

# **The General and Scheme rules**

for the

## **Energy Complaints Scheme**

operated by

### **Utilities Disputes Limited**

**Effective 1 April 2019**

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of  
the complaints resolution services  
operated by  
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## Utilities Disputes Limited

### General Rules

#### INTRODUCTION AND GENERAL PRINCIPLES

1. Utilities Disputes Limited or Utilities Disputes operates an independent external complaints resolution service whose purpose is to resolve Complaints about Providers who provide goods or services in the Utilities Sector.
2. Utilities Disputes' main objectives are to:
  - a) provide Complainants with access to a dispute resolution scheme for resolving their Complaint,
  - b) be an Approved Scheme for businesses or undertakings operating in the Utilities Sector, and
  - c) actively help resolve Complaints.
3. Utilities Disputes will appoint a Commissioner to deal with Complaints. In dealing with Complaints the Commissioner must:
  - a) do what he or she considers appropriate to resolve Complaints in a cooperative, fair, efficient, and timely way,
  - b) proceed with minimum formality,
  - c) be as transparent as possible, while also acting in accordance with his or her confidentiality and privacy obligations, and
  - d) act in accordance with the founding principles of:
    - accessibility
    - independence
    - fairness
    - accountability
    - efficiency
    - effectiveness, and
    - the rules of natural justice.
4. The Commissioner exercises all powers and discretions conferred on Utilities Disputes by these General Rules and the Scheme Rules. The Commissioner must act independently when dealing with Complaints and not be subject to the direction or control of any other person.

## **GENERAL RULES AND SCHEME RULES**

5. These General Rules set out:
  - a) who can make a Complaint,
  - b) how Utilities Disputes resolves Complaints,
  - c) the types of remedies Utilities Disputes can provide, and
  - d) other related matters.
  
6. Utilities Disputes will also agree Scheme Rules with individual Providers or groups of Providers that set out:
  - a) more specific details of how the Scheme will deal with Complaints. For example, the value of the maximum Complaint that can be dealt with for purposes of General Rule 15(e), and
  - b) any variations or additions to these General Rules that will apply to dealing with Complaints about the Providers in that Scheme. For example, variations or additions needed to comply with any legislation that applies specifically to Providers in that Scheme.
  
7. Utilities Disputes will consult with relevant stakeholders before agreeing Scheme Rules.
  
8. If a Scheme Rule is inconsistent with a General Rule, the Scheme Rule will apply.
  
9. By entering into a Provider Agreement, a Provider becomes bound by these General Rules and by the Scheme Rules that apply to it.
  
10. The Board may amend:
  - a) these General Rules, after consulting with relevant stakeholders including all Providers, and
  - b) any Scheme Rules, after consulting with the relevant Providers and other relevant stakeholders.
  
11. Where a Scheme is an Approved Scheme, the Board must follow the requirements of the relevant legislation (for example, obtaining the consent of the Minister) before amending the Scheme.

## **PROVIDER OBLIGATIONS**

12. Each Provider must:
  - a) promote the relevant Scheme(s) on any invoice to customers and in other relevant customer information.

- b) have and comply with a documented Complaints process appropriate to the nature of their services and scale of their operations, including providing and keeping up to date information about the staff member(s) responsible for complaint handling.
- c) provide information about their Complaints process to their customers or consumers.
- d) ensure Complaints can be made in any reasonable form and are promptly recognised as Complaints
- e) promptly refer Complaints made to them in error to the correct Provider.
- f) provide Utilities Disputes' contact details to Complainants when:
  - the Complainant first makes the Complaint to the Provider,
  - advising the Complainant of the outcome of the Provider's Complaints handling system, or,
  - the Complaint has reached Deadlock.
- g) when advising Complainants of the outcome of Complaints dealt with by the Provider's Complaints handling system, also advise Complainants that they may complain to Utilities Disputes, if they are not satisfied with that outcome.

### **COMPLAINTS THAT MAY BE CONSIDERED AND DETERMINED BY UTILITIES DISPUTES**

13. Before accepting a Complaint for consideration, Utilities Disputes must be satisfied:

- a) the Complaint is made by or on behalf of a Complainant, and
- b) the Complaint has been made to the Provider and has reached Deadlock.

13A. For the purposes of considering and determining a Complaint, "Provider" will include a business or undertaking in relation to which a Complaint has been received, which is obliged to become a Provider but which has not yet signed a Provider Agreement, and these rules will be interpreted accordingly.

14. Utilities Disputes may accept a Complaint for consideration:

- a) about goods or services provided (or requested but not provided) by a Provider,
- b) about the unlawful effect on a landowner or land occupier's rights of a Providers actions when exercising, purporting to exercise or failing to exercise rights, powers or obligations claimed by the Provider under any applicable law, under an easement, or under an access agreement granted to the Provider by the owner or occupier, or
- c) if the Provider agrees, where Utilities Disputes would not otherwise have jurisdiction to accept the Complaint for consideration.

15. Unless the Provider agrees otherwise, Utilities Disputes must not accept a Complaint for consideration:

- a) if it is about the price a Provider chooses to set for their goods or services. But Utilities Disputes may consider whether appropriate information about charges

- has been made available to the Complainant and whether charges for services have been correctly applied,
- b) if the subject matter of the Complaint is being, or has already been, dealt with in a previous Complaint to Utilities Disputes by or on behalf of the same Complainant against the same Provider, and there are insufficient additional events and facts raised to warrant Utilities Disputes' consideration of the new Complaint,
  - c) if the subject matter of the Complaint is being, or has already been, dealt with in a proceeding brought by the Complainant before a court, tribunal, arbitrator, independent or statutory complaints or conciliation body or a statutory Ombudsman and the Provider has complied with General Rule 12,
  - d) if more than six years have passed from the date the Complainant first became aware or should reasonably have become aware of the circumstances giving rise to the Complaint, or
  - e) if the value of the Complainant's claim exceeds the amount stated in the Scheme Rules in respect of that Provider.

16. Utilities Disputes decides whether a Complaint falls within its jurisdiction. Utilities Disputes will request and consider representations from both parties before deciding.

17. If a Complaint is not accepted, Utilities Disputes will give written reasons to the parties.

18. Utilities Disputes may refuse to deal, or stop dealing, with a Complaint if Utilities Disputes considers it appropriate.

Examples include where:

- a) there is a more appropriate place to deal with the Complaint,
- b) the Complainant does not, or ceases to, have a sufficient interest in the subject matter of the Complaint,
- c) the Complainant has received a payment under an insurance policy in respect of the subject matter of the Complaint and Utilities Disputes considers the payment to appropriately resolve the Complaint
- d) it appears to Utilities Disputes, on the basis of the facts presented by the Complainant, the relevant Provider has made a reasonable settlement offer in settlement of the Complaint,
- e) the Complaint being made is frivolous or vexatious or not being pursued in a reasonable manner, or
- f) the Complainant knew about the circumstances giving rise to the Complaint for more than 12 months before making the Complaint.

## **WHO MAKES DECISIONS ON COMPLAINTS**

19. The Commissioner makes all decisions on Complaints.

20. The Commissioner may delegate:

- a) all or any powers (except the power to make final decisions on jurisdiction, Recommendations and Determinations) to any employee or contractor engaged by Utilities Disputes.
  - d) with the agreement of the Board, the power to make final decisions on jurisdiction, Recommendations and Determinations, to one or more Deputy Commissioners.
21. Despite General Rule 19, the Commissioner may delegate a Deputy Commissioner to one or more Schemes and the Deputy Commissioner will take responsibility for dealing with Complaints in that Scheme.
22. The Commissioner will form an independent panel of experts with particular knowledge of the relevant industry sector, including good industry practice to provide independent technical advice to the Commissioner in relation to Complaints.

## **DEALING WITH COMPLAINTS**

23. Where Complainants need assistance, Utilities Disputes may assist Complainants make a Complaint.
24. Utilities Disputes must deal with each Complaint on its merits and with the objective of reaching an outcome that, in its opinion, is fair and reasonable in all the circumstances having regard to:
- a) any legal rule or judicial authority that applies,
  - b) rules of natural justice,
  - c) general principles of good industry practice and any industry guidelines that apply,
  - d) resolving Complaints in a cooperative, efficient and timely way, and
  - e) assisting Complainants and Providers to reach informed and voluntary agreements to resolve Complaints where possible.

## **INFORMATION**

25. Utilities Disputes will ensure its Complaint handling process includes a clear and prominent acknowledgement and agreement by the Complainant that the Complainant:
- a) authorises the Provider to disclose any information Utilities Disputes may request from the Provider about the Complaint, and
  - b) undertakes to provide any more information Utilities Disputes may reasonably request.



26. Utilities Disputes may decide not to continue considering a Complaint where a Complainant unreasonably refuses to provide information requested by Utilities Disputes.
27. A Provider must promptly provide Utilities Disputes with information Utilities Disputes requests to assist in dealing with a Complaint. This does not apply if the Provider provides a certificate to Utilities Disputes confirming:
- a) the disclosure would cause the Provider to breach its duty of confidentiality to a third party who has not consented to disclosure, despite the Provider using best efforts to obtain such consent,
  - b) the Provider does not have the information requested, or
  - c) providing the information would breach a Court order or legal professional privilege, or would prejudice a current investigation by the New Zealand Police or another law enforcement agency.
28. Information provided by a Party will not be treated as confidential and may be publicly disclosed, unless the law requires, or Utilities Disputes agrees, otherwise.
29. Any Party may ask for copies of any information on Utilities Disputes' file on the Complaint and Utilities Disputes must provide that information subject to legal requirements and any procedural standard Utilities Disputes develops.

## **COMPLAINT RESOLUTION PROCESS**

30. After accepting a Complaint for consideration, Utilities Disputes must:
- a) use reasonable efforts to resolve the Complaint in a timely manner,
  - b) comply with the requirements of natural justice and procedural fairness, and
  - c) regularly inform the Parties of progress towards resolving the Complaint.
31. In resolving the Complaint, Utilities Disputes:
- a) must investigate the Complaint to the extent it considers appropriate in the way set out in these General Rules and the relevant Scheme Rules and consistent with the rules of natural justice,
  - b) may consider any information in relation to a Complaint, and make any inquiry, that is fair and reasonable in the circumstances, and
  - c) must aim to be consistent with the way other Complaints have been resolved by Utilities Disputes but is not bound by any legal rule of evidence. Decisions do not create precedents.

## **Recommendations**

32. If the parties do not settle the Complaint, or if the Complainant or Provider requests, the Commissioner may recommend a settlement. Before recommending a settlement the Commissioner must give the Parties 15 working days' notice of the intention to do so and the opportunity to make submissions during the notice period.

33. Resolution of a Complaint about a Provider is binding on the Complainant if the Complainant accepts the resolution in full and final settlement or has agreed to be bound by a final decision and a Determination is made.
34. If a Recommendation is accepted by all Parties, the Provider must promptly comply with it.

### **Determinations**

35. If a Recommendation is accepted by the Complainant, but not by the Provider, within 15 working days, the Commissioner may make a Determination.
36. If a Determination is accepted by the Complainant within 15 working days it is binding on the Parties and the Provider must promptly comply with it. If not, the Complainant is entitled to pursue any remedy in any other forum and the Provider is fully released from Determinations in relation to that Complaint.
37. The value of any Determination must not be greater than the amount set out in the Scheme Rules that apply to the Provider, unless the Provider agrees a greater amount
38. In addition to the amount payable under General Rule 37, a Determination may include an amount of up to \$2,000 to compensate a Complainant for expenses of making a Complaint or for inconvenience suffered because of a Provider's failure to comply with a relevant code of conduct. Any amount of money paid to a Complainant under this clause is in addition to the amount a Determination may otherwise provide.
39. Unless the Provider agrees otherwise, any Determination that requires the Provider to provide any good or service, take any action or pay money or money's worth must be made on terms that it may be accepted only in full and final settlement of the subject matter of the Complaint.
40. There is no right of appeal of a Determination.

### **TEST CASES**

41. At any time before the Commissioner has made a Recommendation or Determination, a Provider named in a Complaint:
  - a) may give Utilities Disputes written notice it considers the Complaint should be pursued in court proceedings because it involves an issue which may have important consequences for the Provider's business or businesses like it, or an important or novel point of law,
  - b) must at the same time write to the Complainant explaining it proposes to pursue the Complaint as a test case and outlining the process by which this will occur.

The Provider must copy that correspondence to Utilities Disputes, and

c) must:

- begin, and/or assist the Complainant to begin, proceedings in respect of the Complaint in any New Zealand court within four months of the date of notice to the Complainant,
- pay the Complainant's costs and disbursements (including any reasonable costs of legal representation) of the proceedings at first instance and any subsequent appeal proceedings commenced by the Provider (except by way of respondent's notice, cross-appeal or other similar procedure), and
- make interim payments for such costs if and to the extent that it is reasonable to do so.

42. Provided Utilities Disputes agrees with the Provider's reasons and considers the Provider's notice to the Complainant is accurate and clear, Utilities Disputes must suspend consideration of the Complaint for four months.

43. Utilities Disputes may elect to resume consideration of the Complaint if proceedings are:

- a) not begun within four months, or
- b) not pursued to judgment.

## **COSTS OF PROVIDING THE SERVICES**

44. All Utilities Disputes' costs of operation and of providing its services and related activities are met by the Providers.

45. Each Provider will pay membership fees and charges as set out in the relevant Scheme Rules

46. Utilities Disputes will set the membership fees and charges payable in respect of each Scheme with the aim of covering the Scheme's direct costs and a proportionate share of Utilities Disputes' overall costs.

## **OTHER UTILITIES DISPUTES ACTIVITIES**

47. As well as resolving Complaints, Utilities Disputes 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.

48. These activities may include (but are not limited to):

- a) promoting a Scheme to ensure public awareness of Utilities Disputes' services and how to use them,
- b) setting performance standards for Utilities Disputes' resolution of Complaints, and measuring the quality and timeliness of their services by reference to those standards,

- c) reviewing the General Rules, Scheme Rules and Schemes from time to time, to assess whether Utilities Disputes considers any amendments are appropriate,
- d) monitoring Providers' compliance with the Scheme(s) including, for example, by mystery shopping, and providing reports and recommendations to Providers based on the outcome of the monitoring,
- e) collecting and analysing information and data about Complaints and their handling and about the Utilities Sector, and using those to monitor, prepare and publish reports about trends, practices and systemic issues in relation to a particular Scheme or all or part of the Utilities Sector,
- f) making recommendations and reports in light of trends, practices and issues in relation to a particular Scheme or all or part of the Utilities Sector,
- g) preparing a code of conduct Providers must follow when handling Complaints,
- h) establishing a process for dealing with Complaints about Utilities Disputes' operation of a Scheme,
- i) preparing reports on Utilities Disputes' activities for stakeholders including the Board and any Minister, or
- j) providing anything required by legislation to enable a Scheme to be an Approved Scheme.

49. A Provider must promptly provide information Utilities Disputes requests:

- a) for administrative, operational, business planning or performance review purposes,
- b) to prepare reports and recommendations for a Minister or other significant stakeholder, or
- c) to assist in developing a code of conduct for Providers in one or more Schemes or Utilities Sectors.

## **OTHER MATTERS**

50. The Commissioner, Deputy Commissioner(s), Board members and Utilities Disputes employees and contractors are not liable for any loss, damage or liability that arises from anything done or omitted in the course of their duties, unless the person has acted in bad faith.

51. The Providers in each Scheme jointly indemnify the Commissioner, Deputy Commissioner, Board members and Utilities Disputes employees and contractors for any liabilities incurred as a result of an act or omission performed in good faith in administering that Scheme. This indemnity does not cover liabilities:

- a) to the extent they are covered and paid under an insurance policy held by Utilities Disputes,
- b) incurred in administering other Schemes, or
- c) arising out of a person's wilful default.

52. Utilities Disputes may hold annual stakeholder meetings in each Scheme, giving not less than 10 working days' notice of the time and place. The chairperson of the Board will chair the meeting and will decide the procedure to follow.
53. A Provider which fails to meet its obligations under the General Rules and the Scheme Rules or fails to comply with a Recommendation or Determination may be expelled from Utilities Disputes by the Board.
54. If there is any inconsistency between a Provider's obligations under a Scheme and a Provider's rights and or obligations under any other agreement or arrangement between Providers, the Provider's obligations under the Scheme prevail.
55. A Provider may withdraw from Utilities Disputes by giving 12 months' notice (or a shorter period if the Board agrees).
56. Termination or withdrawal does not affect a Provider's obligations to pay money to Utilities Disputes relating to any period, or to comply with a Recommendation or Determination made by Utilities Disputes, before termination or withdrawal.

## DEFINITIONS

In these General Rules, the following words are used with these meanings:

**Approved Scheme** means a Scheme approved by a Minister as a dispute resolution scheme for the purposes of legislation that applies to participation in the Utilities Sector.

**Board** means Utilities Disputes' Board of Directors.

**Commissioner** means Utilities Disputes' Chief Executive Officer and when used in relation to procedures for dealing with Complaints, includes the Deputy Commissioner assigned to the relevant Scheme.

**Complaint** means an expression of dissatisfaction made to or about a Provider where a response or a resolution is explicitly or implicitly expected. For example, a Complaint may be made by letter, email, phone call, text message or a post on a social media page maintained by the Provider, but not on a social media page maintained by the Complainant or a third party.

**Complainant** means a person who has made a Complaint.

**Deadlock** means either

- a) the Complaint:

- has not been resolved after more than 20 working days and the Provider has not notified the Complainant in writing of its good reason for extending this time, or
- has not been resolved after 40 working days.

b) the Commissioner considers:

- the Provider has made it clear that they do not intend to do anything further about the Complaint,
- the Complainant would suffer unreasonable harm from waiting any longer, or
- it would be unjust for any other reason to wait any longer. **Deadlocked** has a consistent meaning.

**Deputy Commissioner** means a Deputy Commissioner appointed by the Commissioner.

**Determination** means a written determination by the Commissioner under paragraphs 35- 40 including a brief statement of reasons for the determination. **Determine** has a consistent meaning.

**Minister** means the Minister (or Ministers, as the case may be) that is relevant to a particular Scheme or Schemes.

**Party** means a party to a Complaint.

**Provider** means a business or undertaking that provides goods or services in the Utilities Sector and that has entered into a Provider Agreement. When used in relation to a particular Complaint, Provider means the Provider about which the Complaint is made.

**Provider Agreement** means an agreement in the form set out in the Appendix. It includes the Scheme Rules that apply to the particular Provider or group of Providers.

**Recommendation** means a written recommendation by the Commissioner for settlement or withdrawal of a Complaint including a brief statement of reasons for the recommendation.

**Scheme** means the terms on which an individual Provider or group of Providers agrees to use Utilities Disputes' services as set out in these General Rules and the Scheme Rules that apply to them.

**Scheme Rules** means the terms that apply to a particular Provider or group of Providers as set out in their Provider Agreement.

**Utilities Sector** means businesses or undertakings that provide necessary goods or services to the public including (without limitation) electricity, gas, water, and telecommunications and related goods and services.

## **APPENDIX: PROVIDER AGREEMENT**

### **New Provider**

**Name of entity:** *[insert details]* (**New Provider**)

**Physical address:** *[insert details]*

**Postal address:** *[insert details]*

**Scheme:** *[select relevant Scheme from dropdown box]* (**Scheme**)

## **TERMS AND CONDITIONS**

- 1 The terms and conditions of this agreement, together with the relevant Scheme Rules and the General Rules of Utilities Disputes Limited (Utilities Disputes), govern the legal relationship between Utilities Disputes and the New Provider.
- 2 The New Provider acknowledges that by accepting this agreement the New Provider agrees to:
  - 2.1 become a Provider under the Scheme;
  - 2.2 be bound by the terms of the Scheme; and
  - 2.3 observe and perform all of the obligations of a Provider under the Scheme.
- 3 For the purposes of the Contracts (Privity) Act 1982, this agreement is given for the benefit of all Providers, each Utilities Disputes Board Member (including committee members) and the Commissioner, and is enforceable by any of them.
- 4 This agreement becomes effective when it is executed by Utilities Disputes. Utilities Disputes will promptly notify you in writing once it has been executed.
- 5 All terms defined in the Utilities Disputes General Rules or the Scheme Rules have the same meaning when used in this agreement.
- 6 By accepting this agreement you warrant that you are fully and properly authorised to do so on behalf of the New Provider.

**The New Provider understands and accepts the terms and conditions of this agreement**

## SECTION 2 – SCHEME RULES

### UTILITIES DISPUTES LIMITED

#### Scheme Rules - Energy Complaints Scheme

- 1 These Scheme Rules supplement the General Rules of the complaints resolution services operated by Utilities Disputes Limited, and come into effect on approval by the Minister, provided that Appendix One (Fees and Charges) will come into effect for the Scheme Year commencing 1 April 2020. Prior to that date the provisions of Appendix One of the Scheme Rules dated 1 October 2018 shall continue to apply.

Together with the General Rules, they set out the rules that apply to the independent external dispute resolution service for gas and electricity sector Providers and known as the **Energy Complaints Scheme**.

- 2 The Energy Complaints Scheme was previously known as the Electricity and Gas Complaints Commissioner Scheme. The General Rules and these Scheme Rules are adopted by way of amendment to the Electricity and Gas Complaints Commissioner Scheme and they replace the Scheme Document for that Scheme in effect on 1 October 2018.
- 3 The Electricity Industry Act 2010 and the Gas Act 1992 (**Acts**) require some gas and electricity sector Providers, unless exempt, to be members of a dispute resolution scheme that is an 'approved scheme' as defined in the Electricity Industry Act 2010. The Energy Complaints Scheme is the approved scheme. General Rule [53] (which allows Providers to be expelled) does not therefore apply to the Energy Complaints Scheme.
- 4 The Electricity Industry Act 2010 requires the relevant Minister to approve any amendment to the rules of the approved scheme. The Minister's approval will be treated as given if the Minister does not decline approval within 45 days after being notified of the proposed amendment.
- 5 A number of obligations and provisions apply under the Acts to Providers in, and to Utilities Disputes as the provider of, the Energy Complaints Scheme. If a General Rule or a Scheme Rule conflicts with any of those obligations and provisions, then the relevant Act will apply.
- 6 Utilities Disputes may admit new Providers to the Energy Complaints Scheme from time to time.
- 7 For purposes of General Rule [15], Utilities Disputes must not deal with a Complaint under these Scheme Rules where the value of the Complainant's claim exceeds \$50,000. In determining the value of a claim, the Commissioner will take into account the reasonable costs that would be incurred by a Provider in carrying out any actions that may reasonably be required.



- 8 For purposes of General Rule [37], the value of any Determination under the Energy Complaints Scheme must not be greater than \$100,000.
- 9 Utilities Disputes must only consider a Complaint if Utilities Disputes is satisfied the act or failure to act that gave rise to the Complaint first occurred:
  - a) in the case of a complaint related to LPG cylinders, on or after 1 October 2014; or
  - b) in any other case, on or after the date that applies to the subject matter of the Complaint under the Limitation Act 2010.
- 10 A Determination under the Energy Complaints Scheme constitutes a binding settlement for the purposes of s 97 of the Electricity Industry Act 2010 and s 43EB of the Gas Act 1992.
- 11 Subject to Appendix Two, an owner or occupier of land can make a Complaint about the unlawful effect on their rights of a Lines Company's actions when exercising, purporting to exercise or failing to exercise rights, powers or obligations claimed by the Lines Company under any applicable gas or electricity legislation or regulation, under an easement, or under an access agreement granted to the Lines Company by the owner or occupier.
- 12 A Provider in the Energy Complaints Scheme cannot be a Complainant or make a Complaint.
- 13 The General Rules, together with these Scheme Rules, contain all matters Utilities Disputes considers might appropriately be included in a code of conduct for the Energy Complaints Scheme and Utilities Disputes does not therefore intend to prepare a code of conduct for the Energy Complaints Scheme under General Rule [48].
- 14 While Utilities Disputes cannot generally deal with Complaints made by Providers, the Acts require the approved scheme to provide for, or set out, rules and procedures for dealing with indemnity disputes.

Indemnity disputes are disputes between Providers concerning the application of the indemnity in section 46A of the Consumer Guarantees Act 1993. This applies where there has been a failure of the acceptable quality guarantee in the supply of gas or electricity to a consumer that is wholly or partially the result of an event, circumstance or condition associated with a gas pipeline or electricity line as provided for in section 46A of the Consumer Guarantees Act 1993.

A Provider may refer an indemnity dispute up to a value of \$[50,000] (or more with the agreement of the Parties) to Utilities Disputes for resolution.

Utilities Disputes must deal with an indemnity dispute in accordance with the principles and process set out in the General Rules.

All Parties to the indemnity dispute must participate in the process and are bound by any Determination issued by Utilities Disputes.

Each Party to an indemnity dispute must pay:

- Utilities Disputes' costs and expenses (including any expert costs and expenses) incurred in dealing with the indemnity dispute including GST whether or not the indemnity dispute is withdrawn, resolved by agreement between the Parties or by a Determination.
- the part of the costs of the indemnity dispute the Commissioner orders them to pay; and
- their own costs and expenses.

The Commissioner must not order a Party to any indemnity dispute to pay the costs and expenses of another Party to an indemnity dispute.

Utilities Disputes will decide the mechanism for setting costs payable by the Parties to the indemnity dispute from time to time.

The indemnity dispute will be confidential as between the Commissioner and the Parties and all information about the existence or substance of the dispute and its outcome must be held in confidence and not disclosed to any other Party.

- 15 Providers will pay the fees and charges set out in Appendix One.
- 16 The Energy Complaints Scheme will be free of charge to Complainants.
- 17 Words and phrases defined in the General Rules have the same meaning in these Scheme Rules.

## Appendix One

### Fees and charges

The fees and charges for the Energy Complaints Scheme are set out in this appendix below:

- 1.1 The desired outcomes from the Scheme's levy system are that it:
  - 1.1.1 Encourages timely and appropriate resolution of complaints.
  - 1.1.2 Supports the achievement of the Scheme's purpose.
  - 1.1.3 Provides certainty and predictability for Providers.
  - 1.1.4 Reliably provides the funds to run the Scheme.
  - 1.1.5 Is easy to understand and administer.
  - 1.1.6 Is equitable among Providers.
  - 1.1.7 Ensures a levy is not disproportionate to the cost of dealing with a complaint.
  - 1.1.8 Is not dependent on the outcome of a particular complaint.
  - 1.1.9 Is sufficiently robust to not need changing for several years.
  - 1.1.10 Complies with the requirements of Schedule 4 of the Electricity Industry Act 2010.
- 1.2 Providers must pay a levy each Financial Year of at least \$50 per Provider, or such other amount, as the Board may determine from time to time as the minimum levy.

#### **Board to determine levy**

- 1.3 The Board will determine the levy and manner of payment annually and notify it to Providers along with each Provider's specific contribution to the levy. In determining the levy for a Financial Year the Board must have regard to:
  - 1.3.1 the financial budget to operate the Scheme for that Financial Year;
  - 1.3.2 the retained earnings of the Scheme from previous Financial Years; and
  - 1.3.3 the requirement for the Scheme to operate on a not for profit basis.
- 1.4 Providers in more than one Class will have a levy determined for each Class.

## **Invoicing and payment**

- 1.5 The Board will invoice Providers for the levy.
- 1.6 The Board must give notice to each Provider requesting payment of any fee or levy amount to be raised from that Provider. The notice must state the total amount to be raised and the amount of the Provider's contribution.
- 1.7 All fees and levies are:
  - 1.7.1 plus GST payable (if any); and
  - 1.7.2 due and payable by each Provider within 20 Working Days of the Board sending the notice requesting payment (unless otherwise agreed).

## **Providers' specific contributions to levies based on a minimum levy, market share and Deadlocked Complaints**

- 1.8 Each Provider's specific contribution to the levy will be determined on the basis of:
  - 1.8.1 the minimum levy requirement, as specified in clause 1.2 (where applicable);
  - 1.8.2 a Proportionate Basis; and
  - 1.8.3 Deadlocked Complaints;subject to the qualifications set out below.
- 1.9 A Proportionate Basis will be determined as follows:
  - 1.9.1 The Board will, from time to time, determine what percentage or amount of the total amount to be raised or distributed is to be respectively raised from or distributed to:
    - (a) Retailer Joint Class Providers
    - (b) Lines Company Joint Class Providers,
  - 1.9.2 Of the percentage to be raised from or distributed to Retailer Joint Class Providers, each Retailer Provider's proportion will be determined by its market share of the retail sector based on energised Consumer ICPs mapped to each Retailer, compared with the total number of energised Consumer ICPs mapped to all Retailer Providers.
  - 1.9.3 Of the percentage to be raised from or distributed to Lines Company Joint Class Providers excluding Transpower and any Gas Lines Company that only operates Gas Transmission Pipelines, each Lines Company

Provider's proportion will be determined by its market share based on the number of energised Consumer ICPs on its network or Distribution System, compared with the total number of energised Consumer ICPs mapped to all Lines Company Providers.

- 1.9.4 The Board will determine under clause 1.10:
- (a) the amount to be paid by Transpower and any Gas Lines Company that only operates Gas Transmission Pipelines; and
  - (b) the amount to be paid by any Gas Lines Company that operates Gas Transmission Pipelines and other Gas Pipelines in respect of its share of the Gas Transmission Pipelines market. This amount is in addition to that payable by those Gas Lines Companies under clause 1.9.3.
- 1.9.5 Numbers of energised Consumer ICPs will be calculated by the Board based on information available to the Board. Providers authorise the Board or any person authorised by the Board to obtain the relevant information from the Electricity Registry or Gas Registry, or from Providers' records, for this purpose. Providers will provide all information sought within 5 working days of such request.

1.10 In relation to the levy for the Financial Year starting on 1 April 2020 and each Financial Year following:

- 1.10.1 For each Provider, part of the total amount to be raised will be raised by means of level one, level two and level three Deadlocked Complaint levies as follows:
- (a) Providers will pay a level one Deadlocked Complaint levy for each Deadlocked Complaint relating to that Provider in the previous Financial Year.
  - (b) Providers will also pay a level two Deadlocked Complaint levy that is equal to the level one Deadlocked Complaint levy, for each Deadlocked Complaint relating to that Provider in the previous Financial Year where:
    - (i) the Commissioner or a member of the Commissioner's staff worked to resolve the Complaint for more than 8 hours; or
    - (ii) the Complaint was still unresolved after 20 Working Days from receipt by the Commissioner.
  - (c) Providers will also pay a level three Deadlocked Complaint levy equal to the sum of the level one Deadlocked Complaint levy and the level two Deadlocked Complaint levy, for each Deadlocked Complaint relating to the Provider in the previous Financial Year where:

- (i) the Commissioner or a member of the Commissioner's staff worked to resolve the Complaint for more than 16 hours; or
  - (ii) the Complaint was still unresolved after 40 Working Days from receipt by the Commissioner.
- (d) The amounts of the level one, level two and level three Deadlocked Complaint levies will be determined, and invoiced, each Financial Year by the Board after considering the views of the Advisory Committee, based on the number of Complaints relating to a Provider that reached each of the levels in the previous Financial Year.
- 1.10.2 Once the amount to be raised under clauses 1.2 and 1.10.1 is calculated, each Provider's specific contribution to the balance of the total amount to be raised will then be determined on a Proportionate Basis, except that:
- (a) The specific contributions of Retailer Joint Class Providers will be calculated on the basis that the total amount raised from them is 60% of the total amount levied under clause 1.9.
  - (b) The specific contributions of Lines Company Joint Class Providers excluding Transpower and any Gas Lines Company that only operates Gas Transmission Pipelines will be calculated on the basis that the total amount raised from them is 40% of the total amount levied under clause 1.9 less the amount of the contributions calculated under clauses 1.10.2(c) and 1.10.2(d);
  - (c) Transpower's specific contribution will, from 1 April 2020 be \$95,000. For the following year, that amount will be adjusted by the annual percentage change in the Proportionate Basis, as determined by the Board under clause 1.9, applying to other Lines Company Joint Class Providers for that year. Future annual adjustments will be made on the same basis;
  - (d) Any Gas Lines Company that operates Gas Transmission Pipelines (whether or not it operates other Gas Pipelines) will, from 1 April 2020 contribute \$33,000 and if more than one, then the \$33,000 will be apportioned between them according to their share of the Gas Transmission Pipelines market as determined by the Board. For the following year that amount will be adjusted by the annual percentage change in the Proportionate Basis, as determined by the Board under clause 1.9, applying to other Lines Company Joint Class Providers for that year. Future annual adjustments will be made on the same basis.

### **Expert witness costs**

- 1.11 In addition to the levy payable under the Scheme, if the Commissioner requires expert witnesses to assist with any investigation or resolution of a Complaint, the costs of any such expert witnesses shall be charged by the Commissioner to the Provider(s) that is or are the subject of the Complaint.

### **Levy payable by new Providers or Providers joining another Class**

- 1.12 Where a person applies to become a new Provider, the Board will set the amount of the levy required to cover the period from the date the person proposes to join the Scheme until the next 31 March.
- 1.13 Where an existing Provider applies to join the Scheme in another Class, the Board's estimate of the levy payable in respect of that application must be based on the Provider's market share in the Class it is applying to join.
- 1.14 Any levies collected from new Providers or existing Providers joining another Class are to be distributed at the end of the Financial Year to Providers existing at the time such Providers joined, or joined another Class, on a Proportionate Basis as a refund on annual levies paid or off-set against annual levies payable by those existing Providers in the next Financial Year.

### **Disputing levies and fees**

- 1.15 Providers may only dispute an invoice for levies or fees payable under the Scheme in the 30 Working Days from the date of issue of the invoice. Providers disputing an invoice must notify the Board in writing and provide details as to why the invoice or part of it is disputed. If the Board and the Provider cannot resolve the dispute within 20 Working Days the matter will be referred to the Board chair who will make a final determination. Any amount of the invoice found by the Board chair to be payable will be paid by the Provider within 5 Working Days of the final determination. Except as set out in this clause Providers may not dispute or refuse to pay any invoice for levies or fees payable under the Scheme.

### **Definitions**

Words and phrases defined in the General Rules and Scheme Rules have the same meaning when used in this Appendix unless otherwise defined. In this Appendix, the following definitions apply:

**Class** means Provider classifications as Retailers or Lines Companies.

**Consumer** means any person who is supplied, or applies to be supplied, with electricity or gas other than for resupply.

**Distribution System** has the same meaning as in section 2 of the Gas Act 1992.

**Financial Year** means a period commencing on 1 April and ending on 31 March of the following year.

**Gas Transmission Pipeline** means pipelines used in the conveyance of Gas that are operated at a gauge pressure exceeding 2,000 kilopascals.

**ICP** means Installation Control Point, in the case of:

- a) electricity, the point at which a Consumer's property is supplied with electricity and at which the supply of electricity may flow between the electricity Lines Company's network and that Consumer's property only, subject to any amendments to the term point of supply under the Electricity Act 1992, or
- b) gas, the point on a gas Lines Company's Distribution System at which gas may flow between the Distribution System and the Consumer's premises, which the gas Lines Company nominates as the point at which a gas Retailer is deemed to supply gas to a Consumer.

**Joint Class** means, in the case of:

- a) Lines Companies, all electricity Lines Companies together with all gas Lines Companies; or
- b) Retailers, all electricity Retailers together with all gas Retailers.

**Lines Company** means, in the case of:

- a) electricity, a distributor as defined in the Electricity Industry Act 2010 or Transpower; or
- b) gas, a gas distributor as defined in the Gas Act 1992 and any person that operates a Gas Transmission Pipeline.

**Proportionate Basis** means the formula in clause 1.9.

**Retailer** means, in the case of:

- a) electricity, a retailer as defined in the Electricity Industry Act 2010; or
- b) gas, a gas retailer as defined in the Gas Act 1992.

**Scheme** means the Energy Complaints Scheme.

**Transpower** means Transpower New Zealand Limited.

**Working Day** means every Monday to Friday, but does not include a public holiday.



## Appendix Two

- 1 Utilities Disputes must not accept a Complaint for consideration under General Rule 14(b) or Scheme Rule 11 about any dispute:
  - 1.1 as to whether Lines Equipment was lawfully fixed or lawfully installed in terms of section 22 of the Electricity Act 1992 in respect of Electricity Works and section 23 of the Gas Act 1992 in respect of Gas Pipelines;
  - 1.2 as to whether, in respect of Lines Equipment that was constructed or for which construction commenced before 1 October 2006 but to which neither section 22 of the Electricity Act 1992 nor section 23 of the Gas Act 1992 (as the case may be) apply, a Lines Company holds the legal right for that Lines Equipment to be fixed in, over, under or across Land;
  - 1.3 as to whether or not Lines Equipment constructed before 1 October 2006 or for which construction commenced before that date, is owned by a Lines Company;
  - 1.4 involving a local authority or other body or person having jurisdiction over a road or level crossing that relates to or arises from the construction or maintenance of Lines Equipment in, on, along, over or across roads and level crossings under sections 24-33 of the Electricity Act 1992 and sections 25-35 of the Gas Act 1992;
  - 1.5 relating to or arising from the negotiation for, or other process of, obtaining any interest in Land in relation to Lines Equipment, including under the Resource Management Act 1991 or the Public Works Act 1981;
  - 1.6 relating to or arising from a refusal to grant a dispensation under regulation 20 of the Electricity (Hazards from Trees) Regulations 2003 or the terms of a dispensation granted under regulation 20;
  - 1.7 as to whether the maintenance programme carried out by a Lines Company on Lines Equipment is adequate or reasonable;
  - 1.8 as to whether or not a replacement or upgrade of an Electricity Work causes Land to be injuriously affected in terms of section 23(3)(b) of the Electricity Act 1992;
  - 1.9 as to whether any changes to Lines Equipment carried out in the exercise of powers under the Electricity Act 1992 or the Gas Act 1992 have injuriously affected Land in terms of section 57(1) of the Electricity Act 1992 or section 51(1) of the Gas Act 1992, including disputes about the amount of compensation that may be payable in relation to such injurious affection. This clause does not exclude disputes about whether or not a Lines Company has complied with any obligation it may have to mitigate or repair damage to Land or property in or under any applicable electricity or gas legislation and regulations, or Land Agreement

1.10 relating to the quality of electricity or gas supplied by a Lines Company to a Consumer, or any interruption in the supply of electricity or gas or the provision of Line Function Services; or

1.11 *[Deleted 2018]*

2 Utilities Disputes must not accept a Complaint, other than a Complaint under General Rule 14(b) or Scheme Rule 11, that:

2.1 relates to the Services provided by Transpower; or

2.2 relates to the Services provided by any gas Lines Company Provider in the transmission of gas by Gas Transmission Pipelines.

## **Definitions**

Words and phrases defined in the General Rules or Scheme Rules have the same meaning when used in this Appendix unless otherwise defined. In this Appendix, the following definitions apply:

**Electricity Works** means works as defined in the Electricity Act 1992.

**Gas Pipelines** means any equipment that is used in connection with the conveyance of gas.

**Gas Transmission Pipeline** means pipelines used in the conveyance of Gas that are operated at a gauge pressure exceeding 2,000 kilopascals.

**Land** includes any estate or interest in land.

**Land Agreement** means any agreement, including an easement or licence, under which a Lines Company is granted rights by a Land Owner or Land Occupier to access or use any Land, other than a Consumer contract.

**Lines Company** means, in the case of:

- a) electricity, a distributor as defined in the Electricity Industry Act 2010 or Transpower; or
- b) gas, a gas distributor as defined in the Gas Act 1992 and any person that operates a Gas Transmission Pipeline.

**Line Function Services** in the case of:

- a) electricity, has the meaning set out in section 2 of the Electricity Act 1992 and as further provided for in contracts with Consumers, and includes metering services where an electricity Lines Company provides these services; and
- b) gas, has the meaning set out in section 2 of the Gas Act 1992 and as further provided for in a contracts with Consumers, and includes metering services where a gas Lines Company provides these services.

**Lines Equipment** means Electricity Works or Gas Pipelines, as the case may be.

**Land Occupier** means either:

- a) an inhabitant occupier of the Land; or
- b) any person who has a right to occupy the Land under a lease, sub-lease, or licence granted by the Land Owner or another Land Occupier.

**Land Owner** means, in relation to the Land that is held under:

- a) the Land Transfer Act 1952, the person(s) that own(s) the Land in fee simple;
- b) the Land Act 1948, the Crown; and
- c) any other statute, the legal and beneficial owner of the Land (as appropriate) as specified in that statute.

**Retailer** means, in the case of:

- a) electricity, a retailer as defined in the Electricity Industry Act 2010; or
- b) gas, a gas retailer as defined in the Gas Act 1992.

**Services** means goods or services provided by a Retailer, or Line Function Services. References to the provision of services include, where the context requires, references to the non-provision of services.

**Transpower** means Transpower New Zealand Limited.