

11 November 2010

Consumer Policy
Ministry of Consumer Affairs
PO Box 1473
Wellington

by email: consumerlawreform@mca.govt.nz

SUBMISSION ON CONSUMER LAW REFORM ADDITIONAL PAPER

- 1 Orion New Zealand Limited (**Orion**) welcomes the opportunity to comment on the Consumer Law Reform additional paper relating to Electricity and the Consumer Guarantees Act (the **paper**) released by the Ministry of Consumer Affairs (the **Ministry**) in October 2010.
- 2 We do not agree with the reasoning in the paper or with the paper's recommendations.
- 3 To us the matter is reasonably straightforward:
 - 3.1 the Consumer Guarantees Act (the Act) simply does not work for electricity as a good, hence the retailer concerns and the highly convoluted High Court findings;
 - 3.2 the Act should be changed so that liabilities apply only when the *service* has not been provided to an acceptable quality (being the existing reasonable skill and care test).
- 4 We thus repeat our previous recommendation that the Act should be amended so that electricity is only a service, which would effectively remove the potential retailer liability related to network issues that are *not* deemed to have been caused by the failings of the network operator. We do not in fact think this is a material lessening in consumer protection, because in our view the types of network events that lead to such claims



against the retailer (but not against the network operator) are precisely the types of events excluded by the reasonableness tests anticipated by the High Court decision. As we noted in our previous submission:

...the implication that a retailer might thereby effectively be obliged to provide a network more reliable and less subject to faults and defects that the one they are in fact using – and which they have no choice but to use – is nonsensical.

- 5 To the extent that a service based definition under the Act results in some additional liability being borne by consumers, there should be no presumption that the process the consumer will need to go through to obtain redress from an insurer will be more arduous than the process they would have had to go through with an electricity supplier.
- 6 The Ministry instead takes the view that Consumers are appropriately protected under the Act as it stands, and that the issue is one of inappropriate liability being borne by retailers when it should be borne by distributors. While we agree that the additional retailer liability is not sensible, we see no reason why the Ministry needs to concern itself with the allocation of liability if it believes consumers are protected.
- 7 To achieve what the Ministry believes is an appropriate outcome will involve treating the provision of electricity network services in a manner different from the treatment of other network services such as telecommunications and gas. This is clearly not principled consumer law. If consumers are indeed appropriately protected at present, then there is no public policy rationale for the Ministry to amend the Act as proposed. The inclusion of section 42(2)(f) in the Electricity Industry Act was presumably a conscious decision to deal with the issue of retailer/distributor liability by other means?
- 8 A minor related point, we see no reason to formally extend the jurisdiction of the EGCC to disputes between retailers and distributors relating to consumer claims under the Act as set out in recommendation vi. While the EGCC *might* be able to provide some sort of service to the disputing parties where they agree to use it, we see no need or benefit in *requiring* such parties to use the services of the EGCC.

Concluding remarks

- 9 Thank you for the opportunity to make this submission. Orion does not consider that any part of this submission is confidential. If you have any

questions please contact Bruce Rogers (Pricing Manager),
DDI 03 363 9870, email bruce.rogers@oriongroup.co.nz.

Yours sincerely

A handwritten signature in black ink, appearing to be 'BR', written in a cursive style.

Bruce Rogers
Pricing Manager