



UTILITIES  
DISPUTES  
TAUTOHETOHE  
WHAIPAINGA

2 October 2023

## **Utilities Disputes Submission – Options to update and strengthen the Consumer Care Guidelines**

Utilities Disputes Limited | Tautohetohe Whaipanga (UDL) has been a significant provider of complaint resolution services in the energy sector in Aotearoa New Zealand since 2001.

UDL acknowledges the work done by the Electricity Authority | Te Mana Hiko (the Authority) and stakeholders to develop and bring themselves into alignment with the Consumer Care Guidelines (Guidelines). We are pleased to participate in the consultation by the Electricity Authority to review these guidelines.

### **Our background**

UDL is an independent, not-for-profit company that provides free and fair resolution of utilities-related complaints that have not been able to be resolved between the parties.

We currently operate four complaint resolution schemes: the Government-approved Electricity and Gas Complaints Service (Energy Complaints Scheme), the Government-approved Broadband Shared Property Access Disputes (BSPAD) Service, a voluntary Water Complaints Service, and a voluntary Telecommunications Complaints service.

We have strong relationships with consumer support agencies and advocacy groups, our member utility organisations, including both retailers and distributors and Transpower.

### **Opening comments**

Our submissions are based on our experience in dealing with consumer complaints in the energy sector. We have been working in this space for over 22 years and welcome the review of the Guidelines. When dealing with complaints, UDL must have regard to principles of good industry practice and any industry guidelines. We refer to the Guidelines when resolving complaints.

When resolving complaints, the Guidelines provide a reference point for good industry practice regardless of whether they are mandatory or voluntary, and their role in our decision-making would not change should the Authority decide to make part or all the Guidelines mandatory.

We note the Authority's research to date shows some gaps in self-reported compliance with the Guidelines. Making part or all of the Guidelines mandatory may improve complaint resolution

outcomes for those consumers who deal directly with their provider and do not refer their complaints to UDL.

**Q1. Do you agree or disagree with our view that the Guidelines are not delivering on their purpose or intended outcomes? Please provide any supporting evidence.**

UDL regularly references the Guidelines when resolving complaints and issuing decisions. The introduction of the Guidelines has had a clear and positive impact on the way retailers interact with consumers.

However, from UDL's perspective, the Guidelines are not fully delivering on their purpose and intended outcomes given adherence to the guidelines is inconsistent amongst retailers. Many of the complaints we receive contain issues that are covered by the Guidelines with varying levels of adherence to them.

A qualitative analysis of our complaints involving disconnections shows that some retailers have improved their disconnection processes to align with the Guidelines, however inconsistencies remain. For example, before the Guidelines were introduced, complaints involving disconnected consumers were often drawn-out negotiations in which the customer was required to make a significant minimum payment before the retailer would agree to keep the power connected, or reconnect it. Since the Guidelines were introduced, retailers are much more likely to keep consumers' power connected while the complaint is being resolved, which reduces the risk of harm to the consumer.

**Q2. Do you agree the policy objective should be delivering the purpose and intended outcomes of the Guidelines? If not, why not?**

Yes, as an independent service that exists for the benefit of both consumers and the energy industry, UDL supports the Authority's aim to balance consumer and retailer interests.

**Q3. Do you consider the Guidelines' recommendations, purposes, and intended outcomes continue to reflect general industry consensus? Note in this question we are seeking your views on the Guidelines' content; not whether they should be mandatory.**

Yes.

**Q4. What do you think about our approach to limit options to areas covered by the current Guidelines?**

We look forward to future consultations on amending or extending the guidelines. We can provide further data at the Authority's request if this will assist in designing further consultations.

**Q5. What issues that fall outside of the current Guidelines would you like to see us consult stakeholders on in an issues paper to be released by mid2024? If possible, please provide any initial evidence on these issue areas.**

We believe there is value in a consultation on more consistent formats and standards for energy bills. We note the Consumer Advocacy Council has recently done some work in this area including its Best Plan Notice. We deal with many complaints involving bill confusion, where consumers struggle to

understand or interpret the information presented on their bill. We often see examples of industry terminology not being clearly defined, customer plans not being clearly stated, and the significance of estimated bills not being explained. The benefits of bundling and additional offers could also be presented more transparently, and both Consumers and retailers would benefit from bills written in plain language.

We note the Commerce Commission has recently (21 September 2023) called for greater transparency with telecommunication services in the provision of services that are bundled with energy, requesting providers to disclose all key information up front so that consumers know exactly what they're signing up for.

The Authority could also consider any complications retailers might face when applying the guidelines in the context of consumers with bundled utility services (electricity, gas, internet). We note the Gas Industry Co has introduced voluntary Consumer Care Guidelines. Both UDL and the Telecommunications Forum (TCF) have published Customer Care Codes for their Telco scheme members. We expect the Authority will continue to work closely with the relevant stakeholders to ensure consumers are receiving consistent standards of service across all essential utilities.

We note that energy companies already have an obligation under the Authority's Code and UDL's scheme rules to refer complaints to UDL at three points in the complaint lifecycle: Once it is raised, at the end of the provider's complaint resolution process, and at any point that it reaches deadlock.

It would be useful if further amplification of the requirements were explicitly set out in the Guidelines.

By way of an example the Guidelines in part 7 state that disconnections should not occur when a dispute is being considered by UDL or the retailer's internal dispute resolution process, however there is no guidance for retailers on when a dispute should be escalated internally or referred to UDL.

Given that the status of a dispute is key factor in whether a retailer can disconnect or not, the guidelines could be more prescriptive about when and how disputes are referred to UDL.

Clarification would ensure consumer complaints are consistently recognised and escalated appropriately, thereby levelling the playing field for consumer access to dispute resolution services.

## **Q6. Are there other interpretation issues or areas of the Guidelines that you consider need to be clarified, that do not significantly amend or extend the Guidelines?**

UDL makes good use of the guidelines. One area that could use clarification is around the use of a 'traceable form of contact at least once'. Our experience of dealing with complaints that have progressed to disconnection is that there are varying understandings of what this means in practice.

Also, it is also often difficult for retailers to provide evidence that this has taken place.

## **Q7. Do you agree that parts two, six, seven and eight are the parts of the Guidelines preventing the greatest harm from occurring to domestic consumers?**

Overall, yes. Of the areas covered by the Guidelines, UDL receives the most complaints about disconnections and payment difficulties with back bills.

However, some of the recommendations in part 4 cover what retailers should do when deciding not to enter a contract with a person, which is also important for preventing harm. In our view 'refusal to supply' situations often involve consumers who are already without power, which carries the same, if not more, levels of harm as disconnections.

### **Q8. Are there any other options you think we should consider?**

UDL is neutral on the need to make the guidelines mandatory as we use them as part of an industry standard of practice in decision making.

We are satisfied with the options presented by the Authority.

### **Q9. Do you agree with our criteria to assess options? Are there any other criteria you think the Authority should use?**

These criteria appear to be a fair way of assessing the policy options.

### **Q10. Do you agree criteria four and five should be weighted less than the first three criteria?**

Yes, we agree with criteria four and five being weighted less than the first three criteria.

### **Q11. Do you agree with our assumption that retailers already following the Guidelines should not experience a significant increase in their compliance costs if any part of the Guidelines is mandated?**

Retailers already following the Guidelines are likely to be supportive of parts becoming mandated because the additional regulation will ensure a level playing field within the sector. We note this is already covered by the Authority's inclusion of competition and market efficiency in the assessment criteria.

If parts of the Guidelines were mandated, it would place an increased importance on compliance amongst retailers so there may be some increase in costs. The Authority's recent self-assessment of compliance showed confusion amongst the industry around what compliance with the Guidelines looked like – this suggests retailers currently have varying levels of compliance and investment in the Guidelines.

### **Q12. Do you agree that under the status quo, concerns regarding retailer alignment with the Guidelines are likely to continue?**

We believe retailer alignment with the Guidelines will likely improve over time whether they are mandatory or not, however the process will be accelerated if they are made mandatory. And for new entrants into the market, expectations around consumer care will be crystal clear from the outset.

### **Q13. What impacts to competition, innovation and efficiency in the retail market would you expect to see for options three and four respectively?**

Option three (codify parts two, six, seven and eight) may impact on:

- Competition – A level playing field in the areas of supporting customers in financial difficulty, disconnection processes, and non-disconnection of medically dependent consumers may encourage new entrants if they see the market as fair.
- Anecdotally, it appears from our experience that smaller new entrant retailers have been less likely to fully comply with the CCGs so far, potentially due to the cost of compliance, so any move to codify the CCGs may have a greater impact on this sector of the market.
- Innovation – We agree with the assessment that with prescription there will be less room for innovation. However, we question the relevance of innovation in the areas suggested to be codified under option three.
- Efficiency – We agree with the assessment of higher risks to retailers of being unable to disconnect therefore higher risk of bad debt could lead to higher costs for consumers.

Option four (codify parts one to nine) impact on:

- Competition – A level playing field across the guidelines but could be a higher barrier to entry due to costs but may encourage new entrants if they see the market as fair. Any move to codify the CCGs will likely have the greatest impact on smaller retailers and could decrease competition.
- Innovation – We agree with the assessment that with prescription there will be less room for innovation. Many new entrant retailers rely on innovation as a marketing aspect to break into the market.
- Efficiency – We agree with the assessment of higher risks to retailers of being unable to disconnect therefore higher risk of bad debt could lead to higher costs for consumers.

**Q14. For retailers, broken down by Guidelines part, what would the estimated costs to your business be of codifying parts of the Guidelines under option three or four (for example implementation and compliance costs)?**

Not applicable.

**Q15. What do you think the benefits to domestic consumers will be under options two to four?**

The Authority's self-assessment suggests some retailers are currently not aligned with the voluntary guidelines. Because of this we believe making the Guidelines mandatory would force greater compliance resulting in an overall benefit to consumers.

Making aspects of the Guidelines mandatory will have minimal impact on the delivery of UDL's service to consumers as we treat the Guidelines as an industry standard in our decision-making process. Overall, though, it needs to be borne in mind that only a minority of consumers seek the assistance of UDL when they cannot resolve a matter with their provider.

**Q16. Do you agree with our initial assessment of the options against the status quo? If not, what is your view and why?**

We broadly agree. However, for the assessment of Retailer's right to payment/ market efficiency, it is not clear why option three is assessed as low negative impact but option four is assessed as medium negative impact. We agree with the Authority that the other parts of the Guidelines mandated in

option four would not increase retailer debt or infringe on their right to payment so we would expect that the assessment of low negative impact would also apply to option four.

### **Q17. Do you agree with our preliminary view? If not, what is your view and why?**

The preliminary view appears to strike an appropriate balance. Requiring retailers to do more to assist consumers in their times of need should reduce consumer harm and the likelihood of complaints occurring. However, as noted above, from UDL's perspective, it will not change the way we treat the guidelines when investigating complaints.

### **Next steps**

If we can be of further assistance at this stage, please contact Roy McKee at [REDACTED]

Ngā mihi nui

A handwritten signature in blue ink, appearing to read 'M Ollivier', with a horizontal line extending to the right.

**Mary Ollivier**

Commissioner | Toihau

Utilities Disputes Limited | Tautohetohe Whaipanga