



9 November 2010

Consumer Policy
Ministry of Consumer Affairs
PO Box 1473
WELLINGTON 6140

By email: consumerlawreform@mca.govt.nz

Consumer Law Reform Additional Paper: Electricity and the CGA

The New Zealand Law Society (Society) welcomes the opportunity to comment on the Consumer Law Reform October 2010 Additional Paper on *Electricity and the Consumer Guarantees Act*. The comments below supplement the Society's earlier submission on the Ministry's principal discussion paper on consumer law reform.¹

The Society supports the Additional Paper's conclusions and recommendations (paragraphs 62-69), for the reasons stated in the paper. We agree that providing consumers with remedies against electricity retailers under the acceptable quality guarantee in the Consumer Guarantees Act (CGA) is consistent with the principles of that Act.

Further, the Society supports the conclusions and recommendations because they properly reflect the principle of risk allocation – namely, that risk is allocated to the person or entities that can best control the risk. We also support the proposed statutory indemnity for the benefit of electricity retailers outlined in paragraph 69(iv), as this provides a sensible method to achieve the risk allocation outlined in the recommendations.

The Society considers that it might be useful to clarify the provisos regarding consequential loss, to signal the requirement for consumers to take reasonable care to mitigate risks (paragraph 38). We note that although information provided by the supplier is to be taken into account in the reasonable consumer test in the guarantee of acceptable quality, it is not automatically transferable to the reasonable foreseeability of loss caused (or increased) by the consumer's failure to follow the supplier's or manufacturer's recommendations, hence the lengthy discussion in *Contact Energy Ltd v Jones*.

The Society also supports the recommendation to extend the jurisdiction of the Electricity and Gas Complaints Commission to cover indemnity disputes between retailers and lines companies in respect of the CGA acceptable quality guarantee. This recognises that electricity retailers may in practice have difficulty in enforcing the statutory indemnity in cases where lines companies are alleged to have breached the CGA guarantee.

¹ New Zealand Law Society submission dated 6.8.10 on the Ministry of Consumer Affairs' *Consumer Law Reform – A Discussion Paper, June 2010*.

This submission has been prepared by the Society's Commercial and Business Law Committee. If you have any queries regarding this submission please contact Vicky Stanbridge, the Committee Secretary, by telephone (04) 463 2912 or email (vicky.stanbridge@lawsociety.org.nz).

Yours sincerely

A handwritten signature in black ink, appearing to read 'Jonathan Temm', written in a cursive style.

Jonathan Temm
President