



# Recommendation to the Associate Minister of Energy and Resources on the Approval of a Complaints Resolution System under the Gas Act

**Date issued: November 2009**







## **About Gas Industry Co.**

Gas Industry Co was formed to be the co-regulator under the Gas Act.

As such, its role is to:

- recommend arrangements, including rules and regulations where appropriate, which improve:
  - the operation of gas markets;
  - access to infrastructure; and
  - consumer outcomes;
- administer, oversee compliance with, and review such arrangements; and
- report regularly to the Minister of Energy and Resources on the performance and present state of the New Zealand gas industry, and the achievement of Government's policy objectives for the gas sector.

## **Authorship**

This paper was prepared by Bas Walker



# Executive summary

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## Introduction

The purpose of this paper is to provide the supporting information and analysis for a recommendation to the Associate Minister of Energy and Resources that the Electricity and Gas Complaints Commissioner Scheme (EGCC) be approved as a complaints resolution system under the Gas Act 1992. This purpose is consistent with the Government Policy Statement on Gas issued in October 2008 (GPS). The work leading up to this point has been carried out jointly with the Electricity Commission and the Commission is approving the same scheme for electricity under the Electricity Act. The outcome will thus be a single, dual fuel approved complaints resolution scheme.

## Work undertaken to date

Work on complaints resolution has been a significant part of the Gas Industry Co work programme since late 2004. Initial work was carried out by the Company alone and resulted in a recommendation to the Minister, in March 2005, for the approval of the then existing EGCC scheme for gas under the Gas Act. Consideration was deferred for a number of reasons.

Work was restarted as a joint project with the Electricity Commission in December 2007 in anticipation of the issuance of a revised GPS for each of the gas and electricity sectors. The new aim was to develop a single, dual fuel scheme that would be approved under both the Electricity Act and the Gas Act to give full coverage for relevant consumers. The steps taken to achieve this aim included the development of scheme requirements (Achievement Standards) by mid-2008, the issuing of a request for applications from potential schemes in September 2008, and the choice of the EGCC as the preferred candidate, subject to certain changes being made to the EGCC Constitution. A consultation paper was released in February 2009 comparing the option of EGCC approval with other regulated options. On the basis of this comparison, and the passing of the desired changes to the Constitution, the proposed approval of the EGCC was then confirmed by the Electricity Commission and Gas Industry Co.

## Rationale for an approved scheme

Current voluntary arrangements for complaints resolution are unsatisfactory because there are four schemes that provide different forms of service, and some industry participants do not belong to any scheme. Coverage is thus inconsistent between groups of consumers and non-existent for some consumers.

The options under the Gas Act for more satisfactory and comprehensive coverage are Ministerial approval under section 43E, or regulation under section 43G. The rationale for Ministerial approval as the preferred approach is that it provides mandatory coverage, is lower cost and logistically easier to

implement than regulations, builds on existing experience with the EGCC, and allows the industry to take the lead in managing and developing the scheme.

## **Process for scheme approval**

The preferred approach is to seek approval of the EGCC under section 43E of the Gas Act. For an approval, there is no requirement to implement consultation as set out in section 43L and assessment as set out in section 43N of the Gas Act, as is the case for proposed rules or regulations. There are no other relevant requirements set out in the Gas Act. There are nevertheless generally agreed processes that should apply (and have been applied) to ensure that legislative and other requirements are met, parties potentially affected are fully consulted, and that the proposal is justified compared with other approaches that could be adopted.

Approval is by the decision of the Associate Minister and is given effect through a notice in the *Gazette*.

## **The recommended system for approval**

The recommended scheme for approval is the Electricity and Gas Complaints Commissioner Scheme (EGCC). The Constitution of the scheme is set out in Appendix C of this paper.

After taking account of the completion of desired changes to the EGCC Constitution, the assessment is that the scheme has a high level of success against all of the Achievement Standards set (see Appendix A of this paper).

The approved EGCC scheme has been compared with the other practicable options for achieving the regulatory objective, comprising a service provider regulated scheme and a fully specified regulated scheme. The result of the comparison is that the proposed scheme rates better than the regulated options on both overall costs and benefits.

## **Consultation**

Consultation with stakeholders has occurred at two key stages: determining the Achievement Standards to apply; and comparing the preferred candidate for approval (EGCC) with other practicable options for a single, dual fuel scheme. Consultations have involved publication of a consultation paper, holding of a workshop to assist the preparation of submissions, and the publication of a combined analysis of, and response to, submissions received.

A summary of the results of the consultation on comparison of options is set out in the paper.

## **Risks**

Risks to the approval and implementation of the EGCC approved scheme are analysed in the paper. These risks include a possible legal challenge, unexpected or difficult transitional issues for the industry or for complainants, failure of all participants to join the scheme, and unacceptable changes to the scheme proposed after approval. Mitigation actions are discussed.

## **Implementation**

Steps will be taken to ensure that the approval of the EGCC under the Electricity Act by the Electricity Commission and under the Gas Act by the Associate Minister, effectively occur simultaneously and in the same form. Industry feedback indicates that the proposed start date of 1 April 2010 for the approved scheme will create double costs for the two retailers who are currently members of the EGDRS scheme, and they would prefer a delay in the date to allow the EGDRS to first close down. However, the adverse impacts are not considered to be substantial enough to justify a change, given that no other participants have indicated any difficulties.

## **Recommendation**

Gas Industry Co recommends to the Associate Minister of Energy and Resources, under section 43E of the Gas Act 1992, the approval of the Electricity and Gas Complaints Commissioner Scheme (EGCC) as an approved complaints resolution system, with this approval to take effect from 1 April 2010. A draft notice of approval is provided; it is a substantially similar to the proposed notice that the Electricity Commission intends to publish with respect to approval under the Electricity Act.



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# 1

## Introduction

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### 1.1 Purpose and structure of paper

The purpose of this paper is to provide the supporting information and analysis for a recommendation to the Associate Minister of Energy and Resources that the Electricity and Gas Complaints Commissioner Scheme (EGCC) be approved as a complaints resolution system under s43E of the Gas Act 1992.

It is noted that the work leading to this recommendation has been carried out jointly with the Electricity Commission, reflecting the preference for a single, dual fuel complaints resolution scheme as stated in the respective Government Policy Statement (GPS) for each of electricity and gas. Accordingly the recommendation in this paper is wholly consistent with a similar recommendation that has been approved in principle by the Electricity Commission. The electricity approval will be formalised once the gas approval has been agreed to by the Associate Minister. More details are given in the 'Implementation' section of the paper.

This paper is structured as outlined in the following table.

Section	Description
1. Introduction	Describes the purpose and structure of the paper and the objective of the work on complaints resolution.
2. Background: work undertaken to date	Describes the work undertaken to date divided into two phases - initial work carried out by Gas Industry Co in 2005, and the subsequent joint project with the Electricity Commission started in December 2007 and culminating in the present paper.
3. Rationale for an approved scheme	Explains why the status quo of several voluntary schemes without full coverage is unacceptable, and sets out the rationale for having a scheme approved under the Gas Act rather than regulations.
4. Process for scheme approval	Sets out the requirements for a scheme to be approved, the decision by the Minister, and the publication of a notice in the <i>Gazette</i> to give effect to the approval.
5. The recommended system for approval	The scheme is described by the Constitution of the EGCC scheme which is set out in Appendix A. The assessment of the scheme against the Achievement Standards, set out in Appendix A; and the results of comparison of this scheme with other regulated options, are set out.

Section	Description
6. Consultation	The approach to consultation and the major consultations carried out are described. The results of the consultation on the comparison of options are summarised in tabular form.
7. Risks	Key risks to approval and implementation are defined and mitigation actions discussed.
8. Implementation	Arrangements to align the approvals required under the Electricity Act and the Gas Act are explained. Transitional and start up issues are discussed.
9. Recommendation	See section 9.

## 1.2 Objectives

The objective for the current recommendation and the work leading up to it has been effectively set by the following provision in the gas GPS:

The Government prefers a least cost arrangement for the proper handling of consumer complaints. Due to the small size of the retail gas market, the Government considers that consumers' best interests will be served by a joint gas and electricity consumer complaints resolution system. A single multi-fuel system would provide benefits such as ease of access, consistency of outcomes and efficiencies of scale.

The Government expects any consumer complaints resolution system to be free to complainants and to meet appropriate international benchmarks such as accessibility, independence, fairness, accountability, efficiency and effectiveness.

The Government expects the Gas Industry Co to work closely with the Electricity Commission to coordinate the approval and governance process between the electricity and gas sectors to ensure the Government's expectations are met.

There is a corresponding but much more extensive provision in the electricity GPS. The Electricity Act requires the Electricity Commission to 'give effect to' the objectives and outcomes in the electricity GPS, whereas the equivalent requirement in the gas is lesser and is for Gas Industry Co to 'take account of' the provisions of the gas GPS. In order to achieve a joint approach it has accordingly been appropriate for Gas Industry Co to give primacy to the requirements on the Electricity Commission. This is in any case sensible as electricity supply is an essential service (gas is more of a discretionary fuel) and the electricity market is orders of magnitude larger than the gas market.

The objective that has been adopted by Gas Industry Co is thus to:

Work collaboratively with the Electricity Commission, and in consultation with the gas industry, to develop and establish a single, dual fuel complaints resolution system that accords with the provisions of both the gas GPS and the electricity GPS.

# 2

## Background: Work undertaken to date

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### 2.1 Initial work by Gas Industry Co

Work on complaints resolution has been a significant part of the Gas Industry Co work programme since the establishment of the Company in late 2004. Initial work was carried out by Gas Industry Co alone, but more recent work has been carried out through a joint project with the Electricity Commission.

When Gas Industry Co began work in this area there was one industry-led complaints resolution scheme in operation: the Electricity and Gas Complaints Commissioner Scheme (EGCC). The EGCC began life in 2002 as an electricity scheme but its scope was expanded to include gas from 1 April 2005.

The October 2004 GPS invited Gas Industry Co to recommend arrangements for the proper handling of consumer complaints. In response to this invitation and following consideration of the issues and options, Gas Industry Co wrote to the Minister in March 2005 recommending the approval of the EGCC scheme for gas consumers, under the Gas Act.

This recommendation was not acted upon for a number of reasons. Initially, consideration was deferred until the EGCC scheme had been expanded to include land owner/occupier complaints. MED then indicated the Government's preference for a dual fuel (gas and electricity) scheme.

Gas Industry Co undertook a review of its whole consumer issues work programme, including consumer complaints, and a major consultation paper on consumer issues was finally issued in August 2008<sup>1</sup>. In parallel with this, and more significantly for complaints resolution work, the draft version for a revised gas GPS (similarly for electricity) indicated a clear Government preference for a joint gas and electricity approach. This led to the next phase of work discussed below.

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<sup>1</sup> *Current Issues for Domestic and Small Business Gas Consumers: Consultation with Stakeholders*, Gas Industry Co, August 2008. [http://www.gasindustry.co.nz/sites/default/files/consultations/25/147210\\_Full\\_Discussion\\_Paper.pdf](http://www.gasindustry.co.nz/sites/default/files/consultations/25/147210_Full_Discussion_Paper.pdf)

## 2.2 Joint project with the Electricity Commission

Based on the preference for a combined scheme expressed in the reissued GPS for each of gas and electricity, a joint approach to developing and establishing such a scheme was agreed by Gas Industry Co and the Electricity Commission in December 2007. A joint steering committee was established to oversee and carry out the work, which is summarised below.

### Development of Achievement Standards for a single, dual fuel complaints resolution scheme

The first step in the joint project was to set out a process leading to approval of a single, dual fuel scheme, and to set out the requirements that any scheme would need to meet. It was assumed that approval would be a preferred option to a regulated scheme.

In regard to process, it was decided that it would be appropriate to invite competitive bids for approval to ensure a transparent process for selecting the best candidate. This candidate would then be put forward for approval. The competitive approach was, in part, a reflection of the establishment at that time of other industry-led complaint schemes in addition to the EGCC. These schemes had different characteristics but each could, in principle, be the basis of a bid to be an approved scheme.

The development of requirements was driven primarily by the electricity GPS, which had more extensive and stringent requirements than the gas GPS. The electricity GPS stated that any independent complaints resolution scheme must be consistent with international best practice and cited the relevant Australian benchmarks as an example. Those benchmarks include the following six principles:

- accessibility
- independence
- fairness
- accountability
- efficiency
- effectiveness.

A consultation paper on both the process and the requirements<sup>2</sup> was issued in March 2008. The submissions analysis on the results of consultation<sup>3</sup> was published in September 2008. The final set of requirements, in the form of Achievement Standards, took account of the submissions received. As a result of reviewing submissions it was also decided that it would be prudent to introduce a further

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<sup>2</sup> *Approval of a Joint Electricity and Gas Complaints Resolution Scheme: Consultation Paper*, Electricity Commission/Gas Industry Co, March 2008. [http://www.gasindustry.co.nz/sites/default/files/u12/Report\\_No\\_307A140353.pdf](http://www.gasindustry.co.nz/sites/default/files/u12/Report_No_307A140353.pdf)

<sup>3</sup> *Submissions Analysis: Selection of a Preferred Candidate for Approval as a Complaints Resolution Scheme under the Electricity and Gas Acts*, Electricity Commission/Gas Industry Co, September 2008. <http://www.electricitycommission.govt.nz/pdfs/opdev/retail/consumer-complaints/SubmissionsAnalysis.pdf>

consultation step, after the selection of a preferred candidate for approval. This is discussed further below.

### **Selection of a preferred candidate scheme for approval**

A request for applications (RFA) for an approved scheme<sup>4</sup> was issued in September 2008. The RFA described the final set of requirements for an approved scheme, and the selection process that would apply. This included the review of applications by an independent evaluation panel against specified criteria in a defined evaluation methodology.

The resulting evaluation report<sup>5</sup> was published in February 2009. There were three applications considered, two of which were sufficiently compliant with the requirements to warrant full assessment. The result of that process was the selection of the EGCC as the preferred candidate, subject to certain changes being made to the EGCC Constitution to address concerns over governance in particular. It was agreed that action on these changes by the EGCC could be taken in parallel with the next stage of the project, which comprised the comparison of options.

### **Comparison of options: The preferred candidate for an approved scheme compared with regulated schemes**

As indicated earlier, one outcome of the consultation carried out in late 2008 on the process to be followed, was a decision to introduce a further stage of consultation. This consultation was intended to provide a comparison of the option of the selected approved scheme with options based on regulation, to test the hypothesis that an approved scheme was the best option. A consultation paper<sup>6</sup> was published in February 2009. The analysis in this paper indicated that approval of the EGCC scheme provided net benefits relative to the other reasonably practicable options and also met the regulatory objective set down in the paper.

While consultation was in train, a letter dated 6 April 2009 was received from the EGCC advising that the changes sought to the EGCC constitution had failed to pass a vote of members. This created an impasse for the joint agencies, who then encouraged the industry to hold intra-industry discussions with a view to providing a way forward that would be acceptable to all parties. As the outcome of this discussion would have to be acceptable to the Government, the Associate Minister of Energy Resources, the Minister for Consumers Affairs, and officials from both MED and the Ministry of Consumer Affairs became involved.

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<sup>4</sup> *Request for Applications to be Selected as Preferred Candidate for Approval as a Complaints Resolution Scheme under the Electricity and Gas Acts*, Electricity Commission/Gas Industry Co, September 2008.

<http://www.electricitycommission.govt.nz/opdev/retail/consumercomplaints/index.html#request-for-applications-september>

<sup>5</sup> *Electricity and Gas Complaints Resolution Scheme – Applications for Approval under the Gas Act and Electricity Act: Evaluation Report*, Electricity Commission/Gas Industry Co, February 2009.

<sup>6</sup> *Proposal to Approve a Joint Electricity and Gas Complaints Resolution Scheme: Consultation Paper*, Electricity Commission/Gas Industry Co, February 2009.

[http://www.gasindustry.co.nz/sites/default/files/consultations/12/Proposal\\_to\\_Approve\\_a\\_Joint\\_Electricity\\_and\\_Gas\\_Complaints\\_Scheme\\_0.pdf](http://www.gasindustry.co.nz/sites/default/files/consultations/12/Proposal_to_Approve_a_Joint_Electricity_and_Gas_Complaints_Scheme_0.pdf)

The analysis of submissions<sup>7</sup> was published in May 2009; however, the conclusions able to be drawn were limited because industry discussions were still in train.

### **Confirmation of the EGCC as the recommended scheme for approval**

The Associate Minister of Energy Resources and the Minister for Consumers Affairs provided strong guidance on the desirability of quickly resolving the impasse so that a complaints resolution system could be approved. A direct facilitation role was played by the Minister of Consumer Affairs and this proved to be pivotal. The outcome was agreement that a further attempt should be made for the EGCC members to vote in favour of the governance changes sought by the joint agencies, with further desired changes to the EGCC constitution to be set aside for later consideration – most probably after the commencement date of the approval. A vote in favour occurred on 30 October 2009; on this basis, both the Electricity Commission and Gas Industry Co were able to confirm the selection of the EGCC as the preferred candidate for approval.

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<sup>7</sup> *Electricity and Gas Complaints Resolution Scheme – Approval under the Gas Act and Electricity Act: Submissions Analysis*, Electricity Commission/Gas Industry Co, May 2009. [http://www.gasindustry.co.nz/sites/default/files/u24/Response\\_to\\_submissions\\_June\\_09.pdf](http://www.gasindustry.co.nz/sites/default/files/u24/Response_to_submissions_June_09.pdf)

# 3

## Rationale for an Approved Scheme

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The current industry arrangement for complaints resolution comprises four separate schemes, each with its own membership and with different modes of operation. The four schemes are the EGCC, the Independent Energy Complaints Resolution Service (IECRS), the Electricity and Gas Disputes Resolution Service (EGDRS) and the Independent Energy Trust Complaints Resolution Scheme (IETCRS). The EGCC was the first to be formed and is the most comprehensive both in scope and in membership. The other schemes differ from the EGCC in the following ways:

- Membership is limited to no more than two retailers in each instance, and two of the schemes (IECRS and IETCRS) are essentially regional, not national, schemes.
- The schemes are intended to provide quick, low-cost decisions through a mediation process and there is an emphasis on reaching settlements rather than interpreting contractual rights.

The avenues available for the resolution of complaints thus vary according to retailer. There are some industry participants who do not belong to any scheme. There is no assurance that any of the schemes are consistent with internationally recognised benchmarks. The lack of a consistent and internationally benchmarked approach to complaints resolution, for all small consumers, is to the disadvantage of consumers and is unfair as between groups of consumers. The continuation of an industry-led voluntary approach is thus generally unsatisfactory as well as being contrary to both the electricity and gas GPSs.

If a more comprehensive approach is to be adopted the choices available under the Gas Act are an approval under section 43E or regulation under section 43G. Approval under section 43E is the preferred approach for the following reasons:

- It provides for mandatory membership by all retailers or distributors, thus ensuring comprehensive and uniform coverage.
- It is lower cost and logistically easier to implement than any form of regulated scheme.
- It builds on existing experience with the EGCC.

- It allows the industry to continue to take the lead in managing and developing the scheme, subject to a basic level of regulatory oversight.

# 4

## Process for scheme approval

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### 4.1 Specific power to approve complaints resolution scheme

There are two parts of the Gas Act that deal specifically with the establishment of complaints resolutions systems and they essentially provide alternative paths (or options).

The first and less formal option is that of the 'approval' of complaints resolution systems under Section 43E of the Act. Section 43E provides as follows:

- (1) Every gas distributor and every gas retailer must participate in a complaints resolution system that is approved by the Minister for the purpose of addressing complaints relating to those gas retailers and gas distributors by all or any of –
  - (a) small consumers (including potential small consumers):
  - (b) owners and occupiers of land into, through, or against which pipelines have been laid down or placed.
- (2) This section applies to a gas distributor or gas retailer provided the Minister has approved, by notice in the Gazette, 1 or more complaints resolution systems that apply to that gas distributor or gas retailer.

The second and more formal option is provided for by section 43G of the Act. Under this section the Governor General may, by Order in Council made on the recommendation of the Minister, make rules and regulations:

- (2)(a) providing for the establishment of, or participation by gas distributors or retailers in, a complaints resolution system (that may include a code of practice) for the purposes of addressing complaints by all or any of small consumers (including potential small consumers), or owners and occupiers of land into, through, or against which pipelines have been laid down or placed, related to gas retailers and gas distributors, or setting out minimum requirements in relation to that system....

The making of rules and regulations pursuant to s43G is subject to consultation as set out section 43L, and assessment as set out in section 43N of the Act. Section 43N(1)(c) in particular requires that before a recommendation on regulation is made, the industry body (Gas Industry Co) must:

(c) ensure that the objective of the regulation is unlikely to be satisfactorily achieved by any reasonably practicable means other than the making of the regulation ....

In the present case, this means that Gas Industry Co would need to be able to conclude that approval under section 43E alone would be unlikely to be satisfactory before recommending regulations.

Approval can be given directly by the Minister. As discussed below, in preparing a recommendation for approval there is no requirement to follow the provisions in the Act that relate to the recommendation of rules and regulations; in particular section 43L and section 43N.

Approval is given effect by the publication of a notice in the *Gazette*. Because the approval is not a rule or a regulation, the approval can take effect on the date of publication – not after 28 days.

## **4.2 Requirements when recommending approval**

The recommendation in this paper is for the approval of a scheme under section 43E of the Act, rather than the making of rules and regulations for complaints resolution under section 43G.

As indicated above, the Act does not set out any specific requirements relating to the way in which a recommendation for approval should be developed and for the approval process itself. Moreover, it is clear that an approval is not a rule or a regulation and therefore the requirements of sections 43L and 43N of the Act do not apply.

There are nevertheless generally agreed processes that should apply to ensure that legislative and other requirements have been met, parties potentially affected are fully consulted, and that the recommendation put forward is justified compared with other approaches that could be adopted. In particular, the following process has been followed in the present case:

- A set of Achievement Standards have been developed that reflect the general criteria set out in the gas and electricity GPSs for an acceptable complaints resolution system.
- A preferred candidate for an approved scheme has been selected through an open tendering process including independent evaluation against agreed criteria by an evaluation panel.
- The preferred candidate for approval has been compared against other options for implementing complaints resolution, including regulated options.
- There has been full consultation with stakeholders at each major step in the process.

The outcomes of implementing this process are detailed in the next section below.

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## The recommended system for approval

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### 5.1 System description

The complaints resolution system recommended for approval is the Electricity and Gas Complaints Commissioner Scheme (EGCC). A description of the scheme, which comprises the Constitution of the EGCC, is set out in Appendix C. This version of the Constitution was approved on 30 October 2009 and will have the same effective date as the notice of approval, recommended to be 1 April 2010.

Key features of the EGCC scheme include:

- A Complaints Commission with a balanced board comprising consumer representatives, industry representatives, and an independent chair. The Complaints Commission oversees the work of the Commissioner and the EGCC Office in dealing with complaints and making determinations.
- A Commissioner as the principal decision-maker who takes overall accountability for all determinations.
- An EGCC office to provide support for the Commissioner.
- Conciliators located within the EGCC Office to handle complaint enquiries, mediate disputes in the first instance, and support the Commissioner in any determinations.

### 5.2 Comparison of the recommended system with the Achievement Standards

The Achievement Standards developed jointly by the Electricity Commission and Gas Industry Co, in accordance with the criteria set out in the GPS for each sector, are set out in Appendix A. These Achievement Standards were incorporated in the criteria used to evaluate proposals for selection as the preferred candidate for approval and scored according to the framework below. The scoring took

account of both the wording of the scheme rules proposed, and the extent to which it was judged that implementation would achieve the intentions of the Achievement Standards.

Score	Scoring description
0	No evidence of desired attribute and/or no information provided
1	Some evidence of desired attribute but incomplete
2	Desired attribute evident to a reasonably acceptable level
3	Desired attribute evident to a high level
4	Desired attribute evident to an exceptional level

As noted earlier, an evaluation panel was established by the joint agencies. Final scoring by the evaluation panel for the EGCC proposal was as follows (averaged across the five panel members and with a maximum score of four (4) possible for each Achievement Standard). This scoring took account of changes that the respondents agreed to make to their proposals after discussions with the panel.

Achievement Standard	Average score
1. Purpose and scope	3.4
2. Members	3.8
3. Procedures	3.4
4. Accessibility	3.8
5. Decision making	3.2
6. Members compliance	3.2
7. Governance	2.6
8. Funding	3.4
9. Performance monitoring	3.6
10. Exit	3.6

All of these scores are above 2, which is the reasonably acceptable level of achievement, and all but one are above 3, which is a high level of achievement. The score below 3 is that of 2.6 for governance. This reflected the significant changes that needed to be made to the existing Constitution by the EGCC and a degree of reservation held until the changes were accomplished. The grounds for reservation have been removed by the vote of 30 October 2009.

### 5.3 Comparison of the recommended system with other options

A full comparison of options for implementing complaints resolution is set out in the published consultation paper<sup>8</sup>. A summary of submissions received and the joint response of the agencies has also been published<sup>9</sup>.

The consultation paper compares the following options against the status quo (which comprises three separate voluntary schemes with less than full coverage of consumers). The status quo was a convenient point of reference but was not considered to be an acceptable option because it failed to meet the regulatory objective set by the government and the agencies.

- **Approved scheme** (the EGCC)
- **Service provider regulated scheme** (SPRS): The distinguishing feature of this option is that the scheme is set out in regulations but provides for service delivery to be via a contracted service provider. This is simpler and lower cost than the fully regulated option
- **Fully specified regulated scheme** (FSRS): The scheme is set out in regulations and this includes the establishment of a body corporate or company to provide service delivery.

A semi-quantitative cost-benefit analysis was carried out based on the costs and benefits as defined in the following table:

Costs	Benefits
Set-up and transition costs: The costs to set up the complaints scheme and transition from the current arrangements.	Complainant benefits: The benefit to consumers and land owners/occupiers of having the complaints resolution arrangements in place to assist in dealing with disputes.
Operating costs: The cost associated with processing complaints, interfacing with members, and making determinations	Enforcement benefits: The benefits associated with ensuring that electricity and gas participants comply with the requirements of participation in a complaints resolution scheme.
Governance costs: The costs of overseeing the operation of the scheme, amending the rules, and ensuring compliance.	Transition benefits: The benefits associated with managing historical complaints and achieving a smooth transition from the status quo.
Monitoring costs: The costs of monitoring the scheme and ensuring it continues to meet the regulatory objective	Adaptability benefits: The benefits associated with developing and adapting a complaints resolution scheme in response to changing industry and consumer needs and technology advances.

<sup>8</sup> *Proposal to Approve a Joint Electricity and Gas Complaints Resolution Scheme: Consultation Paper*, Electricity Commission/Gas Industry Co, February 2009.

[http://www.gasindustry.co.nz/sites/default/files/consultations/12/Proposal\\_to\\_Approve\\_a\\_Joint\\_Electricity\\_and\\_Gas\\_Complaints\\_Scheme\\_0.pd](http://www.gasindustry.co.nz/sites/default/files/consultations/12/Proposal_to_Approve_a_Joint_Electricity_and_Gas_Complaints_Scheme_0.pd)

<sup>9</sup> *Electricity and Gas Complaints Resolution Scheme – Approval under the Gas Act and Electricity Act: Submissions Analysis*, Electricity Commission/Gas Industry Co, May 2009. [http://www.gasindustry.co.nz/sites/default/files/u24/Response\\_to\\_submissions\\_June\\_09.pdf](http://www.gasindustry.co.nz/sites/default/files/u24/Response_to_submissions_June_09.pdf)

The analysis in the consultation paper suggests that the approved scheme rates better than the regulated options on both overall costs and overall benefits. The margin between the approved scheme and the SPRS is less decisive than the margin between the approved scheme and the FRS. Although not material because of the failure of the status quo option to meet the regulatory objective, the paper concludes that the approved scheme will yield overall benefits that are reasonably material and that these benefits outweigh the slight increase in overall costs that can be expected relative to the status quo.

The submissions analysis carefully considers all of the issues raised in submissions, and the joint agencies then conclude as follows:

A single joint independent electricity and gas CRS, available to all potential complainants, and consistent with the requirements of the electricity and gas GPSs, is the preferred outcome.

The best way of achieving this outcome is to approve an industry-based scheme.

The EGCC scheme rates as superior to the EGDRS scheme (the other scheme considered) in delivering many of the desired outcomes, but the governance arrangements remain a source of concern, and approval without amending these arrangements is not desirable.

As previously stated, the governance arrangements have now been amended as desired.

# 6 Consultation

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Consultation with stakeholders has occurred at the two major steps in the process, as follows:

- Determination of the process for approval and the Achievement Standards to apply to the selection of a preferred scheme, with consultation occurring largely in April 2008.
- Selection of the EGCC as the preferred scheme for approval and the comparison of this approved scheme with other options based on regulation, with consultation occurring during March and April 2009.

The approach adopted for consultation has been as follows:

- A consultation paper has been published with written submissions invited after a set period of time. The consultation period was about six weeks in each case.
- Within the consultation period, a workshop has been held for interested stakeholders to provide an opportunity for asking questions about the consultation paper and clarifying issues.
- All submissions have been published on the Gas Industry Co website, and an analysis of submissions and a response published.

As indicated above the results from each consultation have been published<sup>10 11</sup> and the publications are all publically available and can be downloaded from the Gas Industry Co website [www.gasindustry.co.nz](http://www.gasindustry.co.nz).

The most significant consultation was that occurring on the options paper because it was the last to occur and is the principal basis for the present recommendation. The results of this consultation are summarised in the following table.

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<sup>10</sup> *Submissions Analysis: Selection of a Preferred Candidate for Approval as a Complaints Resolution Scheme under the Electricity and Gas Acts*, Electricity Commission/Gas Industry Co, September 2008. <http://www.electricitycommission.govt.nz/pdfs/opdev/retail/consumer-complaints/SubmissionsAnalysis.pdf>

<sup>11</sup> *Electricity and Gas Complaints Resolution Scheme – Approval under the Gas Act and Electricity Act: Submissions Analysis*, Electricity Commission/Gas Industry Co, May 2009. [http://www.gasindustry.co.nz/sites/default/files/u24/Response\\_to\\_submissions\\_June\\_09.pdf](http://www.gasindustry.co.nz/sites/default/files/u24/Response_to_submissions_June_09.pdf)

Key issue	Summary of submissions and joint agencies responses
Support for EGCC approval as a single, joint, complaints resolution scheme.	Supported by 27 submitters and not supported by nine submitters. Large majority support from lines companies, consumer organisations, community organisations, and 'others'. However, retailer views divided with a small majority not giving support.  No specific agency response as this "vote" speaks for itself.
Concerns about the process followed by the agencies creating impression of "predetermination" in favour of EGCC.	Raised by one submitter only.  The contention of predetermination or a lack of integrity strongly rejected by the agencies. The very robust and transparent process followed is set out in the paper to support this rejection.
Status quo should have been considered as a reasonably practicable option.	Supported by 2 submitters on the grounds that it offers more choice to members than approving single complaints resolution scheme.  The agencies do not consider that the status quo is a reasonably practicable option because it fails to meet the regulatory objective set out in the March 2009 consultation paper. In particular, under the status quo not all gas and electricity consumers have free access to a complaints scheme.
There should be multiple approved schemes.	Supported by six submitters on the grounds that this would allow retailers and distributors to choose a scheme that suited their approach to dispute resolution, would provide competition between schemes and help maintain pressure on costs.  The view of the agencies is that, although having multiple schemes would likely maintain pressure on costs, this would be outweighed by the benefits of having a single scheme. These benefits include avoidance of inconsistent determinations, confusion amongst complainants about where to complain, issues caused by the distributor and the retailer belonging to different schemes, duplication of overhead costs, and a possible weakening of the incentive for each scheme to provide an effective service for complainants.
A regulated scheme is preferable to having a single approved scheme.	Supported by one submitter on the grounds that it was inappropriate for an industry-led scheme to have a monopoly.  The agencies do not agree that a regulated scheme represents the best means of implementing a single, mandatory scheme. However, if a regulated scheme was preferred, the agencies agree that a regulated service provider would be the better of the regulated options.
A mediation based approach is preferred to the "ombudsman" type approach of the EGCC.	Supported by six submitters of the grounds that mediation based approach such as that taken by the EGDRS, is preferable because it results in quicker settlement of disputes and lower overall costs.  The agencies favour an approach that incorporates mediation at an early stage in the process and this is reflected in the Achievement Standards set for the approved scheme. It is observed that a requirement on both of the existing EGCC and EGDRS is that members first attempt to resolve complaints using "in-house" resolution systems. Complaints are only referred to the scheme if in-house efforts have not succeeded within 20 days.
Failure of the EGCC governance amendments	Supported by three submitters on the grounds that the EGCC is still the best option, even if changes are not made.

Key issue	Summary of submissions and joint agencies responses
should not be considered to be fatal to the possible approval of the EGCC scheme.	The agencies generally continue to prefer the EGCC scheme but the current governance arrangements are a real concern in terms of meeting the relevant Achievement Standard and providing an appropriate balance between the interests of parties.
Consultation on the proposed changes to the ERGCC rules should have allowed input from all stakeholders, not just EGCC members.	Supported by two submitters. The EGCC is bound by its own rules to consult only with its own members. However, the consultation paper simultaneously issued by the agencies provided stakeholders more widely with an opportunity to comment on the proposed changes.
If consensus on the best option cannot be achieved between the Electricity Commission and Gas Industry Co, the status quo should remain.	Supported by one submitter on the grounds that a dual fuel approach is essential. The agencies essentially agree and are committed to continuing with a joint approach.

# 7

## Risks

Risks associated with the approval and implementation of the recommendation are set out in the following table.

No and title	Description and response
1. Legal challenge by industry participants who disagree with having a single scheme.	<p>There are a small number of industry participants who are strongly opposed to an approved (mandatory) scheme, and who could seek to mount a legal challenge against any approval.</p> <p>If a legal challenge arises, the best defence is to ensure that the approval process is robust and thus lower the probability of success for any challenge. Robustness has been enhanced by the EGCC members' decision to agree to the desired governance changes and to seek no other changes prior to approval being given.</p>
2. Unexpected transitional difficulties make a 1 April 2010 start date impracticable for all participants.	<p>Participants have already been invited to indicate any transitional difficulties that might arise, and the responses have been factored into implementation planning.</p> <p>There are unlikely to be transitional difficulties for the EGCC itself, but the joint agencies will work closely with the EGCC to support their implementation planning and to assist in resolving any issues. The most likely source of any difficulties is for those industry participants who must extract themselves from and probably close down an existing industry scheme. Again the agencies will liaise with the existing schemes to assist in resolving any difficulties.</p>
3. Industry participants do not join the approved scheme.	<p>If there is a single approved scheme, the Act requires that all retailers and distributors must be members. However, there is no ready means for enforcing this requirement so that a member declining to join may be technically in default of the law but with the only remedy available an action in the High Court.</p> <p>The risk is low in that it is unlikely that any participants would choose to act contrary to law, but cannot be ignored. The most certain means of mitigation is to amend the Gas Act to provide for the enforcement of membership.</p>
4. Consumers who made complaints prior to 1 April 2010 are left with their complaints unresolved.	<p>Legal advice is that it is not possible for the notice of approval to set out transitional arrangements, only to specify a commencement date. Transitional arrangements for the scheme itself must be dealt with in the constitution of the approved scheme. There is thus a risk that complaints that are initiated in another scheme prior to 1 April 2010, and are left unresolved, will not be dealt with by any scheme, to the</p>

No and title	Description and response
	<p>detriment of the consumer.</p> <p>The risk will be mitigated as far as possible by encouraging other existing schemes to act in the interests of consumers.</p>
<p>5. Changes to the scheme rules after 1 April 2010 are unacceptable to the Minister.</p>	<p>Current members of the EGCC have agreed to approval of the EGCC on the understanding that concerns they have with the existing scheme will be resolved by rule changes post 1 April 2010. If the proposed changes are extreme they could threaten the basis on which approval has been given.</p> <p>This risk has been mitigated already by obtaining early warning of changes likely to be sought, and determining that those changes will probably be acceptable. Close contact will continue to be maintained with the EGCC to monitor, and comment on if necessary, the actual changes sought.</p>

# 8

## Implementation

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The immediate implementation issue is to ensure that the approvals given by the Electricity Commission for electricity and by the Associate Minister for gas are consistent with each other. The approach taken to ensure this is as follows:

- The Electricity Commission has given 'approval in principle' to the EGCC under the Electricity Act, and will not confirm the approval until the Associate Minister has given an approval under the Gas Act. It is expected to be sufficient that approval is informally advised rather than waiting for the notice to be published in the *Gazette*.
- The notice attached to this recommendation is similar in form to that used by the Electricity Commission.

The only operational implementation or transitional issue that is able to be covered in the notice of approval is the effective date for the commencement of the approved system. Other issues will have to be dealt with by the industry and by the EGCC.

To assist this process, the Electricity Commission and Gas Industry Co wrote to all participants inviting them to provide advice on possible transitional issues and on the feasibility of the 1 April 2010 start date. Ten replies were received. Only two replies indicated difficulties with the proposed start date and those responses were from Trustpower and Bosco Connect, the two members of the existing EGDRS scheme. The essence of the difficulties is that double costs will be incurred by those companies as 1 April is too soon to enable the EGDRS scheme to be wound up. However, a delay would continue the current unsatisfactory situation for a longer period, to the disbenefit of consumers. It is thus considered that the benefits of the currently proposed start date heavily outweigh the costs, those costs are likely to be limited to only two participants and the 1 April 2010 start date should thus be confirmed.

# 9

## Recommendation

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Gas Industry Co recommends to the Associate Minister of Energy and Resources, under section 43E of the Gas Act 1992, the approval of the Electricity and Gas Complaints Commissioner Scheme as an approved complaints resolution system, with this approval to take effect from 1 April 2010.

A possible notice of approval is set out in Appendix B. This draft is provided as a mirror image of the proposed notice that the Electricity Commission intends to publish.



# Appendix A Achievement Standards

The following are the criteria against which applications putting forward a proposal to be approved as a consumer complaints resolution scheme provider under the Electricity and Gas Acts were assessed. They were included in the Request for Applications issued in September 2008.

## 1. Purpose and Scope

No.	Title	Achievement Standard
<b>1.1</b>	<b>Purpose</b>	
1.1.1	Purpose	The scheme rules will set out the purpose of the scheme, which should include investigating, and facilitating the satisfaction, settlement, or withdrawal of complaints about members. The scheme should be founded on the principles of accessibility, independence, fairness, accountability, efficiency, effectiveness, and community awareness.
1.1.2	Binding rules	The scheme rules will be binding on members.
1.1.3	Whether to investigate	The scheme rules will require the Decision-Maker to consider each query it receives from a complainant and to determine whether the query amounts to a complaint.
<b>1.2</b>	<b>Scope and exclusions</b>	
1.2.1	Coverage	The scheme will cover all of New Zealand and apply to all members and complainants in New Zealand.
1.2.2	Scope	The scheme rules will be clear on the scope of the scheme, including providing that all complaints against members by complainants, that are not otherwise excluded, will fall within the scope of the scheme. The scheme will not consider complaints outside the scope of the scheme or otherwise excluded.
1.2.3	Members	<p>The Electricity and Gas Acts require electricity and gas retailers and distributors to participate in a scheme if one or more is approved. Therefore, the scheme rules will provide that the following persons can participate in the scheme:</p> <p>electricity retailers and electricity distributors (including Transpower) as defined in the Electricity Act 1992; and</p> <p>gas retailers and gas distributors as defined in the Gas Act 1992.</p> <p>The scheme should initially exclude application to gas retailers and gas distributors to the extent that they are supplying reticulated liquid petroleum gas. However, the scheme will have the ability to add that</p>

No.	Title	Achievement Standard
		capacity on notice in writing from the Minister of Energy.
1.2.4	Complainant	<p>The scheme rules will provide that persons entitled to make a complaint under the scheme will be:</p> <p>for electricity, any person (including potential consumers and owners and occupiers of land);</p> <p>for gas:</p> <p>small consumers (as defined in the Gas Act) including potential small consumers; and</p> <p>owners and occupiers of land into, through, or against which pipelines have been laid down or placed.</p>
1.2.5	Exclusions	<p>The scheme rules will provide that the scheme does not apply where:</p> <p>a complainant has a grievance about the price that members choose to set for their goods or services;</p> <p>a Decision-Maker determines that a more appropriate forum exists for consideration of that grievance;</p> <p>a Decision-Maker considers that the grievance is frivolous or vexatious;</p> <p>the grievance is subject to legal action and/or is being pursued in one or more alternative forums; and</p> <p>the grievance has already been successfully resolved in an alternative forum or by agreement of the parties.</p> <p>This list is not intended to be an exhaustive list of the exclusions that a scheme may have.</p>
1.2.6	Members required to advise	The scheme rules will require members to advise complainants of the scheme regardless of whether the member considers the complaint to be vexatious or frivolous.
<b>1.3</b>	<b>Code of practice for conduct in complaint handling</b>	
1.3.1	Conduct	The scheme rules will include a code of practice that governs the conduct of members in handling complaints.
1.3.2	Code coverage	<p>The code of practice will include requirements for members to:</p> <p>treat any expressions of dissatisfaction or concern about a service or provided by the member as a complaint</p> <p>treat complainants with respect;</p>

No.	Title	Achievement Standard
		<p>interact with their complainants and any other person involved in the complaints process (including the Electricity Commission and Gas Industry Co) in an open and professional manner;</p> <p>respond to all queries and complaints as soon as reasonably practicable, but in any case where there is a deadline, before the deadline specified;and</p> <p>be sensitive to any health, disability or language issues relating to complainants.</p>
1.3.3	Code enforcement	The code of practice will be enforceable as part of the scheme rules.

## 2. Members

No.	Title	Achievement Standard
<b>2.1</b>	<b>Timeframes</b>	
2.1.1	Timeframe for resolution	<p>The scheme rules will provide that resolution of a complaint by the in-house complaints resolution system will be completed within 20 working days from receiving the original complaint.</p> <p>However, the scheme rules should allow members to seek an exemption from this requirement from the Decision-Maker. The scheme rules will provide that the Decision-Maker should grant an exemption where the Decision-Maker considers that the matter is likely to be complicated and where either party would be disadvantaged by staying within the time limit.</p>
<b>2.2</b>	<b>In-house complaints resolution systems</b>	
2.2.1	In-house complaints system	The scheme rules will require each member to have an effective in-house complaints resolution system for handling complaints in the first instance. The scheme rules will require members to allocate the in-house complaints resolution system adequate resources for efficient handling of queries and complaints.
2.2.2	Simple processes	The scheme rules will require members to have in-house complaints processes that are simple for complainants to understand and easy to use.
2.2.3	Promotion of in-house systems	The scheme rules will require members to include information on any invoices to their consumers advising that the member runs an in-house complaints resolution service at no extra charge and set out the relevant contact information.

No.	Title	Achievement Standard
2.2.4	Information about the scheme	The scheme rules will require all members to provide complainants, who have a complaint that may fall within the jurisdiction of the scheme, information about the existence and nature of, and the contact information for, the scheme. This information will be presented in plain and accessible language.
2.2.5	Staff training	<p>The scheme rules will require that members' employees who frequently deal with the public are trained in recognising complaints and actively referring them to the in-house complaints resolution system and to the scheme where required.</p> <p>Staff involved in the in-house complaints resolution system must have adequate training to ensure the efficient resolution of the majority of complaints received by the in-house scheme.</p>
<b>2.3</b>	<b>Promoting the independent complaints resolution scheme for residual complaints</b>	
2.3.1	Invoices	<p>The scheme rules will require members who invoice electricity and gas consumers to include on consumer invoices information about the existence and nature of, and the contact information for, the scheme.</p> <p>Transpower should be excluded from this requirement.</p>
2.3.2	Websites	The scheme rules will require each member to include on its primary website information about the existence and nature of, and the contact information for, the scheme.
2.3.3	Advising complainants when in-house process fail	The scheme rules will also require that members advise a complainant in writing about the existence and nature of, and the contact information for, the scheme if a member fails to deal with a complaint within the time limit set out in the scheme rules, or the complainant is dissatisfied with the outcome of the in-house process.
2.3.4	Advising landowners of the scheme	The scheme rules will require that electricity distributors (including Transpower) include information about the existence and nature of, and the contact information for, the scheme in/on any material published specifically for landowners.
<b>2.4</b>	<b>Members to provide information to Decision-Maker</b>	
2.4.1	Timely information	Where the scheme rules require members to provide information, the scheme rules should require members to provide that information as soon as possible but in any case within a certain timeframe.

No.	Title	Achievement Standard
2.4.2	Third-parties and individuals	Where the scheme rules provide that information will be provided by the member to the complainant, the scheme rules will provide the Decision-Maker discretion to allow members to delete personal and/or confidential information, including information which identifies a third-party, providing the information to the complainant.
<b>2.5</b>	<b>Binding determinations</b>	
2.5.1	Binding	The scheme rules will require that a determination of the Decision-Maker is binding on the member if the complainant accepts the determination. A complainant should not be bound by a determination unless he or she accepts the determination.

### 3. Procedures

No.	Title	Achievement Standard
<b>3.1</b>	<b>Informal proceedings</b>	
3.1.1	Encouraging settlements	The scheme rules will encourage settlements over determinations and the Decision-Maker should have discretion, to use appropriate techniques, including conciliation, mediation and negotiation, in attempting to settle complaints.
3.1.2	Encouraging an informal approach	The scheme rules will encourage an informal dispute resolution approach to resolving complaints and will discourage legalistic and adversarial approaches.  The scheme design should not prevent legal personnel reviewing or advising on complaint files.
<b>3.2</b>	<b>Process for complaints</b>	
3.2.1	Complainant's right to be heard	The scheme rules will provide for a complainant's right to be heard orally or in writing at the discretion of the complainant.
3.2.2	Right to address information	The scheme rules will provide each party an opportunity to address information provided by the other party.
<b>3.3</b>	<b>Reasons for determination</b>	
3.3.1	Both informed	The scheme rules will require that all parties are provided the reasons for the determination in writing.
3.3.2	Reasons provided	The scheme rules will provide that if the Decision-Maker considers that a complaint is outside the scope of the scheme or otherwise excluded then the Decision-Maker will advise complainants in writing of the reasons why their query or complaint is outside the jurisdiction of the scheme or otherwise excluded.
<b>3.4</b>	<b>Information about complaints</b>	

No.	Title	Achievement Standard
3.4.1	Sufficient information	The scheme rules will require that all parties involved in a complaint will be informed of the issues and be given sufficient information to understand the position of the other party or parties.
3.4.2	Complainant information	The scheme rules will require the Decision-Maker to encourage complainants to provide information about a complaint. The Decision-Maker will not be able to compel complainants to provide information. However, the Decision-Maker should be required to inform the complainant that failure to provide information may be grounds for discontinuing the investigation.
<b>3.5</b>	<b>Referring complaints and problems to other forums</b>	
3.5.1	Referring complaints	The scheme rules will provide the Decision-Maker discretion to refer complaints to other forums where to do so is, in the opinion of the Decision-Maker, more appropriate or in the consumers' best interests.
3.5.2	Systemic problems	The scheme rules will require that there are mechanisms and procedures for referring systemic industry problems that become apparent from complaints to members and to the Electricity Commission and Gas Industry Co.
<b>3.6</b>	<b>Tracking complaints</b>	
3.6.1	Systems	The scheme rules will require the scheme to keep detailed records of all complaints, their progress, and outcomes.
3.6.2	Time limits	The scheme rules will require the scheme to have a mechanism to monitor whether the time limits for handling complaints are complied with.
3.6.3	In-house system and scheme Receipts	The scheme rules will require members and the scheme to provide complainants with confirmation of receipt of a complaint within five working days of receiving a complaint that is not otherwise excluded. The receipt will include information relevant to the complaint, such as information on the process for resolving complaints.
3.6.4	In-house system and scheme updates	The scheme rules will require members and the scheme to keep complainants informed of the progress of a complaint.
<b>3.7</b>	<b>Confidentiality</b>	
3.7.1	Sensitive information	Where the scheme rules require a member to provide information to a complainant, the scheme rules will provide the Decision-Maker discretion to allow members to delete confidential or personal information before providing the information to the complainant.
<b>3.8</b>	<b>Advice on in-house complaints schemes</b>	

No.	Title	Achievement Standard
3.8.1	Scheme to provide advice	The scheme rules will require the Decision-Maker to have the capacity to provide advice to scheme members about how they may improve the operation of their in-house complaints schemes.

#### 4. Accessibility

No.	Title	Achievement Standard
<b>4.1</b>	<b>Awareness and promotion</b>	
4.1.1	Publicly available material	<p>The scheme will establish and maintain a website that describes the scheme in plain and accessible language and provides information relevant to the scheme, including explaining:</p> <ul style="list-style-type: none"> <li>the nature of the scheme;</li> <li>how to access the scheme;</li> <li>what might be considered a ‘complaint’, and that it is ok to use the scheme to establish if your concern is a complaint;</li> <li>the process for resolving complaints; and</li> <li>the restrictions on the scheme’s scope and powers.</li> </ul> <p>In addition, the scheme will have a simple step-by-step guideline available on its website covering the above matters.</p> <p>The scheme will send a copy of any of the material on the website to a complainant on request at no charge.</p>
4.1.2	Special needs complainants	<p>The scheme rules will require that the scheme promotes its existence in such a way as to be sensitive to complainants with special needs.</p> <p>The scheme will do this by liaising with organisations working with, or consisting of, people who may not be able to find out about the scheme through standard means. The scheme will assist those organisations with distributing information about the scheme to these organisations’ clients and/or members.</p>
<b>4.2</b>	<b>Access and ease of use</b>	
4.2.1	Available	The scheme rules will be in plain and accessible language and made available on the scheme’s website.
4.2.2	Easy access	The scheme will provide a free phone number and a freepost service.

No.	Title	Achievement Standard
4.2.3	Assisted access	The scheme rules will require the scheme to arrange services to assist complainants to access the scheme (such as appropriate services to meet the needs of complainants with disabilities and from non-English speaking backgrounds) at no cost to the complainant.
4.2.4	Assisted complaints	If a complainant is unable to put a complaint in writing, the scheme will record the complaint in writing, send it to the complainant for confirmation, and then forward the complaint to the relevant member/s.
4.2.5	Free access	The scheme rules will specify that the scheme is available to complainants at no charge. This should be made clear in all promotional material published by the scheme.
4.2.6	Advice to in-house complaints systems	The scheme should have capacity to provide advice to members about improving the operation of their in-house complaints schemes.
<b>4.3</b>	<b>Contact Personnel</b>	
4.3.1	Contact personnel training	<p>The scheme will ensure that its personnel who are involved in the complaints process will be adequately trained to carry out their role in the complaints process.</p> <p>This training will include an understanding of the energy industry to a level to enable staff to understand most complaints.</p> <p>The scheme will provide for regular staff training to the extent necessary to maintain the necessary level of understanding of the energy industry and that person's role in the complaints process.</p>
4.3.2	Contact personnel duties	<p>The scheme will require its contact personnel to explain to complainants in simple terms:</p> <ul style="list-style-type: none"> <li>the nature of the scheme;</li> <li>how the scheme works;</li> <li>any relevant restrictions on its powers; and</li> <li>the time limits applicable to the relevant processes in the scheme.</li> </ul> <p>The scheme's contact personnel will be provided with a check-list to be completed for each enquiry to ensure that complainants and potential complainants are given all necessary information.</p>
4.3.3	Non- adversarial approach	The scheme will ensure that its contact personnel adopt a non-adversarial approach with complainants.

## 5. Decision Making

No.	Title	Achievement Standard
<b>5.1</b>	<b>Decision-maker</b>	
5.1.1	Determinations	The scheme rules will require the scheme to have a Decision-Maker who is responsible for determining complaints. The Decision-Maker may have the ability to delegate the power to determine disputes but will remain responsible overall for decision-making.
5.1.2	Residual role	<p>The scheme rules will establish the scheme as having a backup or reserve role to members' in-house complaints resolution systems. The scheme rules will prevent the Decision-Maker from considering a complaint within 20 working-days from the member receiving the complaint. This is intended to provide members the opportunity to attempt to resolve the complaint in the first instance. However, the scheme rules should provide discretion for the Decision-Maker to hear exceptional cases even if this timeframe has not yet expired where the Decision-Maker considers that:</p> <p>the member has made clear that they intend not to do anything about the complaint; or</p> <p>the complainant would suffer unreasonable harm from waiting; or</p> <p>where it would otherwise be unjust.</p>

No.	Title	Achievement Standard
5.1.3	Scope of determinations	<p>The scheme rules will require that the Decision-Maker will have the power to either:</p> <p>send a complaint back to the member's in-house scheme for settlement; or</p> <p>make a determination in favour of a member; or</p> <p>make a determination in favour of a complainant.</p> <p>The scheme rules will provide that if the Decision-Maker makes a determination, the Decision-Maker must include one or more of the following in the determination:</p> <p>no award or action:</p> <p>require a member to pay compensation to a complainant up to a total maximum of \$20,000:</p> <p>require a member to reimburse a complainant's actual and reasonable expenses:</p> <p>require a member to take certain reasonable actions to make redress to a complainant.</p>
5.1.4	Not accountable to members	The scheme rules will require that the Decision-Maker is not accountable to members for determinations.
5.1.5	Fair and reasonable	The scheme rules will require that the Decision-Maker makes determinations based on what is fair and reasonable, having regard to all relevant information, including good industry practice, relevant industry codes of practice, model contracts, and the law.
5.1.6	Consistency in decision-making	The scheme rules should require the Decision-Maker to seek to achieve consistency of determinations. However, the precedent value of determinations will be limited to interpretation of the scheme rules and not material external to the scheme.
<b>5.2</b>	<b>Written determinations</b>	
5.2.1	Detailed reports	The scheme rules will require the scheme to provide reasonably detailed non-confidential written reports of determinations (including reasons for the decision and determination) to the parties involved in the dispute.

No.	Title	Achievement Standard
5.2.2	Summary reports	The scheme will include on its website summaries of all determinations for the purposes of:  educating members and consumers; and  demonstrating consistency and fairness in decision-making.
5.2.3	No names in summaries	The scheme rules will require that website summaries of determinations do not name complainants, members, or other persons.
<b>5.3</b>	<b>Awards</b>	
5.3.1	No penalties	The scheme rules will prevent the Decision-Maker from awarding monetary penalties.
5.3.2	Not punitive	The scheme rules will prevent the Decision-Maker from making awards for punitive damages.
5.3.3	Maximum compensation	The scheme rules will provide that the Decision-Maker the ability to award compensation to complainants of up to a maximum of \$20,000.
5.3.4	Limited expenses	The scheme rules will provide that the Decision-Maker the ability to require a member to reimburse a complainant's actual and reasonable expenses.
5.3.5	Reasonable actions	The scheme rules will provide that the Decision-Maker the ability to require a member to take certain reasonable actions to make redress to a complainant.

## 6. Member Compliance

No.	Title	Achievement Standard
<b>6.1</b>	<b>Scheme rules to provide for compliance</b>	
6.1.1	Compliance	The scheme rules will provide a mechanism to monitor member compliance with the scheme.
<b>6.2</b>	<b>Monitoring member compliance</b>	
6.2.1	Scheme to monitor members	The scheme rules will provide that the Overseeing Entity will monitor member compliance with the scheme rules.

No.	Title	Achievement Standard
6.2.2	Member breaches of scheme rules	The scheme rules will require the Decision-Maker to report a breach of the scheme rules by any member to the Overseeing Entity who will publish details of the breach, the name the member/s involved, and the award made (if any), in the scheme's Annual Report. However, the scheme rules will provide the Overseeing Entity discretion to not publish the details of insignificant or technical breaches if to do so would, in the Overseeing Entity's opinion, unfairly disadvantage or harm the member without just cause.
6.2.3	Report to EC/GIC on breaches of scheme rules	The scheme rules will require the Overseeing Entity to report annually on all breaches of the scheme rules by all members to the Electricity Commission and Gas Industry Co.

## 7. Governance

No.	Title	Achievement Standard
<b>7.1</b>	<b>Overseeing Entity</b>	
1) 7.1 .1	2) Oversight role	The scheme rules will require that an Overseeing Entity is responsible for overseeing the effectiveness and independence of the scheme.
3) 7.1 .2	4) Composition	The Overseeing Entity will have a balance of consumer interests, energy industry interests, and, where relevant, other key stakeholder interests, and will have a chair who is independent of any of those interests.
5) 7.1 .3	6) Functions	7) The scheme rules will require that the functions of the Overseeing Entity include: ensuring that the scheme meets its purpose; appointing and dismissing the Decision-Maker; approving the annual budget; investigating complaints about the operation of the scheme; reviewing the operation and performance of the scheme; taking actions to improve the performance of the scheme where reports suggest that is necessary; receiving information about, and taking appropriate action in relation to, systemic industry problems referred by the scheme; and ensuring that the scheme continues to meet the basis for its approval.

No.	Title	Achievement Standard
8) 7.1 .4	9) Consumer representatives	<p>The scheme rules will require that the representatives of consumer interests are:</p> <p>capable of reflecting the viewpoints and concerns of consumers; and</p> <p>persons in whom consumers and consumer organisations can have confidence.</p>
10) 7.1 .5	11) Industry members	<p>12) The scheme rules will require that the representatives of industry interests are:</p> <p>capable of understanding the viewpoints and concerns of consumers; and</p> <p>persons in whom consumers and consumer organisations can have confidence.</p>
13) 7.1 .6	14) Election of Overseeing Entity representatives	<p>15) The scheme rules will require that:</p> <ul style="list-style-type: none"> <li>• industry representatives are elected by members;</li> <li>• consumer representatives are nominated by the Ministry of Consumer Affairs; and</li> </ul> <p>the Independent Chair is elected by the Overseeing Entity following consultation with the Electricity Commission and the Gas Industry Co.</p>
<b>7.2</b>	<b>Amending the scheme rules</b>	
16) 7.2 .1	17) Process	<p>The scheme rules will provide a process governing how changes are made to the scheme rules that allows the scheme to develop in response to changes to the environment and to improve its performance in meeting its purpose in a timely manner.</p> <p>This process will achieve an appropriate balance between the interests of those who may wish to make complaints and the members involved in governing and funding the scheme.</p>

No.	Title	Achievement Standard
18) 7.2 .2	19) Approval	<p>The scheme rules will provide that any changes to the scheme rules will require the approval of the Electricity Commission and the Minister of Energy.</p> <p>[Note that this Achievement Standard was changed during the RFA process to:</p> <p><i>The scheme rules will provide that any changes to the scheme rules will be notified to the Electricity Commission and Gas Industry Co and will not take effect until 20 business days following that notification.</i></p> <p><i>Should the Electricity Commission or the Gas Industry Co determine that the rule changes would have a material impact on the nature of the scheme or a substantial impact upon member's obligations they will notify the scheme within 20 business days and the rule changes will require the approval of the Electricity Commission and the Gas Industry Co</i></p>
20) 7.2 .3	21) Consultation	The scheme rules will provide that any changes to the scheme rules will be undertaken in consultation with relevant stakeholders, including members and the Overseeing Entity, Gas Industry Co and the Electricity Commission.
22) 7.2 .4	23) GPS objectives and outcomes	The scheme rules will provide that any changes to the scheme rules will be consistent with the objectives and outcomes of the Government Policy Statements for Electricity Governance and Gas Governance.
<b>7.3</b>	<b>Appointing staff to the scheme</b>	
24) 7.3 .1	25) Decision-Maker	The scheme rules will require that the Decision-Maker is appointed by the Overseeing Entity. The Overseeing Entity must be satisfied that that Decision-Maker is independent from members or any other interest that would give rise to an actual or perceived conflict of interest.
26) 7.3 .2	27) Other staff	The scheme rules will provide that the Decision-Maker is responsible for hiring the scheme's employees. The Decision-Maker must be satisfied that the employees are independent of members.
<b>7.4</b>	<b>Handling complaints about the scheme</b>	
28) 7.4 .1	29) Referred to Overseeing Entity	The scheme rules will require the Decision-Maker to pass on any complaints that the scheme receives about the operation of the scheme (other than complaints about a decision of the Decision-Maker) to the Overseeing Entity for appropriate action.
30) 7.4 .2	31) Timely response	The scheme rules will require the Decision-Maker to respond to any recommendations of the Overseeing Entity in response to complaints about the operation of the scheme in a timely and appropriate manner.

## 8. Funding

No.	Title	Achievement Standard
<b>8.1</b>	<b>Funding Arrangements</b>	
8.1.1	Funded by members	The scheme rules will require that the scheme is funded by the members.
8.1.2	Transparency	The arrangements for funding the scheme (including recurring fees and any one off charges) will be set out in the scheme rules.
8.1.3	Fees set out in scheme rules  [Note that this Achievement Standard was changed during the RFA process to:  <i>Mechanism for establishing fees and charges set out in scheme rules]</i>	The scheme rules will include the amount of each fee. The scheme rules will require a change the amount of any fee to involve the rule change process.  [Note that this Achievement Standard was changed during the RFA process to:  <i>The scheme rules will include a description of the mechanism for establishing the amount of each fee and charge.  Any changes to this mechanism will be treated as a rule change and subject to the same consultation and approval requirements as other rule changes.]</i>
8.1.4	Funding mechanism	The scheme rules will require the Overseeing Entity to ensure that the scheme:  has a user pay component to provide an incentive for in-house schemes to be bolstered; and  ensures incentives are correctly aligned to encourage efficient resolution by all parties.
8.1.5	Notice	The scheme rules will require members to be given at least 25 working days notice of a change to any fee.
8.1.6	Challenge	The scheme will have a procedure for members to challenge the amount of an invoice for any fee charged by the scheme to the member.
<b>8.2</b>	<b>Setting the budget</b>	
8.2.1	Overseeing Entity	The scheme rules will require the Overseeing Entity to approve the annual budget and funding arrangements.
8.2.2	Sufficiency and Efficiency	The scheme will be funded sufficiently to allow its caseload to be managed efficiently and to meet the other requirements of the scheme rules. However, the scheme will also be funded at a level consistent with providing a cost-effective outcome.

## 9. Performance Monitoring

No.	Title	Achievement Standard
<b>9.1</b>	<b>Performance standards</b>	
9.1.1	Standards to be set	The scheme rules will set out the standards against which the performance of the scheme will be measured. These standards will be sufficient to allow external parties to readily determine if the scheme is providing an effective complaints resolution service.
<b>9.2</b>	<b>Annual review of scheme</b>	
9.2.1	Annual in-house review	The scheme rules will require the Overseeing Entity to annually review the scheme's performance, including against:  the achievement standards set out in this document;  the performance standards set out in the scheme rules; and  any particular issues raised by the Gas Industry Co and the Electricity Commission.
9.2.2	Annual stakeholder feedback	The scheme rules will provide that the annual review will include seeking feedback from stakeholders and stakeholder perceptions about the performance of the scheme.
9.2.3	Reporting on the annual in-house review	The scheme rules will require the results of the annual review to be reported in the scheme's annual report.
<b>9.3</b>	<b>Independent reviews</b>	
9.3.1	Independent review	The scheme rules will provide that within one year of approval, and subsequently at no more than three yearly intervals, the scheme will organise an independent review of the scheme to assess:  whether the scheme is meeting its purpose;  whether the scheme is continuing to meet the achievement standards set out in this document and whether they are appropriate;  whether the performance standards set by the Overseeing Entity are adequate;  the quality and results of the annual in-house reviews; and  whether the code of practice provides appropriate assurance to stakeholders about the conduct of members.
9.3.2	Terms of reference	The scheme rules will require the Overseeing Entity to consult with the Electricity Commission and Gas Industry Co over the terms of reference for an independent review.

No.	Title	Achievement Standard
9.4.3	Independent review published	The scheme rules will require the results of the independent review to be made available on the scheme's website.
9.3.4	Special review	The scheme rules will provide the ability for the Electricity Commission and Gas Industry Co to require a special review of any or all aspects of the scheme at any time. The scheme rules will state that the Electricity Commission and Gas Industry Co will appoint the independent reviewer.
<b>9.4</b>	<b>Reporting</b>	
9.4.1	Regular reports	The scheme rules will require that the scheme reports regularly to the Overseeing Entity on the performance of the scheme against the standards.
9.4.2	Annual Report	<p>The scheme rules will require the Overseeing Entity to make available on the scheme's website a detailed and informative annual report (the annual report). The annual report must be required to contain all relevant information about the performance of the scheme, including:</p> <ul style="list-style-type: none"> <li>information about how the scheme works;</li> <li>the number of queries the scheme receives;</li> <li>the number and types of complaints it receives and the outcomes;</li> <li>the time taken to resolve each complaint;</li> <li>any systemic problems arising from complaints;</li> <li>examples of representative case studies;</li> <li>information about how the scheme ensures that it meets its purpose;</li> <li>a list of members, together with any changes to the list during the year;</li> <li>a list of member breaches of the scheme rules (as set out in achievement standard 6.2.3)</li> <li>information about new developments or key areas in which policy or education initiatives are required;</li> <li>a report on compliance with the approval criteria set out in this document;</li> <li>a report against the performance standards;</li> <li>the findings of in-house reviews;</li> <li>the findings of the independent review (if relevant for that year); and</li> <li>a financial report containing sufficient information to allow members and</li> </ul>

No.	Title	Achievement Standard
		other stakeholders to understand how the scheme funding is being utilised.
9.4.3	Scheme breaches	The scheme rules will require the Overseeing Entity to include in the annual report a list of any members who breached the scheme rules that year along with what the breach was and the severity of the breach. However, the scheme rules should provide the Overseeing Entity discretion, at the recommendation of the Decision-Maker, to withhold a member's name.
9.4.4	Reporting to stakeholders	The scheme rules will require that the annual report is distributed to relevant stakeholders (the distribution may be through an internet link or by sending electronic copies) and is made widely available via the scheme's website.
9.4.5	Non-performance	The scheme rules will require the Decision-Maker to prepare a brief report to the Overseeing Entity each quarter as to whether the scheme has failed to achieve the performance standards. The report will include the reasons for failure and provide recommendations if similar failures are likely to occur again.

## 10. Exit

No.	Title	Achievement Standard
<b>10.1</b>	<b>Winding up the scheme</b>	
10.1.1	Notice requirement	The scheme rules will require that, if the scheme is to be wound up, at least 12 months notice will be provided to the Electricity Commission and Gas Industry Co.
10.1.2	Continuity	The scheme rules will require that, if the scheme is to be wound up, the scheme will cooperate with the Electricity Commission and Gas Industry Co in the transition to a new set of arrangements for complaints resolution.

It is not a requirement for the scheme rules, but any scheme seeking authorisation should note that, should the Electricity Commission and Minister of Energy decide to revoke approval of a scheme, at least 12 months' notice will be provided. This requirement will be included in any terms of the authorisation.

# Appendix B Draft Gazette Notice

## Gas Act 1992

### Approval of complaints resolution system

In accordance with section 43E of the Gas Act 1992, notice is given that the Associate Minister for Energy and Resources has approved, for the purpose of addressing complaints by any person relating to gas retailers and gas distributors, the complaints resolution system called *The Electricity and Gas Complaints Commissioner Scheme* established under the document entitled *Constitution for the Electricity and Gas Complaints Commissioner Scheme* dated 30 October 2009.

The approval referred to in this notice has effect from 1 April 2010 and applies in respect of every complaint notified to a gas retailer or gas distributor on or after that date.

A copy of the constitution and other documents that comprise The Electricity and Gas Complaints Commissioner Scheme are available from the following website address:

<http://www.egcomplaints.co.nz/scheme/htm>

**DATED** at Wellington this day of 2009.

Hon Pansy Wong  
Associate Minister of Energy and Resources



# Appendix C EGCC Constitution (System Description)