Report prepared for the Electricity and Gas Complaints Commissioner

Understanding the value of the Electricity and Gas Complaints Commissioner

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sapere research group

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Glossary

ADR	Alternative dispute resolution
ANZEWON	Australia and New Zealand Energy and Water Ombudsman Network
ANZOA	Australia and New Zealand Ombudsman Association
Authority	Electricity Authority
BOS	Banking Ombudsman Scheme
CDR	Consumer dispute resolution
Code	The Electricity Industry Participation Code 2010
Commission	Commerce Commission
Commissioner	Electricity and Gas Complaints Commissioner
EGCC	Electricity and Gas Complaints Commissioner
EIA	Electricity Industry Act (2010)
EWON	Energy and Water Ombudsman NSW
EWOQ	Energy and Water Ombudsman Queensland
EWOSA	Energy and Water Ombudsman South Australia
EWOV	Energy and Water Ombudsman Victoria
EWOWA	Energy and Water Ombudsman Western Australia
FSA	Financial Services Authority
GIC	Gas Industry Company, the gas industry co-regulatory body
HHI	Herfindahl-Hirschman index, a measure of market concentration
ICP	Installation Control Point
ISO	Insurance and Savings Ombudsman (on 1 November 2015, the ISO will become the Insurance and Financial Services Ombudsman)
MBIE	Ministry of Business, Innovation and Employment
MED	Ministry of Economic Development
Ofcom	UK telecommunications regulator
Ofgem	The UK energy regulator
Ombudsman Services	The Ombudsman Service Limited (UK)
TCF	Telecommunications Carriers Forum
TDR	Telecommunications Dispute Resolution

Executive summary

The promotion of the long-term benefit of consumers is the government's objective for the electricity (and by inference the gas) sectors. Consumers themselves have expectations that their rights will be protected, and the internet and social media (including online 'news' services) have tended to reinforce consumers' expectations.

Consumer dispute resolution (CDR) supports competition in a market by reducing consumers' perceptions (and experience) of the risk of switching to an unknown supplier; reducing the level of product and service failure by increasing the chance that the supplier will have to provide a remedy; and reducing business risk and uncertainty by clarifying consumers rights and expectations through the development of precedents.

The Electricity and Gas Complaints Commissioner (EGCC)is the only CDR provider for the energy sector in New Zealand. It fulfils all these roles in the energy sector, supporting consumer confidence and the development of a competitive market. The EGCC supports the long-term benefit of consumers.

In this report we use a pyramid to represent the roles of the EGCC to individual consumers, and at a company and system-wide level. The value of each of these roles is assessed and an indicative value is placed on these, the value of:

- resolving individual complaints, is $0.5m
- driving improvements in internal complaint handling by electricity companies, for 5% of complaints, is $0.9m
- identifying and driving improvements in the energy system that affect 1% of all mass market connections is $22m.

While these estimates are by their nature somewhat speculative, we note that the total expenditure of the EGCC in 2014/15 was $3.0m.

The government also has provisions for regulating for distributional equity within the Electricity Industry Act, and has some distributional regulations in place. The EGCC may contribute to equity goals as there is some evidence that vulnerable consumers are more likely to experience problems than the average population. However, it is not possible to measure the extent to which vulnerable populations access the EGCC's services.

Although distributional objectives are secondary to the efficiency objectives of the energy sector (at least for electricity), obtaining more data on the demographics of the population being served by the EGCC would be useful to support the value of this role. It may also assist the EGCC to determine to what extent there is likely to be a group of complainants that are not accessing their services.

With the increasing focus of consumers on obtaining their rights and doing so in a simple, and speedy manner, we have developed some comparisons between the EGCC and Australian energy ombudsmen, as well as the NZ banking sector ombudsmen. While these are not conclusive due to differences in the scale, jurisdiction and market structure of these services, there is no indication that the EGCC is inefficient.

Energy suppliers are starting to enter other markets and it is expected that this diversity of services will only increase. With the changes in services offered the risk is that the EGCC's jurisdiction becomes disconnected from the suppliers' businesses. Gaps and overlaps in CDR providers may result.

This threatens the value of the EGCC in terms of the three roles outlined above, as their ability to consider a complaint is circumscribed, there is a risk of inconsistent processes and outcomes jeopardising company-level benefits and hindering the identification and resolution of industry or system wide issues. This could (should it become widespread) affect consumer perceptions of the industry and therefore competition and the long-term benefit to consumers would be hampered.

If CDR is considered as part of the justice sector, rather than part of the industry regulatory landscape, it suggests that the structure of CDR should be organised from the perspective of consumers (the users of the service) and in a similar manner to how the economy operates.

There may be economies of scale from sharing common systems, but conversely there may be benefits to specialisation, including expertise, flexibility and innovation. The meshed industry structure and relative technical complexity of the energy sector suggests that there is unlikely to be a benefit to competing CDR providers as consistency and sector expertise are likely to be important.

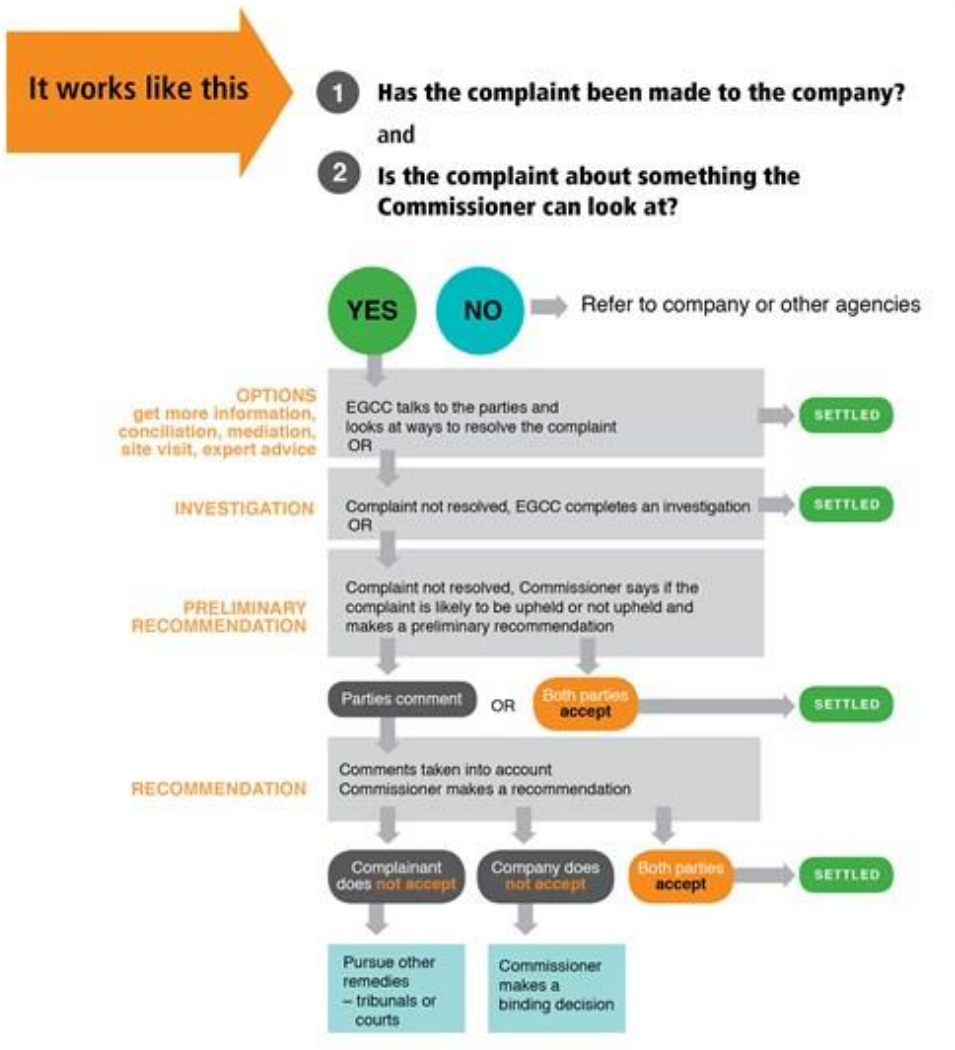
There are two options to the EGCC if it wishes to expand its jurisdiction, either to seek to widen the current scheme's scope or become an approved provider of other CDR schemes (such as telecommunications or financial services). We consider a useful hurdle is: does the lack of jurisdiction impede the EGCC's ability to consider otherwise legitimate complaints about energy suppliers, and/or do consumers face high accessibility barriers (for example because their complaint crosses jurisdictional boundaries).

One possible response would be to explore with members whether they would consider voluntarily giving the EGCC jurisdiction over matters which are currently not able to be investigated, such as where products or services are bundled. The benefit to suppliers could be consistent outcomes, and improved customer trust and loyalty. However, this approach may not provide equitable access to CDR for all consumers, as there are indications that not all members would agree to voluntary jurisdiction.

1. Introduction

The Electricity and Gas Complaints Commissioner provides independent, mandatory dispute resolution services to the electricity and gas sectors. The service is free to consumers with the cost met by levies on member companies.

Figure 1 Complaints process



Source: Electricity and Gas Complaints Commissioner

The issues EGCC can consider include billing, customer service, meters, and disconnections. The Commissioner can also consider complaints about actions of staff or contractors, as well as access to and use of land on which there is electricity or gas equipment. The EGCC uses a

wide range of dispute resolution techniques, including mediation and conciliation, in resolving complaints.[1] Figure 1 provides an overview of the process. Importantly, the energy supplier must have an opportunity to resolve the complaint prior to it being considered by the EGCC.

The EGCC is the only dispute resolution scheme approved under the *Electricity Industry Act 2010* (the EIA). Because there can only be one approved scheme at any time, all electricity and gas retailers and distributors must be members of the scheme.[2]

The EGCC is facing two key drivers of change:

- Changes in the service offerings of its members, specifically increased bundling of electricity and gas with other services. This could limit the ability of the EGCC to consider all aspects of members' services and risks consumer confusion and inconsistency in outcomes. From consumers' perspective another scheme may be available or not.[3]
- Changes in consumer expectations, such as online, quicker and simpler services, with some consumers more savvy and increasingly likely to complain, while other consumers may be confused and vulnerable as service bundling becomes more complex.

This report considers possible strategic responses to these changes to ensure that the services provided by the EGCC are fit-for-purpose. In particular, in order to effectively influence the policy debate and the views of stakeholders, we develop some measures of the value of the EGCC and consider indicators of the efficiency of the organisation. We also consider the extent to which the EGCC and wider consumer dispute resolution (CDR) landscape reflects the New Zealand economy and where there may be benefits in broadening the jurisdiction of the EGCC.

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1 The scope and rules of the scheme are set out in the Scheme Document and comply with section 13 of the Electricity Industry Act. A copy of the Scheme Document is available online here: <http://www.egcomplaints.co.nz/media/101753/2014_EGCC_Scheme_document_1_October.pdf>.

2 Section 95 of the Electricity Industry Act 2010 provides for complaints to be made concerning Transpower or any distributor or retailer to the approved dispute resolution scheme in schedule 4 of the Act. Section 43EA of the Gas Act 1992 requires gas distributors and retailers to be members of the dispute resolution scheme established by schedule 4 of the Electricity Industry Act 2010.

3 Financial service providers must belong to an approved scheme, and Vector has joined Financial Services Complaints Ltd for disputes in relation to its solar financing offering; there is no mandatory telecommunications scheme and Trustpower, which offers phone and internet as well as electricity and gas, is a member of TDR.

2. Types of CDR providers

Consumer dispute resolution (CDR) schemes focus on resolving disputes between consumers and businesses which are generally of relatively low value. Dispute resolution schemes provide consumers with an avenue for resolving complaints or disputes when they cannot resolve them directly with their service provider and going through court action is not a financially realistic option.

We draw a distinction between CDR schemes and ADR more generally. ADR, as described in the literature, is often a precursor to court. In contrast, CDR typically obligates the supplier to follow the decision of the CDR scheme provider, while the consumer is not so obligated and may resort to legal remedies. The reason for this is to counter concerns of possible bias because CDR is funded by the industry.

There are various forms of CDR schemes, which include complaints commissions and ombudsman schemes. A scheme may be either voluntary and industry-initiated, or a mandatory regulatory condition. The principle of these schemes is to offer free (to the consumer), objective advice and non-legalistic and speedy resolution of customer complaints.

CDR schemes can be established by government, industry or in cooperation between the public sector, industry and consumer organisations. Funding may be private, public or a combination of both. Typically, the basic funding tenet for the industry schemes is that members fund the schemes; there is no charge to the customers who use the services (although ultimately at least some of the cost may flow through to prices).

There are two types of providers of CDR. The first is a specialist provider of a single scheme. These are often established by an industry, or by legislation. Sometimes these providers add other industries to their scheme, often as a result of changes to ownership of the suppliers (privatisation) or through regulatory change. Typically they have one scheme document or terms of reference for all users of their services. Where the scope of the scheme is expanded it is usually because of economies of scope and overlap between suppliers. Where suppliers cross industry boundaries (as in electricity and gas) it makes sense to have one scheme for both consumers (giving them certainty over where to turn for help) and suppliers (lowering their administrative costs).

A different approach is where a single business becomes accredited or approved across multiple industries or schemes. The sectors may be diverse. The UK's The Ombudsman Service Ltd (Ombudsman Services) is an example of this. It is the approved scheme provider for the energy sector and also provides CDR for communications, copyright and property. Each of these sectors has a separate terms of reference and the approval for Ombudsman Services to provide the service is from a different body or regulator (e.g. Ofgem and Ofcom). Fairway Resolution in New Zealand is similar, it provides dispute resolution services in a range of sectors including ACC, family, building and telecommunications. These types of providers may have an advantage in terms of economies of scale through reducing cost by sharing some of the services across different schemes.

The EU Directive on Consumer ADR has changed the CDR landscape in Europe by requiring EU countries to:

- ensure all consumers within the EU can seek redress from an ADR scheme

- set consistent standards for ADR providers
- simplify ADR and reduce consumer confusion

The rationale behind this was largely to encourage cross-border consumption. As a result of this change, Ombudsman Services has become accredited to provide ADR for all types of disputes including those where it previously had no jurisdiction in the sectors in which it operates.

These two models suggest if the EGCC wants to broaden its jurisdiction there are two options: it could expand the scope of the existing scheme which is probably more relevant where existing energy suppliers enter other industries; or seek approval as a provider of other (separate) schemes. We discuss this further in section 8.

3. Objectives of energy sector regulation and consumer expectations

The EGCC is part of the regulatory structure of the energy sector.[4] The scheme is approved pursuant to the Electricity Industry Act (2010) (EIA) and it is this Act that establishes the purpose of the scheme, which is in essence to resolve consumer disputes.[5]

The value that the EGCC provides can be considered in the context of supporting the energy sector. The government has an economic efficiency goal for the sector and (to a lesser extent) a distributional or equity objective. Section 15 of the EIA states the objective of the Electricity Authority is "to promote competition in, reliable supply by, and the efficient operation of the electricity industry for the long-term benefit of consumers". Section 113 provides for the making of regulations relating to consumer fairness. The EGCC supports both of these goals.[6]

Consumer policy (both general consumer protection legislation and resolution and redress):

> *[prevents] sellers from increasing sales by lying about their products or by engaging in unfair practices such as unilateral breach of contract or unauthorized billing*[7] …
>
> *[and more interventionist policies may be] explicitly aimed at benefiting vulnerable consumers at the expense of sophisticated consumers*[8]

Consumers also have expectations about their rights and access to CDR or other means of enforcing these; in some cases these expectations are increasing.

In this section we describe both the government's goals and consumer expectations.

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4 It was not initially, as the Electricity Complaints Commissioner was established as a voluntary industry initiative (albeit in response to the 2000 Ministerial Inquiry), but it has become part of the regulatory landscape.

5 The Gas Act establishes the scheme approved under the Electricity Industry Act as the scheme for the gas sector in s43E.

6 Within the gas sector, the Gas Industry Company is the industry body and co-regulator of the sector, its objective as defined by the government is "to ensure that gas is delivered to existing and new customers in a safe, efficient, reliable, fair and environmentally sustainable manner". While this does not explicitly reference the long-term benefit of consumers, we consider it can be inferred. In addition, we consider a focus on the electricity wording is not undue given the relative amount of complaints about each sector (96.8% of deadlocks considered in 2014/15 related to electricity).

7 Armstrong (2008) p.98

8 Armstrong (2008) p.144

3.1 Long term benefit of consumers

The requirement to promote the long-term benefit of consumers mirrors section 1A of the Commerce Act 1986. The legislative history of section 1A is that the wording "long-term benefit of end-users" is a total welfare, or economic efficiency standard.[9] For example, in respect of section 1A of the Commerce Act, the High Court has observed that:[10]

> *It is the balancing of … real resource impacts on the economy that best serves the long-term interests of consumers.*

The Electricity Authority similarly interprets its purpose statement as requiring it to promote economic efficiency, or a total welfare standard.[11] A total welfare standard takes into account not only the interests of consumers but also the interests of suppliers:[12]

> *The term "total welfare" can be defined as the sum of consumer surplus and producer surplus (total surplus) plus consideration of consumer choice and innovation.*

In markets in which competition is feasible, the causal link between promoting outcomes which increase economic efficiency (a total welfare standard) and the long-term benefits to consumers is well accepted in the economics literature. As put succinctly by the current deputy chair of the Commerce Commission (prior to her tenure at the Commission):[13]

> *economists would generally agree that a market would promote long-term consumer welfare if it maximised the sum of producer and consumer surplus over time. Consumers gain when producers, spurred by the prospect of earning profits, enter markets, undertake investments and innovate to produce the goods and services that consumers want.*

The phrase 'long-term' recognises that an intervention to increase efficiency in the market may not immediately benefit consumers, but that competitive processes over time will lead to benefits for consumers.[14] Hence, applying a "total welfare" standard to regulatory interventions in markets is said to:[15]

> *harmonize immediate consumer interests with the overall welfare of society by subordinating consumer interests to aggregate social interest. However, it does so only temporarily. This approach is based on the idea that efficiency gains that are not of immediate benefit to*

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9 Hampton, L. And Scott, P. 2013, *Guide to Competition Law*, LexisNexis NZ Ltd., Wellington. At 1.2.1.

10 Air New Zealand v Commerce Commission (No 6) (2004) 11 TCLR 347 at [241].

11 Electricity Authority, 2011, 'Interpretation of Statutory Objective', paragraph A.15, accessed online July 2015, URL:< http://www.ea.govt.nz/about-us/strategic-planning-and-reporting/foundation-documents/>.

12 Hampton, L. And Scott, P. 2013, Guide to Competition Law, LexisNexis NZ Ltd., Wellington. At 1.2.1.

13 Susan Begg and Bryce Wilkinson, 'Goals of Antitrust Policy and the Commerce Act' in Mark N Berry and Lewis T Evans (eds) 2003, *Competition Law at the Turn of the Century, A New Zealand Perspective*, Victoria University Press, Wellington, Page 78.

14 In markets in which competition is not feasible, Part 4 of the Commerce Act provides for regulation which promotes outcomes consistent with those of workably competitive markets.

15 Cseres, K. 2007, 'The Controversies of the Consumer Welfare Standard', *The Competition Law Review*, vol.13(2), Retrieved from: <http://www.clasf.org/CompLRev/Issues/Vol3Issue2Art1Cseres.pdf>.

consumers should nevertheless be considered as welcome because in the long run producers' innovation and efficiency gains will benefit consumers.

3.2 Effective access to redress supports competition

The Ministry of Consumer Affairs outlined three elements that are required for consumers to have confidence in a market:[16]

- consumers' expectations of transactions are met by suppliers;
- consumers and suppliers have confidence in market rules and institutions and
- consumers have effective access to redress.

By providing access to redress, the EGCC supports the long-term benefit of consumers by enabling consumers to have confidence in energy markets:[17]

> *Confident consumers drive competitive behaviour between firms, as the consumers shop around for the best deals and service. Strongly competitive markets give businesses the incentive to reduce prices, improve quality, service and choice. They provide incentives for firms to become more efficient and to innovate – to compete for customers*[18]

The Electricity Authority has identified improving consumer participation, especially in the retail market, as one of its strategic directions for market development.[19] While competition analysis often focuses on the supply-side of the market, more recently the characteristics of demand in workably competitive markets has received increasing focus.[20] The literature finds that active and confident consumers and vigorously competing firms work together to promote workable competition and deliver long-term benefits to consumers. Markets of this type create a virtuous cycle. The Authority recognises this reinforcing relationship and uses the illustration in Figure 2 to depict it.

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16 Ministry of Economic Development (2006) p.7

17 The link between consumer policy (general consumer protection legislation as well as resolution and redress) and the operation of the market is well established in literature, see for example Armstrong (2008).

18 Department for Business, Innovation and Skills (2014a) para 86

19 Electricity Authority, 'Strategic directions for market development', 2013, www.ea.govt.nz/dmsdocument/15503

20 See for example, Consumer information and workable competition in telecommunications markets, Colton, Roger D., Journal of Economic Issues 27.3 (Sep 1993): 775; Determining When Competition Is "Workable": A Handbook for State Commissions Making Assessments Required by the Telecommunications Act of 1996 David Chessler and Associates for The National Regulatory Research Institute, page 88 and 89; Consumer Choice and Competition Policy: A study of UK energy markets, Giulietti, Monica., Waddams-Price, Catherine., Waterson, Michael., Economic Journal. Oct 2005, Vol. 115 Issue 506, p949-968.

Figure 2 Virtuous circle of a well-functioning market

Source: Electricity Authority, "Retail data project: access to consumption data" Consultation Paper, 15 July 2014, Wellington, New Zealand, Page 10

If consumers are less engaged in the buying process then suppliers will find it harder to win market share by providing what consumers most want. This will reduce consumer benefit because suppliers will have less incentive to compete to provide the desired services. Suppliers will therefore be less likely to innovate and the long-term benefit to consumers would be lower than it would have been had consumers been more engaged in the market. In economic terms, this reduction in price sensitivity is similar to a general reduction in both the product's absolute elasticity, and its substitutability (or cross-elasticity) with other products. Such reductions in elasticity can translate into a lessening of the intensity of competition and, as a result, higher prices for consumers. The long-term benefit to consumers is higher where those consumers are confident and active.[21]

In a review of consumer dispute resolution and redress in the financial services sectors the Ministry of Economic Development (MED) distinguished dispute resolution from regulatory enforcement, noting that while enforcement also promotes confidence in a market, it is necessary irrespective of whether a consumer has suffered actual loss. MED notes that accessibility of dispute resolution and redress can:

- reduce consumers' perceptions of the risk of transacting with a supplier they do not know or trust (a remedy for imperfect information);
- reduce the level of product or service failure by providing a significant chance that the provider will have to remedy a failure (addressing moral hazard);
- clarify consumers' expectations and rights around transactions by establishing precedents (reducing business risk and uncertainty).

[21] Peter MacIntyre, Kieran Murray, Jo Smith "Tariff information in consumer search decisions", Report prepared for the Electricity Authority by Sapere Research Group, 12 February 2015, pp7-8.

The market is enforced by protecting "consumers from unfair business practices, as well as protecting honest businesses from unfair competition."[22] Dispute resolution may also have a role in providing early warning of instability in an energy company, enabling appropriate action to be taken earlier.

3.3 Consumer expectations

Ombudsmen have mixed views about the extent to which consumer awareness of ombudsman schemes is improving, some consumers are becoming more resourceful while others remained confused, powerless and uncertain.[23]

In New Zealand there appears to be an increasing awareness of ombudsman schemes in general. Survey evidence for the EGCC shows that in 2014 13% of people indicated that they would go to an ombudsman for help if they had a problem with their electricity or gas company. An additional 5% specifically nominated the EGCC. This was an increase from 2009 when just 4% indicated they would seek assistance from an ombudsman, and 3% from the EGCC. In 2014, 18% of people stated that they had heard of the EGCC when prompted, compared to 14% in 2009.

Gill et al. conclude that many ombudsman schemes are not well known amongst the general public and that, even where there is awareness, there is limited understanding of the role of ombudsmen. Low awareness of ombudsman schemes is likely to be particularly concentrated amongst those consumers who are most vulnerable and excluded from various forms of social and political participation.[24]

There is a perception that technology is an important factor in shaping consumers' expectations of speedier, more flexible and more individual services. The most frequently cited change in consumer expectations by participants in Gill et al's research was that consumers expected speed and simplicity when using an ombudsman scheme. Consumers' new expectations arose from being increasingly accustomed to being able to conduct instant transactions on the internet and through their mobile phones. One participant noted that there was a need to 'keep up' with the pace of change in consumer behaviour.[25]

In New Zealand, the penetration of internet is high with over 2.8 million people connected to the internet or 93 percent of households. Sixty six percent of people made online purchases. 64 percent accessed government websites; and 73 percent used internet banking.

However, most consumers make the initial contact with the EGCC by phone. Ninety seven percent of 'enquiries' were made over the phone. Seventy three percent of complaints were

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22 Ministry of Economic Development (2006) p.9

23 Gill C., Williams J., Brennan C., and O'Brien N. 2013, *The future of ombudsman schemes: drivers for change and strategic responses*, Queen Margaret University, 15 July 2013, p. 22.

24 Gill C., Williams J., Brennan C., and O'Brien N. 2013, *The future of ombudsman schemes: drivers for change and strategic responses*, Queen Margaret University, 15 July 2013, p. 18.

25 Gill C., Williams J., Brennan C., and O'Brien N. 2013, *The future of ombudsman schemes: drivers for change and strategic responses*, Queen Margaret University, 15 July 2013, p. 20.

made by phone and 25 percent by electronic means. The EGCC offers a (free) 0800 number and accepts calls from mobile phones. Electronic contact has remained fairly constant with 13 percent by email and 12 percent through the website. In comparison, the UK energy CDR scheme The Ombudsman Service Ltd (Ombudsman Services) reported that 43% of initial contacts for energy related complaints were by email compared to 48% by telephone.[26] It is not clear why this difference exists.

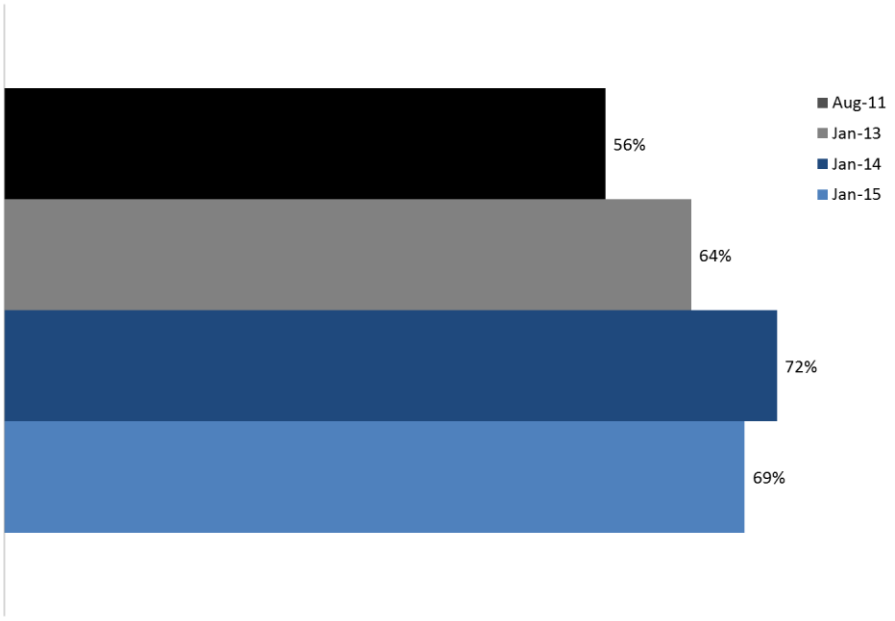
The mixed evidence on consumer behaviour indicates that CDR schemes need to be mindful of the varying levels of sophistication of potential complainants. Visibility and efficiency will continue to be a focus for the EGCC. In the next three sections we develop indicators of the effectiveness, efficiency and accessibility of the EGCC.

[26] The Ombudsman Services, 2015, *Energy Sector Report* 2014/15.

4. The effect of the EGCC on the competitiveness of the market

The Electricity Complaints Commissioner was established in 2001, gas was added to its jurisdictional scope in 2005 and it became a compulsory scheme in 2010. It is impossible to isolate the effect of the EGCC on the electricity and gas markets over that period as there have been many significant changes to the operation of those markets. However, Figure 3 shows that perceptions of the electricity industry improved between 2011 and 2015, and it is likely the EGCC has contributed to this.

Figure 3 Perceptions of electricity retailer competitiveness



Source: UMR(2015) for the Electricity Authority

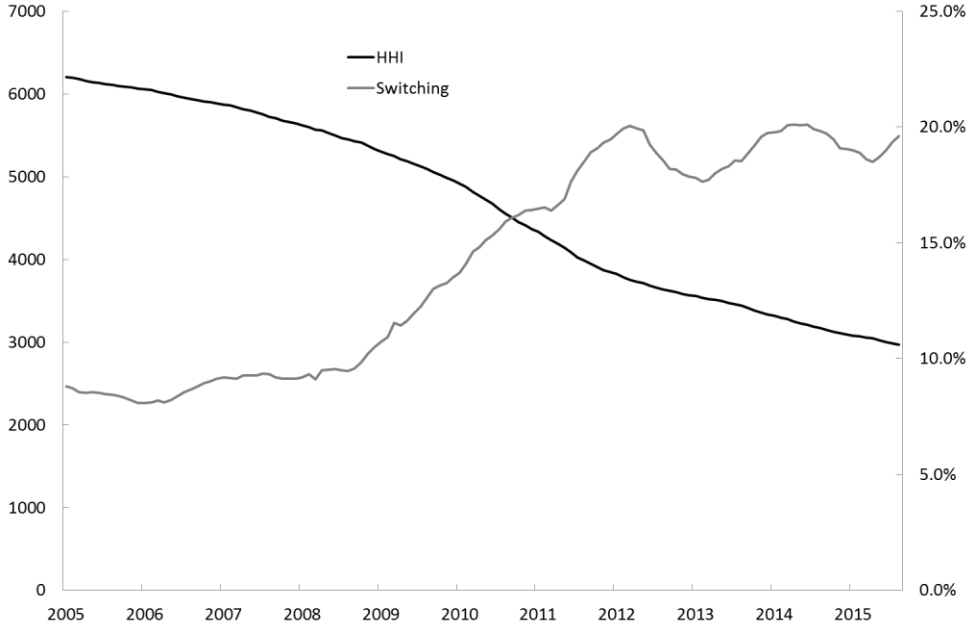
1. The question asked in the UMR survey is: "Using a 0-10 scale where 0 means not at all competitive, 5 means just adequate and 10 means extremely competitive, how competitive are the following businesses in terms of working to get your business and offering you the best deals? If you do not know enough, just say so." Responses of 6-10 are coded as "competitive" for the purposes of this chart.

Considering the three strands outlined in the last section, it is likely that the EGCC contributes to:

Reducing consumer perceptions of the risk of switching

If consumers know that they can obtain resolution and redress for any issues they encounter they are more likely to use an unfamiliar provider or entrant. Figure 4 shows that over the period since 2005 there has been a steady increase in market diversity (HHI is declining) and between 2009 and 2012 a marked increase in switching rates which are now at a sustained high level. There are a number of reasons for these trends including significant changes to industry regulation, but in the electricity market, where there were five incumbent retailers, smaller and entrant retailers may be bolstered by the availability of the EGCC.

Figure 4 Switching and market concentration



Source: Electricity Authority

1. The HHI is the Herfindahl-Hirschman index which provides a measure of market concentration.
2. The switching rate is the rolling annual percent change. It counts all switches as unique (i.e. it does not attempt to account for households which switch multiple times during a 12 month period).

Increasing the chance of redress in the event of a failure

The EGCC provides complaint summaries for all cases that reach deadlock (prior to acceptance for consideration) and for some other complaint enquiries.[27] Anecdotally, these assist the energy companies because they present the facts in a straightforward manner, along with the remedy that would satisfy the consumer. We consider it likely that the provision of complaint summaries contributes to reducing both the risk to consumers of product or service failure, and the uncertainty and cost to suppliers of remedying failures.

The EGCC data does not allow us to determine when the summaries are prepared and hence what proportion of cases is resolved prior to deadlock after the provision of a complaint summary. However, between 1 January 2012 and 15 December 2015 53% of all complaints for which a summary was provided were settled before reaching deadlock. If some complaints were summarised only when deadlock was reached, then more than 53% of complaints that were summarised prior to deadlock were settled with no further action from the EGCC. A further 24% were settled between reaching deadlock and acceptance for consideration by the Commissioner. We consider it likely that both the complaint summary and the deadlock check process would spur some settlement activity.

[27] A complaint summary may be prepared at any time. If it has not already occurred, a summary is prepared when the complaint reaches deadlock.

Clarifying consumer rights and establishing precedents

Despite the fact that they are not binding precedents, publishing decisions and case notes has the effect on industry and scheme decision-makers of establishing patterns of decision-making which influence industry conduct.[28] The inside-out theory of consumer law explains that this can lead to more certainty about expected outcomes for future disputes, and lower the number of disputes that arise as a result, leading to even larger benefits from these schemes.[29]

The impact of the EGCC on systemic issues is described in section 6 and the value of this role is discussed in section 5.1.

[28] Xavier (2011)

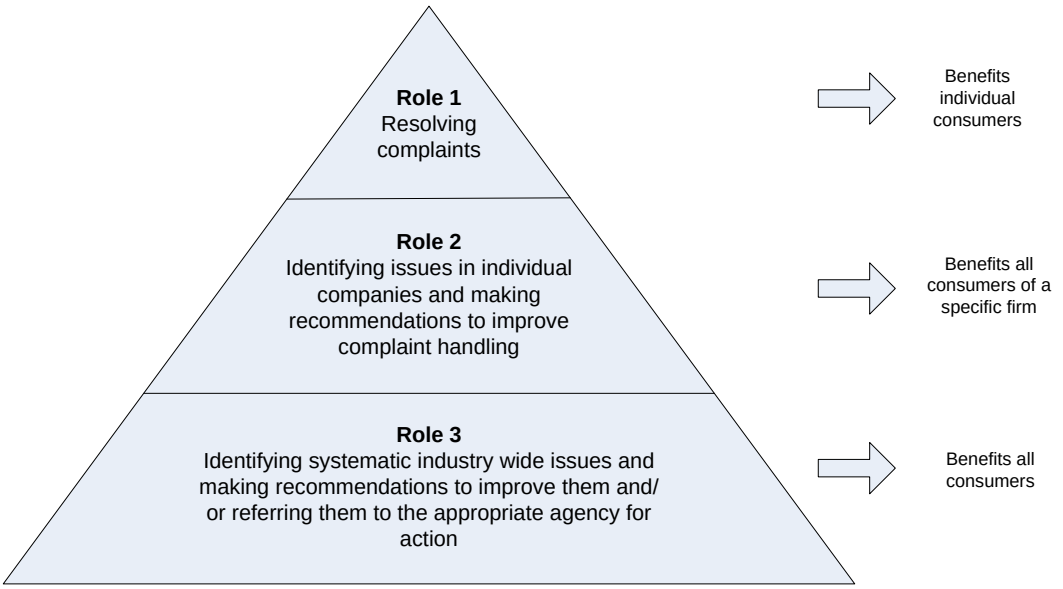
[29] O'Shea and Rickett (2006)

5. Effectiveness of the EGCC

5.1 Valuing outcomes

Figure 5 is adapted from a recent report by Lucerna Partners for Ofgem on the UK Energy Ombudsman supplemented by the discussion in Brooker (2008). It shows three levels of role for an industry dispute resolution service, like the EGCC.

Figure 5 EGCC Roles



Source: Adapted from lucerna partners (2015)

At the point of the triangle, perhaps what consumers would themselves consider core business for the EGCC is resolution of individual complaints. Each of these has a limited benefit being specific to a consumer although obviously there may be an overlap between the resolution of an individual complaint and the other roles of the EGCC to the extent that they are precedent setting and the company learns what to expect.

At the second level, the EGCC influences the behaviour of individual companies towards complaints through (for example) the provision of case summaries, its relationships with staff in the supplier and the publication of information about complaints relating to each company.

Finally, at the base of the triangle the EGCC has a role in addressing systemic issues. The EGCC can influence policy and industry-wide practice. These have the potential to benefit the widest group of consumers.

We can estimate the quantitative benefit of these roles using the number of affected consumers in Table 1.

Table 1 Consumers affected by the EGCC's roles

Deadlocks accepted for consideration	497	Role 1
Complaints to electricity companies	16,376	Role 2
Residential and SME electricity connections	2,028,253	Role 3

Source: EGCC, Electricity Authority

1. Deadlocks relate to the 2014/15 financial year, complaints to electricity companies are for 2014 and the number of connections is as at 31 December 2014.
2. Electricity companies self-report the number of complaints they receive to the EGCC, the sum of these self-reported numbers is used as an estimate of the total number of complaints.

If we assume that the average value of each deadlock accepted for consideration is $1100[30] then the consumer benefit derived from:

- resolving individual complaints, for 497 deadlocks, is $0.5m[31]
- driving improvements in internal complaint handling by electricity companies, for 5% of complaints, is $0.9m[32]
- identifying and driving improvements in the energy system, and avoiding detriments to 1% of all mass market connections, is $22m.[33,34]

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30 The mean value of the settlements where the dollar value was recorded in "Case Notes 5" is $1,158. There is uncertainty about what an appropriate value is as settlement values are not routinely reported. The EGCC is investigating whether more data can be provided. However, we note that "Case Notes 6" has a higher mean value of recorded settlements at $1,321. Hence $1,100 may be conservative and is not unreasonable based on the available information.

31 The estimated mean value of a complaint multiplied by the total number of deadlocks accepted for consideration.

32 This is based on an assumption that by causing improvements in internal complaint handling, an additional 5% of the complaints received by energy companies are settled at the average value. This value is necessarily a judgement however we note that case summaries are prepared by the EGCC for approximately 10% of complaints received by energy companies. Of these, 497 were investigated by the EGCC, meaning that 6.8% of complaints received case summaries, but were not investigated. In 2.7% of complaints, the company was notified of a deadlock by the EGCC and then settled before it was accepted for consideration. It is reasonable to suppose that between 2.7% and 6.8% of complaints resolved internally by energy companies are therefore positively affected by the EGCC. Our assumption is close to the mid-point of this range.

33 This is based on the assumption that improving system wide processes would avoid detriments equivalent to the average value of complaints to 1% of all electricity consumers. We have used the number of electricity connections for two reasons, first, it is likely that gas users are a subset of electricity users (i.e. there are no gas-only consumers in the mass market); second, the vast majority of EGCC deadlocks relate to electricity complaints. In 2014/15 16 deadlocks related to the gas sector, 3.2% of the total.

34 While 1% is necessarily based on judgement, there is qualitative information available on the value of the EGCC in regards to identifying and resolving systemic issues. This is discussed in section 6. In addition, we

The total value based on this top down assessment is $23.8m. While this analysis is by its nature somewhat speculative, we note that the total cost of the EGCC in 2014/15 was $3.0m.

The quantitative analysis above excludes the value derived by consumers from having an independent party provide advice on the reasonableness of their energy provider's actions *where those actions are in fact reasonable*. That is where the value of the settlement is zero, or a case does not proceed to deadlock because the consumer does not pursue it after advice from the EGCC, this method of estimating the average value of a case ascribes a zero value, i.e. no benefit to the consumer. It is likely that there is benefit to consumers of the availability of this independent check and explanation.

5.2 Unmet needs and equity effects

At this time, it is unknown to what extent there are consumer issues that the EGCC could address but for whatever reason complainants do not access their services.

Consumer issues are skewed towards low income households, those with limited comprehension of English language, poor literacy or numeracy skills, disability or chronic illness, and the elderly.[35,36] Māori and Pasifika populations are over-represented in these vulnerable populations in New Zealand. "Often vulnerable consumers are less able or likely to assert their rights and seek individual redress."[37]

The 2006 National Survey of Unmet Legal Needs found that consumer issues were the most prevalent problem amongst those reporting a non-trival legal problem over the previous 12 months (10.4%), and that people were least likely to seek assistance with these problems, with 72% of people not seeking assistance. "Consumer issues" covers a broad range of problems, and we note that debt was treated separately in the survey with an additional 8.1% of people reporting experience of debt or money problems. The Legal Services Agency noted that consumer issues tended to be relatively minor and short term (presumably relative to the other types of issues for which people report unmet legal need, such as employment, immigration or housing problems).

Māori and Pasifika people were more likely to experience a problem than New Zealanders as a whole (approximately 40% of Māori, 33% of Pasifika and 29% over the whole sample reported a non-trivial problem). Māori reported nearly twice the incidence of problems of the average New Zealander in all categories described in the survey. People often experienced multiple problems, with 40% reporting two or more issues, and again a higher prevalence of multiple problems for Māori and Pasifika compared to the general population.

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note that 1% of all consumers is the proportion used by Lucerna Partners to illustrate the value of this role for Ofgem.

35 Young people are sometimes classified as a vulnerable population in terms of legal needs and there is some anecdotal evidence from overseas that they have low awareness of ombudsman schemes(see Australian Productivity Commission (2008) p.195). UMR (2014) suggests that this is also true at a general level in New Zealand although young people appear to have an average level of awareness of the EGCC specifically.

36 See for example Commerce Commission (2015)

37 Commerce Commission (2015) p.22

While these data are old, they highlight the potential distributional impacts of consumer dispute resolution services with the cost spread across all energy consumers, but the need likely to be higher amongst vulnerable consumers. It also highlights the importance of ensuring accessibility of the EGCC for these communities. Common difficulties in accessing services reported in 2006 included difficulties finding information, lack of convenient opening or meeting times, difficulty in contacting services and being referred elsewhere (note this may suggest that vulnerable consumers are unwilling to make multiple connections to try to find the correct service for their issues).

Evidence on vulnerable communities' awareness of the EGCC is mixed. Table 2 presents some indicators. It is notable that income, which is often considered a key indicator of vulnerability, made relatively little difference to awareness and in fact, those in the $30,000-$50,000 income bracket had a very high rate of nominating an ombudsman (generally) as a source of help.

Table 2 Awareness of the EGCC

Percent of respondents in that demographic subset

Demographic category	Characteristic	Would go to EGCC for help	Would go to an ombudsman for help	Prompted awareness of the EGCC
New Zealand	Total	5	13	18
Ethnicity	Māori	4	9	18
Reside in a rural area	Yes	1	8	15
	No	6	14	19
Household income	$30,000 or less	5	13	16
	$30,001-50,000	4	17	15
	$50,001-70,000	4	12	15
	$70,001-100,000	6	12	20
	More than $100,000	7	13	19

Demographic category	Characteristic	Would go to EGCC for help	Would go to an ombudsman for help	Prompted awareness of the EGCC
Education	High school or less	3	12	12
Home ownership	Renting not looking to buy	3	11	13

Source: UMR March 2014

1. The two questions in the UMR survey were: "If you had a problem with an electricity or gas company which you could not resolve with the company, where would you go for help?" and "Are you aware there is an Electricity and Gas Complaints Commissioner that provides help in resolving problems between individuals and their electricity or gas company? (Please note this is different to the Electricity Commission which oversaw the regulation of the electricity industry)"

The EGCC does not routinely collect demographic data on complainants. However they do survey complainants seeking feedback on their experience of the EGCC. Of those who responded the complainant survey data appears to have a lower proportion of Maori than we might expect given the general data on consumer issues described in this section (10%). The reported income of respondents was skewed downward compared to the overall population with 21% of survey respondents reporting income under $30,000 compared to 15% of the population in the 2013 Census.[38]

Although distributional objectives are secondary to the efficiency objectives of the energy sector (at least for electricity), obtaining more data on the demographics of the population being served by the EGCC would be useful to support the value of this role. It may also assist the EGCC to determine to what extent there is likely to be a group of complainants that is not accessing their services.

We do not mean to imply that the EGCC does nothing for vulnerable consumers at present, the relatively low evidential standard, the provision of information in multiple languages and availability of translation and relay services and the ability to contact the service by multiple means (although not face-to-face) and acceptance of support people to assist complainants are all mechanisms that will assist vulnerable communities to some extent.

[38] These data should be treated with caution as they are based on just 91 survey responses.

6. Systemic problems and referrals

One of the other responsibilities of the Commissioner under the Scheme Document is "having mechanisms and procedures for referring to Scheme Members and to the Minister systemic problems that become apparent from Complaints" (para B.52.12). This is role 3 in the pyramid in section 5. Some systemic issues may be apparent without the attention of the Commissioner (for example where the issue is isolated to one company or is sufficiently pervasive that its effect is clear within a single company). At other times the broader perspective of the Commissioner may enable identification of issues that are less widespread within an individual company but are prevalent across the industry, the Commissioner is also in a useful position to be able to identify industry-wide good practice.

In other instances, the Commissioner is able to refer issues to the appropriate agency to be addressed.

6.1 Examples

1. Section 106 of the Electricity Industry Act 2010 allows retailers and distributors to cease supplying electricity or lines services because of money owed in respect of the property. This resulted in some companies refusing to connect new tenants where a previous occupant owed a debt, or billing the new tenant or the landlord for the previous tenant's debt. In 2012/13, the Commissioner made a binding decision on two of the complaints, which prevented the company from pursuing the complainants for the earlier debt. The companies have stopped this practice.

2. A significant event on an electricity network affected a large number of customers with many experiencing damage to appliances. The issue was investigated and the Commissioner made a binding decision on one complaint; the remaining complaints were settled.

3. A company released account information about previous occupants to the new occupants of a property. The Commissioner raised this with the company as a possible privacy breach; the company disagreed. The Commissioner then raised the issue with the Office of the Privacy Commissioner.

4. Complaints were received about back bills from customers who got bills electronically. The back bills were the result of their retailer not being able to access their meter. The retailers were advising of this problem by attaching a letter to the email, or an endorsement to the online bill. Customers were reading the email (which did not mention a problem) and not accessing the attachment or online bill. The Commissioner issued a practice note to all retailers setting out what the Commissioner believes is good industry practice when sending notices to customers who receive bills electronically.

5. A fault in a specific meter type resulted in over-recording of electricity use. The Commissioner asked retailers what action they were taking, consulted a member of her panel of independent experts and worked with retailers to establish what she believes to be good industry practice for this issue.

6. An increasing number of complaints about bottled LPG led the Commissioner to ask the GIC and MBIE to consider whether bottled LPG should be within the jurisdiction of the EGCC. This was the subject of consultation and ultimately a change in the Scheme Document to include bottled LPG (45kg and above).

The EGCC also makes submissions on regulatory proposals where they have relevant expertise. In 2014/15 three submissions were made on:

- proposed Code amendment for customer access to consumption data
- improving transparency of consumers' electricity charges
- review of barriers to group switching and mass market aggregation.

7. Efficiency of the EGCC

Total welfare is maximised where total costs are minimised, for a given level of services. Hence, a disputes resolution process will maximise the long-term benefit for consumers when the totals cost of the original decision (or actions) by the firm giving rise to consumer concerns, the resolution process, and the social harm of any erroneous decision is minimised. To determine whether the EGCC is efficient (i.e. minimises the cost of the resolution process) we provide some comparisons in this section. Although it is impossible to be definitive, they do not indicate that the EGCC is inefficient.

7.1 Comparisons with Australian energy ombudsmen

It is convenient to compare the EGCC to the state ombudsmen in Australia concerned with energy and water. One must be cautious however, as apart from the obvious jurisdictional difference (the EGCC does not deal with water) the energy markets in the two countries are quite different both in size and form: in particular they are subject to different regulations and competitive pressures. Notwithstanding these concerns, there are sufficient similarities to consider comparisons.[39]

Both the Australian ombudsmen offices and the EGCC are members of ANZEWON (the Australia and New Zealand Energy and Water Ombudsman Network), which shares information and considers emerging systemic issues with the objective of enhancing effectiveness, efficiency and appropriate consistency across jurisdictions.[40] The offices all subscribe to the benchmarks for industry-based customer dispute resolution schemes promoted by the Australia and New Zealand Ombudsman Association (ANZOA).

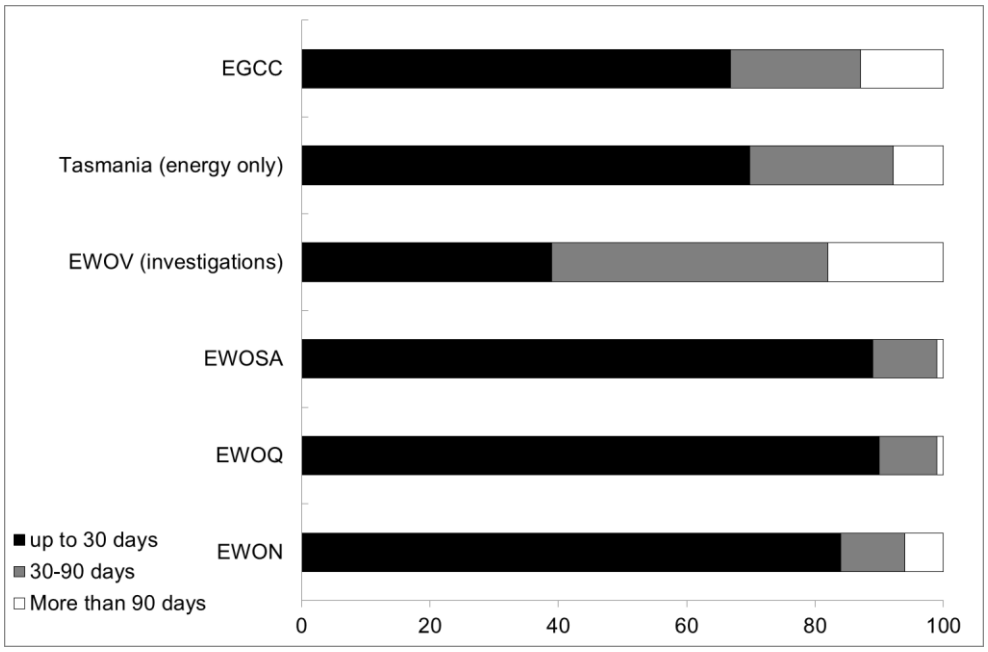
[39] We have not included Ombudsman Tasmania, or the ACT Civil and Administrative Tribunal (ACAT) in the comparisons as these organisations have much broader jurisdictions than the EGCC.

[40] This will reinforce the value of role 3 in the pyramid.

7.1.1 Timeliness

Figure 6 Days to finalise cases

Percent of cases finalised



Source: Ombudsman Annual Reports 2013/14, except EGCC 2014/15

1. The data in this chart are illustrative only as each office presents slightly different bases for reporting, e.g. EWOQ is 28 days, EWOV is 1 and 3 months, Tasmania is 1 month and quarter.
2. EWOWA is excluded as it presents data for less/more than 10 working days only.
3. EGCC data is not readily comparable as their data are presented in working days, whereas other data are in calendar days.
4. EGCC and EWOV data are for deadlocks or investigations only, other data include all cases.

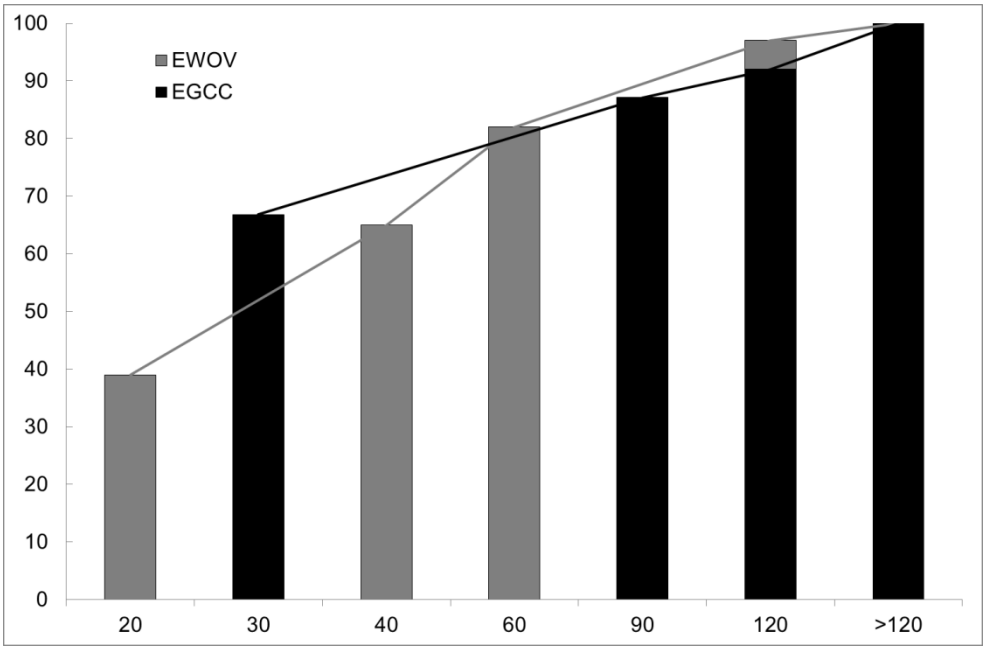
Figure 6 illustrates the relative time to close cases in the EWO offices. This suggests that the EGCC is relatively slow to close cases, with 13% taking in excess of 90 days compared to 6% in NSW and just 1% in Queensland and South Australia. There are two important (and offsetting) differences in the data that mean this comparison is not particularly informative. First the EGCC uses working days to measure the time taken on a case, whereas Australian ombudsmen use calendar days. 90 working days is approximately 4.5 calendar months, suggesting that the EGCC is slower by some margin than the Australian equivalents. However, the Australian ombudsmen all measure the time to finalise *all* cases (which includes enquiries) whereas the EGCC measures timeliness for deadlocks only. This is likely to materially skew the results, although we are unable to determine to what extent. We note that only 14% of complaints registered by the EGCC are accepted by the Commissioner for consideration as deadlocks.[41]

[41] This is a conservative measure of the skew, because unlike its Australian counterparts the EGCC does not register all enquiries as complaints.

A more appropriate comparison is presented in Figure 7. This shows data for EWOV and EGCC only, with the datasets relating to investigations or deadlocks. This data appears to show that EGCC is somewhat quicker at disposing of cases in the short term, but where cases take longer the EWOV finalises more cases relatively more quickly.

Figure 7 Days to finalise investigations, Victoria and NZ

Percent of cases finalised within timeframe



Source: EWOV Annual Report 2013-14, EGCC Annual Report 2014-15

1. Days to finalise are working days with EWOV data converted from calendar days using an average estimate of 20 working days per month.

This data is susceptible to short-term fluctuations in case load and the presence of systemic issues. In particular the EGCC experienced a high level of complaints in 2014-15 relating to one retailer's change to a new billing platform. The Annual Report notes that this meant a focus on resolving the more straightforward cases quickly whereas some more complex cases took longer to resolve (which echoes the pattern seen in the chart), this is indicated as a focus for 2015-16. We note though that overall timeliness improved (proportionately) in 2014-15 compared to the previous year.

As another point of comparison we note that the World Bank Ease of Doing Business survey shows that the estimated time to resolve a complaint through the District Court in New Zealand in relation to enforcing a contract is 216 days. Clearly the EGCC is much more timely than this process.

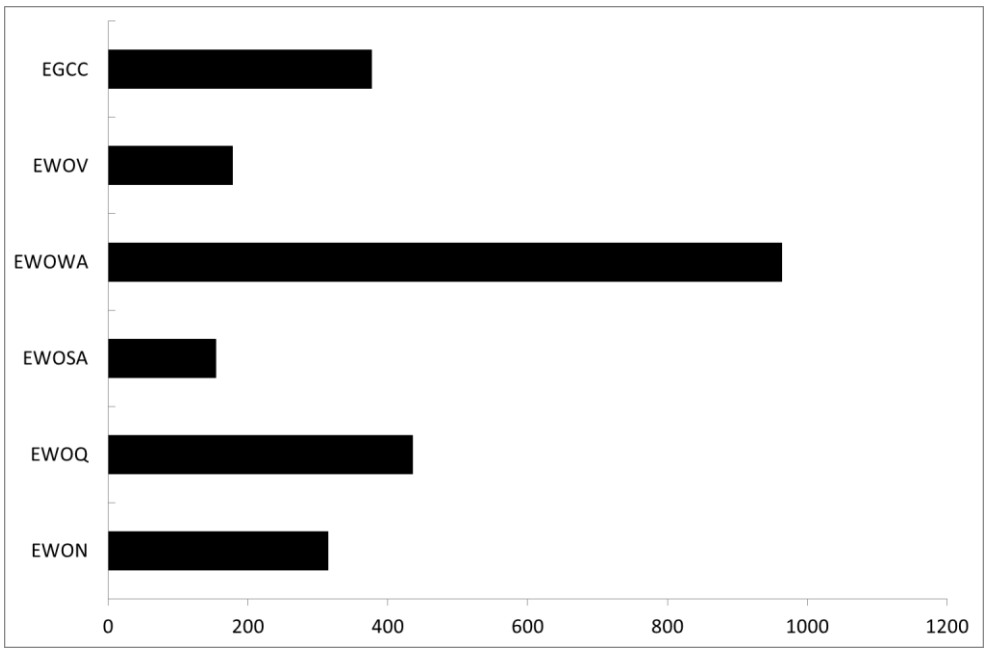
7.1.2 Expenditure

Figure 8 shows the level of actual expenditure per case in each of the Australasian ombudsman offices. This shows that the EGCC was near the middle of the range. The Western Australian and Queensland offices were more expensive per case. This suggests that there may be economies of scale available as these are the two smallest offices in terms of the number of complaints and only the EWOWA has fewer complaints than the EGCC.

However, we note that EWOSA is also relatively small (a similar number of complaints received as EWOQ in 2013/14) and yet has a much lower cost per case and the lowest cost per case of all offices. From information reviewed, it is not apparent how the EWOSA keeps its costs so low, but it appears to be an outlier from a statistical perspective.

Figure 8 Expenditure per case

$ per case (incl enquiries)



Source: Ombudsman Annual Reports 2013/14, except EGCC 2014/15

As ombudsmen are provided for the benefit of consumers, but funded via a levy on members (which is likely to be recovered to at least some extent through consumer charges), Figure 9 presents information on the cost of the ombudsman's office per connection in that jurisdiction. This shows that the EGCC is at the bottom of the range. We note that this reflects both a relatively low number of cases per connection and a relatively low cost per case.

Figure 9 Expenditure per connection

$ per electricity connection

Source: Ombudsman Annual Reports 2013/14, except EGCC 2014/15, AER State of the Energy Market 2014, Western Power Annual Reports 2013 and 2014, Electricity Authority

1. Australian data is presented per connection or customer, while the NZ data is relative to the number of ICPs. These measures can differ as some customers have multiple ICPs.

7.2 Comparison with NZ banking sector

It is possible that differences in the New Zealand and Australian economies (as we have already noted there are differences in the number of consumers, and the structure of the energy sector) make the comparisons in this section somewhat illegitimate. To examine this further we looked to other industry schemes in New Zealand, as this could limit the economy specific effects. The most obvious comparator is another utility sector, but Telecommunication Dispute Resolution which is provided by FairWay Resolution reports limited information about the cost or timeliness of resolving cases. The banking and financial services sector is more transparent.

The EGCC compares well across expenditure and timeliness metrics against the banking sector ombudsmen:

- In 2013/14, the most recent year for which data are available for all three, the Insurance and Savings Ombudsman (ISO)[42] reported that it took on average 88.89 days to resolve a complaint; the Banking Ombudsman Scheme (BOS) reported an average of 65 days and the EGCC closed deadlocks in an average of 65 days.

[42] From 1 November 2015, the ISO will become the Insurance and Financial Services Ombudsman.

- The ISO spent $698 per complaint enquiry, the BOS spent $680 per case and the EGCC spent $441 per case in 2013/14.

Clearly there are also reasons why we might expect differences between the EGCC and similar schemes in other industries. Notwithstanding these, the comparisons do not give rise to concerns about the relative efficiency of the EGCC.

7.3 Comparison with alternatives

To provide some context about the likely cost of other dispute resolution processes we note that recent research at Victoria University suggests that the cost of commercial mediation is usually between $2,500-$5,000 per dispute with a settlement rate of between 70-100% reported by practitioners. This ignores the cost of counsel, with 61% of practitioners reporting that parties are often or always represented. The direct (levied) cost of a complaint was $885 on average in 2014/15; this is significantly less than the cost of commercial mediation. From the consumer's perspective the other benefit of the EGCC is that they do not need the agreement of the electricity or gas company to seek assistance, whereas both parties have to agree to commercial mediation (unless it is contractually provided).

The other route that is available to electricity customers is the District Court and for some types of case, the Disputes Tribunal.[43] It is difficult to estimate the cost of applying to the court, but current fees indicate that if a plaintiff applies for summary judgement they would need to pay the filing fee ($200), interlocutory application fee ($250) and for sealing the judgement ($50). A defendant contesting the matter would need to pay (at least) a fee to file statement of defence ($75). A full hearing would clearly cost more with World Bank data suggesting the cost of a full defended hearing exceeds USD22,000.[44] We do note that the District Courts Act 1947 provides an "equity and good conscience" jurisdiction which allows the court a less onerous process for claims under $3,000. However, Lewin (1998) notes that this jurisdiction is "little used".[45]

The Disputes Tribunal has lower fees than the District Court, specifically it has a sliding scale of fees: $45 for claims under $2,000, $90 for claims of $2,000-$5,000, and $180 for claims above $5,000.[46] While the direct cost to the claimant is therefore relatively low for the Disputes Tribunal, it should be noted that the 2015/16 Government Budget indicates that approximately 90% of revenue for specialist tribunals and the District Court comes from the

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43 Electricity sector-specific legislation is not within the jurisdiction of the Disputes Tribunal and such matters would have to go to the District Court. The Disputes Tribunal could consider matters relating to the more general laws of contract and tort.

44 The World Bank undertakes a survey of business regulations in OECD countries (www.doingbusiness.org), which includes a measure of the cost of enforcing a contract. The results in 2015 for New Zealand show that the cost of enforcing a contract is 27.2% of the value of the claim, where the claim is assumed to be twice the value of per capita income. The report indicates a per capita income value of USD 40,481, from which we derived the USD 22,000 value. The majority of this cost is lawyers' fees at approximately USD 17,800.

45 Paragraph 8.

46 The Disputes Tribunal deals with claims up to $15,000, or $20,000 if both parties agree though this provision is rarely used.

Government (i.e. user fees and other revenue contribute only 10% of the cost of these services on average).[47]

Shavell (1995) suggests that specialist schemes such as the EGCC may have superior outcomes to litigation. In the case of the EGCC, the outcome is based on what is fair and reasonable taking into account good industry practice as well as the law.[48] This broader rule may also improve outcomes relative to litigation.

The EGCC has another advantage over court-based processes. Of the roles in the pyramid, courts only provide role 1 (resolution of individual complaints), and occasionally role 3 (improvements in industry practice) where there is some obvious regulatory failure. The structure of the EGCC scheme as a compulsory industry-funded body, with levies related to the complexity and number of complaints about each company means that it is likely to generate a higher level of commitment than a tax-funded government-led approach. This reinforces incentives on providers to meet consumer expectations and have good internal procedures for addressing complaints.

In reality it is very unlikely that most of the complaints addressed through the EGCC scheme would be taken to a court or commercial mediation process as it would be too costly for the consumer to initiate. This means that the alternative to the EGCC for most claims would be to put up with the problem, or possibly to attempt to switch to another energy provider (although this would not always be possible, and in many billing related cases would make no difference).

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47 The Estimates of Appropriations for the Government of New Zealand for the Year Ending 30 June 2016, Vote Courts http://www.treasury.govt.nz/budget/2015/estimates/v7/est15-v7-courts.pdf

48 Clause B.3 of the Scheme Document 2014 states that : "In considering any Complaint and in granting any remedy under these Terms of Reference the Commissioner must determine what the Commissioner considers is fair and reasonable in the circumstances having regard to all relevant information including:

B.3.1 good industry practice; and

B.3.2 relevant codes of practice; and

B.3.3 model contracts; and

B.3.4 the law.

8. Jurisdictional scope

This section considers the changes in service offering by suppliers and what this might mean for the structure of CDR and the EGCC.

8.1 Changes in industry service offerings

Changes to the way industry deliver their products and services as well as change in the services provided has implications for CDR schemes. Such schemes are reactive to the environment in which they operate. Changes in the quality of service, or outsourcing of customer service by services providers, could create sudden spikes in demand for dispute resolution schemes.[49]

Changes in service provision also have indirect consequences for ombudsman schemes, particularly with regard to creating high expectations in relation to the use of technology and good customer service. As industries become more electronic and more technologically managed the more the paper-based processes of dispute resolution schemes are at risk of looking out of date and bureaucratic. [50]

Broader trends in service provision are likely to drive change in dispute resolution schemes. Suppliers are increasingly providing bundled services. Energy suppliers are providing a range of other services such as telecommunications, financial services, provision of solar installations.

Increased bundling of services has the potential to result in confusion about which aspects could be complained about to which consumer complaints scheme. One participant in the research by Gill et al (2013) noted such 'hybrid' complaints would become more common.

Changes in service offerings could result in overlaps between CDR schemes, or gaps in provision. Where there are gaps none of the benefits already discussed are available and additionally the benefit of CDR for those services that are covered may be impaired if consumers react negatively toward the partial absence of CDR. Where there are overlaps there are other issues, which we discuss next.

8.2 Overlapping CDR schemes

The EGCC may respond to the bundling of services by competing with other providers to provide CDR services in other sectors in which energy suppliers are participating, equally

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[49] Gill C., Williams J., Brennan C., and O'Brien N. 2013, *The future of ombudsman schemes: drivers for change and strategic responses*, Queen Margaret University, 15 July 2013, pp. 23-24. This is a comment made by participants in survey interviews undertaken by the authors. Sixteen qualitative research interviews were carried out with ombudsman schemes, policymakers and consumer advice organisations.

[50] Gill C., Williams J., Brennan C., and O'Brien N. 2013, *The future of ombudsman schemes: drivers for change and strategic responses*, Queen Margaret University, 15 July 2013, p. 24.

they may find pressure to allow other providers into their scheme (although this latter would require legislative change).[51]

The issue of provider competition within a single scheme or sector was the subject of a policy statement endorsed by the members of the Australian and New Zealand Ombudsman Association (ANZOA) in 2011. ANZOA considers that competition runs counter to the principle that ombudsmen should be independent and is confusing for consumers. Their view is that there should be only one CDR body for a sector.[52]

A brief review of some literature suggests that there are two clear camps with respect to whether competition between dispute resolution schemes is beneficial. UK policy-makers consider competition contributes to positive outcomes:

Businesses benefit from being able to choose between competing providers on the basis of cost (membership and case files) and quality.[53]

Other UK commentators, including the National Consumer Council, are not convinced:

We consider this model [more than one scheme in a single market] to be conceptually and practically flawed…There is no evidence that the single statutory scheme model is actually inefficient.…The telecommunications model falls down hardest, because the choice of redress scheme lies with the firm not the consumers. This creates a perverse incentive for firms to choose the scheme which is the cheapest – or which develops a reputation for industry-friendly decisions.[54]

Other arguments against competitive dispute resolution schemes are generally customer focused, for example, that consumers become confused about where to take their complaint, or that problems may arise where two companies that belong to different schemes are involved in a complaint (such as a switching complaint) especially if the schemes take different approaches. The World Bank's handbook for the design of a financial ombudsman describes competitive ombudsmen as "unusual" and notes the "severe" risks to independence and impartiality, stating that such a policy "overlooks the role of financial ombudsmen as an alternative to the courts and creates one-sided competition [i.e. allowing choice to the business but not the consumer]". [55]

The UK telecommunications regulator Ofcom has developed a suite of *Decision making principles* to mitigate the inconsistency between the two schemes in that sector.[56] This

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51 The Electricity Industry Act 2010, defines a dispute resolution scheme to mean whichever of the following is in force under this schedule at the time; either the 'approved scheme' or the 'regulated scheme'. The Gas Act 1992, section 43E dealing with dispute resolution also refers to the Electricity Industry Act 2010 for its identification of the disputes resolution scheme. So the legislation currently provides that a single scheme will cover both industries.

52 ANZOA, *Competition among Ombudsman offices: Policy statement*, September 2011.

53 Department for Business Innovation and Skills (UK), *Implementing the alternative dispute resolution directive and online dispute resolution regulation – impact assessment*, March 2014, para 98

54 Brooker, Steve, *lessons from ombudsmanie,* National Consumer Council (UK), February 2008, pp11-13.

55 Thomas, David and Francis Frizon, *Resolving disputes between consumers and financial businesses: Financial ombudsman fundamentals*, World Bank pp38-9

56 Ofcom, *Review of Alternative Dispute Resolution Schemes – Statement*, 22 August 2012.

highlights the emphasis that multiple providers will tend to place on regulatory oversight and control of the standards of the schemes.

The Hampton Report (UK) identified ways in which the administrative burden of regulation on businesses can be reduced, while maintaining or improving regulatory outcomes.[57] While dispute resolution schemes were not explicitly discussed, the arguments are similar.

One of the matters considered in the Hampton Report was ways to reduce the direct cost of regulation (to Government and regulated sectors). One of the ways to do this recommended in the Hampton Report was to structure regulators around simple, thematic areas.[58]

The report noted the consolidation that had occurred in the financial services sector. The Financial Services Authority (FSA) became the single regulator for the UK's financial services industry in December 2001, integrating the responsibilities of nine bodies into one thematic regulator. At the same time a single Ombudsman service and compensation scheme was established in place of the multiple organisations which existed beforehand. The Hampton Report stated that the merger and creation of a 'one-stop shop' for both consumers and the industry has allowed synergies and efficiencies to be exploited. The new regulator also more closely matched the shape of the regulated industry.[59]

The Hampton Report noted that larger thematic regulators would be expected to be cheaper for businesses, because there are fewer interfaces, and the regulators themselves could be more efficient through the benefits of scale and scope. Further, thematic regulators could harness specialist knowledge, while retaining the resource to provide good general advice. [60]

Other possible benefits include the internalisation of conflicts and identification of duplication, increased levels of visibility and consequently accessibility, and improved workload management.

Horn (1995) notes that requiring an agency to "treat similar cases in a similar manner and to maintain consistent standards over time reduces the ability of both the agency and any subsequent legislatures to favour special interest on an ad hoc basis (any bias has to be consistently applied)".[61] Thus a wider jurisdiction will tend to reinforce impartiality.

8.3 A possible response

While it is tempting to think of an industry ombudsman narrowly as part of a sectoral regulatory regime, it is also useful to characterise it as a part of the justice sector, alongside other forms of alternative dispute resolution. This characterisation is particularly useful when

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57 The review considered the work of 63 national regulators and 468 local authorities.

58 Hampton, P., 2005, *Reducing administrative burdens: effective inspection and enforcement*, HM Treasury, March 2005.

59 Hampton, P., 2005, *Reducing administrative burdens: effective inspection and enforcement*, HM Treasury, March 2005, p. 62.

60 Hampton, P., 2005, *Reducing administrative burdens: effective inspection and enforcement*, HM Treasury, March 2005, p. 64.

61 Horn, Murray J, 1995, *The political economy of public administration: Institutional choice in the public sector*, Cambridge University Press, Melbourne, p.63.

considering the scope of jurisdiction of schemes, and suggests organising the resolution system from the perspective of consumers, rather than regulators.

It seems reasonable from this perspective that there should only be a single CDR provider in the energy sector. Providers are linked through switching and the meshed industry structure, in which many retailers operate on a single distribution network, and one retailer operates on many networks. The industry is also relatively technically complex. These factors suggest that consistency and specialist expertise will be particularly important. This allows industry-wide benefits that would otherwise be unavailable (see sections 5.1 and 6 for discussion of the value of the EGCC in identifying systemic issues).

To provide customers a joined up experience it would be logical to enable the EGCC to consider other aspects of energy suppliers' businesses to the extent that these are integrated with the provision of energy. This could be because they are bundled in the price on a bill. On the other hand, where there are separable products and consumer issues with respect to those products are distinct from energy sector issues there is a less strong argument (financing may fall into this category).

The relevant hurdle seems to be whether it impedes the EGCC's ability to consider legitimate complaints regarding energy suppliers which would otherwise be within their current jurisdiction, or whether consumers would face high accessibility barriers (because for example their complaint crosses jurisdictional boundaries of CDR providers).

Bundling of services may challenge the EGCC's ability to deal with some types of complaints (most obviously in relation to bills). Potentially this would also be frustrating for consumers who may not know with whom to lodge their complaint, or who may not be able to complain about aspects of the service provided by the energy supplier. If confusion arises, and consumers choose the wrong complaint body, there is a risk of referral loss as they no longer seek to make the complaint, or the process is of poor quality. Some consumers may be deterred in the first place if there are multiple options. This threatens the value of role 1 of the EGCC (effective handling of individual complaints). Conversely, providing multiple CDR schemes may raise the profile of the EGCC, improving accessibility in energy sector disputes as well as for cross-sectoral disputes.

Another possible approach (rather than consolidating CDR provision) is to develop a system that provides information and directions to consumers. In New Zealand there are limited directories and advisory systems at present: "complaint line" is a relatively simple online listing of complaint services; Consumer NZ and Consumer Affairs (MBIE) also provide some advisory services. It is not clear whether the benefit derived from such directories in terms of reducing confusion and referral loss exceeds the cost. The Australian Productivity Commission considered that "a loose-knit 'umbrella' arrangement" was likely to be beneficial in the financial services sector in Australia that would provide a single gateway to consumers and suppliers through which they are referred as appropriate.[62] This type of arrangement is likely to be more useful where there is a number of providers in a similar or overlapping space – this is not the case in the energy sector.

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62 Australian Productivity Commission (2008), p. 207

If different schemes use different procedures or rules, then there is a risk of inconsistency in the outcomes.[63] "This also fragments the experience of lessons learnt, limiting opportunities to raise standards."[64] This jeopardises the value of the EGCC in terms of its roles in relation to improving complaint handling in individual companies and more broadly improving industry practices (roles 2 and 3 in the pyramid).

If these effects became sufficiently pervasive it could negatively affect perceptions of the industry and consumers' willingness to engage in the market. This would be to the long-term disbenefit of consumers, as a result of reduced competition (see section 3).

A recent investigation into dispute resolution practices in New Zealand found that despite a strong trend towards government use of ADR, its development had been relatively ad hoc with the result that there is a lack of consistency and coherence in systems across government.[65] Incremental, diverse and ad hoc development is not unique to New Zealand[66]:

> *The current situation makes little sense for businesses either, since they have to invest in administrative systems and staff training to respond to the different rules and procedures of each ombudsman. In short: the economic trend is towards convergence, while the current ombudsman trend is towards divergence.*[67]

A separate argument may be considered in terms of whether there are economies of scale for the CDR provider in supplying multiple CDR schemes. The emergence of non-specialised providers such as Ombudsman Services in the UK, and Fairway Resolution suggests that there may be other advantages (than effective provision of energy sector services) such as lower system costs.

The EGCC will need to weigh up the complexity of adding expertise and skills in a different sector, and potentially changing the structure of the organisation to allow it to provide across multiple schemes against these benefits. There are benefits to a specialised service, for example in the Australian telecommunications sector, an argument can be mounted for the separation of some functions based on the number of providers in a sector, and the practicality of delivering CDR to them all. The capacity of a provider to deliver its core tasks with an expanded jurisdiction is an important consideration.[68]

Trustpower now belongs to the Telecommunications Dispute Resolution (TDR) and Vector belongs to Financial Services Complaints Ltd for disputes in relation to its solar financing offering. We note that TDR and the EGCC have started discussing a memorandum of understanding. There may be a tipping point at which it is worth becoming an approved provider of CDR in relation to financial services[69] or bidding to become the scheme agent

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63 This is an outcome that is observed in Australia with differences in the treatment of consumers between jurisdictions (see Australian Productivity Commission (2008), p.204)

64 Brooker (2008) p.13

65 MBIE (2013) p.5

66 See also Gill et al (2013)

67 Brooker (2008) p.9

68 Australian Productivity Commission (2008) p.203

69 Financial services CDR is currently delivered by four providers. If the EGCC had to interact with all four of these there could be material costs of co-ordination.

for TDR. At present, the number of affected customers and businesses is relatively low, and the costs of changes to the EGCC are unknown. Over time, the value of the potential benefits would increase:

- simplicity for consumers from a single access point
- higher profile for EGCC
- ensuring supplier and industry level improvements are identified
- consistency of experience for consumers
- lower costs for businesses
- economies of scale for the EGCC

However, there are also disadvantages to consolidation apart from the possible loss of expertise already discussed. These include a reduction in flexibility and possibly a loss of innovation in the approaches adopted by the CDR providers, and difficulties in setting fees where there are marked differences in the types of complaints and nature of member businesses (for example).

One conclusion that does seem clear is that it would be preferable for the EGCC to broaden its scope than to allow competition for CDR in the energy sector.

> *Having an ombudsman dedicated to utilities, with concomitant expertise, has improved the previous system and can be seen as a benefit of privatisation.*[70]

It may be possible to explore with members whether they would consider voluntarily giving the EGCC jurisdiction over matters which are currently not able to be investigated. Ombudsman Services experienced this ahead of more recent legislative changes in the UK to broaden the scope of CDR availability more generally. Typically suppliers in the communications and energy sectors asked Ombudsman Services to deal with goods and services that were sold as part of a bundled package.[71] While a moral hazard problem would remain as suppliers can withdraw their approval if they dislike a decision, this problem would not be new (since there is no mandatory CDR in these areas), and Ombudsman Services reports that the benefits for suppliers are a consistent outcome and improved customer trust and loyalty.[72]

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70 Consumer Law Centre Victoria statement in 1999, cited in Neave and Pinnock(2003), p.9

71 This would not be possible for complaints relating to financial services as the Financial Service Providers (Registration and Dispute Resolution) Act 2008 requires every provider of a financial service to a retail customer to be a member of an approved dispute resolution scheme.

72 Ombudsman Services, Annual report 2014/15 p.6

9. Conclusion

Access to effective redress is one of the elements that enable consumers to confidently engage in a market. Confident, engaged consumers and vigorously competing firms work together to promote workable competition in a market and deliver long-term benefits to consumers. In this way, the EGCC promotes the long-term benefit of consumers which is the government's goal in the energy sector.

This report presents a pyramid of roles of the EGCC at the levels of individual consumers, companies and the sector. The value of these roles is assessed and an indicative value is placed on them:

- resolving individual complaints, is $0.5m
- driving improvements in internal complaint handling by electricity companies, for 5% of complaints, is $0.9m
- identifying and driving improvements in the energy system that affect 1% of all mass market connections is $22m.

While these estimates are by their nature somewhat speculative, we note that the total expenditure of the EGCC in 2014/15 was $3.0m.

The government also has provisions for regulating for distributional equity within the Electricity Industry Act, and has some distributional regulations in place. The EGCC may contribute to equity goals as there is some evidence that vulnerable consumers are more likely to experience problems than the average population. However, it is not possible to measure the extent to which vulnerable populations access the EGCC's services. We suggest that this could be an area of future data collection and research for the EGCC. This could also indicate the extent to which there are complaints that are unresolved.

Comparisons with Australian energy sector ombudsmen and the NZ banking sector CDR providers does not indicate any inefficiency in the delivery of CDR services by the EGCC.

The diversification of energy suppliers into other markets is threatening the value of the EGCC if it becomes disconnected from the suppliers' businesses. The structure of CDR as part of the justice sector should take its cue from the perspective of consumers and the structure of the economy.

Whether a proliferation of CDR providers matters depends on whether:

- consumers are confused (referral loss)
- variations between providers mean consumers are treated in a materially different way procedurally or substantively
- there are efficiency gains in specialisation or alternatively in consolidation and sharing common systems and assets

The meshed nature of the energy sector and relative technical complexity suggest there is little to be gained from competing CDR providers, and consistency and sector expertise is more likely to be important.

If the EGCC wishes to expand its jurisdiction it could either seek to widen the current scheme's scope or become an approved provider of other CDR schemes (such as telecommunications or financial services). We consider a useful hurdle is: does the lack of jurisdiction impede the EGCC's ability to consider otherwise legitimate complaints about energy suppliers, and/or do consumers face high accessibility barriers (for example because their complaint crosses jurisdictional boundaries).

One possible response would be to explore with members whether they would consider voluntarily giving the EGCC jurisdiction over matters which are currently not able to be investigated, such as where products or services are bundled. The benefit to suppliers could be consistent outcomes, and improved customer trust and loyalty.

Appendix 1 Energy CDR schemes

NZ Electricity and Gas Complaints Commissioner

The origin of the EGCC was the 2000 Ministerial inquiry to examine New Zealand's electricity industry (Caygill Inquiry). The purpose of the Caygill Inquiry was to evaluate whether the regulatory regime was meeting the Government's objective of ensuring electricity is delivered in an efficient, reliable and environmentally sustainable manner and where existing arrangements were found not to achieve these objectives, to recommend changes.[73]

The Caygill Inquiry recommended the establishment of an Electricity Ombudsman. In response, in 2001, a number of electricity retailers and distributors (though not the entire industry) formed a voluntary complaints resolution scheme (the Electricity Complaints Commission). [74]

In October 2004, the Electricity Act 1992 and Gas Act 1992 were amended to provide for the establishment of the Electricity Commission and the Gas Industry Co (as the industry body approved under the Gas Act). Those amendments included powers for each of the regulators to establish complaints resolution schemes (including two methods – an approved approach and a fully regulated approach) to provide for universal consumer coverage.

Also in October 2004, the Government published Government Policy Statements (GPSs) for both gas and electricity governance, which set out similar expectations for complaints resolution in both the electricity and gas industries.

Members of both the electricity and gas industries were now required by legislation to be members of an approved consumer complaints scheme. In response to these developments, the Electricity Complaints Commissioner Scheme expanded their jurisdiction to include the gas industry in April 2005 becoming the Electricity and Gas Complaints Commissioner.[75] The remit of the scheme was further expanded in 2006 to include land complaints, in 2010 to include reticulated LPG and in 2014 to include bottled LPG over 15kg.[76] Most electricity

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73 The Electricity Commission, and the Gas Industry Company, 2008, 'Submissions Analysis: Selection of a Preferred Candidate for Approval as a Complaints Resolution Scheme under the Electricity and the Gas Acts', accessed online July 2015, URL: < https://www.ea.govt.nz/about-us/what-we-do/our-history/archive/dev-archive/work-programmes/market-wholesale-and-retail-work/dispute-resolution-scheme/>.

74 The Electricity Commission, and the Gas Industry Company, 2008, 'Submissions Analysis: Selection of a Preferred Candidate for Approval as a Complaints Resolution Scheme under the Electricity and the Gas Acts', accessed online July 2015, URL: < https://www.ea.govt.nz/about-us/what-we-do/our-history/archive/dev-archive/work-programmes/market-wholesale-and-retail-work/dispute-resolution-scheme/>.

75 New Zealand Government, 2005, 'Commission to cover gas complaints', Scoop.co.nz, accessed online July 2015, URL: <http://www.scoop.co.nz/stories/PA0503/S00550/commission-to-cover-gas-complaints.htm>.

76 The Electricity and Gas Complaints Commissioner, 'History of the Scheme' accessed online July 2015, URL: <http://www.egcomplaints.co.nz/about-us/the-complaints-scheme/history-of-the-scheme.aspx>.

and gas industry members joined the EGCC but a few set up their own schemes. As at 2008 there were four different schemes in operation, coverage of the schemes was patchy and their approaches were inconsistent.[77]

A 2006 GPS in relation to governance of the electricity industry noted in relation to consumer complaints that while they supported the existing EGCC, not all retailers and distribution companies had joined the scheme and, as such, the scheme's coverage had fallen short of expectations. The GPS went on to recommend that if coverage of the scheme could not be extended to meet expectations the Electricity Commission should recommend regulations to introduce a statutory regime.[78]

The 2008 GPS on Electricity Governance reiterated expectations that there should be universal coverage of for consumer complaints. The Statement went on to recommend that consumers' best interests were likely to be best served by a single, independent complaints resolution scheme that included both electricity and gas[79]:

> *The reason for this is that a single dual-fuel scheme provides benefits such as ease of access, consistency of outcomes and efficiencies of scale. The size of the gas market does not justify a separate scheme and many of the same companies are involved in both sectors. Many customers buy electricity and gas from the same retailer.*

The statement went on to instruct the Electricity Commission and the Gas Industry Company to coordinate approaches to approval and governance of an electricity and gas consumer complaints scheme.

Following this, the Electricity Commission and the Gas Industry Company undertook a consultation process on a proposal to approve a joint complaints resolution scheme. As a result of this work they recommended to their respective Ministers that the EGCC be the approved scheme for both industries. The EGCC was established in its current form, as an approved consumer complaints scheme for both industries, by notice in the Gazette effective from 1 April 2010.[80]

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77 The EGCC, the Independent Energy Complaints Resolution Service (IECRS), the Electricity and Gas Disputes Resolution Service (EGDRS), and the Independent Energy Trust Complaints Resolution Scheme (IETCRS). See: The Electricity Commission and the Gas Industry Company, 2009, 'Consultation Paper – Proposal to Approve a Joint Electricity and Gas Complaints Resolution Scheme', accessed online July 2015, URL: < https://www.ea.govt.nz/about-us/what-we-do/our-history/archive/dev-archive/work-programmes/market-wholesale-and-retail-work/dispute-resolution-scheme/>.

78 David Parker, Minister of Energy and Hon. Lianne Dalziel, Minister of Commerce, 2006, 'Government Policy Statement in relation to Electricity Industry Governance', *New Zealand Gazette*, accessed online July 2015, URL: < https://gazette.govt.nz/notice/id/2006-go7539>.

79 Ministry of Economic Development, 2008, 'Government Policy Statement on Electricity Governance', *New Zealand Gazette*, accessed online July 2015, URL: <https://gazette.govt.nz/notice/id/2008-go3985>.

80 David Francis Caygill, Chair, Electricity Commission, 2009, 'Approval of Complaints Resolution System', *New Zealand Gazette*, accessed online July 2015, URL: < https://gazette.govt.nz/notice/id/2009-10195> and Hon Pansy Wong, Associate Minister of Energy and Resources, 2009, 'Approval of Complaints Resolution System', *New Zealand Gazette*, accessed online July 2015, URL: < https://gazette.govt.nz/notice/id/2009-go10200>.

Australian energy sector schemes

In Australia, under the Australian Energy Market Agreement small customer dispute resolution in the energy (electricity and gas) sector is the responsibility of each State or Territory.

Lines businesses and retailers are obliged to have internal dispute resolution schemes and participate in independent dispute resolution schemes.

The schemes have evolved from a single industry to a multiple industry schemes following structural changes to electricity and gas markets in the eastern states. The number and scope of the schemes reflects the way utilities were corporatized and de-regulated across various jurisdictions.

In 1995, the Electricity Industry Ombudsman (Victoria) (EIOV) was established during a period when the Victorian Government was undertaking a major restructure of its electricity industry including preparing the electricity businesses for sale. There was strong lobbying from consumer groups for appropriate and effective consumer protection mechanisms. EIOV was the world's first such scheme.

There was recognition by consumer groups and the industry regulator that EIOV had the potential to provide a foundation for a broader utilities ombudsman scheme across the Victorian electricity, gas and water industries. In 1999, the Victorian gas industry joined the scheme, and in 2001, the Victorian water industry also joined. Since 2005, EIOV has also handled LPG (liquefied petroleum gas) cases.[81] Today it operates as the Energy and Water Ombudsman (Victoria) (EWOV), with around 75 electricity, gas and water members.

The Energy & Water Ombudsman NSW was set up in 1998 as the first industry complaints scheme in New South Wales. It was an initiative of the six NSW electricity providers, and the transmission operator who considered that part of good customer service was the provision of a free dispute resolution service that was independent of the industry. In December 1999 Sydney Water joined the scheme and EION was renamed the Energy & Water Ombudsman NSW (EWON).

In 2009, the Gas Supply Amendment (Ombudsman Scheme) Bill 2009 passed requiring gas distributors (reticulators) to be members of EWON as a condition of licence. EWON's

The key reasons for expanding the scope of the scheme to include gas distribution businesses were to:[82]

- reduce costs of businesses
- remove uncertainty for customers about ways to resolve disputes
- ensure that a strong, independent body is given approval to assist both customers and the networks

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81 Energy and Water Ombudsman (Victoria), 'About EWOV: History', accessed online 26 June 2015, URL: <https://www.ewov.com.au/about-us/about-ewov/history>.

82 Hon. Sharpe P., 2009, *Gas Supply Amendment (Ombudsman Scheme) Bill 2009*, second reading speech, 12 May 2009.

- allow gas distribution customers to have the same opportunity to have their complaints addressed as they do with respect to electricity
- for some customers gas can be an essential service just as electricity is and so these customers want to be treated exactly the same as electricity customers, and
- continue the Government's commitment to provide strong protections to small energy customers in this State.

UK energy scheme

The Ombudsman Service Ltd (Ombudsman Services) was founded in 2002 and is a private not-for-(distributable) profit company limited by guarantee. The Service provides independent dispute resolution for a wide range of industries including the communications, energy property and copyright licensing industries. It handles complaints about the companies which have joined it ('participating companies'). Ombudsman Services is funded by the participating companies whose complaints are handled through a combination of subscription and case fees. The case fee is the charge to consider a complaint - its payment is not dependent on outcome.

In the UK the Consumers, Estate Agents and Redress Act 2007 (CEAR) changed the previous framework for consumer advocacy in the energy sector (electricity and gas). New arrangements included a requirement for energy supply companies and energy networks businesses to belong to a redress scheme approved by Ofgem. Ofgem ws given responsibility to set complaint handling standards which are binding on energy providers. .[83]

Prior to the requirements of the CEAR Act, Ofgem had determined that the six largest energy companies should operate a voluntary redress scheme. The suppliers worked together through the Energy Retail Association (ERA) and the voluntary redress scheme was established as the Energy Supply Ombudsman (ESO) Scheme in July 2006, to be delivered by Ombudsman Services.[84]

In April 2015 Ombudsman Services started handling retail goods and services complaints, following conversations with a number of retailers about the possibility of setting up tailored schemes. It launched an online service to handle complaints about goods and services in sectors not covered by an independent redress scheme, and set up a dedicated phone line, in preparation for the implementation of the EU directive on ADR.

In 2014/15, the total operating costs of Ombudsman Services was £22.8 million of which 66 percent was funded from case fees and 33 percent from subscription fees.[85]

Ombudsmen Services employed 555 case handlers in 2014/15, approximately 85% of whom are employed on a full time basis and 15% of whom are employed on a fixed term contract basis.

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[83] Sohn Associates Ltd 2010, Independent Review of the Energy Ombudsman, A Report Commissioned by Ofgem, April 2010, p. 9.

[84] Sohn Associates Ltd 2010, Independent Review of the Energy Ombudsman, A Report Commissioned by Ofgem, April 2010, pp. 9-10.

[85] Ombudsman Services 2015, *Annual Report* 2014/15, p.9.

Appendix 2 Case study: financial service providers

A consumer complaints system in relation to financial services is provided for by the Financial Services Providers (Registration and Dispute Resolution) Act 2008 (The FSP Act). New Zealand's dispute resolution regime is unusual in that it has a number of different schemes effectively competing for financial service providers as members.[86]

Prior to the FSP Act coming into force in 2010 voluntary industry schemes covered most banks and insurance companies, together with managed funds. However, coverage of complaints schemes was not comprehensive across the financial sector and in many cases consumers did not have access to appropriate dispute resolution and redress mechanisms. To address this, the FSP Act established a comprehensive, industry-based dispute resolution system, the key features of which are that: the relevant Minister may approve a dispute resolution scheme if it meets specified criteria; and membership of an ADRS is mandatory if a financial service provider provides financial services to retail clients.[87]

There are four difference customer dispute resolution schemes relating to the financial services industry in New Zealand. These are: [88]

- Financial Services Complaints Limited
- The Insurance & Savings Ombudsman scheme
- The Banking Ombudsman scheme, and
- Financial Dispute Resolution Scheme.

These schemes must compete to attract industry members.

Recently an issues paper has been released by MBIE as part of a review of the FSP Act which implies that the purpose of this competition is to ensure the schemes remain efficient and membership fees are controlled.[89] As part of this review MBIE are looking into the impact of having multiple dispute resolution schemes operating in the same sector. In

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86 Ministry of Business, Innovation and Employment, 2015, 'Issues Paper: Review of the Financial Advisers Act 2008 and the Financial Service Providers (Registration and Dispute Resolution) Act 2008", accessed online July 2015, URL: http://www.med.govt.nz/business/business-law/pdf-docs-library/financial-advisers-act/final-issues-paper-20-may-2015.pdf.

87 Bell Gully, 2011, 'Financial Service Providers Law – a guide to wide-ranging law reform', accessed online July 2015, URL: http://www.bellgully.co.nz/resources/pdfs/Financial-Service-Providers-Law_A-Guide-to-Wide-ranging-Law-Reform.pdf.

88 Consumer.nz.org, 2011, 'Financial dispute scheme complaints', accessed online July 2015, URL: < https://www.consumer.org.nz/articles/financial-disputes-resolution>.

89 Ministry of Business, Innovation and Employment, 2015, 'Issues Paper: Review of the Financial Advisers Act 2008 and the Financial Service Providers (Registration and Dispute Resolution) Act 2008", accessed online July 2015, URL: http://www.med.govt.nz/business/business-law/pdf-docs-library/financial-advisers-act/final-issues-paper-20-may-2015.pdf.

relation to competition they have flagged the following potential impacts in their issues paper:[90]

Table 3 Costs and benefits of multiple providers

Potential benefits from multiple providers	Potential negative impacts
Lower fees for financial service providers	The activities of some schemes are constrained. MBIE say "if this is restricting the ability of schemes to promote awareness, introduce new rules or work collaboratively with other schemes, then this could have a negative impact on compliance with the dispute resolution principles and ultimately in consumer confidence in dispute resolution".
Incentives to develop innovative and improved service levels for scheme members are created	Consumers may lose confidence if it becomes apparent that a complaint would have a different outcome depending on which scheme the provider belongs to.
Schemes may develop specialist expertise in a particular sector	Inconsistencies between the assistance each scheme provides consumers with may give rise to accessibility issues, confuse consumers and lead to a reluctance to participate in dispute resolution where this might otherwise be beneficial.
	Reduced consumer awareness and/or confusion as to how the dispute resolution regime works.

Source: MBIE (2015)

[90] Ministry of Business, Innovation and Employment, 2015, 'Issues Paper: Review of the Financial Advisers Act 2008 and the Financial Service Providers (Registration and Dispute Resolution) Act 2008", accessed online July 2015, URL: http://www.med.govt.nz/business/business-law/pdf-docs-library/financial-advisers-act/final-issues-paper-20-may-2015.pdf.

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