

Susan Cuthbert
Policy Analyst
Electricity & Gas Complaints Commission

2 May 2007

Dear Susan

Re: Consultation Paper, Constitutional Changes to the Electricity & Gas Complaints Commissioner Scheme

Thank you for the opportunity to comment on this paper.

The primary role of the Ministry of Consumer Affairs is to create an environment that promotes good and accurate information flows between retailers and consumers so that consumers can transact with confidence and have access to redress.

We would be happy to discuss any of our comments further should you wish.

Frances Ah Mu
Policy Analyst
Ministry of Consumer Affairs

| Question | Comment |
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| 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? | Yes |
| 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? | Yes |
| Q3. Do you agree with the proposed drafting of "Consumer"? | Yes |
| Q4. Do you agree with our assessment that it is appropriate for the Commissioner to consider only some issues relating to potential consumers? | Yes we agree that it is appropriate that EGCC does not consider business decisions made by a company about which customers a company chooses to supply to. |
| Q5. Do you agree with the proposed drafting that limits the Commissioner's ability to consider certain issues relating to potential consumers? | MCA prefers that EGCC has the jurisdiction to consider whether the retailer has correctly applied their procedure to an application by a potential consumer before a consumer is refused supply. For example the Commissioner should be able to check to see whether |

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| | <p>companies have applied their application policies consistently, correctly, provided accurate information and followed natural justice processes.</p> <p>However, MCA does not agree that the proposed drafting sufficiently allows for this.</p> |
| Q6. Do you agree with the proposed drafting of Consumer Complaint? | Yes |
| Q7. Do you agree with the proposal to redraft Land Complaint as suggested? | Yes |
| Q8. Do you agree with the proposed drafting of Clause 6 to provide for consultation with the EC? | Yes |
| 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? | <p>Yes we agree that there should be an amendment. However, the wording of the amendment is confusing.</p> <p>For example: If there is no contract (potential customer), in what circumstances would you foresee a consumer contract being pertinent? And, the Code contains undertakings by companies for fair and reasonable dealings with consumers, but most clauses relate to provisions of consumer contract, not contract formation and is unlikely to cover circumstances where there is no contract, not contract formation and is unlikely to cover circumstances where there is no contract. Therefore, in determining complaints where there is no contract, the commission can look at the law, have regard to good industry practice (how does she determine what this is in the absence of guidelines in the Code?) and consider what is fair and reasonable.</p> |
| 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 | MCA recommends that the proposed |

to make regarding this proposal?

amendments also include consumer complaints against gas providers.