

Submission template

Review of the Approved Financial Dispute Resolution Scheme Rules

Your name and organisation

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Organisation/Iwi	Utilities Disputes Limited (UDL)

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1 What is your feedback on the proposed objective and criteria for the review? What is your feedback on the proposed weighting of the criteria?

The main objective of the review is *to improve consumer access to redress available through the schemes. Establishing consistent scheme rules in key jurisdictional areas may also contribute to the main purposes of the Act.* We note the review is limited in its scope and is awaiting developments in Australia. Any further review should include whether four competing schemes are serving the needs of consumers and are preferable to one large scheme.

The weighting criteria matches the objective of the review.

Financial cap

2 Are you aware of any instances of consumer harm due to the issues outlined?

We are not aware of any instances of consumer harm due to the issues outlined. It should be noted our work is not in the financial sector.

3 Do you have any feedback on the problems outlined?

UDL's Energy Complaints Scheme (ECS) and Broadband Shared Property Access Disputes (BSPAD) Scheme have jurisdiction to consider complaints with an upper limit of \$50,000 (or in the ECS \$100,000 with the agreement of both parties). UDL's Water Complaints Scheme has jurisdiction to consider complaints with an upper limit of \$15,000. UDL's schemes do not have a weekly payment alternative limit.

This is significantly lower than the \$350,000 limit being considered in this proposal.

Option one: set the primary jurisdictional and redress cap at \$350,000

4 Do you have any feedback on this option?

We believe the proposed \$350,000 limit is appropriate. The cost of a consumer taking a dispute through the courts is prohibitively expensive and having wider access to dispute resolution allows consumers quicker and less expensive access to redress.

To ensure efficiency, ADR schemes need to have a process that is scalable to be proportionate to the value of the complaints. It may not be efficient for a low value complaint to receive the same required level of process as a complaint nearing the proposed \$350,000 limit.

We agree with the analysis that it is fairer and more accessible for there to be a consistent jurisdiction limit across all four schemes.

5 Are there any other costs or benefits of this option?

To gain a greater understanding of the benefits it would be worth considering information as to how many cases are currently ruled outside of jurisdiction due to being over the current threshold, and how many would be captured if the threshold were extended to \$350,000. Having consistency across all schemes in terms of the amount of redress available would promote fairness and accessibility to justice for consumers. It would eliminate the disparity they may recover which is dependent on which scheme the consumer has access to.

	Option two: introduce a weekly alternative to a lump sum cap
6	Do you have any feedback on this option?
	As outlined in our response to Q3, UDL does not have a weekly payment alternative limit. Introducing this across all schemes would improve access to those consumers with disputes over the compensation cap that have been paying a weekly amount lower than the weekly alternative cap.
7	Do you agree that a weekly payment alternative should be introduced for all schemes? Why/why not?
	We agree greater accessibility and fairness can be achieved through having consistency across all schemes.
8	Is \$1,500 an appropriate weekly payment alternative? Why/why not?
	No comment.
9	Are there any other costs or benefits of this option?
	To gain a greater understanding of the benefits it would be worth considering information as to how many more cases would be captured if the threshold were extended to include the proposed weekly lump sum cap.
	Other potential issues with inconsistent awards
10	Do you have any feedback on the problems outlined?
	UDL does not have prescribed amounts additional to the jurisdiction limits for inconvenience awards. Any awards would be included in our jurisdictional limit.
11	If a consistent special inconvenience award was to be introduced, in what circumstances should it be awarded? Should this be discretionary, or strictly prescribed?
	We believe it is important for any ADR scheme to remain flexible in its findings. Each complaint should be dealt with on a case-by-case basis. We therefore submit any special inconvenience awards should be discretionary, with a prescribed set of principles that can be taken into account when any amount is awarded.
12	If an interest award was to be introduced how should it be calculated?
	No comment.
13	What are the benefits and costs of the options?

We agree greater accessibility and fairness can be achieved through having consistency across all schemes, however it is unclear whether the current maximums are being reached. Typically UDL makes customer service awards for amounts significantly lower than the special inconvenience awards noted.

Interest awards for delays in the scheme dispute resolution process are primarily dealt with at UDL through a tiered levy structure, where members pay greater levies based on time and days a case is open. This does not compensate a complainant. UDL may find a member took an unreasonable period of time to resolve a complaint but any compensation awarded to the consumer for this is typically small.

Timing of membership & jurisdiction

14 Are you aware of any specific situations where providers have switched between schemes resulting in the situation described above? If so, what happened?

No comment.

15 Do you agree with the potential problems that may occur as a result of inconsistent scheme rules about the timing of membership/jurisdiction?

We agree with the problems that may occur that could see consumers without a forum to consider their complaints. We believe this needs to be resolved.

Option one: require all schemes to consider claims about current claims about current members, even if the issue arose prior to membership

16 Do you have any feedback on this option?

We believe this option is the simplest and most effective. Careful thought would need to be given as to how natural justice concerns would be met. Care would need to be taken to ensure any complaints were determined on the basis of the specific scheme rules in operation at that time. This could result in one scheme applying another scheme's rules. There may be other issues if related complaints arise at a later date which would require collaboration between schemes. Clear transitional regulations would be required to guide the process.

17 Are there any other costs or benefits of this option?

Any assessment of these problems should include consideration of the user's experience. This option would be the simplest option for consumers and members to access.

Option two: require schemes to consider complaints where the issue occurred when the provider was a member of the scheme, even if they are no longer a current member

18 Do you have any feedback on this option?

We believe it would be confusing for consumers if this option were accepted. It would be unclear to consumers which dispute resolution scheme to contact to resolve a past issue and some consumers may need to work with multiple schemes. There could also be a lack of clarity of what past complaints may exist and create a barrier when scheme members change schemes.

19 Are there any other costs or benefits of this option?

No comment.

Applicable time periods (limits) for bringing a claim

20 Do you have any feedback on the problems outlined?

The financial schemes most closely compare with UDL's Energy Complaints Scheme (ECS). The ECS rules allow for:

- complaints to be accepted for consideration and investigated 20 working days after a complaint is first made to a member company (Time Period I)
- the Commissioner to (may) stop dealing with a complaint if the complainant knew about the circumstances giving rise to the complaint for more than 12 months before coming to UDL (Time Period II)
- the Commissioner (must) not to accept a complaint 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 (Time Period III)

21 Are you aware of instances of consumer harm from the problems outlined?

No comment.

Option one: limit time period I to a maximum of two months

22 Do you have any feedback on the option?

In UDL's experience there does not appear to be any issues with its members being able to resolve their complaints within the 20 working day timeframe. We do not believe the two month timeframe proposed across all schemes to be overly onerous and lead to consumers suffering unnecessary delays.

23 Are there any other costs or benefits of this option?

No comment.

Option two: create a consistent time period II of three months after deadlock

24 Do you have any feedback on this option?

UDL amended its ECS rules in 2016 to allow the complainant 12 months to bring their complaint from the event that gave rise to the complaint. Previously the complainant had two months to bring their complaint to UDL from the point at which the scheme member informed the complainant their complaint was at deadlock.

We have not experienced any negative impact by extending this period to 12 months and believe it aids in the accessibility of our scheme. In our experience consumers do not appear to unduly delay bringing their complaints. We support a consistent time period being applied here but believe this period could be further extended out.

25 Are there any other costs or benefits of this option?

No comment.

Option three: introduce discretion to hear a complaint after time period II

26 Do you have any feedback on the option?

UDL supports adding a discretionary time period to hear complaints after time period II. Please refer to our response to question 24). In our experience there are instances where particularly disadvantaged consumers may reasonably delay bringing their complaints to a scheme.

27 Are there any other costs or benefits of this option?

No comment.

Option four: consistent limit for time period III

28 Of the four schemes, which way of outlining time period III is preferable? Why/why not?

UDL's ECS rules say *the Commissioner must not to accept a complaint 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.* We have ruled three complaints out of our jurisdiction using this rule since the scheme started in 2001.

This compares to the BOS and FSCL approach. We believe this approach is consistent with the purpose of the Limitation Act 2010.

29 Are there any other costs or benefits of this option?

We note the discussion paper uses the example of a consumer of a long-term insurance product not becoming aware of a problem until they try and claim on the policy. We believe in this example the point at which the consumer became aware or should have become aware of the problem is most likely at the point the consumer claims on the policy, not before. Meaning this consumer would not be excluded from accessing dispute resolution because of the six year limitation.

Other Comments