

THE ELECTRICITY AND GAS COMPLAINTS COMMISSIONER SCHEME

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PART A THE ELECTRICITY AND GAS COMPLAINTS COMMISSIONER SCHEME

Scheme established by Deed

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

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

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

Purpose of the Scheme

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

Founding Principles

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

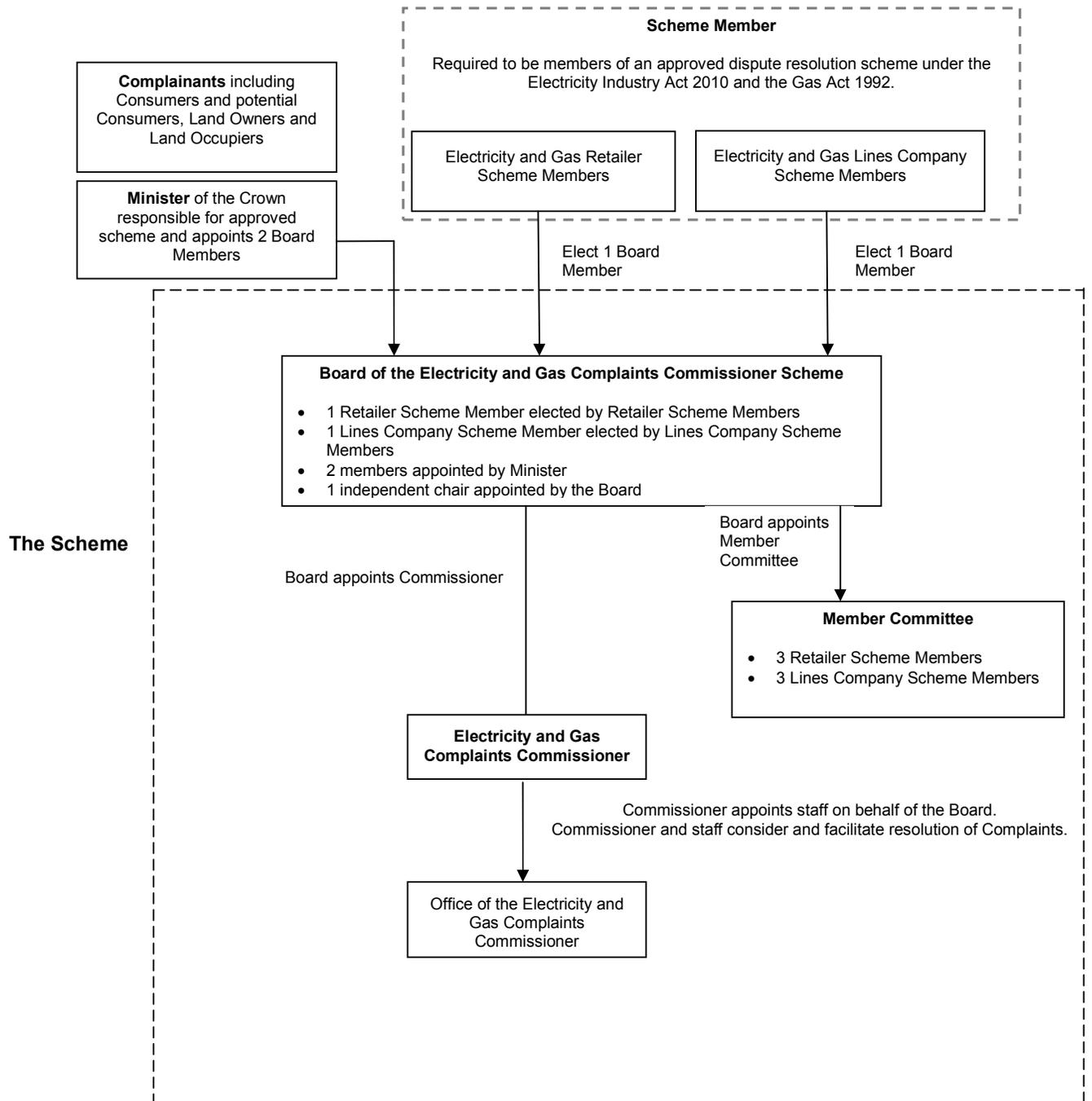
- accessible
- independent
- fair
- accountable
- efficient
- effective
- free to Complainants
- known in the community.

The structure of this document is as follows:

- **Part A** sets out the background to the establishment of the Scheme, the purpose and principles of the Scheme, a diagram of the Scheme and key to interpretation of the Scheme.
- **Part B** sets out the Terms of Reference that the Electricity and Gas Complaints Commissioner must follow when considering a Complaint against a Scheme Member.
- **Part C** sets out the Code of Conduct for Complaint Handling that Scheme Members must follow.

- **Part D** sets out the fees, levies and other costs that Scheme Members must pay.
- **Part E** establishes the Board of the Electricity and Gas Complaints Commissioner Scheme which is responsible for providing a complaints resolution scheme. It sets out the functions, duties and obligations of the Board including appointment of the Commissioner.
- **Part F** outlines Scheme Members' participation in the Scheme and the winding up of the Scheme. An Adoption Deed for persons applying to become a Scheme Member is included in the Appendix to Part F.

Diagram of the Scheme



Interpretation**Definitions**

In this document, the following terms have the meanings set out below:

<i>Term</i>	<i>Meaning</i>
Achievement Standards	The requirements of the Minister for an approved scheme (as defined in P 3 of Schedule 4 of the Electricity Industry Act 2010) which, as at 1 April 2011, are the achievement standards under which the Scheme was approved by the Electricity Commission under section 158G of the Electricity Act 1992 and the Minister under section 43E of the Gas Act 1992.
Adoption Deed	The deed in the Appendix to Part F or any document with similar intent that is approved by the Board.
Board	The persons appointed in accordance with clause E.3 and making up the board of the Electricity and Gas Complaints Commissioner Scheme.
Board Member	A person appointed to the Board under clause E.3.
Class	Scheme Member classifications as Electricity Retailers, Electricity Lines Companies, Gas Retailers, or Gas Lines Companies.
Code	The Code of Conduct for Complaint Handling set out in Part C.
Commissioner	The Electricity and Gas Complaints Commissioner appointed by the Board under clause E.26.
Complainant	A person making a Complaint, or where applicable someone representing a person making the Complaint.
Complaint	An expression of dissatisfaction with Services, or the provision or non-provision of Services, by any person where a response is implicitly or explicitly expected.
Consumer	A consumer or potential consumer where the meaning of consumer is as defined, in the case of electricity, in the Electricity Act 1992 or, in the case of Gas, in the Gas Act 1992.
Consumer Contract	A Conveyance Only Consumer Contract, an Interposed Consumer Contract, or a Supply Only Consumer Contract and includes any other publications which contain information about the Services supplied to Consumers.
Conveyance Only Consumer Contract	A contract between a Consumer and a Lines Company for the supply of Line Function Services to the Consumer.

<i>Term</i>	<i>Meaning</i>
Deadlock or Deadlocked	Has the meaning indicated in clause B.7 of the Terms of Reference.
Deed	The Deed dated 7 August 2001 in which certain Retailers and Lines Companies established the Electricity and Gas Complaints Commissioner Scheme that came into effect on 7 August 2001 as amended or substituted from time to time, including as in this document.
Distribution System	Distribution system as that term is defined in section 2 of the Gas Act 1992.
Electricity Company	An Electricity Retailer and/or Electricity Lines Company.
Electricity Lines Company	A distributor as defined in the Electricity Industry Act 2010 or Transpower.
Electricity Registry	The Electricity Registry is the national database of electricity ICPs.
Electricity Retailer	A retailer as defined in the Electricity Industry Act 2010.
Electricity Works	Works as defined in the Electricity Act 1992.
Financial Year	A period commencing on 1 April and ending on 31 March of the following year.
Gas	Natural gas, which meets the New Zealand Specification for Reticulated Natural Gas NZS5442:1990 (as amended or replaced from time to time), or liquid petroleum gas, that is supplied to a Consumer through a Distribution System but excludes, to avoid doubt: <ul style="list-style-type: none"> (a) LPG for transportation purposes; and (b) CNG for transportation purposes.
Gas Company	A Gas Retailer and/or a Gas Lines Company.
Gas Lines Company	A gas distributor as defined in the Gas Act 1992 and any person that operates a Gas Transmission Pipeline.
Gas Pipeline	Any equipment that is used in connection with the conveyance of Gas.
Gas Registry	The national database of gas ICPs.
Gas Retailer	A gas retailer as defined in the Gas Act 1992.
Gas Transmission Pipelines	Pipelines used in the conveyance of Gas that are operated at a gauge pressure exceeding 2,000 kilopascals.

Term	Meaning
ICP	<p>Installation Control Point, in the case of:</p> <p>(a) electricity, the point at which a Consumer's property is supplied with electricity and at which the supply of electricity may flow between the Lines Company's network and that Consumer's property only, subject to any amendment to the term point of supply under the Electricity Act 1992.</p> <p>(b) Gas, the point on a Gas Lines Company's Distribution System at which Gas may flow between the Distribution System and the Consumer's premises, which the Gas Lines Company nominates as the point at which a Gas Retailer is deemed to supply Gas to a Consumer.</p>
Interposed Consumer Contract	A contract between a Consumer and a Retailer that includes the provision of Line Function Services to the Consumer.
Joint Class	<p>In the case of Lines Companies, all Electricity Lines Companies together with all Gas Lines Companies.</p> <p>In the case of Retailers, all Electricity Retailers together with all Gas Retailers.</p>
Land	Includes any estate or interest in land.
Land Agreement	Any agreement, including any easement or licence, under which a Lines Company is granted rights by a Land Owner or Land Occupier to access or use any Land, other than a Consumer Contract.
Land Complaint	<p>A Complaint that a Lines Company has unlawfully affected a Land Owner's or Land Occupier's rights, in respect of the Land Owner's or Land Occupier's Land, in the course of the Lines Company's exercise, purported exercise, or failure to exercise rights, powers or obligations under:</p> <p>(a) the Gas Act 1992 and the Gas Regulations 1993; or</p> <p>(b) the Electricity Act 1992, the Electricity Regulations 1997 and the Electricity (Hazards from Trees) Regulations 2003; or</p> <p>(c) a Land Agreement;</p> <p>but does not include a complaint in respect of any of the matters listed in clause B.9.8 of the Terms of Reference.</p>
Land Occupier	<p>In relation to Land, either:</p> <p>(a) an inhabitant occupier of the Land; or</p>

Term	Meaning
	(b) any person who has a right to occupy the land under a lease, sub-lease, or licence granted by the Land Owner or another Land occupier entitled to so grant.
Land Owner	In relation to the Land that is held under: <ul style="list-style-type: none"> (a) the Land Transfer Act 1952 the person(s) that own(s) the Land in fee simple; (b) the Land Act 1948, the Crown; and (c) any other statute, the legal and beneficial owner of the Land (as appropriate) as specified in that statute.
Line Function Services	In the case of electricity, has the meaning set out in section 2 of the Electricity Act 1992 and as further provided for in a Consumer Contract and includes metering services where an Electricity Lines Company provides these services. In the case of Gas, has the meaning set out in section 2 of the Gas Act 1992 and as further provided for in a Consumer Contract and includes metering services where a Gas Lines Company provides these services.
Lines Company	An Electricity Lines Company or a Gas Lines Company.
Lines Complaint	Any Complaint about Line Function Services and, in relation to Conveyance Only Consumer Contracts, includes Complaints about billing.
Lines Equipment	Electricity Works or Gas Pipelines, as the case may be.
Member Committee	The committee appointed by the Board under clause E.20.
Minister	The Minister of the Crown responsible for the approved scheme under the Electricity Industry Act 2010 and the Gas Act 1992.
Month	A calendar month.
Proportionate Basis	The formula in clause D.9.
Retailer	An Electricity Retailer or a Gas Retailer.
Scheme	The Electricity and Gas Complaints Commissioner Scheme established under the Deed as amended from time to time.
Scheme Member(s)	A Retailer or Lines Company that is an approved member of the Scheme.

<i>Term</i>	<i>Meaning</i>
Secretary	The secretary appointed by the Board.
Services	Goods or services provided by a Retailer, or Line Function Services. References to the provision of services include, where the context requires, references to the non-provision of services.
Supply Only Consumer Contract	A contract between a Consumer and a Retailer that does not include the provision of Line Function Services to the Consumer.
Terms of Reference	The Terms of Reference set out in Part B.
Transpower	Transpower New Zealand Limited.
Use of System Agreement	An agreement between a Lines Company and a Retailer relating to the supply of Line Function Services to the Retailer.
Working Day	Every Monday to Friday, but does not include a public holiday.

General interpretation

A reference to the singular includes the plural and vice versa.

A reference to a person includes a partnership, body corporate, trust, unincorporated association, authority or natural person and includes a group of persons.

Any appendix forms part of this document.

A reference to a clause, Part, or appendix is a reference to a clause, Part, or appendix of this document, and unless indicated otherwise, a reference within a Part of this document to a clause or an appendix, is a reference to a clause within, or appendix to, that Part of the document.

A reference to a statute, regulation or other statutory instrument includes consolidations, amendments, re-enactments or replacements of the provision(s) referred to.

Whenever the words 'includes' or 'including' are used in this document, they are deemed to be followed by the words 'without limitation'.

Subsidiaries and related companies

A Scheme Member is responsible for ensuring that any subsidiary or related company (as each is defined by the Companies Act 1993) of that Scheme Member complies with the Scheme and that any non compliance is remedied.

Inconsistencies with other agreements

If there is any inconsistency between a Scheme Member's obligations under this Scheme and the Scheme Member's rights or obligations under any other agreement or arrangement between Scheme Members, the Scheme Member's obligations under this Scheme prevail.

Applicable law

This Scheme is governed by New Zealand law.

PART B COMMISSIONER'S TERMS OF REFERENCE

Commissioner's role

- B.1 The Commissioner's principal role is to:
- B.1.1 consider, at no charge to the Complainant, any Complaint; and
 - B.1.2 facilitate the resolution of Complaints in accordance with the Scheme.
- B.2 The Commissioner may delegate any of the Commissioner's functions except making a recommendation or a binding decision.
- B.3 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.
- B.4 In making decisions the Commissioner will seek to achieve consistency of determinations. However, the precedent value of determinations is limited to interpretation of the Scheme.
- B.5 In determining what is good industry practice, the Commissioner must consult within the industry and, as the Commissioner thinks fit, with the Minister.

Complaints the Commissioner can consider

- B.6 The Commissioner may only consider a Complaint if the Commissioner is satisfied that:
- B.6.1 the Complaint meets the definition of Complaint; and
 - B.6.2 the Complainant has made the Complaint to the Scheme Member concerned and the Complaint has reached Deadlock; and
 - B.6.3 the Complainant makes the Complaint to the Commissioner within two Months of being informed by the Scheme Member concerned that Deadlock has been reached. The Commissioner may extend the two Month time limit if the Scheme Member did not comply with the Code, or there are good grounds for doing so; and
 - B.6.4 the act or failure to act that gives rise to the Complaint first occurred:
 - (a) in the case of an electricity-related Complaint, on or after **1 October 2001**; or

- (b) in the case of a Gas-related or a combined electricity and Gas-related Complaint, on or after **1 April 2005**; or
 - (c) in the case of a Land Complaint, on or after **1 October 2006**.
- B.7 A Deadlock is reached where:
 - B.7.1 the Complaint has taken longer to resolve than 20 Working Days and the Commissioner has not previously extended the time for resolving the Complaint (where the Complaint is likely to be complicated and that time limit would disadvantage either party); or
 - B.7.2 the Commissioner is satisfied that:
 - (a) the Scheme Member concerned has made it clear that they do not intend to do anything about the Complaint; or
 - (b) the Complainant would suffer unreasonable harm from waiting any longer; or
 - (c) it would otherwise be unjust to wait any longer.
- B.8 The Commissioner may decide not to consider a Complaint if the Commissioner considers that:
 - B.8.1 the Complainant knew of the act or failure to act that gives rise to the Complaint for more than three Months before the Complaint was made to the Scheme Member; or
 - B.8.2 the Complainant does not, or ceases to, have a sufficient interest in the subject matter of the Complaint; or
 - B.8.3 the Complainant has not waived the duty of confidence owed by a Scheme Member in respect of any information which the Commissioner may request a Scheme Member to produce; or
 - B.8.4 the Complainant has failed to provide information about a Complaint.
- B.9 The Commissioner cannot consider:
 - B.9.1 a Complaint about the price Scheme Members choose to set for their goods or services. But the Commissioner may consider whether appropriate information about charges has been made available to the Complainant and whether charges for Services specified in a Consumer Contract have been correctly applied; or
 - B.9.2 any matter where it appears to the Commissioner that the Complaint is part of, or is related to, another Complaint which the Complainant has made; or
 - B.9.3 a Complaint that involves a claim in excess of the applicable amount set out in clause B.11 of these Terms of Reference, unless agreed to by the Scheme Member concerned in accordance with clause B.38 of these Terms of

Reference and that Scheme Member has obtained any Lines Company's agreement that is required by clause C.24 of the Code; or

- B.9.4 a Complaint if it appears to the Commissioner that on the basis of the facts presented by the Complainant the relevant Scheme Member has made a reasonable offer in settlement of the Complaint; or
- B.9.5 a Complaint where the Commissioner decides it is more appropriate that the Complaint be considered by another person or under a statutory process, provided that the Commissioner should in such cases refer the Complainant to that other person; or
- B.9.6 a Complaint that is trivial or vexatious or that is not made in good faith; or
- B.9.7 a Complaint and any other Complaint by the same Complainant in respect of the same subject matter which is, has been, or during the course of any investigation by the Commissioner becomes, the subject of any proceedings brought by the Complainant in or before any court, tribunal or arbitrator, or any other independent or statutory complaints or conciliation body, or any investigation by an Ombudsman under the Ombudsman Act 1975; or
- B.9.8 any of the following matters which are excluded from the definition of Land Complaint:
 - (a) any dispute as to whether Lines Equipment was lawfully fixed or lawfully installed in terms of section 22 of the Electricity Act 1992 in respect of Electricity Works and section 23 of the Gas Act 1992 in respect of Gas Pipelines; and
 - (b) any dispute as to whether, in respect of Lines Equipment that was constructed or for which construction commenced before 1 October 2006 but to which neither section 22 of the Electricity Act 1992 nor section 23 of the Gas Act 1992 (as the case may be) apply, a Lines Company holds the legal right for that Lines Equipment to be fixed in, over, under or across Land; and
 - (c) any dispute as to whether or not Lines Equipment constructed before 1 October 2006 or for which construction commenced before that date, is owned by a Lines Company; and
 - (d) any dispute involving a local authority or other body or person having jurisdiction over a road or level crossing that relates to or arises from the construction or maintenance of Lines Equipment in, on, along, over or across roads and level crossings under sections 24-33 of the Electricity Act 1992 and sections 25-35 of the Gas Act 1992; and
 - (e) any dispute relating to or arising from the negotiation for, or other process of, obtaining any interest in Land in relation to Lines Equipment, including under the Resource Management Act 1991 or the Public Works Act 1981; and

- (f) any dispute relating to or arising from a refusal to grant a dispensation under regulation 20 of the Electricity (Hazards from Trees) Regulations 2003 or the terms of a dispensation granted under regulation 20; and
- (g) any dispute as to whether the maintenance programme carried out by a Lines Company on Lines Equipment is adequate or reasonable; and
- (h) any dispute as to whether or not a replacement or upgrade of an Electricity Work causes Land to be injuriously affected in terms of section 23(3)(b) of the Electricity Act 1992; and
- (i) any dispute as to whether any changes to Lines Equipment carried out in the exercise of powers under the Electricity Act 1992 or the Gas Act 1992 have injuriously affected Land in terms of section 57(1) of the Electricity Act 1992 or section 51(1) of the Gas Act 1992, including disputes about the amount of compensation that may be payable in relation to such injurious affection. This clause does not exclude disputes about whether or not a Lines Company has complied with any obligation it may have to mitigate or repair damage to Land or property in or under any of the Acts or regulations referred to in the definition of "Land Complaint" in the Scheme, or a Land Agreement; and
- (j) any dispute relating to the quality of electricity or Gas supplied by a Lines Company to a Consumer, or any interruption in the supply of electricity or Gas or the provision of Line Function Services.

B.9.9 any complaint, other than a Land Complaint, that:

- (a) relates to the Services provided by Transpower; or
- (b) relates to the Services provided by any Gas Lines Company Scheme Member in the transmission of Gas by Gas Transmission Pipelines.

B.9.10 a Land Complaint relating to a Retailer.

B.10 The Commissioner decides whether a Complaint is within the Commissioner's jurisdiction. When making a decision as it relates to jurisdiction, the Commissioner must have regard to what the Complainant and the Scheme Member have to say. The Commissioner must ensure the Complainant and the relevant Scheme Member or Scheme Members are advised of the reasons a Complaint is outside the Commissioner's jurisdiction or otherwise excluded.

B.11 For the purposes of clauses B.9.3, B.16.3, B.37, B.38, and B.39 of these Terms of Reference, the applicable amount is:

B.11.1 where the act or failure to act that gives rise to the Complaint first occurred prior to 18 April 2005, \$10,000; or

- B.11.2 where the act or failure to act that gives rise to the Complaint first occurred on or after 18 April 2005, \$20,000.
- B.12 For Land Complaints:
- B.12.1 in determining the value of a claim for the purposes of clause B.9.3 of these Terms of Reference, the Commissioner will take into account the reasonable costs that would be incurred by a Scheme Member in carrying out any actions that might reasonably be required by any binding decision; and
- B.12.2 in determining the value of a binding decision or Complaint for the purposes of clauses B.37, B.38 and B.39 of these Terms of Reference, the Commissioner will take into account the reasonable costs that would be incurred by a Scheme Member in carrying out any actions required by the binding decision.
- B.13 When applying clause B.12 of these Terms of Reference, the Commissioner must not take into account:
- B.13.1 any administrative (including legal) costs of a Scheme Member in responding to a Complaint or any request from the Commissioner relating to a Complaint; or
- B.13.2 any levy payable by a Scheme Member under Part D.

Scheme Members subject to the Chief Ombudsman's jurisdiction

- B.14 The Commissioner may act as a first-point of review for Complaints against Scheme Members who are subject to the Chief Ombudsman's jurisdiction under the Ombudsmen Act 1975 ('the Chief Ombudsman's jurisdiction') if the Complaint relates to a matter within the Commissioner's jurisdiction.
- B.15 When conveying a decision on such a complaint, the Commissioner must advise the Complainant that the Complainant has the right to reject the Commissioner's decision and seek an investigation of the Complaint by the Chief Ombudsman's office.

Scheme Members can extend jurisdiction on ad hoc basis

- B.16 A Scheme Member may consent to a Complaint being considered by the Commissioner where the Commissioner would not otherwise have jurisdiction to determine that Complaint. A Scheme Member extending the Commissioner's jurisdiction on this ad hoc basis:
- B.16.1 must first obtain any Lines Company's agreement that is required by clause C.24 of the Code; and
- B.16.2 can elect to limit the Commissioner's ability to resolve the Complaint to making a recommendation or a finding of facts; and
- B.16.3 may not extend the Commissioner's jurisdiction to consider a claim in excess of the applicable amount except in accordance with clauses B.37, B.38 and B.39 of these Terms of Reference.

PROCEDURAL REQUIREMENTS**Establishing procedures**

- B.17 The Commissioner must decide the procedures to be adopted for considering Complaints. The procedures must be simple to understand and easy to use. The procedures must provide for:
- B.17.1 contact personnel to use a checklist to explain to Complainants the nature of the Scheme, how the Scheme works, any relevant restrictions on its powers, and the applicable time limits; and
 - B.17.2 the use of appropriate techniques including conciliation, mediation, and facilitated negotiation between the parties, in attempting to settle complaints; and
 - B.17.3 informal proceedings which discourage a legalistic adversarial approach; and
 - B.17.4 a Complainant's case to be presented orally or in writing at the discretion of the Complainant; and
 - B.17.5 each party to be informed of the issues and be given sufficient information to understand the position of the other party, and to have the opportunity to address information provided by the other party; and
 - B.17.6 legal representation to be discouraged at any face to face hearings before the decision maker except in special circumstances; and
 - B.17.7 any party to have legal representation if they wish; and
 - B.17.8 ensuring Complainants are kept informed of the progress of the Complaint.
- B.18 The Commissioner will arrange services to assist Complainants to access the Scheme at no cost to the Complainant (such as appropriate services to meet the needs of Complainants with disabilities or from non-English speaking backgrounds).
- B.19 Where the Complainant is unable to put a Complaint in writing, the Commissioner will arrange to record the Complaint in writing and send it to the Complainant for confirmation.
- B.20 If the Complaint is a Lines Complaint in respect of Services provided under an Interposed Consumer Contract the relevant Lines Company or the Retailer with the Consumer Contract (whichever Scheme Member is not the Scheme Member responsible for managing and resolving the Complaint) must be recognised by the Commissioner as a person with an interest in the Complaint.
- B.21 The Commissioner will ensure Complainants receive a receipt indicating the acceptance of the Complaint within five Working Days of receiving the Complaint. The receipt is to include information relevant to the Complaint, such as the process for resolving Complaints.

Confirmation of waivers

- B.22 The Commissioner must promptly advise the Scheme Member named in the Complaint (and where necessary, any Scheme Member with an interest in the Complaint) that the Complainant has waived that Scheme Member's duty of confidentiality referred to in clause B.8.3 of these Terms of Reference.

Information about Complaints

- B.23 The Commissioner may require a Scheme Member named in a Complaint and any Scheme Member with an interest in a Complaint to provide any information about that Complaint. Scheme Members must disclose the information required within 10 Working Days.
- B.24 A Scheme Member is not required to disclose such information if the Scheme Member certifies to the Commissioner:
- B.24.1 that the information is legally privileged;
 - B.24.2 that the disclosure of the information would place the Scheme Member in breach of its duty of confidentiality to a third person who has refused its consent to disclosure despite the Scheme Member using its best endeavours to obtain such consent; or
 - B.24.3 that the Scheme Member does not have the information requested.
- B.25 Where a Scheme Member provides information to the Commissioner which identifies a third party, the information may be provided to the Complainant with deletions, where appropriate, at the discretion of the Commissioner.
- B.26 The Commissioner will encourage but cannot compel Complainants to provide information about a Complaint. The Commissioner will inform the Complainant that failure to provide information is grounds for discontinuing the investigation into the Complaint.

Disclosure of information to parties

- B.27 If any party to a Complaint:
- B.27.1 supplies information to the Commissioner and requests that the Commissioner treat it as confidential, the Commissioner must not disclose that information to any other person (other than to employees of the office of the Commissioner or the chair of the Board), except with that party's consent.
 - B.27.2 requests access to any information on the Commissioner's file, the Commissioner must, subject to these Terms of Reference, any legal requirements and any procedure developed by the Board and the Commissioner, make the information available.
 - B.27.3 supplies information to the Commissioner in relation to a Complaint and the Commissioner has resolved the Complaint or ceased to consider the Complaint, the Commissioner must, if requested, return the information as soon as reasonably practicable.

- B.28 If any person threatens a Scheme Member's staff, agents or property and the Commissioner becomes aware of that threat, the Commissioner must report it to the Scheme Member.

Responding to general enquiries

- B.29 The Commissioner may provide general information about the Scheme and give advice on the procedure for referring a Complaint to the Commissioner. It is not a function of the Commissioner to provide information about Retailers or Lines Companies or Services if that information is not related to a Scheme Member's participation in the Scheme or resolving a Complaint.

Use of company information on ownership of Lines Equipment

- B.30 Where a Land Complaint is dependent for its resolution on determining whether or not a Lines Company owns the Lines Equipment that the Complaint relates to, the Lines Company's geographical information system or equivalent network records will be taken by the Commissioner as evidence of ownership, unless the Complainant provides evidence to the contrary. The Commissioner will not inquire into the issue of whether the Lines Company's records are accurate, unless evidence is provided by the Complainant that the records are inaccurate.

SETTLEMENTS, RECOMMENDATIONS AND BINDING DECISIONS

Settlement by agreement

- B.31 At any time that the Commissioner is considering a Complaint the Commissioner may:
- B.31.1 send the Complaint back to the Scheme Member for settlement; or
 - B.31.2 seek to promote a settlement of the Complaint by agreement between the Complainant and the Scheme Member(s) concerned.

Recommendations

- B.32 If there is no such agreement, the Commissioner, at the request of the Complainant or the Scheme Member concerned, may make a recommendation for settlement of the Complaint. The Commissioner must:
- B.32.1 first give the Complainant and the Scheme Member concerned (and any Scheme Member with an interest in the Complaint) 15 Working Days' notice of the Commissioner's intention to make such recommendation; and
 - B.32.2 during the period of that notice (or such longer period as the Commissioner may agree) allow the Complainant and the Scheme Member(s) concerned to make further representations to the Commissioner in respect of the Complaint; and
 - B.32.3 if no agreement has been reached at the end of the period of notice, make a recommendation,

provided that if no response is received from the Complainant within the 15 Working Days, the Commissioner may, at the Commissioner's discretion, not proceed to make a recommendation.

- B.33 A recommendation must:
- B.33.1 state the name of the Scheme Member(s) concerned; and
 - B.33.2 be in writing; and
 - B.33.3 state the Commissioner's recommendation and if the recommendation is that a Scheme Member or Scheme Members contribute to Settlement, the proportions in which each is recommended to contribute; and
 - B.33.4 include a summary of the Commissioner's reasons for making the recommendation; and
 - B.33.5 not be confidential, except to the extent required by law; and
 - B.33.6 if it would involve a Scheme Member providing any service, taking any action or providing valuable consideration, state that it is open for acceptance by the Complainant only if the Complainant accepts it in **full and final settlement** of the subject matter of the Complaint.

Binding decisions

- B.34 If the Commissioner has made a recommendation which, within 15 Working Days after it is made, has been accepted by the Complainant but not by the Scheme Member(s) named in the recommendation, the Commissioner may make a binding decision against that Scheme Member(s).
- B.35 Scheme Members are bound by the terms of a binding decision and they must pay any money, provide any Service (in respect of Complaints, other than Land Complaints only) or take any action required to carry out and implement a binding decision made against them.
- B.36 A binding decision may comprise the provision of a Service (in respect of Complaints other than Land Complaints only) or require an action to be taken or the provision of valuable consideration (whether in the form of money payment or otherwise).
- B.37 Subject to clause B.38 of these Terms of Reference, the value of any binding decision (excluding any sum granted under clause B.45 of these Terms of Reference) must not exceed the applicable amount set out in clause B.11 of these Terms of Reference.
- B.38 Any Complaints involving a claim with a value in excess of the applicable amount set out in clause B.11 of these Terms of Reference may be considered by the Commissioner if:
- B.38.1 in the case of a Complaint not exceeding the extended amount in value, the Scheme Member concerned agrees to extend the Commissioner's jurisdiction to allow the Commissioner to make a recommendation and if required make a binding decision up to the value of the extended amount (whether in the form of money or otherwise); and

- B.38.2 in the case of a Complaint exceeding the extended amount in value, the Scheme Member concerned agrees to allow the Commissioner to make a finding of fact (but the Commissioner cannot make any recommendation or binding decision).
- B.39 For the purposes of clause B.38 of these Terms of Reference, the extended amount means:
- B.39.1 where the act or failure to act that gives rise to the Complaint first occurred prior to 18 April 2005, \$25,000; or
- B.39.2 where the act or failure to act that gives rise to the Complaint first occurred on or after 18 April 2005, \$50,000.
- B.40 Any decision of a Scheme Member not to allow the Commissioner to consider a Complaint exceeding in value the applicable amount set out in clause B.11 of these Terms of Reference may not be the subject of a further Complaint to the Commissioner (but this clause does not prevent a Complainant reducing the value of its claim to bring it within the Commissioner's jurisdiction).
- B.41 The Commissioner will not make binding decisions for punitive damages or award money penalties.
- B.42 A binding decision must:
- B.42.1 state the name of the Scheme Member(s) against whom the Complaint is being upheld; and
- B.42.2 be in writing; and
- B.42.3 state the nature and value of the binding decision and if the binding decision is made against more than one Scheme Member, the proportions to which each Scheme Member must contribute to the cost of the binding decision; and
- B.42.4 include a summary of the Commissioner's reasons for making the binding decision; and
- B.42.5 state that, if within 15 Working Days after its issue the Complainant agrees to accept it in full and final settlement of the subject matter of the Complaint, the binding decision is binding on the Complainant and the Scheme Member(s) against which it is made; and
- B.42.6 state that it can be accepted by the Complainant providing a written statement that the binding decision (including any amount required to be paid under clause B.45 of these Terms of Reference) is accepted in full and final settlement of the Complaint.
- B.43 The Commissioner must issue a copy of the binding decision to:
- B.43.1 the Complainant; and
- B.43.2 any Scheme Member against which the binding decision is made; and

B.43.3 any Scheme Member interested in the Complaint.

B.44 If a Complainant elects not to accept a recommendation or binding decision of the Commissioner, then the Complainant is entitled to pursue any remedy in any other forum and the Scheme Member will be fully released from the Commissioner's decisions in relation to that Complaint.

Reimbursement for incidental expenses or inconvenience suffered

B.45 The Commissioner may, in any binding decision, require a sum to be paid to the Complainant (or any person the Complainant represents), up to a maximum of \$2,000, that the Commissioner considers is appropriate:

B.45.1 reimbursement for incidental expenses reasonably incurred in making and pursuing the Complaint; or

B.45.2 compensation for inconveniences arising from making and pursuing the Complaint, including any inconvenience attributable, in whole or in part, to the failure of one or more Scheme Members to comply with the Code.

Any amount awarded, or that may be awarded under this clause shall not be taken into account in determining whether a claim or a Complaint exceeds either the applicable amount referred to in clause B.11 of these Terms of Reference or the extended amount referred to in clause B.39 of these Terms of Reference.

TEST CASES

Pursuing a Complaint as a "test case"

B.46 At any time before the Commissioner has made a binding decision, a Scheme Member named in the Complaint may (with the agreement of any Lines Company required by clause C.24 of the Code) give the Commissioner notice in writing stating that in the opinion of the Scheme Member and for the reasons set out in the notice, the Complaint should be pursued in court proceedings, as it involves or may involve:

B.46.1 an issue which may have important consequences for the business of the Scheme Member or similar businesses to the Scheme Member's business; or

B.46.2 an important or novel point of law.

B.47 The Scheme Member must also write to the Complainant stating that it proposes to pursue the Complaint as a "test case" and outlining the process by which this will occur. The Scheme Member must copy that correspondence to the Commissioner.

Requirements on Scheme Members for "test cases"

B.48 The Scheme Member must:

B.48.1 institute in any court in New Zealand proceedings in respect of the Complaint within four Months of the date of the notice to the Complainant; or

B.48.2 assist the Complainant to institute proceedings in any court in New Zealand within four Months of the date of the notice to the Complainant; and

- B.48.3 pay the Complainant's costs and disbursements (including reasonable costs of legal representation on a solicitor/own client basis) of the proceedings at first instance and any subsequent appeal proceedings commenced by the Scheme Member (except by way of respondent's notice, cross-appeal or other similar procedure); and
 - B.48.4 make interim payments on account of such costs identified in clause B.48.3 of these Terms of Reference if and to the extent that it is reasonable to do so.
- B.49 For the avoidance of doubt, in relation to a Land Complaint, the Scheme Member is liable to pay the Complainant's costs under clause B.48.3 of these Terms of Reference only to the extent the costs relate to the aspect of the court proceedings that was the subject of the Complaint.

Effect on Electricity and Gas Complaints Commissioner

- B.50 Providing the Commissioner concurs with the Scheme Member's reasons in the notice required under clause B.46 of these Terms of Reference and considers the Scheme Member's notice to the Complainant under clause B.47 of these Terms of Reference is accurate and clear, the Commissioner must suspend consideration of the Complaint for four Months.
- B.51 Once proceedings are instituted and pursued through to judgment, the Complaint is deemed to be withdrawn. If proceedings are not instituted within four Months, or are not pursued through to judgment, the Commissioner may elect to resume consideration of the Complaint.

COMMISSIONER'S OTHER RESPONSIBILITIES

Responsibilities and requirements

- B.52 The Commissioner is responsible for:
- B.52.1 meeting the performance standards set in accordance with clause E.16.2 and any other requirements agreed with the Board from time to time and reporting regularly against them including:
 - (a) ensuring that the Commissioner employs or contracts, at a reasonable cost and as considered necessary to assist in resolving disputes, one or more persons with expertise in and knowledge of the electricity and gas sectors, including in the operation of electricity lines and Gas Pipelines and in dealing with Land-related issues; and
 - (b) forming a technical advisory panel with particular knowledge of the electricity and gas sectors, including good industry practice in the operation of electricity lines and Gas Pipelines and in dealing with Land-related issues; and
 - B.52.2 attending, in a non-voting capacity, meetings of the Board and/or the Member Committee when invited; and

- B.52.3 liaising, and consulting with other industry bodies, and developing working procedures with these bodies where appropriate; and
- B.52.4 promoting the Scheme and the Commissioner's complaint-handling procedures generally, and in such a way as to be sensitive to people who are disadvantaged or who have special needs, including liaising with organisations working with or consisting of people who may not be able to find out about the Commissioner by standard means; and
- B.52.5 reviewing the Scheme and making recommendations to the Board on any amendments the Commissioner considers are required; and
- B.52.6 in consultation with the Board, preparing:
 - (a) the Commissioner's operational plan that includes goals, output targets and performance standards for the Financial Year; and
 - (b) a financial budget in respect of the Financial Year; and
- B.52.7 controlling and monitoring expenditure within the financial budget and providing regular reports to the Board on expenditure; and
- B.52.8 reporting regularly to the Board on the performance of the Scheme against the Achievement Standards ; and
- B.52.9 responding in a timely and appropriate manner to any recommendations of the Board in response to complaints about the operation of the Scheme; and
- B.52.10 identifying and reporting to the Board on material and persistent breaches of the Scheme by Scheme Members; and
- B.52.11 keeping systematic records of all Complaints and enquiries, their progress and outcomes; and
- B.52.12 having mechanisms and procedures for referring to Scheme Members and to the Minister systemic industry problems that become apparent from Complaints; and
- B.52.13 referring complaints about the operation of the Scheme, other than complaints about a decision of the Commissioner, to the Board for appropriate action; and
- B.52.14 together with the Board, preparing an annual report containing, in relation to the preceding Financial Year:
 - (a) a general review of the Commissioner's activities during that year (including information identifying the separate costs of the Commissioner's activities relating to Land Complaints and other Complaints respectively);
 - (b) problems with Scheme Member compliance reported to the Board;
 - (c) information about how the Scheme works;

- (d) the number of enquiries the Scheme receives;
- (e) the number and type of Complaints the Scheme receives and their outcomes;
- (f) the time taken to resolve Complaints;
- (g) systemic problems arising from Complaints;
- (h) examples of representative case studies;
- (i) information about how the Scheme ensures equitable access;
- (j) information about new developments or key areas in which policy or education initiatives are required;
- (k) a report on compliance with the Achievement Standards;
- (l) a report on the performance standards set in accordance with clause E.16.2 or otherwise agreed with the Board;
- (m) any other information the Board requests:

and, at least 20 Working Days before the Board's annual meeting, sending that annual report to the Board, the Member Committee and Scheme Members; and

B.52.15 providing written reports of recommendations and binding decisions (excluding confidential information for which consent has not been given under clause B.27.1 of these Terms of Reference) to Scheme Members and to any interested bodies for the purpose of:

- (a) educating Scheme Members, Consumers, Land Owners and Land Occupiers;
- (b) demonstrating consistency and fairness in decision-making; and

B.52.16 at the Commissioner's discretion, making:

- (a) ad hoc confidential reports to Scheme Members on matters coming to the Commissioner's attention concerning their general compliance with the Scheme;
- (b) general observations about the purpose and operation of the Scheme in any public forum;
- (c) a report to the Board on issues arising that relate to the electricity and Gas sector as a whole, or any other initiative, affecting the Scheme;
- (d) observations to Scheme Members about the effectiveness of the Scheme Member's internal complaints process; and

- B.52.17 having a mechanism to ensure that the time limits for dealing with Complaints are complied with as far as possible; and
 - B.52.18 keeping data on enquiries and Complaints and remedies for reporting purposes, to identify the sources of practices giving rise to similar Complaints; and
 - B.52.19 reporting quarterly to the Board on whether the Commissioner has achieved the performance standards set in accordance with clause E.16.2 or otherwise agreed with the Board, the reasons for the failure and providing recommendations if similar failures are likely to occur again.
- B.53 The Commissioner is responsible to the Board for the day to day administration and conduct of the operations of the Commissioner. The Commissioner has the power to incur expenditure on behalf of the Board in accordance with the current financial budget and expenditure authority approved by the Board.
- B.54 The Commissioner must not exercise any power which the Scheme expressly gives to the Board or to any other person unless that power has been delegated to the Commissioner by the Board.
- B.55 With the Board chair's approval, the Commissioner has the power, on behalf of the Board, to appoint and dismiss employees, consultants, independent contractors and agents, and to determine their terms of employment or engagement. Before making any appointment, the Commissioner must be satisfied that employees are independent of Scheme Members.

PART C CODE OF CONDUCT FOR COMPLAINT HANDLING

COMPLAINT HANDLING

Purpose

- C.1 The purpose of the Code of Conduct for Complaint Handling is to ensure Scheme Members provide an effective in-house complaints handling process that is consistent with the purpose of the Scheme.

Principles

- C.2 In handling Complaints:
- C.2.1 Scheme Members must treat any expression of dissatisfaction or concern about a service or good provided by a Scheme Member as a Complaint.
 - C.2.2 Scheme Members must respond to all queries and Complaints as soon as reasonably practicable, but in any case before the deadlines specified in this Code.
 - C.2.3 Scheme Members must treat Complainants courteously and with respect.
 - C.2.4 Scheme Members must be sensitive to any health, disability or language issues relating to Complainants.
 - C.2.5 Scheme Members must interact with Complainants and any other person involved in the complaints process (including the Minister) in an open and professional manner.

Scheme Members must promote Scheme on invoices and on material for Consumers, Land Owners and Land Occupiers

- C.3 Scheme Members (excluding Transpower and Gas Transmission Pipelines operators) who directly invoice Consumers or who contract with Consumers must include on any invoice, in any Consumer Contract, on their websites and in other relevant Consumer information:
- C.3.1 advice that the Scheme Member has a free internal complaints process and provide contact information; and
 - C.3.2 information about the existence, nature of, and contact details for the Scheme.
- C.4 Scheme Members must include information about the existence and nature of, and the contact information for, the Scheme in/on any material published specifically for Land Owners and Land Occupiers.

Requirements for in-house complaints handling

- C.5 Scheme Members must have a free, accessible, fair and effective, in-house complaint handling process that is simple for Complainants to understand and easy to use.

- C.6 Scheme Members must accept Complaints in any reasonable form from a Complainant including written and oral, and via a variety of delivery mechanisms including face-to-face, posted, hand-delivered, facsimile or electronic.
- C.7 Scheme Members must:
- C.7.1 provide written information about their complaint handling process presented in plain and accessible language; and
 - C.7.2 provide information to Complainants about how their Complaint will be dealt with, and by when; and
 - C.7.3 keep Complainants informed of the progress of a Complaint; and
 - C.7.4 train their staff about their complaints handling processes, including recognition of complaints and active referrals to their in-house Complaints handling processes and to the Commissioner where required; and
 - C.7.5 provide adequate resources for their internal complaints handling processes; and
 - C.7.6 tell Complainants that there is a Commissioner to whom they can go if their Complaint is not resolved (including contact information, and information about the nature of the Scheme), regardless of whether the Scheme Member considers the Complaint to be frivolous or vexatious; and
 - C.7.7 provide the Commissioner with information regarding their in-house complaint handling process and a nominated point of contact for Complaints.

COMPLAINT OTHER THAN LAND COMPLAINT DISPUTE RESOLUTION

- C.8 Scheme Members must in relation to Complaints other than Land Complaints:
- C.8.1 if they are the Scheme Member contracting with the Consumer, acknowledge the Complaint in writing as soon as possible but in any event no later than two Working Days after receipt; and
 - C.8.2 if they are the Scheme Member contracting with a Consumer, provide a response (initial or otherwise) to the Consumer as soon as possible, commensurate with the urgency of the Complaint, but in any event no later than seven Working Days after receipt; and
 - C.8.3 not allow disputes between them to compromise the efficient and timely resolution of Complaints; and
 - C.8.4 act as clearing-houses for any Complaints made to them in error and refer the Complaint to the correct Scheme Member; and
 - C.8.5 if they are the Scheme Member managing a Complaint, and the Complaint reaches Deadlock, inform the Consumer that the Consumer may ask the Commissioner to consider the Complaint; and
 - C.8.6 co-operate with each other in order to:

- (a) ensure ease of access for Consumers to a means of dispute resolution with Scheme Members which is also free, fair and effective;
 - (b) promote the efficient and timely resolution of Complaints; and
- C.8.7 have an efficient system with adequate resources for receipting, recording and monitoring Complaints received, referred (to or by them), managed and resolved by them; and
- C.8.8 nominate an individual(s) to be the point of contact for the receipt, referral management and resolution of Complaints; and
- C.8.9 if they are party to a Consumer Contract and refer a Complaint to another Scheme Member who is to manage the Complaint:
 - (a) conform with the provisions of this Code governing referrals; and
 - (b) monitor and facilitate the management and resolution of the Complaint by the Scheme Member managing the Complaint; and
- C.8.10 monitor their compliance with the Scheme and report annually on their compliance to the Board

Clearing-house mechanism for referral of Complaints to correct Scheme Member

- C.9 If a Consumer makes a Complaint to a Scheme Member, who does not have a contract with the Consumer in respect of the subject of the Complaint, that Scheme Member must:
 - C.9.1 within one Working Day of receipt, forward the Complaint to the Scheme Member contracting with the Consumer (where that Scheme Member can be identified); and
 - C.9.2 where it is not clear which Scheme Member contracts with the Consumer, use its best endeavours to identify that Scheme Member as soon as possible after receiving the Complaint, forward the Complaint to that Scheme Member, and provide the Consumer with the point of contact details for that Scheme Member.

This applies even if the Complaint relates to Gas and is made to an Electricity Company in error or if the Complaint relates to Electricity and is made to a Gas Company in error.

- C.10 When the correct Scheme Member receives a Complaint forwarded to it, it must:
 - C.10.1 acknowledge the referral; and
 - C.10.2 inform the Consumer of its receipt of the Complaint, the date of receipt and the process it will follow for the referral (if any), management and resolution of the Complaint.

Conveyance Only Consumer Contracts

- C.11 Conveyance Only Consumer Contracts must provide that:

- C.11.1 the Lines Company is responsible for managing and resolving Complaints relating to the Services provided under the contract; and
 - C.11.2 if a Complaint is not resolved by the Lines Company, the Consumer may refer the dispute to the Commissioner.
- C.12 The Lines Company is responsible for the payment of all compensation (including any binding decision of the Commissioner) and its management costs and for providing any remedy with respect to a Complaint arising out of a Conveyance Only Consumer Contract.

Supply Only Consumer Contracts

- C.13 Supply Only Consumer Contracts must provide that:
- C.13.1 the Retailer is responsible for managing and resolving Complaints relating to the Services provided under the contract; and
 - C.13.2 if a Complaint is not resolved by the Retailer, the Consumer may refer the dispute to the Commissioner.
- C.14 The Retailer is responsible for the payment of all compensation (including any binding decision of the Commissioner) and its management costs and for providing any remedy with respect to a Complaint arising out of a Supply Only Consumer Contract.

Interposed Consumer Contracts

- C.15 Interposed Consumer Contracts must provide:
- C.15.1 that Complaints should, in the first instance, be made to the Retailer; and
 - C.15.2 that the Retailer is responsible for managing and resolving any Complaints about goods or services provided by the Retailer arising under the contract; and
 - C.15.3 unless otherwise agreed with a Lines Company, that all Lines Complaints arising under the contract must be referred by the Retailer to a Lines Company to manage and resolve; and
 - C.15.4 if the Retailer has agreed with a Lines Company not to refer certain Lines Complaints to the Lines Company, the circumstances in which it will not do so, and that the Retailer is responsible for managing and resolving those Lines Complaints; and
 - C.15.5 if a Complaint is not resolved under an in-house Complaints handling service then the Consumer may refer the Complaint to the Commissioner.

Complaint management referral requirements for Interposed Consumer Contracts

- C.16 The Retailer must refer all Lines Complaints arising under its Interposed Consumer Contract to the Lines Company whose Services are the subject of the Complaint, for management and resolution unless the Retailer has agreed with the Lines Company that certain Lines Complaints may be managed and resolved by the Retailer. Unless so agreed:

- C.16.1 the Retailer must refer full details of the Complaint to the Lines Company as soon as possible but no later than two Working Days after receipt of the Complaint; and
 - C.16.2 the Retailer must inform the Consumer in writing of the Lines Company that will manage and resolve the Complaint and the point of contact details of the Lines Company; and
 - C.16.3 the Lines Company must acknowledge the referral to both the Retailer and the Consumer no later than two Working Days after receipt.
- C.17 Where a Retailer is authorised to deal with a Lines Complaint, the Retailer must not admit breach or liability or offer or agree to any compensation without the prior agreement of the Lines Company, and must comply with any reasonable directions given by the Lines Company on the handling of that Complaint where that is required by any agreement between the Retailer and the Lines Company.
- C.18 Where the Retailer and Lines Company have agreed that the Retailer is authorised to resolve an individual Complaint, or categories of Complaints, by way of defined maximum amounts ex gratia, the Retailer must advise the Lines Company of the Complaint, the action taken to resolve the Complaint and the amount paid (if any).
- C.19 If a Lines Complaint is referred by a Consumer to the Commissioner the Company managing the Complaint must inform the Retailer or Lines Company, as appropriate, that the Complaint has been referred to the Commissioner no later than two Working Days after being notified by the Commissioner.

Compensation under Interposed Consumer Contracts

- C.20 Scheme Members are responsible as follows:
- C.20.1 the Retailer is responsible for compensation (including any binding decision of the Commissioner) or any other remedy and management costs in respect of any Complaint about any goods or services provided by the Retailer; and
 - C.20.2 the Lines Company, whether or not the Complaint is referred to the Lines Company, is responsible for any compensation paid or payable to the Consumer and the costs of the management of a Lines Complaint, including the compensation paid by or management costs of the Retailer in the case of a Lines Complaint not referred to the Lines Company.
- C.21 The management costs to be paid by the Lines Company to the Retailer in the case of a Lines Complaint not referred to the Lines Company may be agreed in advance by the parties.
- C.22 The Lines Company's responsibility for compensation or management costs incurred by a Retailer for a Lines Complaint not referred to the Lines Company does not apply to the extent that the Retailer has not complied with its obligations under clauses C.16, C.17, C.18, or C.21 of the Code.

Responsibility for management costs not to conflict with binding decision by Commissioner

- C.23 A Scheme Member is not liable to pay the Complaint management costs of another Scheme Member to the extent that those costs comprise a sum required to be paid by the other Scheme Member under clause B.45.2 of the Terms of Reference.

Retailers managing Lines Complaints require consent of Lines Companies for discretionary or "test case" proceedings

- C.24 A Retailer managing a Lines Complaint referred to the Commissioner may not without the prior agreement in writing of the Lines Company whose Line Function Services are the subject of the proceedings:
- C.24.1 consent to an extension of the Commissioner's jurisdiction under clause B.16 of the Terms of Reference; or
 - C.24.2 allow an increase in the amount able to be awarded to the extended amount (as that term is defined in clause B.39 of the Terms of Reference) or make a request for a finding of fact by the Commissioner under clause B.38.2 of the Terms of Reference; or
 - C.24.3 notify the Commissioner under clause B.46 of the Terms of Reference that a Complaint will be pursued as a "test case".

Scheme Members to co-operate in the provision of information in respect of Lines Complaints

- C.25 A Lines Company or a Retailer that is not managing a Complaint referred to the Commissioner must provide all information and assistance reasonably required by the Scheme Member managing the Complaint so that the Scheme Member may effectively participate in the proceedings before the Commissioner.

LAND COMPLAINTS DISPUTE RESOLUTION

- C.26 In relation to Land Complaints, Scheme Members must co-operate with other Scheme Members to:
- C.26.1 ensure Land Owners and Land Occupiers can easily resolve disputes with Lines Company Scheme Members; and
 - C.26.2 promote the efficient and timely resolution of Land Complaints; and
 - C.26.3 prevent disputes between Lines Companies, and between Retailers and Lines Companies, over their relative responsibilities from impeding the efficient and timely resolution of Land Complaints.
- C.27 A Lines Company Scheme Member must:
- C.27.1 inform Land Owners and Land Occupiers on its website and in any other relevant information it makes available to Land Owners and Land Occupiers from time to time, of:

- (a) the way in which, and to whom in the Scheme Member's organisation, Land Complaints may be made; and
 - (b) the Scheme Member's participation in the Scheme; and
- C.27.2 have an efficient system for receipting, recording and monitoring Land Complaints received, referred (to or by them), managed, and resolved by, them; and
- C.27.3 nominate an individual(s) to be the point of contact for dealing with Land Complaints; and
- C.27.4 monitor their compliance with the Scheme and report annually on their compliance to the Board.
- C.28 A Retailer Scheme Member must have an efficient system for receipting Land Complaints and expeditiously referring those Land Complaints to the Lines Company that is responsible for the Complaint under clause C.31 of the Code.
- C.29 The Lines Company Scheme Member that owns the Lines Equipment on the Land Owner's or Land Occupier's Land that is the subject of a Land Complaint is responsible for that Land Complaint.

General timeframes

- C.30 The Lines Company Scheme Member responsible for a Land Complaint must acknowledge the Complaint, in writing, as soon as possible but no later than two Working Days after receipt (such acknowledgement to confirm that the Scheme Member is a member of the Scheme and information on the Land Owner's or Land Occupier's right to complain to the Commissioner).
- C.31 The Lines Company Scheme Member responsible for a Land Complaint must provide a response (initial or otherwise) to the Land Owner or Land Occupier as soon as possible, commensurate with the urgency of the Complaint, but in any event no later than seven Working Days after receipt.
- C.32 The Lines Company Scheme Member responsible for a Land Complaint must if a Complaint reaches Deadlock, notify the Land Owner or Land Occupier, and inform the Land Owner or Land Occupier of the right to refer the Complaint to the Commissioner.

Clearing-house mechanism for referral of Land Complaints to correct Scheme Member

- C.33 If a Land Owner or Land Occupier makes a Land Complaint to a Scheme Member who is not the Scheme Member responsible for the Complaint under clause C 31 of the Code, that Scheme Member must:
 - C.33.1 forward the Land Complaint, no later than one Working Day after receipt, to the Lines Company Scheme Member responsible for the Complaint (where that Lines Company Scheme Member can be identified); and
 - C.33.2 where it is not clear which Lines Company Scheme Member is responsible for the Complaint, use its best endeavours to identify the Scheme Member

responsible for the Complaint as soon as possible after receiving the Complaint and forward the Complaint to that correct Scheme Member and at the time of forwarding the Complaint, provide the Land Owner or Land Occupier with the contact details of the Scheme Member responsible for the Complaint.

This clause applies even if the Land Complaint is made to a Retailer in error.

- C.34 If Transpower, or any Gas Lines Company Scheme Member who operates Gas Transmission Pipelines and does not operate any other Gas Pipelines, receives a Complaint other than a Land Complaint, it must:
- C.34.1 forward the Complaint, no later than one Working Day after receipt, to the Scheme Member contracting with the Consumer (where that Scheme Member can be identified) and at the time of forwarding the Complaint provide the Consumer with the contact details of the Scheme Member contracting with the Consumer; and
 - C.34.2 where it is not clear which Scheme Member contracts with the Consumer, use its best endeavours to identify the Scheme Member contracting with the Consumer as soon as possible after receiving the Complaint and forward the Complaint to that correct Scheme Member and at the time of forwarding the Complaint, provide the Consumer with the contact details of the Scheme Member contracting with the Consumer.
- C.35 When the Lines Company Scheme Member responsible for the Land Complaint under clause C.31 of this Code receives a Land Complaint forwarded to it, it must:
- C.35.1 acknowledge the referral to the Scheme Member that forwarded the Complaint; and
 - C.35.2 inform the Land Owner or Land Occupier of its receipt of the Complaint, the date of receipt, and the process it will follow for dealing with the Complaint.

BILATERAL AGREEMENTS BETWEEN COMPANIES

- C.36 Scheme Members may agree to divide or allocate between themselves any responsibility or liability under this Scheme. However such an agreement does not override any Scheme Member's liability to a Complainant.
- C.37 Scheme Members must, subject to any agreement between them governing disputes, refer any dispute between them about the handling of Complaints to mediation, arbitration or expert determination.

PART D FEES AND LEVIES

- D.1 Scheme Members must pay a levy each Financial Year.
- D.2 The desired outcomes from the Scheme's levy system are that it:
- D.2.1 Encourages timely and appropriate resolution of complaints.
 - D.2.2 Supports the achievement of the Scheme's purpose.
 - D.2.3 Provides certainty and predictability for Scheme Members.
 - D.2.4 Reliably provides the funds to run the Scheme.
 - D.2.5 Is easy to understand and administer.
 - D.2.6 Is equitable among Scheme Members.
 - D.2.7 Ensures a levy is not disproportionate to the cost of dealing with a complaint.
 - D.2.8 Is not dependent on the outcome of a particular complaint.
 - D.2.9 Is sufficiently robust to not need changing for several years.
 - D.2.10 Complies with the Achievement Standards.

Board to determine levy

- D.3 The Board will determine the levy and manner of payment annually and notify it to Scheme Members along with each Scheme Member's specific contribution to the levy. In determining the levy for a Financial Year the Board must have regard to:
- D.3.1 the financial budget to operate the Scheme for that Financial Year, as approved in accordance with clause E.16.19;
 - D.3.2 the retained earnings of the Scheme from previous Financial Years; and
 - D.3.3 the requirement for the Scheme to operate on a not for profit basis.
- D.4 Scheme Members in more than one Class will have a levy determined for each Class.

Invoicing and payment

- D.5 The Board will invoice Scheme Members for the levy.
- D.6 The Board must give notice to each Scheme Member requesting payment of any fee or levy amount to be raised from that Scheme Member. The notice must state the total amount to be raised and the amount of the Scheme Member's contribution.
- D.7 All fees and levies are:
- D.7.1 plus GST payable (if any); and

- D.7.2 due and payable by each Scheme Member within 20 Working Days of the Board sending the notice requesting payment (unless otherwise agreed).

Scheme Members' specific contributions to levies based on market share and Deadlocked Complaints

- D.8 Each Scheme Member's specific contribution to the levy will be determined on the basis of:

D.8.1 a Proportionate Basis; and

D.8.2 Deadlocked Complaints;

subject to the qualifications set out below.

- D.9 A Proportionate Basis will be determined as follows:

D.9.1 The Board will, from time to time, determine what percentage or amount of the total amount to be raised or distributed is to be respectively raised from or distributed to:

(a) Retailer Joint Class Scheme Members

(b) Lines Company Joint Class Scheme Members,

D.9.2 Of the percentage to be raised from or distributed to Retailer Joint Class Scheme Members, each Retailer Scheme Member's proportion will be determined by its market share of the retail sector based on energised Consumer ICPs mapped to each Retailer, compared with the total number of energised Consumer ICPs mapped to all Retailer Scheme Members.

D.9.3 Of the percentage to be raised from or distributed to Lines Company Joint Class Scheme Members excluding Transpower and any Gas Lines Company that only operates Gas Transmission Pipelines, each Lines Company Scheme Member's proportion will be determined by its market share based on the number of energised Consumer ICPs on its network or Distribution System, compared with the total number of energised Consumer ICPs mapped to all Lines Company Scheme Members.

D.9.4 The Board will determine under clauses D.10 and D.11:

(a) the amount to be paid by Transpower and any Gas Lines Company that only operates Gas Transmission Pipelines ; and

(b) the amount to be paid by any Gas Lines Company that operates Gas Transmission Pipelines and other Gas Pipelines in respect of its share of the Gas Transmission Pipelines market. This amount is in addition to that payable by those Gas Lines Companies under clause D.9.3.

D.9.5 Numbers of energised Consumer ICPs will be calculated by the Board based on information available to the Board. Scheme Members authorise the Board or any person authorised by the Board to obtain the relevant information from

the Electricity Registry or Gas Registry, or from Scheme Members' records, for this purpose.

- D.10 In relation to the levy for the Financial Year starting on 1 April 2011 each Scheme Member's specific contribution to the total amount to be raised will be determined on a Proportionate Basis, except that:
- D.10.1 The specific contributions of Retailer Joint Class Scheme Members will be calculated on the basis that the total amount raised from them is 60% of the total levy on all Scheme Members.
 - D.10.2 The specific contributions of Lines Company Joint Class Scheme Members excluding Transpower and any Gas Lines Company that only operates Gas Transmission Pipelines, will be calculated on the basis that the total amount raised from them is 40% of the total levy on all Scheme Members less \$88,000;
 - D.10.3 The amount of \$88,000 will be raised as follows:
 - (a) Transpower's specific contribution will be \$65,000; and
 - (b) Any Gas Lines Company that operates Gas Transmission Pipelines (whether or not it operates other Gas Pipelines) will contribute \$23,000 and, if more than one, then the \$23,000 will be apportioned between them according to their share of the Gas Transmission Pipelines market as determined by the Board.
- D.11 In relation to the levy for the Financial Year starting on 1 April 2012 and each Financial Year following:
- D.11.1 For each Scheme Member, part of the total amount to be raised will be raised by means of level one, level two and level three Deadlocked Complaint levies as follows:
 - (a) Scheme Members will pay a level one Deadlocked Complaint levy for each Deadlocked Complaint relating to that Scheme Member in the previous Financial Year.
 - (b) Scheme Members will also pay a level two Deadlocked Complaint levy that is equal to the level one Deadlocked Complaint levy, for each Deadlocked Complaint relating to that Scheme Member in the previous Financial Year where:
 - (i) the Commissioner or a member of the Commissioner's staff worked to resolve the Complaint for more than 8 hours; or
 - (ii) the Complaint was still unresolved after 20 Working Days from receipt by the Commissioner.
 - (c) Scheme Members will also pay a level three Deadlocked Complaint levy equal to the sum of the level one Deadlocked Complaint levy and the level two Deadlocked Complaint levy, for each Deadlocked

Complaint relating to the Scheme Member in the previous Financial Year where:

- (i) the Commissioner or a member of the Commissioner's staff worked to resolve the Complaint for more than 16 hours; or
 - (ii) the Complaint was still unresolved after 40 Working Days from receipt by the Commissioner.
- (d) The amounts of the level one, level two and level three Deadlocked Complaint levies will be determined, and invoiced, each Financial Year by the Board after considering the views of the Member Committee, based on the number of Complaints relating to a Scheme Member that reached each of the levels in the previous Financial Year.

D.11.2 Once the amount to be raised under clause D.11.1 is calculated, each Scheme Member's specific contribution to the balance of the total amount to be raised will then be determined on a Proportionate Basis, except that:

- (a) The specific contributions of Retailer Joint Class Scheme Members will be calculated on the basis that the total amount raised from them is 60% of the total levy on all Scheme Members.
- (b) The specific contributions of Lines Company Joint Class Scheme Members excluding Transpower and any Gas Lines Company that only operates Gas Transmission Pipelines will be calculated on the basis that the total amount raised from them is 40% of the total levy on all Scheme Members less the amount of the contributions calculated under clauses D.11.2(c) and D.11.2(d);
- (c) Transpower's specific contribution will be \$65,000 plus an amount adjusted annually to reflect the Board's assessment of any movement in the Consumer Price Index (all groups) published by New Zealand Statistics. The adjustment shall use the December quarter immediately prior to the beginning of the annual review period as a start point and the December quarter immediately prior to the end of the annual review period as an end point;
- (d) Any Gas Lines Company that operates Gas Transmission Pipelines (whether or not it operates other Gas Pipelines) will contribute \$23,000 and if more than one, then the \$23,000 will be apportioned between them according to their share of the Gas Transmission Pipelines market as determined by the Board, plus an amount adjusted annually to reflect the Board's assessment of any movement in the Consumer Price Index (all groups) published by New Zealand Statistics. The adjustment shall use the December quarter immediately prior to the beginning of the annual review period as a start point and the December quarter immediately prior to the end of the annual review period as an end point.

Expert witness costs

- D.12 In addition to the levy payable under the Scheme, if the Commissioner requires expert witnesses to assist with any investigation or resolution of a Complaint, the costs of any such expert witnesses shall be charged by the Commissioner to the Scheme Member(s) that is or are the subject of the Complaint.

Levy payable by new Scheme Members or Scheme Members joining another Class

- D.13 Where a person applies to become a new Scheme Member, the Board will set the amount of the levy required to cover the period from the date the person proposes to join the Scheme until the next 31 March.
- D.14 Where an existing Scheme Member applies to join the Scheme in another Class, the Board's estimate of the levy payable in respect of that application must be based on the Scheme Member's market share in the Class it is applying to join.
- D.15 Any levies collected from new Scheme Members or existing Scheme Members joining another Class are to be distributed at the end of the Financial Year to Scheme Members existing at the time such Scheme Members joined, or joined another Class, on a Proportionate Basis as a refund on annual levies paid or off-set against annual levies payable by those existing Scheme Members in the next Financial Year.

Disputing levies and fees

- D.16 Scheme Members may only dispute an invoice for levies or fees payable under the Scheme in the 30 Working Days from the date of issue of the invoice. Scheme Members disputing an invoice must notify the Board in writing and provide details as to why the invoice or part of it is disputed. If the Board and the Scheme Member cannot resolve the dispute within 20 Working Days the matter will be referred to the Board chair who will make a final determination. Any amount of the invoice found by the Board chair to be payable will be paid by the Scheme Member within 5 Working Days of the final determination. Except as set out in this clause Scheme Members may not dispute or refuse to pay any invoice for levies or fees payable under the Scheme.

PART E THE SCHEME BOARD

Establishment and role

- E.1 The Electricity and Gas Complaints Commission established under the Deed shall continue and be known as the Board of the Electricity and Gas Complaints Commissioner Scheme.
- E.2 The role of the Board is to establish and maintain the office of the Commissioner and to provide independent implementation and administration of the Scheme.

Composition of the Board

- E.3 The Board comprises 5 members as follows:
- E.3.1 two members nominated and elected by Scheme Members and representing Scheme Members, being one Retailer and one Lines Company; and
 - E.3.2 two members appointed by the Minister and representing Consumers, Land Owners and Land Occupiers; and
 - E.3.3 an independent chair appointed by the Board, following consultation with the Minister.
- E.4 Board Members must be:
- E.4.1 capable of understanding the viewpoints and concerns of Consumers; and
 - E.4.2 persons in whom Consumers and Consumer organisations can have confidence.
- E.5 The chief executive officer of the Retailer and the chief executive officer of the Lines Company appointed to the Board may from time to time nominate an individual to carry out that Retailer or Lines Company's role on the Board.
- E.6 Scheme Members appointed to the Board must have regard to the interests of all Scheme Members.
- E.7 One alternate Board Member may be appointed by the Minister for each Board Member the Minister appoints. Each alternate:
- E.7.1 must meet the criteria set out in clause E.4 and be appointed at the same time and for the same term as the Board Member for whom the alternate acts; and
 - E.7.2 in the event the Board Member ceases to be a Board Member before the end of the term for which the Board Member was appointed, acts as the Board Member until a new Board Member is appointed; and
 - E.7.3 is entitled to notice of all meetings of the Board and if the Board Member for whom the alternate acts is not present, to attend and vote in that Board Member's stead; and

- E.7.4 may exercise all the powers of the Board Member for whom the alternate acts and may exercise powers as a Board Member.
- E.8 In appointing Board Members under clause E.3.2, and alternate Board Members under clause E.7, the Minister may take into account the extent to which they are able to represent the interests of Land Owners and Land Occupiers.
- E.9 The Board Members appointed by the Minister must take into account the interests of Consumers and Land Owners and Land Occupiers.

Termination of Board Member's appointments

- E.10 A Board Member must immediately cease to be a Board Member if:
- E.10.1 in the case of a Board Member who is a natural person:
- (a) is adjudged bankrupt; or
 - (b) becomes of unsound mind; or
 - (c) is absent for more than three meetings without permission of the Board chair; or
 - (d) is convicted of an indictable offence or commits any act of dishonesty whether relating to the Board or otherwise; or
 - (e) is removed in writing by the person that appointed the Board Member; or
 - (f) resigns by notice in writing to the Board and copies the notice to the person that appointed the Board Member; or
- E.10.2 in the case of a Board Member who is a body corporate, it:
- (a) becomes insolvent; or
 - (b) is not represented at a meeting of the Board for more than three meetings without permission of the Board chair; or
 - (c) ceases to be a Scheme Member; or
 - (d) resigns by notice in writing to the Board.

Term of office

- E.11 Subject to clause E.12 and E.13:
- E.11.1 Board Members may be appointed for a term of office of up to two years. A Board Member may be re-appointed at the expiry of any term of office.
- E.11.2 No Board Member can hold office for more than six consecutive years.
- E.11.3 The Board chair is appointed for a four year term of office.

- E.12 The Board may extend the duration of a Board Member's term of office by:
- E.12.1 up to three Months so that the end of a Board Member's term of office coincides with the date of the annual meeting; or
 - E.12.2 up to six Months to ensure that the final terms of office of two or more Board Members do not end in the same half of any calendar year.
- E.13 The terms of office of those Scheme Members who are Board Members on the date the amendments to this Deed take effect are extended up to and including the date of the annual meeting in 2012.

Requirements for Board chair

- E.14 The Board must use its best endeavours (which may include consulting with Consumer, Land Owner and Land Occupier, and electricity and Gas industry interest groups, and Government) to ensure that the individual appointed as the Board chair is independent and has no material interest in the electricity or Gas sector that may conflict with the duties of the Board chair. A 'material interest' in this clause includes but is not limited to employment in an electricity or Gas related capacity or the provision of consultancy advice on electricity or Gas sector issues.

Powers of the Board

- E.15 The Board may do anything that a natural person of full age and capacity may do. This includes:
- E.15.1 **Investing** the income and capital of the Board in any property in New Zealand and to vary those investments; and
 - E.15.2 **Purchasing** goods and services or acquiring any property in New Zealand from any person; and
 - E.15.3 **Selling** any property to any person in such manner and on such terms as the Board thinks fit; and
 - E.15.4 **Leasing** any property in New Zealand to any person on such terms as the Board thinks fit and accepting renewals or surrenders of leases; and
 - E.15.5 **Taking on a lease**, licence or bailment of any property in New Zealand from any person on such terms as the Board thinks fit, and renewing or surrendering such leases, licenses and bailments and generally dealing with these as the Board thinks fit; and
 - E.15.6 **Lending** or advancing moneys to or leaving moneys with any person either with or without security and at such rate of interest (if any) and generally upon such terms as the Board thinks fit; and
 - E.15.7 **Borrowing** money with or without security from any person; and
 - E.15.8 **Levying**, charging, collecting and receiving levies and fees from Scheme Members and expending the funds on administering the Scheme; and

- E.15.9 **Employing** or retaining persons (taking into account the financial budget of the) in connection with the objects of the Board and paying them fees, salary, wages or other remuneration; and
- E.15.10 **Remunerating:**
- (a) the Board chair, the Board Members appointed by the Minister and the Commissioner for services to the Board; and
 - (b) Board Members and the Commissioner for costs arising from attending Board meetings and other identifiable and reasonable costs arising from services actually rendered to the Board; and
 - (c) identifiable and reasonable costs incurred by any Scheme Member in return for any services actually rendered to the Board; and
- E.15.11 **Generally** doing all things as are incidental or conducive to the functions of the Board and which in the opinion of the Board can advantageously be done for the benefit of the Board or for the furtherance of its functions.

Duties of the Board

- E.16 The Board must:
- E.16.1 ensure the Scheme meets its purpose; and
 - E.16.2 set performance standards, sufficient to allow external parties to readily determine if the Scheme is providing an effective complaints resolution service, against which the performance of the Scheme will be measured. The performance standards may include:
 - (a) Total time to close cases; and
 - (b) Cost per case; and
 - (c) Complainant satisfaction; and
 - (d) Scheme Member satisfaction; and
 - (e) External review of cases; and
 - (f) Awareness in the community and accessibility; and
 - (g) Reporting - compliance reporting complete, accurate and on time.
 - E.16.3 give any assistance it considers necessary to the Commissioner concerning the performance of the Commissioner's duties; and
 - E.16.4 appoint an independent chair to the Board after consulting with the Minister; and
 - E.16.5 receive and consider all recommendations from the Commissioner for changes to the Scheme; and

- E.16.6 obtain independent reviews of the Scheme in accordance with clause E.58; and
- E.16.7 monitor the Scheme (generally and by way of the review procedure set out in clause E.57); and
- E.16.8 if it considers that amendments are required, propose amendments to the Scheme in accordance with clauses E.64 to E.66; and
- E.16.9 investigate complaints about the operation of the Scheme; and
- E.16.10 review the operation and performance of the Scheme; and
- E.16.11 take actions to improve the performance of the Scheme where reports suggest that is necessary; and
- E.16.12 receive information about, and take appropriate action in relation to, systemic industry problems referred to it by the Commissioner; and
- E.16.13 ensure that the Scheme continues to operate so that the Minister does not withdraw approval of the Scheme; and
- E.16.14 develop and implement a Code that requires Scheme Members to provide an effective in-house complaints handling process; and
- E.16.15 at its annual meeting receive and, if considered appropriate, approve the annual report of the Commissioner for the Board's previous Financial Year, but this subclause does not entitle the Board to consider, approve or disapprove the exercise of the independent responsibility of the Commissioner in respect of a particular Complaint; and
- E.16.16 report annually on all breaches of the Scheme by all Scheme Members to the Minister; and
- E.16.17 monitor compliance with the Scheme by Members using a variety of means (including, for example, mystery shopper surveys); and
- E.16.18 consider the annual operational plan proposed by the Commissioner; and
- E.16.19 approve the overall financial budget to operate the Scheme before approving an overall financial budget, the Board must:
 - (a) be satisfied that the Scheme will be funded sufficiently to allow its caseload to be managed efficiently and to meet the other requirements of the Scheme so far as this is consistent with providing a cost effective outcome; and
 - (b) seek the view of the Member Committee on the proposed overall financial budget; and
- E.16.20 in relation to each Financial Year, prepare or procure the preparation of appropriate financial statements of the Board; and

- E.16.21 with the Commissioner, publish an annual report in relation to the preceding Financial Year which is to be widely distributed to all stakeholders and contain:
- (a) information about how the Scheme ensures that it meets its purposes; and
 - (b) a list of Scheme Members together with any changes to the list during the year; and
 - (c) a report on Scheme Member compliance with the Scheme including a list of Scheme Member breaches of the Scheme (including names of the Scheme Member(s) involved and binding decisions made (if any)), provided that the Board has the discretion to not publish details of insignificant or technical breaches if to do so would, in the Board's opinion, unfairly disadvantage or harm the Scheme Member; and
 - (d) a report against the performance standards set out in clause E.16.2; and
 - (e) a report on performance of the Scheme in relation to the grounds for withdrawal of approval of the Scheme by the Minister; and
 - (f) the findings of annual reviews; and
 - (g) the findings of the independent review (if relevant for that year); and
 - (h) a financial report containing sufficient information to allow Scheme Members and other stakeholders to understand how the Scheme funding is being used.

E.16.22 Do anything else provided for in this document.

Exercising and delegating Board powers

- E.17 The Board may determine the most appropriate and prudent manner in which to exercise its powers, including the manner of signing all cheques, promissory notes, bankers' drafts, bills of exchange and other negotiable instruments, and all receipts for money paid to the Board.
- E.18 The Board may not delegate any of its powers and duties under Part D or under clauses E.20, E.63, or E.64. The Board may delegate any of its other powers and duties where it is appropriate or prudent to do so to the Commissioner, the Secretary, a committee or the Board chair. The delegate must exercise the powers, duties or functions delegated in accordance with the Scheme and any directions or instructions issued to the delegate by the Board.

Committees

- E.19 Committees may consist of any person the Board considers appropriate. The chair of each committee must manage meetings and proceedings according to this Part E (subject to any directions by the Board in its instructions to the committee).

Member Committee

- E.20 A Member Committee is established as a standing committee of the Board. Pending the appointment of the members of the Member Committee under this clause, those Scheme Members on the board of the Electricity and Gas Complaints Council prior to the amendments to this Deed taking effect shall be members of the Member Committee. The Board will appoint six Scheme Members to the Member Committee.
- E.21 The Board will appoint the chair of the Member Committee selected from the members of the Member Committee.
- E.22 The role of the Member Committee is to:
- E.22.1 Provide the Board with its view of the Board's proposed budget in accordance with clause E.16.19; and
 - E.22.2 Provide any other advice or recommendations that the Board may request; and
 - E.22.3 Do anything else provided for in this document.
- E.23 When providing its view of the Board's proposed budget, the Member Committee must not consider:
- E.23.1 the business decisions of the Commissioner or the Board in determining how funds should be allocated within any particular budget; or
 - E.23.2 any decisions made in relation to any Complaints referred to the Commissioner.
- E.24 Subject to any directions by the Board, the Member Committee must manage meetings, quorum (being 3 consisting of at least the chair and one committee member representing the other Class of Scheme Members as represented by the chair), voting (the chair has no casting vote) and regulate its proceedings in the same manner as required of the Board under this Part E.

General requirements for the application of income

- E.25 The Board must ensure that the Scheme operates on a not for profit basis and that it applies all the income and property of the Scheme towards the promotion of the purpose and objectives of the Scheme.

Appointment of the Commissioner

- E.26 The Board must appoint a Commissioner either as an employee or as an independent contractor to hold office for such period on such terms as the Board thinks fit including terms that the Commissioner must implement the Terms of Reference and meet annual performance targets.
- E.27 The Commissioner may be re-appointed at the expiry of any term of office.

Requirements for Commissioner

- E.28 The Commissioner must:

- E.28.1 not be, nor have been, an employee of, nor hold nor have held any office or position with a Scheme Member, nor must the Commissioner, either personally or by the Commissioner's firm, act in a professional capacity for the Board or any Scheme Member; and
 - E.28.2 be free from any other interest that would give rise to an actual or perceived conflict of interest.
- E.29 In the exercise of the Commissioner's Complaint functions the Commissioner must act independently and not be subject to the direction or control of any other person.

Discretion to suspend or terminate appointment and appointment of acting Commissioner

- E.30 The Board has an absolute discretion to suspend or remove the Commissioner at any time for:
- E.30.1 not complying with the terms of the Commissioner's contract or performance targets; or
 - E.30.2 becoming incapacitated on health grounds; or
 - E.30.3 being adjudged bankrupt or convicted of any offence involving dishonesty or likely to bring the Board or the office of the Commissioner into disrepute.
- E.31 If the Commissioner is suspended, indisposed or otherwise prevented from carrying out the Commissioner's duties, the Board must appoint a person in an acting capacity as the Commissioner for as long as the Board considers necessary. While an acting Commissioner holds office, the Terms of Reference and the Commissioner's performance targets (if any) apply, with any necessary alterations, as if that person was the Commissioner.

Use of Information

- E.32 Board Members and the Commissioner must establish procedures for the use of and holding of information (taking into account legal requirements relating to the management and release of information).
- E.33 Except as otherwise provided by the Scheme, the Commissioner and employees of the Board or the office of the Commissioner must not disclose to any person, other than to each other, or the Board chair, any information concerning a Complaint referred to the Commissioner from which it would or might be possible to identify the Complainant or any Scheme Member named in a Complaint. This clause does not prohibit the disclosure of any information to any Scheme Member named in a Complaint or any information relating to non-compliance with the Scheme by a Scheme Member.

Reporting

- E.34 The Board is responsible for the preparation of detailed accounts for each Financial Year and reporting, quarterly, to Scheme Members on the Board's financial status.
- E.35 In addition, the Board must also report to Scheme Members on any initiative, or any comments or submissions regarding the electricity and Gas sector that will potentially

impact on the Scheme. The Board must also refer to Scheme Members any similar reports, comments or submissions from the Commissioner.

Board meetings

- E.36 Board Members may meet together and regulate their meetings as they think necessary, subject to each meeting having a quorum consisting of at least the Board chair, one Board Member appointed by the Minister, one Board Member elected by Scheme Members and one other Board Member.
- E.37 A Board Member may request the Secretary to convene a meeting of the Board at any time.
- E.38 Any form of communication where Board Members (and any other persons required to be present) can hear each other simultaneously is sufficient for them to be considered present at a meeting.

Questions decided by majority

- E.39 Each Board Member has one vote. Except where the Scheme provides otherwise, questions arising at a meeting of the Board are decided by a majority of votes of Board Members present and voting. In the event of there being an equality of votes, the Board chair, in addition to a deliberative vote, has a casting vote. Any question decided by a vote is deemed a decision of the Board.

Written Resolution by the Board

- E.40 If all the Board Members have signed a document containing a statement that they are in favour of a resolution of the Board in the terms set out in the document, a resolution in those terms is deemed to have been passed at a meeting of the Board held on the date on which the document was last signed by a Board Member.
- E.41 For the purposes of clause E.40, two or more separate documents containing statements in identical terms signed by one or more Board Members are together deemed to constitute one document containing a statement in those terms signed by those Board Members on the respective dates on which the separate documents are signed.

Validity of acts of Board Members

- E.42 Even if it is discovered after a meeting that there was some defect in the appointment of a person as a Board Member or power to act as a Board Member or that a person so appointed was disqualified, all acts done by that meeting of the Board or by any person acting as a Board Member are valid.

Minutes

- E.43 The Board must keep minutes of all proceedings at meetings of the Board or its committees. The Board chair or chair of the committee must sign the minutes of each meeting correct. The minutes must be made available to all Board Members within one Month after the relevant meeting is held.

Conflicts of interest

- E.44 Except as otherwise provided by the Scheme, a Board Member cannot vote at a meeting of the Board on any resolution concerning a matter in which the Board Member has a direct or indirect interest which is material and which conflicts or may conflict with the interest of the Board. The Board Member is also not to be counted in the quorum present at the meeting. However:
- E.44.1 the Board may suspend or relax to any extent, either generally or in respect of any particular matter, any provision of this Part E prohibiting a Board Member from voting at a meeting of the Board; and
 - E.44.2 if a question arises at a meeting of the Board as to the right of a Board Member to vote, the question may, before the conclusion of the meeting, be referred to the Board chair and the Board chair's ruling in relation to a Board Member (other than the Board chair) is final and conclusive; and
 - E.44.3 Board Members that are representatives of Scheme Members do not have a conflict of interest merely because they operate within the electricity and Gas sector.
- E.45 A Board Member may not hold another office of profit with the Board or in the office of the Commissioner, nor, either personally or the by Board Member's firm, act in a professional capacity for the Board or the office of the Commissioner.

Appointment of Secretary

- E.46 The Board must appoint a person to act as Secretary to the Board. The appointment may be an employee of, or a party contracted to the Board. The appointment may be made on such term and at such remuneration as the Board thinks fit. The Board has the power to suspend or remove the Secretary.

Powers and duties of Secretary

- E.47 Subject to clause E.18, the Board may vest in the Secretary any powers, duties and authorities it considers appropriate and the Secretary must accept all such powers, duties and authorities subject at all times to the control of the Board.

Secretary to attend meetings

- E.48 The Secretary may attend all annual and other Board meetings but is not required to attend committee meetings unless the Secretary is a member of the committee. The Secretary may be heard on any matter.

Inspection of records

- E.49 The Board may determine whether the Board's accounting records and other documents will be opened to the inspection of Scheme Members and impose conditions on any such inspection. A Scheme Member does not have the right to inspect any Board document except as provided by law or authorised by the Board.

Annual meetings to be held

- E.50 The Board must, in addition to any other meeting held by it, hold a meeting to be called the annual meeting within three Months of the end of each Financial Year. At the annual meeting the Board will receive the annual report of the Commissioner.
- E.51 Notice of every annual meeting must be given by the Board to:
- E.51.1 every Scheme Member; and
 - E.51.2 the Commissioner; and
 - E.51.3 the Secretary; and
 - E.51.4 any auditor appointed to audit the Board's or the Commissioner's financial records; and
 - E.51.5 the Minister; and
 - E.51.6 Consumer, Land Owner and Land Occupier groups considered likely by the Board to have an interest in the Scheme.
- E.52 No other person is entitled to receive notices of annual meetings.
- E.53 Persons notified may attend annual meetings. However except as provided under clause E.54, only Board Members may vote on matters put to the meeting.
- E.54 The Board will, prior to the annual meeting, call for nominations to replace any Board Member who is a Scheme Member whose term of office has expired, or will expire on the day of the annual meeting or in the year following the annual meeting. The call for nominations will be sent to every Scheme Member and will specify a date in advance of the annual meeting by which nominations are to be received by the Board. If more than one nomination for any position is received by the specified date, the replacement Board Member will be elected by vote at the annual meeting. The vote will be by Retail Scheme Members if the Board Member to be replaced is a Retailer, and will be by Lines Company Scheme Members if the Board Member to be replaced is a Lines Company. The nominated Retailer or Lines Company, as the case may be, that receives the most votes (apportioned in accordance with clauses F.14, F.15 and F.16) of those Scheme Members present or by proxy at the meeting will be declared elected. If only one nomination for a position is received by the specified date, the nominated person will be deemed elected.
- E.55 Any person who is entitled to receive notice may speak at an annual meeting.

Publication of Annual Report

- E.56 After the Commissioner's Annual Report is accepted, the Board must make it publicly available, together with any additional comments it considers appropriate.

Review of the Scheme

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

feedback from stakeholders about the performance of the Scheme. The Board must include the results of the review in its annual report.

E.58 The Board:

E.58.1 must obtain an independent review of the performance and effectiveness of the Scheme at least every three years (including within one year of approval of the Scheme); and

E.58.2 will determine the terms of reference and appoint the independent reviewer for any independent review following consultation with the Minister; and

E.58.3 must ensure that the review will assess:

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

E.59 The Board will make available on the Scheme website the results of the independent review.

E.60 The Board must obtain a special independent review at any time if requested by the Minister. If such a review is required, the independent reviewer will be appointed by the Minister.

Register

E.61 The Secretary must keep a publicly available register of Scheme Members, Board Members, Member Committee members and the Commissioner.

Amendments to the Scheme

E.62 Any person can propose amendments to the Scheme.

E.63 If the Board considers that the proposed amendments:

E.63.1 are consistent with:

- (a) any government policy statement on electricity governance or gas governance; and
- (b) the Achievement Standards; and
- (c) the purpose of the Scheme and its founding principles; and

E.63.2 may allow the Scheme to develop in response to changes in the environment;
or

E.63.3 may improve the performance of the Scheme in meeting its purpose in a timely manner; or

E.63.4 are reasonable,

the Board must consult with all relevant stakeholders, including Scheme Members and the Minister, on the proposed amendments.

E.64 Any proposal for amendments to or substitution for the Scheme can be approved by:

E.64.1 a resolution at the next meeting of the Board by a vote in favour of at least four Board Members; or

E.64.2 all Board Members agreeing in writing to the proposed amendment or substitution.

E.65 If the proposed amendments or substitutions are approved under clause E.64, the Board must notify and provide a copy of the Scheme incorporating the proposed amendments or substitutions to:

E.65.1 the Minister; and

E.65.2 Scheme Members.

E.66 The proposed amendments approved by the Board will not take effect unless they are approved by the Minister. Proposed amendments are deemed to be approved unless, within 45 days after the date of notification under clause E.65, the Minister declines approval.

PART F SCHEME MEMBER PARTICIPATION

MEMBERSHIP OF THE SCHEME

Scheme Members

F.1 All Scheme Members are members of the Scheme.

Joining the Scheme

F.2 An application to be a Scheme Member must be accepted by the Board where the applicant:

F.2.1 is a Retailer or Lines Company of the Class it is applying to join;

F.2.2 supplies the Board with sufficient information to enable it to determine any fees or levies payable by the Scheme Member; and

F.2.3 signs an Adoption Deed.

F.3 The Board must give its reasons for declining an application.

F.4 An applicant becomes a Scheme Member from the date the Board accepts the application.

Voluntary withdrawal from the Scheme

F.5 If permitted by law, a Scheme Member may withdraw from the Scheme by giving the Board 12 Months written notice of the date it will cease to be a Scheme Member. The Board may agree to reduce the 12 Months notice period.

F.6 Ceasing to be a Scheme Member:

F.6.1 does not entitle the Scheme Member to be repaid any fee or levy;

F.6.2 is without prejudice to the Scheme Member's liability for any obligations to pay money arising from membership up to the date it ceases to be a Scheme Member; and

F.6.3 is without prejudice to the Scheme Member's obligations in respect of any Complaint already referred to the Commissioner and unresolved or outstanding on the date it ceases to be a Scheme Member.

Defaulting Scheme Members

F.7 A Scheme Member is in default if the Scheme Member fails to:

F.7.1 comply with this Scheme; or

F.7.2 pay any fee or levy required to be paid under the Scheme within 60 Working Days of a demand for the amount owing; or

F.7.3 comply with any settlement or recommendation under the Scheme previously accepted by the Scheme Member; or

F.7.4 comply with any binding decision made by the Commissioner.

MEETINGS FOR SCHEME MEMBERS

Requirements for general meetings

F.8 A general meeting of the Scheme Members may be held at any time, at the request of two or more Scheme Members sending written notice to each Scheme Member, the Board and the Commissioner not less than 10 Working Days before the meeting.

F.9 The notice must state:

F.9.1 The time and place of the general meeting; and

F.9.2 the nature of the business to be discussed in sufficient detail to enable the Scheme Member to form a reasonable judgment in relation to it; and

F.9.3 the text of any resolution to be submitted to the meeting.

F.10 A general meeting of Scheme Members will be chaired by the Member Committee chair or if no chair has been appointed or the chair is not present within 15 minutes after the time appointed for the commencement of the meeting, the Scheme Members present may choose a chair.

F.11 If the purpose of the general meeting is to wind up the Scheme, the notice under clause F.8 must comply with clause F.23.

Quorum for general meetings

F.12 A quorum for a general meeting of the Scheme Members is four Scheme Members present (by proxy, attorney or representative), being two Retailer Scheme Members and two Lines Company Scheme Members, that represent a majority of the votes of both Retailers and Lines Companies.

F.13 If, for any reason, a quorum is not present within 30 minutes of the time appointed for the general meeting, the meeting may be adjourned (but only once) until another time that the chair determines. Such date must not be more than 20 Working Days after the original scheduled date.

Number of votes allocated to each Scheme Member

F.14 The number of votes that each Scheme Member may exercise is determined as follows:

F.14.1 Retailer Joint Class:

Each Retailer Scheme Member has one vote for each 0.01% of its market share of all energised Consumer ICPs mapped to each Retailer, compared with the total number of energised Consumer ICPs mapped to all Retailer Scheme Members.

F.14.2 Lines Company Joint Class:

- (a) Each Lines Company other than Transpower New Zealand Limited and Lines Company Scheme Members that only operate Gas Transmission Pipelines has one vote for each 0.01% of its market share of energised Consumer ICPs on its network or Distribution System, comparative to the total number of energised Consumer ICPs mapped to all Lines Company Scheme Members. The calculation of each Lines Company Scheme Member's market share shall take into account Transpower's deemed market share calculated under clause F.14.2(b)(ii) and the deemed Gas Transmission Pipeline market share of any Scheme Member that is operating Gas Transmission Pipelines under clause F.14.2(c). The voting rights of any Scheme Member as determined under this clause will be in addition to its voting rights calculated under clause F.14.2(c).
- (b) Transpower:
- (i) exercises 20% of the voting rights, or such other percentage determined by the Board; and
 - (ii) for the purposes of calculating each Lines Company Scheme Member's (other than Transpower's) market share under clause F.14.2(a), is deemed to have a market share of 20%, or such other percentage determined by the Board.
- (c) The voting rights and market share for all Scheme Members that operate Gas Transmission Pipelines will be 6.8% of the voting rights and a 6.8% deemed market share for the purposes of clause F.14.2(a) or such other percentages as determined by the Board. If more than one Scheme Member operates Gas Transmission Pipelines the voting rights and market share determined under this clause will be apportioned between them according to their share of the Gas Transmission Pipelines market as determined by the Board. Where a Gas Lines Company operates Gas Transmission Pipelines and other Gas Pipelines, its share of the voting rights apportioned under this clause will be in addition to its voting rights calculated under clauses F.14.2(a) and F.14.2(b).
- (d) The Board's determination of percentages for the purposes of clauses F.14.2(b) and F.14.2(c) shall take into account the total value of the relevant Lines Company Scheme Members' system fixed assets as compared to the total value of other Lines Company Scheme Members' system fixed assets. The values of Lines Company Scheme Members' system fixed assets for the purposes of this clause shall be those which were most recently disclosed under the information disclosure requirements for Electricity Lines Companies set by the Commerce Commission under the Commerce Act 1986.

- F.15 A Scheme Member can only exercise up to 49% of the votes in its Joint Class. Any votes that a Scheme Member would otherwise be entitled to exercise above the 49% threshold must be distributed to the other Scheme Members in its Joint Class on the basis of the remaining respective market shares and the 49% threshold cap.
- F.16 The number of energised Consumer ICPs must be calculated at the date the notice of a general meeting of the Scheme Members is given under clause F.8. Each Scheme Member authorises the Board or any person authorised by the Board to access the Electricity Registry and the Gas Registry and Scheme Members' records for this purpose.

Voting in general meetings

- F.17 Issues put to the vote at any general meeting of the Scheme Members, unless expressly stated, are passed when there is a majority vote in favour by each Joint Class of Scheme Member based on votes (apportioned in accordance with clauses F.14, F.15 and F.16) of those Scheme Members present or by proxy at the meeting.
- F.18 A Scheme Member is deemed to be present for the purposes of a general meeting and voting if its chief executive officer representative or proxy is attending the meeting. Any form of communication where Scheme Members can hear each other simultaneously is sufficient for the Scheme Members to consider that each is present and attending the meeting.

Defaulting Scheme Member's voting rights suspended

- F.19 A Scheme Member in default's right to vote is suspended until any outstanding amounts have been paid or the issue on which that Scheme Member is in default is otherwise resolved.

Proxies

- F.20 The chief executive officer of any Scheme Member may appoint another Scheme Member to act as the Scheme Member's proxy. A proxy must vote as directed. If a proxy receives no directions, the proxy may vote as it thinks fit. The instrument appointing a proxy may be in any common or usual form acceptable to the Member Committee chair.
- F.21 A vote given in accordance with an instrument of proxy or attorney or representative is valid even if a proxy instrument or the authority under which it was executed are revoked, unless the Member Committee chair is advised in writing of the revocation before the general meeting at which the vote is cast.

Minutes of Scheme Members' meetings

- F.22 Minutes of all proceedings at general meetings of Scheme Members will be kept. The chair of the general meeting will sign the minutes once confirmed. The minutes must be made available to Scheme Members on request.

WINDING UP

Winding-up of the Scheme

- F.23 Scheme Members may wind up the Scheme by:

- F.23.1 Passing a resolution at a general meeting held in accordance with clause F.8 of their intention to pass a resolution to wind up the Scheme at a further general meeting to be held at the expiry of 12 Months from the giving of the notice referred to in clause F.23.2 below; and
 - F.23.2 Giving notice in writing of the passing of the resolution under clause F.23.1 to the Minister and the Board; and
 - F.23.3 At the general meeting to wind up the Scheme, the resolution to wind up is passed by 75% of the total number of votes able to be cast for each Joint Class of Scheme Member (whether all Scheme Members are present (or by proxy) or not).
- F.24 Scheme Members will co-operate with the Minister on the transition to a new set of arrangements for complaints resolution.

Contributions on winding-up

- F.25 Scheme Members are jointly liable for outstanding liabilities, and for the costs, charges and expenses of rescinding and winding up the Scheme. Scheme Members must continue to be jointly liable for the costs, charges and expenses of a winding up for a period of 12 Months after the Scheme has been wound up. Scheme Members must contribute on a Proportionate Basis to winding up the Scheme if the Scheme is being wound up while they are Scheme Members or within 12 Months of ceasing to be a Scheme Member.

Distribution of assets on winding-up

- F.26 If on the winding up of the scheme there is property or other assets remaining after the satisfaction of all of the Board's debts and liabilities, that property and those assets must be distributed on a Proportionate Basis to Scheme Members and former Scheme Members (excluding Scheme Members to the extent that they are in default) whose membership ceased within the 12 Months prior to the date of winding up.

GENERAL

Indemnity

- F.27 The Scheme Members jointly indemnify the Board, each Board Member (including committee members), the Commissioner, any staff employed by the Board and persons engaged in contract by the Board for any liabilities incurred as a result of an act or omission performed in good faith in complying with and administering this Scheme except that this indemnity will not extend to protect any of those parties from any damage or loss arising out of deliberate neglect or default on their part.
- F.28 For the purposes of the Contracts (Privity) Act 1982, the indemnity given in clause F.27 is for the benefit of the Board, each Board Member (including committee members), the Commissioner, any staff employed by the Board, persons engaged in contract by the Board, and is enforceable by any of them.

Enforcement

- F.29 This document is enforceable by a Scheme Member, the Board, each Board Member and the Commissioner but subject to clause F.28 is not intended to create rights enforceable by any other person under the Contracts (Privity) Act 1982.

APPENDIX - ADOPTION DEED

Date:

PARTIES:

THE BOARD OF THE ELECTRICITY AND GAS COMPLAINTS COMMISSIONER SCHEME on behalf of the scheme members (**Scheme Members**)

[*Insert full legal name*] having its registered office (or head office if it does not have a registered office) at [*Insert address*] (**New Party**)

Background

- A. The Scheme Members are the parties to the Electricity and Gas Complaints Commissioner Scheme Deed which came into effect on 7 August 2001 (**Scheme**).
- B. Under the Scheme, the New Party is required to execute this Deed to become a Scheme Member.

Operative Provisions

1. The parties agree that with effect from [*Insert date*] (**Effective Date**), the New Party:
 - (a) becomes a party to the Scheme as if it had been named as a Scheme Member and had executed the Scheme; and
 - (b) must observe and perform all of the obligations of a Scheme Member under the Scheme and will be bound by the terms of the Scheme; and
 - (c) The New Party will be a Scheme Member in the following class(es):
 - (i) *Electricity Retailer/Electricity Lines Company/ Gas Retailer/ Gas Lines Company* [**Delete as appropriate.**];
 - (d) The Scheme remains in full force and effect.
2. The New Party agrees with the Scheme Members that it will observe and perform its obligations under the Scheme and will be bound by the terms of the Scheme.
3. For the purposes of the Scheme, the designated address of the New Party is as follows:

[Insert address details]
4. For the purposes of the Contracts (Privity) Act 1982, this Deed is given for the benefit of all Scheme Members, the Board, each Board Member (including committee members) and the Commissioner and is enforceable by any of them.
5. All terms defined in the Scheme and used in this Deed have the same meaning as in the Scheme.

