



PO Box 6144, Marion Square  
Wellington, New Zealand  
Telephone 0800223340  
Facsimile 0800223347  
Email: [info@egcomplaints.co.nz](mailto:info@egcomplaints.co.nz)  
[www.egcomplaints.co.nz](http://www.egcomplaints.co.nz)

9 March 2007

Electricity Commission  
PO Box 10041  
WELLINGTON

Attention: Jenny Walton

BY EMAIL [info@electricitycommission.govt.nz](mailto:info@electricitycommission.govt.nz)

#### Approval of consumer complaints resolution systems

Thank you for the opportunity to comment on the consultation paper *Approval Method for Consumer Complaints Resolution Schemes* dated December 2006.

My comments are in the attached appendices and are from the perspective of commissioner of the Electricity and Gas Complaints Commissioner Scheme, an independent dispute resolution mechanism for consumers of electricity and gas. The Electricity & Gas Complaints Commission supports my comments.

Yours sincerely

A handwritten signature in brown ink that reads "Judi Jones".

Judi Jones  
Electricity and Gas Complaints Commissioner

## Approval method for consumer complaints resolution schemes

### Feedback form 1:

<i>Questions</i>	<i>Response</i>
<p>1 Do you see any problems with the Commission using the Australian Benchmarks to evaluate consumer complaints resolution schemes? If so what evaluation method should the Commission use?</p>	<ul style="list-style-type: none"> <li>• My view is that the Australian Benchmarks are the most appropriate standard against which to measure a consumer complaint resolution scheme. The definition of a “complaint” in the ISO 10002 would be a useful addition. The definition is:  “A complaint is an expression of dissatisfaction made to an organisation, related to its products, or the complaints handling process itself, where a response or resolution is explicitly or implicitly expected”.</li> </ul>
<p>2 The suggested level of achievement is to indicate the level at which the Commission believes the benchmark criteria would be met. Is it useful to have a suggested level of achievement for each of the benchmark criteria?</p>	<ul style="list-style-type: none"> <li>• In determining the standards to be applied, it is important that the Commission<sup>1</sup> has regard to the administrative costs in complying with those standards. For this reason, the Commission should allow a degree of flexibility in meeting the achievement standard. Having said that, it is useful for the Commission to provide a suggested level of achievement.</li> <li>• For some achievement standards the Commission has set out its expectation of how the achievement standard is to be demonstrated, for example, by stating that a policy or procedure is required. It would be useful if the Commission could set an expectation for all the achievement standards.</li> <li>• In setting out what is required as an achievement standard, it would be useful to know the minimum requirement. For example, if a policy is listed but the requirement is already demonstrated via the scheme’s constitution, then I presume a policy would not be required in addition to the constitutional term. It would be useful to have this clarified.</li> </ul>

<sup>1</sup> Reference to the “Commission” is reference to the Electricity Commission, rather than the Electricity & Gas Complaints Commission.

<p>3 The Commission is seeking comments on the individual benchmark criteria and achievement standards detailed in the table attached as Appendix one:</p> <p>a) Identify benchmark criteria that are not suitable for the evaluation of an electricity consumer complaints resolution scheme. If possible, suggest an alternative;</p> <p>b) Identify achievement standards that are not suitable for the evaluation of an electricity complaints resolution scheme. If possible, identify an alternative; and</p> <p>c) Should any additional benchmark criteria be inserted? If so, what should the additional benchmark criteria specify, and what would the achievement standard be?</p>	<p>a) See Feedback Form 2</p> <p>b) See Feedback Form 2</p> <p>c) See above regarding ISO 10002.</p>
<p>4 Should the Commission approve more than one scheme?</p>	<ul style="list-style-type: none"> <li>As already pointed out in the discussion document, difficulties will arise where a complaint involves a retailer and a lines company that belong to different schemes. The application of the Consumer Guarantees Act will give rise to this type of situation and also where the complaint involves a lines company issue and also a customer service issue as delivered by the retailer. Switching and billing complaints will often involve more than one retail company and it is not unknown to have a complaint involving three retail companies.</li> </ul>
<p>5 If the Commission were to approve more than one scheme, what should be required of each scheme to ensure that consumer confusion is avoided? Are the achievement standards under criteria 6.2(a) sufficient?</p>	<p>See Feedback Form 2.</p>
<p>6 Is it appropriate that the Commission is able to consider applications that do not meet the level of achievement for each benchmark criterion? That is, should the Commission be able to accept alternative evidence that a benchmark principle is met to an acceptable standard even though individual benchmark criteria are not satisfied as</p>	<ul style="list-style-type: none"> <li>The achievement standards add value to the benchmarks as they outline the standards that are acceptable within the context of the electricity and gas industry in New Zealand.</li> <li>The achievement standards also provide an 'even playing field' that all schemes can clearly</li> </ul>

<p>specified by the achievement standards?</p>	<p>be assessed against.</p> <ul style="list-style-type: none"> <li>• However, this needs to be balanced against ensuring that the costs of meeting the specified achievement standards do not unnecessarily add to the costs of the scheme. Alternative methods of meeting the benchmarks should be able to be considered, so long as there was consistency of approach.</li> <li>• If achievement standards are to be used, it would be important to ensure that the achievement standards are reviewed regularly and stay congruent with latest business practices.</li> </ul>
<p>7 Do you have any comments on the performance monitoring process?</p>	<ul style="list-style-type: none"> <li>• I accept and welcome on-going monitoring as set out in the discussion document. The Commission will need to ensure they have the necessary resources to adequately monitor all the approved schemes.</li> <li>• It may be useful to consider a scheme's internal monitoring regime as well. For example, the Electricity &amp; Gas Complaints Commissioner's scheme has an internal monitoring regime that involves: <ul style="list-style-type: none"> <li>○ Monthly reporting to the scheme's commission and members of the scheme through the board of the council</li> <li>○ Monthly reporting to the Minister of Energy, the Minister of Consumer Affairs, the Electricity Commission and the Gas Industry Company</li> <li>○ Publication of an annual report</li> <li>○ Regular updates in respect of workload and issues on the scheme's website</li> <li>○ Consumer groups and ministry officials are entitled to attend and ask questions at the scheme's AGM, and at a general meeting at which the budget is approved</li> <li>○ The commission of an independent</li> </ul> </li> </ul>

	<p>review of the performance &amp; effectiveness of the scheme every five years.</p>
<p>Other</p>	<p><i>Every person:</i></p> <ul style="list-style-type: none"> <li>• Para 24 mentions the ‘every person’ GPS requirement and says that this has been woven into the achievement standards. However, I cannot see where the GPS requirement of “every person” appears as an achievement standard.</li> <li>• I have concerns about the use of materiality as a nexus between the complainant and a complaint that is within jurisdiction. I note that section 158G of the Electricity Act and the GPS do not contain any limits on “everyone”, including the concept of material affection. While I consider that it may be appropriate for land access complaints, I think it is too high a threshold for other types of complaints that may not individually involve a high value. It also does not cover situations where a dollar amount is not involved.</li> <li>• It would be useful to have a clear achievement standard for the GPS ‘every person’ requirement. In considering this it may be useful to keep in mind that under the Electricity &amp; Gas Complaints Commissioner’s current terms of reference I can decide not to investigate a complaint if I believe the complainant does not have sufficient interest in the subject matter of the complaint. This ensures a nexus of interest exists between the complainant and the complaint. In addition, I can decide not to investigate a complaint if I consider that the complaint is being pursued in a manner that is trivial, vexatious or was not made in good faith.</li> <li>• The ISO 10002 definition of a “complaint” would be more consistent with the standards proposed.</li> </ul>

	<p><i>Land complaints:</i></p> <p>I do not understand why an approved scheme other than the Electricity &amp; Gas Complaint Commission would not have to process land complaints merely because Transpower has joined the Electricity &amp; Gas Complaints Commissioner Scheme. The majority of land complaints are against distribution companies, not Transpower.</p>
--	---

**Feedback form 2: Submissions relating to specific benchmark criteria and achievement standards**

	<i>Benchmark/ benchmark criteria reference</i>	<i>Feedback on benchmark criteria</i>	<i>Feedback on achievement standard</i>
	General comment	<p>The practice of ombudsman type schemes in New Zealand and Energy &amp; Water schemes in Australia is to take an inquisitorial procedural approach. This model involves the decision maker undertaking his/her own investigation and using legal experts where required.</p> <p>An inquisitorial procedural model may be a useful performance standard to ensure a scheme does not become overly legalistic.</p>	
1.1	<i>Awareness and promotion</i>		To ensure the public know about the scheme, I believe the items listed (a-e) should be part of the achievement standard rather than “an example of a “suitable level of activity”
1.3	<p><i>Awareness and promotion:</i></p> <p>“The scheme must have a code of practice which sets minimum standards of conduct”.</p>		If there are to be different codes of practice in the market place, is it necessary to ensure that the standards set by industry are consistent?
1.21	<p><i>Legal representation:</i></p> <p>“The scheme provides the opportunity for both parties to be legally represented where one party is so allowed”.</p>		<p>We endorse the practices set out in 1.19 and 1.20.</p> <p>Benchmark 1.21 is not appropriate to complaints resolution schemes that are based on an inquisitorial procedural model. It is more applicable to an adversarial approach and/ or in tribunal situations where the decision-maker makes a decision</p>

			based upon the passive reception of evidence as presented by each party.
1.22	<p><i>Legal representation:</i></p> <p>“The scheme provides for the scheme member to pay the legal costs of complainants where the scheme member is the first party to request to be legally represented and the decision-maker agrees to that request”.</p>	<p>It could be said that the member companies are always legally represented due to the use of in-house counsel. The achievement standard as it is currently written would mean that, in reality, complainants would have the right to member-funded legal representation for every complaint that comes to my office. I believe this would create a highly legalistic adversarial system that is not appropriate for the resolution of electricity and gas complaints.</p>	
3.1	<p><i>Determinations:</i></p> <p>The decision-maker’s terms of reference is to state that determinations must be based on what is fair and reasonable, having regard to good industry practice, relevant industry codes of practice and the law.</p>		<p>The Electricity and Gas Complaints Commissioner is required to apply the law. Is this seen as meeting the standard, or would the Commission expect the terms of reference to be amended?</p>
3.11	<p><i>Confidentiality:</i></p> <p>The scheme’s policies ensure that information provided to it, for the purposes of resolving complaints, is kept confidential, unless disclosure is required by law</p>		<p>Confidentiality of information gained during the course of proceedings has not been raised as an issue for the scheme so far, despite consideration of issues that are often contentious.</p> <p>My view is that it is not practical to require complainants to agree not to disclose information gained during proceedings where complaints are being dealt with over the phone. The scheme’s procedures could involve</p>

<p>3.12</p>	<p>or for any other purpose specified in the approval criteria.</p> <p>The scheme requires parties to a complaint to agree not to disclose information gained during the course of any mediation, conciliation or negotiation to any third party, unless required by law to disclose such information.</p>		<p>sending out a form to the complainant for them to sign and return although this would add considerably to the time taken to resolve the complaint. In emergency situations this added step would be a major obstacle to swift resolution.</p> <p>Obtaining the complainant’s agreement may have a negative effect by raising suspicions around the motives of the companies in wanting to keep the information confidential.</p> <p>Would the confidentiality relate to the information gathered during investigations or also to the decision-maker’s decisions? Does this mean decisions could not be shown to bodies such as insurance companies and dispute tribunals? If so, this requirement is likely to detract from the effectiveness of the scheme. Members may have a view in respect of the way information is used in other court proceedings.</p> <p>In any event, it would be difficult and often counter-productive to enforce such an agreement if a party were to disclose information. The existence of an agreement is unlikely to stop a complainant who is intent on disseminating information.</p>
<p>5.1</p>	<p><i>Appropriate process or forum:</i></p> <p>“The scheme deals only with complaints which are within its terms of reference and have not been dealt with, or are not being dealt with, by another dispute resolution forum”</p>		<ul style="list-style-type: none"> <li>From time to time, my office may investigate a complaint that is also heard in another forum such as the Fair Trading branch of the Commerce Commission. The other agency may have a different purpose in investigating the complaint and may be able to provide different remedies to the complainant.</li> </ul>

	<p>“Standard – the scheme specifies that ‘reasonable time’ under benchmark criterion 5.1(b) is:</p> <p>i Two months from the original complaint; or</p> <p>ii The resolution agreed to by the member does not eventuate within two months of that agreement”.</p>		<ul style="list-style-type: none"> <li>• These timeframes do not allow the complainant to reject the company’s offer at any time thus bringing a quicker end to the internal complaints process as can happen under the Electricity &amp; Gas Complaints Commissioner Scheme.</li> <li>• It would be useful to know what “a month” means.</li> </ul>
5.5	<p><i>Tracking of complaints:</i></p> <p>The scheme has a policy stating that 90 per cent of all complaints received by the scheme are resolved within three months of receiving notification of the complaint.</p>		<p>Complaint resolution schemes go through growth phases that impact on the time taken to resolve complaints. As a scheme matures complaint files become more difficult as companies resolve most of the issues themselves. Gathering information on complex files can take time. This would be more time consuming if more than one scheme is involved.</p> <p>Other factors may arise that may impact upon complaint numbers and time taken to resolve complaints. For this reason I consider it inappropriate to apply a percentile as an achievement standard.</p>
6.2	<p><i>Coverage:</i></p> <p>“each scheme must establish procedures (including the power to compel information from</p>		<ul style="list-style-type: none"> <li>• I agree that each scheme would need a set of procedures to govern how referrals will occur</li> <li>• A memorandum of understanding between the offices may also be</li> </ul>

<p>a scheme member) to share information with other approved schemes if another scheme requires it to enable resolution of a complaint”.</p>	<p>“each scheme must establish procedures covering the circumstances under which it will recognise and enforce a decision of another approved scheme which is adverse to a member of the scheme”.</p>		<p>useful to ensure processes ran smoothly</p> <ul style="list-style-type: none"> <li>I have concerns that the development of a procedure that compels a company to provide information to their own scheme or another scheme would not work in practice. This is because industry self regulated complaint schemes generally do not work on the basis that they have power to compel the giving up of information. While there is a right under the constitution to complain to the Council Board about actions of a member, it is up to the Council Board to impose a penalty. The members are contractually bound to provide information to the commissioner as members of this scheme only.</li> </ul> <p>I believe the Electricity &amp; Gas Complaints Commissioner Scheme works due to the level of relationship between the commissioner and the scheme’s members. This level of relationship would obviously not exist where the company belongs to another scheme, nor would there be a contractual obligation.</p> <ul style="list-style-type: none"> <li>I also have concerns about the practicalities of enforcing a decision of another approved scheme. It would seem to me to be a breach of natural justice to decide against a company that is not a party to the investigation process.</li> </ul>
--	---	--	---