

6 April 2018

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Utilities Disputes Limited
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Sent via email: submissions@utilitiesdisputes.co.nz

Dear James

Proposed changes to the Energy Complaints Scheme

First Gas Limited welcomes the opportunity to make a submission to Utility Disputes Limited (“Utility Disputes”) on its consultation paper “*Independent 5-year review of Utilities Disputes Limited: Recommendations from the review and other Board proposed changes.*”

First Gas has answered the consultation questions asked by Utility Disputes in **Attachment 1**. The remainder of this submission focuses on the key points of interest to our business.

About First Gas

First Gas operates 2,500km of gas transmission pipelines (including the Maui pipeline), and more than 4,600 km of gas distribution pipelines across the North Island. These gas infrastructure assets transport gas from Taranaki to major industrial gas users, electricity generators, businesses and homes, and transport around 20 percent of New Zealand’s primary energy supply.

Our distribution network services 62,670 consumers across the regions of Northland, Waikato, Central Plateau, Bay of Plenty, Gisborne and Kapiti. First Gas is a provider in the Energy Complaints Scheme (the Scheme) operated by Utilities Disputes Limited for both our distribution and transmission businesses. For further information on First Gas, please visit our website www.firstgas.co.nz.

The Energy Complaints Scheme is generally working well

We agree with the independent review that the Scheme is generally working well, but there is an opportunity to refine specific areas such as the levies mechanism and performance metrics. We consider these items are linked, as the performance metrics provide assurance to providers that the levy is funding an efficient operation.

We do not support the removal of key funding principles or the proposal to extend the jurisdiction of the Scheme

We do not support the Utility Dispute Board’s (“the Board”) proposals to:

- Remove the principle of natural justice from the founding principles in the Scheme document; and
- Remove the exclusion of certain complaint types from the Scheme.

We consider the principles and exclusions are cornerstones of the Scheme. These two elements determine how, and which, claims will be considered by Utility Disputes.

The **principle of natural justice** underpins how the Commissioner must consider complaints. We do not agree with the independent review conclusion that it is superfluous or capable of misinterpretation.¹ If Utility Disputes considers the complaints process is not well understood or complainants may have incorrect expectations, this can be resolved with training and information. It does not predetermine the need to remove the principle.

We are concerned Utility Disputes is considering removing **exclusions** that have had a long-term role in the disputes scheme (formerly Electricity and Gas Complaints Commissioner Scheme (EGCC) and now Utility Disputes). The exclusions exist because the matters excluded from the Scheme are more appropriately considered in other forums by those with the knowledge and experience to do so. They also reflect matters already covered by other entities or Acts. The exclusions ensure there is no duplication by UDL of work completed by other agencies and processes. We disagree with the recommendations and consider Utility Disputes has not sufficiently made the case for the changes proposed.

Contact person

If you have any questions regarding this submission, please contact me on (06) 215 4046 or via email at lynette.taylor@firstgas.co.nz, or Matt Wilson, Gas Distribution Commercial Manager, on (04) 979 5363 or via email at matt.wilson@firstgas.co.nz.

Yours faithfully



Lynette Taylor
Regulatory Advisor

¹ Page 34, Section 7.7, *Independent review of Utilities Disputes Limited, 2017*, Queen Margaret University Consumer Dispute Resolution Centre.

Attachment 1: Responses to consultation questions

PRINCIPLE/ AREA OF DOCUMENT	#	QUESTION	BOARD'S VIEW (IF AVAILABLE)	FIRST GAS RESPONSE
Accountability	1	Do you agree with the review's recommendation <i>The Board should consider following the example of the Electricity Authority and name the relevant providers in its case notes?</i>	The Board disagreed with this recommendation. For further information on the Board's view, see pt8 (a) of the consultation pack (above)	<p>First Gas agrees with the recommendation that providers should be named in the case notes.</p> <p>A key principle of dispute resolution schemes is accountability, as this allows assessment and improvement of the scheme's performance and that of participating providers. The naming of providers in case notes supports this concept as it allows assessment of providers responses to complaints by parties' external to Utility Disputes.</p> <p>We also note that case notes are summaries of disputes handled and resolved by Utilities Disputes. Therefore, the naming of providers will only be undertaken, once it has been confirmed that the complaint is within Utility Disputes' jurisdiction and the provider has had sufficient opportunities to resolve the complaint prior to it reaching deadlock.</p> <p>If providers are named in the case notes, it would be useful to separate First Gas distribution cases from those relating to First Gas transmission. This would assist readers of the case notes.</p>

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	2	Do you agree with the Board's proposal for Utilities Disputes to name providers that breach scheme rules and guidelines?	Board proposes naming providers that breach scheme rules and guidelines	<p>First Gas supports the Boards proposal to name providers that breach the Scheme rules. When providers enter into a provider agreement with Utility Disputes they agree to abide by the Scheme rules. The Scheme rules are also subject to rigorous consultation with stakeholders, including providers, prior to any changes before undertaken. Therefore, we consider that is appropriate that any provider that breaches the Scheme rules should be held to account. This may include naming those providers.</p> <p>We have no comments regarding the proposal to name providers that breach guidelines.</p>
	3	Do you agree with the Board's proposal for Utilities Disputes not to name providers in its case notes?	Board does not accept recommendation to name providers in its case notes	<p>No.</p> <p>As outlined in our response to question one, we agree with the recommendation from the independent review that providers should be named in the case notes.</p>

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	4	If Utilities Disputes were to name providers in case notes, what other information do you think needs to be included?	Board seeks views before considering the issue further	<p>We consider the summary of the complaint and outcome as currently portrayed in the case notes is sufficient. The addition of the provider's name does not require further information, except where any provider named has more than one type of utility under the scheme. In these instances, the provider and the utility should be named in the case notes.</p> <p>For example, we recommend that any case notes referencing First Gas, specify whether the case involves our distribution business or our transmission business.</p>
Natural Justice	5	Do you agree with the review's recommendation to <i>consider removing the principles of natural justice from its scheme document?</i>	Explicit reference to natural justice in the list of principles is not needed and can be removed	<p>First Gas does not support the removal of the explicit reference to natural justice from the scheme document.</p> <p>If Utility Disputes believe that the principle is misunderstood, it should be clearly defined in the Scheme document. This would be subject to consultation as natural justice is considered a principle of the Scheme. Further, the Utility Disputes website and brochures should be amended if Utility Disputes believe complainants may have unwarranted expectations of the process.</p> <p>The principle of natural justice comprises two rules – the rule against bias, and the rule of the right to a fair hearing. This is one of the founding principles that providers agreed to when joining the Scheme.</p> <p>The consultation paper and independent review do not point to where its inclusion has caused issues with the</p>

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				<p>performance of the Scheme. Without this evidence, or any underlying change in the industry or operating environment, we cannot support the removal of a key principle.</p> <p>The independent review has indicated that the inclusion of natural justice as a principle is unnecessary. The report concludes that principle of fairness provides the same assurances as the term natural justice and therefore including natural justice as a founding principle is superfluous.</p> <p>First Gas does not agree with this conclusion. When developing the founding principles to the Scheme, it was agreed that both the principle of fairness and natural justice were key cornerstones to the Scheme. There has been no further information come to light that change this position.</p> <p>The independent report further raises a concern that the term of natural justice may be misinterpreted. It states that “alternative dispute resolution schemes deliberately have fewer procedural safeguards than the adversarial court process but the quid pro quo is that they provide quicker, more accessible, more consumer-friendly processes”. The authors are concerned that the “problem with using the term natural justice is that few people have the kind of sophisticated understanding of the way in which it operates’ in dispute resolution schemes.”² The independent review</p>

² Page 35, section 7.7, Independent review of Utilities Disputes Limited,2017, Queen Margaret University Consumer Dispute Resolution Centre.

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				<p>recommends the term should be removed as it may create unwarranted expectations from complainants.</p> <p>First Gas disagrees that a key principle should be removed simply because it may be misunderstood. We recommend that Utility Disputes:</p> <ul style="list-style-type: none"> • Includes the process, and what complainants may expect in any training materials to avoid confusion; • Update its website and brochures to ensure complainants know what to expect; • Include a definition of natural justice in the Scheme document. The term has an internationally accepted meaning that was understood by providers when joining the scheme. The standard definition could be included in the Scheme document if it is required to ensure a common understanding and expectation.
	6	Do you agree with the Board's view that the explicit reference to natural justice in the list of principles is not needed and can be removed?	Explicit reference to natural justice in the list of principles is not needed and can be removed	First Gas does not agree with the proposal to remove explicit reference to natural justice from the list of principles. Please refer to our response under question 5.

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Performance Standards	7	Do you agree with the review's recommendation to remove performance standards relating to providers' self-reporting on compliance?	Board seeks views before considering the issue further	<p>First Gas supports the removal of performance standards relating to providers' self-reporting on compliance.</p> <p>As providers, we are obligated to uphold compliance with the General Rules and Scheme Rules. Whilst the annual self-reporting compliance is not burdensome, it is also not required. Removing this additional administrative task does not affect providers' obligations or intent to comply with the Scheme.</p>
	8	Do you agree with the review's recommendation to remove performance standards relating to cost per case?	The Board believes a <i>cost per case</i> measure is not sufficiently linked to Utilities Disputes performance to justify a performance measure. However, the current measures should remain until new measures have been approved	<p>In principal, we support the inclusion of performance standards that are meaningful and drive the right behaviour. The current measure of cost per case by itself does not provide much guidance to Utility Disputes performance, as it can be affected by the mix and complexity of complaints and other work Utility Disputes may be undertaking.</p> <p>We agree with the Board's view that. Utility Disputes should maintain this current measure until new measures have been approved.</p>
	9	Do you have ideas about other measures the Board could consider adopting?	Board seeks views before considering the issue further	<p>We consider it would be useful to have a mix of qualitative and quantitative measures.</p> <p>We have not had sufficient time to consider ideas of suitable new performance measures, but would welcome the opportunity to engage on this matter further.</p>

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Levies	10	Do you agree with the review's general recommendation that the levy mechanism needs to be changed?	Board seeks views before considering the issue further	<p>First Gas supports the Board's view to consider the levy mechanism issues further.</p> <p>As a matter of principle, we consider that the levy individual providers are charged should:</p> <ol style="list-style-type: none"> 1. Allow Utility Disputes to recover costs in full and in a timely manner; 2. The levy individual providers are charged should reflect the use and benefits they receive from Utility Disputes; and 3. The levy should reflect costs that are incurred by an efficient organisation. <p>We continue to support the levy be only charged to providers to the Scheme and no fee be charged to complainants.</p>

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	11	What information do you think the Board needs, to help it decide what options are available?	Board seeks views before considering the issue further	<p>Any levy mechanism needs to be equitable and proportionate. The Board should consider what is driving costs that are not being appropriately funded in year. Any levy mechanism should reflect the underlying drivers of the cost and users of the service. This may result in a reapportionment of costs between the fixed and variable components.</p> <p>Utility Disputes is in a position to determine the cost in time for each complaint accepted and separately, the cost of each complaint reaching deadlock. The variable levy could include a charge for all complaints that are accepted by Utility Disputes.</p> <p>The independent review has found that it is difficult to determine the quantum of claims each year, and the average time that will be required. A single event can result in a number of claims.</p> <p>One option Utility Disputes could consider is to invoice for the variable portion of fees that relate entirely to that claim, as soon as the claim is settled.</p>

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	12	What elements of the current levy mechanism do you think work well and should be retained?	Board seeks views before considering the issue further	<p>We consider that the split of the levy between a fixed charge and a variable charge is sensible approach to funding Utility Disputes.</p> <p>A fixed charge is an appropriate mechanism for funding aspects of the Scheme that provide benefit to all providers (i.e. not directly attributable to any on parties) and/or are fixed annual costs. For example, funding for:</p> <ul style="list-style-type: none"> • Funding training of personnel, consumers and providers; • Raising knowledge of the Utility Disputes service; and • A portion of base employee costs. <p>As the scope Utility Disputes broadens to include consumer services such as broadband, we consider it would be appropriate to share the fixed costs with all providers incorporated into the broader scheme.</p> <p>We consider variable charges are suitable for costs that are attributable to specific parties and are volume-related, for example complaint resolution. In the case of each complaint, the provider or providers can be clearly identified. We consider that the variable charge should only be levied once Utility Disputes has accepted the complaint; this indicates it is within their jurisdiction to consider and the provider has had the opportunity to resolve the complaint.</p>
	13	What elements of the current levy mechanism do not work and	Board seeks views before considering	First Gas considers the current levy mechanism generally works well. However, we recommend further consideration

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		why?	the issue further	<p>of the calculation method used for the variable charge.</p> <p>At present, the variable component of the levy is based upon which phase the complaint reaches before being resolved. The phase is determined by the days or hours the complaint is in the process.</p> <p>We recommend a review of this process to ensure it is efficient and complainants are encouraged or incentivised to respond to information requests or meeting requests in a timely manner. We have some concern that a complaint may move from levy phase 1 to phase 2 due to events outside of our control.</p> <p>Currently, providers must supply any information requested by Utility Disputes in a timely manner. We are incentivised to do so to minimise the time the complaint remains unresolved. Complainants do not seem to have the same pressure to respond to requests for information.</p> <p>Complainants should also have a time in which they should respond before the complaint is put on hold and then removed. This would need to be clearly specified on the Utility Disputes website and in any communication to ensure the principle of fairness is maintained.</p> <p>Currently, it appears that it is possible for a complaint to go from phase 1 to phase 2 simply due to the time it takes for a complainant to respond.</p> <p>Providing an incentive for complainants to respond to any requests for information will also minimise the time that</p>

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				Utility Disputes staff may need to invest following up with complainants.
	14	What levy options can you think of to address provider concerns about 'throwing money at complaints' to avoid the levy?	Board seeks views before considering the issue further	One option could be that the variable levy is based on the number of complaints that reach Utility Disputes, rather than on only deadlocked complaints. This incentivises providers to manage the customer experience in house to prevent an escalation of an issue to Utility Disputes.
	15	What levy options can you think of to avoid senior staff spending more time on jurisdiction issues	Board seeks views before considering the issue further	<p>We consider the determination of whether a complaint falls within the Scheme's jurisdiction is an essential function of Utility Disputes' staff. If it cannot be determined by junior staff at the time the complaint is lodged, it is appropriate that senior staff are involved to ensure it is resolved in a timely manner. This upfront effort will minimise time spent unnecessarily on a claim and the claimant can be advised of other alternatives.</p> <p>The Utility Disputes website already specifies which type of claims are outside of its jurisdiction. This should be clearly stated when talking to consumers or consumer groups.</p> <p>Providers are made aware of the complaint once it has been accepted. Timely advice to providers and a time frame in which they can advise if they believe the complaint is not within the jurisdiction of the Scheme may minimise the time spent by senior staff.</p>

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	16	What levy options can you think of that would avoid delays (beyond the provider's control) triggering levy levels?	Board seeks views before considering the issue further	<p>We consider an issue with the current mechanism is that levy levels can be triggered by delays in Utility Disputes receiving information from complainants.</p> <p>We suggest that a mechanism be put in place to ensure that complainants must respond to requests for information or meetings in a timely manner. While waiting for a response from a complainant, the claim should be put on hold and not affect the time calculation that will push the claim to the next levy level.</p>
	17	Do you agree with the recommendation <i>every organisation which is covered by the Scheme should make a contribution to its running costs?</i>	Board seeks views before considering the issue further	We agree that every organisation that is a provider in the Scheme should contribute to its running costs on a basis proportionate to its use of the scheme and benefits from the Scheme.
	18	Do you agree with the recommendation <i>there should be no cross-subsidisation of providers, nor sweetheart deals. Thus, the levy arrangements for Transpower and First Gas should be revisited?</i>	Board seeks views before considering the issue further	<p>First Gas agrees there should be no cross-subsidisation of providers, whether this is between classes or between schemes. However, we do not agree that there are any 'sweetheart' deals in place for Transpower or First Gas' transmission business. Rather, a different rate for transmission providers reflects the different situation facing these transmission providers and its customers.</p> <p>First Gas 'transmission business is unlikely to require the services of Utility Disputes due to:</p>

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				<ul style="list-style-type: none"> • The existing commercial arrangements under our connection contracts for use of the gas transmission network; and • The magnitude of claims that can be addressed by the Scheme. <p>First Gas' transmission business has commercial arrangements with its customers (shippers) through the Maui Pipeline Operating Code and the Vector Transmission Code (VTC). Both these codes have provisions for contractual disputes and would be the most likely avenue a shipper would use.</p> <p>We also query how many gas transmission-related complaints could be dealt with via the Scheme. The magnitude of claims that can be addressed by the Scheme is currently limited to complaints under \$50,000. Events occurring on the gas transmission network affecting customers are usually high impact, low probability (HILP) events that would fall outside this range, i.e. a rupture to a section of pipeline.</p> <p>As providers to the Scheme we agree that our transmission business should bear some of the costs of the scheme. However, we consider we already subsidise other providers to the extent we contribute to the fixed levy, although our consumers are unlikely to use Utility Disputes services.</p> <p>We welcome a review of the levy arrangements in place but caution against a solution that may appear easy but leads</p>

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				to an inequitable result.
	19	Do you agree with the recommendation <i>The fixed element should cover all costs incurred by Utilities Disputes excluding those solely related to the handling of individual complaints?</i>	Board seeks views before considering the issue further	<p>In principle, we agree that the fixed portion of the levy should cover the fixed costs of Utility Disputes and the variable component should cover those costs relating to the handling of individual complaints.</p> <p>We suggest that a portion of personnel costs should be covered by the variable levy. From our understanding, it is not clear if this is how the levy is currently set.</p> <p>The performance measures previously discussed should work alongside the fixed element of the levy to ensure the levy reflects efficient costs.</p>
	20	Do you agree with the recommendation <i>In keeping with the 'user pays' principle, any case reaching Utilities Disputes at deadlock should incur a fee?</i>	Board seeks views before considering the issue further	<p>In principle, we agree that any case reaching Utilities Disputes at deadlock should incur a fee. We also consider that any complaint being accepted by Utility Disputes (i.e. is within their jurisdiction and providers have had an opportunity to resolve) should incur a fee.</p>
	21	Do you agree with the recommendation <i>The current variable fee structure needs to be reconsidered?</i>	Board seeks views before considering the issue further	<p>First Gas agrees with the recommendation that the current variable fee structure should be reconsidered.</p>

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Land Complaint exclusions	22	Do you agree with the review's recommendations to remove the exclusions?	The Board is concerned the Land Complaint exclusions may impact on the Scheme's approval (scheme rules must provide for or set out that <i>any person</i> who has a complaint about a member has access to a Scheme for resolving the complaint)	<p>First Gas does not support this recommendation to alter the jurisdiction of claims considered by Utility Disputes.</p> <p>The current land exclusions in Appendix 2 of the Scheme rules reflect issues that are more appropriately considered in other forums. These forms of disputes can be highly technical and likely to be beyond the expertise of the Scheme. We consider that these other forums are more suitable for dealing with any issues covered by the exclusions.</p> <p>We are disappointed that this matter is being considered without a strong evidence-based case. To our knowledge nothing has changed since the decision to retain the exemptions in 2016. With no evidence provided to support the removal of the exclusions, we consider they should remain in place.</p>
	23	If the exclusions were removed, what impact would this have on your business? Please provide examples and what information this is based on wherever possible.	Board seeks views before considering the issue further	<p>First Gas is concerned that complaints will no longer be considered in the most appropriate forum.</p> <p>We understand the exclusions referred to are those that would otherwise be a land complaint. We have focused our comments on the proposal to remove the land exclusions. In principle, we do not consider any of the exclusions should be removed. If the land exclusions were removed, Utility Disputes is likely to incur significant costs for technical experts to support decisions. This will increase costs to providers and ultimately to our consumers.</p>

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				<p>The Scheme specifically states that Utility Disputes, in resolving a complaint:</p> <p><i>‘... must aim to be consistent with the way other complaints have been resolved by UDL but is not bound by any legal rule of evidence. Decisions do not create precedents.’</i></p> <p>This adds a level of uncertainty for providers in an area that has strong legal precedent and is already covered in other forums. This may result in decisions being made that are contrary to those made in other forums and/or under other Acts.</p> <p>For example, exclusion 1.4 refers to matters between local authorities and lines companies around network assets in the road. These are covered with provisions in the National Code of Practice for Utility Operators’ Access to Transport Corridors. It does not seem an efficient or practical use of Utility Disputes’ resources to duplicate this work.</p>
Other proposed changes - <i>Accessibility</i>	24	Do you agree in principle with the idea of a deemed membership mechanism?	Board seeks views before considering the issue further	In principle, we agree with the idea of a deemed membership mechanism. We welcome the opportunity to respond to further consultation on this matter.

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	25	If implemented, do you think the deeming mechanism should apply to any scheme with mandatory membership that Utilities Disputes operates?	Board seeks views before considering the issue further	We cannot comment on the appropriateness of any mechanism for other schemes Utility Disputes operates.
	26	To enable fair contribution toward the costs of running the scheme, if implemented, when should the levy obligations for deemed providers start?	Board seeks views before considering the issue further	As we have commented above, all providers signed up to the Scheme should contribute to the costs of the Scheme. Deemed providers should incur their portion of the fixed charges from the time they join the Scheme. While this could result in Utility Disputes being over-funded for the fixed component of the Scheme in that year, we believe that a wash-up could be undertaken to reduce the levy for all providers in the following year.
	27	If implemented, when should other provider obligations (for example those in General Rule 12) start for deemed providers?	Board seeks views before considering the issue further	We recommend the commencement of provider obligations be considered on a case-by -case basis, but providers be fully compliant within a specified timeframe. While providers should be obligated to abide by all rules immediately, some rules such as General Rule 12, may require changes to their system or processes. We consider that a reasonable timeframe to reach full compliance could be up to 90 days.

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	28	Do you have other suggestions to address the problem of non-compliance with membership requirements to join the Energy Complaints Scheme?	Board seeks views before considering the issue further	<p>We consider that if distributors and retailers have not joined the Scheme, it is likely because they are not aware of the requirement.</p> <p>We suggest Utility Disputes increase its awareness within the industry. Part of this approach could be to ensure the Electricity Authority and Gas Industry Company advise any new retailers or distributors of their required participation in the Scheme.</p>
Accessibility/ Efficiency	29	Do you agree with the proposed change to substitute “ <i>distributor</i> ” for “ <i>lines company</i> ” where they appear in the scheme documents?	Board thinks this will improve consistency in terminology.	<p>First Gas supports the separation of distribution and transmission. The current definition of a lines company groups these classes of provider together.</p> <p>The Scheme document in general references “lines companies excluding Transpower or gas transmission services”. It is appropriate to change the definition to simply refer to distribution services.</p>

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	30	If references to lines company were changed to distributor, what other steps, (including other potential changes) do you think are needed to avoid changing the meaning of any clause(s) affected?	Board seeks views before considering the issue further	<p>We believe the exemption clauses in appendix two would need to include reference to both the distribution networks and transmission networks, if the “Lines company” term is removed.</p> <p>We are not aware of any other steps that are needed to avoid changing the meaning of any clause(s). However, we believe future consultation on detail amended wording would provide greater insight into any other necessary changes.</p>