

Regulatory Impact Statement

Electricity and Gas Complaints Commissioner Scheme Class Exemption Regulations

Agency Disclosure Statement

- 1 This Regulatory Impact Statement has been prepared by the Ministry of Business, Innovation and Employment.
- 2 It provides an analysis of options for addressing consumer complaints or disputes related to gas retailers who supply liquefied petroleum gas (**LPG**) in or directly into cylinders, and in quantities less than 15 kg when the cylinder is filled to capacity for consumption (**small-sized LPG cylinders**).
- 3 Our analysis is qualitative in nature due to the difficulty in obtaining quantitative data. In particular, we are unable to quantify the extent of costs that would be generated if all gas retailers who supply LPG in or directly into small-sized LPG cylinders were to become members of the Electricity and Gas Complaints Commissioner Scheme (the **EGCC Scheme**). However, we can reasonably assume that these costs would be non-trivial, given the substantial number of relevant gas retailers operating throughout New Zealand, and largely borne by consumers.
- 4 In addition, we are unable to determine the extent of consumer complaints, if any, made to the Electricity and Gas Complaints Commissioner (the **EGCC**) in relation to small-sized LPG cylinders. However, information received from the office of the EGCC shows complaints concerning LPG invariably are related to LPG supplied in cylinders that are larger than small-sized LPG cylinders.
- 5 The analysis in this Regulatory Impact Statement is augmented by targeted stakeholder engagement, including with the major gas retailers and the office of the EGCC).

Melanie Porter

Manager, Competition and Consumer Law

Labour and Commercial Environment

Ministry of Business, Innovation and Employment

Status Quo and Problem Definition

- 6 Small-sized LPG cylinders are ordinarily used for domestic consumption to fuel small appliances such as BBQs, heaters and camping appliances. They are commonly supplied by the likes of petrol service stations and hardware stores as “swap bottles”; when the cylinders run out of LPG they can be taken to any gas retailer that supplies them to be exchanged for a full cylinder. Alternatively, in some instances, it is possible for the consumer to have their empty cylinder refilled at a refuelling station.
- 7 Persons who supply LPG in or directly into small-sized LPG cylinders are designated “gas retailers” under the Gas Act 1992. The Act requires all gas retailers to be members of the EGCC Scheme, but the Minister of Energy and Resources may recommend regulations to exempt the members of an identified class of gas retailers from that obligation (a **class exemption**). Most gas retailers who supply LPG in or directly into small-sized LPG cylinders currently are not members of the EGCC Scheme, and therefore are contravening the dispute resolution scheme membership requirement in the Gas Act.
- 8 The EGCC Scheme is a free independent and specialised disputes resolution service. It can consider and facilitate resolution of most consumer complaints concerning transmission, distribution and retailing of electricity and gas (including LPG) if the complaints are about members of the EGCC Scheme.
- 9 The policy rationale for establishing the EGCC Scheme is the recognition that electricity and gas consumers have a particular disadvantage in their ability to resolve complaints or disputes with suppliers, and that a specialised disputes resolution service, available to all consumers, is necessary to help resolve this disadvantage. The disadvantage can arise because of the presence of various market failure-related factors, including information and resource asymmetries, the lack of competitive alternatives for consumers and/or the presence of non-trivial switching costs, and the inability of generic consumer complaints mechanisms to satisfactorily deal with complaints or disputes due to the complex or specialised nature of the relevant product or service.
- 10 While membership of the EGCC Scheme is mandatory for all gas retailers under the Gas Act, consumers of LPG in small-sized LPG cylinders are not particularly disadvantaged in their ability to resolve complaints or disputes with gas retailers. Based on information provided by the office of the EGCC, the indication is that these consumers do not resort to the EGCC for assistance to resolve any issues with their gas retailers.
- 11 Consumers are not particularly disadvantaged because of the nature of the market for LPG supplied in small-sized LPG cylinders. In particular, the product and related transactions are not complex to understand and therefore should not lead to consumers being misinformed or confused, and the market is very competitive with consumers having low-cost alternative options for the supply of LPG in small-sized LPG cylinders.
- 12 Given that consumers are not particularly disadvantaged, there is no unique benefit derived from requiring gas retailers to be members of the EGCC Scheme in relation to small-sized LPG cylinders. If these gas retailers did become members of the EGCC Scheme, there would be, however, significant costs involved in the form of membership and compliance costs. In addition, as a consequence, the EGCC Scheme would face additional operating, governance and monitoring costs, which would be reflected in the membership levies charged to gas retailers. Moreover, these costs ultimately would be passed through by gas retailers to consumers.

Objectives

- 13 The objectives are to ensure that:
- a. consumers of LPG supplied in small-sized LPG cylinders have access to dispute resolution services that provide an effective means of resolving complaints or disputes with gas retailers; and
 - b. the cost of this access is proportionate to the problem intended to be addressed.

Regulatory Impact Analysis

- 14 The options we have considered are:
- a. to require gas retailers to be members of the EGCC Scheme in relation to the supply of LPG by them in or directly into small-sized LPG cylinders (**Option 1**); or
 - b. to exempt gas retailers from this requirement by giving a class exemption in relation to the supply of LPG by them in or directly into small-sized LPG cylinders, leaving consumers with access to generic dispute resolution services to resolve complaints or disputes arising in that product market (**Option 2**, our preferred option).

Option 1 (require membership of the EGCC Scheme)

- 15 Option 1 implies that access to generic dispute resolution services is not an effective means of resolving complaints or disputes with gas retailers in the relevant product market, and a specialised dispute resolution scheme (the EGCC Scheme) is necessary to alleviate any detrimental consequences for consumers. Harm to consumers may occur because of various market failure-related factors, including:
- a. Information asymmetries, which relates to consumers' inability to access and/or understand information as a prerequisite to them satisfactorily engaging with suppliers where there is a complaint or dispute.
 - b. Suppliers having more resources than consumers in dealing with complaints or disputes (i.e., resource asymmetries).
 - c. The inability of consumers to easily switch to alternative suppliers due to a lack of competitive alternatives and/or the presence of non-trivial switching costs.
 - d. The inability of consumer complaints to be satisfactorily handled by generic dispute resolution services, particularly where products or services and/or related transactions have a propensity to be complex and specialised.
- 16 However, the nature of the market for the supply of LPG in or directly into small-sized LPG cylinders does not lead to the market failure-related factors identified above. We note that:
- Small-sized LPG cylinders are portable (consumers are able to and do transport them), which means there will be no disputes relating to delivery services.
 - There are no difficult technical characteristics associated with small-sized LPG cylinders that may cause consumer complaints to be exceptionally difficult to investigate and resolve.
 - There are no bundled services, such as dual-fuel deals, to make the sale and purchase transaction more complex, which could result in consumer choices not being well informed or understood.

- There are no complex or confusing terms and conditions, on-going contractual relationships or price/service plans, and no billing issues, since payment by the consumer is made at the time the small-sized LPG cylinder is purchased, exchanged or refilled.¹
 - Consumers have myriad options for purchasing, exchanging and refilling small-sized LPG cylinders; when the cylinders run out of LPG they can be taken to any gas retailer (such as petrol service stations or hardware stores) to be exchanged or refilled. In addition, consumers are able to easily switch between alternative retailers and any switching costs will be negligible.
- 17 These market characteristics indicate that the degree of expertise and investigative capability able to be deployed by the EGCC is more than likely to be unnecessary for this product market. Moreover, consumer complaints leading to disputes are likely to be a rarity in the absence of product and transaction complexity, and in light of the market discipline imposed upon gas retailers due to competitive rivalry.
- 18 While any benefit to consumers from the EGCC Scheme may be considered as negligible, this is not true for the other side of the ledger with respect to the costs that would be incurred by gas retailers (predominantly the likes of petrol service stations and hardware stores) and the EGCC Scheme, which ultimately will likely be borne by consumers. In addition, there would be costs incurred by government in ensuring that all gas retailers who supply LPG in or directly into small-sized LPG cylinders are members of the EGCC Scheme. Requiring gas retailers to be members of the EGCC Scheme in relation to small-sized LPG cylinders is likely to result in non-trivial costs that are disproportionate to the problem a specialised dispute resolution scheme is intended to mitigate.
- 19 We are unable to quantify the extent of all these costs, but they are likely to be non-trivial; the number of gas retailers involved nationwide is probably in the hundreds and, according to the LPG Association, the number of consumers of small-sized LPG cylinders could be well in excess of a million.

Option 2 (a class exemption for gas retailers in the relevant product market)

- 20 Option 2 implies that there are no special market characteristics as discussed above that would require a unique dispute resolution service in relation to the supply of LPG in small-sized LPG cylinders. Therefore, while consumer complaints and disputes could be handled by the EGCC Scheme, access to alternative generic mechanisms, such as the Consumer Guarantees Act 1993 and the Disputes Tribunal, is equally effective.
- 21 However, while there is no relative advantage to consumers from the EGCC Scheme in regards to the facilitation and resolution of complaints or disputes, the alternative generic dispute resolution mechanisms avoid the incremental costs associated with the EGCC Scheme as discussed for Option 1 above.

¹ Compare this with the complex tariff structures and price menus that are routine in the supply of electricity and natural gas. These include: fixed prices for a period of time, tariff structures stepped according to consumption and time-of-use, and charges that differ between distribution network, retail, fixed and variable components; rebates and discounts (connected to bundling or on-time payment); the lumpy nature of bills (settlement is usually on a monthly basis); flexible payment options, including the predominance of credit as a purchasing method; contract terms (including a move to fixed term and termination fees).

Summary of Options 1 and 2

- 22 The following table compares Options 1 and 2 with respect to the objectives of ensuring that consumers have access to effective disputes resolution services, and the cost of this access is proportionate to the problem intended to be addressed.

Option	Access to effective scheme?	Cost of access is proportionate?
<i>Option 1</i> (require membership of the EGCC Scheme for gas retailers in the relevant product market)	Yes However, in the absence of market failure, the specialised nature of the EGCC Scheme is excessive (see paragraphs 15–16).	No Gas retailers would face membership levies and other costs, such as providing and reporting to the EGCC Scheme on a complaints-handling system. The EGCC Scheme would face significant extra operating, governance and monitoring costs as a result of a substantially increased membership base. Ultimately, the above costs are likely to be borne by consumers. The Ministry of Business, Innovation and Employment is responsible under the Gas Act for ensuring the membership requirement is met. This would be a non-trivial and expensive exercise given the large number of gas retailers involved.
<i>Option 2</i> (a class exemption for gas retailers in the relevant product market)	Yes Any disputes can be dealt with under the Consumer Guarantees Act and through the Disputes Tribunal, as for many other goods and services.	Yes Avoids unnecessary incremental costs in Option 1, most of which would likely be treated as pass-through costs to consumers.

Consultation

- 23 A discussion paper was released by the Ministry of Business, Innovation and Employment in July 2013.² Two submissions were received.³ In addition, targeted engagement was undertaken with relevant stakeholders, including the major gas retailers.⁴
- 24 Based on this engagement, the vast majority of stakeholders (including the LPG Association and the office of the EGCC) supported a class exemption for gas retailers who supply LPG in or directly into small-sized LPG cylinders.

² Ministry of Business, Innovation and Employment, *Electricity and Gas Complaints Commissioner Scheme: Membership Exemptions – Discussion Paper*, 15 July 2013.

³ The Board of the EGCC Scheme and Vector Limited.

⁴ Office of the EGCC, LPG Association of New Zealand, Contact Energy Limited, Elgas Limited, Genesis Energy Limited, Nova Energy Limited, and Vector Limited.

Conclusions and Recommendations

- 25 The regulatory impact analysis suggests that:
- a. the EGCC Scheme (Option1) is not necessary in relation to the supply of LPG by gas retailers in or directly into small-sized LPG cylinders, and would impose additional costs on this product market; and
 - b. Option 2 (a class exemption) is therefore the option that most closely meets the objectives, and is the preferred option.

Implementation

- 26 It is proposed that the preferred option (Option 2) be implemented through the Gas (Dispute Resolution Scheme Membership) Class Exemption Regulations 2014.

Monitoring, Evaluation and Review

- 27 The Ministry of Business, Innovation and Employment receives information on a wide range of consumer issues through its contact centre. These include complaints relating to the Consumer Guarantees Act and complaints that may require referral to dispute resolution schemes. We will monitor such information to assess whether there are significant numbers of consumer complaints in relation to LPG supplied in or directly into small-sized LPG cylinders.
- 28 In addition, the EGCC Scheme, as a single energy-based dispute resolution service, receives market intelligence on consumer-related matters (and concerns) in the gas retail sector. We expect that if there are significant consumer issues concerning the supply of LPG in or directly into small-sized LPG cylinders, that the EGCC will inform us.
- 29 If serious consumer concerns are raised or identified as a result of information gathering, the decision to give a class exemption to gas retailers in relation to small-sized LPG cylinders will be reviewed at that time.