



## COVERSHEET

<b>Minister</b>	Hon Dr Megan Woods	<b>Portfolio</b>	Energy and Resources
<b>Title of Cabinet paper</b>	Electricity Industry Act 2010 and the Electricity Industry (Enforcement) Regulations 2010: Proposed Amendments	<b>Date to be published</b>	4 May 2022

<b>List of documents that have been proactively released</b>		
<b>Date</b>	<b>Title</b>	<b>Author</b>
February 2022	Electricity Industry Act 2010 and the Electricity Industry (Enforcement) Regulations 2010: Proposed Amendments	Office of the Minister of Energy and Resources
9 February 2022	Electricity Industry Act 2010 and the Electricity Industry (Enforcement) Regulations 2010: Proposed Amendments DEV-22-MIN-0005 Minute	Cabinet Office
January 2022	Regulatory Impact Statement: Electricity Compliance Framework	MBIE

### **Information redacted**

**NO**

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# Cabinet Economic Development Committee

## Minute of Decision

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### Electricity Industry Act 2010 and the Electricity Industry (Enforcement) Regulations 2010: Proposed Amendments

Portfolio                      Energy and Resources

On 9 February 2022, the Cabinet Economic Development Committee:

#### Background

- 1        **noted** that the Electricity Industry Amendment Bill 2021, as introduced:
  - 1.1        provides 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;
  - 1.2        enables the recovery of all costs of the 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;
  - 1.3        removes ambiguity in the Electricity Authority's ability to regulate for the protection of household and small business consumers, including vulnerable and medically dependent consumers;
  - 1.4        provides 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 the Electricity Industry Participation Code (the Code), which the Electricity Authority can then develop and amend;
  - 1.5        clarifies that the Electricity Authority should be able to regulate all parts of distribution agreements, as it already does for transmission agreements;
  - 1.6        clarifies 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 (the Act);
  - 1.7        enables the Electricity Authority to share information with other government agencies or regulators, subject to safeguards relating to the use and storage of that information;
  - 1.8        enables the Minister of Energy and Resources to amend the Code, not earlier than two years after and not later than four years after the date of enactment, if the Minister is not satisfied with progress on specified matters;

**Changes to the Act following consideration of submissions on the Bill**

- 2 **noted** that amendments to the policies set out in paragraphs 1.7 and 1.8 above are proposed in light of submissions on the Bill;
- 3 **agreed** that the Minister of Energy and Resources may amend the Code in relation to specified matters, not earlier than one year after and not later than three years after the date of enactment, if the Minister is not satisfied with progress on the specified matters;
- 4 **noted** that the Electricity Authority is unable to share certain information with the Australian Securities and Investment Commission, which regulates the Australian Securities Exchange on which New Zealand Electricity Futures are traded;
- 5 **agreed** that the Electricity Authority may share information with overseas regulators, subject to conditions on the use of that information;
- 6 **noted** that the Electricity Authority is unable to share certain information with the Gas Industry Company, which has statutory functions and powers under the Gas Act 1992 relating to the gas industry;
- 7 **agreed** that the Electricity Authority may share information with the industry body approved under section 43ZL of the Gas Act 1992, subject to conditions on the use of that information;
- 8 **noted** that it is unclear whether section 109 of the Act, which enables regulations that define a new industry participant, is unduly broad or unduly narrow (in terms of the types of persons who may be defined as industry participants);
- 9 **agreed** the Act be amended to clarify that a new industry participant defined in regulations under section 109 is not limited to a person providing services to the electricity industry, but may include classes of persons whose activities or roles in the electricity industry are material to the Electricity Authority's statutory objectives in section 15 of the Act;

**Changes to the Act following a review of the electricity compliance framework**

- 10 **noted** that three proposals to amend the Act result from a targeted review of the electricity industry compliance framework in 2021;

**Increase maximum penalty for breach of Code and add penalty for continuing breach**

- 11 **noted** that the Rulings Panel, on determining an industry participant has breached the Code, may make a pecuniary penalty order not exceeding \$200,000;
- 12 **agreed** that the Rulings Panel, on determining an industry participant has breached the Code, may make a pecuniary penalty order not exceeding \$2 million;
- 13 **agreed** that the Rulings Panel may make an additional penalty order of up to \$10,000 for each day or part of a day that a breach continues;
- 14 **agreed** that the Rulings Panel must consider, when determining a penalty order, the impact of that penalty on the participant and on the electricity industry;

**Enable awarding of costs**

- 15 **noted** that the Rulings Panel may only award costs if it has determined a breach of the Code;

- 16 **agreed** to allow the Rulings Panel discretion to award costs when it has not determined a breach of the Code;

#### **Series of closely related events**

- 17 **noted** that there is ambiguity in the Act as to whether a continuing or recurring breach of the Code is subject to a single penalty or recurring penalties;
- 18 **agreed** to amend the Act to provide that a series of closely related events will be treated as a single breach and subject to a single penalty;

#### **Changes to the enforcement regulations**

- 19 **noted** that proposals to amend the enforcement regulations result from a targeted review of the electricity industry compliance framework in 2021;

#### **Allow complaint to be made directly to the Rulings Panel**

- 20 **noted** that the enforcement regulations do not allow an industry participant to make a complaint directly to the Rulings Panel if the Electricity Authority has decided not to investigate the complaint;
- 21 **agreed** that an industry participant may make a complaint directly to the Rulings Panel if the Electricity Authority chooses not to investigate it, provided the Rulings Panel is able to award costs (as per paragraph 16 above);

#### **Make settlement an optional step for investigators**

- 22 **noted** that the enforcement regulations require an investigator to attempt to reach settlement between parties where there is an alleged breach of the Code;
- 23 **agreed** that an investigator may, rather than must, attempt to reach a settlement;

#### **Remove target timeframe for a settlement**

- 24 **noted** that the enforcement regulations require an investigator to endeavour to reach a settlement within 30 working days, which is unduly restrictive;
- 25 **noted** that the Electricity Authority will publish guiding principles on process and timeframe for effecting a settlement, if no longer limited by a regulated timeframe;
- 26 **agreed** to remove the target of 30 working days for the investigator to endeavour to reach a settlement;

#### **Treat a breach of settlement as a breach of Code**

- 27 **noted** that the enforcement regulations do not provide for the Electricity Authority or Rulings Panel to enforce a settlement unless a new breach arises;
- 28 **agreed** that a breach of a settlement be treated as though it were a breach of the Code;

#### **Allow Authority to report a breach**

- 29 **noted** that the enforcement regulations are unclear as to whether the Electricity Authority can report a breach of the Code;
- 30 **agreed** that the enforcement regulations expressly provide the Electricity Authority may report a breach of the Code;

**Clarify treatment of confidential information**

- 31 **noted** that the enforcement regulations are not clear about the treatment of confidential information and provide the Electricity Authority little discretion as to what information it may publish following investigation of a breach of the Code;
- 32 **agreed** that the enforcement regulations expressly provide that:
- 32.1 the Electricity Authority may publish information that is not confidential;
- 32.2 confidential information may be redacted from the published report;
- 32.3 parties that receive confidential information during an investigation or Rulings Panel consideration of a complaint must hold that information in confidence;

**Treat failure to report a breach as a breach of Code**

- 33 **noted** that the enforcement regulations provide for the Court to enforce the obligation on industry participants to report a breach of the Code, and the maximum penalty for a failure to report a breach is \$20,000;
- 34 **agreed** that a breach of the mandatory reporting obligation be enforceable as though it were a breach of the Code;

**Implementation**

- 35 **noted** that the proposals in paragraphs 2 to 16 above will be reflected in the Departmental Report to be presented to the Economic Development, Science and Innovation Committee on 14 February 2022;
- 36 **invited** the Minister of Energy and Resources to issue drafting instructions to the Parliamentary Counsel Office for amendments to the Electricity Industry (Enforcement) Regulations 2010 giving effect to paragraphs 21 to 34 above;
- 37 **authorised** the Minister of Energy and Resources to make any minor and technical changes to the proposals above that are consistent with the policy intent;

Janine Harvey  
Committee Secretary

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**Present:**

Hon Grant Robertson (Chair)  
Hon Dr Megan Woods  
Hon David Parker  
Hon Nanaia Mahuta  
Hon Poto Williams  
Hon Stuart Nash  
Hon Kris Faafoi  
Hon Michael Wood  
Hon Dr Ayesha Verrall  
Hon Meka Whaitiri  
Hon Phil Twyford  
Rino Tirikatene MP  
Dr Deborah Russell MP

**Officials present from:**

Office of the Prime Minister  
Officials Committee for DEV