

2014 EGCC consultation – preferred form for submissions

Your name/company name: Northpower Ltd
 Prepared by: Josie Boyd, General Counsel

Questions for submitters	Yes/No	Comment
1. Do you agree that the EGCC indemnity dispute process should be mandatory for both parties if one party refers the indemnity dispute to the EGCC and it meets the criteria for the Commissioner to consider it?	Yes, but subject to comments.	<p>We agree submitting to a mandatory process is a sensible way of resolving small disputes.</p> <p>However, in most cases the parties will seek to resolve matters between themselves. The parties also have the dispute resolution processes available under their Use of System Agreements, which will often include the appointment of an external mediator. Any mandatory process should have regard to this contractual context.</p> <p>Therefore, we recommend that:</p> <ul style="list-style-type: none"> • The parties must first have made reasonable efforts to reach a negotiated resolution through internal escalation. • Where direct negotiations have failed either party may elect to: <ul style="list-style-type: none"> ○ Refer to disputes process in UofSA; or ○ EGCC process. • As per comments below, the Responsible Party may also elect to join a Complaint if there is a suggestion that there may be a right of indemnity under the Consumer Guarantees Act.
2. Do you agree that the existing financial limits for complaints should apply to Indemnity Disputes?	Yes	We believe \$50,000 remains appropriate, as the financial limits should align with the Complaints regime.
3. Do you agree with the Board's proposed levy system for indemnity disputes?	Yes	We agree with a user pays basis.
4. Do you agree that reporting of Indemnity Disputes to the responsible Minister should be limited to the number of cases considered?	Yes.	

<p>5. Do you have any other comments or concerns about the proposed changes you would like the Board to consider?</p>	<p>Yes</p>	<p>Parties to a dispute: We suggest that the language in Part G clarifies that there may be 3 parties to an indemnity dispute – the retailer, distributor and Transpower (as providers of line function services). Both the distributor and Transpower may have caused or contributed to the failure of acceptable quality and an indemnity dispute should consider the role of both the line service providers. As currently drafted the Scheme documentation only envisages two parties to an indemnity dispute.</p> <p>Interrelationship with Complaints: There is a danger in inconsistencies arising between:</p> <ul style="list-style-type: none"> • a Complaint finding by the EGCC that there has been a failure of acceptable quality; and • an Indemnity Dispute, with the benefit of evidence from the “Responsible Party”, which shows that there was no such breach with regards to line function services. <p>We recommend that where there are potential issues regarding line function services an Indemnity Dispute should be heard <i>in conjunction</i> with a Complaint. While the right to indemnity arises after a finding of breach, there is nothing in the legislation to limit an Indemnity Dispute from occurring at the same time the EGCC considers the Complaint.</p> <p>In this regard, analogies can be drawn with the third party procedure under the High Court Rules – where a defendant seeking a right of contribution or indemnity from a third party (in the event liability is established by the plaintiff) may join that third party to the proceedings. In this way, all issues are heard together including liability to the claimant and the right of the defendant to be indemnified by the third party.</p> <p>However, for an Indemnity Dispute to be heard in conjunction with a Complaint the Scheme rules would</p>
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		<p>have to acknowledge that information provided by the Responsible Party could be considered within the Complaint.</p> <p>Combining these two dispute processes would result in:</p> <ul style="list-style-type: none">• More efficient use of EGCC resources (avoiding the need for two separate hearings);• Improved decision making, as the Responsible Party is also able to put forward evidence relevant to the line function services and be heard on issues relevant to the acceptable quality guarantee, thus avoiding inconsistencies in decisions.
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