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Committee Secretariat
Finance and Expenditure
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By online submission

Submission on the Water Services Economic Efficiency and Consumer Protection Bill

1. Introduction

Utilities Disputes Limited | Tautohetohe Whaipainga (UDL) welcomes the opportunity to make a submission on the Water Services Economic Efficiency and Consumer Protection Bill (the Bill).

2. Summary of submission

UDL's submission relates to Parts 3 and 5, and Schedule 2 of the Bill, and focuses on consumer protection and the proposed consumer dispute resolution service which reflect our areas of expertise.

UDL seeks to be heard on these submissions.

3. UDL

UDL has been operating the government approved energy dispute resolution service for 22 years which has some synergies with the proposed consumer dispute resolution service for water. UDL also provides a voluntary water dispute resolution service.

UDL is an independent, not-for-profit company that provides fair and independent resolution of complaints and disputes between utilities companies and their customers when they are unable to be resolved between the parties. We also resolve indemnity disputes between scheme members.

UDL operates three dispute resolution schemes:

- The government approved Electricity and Gas Complaints Scheme (for 22 years),

- The government appointed Broadband Shared Property Access Disputes Scheme, and
- A voluntary water complaints service.

We focus on three aspects - Prevent, Educate and Resolve. As well as working with utilities organisations we engage with the community via social agencies that support Aotearoa New Zealand's most vulnerable consumers.

4. Part 3 Subpart 2 – Service Quality Code

Clause 69 The Commission must make a service quality code

Clause 60 confirms the purpose of Part 3 of the bill is to protect consumers and drive improvements in the quality of service provided by regulated water services providers and drinking water suppliers.

Clause 69 provides for the Commission to make a Service Quality Code (SQC) for water providers.

We welcome the provision for an SQC. This is particularly important for a monopoly service to ensure consumers are well served where they cannot change provider. We note that the SQC does not need to be in place until 2027. Ideally this would be in place sooner.

When establishing the parameters of the SQC, the Commission may wish to consider the Retail Service Quality being developed for telecommunications consumers by the Telecommunications Commissioner to ensure consumers have a consistent level of service. The Commission should also have regard to the Electricity Authority's Consumer Care Guidelines (CCGs) ¹for the same purpose, as these include a number of guidelines around the level of service electricity companies should provide, including the steps they must take when dealing with vulnerable consumers and those in circumstances where hardship is a factor.

Ideally the SQC would be designed to address these areas as well as including requirements to establish good practices to recognise and appropriately respond to instances where customers may be experiencing domestic violence, the compassionate management of water pressure restriction for unpaid debt and, and the level of support provided to consumers who are experiencing hardship.

UDL has experience in dealing with these issues though its role in energy and other utilities and would welcome the opportunity to share these. They are often omitted from service codes.

¹ Consumer Care guidelines <https://www.ea.govt.nz/consumers/what-are-my-rights-as-an-electricity-consumer/consumer-care-guidelines/>

We also recommend consideration of the outstanding work being done by the Essential Services Commission in Victoria, Australia to introduce common service standards such as, for example, the time frames for electricity companies to connect new services for consumers.

Part 3 Subpart 3 – Consumer complaints process and consumer dispute resolution service

Clause 73 Requirement for regulated water services provider and drinking water suppliers to provide information to consumers and have a complaint process

UDL welcomes the requirement for water service providers and drinking water suppliers to provide information to consumers and have an appropriate complaints handling process. We also welcome the requirement to report on their consumer complaints processes.

Consumer complaints process

Overtime we would expect service providers' complaints processes would be required to align closely with the SQC to be introduced by the Commission under clause 69. The Electricity Authority's CCG remain as guidelines currently on the understanding they will be mirrored in electricity providers own internal processes.

Consideration should be given to linking providers' internal complaints processes to an appropriate international complaint handling standard.

For example, the Australian Standard (previously an Australian/New Zealand standard) *AS 10002: Guidelines for complaint management in organisations*² has recently been updated and comprehensively reflects international best practice internal complaints management. It is hoped by Standards Australia that it will in time become an international standard.

This could also be complemented with an appropriate New Zealand Aotearoa standard. The MBIE Government Centre for Dispute Resolution (GCDR) has developed a best practice dispute resolution framework³. Standard 1 includes a commitment to Te Tiriti o Waitangi and its principles (including partnership, active protection and participation). It says providers should design and deliver Māori culturally responsive dispute resolution for all Māori users. This includes recognition of Te Ao Māori and use of tikanga and te reo Māori in the design, resourcing and delivery of dispute resolution processes.

² Australia and New Zealand disputes resolution benchmarks and principles

<https://treasury.gov.au/publication/benchmarks-for-industry-based-customer-dispute-resolution>

³ Ministry of Business and Innovation, Government Centre of Dispute Resolution – Aotearoa best practice dispute resolution framework <https://treasury.gov.au/publication/benchmarks-for-industry-based-customer-dispute-resolution>

The GCDR framework is primarily designed for dispute resolution, and we have referred to the framework below in our comments under schedule 2 clause 5 relating to the benchmarks for the consumer dispute resolution service provider. If it was not considered appropriate to adopt this standard for internal complaints handling procedures, we would recommend the GCDR is involved in their establishment.

This is in part because it would assist the provider of any external dispute resolution process, as envisaged by Clause 76, if water service providers and drinking water suppliers applied consistent standards internally and when responding to consumer complaints. Using well-established guidelines can ensure this is the case. This is important in the circumstances where 85% of consumers will be subject to a monopoly, Consumers must also be able to have trust in their drinking water suppliers and their water service providers for the three waters reforms to succeed.

Prescribed information to consumers

UDL supports the requirement to provide prescribed information to consumers. We expect this will include clear and prominent guidance on how they can raise an issue or complaint with their water services provider or drinking supplier. If consumers are aware of their ability to complain this will ensure water providers are aware of the needs of their consumers so they can be responsive in addressing them and address the issues they face. Ideally, water service providers would be required to adhere to the same standard as energy companies who are required to provide clear and prominent information on all relevant communications information, including bills, about their consumer dispute resolution service provider. This includes how to access it if consumers are not satisfied with the treatment and outcome of their complaint by their water provider.

Reporting

UDL fully supports the proposed requirement for water service providers to report annually to the Commission on their consumer complaints processes. We would expect that supporting regulations would provide guidance not just about the key features of the complaints process that providers and suppliers follow but also reporting metrics to enable appropriate comparisons to be made for assessment on how providers and suppliers are performing individually and against each other.

We suggest water service providers are required to report on the types of complaints they receive, and the amount of time it takes for them to be resolved as well as their customers' satisfaction at the way their complaint was dealt with. They should also be required to report on the experience of vulnerable consumers, Māori, Pacifica, and other ethnic groups and communities to ensure their services are identifying and responding appropriately to their needs. The reporting should be available publicly.

This reporting is carried out by water providers in the UK via the Consumer Council for Water (CCW)⁴ and the Water Services Regulation Authority (OFWAT)⁵. In the UK water service providers outperform telecommunications, energy and finance in terms of complaints handling time⁶. The NZ Banking Ombudsman imposes specific requirements on the banking sector in Aotearoa New Zealand and this is an effective way to gain insights on consumer complaints and promote effective service delivery.

We recommend any reporting obligations are mirrored by the consumer dispute resolution service provider so the Commissioner can receive a comprehensive picture of how consumer complaints are being addressed across the spectrum.

Clause 74 Review of complaint outcome using consumer dispute resolution process

UDL fully supports the introduction of a consumer dispute resolution process for the water sector which is mandatory.

Clause 74 (2) sets out five well established criteria for when a service provider may decide to take no action or no further action on a complaint referred to it. We agree with these criteria noting there is adequate case law available on many of these in different sectors (such as the legal profession via the Lawyers and Conveyancers Act 2006) where similar exclusions apply.

While it is crucial that any consumer dispute resolution service is as accessible as possible there are some other issues that could also be considered for inclusion as grounds for no action or further action to be taken such as:

- there is a more appropriate place to deal with the complaint..
- the complainant does not or ceases to have a sufficient interest in the subject matter of the complaint
- An insurance payment in respect of the subject matter has been made which appropriately resolves the complaint
- It appears the provider has made a reasonable offer in settlement of the complaint.

Consumer dispute resolution

Clause 76 Consumer dispute resolution service

An independent consumer dispute resolution service reflects best practice internationally for essential services. As the operator of three utilities disputes schemes it is clear there is a high need for such services as they can lead to significant improvements in the behaviour of the providers of utility services towards consumers.

⁴ Consumer Council for Water, a statutory consumer body for the water industry in England and Wales

⁵ Water Services Regulation Authority, the body responsible for economic regulation of the privatised water and sewerage industry in England and Wales

⁶ See CCW and Ofwat Improving complaint processes in water – a follow up report October 2021.

The consultation requirements for the Minister prior to appointment of a service provider appear appropriate. Consideration could be given to consultation with the GCDR (referred to above) and a suitable consumer organisation.

It is also relevant to note the changing nature of dispute resolution service providers. In the 2022 independent review of the national Telecommunications Industry Ombudsman in Australia the reviewer discussed the changing role of a modern industry ombudsman⁷(equally applies to an independent dispute resolution service provider) from being confined to just handling complaints to a wide range of services aimed at improving the sector.

Clause 77 Determinations binding on regulated water services providers and drinking water suppliers

UDL agrees that a determination should be binding on the provider or water supplier.

There are occasions in our experience when a complainant does not accept a determination yet declines to embark on an appeal. Such situations are not common however when they occur they result in some uncertainty for all parties.

Clauses 78 and 79 Appeals against determinations

UDL agrees that a single appeal to the court by a consumer (not by a provider or supplier), is appropriate and there should not be a further right of appeal against the court's decision to enable certainty.

Clause 79 Procedure on Appeal

In relation to clause 79 we consider the time frame of 5 working days for a consumer to lodge an appeal to be restrictive and suggest it could be expanded to say 15 working days.

UDL operates a scheme that has a similar short timeframe to lodge an appeal. This may be one of the reasons why there are very few appeals although we do not have any definitive data to support this. Apart from the timeframe there are also associated costs and consumers may not feel confident in the unfamiliar and formal jurisdiction of a court. While it may be expected that there would be very few appeals given the nature of utility disputes, we consider that 5 working days is restrictive when a potential appellant will likely be a lay person who may need to identify and instruct a lawyer to lodge the appeal within a short period. It is appreciated that water providers may wish to have certainty however a prohibitively short period deprives the consumer of considering the determination fully and then taking necessary steps should they decide to appeal.

We also question whether prohibiting any of the parties from having representation is proportionate and whether this would assist the court in dealing with potentially complex issues.

⁷ TIO scheme review <https://www.tio.com.au/news/2022-independent-review-our-scheme-has-commenced>

We have been unable to confirm whether there is a prescribed court for dealing with appeals and the enforcement of binding decisions. Section 97 of the Electricity Industry Act 2010 prescribes the District Court for enforcement of binding decisions. Whilst rare, UDL has had to pursue this option on occasion and suggests the correct forum is clarified in the bill.

Commission Review of consumer dispute resolution service

Clause 81 Commission must review consumer dispute resolution service

UDL has made comments below under Schedule 2.

Miscellaneous Matters

Clause 82 Duties of dispute service provider, regulated water services providers, and drinking water suppliers

UDL agrees with this clause. . Given drinking water complaints are included in the potential matters that could be referred to the consumer dispute service provider it is critical that there be close liaison between the service provider, the Commission and Taumata Arowai.

While regular information and data from the consumer dispute resolution service provider would be shared to assist with trending and systemic issues the consumer resolution dispute service provider must have an internal mechanism for immediate identification and reporting of any serious or suspected systemic issue. Any supporting regulations should address this in detail to highlight its importance.

5. Part 5

Subpart 1 – Water Services Commissioner

Clause 127 Appointment of Water Services Commissioner

UDL supports the appointment of a dedicated Water Services Commissioner within the Commerce Commission. This will ensure transparency of water entities' operations, as provided for in the Bill. The Commissioner will be able to focus on such matters as information disclosure, service quality, economic policies such as price-quality regulation and other features set out in the Bill. It would also be useful for stakeholders including the consumer dispute resolution service provider to have a consistent point of contact within the Commissioner who recognises the unique challenges of the water sector and for regular liaison about issues and areas of concern as they arise.

The Telecommunications Commissioner is a good example of a similar position which is making a difference in the telecommunications sector and ensuring continuously improving consumer experiences.

Subpart 3 – Other provisions

Clause 140 Regulations

Clause 142 Levy for consumer dispute resolution services

UDL notes the proposal to make regulations to set a levy to fund the consumer dispute resolution service.

UDL has trialled many different funding models over 22 years. A blend of fixed levies and a variable levy for certain complaints assists to ensure that providers with high numbers of complaints are not subsidised by those with low numbers.

It is recommended that widespread consultation occur prior to setting this levy model and consideration be given to providing the Minister with authority to approve the charging methodology directly with the dispute resolution provider.

Schedule 2

Schedule 2 Clause 1 Purpose of consumer dispute resolution service

UDL agrees with the purpose of the consumer dispute resolution service.

The Bill provides for a neutral third party to make a decision that is legally binding on the regulated water services provider. UDL understands the consumer dispute resolution provider is intended to be the same organisation that facilitates the attempted agreement as well as issuing a binding decision on a drinking water supplier, if the matter is not able to be resolved. This is the way UDL operates through its commissioner.

It is suggested the reference to the neutral third party here and in clause 3 below is clarified.

The dispute resolution service provider should also be required to give effect to te mana o te wai in its operations.

Schedule 2 Clause 3 Rules of the approved service

UDL agrees with the high-level rules of the approved service which appear to be standard for dispute resolution service providers.

Including timeframes in the rules is welcome as to be truly effective dispute resolution must be carried out in a timely fashion. It would be useful to include a provision setting out the time limit for referring a dispute to the consumer dispute resolution service provider which appears to be missing. It is typical for rules to confirm a dispute must be brought within six years of when the complainant was aware or ought to reasonably have been aware of the complaint and their right to complain. This timeframe can be reduced to twelve months in the absence of special circumstances which is also a common feature for complaints and dispute handling scheme rules.

It is suggested the rules also make it clear that the consumer dispute resolution service is free to consumers.

Clause 3 (1)(a) refers to who can refer a matter to the approved service. It is expected this would be “any person” and include a definition of what a “person” is including any legal entity. Generally it is not appropriate for a water provider to be able to refer a matter to a consumer dispute resolution service.

Clarification around publication of decisions and whether or not they should identify water service providers or water suppliers is a matter that is often absent from rules and would be a helpful addition.

Ensuring that rules are relatively informal and allow discretion and flexibility is important. They should be written in easy English (translation into te reo would be desirable) and able to be understood by consumers and agreed by water providers with a straightforward process for amendment which does not require widespread consultation.

Schedule 2 Clause 4 Application for approval

UDL agrees with the application for approval process.

It may be beneficial for the application process to consider appointing a consumer dispute resolution service provider prior to finalising the rules and framework so the Minister’s office and the service provider appointee can work together to provide a fit for purpose solution in the unique water sector in Aotearoa New Zealand. This may include the appropriate mechanism to levy and collect the funds required to operate the service under clause 142.

Alternatively UDL is willing to provide any assistance that may be required based on its experience as a trusted advisor.

Schedule 2 Clause 5 Mandatory considerations for approval

UDL agrees with the stated mandatory considerations for approval of appointment of a consumer dispute resolution service provider.

UDL agrees with the key principles which are the 2015 *Benchmarks for Industry-based Customer Dispute Resolution*^[1] that most dispute resolution service providers are required to follow.

However as mentioned under clause 73 consideration should be given to replacing the principles to include the GCDR best practice framework for dispute resolution. This framework has been developed specifically for Aotearoa New Zealand ⁸

⁸ Government Centre for Dispute Resolution, Aotearoa best practice dispute resolution framework <https://www.mbie.govt.nz/cross-government-functions/government-centre-for-dispute-resolution/dispute-resolution-tools-and-resources/aotearoa-best-practice-dispute-resolution-framework/>

Schedule 2 Clause 9 Commission review of consumer dispute resolution service

UDL agrees regular reviews of the consumer dispute resolution service provider by the Commission are required.

Schedule 2 Clause 9 currently provides for reviews at least every 3 years. We suggest the Commission consider reviewing the service initially after a period of 2 years to ensure it is functioning appropriately and providing a good service particularly given the importance of water reforms in Aotearoa New Zealand as it is vital that consumers are well catered for.

An initial 2-year review was put in place for UDL's broadband statutory right of access scheme for objections to the installation of fibre on shared property. We found the first 2 yearly review to be useful in identifying a number of reporting and other issues.

Similarly with the energy complaints scheme while it was not required the Electricity and Gas Complaints Commission (the predecessor to UDL) decided to instigate a review after 2 years rather than wait the required 5 years⁹. The feedback received was invaluable for the success of the scheme.

Consideration could be given in the future to extending subsequent reviews, (following an initial 2 yearly review) to 5 yearly intervals which is standard in the dispute resolution sector such as the four financial dispute resolution schemes in NZ, the Telecommunications Industry Ombudsman and the Energy and Water Ombudsman schemes in Australia.

UDL's comments on replacing the principles are set out above under clause 5.

Schedule 2 Clause 10 Purpose of the service provider

UDL agrees with the purpose of the consumer dispute resolution service provider in administering and monitoring compliance not just of the service provided to consumers but also administering the code.

To facilitate this work the service provider could offer additional supporting services to water services providers and drinking water suppliers.

For example, the service provider could offer dispute resolution training to water providers' customer service teams. This could significantly reduce the number of complaints referred and provide better customer service for consumers.

In addition, the service provider could assist with notifying water providers of potential vulnerable consumer issues. UDL also believes there is a space for the consumer dispute resolution provider to assist water services providers with outreach, education and informing the community.

UDL suggests that clarification be given to what is meant by (g) enforcing the provisions of the service and the code.

⁹ The Electricity Industry Act 2010 requires UDL to ensure that an independent review of the scheme is carried out at least once every 5 years.

Schedule 2 Clause 11 Provision of information

UDL agrees with this provision.

The consumer dispute resolution service provider should also provide the Ministers' office with its annual report.

Schedule 2 Clause 12 Regulations setting out rules for service

UDL agrees with the provision. As noted above under schedule 2 clause 4 it may be useful for the Minister to work with the appointed consumer dispute resolution provider prior to finalising regulations to ensure workability. As mentioned above UDL is willing to assist in the development of the regulations as a trusted experienced advisor.

Thank you for the opportunity to make these submissions. If there are any queries, please contact Hamish Clareburt at hamish@udl.co.nz.

Ngā mihi nui



Mary Ollivier

Commissioner: Toihau

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