

19 June 2024

UDL Submission - Enhancing telecommunications regulatory and funding frameworks

Introduction

Utilities Disputes Limited Tautohetohe Whaipainga (UDL) welcomes the opportunity to comment on the Ministry of Business, Innovation & Employment's (MBIE) *Discussion document: Enhancing telecommunications regulatory and funding frameworks*.

UDL

UDL is an independent, not-for-profit organisation that resolves complaints between utilities companies and their customers. Our aim is to facilitate a strong relationship of trust between consumers and utilities organisations and focus on three aspects: Prevent, Educate and Resolve.

UDL operates the government approved Broadband Shared Access Disputes Scheme (BSPAD Scheme) and has expertise and knowledge of the types of the complaints and challenges that arise in this area.

UDL also operates a telecommunications complaints resolution service for Contact Energy, which is open to other providers. This is a voluntary scheme and is not an Industry Dispute Resolution Scheme under part 7 of the Telecommunications Act 2001. In addition to these schemes, UDL operates the approved Electricity and Gas Complaints Scheme, and voluntary Water Complaints Schemes.

UDL's comments come from this extensive background in complaints resolution over a number of utilities, and our particular expertise in the BSPAD space.

Response to Questions

Q1. Do you have any feedback about the proposed criteria to assess the options in the next phase of this work? Are there other criteria that we should consider?

UDL supports the proposed criteria, and we make the following initial observations.

We note the criteria *promoting competition* will include fairness through the concept of a level playing field between providers when providing consumers access to dispute resolution services. This is relevant when considering mandatory membership of a dispute resolution scheme. We note the criteria *protecting consumer interests* is particularly relevant when considering the reinstatement and expansion of the statutory right of access.

Both these criteria will also have application should a telecommunications scheme become mandatory.

While the consultation document assumes that Telecommunications Disputes Resolution (TDR) would likely be the scheme provider,¹ we would expect an open tendering process to be followed if a single mandatory industry dispute resolution scheme was introduced. A robust tendering process will ensure the best resolution model and service provider is selected for consumers and telecommunications providers.

Q2. Do you consider that the lack of mandatory requirement for telecommunications service providers to belong to an industry dispute resolution scheme is a problem that needs to be addressed?

UDL's experience in the electricity sector is that a single mandatory dispute resolution scheme, regularly reviewed, has many advantages. It allows for consistency in decision making, consistent data collection and can provide an opportunity to mandate specific reporting requirements that can provide greater transparency for how a particular sector is performing in terms of consumer issues.² It can also allow staff to become trained as experts in conciliation and the workings of the industry.

The recent independent review of UDL's Energy Complaints Scheme showed providers can also support a single mandatory scheme if it operates effectively. UDL's sense is that similarly the telecommunications sector may benefit from having a single scheme provider.

¹ "Given there is only one industry dispute resolution scheme currently in place (the TDR), the implication of this option is that all telecommunications providers would likely become members of the TDR. Under the Act there is provision for other industry dispute resolution schemes to be developed." *Discussion document*, para 33.

² For example, in our experience most significant dispute resolution schemes operating in New Zealand and Australia report annually on the number of enquiries and complaints they resolve. There is some variation, however, on how this data is labelled and provided. For example, while TDR appears to have provided a combined total for enquiries and complaints in the past, these appear to have been subsequently combined and reported as complaints which we will expect will be for valid reasons. The difference in reporting can, however, make it hard to compare industries and consumer satisfaction and a standard approach could be introduced for any mandatory scheme.

Q3. For telecommunications service providers who are not members of the Telecommunications Dispute Resolution scheme, why have you chosen not to be a member? Are you a member of another scheme, why or why not?

While this question does not directly relate to UDL, we believe it is helpful to provide some context for the scheme we operate.

UDL provides a voluntary telecommunications scheme for Contact Energy. The scheme is not an industry dispute resolution scheme under part 7 of the Telecommunications Act 2001. The scheme does not consider complaints about Industry Retail Service Quality Codes or Commerce Commission Codes.

The impetus for the scheme was to provide a complaints resolution service for both Contact Energy's electricity and telecommunications services. This closed a potential gap in consumer protection. It also provided the added benefit for Contact Energy customers of being able to access UDL's services for all potential consumer issues, whether they related to energy or telecommunications services.

It is worth noting, however, that we have maintained an effective relationship with the TDR scheme, when offering our services to ensure Contact Energy customers are not disadvantaged. This includes the referral of complaints to TDR (we also regularly refer complaints to TDR from customers of other energy scheme members who are part of TDR) and the effective sharing of relevant information between both organisations.

Q5. What are your views on the options we have identified? Do you have a preference, if so, why? Are there any options we have not identified?

UDL supports the creation of a mandatory industry dispute resolution scheme for telecommunication customers and providers.

The 2021 Cameron Ralph Khoury independent review of the TDR scheme noted considerable support for membership of the scheme to become mandatory, with improvements to customer service and internal standards, a more level playing field, awareness of the scheme, industry coverage and independence all noted as important reasons for membership.

The Cameron Ralph Khoury review also noted scheme fees can be set in a way that ensures fairness between members (including small members who may have very few complaints coming to the scheme), and when this is done successfully, industry participants are generally accepting of mandatory membership. A robust fee process also ensures the resolution scheme has the resources to resolve complaints in timely manner, with the appropriate industry expertise.

In UDL's Energy Complaints Scheme a fee is charged per installation control point which each provider is responsible for (often there is one installation point per customer). A further fee is charged per complaint which increases at each stage of the dispute resolution process. This hybrid model ensures the dispute resolution process has the resources it requires, but also means small providers pay an appropriately sized membership fee.

Q6. What are your views on the options we have identified? Do you have a preference, if so, why? Are there any options we have not identified?

UDL is generally supportive of Option 2, with the appropriate safeguards to protect individual property rights. We have sought to rely on the purpose of the original amendments to the Telecommunications Act 2001 and ability for affected persons to access an independent service such as ours.

As the BSPAD scheme provider, UDL has been able to resolve a significant number of disputes since its establishment in 2017. While we have seen a reduction in the number of cases over time, we agree with the analysis that there will be continued fibre uptake and demand for new fibre connections will continue.

UDL notes the statutory framework for new BSPAD installations will expire on 1 January 2025.³ Although UDL could attempt to assist parties in a voluntary scheme after this date, the effectiveness of such a voluntary scheme would be limited. This is because at the heart of the dispute is the issue of property rights. Understandably such rights are highly valued by the public. We are confident Parliament will correctly weigh the competing rights and the need to extend the BSPAD scheme when considering any extension. It is worth reflecting on section 155A of the Telecommunications Act 2001 and its description of the purpose of the subpart:

The purpose of this subpart is to enable more people and businesses to obtain the benefits of fibre-to-the-premises and other technology, within a shorter time frame, by—

(a) recognising that, when more than 1 person's consent is required for an FTTP service provider or a network operator to access a property because each of those persons has some form of legal right in respect of that property, and there are difficulties in obtaining those consents, the process of installing infrastructure (such as fibre optic media) is delayed and opportunities to realise the benefits of that technology are missed;

UDL's experience of considering BSPAD complaints is that the above statutory description is accurate, and if parliament decides to extend the BSPAD roll out, a reinstatement of the statutory right or an urgent amendment will be required. These complaints, while not many, can be understandably positional in nature, and many consumers are surprised at the BSPAD right of installation and entry. The right to access fast and reliable internet access should also be considered.

The proposed gap from 1 January 2025 until the right of access may be reinstated is regrettable. It is possible it will impact on industry lead in times on installations, as providers stop offering installations in affected areas. We have been advised by one major provider that this could impact up to 4000 properties. We would be willing to work with MBIE to see if there are any steps that can be taken to minimise or reduce the proposed gap if possible.

³ See Telecommunications Act 2001 s 155H(A).

Q8. If the statutory rights were reinstated, what do you think is an appropriate expiry date (if any)?

If there is a renewed commitment to the fibre roll out then ideally it should be long enough for completing or providing the opportunity for all installations. We would be willing and ready to continue to operate the BSPAD scheme and provide an ongoing dispute resolution service.

Q9. What are your views on the options we have identified? Do you have a preference, if so, why?

AND

Q10. If the statutory rights were expanded to cover some high impact installs, what type of 'high impact' installs should be permitted? If you are a fibre provider, please provide examples of what changes to the rights would make a significant difference to enabling more fibre connections.

UDL would be able to consider and resolve disputes about high impact installations. We maintain a panel of experts who assist UDL on the technical aspects of cases and we would continue to commit to training our staff in this area.

The discussion paper identified two high impact install methods that could be included in the BSPAD scheme:

- Increasing the length of trenches allowed to lay cables (currently 3m for each dwelling it passes)
- Increasing the square meterage of a driveway that can be impacted (currently 30 per cent of a driveway's width)

We expect parliament will balance the merit of increasing the availability of fibre with any additional encroachment into property rights. We believe the current BSPAD scheme is an effective safeguard for property owners who rely on access to shared property which could also be effectively applied to suitable high impact installations.

Q11. What are your views on the options we have identified? Do you have a preference, if so, why? Please provide data and evidence to support your submission where possible.

We believe the Telecommunications Act 2001 could benefit from being clearer in situations where fibre installations can be invoked without a connection order, in the circumstances set out in the paper. We believe clarifying this to allow rights to be invoked without a connection order will assist in meeting the stated goal of fibre being available to 87% of the population.

UDL has also considered disputes where there have been divergent views over the scope of the access rights granted to fibre installation under s 155I of the Act, particularly in relation to the installation of fibre infrastructure and drop off points for future requestors on shared

property. This typically arises where a fibre installer wants to limit the disruption to shared property by installing infrastructure for multiple users at the first opportunity.

UDL therefore recommends a definition of “installation” in the Act, to further emphasise that subpart 3 of part 4 provides access rights in respect of all premises in an area of shared property and is not limited to installation work required in respect of the particular person who placed the order (see ss 155A, 155 ZD(1)(b)). This may be particularly relevant if the scope of the rights are extended. UDL is available to discuss this further if required.

Q19. Do you consider there is a need for a registration requirement for telecommunications providers operation in New Zealand (when entering the market, as well as updating contract and other business details over time)? Why or why not?

A registration requirement for telecommunications providers would assist in holding market participants accountable to consumers but also may assist the participants to have ready access to industry guidance. In the energy sector market participants are required to register with the Electricity Authority. This includes the opportunity for education, compliance and vetting.

Next Steps

If UDL can be of further assistance please contact Paul Moreno, Kaiwhakahaere Rangahau, Pūrongo | Research and Reporting Manager paul@udl.co.nz

Yours sincerely



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