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James Blake-Palmer  
Team Manager - Projects  
Electricity and Gas Complaints Commissioner Scheme  
Wellington

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

Dear James

### **Indemnity Disputes under the CGA**

1. Vector welcomes the opportunity to make a submission on the Electricity and Gas Complaints Commissioner Scheme's ("EGCC") consultation paper, *Amendments to the Scheme document: Indemnity Disputes under the Consumer Guarantees Act*, circulated for consultation on 24 March 2014.
2. Vector's contact person for this submission is:  
  
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3. Our responses to the questions in the consultation paper are set out in the Appendix.

Yours sincerely

A handwritten signature in blue ink that reads "Ian Ferguson".

Ian Ferguson  
**Regulatory Policy Manager**

**Appendix: Responses to consultation questions**

Question for submitters	Yes/No	Vector's comment
1. Do you agree that the EGCC indemnity dispute process should be mandatory for both parties if one party refers the indemnity dispute to the EGCC and it meets the criteria for the Commissioner to consider it?	Yes	
2. Do you agree that the existing financial limits for complaints should apply to Indemnity Disputes?	Yes	
3. Do you agree with the Board's proposed levy system for indemnity disputes?	Partly	<p>Vector agrees that the parties to each indemnity dispute should be required to pay for the costs incurred by the EGCC in considering the dispute. We welcome the EGCC's intention to treat the costs of resolving indemnity disputes as variable costs, rather than fixed costs. The allocation of the fixed levy, which is based on Scheme Members' relative market shares, should not be affected by any additional disputes concerning the same members.</p> <p>We assume the EGCC's proposal to calculate levies based on existing arrangements means the charges will be based on the level of complaint, i.e. time taken by the EGCC to resolve the complaint. We consider this approach to be reasonable.</p> <p>However, it is not clear how the EGCC envisages dividing up the levies between the parties to an indemnity dispute, which are both Scheme Members. We consider that both parties should pay towards the EGCC's costs, although the 'losing' party should bear a bigger share of the</p>

Question for submitters	Yes/No	Vector's comment
		<p>cost. This will provide incentives on both parties to only take a dispute to the EGCC when it genuinely cannot be resolved any other way. As Scheme Members, both retailers and distributors are subject to the requirement to exert all reasonable efforts to resolve a consumer complaint before referring it to the EGCC. The same requirement should apply to retailers and distributors in respect of indemnity disputes.</p> <p>We <b>recommend</b> that further amendments be made to the Scheme Document to clarify how levies for indemnity disputes are allocated between the relevant parties.</p>
<p>4. Do you agree that reporting of Indemnity Disputes to the responsible Minister should be limited to the number of cases considered?</p>	<p>Partly</p>	<p>Confidentiality should apply to both information about the dispute and its outcome.</p> <p>However, we <b>recommend</b> that the EGCC include in its reports to the responsible Minister on indemnity disputes information about the time taken to resolve such disputes. This would be useful and consistent with the EGCC's reporting practice.</p>
<p>5. Do you have any other comments or concerns about the proposed changes you would like the Board to consider?</p>	<p>Yes</p>	<p>Vector wishes to query the way the consultation paper describes indemnity disputes. Section 3 of the paper says:</p> <p style="padding-left: 40px;">An indemnity dispute occurs where a distributor refuses to indemnify a retailer for remedy costs where there has been a failure of the acceptable quality guarantee for electricity and gas, as determined by the retailer, the EGCC (following a complaint made to it), the Disputes Tribunal or a court.</p> <p>This is not correct and risks creating unfortunate perceptions regarding the indemnity disputes scheme. However, we assume this is just a drafting oversight and we acknowledge that the draft amendment to the Scheme document defines indemnity dispute correctly.</p>

Question for submitters	Yes/No	Vector's comment
		<p>In our view, an indemnity dispute could occur in any of the following circumstances:</p> <ul style="list-style-type: none"> <li>a) where a retailer believes there has been a failure of the acceptable quality guarantee but the distributor or transmission operator disagrees;</li> <li>b) where both sides agree there has been a failure of the acceptable quality guarantee but there is a dispute over the quantum of the compensation payment made; or</li> <li>c) where both sides agree a failure has occurred and agree on the quantum, but the distributor or transmission operator fails to indemnify the retailer.</li> </ul> <p>The EGCC consultation paper suggests that only circumstance (c) above will be addressed, which we assume is not the intention.</p> <p>We are somewhat concerned by the EGCC's statement that "an indemnity dispute occurs where there has been a failure of the acceptable quality guarantee...". Our concern is that this may create a perception that the EGCC will automatically assume that a failure has occurred, even though this could be the very issue that is the subject of the dispute (circumstance (a) above). This could undermine confidence in the EGCC's impartiality and the indemnity dispute resolution process.</p> <p>We <b>recommend</b> that the EGCC clarify its view of when indemnity disputes occur.</p> <p>Also, the CGA indemnity covers transmission operators as well as distributors so the reference in the consultation paper to distributors alone is too narrow.</p> <p>We <b>recommend</b> that the EGCC further clarify what the implications of the proposed changes are</p>

<b>Question for submitters</b>	<b>Yes/No</b>	<b>Vector's comment</b>
		<p>for transmission operators, given the EGCC can only consider land complaints in respect of these Members.</p> <p>The Appendix sets out a number of drafting comments on the EGCC's proposed amendments to the Scheme Document.</p>

**Appendix:** Drafting Comments on Proposed Amendments to the Scheme Document

Proposed amendment	Vector comment/recommendation
G.2 All parties to the Indemnity Dispute must participate in the Indemnity Dispute process and are bound by any binding settlement issued by the Commissioner.	Clarify that this provision applies only where a party has referred the dispute under G1.
G.4 In considering any Indemnity Dispute the Commissioner must determine what the Commissioner considers is fair, reasonable and in accordance with the law.	As per section B.3 in respect of Complaints, there should be a requirement on the Commissioner to have regard to all relevant information.
G.5 The Commissioner must decide the method and process to be used to resolve the Indemnity dispute...	Replace "method and process" with "procedures".
G.6 The Commissioner will ensure each party to the Indemnity Dispute receives notification that the Indemnity Dispute has been received.	As per section B.21 of the Scheme Document, there should be a timeframe (for example, 5 Working Days) for the Commissioner to notify parties that the Indemnity Dispute has been received.
G.7 The Indemnity Dispute will be dealt with by the Commissioner as a confidential negotiation between the Scheme Members that are the parties to the Indemnity Dispute. Upon making a referral to the Commission to consider the Indemnity Dispute, the parties must confirm in writing acceptance of confidentiality in the format required by the Commissioner.	The format required by the Commissioner should either be in a standard template or "in the format <i>reasonably</i> required..."
<p>G.10 Where a party to the Indemnity Dispute supplies information to the Commissioner:</p> <p>G.10.1 the Commissioner must not, without that party's consent, disclose that information to any other person other than to the other party to the Indemnity Dispute, employees of the office of the Commissioner or the chair of the Board;</p> <p>G.10.2 when the Commissioner has resolved the Indemnity Disputer or ceased to consider the Indemnity Dispute, the Commissioner must, if requested, return the information as soon as reasonably practicable. The Commissioner may retain such information necessary as file records.</p>	<p>This proposed amendment requires the Commissioner to keep information supplied to him/her confidential. However, there does not appear to be a clear obligation on the Commissioner to keep any proposed settlement or binding settlement confidential.</p> <p>We note that section G.9 states..."including any agreement reached by the parties or settlement made by the Commissioner".</p>

<b>Proposed amendment</b>	<b>Vector comment/recommendation</b>
<p>G.11 The confidentiality obligations in clauses G.9 and G.10 do not apply where disclosure:</p> <p>...</p> <p>G.11.3 is reasonably required by the Commissioner to carry out its responsibilities under the Scheme; or....</p>	<p>This is an exception to the Commissioner's obligations of confidentiality where "reasonably required by the Commissioner to carry out its responsibilities under the Scheme". It is not clear to Vector when or how the Commissioner might use this.</p> <p>Also, the wording is different from G11.4 which refers to "properly and reasonably". We do not think this is necessary in light of the other exceptions in this clause.</p>
<p>G.12 At any time the Commissioner is considering an Indemnity Dispute, the Commissioner may seek to promote a settlement of the parties by agreement.</p>	<p>We suggest that the wording be amended to read "...may seek to promote a settlement of the Indemnity Dispute by agreement between the parties".</p>
<p>G.15 The parties have 15 Working Days from the date of issue of the proposed settlement (or such longer period as the Commissioner may agree) to make further representations to the Commissioner in respect of the Indemnity Dispute.</p>	<p>There does not appear to be a requirement on the Commissioner to consider further representations to the Commissioner provided under G.15.</p> <p>Also, it may be better to refer to "submissions" or "comments" rather than "representations".</p>
<p>G.17 If the Indemnity Dispute remains unresolved at the expiry of the timeframe specified in clause G.14, the Commissioner may issue a binding settlement.</p>	<p>The reference to G.14 does not appear to be correct. It seems like G.17 is intended to refer to the timeframe in G.15. However, if that is the case, then there is no obligation on the Commissioner to consider any further "representations" before it can issue a binding settlement. We suggest that the EGCC clarify this.</p>
<p>G.18 Scheme Members are bound by the terms of a binding settlement and they must pay any money, or take any action required to carry out and implement a binding settlement and pay all levies, costs and expenses incurred by the Commissioner relating to the Indemnity Dispute invoiced by the Commissioner in accordance with Part D.</p>	<p>This proposed amendment includes an obligation to pay "all levies, costs and expenses incurred by the Commission relating to the Indemnity Dispute..." We are not sure what levies the Commissioner would be required to pay in respect of an Indemnity Dispute, and suggest that this be removed.</p> <p>Any "costs and expenses" should be qualified as "reasonable".</p>