# Electricity and Gas Complaints Commissioner Scheme

# Independent review of Scheme

## Board's response to Working Group recommendations

**Contents**

**Board's response to Working Group recommendations**

| Clause | Submitter Comment (Round 2) | Working Group Recommendation/Comment | Board's Response/Comment |
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| General Comments | **Contact Energy** submitted on all the recommendations (apart from the financial limits) with the following response:<br>"*Agree with Board's response*"<br>For Contact's response on financial limits see below<br>**Mainpower**: - We applaud the independent review of the Electricity and Gas Complaints Commissioner (EGCC) Scheme document commissioned by the EGCC and the recommended changes tabled in the revised Scheme document. The proposed changes will align the Scheme with the best practice in responding to customer complaints for the electricity industry, in a way that also takes note of the industry's unique operating environment in New Zealand.<br>**Powerco**: - Powerco has considered the views of the Working Group and agrees with all of the Board's responses to the changes. The rest of [Powerco's] submission comments on the appropriate jurisdictional | Noted – No recommendation or comment | The Board agrees with the Working Group |

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| | limit for the Electricity and Gas Complaints Commissioner Scheme. | | |
| Ability to refer cases to a higher level – change not needed | **Wellington Electricity Lines (WELL)**: - Agree that no change is needed | Noted – No recommendation or comment | The Board agrees with the Working Group |
| No change to Scheme's legal basis | **WELL**: - Agrees that there should be no change to the Scheme's legal basis | Noted – No recommendation or comment | The Board agrees with the Working Group |
| The test case procedures – to remain | **WELL**: - Agrees with the report recommendation | Noted – No recommendation or comment | The Board agrees with the Working Group |
| Further changes proposed by the Board (various clauses in the Scheme document) | **WELL**: - [In response to the Board proposed changes, WELL confirms it agrees with all of them] | Noted – No recommendation or comment | See specific submissions/recommendations/ responses below |
| Coverage (various clauses in the Scheme document) Para 9.1 page 46 of the recommendations<br><br>**Recommendation**: The Board consider appropriate amendments to the Scheme document to resolve any inconsistencies or lack | **WELL: -** Agrees with the Working Group comments | Noted – No recommendation or comment | The Board agrees with the Working Group |

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| of clarity. | | | |
| Information management (no corresponding clause in the Scheme document) Para 9.1.1 page 46<br><br>**Recommendation**: As a matter of good policy and administrative practice, it is recommended that an archive policy and document disposal schedule be developed and implemented. | **WELL: -** Agrees with the recommendation and that no change to the scheme document is required | Noted – No recommendation or comment | The Board agrees with the Working Group |
| Professionalism Para 9.2 page 47 (no corresponding clause in the Scheme document)<br><br>**Recommendation**: that members be requested to provide the EGCC with information on any changes in their in-house complaints handling process, including changes in team membership, and | **WELL: -** Agrees with the Board that no change to the Scheme is required. | Noted – No recommendation or comment | The Board agrees with the Working Group |

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| that they also provide information on changes in any terms and conditions relating to their services. | | | |
| Definition of a complaint (Scheme document part A) – (recommendation Para 5.1.1, page 33)<br><br>**Recommendation**: the Scheme use the International Organisation for Standardisation (ISO) definition of '*complaint*', (amended to include '*and services*', after '*products'*).<br><br>This recommendation proposes a change to the Scheme document and adding the definition to the Achievement Standards. The ISO definition is:<br><br>'*A complaint is an expression of dissatisfaction made to an organization, related to its products, or the* | **Mainpower**: - The need to refine the definition of complaint in the context of the Scheme document was acknowledged in the Round 2 consultation document, however, we have failed to locate any revision of the definition in the draft revised Scheme document. In our opinion the EGCC should take note of the need to address this issue.<br><br>**Mainpower**: - We noticed that on page 6 of the consultation document the Board agrees with the Working Group feedback that "ought to consider whether this change requires consequential changes to, for example the definition of '*Services*', to avoid inconsistency". However, the definition of the term "Services" is still "Good or services provided…". It appears the draft Scheme document requires an update of the term services.<br><br>**Mainpower**: - We suggest the cleanest way of providing the term and bringing it into line with the ISO definition of a complaint is to replace all references of "services" with "goods and services". This will provide a more sensible meaning to the relevant clauses while meeting the goal of aligning with the ISO definition.<br><br>**Counties Power**: - The ISO definition is narrow in its reference to "related to its products". CP has no problem with the word "services" being included after products. | The Working Group considers the revised definition of *Complaint* is consistent with the definition of *Services* and no <u>further</u> change is required. | The Board agrees with the Working Group |

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| *complaints handling process itself, where a response or resolution is explicitly or implicitly expected*.' Definition from ISO 10002:2004. | **WELL: -** Agrees with alignment to the ISO definition | | |
| Land Complaint definition (Scheme document part A)<br><br>**Proposal**: To ensure references in the Scheme document to legislation and regulations are as accurate as possible, the Board proposes the definition of *Land Complaint* is amended by substituting for the existing wording after the colon, the words<br><br>*"…a) the applicable gas legislation and regulations; or*<br><br>*(b) the applicable electricity legislation and regulations; or*<br><br>*(c) a Land Agreement."* | **Transpower**: - remains strongly opposed to the proposed change to this definition.<br>The definition is intentionally limited to the specific legislation currently listed. The working group discussed whether the proposed wording expands the scope of the Scheme (which it does) and seems to think the expansion is "worthwhile". That is insufficient justification for a change of this significance.<br><br>**Transpower**: - The terminology "electricity legislation and regulations" is not defined and this creates significant risk for lines company members. It is not clear whether the term is limited to legislation that relates to electricity only or extends to any legislation that is relevant to the way members conduct themselves in the electricity industry. If the latter then very many different pieces of legislation are brought within the scope of a Land Complaint, including the Fair Trading Act, Consumer Guarantees Act, Resource Management Act, Commerce Act, State-Owned Enterprises Act (potentially bringing Treaty of Waitangi related complaints within the Scheme's jurisdiction) and the Land Transfer Act. At the very least the effect of the change would be to bring within the Scheme's jurisdiction complaints about the Electricity Industry (Safety) Regulations and the Electricity Industry Participation Code, despite there | The Working Group reiterates their previous view that the existing clause is out of date and needs amendment.<br><br>The group makes the following points for the Board's consideration:<br><br>• If the definition of *Land Complaint* is not satisfied, the matter would not be in the Commissioner's jurisdiction to consider<br><br>• The Scheme document (at B.9.8) already excludes a number of matters from the definition of *Land Complaint*<br><br>• The Scheme document (at B.9.5) provides the | After receiving advice from DLA Phillips Fox that the changes recommended by the Working Group did not expand the scope of the Scheme, the Board decided to make the changes recommended. |

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| | already being other bodies with the specific function of considering complaints about compliance with this technical legislation (the Energy Safety Service, Department of Labour, Electricity Authority and Electricity Rulings Panel). These forums are already accessible to land owners and occupiers, and consumers.<br><br>**Transpower**: - If the concern is that the definition of Land Complaint is out of date (which we agree it is) then that can be fixed in a way that does not expand the scope of Scheme.<br>We note that neither the former nor current Minister of Consumer Affairs expressed any dissatisfaction with the definition of Land Complaint in their letters to the Scheme.<br><br>**Transpower**: - However, while we consider the overall process of this review to have been robust, we still do not see there has been sufficient evidence or analysis to support the proposed expansion of the Scheme's jurisdiction. We resubmit that since the Scheme is mandatory for industry participants its rules are equivalent to delegated legislation. As such, any proposal to significantly expand the Scheme's jurisdiction must be supported by clear evidence that there is a problem to be fixed and an analysis of the costs and benefits of the proposed method for doing so. That has not happened.<br><br>**Transpower**: - We continue to strongly oppose the proposed change to the definition of Land Complaint. Although the definition is somewhat out of date, it should be fixed in a way that does not expand the scope of the | Commissioner with discretion to decide whether it is more appropriate that the complaint be considered by another person or under a statutory process.<br><br>• The Commissioner's office may wish to obtain Transpower's view on alternative ways the definition could be brought up to date that in its view would not expand the scope of the Scheme.<br><br>• The Board may wish to consider other ways the definition could be brought up to date.<br><br>• The group acknowledges the Commissioner will not consider irrelevant legislation or regulations | |

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| | Scheme. The proposal in its present form creates significant risk for lines company members by capturing many pieces of legislation that are not currently in scope and that do not relate to electricity directly at all. In most cases this would inefficiently duplicate existing forums and processes for the consideration of land owner and occupier complaints. | | |
| B.7.1 (Extensions of time Para 8.2.1 page 45)<br><br>**Recommendation**: Where a customer has complained directly to the company, without referral from the EGCC, the Member is empowered to negotiate the extension of time directly with the complainant.<br>**Recommendation**: Where the customer has been referred by the EGCC and an extension of time is negotiated, the member is required to inform the EGCC of this.<br><br>The Board prefers the previous approach | **WELL: -** Agrees with the Board's preference | The group notes the Board's preference and has no further recommendation or comment | The Board agrees with the Working Group |

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| (constitution pre 1 April 2010) where the member could claim a further 20 working days so long as they advised the complainant of this in writing (including the reasons for needing extra time). The Board believes this would give some flexibility to members, but with some certainty of a maximum time for complainants. | | | |
| B.8.2 (Discretion not to investigate Para 8.1.3 pages 43-44)<br><br>**Recommendation**: The Commissioner be given a discretionary power not to investigate, or continue to investigate, a complaint where, in all the circumstances, the Commissioner considers there is little likelihood that sufficient evidence will be available to make a | **Transpower**: - suggests that this discretionary ground for not considering or ceasing to consider a complaint be moved to clause B.9 to make it mandatory. We do not see any good reason why a complainant without sufficient interest in a complaint should ever be allowed to pursue it.<br><br>**WELL**: - Agrees that the wording recommended in the Baljurda report is used | The group disagrees with Transpower, noting there would be practical issues in making non-consideration mandatory on the ground of insufficient interest by the Complainant. | The Board agrees with the Working Group.<br><br>The Board approved the revised wording, giving the Commissioner discretion to not consider a complaint or consider a complaint further, if consideration or further consideration is not warranted having regard to all the circumstances (see p 44 of the Baljurda Report) |

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| decision about the merits of either parties' case. | | | |
| B.9.4 | **Meridian**: - Meridian would like to reiterate the need to amend clause B.9.4. While Meridian appreciates that amending the definition of a complaint is not intended to expand the scheme, Meridian considers that it is likely that it will lead to an increase in unmeritorious complaints relating to the complaints handling process. Amending clause B.9.4 is an appropriate counterbalance, and will clarify that the Commissioner is able to decline to hear unmeritorious complaints earlier in the complaints handling process, rather than proceeding to a full determination and billing the member for a decision made in their favour.<br><br>Meridian suggests that clause B.9.4 should be amended to read "*… a Complaint if it appears to the Commissioner that [capitalised part to be deleted] ON THE BASIS OF THE FACTS PRESENTED BY THE COMPLAINANT the relevant Scheme Member has made a reasonable offer in settlement of the Complaint*". | The group is unable to reach consensus on this submission.<br><br>The group notes Genesis supports this submission<br><br>The group makes the following comments:<br>• B.9.4 is an initial filter or screening process, as to whether a complaint is in jurisdiction.<br>• The focus of the discussion would initially be about whether the complaint was in jurisdiction or not, rather than in resolving the dispute.<br>• The EGCC internal process meets the requirements of natural justice by staff asking the complainant about any offers and putting that to the member at | The Board confirmed no change is to be made to this clause. The Board believes the clause, as drafted, operates as an initial filter and it is not appropriate to fully investigate all aspects of the complaint at deadlock check. The Board believes the clause, as currently drafted, requires the Commissioner to take into account any offers that have been made and test that against the information provided by the complainant. The Board is satisfied the existing wording satisfies the requirements of natural justice. |

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| | | deadlock (some disagreed this meets the threshold of natural justice)<br><br>• To make the submitted change could mean the Commissioner considers the complaint pre-deadlock and therefore when the complaint is not yet in jurisdiction.<br><br>• Complainants cannot be compelled by the office to disclose offers that have been made which can mean that full disclosure up front is not always made. This can mean a complaint will proceed to deadlock and the member be charged for the file. | |
| B.43 Determinations (Recommendation 7.1, page 39) | **Wellington Electricity Lines (WELL)**: - WELL disagrees in principle with the Working Group and the Board's responses. Wellington Electricity generally supports the inclusion of anonymised determinations | The group reiterates its previous view that no change be made - there is little | The Board agreed no change to this requirement. The Board believes the Commissioner's current |

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| **Recommendation**: clause B.43 of the Scheme document is amended to require the Commissioner to make anonymised copies of determinations available to the public, with discretion to publish only summary, non-identifying information where anonymising would not prevent the identification of a complainant or a member. | provided the context of those determinations is also made available.<br><br>Inclusion will promote:<br><br>o Transparency<br>o Public understanding of industry issues<br>o Minimisation of frivolous complaints<br><br>However, the "potential downsides" mentioned in the Working Group's comments should be quantified and socialised among Members before a final decision is made.<br><br>Wellington Electricity notes that communicating with the public on past determinations could work both ways. Being a precedence based scheme, consumers could use past determinations to deadlock complaints rather than settle, with higher costs borne by Members. | evidence of the benefits this would bring. Any benefits ought to be weighed against 1 - the cost and time this would potentially add to EGCC's processes; 2 – the principle of confidentiality (benchmarks); and 3 – risks of privacy breach complaints about the scheme.<br><br>The group acknowledges other initiatives used by the Commissioner's office, including the issuing of case notes and the case notes digest and the possibility of practice notes. | practice of publishing summaries as case notes is sufficient. |
| B.52 – Commissioner's responsibilities | **Counties Power**: - submits that this clause should be amended so that the commissioner is required to give high priority to working with subject organisations to assist them to identify and remove the causes of complaints. | The group considers the revised clause B.52.16 covers this. | The Board agrees with the Working Group |
| B.52.8, B.52.14(k) and D.2.10 | **Transpower: -** We suggest greater specificity for where the requirements for the Scheme are located in the Electricity Industry Act. They are in *clause 5* of Schedule 4.<br>Given that these requirements are referenced several times in the Scheme document, we propose retaining "Achievement Standards" as a defined term meaning the requirements of clause 5 of Schedule 4 of the Electricity Industry Act. | The group does not consider this additional detail necessary and suggests the Board may wish to obtain advice if it has any concerns the existing wording creates any ambiguity. | The Board agrees with the Working Group |

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| B.52.12 and E.16.12 (Recommendations para 9.3, pages 47-48) | **Transpower**: - remains opposed to the decision to delete the word "industry" from this clause as a problem due to an individual member can be addressed using the Commissioner's ability to make binding orders. | The group disagrees with this submission and accept there was a valid basis for the change. | The Board agrees with the Working Group |
| B.52.16 (Internal complaints mechanisms - Recommendation Para 9.5 page 50-52)<br><br>**Recommendation**: The Scheme document is amended so that if the Commissioner becomes concerned about the performance of a Member's complaint handling processes or performance, the Commissioner may undertake an audit of the Member's processes and provide advice to the Member on any remedial action. | **Counties Power: -** Rather than a preference for raising issues with a member before conducting an audit, CP would require it to be mandatory for the commissioner to raise issues before an audit.<br><br>**WELL**: - Agrees with the report recommendation providing that the Member concerned is fully consulted prior to an audit taking place. | The group consider it a matter of common sense the Commissioner would raise issues with the relevant member before conducting an audit. The group felt no additional change was necessary. | The Board agrees with the Working Group |
| Part C. (Code of Conduct for Complaint Handling – Recommendation Para 10.4 page 55)<br><br>**Recommendation**: The Code is reviewed with | **WELL: -** Supports the proposed changes to the Code | Noted | [see specific responses about Part C below] |

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| the aim of rationalising and simplifying the document. | | | |
| C.2.1 | **Counties Power**: - strongly objects to the principle outlined in C.2.1 since it has the effect of widening the definition of Complaint beyond the ISO definition referred to at para 5.1.1 of the recommendations document. That definition includes the limitation "where a response or resolution is explicitly or implicitly expected". C.2.1 effectively removes this.<br>Read literally this would require that <u>any</u> expression of concern should be treated as a Complaint and duly acknowledged, with reference to the Scheme, etc. This is unnecessary and runs the risk of giving rise to a complaints culture.<br>CP team members live and work in this community, among our customers. Any one of us is likely to receive comment on the company and aspects of its service in all manner of places and settings – at the supermarket, over dinner, in the pub, at a football match, etc. CP trusts our team members to judge which of these explicitly or implicitly expect a response. The commissioner should do the same. | The group disagrees with the submitter that the changes have this effect.<br>The group considers common sense should apply to a member's assessment of whether a complaint meets the definition of complaint and that no further change is necessary. | The Board agreed with the Working Group that the proposed change did not have the effect of widening the jurisdiction of the Scheme. |
| C.2.4 (Recommendation C.7 – Plain and accessible language)<br>**Proposal**: C.7.1 The Board considers the intention of clause C.7 (informing consumers) would be better achieved if all | **Counties Power**: - submits that equally there should be an obligation on the commissioner when corresponding with consumers to respond in plain and accessible language. | The group does not consider there is a basis for this submitter's concerns and believes no change is necessary. | The Board agrees with the Working Group |

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| information given by Members to consumers is in plain and accessible language.<br><br>To achieve this, the Board proposes C.7 is amended by inserting the words "*in plain and accessible language*;" after the words "*Scheme Members must*" and removing the words "*presented in plain and accessible language*" from clause C.7.1. | | | |
| C.5.7 (Recommendation C.7.7 – nominated contact)<br><br>**Proposal**: The Board considers the Scheme's purpose of resolving complaints would benefit from clearer communication channels between Members and the EGCC. To achieve this the Board proposes clause C.7.7 is amended by substituting the words that appear after the words<br><br>"*Complaint handling* | **Counties Power**: - CP supports the board's stance, and we note within the last week the commissioner has taken steps to update key contact information. | Noted | The Board agrees with the Working Group |

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| *processes*"<br><br>with the words<br><br>" *including a nominated point of contact for complaints and up-to-date contact details"*. | | | |
| C.6 - Acknowledgment of complaint<br><br>**Recommendation**: Amend clause C.8.1 of the scheme document (members to acknowledge complaints in writing within two working days) to allow flexibility in acknowledging complaints. | **WELL**: - Agrees with the report recommendation. | Noted | The Board agrees with the Working Group |
| C.7.1 and C.15.1 – Forwarding complaints (Clearing House mechanism) | **Counties Power: -** These clauses provide that under an Interposed UoSA, complaints should be made to the retailer in the first instance and that a company which does not have a contract with the customer (e.g. the lines company under an Interposed UoSA) should refer complaints to the organisation which does (i.e. the retailer).<br><br>This is nonsense and does not recognise the fact that many such lines companies (including CP) operate the local network and the local faults service. Customers will get quicker and better service by raising any complaints about our performance with us direct, just as they report lines faults etc to us. The Scheme Document should be | The group notes that separate agreements between the retailer and distributor can and are used for this purpose. No further change required. | The Board agrees with the Working Group |

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| | amended to recognise this fact. | | |
| Referral to a higher level (Recommendation Para 8.1.2 page 45 – no corresponding Scheme document clause)<br><br>**Recommendation**: The Commissioner be given the power to refer complaints to a higher level, if she considers the complaint could be resolved by so doing. | **WELL: -** Agrees that no change is needed | Noted. No change recommended. | The Board agrees with the Working Group |
| C.8.1<br><br>**Recommendation**: Amend clause C.8.1 of the scheme document (members to acknowledge complaints in writing within two working days) to allow flexibility in acknowledging complaints. | **Mainpower**: - We agree in particular with the EGCC that an oral form of acknowledgement from the Scheme Member is accepted as an alternative to written acknowledgements for complaints that are given orally, provided the Complainant agrees with taking the acknowledgement in the oral form. In practice the Scheme Member will likely to suggest the complaint be acknowledged orally if the complaint is simple in scope and likely to be resolved in a timeframe that is not much longer than two business days. This amendment will reduce noticeable inefficiencies in the smaller-sized Scheme Members' complaints response process, of which MainPower is one such member.<br><br>**Counties Power**: - CP agrees with expansion beyond acknowledgment in writing; however the clause should also allow for acknowledgment in person, since some subject organisations (such as CP) still operate walk in offices. | The group considers no further change is necessary. | The Board agrees with the Working Group |

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| C.9 – consistency with definition of complaint<br><br>**Proposal**: The current wording of C.9 implies a "*contract* "is necessary for a consumer to be able to complain. Because this is not the case, and to clarify the Commissioner's jurisdiction, the Board proposes inserting a further paragraph at the end of clause C.9 that states:<br>"*This clause does not operate to prevent the Commissioner from considering a Complaint by a Consumer about a Member with whom they may not have a contract".*<br>This change would make clause C.9 consistent with the current definition of *Complaint* in Part A. | **Counties Power**: - CP contends that there must be further clarity around this clause. When the commissioner considers a complaint about a member where the consumer has not previously contacted the member, we believe this imposes an obligation on the commissioner to advise the member of the complaint within strict time limits such as "same day by 4pm"<br><br>**Counties Power**: - [further clarifying the above] I think the point is that our submission refers to the same existing clause 9 (which specifies when member must pass things to another) but that it raises a separate point from that referred to in the consultation (which concerns the definition of complaint). Hence what we're saying is – noting that there are time constraints on members passing things on, shouldn't there also be such constraints where the commissioner needs to pass things on. | In response to this submission the group notes the time does not start to run on a deadlocked complaint until the member has been notified of it.<br><br>A requirement to refer complaints same day may often be unworkable in practice, for example when a complaint comes to the office very late in the day.<br><br>The group considers this a matter of practical common sense and no further change is needed to the Scheme document. | The Board agrees with the Working Group |
| D.10 – D.3 – Fees and levies; E.16.19 - Budget | **Counties Power: -** CP has been horrified to receive a fees invoice from the commissioner which is some 34% higher than that for the previous year. As a customer owned company we take all reasonable steps to hold | The group notes the review of levies occurred in 2010. | One submitter raised concerns about this year's budget and levy increase. The Board |

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| | down prices and this is not helped by quasi government agencies raising their charges by many times the rate of inflation.<br><br>If there was competition in the provision of complaints services then CP would be content for a market price to emerge. Since there isn't CP submits that these clauses need to be changed. Either D.1 should be changed to make levy payment voluntary, or D.3 and / or E.16.19 should be changed to require that the budget and levies must not increase annually by more than CPI less say 1%. | The group considers this submitter's request is outside the scope of the group's task (to consider submissions on the post-independent review of the Scheme document and make recommendations to the Board).<br><br>However the group feels it appropriate to bring the submission to the Board's attention. | agreed with the r ecommendation of the Working Group that there be no change as the levies were reviewed in 2010. |
| D.10.2(c) and (d) | **Transpower**: - The $65,000 and $23,000 baselines for the transmission members' contributions were set as at 1 April 2011 and have already been increased once by CPI. These increased figures should be used as the new baselines in clause D.10. | The group considers this submitter's request is outside the scope of the group's task (to consider submissions on the post-independent review of the Scheme document and make recommendations to the Board).<br><br>However the group feels it appropriate to bring the submission to the Board's attention. | The Board notes the contributions for Transpower for 2012-13 is $66,200 and the contributions for gas transmission companies is $23,400.<br><br>The Board agrees these figures should be used as the new base in the Scheme document. |
| Reporting (E.16.21 of Scheme document – Recommendation Para 7.3 pages 40-41)<br><br>**Recommendation**: The Scheme document is amended to require | **Network Tasman**: - The Baljurda report says that naming members against statistics would provide valuable comparative information about a competitors' performance.<br><br>The working group has recommended and the Board agrees to naming members against deadlock statistics only. | Noted – No change recommended.<br><br>The group acknowledges the need for context when publishing statistics in the | **The Board agreed with the Working Group on publication of statistics by member**<br><br>**company. The Board notes there is no prohibition on reporting statistics by member.** |

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| publication of member names against complaint statistics in the Annual Report.<br><br>**Recommendation**: Amend clause E.16.16 to require the Board and Commissioner to report on material or persistent breaches. | First-<br><br>By naming members in statistics on deadlocked complaints you seem to be implying that if a complaint goes to deadlock the member is performing poorly? We question whether that is a fair leap to make?<br><br>Furthermore-<br><br>Given the level of complaints received and the ambiguous nature of statistics we wonder whether any positive result would be realised through naming.<br><br>The EGCC handled 1200 complaints last year, of which 143 went to deadlock. (Presumably a number of the deadlock cases were not upheld but the number was not evident in the annual report.)<br><br>There are approx 3 million electricity connections throughout the country; about 2.7 million are domestic consumers.<br><br>That is approximately one deadlock complaint for every 19,000 domestic consumers.<br><br>To some this statistic would suggest that members are performing quite well.<br><br>By naming members against deadlock or even complaint received statistics you could be wrongly implying poor performance where there is none.<br><br>Statistics can be ambiguous. We urge caution in using them to name and shame.<br><br>**WELL**: - WELL supports the report recommendation in principle provided sufficient information is included to put the statistics into perspective. For example, energy retailers and distributors with high ICP numbers will | annual report, for example customer base. | The Board shares the view of the Working Group that any reporting of Members' names against statistics requires context. The Board believes mandatory reporting should be limited to reporting of complaints that have been accepted by the Commissioner for consideration. The Board notes it retains a discretion to report on other statistics by member. |

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| | naturally receive more complaints than those with low ICP numbers.<br><br>**WELL**: - Supports the report recommendation in principle provided sufficient information is included to put the statistics into perspective. For example, energy retailers and distributors with high ICP numbers will naturally receive more complaints than those with low ICP numbers. | | |
| Internal complaints mechanisms (B.52.16 Scheme document – Recommendation Para 9.5 page 50-52)<br><br>**Recommendation**: The Scheme document is amended so that if the Commissioner becomes concerned about the performance of a Member's complaint handling processes or performance, the Commissioner may undertake an audit of the Member's processes and provide advice to the Member on any remedial action. | **Network Tasman**: - We remain opposed to this recommendation.<br>However, if approved we trust the change would be supported by clear benchmarks for non performance and strict protocol around the auditing process.<br><br>**Counties Power**: - Rather than a preference for raising issues with a member before conducting an audit, CP would require it to be mandatory for the commissioner to raise issues before an audit.<br><br>**WELL**: - Agrees with the report recommendation providing that the Member concerned is fully consulted prior to an audit taking place. | | The Board agrees clear processes would have to be in place around a decision to audit a member's internal complaint mechanism, but does not believe these need to be in the Scheme document. The Board believes if a member reported compliance and this was supported by the member's complaint statistics, there would be no basis for an audit. |

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| Member compliance reporting (B.52.16 of Scheme document – Recommendation Para 7.3.1 page 41)<br><br>**Recommendation**: amend the Scheme document to require the Board to monitor member compliance by audits of member websites and random audits of member materials for compliance. | **Network Tasman**: - We agree with the Baljurda recommendation. We do not agree that the board should audit materials beyond what is publicly available and would not want to see a position created for an auditor or assessor.<br><br>**WELL**: - WELL supports the report recommendation in principle, provided the audit selection process is seen to be fair. Wellington Electricity disagrees that the audit process extends beyond publically available material.<br><br>We also caution that confidentiality is important, particularly in view of the recommendation above (report para 7.3; pages 40-41).<br><br>**Meridian**: - Meridian remains of the view that the Commissioner should have the ability to suspend the requirements for annual compliance reporting. Providing the Commissioner with this ability would assist with managing members compliance costs. | The group considers the re-worded clause B.52.16 covers the concerns raised by submitters.<br><br>In addition the group notes the Commissioner's office is reviewing the reporting documentation with a view to making the process more efficient and effective.<br><br>The group did not agree with the submission that the Commissioner suspend the requirements for annual compliance reporting – being of the view this would be problematic to implement fairly. | The Board agrees with the Working Group.<br><br>See also comments in the preceding box. |
| Financial limits (B.11/B.38) Para 9.1.2 pages 46-47 & Minister's recommendation | **Network Tasman**: - We are concerned by the tone of the Minister's letter but remain strongly in disagreement with his recommendation of a jurisdictional limit of $100,000.<br>We wonder how many legitimate complainants are being denied access to the scheme at the current jurisdictional limit and whether the Ministers' recommendation is a reaction to a one-off or highly unusual event such as the one referenced in Ross Milner's submission.<br>We are in agreement with the proposal of $25k and $60k by agreement of parties.<br><br>**Genesis Energy**: - The second consultation document has asked for the views of stakeholders on the | To assist discussion, the Commissioner's office provided the group with statistics on complaints above $20,000 that have been brought to the office. (Appendix 4).<br><br>The group acknowledged a potential difficulty with statistics is that those groups who interact direct with consumers may be aware of the Scheme's | After seeking further clarification from the Minister, the Board resolved to increase the limit of the Scheme to $50,000 ($100,000 with the agreement of the Member). |

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| | appropriate jurisdictional limit for the scheme. Genesis Energy does not support increasing the jurisdiction limit to $50,000.<br><br>**Genesis Energy**: - Our submission on the proposed changes to the scheme outlines our reasons why we consider that the current limit should remain:<br><br>We do not support the proposed change to the financial limit for EGCC complaints. We consider that the key benefit of the EGCC is its accessibility and flexibility in addressing electricity and gas complaints in a timely and cost-effective manner. In our view, increasing the financial limit to $100,000 will require considerable changes to reflect the increased value of claims, and that these changes will not benefit the majority of consumers who use the EGCC for resolving their disputes.<br><br>The Minister of Consumer Affairs makes the comparison to the District Court in her letter (para 7 of the consultation document). We consider that it is more appropriate to compare the EGCC to the Disputes Tribunal as the Disputes Tribunal provides a cost-effective and accessible means of dealing with minor disputes (including complaints under the Consumer Guarantees Act 1993). In this regard, we note that the Disputes Tribunal is limited to disputes up to a value of $15,000 (or up to $20,000 with consent of the parties), comparable to the current financial limit for EGCC disputes.<br><br>In our view the limited numbers of disputes that may exceed the current financial limits are better addressed via the courts (we note that the EGCC Complaints Statistics Report, December 2011, does not identify any claims that have been refused on jurisdiction grounds). | $limit but not aware it can be increased by agreement or finding of fact can be used.<br><br>The group were unable to reach consensus on how the issues of the recommended increase to the Scheme's jurisdiction could be resolved.<br><br>The vote on this issue is split 5/1 between industry representatives on the working group and the consumer representative.<br><br>There was unanimous support among industry representatives on the working group for the proposed increase to $25,000 and up to $65,000 by agreement. There was the same level of support for an increase to $25,000 and up to $100,000 by agreement.<br><br>The consumer representative voted in favour of increasing the limit to $50,000.<br>The group unanimously agreed a rounded figure should be used, whatever the final limits are. | |

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| | We consider that the court system provides the appropriate level of judicial consideration, formality and consistency that is required for higher value claims.<br><br>**Genesis Energy**: - The Minister for Consumer Affairs has asked the EGCC Board to reconsider the issue of increasing the jurisdiction limit. We remain unconvinced that there are any "access problems" with the current EGCC scheme that need to be addressed by increasing the jurisdictional limit. In our own experience, claims above the current $20,000 limit are rare. We have not seen any evidence from the EGCC or the Ministry for Consumer Affairs to suggest that the jurisdiction limit is a constraint to access.<br><br>Furthermore, parties to a dispute may agree that a higher value claim is resolvable by a more informal EGCC setting (up to a value of $50,000). This choice is important. It recognises that high value claims (over the current $20,000 limit) will generally require a more formal approach and process. But it also provides the flexibility for parties to use the EGCC process where they agree the dispute is better resolved in that setting.<br><br>**Genesis Energy**: - CPI Adjustments should not be made annually. We support the jurisdictional limit being adjusted to reflect changes in CPI. However, we consider the implementation proposed by the second consultation paper is not the optimum method for this adjustment. We are concerned that the proposed annual CPI adjustments will introduce unnecessary complication to the scheme for calculating eligibility of claims. In our view the jurisdiction limit must remain a clear and well defined monetary amount, and we are unaware of any other dispute resolution process that links the jurisdiction limit to annual CPI increases in such a manner. | Set out below are the comments made by one or more working group members for the Board's consideration:<br><br>• the limit could be increased and the issue of the increase reviewed within 1-3 years to assess its effectiveness.<br><br>• they will act differently (more formally) toward the Scheme if the proposed increase to $50,000 occurs.<br><br>• The number of complaints at this level was higher than expected, even taking into account the complaints cover a two year period.<br><br>• the EGCC Scheme aligns with the Disputes Tribunal because (as with the DT) the Commissioner takes the law into account, | |

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| | We suggest that adjusting for CPI increases should be one of the requirements of reviews of the scheme. Although this will require the review to consider the future trends for CPI, to ensure that the limit remains valid up to the next review period, we consider that this is preferable to a variable limit.<br><br>**Contact Energy**: - Contact agrees with the recommendation of the working group. Contact disagrees with the alternative recommendation.<br><br>Contact strongly opposes increasing the financial limit for EGCC complaints to $50,000. In our view adjusting the jurisdictional limit to reflect changes in the CPI is appropriate, however any further increase to the limit is both unnecessary, and potentially damaging to the effectiveness of the EGCC.<br><br>Contact opposes any substantial increase to the limits for the following reasons:<br><br>• A key benefit of the EGCC is its accessibility and flexibility in dealing with and resolving complaints in a timely and cost-effective manner. If the jurisdictional limit was to be increased, we believe considerable changes would be required to reflect the increased value of claims. In our view, these changes would impact the ability of the EGCC to remain simple and cost-effective, and will have adverse effects on the majority of the consumers who use the EGCC for resolving their disputes.<br><br>• In Contact's view the EGCC scheme is | rather than the law being the determinative factor in deciding the outcome of a complaint.<br><br>• The group understands the Disputes Tribunal is unable to consider the Electricity Act (ss 10, 13 and schedule 1, Disputes Tribunal Act 1988)<br><br>• the higher the limit of the Scheme, the more legal approach ought to be taken.<br><br>• there are other complaints schemes with limits exceeding $100,000.<br><br>• a binding decision from the Commissioner needs to be binding on both parties if the limit is increased, as proposed by the Minister of Consumer Affairs.<br><br>• Three members of the | |

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| | comparable to the Disputes Tribunal as both organisations seek to resolve disputes in a simple, cost-effective way which can be easily accessed. Given the similar nature of the Disputes Tribunal and the EGCC, Contact believes that the EGCC scheme should have a comparable jurisdictional limit to that of the Disputes Tribunal. Contact notes the jurisdictional limit of the Disputes Tribunal is $15,000 (or up to $20,000 with the consent of the parties). This is comparable to the current limits of the EGCC.<br><br>• Contact is not convinced that there is a need to increase the limit to $50,000. In our experience the current limits are completely satisfactory for the majority of the complaints that Contact deals with. In addition, Contact notes that recent statistics provided by the EGCC (namely, the EGCC Complaints Statistics Report, December 2011) did not identify any claims that have been refused on jurisdictional grounds.<br><br>• Contact believes that existing dispute resolution methods are already available for disputes of a higher value, for example the court system, and that they are more appropriately resourced and qualified to deal with such disputes. In Contact's view, the court system provides the appropriate level of judicial consideration, formality and consistency for higher value claims.<br><br>• Contact's view is that any dispute in excess of the current jurisdictional limits of the EGCC would primarily involve commercial customers | group advise they have had 1 or fewer complaints above $20,000 in the last 12 months.<br><br>• even if a greater proportion of complaints above $20,000 are for businesses (as opposed to individuals) they still have a right to complain under the principle of accessibility.<br><br>• there is also the gap for small businesses that may not have the resources to take a dispute to the District Court.<br><br>• the purpose of the dispute resolution scheme (Electricity Industry Act 2010, Schedule 4, clause 1) is that:<br>• "*any person (including consumers, potential consumers, and owners* | |

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| | who are capable of accessing, and working with, traditional dispute resolution methods.<br><br>• Contact notes that the Baljurda report states that the current financial limits are consistent with the limits for the equivalent scheme in Australia.<br><br>• Contact is concerned that the broad discretion given to the Commissioner to consider reasons other than the law when determining a dispute may be detrimental to the resolution of larger disputes. Contact believes that disputes that are beyond the current financial limits of the scheme are more appropriately determined by a stricter application of the law.<br><br>• Contact notes the many submissions by industry participants, which are largely against the increase in the EGCC jurisdictional limits. On this basis, Contact believes that the current financial limits reflect what the industry considers to be appropriate, and should not be increased.<br><br>**Ministry of Economic Development**: - I am writing in response to the second round of consultation on recommended changes to the Scheme document, in particular to convey the Ministry's support for the proposal by the Minister of Consumer Affairs to increase the jurisdiction limit of the scheme to at least $50,000.<br><br>The scheme approval criteria require the Minister to consider whether the scheme is capable of dealing with a wide range of complaints by persons entitled to make a complaint [Electricity Industry Act 2010, Schedule 4, section 5(1)(c)]. While many of the complaints received | *and occupiers of land, but excluding members of the scheme) who has a complaint about a member has access to a scheme for resolving the complaint*"<br><br>• "*Accessibility*" is a mandatory consideration for approval (EIA Schedule 4, Clause 5 (2).<br><br>• a large proportion of the higher level complaints are brought by insurance companies.<br><br>• Complaint types at a level above $20,000 could include issues relating to back-bills or upgrade costs.<br><br>• EGCC would be dealing more often with the members' legal department, rather than their call centre, if the limit increases.<br><br>• an increase to the limit | |

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| | by the scheme may be resolved within the proposed new limit of approximately $23,000, an increasing number are not. In particular land complaints (as defined in the Scheme document) are more likely to be complex and higher in monetary value.<br><br>A recent declaratory judgement (Marlborough Lines Ltd v Cassels [2012] NZHC 9) in relation to the Electricity (Hazards from Trees) Regulations 2003 highlighted the situation, particularly where large plantations of trees are involved. Declarations were sought from the High Court on several disputes about the costs of removing debris from land and what to do with debris. In this particular case the parties agreed that the estimated cost of the debris in dispute was in the range of $100,000-$200,000, and while this is considerably in excess of the suggested $50,000, it does provide an indication of the potential costs of tree-related complaints.<br><br>In his declaratory judgement the Judge commented that this is not the sort of issue that should have to be brought to court for decision (paragraph 44). He further commented that these matters would be better determined by an arbitrator with practical knowledge as to electricity reticulation (paragraph 46). The Ministry considers that such a role fits comfortably with the EGCC scheme's mediation and conciliation role.<br><br>From the Ministry's perspective it is important that the EGCC Scheme is able to consider land complaints of this nature. If industry members are unable to agree to an increase in the monetary jurisdiction for all complaints, an alternative would be to have a separate, higher, jurisdiction for land complaints (as defined in the | will damage a member's relationship with the EGCC - they would question the competency of some EGCC conciliators to deal with the difficult issues.<br><br>• they would do the same work for a $20,000+ complaint as they would for court proceedings for the same amount.<br><br>• would want an appeal process if the jurisdiction was increased.<br><br>• the jurisdiction of the District Court (Electricity Industry Act 2010, s 97) enables it to modify a binding decision if it considers it "*manifestly unreasonable*".<br><br>• the test case procedures are available to parties, as | |

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| | Scheme document).<br><br>**Transpower**: - While we consider the overall process of this review to have been robust, we still do not see there has been sufficient evidence or analysis to support the proposed expansion of the Scheme's jurisdiction. We resubmit that since the Scheme is mandatory for industry participants its rules are equivalent to delegated legislation. As such, any proposal to significantly expand the Scheme's jurisdiction must be supported by clear evidence that there is a problem to be fixed and an analysis of the costs and benefits of the proposed method for doing so. That has not happened.<br><br>**Transpower**: - We do not support any increase in the Scheme's financial limits beyond what may be reasonable to keep pace with general inflation. We again note that the current financial limits of the Scheme are consistent with the equivalent limits in Australia and that the Ministry of Consumer Affairs considers Australian benchmarks to be illustrative of international best practice in consumer dispute resolution schemes. Further, any increase in the financial limits of the Scheme will widen the disparity between the Scheme's financial jurisdiction and the financial jurisdiction of the Disputes Tribunal (limit of $15,000).<br><br>**TrustPower**: - supports the Working Group's recommendation that the Board increase the limit to $25,000 (and up to $60,000 with the consent of the member).<br><br>**TrustPower** has yet to see any evidence that creates a credible argument for increasing the limit to a level above that recommended by the Working Group. We | is the Commissioner's "*finding of fact*" jurisdiction.<br><br>• the Board needs to decide what is good for the scheme overall, rather than what steps the Ministry could take (eg change of legislation, regulation, withdrawal of approval of the Scheme, not approving the changes under the Scheme document, part E.<br><br>• With delegated financial authorities within member organisations, the higher the limit the higher the level in the organisation will be dealing with the complaint. | |

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| | are also disturbed by the suggestion by Minster Bridges that the limit be increased further. His letter provides no evidence of needs not being met, and seems simply premised on the basis that members are litigious and that the only alternative to the scheme is the District Court.<br><br>In TrustPower's experience, the number of customer disputes that fall within the $25,000-$100,000 range is insignificant. In order for a customer dispute to fall within that range, the customer typically has to be a significant consumer of electricity (and/or gas). Customers with purchase costs that fall within that range typically have commercial agreements in place that contain well-defined dispute mechanisms. These have been agreed with the intent of avoiding significant costs for both parties.<br><br>We consider that a process requiring the Commissioner to address a significant and complex issue, for which the cost of hearing that complaint and obtaining expert external advice is passed on solely to a member, and binding only that one member by the ruling, is unlikely to be considered effective.<br><br>One of the principles the Scheme is required (by the Electricity Industry Act 2010) to meet is the principle of effectiveness. In the *Benchmarks for Industry-Based Customer Dispute Resolution Schemes*, a key practice of effectiveness is that the scope of the scheme is sufficient to deal with the vast majority of customer complaints in the relevant industry; the specified maximum should be consistent with the nature, extent and value of customer transactions in the industry. | | |

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| | It is TrustPower's view that increasing the limit to $25,000 (and up to $60,000 with the consent of the member), more than meets this requirement. Unless one holds the view that members actively seek to incur the additional costs associated with a District Court process, then a provision that allows the Commissioner to hear the vast majority of complaints, as well as those up to $60,000 with the consent of the member, seems a pragmatic way to address the concerns that Minister Bridges has.<br><br>**Transpower**: - supports the working group's proposal to increase the financial limits of the Scheme to $25,000 and, with consent, $60,000. We are not aware of any evidence or analysis justifying increases of any more than that.<br>The alleged problems with access to the Scheme have not been particularised by either of the Ministers of Consumer Affairs or by anyone else we are aware of. We are not aware of significant numbers of land owners or occupiers, or consumers, having raised concerns about their high value complaints being excluded from the Scheme.<br>We point out again the comment on page 46 of the Baljurda report that "the current financial limits [of the Scheme] are consistent with the equivalent limits in Australia." Given that the Ministry of Consumer Affairs describes Australian benchmarks as "an illustration of international best practice in consumer dispute resolution schemes", it is very difficult to rationalise any significant departure from the financial limits that apply in Australia. Any increase in the financial limits of the Scheme will widen the disparity between the Scheme's financial jurisdiction and the financial jurisdiction of the Disputes Tribunal (limit of $15,000). | | |

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| | **Mainpower**: - We have provided our feedback on the financial limit of the Scheme as requested by the EGCC. As one of the smaller-sized Scheme Members, we believe the financial limit should be set in a manner that is easy to explain accurately by the Scheme Members to any potential and actual Complainants. Subjecting the limit to an annual revision based on CPI movements will provide a moving threshold every year. Scheme Members will be required to invest in staff training to inform them of updated financial limits as well as updating EGCC-related materials. For Scheme Members that encounter complaints occasionally, this will likely drive up transaction costs and introduce errors in communicating with the Complainants.<br><br>Since the Scheme will be subject to a five-yearly review cycle, we recommend the financial limit be revised each time during the actual review. The New Zealand economy is relatively stable, and the CPI movements are unlikely to be significant over any five year period. The five-yearly revisions will therefore not have a huge negative impact on how the Complainants are covered financially.<br><br>**Mainpower**: - agrees with the financial limit of $25,000 as suggested by the Working Group. We agree this will cover a majority of complaints that could reasonably be expected to require the EGCC to intervene.<br><br>We believe the requirement of adjusting the financial limit on an annual basis using the CPI is redundant. We will be required to update any relevant EGCC-related materials as well as retraining staff of the updated threshold every financial year. In addition, there will be | | |

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| | risks of misquoting the limit in communication the EGCC Scheme to the public if the CPI-based adjustment occurs on an annual basis.<br><br>The Scheme document will be subject to five-yearly reviews, and we therefore believe any adjustments on the financial limits should be made each time during actual the review.<br><br>**Counties Power**: - CP does not support a substantial across the board increase in limits. A key element of the scheme is that it aims to resolve disputes by taking into account sundry factors including but not limited to the law.<br><br>The vast majority of relevant transactions are for sums well under $25,000. Electricity disputes above this sum are likely to be with corporate customers who (like suppliers) are likely to prefer the certainty of legal processes (including alternative dispute resolution within the context of the law).<br><br>The only area where we can see a that higher limit than $25,000 might be justified is land complaints, but given that land relations are firmly based in law again CP prefers the certainty of legal processes (without discounting alternative dispute resolution). The minister's letter is interesting but it provides no rational basis to support the position it advances.<br><br>**Greypower/Domestic Energy User's Network**: - Grey Power and DEUN submit that the jurisdictional limit of the scheme should be increased to $100,000 as recommend by the Minister of Consumer Affairs. Domestic consumer accounts under complaint can readily be well in excess of $25,000 when the case has been over a long period. Further the higher limit without | | |

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| | agreement would no doubt assist small non domestic consumers with their complaints.<br><br>We strongly recommend for all claims that the consent of the member under question should not be required. In a dispute of this order what member would consent to the extension of the jurisdiction to $100,000 if it considered that it was going to lose the case? Natural justice must clearly be applied in such cases.<br><br>This is very similar to the same weakness in the Disputes Tribunal rules where the company under complaint has the right to disagree with a case being taken over the limit of $15,000 to $20,000.<br><br>If one party can foresee that they will lose the case then why would they not limit the amount payable by declining to go over the nominal limit? Is this justice?<br><br>**Unison**: - Unison does not support an increase of the jurisdictional limit of the Scheme to $50,000. We continue to be of the view that claims of such an amount are more appropriately dealt with by the court system. A court hearing is more appropriate when the issues are both complex and there is a large liability claim at stake. We support the Working Group's recommendation that the Board increase the current jurisdictional limit of $20,000 to $25,000 (or $60,000 with agreement by the parties to the dispute); this is a fair and reasonable limit. Such a limit ensures that the office of the Commissioner has the resources and the expertise to appropriately deal with complaints about member companies. As previously submitted, this is analogous to the structure of New Zealand's justice system where there is a statutory 'ceiling' on the cases that can be heard by the Disputes Tribunal and the District Court. | | |

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| | Although the alternative to the Scheme, litigation in the District Court is potentially expensive for both parties, the court system provides a right of appeal for both parties. The Disputes Tribunal also allows both participants to the dispute to appeal, if either party believes the Referee conducted the hearing in an unfair way and that affected the outcome. Appeals are heard by District Court Judges but not in open Court. The Judge has to be convinced that the hearing was conducted in an unfair way. The Judge can send then send the claim back to the Tribunal for a rehearing, refer the claim to the District Court, or dismiss the claim.<br><br>As the Commissioner's decisions are binding on the member company involved, with no right of appeal, there is no alternative but acceptance of the Commissioner's decision of up to $50,000 (as well as any additional costs incurred by both parties in the process).<br><br>Therefore we reiterate our previous concern, that if the jurisdictional limit of the Scheme is significantly increased, the onus on the member companies will unjustly increase.<br>In conclusion, with the increased likelihood that external specialists will be required for cases involving a significant liability claim (increasing the additional costs on top of the liability claim amount), the court system is the appropriate avenue for resolving potential costly civil disputes.<br><br>**Vector**: - Vector supports the Working Group's recommendation to the EGCC Board to increase the jurisdictional limit to $25,000 (and up to $60,000 with the consent of the Member concerned). This | | |

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| | recommendation is much closer to the Baljurda Report's recommendation of adjusting the limit every three years in line with inflation, which would have meant an adjustment of the current limit from $20,000 to approximately $23,000. Vector notes that this recommendation was widely supported by submissions on the first consultation document on the Scheme's review (there was consensus amongst retailers and lines companies).<br><br>Vector does not support the step-change recommended by the Minister of Consumer Affairs, which would increase the jurisdictional limit to $50,000, for the following reasons:<br><br>a. The intent of the Scheme is to resolve the complaints of "small consumers" in an expeditious and low-cost manner. Higher value complaints do not usually involve small consumers but commercial entities that have the wherewithal to resolve issues through commercial means or through the Courts. It is not unreasonable to assume that commercial entities and Scheme Members are interested in resolving issues expeditiously, and preferably, through commercial means.<br><br>b. In Vector' experience, higher value complaints are very rare. A step change in the jurisdictional limit to accommodate 'outlier' complaints would expand the scope of the Scheme significantly, which would involve higher administrative costs for the EGCC and compliance costs for Scheme Members, hence higher costs for electricity | | |

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| | and gas consumers.<br><br>c. The resolution of higher value complaints is likely to be more complex and, as pointed out by Unison, could require specialist expertise and therefore more costly to resolve. The EGCC Board (and the Minister and MED) should be cognisant that cost increases for Scheme Members will ultimately be borne by electricity and gas consumers.<br><br>d. Members of the EGCC are already bearing a significant increase in the EGCC levy, following the legislative requirement for all electricity and gas companies to become Members of the Scheme.<br><br>e. In respect of land complaints, it is worth noting that Vector has not had any significant land complaints in the past 20 years. We have good relationships with landowners, and any land complaints we had were expeditiously resolved and did not involve complaints being escalated to the next level.<br><br>With regards to the Ministry of Economic Development's alternative suggestion of setting a different jurisdictional limit for land complaints, Vector believes there should be no differentiation between land complaints and all other complaints. Doing so would imply that land complainants are not small consumers, and therefore, should not be covered by the Scheme in the first place.<br><br>Should a decision be made to adopt the Minister's | | |

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| | recommendation, Vector would like it to be supported by robust evidence or a cost-benefit analysis indicating that a higher limit would be cost-effective and would, on balance, result in greater benefits to consumers. Any significant changes to the Scheme should only be made if it better achieves the purpose of the Scheme.<br><br>Vector looks forward to a resolution of the issue on jurisdictional limit in a manner that does not impose undue costs on the EGCC and its Scheme Members, and ultimately, electricity and gas consumers.<br><br>**Powerco**: -<br><br>1. In summary, Powerco supports increasing the current limit by CPI, rather than changing it to $50,000. This is because the current approach provides an extra step in the process, but still allows complaints of up to $50,000 to be resolved under the Scheme. Currently, if the complaint is above $25,000, the company can assess if it should allow the limit to be increased $50,000, or if it should move to a forum with a right of appeal and discovery. This allows flexibility and ensures a just system for higher value complaints. We do not support a system where we have no right of appeal for complaints nearing $50,000. More explanation is provided below.<br><br>2. The Minister of Consumer Affairs has recommended that the monetary limit of the Scheme be increased to $50,000. This is driven by a desire to ensure consumers have access to a forum to resolve | | |

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| | legitimate complaints, based on a belief that the District Court is much more costly for both parties.<br><br>3. Powerco submits that the current definition of a *complaint* (as defined in the Scheme document) is broad enough to capture matters which may, in certain circumstances, be more properly defined as a *dispute*.<br><br>4. It is difficult to envisage a scenario in which a *complaint* concerning the provision and maintenance of works for either gas or electricity, or the operation of such works, could require a settlement in excess of $25,000 for a consumer.<br><br>5. In the event that it is, however, the current Scheme rules already provide an option for the parties to agree an increase in the monetary jurisdiction of the Commissioner. This right to consult is appropriate as it protects the Scheme members if a matter with a monetary value above $25,000 is more appropriately defined as a *dispute*, although it began its life through the complaints handling process of the Scheme member.<br><br>6. In these circumstances, it is more equitable for the Scheme members to have an | | |

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| | opportunity for the matter to be heard in a forum with a right of appeal and, potentially, discovery. The current New Zealand judicial system provides adequate forums for such disputes. This is similar to the current Disputes Tribunal system, where the limit of the Tribunal is $15,000. Claims of higher amounts are processed through the Court system.<br><br>We note the Minister's concern regarding costs to consumers of Court processes. However, this concern is addressed by the Courts' systems of dealing with cost allocations at the time of judicial settlement or judgment.<br><br>**WELL**: - WELL agrees with the recommendations of the Baljurda report and the Commissioner that the financial limits covered by the Scheme are increased annually by CPI based on the current limit ($20,000).<br><br>It is rare for a residential customer claim to approach the current limit. Management of claims of a higher value need to be appropriately resourced by both parties and are better managed via traditional dispute resolution mechanisms.<br><br>Wellington Electricity also notes that the Scheme as it stands has provision to increase the financial limit (to $50,000) with the approval of the appropriate Member.<br><br>**Mercury**: - Mercury Energy feels that the EGCC, similar to the Disputes Tribunal, is most effective in resolving low-level, common-sense disputes and that the more complicated (and higher value claims) should be heard by the District Court. The District Court, with its well- | | |

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| | developed rules of procedure and evidence, is likely to be the most appropriate venue for higher value matters that are usually more complicated.<br><br>The current scope of the scheme is sufficient to deal with the vast majority of customer complaints from Mercury's perspective.<br><br>In the absence of any compelling details to support the claim for a substantial increase, the Baljurda report would seem to provide the best factually based review and recommendation on this matter.<br><br>The amendment proposes to increase the jurisdictional limit to allow the EGCC to hear and determine complaints of up to $50,000. While we are generally supportive of the principles and functions of the EGCC, we believe the increase to their jurisdictional limit is unnecessary. The EGCC provides a relatively informal mechanism to resolve disputes relating to energy matters. Higher value disputes or complaints are often likely to involve more complex legal issues (e.g. a negligence claim) which will need to be considered against the backdrop of relevant case law precedent. Disputes heard by the EGCC that involve these more complicated matters of law are likely to miss out on this essential case law component.<br><br>We believe the EGCC is most effective in resolving low-level, common-sense disputes that turn on their facts, rather than the application of the law. If the EGCC were to hear more complicated legal claims, the body of applicable case law would be unlikely to be properly considered in many cases. This view is supported by the current jurisdictional limits of the Disputes Tribunal which are set at $15,000 (or $20,000 if both parties agree). We | | |

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| | feel that the EGCC, similar to the Disputes Tribunal, is most effective in resolving low-level, common-sense disputes and that the more complicated (and higher value claims) should be heard by the District Court. The District Court, with its well-developed rules of procedure and evidence, is likely to be the most appropriate venue for higher value matters that are usually more complicated.<br><br>We support the EGCC and consider its investigators and the Commissioner to be highly effective and well-trained. At the same time, however, we recognise that the informal resolution model has its limits and do not support jurisdictional limits for the EGCC and Disputes Tribunal that are unreasonably disproportionate.<br><br>Our retail brand complaints that proceed to deadlock with the EGCC are well under the existing jurisdictional limits with only one recorded exception in the last 3 years. The current scope of the scheme is sufficient to deal with the vast majority of customer complaints from Mighty River Power's perspective.<br><br>In the absence of any compelling details to support the claim for a substantial increase, the Baljurda report would seem to provide the best factually based review and recommendation on this matter.<br><br>**Consumer**: - In our view it is appropriate to increase the jurisdictional limit to $50,000 (and up to $100,000 with the member's consent).<br><br>The limit proposed by the Board's working group ($25,000/$60,000) is too low, for a number of reasons.<br><br>The costs of taking action in the District Court make it an | | |

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| | unrealistic option for matters involving less than at least $50,000 (and even at that level would still require a very optimistic litigant).<br><br>It's worth pointing out also that the Disputes Tribunal only hears claims up to $15,000 (or up to $20,000 by agreement of the parties).<br><br>Increasing the scheme limit to $50,000 would mean consumers would have a forum to resolve claims that are not currently able to be heard.<br><br>Some types of claims that are commonly raised with the Commission (for example, those that involve responsibility for trees, or damage caused by power surges) can involve reasonably large amounts of money. The jurisdictional limit should not be set so low as to prevent claims that are within the amounts one would expect to see.<br><br>It must be said we don't know how many consumers are missing out simply because they have claims which are too high because of the current limits.<br><br>We understand only a tiny number of complainants have had to be turned away from the Commission because their claims exceed the limit. However, that may be because potential claimants know of the limit and avoid the scheme as a result.<br><br>However, we do know this: if there are consumers out there with meritorious claims who are currently missing out on the right to have their claims heard, they should be given the opportunity to do so.<br><br>If on the other hand, there are only a very few | | |

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| | consumers in that position, raising the limit will do no one any harm.<br><br>**Meridian**: - Meridian does not support increasing the level of the award the Commissioner is able to make from $20,000 to $50,000. From Meridian's perspective, as a retailer, claims for $50,000 are very rare. Therefore, we do not believe increasing the level of the award would result in a significant increase in access to, or use of, the scheme.<br><br>Meridian considers that as the value of the complaint increases it is more appropriately dealt with by the Courts, both from a procedural perspective and from the point of view that the Commissioner has to determine what he or she considers is fair and reasonable while having to have regard to a number of other factors including law, rather than simply the law.<br><br>The current award level, which Meridian agrees should be appropriately indexed, is satisfactory for the majority of the complaints that Meridian has to deal with. In our view it provides an appropriate workload split between the EGCC and the Courts. | | |
| Systemic problems (B.52.12 Scheme document - Recommendation Para 9.3 pages 47-48)<br><br>**Recommendation**: The word "*industry*" is deleted in reference to systemic problems. | **Transpower**: - We are pleased to see that some of Transpower's comments have been taken into account, such as retaining the requirement that a systemic issue be discovered from complaints before the Commissioner can start an investigation.<br><br>**Counties Power**: - agrees with the Board's stance.<br><br>**WELL**: - Agrees that no separate levy is required to identify and investigate systemic issues. | Noted – no recommendation | The Board agrees with the Working Group. |

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| **Recommendation**: The Commissioner is given a discretionary power, after consultation with the Member or Members affected by the systemic issues, to investigate the problem and make recommendations for its solution. The fees for investigation of systemic issues should be on the same basis as other complaints.<br><br>**Recommendation**: The wording in clause B.52.12 of the Scheme document (identification of systemic issues from complaints) be amended to give the Commissioner responsibility for identifying systemic issues from either complaints or other sources. | Agrees with the Board's response that the Scheme is not changed to expand the basis for the commissioner to consider systemic issues beyond those that become apparent from complaints. | | |
| Independent review (E.57 Scheme document – Recommendation Para 9.7 pages 52-53) | **Genesis Energy**: - We agree with most of the EGCC Board's recommendations as contained in the second consultation document. However we do not agree that the change of the review period from three years to five years will necessarily be in the best interests of consumers and participants. | The group is unable to reach consensus on this issue.<br><br>One of the industry | The Board agreed the Scheme document be amended to require an independent review at least every five years. . |

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| **Suggestion**: Consideration is given to changing the three year interval for an independent review of the Scheme to a five year interval. | **Genesis Energy**: - We understand there are financial benefits in moving to a five year review period. However, these benefits need to be carefully weighed against the loss of flexibility that will be inherent in pushing out independent reviews to five years.<br>We consider that the flexibility of the EGCC scheme to adapt to new issues and changes in consumer concerns is one of the key benefits of the scheme versus other dispute resolution processes.<br>Furthermore, we consider that a reduction in review periods may impact on the perception of independence for the EGCC itself. Having regular independent reviews is an important aspect of independence. It provides surety to claimants and participants that the scheme is operating in the best possible way to meet its objectives.<br><br>**Genesis Energy**: - We also consider that the proposed annual CPI adjustments for the limit will add an unnecessary complication to the scheme.<br><br>**WELL**: - WELL disagrees with the Working Group and Board proposal to extend the Scheme review period from 3 years to 5 years. The proposal will reduce Scheme flexibility and response to consumer needs in response to energy market and technology changes.<br><br>**Transpower**: - suggests that the independent review period remains at three years, particularly if the jurisdiction of the Scheme is expanded as proposed. | representatives in the group does not express a preference and three industry representatives support 3 years.<br><br>The consumer representative group member voting in support of 5 years notes the Benchmarks include 5 years, as does the Electricity Industry Act 2010.<br><br>Further comments made by one or more members of the group:<br><br>• 3 years allows more flexibility, we are an ever changing industry and should be looking to adopt a philosophy of continuous improvement, pushing out the review period to 5 years will limit that flexibility for both consumers and members.<br><br>• there are provisions in the scheme doc that allow for proposed changes outside of the | |

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| | | review period (E.62-66). The group noted that this had not been used before.<br><br>• reviews are costly both in finance and resource and that since the scheme started each review has led to multiple overhauls in the constitution/scheme document. Group members in support or 3 years felt this further rationalised the need to leave the review period at 3 years and confirmed the ever changing industry we work in and the on-going need for flexibility to change. | |
| F.8. Defaulting Scheme Members (Recommendation 9.6.1, p52)<br><br>**Recommendation**: The Scheme document is updated to provide information on the processes for dealing with defaulting | **Counties Power**: - Given that participation in the scheme now appears to be effectively compulsory, CP submits that the scheme documents should cease to refer to subject organisations as "members". Membership implies voluntary participation, and members controlling all key decision-making processes.<br><br>**WELL**: - Agrees with the recommendation. Also agrees with the Working Group that details of the process for dealing with defaulting Members should be set out in the Scheme document. | The group has nothing to recommend on this issue. | |

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| members. | | | |

**Appendix 1 – 'Land Complaint' Definition – Transpower's suggested re-wording**

Transpower: -

"The definition of Land Complaint is out of date because both the Electricity Regulations 1997 and the Gas Regulations 1993 have been revoked (although the latter survive for certain transitional purposes, I understand). The replacement regulations are the Electricity (Safety) Regulations 2010 and the Gas (Safety and Measurement) Regulations 2010.

Accordingly, the definition can be brought up to date without expanding it as follows:

> *A Complaint that a Lines Company has unlawfully affected a Land Owner's or Land Occupier's rights, in respect of the Land Owner's or Land Occupier's Land, in the course of the Lines Company's exercise, purported exercise, or failure to exercise rights, powers or obligations under:*
> *(a) the Gas Act 1992, ~~and~~ the Gas Regulations 1993 or the Gas (Safety and Measurement) Regulations 2010; or*
> *(b) the Electricity Act 1992, the Electricity (Safety) Regulations 2010 ~~1997 and~~ or the Electricity (Hazards from Trees) Regulations 2003; or*
> *(c) a Land Agreement;"*