

6 April 2018

Utilities Disputes Ltd
PO Box 5875
Wellington 6140

To: submissions@utilitiesdisputes.co.nz

**ENA submission on the independent 5-year review of Utilities Disputes Limited -
Recommendations from the review and other Board proposed changes**

The Electricity Networks Association (ENA) welcomes the opportunity to provide a submission to Utilities Disputes Ltd (UDL) on its proposed changes to the Energy Complaints Scheme documents arising from the independent 5 year review. ENA makes this submission on behalf of the New Zealand electricity distribution businesses (EDBs) and in support of any submissions individual EDBs may have made.

The ENA represents all of New Zealand's 27 EDBs or lines companies, who provide critical infrastructure to New Zealand residential and business customers. Apart from a small number of major industrial users connected directly to the national grid and embedded networks, electricity consumers are connected to a distribution network operated by an ENA member, distributing power to consumers through regional networks of overhead wires and underground cables. Together, EDB networks total 150,000 km of lines. Some of the largest distribution network companies are at least partially publicly listed or privately owned, or owned by local government, but most are owned by consumer or community trusts.

ENA has reviewed the consultation document and the changes proposed. Of these, three stand out as potentially significant issues for EDBs. These are

- 8 (b) Natural Justice (review part 7.7)
- 8 (d) Levies (review part 14)
- 8 (e) Land Complaint exclusions (review part 16)

Our response to these specific proposals are contained in Appendix A to this letter in the format requested by UDL.

Setting to one side the proposals contained in the consultation, ENA has some more general comments regarding the scheme and UDL's operation that we would like to take the opportunity to pass on.

ENA has both observed and received comments about a general unease within the electricity industry with the way in which UDL resolves some consumer complaints. The broad thrust of this disquiet is a perception that UDL has moved from being an accessible, but neutral, arbiter of complaints to a consumer advocate with a predisposition to adjudicate disputes in the complainant's favour.

This will ultimately lead to poor outcomes for both the industry and consumers for the following reasons:

- Because of the uncertain outcome of complaints referred to the commissioner, providers will go to increasing lengths to avoid a referral to UDL. Even when a consumer complaint is without merit, the provider might nevertheless look to resolve the complaint, leading to increased costs in the business which are not efficiently incurred.
- Related to the above point, any significant downturn in complaints referred to UDL will reduce its collective capability and potentially threaten its sustainability.
- Providers will not be as willing as they would otherwise be to promote the availability of UDL to consumers, thereby reducing use of the scheme and increasing its costs on a per complaint basis.
- Providers will be more likely to seek reviews of commissioner decisions (including through the courts), which will give rise to increased costs and more uncertainty about the reliability of UDL as a complaints resolution service.

ENA is also hearing concerns about UDL's interpretation of the Consumer Guarantees Act tending to find in favour of the complainant, at odds with the facts of the individual case. Though beneficial to consumers and UDL in the short term through higher levels of consumer satisfaction over resolution of questionable complaints, the unfair interpretation will hurt these same parties in the longer term as providers lose confidence for the reasons outlined above.

ENA also has concerns about the looming changes to UDL governance and the method of appointment of the new board. We appreciate that the post October 1, 2018, board structure was decided in 2016, and that UDL will have distributor representative(s) on its electricity sector member committee. While ENA remains disappointed at the removal of a direct electricity industry representative from the UDL board, we look forward to working with Utilities Disputes to support the establishment of an effective advisory committee representing member organisations. In order to retain industry confidence in Utilities Disputes, we would ask that you ensure that your board appointment process is robust and as transparent as it can be.

ENA urges the commissioner and the UDL Board to reflect upon these comments and consider how more certainty, predictability and consistency can be introduced into the complaints resolution process. If successful in doing so, changes along these lines will give rise to greater confidence in

UDL among providers. One possible approach to this might be for UDL to arrange regular meetings or forums with the providers so that they can provide feedback on UDL performance and give UDL a better understanding of their anticipated business activity. This could then be used to inform future decisions by UDL about the operation of the scheme.

Please let me know if ENA can be of any further assistance or if you wish to discuss any of the points we've raised in more detail. In the first instance please contact ENA's Senior Advisor Policy and Innovation, Richard Le Gros, at richard@electricity.org.nz, 04 555 0075.

Yours sincerely

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

Graeme Peters
Chief Executive
Electricity Networks Association

Appendix A – ENA response to specific consultation questions

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	ENA considers that the ‘principles of natural justice’ are a distinct concept, more specific than simply ‘fairness’. We suggest that the 3rd principle in rule 5 of the scheme document be amended to refer to “procedural and substantive fairness” which is more in line with the alternative dispute resolution practices but ensures that both the procedure and the outcome are fair.
	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	See our response to question 5.
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	No comment
	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	No comment
	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	No comment
	13	What elements of the current levy mechanism do not	Board seeks views before considering the issue further	No comment

		work and why?		
	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	As per our comments in the body of this letter, ENA is aware of a sentiment within the industry that confidence in the neutrality of UDL's decision-making is low, and one outcome of this is that providers may 'throw money' at a complaint to avoid it going to UDL. If UDL could demonstrate to industry greater consistency and neutrality within its decision-making, this would become less of a problem.
	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	No comment
	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	No comment
	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	ENA believes that, wherever possible and practical, a principle of 'user pays' should be applied to the levy arrangements for the scheme. Therefore, every organization which is covered by the scheme should make a contribution to its running costs, proportional to that organisation's impact upon those running costs.
	18	Do you agree with the recommendation <i>there should be no cross-subsidisation of providers, nor</i>	Board seeks views before considering the issue further	ENA agrees that there should be no, or as little as possible, cross-subsidisation between providers or sweetheart deals. This is in keeping with the general tenor of our

		<i>sweetheart deals. Thus, the levy arrangements for Transpower and First Gas should be revisited?</i>		responses to question 17.
	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	No comment
	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	See our response to question 17.
	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	No comment

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)	As per the comments ENA made in our submission on the incorporation of UDL and the related Scheme document changes in July 2016, we believe the land complaint exclusion should remain. The potential cost implications of the Commissioner ruling on land complaints could be very significant, and these costs would ultimately be borne by consumers as a whole. We believe the existing alternative avenues of recourse available to consumers (e.g. the Environment Court) are satisfactorily meeting the needs of consumers.
	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	No comment.