



Independent 5-year review of Utilities Disputes Limited

Recommendations from the review and other Board proposed changes

Consultation Paper for Round 1

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1. Introduction and background to the review

The Utilities Disputes Board (the Board) is seeking submissions on its proposals to amend the Energy Complaints Scheme documents to implement recommendations from the Five Year Independent Review.

Queen Margaret University Consumer Dispute Resolution Centre conducted an independent review of the Energy Complaints Scheme in 2017. This review was conducted in accordance with the Electricity Industry Act 2010, Schedule 4, Clause 15, which states:

“The provider of the approved scheme must ensure that, at least once every 5 years, an independent review of the scheme is carried out and the report of the review is provided to the Minister within 3 months of its completion.”

The review report (“the review”) states:

“This report outlines the findings of the Five Year Independent Review of the approved Energy Complaints Scheme provided by Utilities Disputes but also includes a wider review of Utilities Disputes Limited. At the time of the review, as the only scheme provided by Utilities Disputes relates to energy complaints, for ease of reading and reporting reference is made to Utilities Disputes only.”

As set out in an email to all providers on 5 February, the review was completed in July 2017 and provided to the Minister of Commerce and Consumer Affairs, as required. The previous Minister was unable to consider the review before the general election and change of government. The review was discussed with the new Minister, the Hon Kris Faafoi in January 2018.

2. The review – overall conclusions

The review's overall conclusion was that *"Utilities Disputes is an effective dispute resolution scheme. To maintain its effectiveness into the future, the review has highlighted a number of areas for further development."*

The review also noted *"with only a few minor exceptions, Utilities Disputes meets the requirements of the Key Practices for Industry-based Customer Dispute Resolution."*

The review noted there was room for improvement and detailed the areas it believes this needs to occur.

A full copy of the review and its recommendations is available [here](#).

3. The Board's approach to recommendations

The Board is seeking views from stakeholders on those recommendations requiring scheme document changes and two of its own proposed changes. These are set out in this paper (using **blue** headings), along with the Board's view, where available.

The Board's proposed changes are to enhance accessibility and efficient operation of the Energy Complaints Scheme.

At the end of each recommendation or proposal are questions to help the Board consider available options and next steps. Submitters are welcome to give views on other review recommendations.

4. Documents and information about Utilities Disputes and schemes it operates

For further information about Utilities Disputes, see the Utilities Disputes website [here](#).

To access the relevant scheme documents for the Energy Complaints Scheme, available on the Utilities Disputes website see [here](#).

5. Process and proposed timetable

Table 1 below outlines the process and proposed timetable for consultation. The Board proposes two rounds of consultation.

Round 1 is to give providers and stakeholders the opportunity to comment on the review's recommendations by answering a series of questions and adding further comments. The

questions are listed in each section. Appendix 1 contains a full list of questions and is the preferred for submissions.

Round 2 will include the wording for proposed changes the Board feels appropriate, after considering the feedback from round 1 and any further analysis the Board undertakes.

Feedback from previous consultation indicates submitters want similar time-frames for each round. Depending on submissions received in round 1, the Board will review the indicative timetable and include any updates to it, ahead of round 2.

Table 1 – Indicative timetable for proposed changes

Date (week beginning)	Activity
12 March 2018	First consultation round opens (Mon 12 March)
19 March	First consultation round continues
26 March	First consultation round closes (Fri 30 March)
2 April – 7 May	Board to consider submissions, draft proposed changes and prepare documentation for second round of consultation
14 May	Second consultation round opens
21 May	Second consultation round continues
28 May	Second consultation round closes (Friday 1 June)
4 June – 18 June	Board to consider submissions from second consultation round
25 June	Board votes on proposed changes and gives notice to Minister of Commerce and Consumer Affairs and Energy Complaints Scheme Providers
13 August	Changes effective

6. Closing date for submissions

The closing time and date for submissions for the first consultation round is 5 pm on Friday 30 March 2018. Please note late submissions are unlikely to be considered.

7. Making submissions

Please send submissions in Microsoft Word format to:

Email submissions@utilitiesdisputes.co.nz.

Post PO Box 5875, Wellington 6140

When submitting, please use the preferred form for submissions in Appendix 1. Submitters should indicate any documents attached in support of the submission in a covering letter.

The Board may make submissions available on the Utilities Disputes website. If submitters provide any information on a confidential basis, please clearly show this in a cover letter.

If you have any questions during the consultation process, please contact James Blake-Palmer either by email j.blake-palmer@utilitiesdisputes.co.nz or phone 04 914 4537.

All submissions will be acknowledged. If you do not receive an acknowledgement within two working days, please contact James.

8. Review recommendations requiring changes to the Scheme documents

The review recommended scheme document changes to ensure Utilities Disputes and its schemes continue to meet the principles of *accessibility, independence, fairness, accountability, efficiency* and *effectiveness*.

As noted above, the review made recommendations about other aspects of Utilities Disputes. Given this, the Board is consulting with members of the Energy Complaints Scheme, the Broadband Shared Property Access Dispute (BSPAD) Scheme and the Water Complaints Scheme, as well as stakeholders and the wider community.

This section sets out those recommendations, gives the Board's view and poses questions to help the Board's consideration.

Following the layout of the review, the recommendations below are set out under the relevant principle or area of the scheme document.

(a) Accountability (review part 7.4)

Review recommendation:

The Board should consider following the example of the Electricity Authority and name the relevant providers in its case notes

Board's view:

The Board disagreed with this recommendation. The Board considers the Electricity Authority naming participants found to be in breach of its code is not analogous to Utilities Disputes naming providers in case notes.

A Utilities Disputes case note is a summary of a complaint that has been accepted for consideration. Its purpose is to inform providers and consumers of the issue raised in the complaint, the approach taken to resolve the complaint and the outcome. Parties to the complaint are not named, as this is not necessary to achieve these purposes.

The Board considers it more appropriate to name providers in breach of scheme rules and guidelines.

Question for submitters:

1. Do you agree with the review's recommendation *The Board should consider following the example of the Electricity Authority and name the relevant providers in its case notes?*
2. Do you agree with the Board's proposal for Utilities Disputes to name providers that breach scheme rules and guidelines?
3. Do you agree with the Board's proposal for Utilities Disputes not to name providers in its case notes?
4. If Utilities Disputes were to name providers in case notes, what other information do you think needs to be included?

(b) Natural Justice (review part 7.7)

Currently natural justice is included in the principles section of the Energy Complaints Scheme document. Natural Justice was included in the 2016 changes at the request of a provider.

Review recommendation:

The Board should consider removing the principle of 'natural justice' from its scheme document

Board's view:

The Board agrees with the recommendation. The principle of fairness covers natural justice, so the inclusion of natural justice is unnecessary.

Questions for submitters:

5. Do you agree with the review's recommendation for *Utilities Disputes* to consider removing the principles of natural justice from its scheme document?
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?

(c) Performance Standards (review part 13)

Review recommendation:

The current performance standards relating to the self-reporting of compliance and cost per case should be removed

The review (pages 47-49) sets out its reasoning, noting *the average cost per case standard also appears flawed and lacks the required credibility.*

Board's view:

The Board believes a *cost per case* 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.

While *cost per case* has been used in the past, the Governance Charter where it is mentioned, states it is a performance measure the Board "*may include*".

Questions for submitters:

7. Do you agree with the review's recommendation to remove performance standards relating to providers' self-reporting on compliance?
8. Do you agree with the review's recommendation to remove performance standards relating to cost per case?
9. Do you have ideas about other measures the Board could consider adopting?

(d) Levies (review part 14)

The review (part 14, pages 52-57) considers the current levy structure. The Board recommends submitters read that section for context on the review recommendations.

The current levy mechanism for the Energy Complaints Scheme is set out in appendix 1 of the scheme document. To access the levy section, click on the words Scheme rules in the table of contents from [here](#) and scroll to appendix one.

The Board is seeking views on the recommendation to review levies. The Board acknowledges the need to have a levy mechanism that:

- ensures each scheme is self-funded;
- ensures each scheme contributes to its share of overall Utilities Disputes costs;
- avoids cross-subsidization between schemes; and
- is fit for purpose both now and into the future

The levy mechanism needs to ensure Utilities Disputes can carry out its purpose and objectives and those of each scheme it operates. The levy mechanism must meet the principles outlined earlier; be fit-for-purpose currently and be able to cope with the inclusion of new schemes.

Any levy mechanism needs to account for of the potentially different nature of the schemes, how they may have come about (for example through legislation or by agreement); how many Providers a scheme may cover and whether Providers in a scheme need to be treated differently.

The Board also acknowledges the need to provide a level of certainty to Providers about how funding will work. For these reasons, the existing levy mechanism was retained following incorporation of Utilities Disputes and included in the review.

The Board may seek guidance from similar Schemes in New Zealand, Australia, and the UK, where options such as initial service fees, periodic invoicing based on customer share and complaint numbers and apportioning based on principles of user-pays and proportionality are variously used.

The review makes the following specific recommendations about levies.

- *Every organisation which is covered by the Scheme should make a contribution to its running costs.*
- *There should be no cross-subsidisation of providers, nor sweetheart deals. Thus, the levy arrangements for Transpower and First Gas should be revisited.*
- *The fixed element should cover all costs incurred by Utilities Disputes excluding those solely related to the handling of individual complaints.*
- *In keeping with the 'user pays' principle, any case reaching Utilities Disputes at deadlock should incur a fee.*
- *The current variable fee structure needs to be reconsidered.*

Questions for submitters:

10. Do you agree with the review's general recommendation that the levy mechanism needs to be changed?
11. What information do you think the Board needs, to help it decide what options are available?
12. What elements of the current levy mechanism do you think work well and should be retained?
13. What elements of the current levy mechanism do not work and why?
14. What levy options can you think of to address provider concerns about 'throwing money at complaints' to avoid the levy?
15. What levy options can you think of to avoid senior staff spending more time on jurisdiction issues?
16. What levy options can you think of that would avoid delays (beyond the provider's control) triggering levy levels?
17. Do you agree with the recommendation every organisation which is covered by the Scheme should make a contribution to its running costs?
18. Do you agree with the recommendation there should be no cross-subsidisation of providers, nor sweetheart deals. Thus, the levy arrangements for Transpower and First Gas should be revisited?
19. Do you agree with the recommendation the fixed element should cover all costs incurred by Utilities Disputes excluding those solely related to the handling of individual complaints?
20. Do you agree with the recommendation In keeping with the 'user pays' principle, any case reaching Utilities Disputes at deadlock should incur a fee?
21. Do you agree with the recommendation the current variable fee structure needs to be reconsidered?

(e) Land Complaint exclusions (review part 16)

The current scheme documents for the Energy Complaints Scheme contain explicit exclusions from what would otherwise be a land complaint the Commissioner could consider. These exclusions are set out in appendix 2 of the Energy Complaints Scheme rules.

When consulting on changes to enable the change from the former *Electricity and Gas Complaints Commissioner Scheme* to Utilities Disputes, the Board proposed removal of the land complaint exclusions.

The driver for removing these was the Board's concern these provisions may impact on the Scheme's approval, given, as noted above, the scheme rules must provide for or set out that *any person* who has a complaint about a member has access to a Scheme for resolving the complaint.

Some submitters objected to the removal of the exclusions. The Board decided to leave the exclusions in the rules and include the issue in the review before making a final decision.

The review (part 16, pages 61-67) considers the exclusions. The Board recommends submitters read that section for context on the review recommendations.

Review recommendation:

Should the question of the exclusion's lawfulness persist then the Board may want to take senior counsel opinion on this matter. It is recommended that the land exclusions should be removed.

Questions for submitters:

22. Do you agree with the review's recommendations to remove the exclusions?
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

9. Other Board proposed changes

This section sets out other proposed changes. At the end of the section are questions to help the Board consider the issues. For ease of use, these questions are also included in Appendix 1.

The basis for the Board to propose changes for the Energy Complaints Scheme is set out in the General Rules. General Rule 47 states:

"As well as resolving complaints, UDL may carry out activities it may consider appropriate to support its services and with the aim of promoting good practice in relation to handling of Complaints and public confidence in dealing with Providers"

General Rule 48 states “*these activities may include...reviewing the General Rules, Scheme Rules and Schemes from time to time, to assess whether UDL considers any amendments are appropriate*”.

9 (a) Deemed membership of participants (providers) required to join

The Board is concerned Utilities Disputes often becomes aware of providers who are required by legislation to join the Energy Complaints Scheme, when a consumer makes a complaint to Utilities Disputes about them.

This issue impacts on the principles of accessibility, efficiency and effectiveness.

To ensure the scheme documents give effect to the legislative intention, the Board is considering the option of adding a deeming mechanism. This would clarify Utilities Disputes could consider the complaint, subject only to the complaint meeting usual criteria and the provider having its usual opportunity to attempt resolution first.

The Board acknowledges a deeming mechanism must work fairly for both existing providers and new providers. This means having an appropriate trigger point and start date for levies and other provider responsibilities such as promoting the Energy Complaints Scheme and having appropriate complaints handling processes.

Questions for submitters:

24. Do you agree in principle with the idea of a deemed membership mechanism?
25. If implemented, do you think the deeming mechanism should apply to any scheme with mandatory membership that Utilities Disputes operates?
26. To enable fair contribution toward the costs of running the scheme, if implemented, when should the levy obligations for deemed providers start?
27. If implemented, when should other provider obligations (for example those in General Rule 12) start for deemed providers?
28. Do you have other suggestions to address the problem of non-compliance with membership requirements to join the Energy Complaints Scheme?

9 (b) Changing references in scheme documents – from “*lines company*” to “*distributor*”

The scheme documents for the Energy Complaints Scheme refer to electricity and gas “*lines companies*”. For clarity and consistency with legislation, the Board seeks views on changing references to “*distributor*” (or “*distribution*” where appropriate).

The Board acknowledges the need to avoid changing the meaning or having any unintended consequences

Questions for submitters:

29. Do you agree with the proposed change to substitute “distributor” for “Lines Company” where they appear in the scheme documents?
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?

10. Next steps

The steps in the consultation process are set out in the timeline in table 1 above and on the current consultation page of the Utilities Disputes website.

Following consultation round 1 the Board will consider the feedback and decide whether further information or analysis is required, and whether further changes to the documents are necessary.

The Board may convene the Energy Complaints Scheme Advisory Committee of consumer and industry representatives to review submissions received and make recommendations to the Board.

Once the Board approves the final versions of the amended documents, the Board will notify the Minister of the proposed changes in accordance with the [Electricity Industry Act 2010](#), Schedule 4, Clause 8. Utilities Disputes will make the approved documents available on its website.



Hon Heather Roy
Independent Chair
Utilities Disputes Ltd
12 March 2018

11. Appendix 1 – Questions for submitters and preferred form for responses

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)	
	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	
	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	

	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	
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	
	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	
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	
	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	

	9	Do you have ideas about other measures the Board could consider adopting?	Board seeks views before considering the issue further	
Levies	10	Do you agree with the review's general recommendation that the levy mechanism needs to be changed?	Board seeks views before considering the issue further	
	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	
	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	
	13	What elements of the current levy mechanism do not work and why?	Board seeks views before considering the issue further	
	14	What levy options can you think of to address provider concerns about 'throwing money at complaints' to avoid the levy?	Board seeks views before considering the issue further	
	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	
	16	What levy options can you think of that would avoid delays (beyond	Board seeks views before considering the issue further	

		the provider's control) triggering levy levels?		
	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	
	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	
	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	
	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	

	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	
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)	
	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	
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	
	25	If implemented, do you think the deeming mechanism should apply to any scheme with mandatory membership that Utilities Disputes	Board seeks views before considering the issue further	

		operates?		
	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	
	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	
	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	
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.	
	30	If references to lines company were changed to distributor, what other steps, (including other	Board seeks views before considering the issue further	

		potential changes) do you think are needed to avoid changing the meaning of any clause(s) affected?		
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