

# Legislative Statement: Electricity Industry Amendment Bill

## Third reading

### Purpose

1. This legislative statement supports the Third Reading of the Electricity Industry Amendment Bill **(the Bill)**.
2. The Bill amends the Electricity Industry Act 2010 **(the Act)**. The purpose of the Bill is to ensure that the Act, which governs the Electricity Authority **(the Authority)** and the Electricity Industry Participation Code **(the Code)**, will provide an effective regulatory framework for the electricity industry in view of rapidly evolving technologies and business models.

### Background

3. The Minister of Energy and Resources established the Electricity Price Review **(EPR)** in 2018 to investigate whether the electricity sector was delivering fair and equitable prices to consumers. It also considered whether the electricity market and the regulatory framework would continue to be appropriate in the future, particularly with the emergence of new technologies and the goal of moving to a low emissions economy.
4. The EPR's Final Report in September 2019, found that the electricity regulatory regime generally works well in the current environment, but noted that opportunities and challenges in the sector increasingly cross traditional boundaries. It made a number of recommendations to improve the electricity regulatory system and ensure it is more future-fit in light of significant changes occurring in the industry. The Bill will implement a number of these recommendations.

### Key features of the Bill

5. The main amendments proposed in the Bill are:
  - strengthening the consumer voice - consumers, particularly households and small businesses, struggle to make their voices heard and to engage with and exert influence over decisions affecting them in the electricity sector;
  - clarifying the current ambiguity regarding the Authority's regulatory powers to protect the interests of small consumers;
  - addressing the need for more adaptive regulation to respond to technological advances, especially where regulated monopolies are competing with other businesses to sell services to consumers; and
  - clarifying that the Authority should be able to regulate all parts of distribution access agreements, as it already does for transmission access agreements.

*Strengthening the consumer voice*

6. The EPR identified that residential and small business consumers struggle to be heard on decisions affecting them in the electricity market in New Zealand. This is often due to technical complexity and a lack of time and resources. The Bill provides for the appointment of a consumer advocacy agency to provide evidence-based advocacy for household and small business consumers. Having a statutory basis for this consumer advocacy agency may enable it to be funded from the electricity levy, however, it is currently funded through Budget 2020.

*Clarifying the Authority's regulatory powers to protect the interests of small consumers*

7. The Bill will add an additional objective to the Authority's statutory objective, which currently is to promote competition in, reliable supply by, and the efficient operation of, the electricity industry for the long-term benefit of consumers. Despite the reference to "the long-term benefit of consumers" there is uncertainty about the Authority's jurisdiction to protect small consumers. The Bill will give the Authority the additional objective of protecting the interests of household and small business consumers in their dealings with industry participants. This will clarify and strengthen the Authority's important role in protecting household and small business consumers in their dealings with industry participants.
8. The EPR preferred to give the Authority a consumer protection function without also changing its objective, to minimise potential unintended consequences that might result from changing the objective. However, further analysis concluded that it is prudent also to change the objective, due to the risk that a consumer protection rule might be considered inconsistent with the existing objective. For example, a requirement for retailers to make reasonable efforts to contact a consumer before disconnecting the power for non-payment of a bill could perhaps impose disproportionate costs on some retailers making them less competitive and thereby reduce competition.
9. Protecting small consumers is intended to be a relevant consideration for a relatively small portion of the Authority's work. It is expected to come into play only when the Authority is considering the conduct of retailers and other participants that deal directly with small consumers, where there is an imbalance of power in those relationships that can result in adverse outcomes for small consumers. It is not expected to be a relevant consideration, for example, when the Authority is considering transmission prices, or the services provided by distributors to retailers, or the conduct of generators in the wholesale spot market.

*Addressing the need for more adaptive regulation to respond to technological advances*

10. The need for more adaptive regulation arises from emerging technologies and services that blur the boundaries between generators, distributors and retailers. The Bill will give the Authority greater flexibility to respond quickly, if necessary, to develop rules that can respond if existing participants use monopoly or market power, deliberately or inadvertently, to deter competitors from entering the market for such products and services or disadvantage those already in the market. This will help ensure that

consumers can benefit from new products and services that offer higher quality, lower cost, or more choice, enabled by these emerging technologies and services.

#### *Clarifying the Authority's ability to regulate all parts of distribution access agreements*

11. The EPR found that the lack of standardisation of terms and conditions for network access agreements between distributors and other parties seeking access raises costs and impedes competition. The Authority has made good progress in addressing this issue under default distribution agreements through existing Code provisions, but this was impacted by legal action questioning the Authority's ability to regulate distribution agreements. The Bill will enable the Code provisions to regulate distribution access terms and conditions as it already does for transmission.

#### **Supplementary Order Paper**

12. Two amendments have been made to the Bill through a Supplementary Order Paper tabled by the government ahead of the Committee of the Whole House. These changes are as follows:
  - amending clause 2 (commencement) to provide for clause 9 to come into force 4 months after the date on which the Bill receives the Royal assent. Clause 9 amends section 15 of the Act, which relates to the objective of the Authority. Clause 9 is the only clause that is proposed to have a delayed commencement, with the remainder of the Bill coming into force on the day after the date of Royal assent.
  - inserting a new clause 32A, which amends section 102 of the Act. Section 102 relates to the procedures for an annual meeting of the beneficiaries of a customer or community trust. The amendment provides that beneficiaries may attend and vote at such a meeting in person or, subject to the approval of the trustees, remotely (for example, by audio link).

#### **Other features of the Bill**

13. The Bill also provides for other matters that will improve the electricity regulatory system, including:
  - updating the electricity compliance framework;
  - clarifying the Authority's powers to gather information from industry participants; and
  - giving the Minister of Energy and Resources a time-limited power to make Code to address specified matters that have not been progressed satisfactorily.

#### *Updating the electricity compliance framework*

14. The EPR recommended the government should review the compliance framework in the Act and related enforcement regulations to bring them up to date with best practice. The Ministry of Business, Innovation & Employment conducted a review of the compliance framework, drawing on advice from the Authority and the Rulings Panel, and found that there is a mismatch between the revenue that could be generated by a breach of the

Code, or the cost of the harm that could arise from a breach, and the maximum penalty that could be applied under the Act. It was also unclear whether the penalty could be applied more than once, regardless of the duration of a breach.

15. A consultation with electricity industry participants, as the parties directly affected, as well as a number of interested parties from other sectors was conducted in March 2021, seeking feedback on proposed improvements to the compliance framework. That consultation resulted in the following recommended changes, which are included in the Bill:

- increase the maximum penalty that the Rulings Panel may impose on an industry participant for breaching the Code from \$200,000 to \$2 million;
- allow the Rulings Panel to impose an additional \$10,000 penalty for every day (or part-day) that a breach continues; and
- require the Rulings Panel to consider two or more Code breaches, relating to the same event or a series of closely related events arising from the same cause, as a single breach.

*Clarifying the Authority's information gathering powers*

16. The Bill will clarify and improve the Authority's powers to gather information from industry participants for the purpose of carrying out reviews or investigations requested by the Minister of Energy and Resources. The Authority's current information-gathering powers cannot be used for the purpose of an inquiry requested by the Minister of Energy and Resources. This interpretation defeats the policy intent, which is that the Authority should be able to use its information-gathering powers when undertaking a review or inquiry requested by the Minister of Energy and Resources.

*Giving the Minister of Energy and Resources a time-limited power to make Code*

17. The Bill will enable the Minister of Energy and Resources to amend the Code if there is not satisfactory progress on specified matters. This will be a time-limited power to ensure timely action by industry and the Authority to consider and progress improvements to the retail and wholesale electricity markets for the benefit of consumers.