



Proposal to Approve a Joint Electricity and Gas Complaints Resolution Scheme

Consultation Paper

March 2009

The Electricity Commission is a Crown Entity set up under the Electricity Act 1992 to oversee the New Zealand electricity industry and markets. The Commission regulates the operation of the electricity industry and markets. In doing so, its principal objectives are to:

- Ensure that electricity is produced and delivered to all classes of consumers in an efficient, fair, reliable and environmentally sustainable manner; and
- Promote and facilitate the efficient use of electricity.

Gas Industry Co is an approved industry body under the Gas Act 1992. Gas Industry Co recommends arrangements to the Minister, including rules and regulations where appropriate, which improve:

- The operation of gas markets;
- Access to key infrastructure; and
- Consumer outcomes.

Gas Industry Co also reports regularly to the Minister of Energy and Resources on the performance and present state of the New Zealand gas industry, and the achievement of Government's policy objectives for the gas sector.

Executive Summary

This paper outlines a proposal for the Electricity Commission to approve, and for Gas Industry Co to recommend that the Minister of Energy and Resources approves, the Electricity and Gas Complaints Commission (EGCC) under the provisions of the Electricity Act and the Gas Act respectively.

The paper invites submissions from all stakeholders on this proposal.

The key points made in the paper include:

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| Problem definition | Electricity and gas consumers have a particular disadvantage in their ability to resolve disputes with suppliers. A free independent complaints resolution service, available to all consumers, helps to resolve this disadvantage. |
| Current situation | Some complainants do not have access to a free independent complaints scheme. There are four complaints resolution schemes in operation and they comply to varying degrees with best practice for complaints resolution schemes. |
| Proposed objective | It is proposed that all energy consumers (and owners and occupiers of land) should have access to a free complaints resolution scheme that is founded on the principles of accessibility, independence, fairness, accountability, efficiency, effectiveness, and community awareness. |
| Applications | Three applications for approval as a single energy-based complaints resolution scheme were received in response to the Request for Applications (RFA) published in September 2008. The applications were carefully evaluated and the EGCC Scheme has been selected as the preferred applicant. |
| EGCC Scheme | The EGCC Scheme was amended to align more closely with the Achievement Standards promulgated with the RFA. During the process of evaluation, proposals to further amend the EGCC Scheme were developed. The recommendation to approve the EGCC Scheme depends on these further amendments being implemented. |
| Reasonably practicable options | The other reasonably practicable options are considered to be regulated arrangements based on either a scheme fully specified in regulation or a scheme based on appointment of a service provider pursuant to regulations. The status quo is not considered to be a reasonably practicable option because it fails to meet the proposed objective, but has been included in the assessment in order to provide a benchmark for comparison. |
| Cost-benefit assessment | The cost-benefit assessment concludes that approval of the EGCC Scheme will provide overall benefits that will outweigh a small increase in costs relative to the status quo, and will provide greater benefits and lower cost than either of the regulated alternatives. |

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1 Introduction

Purpose

- 1.1 The purpose of this consultation paper is to seek submissions on the proposal by the Electricity Commission to approve, and Gas Industry Co to recommend that the Minister of Energy and Resources approves, the EGCC Scheme, under the provisions of the Electricity Act and the Gas Act respectively.
- 1.2 This paper sets out some key terms of the EGCC Scheme, assesses the costs and benefits of approving this scheme relative to the reasonably practicable alternatives to approval, and outlines a possible timetable for implementation.
- 1.3 The Electricity Commission and Gas Industry Co invite submissions from industry participants, energy consumer representatives and other stakeholders on the matters set out in this paper.

Format of this Paper

- 1.4 This paper is organised as outlined in the following table.

Section	Description
1. Introduction	Describes the purpose of the paper and provides a glossary of terms.
2. Consultation Process	Outlines the submission requirements and timetable.
3. Policy and industry context	Outlines the policy rationale for a comprehensive complaints resolution arrangement, describes the current situation, and outlines the legislative framework.
4. Establishing a Single Joint Scheme	Outlines the options for establishing a single joint scheme, the steps taken to date, and proposes an overall objective.
5. Proposal to Approve the EGCC	Describes the EGCC Scheme, invites submissions on the detailed EGCC rules, proposes that approval would be for an indefinite period, and discusses transition issues.
6. Reasonably Practicable Options	Suggests that the status quo fails to meet the proposed regulatory objective and describes the reasonably practicable options as a fully specified regulated scheme and a service provider regulated scheme.
7. Cost-Benefit assessment	Outlines the approach to assessing the costs and benefits of the options.
8. Conclusion	Concludes that approval of the EGCC Scheme will provide overall benefits that outweigh the small increase in costs.
9. Next Steps	Outlines the next steps toward approval of the EGCC Scheme or recommending a regulated scheme.
Appendix A: Recommended Format for Submissions	Provides a list of all the questions.
Appendix B: Legislative Framework	Outlines the requirements of the Electricity Act, the Gas Act and the Government Policy Statements for electricity and gas governance.

Glossary of Abbreviations and Terms

- 1.5 This paper uses a number of abbreviations and terms that are set out here for the convenience of the reader.

Achievement standards	The standards that an approved complaints resolution scheme would need to meet as amended during the RFA process. The Achievement Standards are available on the Electricity Commission website using the following link: www.electricitycommission.govt.nz/opdev/retail/consultations/docs/complaints-resolution/achievement-standard.pdf
Assessment Criteria	The criteria used to assess the costs and benefits of the preferred complaints resolution scheme and other reasonably practicable options (relative to the status quo).
Australian Benchmarks	The Australian Benchmarks for Industry-Based Customer Dispute Resolution Schemes as developed by the Australian Minister for Customs and Consumer Affairs with assistance from the NZ Ministry of Consumer Affairs.
Commission	The Electricity and Gas Complaints Commission
Complainant	A person, including a consumer, potential consumer, former consumer or affected land owner, with a complaint about a gas or electricity retailer or distributor.
Complaints Resolution Scheme	A set of rules and an associated body, which are independent of retailers and distributors, and are available to any person who wishes to complain about an energy retailer or distributor.
Decision-maker	The person who makes determinations about a complaint under the rules of a complaints resolution scheme.
Determination	A finding by the decision-maker about a complaint
Disputes Tribunal	The tribunal established under the Disputes Tribunal Act 1988 to resolve civil disputes.
EGCC	The Electricity and Gas Complaints Commission
EGCC Scheme	The Electricity and Gas Complaints Commission Scheme, as proposed for approval by the Electricity Commission and Gas Industry Co. The EGCC Scheme constitution and rules are available on the EGCC website using the following link: http://www.egcomplaints.co.nz/consultation.htm
Electricity Act	The Electricity Act 1992
Electricity Distributor	A person who supplies electricity line services to any other person or persons (including Transpower)

Electricity Retailer	A person who supplies electricity to another person or other persons for any purpose other than for resupply by the other person or persons.
Evaluation Panel	The joint Electricity Commission and Gas Industry Co panel formed to undertake the evaluation of applications to be approved under the provisions of the Electricity Act and the Gas Act.
Gas Act	The Gas Act 1992
Gas Distributor	A person who supplies gas pipeline services to any other person or persons.
Gas Retailer	A person who supplies gas to another person or other persons for any purpose other than for resupply by the other person or persons.
GPS	The Government Policy Statement on Electricity Governance or Gas Governance
Member	Member of a complaints resolution scheme
Minister	The Minister of Energy and Resources
Overseeing Entity	The governing body for a complaints resolution scheme
Scheme rules	The rules by which a complaints resolution scheme considers complaints, obtains information, makes determinations, awards compensation and changes its own rules.

Electricity Commission, and will be among the information the Commission holds which is subject to public release under the Official Information Act 1982 (OIA)².

- 2.10 In the interests of a transparent process, requests for non-disclosure of submissions, in whole or in part, are discouraged. Despite this, if it is necessary to include confidential information in a submission, the confidential information should be clearly identified, and preferably contained in an appendix to the submission. Submitters should provide the Commission with confidential and public versions of their submissions. The responsibility for ensuring that confidential information is not included in a public version of a submission rests entirely with the party making the submission.
- 2.11 If you have any questions about the process or this consultation paper please contact either Karen Bradley (04 460 8876 or Karen.Bradley@electricitycommission.govt.nz) or Bas Walker (04 494 6582 or BasW@gasindustry.co.nz).

Timetable for Decision

- 2.12 Following receipt and consolidation of submissions the Electricity Commission and Gas Industry Co will, acting jointly, consider all submissions, finalise their decision, and issue a paper setting out the decision. The intended target date for making the decision is June 2009.
- 2.13 The next steps and the timetable will depend on the decision reached, in particular, whether to proceed with establishing an approved scheme as proposed or to instead pursue a regulated scheme. The next steps and timetable under each of these is set out in Section 9 of this paper.

² If the Commission receives a request for the release of information contained in a submission, it will be required to consider the release of the submission, in whole or in part, in terms of the criteria set out in the OIA. This would usually be done in consultation with the submitter. The Commission can withhold official information in certain circumstances. The grounds for the Commission withholding official information are set out in the OIA. Any decision by the Commission to withhold information is subject to review by the Ombudsman.

3 Policy and Industry Context

Problem Definition

- 3.1 The government policy framework for the energy sector promotes competition in gas production, electricity generation, wholesale energy markets and retail energy markets, while providing for direct regulation of natural monopoly transmission and distribution elements. This framework is supported by the Commerce Act, the Fair Trading Act, the Consumer Guarantees Act, and other commercial laws.
- 3.2 The main emphasis for delivering good outcomes for energy consumers is therefore on competition, and policy initiatives to facilitate and promote competition are a key component of government policy.
- 3.3 The Electricity Act and the Gas Act recognise that this reliance on competitive pressures may not be sufficient, on its own, to ensure good outcomes for consumers and the Acts provide for a range of possible additional measures to improve consumer outcomes and protect consumers. The origin of these additional measures lies in the observation that in situations where parties to a transaction have unequal bargaining power, there is a risk that the party with less power will incur a higher cost, or be subject to less favourable contract terms, than they would have if the transaction had been between two parties with equal bargaining power.
- 3.4 One area where electricity and gas consumers have a particular disadvantage is their ability to resolve disputes with suppliers. The unequal bargaining power arises from the superior knowledge and resources available to a supplier relative to a consumer. In any dispute it becomes difficult for a consumer to obtain the information necessary and argue the case with a supplier when that supplier has much greater knowledge and resources at its disposal.
- 3.5 Although consumers could use the Disputes Tribunal to resolve disputes with retailers and distributors, electricity and gas issues can be complex and specialised. The Disputes Tribunal may not have sufficient experience in this area to balance the unequal bargaining power. Accordingly, the preference is for a specialised service that can provide consistent decisions based on a comprehensive knowledge of the industry. Use of a complaints resolution scheme would not prevent complainants from later accessing the Disputes Tribunal.
- 3.6 It is for these reasons that the Electricity Act, the Gas Act, and successive GPSs have all identified the need for an effective specialised complaints resolution service to be available to consumers. A specialised complaints resolution service helps to balance the information and resource asymmetry by making expert resources available to investigate legitimate consumer complaints.

Current Situation

- 3.7 In response to this need and the GPS expectations, the electricity and gas industries have taken a series of steps over recent years to develop arrangements for consumer complaints resolution.
- 3.8 As a result, there are four energy-based schemes that currently offer complaints resolution services covering electricity and gas. These schemes are:

- **The Electricity and Gas Complaints Commission (EGCC)** which was formed in 2002 by members of the electricity industry to provide services to electricity consumers. The scheme has been expanded to include gas and to include land owners or occupiers of land that had complaints about lines or pipes crossing their land. The scheme is funded by its members (electricity and gas retailers and distributors) and is free to complainants.
- **The Independent Energy Complaints Resolution Service (IECRS)** is an electricity and gas disputes adjudication service that is set up to resolve disputes for energy consumers supplied by Bay of Plenty Energy. The scheme is funded by Bay of Plenty Energy and is free to complainants.
- **The Electricity and Gas Disputes Resolution Service (EGDRS)** is an electricity and gas disputes adjudication service that is set up to resolve disputes between energy consumers and member suppliers. The current members are Trustpower and Bosco Connect Limited. The scheme is funded by its members and is free to complainants.
- **The Independent Energy Trust Complaints Resolution Scheme (IETCRS)** is an electricity disputes adjudication service that is overseen by the King Country Electric Power Trust and the Waitomo Energy Services Trust and provides complaint resolution services for customers of King Country Energy. The scheme is free to complainants.

3.9 The current membership of dispute resolution schemes is outlined in the following table³:

Dispute Resolution Scheme	Retailer Members	Distributor Members	
EGCC	Contact Energy Empower Energy Online Genesis Energy Mercury Energy Meridian Energy Mighty River Power Powershop Pulse Utilities Simply Energy Stewart Island Electricity Wanganui Gas	Alpine Energy Aurora Energy Buller Electricity Centralines Counties Power Eastland Network Electra Electricity Ashburton Horizon Energy Mainpower Marlborough Lines Nelson Electricity Networks South Network Tasman Northpower Orion NZ	Powerco Powernet Scanpower Stewart Island Electricity The Lines Company Top Energy Transpower Unison Networks United Networks Vector Wanganuia Gas Waipa Networks Wellington Electricity Lines WEL Networks Westpower
IECRS	Bay of Plenty Energy		
IETCRS	King Country Energy		
EGDRS	Trustpower Bosco Connect		

³ Based on the information available to the Electricity Commission and Gas Industry Co.

- 3.10 This table demonstrates that nearly all retailers and distributors provide access to a complaints resolution scheme and that a large majority have chosen to join the EGCC Scheme. However, there are some deficiencies associated with the existing situation including:
- Not all energy consumers, land owners and occupiers of land, have access to a complaints resolution scheme⁴;
 - The existing complaints resolution schemes comply to varying degrees with the Australian Benchmarks;
 - There are differences in approach to complaint resolution between the existing schemes that lead to varying levels of support for complainants during the complaint process and potentially inconsistent determinations;
 - Possible confusion among complainants about where to complain;
 - The costs associated with operation of multiple schemes; and
 - Complications where complaints cover issues related to members of different schemes.
- 3.11 In April 2008, the Government published new GPSs for electricity and gas. These GPSs encourage the Electricity Commission and Gas Industry Co to work closely together to make arrangements for a joint energy-based complaints resolution scheme. The Government's expectation of a single-joint scheme is based on a belief that a single scheme will have benefits for consumers and a lower overall cost.
- 3.12 It is noted that a revised electricity GPS is currently being consulted on. In respect of complaints resolution, the revised GPS has not changed.
- 3.13 The policy expectations, together with the legislative framework within which these sit, are summarised in the following section to provide the context for the proposals set out in this consultation paper.

The Electricity Act and the Gas Act

- 3.14 Both the Electricity Act and the Gas Act provide for the approval of a complaints resolution scheme for the purpose of addressing complaints by consumers and land occupiers or owners relating to retailers and distributors.
- 3.15 The requirements of the Electricity Act and the Gas Act are described in some detail in Appendix B. The key points are:
- Every electricity distributor and retailer and every gas distributor and retailer must participate in an approved complaints resolution scheme (if one exists).
 - The Electricity Commission has the power to approve one or more complaints resolution schemes for electricity.

⁴ Based on the information available to the Electricity Commission and Gas Industry Co, those without access to a complaints resolution scheme include complainants in the electrically isolated Chatham Islands and Haast areas, reticulated LPG consumers, electricity and gas consumers supplied by Nova Gas and Easy Energy, gas consumers supplied by Auckland Gas and E-gas, and electricity and gas consumers supplied across networks within commercial and industrial buildings and installations.

- The Minister has the power to approve one or more complaints resolution schemes for gas.
- As an alternative to approval of a proposed scheme, the Minister may make a recommendation for regulations (under both the Electricity Act and the Gas Act) to establish a complaints resolution scheme.

The GPSs for Electricity and Gas

- 3.16 The 2008 GPSs for electricity and gas set out a number of expectations that need to be taken into account when setting out requirements for an independent complaints resolution scheme. These expectations are set out in Appendix B and summarised in the following section.

4 Establishing a Single Joint Scheme

A Joint Approach

- 4.1 The Electricity Commission and Gas Industry Co have operated a joint process to select a preferred applicant for approval. The GPSs outline an expectation that the Electricity Commission and Gas Industry Co will co-ordinate their approaches to the approval of a complaints resolution scheme because a single scheme for both electricity and gas would provide a number of important benefits.

Possible Routes to a single joint scheme

- 4.2 Analysis of the Electricity Act and the Gas Act, against the background of the GPSs, suggests that there are two possible routes to establishing a single joint energy-based complaints resolution scheme:
- **Approve an existing scheme** – the Electricity Commission and Gas Industry Co could reach agreement on approval of a single joint energy-based scheme. The Electricity Commission could then approve the scheme under the Electricity Act and the Gas Industry Co could recommend to the Minister that he approve the scheme under the Gas Act.
 - **Establish a scheme through rules or regulation** - the Electricity Commission and Gas Industry Co could reach agreement on the detail of a single joint energy-based scheme. The two bodies could then develop a set of rules or regulations establishing the framework for the joint scheme and both recommend these to the Minister.
- 4.3 In order to recommend rules or regulations, both the Electricity Commission and Gas Industry Co would be required to follow the processes set out in Appendix B to consult with representative persons, assess costs and benefits, and prepare a statement of proposal.
- 4.4 The key steps in the collaborative process leading to this point are summarised in the following table. The reader is referred to the papers noted in the table for further detail.

Consultation March 2008

The Electricity Commission and Gas Industry Co released a joint consultation paper describing the proposed process to establish a single scheme, and seeking submissions on a set of proposed Achievement Standards that any scheme would need to satisfy if it were to be approved.

Submissions were received from 29 stakeholders representing a broad cross-section of interests.

<http://www.electricitycommission.govt.nz/pdfs/opdev/retail/consultationdocs/Consultation-Paper.pdf>

<http://www.electricitycommission.govt.nz/submissions/retail/consumer-complaints>

**Submissions Analysis
September 2008**

Following consideration of submissions on the consultation paper, the Electricity Commission and Gas Industry Co modified the proposed Achievement Standards and the criteria against which applications would be assessed.

A Submissions Analysis Paper was published at this time, setting out the findings and proposed next steps.

<http://www.electricitycommission.govt.nz/pdfs/opdev/retail/consumer-complaints/SubmissionsAnalysis.pdf>

**Request for Applications
September 2008**

In line with the conclusions set out in the Submissions Analysis paper, the Electricity Commission and Gas Industry Co issued a Request for Applications (the RFA) to be selected as a preferred candidate for approval as a Complaints Resolution Scheme under the Electricity and Gas Acts. This RFA set out the requirements and Achievement Standards, and sought applications for consideration.

<http://www.electricitycommission.govt.nz/pdfs/opdev/retail/consumer-complaints/request-applications.pdf>

**Consideration of Applications
January and February 2009**

The Electricity Commission and Gas Industry Co considered the applications received, and assessed these in accordance with an agreed evaluation methodology to determine the preferred candidate for an approved scheme.

The costs and benefits of an approved scheme have been assessed alongside the other reasonably practicable options (two forms of a regulated scheme). This assessment has been undertaken relative to the status quo.

It is this assessment that is the subject of this consultation paper.

- 4.5 The next steps depend on the outcome of the Electricity Commission's and Gas Industry Co's consideration of the submissions received and the conclusions reached (refer Section 9 of this paper).

Key Requirements of Single Joint Scheme

- 4.6 The expectations set out in the electricity GPS provide guidance about the outcomes Government is seeking for a complaints resolution scheme covering electricity and gas. These include:
- The scheme must be consistent with international best practice for complaint resolution.
 - The decision-making process and administration of the scheme must be independent from scheme members.
 - Membership must include all distributors (including Transpower) and retailers.

- The scheme must require robust internal complaints-handling processes within all member companies.
- The scheme must incorporate a document that sets out the minimum standards of conduct for scheme members.
- The scheme must be free to complainants and be funded by the industry members.
- The scheme must provide compensation for complainants where appropriate.
- The scheme must resolve disputes quickly and cheaply without unduly protracted or costly processes.

Proposed Objective

4.7 In selecting a preferred candidate for an approved scheme, and then considering the option of an approved scheme against the reasonably practicable option(s) of a regulated scheme, the Electricity Commission and Gas Industry Co have adopted the following overall objective to guide their assessment:

"The overall objective is to provide all gas and electricity consumers (including potential consumers)⁵ and all owners and occupiers of land, with free access to a complaints resolution scheme that is founded on the principles of accessibility, independence, fairness, accountability, efficiency, effectiveness, and community awareness."

4.8 The remainder of this consultation paper sets out the Electricity Commission and Gas Industry Co proposed approach to meeting this objective, having considered all relevant information including:

- Legislative requirements and policy expectations;
- Feedback from earlier consultations;
- The applications received in response to the RFA issued in September 2008; and
- Further analysis undertaken by the Electricity Commission and Gas Industry Co.

⁵ All consumers covered by the Electricity Act (any person) and the Gas Act (small consumers).

5 Proposal to Approve the Electricity and Gas Complaints Commission

- 5.1 The Electricity Commission and Gas Industry Co have selected the EGCC Scheme as their preferred applicant for approval as a single nationwide scheme to cover gas and electricity related complaints.
- 5.2 This approval would be made by the Electricity Commission (under the Electricity Act) and by the Minister (under the Gas Act). If approved as the single joint complaints resolution scheme, it will become mandatory for all electricity and gas retailers and all electricity and gas distributors, to participate in the scheme.

Evaluation of Applications

- 5.3 In response to the RFA issued on 8 September 2008, three applications were received by the closing date of 8 December 2008. These applications were from the following organisations:

Disputes Resolution Services Limited (DRSL)	DRSL is an independent company that currently operates two dispute resolution services: review of ACC decisions and dispute resolution for the telecommunications industry.
Electricity and Gas Disputes Resolution Service (EGDRS)	EGDRS was established by Trustpower and Mighty River Power in 2007 to resolve disputes between energy line company and retailer company members and their customers. Its current membership includes Trustpower and Bosco Connect Ltd, who are both retailers.
Electricity and Gas Complaints Commission (EGCC)	EGCC was established by electricity industry participants in 2002 to resolve disputes between electricity line company and retailer company members and their customers. The scheme has evolved to cover gas and to cover complaints from owners and occupiers of land. Its current membership is widespread covering most electricity and gas retailers and line companies.

- 5.4 The Electricity Commission and Gas Industry Co formed a joint Evaluation Panel to undertake the process of considering applications and selecting a preferred applicant. A detailed and comprehensive evaluation process resulted in the Evaluation Panel recommending the EGCC Scheme as the preferred applicant. This recommendation was endorsed by the boards of the Electricity Commission and Gas Industry Co.

Key Features of the EGCC Application

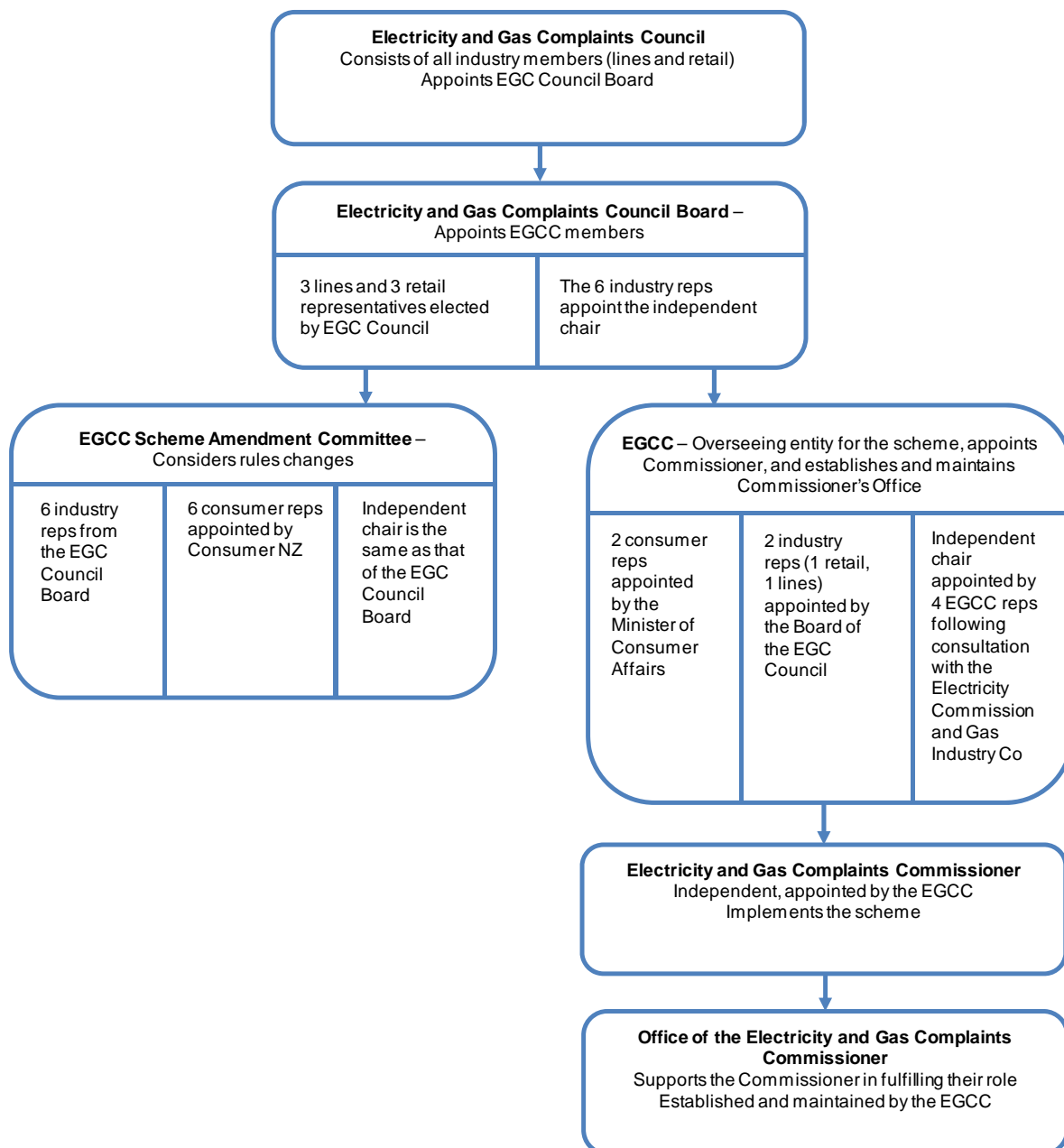
- 5.5 The EGCC Scheme has been operating for more than 7 years. It was formed by electricity industry participants following a Ministerial Review in 2000 which recommended an industry ombudsman scheme to help improve competition and outcomes for consumers. The scheme has evolved to cover gas and to cover complaints from owners and occupiers of land.

- 5.6 The application from EGCC amended the existing structure and operation of the service to align more closely with the Achievement Standards. These amendments were developed through a process involving the Scheme Amendment Committee⁶ and consultation with members.
- 5.7 Key features of the amended scheme include:
- A Commissioner as the principal Decision-Maker who takes overall accountability for the determinations;
 - An EGCC Office to provide support to the Commissioner;
 - Conciliators located within the EGCC Office to handle complainant inquiries, mediate disputes in the first instance, and support the Commissioner in any determinations;
 - Codes of practice for electricity, gas and land, provided as schedules to the rules, and setting out minimum standards of behaviour and minimum terms for consumer contracts⁷.
- 5.8 The EGCC Scheme is currently provided by a staff of 10 in support of the Commissioner. They provide a mix of experience in the energy industry and in dispute resolution. Five of the staff have been with the EGCC Scheme for more than five years.
- 5.9 The governance arrangements included in the EGCC application are outlined in the diagram⁸ on the following page. These arrangements include:
- A Council comprising all industry members of the scheme, and which appoints the members of a Board;
 - A Council Board comprising three retailer representatives and three distributor representatives and an independent chair;
 - A Complaints Commission with a board comprising consumer representatives, industry representatives, and an independent chair – the Complaints Commission oversees the work of the Commissioner and the EGCC Office in dealing with complaints and making determinations;
 - A Scheme Amendment Committee, with representation from consumer groups and members, which oversees the process to amend the scheme constitution and rules.

⁶ The role of the Scheme Amendment Committee is set out in paragraph 5.9 and illustrated in the diagram on the following page.

⁷ Some of the codes of practice relate to issues that are beyond the scope of “complaints resolution”. These codes will need to be established within the EGCC scheme as separate from the approval under the Electricity Act and the Gas Act. Choosing to be bound by these codes will need to be a voluntary decision on the part of participants.

⁸ This diagram was developed by the Evaluation Panel, from the EGCC application, in order to aid its understanding of the governance arrangements.

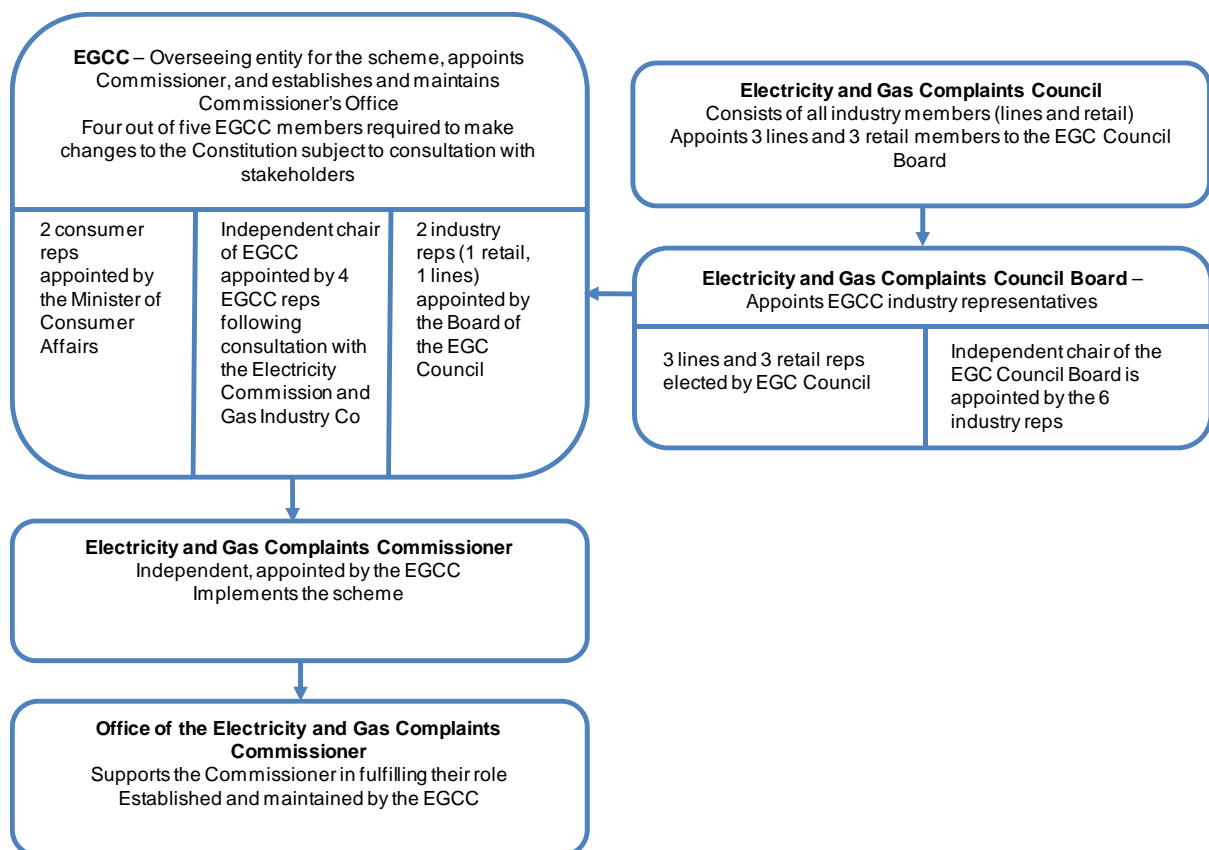


Amendments made during the Evaluation Process

- 5.10 Although the EGCC application complied with most of the Achievement Standards, the Evaluation Panel had concerns about a number of issues. These concerns were discussed at a meeting with representatives of EGCC and followed up by letter⁹. As a result of the meeting and follow-up letter, the EGCC representatives agreed to consider further amendments to the EGCC Scheme.

⁹ An identical process (to follow up with Evaluation Panel concerns) was followed with one other applicant.

- 5.11 Although the further amendments have been agreed between the Electricity Commission, Gas Industry Co and the EGCC representatives, they have yet to be endorsed by the EGCC membership. It is understood that consultation with EGCC members on the further amendments to the EGCC Scheme will take place during March and early April 2009.
- 5.12 For the purpose of this consultation paper, it is assumed that these further amendments will be agreed by members. The assessment of the approved EGCC Scheme relative to the reasonably practicable options has therefore been undertaken using the EGCC constitution and rules which include the further amendments.
- 5.13 If the further amendments are not agreed by the EGCC members, it would be necessary for the Electricity Commission and Gas Industry Co to reconsider whether to proceed with the approval process.
- 5.14 The amendment of most significance is to the overall governance structure of the EGCC Scheme. The amended governance structure proposed by the EGCC representatives is outlined in the following diagram¹⁰:



- 5.15 The amendments to the governance structure include:
- The Scheme Amendment Committee will cease to exist;

¹⁰ This diagram was also developed by the Evaluation Panel, from the further amendments proposed by EGCC.

- The Commission will oversee the process to amend the constitution and rules of the EGCC Scheme and any amendments will require support from four out of the five Commissioners, following consultation with members.
- 5.16 The other changes to the EGCC Scheme are less material and include amending the constitution and rules so that:
- The purpose statement more closely aligns with the Achievement Standards;
 - The gas consumers covered by the scheme align with the provisions of the Gas Act;
 - The Commissioner has a duty to refer complaints where appropriate;
 - Contact staff are required to explain the characteristics of the scheme in simple terms;
 - Determinations are generally not confidential;
 - The Commission is required to actively monitor and report on member compliance;
 - Members are bound by a code of conduct for complaint handling;
 - Members may agree separately to be bound by the Electricity Consumer Code of practice, the Gas Consumer Code of Practice, and the Land Code.

Consultation on Rules for the EGCC Scheme

- 5.17 Submissions made in response to the March 2008 Consultation Paper included a suggestion that rules for the preferred scheme should be subject to consultation in order to obtain input from stakeholders. The Electricity Commission and Gas Industry Co agreed that input from stakeholders on the proposed scheme would facilitate a better overall scheme being approved. Accordingly, they agreed to accept submissions on the scheme rules and structure following selection of the preferred applicant.
- 5.18 The Constitution and associated schedules that constitute the EGCC Scheme, modified to incorporate the amendments made to the scheme as part of the evaluation process, are available from the EGCC website using the link included in the glossary of terms in paragraph 1.5.
- 5.19 The Electricity Commission and Gas Industry Co will accept submissions on these arrangements and will consider seeking possible amendments to the EGCC Scheme as part of any final approval process, in the event that they decide to proceed with approval.

- Q1:** *Do you agree that the EGCC Scheme arrangements represent an appropriate basis for a single nationwide complaints resolution scheme for electricity and gas?*
- Q2:** *Do you have particular areas of concern that would lead you to making suggestions for changes to the EGCC Scheme?*

Term of Approval

- 5.20 Submissions made in response to the March 2008 Consultation Paper provided contrasting views on whether the selected complaints resolution scheme should be approved for a fixed term or for an indefinite period.

- 5.21 The submitters favouring no fixed term hold the view that the approved scheme should have the characteristics of an Ombudsman scheme, including appointment in perpetuity. This view is based on a belief that a perpetual ombudsman scheme will deliver more consistent outcomes for consumers on a long-term basis and will avoid a possibly destabilising focus on the need to prepare for the next application and retain staff through a period of uncertainty.
- 5.22 The submitters favouring a fixed-term appointment, and a process of re-application for approval, hold the view that a more important consideration is a focus on providing a commercial and cost-effective arrangement. This view is based on a belief that performance in this area will be sharpened by the prospect of competition to provide the service.
- 5.23 The Electricity Commission and Gas Industry Co have considered the arguments for and against a fixed term for approval and decided that, on balance, they intend to recommend approval of the EGCC Scheme without a fixed term. Rather than have approval lapse following a particular term, the Electricity Commission and Gas Industry Co prefer to encourage cost-effective performance through the process of independent review of the scheme every three years and the possibility that approval could be revoked at any time.

Q3: *Do you agree that approval should be on the basis of an indefinite term, while encouraging cost-effective performance through the independent review process? If not, do you have any additional observations on the merits of a fixed-term?*

Transition Issues

- 5.24 The Electricity Commission and Gas Industry Co have considered the issues associated with the transition from the current situation involving multiple schemes to a single joint electricity and gas approved scheme and concluded that the transition to an approved EGCC Scheme should be relatively straight-forward.
- 5.25 The Electricity Commission and Gas Industry Co note that in discussions with applicant schemes there was general agreement that the parties would cooperate in a sensible transition, regardless of the decision on a preferred applicant, and it is intended that, once a final decision is made, discussions with affected parties will take place to manage any transition.
- 5.26 The Electricity Commission and Gas Industry Co have also concluded that:
- For most potential complainants the transition will be straight-forward;
 - For complainants currently having a complaint considered by the EGCC Scheme there should be no change;
 - For potential complainants not currently covered by the EGCC Scheme, the transition will be straight-forward, and they may notice that the availability of the EGCC Scheme is promoted on invoices;
 - For complainants currently having a complaint considered by another scheme (likely to be a relatively small number) it may be sensible for the current provider to continue to handle the complaint.

Q4: *Do you agree that the transition to an approved EGCC Scheme should be relatively straight-forward? Do you have any views on how the transition should be managed?*

6 Reasonably Practicable Options

- 6.1 Before the Electricity Commission makes a final decision to approve the EGCC Scheme and before the Gas Industry Co makes a recommendation to the Minister, the Electricity Commission and Gas Industry Co have agreed to undertake an assessment of the preferred applicant (the EGCC Scheme) relative to the reasonably practicable options, in order to confirm that a single approved scheme covering electricity and gas complaints is likely to provide the best overall outcome.
- 6.2 The Electricity Commission and Gas Industry Co have considered the reasonably practicable options and concluded that:
- **The Status Quo** fails to meet the regulatory objective because it does not ensure that all persons (covered by the Electricity Act and Gas Act) have access to a complaints resolution scheme with the required characteristics. Nevertheless, the Status Quo has been included as a benchmark against which to compare the proposal (approval of the EGCC Scheme) and the other reasonably practicable options.
 - There are two regulated alternatives that constitute reasonably practicable options; a **Fully Specified Regulated Scheme** and a **Service Provider Regulated Scheme**.
- 6.3 The Electricity Commission and Gas Industry Co have concluded that the regulated alternatives are reasonably practical options because they have the potential to meet the regulatory objective and are capable of being implemented within the powers of the Electricity Act and the Gas Act within reasonable timeframes and at a reasonable cost.
- 6.4 The Electricity Commission and Gas Industry Co consider that there are no other reasonably practicable options that should be considered.

Status Quo

- 6.5 The Status Quo is described in section 3 of this paper. It comprises a situation with four energy-based schemes that offer complaints resolution services. These schemes are the EGDRS, the EGCC, the IETCRS and the IECRS.
- 6.6 Section 3 outlines that nearly all retailers and distributors provide access to a complaints resolution scheme, that a large majority have chosen to join the EGCC Scheme, and that there are a number of deficiencies associated with the existing situation¹¹.
- 6.7 In particular, Section 3 outlines that some electricity and gas consumers and owners and occupiers of land do not have access to a free independent complaints resolution scheme.

¹¹ These deficiencies were listed in paragraph 3.10 and included: varying compliance with the Australian Benchmarks, differences in approach between schemes, possible confusion and complications about where to complain, and costs associated with multiple schemes.

Regulated Schemes

6.8 In order to assess the proposal to approve the EGCC Scheme against the reasonably practicable options, the Electricity Commission and Gas Industry Co have considered the likely form of Fully Specified and Service Provider regulated schemes. The key conclusions are:

- In both cases, the key features of the scheme and the detailed scheme rules would be set out in regulations (or rules) ¹²;
- The statutory form would likely be either a body corporate established by regulation, or an industry body (such as a company) recognised by the regulations;
- Appointments to the Overseeing Entity would likely be made by the Minister of Energy and Resources and/or the Minister of Consumer Affairs.

6.9 The likely key features of the two regulated options are summarised in the following table:

Item	Fully Specified Regulated Scheme (FSRS)	Service Provider Regulated Scheme (SPRS)
Key features of scheme	Set out in regulations	Set out in regulations
Detailed scheme rules	Detailed schedule to regulations or rules	Detailed schedule to regulations or rules (relating to member obligations) and attachment to the service provider agreement (relating to service provider obligations)
Legal status	Body Corporate or company established by regulation to provide a complaints resolution scheme	Body corporate or company established by regulation to contract with a service provider (the service provider could have any legal status)
Service delivery	Via staff employed by Body Corporate or company	Via entity contracted as Service Provider
Overseeing entity	Board established by regulation (appointments by Minister or Ministers)	Board established by regulation to manage Service Provider (appointments by Minister or Ministers)
Decision-Maker and Staff	Appointed by Board (and by Decision-Maker)	Appointed by Service Provider
Determinations	By Decision-Maker supported by staff	By Service Provider Decision-Maker supported by staff
Regulation/rule changes	Regulation/rule change process (with recommendations able to be made by the Board, the Electricity Commission and Gas Industry Co)	Regulation/rule change process (with recommendations able to be made by the Service Provider, the Electricity Commission and Gas Industry Co)
Reporting	Annual Report from Board as set out in Regulations	Annual Report from Service Provider and Review from Board
Monitoring	Electricity Commission / Gas Industry Co Annual Review	Electricity Commission / Gas Industry Co Annual Review

¹² A regulated scheme could be established by regulations, rules, or some combination of regulations and rules. In this section the references to regulations should be read as either regulations or rules.

Item	Fully Specified Regulated Scheme (FSRS)	Service Provider Regulated Scheme (SPRS)
Funding	Set up costs – funded by levies under the Electricity Act and the Gas Act Operating costs – funded by industry participants via regulations	Set up costs – funded by levies under the Electricity Act and the Gas Act Operating costs – funded by industry participants via regulations
Enforcement	Electricity Commission / Gas Industry Co to enforce Rulings Panel to adjudicate	Electricity Commission / Gas Industry Co to enforce Rulings Panel to adjudicate

6.10 The main points of difference between the fully specified and service provider schemes include:

- In the fully specified arrangement the role of the Overseeing Entity would be to oversee all aspects of the operation of the scheme, while in the service provider arrangement the role would be to oversee the appointment of, and the performance of, the service provider;
- In the fully specified arrangement the Decision-maker and staff would be employees of the body corporate or the recognised industry body, while in the service provider arrangement they would be employees of the service provider;
- Under the service provider arrangement, the appointment of the service provider would likely be via a contested process and appointment is likely to be for a limited term.

Q5: *Do you agree that the Service Provider Regulated Scheme and the Fully Specified Regulated Scheme are the only reasonably practicable alternatives to approving an applicant scheme, which meet the proposed regulatory objective? If not, what other reasonably practicable options exist in your view?*

7 Cost-benefit Assessment

- 7.1 The reasonably practicable options and the proposal to approve the EGCC Scheme have each been compared to the Status Quo. This section describes the approach used for this assessment, sets out the results and draws conclusions.

Approach to Cost-benefit Assessment

- 7.2 In order to assess the costs and benefits of an approved EGCC Scheme relative to the Fully Specified Regulated Scheme, the Service Provider Regulated Scheme, and the Status Quo, the Electricity Commission and Gas Industry Co have considered the likely costs of each of the arrangements and the likely benefits of each of the arrangements. A national cost-benefit approach has been adopted.
- 7.3 The Electricity Commission and Gas Industry Co concluded that it would not be feasible to undertake a quantitative assessment of the costs relative to the benefits because there would be many subjective judgements involved and some of the benefits, in particular, would be extremely difficult to quantify. The costs and benefits have therefore been assessed largely on a qualitative basis. For the purpose of the analysis, the costs and benefits of the proposal and the regulated options have been assessed relative to the Status Quo.
- 7.4 The Electricity Commission and Gas Industry Co have identified the areas set out in the following table as those that should be assessed when considering the costs and benefits of the proposal, the Fully Specified Regulated Scheme and the Service Provider Regulated Scheme relative to the Status Quo.

Costs	
Set-up and Transition Costs	The costs to set up a complaints scheme and transition from the current arrangements
Operating Costs	The costs associated with processing complaints, interfacing with members, and making determinations
Governance Costs	The costs of overseeing the operation of the scheme, amending the rules and ensuring compliance
Monitoring Costs	The costs of monitoring the performance of the scheme, and ensuring it continues to meet the regulatory objective

Benefits	
Complainant Benefits	The benefit to consumers, potential consumers and land owners and occupiers of having independent and free complaints resolution arrangements in place to assist them when a dispute arises with a retailer or distributor
Enforcement Benefits	The benefits associated with ensuring that electricity and gas participants comply with the requirements of participation in a complaints resolution scheme
Transition Benefits	The benefits associated with managing historical complaints and achieving a smooth transition from the Status Quo
Adaptability Benefits	The benefits associated with developing and adapting a complaints resolution scheme in response to changing industry and consumer needs and technology advances

- 7.5 The costs that have been assessed are generally tangible costs that could be expressed in dollar form if it was feasible to provide estimates with any

confidence. The benefits, on the other hand, are generally less tangible and more difficult to describe in dollar terms.

Q6: *Do you agree that the costs and benefits set out in the table are the main costs and benefits that need to be considered? If not, what other costs and benefits would you suggest?*

Assessing the Costs and Benefits

7.6 Although the Electricity Commission and Gas Industry Co concluded that a true quantitative cost-benefit assessment was not feasible, a quantitative scoring system has been used to help guide the assessment of costs and benefits.

7.7 This approach applies the following scoring system using a range of +4 to -4 to assess each cost and benefit area as follows:

Score	Scoring description
0	No material difference relative to the Status Quo
+/-1	A small difference relative to the Status Quo
+/-2	A reasonably material difference relative to the Status Quo
+/-3	A reasonably large difference relative to the Status Quo
+/-4	A very large difference relative to the Status Quo

7.8 Note that a positive score represents an increase in cost (or an increase in benefit) relative to the Status Quo, while a negative score represents a decrease in cost (or a decrease in benefit) relative to the Status Quo.

7.9 This scoring system has been used in order to facilitate the development of an overall assessment of the costs and an overall assessment of the benefits and allow a ready comparison between the options.

Q7: *Do you agree that the simple scoring system set out in the table is a reasonable way of comparing costs and benefits across the options?*

Set-up and Transition Costs

7.10 The costs to set up a complaints scheme and transition from the current arrangements have been assessed for each option relative to the Status Quo. The assessment is outlined in the following table:

Option	Set-up and Transition costs (relative to Status Quo)	Score
Approved Scheme	Transition to an approved EGCC Scheme should be relatively straightforward – relatively few changes are required to the existing scheme and the large majority of participants are already members. A few participants will need to transition from other schemes to the EGCC.	+1
Service Provider Regulated Scheme	Transition to a Service Provider scheme will involve a lengthy transition; establishing regulations, establishing a body corporate or company, calling for proposals and negotiating a contract. Existing scheme operators are likely to make Service Provider proposals.	+2

Option	Set-up and Transition costs (relative to Status Quo)	Score
Fully Specified Regulated Scheme	Transition to a Fully Specified regulated scheme will involve an even more lengthy transition; establishing regulations, establishing a body corporate or company, recruiting staff and setting up a new operation from scratch.	+4

Operating costs

- 7.11 The costs associated with processing complaints, interfacing with members, and making determinations have been assessed for each option relative to the Status Quo. The assessment is outlined in the following table:

Option	Operating costs (relative to Status Quo)	Score
Approved Scheme	Moving to an approved EGCC Scheme may see costs rise because the EGCC Scheme is likely to cost slightly more than the other existing schemes and, because membership will be more comprehensive, the volume of complaints being managed may rise. Providing the EGCC Scheme with approved status may also dilute the pressure to keep costs down. This would be counter-balanced to some extent by the scope for regular independent performance reviews.	+2
Service Provider Regulated Scheme	Moving to a Service Provider scheme may see costs rise because a scheme that meets the Australian Benchmarks is likely to cost slightly more than the existing schemes and, because membership will be more comprehensive, the volume of complaints being managed may rise. Fixed term appointments for the Service Provider would help maintain pressure to keep costs down. The need to establish a body corporate or company to manage and oversee contracts will add to costs.	+2
Fully Specified Regulated Scheme	Moving to a Fully Specified regulated scheme could see costs increase significantly because a fully-staffed government agency operating a scheme that meets the Australian Benchmarks is likely to cost more than the existing schemes and, because membership will be more comprehensive, the volume of complaints being managed may rise. The incentives to keep costs down would also be significantly diluted.	+3

Governance costs

- 7.12 The costs of overseeing the operation of the scheme, amending the rules and ensuring compliance have been assessed for each option relative to the Status Quo. The assessment is outlined in the following table:

Option	Governance costs (relative to Status Quo)	Score
Approved Scheme	Moving to an approved EGCC Scheme should see overall governance costs fall since there would be a transition from several schemes to one scheme, and the modified governance model for EGCC will reduce complexity relative to the current EGCC Scheme.	-2
Service Provider Regulated Scheme	Moving to a Service Provider scheme should also see overall governance costs fall since there would be a transition from several schemes to one scheme, and reduced complexity. Cost may not fall as much as for the Approved Scheme because of the need to oversee the appointment of a service provider and follow the regulatory process to recommend any changes to the regulations/rules.	-1
Fully Specified Regulated Scheme	Moving to a Fully Specified regulated scheme would see overall governance costs increase slightly because of the need to establish a regulated overseeing entity with an ongoing need to monitor and follow the regulatory process to recommend any changes to the regulations/rules. These cost increases will be balanced to some degree because of the transition from several schemes to one scheme.	+1

Monitoring Costs

- 7.13 The costs of monitoring the performance of the scheme, and ensuring it continues to meet the regulatory objective have been assessed for each option relative to the Status Quo. The assessment is outlined in the following table:

Option	Monitoring costs (relative to Status Quo)	Score
Approved Scheme	Moving to an approved EGCC Scheme is likely to result in overall monitoring costs increasing since there would be a need for the Electricity Commission and Gas Industry Co to monitor performance and institute regular independent reviews.	+2
Service Provider Regulated Scheme	Moving to a Service Provider scheme is also likely to result in overall monitoring costs increasing since there would be a need to monitor service provider performance and conduct regular performance reviews.	+2
Fully Specified Regulated Scheme	Moving to a Fully Specified regulated scheme is also likely to result in overall monitoring costs increasing since there would be a need for the Electricity Commission and Gas Industry Co to monitor performance and conduct regular performance reviews. Other government-related performance monitoring may also be necessary.	+3

Complainant Benefits

- 7.14 The benefit to consumers, potential consumers, and to land owners and occupiers of having independent and free complaints resolution arrangements in place to assist them when a dispute arises with a retailer or distributor, have been

assessed for each option relative to the Status Quo. The assessment is outlined in the following table:

Option	Complainant benefits (relative to Status Quo)	Score
Approved Scheme	Moving to an approved EGCC Scheme is likely to deliver real benefits to consumers, potential consumers, and to land owners and occupiers, from more consistent determinations, more ready access to a complaints scheme, and full national coverage of a scheme meeting the Australian Benchmarks.	+3
Service Provider Regulated Scheme	Moving to a Service Provider scheme is likely to deliver real benefits to consumers, potential consumers, and to land owners and occupiers, from more consistent determinations, more ready access to a complaints scheme, and full national coverage of a scheme meeting the Australian Benchmarks.	+3
Fully Specified Regulated Scheme	Moving to a Fully Specified regulated scheme is likely to deliver real benefits to consumers, potential consumers, and to land owners and occupiers, from more consistent determinations, more ready access to a complaints scheme, and full national coverage of a scheme meeting the Australian Benchmarks.	+3

Enforcement Benefits

7.15 The benefits associated with ensuring that electricity and gas participants comply with the requirements of participation in a complaints resolution scheme have been assessed for each option relative to the Status Quo. The assessment is outlined in the following table:

Option	Enforcement benefits (relative to Status Quo)	Score
Approved Scheme	Moving to an approved EGCC Scheme should deliver some benefits from increased compliance with the scheme rules relating to members. These benefits should arise because the modified EGCC Scheme includes enhanced self-reporting mechanisms and an active obligation on the Commission to monitor and report on member compliance. The lack of an effective means of enforcing participation and enforcing member rules may limit the benefits for some potential complainants.	+2
Service Provider Regulated Scheme	Moving to a regulated Service Provider scheme should deliver significant benefits from increased compliance with the scheme rules relating to members. These benefits should arise because the regulations are likely to include specific provisions to enforce mandatory participation.	+4
Fully Specified Regulated Scheme	Moving to a Fully Specified regulated scheme should deliver significant benefits from increased compliance with the scheme rules relating to members. These benefits should arise because the regulations are likely to include specific provisions to enforce mandatory participation.	+4

Transition Benefits

- 7.16 The benefits associated with managing historical complaints and achieving a smooth transition from the Status Quo, have been assessed for each option relative to continuing the Status Quo¹³. The assessment is outlined in the following table:

Option	Transition benefits (relative to Status Quo)	Score
Approved Scheme	Moving to an approved EGCC Scheme should be relatively straight-forward, with historical EGCC complaints continuing to be managed by the approved EGCC scheme and other complaints managed through an agreed transition process.	0
Service Provider Regulated Scheme	Moving to a regulated Service Provider scheme should also be relatively straight-forward, with historical complaints being transitioned to the new service provider. There is, however, more scope for problems in the transition because of the need to transition all existing complaints to the new Service Provider.	-1
Fully Specified Regulated Scheme	Moving to a Fully Specified regulated scheme should also be relatively straight-forward, with historical complaints being transitioned to the new service provider. There is, however, more scope for problems in the transition because of the need to transition all existing complaints to the new regulated scheme.	-1

Adaptability Benefits

- 7.17 The benefits associated with the ability to develop and adapt a complaints resolution scheme in response to changing industry and consumer needs and technology advances have been assessed for each option relative to continuing the Status Quo. The assessment is outlined in the following table:

Option	Adaptability benefits (relative to Status Quo)	Score
Approved Scheme	Moving to an approved EGCC Scheme should improve the scope for the scheme to evolve and adapt in response to changing industry and consumer needs and technology advances, because the modified scheme rules allow for a much simpler rule change process overseen by a balanced Commission. The scope for effective rule changes being blocked by particular interest groups is reduced.	+1

¹³ Transition benefits have been differentiated from transition costs because they represent the benefit to complainants of a smooth transition, rather than the transaction costs associated with the transition.

Option	Adaptability benefits (relative to Status Quo)	Score
Service Provider Regulated Scheme	Moving to a regulated Service Provider scheme is likely to reduce the flexibility available to evolve and adapt in response to changing industry and consumer needs and technology advances, because any changes will need to be managed through the regulation/rule change process. This is likely to be more cumbersome and slow than for an Approved Scheme. It may be possible to limit the downside by including some provisions within the Service Provider contract rather than directly within the regulations.	-2
Fully Specified Regulated Scheme	Moving to a Fully Specified regulated scheme is likely to reduce the flexibility available to evolve and adapt in response to changing industry and consumer needs and technology advances, because any changes will be need to be managed through the regulation/rule change process. This is likely to be more cumbersome and slow than for an industry-based scheme.	-3

Overall Cost-Benefit Assessment

7.18 In order to make an overall assessment of the likely direction of costs and benefits relative to the Status Quo, a weighting has been applied to each cost and benefit area, to develop a composite score. The weightings that have been applied are set out in the following table:

Costs		Benefits	
Set-up and Transition Costs	10-20%	Complainant Benefits	30-50%
Operating Costs	30-50%	Enforcement Benefits	20-30%
Governance Costs	20-30%	Transition Benefits	5-15%
Monitoring Costs	15-25%	Adaptability Benefits	20-30%
Total Costs	100%	Total Benefits	100%

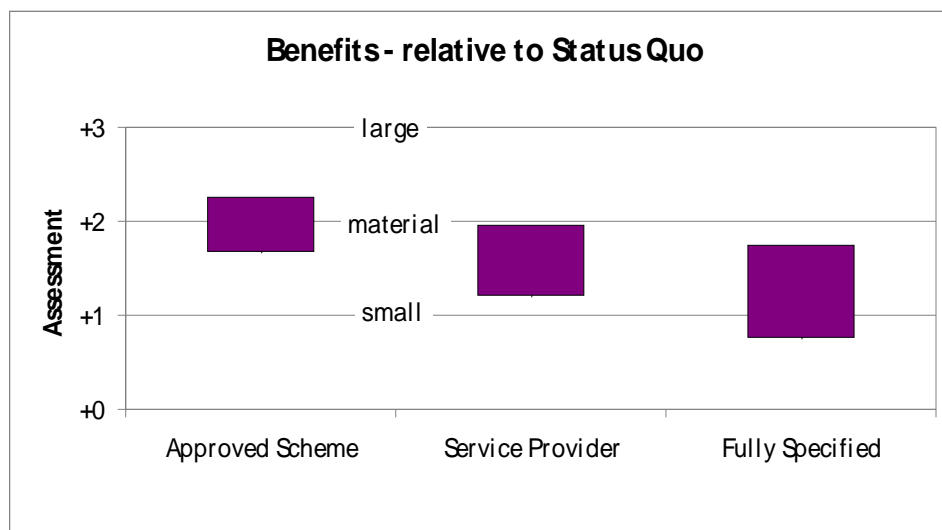
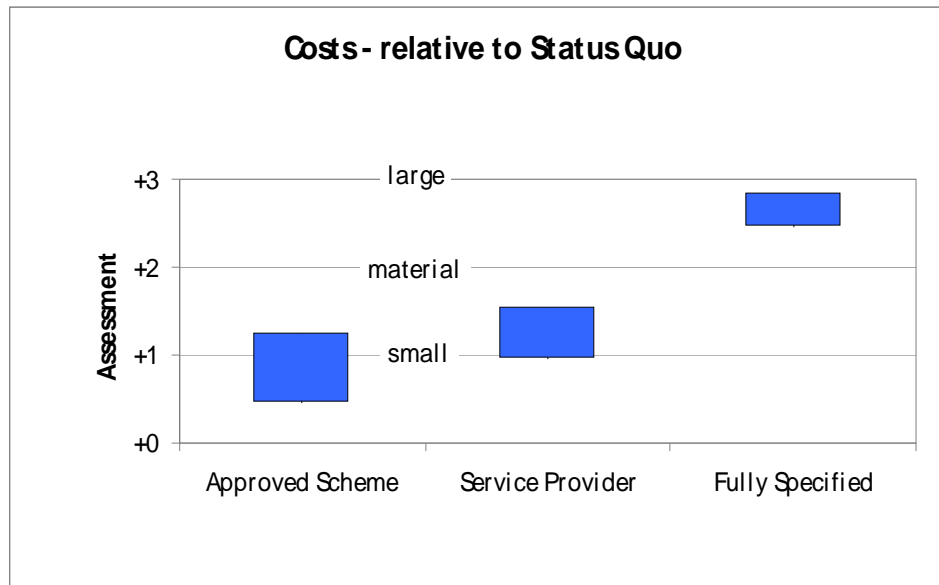
7.19 A range has been included in order to recognise the subjectivity of the weightings and to test the sensitivity of the conclusions to a range of different judgements about the importance of each cost and benefit.

7.20 These weightings indicate that:

- Operating costs are considered to be more important than other costs;
- Governance costs are considered to be more important than set-up, transition and monitoring costs;
- Complainant benefits are considered to be more important than other benefits;
- Enforcement and adaptability benefits are more important than transition benefits.

Q8: *Do you agree that the range of weighting of costs and benefits in the table are reasonable? If not what alternative weightings would you suggest?*

7.21 The qualitative assessments discussed in this section have been applied using the scoring system and the range of weightings indicated in the table. The results are illustrated in the following charts:



7.22 From the charts it can be observed that:

- For all three options the overall costs are positive relative to the Status Quo which means that costs are higher than for the Status Quo;
- For all three options the overall benefits are positive relative to the Status Quo which means that benefits are greater than for the Status Quo.

7.23 It then becomes a judgement as to which option is likely to achieve the greatest net benefit.

7.24 The analysis suggests that the Approved Scheme is likely to have slightly higher costs to the economy than the Status Quo but lower costs than either of the regulated alternatives. Although the Service Provider option is likely to be only slightly higher cost than the approved scheme, the Fully Specified Regulated Scheme is likely to have a “reasonably material” to “reasonably large” higher cost than the Status Quo.

- 7.25 The analysis suggests that the Approved Scheme is likely to have a reasonably material benefit relative to the Status Quo, while the two regulated options are likely to have positive but smaller benefits relative to the Status Quo.
- 7.26 The judgements made and weightings assumed in this analysis are subjective and it would be possible to make different (and possibly plausible) judgements that yield different overall outcomes. However, the Electricity Commission and Gas Industry Co consider that the conclusions are reasonably sound and conclude that they support an overall judgement about the relative merits of the options and the Status Quo.
- 7.27 If the range of relative scores and weightings are accepted as reasonable, the analysis suggests that the Approved Scheme option rates better than the Regulated options on both overall costs and overall benefits. The margin between the Approved Scheme and the regulated Service Provider is less decisive than the margin between the Approved Scheme and the regulated Fully Specified Scheme.
- 7.28 Accordingly, the Approved Scheme is assessed as the best of the reasonably practicable options.
- 7.29 Although the Status Quo is not considered to be a reasonably practicable option, the Electricity Commission and Gas Industry Co agreed that it would be useful to assess the merits of the Approved Scheme relative to the Status Quo. This assessment is not straight-forward. The question is whether the overall benefits associated with the Approved Scheme outweigh the slightly higher overall costs relative to the Status Quo.
- 7.30 The Electricity Commission and Gas Industry Co have concluded that, on balance, the Approved Scheme option (approving the EGCC Scheme) would yield overall benefits that are reasonably material and that these benefits would outweigh the slight increase in overall costs that could be expected relative to the Status Quo.

- Q9:** *Do you agree that the Approved Scheme option (approving the EGCC Scheme) is the best of the reasonably practicable options?*
- Q10:** *Do you agree that the Approved Scheme option (approving the EGCC Scheme) would yield overall benefits that are reasonably material and that these benefits would outweigh the slight increase in overall costs that could be expected relative to the Status Quo?*

8 Conclusion

- 8.1 Following a Request for Applications and evaluation process, the Electricity Commission and Gas Industry Co have selected the Electricity and Gas Complaints Commission (EGCC) as their preferred applicant for approval as a single nationwide scheme to cover gas and electricity related complaints.
- 8.2 The Electricity Commission and Gas Industry Co have concluded that approving the EGCC Scheme would provide overall benefits relative to the reasonably practicable options.
- 8.3 The Electricity Commission and Gas Industry Co have also concluded that approving the EGCC Scheme would provide overall benefits (assessed as reasonably material) that outweigh the small increase in overall costs that could be expected relative to the Status Quo.
- 8.4 The Electricity Commission and Gas Industry Co have concluded that approving the EGCC Scheme best meets the regulatory objective set out in section 4.7.

9 Next Steps

- 9.1 Following receipt and consolidation of submissions the Electricity Commission and Gas Industry Co will, acting jointly, consider all submissions, finalise their decision, and issue a paper setting out the decision.

Approved Scheme

- 9.2 If an approved scheme is accepted as the best approach to take, the anticipated timetable for establishing an approved scheme would be as set out in the following table:

Target Date	Key Step
6 March 2009	Release of consultation paper
14 April 2009	Closing date for submissions
June 2009	Electricity Commission approves scheme Gas Industry Co Board makes recommendation to Minister

Regulated Scheme

- 9.3 In the event that the Electricity Commission and Gas Industry Co determine that a regulated scheme is preferred to an approved scheme, they anticipate making a recommendation to the Minister for rules or regulations to establish a complaints resolution scheme under the provisions of the Electricity Act and the Gas Act. A possible timetable for establishing a regulated scheme is set out in the following table:

Target Date	Key Step
6 March 2009	Release of consultation paper
14 April 2009	Closing date for submissions
June 2009	Electricity Commission concludes regulated scheme is preferred Gas Industry Co Board concludes regulated scheme is preferred
July 2009	Electricity Commission and Gas Industry Co notify the Minister that a regulated scheme is preferred
November 2009	Electricity Commission and Gas Industry Co develop a proposal for a regulated scheme and publish for consultation

Appendix A: Recommended Format for Submissions

To assist the Gas Industry Co and the Electricity Commission in the orderly and efficient consideration of stakeholders' responses a suggested format for submissions has been prepared.

Submission prepared by:

(company name and contact)

QUESTION	COMMENT
Q1: Do you agree that the EGCC Scheme arrangements represent an appropriate basis for a single nationwide complaints resolution scheme for electricity and gas?	
Q2: Do you have particular areas of concern that would lead you to making suggestions for changes to the EGCC Scheme?	
Q3: Do you agree that approval should be on the basis of an indefinite term, while encouraging cost-effective performance through the independent review process? If not, do you have any additional observations on the merits of a fixed-term?	
Q4: Do you agree that the transition to an approved EGCC Scheme should be relatively straight-forward? Do you have any views on how the transition should be managed?	
Q5: Do you agree that the Service Provider Regulated Scheme and the Fully Specified Regulated Scheme are the only reasonably practicable options to approving an applicant scheme, which meet the proposed regulatory objective? If not, what other reasonably practicable options exist in your view?	

QUESTION	COMMENT
Q6: Do you agree that the costs and benefits set out in the table are the main costs and benefits that need to be considered? If not, what other costs and benefits would you suggest?	
Q7: Do you agree that the simple scoring system set out in the table is a reasonable way of comparing costs and benefits across the options?	
Q8: Do you agree that the range of weighting of costs and benefits in the table are reasonable? If not what alternative weightings would you suggest?	
Q9: Do you agree that the Approved Scheme option (approving the EGCC Scheme) is the best of the reasonably practicable options?	
Q10: Do you agree that the Approved Scheme option (approving the EGCC Scheme) would yield overall benefits that are reasonably material and that these benefits would outweigh the slight increase in overall costs that could be expected relative to the Status Quo?	

OTHER ISSUES (note achievement standard number if appropriate)	COMMENT

Appendix B: Legislative Framework

The Electricity Act

Under section 158G every electricity distributor and every electricity retailer must participate in a complaints resolution scheme that is approved by the Electricity Commission for the purpose of addressing complaints relating to electricity retailers and electricity distributors.

These requirements of the Electricity Act only apply if the Commission has approved, by notice in the Gazette, one or more complaints resolution schemes.

The Act also requires that any approved scheme is to cover complaints from any person (including potential consumers and owners and occupiers of land).

Section 172O states that one of the Commission's functions is to approve one or more complaints resolution schemes for the purpose of 158G.

In addition, under section 172D (1) (27) the Governor General may, by Order in Council made on the recommendation of the Minister, make rules or regulations for:

“providing for the establishment of, and participation by electricity distributors and electricity retailers in, a complaints resolution system (which may include codes of practice) for the purpose of addressing complaints by any person (including potential consumers and owners and occupiers of land) relating to electricity retailers and electricity distributors, and setting out minimum requirements in relation to that system, including-

a) provision for compensation up to a maximum of \$20,000 to be awarded, and other actions to be taken, by the complaints resolution agency in relation to those complaints:

b) provision for rights of review, or rights of appeal on a question of law only, in relation to decisions relating to those complaints:”

In making recommendations to the Minister under section 172D, the Electricity Commission must comply with the provisions of sections 172E and 172F. These sections require the Commission to consult with persons that are representative of those likely to be substantially affected by the proposed rules or regulations, undertake an assessment of the benefits and costs of the proposed rules or regulations and any alternatives that have been considered, and prepare a statement of proposal.

The Electricity Commission is required by section 172X to give effect to its principal objectives and outcomes, and its GPS objectives and outcomes, when formulating recommendations for electricity governance rules or regulations.

The GPS on Electricity Governance

The May 2008 GPS provides as follows:

“26. Section 158G(1) of the Electricity Act requires that every electricity distributor and every electricity retailer must participate in a complaints resolution system, provided that the Commission has approved one or more complaints resolution systems under that section.

27. The Government expects everyone (including potential consumers and owners and occupiers of land), in their capacity as producers or consumers of electricity, to have access to an independent and cost-effective system for resolving complaints about electricity distributors (including Transpower) and electricity retailers without charge to the

user/applicant, whether or not they have a consumer contract with the retailer or distribution company.

28. The Commission should, in consultation with the Ministry of Consumer Affairs, ensure that any approved system adequately addresses consumers' interests.

29. The Government believes that consumers' best interests are more likely to be served by a single independent complaints resolution scheme that includes both electricity and gas. The reason for this is that a single dual-fuel scheme provides benefits such as ease of access, consistency of outcomes and efficiencies of scale. The size of the gas market does not justify a separate scheme and many of the same companies are involved in both sectors. Many customers buy electricity and gas from the same retailer.

30. The Commission should work closely with the Gas Industry Company and coordinate approaches to approval and governance of an electricity and gas consumer complaints scheme.

31. If the industry is unable to provide an acceptable scheme supported by membership from all retailers and all distributors (including Transpower) within a reasonable time, the Commission should recommend regulations to introduce a statutory scheme. Again, the Government expects the Commission to work closely with the Gas Industry Company in this regard.

32. The Government expects any approved complaints resolution system to include the following features:

- an independent, complaints resolution scheme that is consistent with international best practice in the field of consumer complaints resolution systems (for example the Australian Benchmarks for Industry based Consumer Dispute Resolution Schemes which were developed in consultation with the New Zealand Ministry of Consumer Affairs)*
- a decision-making process and administration of the scheme that is independent of scheme members*
- membership by all distributors (including Transpower) and retailers*
- robust internal complaints-handling processes within all member companies*
- a document that sets out the minimum standards of conduct for scheme members*
- self-funding by the industry*
- compensation for consumers where appropriate*
- is practical and resolves disputes quickly and cost-effectively without unduly protracted or costly processes."*

The Gas Act

Under section 43E every gas distributor and every gas retailer must participate in a complaints resolution system that is approved by the Minister for the purpose of addressing complaints relating to those gas retailers and gas distributors. The Minister may approve one or more schemes by notice in the Gazette.

These requirements of the Gas Act only apply to particular gas distributors and retailers if the Minister has approved, by notice in the Gazette, one or more complaints resolution systems that apply to the particular gas distributor or retailer.

In addition, under section 43G the Governor General may, by Order in Council made on the recommendation of the Minister, make rules or regulations for:

“providing for the establishment of, or participation by gas distributors and gas retailers in, a complaints resolution system (that may include a code of practice) for the purpose of addressing complaints by all or any of small consumers (including potential small consumers), or owners and occupiers of land into, through, or against which pipelines have been laid down or placed, relating to gas retailers and gas distributors, or setting out minimum requirements in relation to that system, including –

a) provision for compensation up to a maximum of \$20,000 to be awarded, and other actions to be taken, by the complaints resolution agency in relation to those complaints:

b) provision for rights of review, or rights of appeal on a question of law only, in relation to decisions relating to those complaints:

In making recommendations to the Minister under section 43G, Gas Industry Co must comply with the provisions of sections 43I to 43P of the Act. These sections require Gas Industry Co to consult with persons that are representative of those likely to be substantially affected by the proposed rules or regulations, undertake an assessment of the benefits and costs of the regulations and any alternatives that have been considered, and prepare a statement of proposal.

The powers to regulate and the processes that must be followed are therefore essentially the same as those provided in the Electricity Act.

The Gas Industry Co is required by section 43ZO of the Act to have regard to the objectives and outcomes set by the Minister in the GPS when making recommendations for gas governance regulations. Gas Industry Co is also required to report against these objectives and outcomes.

The GPS on Gas Governance

The April 2008 GPS provides as follows:

“The Government prefers a least-cost arrangement for the proper handling of consumer complaints. Due to the small size of the retail gas market, the Government considers that consumers’ best interests will be served by a joint gas and electricity consumer complaints resolution system. A single multi-fuel system would provide benefits such as ease of access, consistency of outcomes and efficiencies of scale.

The Government expects any consumer complaints resolution system to be free to complainants and to meet appropriate international benchmarks such as accessibility, independence, fairness, accountability, efficiency and effectiveness.

The Government expects the Gas Industry Co to work closely with the Electricity Commission to coordinate the approval and governance process between the electricity and gas sectors to ensure the Government’s expectations are met.