

# Independent Review of the Electricity and Gas Complaints Commissioner Scheme 2011

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## FOREWORD

Baljurda Comprehensive Consulting has been involved in accountability, complaint handling, governance, and ombudsman schemes in Australia, New Zealand, Indonesia, Thailand, the Philippines, Timor-Leste, Solomon Islands, Tonga, Vietnam, United Kingdom, and South Africa.

Prior to setting up the company, I was Deputy Commonwealth Ombudsman in Australia, and for ten years before that, head of Australia's Federal Bureau of Consumer Affairs.

I wish to thank all the Scheme Members and Complainants who responded to the surveys and often made constructive comments, and to the various others who provided valuable knowledge and insight.

In particular I would like to acknowledge the assistance, patience, and dedication of the Commissioner, Deputy Commissioner and the EGCC staff. It is a tribute to them that 94% of respondent complainants – including those who did not receive a favourable outcome – were extremely satisfied or satisfied with the help and courtesy they received from the Office's staff.

A handwritten signature in black ink, appearing to read 'John T. D. Wood', written in a cursive style.

John T. D. Wood

## EXECUTIVE SUMMARY

The EGCC is a very effective external complaint handling scheme. Feedback from comments from stakeholders, surveys, staff discussions, and document analysis, all support this view.

Improvements made to the Scheme Document as of April 2011, are manifest, and represent one of the best and most thorough constitutions I have seen.

With a few minor exceptions, the Scheme meets the key practices set out in the Australian Benchmarks for Industry-Based Consumer Dispute Resolution Schemes, that have been accepted in New Zealand and Australia as the relevant template for measuring external complaint handling schemes, against:

- Accessibility;
- Independence;
- Fairness;
- Accountability;
- Efficiency; and
- Effectiveness.

The same applies in relation to an assessment of the Scheme against the best practice standard AS/ISO 10002:2006 – *Guidelines for complaints handling in organizations*.

In the year subject to this Review, there was a 185% increase in total cases, and a 106% increase in complaints over 2008. There is no doubt that the provision of information about the Scheme on Member's bills has been in part responsible for this greater awareness and use of the Scheme.

### Processes

There is no need for any major reform of the Scheme Document, including the Code of Conduct. There are a number of recommendations and suggestions that I consider, would improve the operation of the Scheme for all parties. I also recommend reviewing the Terms of Reference and the Code of Conduct to improve clarity and remove inconsistencies that have resulted from the transition to the new Scheme.

Issues around the standard of internal complaint handling processes also arise and I have recommended some means for improving that situation.

Importantly, I believe that it is time for the maturity of the Scheme to be further demonstrated by naming Members in statistical reports in the Annual Report. This would bring the Scheme into line with comparable schemes in Australia and elsewhere in the world, as well as the NZ Banking Ombudsman.

## SUMMARY OF RECOMMENDATIONS AND SUGGESTIONS

### *Awareness/Promotion*

It is **recommended** that whilst coverage in the media – on programmes such as *Fair Go* on TVNZ for instance, on community radio, and through liaison with consumer writers in the print media, can be useful - that resources for community awareness be targeted to organizations dealing especially with demographics that are under-represented among the complainants. Ensuring these organizations are kept up to date with information and complaint kits, and having regular staff visits to them can produce great benefits. Consequently, it is **recommended** that the performance measure relating to awareness in the community, be amended to reflect this approach.

### *Definition of a complaint*

Because of the importance of the internal complaint handling systems, the International and Australian Standards on complaint handling used the following definition for a complaint:

‘A complaint is an expression of dissatisfaction made to an organization, related to its products, or the complaints handling process itself, where a response or resolution is explicitly or implicitly expected.’<sup>1</sup> Definition from ISO 10002:2004.

It is **recommended** that the ISO definition, amended to include ‘and services’ after ‘products’, be included in the Achievement Standards, and substituted for the current definition in the EGCC Scheme Document and Member Guide.

### *Determinations*

Currently, the EGCC publishes Case Notes on its website. To make this aspect of accountability to the public clear, it is **recommended** that clause B.43 of the scheme Document be amended to read:

B.43 The Commissioner must issue a copy of the determination to:

B.43.1 the Complainant; and

B.43.2 any Scheme Member against which the binding decision is made;

B.43.3 any Scheme Member interested in the Complaint; and

B.43.4 make an anonymised copy publicly available.

In circumstances where even anonymising a determination would not prevent the

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<sup>1</sup> International Standards Organization; ISO 10002:2004, *Guidelines for complaints handling in organizations*



identification of a Member or a complainant, it is **recommended** that the Commissioner be given the authority to publish only summary, non-identifying information about that determination.

### ***Reporting***

As I reported in my 2008 Review of Complaint Handling Processes for the then Scheme:

- ‘In order for consumers to obtain some impression of how individual members perform within the Scheme, members’ names should be published against statistics in the Annual Report and Website. This would also provide valuable comparative information to members about competitors’ performance, and contribute to improving their performance.’

Reporting names in such a manner should be welcomed in a competitive industry and, as is evident from Appendix C, is now practiced by most schemes. It is **recommended** that the EGCC Scheme Document be amended to require the publication of Member names against complaint statistics in the Annual Report.

Currently the Board is required to ‘...report annually on all breaches of the Scheme by all Scheme Members to the Minister.’ (E.16.16 of Scheme Document) This seems to be overly onerous, and it is **recommended** that it, and the obligation on the Commissioner (B.52.10) be changed; for the Board to ‘...report annually on all *material or persistent* breaches of the Scheme by all Scheme Members to the Minister.’; and for the Commissioner to ‘ identifying and reporting to the Board on *material or persistent* breaches of the Scheme by Scheme Members.’

Consequently, it is also **recommended** that 6.2.3 of the Achievement Standards be similarly amended.

### ***Member compliance reporting***

Members are required by the Scheme Document (C.8.10) to monitor compliance with the Scheme and report annually on their compliance to the Board by way of a 13 page detailed compliance questionnaire. In my view this is an onerous, and not necessarily very productive, compliance process. Auditing Member websites, and random audits of materials for compliance, would be more useful, and it is **recommended** that such actions replace the current mechanisms, and that the Constitution be amended accordingly.

### ***Acknowledgement of complaint***

The Scheme’s Code of Conduct (C.8.1) requires Scheme Members to:

- ‘acknowledge the Complaint in writing as soon as possible but in any event no later than two Working Days after receipt’

To accommodate situations where the matter can be quickly resolved, e.g. within that time period, the clause should reflect this. In addition, as the vast majority of complaints are oral, the Code should reflect this. It is **recommended** that C.8.1 should be amended to read:

- ‘if they are the Scheme Member contracting with the Consumer, and the Complaint is in writing, acknowledge the Complaint in writing as soon as possible but in any event no later than two Working Days after receipt; and if the Complaint is oral and the complainant agrees, acknowledge the Complaint over the phone and record the fact. If the Scheme Member considers the matter can be resolved within five Working Days of receipt of the Complaint, there is no need for the acknowledgement; but if the five Working Days cannot be achieved, the Scheme Member must contact the complainant and inform them of that fact; and’

### ***Referral to a higher level:***

In order to further the EGCC’s role and assist early resolution of complaints it is **recommended** that if the Commissioner considers that a complaint can be resolved by reference to a higher level within the Member company, she be given the power to do so.

### ***Discretion not to investigate***

In order to improve the efficiency of the Scheme, and avoid wasting the time and resources of all parties, it is **recommended** that the Commissioner be given a discretionary power not to investigate, or continue to investigate, along the lines of the Commonwealth Ombudsman in Australia, that is:

Where a complaint has been made the Commissioner may, in his or her discretion, decide not to investigate the complaint or, if he or she has commenced to investigate the complaint, decide not to investigate further if, in the opinion of the Commissioner, an investigation, or further investigation, of the complaint is not warranted having regard to all the circumstances.

Where the Commissioner decides to exercise the discretion, the Commissioner will give the complainant an opportunity to make representations before deciding. Where the Commissioner then decides not to investigate, or continue to investigate, she will give reasons to the complainant for that decision and inform the Member.

### ***Extensions of time***

When a customer has complained directly to the company, without referral from the EGCC, it is **recommended** that the Member be empowered to negotiate the extension directly with the complainant and, if the complainant agrees, records this.

There would be no need to inform the EGCC. If the complainant does not agree, then the current process set out in the Member Guide would be followed.

Where a customer has been referred to the Member by the EGCC, it is **recommended** that the Member be empowered to negotiate the extension directly with the complainant and, if the complainant agrees, records this and informs the EGCC. If the complainant does not agree, then, as above, the current process set out in the Member Guide would be followed.

### ***Coverage***

Staff have identified a number of these minor matters, and it is **recommended** that the Board consider appropriate amendments to the Scheme Document to resolve any inconsistencies or lack of clarity.

### ***Information management***

As a matter of good policy and administrative practice, it is **recommended** that an archive policy and document disposal schedule be developed and implemented.

### ***Financial limits***

It is **recommended** that in the first instance, the amount of \$20,000.00 set in April 2005 should be adjusted up to the current date – based on CPI increases; and then be automatically adjusted according to the CPI every three years thereafter, on the applicable date.

### ***Professionalism***

Clause C.7.7 of the scheme Document requires Scheme Members to:

- provide the Commissioner with information regarding their in-house complaint handling process and a nominated point of contact for Complaints.

While some Members regularly advise the EGCC of any changes, it is **recommended** that Members be requested to provide the EGCC with information on any changes in their in-house complaints handling process, including changes in team membership, and that they also provide information on changes in any terms and conditions relating to their services. This would assist both the Member and the EGCC improve efficiency in handling complaints.

### ***Systemic Problems***

Systemic issues may be raised by individual complaints and show issues of procedure, policy or law, which have the potential to affect a wider number of

people than just the complainant. They are distinguished from complaints where a simple mistake has occurred, or there has been a one-off misunderstanding in applying an organization's rules. There may be systemic issues within a Member or within the industry. Currently the Member Guide refers to 'Systemic *industry* problems' only and it is **recommended** that the word 'industry' be deleted.

Systemics may be relatively small matters, requiring simple changes to administrative procedures, or they may address significant issues about policy, administration, or rules. The aim of pursuing systemics is to prevent detriment to the clients of an organization (and to the organization itself) and to reduce future complaints by addressing underlying defective processes.

For these reasons, it is **recommended** that the Commissioner be given a discretionary power, after consultation with the relevant Member or Members affected by the systemic issue/s, to investigate the problem and make recommendations for its solution. The fees for investigation of systemic issues should be on the same basis as for complaints.

The current wording of B.52.12 in the scheme Document, '...having mechanisms and procedures for referring to Scheme Members and to the Minister systemic industry problems that become apparent from Complaints;' is unnecessarily limiting. It precludes the EGCC considering systemic issues brought to her attention by, for example, a regulator, Member of Parliament, media report, etc. This is clearly not in the interests of the industry or consumers, and it is **recommended** that the relevant wording of the Scheme Document be changed to:

- The Commissioner is responsible for:
- 'B.52.12 having mechanisms and procedures for referring to Scheme Members and to the Minister, and for investigating where appropriate, systemic problems of which the Commissioner becomes aware from Complaints or other sources; '

Consequently, Clauses 3.5.2 and 9.4.2 of the Achievement Standards should also be similarly amended.

### ***Internal Complaints Mechanisms***

To enable Members to develop or assess the adequacy of their internal complaint handling processes, it is **recommended** that the Australian Standard, AS/ISO 10002:2006 – *Guidelines for complaints handling in organizations*, be promoted to Members as a template.

It is also pointless for the Scheme to refer complainants back to members if they are unable to have faith in that member's processes. The Scheme provides [B.52.16(d)] for the Commissioner to make 'observations to Scheme Members about the effectiveness of the Scheme Member's internal complaints process. To complement this, however, the Scheme should give the Commissioner the power to audit members' internal complaint handling schemes.

Consequently, it is **recommended** that the Scheme Document be amended so that if the Commissioner becomes concerned about the performance of a Member's complaint handling processes or performance, the Commissioner may undertake an audit of the Members processes and provide advice to the Member on necessary remedial action.

### ***Defaulting Scheme Members***

Apart from stipulating that the Member's voting rights are suspended, the Scheme documents are silent on what happens next. That is largely because the powers for dealing with a Member who fails to comply with the rules of the Scheme are dealt with in the *Electricity Industry Act 2010*, which did not come into force until 1 November 2010, nearly 7 months after the commencement of the present Scheme. As an aid to Members and consumers alike, it is **recommended** that the Scheme documents be updated to provide information on the processes for dealing with defaulting Members.

### ***Achievement Standards:***

In the context of developments in complaint handling internationally, it is **recommended** that the definition of complaint in the International Standard 10002 - *Guidelines for complaints handling in organizations* –replace the current definition in the Achievement Standards. (See under 2. Independence)

Currently the requirement for the Board to report annually on **all** breaches of the Scheme, however trivial, seems onerous and it is **recommended** that this be rectified in the Scheme Document and amendment of clause 6.2.3 of the Achievement Standards. (See under 4. Accountability)

There appear to be some minor inconsistencies between the Achievement Standards and the Electricity Industry Act (which was enacted after the Achievement Standards were established. Some of the detail in the Achievement Standards could also be reduced, and it is **recommended** that they be reviewed to remove inconsistencies and to clarify and simplify the requirements.

### ***The Code of Conduct for Complaint Handling***

It should be remembered that the Code of Conduct is the product of compiling previous Codes and as such, is a bit awkward, and sometimes confusing. For example, one respondent suggested that including concise definitions of electricity, gas and land complaints would be a good idea. The definition of 'consumer' is also apparently at odds with that in the *Electricity Industry Act 2010*, and 'complainant' should, perhaps, be used where currently 'consumer' is (e.g. C.9 et al.). It is

**recommended** that the Code of Conduct be reviewed with the aim of rationalizing and simplifying the document.

There appear to be occasions when a Member fails to recognize a complaint when contacted by a Complainant, and passes them on to a relevant area of the organization, without informing the Complainant of the existence of a complaint handling process or of the EGCC. It is **recommended** that Members continue to pay attention to the requirements of clause C.7.4 of the Code of Conduct and, if necessary seek the assistance of the Commissioner.

### ***The EGCC's legal basis***

This may be a matter that is left on the shelf for the time being – especially as the Scheme has only recently been revised. If it is determined that the legal structure should change in the future, then it is **recommended** that of a not-for-profit company limited by guarantee would be the most appropriate for the Scheme's purpose. It could provide the option for a more commonly used structure and accountability, and familiar corporate rules.

### ***Independent Review***

With the requirement for the Board to undertake an annual in-house review of the scheme's performance – that includes stakeholder feedback – there is a good deal of continuous assessment of the Scheme, and it is **suggested** that consideration be given to changing the three year intervals to five year intervals.

### ***Test cases***

Currently, the Commissioner's terms of Reference provide for the pursuit of a 'test case' by a Member, prior to the making of a binding decision (clauses B.46 – B.51). This is not a provision that applies in comparable schemes internationally. It is my understanding that decisions of the Commissioner under the Scheme, are probably subject to judicial review. If that is the case, then the 'Test cases' provision is superfluous. Consequently, it is **recommended** that formal legal advice be sought on whether the Commissioner's decisions are subject to judicial review, and if so, that the clauses B.46 – B.51 be removed from the Scheme Document.

### ***Credit issues***

There are reports of customers contacting Members with bill payment issues who are referred straight on to the credit management area of the company. Whilst this can save the customer time finding the right people to talk to, the credit

management people do not always inform the customer of the existence of a complaint handling process within the company, or the existence of the EGCC. It is **suggested** that this oversight should be brought to Members' attention.

### ***Future external complaint handling arrangements***

It is **suggested** that a New Zealand Ombudsman for Services should be contemplated. Such a body would bring together all the existing schemes – financial services, telecommunications, and energy - under a national portal. Initially the system would ensure that consumers were directed to the most relevant existing scheme to handle their complaints, but ultimately it is envisaged that there would be a single industry funded organisation managing the scheme.

Clearly there is a huge amount of detail that needs to be considered in the development of such a scheme, but it is **suggested** that preliminary discussion between the schemes might commence in order for it to become a reality in the near future.

As a first step towards dealing with this convergence, it is also **suggested** that the EGCC undertake discussions with those in the telecommunications and water sectors with a view to establishing a joint utilities external complaint handling scheme.

## 1. BACKGROUND

### 1.1 Terms of Reference for the Review

#### 1.1.1 Background

The Scheme is the approved Scheme for electricity and gas complaints under the Electricity Industry Act 2010<sup>1</sup> and the Gas Act 1992. The Scheme was approved effective 1 April 2010.

Part A of the Scheme document (effective from 1 April 2011) sets out the purpose and founding principles of the Scheme:

*“The purpose of the Scheme is to provide a complaints resolution scheme for the electricity and gas sectors to investigate and facilitate the satisfaction, settlement or withdrawal of complaints.”*

*“The founding principles of the Scheme are that it must be:*

- accessible*
- independent*
- fair*
- accountable*
- efficient*
- effective*
- free to Complainants*
- known in the community”<sup>2</sup>*

The Scheme document was revised in 2010-11 to, amongst other things, simplify the document, remove redundant codes of practice, change the governance structure and processes for changing the document, change the levy system, tidy some definitions and make some other changes to jurisdiction.

The Scheme operated under several versions of the Scheme Document in 2010-11 – see <http://www.egcomplaints.co.nz/constitution.php>.

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<sup>1</sup> See Part 4 and Schedule 4

<sup>2</sup> These principles reference the Australian Benchmarks for Industry-Based Consumer Dispute Resolution Schemes.



### **1.1.2 Requirements for the review**

The requirements for an independent review of the Scheme are set out in clause E.58 of the Scheme document. E.58 says the Board of the Electricity and Gas Complaints Commission:

*E.58.1 must obtain an independent review of the performance and effectiveness of the Scheme ... within one year of approval of the Scheme; and*

*E58.3 must ensure that the review will assess:*

- (a) whether the Scheme is meeting its purpose; and*
- (b) whether the Scheme is continuing to meet the Achievement Standards;<sup>3</sup> and*
- (c) whether the performance standards set by the Board are adequate; and*
- (d) the quality and results of the annual internal reviews; and*
- (e) whether the Code sets out appropriate requirements for Scheme Members' in-house complaints processes*

The Board is required to make the results of the review available on the Scheme website (E.59).

### **1.1.3 Outcome**

The outcome of the review is a report to the Board with recommendations on how the Scheme should evolve or improve its operations. This may include recommendations for changes to the Scheme document.

### **1.1.4 Processes**

The review will fulfil the requirements of clause E.58.3 of the Scheme document.

In conducting the review, the reviewer should have regard to:

- The Australian Benchmarks for Industry-Based Consumer Dispute Resolution Schemes
- The Achievement Standards under which the Scheme was approved
- The minimum requirements for the Scheme as set out in clause 13 of Schedule 4 of the Electricity Industry Act 2010 and principles set out in clause (5(4) of the same Schedule

The Board expects the reviewer to consider the more specific questions set out in the appendix to this document.

The Board expects the review to include (but not be limited to) the following

aspects:

a. A review of:

- i. The Commissioner's processes and procedures
- ii. Information and communication materials
- iii. The role of the Board and how it carries out its functions

b. Consultation with:

- i. The Board
- ii. The Commissioner and her staff
- iii. Members of the Scheme
- iv. Community groups
- v. Ministry of Consumer Affairs
- vi. Minister of Consumer Affairs
- vii. Electricity Authority and Gas Industry Co

c. Consideration of systems, processes and structures used by other equivalent industry based ombudsman schemes

In reaching conclusions, the Board expects the reviewer to:

- Critically analyse issues raised by those consulted during the review process
- Test assertions made by those consulted by seeking reasoning and supporting evidence
- Provide a balanced analysis of the key issues identified during the review
- Make recommendations that enhance the achievement of the Australian Benchmarks and are consistent with the legislative requirements for the Scheme
- Supply a record of issues raised that were not covered by the criteria set out in these terms of reference.

The review will take into account the requirements of the various versions of the constitution under which the Scheme operated in 2010-11 and the Scheme document effective from 1 April 2011. Any recommendations for changes should be to the Scheme document effective from 1 April 2011.

### ***1.1.5 Specific questions to be addressed***

a. **The appropriateness of the Achievement Standards** – are any of the Achievement Standards impeding the evolution of the Scheme, or should any be amended to enhance the achievement of the Benchmarks?

b. **The Code of Conduct for Complaint Handling** – are there any parts of the previous consumer codes (electricity and gas) that should be added to the Code of Conduct for Complaint Handling?

c. **Governance of the Scheme:**

- is the current legal structure appropriate or should it become an incorporated

body of some form?

- is the current governance structure and the manner in which the Board carries out its functions appropriate and effective?

d. **Stakeholder management** – do the current terms of reference provide the appropriate framework for managing relationships with stakeholders?

e. **Commissioner's jurisdiction:**

- are the exclusions from jurisdiction still appropriate?
- is \$20,000 still the appropriate limit, given the increased jurisdiction of the Disputes Tribunal (\$15,000 or \$20,000 with agreement of the parties – when the Scheme limit was set at \$20,000, the Disputes Tribunal limit was \$7,500 or \$12,000 with the agreement of the parties)?

## 2. PROCESS

### 2.1 Information sources

In undertaking the review, I considered a large range of information from within the Electricity and Gas Complaints Commissioner Scheme (EGCC) and relevant equivalent procedures and processes from other external disputes resolution schemes with which I am familiar. Sources of information included:

- The EGCC Scheme Document, 7 April 2011;
- Previous Constitutions of the Scheme: 1 April 2010, 1 November 2010 & 1 December 2010;
- EGCC Annual Reports;
- Report of the Independent Review of the EGCC Process for Deadlocked Files, April 2011;
- Review of the Electricity Complaints Commissioner Scheme, 2005;
- Review of the Complaint Handling Process for the EGCC, 2008;
- Reports from the GECO database
- Forms used by the scheme
- Leaflets, booklets and brochures issued by the EGCC;
- The EGCC Website;
- Complaint files;
- Discussions with the Commissioner, Deputy Commissioner, and EGCC staff;
- Interviews with external personnel including:
  - Liz McPherson and Evelyn Cole, Ministry of Consumer Affairs;
  - Richard Janes, Chair of the Board of the EGCC Scheme;
  - Sue Chetwin, CEO, Consumer NZ;
  - Greig Hinds and Jacki Eves, the Gas Industry Co.
  - John Rampton, Electricity Authority;
  - The EGCC Board;
  - Raewyn Fox, CEO, Federation of Family Budgeting Services;
  - Beverley Wakem, Chief Ombudsman;
  - Brian Bray, DLA Phillips Fox;
  - Ombudsmen in various international schemes
- EGCC Member Satisfaction Survey, January 2011;
- EGCC Survey of Complainants, March 2011;
- EGCC Annual Review of the Scheme, 2010-11;
- Benchmarks for Industry-based Customer Dispute Resolution Schemes (the Benchmarks), Consumer Affairs Division, Australian Department of Industry, Science and Tourism, 1997;
- The International Standard on Guidelines for Complaints Handling in Organizations (ISO:10002);
- The International Standard for Guidelines for Dispute Resolution External to Organizations (ISO:10003);
- Energy Retailers Association of Australia's Policy Position Paper on Dispute

- Resolution Schemes for the Australian Energy Industry 2006;
- EGCC Member Guide 1 April 2011;
  - *Electricity Industry Act 2010*;
  - *Consumer Guarantees Act 1993*;
  - *Fair Trading Act 1986*;
  - Constitution, rules, websites, and Annual Reports of various industry ombudsman schemes including:
    - NZ: Banking Ombudsman Scheme Ltd;
    - NZ: Insurance & Savings Ombudsman;
    - NZ: Financial Services Complaints Ltd;
    - UK: Financial Ombudsman Service Ltd;
    - UK: Ombudsman Services Ltd;
    - UK: The Property Ombudsman;
    - South Africa: Ombudsman for Banking Services;
    - Australia: Energy & Water Ombudsman (NSW) Limited;
    - Australia: Financial Ombudsman Service Ltd;
    - Australia: Telecommunication Industry Ombudsman Ltd;
    - Australia: Energy and Water Ombudsman Queensland;
    - Australia: Energy and Water Ombudsman (Victoria) Ltd;
    - Canada: Ombudsman for Banking Services and Investments;
    - Canada: General Insurance OmbudService;
    - Canada: OmbudService for Life & Health Insurance.
  - British and Irish Ombudsman Association, Guide to principles of good complaint handling, 2007,;
  - Office of Gas and Electricity Markets, Complaint Handling Standards, United Kingdom, April 2008;
  - Commonwealth Ombudsman (Australia), Better practice guide to complaint handling; 2009;
  - Steve Brooker, Lessons from Ombudsmania, February 2008, National Consumer Council, United Kingdom;
  - Handbook: The why and how of complaints handling, Standards Australia HB 229-2006.

## 2.2 Stakeholder Surveys

A survey form was developed and sent to all Scheme Members (see Appendix A), and another to all complainants whose cases reached deadlock during the period April 2010 to March 2011 (see Appendix B).

53 Member Surveys were sent, three were returned because of address problems, and 25 completed surveys were returned. This was a response rate of 47%, and compares with a 46.94% response rate for the EGCC survey of January 2011, and an industry average of 49%. (Industry here and in some tables, refers to the average of responses from similar surveys administered by me since 1995.)

114 Complainant Surveys were sent, five were returned because of address problems, and 34 completed surveys were returned. This was a response rate of 31.19%, and compares with a 26% response rate for the EGCC survey of March 2011, 30.46% for the EGCC survey of 2010, and an industry average of 29.7%.

### 3. SATISFACTION

#### 3.1 Scheme Member Survey

The survey indicated a high level of satisfaction by Members. Some of the key findings included:

- 84% rate the EGCC's core role of investigating and facilitating resolution of electricity and gas complaints as Very good or Good.
- 84% are Very satisfied or Satisfied with the degree to which due process has been followed by the Commissioner.
- 92% consider that the Scheme is meeting its purpose as set out in the Scheme documents.
- 48% considered that enquiries and investigations by the Commissioner of complaints made about their organization assisted the organization to improve its performance.
- 87% considered that the Commissioner is sufficiently independent.
- 74% considered that the Commissioner is a necessary part of industry responsibility.

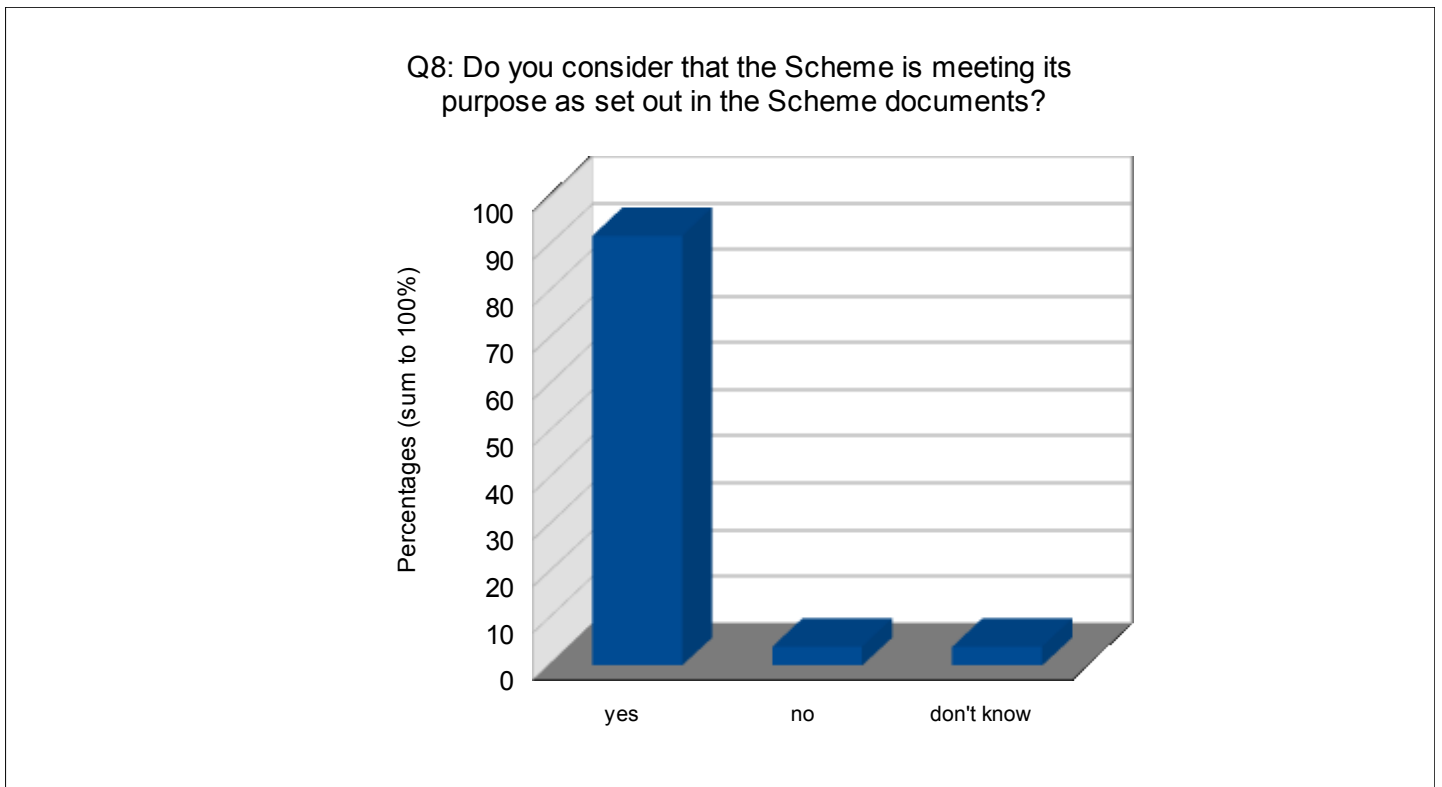
The full results for the Member Survey are at Appendix A.

#### 3.2 Member Satisfaction

<b>Q6</b> On a scale of 1 to 5, with "1" meaning <i>very satisfied</i> , and "5" meaning <i>very dissatisfied</i> , for each of the following issues, place a tick in the one box which best describes how <b>satisfied</b> you have been.						
<b>Tick <u>one</u> box for each of items (a) to (e)</b>	Very satisfied	Satisfied	Neither satisfied nor dissatisfied	Dissatisfied	Very dissatisfied	Not applicable
<b>How satisfied or dissatisfied have you been with.....</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	
a. the general methods used to investigate/conciliate complaints..... ..	<b>12%</b>	<b>64%</b>	<b>12%</b>	<b>4%</b>	<b>0</b>	<b>8%</b>
b. the amount of information given to you about complaint handling..... ..	<b>16%</b>	<b>56%</b>	<b>20%</b>	<b>0</b>	<b>0</b>	<b>4%</b>
c. the quality of the findings, correspondence and reports	<b>28%</b>	<b>44%</b>	<b>12%</b>	<b>4%</b>	<b>4%</b>	<b>8%</b>

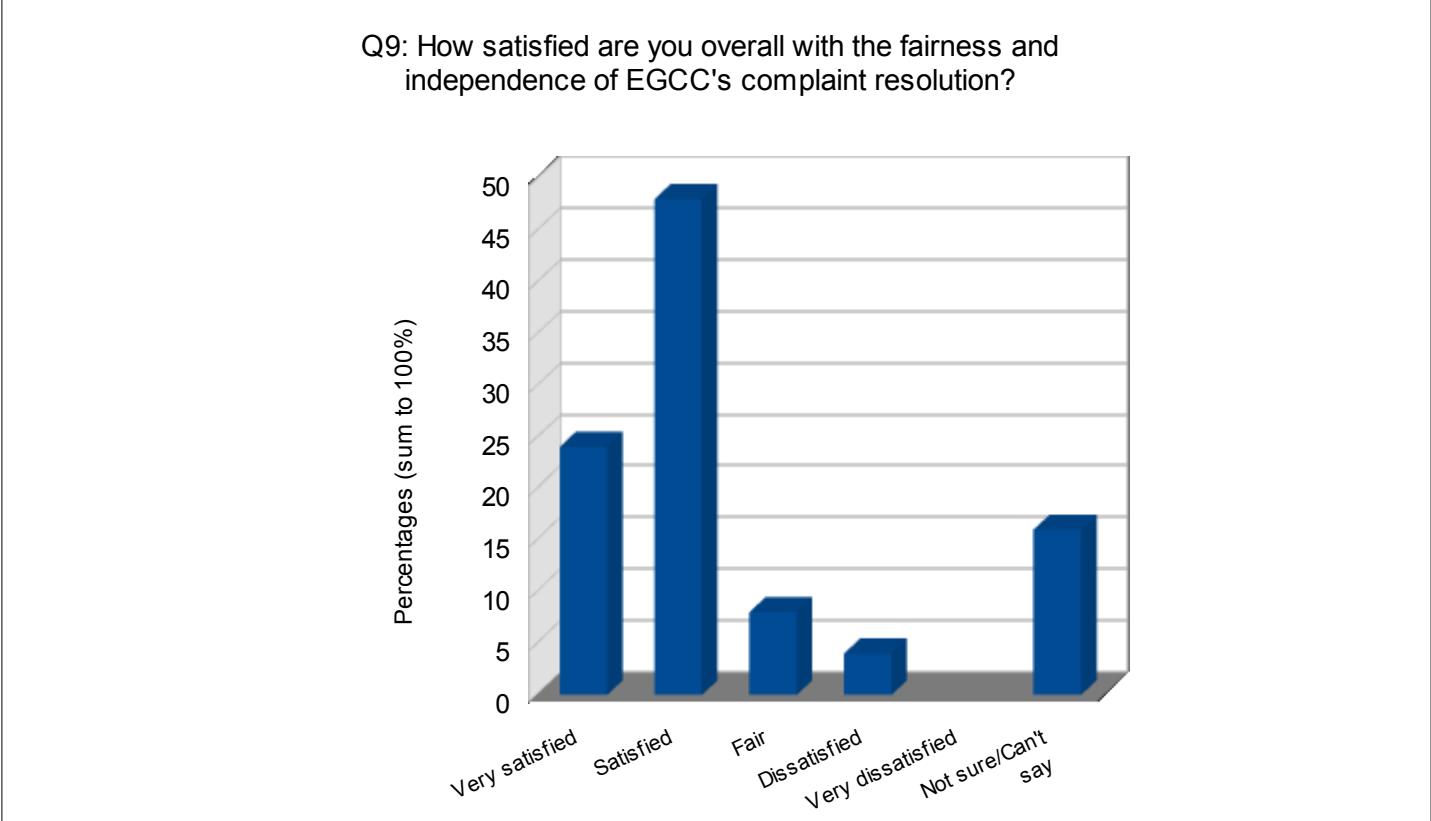
by the Commissioner.....						
d. the degree to which due process has been followed by the Commissioner.....	<b>36%</b>	<b>48%</b>	<b>4%</b>	<b>4%</b>	<b>0</b>	<b>8%</b>
e. the benefit of the overall outcome.....	<b>12%</b>	<b>36%</b>	<b>28%</b>	<b>8%</b>	<b>3%</b>	<b>12%</b>

**Q8** Do you consider that the Scheme is meeting its purpose as set out in the Scheme documents?





**Q9** How satisfied are you overall with the fairness and independence of EGCC's complaint resolution?



### 3.3 Complainant Survey

Again there are high levels of satisfaction expressed by respondents. Some of the highlights include:

- 97% of respondents were 35 years of age or older!
- Over 60% identified the key aspects of the Scheme’s role.
- Over 82% found the EGCC’s written communication, and 88% the oral communication, informative and easy to understand.
- 85% thought that think the Commissioner's Office gave clear advice about what it could do and what it would do.
- Respondents identified the following as the most important service attributes (over 70% identifying them as Extremely important):
  - ...the critical issues in my complaint are understood. (82%)
  - ...I am given clear reasons for the Commissioner's decision (76%)
  - ...the Commissioner requires the electricity/gas company to explain their action (74%)
  - ...Commissioner's Office staff are knowledgeable and experienced (71%)
- 79% were confident about the way the Commissioner’s Office handled their complaint
- 94% were Extremely satisfied or Satisfied with the help and courtesy they received from Commissioner's Office staff – this is an outstanding result.
- 68% thought that the Commissioner’s finding or decision on their complaint was reasonable.

### 3.4 Complainant satisfaction

Below are a number of tables relating to responses from complainants about various EGCC performance issues. The full results for the Complainant Survey are at Appendix B.

Survey question	Number	Yes	No
<b>B4</b> Do you think the Commissioner's Office gave you <b>clear advice</b> about....	a. ....what it <i>could</i> do?.....	<b>85.29%</b>	<b>14.71%</b>
	b. ....what it <i>would</i> do?.....	<b>85.29%</b>	<b>14.71%</b>
	c. ....what it <i>could not</i> do?.....	<b>70.59%</b>	<b>29.41%</b>
	d. ....where else I could go or someone else to refer to.....	<b>54.55%</b>	<b>45.45%</b>

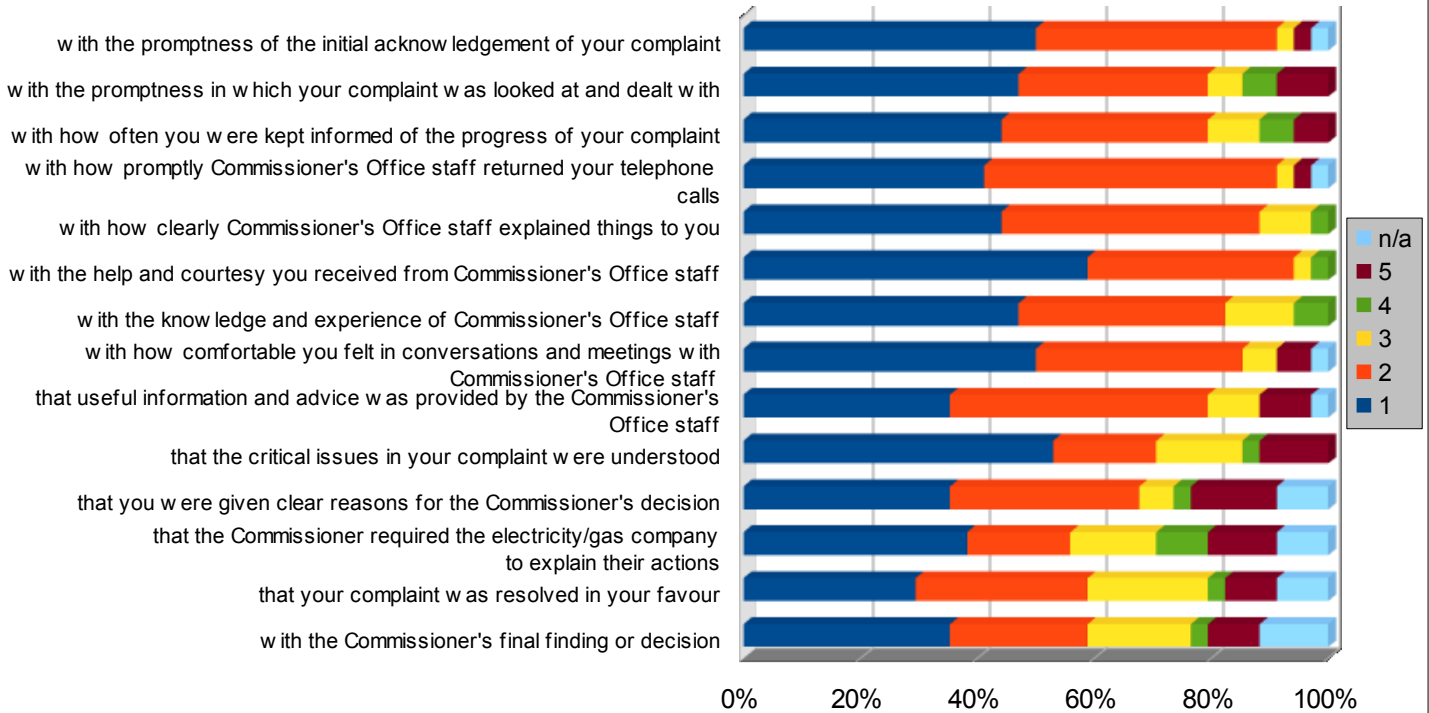
Survey question	Length	Survey %	Industry %
<b>C3</b> Thinking about the time actually taken to deal with your complaint, do you think the Commissioner's Office....	...took <i>too long</i> to deal with my complaint	<b>23.53%</b>	<b>24%</b>
	...took <i>less time</i> than expected to deal with my complaint	<b>5.88%</b>	<b>6%</b>
	...took <i>about the right time</i> to deal with my complaint	<b>70.59%</b>	<b>70%</b>

<b>D3</b> On a scale of 1 to 5, with "1" meaning <i>extremely satisfied</i> , and "5" meaning <i>not at all satisfied</i> , for each of the following service attributes, place a tick in the one box which best describes how <b>satisfied</b> you were with each item.)						
<i>Tick one box for each of items (a) to (p)</i>	Extremely satisfied	Satisfied	Neither satisfied nor dissatisfied	Dissatisfied	Not at all satisfied	Not applicable
How satisfied were you.....	1	2	3	4	5	
a. ...with the promptness of the initial acknowledgment of your complaint.....	50%	41.18%	2.94%	0	2.94%	2.94%
b. ...with the promptness in which your complaint was looked at and dealt with.....	47.06%	32.35%	5.88%	5.88%	8.82%	0
c. ...with how often you were kept informed of the progress of your complaint.....	44.12%	35.29%	8.82%	5.88%	5.88%	0
d. ...with how promptly Commissioner's Office staff returned your telephone calls .....	41.18%	50%	2.94%	0	2.94%	2.94%
e. ...with how clearly	44.12%	44.12%	8.82%	2.94%	0	0

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Commissioner's Office staff explained things to you .....						
f. ...with the help and courtesy you received from Commissioner's Office staff.....	58.82%	35.29%	2.94%	2.94%	0	0
g. ...with the knowledge and experience of Commissioner's Office staff.....	47.06%	35.29%	11.76%	5.88%	0	0
h. ...with how comfortable you felt in conversations and meetings with Commissioner's Office staff.....	50%	35.29%	5.88%	0	5.88%	2.94%
j. ...that useful information and advice was provided by the Commissioner's Office staff.....	35.29%	44.12%	8.82%	0	8.82%	2.94%
k. ...that the critical issues in your complaint were understood.....	52.94%	17.65%	14.71%	2.94%	11.76%	0
l. ...that you were given clear reasons for the Commissioner's decision .....	35.29%	32.35%	5.88%	2.94%	14.71%	8.82%
m. ...that the Commissioner required the electricity/gas company to explain their actions.....	38.24%	17.65%	14.71%	8.82%	11.76%	8.82%
n. ...that your complaint was resolved in your favour.....	29.41%	29.41%	20.59%	2.94%	8.82%	8.82%
p. ...with the Commissioner's final finding or decision .....	36.36%	24,24%	18.18%	3.03%	9.09%	12.12%

D3: On a scale of 1 to 5, with "1" meaning extremely satisfied, and "5" meaning not at all satisfied, for each of the following service attributes, how satisfied were you...



Survey question	Response	%
<b>D4</b> Overall, did the Commissioner's Office meet your expectations in handling your complaint?	Yes, <i>completely</i>	<b>52.94%</b>
	Yes, but only <i>partially</i>	<b>29.41%</b>
	No, did not meet expectations	<b>17.65%</b>

One of the most useful assessments of complainants' satisfaction is that of those who saw their complaint as **not** having been resolved in their favour. Obviously these will be the most dissatisfied group of respondents, but if their view of how well the Office dealt with them can be improved over time, it will provide a very useful indicator of performance. Table 1 shows the views of complainants of handling of their complaint related to their perception of the outcome.

**Table 1: Complainant views of complaint handling related to outcome**

<b>D1</b> After your complaint had been finalised, how did you see the outcome?	<b>Resolved <i>substantially</i> in my favour</b>	<b>Resolved <i>partly</i> in my favour</b>	<b><i>Not at all</i> resolved in my favour</b>

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<b>% of all respondents</b>	<b>44.12%</b>	<b>32.35%</b>	<b>23.53%</b>
<b>D2</b> Did you think the Commissioner's finding or decision on your complaint was <i>reasonable</i> ?			
<b>Yes</b>	<b>100%</b>	<b>81.81%</b>	<b>12.5%</b>
<b>No</b>		<b>18.18%</b>	<b>87.5%</b>
<b>D4</b> Overall, did the Commissioner's Office <i>meet your expectations in handling your complaint</i> ?			
<b>Yes, completely</b>	<b>80%</b>	<b>45.45%</b>	<b>12.5%</b>
<b>Yes, but only partially</b>	<b>20%</b>	<b>54.55%</b>	<b>25%</b>
<b>No, did not meet expectations</b>			<b>62.5%</b>

These six sections; Accessibility, Independence, Fairness, Accountability, Efficiency, and Effectiveness, deal with an assessment of the Scheme against relevant principles and key practices set out in the Australian Benchmarks for Industry-Based Consumer Dispute Resolution Schemes. It only addresses practices where there are suggestions for improvements or changes.

## 4. ACCESSIBILITY

### Principle

THE SCHEME MAKES ITSELF READILY AVAILABLE TO CUSTOMERS BY PROMOTING KNOWLEDGE OF ITS EXISTENCE, BEING EASY TO USE AND HAVING NO COST BARRIERS.

### Purpose

To promote customer access to the scheme on an equitable basis.

### 4.1 Awareness/Promotion

One of the performance measures for the Scheme set by the Board relates to knowledge about the EGCC in the community. For the first year of the new Scheme it aimed for 10% of unprompted and 30% of prompted respondents having heard about office of EGC Commissioner. In fact the figures achieved were 3.9% and 14% respectively – a clear failure to meet the target.

It is my view, however, that general awareness of a name is no longer a useful measure of the ability of someone to find the appropriate complaint handling body when it is needed. Times have changed the way people seek information. For example, although, of course, not everyone has access to the internet, it is instructive to enter ‘electricity complaint nz’ or ‘gas complaint nz’ into Google and discover that the first three items are the EGCC website and Facebook pages.

We live in an age of ever expanding information sources and of the technologies to deliver that information. But we also live in an age of information overload; we struggle to deal with the barrage of information directed at us, let alone be able to digest it. This is sometimes referred to as information ‘static’ or ‘noise’ – messages competing to attract our attention. To be frank, it is only the largest advertisers and government campaigns that can afford to penetrate this ‘noise’ and leave a message in our memory.

We have to rely on others to absorb and process the information that may be important for us. For this we rely on people in dedicated information bodies such as citizen advice bureaux and libraries, and non-government organizations such as budgeting services, consumer advocacy bodies, ethnic bodies, and so on. They are the information gate-keepers. As well as the internet, directories, and our friends, these are the people we turn to when we want to find out who can fix our problem. It is them that it is most useful to attend, and to whom the EGCC is concentrating its efforts. It is **recommended** that whilst coverage in the media – on programmes such as *Fair Go* on TVNZ for instance, on community radio, and through liaison

with consumer writers in the print media, can be useful - that resources for community awareness be targeted to organizations dealing especially with demographics that are under-represented among the complainants. Ensuring these organizations are kept up to date with information and complaint kits, and having regular staff visits to them can produce great benefits. Consequently, it is **recommended** that the performance measure relating to awareness in the community, be amended to reflect this approach.

Unfortunately, little research has been published on the ways in which young people deal with problem resolution in the consumer products and services field. However, some recent work I have undertaken with this demographic (16 to 25 years old)<sup>2</sup> revealed the following:

- they will return to the place of purchase and try and get an outcome;
- they will try and find a solution from friends;
- they will try and find a solution on the internet, particularly via social media;
- they may approach an NGO such as a financial counselling service;
- they are unlikely to ring or write or email the company concerned if the problem isn't sorted at the place of purchase;
- they are unlikely to go to an EDR scheme; and
- they will tell everyone they know about the 'bad deal' they got.

This would seem to indicate that it would be worthwhile for the EGCC to maintain a presence in social media and consider paid advertisements on Facebook and Google.

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<sup>2</sup> Baljurda Comprehensive Consulting, unpublished research on consumer behaviour of young people in the A.C.T., March. 2010.



## 5. INDEPENDENCE

### Principle

THE DECISION-MAKING PROCESS AND ADMINISTRATION OF THE SCHEME ARE INDEPENDENT FROM SCHEME MEMBERS.

### Purpose

To ensure that the processes and decisions of the scheme are objective and unbiased and are seen to be objective and unbiased.

## 5.1 Scheme object

### 5.1.1 Definition of a complaint

Currently the EGCC Scheme Document defines a complaint as:

- ‘An expression of dissatisfaction with Services, or the provision or non-provision of Services, by any person where a response is implicitly or explicitly expected.’

In the last ten years, the incidences of complaints to external complaints handling institutions internationally, about member’s internal complaint handling has increased considerably – in some instances up to 15% of the complaints about the scheme member. Because of the importance of the internal complaint handling systems, the International and Australian Standards on complaint handling used the following definition for a complaint:

‘A complaint is an expression of dissatisfaction made to an organization, related to its products, or the complaints handling process itself, where a response or resolution is explicitly or implicitly expected.’<sup>3</sup> Definition from ISO 10002:2004.

It is **recommended** that the ISO definition, amended to include ‘and services’ after ‘products’, be included in the Achievement Standards, and substituted for the current definition in the EGCC Scheme Document and Member Guide.

## 5.2 Overseeing Entity

### 5.2.1 The Board

#### 5.2.1.1 Membership

The current governance structure consists of the Scheme being governed by the Scheme Board, consisting of:

- an independent Chair appointed by the Board, following consultation with

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<sup>3</sup> International Standards Organization; ISO 10002:2004, *Guidelines for complaints handling in organizations*

the Minister;

- two members nominated and elected by Scheme Members and representing Scheme Members, being one Retailer and one Lines Company; and
- two members appointed by the Minister and representing Consumers, Land Owners and Land Occupiers.

Board Members must be:

- capable of understanding the viewpoints and concerns of Consumers; and
- persons in whom Consumers and Consumer organisations can have confidence.

Scheme Members appointed to the Board must have regard to the interests of all Scheme Members, and the Board Members appointed by the Minister must take into account the interests of Consumers and Land Owners and Land Occupiers.

#### **5.2.1.2 *Role of the Board***

The role of the Board is to establish and maintain the office of the Commissioner and to provide independent implementation and administration of the Scheme.

#### **5.2.1.3 *Duties of the Board***

The Board must:

- ensure the Scheme meets its purpose; and
- set performance standards, sufficient to allow external parties to readily determine if the Scheme is providing an effective complaints resolution service, against which the performance of the Scheme will be measured. The performance standards may include:
  - Total time to close cases; and
  - Cost per case; and
  - Complainant satisfaction; and
  - Scheme Member satisfaction; and
  - External review of cases; and
  - Awareness in the community and accessibility; and
  - Reporting - compliance reporting complete, accurate and on time.
- give any assistance it considers necessary to the Commissioner concerning the performance of the Commissioner's duties; and
- appoint an independent chair to the Board after consulting with the Minister; and
- receive and consider all recommendations from the Commissioner for changes to the Scheme; and
- obtain independent reviews of the Scheme in accordance with clause E.58; and
- monitor the Scheme (generally and by way of the review procedure set out in clause E.57); and
- it considers that amendments are required, propose amendments to the

- Scheme in accordance with clauses E.64 to E.66; and
- investigate complaints about the operation of the Scheme; and
  - review the operation and performance of the Scheme; and
  - take actions to improve the performance of the Scheme where reports suggest that is necessary; and
  - receive information about, and take appropriate action in relation to, systemic industry problems referred to it by the Commissioner; and
  - ensure that the Scheme continues to operate so that the Minister does not withdraw approval of the Scheme; and
  - develop and implement a Code that requires Scheme Members to provide an effective in-house complaints handling process; and
  - at its annual meeting receive and, if considered appropriate, approve the annual report of the Commissioner for the Board's previous Financial Year, but this subclause does not entitle the Board to consider, approve or disapprove the exercise of the independent responsibility of the Commissioner in respect of a particular Complaint; and
  - report annually on all breaches of the Scheme by all Scheme Members to the Minister; and
  - monitor compliance with the Scheme by Members using a variety of means (including, for example, mystery shopper surveys); and
  - consider the annual operational plan proposed by the Commissioner; and
  - approve the overall financial budget to operate the Scheme before approving an overall financial budget, the Board must:
    - (a) be satisfied that the Scheme will be funded sufficiently to allow its caseload to be managed efficiently and to meet the other requirements of the Scheme so far as this is consistent with providing a cost effective outcome; and
    - (b) seek the view of the Member Committee on the proposed overall financial budget; and
  - in relation to each Financial Year, prepare or procure the preparation of appropriate financial statements of the Board; and
  - with the Commissioner, publish an annual report in relation to the preceding Financial Year which is to be widely distributed to all stakeholders and contain:
    - (a) information about how the Scheme ensures that it meets its purposes; and
    - (b) a list of Scheme Members together with any changes to the list during the year; and
    - (c) a report on Scheme Member compliance with the Scheme including a list of Scheme Member breaches of the Scheme (including names of the Scheme Member(s) involved and binding decisions made (if any)), provided that the Board has the discretion to not publish details of insignificant or technical breaches if to do so would, in the Board's

- opinion, unfairly disadvantage or harm the Scheme Member; and
  - (d) a report against the performance standards set out in clause E.16.2; and
  - (e) a report on performance of the Scheme in relation to the grounds for withdrawal of approval of the Scheme by the Minister; and
  - (f) the findings of annual reviews; and
  - (g) the findings of the independent review (if relevant for that year); and
  - (h) a financial report containing sufficient information to allow Scheme Members and other stakeholders to understand how the Scheme funding is being used.
- Do anything else provided for in this document.

### **5.2.2 Comment**

The composition of the Board, with an independent Chair and equal industry and consumer representation is very much the norm for external complaint handling bodies, and consistent with Key Practice 2.6. of the Industry Benchmarks.

The functions, responsibilities, and duties of the Board are also equivalent to those of the majority of industry schemes. Whilst a few schemes still have dual levels of governance, current good practice indicates a single level is far preferable, and removes the possibility, or appearance, of industry direction of the scheme.

Keeping the number of Board members to as few as are needed to effectively carry out the Board's duties is also seen as good practice; and supplementary assistance, if necessary can be gained through the establishment of sub-committees with co-opted members or by the use of advisory committees.

## **5.3 Funding**

### **5.3.1 Costs and fees**

Costs will always be a major concern for Scheme Members and the EGCC - as it is in all such external complaint handling organizations – and rightly so. It is perhaps trite to say that the efficiency of the EGCC Scheme itself and the efforts made by Members to eliminate causes of complaints, and to learn from them, are the keys to minimising the costs of the Scheme to Members, but it is true.

The EGCC and her staff are clearly aware of the need to undertake their work as efficiently as possible without sacrificing professionalism in handling complaints. They have been the source of some of the suggestions for improving the Scheme processes, and there is an on-going campaign to reduce costs where possible.

### **5.3.2 Unforeseen circumstances**

There are from time to time, events outside the control of the Scheme or its Members that can lead to increased complaint numbers and costs. Recent examples include the Christchurch earthquake and the *consumer.powerswitch* campaign -

supported by the Ministry of Consumer Affairs, Consumer NZ, and the Electricity Authority. Whether the Government should provide some form of subvention to the Scheme in such circumstances, is a subject that the Board may wish to discuss with Members and the Government.

## 6. FAIRNESS

### **Principle**

THE SCHEME PRODUCES DECISIONS WHICH ARE FAIR AND SEEN TO BE FAIR BY OBSERVING THE PRINCIPLES OF PROCEDURAL FAIRNESS, BY MAKING DECISIONS ON THE INFORMATION BEFORE IT AND BY HAVING SPECIFIC CRITERIA UPON WHICH ITS DECISIONS ARE BASED.

### **Purpose**

To ensure that the decisions *and procedures* of the scheme are fair and are seen to be fair.

### **6.1 Provision of Information to the Decision-Maker**

In addition to providing the Commissioner with information relating to complaints, it would also be useful if Members, as a matter of course, provided timely information about administrative and policy matters that can be relevant to disputes, such as system agreements between line companies and retailers, etc. This would save time for both Members and EGCC staff when relevant complaints arise.

## 7. ACCOUNTABILITY

### Principle

THE SCHEME PUBLICLY ACCOUNTS FOR ITS OPERATIONS BY PUBLISHING ITS DETERMINATIONS AND INFORMATION ABOUT COMPLAINTS AND HIGHLIGHTING ANY SYSTEMIC INDUSTRY PROBLEMS.

### Purpose

To ensure public confidence in the scheme and allow assessment and improvement of its performance and that of scheme members.

### 7.1 Determinations

In its review of the Industry Principles, ANZOA suggested the amendment of this clause so that it would read:

The scheme regularly provides written reports of determinations to scheme members, *the public*, and any interested bodies for the purposes of:

- a. educating scheme members and consumers; and
- b. demonstrating consistency and fairness in decision-making.

The Achievement Standards state:

5.2.2 Summary reports - The scheme will include on its website summaries of all determinations for the purpose of:

- educating members and consumers; and
- demonstrating consistency and fairness in decision-making.

In the context of this Scheme, I interpret 'determinations' to include the Commissioner's Recommendations and Binding Decisions.

Currently, the EGCC publishes Case Notes on its website. To make this aspect of accountability to the public clear, it is **recommended** that clause B.43 of the Scheme Document be amended to read:

B.43 The Commissioner must issue a copy of the determination to:

- B.43.1 the Complainant; and
- B.43.2 any Scheme Member against which the binding decision is made;
- B.43.3 any Scheme Member interested in the Complaint; and
- B.43.4 make an anonymised copy publicly available.

In circumstances where even anonymising a determination would not prevent the identification of a Member or a complainant, it is **recommended** that the Commissioner be given the authority to publish only summary, non-identifying information about that determination.

## 7.2 Transparency

See comments below in 'Reporting'.

## 7.3 Reporting

In 2010 ANZOA reviewed the Industry Benchmarks and amended Key Practice 4.3. to read:

The scheme publishes a detailed and informative annual report containing specific statistical and other data about the performance of the scheme, including, (*inter alia*):

- h. the names of those scheme members which do not meet their obligations as members of the scheme;<sup>4</sup>

In my view, however, the requirement should go further, to enable the reporting of the names of Members against statistical reporting of complaint numbers and outcomes in the Scheme Annual Report.

As I reported in my 2008 Review of Complaint Handling Processes for the then Scheme:

- 'In order for consumers to obtain some impression of how individual members perform within the Scheme, members' names should be published against statistics in the Annual Report and Website. This would also provide valuable comparative information to members about competitors' performance, and contribute to improving their performance.'

Reporting names in such a manner should be welcomed in a competitive industry and, as is evident from Appendix C, is now practiced by most schemes. It is **recommended** that the EGCC Scheme Document be amended to require the publication of Member names against complaint statistics in the Annual Report.

There is frequently discussion about applying a qualifier in these circumstances, such as a per customer, turnover, or connection denominator. In the EGCC case this could be on a per Installation Control Point (ICP) basis, but is that a relevant measure for a line company? If per ICP was used, how is the number ascertained, averaged over a year or at a fixed date? In Australia, the Energy and Water Ombudsman (NSW) categorises complaints by company's customers in broad bands: Over a million customers; 500,000 – 1 million customers; 100,000 to 500,000 customers; and under 100,000 customers. The Energy and Water Ombudsman (Victoria) similarly has bandwidths of 500,001 – 750,000; 250,001 – 500,000; and less than 250,000 customers.

Currently the Board is required to '...report annually on all breaches of the Scheme by all Scheme Members to the Minister.' (E.16.16 of Scheme Document) This seems

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<sup>4</sup> Examples of where a Scheme Member does not meet its obligations under the scheme will include where it does not provide information as and when requested, or where it does not comply with a determination made under the scheme.



to be overly onerous, and it is **recommended** that it, and the obligation on the Commissioner (B.52.10) be changed; for the Board to ‘...report annually on all *material or persistent* breaches of the Scheme by all Scheme Members to the Minister.’; and for the Commissioner to ‘ identifying and reporting to the Board on *material or persistent* breaches of the Scheme by Scheme Members.’

Consequently, it is also **recommended** that 6.2.3 of the Achievement Standards be similarly amended.

### ***7.3.1 Member compliance reporting***

Members are required by the Scheme Document (C.8.10) to monitor compliance with the Scheme and report annually on their compliance to the Board by way of a 13 page detailed compliance questionnaire. This can be a very constructive process for Members, and assists them in checking that compliance measures are working. To avoid this becoming an onerous, and not necessarily very productive process over time, it is **recommended** that the Commissioner, in consultation with the Member, can approve the suspension of this requirement, and that the Scheme Document be amended accordingly. In these circumstances it is **recommended** that the Commissioner undertakes audits of the Member’s website, and random audits of materials for compliance.

## 8. EFFICIENCY

### Principle

THE SCHEME OPERATES EFFICIENTLY BY KEEPING TRACK OF COMPLAINTS, ENSURING COMPLAINTS ARE DEALT WITH BY THE APPROPRIATE PROCESS OR FORUM AND REGULARLY REVIEWING ITS PERFORMANCE.

### Purpose

To give customers and scheme members confidence in the scheme and to ensure the scheme provides value for its funding.

### 8.1 Appropriate Process or Forum

#### 8.1.1 Acknowledgement of complaint

The Scheme's Code of Conduct (C.8.1) requires Scheme Members to:

- 'acknowledge the Complaint in writing as soon as possible but in any event no later than two Working Days after receipt'

To accommodate situations where the matter can be quickly resolved, e.g. within that time period, the clause should reflect this. In addition, as the vast majority of complaints are oral, the Code should also reflect this. It is **recommended** that C.8.1 should be amended to read:

- 'if they are the Scheme Member contracting with the Consumer, and the Complaint is in writing, acknowledge the Complaint in writing as soon as possible but in any event no later than two Working Days after receipt; and if the Complaint is oral and the complainant agrees, acknowledge the Complaint over the phone and record the fact. If the Scheme Member considers the matter can be resolved within five Working Days of receipt of the Complaint, there is no need for the acknowledgement; but if the five Working Days cannot be achieved, the Scheme Member must contact the complainant and inform them of that fact; and'

#### 8.1.2 Referral to a higher level:

One of the Commissioner's principal roles is to ...'facilitate the resolution of Complaints in accordance with the Scheme'. However the Scheme constrains her from considering complaints before the complaint has reached deadlock, i.e. in most cases for 20 days. There are occasions when a complainant contacts the EGCC and it is evident that the complaint is not progressing well with the Member. In such circumstances it can be helpful to both parties if the matter is escalated to a higher level within the Member company. While this already happens in some instances, there is no specific power to enable the Commissioner to follow this course of action.

In Victoria, the Energy and Water Ombudsman can do this:

- Where a customer has contacted EWOV after one unsuccessful contact with their company — or where the customer has had two or more unsuccessful contacts with their company, but chooses to give the company a final opportunity for direct resolution rather than move to an EWOV investigation — we provide an assisted referral. A higher-level staff member within the company must contact the customer by close of business the following business day. If the customer can't be contacted by phone, the company has extra time to send a letter.

The New South Wales Energy and Water Ombudsman has a similar referral to a higher level (RHL) process.

In order to further the EGCC's role and assist early resolution of complaints it is **recommended** that if the Commissioner considers that a complaint can be resolved by reference to a higher level within the Member company, she be given the power to do so.

### ***8.1.3 Discretion not to investigate***

There are occasions when a complaint may be made that is incapable of resolution, for reasons other than it being trivial, vexatious, not made in good faith, or the intransigence of the Scheme Member. These could include, for example, unrealistic expectations of the complainant - even though the Member may have not made a reasonable offer in settlement; where the mental state of the complainant precludes reaching a reasonable conclusion; or the facts as put forward by both of the parties are incapable of verification.

The Scheme Document only provides that:

- B.9 The Commissioner cannot consider, *inter alia*:
- B.9.4 a Complaint if it appears to the Commissioner that on the basis of the facts presented by the Complainant the relevant Scheme Member has made a reasonable offer in settlement of the Complaint; or
- B.9.5 a Complaint where the Commissioner decides it is more appropriate that the Complaint be considered by another person or under a statutory process, provided that the Commissioner should in such cases refer the Complainant to that other person; or
- B.9.6 a Complaint that is trivial or vexatious or that is not made in good faith;

None of these would be relevant in the circumstances. Other schemes provide a generic discretion.

#### ***8.1.3.1 Discretionary powers that exist in other schemes***

##### **Electricity and Water Ombudsman (New South Wales and Victoria):**

- The Ombudsman has the discretionary power to decline to investigate a

complaint if in the opinion of the Ombudsman:

- .....
- (c) an investigation, or further investigation, is not warranted;

**Telecommunications Industry Ombudsman (Australia):**

- an investigation, or further investigation, is not warranted, including where:
  - there is little likelihood that sufficient evidence will be available for the TIO to make a judgment about the merits of either party's case

**Financial Ombudsman Service (UK):**

The *Ombudsman* may dismiss a *complaint* without considering its merits if he considers that:

.....

(3) the *complaint* clearly does not have any reasonable prospect of success;

**Commonwealth Ombudsman (Australia):**

6(1) Where a complaint has been made to the Ombudsman with respect to action taken by a Department or by a prescribed authority, the Ombudsman may, in his or her discretion, decide not to investigate the action or, if he or she has commenced to investigate the action, decide not to investigate the action further:

..... (b) if, in the opinion of the Ombudsman:

.....

(iii) an investigation, or further investigation, of the action is not warranted having regard to all the circumstances.

### **8.1.4 Comment**

In order to improve the efficiency of the Scheme, and avoid wasting the time and resources of all parties, it is **recommended** that the Commissioner be given a discretionary power not to investigate, or continue to investigate, along the lines of the Commonwealth Ombudsman in Australia, that is:

Where a complaint has been made the Commissioner may, in his or her discretion, decide not to investigate the complaint or, if he or she has commenced to investigate the complaint, decide not to investigate further if, in the opinion of the Commissioner, an investigation, or further investigation, of the complaint is not warranted having regard to all the circumstances.

Where the Commissioner decides to exercise the discretion, the Commissioner will give the complainant an opportunity to make representations before deciding. Where the Commissioner then decides not to investigate, or continue to investigate, she will give reasons to the complainant for that decision and inform the Member.

## **8.2 Tracking of Complaints**

### ***8.2.1 Extensions of time***

There is a very bureaucratic process stipulated in the Member Guide (9.6) for Members requesting extra time to resolve a complaint which can involve a lot of unnecessary time for the Member and the EGCC.

When a customer has complained directly to the company, without referral from the EGCC, it is **recommended** that the Member be empowered to negotiate the extension directly with the complainant and, if the complainant agrees, records this. There would be no need to inform the EGCC. If the complainant does not agree, then the current process set out in the Member Guide would be followed.

Where a customer has been referred to the Member by the EGCC, it is **recommended** that the Member be empowered to negotiate the extension directly with the complainant and, if the complainant agrees, records this and informs the EGCC. If the complainant does not agree, then, as above, the current process set out in the Member Guide would be followed.

These changes would still be consistent with the Achievement Standards.

## **8.3 Monitoring**

An issue that is causing some concern in a number of schemes, is the failure of a member to implement undertakings made in the resolution of a complaint with a customer. While it is not apparent that this has become an issue with the EGCC Scheme, it is, nevertheless, something worth watching.

## 9. EFFECTIVENESS

### Principle

THE SCHEME IS EFFECTIVE BY HAVING APPROPRIATE AND COMPREHENSIVE TERMS OF REFERENCE AND PERIODIC INDEPENDENT REVIEWS OF ITS PERFORMANCE.

### Purpose

To promote customer confidence in the scheme and ensure that the scheme fulfils its role.

### 9.1 Coverage

The Commissioner's Terms of Reference as set out in Section B of the Scheme Document, are one of the most comprehensive I have seen for an external complaint handling body. Elsewhere in this Report there are some recommendations for changes in the provisions to improve the Scheme.

There are also, of course, minor amendments that may clarify provisions or aid interpretation. For example, the current wording of B.6.3 says:

- 'The commissioner may only consider a complaint if the Commissioner is satisfied that...the Complainant makes the Complaint to the Commissioner within two months of being informed by the Scheme Member concerned that Deadlock has been reached.'

Apparently, Members have challenged deadlock on the basis they have not informed the complainant about deadlock and therefore the Commissioner does not have jurisdiction. Whilst this would be a disingenuous response, it would be advisable to address this loophole.

Staff have identified a number of these minor matters, and it is **recommended** that the Board consider appropriate amendments to the Scheme Document to resolve any inconsistencies or lack of clarity.

#### ***9.1.1 Information management***

In relation to B.27.3 a question was raised about the return of information supplied to the Commissioner by any party to the Complaint. It would appear to me that what is required is the return of any original documents, whilst allowing the Commissioner to retain hard or electronic copies.

As a matter of good policy and administrative practice, it is **recommended** that an archive policy and document disposal schedule be developed and implemented.

#### ***9.1.2 Financial limits***

The current financial limits are consistent with the equivalent limits in Australia . However, the issue of the financial limits frequently generates debate about what is

appropriate and what is not. A better way for establishing the limits is to tie them to an accepted price indicator such as the Consumer Price Index (CPI).

It is **recommended** that in the first instance, the amount of \$20,000.00 set in April 2005 should be adjusted up to the current date – based on CPI increases; and then be automatically adjusted according to the CPI every three years thereafter, on the applicable date.

## 9.2 Professionalism

Clause C.7.7 of the Scheme Document requires Scheme Members to:

- provide the Commissioner with information regarding their in-house complaint handling process and a nominated point of contact for Complaints.

While some Members regularly advise the EGCC of any changes, it is **recommended** that Members be requested to provide the EGCC with information on any changes in their in-house complaints handling process, including relevant changes in team membership, and that they also provide information on changes in any terms and conditions relating to their services. This would assist both the Member and the EGCC improve efficiency in handling complaints.

## 9.3 Systemic Problems

Clause 15.5, *Systemic industry problems*, of the EGCC Member Guide says:

- A systemic industry problem may be (but is not limited to) an issue, which affects (or has the potential to affect) a number of people. It is something which has the potential to affect a group or class of people.
- By their nature, systemic industry problems have the ability to adversely affect numbers of people, sometimes on an ongoing basis. The problem may result (or have resulted) in multiple complaints to members or the Commissioner.
- The Commissioner will consider whether the problem is specific to a member or industry or whether it is applicable across both the electricity and gas industries. Reporting potential problems or giving feedback to members as soon as possible allows the member to provide a systemic solution or opportunity to resolve the problem before it becomes widespread.
- The Scheme document requires the Commissioner to have mechanisms and procedures for referring systemic industry problems to members and to the Minister as they become apparent from complaints (B.52.12)
- Where the Commissioner identifies a systemic industry problem, the member(s) and the Board will be notified, as appropriate.
- If a systemic industry problem is referred to the Board, the Board will take appropriate action (E.16.12) This may include a report to the Minister, referral to another agency, the Board keeping a watching brief on the

problem or further discussions with the member(s).

- The annual report will contain a report on systemic industry problems identified from complaints (B.52.14 (g)).

The Guide and Scheme Document, however, do not canvass the value of the Commissioner investigating a systemic issue.

Systemic issues may be raised by individual complaints and show issues of procedure, policy or law, which have the potential to affect a wider number of people than just the complainant. They are distinguished from complaints where a simple mistake has occurred, or there has been a one-off misunderstanding in applying an organization's rules. There may be systemic issues within a Member or within the industry. Currently the Member Guide refers to 'Systemic *industry* problems' only and it is **recommended** that the word 'industry' be deleted.

Systemics may be relatively small matters, requiring simple changes to administrative procedures, or they may address significant issues about policy, administration, or rules. The aim of pursuing systemics is to prevent detriment to the clients of an organization (and to the organization itself) and to reduce future complaints by addressing underlying defective processes.

For these reasons, it is **recommended** that the Commissioner be given a discretionary power, after consultation with the relevant Member or Members affected by the systemic issue/s, to investigate the problem and make recommendations for its solution. The fees for investigation of systemic issues should be on the same basis as for complaints.

The current wording of B.52.12 in the Scheme Document, '...having mechanisms and procedures for referring to Scheme Members and to the Minister systemic industry problems that become apparent from Complaints;' is unnecessarily limiting. It precludes the EGCC considering systemic issues brought to her attention by, for example, a regulator, Member of Parliament, media report, etc. This is clearly not in the interests of the industry or consumers, and it is **recommended** that the relevant wording of the Scheme Document be changed to:

- The Commissioner is responsible for:
- 'B.52.12 having mechanisms and procedures for referring to Scheme Members and to the Minister, and for investigating where appropriate, systemic problems of which the Commissioner becomes aware from Complaints or other sources; '

Consequently, Clauses 3.5.2 and 9.4.2 of the Achievement Standards should also be similarly amended.

## 9.4 Scheme Performance

The EGCC Board must, *inter alia*:

- E.16.7 monitor the Scheme (generally and by way of the review procedure



set out in clause E.57); and

E.16.8 if it considers that amendments are required, propose amendments to the Scheme in accordance with clauses E.64 to E.66; and

E.16.9 investigate complaints about the operation of the Scheme; and

E.16.10 review the operation and performance of the Scheme; and

E.16.11 take actions to improve the performance of the Scheme where reports suggest that is necessary;

Additionally:

- E.57 The Board must annually review the Scheme's performance including against the Achievement Standards, the performance standards set out in clause E.16.2 and any particular issues raised by the Minister. The annual review must include seeking feedback from stakeholders about the performance of the Scheme. The Board must include the results of the review in its annual report.

These responsibilities are more extensive than found in many schemes and are to be applauded, as they ensure continuous improvement.

Under clause E.16.2 of the Scheme Document, the Board must:

- set performance standards, sufficient to allow external parties to readily determine if the Scheme is providing an effective complaints resolution service, against which the performance of the Scheme will be measured. The performance standards may include:
  - (a) Total time to close cases; and
  - (b) Cost per case; and
  - (c) Complainant satisfaction; and
  - (d) Scheme Member satisfaction; and
  - (e) External review of cases; and
  - (f) Awareness in the community and accessibility; and
  - (g) Reporting - compliance reporting complete, accurate and on time.

The standards set by the Board for 2010-11 and the EGCC performance are set out in Table 2 (below).

**Table 2 – Performance against set standards for 2010-11**

Standard	Performance
75% deadlocked files closed within 90 working days (total time to close)	Met
Independent review of sample cases assesses handling of complaints as meeting requirements of natural justice and good complaint handling standards	Met

Cost per case: The proportion of total budget to total cases \$549	Met
Survey of complainants shows 95% overall satisfaction with complaint handling process	Met
All compliance reporting to regulators is complete, accurate, delivered on time, and cost effective	In progress
Internal time to close files within [to be measured in 2010-11 year to set up benchmark for following years] working days	Benchmark set, but standard to be discontinued – see discussion in section 6.
Survey of community groups establishes baseline for monitoring accessibility	Benchmark set
Survey of members shows [set benchmark in 2010-11]% satisfaction with scheme	Benchmark set
10% of unprompted and 30% of prompted respondents have heard about office of EGC Commissioner	Not met

The Member respondents to the Survey either considered that the performance measure were adequate or did not have a view.

It is difficult to make comparison with other schemes because their methods of operation vary so much from scheme to scheme. The EGCC Scheme measures are, however, more extensive than most other’s published performance data. It is my view that most of the adopted measures are a good means of assessing performance. I have, however, made some qualifying comments elsewhere in this report about measuring awareness in the community. Whilst I agree that setting targets for total time to close cases within 90 days is an appropriate measure, I believe that an additional measure of total cases closed within 28 or 30 days would assist in assessing the Schemes performance in obtaining early resolution. This time period is also used by Australian energy schemes in New South Wales, Victoria and Queensland.

## 9.5 Internal Complaints Mechanisms

An organization’s complaint handling system has a multiplicity of purposes, which can deliver benefits for all the participants. Such a system provides an opportunity for the consumers of an organisation’s services to have their voice heard on those

occasions when:

- the organisation fails to deliver its services or goods;
- they are delivered in a manner that is unacceptable to the consumer;
- the organisation fails to meet its own standards of service, or those considered generally acceptable for the industry in which the organisation operates;
- the organisation fails to meet an undertaking; or
- the organisation acts in a manner that the consumer considers to be injurious to his or her interests or self.

Secondly, a complaint handling system provides a unique opportunity for an organisation to find out what its consumers think of it, both good and bad, a window into the minds of its consumers and avoids their tarnishing the reputation of an organisation by voicing their complaints in the wider community. An organisation will fail to discover what its public thinks is wrong with it until there is a critical mass that compels attention.

Thirdly, a complaint handling system is an essential ingredient of a client service quality program. Research has shown that effectively handling a complaint will lead to greater levels of loyalty and customer satisfaction than if there had been no problem at all.<sup>5</sup>

Finally, effective complaint handling is a major component of an accountability system. It is a declaration by an organisation that it has sufficient confidence in itself to conduct its business in the public gaze; invite complaints, deal with them properly, and report publicly on the outcomes.

It is evident that an external complaint handling schemes' success will depend to a degree on the effectiveness of the internal complaint handling processes established by the scheme's members.

To enable Members to develop or assess the adequacy of their internal complaint handling processes, it is **recommended** that the Australian Standard, AS/ISO **10002:2006** – *Guidelines for complaints handling in organizations*, be promoted to Members as a template.

Undertaking training for Members on a cost recovery basis is also a good means for building relationships with Members and for developing respect for the professionalism of Commission staff.

It is also pointless for the Scheme to refer complainants back to members if they are unable to have faith in that member's processes. The Scheme provides [B.52.16(d)] for the Commissioner to make 'observations to Scheme Members about the effectiveness of the Scheme Member's internal complaints process. To complement

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<sup>5</sup> TARP. American Express/SOCAP study of complaint handling in Australia. *op.cit.*

this, however, the Scheme should give the Commissioner the power to audit members' internal complaint handling schemes.

Consequently, it is **recommended** that the Scheme Document be amended so that if the Commissioner becomes concerned about the performance of a Member's complaint handling processes or performance, the Commissioner may undertake an audit of the Members processes and provide advice to the Member on necessary remedial action.

## 9.6 Compliance

### 9.6.1 Defaulting Scheme Members

It is crucial that all external complaint handling schemes have mechanisms for ensuring compliance with its rules, including its determinations.

The Scheme Document defines a defaulting Member thus:

- F.7 A Scheme Member is in default if the Scheme Member fails to:
- F.7.1 comply with this Scheme; or
- F.7.2 pay any fee or levy required to be paid under the Scheme within 60 Working Days of a demand for the amount owing; or
- F.7.3 comply with any settlement or recommendation under the Scheme previously accepted by the Scheme Member; or
- F.7.4 comply with any binding decision made by the Commissioner.

Apart from stipulating that the Member's voting rights are suspended, the Scheme documents are silent on what happens next. That is largely because the powers for dealing with a Member who fails to comply with the rules of the Scheme are dealt with in the *Electricity Industry Act 2010*<sup>6</sup>, which did not come into force until 1 November 2010, nearly 7 months after the commencement of the present Scheme. As an aid to Members and consumers alike, it is **recommended** that the Scheme documents be updated to provide information on the processes for dealing with defaulting Members.

## 9.7 Independent Review

E.58.1 of the Scheme Document and clause 9.3 of the Achievement Standards specify the requirements for an 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 .....

With the requirement for the Board to undertake an annual in-house review of the

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<sup>6</sup> ss. 97 & 98 of the *Electricity Industry Act 2010*

scheme's performance – that includes stakeholder feedback – there is a good deal of continuous assessment of the Scheme, and it is **suggested** that consideration be given to changing the three year intervals to five year intervals.

## 10. SPECIFIC QUESTIONS TO BE ADDRESSED

### 10.1 Purpose:

- is the Scheme meeting its purpose as set out in the Scheme documents?

*The purpose of the Scheme is to provide a complaints resolution scheme for the electricity and gas sectors to investigate and facilitate the satisfaction, settlement or withdrawal of Complaints. (Part A of the Scheme Document)*

Scheme Members clearly believe it is meeting its purpose, as reflected in responses to the survey:

Survey question	Response	%
<b>Q8</b> Do you consider that the Scheme is meeting its purpose as set out in the Scheme documents?	Yes	<b>92%</b>
	No	<b>4%</b>
	Don't know/don't have a view	<b>4%</b>

From all the evidence, including the number of consumers using the scheme, Complainant and Member responses to the survey, external views, and conciliated outcomes, the Scheme is clearly meeting its purpose.

### 10.2 Performance:

- is the Scheme continuing to meet the requirements of the Minister of Consumer Affairs for an approved scheme (ie. the **Achievement Standards**)?

No evidence to the contrary was identified, and Member respondents considered that it was:

Survey question	Yes	No	Don't know/Don't have a view
<b>Q10</b> Do you consider that the Scheme is continuing to meet the requirements of the Minister of Consumer Affairs for an approved scheme (ie. the <b>Achievement Standards</b> )?	<b>84%</b>	<b>4%</b>	<b>12%</b>

Neither the Member Survey nor the Complainant Survey identified any fundamental problems with the Scheme performance, although one Member respondent raised an issue of jurisdiction.

- are the performance standards set by the Board (in accordance with clause E.16.2 of the Scheme document) adequate?

See under 9. Effectiveness; *Scheme Performance*

### 10.3 Achievement Standards:

- are any of the Achievement Standards impeding the evolution of the Scheme, or should any be amended to enhance achievement of the Benchmarks for Industry-Based Customer Dispute Resolution Schemes (see Clause 2.2 of the Member Guide)?

Members either considered that the Achievement Standards were not impeding the evolution of the Scheme or did not have a view.

Survey question	Yes	No	Don't know/Don't have a view
<b>Q11</b> Do you consider that any of the <b>Achievement Standards</b> are impeding the evolution of the Scheme ?	4%	64%	32%
<b>Q12</b> Do you consider that any of the <b>Achievement Standards</b> should be amended to enhance achievement of the Benchmarks for Industry-Based Customer Dispute Resolution Schemes (see Clause 2.2 of the Member Guide)?	4%	36%	60%

In the context of developments in complaint handling internationally, it is **recommended** that the definition of complaint in the International Standard 10002 - *Guidelines for complaints handling in organizations* –replace the current definition in the Achievement Standards. (See under 5. Independence)

Currently the requirement for the Board to report annually on **all** breaches of the Scheme, however trivial, seems onerous and it is **recommended** that this be rectified in the Scheme Document and amendment of clause 6.2.3 of the Achievement Standards. (See under 7. Accountability)

I also consider that the current wording relating to referral of systemic problems in both the Scheme Document (B.52.12) and the Achievement Standards (Clauses 3.5.2 and 9.4.2) is unnecessarily limiting, and recommend their amendment. (See under 9. Effectiveness; *Systemic Problems*)

It is also suggested that consideration be given to the interval for external reviews of the Scheme (Scheme Document E.58.1 and clause 9.3 of the Achievement Standards) being extended from three to five years. (See under 9. Effectiveness; *Compliance*)

There appear to be some minor inconsistencies between the Achievement Standards and the Electricity Industry Act (which was enacted after the Achievement Standards were established. Some of the detail in the Achievement Standards could

also be reduced, and it is **recommended** that they be reviewed to remove inconsistencies and to clarify and simplify the requirements.

#### 10.4 The Code of Conduct for Complaint Handling:

- does the Code set out appropriate requirements for Scheme Members' in-house complaint processes?

Survey respondents clearly felt that the Code was appropriate.

Survey question	Yes	No	Don't know/Don't have a view
<b>Q13</b> Do you consider that the <b>Code of Conduct</b> for complaint handling (Part C in the Scheme document) sets out appropriate requirements for Scheme Members' in-house complaints processes?	80%	16%	4%

There were a couple of views expressed about whether a 'concern' should be interpreted as a complaint; and about the requirement of C.7.6 for informing complainants of the Commissioner regardless of whether the Member considers the complaint to be frivolous or vexatious. These matters have been considered many times in various jurisdictions and the overwhelming view has been, that an expression of concern should, indeed, denote a complaint.

It would be helpful if clause C.8.1 of the Code was amended to accommodate oral acknowledgements of complaints and to remove the requirement for acknowledgement for complaints that can be resolved expeditiously. (See under 8. Efficiency; *Appropriate Process or Forum*)

Elsewhere in this Report, it is recommended that the Australian Standard, AS/ISO **10002:2006** – *Guidelines for complaints handling in organizations*, be promoted to Members as a template. (See under 9. Effectiveness; *Internal Complaints Mechanisms*)

It should be remembered that the Code of Conduct is the product of compiling previous Codes and as such, is a bit awkward, and sometimes confusing. For example, one respondent suggested that including concise definitions of electricity, gas and land complaints would be a good idea. The definition of 'consumer' is also apparently at odds with that in the *Electricity Industry Act 2010*, and 'complainant' should, perhaps, be used where currently 'consumer' is (e.g. C.9 et al.). It is **recommended** that the Code of Conduct be reviewed with the aim of rationalizing and simplifying the document.

There appear to be occasions when a Member fails to recognize a complaint when contacted by a Complainant, and passes them on to a relevant area of the organization, without informing the Complainant of the existence of a complaint handling process or of the EGCC. It is **recommended** that Members continue to pay attention to the requirements of clause C.7.4 of the Code of Conduct and, if

necessary seek the assistance of the Commissioner.

- are there any parts of the previous consumer codes (electricity and gas) that should be added to the Code of Conduct for Complaint Handling?

Survey question	Yes	No	Don't know/Don't have a view
<b>Q14</b> Do you consider that any parts of the previous consumer codes (electricity, gas or land) should be added to the <b>Code of Conduct</b> ?	4%	64%	36%

No one put forward any suggestions for adding parts of the previous consumer codes (electricity and gas).

## 10.5 Governance of the Scheme:

- is the current legal structure appropriate or should it become an incorporated body of some form?
- 

### 10.5.1 *The EGCC's legal basis?*

The Electricity and Gas Complaints Commissioner Scheme was established by a Deed dated 7 August 2001 by certain Retailers and Lines Companies and came into effect on 7 August 2001.

The Scheme was approved as a complaints resolution system under the Electricity Act 1992 and the Gas Act 1992 and is the approved scheme under the Electricity Industry Act 2010.

This document sets out the terms of the Scheme that all participating Scheme Members have agreed to abide by following consultation and adoption of amendments to the Scheme in accordance with the requirements of the Deed and will take effect on 1 April 2011 (unless the Minister decides otherwise).

Establishment by Deed is an unusual method, and is not used anywhere else for an external complaint handling scheme, to my knowledge.

### 10.5.2 *How other industry schemes are established*

With the exception of the Insurance and Savings Ombudsman (NZ), which is an incorporated society, all other industry external complaint handling schemes in New Zealand, Australia, Canada, South Africa, and the United Kingdom, are established as not-for-profit companies limited by guarantee. These are set out in Appendix D.



### 10.5.3 Comment

I believe that the adage of ‘ if it ain’t broke, don’t fix it’ is generally pretty good advice. Certainly this seems to be reflected in Member survey responses.

Survey question	Yes	No	Don’t know/Don’t have a view
<b>Q17</b> Do you consider that the current legal structure – that is a Scheme established by a Deed - is appropriate or should it become an incorporated body of some form?	68%	0%	32%

It appears that the EGCC Scheme is able to undertake all its functions and responsibilities under the current Deed. No evidence was put forward of problems resulting from this structure, and there is no obvious demand for change. For taxation purposes the Inland Revenue has determined that the EGCC is an unincorporated association.

The one concern I could identify is the exposure of the Commissioner to suit, even though indemnified under the Scheme, which is less than desirable.

This may be a matter that is left on the shelf for the time being – especially as the Scheme has only recently been revised. If it is determined that the legal structure should change in the future, then it is **recommended** that of a not-for-profit company limited by guarantee would be the most appropriate for the Scheme’s purpose. It could provide the option for a more commonly used structure and accountability, and familiar corporate rules.

- is the current governance structure and the manner in which the Board carries out its functions appropriate and effective?

Survey question	Yes	No	Don’t know/Don’t have a view
<b>Q16</b> Do you consider that the current governance structure of the Scheme and the manner in which the Board carries out its functions are appropriate and effective?	72%	4%	24%

This is dealt with (under 5. Independence; *Overseeing Entity*) above. One Member did not agree with the current make up of, and distribution of power within the Board of the Scheme. Essentially they considered that there should be greater representation of industry. They suggested: additional retailer, lines company, and consumer representatives, making total of 8 members (Chair; 4 industry; 3 consumer); require that Scheme Document changes have to be approved by 7 out of

8 members; and retain simple majority approval for ordinary matters, with Chair having a determinative as well as deliberative vote as currently. In my view this would be inimical to a fundamental principle of an independent external complaints handling scheme.

### 10.6 Stakeholder management:

- do the current terms of reference (Part B of the Scheme document) provide the appropriate framework for managing relationships with stakeholders?

Survey question	Yes	No	Don't know/Don't have a view
<b>Q18</b> Do you consider that the Commissioner's current terms of reference (Part B of the Scheme document) provide the appropriate framework for managing relationships with stakeholders?	88%	4%	8%

Fundamentally, the answer to this is affirmative – the Part B provides a comprehensive framework. There are always matters that can be tweaked to improve them, and aspects of this are dealt with under 9. Effectiveness above. There is doubt about the value of the provisions dealing with test cases, and this is dealt with in 11. Other Issues below.

### 10.7 Commissioner's jurisdiction:

- are the exclusions from jurisdiction (clause B.9 of the Scheme document) still appropriate?

Survey question	Yes	No	Don't know/Don't have a view
<b>Q19</b> Do you consider that exclusions from the Commissioner's jurisdiction (clause B.9 of the Scheme document) are still appropriate?	72.73%	4.55%	22.72%

A suggestion was made that it would be useful to have guidelines for matters considered to be trivial, vexatious or not made in good faith. In my view, this is extremely difficult to do, because of the various permutations and combinations of a particular context. It is also a path that no other scheme, of which I am aware, has travelled.

Another suggestion was made that a further exclusion should be added to the list in B.9.8 for complaints relating to environmental effects, at least in circumstances where a lines company is not exercising or failing to exercise rights, powers or obligations under relevant legislation or an agreement with the land owner or occupier. This related to a case where the respondent contested the Commissioner's

jurisdiction, and was advised to refer the matter to this Review. Without going into the particulars of the case, I was able to reassure myself that it was a complaint that the two major energy ombudsmen in Australia would also have ruled within their jurisdiction.

In terms of general principle, I believe it is appropriate for these kinds of complaints to be covered by the Scheme. While there may be an alternative forum for some environmental effects (such as noise), the Scheme provides an accessible, specialist forum within the energy sector to deal with issues arising between landowners or land occupiers and members of the Scheme.

A further suggestion was made, that in relation to B.9.4 – it would be more equitable and more efficient if assessment of a fair and reasonable offer was based on information presented by both Complainant and Member; alternatively, the complainant be questioned on offers that have been made. Whilst appreciating the equity issue involved in the first part of this suggestion, this matter is addressed before the complaint reaches an investigation stage. In the normal course of events, where a Complainant has been to the Member and then comes to the EGCC, the Conciliator would question the Complainant on offers that have been made, as part of assessing the complaint status.

- is \$20,000 still the appropriate limit, given the increased jurisdiction of the Disputes Tribunal (\$15,000 or \$20,000 with agreement of the parties – when the Scheme limit was set at \$20,000, the Disputes Tribunal limit was \$7,500 or \$12,000 with the agreement of the parties)?

Member responses were as one on this question.

Survey question	Yes	No	Don't know/Don't have a view
<b>Q20</b> Do you consider that \$20,000 is still the appropriate limit, given the increased financial jurisdiction of the Disputes Tribunal ?	<b>100%</b>	<b>0%</b>	<b>0%</b>

This is dealt with under 9. Effectiveness; *Coverage* above.

## 11. OTHER ISSUES

### 11.1 Test cases

Currently, the Commissioner's terms of Reference provide for the pursuit of a 'test case' by a Member, prior to the making of a binding decision (clauses B.46 – B.51). This is not a provision that applies in comparable schemes internationally. It is my understanding that decisions of the Commissioner under the Scheme, are probably subject to judicial review. If that is the case, then the 'Test cases' provision is superfluous. Consequently, it is **recommended** that formal legal advice be sought on whether the Commissioner's decisions are subject to judicial review, and if so, that the clauses B.46 – B.51 be removed from the Scheme Document.

### 11.2 Credit issues

There are reports of customers contacting Members with bill payment issues who are referred straight on to the credit management area of the company. Whilst this can save the customer time finding the right people to talk to, the credit management people do not always inform the customer of the existence of a complaint handling process within the company, or the existence of the EGCC. It is **suggested** that this oversight should be brought to Members' attention.

### 11.3 Future external complaint handling arrangements

It is clear that the utilities market is rapidly developing into something that would be unrecognisable to any of us ten years ago. In particular, the means for delivering services and utilities will be vastly different in future. Any large company with networking and large scale billing capacity may well deliver anything from financial services through energy to telecommunications, video or audio on demand, and so on. After all, this is envisaged as what the future of the broadband internet will be all about.

As the Australian Productivity Commission intimated in its *Review of Australia's Consumer Policy Framework* in 2008, changes in markets and consumer needs will require periodic review of the nature and structure of external dispute resolution services.<sup>7</sup> There is no reason why the same principle wouldn't apply in New Zealand. It is evident to many, in all sectors, that the nature and structure of the market for services in New Zealand is going to change significantly. As previously indicated, the continued development of communication technologies together with sophisticated networking and billing systems will allow a wide variety of services to be offered by companies who previously have not been in that industry retail

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<sup>7</sup> Productivity Commission. *Review of Australia's Consumer Policy Framework – Final Report*.

Productivity Commission. Canberra, 2008.

market, making traditional industry sector boundaries no longer so visible. Under current external complaint handling arrangements, a single bundled bill in this new world would provide consumers with a considerable challenge about knowing who to turn to in the event of difficulty in resolving the problem with the biller.

It is **suggested** that a New Zealand Ombudsman for Services should be contemplated. Such a body would bring together all the existing schemes – financial services, telecommunications, and energy - under a national portal. Initially the system would ensure that consumers were directed to the most relevant existing scheme to handle their complaints, but ultimately it is envisaged that there would be a single industry funded organisation managing the scheme.

Such a scheme would have electronic lodgement and transmission of complaints, so that multiple issues across industries could be quickly transferred and returned to the case management desk.

Clearly there is a huge amount of detail that needs to be considered in the development of such a scheme, but it is **suggested** that preliminary discussion between the schemes might commence in order for it to become a reality in the near future.

As a first step towards dealing with this convergence, it is also **suggested** that the EGCC undertake discussions with those in the telecommunications and water sectors with a view to establishing a joint utilities external complaint handling scheme.

## APPENDIX A: MEMBER SURVEY RESPONSES

Total surveys sent: **53**; Returned (address problem): **3**; Responses: **25** or **47.17%**

Comparisons: EGCC Jan 2011 survey: **46.94%**; Industry: **49%** (Industry here and in some tables, refers to average of responses from similar surveys administered since 1995)

The following include survey results and summary of respondents' comments.

Survey question	Position	%
<b>Q1</b> Which of these best describes your current position  <i>Tick as many as apply</i>	CEO	<b>20%</b>
	Retail Manager	<b>4%</b>
	Network Manager	<b>4%</b>
	Senior complaint handler	<b>32%</b>
	Other (please describe)	<b>44%</b>

Survey question	Category	%
<b>Q2</b> What category fits your organization?	Electricity Retailer	<b>4%</b>
	Electricity Line Company	<b>68%</b>
	Electricity Retailer & Electricity Line Company	<b>4%</b>
	Gas Retailer	<b>0</b>
	Gas Line Company	<b>4%</b>
	Electricity & Gas Retailer	<b>16%</b>
	Nergy mission Company	<b>4%</b>

Survey question	Category	%
<b>Q3</b> What sort of contacts with the EGCC are reported to the CEO?  <i>Tick as many as apply</i>	Telephone enquiries	<b>4.35%</b>
	Written enquiries	<b>8.70%</b>
	Notice of deadlocked complaint	<b>39.13%</b>
	Notice of intended recommendation by Commissioner	<b>39.13%</b>
	Commissioner's Recommendation	<b>43.48%</b>
	Commissioner's Binding Decision	<b>52.17%</b>
	ALL contacts	<b>39.13%</b>

Survey question	Rating	%
<b>Q4</b> The EGCC's core role is to investigate and facilitate resolution of electricity and gas complaints. How would you rate EGCC's overall performance in this role?	Very good	<b>28%</b>
	Good	<b>56%</b>
	Fair	<b>8%</b>
	Poor	<b>4%</b>
	Very poor	<b>0</b>
	Not sure/Can't say	<b>4%</b>

<b>Q5</b> Do you think you are <b>adequately aware</b> of the Commissioner's....		
<b>Tick "Yes" or "No" for each of items (a) to (e)</b>	<b>Yes</b>	<b>No</b>
a. ....role and functions?.....	<b>100%</b>	<b>0</b>
b. ....powers?.....	<b>100%</b>	<b>0</b>
c. ....reporting obligations?.....	<b>96%</b>	<b>4%</b>
d. ....confidentiality/disclosure obligations?.....	<b>96%</b>	<b>4%</b>
e. ....fees and levies?.....	<b>96%</b>	<b>4%</b>

<b>Q6</b> On a scale of 1 to 5, with "1" meaning <i>very satisfied</i> , and "5" meaning <i>very dissatisfied</i> , for each of the following issues, place a tick in the one box which best describes how <b>satisfied</b> you have been.						
<b>Tick one box for each of items (a) to (e)</b>	Very satisfied	Satisfied	Neither satisfied nor dissatisfied	Dissatisfied	Very dissatisfied	Not applicable
<b>How satisfied or dissatisfied have you been with.....</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	
a. the general methods used to investigate/conciliate complaints.....	<b>12%</b>	<b>64%</b>	<b>12%</b>	<b>4%</b>	<b>0</b>	<b>8%</b>
b. the amount of information given to you about complaint handling.....	<b>16%</b>	<b>56%</b>	<b>20%</b>	<b>0</b>	<b>0</b>	<b>4%</b>

..						
c. the quality of the findings, correspondence and reports by the Commissioner.....	<b>28%</b>	<b>44%</b>	<b>12%</b>	<b>4%</b>	<b>4%</b>	<b>8%</b>
d. the degree to which due process has been followed by the Commissioner.....	<b>36%</b>	<b>48%</b>	<b>4%</b>	<b>4%</b>	<b>0</b>	<b>8%</b>
e. the benefit of the overall outcome.....	<b>12%</b>	<b>36%</b>	<b>28%</b>	<b>8%</b>	<b>3%</b>	<b>12%</b>

Survey question	Purpose	Survey %	Industry %
<b>Q7</b> What do you see as the main purpose of the EGCC?	To argue a complainant's case?	<b>4%</b>	<b>16%</b>
	To independently assess a complainant's grievance?	<b>88%</b>	<b>87%</b>
	To explain to a complainant the position of the company about whom they have complained?	<b>4%</b>	<b>30%</b>
	To investigate consumers' complaints and find the truth?	<b>40%</b>	<b>58%</b>
	To conciliate/mediate/resolve differences between complainants and companies?	<b>96%</b>	<b>54%</b>
	To ensure actions of companies are reasonable and fair?	<b>52%</b>	<b>79%</b>
	To argue a company's case?	<b>0%</b>	<b>0%</b>
	Other ( <i>please give details</i> )	<b>16%</b>	<b>5%</b>
<b>Comments:</b>	<i>Current process flawed as companies settle even if their case strong because it's cheaper than going to deadlock and investigation. Funding should be changed to fixed per ICP</i>		



*Conciliate, mediate, resolve is what EGCC is supposed to do, but it seems to regard itself as the consumer champion*

*Also: independent party when communication or relationship between consumer & retailer has broken down; and, facilitation of complaint resolution.*

Survey	Response	%
<b>Q8</b> Do you consider that the Scheme is meeting its purpose as set out in the Scheme documents?	Yes	<b>92%</b>
	No	<b>4%</b>
	Don't know/don't have a view	<b>4%</b>

Survey	Rating	%
<b>Q9</b> How satisfied are you overall with the fairness and independence of EGCC's complaint resolution?	Very satisfied	<b>24%</b>
	Satisfied	<b>48%</b>
	Neutral	<b>8%</b>
	Dissatisfied	<b>4%</b>
	Very dissatisfied	<b>0</b>
	Not sure/Can't say	<b>16%</b>

Survey question	Yes	No	Don't know/Don't have a view
<b>Q10</b> Do you consider that the Scheme is continuing to meet the requirements of the Minister of Consumer Affairs for an approved scheme (ie. the <b>Achievement Standards</b> )?	<b>84%</b>	<b>4%</b>	<b>12%</b>
<b>Q11</b> Do you consider that any of the <b>Achievement Standards</b> are impeding the evolution of the Scheme ?	<b>4%</b>	<b>64%</b>	<b>32%</b>
<b>Q12</b> Do you consider that any of the <b>Achievement Standards</b> should be amended to enhance achievement of the Benchmarks for Industry-Based Customer Dispute Resolution Schemes (see Clause 2.2 of the Member Guide)?	<b>4%</b>	<b>36%</b>	<b>60%</b>
<b>Q13</b> Do you consider that the <b>Code of Conduct</b> for complaint handling (Part C in the Scheme document) sets out appropriate requirements for Scheme Members' in-house	<b>80%</b>	<b>16%</b>	<b>4%</b>

complaints processes?			
<p><i>Largely appropriate, but clause c8.2 unrealistic given extremely wide definition of complaint</i></p> <p><i>Definition of a complaint is too broad. Should be distinction between formal complaint and casual expression of dissatisfaction. Formal Code of Conduct requirements would not apply to latter, which would be dealt with as an internal issue.</i></p> <p><i>Provides uniformity and conformity for complaint management across industry.</i></p> <p><i>Risk that members do not follow own procedures.</i></p> <p><i>Sometimes struggle with C.7.6 – understand intention but we are at times left in a position where financially better of to ‘pay off’ the customer even though confident we have dealt with issue fairly.</i></p> <p><i>A ‘concern’ about any service or goods provided should not constitute a complaint.</i></p> <p><i>Do not agree that complainants should be told in an unqualified way that they can take their complaint to the Commissioner if the Scheme Member reasonably believes the complaint is not within the Commissioner’s jurisdiction. Suggest addition at end of clause C.7.6: ‘...provided that a Scheme Member who reasonably believes the Complaint to be outside the Commissioner’s jurisdiction may inform the Complainant of that at the same time.’</i></p> <p><i>Given wide definition of Complaint, and decentralised ways a Land Complaint may be received by a lines company, do not believe current inflexible timeframes in C.30 and C.31 (2 &amp; 7 working days) are appropriate; should either be extended (perhaps to 5 &amp; 10 working days, still noting obligation to respond ‘as soon as possible’), or made reasonable endeavours obligations only.</i></p>			
<p><b>Q14</b> Do you consider that any parts of the previous consumer codes (electricity, gas or land) should be added to the <b>Code of Conduct</b>?</p>	<p><b>4%</b></p>	<p><b>64%</b></p>	<p><b>36%</b></p>
<p><i>Electricity Authority’s voluntary principle and minimum content very prescriptive and enough.</i></p> <p><i>Concise definitions of electricity, gas and land complaints would be good.</i></p>			
<p><b>Q15</b> Do you consider that the <b>performance standards</b> set by the EGCC Board (in accordance with clause E.16.2 of the Scheme document) are adequate?</p>	<p><b>68%</b></p>	<p><b>8%</b></p>	<p><b>24%</b></p>
<p><i>The Achievement Standards require that the Scheme provide advice to members on how to improve their in-house dispute resolution processes. There is no performance standard to measure the effectiveness of this advice or of the in-house schemes. Given that the number of cases being referred to the EGCC is growing, perhaps the scheme should set a performance standard around reducing the number of referred through developing effective in-house schemes.</i></p> <p><i>Cover all relevant areas. E. 16.2 (a), (b), (c) and (d) would benefit from benchmarks.</i></p> <p><i>Satisfaction targets should be same for both complainants and members. 95/75 implies EGCC tends to favour complainants.</i></p> <p><i>Cover all relevant areas. E. 16.2 (a), (b), (c) and (d) would benefit from benchmarks.</i></p>			
<p><b>Q16</b> Do you consider that the current governance structure of the Scheme and the</p>	<p><b>72%</b></p>	<p><b>4%</b></p>	<p><b>24%</b></p>

manner in which the Board carries out its functions are appropriate and effective?			
<i>Does not agree with current make up of, and distribution of power within the Board of the Scheme. Essentially considers that there should be greater representation of industry. Considers should be additional retailer, lines company, and consumer reps, making total of 8 members; require Constitution changes to be approved by 7 out of 8 members; and retain simple majority approval for ordinary matters, with Chair having a determinative as well as deliberative vote as currently.</i>			
<b>Q17</b> Do you consider that the current legal structure – that is a Scheme established by a Deed - is appropriate or should it become an incorporated body of some form?	<b>68%</b>	<b>0%</b>	<b>32%</b>
<b>Q18</b> Do you consider that the Commissioner's current terms of reference (Part B of the Scheme document) provide the appropriate framework for managing relationships with stakeholders?	<b>88%</b>	<b>4%</b>	<b>8%</b>
<i>More powers needed to reject complaints when EGCC used to litigate bills. E.g. had customer change complaint apparently prolong the debate.</i>			
<b>Q19</b> Do you consider that exclusions from the Commissioner's jurisdiction (clause B.9 of the Scheme document) are still appropriate?	<b>72.73%</b>	<b>4.55%</b>	<b>22.72%</b>
<i>Guidelines re B.9.6 conditions (trivial, vexatious or not made in good faith) would be useful – any examples?</i> <i>If, at any stage, a complaint is determined to be outside of jurisdiction, the Member should not be charged.</i> <i>Re. 9.4 – believe it would be more equitable and more efficient if assessment of a fair and reasonable offer was based on information presented by both complainant and Member; alternatively, the complainant be questioned on offers that have been made.</i> <i>A further exclusion should be added to list in B9.8 for complaints relating to environmental effects, at least in circumstances where lines company is not exercising or failing to exercise rights, powers or obligations under relevant legislation or an agreement with the land owner or occupier.</i>			
<b>Q20</b> Do you consider that \$20,000 is still the appropriate limit, given the increased financial jurisdiction of the Disputes Tribunal ?	<b>100%</b>	<b>0%</b>	<b>0%</b>

Survey question	Impact	%
<b>Q21</b> Do you consider that enquiries and	Generally had no impact.....	<b>21.74%</b>

investigations by the Commissioner of complaints made about <b>your organization</b> .....  <b>Tick as many boxes as apply</b>	Led to changes in policy and/or procedures.....	<b>43.48%</b>
	Made your organization more accountable.....	<b>30.43%</b>
	Assisted your organisation to improve its performance.....	<b>47.83%</b>
	Only benefited the complainants involved.....	<b>17.39%</b>
	Had a negative impact.....	<b>13.04%</b>
	Don't know/don't have a view	<b>26.09%</b>

*Varied experience – one fair call, two customers wasting time*  
*Don't yet fully trust EGCC to view complaints appropriately though not yet had a decision against company*  
*Have improved 'Planned Outage notifications' and improved 'disconnect for safety' process.*

<b>Q22</b> In your view.....			
<b>Tick one box" for each of items (a) to (d)</b>	<b>Yes</b>	<b>No</b>	<b>Don't know</b>
a. is the Commissioner a necessary part of industry responsibility?.....	<b>73.91%</b>	<b>17.39%</b>	<b>8.70%</b>
<i>Not convinced Commissioner needed though more experience may convince</i>			
b. are the Commissioner's powers used appropriately?.....	<b>81.82%</b>	<b>9.09%</b>	<b>9.09%</b>
c. is the Commissioner adequately resourced?.....	<b>66.66%</b>	<b>0</b>	<b>33.33%</b>
d. is the Commissioner sufficiently independent?.....	<b>86.96%</b>	<b>4.35%</b>	<b>8.70%</b>
<i>Scheme weighted to consumer, complaints escalate once referred to EGCC.</i> <i>As long as Minister's appointees in minority.</i>			

<b>Q23</b> How do you think the Commissioner could deal more effectively with complaints about <b>your organization</b> ?
<i>Approach taken needs to be tailored to varying size/sophistication of 20 plus lines businesses.</i> <i>Maintain good communications, listen to all views, act fairly.</i> <i>Commissioner needs power to reject frivolous complaints.</i>

*Working well especially with last year's process changes by Commissioner.*

*Need to be advised of complaints to EGCC not made to us so we can manage timelines and processes.*

*EGCC seems to do utmost to side with complainants.*

**Q24** Do you have any other comments/suggestions about ways of improving the Scheme?

*Happy re most cases. Process weighted in favour of consumer and outcomes often determined by cost/workload. Even if company is right it's not worth pursuing the complaint with costs born by company and no cost to consumer. Ultimately the estimated average cost of complaints is built into prices.*

*A successful scheme would be one in which the deadlocked cases diminish over time because:*

- The scheme members are doing a good job of handling complaints in-house; and*
- Complaints are minimised because EGCC case determinations have exposed unacceptable practices and set a precedent for expected industry actions & behaviours.*

*More regular reporting of complaint activity among members, and some indication of common complaints. EGCC seminars on common complaints would help; EGCC website 'case studies' highly valuable.*

*Suggest 2 day acknowledgment of complaint should not be required if complaint can be resolved within 7 days.*

*Charges need reviewing dependent on the value of the complaint – if complaint is less than \$400, we are better off settling whether or not we are found to be in the right.*

*Believe that a lot more work ought to be done pre deadlock, such as the process followed by the Disputes Tribunal.*

*Re B.7.1 - Believe it should be the customer not the Commissioner that gives permission to extend investigation time beyond 20 working days.*

## APPENDIX B: COMPLAINANT'S SURVEY RESPONSES

Total surveys sent: **114**; Returned (address problem): **5**; Responses: **34** or **31.19%**

Comparisons: EGCC March 2011 survey: **26%**; EGCC 2010 survey: **30.48%** Industry: **29.7%** (Industry here and in some tables, refers to average of responses from similar surveys administered since 1995).

The following include survey results and summary of complainants' comments.

### Prior to Complaint

	Source	%
<b>A1</b> How did you hear about the Electricity and Gas Complaints Commissioner?  <i>Tick as many as apply</i>	Friends/relatives	8.82%
	Media	11.76%
	Pamphlets	5.88%
	White Pages directory	5.88%
	Internet	23.53%
	Legal advice/accountant	5.88%
	Maori or Pacific Island organisation	2.94%
	Budgeting service	5.88%
	Community legal centre/ community information organisation/ other community group	8.82%
	Electricity or gas company	32.35%
	Consumer group	5.88%
	Ministry of Consumer Affairs	5.88%
	Previously used the Commissioner's services	0%
Other ( <i>please give details</i> )	20.59%	

Survey question	To do	Survey %	Industry %
<b>A2</b> Thinking back to the time you first decided to lodge a complaint, <b>what</b> did you expect the Commissioner to do for you?  <i>Tick as many as apply</i>	Argue my case for me	20.59%	24%
	Independently assess my problem	76.47%	45%
	Provide advice or information	61.76%	42%
	Refer me to the right place for help	23.53%	21%

	Investigate my complaint and find the truth	<b>61.76%</b>	<b>60%</b>
	Investigate my complaint and recommend change if the decision by the electricity/gas company was found to be 'unreasonable' or 'wrong'	<b>64.71%</b>	<b>59%</b>
	Be the avenue of 'last resort' to get justice	<b>23.53%</b>	<b>32%</b>
	Facilitate the resolution of my complaint with the electricity/gas company through mediation	<b>67.65%</b>	<b>31%</b>
	Ensure that I was compensated by the company	<b>23.53%</b>	<b>26%</b>
	Other ( <i>please give details</i> )	<b>8.825</b>	<b>1%</b>

<b>Survey question</b>	<b>Means</b>	<b>Survey %</b>	<b>Industry %</b>
<b>A3</b> Again, thinking back to the time you first decided to lodge a complaint, <b>how</b> did you expect the Commissioner to handle your complaint?	Simple telephone advice only	<b>6.45%</b>	<b>16%</b>
	Simple written advice only ( <i>e.g. letter or email</i> )	<b>16.13%</b>	<b>15%</b>
	Formal report based on further investigations	<b>38.71%</b>	<b>45%</b>
	Mediation	<b>25.81%</b>	<b>18%</b>
	Formal face-to-face hearing	<b>3.23%</b>	<b>1%</b>
	Other	<b>9.68%</b>	<b>5%</b>

Survey question	Time	%
<b>A4</b> When you first contacted the Commissioner's Office, how long did you <b>expect</b> it to take to finalise your complaint?	Same day	<b>0%</b>
	One week	<b>15.63%</b>
	Up to 2 weeks	<b>21.88%</b>
	From 3 to 8 weeks	<b>50%</b>
	From 9 weeks to 3 months	<b>6.25%</b>
	From 4 to 6 months	<b>3.13%</b>
	From 7 months to 1 year	<b>3.13%</b>
	More than 1 year but at most 2 years	<b>0%</b>



### Communication

Survey question	Yes	No	Not applicable
<b>B1</b> Did you find <b>written</b> communication (including letters, pamphlets, etc.) with the Commissioner's Office informative and easy to understand?	82.35%	8.82%	8.82%
<b>B2</b> And did you find <b>oral</b> or spoken communication with the Commissioner's Office informative and easy to understand?	88.24%	11.76%	0%

Survey question	Time	%
<b>B3</b> During the time the Commissioner was dealing with your complaint, <b>how often</b> do you think contact should have been made with you?	Everyday	2.94%
	Two or three times a week	8.82%
	Once a week	35.29%
	At least once a month	14.71%
	Once every two to three months	2.94%
	Less than once every two to three months	0%
	Only to clarify/discuss important matters relating to my complaint	23.53%
	Other ( <i>please give details</i> )	11.76%
<i>Comments:</i>	<i>Always when input from other party</i>	

Survey question	Number	Yes	No
<b>B4</b> Do you think the Commissioner's Office gave you <b>clear advice</b> about....	a. ....what it <i>could</i> do?.....	85.29%	14.71%
	b. ....what it <i>would</i> do?.....	85.29%	14.71%
	c. ....what it <i>could not</i> do?.....	70.59%	29.41%
	d. ....where else I could go or someone else to	54.55%	45.45%

	refer to.....		
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Survey question	Number	%
<b>B5</b> How many people <b>outside your household</b> have you told about your dealings with the Commissioner's Office?	1 or 2 people	<b>14.71%</b>
	3 or 4 people	<b>20.59%</b>
	5 or 6 people	<b>14.71%</b>
	7 or 8 people	<b>11.76%</b>
	9 or 10 people	<b>0%</b>
	11 or more people	<b>32.35%</b>
	Have not told anybody	<b>5.88%</b>

## Service

<b>C1</b> On a scale of 1 to 5, with "1" meaning <i>extremely important</i> , and "5" meaning <i>not at all important</i> , for each of the following service attributes, place a tick in the one box which best describes how <b>important</b> you think each item is.						
<b>Tick one box for each of items (a) to (n)</b>	Extremel y important	Importan t		Unimp ortant	Not at all importa nt	Not applicabl e
<i>How important is it that...</i>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	
a. ... my complaint is looked at and dealt with reasonably quickly.....	<b>55.88%</b>	<b>41.18%</b>	<b>2.94%</b>	<b>0</b>	<b>0</b>	<b>0</b>
b. ... the initial acknowledgment of my complaint is prompt.....	<b>51.52%</b>	<b>42.42%</b>	<b>3.03%</b>	<b>0</b>	<b>0</b>	<b>0</b>
c. ... I am kept regularly informed of progress .....	<b>36.36%</b>	<b>60.61%</b>	<b>3.03%</b>	<b>0</b>	<b>0</b>	<b>0</b>
d. ... Commissioner's Office staff are prompt in returning my telephone calls.....	<b>32.35%</b>	<b>64.71%</b>	<b>2.94%</b>	<b>0</b>	<b>0</b>	<b>0</b>
e. ... Commissioner's Office staff explain things clearly to me.....	<b>61.76%</b>	<b>35.29%</b>	<b>2.94%</b>	<b>0</b>	<b>0</b>	<b>0</b>
f. ... Commissioner's Office staff are helpful and courteous.....	<b>50%</b>	<b>41.18%</b>	<b>8.82%</b>	<b>0</b>	<b>0</b>	<b>0</b>
g. ... Commissioner's Office staff are knowledgeable and experienced.....	<b>70.59%</b>	<b>23.53%</b>	<b>5.88%</b>	<b>0</b>	<b>0</b>	<b>0</b>
h. ... I feel comfortable during conversations and meetings with Commissioner's Office staff.....	<b>47.06%</b>	<b>52.94%</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
j. ...useful information and advice is provided by the Commission .....	<b>51.52%</b>	<b>45.45%</b>	<b>3.03%</b>	<b>0</b>	<b>0</b>	<b>0</b>
k. ... the critical issues in my complaint are	<b>81.82%</b>	<b>18.18%</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

understood.....						
l. ... I am given clear reasons for the Commissioner's decision .....	<b>76.47%</b>	<b>20.59%</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
m. ... the Commissioner requires the electricity/gas company to explain their action.....	<b>73.53%</b>	<b>17.65%</b>	<b>5.88%</b>	<b>0</b>	<b>0</b>	<b>0</b>
n. ... my complaint is resolved in my favour.....	<b>35.29%</b>	<b>23.53%</b>	<b>11.76%</b>	<b>11.76%</b>	<b>5.88%</b>	<b>11.76%</b>

Survey question	Time	%
<b>C2</b> How long did the Commissioner's Office actually take to finalise your complaint?	Same day	<b>2.94%</b>
	Up to 2 weeks	<b>11.76%</b>
	From 3 to 8 weeks	<b>41.18%</b>
	From 9 weeks to 3 months	<b>20.59%</b>
	From 4 to 6 months	<b>8.82%</b>
	From 7 months to 1 year	<b>8.82%</b>
	More than 1 year but at most 2 years	<b>0%</b>
	Did not finalise my complaint	<b>5.88%</b>

Survey question	Length	Survey %	Industry %
<b>C3</b> Thinking about the time actually taken to deal with your complaint, do you think the Commissioner's Office....	...took <i>too long</i> to deal with my complaint	<b>23.53%</b>	<b>24%</b>
	...took <i>less time</i> than expected to deal with my complaint	<b>5.88%</b>	<b>6%</b>
	...took <i>about the right time</i> to deal with my complaint	<b>70.59%</b>	<b>70%</b>

Survey question	Yes	No
<b>C4</b> Were you confident about the way the Commissioner's Office handled your complaint?	<b>79.41%</b>	<b>20.59%</b>

Survey question	Length	%
<b>C5</b> Did you feel that the Commissioner's Office....	...acted on <i>my behalf</i> in dealing with the electricity/gas company about which I complained	<b>14.71%</b>
	...was <i>independent in</i> dealing with my complaint (that is, did not take sides)	<b>67.65%</b>
	...acted on the <i>behalf of the electricity/gas company</i> about which I complained	<b>17.65%</b>

**Satisfaction**

Survey question	Outcome	%	Industry %
<b>D1</b> After your complaint had been finalised, how did you see the outcome?	Resolved <i>substantially</i> in my favour	<b>44.12%</b>	<b>37%</b>
	Resolved <i>partly</i> in my favour	<b>32.35%</b>	<b>24%</b>
	<i>Not at all</i> resolved in my favour	<b>23.53%</b>	<b>39%</b>

<b>D2</b> Did you think the Commissioner's finding or decision on your complaint was <i>reasonable</i> ?	Yes	No	Industry Yes	Industry No
	<b>67.65%</b>	<b>32.35%</b>	<b>62%</b>	<b>38%</b>

<b>D3</b> On a scale of 1 to 5, with "1" meaning <i>extremely satisfied</i> , and "5" meaning <i>not at all satisfied</i> , for each of the following service attributes, place a tick in the one box which best describes how <b>satisfied</b> you were with each item.)						
<i>Tick one box for each of items (a) to (p)</i>	Extremely satisfied	Satisfied	Neither satisfied nor dissatisfied	Dissatisfied	Not at all satisfied	Not applicable
How satisfied were you.....	1	2	3	4	5	
a. ...with the promptness of the initial acknowledgment of your complaint.....	50%	41.18%	2.94%	0	2.94%	2.94%
b. ...with the promptness in which your complaint was looked at and dealt with.....	47.06%	32.35%	5.88%	5.88%	8.82%	0
c. ...with how often you were kept informed of the progress of your complaint.....	44.12%	35.29%	8.82%	5.88%	5.88%	0
d. ...with how promptly Commissioner's Office staff returned your telephone calls .....	41.18%	50%	2.94%	0	2.94%	2.94%
e. ...with how clearly	44.12%	44.12%	8.82%	2.94%	0	0

Commissioner's Office staff explained things to you .....						
f. ...with the help and courtesy you received from Commissioner's Office staff.....	58.82%	35.29%	2.94%	2.94%	0	0
g. ...with the knowledge and experience of Commissioner's Office staff.....	47.06%	35.29%	11.76%	5.88%	0	0
h. ...with how comfortable you felt in conversations and meetings with Commissioner's Office staff.....	50%	35.29%	5.88%	0	5.88%	2.94%
j. ...that useful information and advice was provided by the Commissioner's Office staff.....	35.29%	44.12%	8.82%	0	8.82%	2.94%
k. ...that the critical issues in your complaint were understood.....	52.94%	17.65%	14.71%	2.94%	11.76%	0
l. ...that you were given clear reasons for the Commissioner's decision .....	35.29%	32.35%	5.88%	2.94%	14.71%	8.82%
m. ...that the Commissioner required the electricity/gas company to explain their actions.....	38.24%	17.65%	14.71%	8.82%	11.76%	8.82%
n. ...that your complaint was resolved in your favour.....	29.41%	29.41%	20.59%	2.94%	8.82%	8.82%
p. ...with the Commissioner's final finding or decision .....	36.36%	24,24%	18.18%	3.03%	9.09%	12.12%

Survey question	Response	%
<b>D4</b> Overall, did the Commissioner's Office meet your expectations in handling your complaint?	Yes, <i>completely</i>	<b>52.94%%</b>
	Yes, but only <i>partially</i>	<b>29.41%</b>
	No, did not meet expectations	<b>17.65%</b>

**D5** Why do you think the Commissioner's Office did not meet or only partially met your expectations?

**Please write all reasons in the space provided**

*Constrained by legislation*

*Company known to be unyielding*

*Did not volunteer all information – requests needed*

*Very happy*

*Regulation/company practice needs to be changed to require better communication with consumers*

*Company/EGCC did not fully consider our business financial circumstances*

*Question of matter in time limit if event outside, but knowledge of event inside*

*EGCC did not consider underlying problems/accept problem existed. Staff dealing with matter changed and I withdrew*

*Companies do not respect EGCC as cannot make binding ruling*

*Point of law determined outcome thus justice not served*

*1. EGCC acted for company, 2. too long to resolve, 3. Company admitted it was wrong at outset*

*Required apology, but only got sympathy from company*

*EGCC did not address or understand issue*



**Respondent Information**

<b>E1</b> Are you.....	<b>Male</b>	<b>Female</b>
	<b>58.82%%</b>	<b>41.18%</b>

<b>Survey question</b>	<b>Ethnicity</b>	<b>%</b>	<b>NZ Census</b>
<b>E2</b> Which ethnic group do you identify with?	NZ Pakeha/European	<b>67.65%</b>	<b>69%</b>
	Maori	<b>20.59%</b>	<b>14.6%</b>
	Pacific Island	<b>0</b>	<b>6.9%</b>
	Asian	<b>2.94%</b>	<b>9.2%</b>
	Other ( <i>please specify</i> )	<b>8.825</b>	

<b>Survey question</b>	<b>Age group</b>	<b>%</b>
<b>E3</b> Which age group are you in?	Under 18 years	<b>0%</b>
	18-24 years	<b>2.94%</b>
	25-34 years	<b>0%</b>
	35-44 years	<b>23.53%</b>
	45-54 years	<b>29.41%</b>
	55-64 years	<b>20.59%</b>
	65 years or over	<b>23.53%</b>

<b>E6</b> Did you obtain help to make your complaint to the Commissioner's Office?	<b>Yes</b>	<b>No</b>
	<b>24.24%</b>	<b>75.76%</b>

<b>Survey question</b>	<b>Who</b>	<b>%</b>
<b>E7</b> If you answered <b>Yes</b> to E6, what kind of assistance did you obtain?	Family member/friend to speak or write for me	<b>11.11%</b>
	Interpreter to speak or write for me and/or explain what the Commissioner's Office wanted to tell me	<b>0</b>
	Help from staff of the	<b>33.33%</b>

	Commissioner's Office	
	Help from a community advice organisation	22.22%
	Help from a community legal centre/ budgeting organisation	11.11%
	Help from a carer or disability support group	0
	Other ( <i>please give details</i> )	22.22%

**E8** Please write any suggestions about the ways the Commissioner could improve her service to the public

Legislation should allow EGCC to investigate any complaint.

Had to keep emailing to get action. EGCC needs better tracking system to keep people informed and tighter time frames.

Companies with upheld complaints should publicly acknowledge them and advise remedial action.

Several – Companies need to be required to tell customers about EGCC (on statements)/EGCC needs to be better publicised (yellow pages).

EGCC should have broader role in improving company conduct especially monopolies.

Several – Valuable, independent, great staff

Several – No improvement needed

Society's expectations are that customer experience and that services should be "customer centric". This is not reflected in regulation.

Concern that company told complainant different things than it told EGCC.

Abolish EGCC – complete waste of taxpayer money

EGCC needs information gathering powers, power to make binding rulings, and power to make all information available to both parties. Commissioner needs to earn respect of public and industry

Various including:

- Ensuring calibration & standards re meter accuracy
- independent body needed to test meters
- price monitoring powers
- single authority to regulate gas/electricity and deal with complaints

also:

- safety standards need for gas bottles
- authority to enforce gas bottle standards

- penalties needed
- one stop shop

Very impressed, possibly more paper work than needed, status of EGCC could be better explained

Be more sceptical of monopolies

Speed up process and act for complainant not company

EGCC caring, positive, helpful, thorough. Company mismanaged implementation of EGCC's recommended resolution.

### APPENDIX C: NAMING BY OMBUDSMAN SCHEMES

Scheme Name	Members named in Annual Report?	Member named in Case Studies?
NZ Insurance and Savings Ombudsman	No	No
NZ Banking Ombudsman	Yes	No
NZ Telecommunications Dispute Resolution	No	No
UK Financial Ombudsman Service <a href="http://www.ombudsman-complaints-data.org.uk/">www.ombudsman-complaints-data.org.uk/</a>	Not in Annual Report but in a separate Online listing of complaints data	No
UK Ombudsman Services – Energy	No	No
UK The Property Ombudsman	No	No
Canada General Insurance Ombudsman	No	No
Canada Ombudsman for Banking Services and Investments	Yes	No
Australia Energy & Water Ombudsman Victoria	Yes	No
Australia Energy & Water Ombudsman NSW	Yes	No except in special circumstances
Australia Energy Industry Ombudsman South Australia	Yes	No
Australia Energy & Water Ombudsman Queensland	Yes	No
Australia Financial Ombudsman Service	Yes (Online)	No
Australia Telecommunications Industry Ombudsman	Yes	No
Australia Private Health Insurance Ombudsman	Yes	No
Australia Credit Ombudsman Service Limited	Yes	No

South Africa Ombudsman for Banking Services	Yes	No
South Africa Ombudsman for Long Term Insurance	No	No
South Africa Ombudsman for Short Term Insurance	No	No
South Africa Financial Advisory and Intermediary Services Ombudsman	Yes	Yes

## **APPENDIX D: LEGAL STRUCTURE OF INDUSTRY OMBUDSMAN SCHEMES**

### ***Insurance & Savings Ombudsman (ISO) (NZ):***

The ISO Scheme is an incorporated society and was set up in accordance with the ISO [Rules](#), which establish the ISO Commission and the ISO Board. The Rules provide for the appointment of an ISO and set out how the ISO Scheme is to be funded.

The Insurance & Savings Ombudsman Scheme Incorporated is governed by the ISO Board that has 8 members, made up of 2 representatives nominated by each of the industry bodies representing fire and general insurance, health insurance, life insurance and savings.

The ISO Board's primary function is to amend the [Rules](#) and the [Terms of Reference](#). The primary functions of the ISO Commission are to appoint an ISO, to monitor the operation of the ISO Scheme and to approve the annual budget. It is the ISO Commission's responsibility to levy the Participant companies to fund the service provided by the ISO.

The ISO Commission has an independent Chairperson, 2 industry representatives appointed by the ISO Board and 2 consumer representatives appointed by the Minister of Consumer Affairs.

### **Financial Services Complaints Limited (NZ):**

FSCL is an independent not-for-profit External Dispute Resolution (EDR) scheme approved by the Minister for Consumer Affairs under the Financial Service Providers (Registration and Dispute Resolution) Act 2008. It has been set up specifically to deal with disputes arising out of financial products and services.

FSCL is a company limited by guarantee, governed by a [board](#) that includes two industry representatives, and two consumer representatives and an independent Chair. The Chair holds all 100 of the company shares.

The Board appoints a CEO who has the power to exercise all powers and discretions conferred on FSCL by the Terms of Reference and to carry out all responsibilities attributed to FSCL under the Terms of Reference. The Chief Executive Officer's duties include:

- (i) making jurisdictional decisions;
- (ii) resolving complaints by making recommendations and determinations;
- and
- (iii) the chairing of and participation in FSCL Panel processes.

### ***Banking Ombudsman (NZ):***

The Banking Ombudsman Scheme was set up in 1992. The scheme is a free and independent process which helps people sort out unresolved problems with their

[banking service providers](#).

The Banking Ombudsman scheme is a company, Banking Ombudsman Scheme Ltd. Its governing body is a [Board](#) on which banks and consumer groups are represented without either having a majority. The Chair of the Board is independent of banks and consumer groups.

The main function of the Board is to ensure the independence of the Banking Ombudsman and to make sure that the Banking Ombudsman scheme is well run and effective.

***Energy and Water Ombudsman (Victoria):***

EWOV was set up as a company limited by guarantee, legally separate from, and independent of, the energy and water companies and government.

In accordance with the EWOV Limited [Constitution](#) and the EWOV [Charter](#), EWOV Ltd. established EWOV as an independent dispute resolution scheme — and appointed an Ombudsman to be responsible for the day-to-day operation of that scheme.

The EWOV Limited Board has four industry directors — two electricity, one gas and one water — elected by scheme participants; four consumer directors nominated by the Essential Services Commission and then approved by the Board and an independent Chairperson.

The Board is responsible for the business affairs and property of the company — including corporate governance, the setting of budgets, risk management, strategic planning and ensuring the Ombudsman's independence. The equal representation of industry and consumers engenders a sense of commitment and ownership of results. The roles of the Board and the Ombudsman are complementary, with the Ombudsman attending Board meetings.

***Energy & Water Ombudsman (New South Wales):***

The Energy & Water Ombudsman NSW (EWON) is the government approved dispute resolution scheme for New South Wales [electricity](#) and [gas](#) customers, and some [water](#) customers.

EWON was [founded in 1998](#) as an industry-based Ombudsman scheme, to independently resolve complaints about members of the scheme.

The Energy and Water Ombudsman (NSW) Limited is a not-for-profit company limited by guarantee. As an industry-based scheme, EWON is funded by its [members](#). According to the Constitution, the EWON Board is responsible for corporate governance and funding, and is made up of 10 industry members including the Chair and Deputy Chair.

The EWON Council is responsible for policy and strategy.

The EWON Council ensures the organisation's independence through its composition of consumer and industry representatives. It consists of an independent Chair and

10 members – 5 from Members of the scheme and 5 from consumer interests.

***Telecommunications Industry Ombudsman (Australia):***

The Telecommunications Industry Ombudsman ("TIO") scheme has been established by means of a company limited by guarantee, the **Telecommunications Industry Ombudsman Limited**. The Memorandum and Articles of Association of the company establish:

- a Board of 9 Directors, composed primarily of directors appointed by the members and vested with traditional corporate governance responsibilities;
- a Council, composed of an equal representation of 5 member representatives and of 5 user and public interest group representatives, chaired by an independent Chairman, and with responsibility for:
  - complaint-handling and policy issues;
  - maintaining the independence of the TIO; and
  - acting as an intermediary between the TIO and the Board; and
- a Telecommunications Industry Ombudsman vested with authority under this TIO Constitution to
  - receive, investigate and facilitate the resolution of complaints; and
  - exercise such other powers and functions as may be conferred by statute.

***The Financial Ombudsman Service (Australia):***

The Financial Ombudsman Service Ltd is a company limited by guarantee, and is governed by an independent board of 4 consumer representatives and 4 financial services industry representatives. The Board also seeks expertise and advice from Specialist Advisory Committees drawn from Financial Ombudsman Service member organisations and consumer organisations. The role of the Board is to monitor the performance of the Financial Ombudsman Service, provide direction to the Ombudsman on policy matters, set the budget and review from time to time, the Terms of Reference including the jurisdictional limits of the Ombudsman. The Board does not get involved in the detail of cases which come before the Ombudsman as that would prejudice the independence of the Ombudsman. The decisions of the Ombudsman are independent of any interference from the Board.

The Financial Ombudsman Service Constitution outlines the purpose and objectives of the Financial Ombudsman Service Limited, including how dispute resolution rules and processes are developed, agreed and implemented.

***Ombudsman for Banking Services (South Africa):***

The Ombudsman for Banking Services is a non-profit company. The governing structure of the OBS consists of a Board of Directors, comprised four independent, non-bankers, three representatives of the banks and an independent chairperson. The function of the Board is to ensure that the OBS is financially sound, to take



decisions on how the OBS is to be financed and to consider the annual budget. The Board ensures the independence of the OBS, through the appointment of the OBS or acting OBS, the dismissal of the OBS, the approval of changes to the Terms of Reference, considering the Annual Report and to making recommendations to the Banking Association South Africa on changes to the Code of Banking Practice.

***Ombudsman for Banking Services and Investments (Canada):***

A non-profit corporation and independent organization, OBSI is overseen by a [Board of Directors](#). A majority of the directors are independent, and have not been part of industry or government for at least five years. A minority of the directors are appointed by industry bodies. The directors also comprise the voting membership of the organization.

Beyond the composition of the Board, further important safeguards of OBSI's independence are in place. In addition to having at least a two-thirds majority on the board, the Independent Directors control the hiring and firing of the Ombudsman, the budget process, the [Terms of Reference](#) and the nomination of Independent Directors.

The Independent Directors search for new independent board members, balancing diversity, geography and a variety of backgrounds and skills. Collectively, the directors have experience in business, law, consumer affairs, economics, community organizations, dispute resolution and public service.

The Board of Directors meets at least quarterly, and in addition has an annual strategic planning session. The Independent Directors also conduct performance reviews with the Chair every two years.

Rules prohibit the Board or individual directors from being involved with individual complaints. The final decision concerning complaints rests with the Ombudsman. There is no appeal to the Board, nor can the Board influence the decisions of the Ombudsman. However, on behalf of the Board the Chair does consider complaints from OBSI clients who believe that their case has not been handled fairly.

***General Insurance OmbudService (Canada);***

The General Insurance OmbudService (GIO) is an independent not-for-profit corporation, created in 2002, with the sole purpose of helping Canadian consumers resolve disputes or concerns with their home, automobile or business insurers.

The GIO is governed by a seven-member Board of Directors, committed to the ideals of fairness and integrity. Five of the Directors are individuals from outside the insurance industry who bring experience from a wide range of backgrounds. The regionally diverse Board also has two insurance industry appointed directors who provide an industry perspective.

***OmbudService for Life & Health Insurance (Canada):***

The OmbudService for Life & Health Insurance (OLHI) is a national independent

complaint resolution and information service for consumers of Canadian life and health insurance products and services, including life, disability, employee health benefits, travel, and insurance investment products such as annuities and segregated funds.

It was incorporated in 2002 as a federal not-for-profit corporation pursuant to the Canada Corporations Act. Its By-Laws set out the provisions governing the affairs of the Corporation.

OLHI's operations are overseen by its Board of Directors, the majority of whom have no ties with the life and health insurance industry. Currently the Board is comprised of eight directors, six of whom are independent from the life and health insurance industry ("Independent Directors") and two of whom are appointed by industry ("Industry Directors").

### ***Financial Ombudsman Service (UK):***

The "body corporate" that administers the ombudsman scheme as the "scheme operator" (under s225 of the *Financial Services and Markets Act*) takes the form of a company "limited by guarantee and not having a share capital". This company is called the Financial Ombudsman Service Limited. The powers and functions of the scheme operator are set out in company's legal constitution:

The scheme operator has a [board](#) consisting of nine directors – including the chairman. They are appointed by the Financial Services Authority (FSA) under the Financial Services and Markets Act 2000. The chairman of the board is appointed by the FSA with the approval of the HM Treasury.

These directors (or board members) are "non-executive" – they are not involved in considering individual complaints. Their job as "public interest" directors is to take a strategic overview and ensure that the ombudsman service is properly resourced and able to carry out its work effectively and independently.

The directors appoint the [ombudsmen](#) and publish a [report](#) annually – as well as publishing the [minutes of their board meetings](#). The directors also form a number of [sub-committees](#) of the full board.

### ***Ombudsman Services – communications, energy, property (UK):***

Ombudsman Services provides independent dispute resolution for the communications, energy, property and copyright licensing sectors.

Ombudsman Service Limited is a not-for-profit private company limited by guarantee. It investigates complaints with a view to reaching a speedy resolution. It is entirely independent, meaning that it does not take sides and makes decisions based on the facts.

There is no indication of qualifications for the non-Executive Directors of the Board.

***The Property Ombudsman (UK):***

The Property Ombudsman scheme is designed to reach a resolution of unresolved disputes in full and final settlement. It provides actual and potential buyers, sellers, landlords, leaseholders, lessees and tenants of property with free and independent redress of complaints relating to acts or omissions of Members in connection with the sale and/or purchase and/or letting and/or management of property in the United Kingdom.

2. The TPO scheme is set up as a company limited by guarantee, The Property Ombudsman Limited, and has three parts to its structure:

- a. TPO Council, consisting of an independent Chair, 5 non-industry members and 2 industry members, whose role is:
  - To ensure the Ombudsman's independence and resourcing.
  - View the [Statement of Terms of Appointment of the Ombudsman](#)
  - To act as an advisory body to the Ombudsman.
  - To refer matters of consideration to the TPO Board.
  -
- b. The Office of the Ombudsman
- c. TPO Board, consisting of a Chair, Vice-Chair, and 9 members elected by member agencies and one representative of two industry associations, and whose role is:
  - To manage the business of the Company.
  - To raise sufficient funds from Members to administer the Scheme.
  - To represent the Member Agencies.