

Submission on EC/GIC Consultation - Proposal to Approve a Joint Electricity and Gas Complaints Resolution Scheme (March 2009)

Submission prepared by: Electricity and Gas Disputes Resolution Service (EGDRS)
 Contact: David Clark, Chairperson

QUESTION	COMMENT
<p>Q1: Do you agree that the EGCC Scheme arrangements represent an appropriate basis for a single nationwide complaints resolution scheme for electricity and gas?</p>	<p>Given that the process hasn't gone as anticipated EGDRS is willing to consider further changes to the EGDRS Scheme to address the concerns expressed with the scheme, for example:</p> <ul style="list-style-type: none"> • a greater investigation role for PDR at decision stage of the process; • location of the office; • staff appointments - EGDRS agrees that the PDR role in a single national scheme would require a full time appointment. <p>If the decision was made to retain more than one scheme, EGDRS would be willing to cooperate with other schemes, to ensure that consumers are clear on the complaints process available and are not straddled between more than one scheme.</p>
<p>Q2: Do you have particular areas of concern that would lead you to making suggestions for changes to the EGCC Scheme?</p>	<p>There are several areas of concern:</p> <ol style="list-style-type: none"> 1. Scheme structure – the scheme structure fundamentally a 'rights based' system with a single decision maker. This raises a number of concerns: <ol style="list-style-type: none"> a. Research demonstrates that people often have complaints about issues which do not fall into a category of rights (eg legal rights) and any system which does not first offer an interest based process, such as true mediation (not conciliation) is likely to miss the important issues for the complainant and result in an outcome that does not offer full satisfaction. This leads to increased

numbers of complaints, dissatisfaction with process, high costs and lengthy processes to resolve the issues. The relatively low number of complaints which became 'deadlocked' during the 18 months of operation for EGDRS (two deadlocked complaints) and the relatively short period in which the two deadlocked complaints were resolved to the satisfaction of the complainant (approximately two months) demonstrates the efficiency of using interest based processes first;

b. A robust judicial system requires a variety of decision makers to ensure that the application of the law is tested that power is spread across a number of qualified individuals. Vesting all decision making power in one person creates opportunities for criticism and will inevitably lead to delays in decisions. We note that the achievement standards, while requiring one decision maker, allow for delegation of powers to determine disputes.

2. **Cost** – The costs of the EGCC Scheme are significantly greater than the EGDRS Scheme and are likely to increase as a result of changes being adopted to comply with the EC/GIC's criteria.

a. A scheme which contracts local mediators, who are paid only when working, reduces the cost of office overhead, employees and travel.

b. Further the EGCC does not appear to be based on a user pays system which effectively penalises those members who have large customer bases and/or effective in-house complaints handling systems.

c. In our view the scheme is too costly and we believe cost savings would be made if regional mediation on a contract basis was incorporated into it.

3. **Speed of resolution** – As referred to in paragraph 1 above, a scheme which operates out of one office (without the availability of face to face meetings with locally contracted mediators), with one decision maker will inevitably result in delays to resolution. This will be further exaggerated by the use of a rights based approach requiring full

enquiry and application of rights, while often not addressing the real issues for the complainant. Compare the average time for resolving those disputes which reach 'deadlock' (EGCC 6 months plus compared with EGDRS 2 months).

4. **Method of resolution** – the EGCC relies on essentially remote judicial resolution. This does not provide for dialogue between consumers and scheme members during the resolution process. A strength of EGDRS's proposal is to have face to face hearings in regions facilitated by trained and experienced mediators, and this does not appear to be present in the EGCC scheme. EGDRS is confident that this not only achieves better consumer outcomes, but also faster resolution, and greater exposure of scheme members to consumers, which allows consumers to 'have their say' and also ensures that scheme members understand the consumer's perspective. This is much more likely to ensure scheme members modify their behaviour with respect to consumers, and avoids the judicial or rights based approach which encourages parties to become more positional. EGDRS believes that the successful scheme should include provision for mediation in regions using local mediators.

This does not prevent the use of a decision making process, with investigation, for those complaints which are not resolved during the mediation phase.

Regional mediation reflects the achievement standards which encourage settlements over determinations, and the decision maker having discretion to use appropriate techniques including conciliation, mediation and negotiation in attempting to settle complaints.

5. **Governance structure** If the EGCC Scheme does come into force EGDRS supports the abolition of the Scheme Amendment Committee. It is noted that the Committee may continue in an advisory capacity. It is not necessary to have a separate body with the sole function of dealing

	<p>with rule changes and we therefore support the simplified governance structure.</p>
<p>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?</p>	<p>Provided that any element of an approved scheme can be modified, an indefinite term for the appointment of the office would create more certainty for members and consumers. However, EGDRS advocates for the appointment of the decision-maker and any mediation panel members to be for a term of no more than 5 years.</p>
<p>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?</p>	<p>If the EGCC scheme is confirmed, we envisage that EGDRS will continue to receive complaints until an agreed cut-off date and complaints received after that date would be directed to the approved scheme. For complaints lodged with EGDRS before the cut-off date, EGDRS would complete the resolution of these complaints.</p> <p>As indicated at our meeting with the Commission EGDRS will fully cooperate with the approved scheme provider in managing the transition. It should be managed in such a way so as to minimise confusion for people using the scheme. Information to consumers will need to clearly identify the dates the new scheme takes effect and how to access it.</p> <p>There will need to be an allowance made for existing contractual obligations to be met. We suggest 12 months would be an appropriate period for fulfilling existing contractual obligations. We note that the current timetable for the completion and implementation of scheme is 1 September 2009. This would not enable us to fulfil existing obligations.</p>

<p>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?</p>	<p>The EGDRS considers that the EGDRS Scheme is an effective and efficient scheme and is a practicable option.</p>
<p>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?</p>	<p>The following benefits should be considered:</p> <ul style="list-style-type: none"> • Timeliness • Skill base of independent neutrals • Neutrality • Cost • Opportunity to be heard • Opportunity for real issues to be resolved • Empowerment of the Consumer (opportunity of the consumer to be part of the process) • Availability both in terms of time and place
<p>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?</p>	<p>The EGDRS believes that any cost benefit analysis should include consumer satisfaction and outcomes for those consumers that have been served by different schemes.</p>
<p>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?</p>	<p>The EGDRS believes that any cost benefit analysis should include consumer satisfaction and outcomes for those consumers that have been served by different schemes.</p>
<p>Q9: Do you agree that the Approved Scheme option (approving the EGCC Scheme is the best of the reasonably</p>	<p>As one of the scheme applicants, we believe there are benefits in the EGDRS scheme, as discussed above, which are not reflected in the EGCC scheme.</p>

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?	<p data-bbox="763 234 1895 411">It is not clear from the documentation that has been made publicly available what the reasons are for the increased costs. As one of the scheme applicants whose application has at this stage been unsuccessful we believe there are benefits in the EGDRS scheme which would be less costly, as discussed above, and which are not reflected in the EGCC scheme.</p> <p data-bbox="763 451 1895 549">The EGDRS scheme has significantly lower fixed costs due to its use of a panel of contracted independent mediators, who would not attract overhead costs and would only be paid when required to mediate.</p>