

Submission by



to the
Ministry of Business, Innovation and Employment

on the
Compliance Framework: Electricity

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COMPLIANCE FRAMEWORK: ELECTRICITY CONSULTATION PAPER – SUBMISSION BY BUSINESSNZ ENERGY COUNCIL¹

1. INTRODUCTION

- 1.1 The BusinessNZ Energy Council (BEC) is pleased to have the opportunity to provide feedback on the consultation paper 'Compliance Framework: Electricity' published by the Ministry of Business, Innovation and Employment in March 2021.
- 1.2 BEC supported the review of the compliance framework as proposed by the Electricity Price Review Panel in its 2019 consultation. A modern, competitive economy is underpinned by a secure and efficient electricity system. Overall New Zealand's **energy system** performs well, rating highly on **the World Energy Council's Energy Trilemma Index**, and delivering secure, affordable and sustainable energy. However, significant change is expected in the sector in order to meet our climate change obligations and integrate emerging technology. The current electricity compliance framework dates back more than 20 years, so this is an important opportunity to ensure the framework is fit-for-purpose and **'future-proofed'**.

2. RECOMMENDATIONS

- 2.1 The consultation paper is divided into three sections discussing issues with the institutional structure, amendments to the Act and amendments to the Regulations. Although our members had various views on the institutional structure, many were generally supportive of the recommended amendments. In summary:
 - 2.1.1 Members held different views on whether the rule-making and rule-enforcement functions should be split. We support further discussion to explore possible arrangements.
 - 2.1.2 Members viewed the process as more important than the penalty. We acknowledge an increase to the maximum breach penalty under the Act may be appropriate. However changes should not be made until agreement is reached on an appropriate institutional structure.
 - 2.1.3 We generally support proposed amendments to the Regulations regarding the settlement of breaches and mandatory reporting requirements.
- 2.2 Further details are provided in the comments below.

3. DETAILED COMMENTS

Institutional Structure

- 3.1 The consultation paper asks whether the rule-making and rule-enforcement functions of the Authority should be split, and if there are examples of problematic blurring of functions. Our members held various views based on their different experiences.
- 3.2 Some members raised concerns over the current structure, noting rule-making and rule-enforcement are two very different tasks. This joint responsibility creates concerns that rule-makers may influence rule-enforcement, particularly when trying to interpret rules. They also note there is a risk of competition for resources between the two functions when sitting within the same agency. Any complaints received may require a significant amount of time and effort to investigate, potentially diverting resources from other higher priority activities. These members support greater independence of the Rulings Panel. Any additional costs which may arise as a result of separating functions are justified to ensure the compliance process functions effectively and enhances industry participants' confidence in the integrity and fairness of the process.

¹ Background information on BusinessNZ is attached as Appendix One.

- 3.3 Other members had not observed problematic blurring of functions but acknowledge it could arise under the current structure. They note there may be benefits in the current structure. For example, where there are minor technical breaches identified with no market impact, there is a process to quickly implement a change to the Code. These types of changes may become more difficult with a greater separation of roles.
- 3.4 It is unclear from the proposal if some functions would be performed by an existing agency or a new agency. We note there are already a number of regulatory agencies involved in the electricity sector; the Electricity Authority, Commerce Commission, Ministry of Business, Innovation and Employment, and the Energy Efficiency and Conservation Authority. We believe it is important for these agencies to have a 'joined up' approach to ensure the successful development of the sector. Any changes should aim to clarify roles and responsibilities and be careful to avoid creating jurisdictional issues. We acknowledge the work these agencies are already doing to co-ordinate and would like to see this develop further.
- 3.5 This is a rare opportunity to review the institutional framework. We support further discussion to explore possible arrangements. This may include a mechanism to deal with minor technical breaches with no market impact, and a separate mechanism allowing greater independence for the Rulings Panel to oversee significant investigations.

Maximum Penalty

- 3.6 The process is viewed as more important than the penalty. Those members who raised concerns over the blurring of functions do not support a change to the maximum penalty, unless there were changes to the institutional structure. As long as the rules are clear and the compliance process is fair, then the maximum value of the penalty is of less importance.
- 3.7 Participants already face a number of other risks that may be more costly. For example, participants connected to the grid manage physical risks to their assets. If a breach were to occur and assets were to fail this could result in significant financial costs, as well as serious and ongoing reputational risk. These financial and reputational risks already serve as a deterrent. Although the current penalty may be viewed as token, the compliance process provides clarification on the rules for all participants.
- 3.8 Many members did accept an increase to the maximum breach penalty under the Act may be appropriate given potential revenues gained according to previous investigations. A higher penalty may also address the issue of closely related events, although further clarification of a **'series of closely related events' would be beneficial.**
- 3.9 However, any increase to penalty costs may create a barrier to entry for new participants. As noted by the Ministry of Economic Development in 2009, an increase to the maximum penalty **'may discourage market participants from providing certain services and encourage undue risk aversion.'** Given the rapid pace of change of technology and new business models anticipated in the electricity sector, it is important any rule change does not discourage the implementation of new services or technology. New participants who offer innovative services may be less likely to be able to meet potentially higher penalty costs.

Amendments to the Regulations

- 3.10 We generally support proposed amendments to the regulations regarding the settlement of breaches and mandatory reporting requirements which will remove administrative burden and reduce costs. In general the amendments appear straight forward and sensible.
- 3.11 Some participants thought the Authority's role as gatekeeper for dismissing vexatious or continuous complaints could be undermined if participants were allowed to lay complaints with the Panel directly and may lead to a proliferation of complaints being laid with the Panel. However, some of that concern may be met if the Panel was allowed greater discretion to award costs. This should discourage participants from making vexatious or continuous complaints.

Other issues

- 3.12 We agree it is important to look ahead. As noted, significant change is expected in the sector in order to meet our climate change obligations and integrate emerging technology. We believe the regulatory framework must be flexible and adaptable to ensure the sector can address these challenges.

Appendix One - Background information on BusinessNZ Energy Council

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.

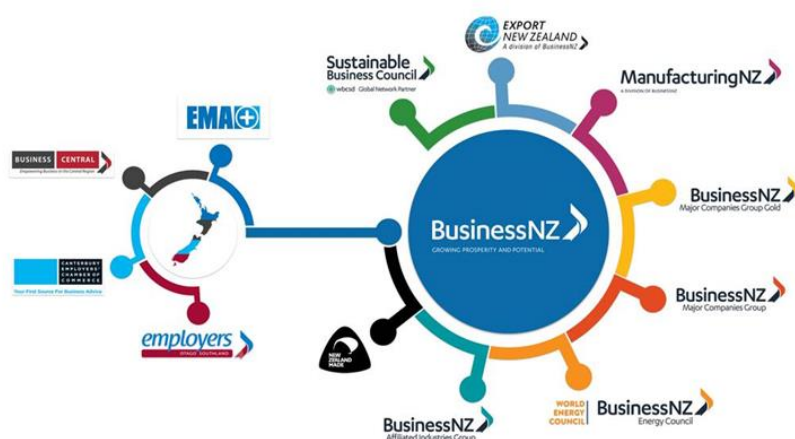
Our vision is to support New Zealand's economic wellbeing through the active promotion of the sustainable development and use of energy, domestically and globally. With that goal in mind, BEC is shaping the debate through leadership, influence and advocacy.

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**).



www.businessnz.org.nz