

4 April 2014

Electricity and Gas Complaints Commission  
P O Box 5875,  
Lambton Quay,  
Wellington 6145

*by email:* [submissions@egcomplaints.co.nz](mailto:submissions@egcomplaints.co.nz)


#### **AMENDMENTS TO THE EGCC SCHEME – INDEMNITY DISPUTES UNDER THE CGA**

- 1 Orion New Zealand Limited (**Orion**) welcomes the opportunity to comment on the Electricity and Gas Complaints Commission's (**the Commission**) Consultation paper "Amendments to the Scheme document – Indemnity Disputes under the Consumer Guarantees Act" (the **Paper**).
- 2 Our submission in the form requested is appended, it responds to the Commission's questions and raises a number of additional issues we would like the EGCC Board to consider.

#### **Concluding remarks**

- 3 Thank you for the opportunity to make this submission. Orion does not consider that any part of this submission is confidential. If you have any questions please contact Dennis Jones (Industry Developments Manager - Commercial), DDI 03 363 9526, email [Dennis.Jones@oriongroup.co.nz](mailto:Dennis.Jones@oriongroup.co.nz).

Yours sincerely



Dennis Jones  
**Industry Developments Manager – Commercial**

## Appendix

### 2014 EGCC consultation – preferred form for submissions

Your name/company name: **Orion New Zealand Limited**

Questions for submitters	Yes/No	Comment
<p>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?</p>	<p>Yes</p>	<p>We agree that as participants in the EGCC scheme it is appropriate that we are obliged to engage in the dispute resolution process.</p>
<p>2. Do you agree that the existing financial limits for complaints should apply to Indemnity Disputes?</p>	<p>Yes</p>	<p>We consider that it is appropriate to place a cap on the amount that may be dealt with by the EGCC scheme. It is of note that an indemnity dispute arises only when a retailer provides a remedy to a customer. Therefore the limit on the indemnity dispute simply mirrors that in the underlying dispute that could have been brought to the EGCC.</p> <p>Further, we consider that, in the event that a large claim was made, it would be appropriate for it to be resolved by the Courts.</p> <p>The \$50,000 cap that is imposed on complaints is the rational cap to impose in all matters and retains consistency.</p>
<p>3. Do you agree with the Board's proposed levy system for indemnity disputes?</p>	<p>No</p>	<p>We consider that the levy framework for indemnity disputes needs further work. We note as follows:</p> <ol style="list-style-type: none"> <li>1. The provisions in G16.4 appear to reflect more of a costs award than a levy. There is a risk of confusion with</li> </ol>

		<p>the annual levy.</p> <p>2. We consider that an indemnity dispute is a commercial rather than consumer dispute and the participants should bear a significant proportion of the cost of that dispute.</p> <p>3. We consider that G16.4 requires further elaboration because in its current form it gives little guidance as to how the amount of the “levy” will be calculated. We suggest that something like the following replacement may be suitable:</p> <p>a. Order the payment of such proportion of the costs and expenses of the Commission (including any expert costs and expenses) relating to the Indemnity Dispute on the basis of the following principles:</p> <p>i. That a party who is successful in prosecuting or defending a claim should not pay the Commission’s costs</p> <p>ii. That there is a public interest in the Commission resolving indemnity disputes; and</p> <p>iii. That costs should be bourn equitably across scheme members.</p>
<p>4. Do you agree that reporting of Indemnity Disputes to the responsible Minister should be limited to the number of cases considered?</p>	<p>Yes</p>	<p>We do not consider that there is any need for detailed reporting of indemnity disputes to the Minister. The Minister needs to be informed of the volume of the disputes, and the fact that they are being effectively resolved in accordance with the legislative intent.</p>
<p>5. Do you have any other comments or concerns about the proposed changes you would like the Board to</p>	<p>Yes</p>	<p>See further points below</p>

<p>consider?</p>		
<p>6. “fair reasonable and in accordance with the law”</p>		<p>Clause G4 provides “In considering any Indemnity Dispute the Commissioner must determine what the Commissioner considers is fair, reasonable and in accordance with the law”. We consider that this is not appropriate for a commercial dispute.</p> <p>While it is accepted that industry standards and practice will be relevant in determining the obligations of the parties to a dispute, we consider that the proper basis for the resolution of a dispute (other than by mutual agreement) is on the basis of the law.</p>
<p>7. Natural Justice</p>		<p>The procedure for the dispute resolution is set out in clause G5.</p> <p>We agree that an informal dispute resolution process is appropriate and that non adversarial methods of dispute resolution should be preferred.</p> <p>However we consider that all the process must be subject to the principles of natural justice.</p> <p>We suggest that clause G5 might be redrafted as follows:</p> <p style="padding-left: 40px;">The Commissioner must conduct any review with as little formality and technicality, and as much expedition, as is consistent with the Scheme requirements of this Act; a proper consideration of the matter; and the rules of natural justice. Subject to this the method and process to be used to resolve the Indemnity Dispute may include: ...</p>

<p>8. Related claims</p>		<p>We consider that where a number of indemnity disputes relate to the same event then they should be dealt with as a single claim.</p> <p>Further, if together related claims exceed \$50,000, they should be recognised as outside of the jurisdiction of the EGCC</p>
<p>9. Test cases</p>		<p>We consider that the test case provisions should be amended to reflect that Indemnity Disputes may be taken as test cases.</p> <p>In such an instance the clauses relating to the payment of the complainant's costs would be redundant.</p>