



Electricity and Gas Complaints Commissioner Scheme

Independent review of Scheme – recommended changes to Scheme document

Consultation document

SUBMISSIONS DUE 19 April 2012

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1. Introduction

The EGCC Board is seeking submissions on its proposals to amend the Scheme to implement recommendations from the Baljurda Report.

Baljurda Comprehensive Consulting Ltd conducted an independent review of the Scheme, and in September 2011, recommended a number of changes to the Scheme. The Board has accepted most of the recommendations for the purpose of consulting with stakeholders.

This consultation document summarises the proposed changes, sets out the timetable, and provides information on the submission process.

2. Process and proposed timetable

The process for making changes to the Scheme document is summarised in the [Scheme Amendment Process diagram](#), available as a PDF document on the current consultation page of the website.

The proposed timetable is (see over):

Date (week beginning)	Activity
19 March 2012	Board considers and approves Baljurda's recommended changes to the Scheme document for consultation and approves consultation document (21 March)
26 March	Consultation (3 weeks)
16 April	Consultation closes (19 April)
23 April	Working Group (WG) meets and reviews submissions (one meeting) and recommends to Board (24 April)
30 April	Board (at 1 May meeting) considers WG recommendations – instructs DLA Phillips Fox (DLAPF) to draft amended Scheme document
7 May	DLAPF drafting
14 May	Chair (under delegated authority) or Board (by circular resolution) approves 2 nd consultation document
14 May	Consultation (16-29 May)
28 May	Consultation closes (29 May)
4 June	WG meets, considers submissions recommends to Board (6 June)
18 June	Board approves changes (Board meeting 18 June)
18 June	Board gives notice of changes to Ministry of Consumer Affairs (MCA) and members (19 June)
30 July	Time for Minister to object expires 5 August (45 days)
6 August	Scheme document amended

The Board has agreed the proposed amendments meet the requirements of clause E.63 of the Scheme document.

The Board will appoint a working group of stakeholder representatives to review submissions received and make recommendations to the Board. The Board will seek nominations to the working group separately from this consultation document.

Once the Board has considered submissions, its legal advisors, DLA Phillips Fox, will draft the required amendments to the Scheme document. The Board will then consult with stakeholders on the detail of the proposed amendments.

3. Closing date for submissions

The closing time and date for submissions is 5 pm on 19 April.

Please note late submissions are unlikely to be considered.

4. Making submissions

In making submissions, the Board prefers electronic submissions in Microsoft Word format. Please send **submissions** to:

E-mail submissions@egcomplaints.co.nz.

Please use the format shown in appendix 2. Submitters should indicate any documents attached in support of the submission in a covering letter. A word version of the form (with expandable boxes), called the preferred form for submissions is on the [current consultation page of the website](#). Please save this to your computer to fill in.

The Commission may make submissions available on the Commissioner's website. If submitters provide any confidential information, please clearly show this in a cover letter.

If you have any **questions** during the consultation process, please contact James Blake-Palmer either by e-mail j.blake-palmer@egcomplaints.co.nz or phone 04 914 4537.

All submissions will be acknowledged. If you do not receive an acknowledgement within two working days, please contact Kirsty Williams 04 914 4524 or k.williams@egcomplaints.co.nz

5. Achievement Standards – amend definition

The Baljurda Report recommended a number of changes to the Achievement Standards, to which the Board is required to have reference when proposing amendments to the Scheme.¹

The Scheme document defines the Achievement Standards as:

“The requirements of the Minister for an approved scheme (as defined in P 3 of Schedule 4 of the Electricity Industry Act 2010) which, as at 1 April 2011, are the achievement standards under which the Scheme was approved by the Electricity Commission under section 158G of the Electricity Act 1992 and the Minister under section 43E of the Gas Act 1992.”

¹ For example, the Baljurda Report recommended (see para 10.3 at pages 54-55) the Achievement Standards be reviewed to ensure consistency with the Electricity Industry Act 2010.

The Ministry of Consumer Affairs has confirmed that the requirements of the Minister for an approved Scheme are those set out in Schedule 4 (clauses 5 and 13) of the Electricity Industry Act 2010 (the EI Act).

The Board recommends amending the definition of Achievement Standard to refer to clause 3 of Schedule 4 of the EI Act for the meaning of the approved scheme.

6. Recommendations for changes to the Scheme document

Following an independent review the Scheme, Baljurda Comprehensive Consulting recommended a number of changes to the Scheme. The Board is seeking the views of stakeholders on those recommendations.

The [Baljurda Report](#) is available on the Commissioner's website, along with the [Board's response to the Baljurda recommendations](#).

The Baljurda Report recommends amendments to the Scheme to enhance achievement of the Scheme's purpose and founding principles. Most of the recommended changes require amendment to the Scheme document and Board approval.

7. Request from Minister to increase jurisdictional limit

The Board has received a request from the Minister of Consumer Affairs, Hon Chris Tremain, to increase the \$value jurisdictional limit for complaints able to be considered by the Commissioner to \$100,000. The Minister wrote:

"I am concerned that the present limit of \$20,000 (or \$50,000 with the approval of the company concerned) can result in consumers being unable to achieve redress. A number of potential circumstances have been brought to my attention that could result in consumers being forced to reduce a higher claim in order to fit within the limit. As a result they are awarded less compensation than they might otherwise be entitled to receive.

A higher monetary limit would help to alleviate these concerns by allowing consumers access to the Scheme in a wider variety of circumstances. I have received advice that a figure of \$100,000 would be effective, and modest relative to the jurisdiction limits of various financial sector dispute resolution schemes and the District Court.

I believe that it would be in the best interests of electricity consumers to increase the jurisdiction limit, ideally to \$100,000."

The Baljurda Report recommended an increase to match the CPI. The Board welcomes submissions on the \$value jurisdictional limit – see section 9 (i).

8. Recommended changes on which the Board disagrees with the recommendations for change

The Board has considered and rejected three of the Baljurda Report recommendations. The Board is seeking submissions from stakeholders on these issues. The recommendations are:

- Referral to a higher level
- The Scheme's legal basis
- The test case procedures

a) Referral to a higher level

Baljurda Report – para 8.1.2 page 45 | Scheme document – Part B

Recommendation: The Commissioner be given the power to refer complaints to a higher level, if she considers the complaint could be resolved by so doing.

The Board accepts the advice of the Commissioner that there is no barrier in the Scheme document to her referring matters to a higher level. The Commissioner advises this is already a useful means of resolving complaints at an early stage.

b) The Scheme's legal basis

Baljurda Report - para 10.5.1 page 56

Recommendation: If the legal structure should change in the future, a not-for-profit company limited by guarantee would be the most appropriate.

The Board agrees with the observations of the Baljurda Report that this matter should be left on the shelf for the time being. The Board notes this was a question on which members' views were specifically sought by Baljurda, and the survey results showed members were satisfied with the current legal structure.

c) Test cases

Baljurda Report – para 11.1 page 60 | Scheme document – B.46-B.51

Recommendation: Legal advice is sought on whether the Commissioner's decisions are subject to judicial review, and if so, Clauses B.46-B.51 (the test case procedure) be removed from the Scheme document.

The Board obtained legal advice suggesting that while it is likely that the Commissioner's decisions are subject to judicial review, the issue is not clear cut. The Board is therefore not proposing to remove the test case procedure at this time.

9. Summary of recommended changes on which the Board is consulting

Set out below are summaries of the recommendations from the Baljurda Report with references to the paragraph where they appear in the Baljurda Report, together with the Scheme document reference, where relevant.

a) Definition of a complaint

Baljurda Report – para 5.1.1, page 33 | Scheme document – Part A definitions

Recommendation: the Scheme use the International Organisation for Standardisation (ISO) definition of '*complaint*', (amended to include '*and services*', after '*products*').

This recommendation proposes a change to the Scheme document and adding the definition to the Achievement Standards. The ISO definition is:

'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.' Definition from ISO 10002:2004.

b) Determinations

Baljurda Report - para 7.1 page 39 | Scheme document – B.43

Recommendation: clause B.43 of the Scheme document is amended to require the Commissioner to make anonymised copies of determinations available to the public, with discretion to publish only summary, non-identifying information where anonymising would not prevent the identification of a complainant or a member.

c) Reporting

Baljurda Report – para 7.3 pages 40-41 | Scheme document – E.16.16

Recommendation: The Scheme document is amended to require publication of member names against complaint statistics in the Annual Report.

Recommendation: Amend clause E.16.16 to require the Board and Commissioner to report on material or persistent breaches.

d) Member compliance reporting

Baljurda Report – para 7.3.1 page 41 | Scheme document – C.8.10

Recommendation: amend the Scheme document to require the Board to monitor member compliance by audits of member websites and random audits of member materials for compliance.

e) Acknowledgment of complaint

Baljurda Report – para 8.1.1 page 42 | Scheme document – C.8.1

Recommendation: Amend clause C.8.1 of the Scheme document (members to acknowledge complaints in writing within two working days) to allow flexibility in acknowledging complaints.

f) Discretion not to investigate

Baljurda Report – para 8.1.3 pages 43-44 | Scheme document – Part B

Recommendation: The Commissioner be given a discretionary power not to investigate, or continue to investigate, a complaint where, in all the

circumstances, the Commissioner considers there is little likelihood that sufficient evidence will be available to make a decision about the merits of either parties' case.

g) Extensions of time

Baljurda Report - para 8.2.1 page 45 | Scheme document – B.7.1

Recommendation: Where a customer has complained directly to the company, without referral from the EGCC, the Member is empowered to negotiate the extension of time directly with the complainant.

Recommendation: Where the customer has been referred by the EGCC and an extension of time is negotiated, the member is required to inform the EGCC of this.

The Board prefers the previous approach (constitution pre 1 April 2010) where the member could claim a further 20 working days so long as they advised the complainant of this in writing (including the reasons for needing extra time). The Board believes this would give some flexibility to members, but with some certainty of a maximum time for complainants.

The Board seeks submissions on its preferred approach.

h) Coverage

Baljurda Report - para 9.1 page 46 | Scheme document – various (see Appendix 1)

Recommendation: The Board consider appropriate amendments to the Scheme document to resolve any inconsistencies or lack of clarity.

The changes the Board recommends to resolve inconsistencies or lack of clarity are those discussed in section 10 and Appendix 1.

i) Financial limits

Baljurda Report – para 9.1.2 pages 46-47 | Scheme document – B.11, B.39 and consequential amendments to other clauses

Recommendation: The amount of \$20,000 be adjusted up to the current date, based on CPI increases, and then be automatically adjusted to the CPI every three years thereafter. This would mean an adjustment to \$23,211.98 based on \$20,000 in 2005 dollars.

Alternative recommendation from the Minister of Consumer Affairs: The jurisdictional limit of the Scheme be \$100,000.

j) Systemic problems

Baljurda Report - para 9.3 pages 47-48 | Scheme document – B.52.12

Recommendation: The word “*industry*” is deleted in reference to systemic problems.

Recommendation: The Commissioner is given a discretionary power, after consultation with the Member or Members affected by the systemic issues, to investigate the problem and make recommendations for its solution. The fees for investigation of systemic issues should be on the same basis as other complaints.

Recommendation: The wording in clause B.52.12 of the Scheme document (identification of systemic issues from complaints) be amended to give the Commissioner responsibility for identifying systemic issues from either complaints or other sources.

The Board does not believe there should be a separate levy for work on a systemic issue, but welcomes submissions from stakeholders on this point.

k) Internal complaints mechanisms

Baljurda Report - para 9.5 page 50-52

Recommendation: The Scheme document is amended so that if the Commissioner becomes concerned about the performance of a Member's complaint handling processes or performance, the Commissioner may undertake an audit of the Member's processes and provide advice to the Member on any remedial action.

l) Defaulting Scheme Members

Baljurda Report - para 9.6.1 page 52 | Scheme document – Part F

The Scheme document is updated to provide information on the processes for dealing with defaulting members.

Section 96 of the EI Act out the obligation for all members to be members of an approved dispute resolution scheme, unless exempted. This section also makes it an offence to knowingly refuse or fail to become a member.

m) Independent review

Baljurda Report - para 9.7 pages 52-53 | Scheme document – E.58

Suggestion: Consideration is given to changing the three year interval for an independent review of the Scheme to a five year interval.

The Board proposes amending the Scheme to allow for a five year interval, which would be consistent with the requirements of Schedule 4 of the EI Act.

n) Code of Conduct for Complaint Handling

Baljurda Report – para 10.4 page 55 | Scheme document – Part C

Recommendation: The Code is reviewed with the aim of rationalising and simplifying the document.

10. Further amendments proposed by the Board

The Board has recommended some additional changes to resolve inconsistencies or lack of clarity (see recommendation (h) in section 9 above). These are set out in Appendix 1.

A handwritten signature in black ink, appearing to read 'R. Janes', with a long horizontal stroke extending to the right.

Richard Janes

Independent Chair

Electricity and Gas Complaints Commissioner Scheme

29 March 2012

Appendix 1 Further amendments proposed by the Board – see section 10

<p><i>Achievement Standards</i> definition (part A)</p>	<p>To correct reference to the Electricity Industry Act 2010 – amend definition to: <i>“The requirements of the Minister for an approved scheme (as defined in clause 3 of Schedule 4 of the Electricity Industry Act 2010)...”</i></p>
<p><i>Land Complaint</i> definition (part A)</p>	<p>To ensure references in the Scheme document to legislation and regulations are as accurate as possible, the Board proposes the definition of <i>Land Complaint</i> is amended by substituting for the existing wording after the colon, the words <i>“...a) the applicable gas legislation and regulations; or (b) the applicable electricity legislation and regulations; or (c) a Land Agreement.”</i></p>
<p>B.8.4</p>	<p>To clarify the intent of clause B.8.4, amend the clause to read: <i>“The Commissioner may decide not to consider a Complaint if the Commissioner considers that: B.8.4 the Complainant has failed to provide information to the Commissioner about a Complaint.</i></p>
<p>Heading above B.9 – Commissioner’s terms of reference (part B)</p>	<p>To help sign-post readers and make the document simpler to use the Board proposes a heading is inserted above clause B.9 stating <i>“Complaints the Commissioner cannot consider”</i>.</p>
<p>B.52.10 vs. E.16.16 – Reporting breaches (pp 25, 45)</p>	<p>These two clauses are inconsistent. To achieve consistency the board considers E.16.16 should be amended by removing the word <i>“all”</i> where it first appears in that clause and replacing it with the words <i>“material and persistent”</i>.</p>
<p>B.52.14 – Reporting on costs of Land Complaints</p>	<p>Remove the requirement for the Commissioner to report separately on the costs of the Commissioner’s activities relating to Land Complaints. This requirement was added at the time the Scheme was amended to include jurisdiction for Land Complaints. After keeping track of costs for some years, the \$cost of separate activities relating to Land Complaints became increasingly difficult to identify. The most tangible cost was the cost of publishing the Land</p>

	Code – which no longer exists.
Part C	<p>The Board accepts, as noted in the Baljurda report, part C can be further improved.</p> <p>As well as rationalising the various provisions, the Board proposes the following specific changes to Part C.</p>
Part C	<p>Amend C.8.5 so it says:</p> <p><i>“Scheme Members must in relation to Complaints other than Land Complaints:</i></p> <p><i>If they are the Scheme Member managing a Complaint, and the Complaint reaches Deadlock, inform the consumer of the Deadlock and that the consumer has two months to ask the Commissioner to consider the Complaint; and”</i></p> <p>Amend C.32 so it says:</p> <p><i>“The Lines Company Scheme Member responsible for a Land Complaint must if a Complaint reaches Deadlock, notify the Land Owner or Land Occupier of this and that the Land Owner or Land Occupier has two months to refer the Complaint to the Commissioner”</i></p> <p>C.7.1 The Board considers the intention of clause C.7 (informing consumers) would be better achieved if all information given by Members to consumers is in plain and accessible language.</p> <p>To achieve this, the Board proposes C.7 is amended by inserting the words <i>“in plain and accessible language;”</i> after the words <i>“Scheme Members must”</i> and removing the words <i>“presented in plain and accessible language”</i> from clause C.7.1.</p>
C.7.7 – Nominated contact	<p>The Board considers the Scheme’s purpose of resolving complaints would benefit from clearer communication channels between Members and the EGCC. To achieve this the Board proposes clause C.7.7 is amended by substituting the words that appear after the words</p> <p><i>“Complaint handling processes”</i> with the words <i>“ including a nominated point of contact for complaints and up-to-date contact details”</i>.</p>
C.7.6 vs. C.30	<p>The Board considers there is inconsistency between lines and retail members, as to when they are required to inform complainants about the EGCC.</p> <p>To achieve consistency the Board proposes adding to C.7.6, the words:</p> <p><i>“such acknowledgment to confirm the Scheme Member is a member of the Scheme and provide information on the complainant’s right to complain to the Commissioner”</i>.</p>

	The word “ <i>provide</i> ” should also be added to clause C.30 so it is clear the obligation to notify about the EGCC is the same for retail and lines members
C.9	<p>The current wording of C.9 implies a “<i>contract</i>” is necessary for a consumer to be able to complain. Because this is not the case, and to clarify the Commissioner’s jurisdiction, the Board proposes inserting a further paragraph at the end of clause C.9 that states:</p> <p><i>“This clause does not operate to prevent the Commissioner from considering a Complaint by a Consumer about a Member with whom they may not have a contract”.</i></p> <p>This change would make clause C.9 consistent with the current definition of <i>Complaint</i> in Part A.</p>
E.11.2 vs. E.11.3 and definition of “ <i>Board Member</i> ”	<p>Clause E.11.2 sets out the length Board Members are appointed for. The maximum is six years. This does not reflect the possibility that the Board Chair (who is a Board Member, as defined in part A) may be reappointed for a further four-year term.</p> <p>To clarify, the Board proposes clause E.11.2 is amended by adding after the words “<i>No Board Member</i>” the words: “, <i>except for the Board Chair,</i>”</p>

Appendix 2 Preferred form for submissions

Recommendations	Agree or disagree✓ or X	Comments
Ability to refer cases to a higher level – change not needed		
No change to Scheme’s legal basis		
The test case procedures – to remain		
Definition of a complaint - Para 5.1.1, page 33		
Determinations - Para 7.1 page 39		
Reporting Para 7.3 pages 40-41		
Member compliance reporting Para 7.3.1 page 41		
Acknowledgment of complaint Para 8.1.1 page 42		
Referral to a higher level Para 8.1.2 page 45		
Discretion not to investigate Para 8.1.3 pages 43-44		
Extensions of time Para 8.2.1 page 45		
Coverage Para 9.1 page 46		
Information management Para 9.1.1 page 46		
Financial limits Para 9.1.2 pages 46-47 & Minster’s recommendation (see section 7 of this document)		

Professionalism Para 9.2 page 47		
Systemic problems Para 9.3 pages 47-48		
Internal complaints mechanisms Para 9.5 page 50-52		
Defaulting Scheme Members Para 9.6.1 page 52		
Independent review Para 9.7 pages 52-53		
Code of Conduct for Complaint Handling Para 10.4 page 55		
Further changes proposed by the Board – see Appendix 1		
Replace reference to the Achievement Standards with reference to Schedule 4 of the Electricity Industry Act 2011		
Land Complaint definition		
B.8.4 – clarify		
Heading above B.9 – add heading		
E.16.16 – make consistent with B.52.10		
E.52.14 – remove requirement to report separately on activities relating to Land Complaints		
Rationalise Part C – Code of Conduct for Complaint Handling		
C.8.5, C.32 – clarify		

C.7 – make reference to plain and accessible language general		
C.7.7 – nominated contact		
C.7.6 – consistency with C.30		
C.9 – consistency with definition of complaint		
E.11.2 – term for Chair of Board		