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Consultation Paper: Proposed Consumer Care Obligations

Introduction

Utilities Disputes Limited | Tautohetohe Whaipanga (UDL) welcomes the opportunity to comment on the Electricity Authority | Te Mana Hiko's (EA) proposed Consumer Care Obligations (Obligations). UDL did not contribute to the preparation of the EA documents issued on 9 August 2024. UDL will continue to liaise with the EA about these matters.

The core points of the submission are:

1. UDL supports the Consumer Care Guidelines (Guidelines) becoming mandatory Obligations. If properly managed the Obligations will provide certainty for consumers and industry participants.
2. UDL is concerned about how the EA will manage compliance and enforcement of the Obligations. UDL understands the EA may investigate and resolve individual consumer complaints about the Obligations, essentially creating a process that is parallel to UDL's complaints process. UDL believes this would be an extension of the EA's role that goes beyond its intended statutory functions and into areas that are already legislated for in the Electricity Industry Act 2010.
3. UDL believes the EA should do more to ensure it properly consults on how it will manage compliance and enforcement of the Obligations. This is because the consultation paper is essentially silent on the EA's intention in this area and how it will manage compliance and enforcement of the Obligations in a practical way. While UDL appreciates the EA is willing to work through this aspect of the Obligations with UDL and welcomes this opportunity, it believes the compliance and enforcement Obligations requires greater assessment, transparency and review.
4. UDL is also concerned that should the EA investigate and attempt to resolve individual consumer complaints it will lead to confusion amongst participants, consumers and the organisations that support them. UDL believes this will create duplication, delay, and increased costs that are entirely avoidable. UDL has seen little

evidence that the EA's entry into handling individual consumer complaints will protect and promote the interest of consumers or result in complaints being considered efficiently and effectively.

5. UDL has signalled its support for many of the changes to the Obligations, and offers some amendments such as a reasonableness test, and keeping the onus on the retailer to be the core contact for the consumer.

As the submissions were due the EA has clarified that it may only investigate a few complaints of special regulatory interest or national importance. However, many of the issues remain to be worked through, and UDL's core concerns remain. We therefore are setting them out comprehensively for review.

The submission has three parts. Part A provides a summary of the role of the Energy Complaints Scheme, and how it is required to consider all aspects of consumer complaints. Part B states that consumers should continue to have the benefit of a single body to consider their complaints. Part C sets out UDL's observations on the proposed Obligations.

Part A: Energy Complaints Scheme

UDL has set out its role and the processes it adopts below to provide context to the concerns it has raised in its submissions.

UDL is the dispute resolution scheme provider for the electricity sector under s 95 of the Electricity Industry Act 2010 (EIA 2010). The central purpose of UDL's Energy Complaints Scheme is to ensure that:

“any person (including consumers, potential consumers, and owners and occupiers of land, but excluding members of the scheme) who has a complaint about a member has access to a scheme for resolving the complaint.”¹

UDL has been providing an Energy Complaints Scheme for over 20 years, and the scheme is free to consumers. The Energy Complaints Scheme was independently reviewed in 2023 and found to be operating effectively.²

Consumer access to the Energy Complaints Scheme

In the last reporting year UDL considered 8,136 consumer queries, and 6,694 consumer complaints about electricity retailers and distributors. UDL has extensive experience and expertise in resolving consumer complaints. It has invested significant resources to ensure it meets its statutory function of resolving consumer complaints efficiently and effectively.³ Indeed the High Court has noted that by setting up the scheme: “... Parliament intended to

¹ See EIA 2010, sched 4, cl 1.

² See Ron Paterson, *2023 Independent Review of the Energy Complaints Scheme*, October 2023. UDL continues to work through this report and action many of the improvements Professor Paterson identified.

³ See EIA 2010, sched 4, cl 5. See also Energy Complaints Scheme Rules, general rule 3d.

provide a quick (efficient), inexpensive (accessible) and effective dispute resolution mechanism for complaints.”⁴

Fair and Reasonable Standard – An Expansive Standard

UDL applies a fair and reasonable test when resolving any complaint. This allows its Commissioner to determine what would resolve the complaint in a fair and reasonable way after considering any relevant legal authority or judicial rule that may apply, and general principles of good industry practice and guidelines.⁵ Each complaint is considered on its merits and no single factor may necessarily outweigh another.⁶

While UDL understands the EA believes complaints may be capable of being divided into complaints about the Obligations and other consumer complaints, it believes this is an artificial and erroneous distinction.

Consumer complaints typically raise a multitude of issues. The Commissioner will often have to consider the Electricity Industry Participation Code 2010 (Code), the Consumer Guarantees Act 1993, common law, the principles of property and contract law, electricity retailers’ terms and conditions and other general consumer obligations when resolving a complaint.

The Commissioner may ultimately choose to depart from any of these when resolving a complaint if he decides it is fair to do so.⁷ The Commissioner does not make a finding of a legal breach, rather the legal authorities inform the assessment of what is fair and reasonable.

The process set out above has been designed to provide flexibility, and a fair and efficient resolution process for consumers and providers. It is also in accordance with international best practice for such consumer focussed schemes including schemes in England, Wales, and Australia.⁸

The Commissioner – Recommendations and Determinations

UDL attempts to help the consumer, retailer or distributor reach a mutually agreed resolution. When this is not possible the Commissioner issues a recommendation, and if necessary will issue a binding determination. The determination cannot be appealed and may be enforced by the District Court.⁹

Summary

The Energy Complaints Scheme was established and designed for consumers. While the Commissioner acts independently and resolves complaints on behalf of consumers and providers, he is not restricted by prescriptive or formal processes. As a result, the Energy

⁴ See *Contact v Moreau*, CIV 2017-485-962, [2018] NZHC 2884, para 111.

⁵ See Energy Complain Scheme Rules, general rule 24.

⁶ See *Contact v Moreau*, para 116.

⁷ *Ibid.*, 120.

⁸ *Ibid.*

⁹ See EIA 2010, s 97. See also sch 4, cl 13.

Complaints Scheme’s consumer focus may sometimes lead to the Commissioner awarding a variety of remedies not always prescribed by a relevant statute.¹⁰

Part B: One Provider to Consider Consumer Complaints (Questions 1, 4, 15)

The Obligations inclusion in the Code will mark a notable change for the EA.

The Code is predominantly focused on the relationship between retailers, distributors, and Transpower.¹¹ The EA’s changes extend the Code into regulating participants’ relationships with consumers by covering: “.... *interactions over the entire customer-retailer relationship*” and will “...*provide convenience and dignity benefits to consumers.*”¹²

Lack of Prior Consultation

Under the EIA 2010 UDL is the established entity to receive complaints about the goods and services provided by electricity retailers, distributors, and Transpower.

However, UDL understands that on 1 January 2025 the EA will be seeking to perform this function in parallel to UDL and will advise consumers they can choose to either make a complaint to UDL or make the same complaint to the EA as an alleged Code breach.¹³

The EA has outlined a monitoring and enforcement process that relies on participants to confirm compliance with the Obligations on an annual basis. The EA it seems will be able to refer any matters arising from the report or throughout the year to the Rulings Panel under s 50 of the EIA 2010. The Rulings Panel can order several remedies including making a compensation order.¹⁴ However, there is no stated commitment to do so or any policy statement to confirm how the EA will do this in practice, particularly in relation to its proposed desire to receive, investigate and attempt to resolve individual consumer complaints.

There is also no discussion on how this aligns with the EA’s published enforcement policy: *Enforcement Policy 2017*. Given the impact the Obligations will have on consumers, participants and UDL, this lack of detail, at this late stage, is a significant oversight.

¹⁰ See discussion *Contact v Moreau*, para 147-151.

¹¹ See for definition of industry participants EIA 2010, s 7.

¹² *Assessment of the Costs and Benefits*, para 1.1 (emphasis added).

¹³ See: “**Clearer consumer rights** – by improving the clarity of the retailers’ obligations, consumers are more likely to understand what they are entitled to under the Obligations. This (combined with further efforts by the Authority to educate consumers about the Obligations) will help consumers to identify when their rights may have been infringed upon and the remedies available (such as raising the issue with the retailer, and if this unsuccessful, making a complaint to Utilities Disputes Limited, or alleging a breach with the Authority).” *Assessment of the Costs and Benefits*, para 4.1.1.

¹⁴ See EIA 2010, s 54(1).

In correspondence with UDL, the EA has also indicated it may go beyond the above mechanism by investigating and attempting to resolve individual complaints. The paper is wholly silent on this and the EA's interaction with the Energy Complaints Scheme and what its intentions are in response to individual consumer complaints. This is a serious omission, especially considering the goal of a 1 January 2025 roll out and the EA's statutory obligation to consult.¹⁵ UDL's expectation is that further consultation will be required, including with retailers and distributors.

The Position of the EA

UDL has sought clarity on this issue from the EA. The EA has recently confirmed some of its intentions and while it has expressed its wish to work with UDL, it has confirmed that it will investigate individual consumer complaints because:

- i. it has the statutory authority to set up an additional process to receive and consider consumer complaints about the Obligations; and
- ii. its regulatory mechanisms are fit for this purpose.

UDL raises the following concerns in relation to these views.

1) The Structure of the EIA 2010

UDL is concerned that the EA's intention to establish a consumer complaints scheme does not conform with legislation, primarily of EIA 2010. The EIA 2010 was introduced to allow the EA to focus on its core functions:¹⁶

“We are effectively taking out duplication of effort. The objectives of the authority are narrowed to the things that it can and should be held accountable for—namely, providing for an efficient, competitive, reliable market—and do not include things that other bodies are already legislated to do.”¹⁷

While a new consumer objective has been added, it was intended to allow the EA to extend the exercise of its regulatory powers to factor in consumers and small businesses. It was not intended, in our view, to allow the EA to start engaging in processes that other bodies are already legislated to do under the EIA 2010, such as the Energy Complaints Scheme operated by UDL.¹⁸

Parliament's Intention

There is no indication in any of the Hansard materials or the relevant explanatory notes that support the EA establishing an additional consumer complaints scheme, which is what has been signalled by the EA in meetings. While we appreciate it may have been couched in different terms or that it is not the EA's intention, it is effectively what the EA will be doing if

¹⁵ See EIA 2010, s 39.

¹⁶ See Minister of Energy and Resources, (20 July 2010), Hansard.

¹⁷ Electricity Industry Bill – Second Reading (20 July 2010) 665 NZPD 12473.

¹⁸ See EIA 2010, s 15 (2)-(3).

it decides to receive, investigate and attempt to resolve individual consumer complaints about the Obligations.

Specific amendments to the EIA 2010 would be expected if the EA were to receive, investigate and attempt to resolve individual consumer complaints, such as:

- a) an express inclusion of the complaints scheme in the functions of EA;¹⁹
- b) amendments to s 50 of the EIA 2010 which state all breaches of the Code must be considered by a Rulings Panel - a cumbersome method for considering consumer complaints;
- c) further regulations setting out how the EA will manage such consumer complaints; and
- d) amendments to s 95 of the EIA 2010 which mandates one approved dispute resolution scheme.²⁰

It is also noteworthy that the EA does not approve the energy complaints scheme provider,²¹ a role previously exercised by its predecessor but was removed under the EIA 2010.

Statutory Overreach

We acknowledge that the EA has the authority to make substantial changes to the Code. It is reminded that even wide statutory powers have limits:

“A statutory power is subject to limits even if it is conferred in unqualified terms. Parliament must have intended that a broadly framed discretion should always be exercised to promote the policy and objects of the Act. These are ascertained from reading the Act as a whole. “The exercise of the power will be invalid if the decision-maker ‘so uses his discretion as to thwart or run counter to the policy and objects of the Act’.”²²

UDL is of the view the current proposal may exceed the statutory limits imposed by the structure of the EIA 2010. The EIA 2010 is clear that there should be a Minister approved consumer complaints service. This scheme has the role of considering consumer complaints about goods and services of retailers and distributors. It is also the role of this scheme to consider such complaints having regard to any industry standard or guideline.²³ However, the EAs desire to function as a complaint handler on 1 January 2025 alters this structure. Such a step is likely to cause consumer confusion (see below) and is based on an uncertain statutory foundation.²⁴

It is also unnecessary as UDL will assist the EA in its compliance obligations in the same way it does for other regulators (such as the other energy regulator the Commerce Commission).

¹⁹ See EIA 2010 s 16.

²⁰ See EIA 2010, SCH 4, cl 6 (4).

²¹ See Electricity Act 1992 s 158G.

²² See *Unison Networks Limited v Commerce Commission*, SC 12/2007 [10 September 2007], para 53. See also *Vector v EA*, CA481/2017; [2018] NZCA 543, para 40.

²³ See Energy Scheme Rules, general rules 14 & 24.

²⁴ See EIA 2010 s 16.

2) The Integrity of the Complaints Process

Putting aside the apparent legislative and regulatory hurdles, it is difficult to see how the proposal will not lead to consumer confusion and duplication of resources.

The EA advises UDL that complaints will be triaged into code breaches and consumer complaints. At the risk of repetition, the Obligations cover “*interactions over the entire customer-retailer relationship*”. Indeed, the Obligations cover a full range of consumer-retailer interactions:

- a) requirements on retailers to develop and publish a consumer care policy;
- b) requirements in relation to signing up customers and denying contracts;
- c) requirements in relation to keeping records on customer care;
- d) business-as-usual account management;
- e) actions that a retailer must take when there are payment difficulties;
- f) disconnection and reconnection of residential premises;
- g) obligations in respect of medically dependent consumers; and
- h) obligations in respect of fees, bonds and conditional discounts.

Therefore, the majority of the complaints received by UDL will have some connection with the proposed Obligations. The EA has also signalled its intention to receive complaints involving disconnection and many of the other issues consumers and retailers refer to UDL.

A Typical Complaint

At present a typical complainant has more than one issue, as illustrated by this hypothetical case example:

Mr A rings UDL and advises he has received notice his power will be disconnected in two days. He says he can't understand his bills and that they don't include some credits he was owed when actual reads were considered. He also advises that he rang the retailer, and they were rude to him.

UDL actions the complaint straight away due to the serious consequences for the customer. UDL rings the retailer on a number UDL and the retailer have agreed can be utilised for disconnections. The disconnection is immediately put on hold as a complaint is made, and there are some indications that Mr A has been given notices on two different email addresses. UDL advises Mr A he will not be disconnected. UDL then prepares a written complaint summary and gives the retailer an opportunity to resolve the complaint.

The retailer soon advises UDL a resolution cannot be reached. UDL accepts the matter for consideration. As part of its inquiry UDL investigates

- a) how many disconnection letters were sent and to what email addresses;*
- b) a payment plan offered by the retailer once it received the complaint and if the plan is reasonable;*
- c) whether the bills were accurate and conform to industry standards;*

d) whether the retailer complied with all its terms and conditions; and

e) listens to Mr A's phone call with the retailer.

Mr A is kept informed of the investigation and has access to the core materials provided by the retailer. He is also referred to any support agencies that might be available if he needs support for any non-electricity issues.

If the parties do not reach a resolution after this inquiry, the Commissioner then issues a recommendation. He considers the retailers Consumer Care Policy, the Consumer Care Guidelines (on matters such as, payment plans, advising of a disconnection, respect and courtesy), and other industry standards concerning billing. The consumer and retailer have clearly defined opportunities to comment on the recommendations before any determination is issued.

It appears, based on recent communications, the EA intends to insert itself into the above process on 1 January 2025.

While the EA has not confirmed how this will occur, it has proposed UDL, or the retailer, will refer Mr A's potential disconnection to the EA when he complains about it. This is despite the fact neither Mr A or UDL is required to submit a mandatory report about a potential code breach under the EIA 2010.²⁵ There does not appear to be any other statutory pathway for the EA to receive, investigate and resolve the disconnection other than through s 50 of the EIA 2010.

The reality is consumers facing disconnection are particularly vulnerable and require urgent support. They will not appreciate the nuances of what amounts to a Code breach and be interested in following a parallel process simply because the EA is concerned it could amount to a possible Code breach.

UDL can assist the EA in its compliance role, however, its priority will be to resolve the issue for Mr A.

As part of UDL's present process, potential Code breaches are routinely referred to the EA as part of the comprehensive decisions UDL shares. If the EA wants to investigate the matter further, it can request the full details from UDL under the statutory powers that exist.

UDL could also confirm whether Mr A would like UDL to refer the complaint to the EA when it is resolved as part of its process. The EA's approach to this situation is unknown as it hasn't addressed it directly in its consultation. It could decide the disconnection is the most serious matter and suggest UDL investigate the rest of the complaint such as the inaccurate billing (see paragraph 22),²⁶ and the customer service issue (see paragraph 4). However, the billing issue may or may not be relevant to the disconnection (see paragraph 38). It is also possible that the EA discovers after talking to Mr A that one or other aspect of his complaint does not neatly fall under the Code.

If aspects were referred back to UDL, it is possible the complaint could be subject to two concurrent investigations, each with their own processes.

²⁵ See Electricity Industry (Enforcement Regulations) 2010, reg 7-8.

²⁶ The term paragraph on this occasion and following is used to reference specific Obligations.

Complex complaints

It would also not be a case of the EA taking only serious complaints. For example, complaints concerning negligence, quality of supply (see 7A of the Consumer Guarantees Act 1993; but see paragraph 70), and tree complaints,²⁷ where a consumer's trees may allegedly interfere with the network, may fall outside the Obligations. Therefore, these complex complaints are likely to remain with UDL. This dual structure, of varying jurisdictions is likely to cause confusion for consumers.

Changes to the Consumer Complaints Process

The EA's proposal to investigate and attempt to resolve individual breaches of the Obligations is a significant departure from current practice, in terms of the Obligations covering the full range of consumer interactions. The EA from 1 January 2025 will be able to investigate most consumer complaints as breaches of the Code. UDL highlights the outcomes which may arise from the EA's triaging and investigating consumer complaints in parallel to UDL:

1. Given the fact the Obligations touch upon a wide range of consumer issues, the EA will have to review and triage thousands of individual complaints if it believes it should be the initial point of contact for all potential breaches of the Obligations. This will require a significant investment and resourcing, and essentially duplicate the Energy Complaints Scheme.
2. The EA will move from the traditional regulator's role where they focus resources on significant breaches or a pattern of behaviour, into the role of a consumer dispute organisation. Retailers, distributors and complaints teams will question why they are funding this duplicated process. Consumers will question what role they will have under s 50 of the EIA 2010 and will not accept a drawn-out prescriptive enforcement and resolution process that wasn't designed for them.
3. Consumers will be subject to confusing communications²⁸ from the EA and UDL setting out competing processes. It is not clear how the consumer will be able to determine which is the best process for their consumer complaint.

UDL is not convinced consumers will be best served by the EA's proposal to receive and investigate and resolve consumer complaints about breaches of the Obligations from 1 January 2025. The EA appears to have failed to undertake a detailed estimate of the resources and systems needed for managing consumer complaints. The materials also do

²⁷ See Electricity (Hazards from Trees) Regulations 2003.

²⁸ "While we note that the Authority's costs may increase as more consumers engage directly with it, we consider that these costs will result primarily from other activities the Authority is choosing to undertake that will raise the profile of the Obligations (such as producing fact sheets, engaging in targeted advertising, setting up a phone line, etc.) rather than resulting directly from the proposal." See *Assessment of the Costs and Benefits*, fn.17.

not disclose that the EA has weighed the risks to the consumer in terms of double handling of complaints, confusing communications, and differing standards for complaint assessment.

UDL, therefore does not have confidence that the EA's proposal will protect and promote the consumers' interests in having their complaints considered in an efficient and effective manner.²⁹ The proposal therefore cuts across both organisations' ability to perform their differing regulatory and consumer functions.

3) *The Method of Managing and Enforcing the proposed Obligations*

As stated above, from the information it has disclosed it appears the EA intends to rely on a yearly report to manage enforcement. The proposed Code amendment requires a yearly report to be submitted by the retailer identifying compliance with the Obligations. This is a 11A.4 report, and under 11A.7 the EA can require an independent review of the report. The Obligations set out a procedure for such review involving nomination of a review person by the retailer and payment for the reviewer.

However, the procedure does not confirm a breach will be investigated if it is received in advance of this yearly report, or in the yearly review. This is despite the EA having advised UDL it intends to receive individual complaints so that it can undertake investigations and attempt to resolve breaches. As stated above the EA should have disclosed its intentions for informed consultation to occur.

If the yearly report is intended to have some investigatory complaint function (see 11 A4 (c)), it also appears to be unfit and unsuited for this purpose. This is because it involves only the retailer having a role in providing information and choosing the investigator (albeit it appears the EA could choose a different person). A key element of consumer complaint investigation is the customer is central to the process and has defined rights in terms of what they can submit and respond to. While this may be implied, none of these requirements are expressly mandated in this new section of the Code. This appears necessary if the proposal is to conform with the principles of natural justice.

Moreover, how the report relates to the mechanism for breaches of the Code set out in s 50 of the EIA 2010 is not made out. Without this further information it is difficult to assess the value of the 11A.4 report.

A Way Forward

The EA has a broad regulatory role in the electricity sector which is ill-suited to investigating individual consumer complaints. Up to now most breaches of the Code have involved industry participants and the EA lacks experience in resolving consumer complaints that relate to:

- a) network connections;
- b) retailer terms and conditions;
- c) the CGA and quality of electricity supply;

²⁹ See EIA 2010, ss 15-16, 32; sch 4, cl 5(2).

- d) property issues and complex legal complaints such as those that relate to the tree regulations and general law of nuisance, torts and negligence;
- e) billing, credit and hardship related matters;
- f) consumer care policy; and
- g) Consumer Care Guidelines.

The approved Energy Scheme Rules and the processes put in place show the care required to process such matters.

UDL is of the view that, for consistency and certainty, the EA should work with UDL to agree to a formal process that will inform the EA of potential breaches of the Obligations through regular reporting, referrals and data. Direct reporting the EA may mandate or receive, will also assist the EA, as it does currently. This coupled with the yearly report, will provide sufficient information to allow the EA to make informed choices in terms of pursuing breaches of the Obligations which require regulatory action.

The EA would then allow the Energy Complaints Scheme to perform its function to resolve consumer complaints. The Commissioner would continue to make it clear any breach is for the EA to determine, and the EA can take action against an industry participant as needed. Such an agreed protocol will allow both the EA and UDL to discharge their obligations and intended functions under the EIA 2010.

The EA could also complement this process by extending its current trader audits (and MEP and distributor audits) process to review compliance with the Obligations. This would provide the EA with another regulatory channel to review compliance and take action if it receives evidence that can establish any breach has reached a level that warrants a regulatory response. This would shift the costs to the participant and non-compliance could affect recertification of traders. Trader audits could be expanded to include the retailer's Customer Care Policy. It is not clear to UDL that the *content* of such policies can be regulated under the proposal as they would not actually be a part of the Code. The benefit of this added approach is that it is not reliant on the industry participant compilation of information. Rather it begins with an independent audited inquiry.

Part C: The Proposed Obligations (Questions 2, 3, 7-14)

Q2. Do you have any feedback on the proposals to clarify the application of the proposed Consumer Care Obligations?

UDL supports the use of “residential consumer” as a category in place of “domestic consumer”. UDL is of the view the category of consumers for which the Obligations applies should be defined and interpreted liberally.

Q3. Do you have any feedback on the purpose statement for the proposed Part 11A of the Code?

UDL has concerns about the removal of the overarching principles and intended outcomes from the Consumer Care Guidelines (Part 1: 1-5). Although they may be restatements of themes found in paragraph 11A.1 and throughout the Obligations, UDL believes there is still value in making such restatements.

UDL's view is that the Obligations, like the Guidelines, should be a document which is accessible and usable by consumers as well as retailers. A section which summarises the overarching principles of consumer care at the beginning of the document helps consumers understand the general standards retailers should adhere to and assists consumers in framing their complaints and concerns. UDL has found the opening section of the Guidelines helpful in communicating with consumers about their electricity supply and relationship with their retailers.

UDL proposes that the overarching principles and intended outcomes be reinstated to the Obligations. If the EA does not wish to include them in the Code itself, consideration should be given to including them in a separately published version of the Obligations which is more consumer-focused.

Q5. Do you have any feedback on the proposed improvements to terminology?

UDL largely supports the proposed amendments to terminology. However, UDL believes consideration should be given to further extending the definition of "payment plan" to expressly include customers who have previously experienced payment difficulties alongside the existing inclusion of customers who are "anticipating or experiencing payment difficulty". It is not uncommon for customers to enter into payment arrangements with retailers lasting multiple years, and a customer's financial situation may change during this time.

Q6. Do you have any feedback on the proposal to align standards of behaviour in the proposed Consumer Care Obligations?

UDL supports the use of clear language and standards in the Obligations regarding the behaviour expected of retailers (and distributors). However, UDL does not think the proposed new terms provide additional clarity or utility over the previous terms used in the Guidelines.

A plain reading of "best endeavours" appears to place a higher standard of behaviour on retailers than the previously used "all reasonable efforts". It is not clear whether this is the EA's intention. It is also not clear whether a "best endeavours" standard would require a retailer to take actions which a normal retailer or consumer would consider to be unreasonable. The EA's consultation document mentions there may be "practical limits" to the actions a retailer is required to take, but these limits are not clear from the text of the Obligations.

When dealing with a complaint, UDL uses a "fair and reasonable" standard to assess the actions of retailers. UDL's experience is that a reasonableness standard is sufficient to

impose a high standard of behaviour on retailers when necessary. For example, what is reasonable in an emergency may not be considered needed/reasonable in an everyday interchange. A reasonableness standard can also be interpreted widely to take into account the context of the complaint and the actions of the consumer themselves including their express knowledge of a matter.

UDL recommends the EA considers using a reasonableness standard throughout the Obligations where possible. In our view, this would make the Obligations easier to understand for both retailers and consumers, and better align the Obligations with standards used by UDL and other dispute resolution agencies. Where the EA wishes to make something mandatory, it can, as it has done, set out the mandatory step that *must* take place.

Q7. Do you have any feedback on Part 2 of the proposed Consumer Care Obligations relating to consumer care policies and related matters?

UDL supports the EA's proposed Obligations relating to consumer care policies. However, it is not clear if the *content* of such a policy would become part of the Code, and a failure to comply would constitute a Code breach.

UDL recommends consideration be given to including an obligation for retailers to have a consumer care policy in additional languages such as Te Reo Māori.

Q8. Do you have any feedback on Part 4 of the proposed Consumer Care Obligations relating to information and records relating to consumer care?

UDL recommends consideration be given to including further obligations regarding the information to be provided to new customers (paragraph 12). In UDL's experience, some customers feel they are not provided with sufficient information on sign-up to adequately manage their account. Further obligations could include information about how to request and/or monitor usage, how to contact the retailer if dissatisfied with bills, how to make a formal complaint and/or contact UDL.

Q9. Do you have any feedback on Part 3 of the proposed Consumer Care Obligations relating to when a customer signs up or is denied a contract?

UDL recommends that consideration be given to how a retailer's obligations under this Part may interact with the Privacy Act 2020. This may be particularly relevant to the matters set out in paragraph 16. The EA may wish to consider aligning this Part with the Privacy Act by including obligations on retailers to inform customers about what information they are recording and for what purpose, how long the information will be held, and how to request the information is deleted or corrected. In UDL's view, some customers may not want their personal circumstances to be recorded or may be surprised to learn it is recorded.

UDL understand the EAs reluctance to include other legal obligations. However, inclusions like this one would assist in helping the Obligations to be practical and easily referenced by consumers and complaints teams alike.

Q10. Do you have any feedback on Part 5 of the proposed Consumer Care Obligations relating to business-as-usual account management?

UDL recommends consideration be given to including additional obligations in this Part to better achieve the purposes of protecting consumers.

UDL suggests that additional obligations be included in paragraph 19. When a retailer contacts a customer in accordance with this paragraph, it is not clear why the information provided should be limited to a copy of the customer care policy and the customer's ability to request consumption data. At a minimum, this point of contact could trigger the obligations under paragraph 20 to provide advice to the customer regarding the most suitable product offering for the customer. Further obligations might include providing a summary of the customer's consumption and information about how to make a complaint or contact UDL.

Similarly, it is not clear why paragraph 20 is triggered only when a customer "enquires with the retailer about changing a pricing plan or signing up to a different product offering". UDL suggests this could be extended to include any customer who express dissatisfaction with their billing or consumption.

UDL also suggests paragraph 21 could be extended to further set out the minimum actions a retailer should take in situations where a customer has been billed on estimated readings for a period of time. In UDL's experience, a significant number of consumer complaints arise from large back-bills as a result of repeated estimated readings. UDL suggests paragraph 20 could include obligations to:

- make reasonable endeavours to contact a customer if an actual reading has not been obtained from the customer's property for more than three months;
- when contacting a customer about issues with readings, inform the customer of the consequences of repeated estimated readings and of the customer's ability to provide their own readings;
- make reasonable endeavours to resolve any issues which may prevent an actual reading from being obtained, either technical or access-related; and
- make reasonable endeavours to contact a customer prior to issuing a back-bill covering a period of more than three months, and to inform the customer how to make a complaint about the back-bill or arrange a payment plan.

Q11: Do you have any feedback on Parts 6 and 7 of the proposed Consumer Care Obligations relating to customers experiencing payment difficulties and disconnections?

UDL suggests consideration be given to including an obligation in paragraph 37 for a retailer to send a physical copy of a disconnection notice to the customer's premises before progressing to disconnection for non-payment. In UDL's experience, complainants often express a preference to have multiple points of contact from a retailer before a disconnection takes place.

Q12. Do you have any feedback on Part 8 of the proposed Consumer Care Obligations relating to medically dependent consumers?

UDL notes there may be a conflict between paragraphs 45 and 68 regarding disconnecting MDCs. Paragraph 45(1)(b) states a retailer “must not” disconnect a premises if “the retailer knows that a medically dependent consumer may be permanently or temporarily residing at the premises”. However, paragraph 68 only obliges a retailer to use “best endeavours to avoid electrically disconnecting any residential premises at which a medically dependent consumer is residing”. It is not clear how these obligations interact.

Q13. Do you have any feedback on Part 9 of the proposed Consumer Care Obligations relating to fees, bonds and conditional discounts?

UDL has no suggested changes to this Part.

Q14. Do you have any feedback on the proposed Code obligations for distributors?

UDL believes paragraph 69 may require further review and reflection. Paragraph 69 requires distributors to visit a customer’s premises before disconnecting supply in an emergency. UDL questions whether this is likely to be practical in an emergency. It is also not clear whether the obligations in paragraph 69(1) should apply to all customers or just to MDCs.

UDL has some concerns about the obligations imposed on distributors in relation to service interruptions and MDCs (paragraphs 69 and 70). Having distributors directly obligated to mitigate the impacts of interruptions on MDCs may risk creating confusion on the part of the MDC about who is responsible for their electricity supply and who to contact in the event of a problem. UDL’s view is that it may be preferable for retailers to have sole responsibility for providing care to MDCs, although it may still be useful for distributors and retailers to have mandated designated communication channels for contact. This would also help mitigate impacts on MDCs who do not provide their retailers with consent to share information under paragraph 57(1)(b).

This preference for focusing on the retailer would align with the quality of supply guarantee under the CGA. This guarantee lies with the retailer even though the distributor will often be responsible for the outage. However, focusing on the retailer highlights the retailers’ consumer facing role. Rather than the consumer being shifted from one industry participant to another it is the retailer who must take immediate responsibility in the first instance, and laisse with the distributor.

UDL continues to be available to the EA to discuss the implementation of the Obligations as needed. The EA at the first instance may contact Paul Byers, Legal and Policy Officer:
paulb@udl.co.nz

Yours sincerely

A handwritten signature in black ink, appearing to read 'Neil Mallon', with a stylized flourish at the end.

Neil Mallon
Toihau Commissioner
Tautohetohe Whaipainga: Utilities Disputes Limited

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