

17 November 2021

Chair
Economic Development, Science, and Innovation Committee
Parliament Buildings
Wellington

Via email: edsi@parliament.govt.nz

SUBMISSION ON THE ELECTRICITY INDUSTRY AMENDMENT BILL

The Electricity Retailers' Association of New Zealand ('ERANZ') welcomes the opportunity to provide feedback on the Electricity Industry Amendment Bill.

ERANZ is the industry association representing companies that sell electricity to kiwi households and businesses. Our members supply over 90 per cent of New Zealand's electricity. We work for a competitive, fair, and sustainable electricity market that benefits consumers.

ERANZ would like the opportunity to make an oral submission to the Committee.

Executive Summary

Overall, ERANZ supports the Electricity Industry Amendment Bill, albeit with some important caveats. ERANZ members work hard to support consumers across Aotearoa, especially those facing energy hardship. We look forward to continuing to work with the Minister and the Electricity Authority ('the Authority') as we continually improve the electricity sector for the benefit of kiwis and tackle climate change.

As electricity retailers, the provisions in the Bill with the most impact on our businesses relate to the objectives and functions of the Authority, the establishing and funding of a Small Electricity Consumers Agency and amending the Authority's and Minister's powers to amend the Code.

ERANZ is concerned that amending the Authority's objectives and functions as well as creating a stand-alone Small Electricity Consumers Agency could result in contradictory initiatives if both organisations do not coordinate their work programmes.

The Bill significantly changes the legislation for the Authority and the Minister to amend the Electricity Industry Participation Code without any corresponding checks or balances. If these provisions go ahead, ERANZ recommends the Committee consider introducing a merits review mechanism available to consumers and industry.

Objective and functions of the Authority

The Bill gives the Authority an additional objective and function of protecting "the interests of domestic consumers and small business consumers in relation to the supply of electricity to those consumer" [*clauses 9 & 10*].

We, as retailers, are the most consumer facing organisations in the sector. Two acts already govern behaviour, the Fair Trading Act 1986 and the Consumer Guarantees Act 1993. In addition, electricity retailers are subject to regulation by the Electricity Authority and must abide by the provisions of the Electricity Industry Participation Code as well as the Consumer Care Guidelines. All these provisions add up to wide-ranging (and sometimes overlapping) protection for consumers covering standards of service, support for paying bills, and rules around disconnections.

ERANZ members take very seriously our role in serving and protecting customers. It was ERANZ who kicked off the process of updating and strengthening the Consumer Care Guidelines that the Authority ultimately picked up and became the refreshed Guidelines coming into force on 1 January 2022. ERANZ runs a Consumer Care Working Group to coordinate efforts to support those in energy hardship across government departments, agencies, NGOs and electricity retailers. EnergyMate is our free in-home energy coaching service to help kiwis in need manage their energy use and keep their homes warm. So far, we operate in 13 locations, and we aim to support around 4,000 Kiwis this year.

Over the last few months, ERANZ members have sought to protect customers from disconnections as Covid lockdowns again disrupted some households' ability to earn an income, and people spent more time at home using power. For example, our members are suspending all disconnections for post-paid customers living under Covid alert levels 3 and 4 lockdowns. In addition, members are undertaking a programme of outbound calling to check on customers identified as likely in hardship.

ERANZ has a very good working relationship with the Authority and sees first-hand their work supporting the interests of household and other small consumers. The 2019 'Electricity Price Review' recommended changing the function of the Authority but not its objective. Indeed, it is arguable the Authority can already adequately advocate for consumer interests within their current mandate. Therefore, the case for change is limited. However, ERANZ supports the change but asks the Committee to examine whether this change inappropriately dilutes the Authority's existing objectives and functions.

Small Electricity Consumers Agency and levy

The Bill establishes a 'Small Electricity Consumers Agency', to represent and advocate for the interests of household and small business electricity consumers [*clause 11*]. To cover this new Agency's costs, the Bill enables the recovery of all costs incurred from 1 July 2021 from electricity industry participants, subject to consulting levy payers on any cost recovery via levy regulations [*clause 38*].

ERANZ has a close working relationship with many consumer advocacy organisations. We deliver EnergyMate, our in-home energy coaching service, via contracted NGOs working in eight local communities. In addition, multiple groups and agencies participate in our Consumer Care Working Group. Finally, ERANZ is in the process of establishing an electricity voucher scheme in conjunction with FinCap, to help households transition away from the 'Low fixed charge' regime following the government's decision to remove these regulations.

ERANZ supports the 2019 Electricity Price Review recommendations for additional advocacy on behalf of households. However, the government could achieve this recommendation without necessarily establishing a new government agency. Creating a new stand-alone agency risks doubling up with the Authority's expanded objectives and functions under clauses 9 and 10. These

two organisations must, therefore, carefully coordinate their work otherwise they may pull in opposite directions.

ERANZ notes a levy-funded agency means additional costs will flow through to customers. Given the recommendation in the 2019 Electricity Price Review to reduce consumer costs, care must be taken to keep these to a minimum. While the costs will be defrayed across all New Zealanders, it is those on lower incomes who are most price sensitive.

ERANZ does not support the retrospective regulations allowing for cost recovery for the Small Electricity Consumers Agency in this financial year, even if the regulations come into effect after 30 June 2022 [*Schedule 1, Part 1, clause 6*]. This clause would impose costs on levy payers retrospectively.

Authority's powers to change the Code

The Bill gives the Authority the ability to regulate involvement by distributors and Transpower in contestable electricity markets, such as distributed energy resources, by changing the Code [*clause 13*]. The Bill's proposed section 32(4) provides that the Code may contain provisions that "set quality or information requirements for Transpower or one or more distributors in relation to the terms and conditions for access to transmission or distribution networks and set pricing methodologies for Transpower or one or more distributors".

Today's emerging technologies increasingly blur the traditional boundaries of defined roles such as generator, distributor, and retailer. Such innovation is important for the electricity industry to cater for new ways of doing things as we transition to a low-carbon economy powered by predominately renewable electricity.

ERANZ recognises the goal of transferring some of the Authority's powers from the Act to the Code is to speed up rule making for these rapidly evolving markets; so ERANZ supports moves to make regulatory changes more responsive. However, we urge caution. These provisions do not come with any additional checks and balances, so the Authority will have the ability to potentially change the Code in fundamental ways. During some previous instances of the Authority changing the Code, their regulatory statement and cost-benefit analyses have been too thin compared to the size of their proposed changes. Judicial reviews of Authority decisions are available, but these are expensive and are examined by judges narrowly.

ERANZ recommends the Committee consider how they can balance the broad powers of the Authority to change the Code with the need for industry and consumer input. ERANZ submits the Committee should investigate introducing merits review of Authority decisions – these are not available currently but could help protect against the heightened powers the Authority will have under these changes while avoiding costly judicial reviews.

Minister's powers to change the Code

The Minister gains additional time-limited powers [*clause 19*] to amend the Code themselves. They can do this if they consider the Code inadequate to address the Electricity Price Review's recommendations.

ERANZ notes the Authority already has independent power to amend the Code to deliver on the Electricity Price Review recommendations, housed within recognised decision-making processes, including consultation with industry. Care should be taken when providing any individual decision-

maker with the ability to make wide-ranging changes. MBIE concludes on page 34 of its Regulatory Impact Analysis for this Bill that they oppose including these provisions.

Additionally, the consultation requirements in section 39 of the Electricity Industry Act can be circumvented through subsection 39(3), so these new provisions would provide a single decision-maker (the Minister) with the ability to make changes to the Code without consultation. ERANZ notes the Authority has gone through the full Code change process to implement the Electricity Price Review's recommendations, rather than using subsection 39(3)(c), so we expect the Minister to follow this same approach if using their new powers under clause 19. However, this is not guaranteed, so ERANZ recommends the Committee consider further protections for consumers and industry participants should they wish to proceed with these new ministerial powers. ERANZ submits the merits review process we recommend for the Authority be extended to include the Minister.

Conclusion

ERANZ would like to thank the Committee for your consideration of our submission.

Yours sincerely

A handwritten signature in black ink, appearing to read 'C. Burrows', with a long horizontal flourish extending to the right.

Cameron Burrows
Chief Executive