



28 March 2018

Submissions

Utilities Disputes Limited
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by email: submissions@utilitiesdisputes.co.nz

Submission on consultation paper round 1—

Independent 5-year review of UDL, recommendations from the review and other Board proposed changes

- Orion New Zealand Limited (Orion) welcomes the opportunity to comment on Utilities Disputes (UDL) consultation paper (the paper) on the recommendations from the 5-yearly review.
 - a. Our submission covers our response to the specific questions detailed in the consultation material.
- Our submission is made from the perspective of an electricity distribution business.

Concluding remarks

- Thank you for the opportunity to make this submission. We do not consider that any part of this submission is confidential. If you have any questions please contact Dayle Parris (Regulatory Manager), DDI 03 363 9874, email dayle.parris@oriongroup.co.nz.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'DP', is positioned above the name of the sender.

Dayle Parris
Regulatory Manager



Principle/Area of document	#	Question	Board's view (if available)	Submitter's response
Accountability	1	Do you agree with the review's recommendation <i>The Board should consider following the example of the Electricity Authority and name the relevant providers in its case notes?</i>	The Board disagreed with this recommendation. For further information on the Board's view, see pt8 (a) of the consultation pack (above)	We disagree with the review recommendation. We feel that naming providers will deter from the purpose of case notes; that is for scheme members to learn from complaint findings and implement continual improvement, in company, for complaint handling. Naming the provider or the complainant, for that matter, provides no benefit to this objective.
	2	Do you agree with the Board's proposal for Utilities Disputes to name providers that breach scheme rules and guidelines?	Board proposes naming providers that breach scheme rules and guidelines	We agree with this recommendation. Members are familiar with this process under regulation. This approach will provide an incentive for members to maintain a standard within complaints management and will hold members to account.
	3	Do you agree with the Board's proposal for Utilities Disputes not to name providers in its case notes?	Board does not accept recommendation to name providers in its case notes	We agree. See answer to Q1. Naming providers in case notes provides no benefit towards enhancing accessibility and efficient operation of the Energy Complaints Scheme.

	4	If Utilities Disputes were to name providers in case notes, what other information do you think needs to be included?	Board seeks views before considering the issue further	Consideration would need to be made to naming both trader, distributor and other relevant service providers (i.e. future participant types) and highlighting which provider was the primary provider for the particular complaint.
Natural Justice	5	Do you agree with the review's recommendation to <i>consider removing the principles of natural justice from its scheme document?</i>	Explicit reference to natural justice in the list of principles is not needed and can be removed	<p>We strongly disagree with removing 'natural justice' from the Scheme document/rules because;</p> <ul style="list-style-type: none"> • Section 13(1)(e) of the Electricity Industry Act 2010 requires UDL to comply with the rules of natural justice. Specifically <i>"that complaints about members must be investigated in a way that is consistent with the rules of natural justice:"</i> • The rules of natural justice prescribe what is necessary for issues to be fairly heard and determined, and is a fundamental aspect of the legal system in New Zealand and has application to organisations like UDL. • The concept of natural justice is wider than that of "fairness". • Importantly, the concept of natural justice goes both ways i.e. it is for the benefit and applies to both Provider and complainant.

	6	Do you agree with the Board’s view that the explicit reference to natural justice in the list of principles is not needed and can be removed?	Explicit reference to natural justice in the list of principles is not needed and can be removed	We strongly disagree- see our answer to Q 5 above.
Performance Standards	7	Do you agree with the review’s recommendation to remove performance standards relating to providers’ self-reporting on compliance?	Board seeks views before considering the issue further	Yes we agree.
	8	Do you agree with the review’s recommendation to remove performance standards relating to cost per case?	The Board believes a <i>cost per case</i> measure is not sufficiently linked to Utilities Disputes performance to justify a performance measure. However, the current measures should remain until new measures have been approved	We agree
	9	Do you have ideas about other measures the Board could consider adopting?	Board seeks views before considering the issue further	No comment

<p>Levies</p>	<p>10</p>	<p>Do you agree with the review’s general recommendation that the levy mechanism needs to be changed?</p>	<p>Board seeks views before considering the issue further</p>	<p>We agree that a review of the levy mechanism seems appropriate.</p> <p>Our general understanding of the current fee structure is that;</p> <ul style="list-style-type: none"> • Providers are charged a fixed market share factor (ICP based) and a variable deadlock factor using a three level tiered system • Level 1 (reaches deadlock)- \$500, Level 2 (unresolved after 8 hrs UDL time or 20 working days (whichever first)- \$500, Level 3 (unresolved after 16hrs UDL time or 40 working days (whichever is first)-\$1000. <p>The independent report highlights that around half of all deadlocked complaints are settled within the first 24 hour period. Also cases reaching deadlock but ruled out of jurisdiction have no variable fee applied.</p> <p>We also note the following;</p> <ul style="list-style-type: none"> • that around 70-75% of UDL’s expenses are salary and wage based • that new service providers will be entering the electricity market in the coming years • that UDL’s expenses have exceeded income in the last few years
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	11	What information do you think the Board needs, to help it decide what options are available?	Board seeks views before considering the issue further	An understanding of the use of the service by various member groupings and individual companies to understand the fairness of a higher weighting of fixed charges over 'user pays' charges. Members who have a low historical use of or involvement with the service (i.e. having complaints reach Utility Disputes) may feel it is unfair to carry a greater proportion of the fixed costs.
	12	What elements of the current levy mechanism do you think work well and should be retained?	Board seeks views before considering the issue further	The market share by ICP does provide certainty for Providers about the bulk of the levy they will be subject to. We would not like to see a move to a system that incorporates wash-ups as this impacts budgeting for regulated entities and creates uncertainty in meeting revenue caps.
	13	What elements of the current levy mechanism do not work and why?	Board seeks views before considering the issue further	Complaints that are 'sat on' or resurrected by customers and brought to Utility Disputes at some later date (sometimes years) may automatically be considered in deadlock increasing the cost of processing the complaint to members. Provided the Provider has taken the steps to ensure awareness of the dispute resolution scheme by the customer there should not be immediate deadlock of the complaint due to a customer taking a long time to decide whether to lodge a complaint and lodging it without going back to the Provider.

				<p>The deadlock tiers do not take account of the slow or delayed response of complainants to information requests. This is outside the control of Providers. Also, it seems that Providers are required to provide information and have this shared with complainants however information provided by complainants is not always shared with Providers. This creates a lack of transparency between the parties which has the potential to delay the process of resolution.</p>
	14	<p>What levy options can you think of to address provider concerns about 'throwing money at complaints' to avoid the levy?</p>	<p>Board seeks views before considering the issue further</p>	<p>Presumably a member company would 'throw money at complaints' for a number of reasons; firstly they believe they are doing the 'right thing' by the customer or secondly they believe that they can resolve the complaint in a more timely and cost effective way than by using the Utility Disputes process or thirdly they would prefer to minimise complaints statistics with Utility Disputes. As a counter a member company might choose to take a complaint to Utility Disputes to gain benefit from an independent review and finding as against other avenues such as the small claims court or other legal system. We suggest that Utility Disputes explore through survey at what level of cost member companies would be incentivised to follow a complaint through internally rather than take it through the complaints scheme. What is the price/service trade off?</p>

	15	What levy options can you think of to avoid senior staff spending more time on jurisdiction issues	Board seeks views before considering the issue further	<p>The Scheme documents detail the jurisdiction of UDL and there should be a fundamental internal understanding about this.</p> <p>We recommend internal training on UDL jurisdiction to support staff in easily and quickly identifying out of jurisdiction issues.</p> <p>If out of jurisdiction cases are increasing and UDL time is taken to determine this status then perhaps there should be a set fee to cover the processing of an 'out of jurisdiction' complaint.</p>
	16	What levy options can you think of that would avoid delays (beyond the provider's control) triggering levy levels?	Board seeks views before considering the issue further	The 'clock' should be stopped while waiting for complainants to respond to information requests and restarted once the information is provided i.e. the level timeframes should only apply to Provider information requests.
	17	Do you agree with the recommendation <i>every organisation which is covered by the Scheme should make a contribution to its running costs?</i>	Board seeks views before considering the issue further	Yes

	18	Do you agree with the recommendation <i>there should be no cross-subsidisation of providers, nor sweetheart deals. Thus, the levy arrangements for Transpower and First Gas should be revisited?</i>	Board seeks views before considering the issue further	Yes we agree
	19	Do you agree with the recommendation <i>The fixed element should cover all costs incurred by Utilities Disputes excluding those solely related to the handling of individual complaints?</i>	Board seeks views before considering the issue further	Yes provided Utility Disputes demonstrates operational efficiency and financial accountability in its operation.
	20	Do you agree with the recommendation <i>In keeping with the 'user pays' principle, any case reaching Utilities Disputes at deadlock should incur a fee?</i>	Board seeks views before considering the issue further	We agree in principle but the Board would need to carefully consider if this would reinforce “the ‘bizarre behaviour’ of settling to avoid a fee” as indicated on page 54 of the independent report. While Providers may make every effort to resolve complaints in-house the independent voice of UDL can often be the last step in reaching a resolution. The payment of a market share factor (ICP fixed levy) should be able to cover this scenario.

	21	Do you agree with the recommendation <i>The current variable fee structure needs to be reconsidered?</i>	Board seeks views before considering the issue further	We agree with the idea of developing additional deadlock levels and reviewing the level of fees per tier. Refer to our answer to Questions 13, 15 and 16.
Land Complaint exclusions	22	Do you agree with the review's recommendations to remove the exclusions?	The Board is concerned the Land Complaint exclusions may impact on the Scheme's approval (scheme rules must provide for or set out that <i>any person</i> who has a complaint about a member has access to a Scheme for resolving the complaint)	Yes we agree subject to the relevant safeguards detailed in the review recommendation being put in place. Specifically those safeguards detailed in point 1 to 5 on page 66 and page 67 of the independent review report.
	23	If the exclusions were removed, what impact would this have on your business? Please provide examples and what information this is based on wherever possible.	Board seeks views before considering the issue further	We have no further comment.
Other proposed changes - <i>Accessibility</i>	24	Do you agree in principle with the idea of a deemed membership mechanism?	Board seeks views before considering the issue further	Yes

	25	If implemented, do you think the deeming mechanism should apply to any scheme with mandatory membership that Utilities Disputes operates?	Board seeks views before considering the issue further	Yes
	26	To enable fair contribution toward the costs of running the scheme, if implemented, when should the levy obligations for deemed providers start?	Board seeks views before considering the issue further	To ensure that barriers to entry are not created for new industry participants, consideration should be given to participants meeting a critical mass of ICPs before being required to contribute to the market share factor. The critical mass referred to could align with the Electricity Authority Code requirements under section 16 and Schedule 15.1 2(A) of greater than 100 ICPs. However the deadlock user pays structure should apply from the first complaint.
	27	If implemented, when should other provider obligations (for example those in General Rule 12) start for deemed providers?	Board seeks views before considering the issue further	The requirements under General Rule 12 should apply per Schedule 15.1 clause 2(A) of The Code within 12 months of functioning as a trader for those with <100 ICPs and within 6 months for all others.

	28	Do you have other suggestions to address the problem of non-compliance with membership requirements to join the Energy Complaints Scheme?	Board seeks views before considering the issue further	We suggest that UDL seek regular updates from the Electricity Authority on newly registered participants or alternatively regularly review the participant register (published on their website) to identify new participants. Once identified UDL could be more proactive in directly communicating with participants about their obligations and the service provided by UDL.
Accessibility/ Efficiency	29	Do you agree with the proposed change to substitute “ <i>distributor</i> ” for “ <i>lines company</i> ” where they appear in the scheme documents?	Board thinks this will improve consistency in terminology.	We agree.
	30	If references to lines company were changed to distributor, what other steps, (including other potential changes) do you think are needed to avoid changing the meaning of any clause(s) affected?	Board seeks views before considering the issue further	To maintain readability another synonym for the word ‘distributed’ may need to be used where ‘lines company’ is changed to ‘distributor’ and these are close together in a sentence i.e. Scheme Rule 1.9.3. We did not identify any other issues with this suggested change.