

Submission by



to the

Economic Development, Science and Innovation Select Committee

on the

Electricity Industry Amendment Bill

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ELECTRICITY INDUSTRY AMENDMENT BILL
– SUBMISSION BY BUSINESSNZ ENERGY COUNCIL¹

INTRODUCTION

1. The BusinessNZ Energy Council ('BEC') welcomes the opportunity to provide feedback to the Economic Development, Science and Innovation Select Committee on the Electricity Industry Amendment Bill (referred to as 'the Bill').
2. BEC is a group of New Zealand's energy sector organisations, including businesses, government, and research organisations, taking a leading role in creating a sustainable, affordable, and secure energy future for all New Zealanders. Together we seek to shape the energy agenda for New Zealand. BEC is a division of BusinessNZ, New Zealand's largest business advocacy body and the New Zealand member committee of the World Energy Council (WEC).
3. This Bill aims to "*provide an effective regulatory framework for the electricity industry in view of rapidly evolving technologies and business models.*" There are four key objectives of the changes, to:
 - A. amend the Authority's objective to protect households and small business consumers,
 - B. establish a small consumer advocacy agency to strengthen consumers' voice,
 - C. provide regulatory agility by shifting distributor provisions from the Act to the Code,
 - D. and regulate distribution access terms and conditions under the Code.

The proposed changes also address a number of other matters including clarifying the Authority's powers to gather information from industry participants for ministerial reviews or investigations, allowing the Authority to share information with public service agencies and statutory agencies, and allowing the Minister to amend the Code on specified matters.

4. In general, we support the move to ensure the regulatory framework will allow for new technologies and business models. The nature of those regulatory changes, however, is critical. This submission provides some general comments on the proposed changes, seeks clarification and proposes further changes.
5. Given the diversity of our membership, some members will have specific issues which they might wish to comment on in more detail. We have encouraged individual members to make their own submissions raising issues specific to their areas of expertise.

¹ Background information on BusinessNZ Energy Council (BEC) is attached as Appendix One.

BACKGROUND

6. We believe an efficient electricity system is vital for a competitive economy. Electricity is a key input to the production of goods and services for businesses. We believe consumers' demands need to be satisfied in a manner which is least cost to the economy so that scarce resources are not wasted. In 2009 BusinessNZ, in its submission² on an earlier electricity market review stated its vision:

"Business New Zealand would like to see a future electricity market that is consistent with the following:

- a) a market-based framework where generators and retailers of any size are competing vigorously over a robust transmission network, and businesses and residential consumers are trading in a way that enables them to manage their risks at efficient prices;*
- b) a focused, stable regulatory and governance framework delivering an investment climate where local and international firms feel comfortable enough to risk their capital to invest in the right generation technology, at the right cost, and at the right time;*
- c) a market where the participants are more willing to use the electricity market, rather than the political market to resolve their issues, and where politicians are willing to set policy but rely on market outcomes and*
- d) an industry where transparent information about the state of its health is regularly delivered in a form that facilitates understanding and debate about the sector's performance."³*

7. Although the industry is changing rapidly, our vision has not changed. We believe the best way to stimulate investment in innovation is through supportive, stable regulations that are durable over time and afford certainty to participants in new and emergent markets.

GENERAL COMMENTS ON KEY OBJECTIVES

A. Amend the Authority's objectives to protect households and small business consumers

8. The BEC supports strengthening the voice of consumers, particularly small businesses who may struggle to engage with the decisions affecting them in the electricity sector. We use the energy trilemma framework to benchmark and monitor our energy system performance globally. The trilemma recognises the need to balance energy equity (including access to and affordability of energy) with energy security and environmental sustainability.
9. Like the trilemma, and as noted in the Bill's explanatory notes, at times the Authority's objectives may be in conflict. Protecting small consumers in their dealings with industry participants might not necessarily

² BusinessNZ Submission on Improving Electricity Market Performance, page 7, paragraph 3.6
[https://www.businessnz.org.nz/__data/assets/pdf_file/0010/67942/090916-Electricity-Market-Review.pdf]

³ BusinessNZ Submission on Improving Electricity Market Performance, page 4-5, paragraph 3.4
[https://www.businessnz.org.nz/__data/assets/pdf_file/0010/67942/090916-Electricity-Market-Review.pdf]

be consistent with the Authority's objective of promoting competition, reliability of supply or the efficient operation of an industry.

10. We believe a market-based framework is the most effective and efficient way to make trade-offs, where there is sufficient competition between generators and retailers over a robust transmission and distribution network, where the emergence of new flexibility markets and network integrated Distributed Energy Resources (DER) are enabled, and where consumers can trade in a way that enables them to manage risks at efficient prices.

B. Establish a Small Electricity Consumer Advocacy Agency

11. We support the establishment of Small Business Consumer Advocacy Council as proposed by the Electricity Price Review ('Review')⁴, and believe the BEC should be part of this. The success of this proposal will largely depend on its scope and resourcing and ultimately its influence on decision-making processes.
12. In a cabinet paper reporting back on the progress of the Review's recommendations⁵ the Minister states *"I do not envisage the Council to be of a scale to justify the creation of a separate Crown entity or departmental agency."* We agree the new body does not require a standalone structure and should be established as a part of an existing agency, rather than as a separate agency. For clarity, we believe the new body should be referred to as a Council or Committee.
13. We agree this body should operate independently of industry participants, regulators and government. It must have the appropriate capability and expertise in order to be effective and should complement rather than replace existing groups advocating on behalf of consumers.
14. We note that any costs incurred by the proposed new levy will ultimately be borne by the consumer. The entity must have a clear function and focussed work programme to provide value to consumers. If these are not well managed, there is a risk the levy will have the opposite effect on electricity prices from that intended by the Electricity Price Review and resulting recommendations.
15. We do not support the imposition of regulations in respect to the Small Electricity Consumers Agency under Schedule 1, Part 1, clause 6, which currently allows for the recovery of costs incurred in the year ending 30 June 2022, even if the regulations come into effect after that date. This clause would impose costs on levy payers retrospectively.

Recommendation: Refer to the newly established entity as the Small Consumer Advocacy Council.

Recommendation: Remove Schedule 1, Part 1 clause 6 which imposes costs retrospectively

⁴ Electricity Price Review: Final Report <https://www.mbie.govt.nz/assets/electricity-price-review-final-report.pdf#page=77>, p77

⁵ Progressing the Electricity Price Review's recommendations <https://www.mbie.govt.nz/dmsdocument/10987-progressing-the-electricity-price-reviews-recommendations-proactiverelase-pdf>, p5

C. Provide regulatory agility by shifting provisions from the Act to the Code

16. We agree the rapidly evolving electricity system requires more flexibility and a new regulatory approach. We support the purpose of the Bill *"to provide more regulatory agility to promote competition in evolving contestable markets"*.
17. This is particularly the case for distributors who might wish to explore implementing new technologies and platforms to accommodate distributed energy resources, such as solar and battery systems or electric vehicles. These innovations have the potential to encourage greater consumer engagement and reduce emissions.
18. We acknowledge the uncertainty for industry participants, particularly distributors, who will be affected by the anticipated changes. We are aware of some cases where this kind of uncertainty has caused industry participants to defer investments which would otherwise have been implemented and would have resulted in greater energy efficiency and reduced emissions.
19. By transferring provisions out of primary legislation and leaving industry with no knowledge of what rules could emerge in their place, the Bill as it stands creates uncertainty for networks at a time when greater network investment in needed solutions is required urgently. In our view, the uncertainty of what might be captured under future regulations could have a chilling effect on investment, slowing the evolution of contestable markets.
20. For example, digital and data-based platforms which can enable dynamic demand management are necessary for the emergence of new and innovative products and services – and to unlock value from consumer products, such as smart EV chargers (which would offer less system wide optimisation without being connected to a digital platform for dynamic management). The consumer value of a smart phone, for instance, would be limited without broadband. In this context the salient question for the Authority is how to ensure settings and platforms are in place to promote the emergence of new markets and sources of consumer value.
21. Regulatory flexibility must be balanced with regulatory certainty to encourage investment in future innovation. We support a focused, stable regulatory and governance framework delivering an investment climate where local and international firms feel comfortable enough to risk their capital to invest in the right technology, at the right cost and at the right time. When a change to regulations is required, the reasons for change should be well-defined, well-signalled and thoroughly consulted on to provide sufficient certainty to existing and potential industry participants.

Recommendation: Any future changes to the Act or Code should be well-signalled and thoroughly consulted on.

D. Regulate distribution access terms and conditions under the Code

22. We recognise the work the Electricity Authority and industry participants have undertaken to develop a default distribution agreement. We acknowledge the standardisation of terms and conditions might reduce costs and assist competition in some cases, however in others, regulating access agreements might impose costs which are not compensated for under the Commerce Commission's price-quality regulation.

23. We support moves to clarify what might be regulated by the Authority under the Code. We note the Electricity Authority and Commerce Commission both have a role to play and would expect collaboration between these agencies to ensure there are no conflicting requirements.
24. We expect these types of boundary issue, where one or more agencies is involved, will become more frequent in future as distributed energy resources in homes, and across transport modes mean more agencies will have a growing interest in the impact on the electricity sector.
25. We understand the Council of Regulators meets regularly to discuss these types of cross-cutting issue, however we note industry participants might not be aware of the meetings.

Recommendation: Provide greater transparency to industry by publishing more information about the council's work. Information could include frequency of meetings and an overview of the agenda.

Other matters

26. The Bill enables the Minister to amend the Code if not satisfied with progress on specified matters. In general, we do not support this kind of back-stop regulatory power, although we acknowledge it has been limited in terms of scope and timing.
27. The Bill allows the Authority powers to gather information from industry participants for the purpose of carrying out reviews or investigations requested by the Minister. We would prefer to see participants use the electricity market, rather than the political market to resolve issues, where politicians are willing to set policy but rely on market outcomes. We note this information gathering requirement has the potential to be an onerous, time-consuming and costly task and suggest that if implemented, organisations should be compensated appropriately for their time and effort.
28. The Bill allows the Authority to share information with other public service agencies and statutory entities. We recognise there may be efficiencies to be gained from information-sharing and note the importance of transparent information, particularly concerning the health of the overall sector, in facilitating understanding and debate about the sector's performance. However, it remains unclear what kind of information might be of interest. In principle, we believe there is an optimal level of sharing so there must be a clear need for the data. Consideration should be given to notifying industry participants of when and what data is being shared.

Recommendation: Require the Authority to publish details of how often it is requesting information formally under Section 46 of the Act. Consider compensation arrangements for organisations required to provide information for ministerial investigations or reviews.

Recommendation: Provide further details of the purpose and nature of information to be shared between agencies. Consider arrangements to notify participants of what information is being shared when.

APPENDIX ONE - BACKGROUND INFORMATION ON BEC

The [BusinessNZ Energy Council \(BEC\)](#) is a group of New Zealand's peak energy sector organisations taking a leading role in creating a sustainable energy future. BEC is a division of BusinessNZ, New Zealand's largest business advocacy group. BEC is a member of the [World Energy Council \(WEC\)](#). BEC members are a cross-section of leading energy sector businesses, government and research organisations. Together with its members BEC is shaping the energy agenda for New Zealand.

Our vision is to support New Zealand's economic wellbeing through the active promotion of the sustainable development and use of energy, domestically and globally. With that goal in mind, BEC is shaping the debate through leadership, influence and advocacy.

[BusinessNZ](#) is New Zealand's largest business advocacy body, representing:

- Regional business groups [EMA](#), [Business Central](#), [Canterbury Employers' Chamber of Commerce](#), and [Employers Otago Southland](#)
- [Major Companies Group](#) of New Zealand's largest businesses
- [Gold Group](#) of medium sized businesses
- [Affiliated Industries Group](#) of national industry associations
- [ExportNZ](#) representing New Zealand exporting enterprises
- [ManufacturingNZ](#) representing New Zealand manufacturing enterprises
- [Sustainable Business Council](#) of enterprises leading sustainable business practice
- [BusinessNZ Energy Council](#) of enterprises leading sustainable energy production and use
- [Buy NZ Made](#) representing producers, retailers and consumers of New Zealand-made goods

BusinessNZ is able to tap into the views of over 76,000 employers and businesses, ranging from the smallest to the largest and reflecting the make-up of the New Zealand economy.

In addition to advocacy and services for enterprise, BusinessNZ contributes to Government, tripartite working parties and international bodies including the International Labour Organisation ([ILO](#)), the International Organisation of Employers ([IOE](#)) and the Business and Industry Advisory Council ([BIAC](#)) to the Organisation for Economic Cooperation and Development ([OECD](#)).

