



## COVERSHEET

<b>Minister</b>	Hon Dr Megan Woods	<b>Portfolio</b>	Energy and Resources
<b>Title of Cabinet paper</b>	Electricity Industry Amendment Bill: Approval for Introduction	<b>Date to be published</b>	20 September 2021

<b>List of documents that have been proactively released</b>		
<b>Date</b>	<b>Title</b>	<b>Author</b>
August 2021	Electricity Industry Amendment Bill: Approval for Introduction	Office of the Minister of Energy and Resources
5 August 2021	Electricity Industry Amendment Bill: Approval for Introduction LEG-21-MIN-0110	Cabinet Office

### **Information redacted**

### **YES / NO**

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[In Confidence]

Office of the Minister of Energy and Resources  
Chair, Cabinet Legislation Committee

## **Electricity Industry Amendment Bill: Approval for Introduction**

### **Proposal**

- 1 This paper seeks approval for the introduction of the Electricity Industry Amendment Bill 2021 (**the Bill**).

### **Policy**

#### *Background*

- 2 I established the Electricity Price Review (**EPR**) in 2018 to investigate whether the electricity sector is delivering fair and equitable prices to consumers. The EPR's final report was published in October 2019.
- 3 In December 2019 I obtained Cabinet's agreement to prepare legislation to implement several of the EPR's recommendations to improve the regulatory framework for the electricity industry.
- 4 While the EPR found the electricity regulatory system generally works well, it recommended several improvements. The most significant is to reduce constraints and ambiguity about the Electricity Authority's ability to regulate access to distributors' networks, including when they are competing with other businesses to sell services to consumers.
- 5 The need for more adaptive regulation arises from emerging technologies and services that are testing the primary legislation, as they blur the boundaries between distributors, generators and retailers. These changes are still in their early stages, but they are expected to grow and have a significant impact on the electricity sector. The Electricity Authority needs to be able 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.
- 6 The EPR found that consumers, particular households and small businesses, struggle to make their voices heard and exert influence over decisions affecting them in the electricity sector. This is often due to technical complexity and a lack of time and resources. The EPR recommended establishing a Consumer Advocacy Council to advocate on behalf of household and small business consumers.

- 7 The EPR also identified a regulatory gap in the protection of household and small business electricity consumers. The EPR recommended the Electricity Authority have an explicit function to protect the interests of such consumers.
- 8 Other EPR recommendations concerned administrative matters, including the Electricity Authority's limited ability to gather information when undertaking a review requested by the Minister.

*Policy decisions*

- 9 The Bill will implement the following Cabinet policy decisions to amend the Electricity Industry Act 2010 (**the Act**) [*DEV-19-MIN-0325 refers*] to:
  - 9.1 provide for the Minister of Commerce and Consumer Affairs, in consultation with the Minister of Energy and Resources and the Minister for Small Business, to appoint a suitably constituted and qualified body to perform the functions of a Consumer Advocacy Council;
  - 9.2 enable the recovery of all costs of the Consumer Advocacy Council incurred from 1 July 2020 from electricity industry participants, subject to consulting levy payers on the approach for any cost recovery via levy regulations;
  - 9.3 clarify the Electricity Authority's powers to gather information from industry participants for the purpose of carrying out reviews or investigations requested by the Minister;
  - 9.4 give the Electricity Authority jurisdiction to regulate transmission and distribution access terms and conditions, including setting quality standards and information disclosure requirements as those terms are used in the Commerce Act 1986;
  - 9.5 give the Electricity Authority jurisdiction to regulate involvement by Transpower and distributors in contestable electricity markets by:
    - 9.5.1 incorporating the substance of sections 76 to 79 in Part 3 of the Act into the Electricity Industry Participation Code, at the point of enactment;
    - 9.5.2 retaining section 75, requiring ownership separation of distribution and large-scale grid-connected generation, together with any provisions necessary for its operation;
    - 9.5.3 providing for the enforcement of those provisions transferred into the Code under existing sections 50 to 62 of the Act;
    - 9.5.4 making any other amendments to Part 3, and to the provisions transferred into the Code, that may be necessary or desirable to give effect to paragraph 20;

- 9.6 give the Electricity Authority an explicit statutory function under the Act to protect residential and small business electricity consumers, together with any further amendments necessary to ensure consistency with its statutory objective;
- 9.7 give the Minister of Energy and Resources a time-limited power, lasting no more than two years and commencing no less than two years after the power comes into force, to amend the Electricity Industry Participation Code as if the Minister were the Electricity Authority, if the Minister considers the Code's provisions are unsatisfactory in respect of any matters underpinning or relating to the following specified recommendations from the Review:
  - 9.7.1 develop a streamlined way for retailers to process consumer requests for consumption data;
  - 9.7.2 make distributors offer retailers standard terms for network access;
  - 9.7.3 prohibit saves and win-backs;
  - 9.7.4 establish a pilot scheme to help non-switching consumers find better deals;
  - 9.7.5 improve the availability of wholesale market information;
  - 9.7.6 introduce a mandatory market-making obligation unless the sector develops an effective incentive-based scheme;
  - 9.7.7 make generator-retailers release information about the profitability of their retailing activities.
- 10 The Bill also amends section 54V of the Commerce Act 1986, relating to the impact of certain decisions made under the Electricity Industry Act 2010 on the regulation of Transpower and electricity distributors under Part 4 of the Commerce Act.

*Additional policy*

- 11 The Bill contains a proposal that was not agreed by Cabinet but arose during the drafting as a result of consultation with the Electricity Authority. This proposal will enable the Electricity Authority to share information with a public service agency or statutory entity, subject to safeguards relating to the use and storage of that information.
- 12 This proposal is consistent with similar information-sharing provisions in comparable regulatory regimes, and officials consider it will generally improve the effectiveness of electricity regulation and thereby benefit electricity consumers. I propose that the Bill be introduced with the information provision, so that the select committee's consideration can be informed by interested parties' submissions on it.

### *Minor and technical issues arising during drafting*

- 13 Cabinet authorised the Minister of Energy and Resources to make decisions consistent with the overall policy decisions in the paper under DEV-19-SUB-0325, including on any minor and technical issues that may arise in the drafting process. [*DEV-19-MIN-0325 refers*].
- 14 One matter arose during consultation with the Electricity Authority; the proposal is to enable the Electricity Authority to revoke a Code amendment that was made under urgency without following the normal procedural steps to amend the Code. This proposal will avoid unwarranted procedural steps and delays when revoking Code provisions that were made under urgency when the circumstances giving rise to those provisions no longer exist and it is desirable to revoke them.

### **Impact analysis**

- 15 A Regulatory Impact Assessment was prepared in accordance with the necessary requirements and was submitted at the time Cabinet policy approvals relating to the Bill were sought [*DEV-19-MIN-0325 refers*].

### **Compliance**

- 16 The Bill complies with each of the following:
  - 16.1 the principles of the Treaty of Waitangi;
  - 16.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993;
  - 16.3 the disclosure statement requirements (a disclosure statement has been prepared and is attached to the paper);
  - 16.4 the principles and guidelines set out in the Privacy Act 2020;
  - 16.5 relevant international standards and obligations;
  - 16.6 the Legislation Guidelines (2018 edition), which are maintained by the Legislation Design and Advisory Committee.

### **Consultation**

- 17 The EPR undertook extensive public consultation when developing the findings and recommendations that informed the policy decisions that are implemented in the Bill.
- 18 The following agencies were consulted on the policy proposals submitted to Cabinet in December 2019: Ministry for Social Development, Ministry of Health, Ministry of Housing and Urban Development, Ministry for the Environment, Energy Efficiency and Conservation Authority, Kāinga Ora,

Electricity Authority, Commerce Commission, Gas Industry Company, Te Puni Kōkiri, Treasury, State Services Commission, Ministry of Justice, and the Department of the Prime Minister and Cabinet.

- 19 I consulted the Minister of Commerce and Consumer Affairs and the Minister for Small Business on the proposal to establish a small electricity consumer advocacy council.
- 20 The Ministry of Business, Innovation and Employment (**MBIE**) consulted the Electricity Authority and Commerce Commission during the preparation of the Bill. MBIE also consulted the Legislation Design and Advisory Committee on proposals in the Bill to give the Electricity Authority an explicit function and an additional objective to protect households and small business consumers in their dealings with industry participants.

#### *Electricity Authority's views on the Bill*

- 21 The Electricity Authority considers the Bill goes further than is necessary to give it an explicit function to protect the interests of households and small business consumers. This is because the Bill also gives the Authority the additional objective to protect the interests of households and small business consumers in relation to their dealings with industry participants.
- 22 The Authority considers a consumer protection function in and of itself could be exercised consistently with the Authority's current objective. It also considers the additional objective could result in competing objectives that will pull the Authority in too many directions.
- 23 I understand the Authority's views about extending its existing objective, but I consider it is necessary to reduce the risk of legal challenge if or when the Authority creates regulatory obligations on participants to protect consumers. The risk arises because the Authority must undertake its functions consistently with its objective, and it could be argued that consumer protection is not consistent with the Authority's existing objective.
- 24 The Electricity Authority also considers it is not necessary or desirable for the Bill to include a regulatory backstop for the Minister, because all of the specified matters (relating to EPR findings and recommendations) have now been, or will soon be, addressed in the Code. I do not propose to remove the regulatory backstop from the Bill at this stage because not all of the specified matters have yet been addressed. I note the Authority's proposal to remove the regulatory backstop can be considered by the select committee.

#### **Binding on the Crown**

- 25 The Act binds the Crown. The Bill will not amend that provision.

#### **Creating new agencies**

- 26 The Bill will enable the Minister to establish a Small Electricity Consumers Agency by approving one or more persons to perform the function of the agency; the function is to represent and advocate for the interests of

household and small business electricity consumers. It is intended this legislative responsibility be assigned to the Minister of Commerce and Consumer Affairs, in consultation with the Minister of Energy and Resources and the Minister for Small Business.

- 27 Cabinet agreed in December 2019 to establish the Consumer Advocacy Council as a Ministerial Advisory Committee [*DEV-19-Min-0325 refers*] and agreed in June 2021 to appoint the inaugural chair of the Council [*APH-21-MIN-0105 refers*].
- 28 Following enactment of the Bill, the responsible Minister may approve or appoint all members of the Consumer Advocacy Council to perform the function of the Small Electricity Consumers Agency. This will enable the costs of the Council relating to electricity consumer advocacy to be recovered by an electricity industry levy, subject to the promulgation of regulations following consultation with levy payers.

### **Allocation of decision making powers**

- 29 The Bill will not affect the allocation of decision making powers between the executive, the courts, and tribunals.

### **Associated regulations**

- 30 Regulations are not required to implement the Bill.

### **Other instruments**

- 31 The Act empowers the Electricity Authority to amend the Electricity Industry Participation Code, which is a disallowable instrument but not a legislative instrument.
- 32 The Bill will empower the Minister also to amend the Code in relation to a specified matter, for a time-limited period, if the Minister considers the Code's provisions for the specified matter is not satisfactory and the amendment will contribute to the achievement of the Electricity Authority's objectives.

### **Definition of Minister/department**

- 33 The Bill does not contain a definition of Minister or Department.

### **Commencement of legislation**

- 34 The Bill will come into force on the day after the date of Royal Assent.

### **Parliamentary stages**

- 35 I intend to introduce the Bill on 12 August 2021. Depending on availability of House time, I will move first reading during the week of 23 August 2021. The Bill should be passed by July 2022.

- 36 I will propose the Bill be referred to the Economic Development, Science and Innovation Committee for consideration for a period of six months.

### **Proactive Release**

- 37 This paper will be published on MBIE's website, and MBIE will email interested parties.

### **Recommendations**

- 38 The Minister of Energy and Resources recommends that the Committee:

1 **note** that the Electricity Industry Amendment Bill holds a category 4 priority (to be referred to a select committee in the year) on the 2021 Legislation Programme;

2 **note** that the Bill will:

2.1 provide for the responsible Minister to appoint a suitably constituted and qualified body, a Small Electricity Consumers Agency, to represent and advocate for the interests of household and small business electricity consumers;

2.2 enable the recovery of all costs of Small Electricity Consumers Agency incurred from 1 July 2021 from electricity industry participants, subject to consulting levy payers on any cost recovery via levy regulations;

2.3 remove ambiguity in the Electricity Authority's ability to regulate for the protection of household and small business consumers, including vulnerable and medically dependent consumers

2.4 provide more regulatory agility to promote competition in evolving contestable markets by shifting provisions relating to a distributor's involvement in contestable activities from primary legislation into secondary legislation, which the Electricity Authority can then develop and amend

2.5 clarify that the Electricity Authority should be able to regulate all parts of distribution agreements, as it already does for transmission agreements

2.6 clarify the Electricity Authority's powers to gather information from industry participants for the purpose of carrying out reviews or investigations requested by the Minister in accordance with the Electricity Industry Act 2010

2.7 enable the Minister of Energy and Resources to amend the Electricity Industry Participation Code if the Minister is not satisfied with progress on specified matters.

3 **Note** that Cabinet approval has not been obtained for a provision in the Bill that will enable the Electricity Authority to share information with other



government agencies or regulators, subject to safeguards relating to the use and storage of that information;

- 4 **Note** that the information-sharing provision in the Bill is consistent with similar provisions in comparable regulatory regimes;
- 5 **Agree** to the information-sharing provisions being included in the Bill, and subject to the Committee's agreement:

EITHER

- 5.1 **Approve** the Electricity Industry Amendment Bill for introduction, subject to the final approval of the government caucus and sufficient support in the House of Representatives;

OR

- 5.2 **Agree** that the information-sharing provisions be deleted from the Bill and a new version be provided to Cabinet for introduction;
- 6 **agree** that the Bill be introduced on 12 August 2021;
- 7 **agree** that the Government propose that the Bill be:
  - 7.1 referred to the Economic Development, Science and Innovation Committee for consideration;
  - 7.2 enacted by July 2022.

Authorised for lodgement

Hon Dr Megan Woods  
Minister of Energy and Resources