

6 April 2018

Hon Heather Roy
Independent Chair
Utilities Disputes Limited
Wellington

VECTOR LIMITED
101 CARLTON GORE ROAD
PO BOX 99882
AUCKLAND 1149
NEW ZEALAND
+64 9 978 7788 / VECTOR.CO.NZ

By email: submissions@utilitiesdisputes.co.nz

Dear Madame Chair

Submission on the Independent Five-Year Review of Utilities Disputes Limited

This is Vector Limited's (Vector) submission on the consultation paper released by Utilities Disputes Limited (Utilities Disputes) on 12 March 2018 on the independent five-year review of Utilities Disputes, focusing on its Energy Complaints Scheme.

We set out in the Appendix our responses to consultation questions that are of relevance or interest to Vector businesses that are providers under Utilities Disputes using the submission template for this consultation.

No part of this submission is confidential.

We are happy to discuss any aspects of our submission with managers or staff of Utilities Disputes. Vector's contact person for this submission is:

Ross Malcolm
Manager Customer Experience
Ross.Malcolm@vector.co.nz
09 978 7648

Yours sincerely
For and on behalf of Vector Limited



Richard Sharp
Head of Regulatory and Pricing

Appendix – Questions for submitters and preferred form for responses

Principle/Area of document	#	Question	Board's view (if available)	Vector'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)	<p>Vector strongly disagrees with the review's recommendation of naming the relevant providers in case notes for the reasons noted by the Board of Utilities Disputes.</p> <p>The naming of parties would unnecessarily focus attention on the named parties and not on the purpose of the case notes which is to highlight relevant cases.</p> <p>Naming the relevant providers may also undermine the confidentiality of settlements.</p>
	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 strongly disagree with the naming of the relevant providers in breach scheme rules and guidelines for the same reason stated in our response to Question 1.
	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 with the Board's position not to accept the review's recommendation to name providers in Utilities Disputes' case notes for the reason stated in our response to Question 1.

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	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	As stated in our response to Question 1, we do not support the naming of providers in case notes. Care would need to be taken to consider whether naming providers would lead to privacy concerns.
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>Vector strongly disagrees with the review's recommendation to consider removing the principles of natural justice from the scheme document. We believe that the High Court judgment (Vector v Utilities Disputes) is likely to provide further guidance on this issue. If the judgment is silent on this issue, we will provide further details.</p> <p>As a starting point, we are concerned that the removal of explicit reference may, in time, mean that natural justice principles are ignored and the removal is seen as evidence that decisions are no longer amenable to judicial review.</p>
	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 do not 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 for the same reason stated in our response to Question 5.
Performance	7	Do you agree with the review's	Board seeks views before considering	We agree with the review's recommendation to remove

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Standards		recommendation to remove performance standards relating to providers' self-reporting on compliance?	the issue further	<p>performance standards relating to providers' self-reporting on compliance.</p> <p>We agree with the review's observation (page 48 of the report on the review) that it is inefficient to request the same information from providers several times because of changes in caseworkers.</p> <p>We would support measures to ensure that multiple requests for the same information from providers is minimised, if not avoided.</p>
	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	<p>We agree with the review's recommendation, which is supported by the Board, to remove performance standards relating to cost per case.</p> <p>We also agree with the Board that current measures should remain until new measures have been approved.</p>
	9	Do you have ideas about other measures the Board could consider adopting?	Board seeks views before considering the issue further	We believe the primary responsibility of raising consumer awareness of Utilities Disputes' services rests with Utilities Disputes. We therefore support low-cost/practical initiatives that are proven or show promise (in New Zealand and other jurisdictions) in effectively raising consumer awareness of the scheme.

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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	<p>In our view, changes can be made to the levy mechanism to improve the efficiency and fairness of how the levy is allocated. We make some suggestions for improvement in our responses to the levy-related questions below.</p> <p>We do not agree with the review's recommendation of removing the 24-hour period following deadlock before a complaint accrues a fee (variable levy). This 24-hour period provides:</p> <ul style="list-style-type: none"> • a strong incentive for providers to make an offer for settlement (as a business decision); and • greater choice for the customer - whether to settle or not at that point. <p>From a provider's perspective, it can be hard to determine which complaints are likely to go to deadlock. The 24-hour period serves as a signalling mechanism that the relevant parties can 'still do something about the complaint'. The settlement of disputes earlier is often preferable to settlement at a later time, saving distress, frustration and costs for the customer, the provider, and Utilities Disputes.</p> <p>We suggest that Utilities Disputes seek independent advice on whether the allocation of the total scheme levy to different</p>

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				<p>types of providers is generally proportionate and fair. For example, bottled LPG consumers have multiple options for resolving their complaint, such as going to another petrol station to get an alternative bottle (i.e. voting with their feet), or the provider could simply replace the LPG bottle that is the subject of the complaint for free. The presence of multiple, alternative bottled LPG providers and the likely smaller value of bottled LPG complaints (relative to other complaints) imply that the likelihood of LPG consumers using the scheme could be lower than consumers of other energy products/services.</p> <p>In relation to special levies - we do not support special levies to fund the defence of Utilities Disputes' actions against the scheme's providers. As evidenced in the Vector v Utilities Disputes process and the special levy, we do not consider the latter to be necessary to fund a defence. Utilities Disputes should be required to operate within its means and not see the ability to raise a special levy as a way to expand its role.</p>
	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	We suggest that the Board consider implementing the option recommended in the review of having 5 fee bands instead of the existing 3 fee bands. This would reduce the gaps between fee bands, i.e. more accurately reflect the time and resources spent on a complaint.

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	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	<p>The principle of 'user pays' should be retained/upheld in the allocation of the levy, i.e. the share of a provider's variable pay should reflect the intensity of their use of Utilities Disputes' services.</p> <p>We support the avoidance or removal of any existing cross-subsidies across providers and across schemes.</p>
	13	What elements of the current levy mechanism do not work and why?	Board seeks views before considering the issue further	<p>The existing levy structure could provide more incentives for providers that very rarely or never used Utilities Disputes' services because no consumer complaints to these providers were referred to Utilities Disputes.</p> <p>For example, a provider that does not have any complaints for the past 2-3 years could be given some discount in their levy allocation the following year, and/or learnings from how they are able to resolve complaints effectively could be acknowledged and shared more widely.</p>
	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	We will wait for the Board's view before commenting.

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	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	We will wait for the Board's view before commenting.
	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	We will wait for the Board's view before commenting.
	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	We agree with the review's recommendation that every organisation covered by the Energy Complaints Scheme should make a contribution to its running costs.
	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	We agree that there should be no cross-subsidisation between providers. And for that matter, between schemes operated by Utilities Disputes.

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	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	<p>We agree with the review's recommendation that the fixed element should cover all costs incurred by Utilities Disputes, excluding those solely related to the handling of individual complaints.</p> <p>There should be incentives to ensure that, as the service grows, fixed cost efficiency is achieved to the benefit of all providers.</p>
	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 10 - second and third paragraphs.
	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	<p>We agree with the review's recommendation that the current variable fee structure needs to be reconsidered.</p> <p>We agree with the review's recommendation of having more fee bands than the existing three-tiered structure.</p>
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>	<p>Vector does not share the Board's concern relating to Land Complaint exclusions.</p> <p>We believe that Land Complaints are best dealt with under the</p>

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			<p>who has a complaint about a member has access to a Scheme for resolving the complaint)</p>	<p><i>Resource Management Act 1991, Electricity Act 1992</i>, and various local body legislation. Our recent experience in a land complaint which Utilities Disputes was made aware of in Auckland's Mission Bay area highlighted the complexities with health & safety issues, neighbourhood disputes about property development, and the location of electricity assets in the road corridor. We await to see Utilities Disputes' approach to that complaint and will provide further comments, if required.</p> <p>We support the existing arrangements which allow providers to refer a land matter to Utilities Disputes as a path to resolution where urgent factors like health & safety issues are not involved.</p>
	23	<p>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.</p>	<p>Board seeks views before considering the issue further</p>	<p>We are concerned that the removal of these exclusions could lead to health & safety implications as well as delays in our operations and processes.</p>
<p>Other proposed changes -</p>	24	<p>Do you agree in principle with the idea of a deemed membership mechanism?</p>	<p>Board seeks views before considering the issue further</p>	<p>We do not tend to agree with the idea of a deemed membership mechanism.</p>

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<i>Accessibility</i>				<p>We believe that the process of integrating additional/potential providers to any Utilities Disputes scheme should undergo a proper consultation process similar to that undertaken for LPG providers. This would ensure that:</p> <ul style="list-style-type: none"> • the right types of service providers are identified; • those providers' membership can commence at the same time, i.e. some will not be levied earlier or later; and • there is a proper notification and transition period for the incoming providers and their customers. <p>In addition, there may be sectors where there are alternative dispute resolution mechanisms. We prefer to see consumers retain the right to choose where and how their complaints are resolved.</p>
	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	We do not tend to think that a deeming mechanism should apply to any scheme with mandatory membership for the reasons stated in our response to Question 24.
	26	To enable fair contribution toward the costs of running the scheme, if	Board seeks views before considering the issue further	See our response to Question 24.

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		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?	Board seeks views before considering the issue further	See our response to Question 24.
	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 will wait for the Board's view before commenting.
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 do not have any objection to changing references to "lines company" to "distributor" in the scheme documents. In our view, what is important is consistency in the use of terms in these documents to avoid confusion and enable consumers and providers to use the scheme more easily.
	30	If references to lines company were changed to distributor, what other steps, (including other	Board seeks views before considering the issue further	Unless examples are provided, it is hard to see how the meaning of any clause referring to the same type of provider but called by a new name could change the meaning of that

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		potential changes) do you think are needed to avoid changing the meaning of any clause(s) affected?		<p>clause.</p> <p>As indicated in our response to Question 29, consistency in the use of terms should be given importance.</p>