



**CONTACT ENERGY LIMITED'S RESPONSE TO THE
ELECTRICITY AND GAS COMPLAINTS COMMISSION
CONSULTATION PAPER – “CONSTITUTIONAL
CHANGES TO THE ELECTRICITY AND GAS
COMPLAINTS COMMISSIONER SCHEME” – APRIL 2007**

CONTACT ENERGY LIMITED'S RESPONSE TO THE ELECTRICITY AND GAS COMPLAINTS COMMISSION'S CONSULTATION PAPER – "CONSTITUTIONAL CHANGES TO THE ELECTRICITY AND GAS COMPLAINTS COMMISSIONER SCHEME" – APRIL 2007

Question	Comment
<p>Q1. Do you agree with our assessment of who should have access to the Scheme, taking into account the requirements of the Act, the GPS and the EC?</p>	<p>The proposed approach seems to be broadly consistent with the outcomes anticipated by the Electricity Act and GPS. However, this should be viewed in light of the comments set out below in this Submission. We believe our comments are reflective of the concerns expressed by the EGCC at paragraphs 26-28, in particular, of the Consultation Paper.</p> <p>In addition, we understand that s.158G(2) states that s.158G(1) applies only if the Commission has approved one or more complaints resolution systems by notice in the Gazette. Accordingly, Contact considers there is scope, in approving any scheme, for the EC to ensure that its coverage does not extend beyond that which is practical and reasonable.</p>
<p>Q2. Do you agree that it is preferable not to use "materiality" as the connecting factor between the complainant and the complaint issue? Do you agree that limiting complaints to "a user or potential user ... in respect of that use or potential use" is appropriate? Is there another connecting factor that could be used?</p>	<p>Contact Energy does not think the "materiality" criterion is necessary and acknowledges it could cause uncertainty.</p> <p>However, we do think that the references to "affected" should be changed to "adversely affected". Many acts or omissions might touch on or affect a person, but unless they result in some sort of detrimental consequence there should be no cause for a complaint or investigation.</p> <p>Further, Contact considers that under the Scheme a complaint should relate to the supply of energy, line or related services to that person by the relevant Retailer or Lines Company (Services) to the complainant. We do not think it would be appropriate if the Scheme would allow any person to make a complaint about an undertaking, practice or policy of a Member that does not relate to that</p>

	<p>person's "use" or enjoyment of the Services (e.g. a person should not be able to use the Scheme to bring a complaint about, say, the design of a network system expansion or about a Member's environmental policies).</p>
<p>Q3. Do you agree with the proposed drafting of "Consumer"?</p>	<p>There are some conceptual issues with the proposition of allowing a complainant Consumer "not having" a Consumer Contract with the Retailer/Lines Company to make Complaints.</p> <p>Almost by definition, if no contract exists, and assuming there is no other specific legal or equitable duty, a person could not normally claim legally enforceable rights against another person and therefore no basis for a complaint should arise in those circumstances.</p> <p>We think that the proposed definition might cover a person who has sought to enter into a Consumer Contract (e.g. the application or switch has been rejected on grounds that are disputed) or one who is physically receiving supply at their property even if, for some reason, it is not clear to that person with whom that relationship exists at the relevant time¹. However, in most of the other scenarios that are mentioned in paragraph 23 of the Consultation Paper there are a number of other avenues available to the complainant (e.g. the disputes tribunal).</p> <p>We do not consider it is fair for member companies to be exposed to complaints under the Scheme from sources who, or whose existence, often will be unknown to the member company. In this regard we do not consider a Land Owner of a user or potential user should have such rights (including because the user/potential user has that right and/or the Land Owner could contract direct with the retailer (and/or, in some cases, the lines company) if they chose to do so).</p> <p>¹However, once it has been identified, the relevant retailer's or lines company's</p>

	complaints system should be gone through before the EGCC Scheme is implemented.
Q4. Do you agree with our assessment that it is appropriate for the Commissioner to consider only some issues relating to potential consumers?	YES – for reasons stated at Question 3. If there is no legal or equitable duty or contractual relationship and/or no reasonable basis for implying either then we do not believe the EGCC’s jurisdiction should extend into that area.
Q5. Do you agree with the proposed drafting that limits the Commissioner’s ability to consider certain issues relating to potential consumers?	The proposed provision only excludes complaints about a refusal to supply (i.e. a specific issue rather than some issues) and it specifically permits an issue that is arguably one for which another complaints body, the Privacy Commission, already exists. The limitations should be fully identified, including by reference to the existing provisions in B1.10 of the Constitution.
Q6. Do you agree with the proposed drafting of Consumer Complaint?	We do not believe this addition is necessary as the intended point seems already to be covered by existing paragraph (a) of the definition of Consumer Complaint. However, if it is implemented then, as indicated above, we consider that it should state “ <u>adversely</u> affects...”
Q7. Do you agree with the proposal to redraft Land Complaint as suggested?	We think this should also state “ <u>adversely</u> affects...”
Q8. Do you agree with the proposed drafting of Clause 6 to provide for consultation with the EC?	We would have thought it would be sufficient for the Scheme Amendment Committee to use “reasonable endeavours” or take “reasonable steps” rather than have to “do everything reasonably practicable on its part”, which seems a very strict standard to achieve.
Q9. Do you agree with the proposed drafting of Clause 6 to provide consistency with any GPS and relevant benchmarks?	YES
Q10. Do you agree the drafting of the Constitution needs to allow for situations where there may not be a consumer contract?	Please see comments above.

Q11. Do you agree that it would be preferable not to amend the Constitution to impose a confidentiality obligation on the parties unless this criterion is required by the EC?	YES
Q12. Do you have any other comments to make regarding this proposal?	NO

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