



# ERANZ

Electricity Retailers' Association of New Zealand

## ERANZ SUBMISSION TO THE MBIE PROPOSAL TO EXPAND THE PURPOSE OF ENERGY LEVIES

7 JUNE 2016

Electricity Retailers' Association of New Zealand  
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## Options for Expanding the Purpose of Existing Energy Levies

### Introduction and Overview

1 The Electricity Retailers' Association of New Zealand (ERANZ) welcomes the opportunity to provide a submission to the Ministry of Business, Innovation and Employment (MBIE) on its *Options for Expanding the Purpose of Existing Energy Levies* consultation paper (the Consultation Paper).

2 ERANZ was established in August 2015 to promote and enhance a competitive and sustainable electricity market that delivers value to New Zealand electricity consumers. ERANZ members are Genesis Energy, Contact Energy, Mighty River Power, Meridian Energy, Trustpower, Nova Energy, Pulse Energy, and Prime Energy. ERANZ represents over 99% of the retail market in New Zealand by ICP count.

3 ERANZ members support the work of the Energy Efficiency and Conservation Authority (EECA) to improve the energy efficiency of New Zealand's homes and businesses, and encourage the uptake of renewable energy. Retailers also seek to add value to their customers by complementing or referencing the work that EECA does in assisting New Zealand customers to get more value out of the electricity they use.

4 We believe there would be long-term benefit for New Zealand in moving beyond *electricity* efficiency to *energy efficiency*, especially when it comes to carbon emissions reduction particularly from the transport and industrial sectors. We agree the MBIE proposal would assist in this objective.

5 ERANZ supports the MBIE proposal in principle and agrees with a model that:

- a. Expands EECA activity from a focus on electricity efficiency to *energy* efficiency;
- b. This should be achieved by recovering some EECA funding from other energy levies (eg. gas, petroleum and engine fuels), and;
- c. Retains the existing electricity levy collection methodology of volume based rather than ICP or generation based.

6 We also consider, following legal advice, that the interpretation of "electricity efficiency" is unnecessarily restrictive and in fact does already allow for the promotion of electric vehicles as an efficient use of electricity. A strong case can be made that it was never Parliament's intention to limit the use of the electricity levy to conservation but rather electricity efficiency. If net benefits were interpreted as those also having a carbon emission reduction, then activities that promote

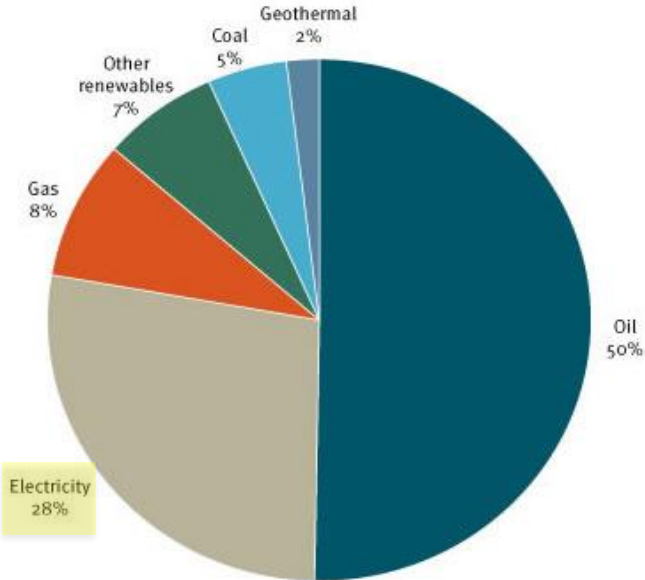
the “electrification” of other sectors within the energy market, such as transport and industrial heat, would naturally fall into areas that the electricity levy could be applied.

### ERANZ position

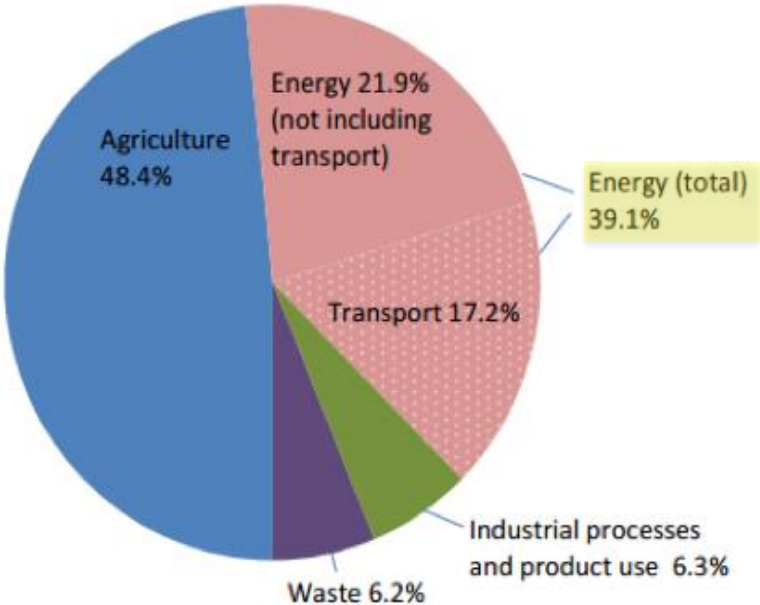
It is logical that the energy efficiency activities must be funded by more sectors than just electricity

7 Electricity only accounts for around 25% of New Zealand’s primary energy use. 81% of our electricity generation is from renewable sources. In the New Zealand context, as MBIE knows, the biggest ‘bang for buck’ in reducing carbon emissions lies in targeting fossil fuel consumption rather than electricity. The most emissions come from our transport and industrial heat sectors. Encouraging the “electrification” of these sectors would not only have the benefit of reducing carbon emissions, it addresses energy security issues, and makes use of our highly efficient and predominantly renewable electricity sector.

**New Zealand energy consumption**



**New Zealand emissions by sector**



8 We agree that EECA should be able to access resources from other existing energy levies, namely the Petroleum or Engine Fuel Monitoring Levy (PEFML) and the Gas Levy, in order to also contribute to the energy efficiency fund. This makes a lot of sense, given that EECA was always supposed to be about *total energy efficiency* in the first place, as its very name suggests, rather than only drawing on the electricity sector.

**The electricity levy should be used to promote electric vehicles, and this can be done without expanding the purpose**

9 There are core policy principles that need to be considered when using levies imposed on a sector. There must be a rational, equitable and transparent link between the group of levy payers (in this case electricity industry participants) and the service or activity being provided. To stretch the use of the levy too far would be in breach of those principles<sup>1</sup>.

10 It is in the interests of members to ensure that the funds levied on the purchasers of electricity are effectively used. The levy is placed on the sector, not the consumer. It just so happens that it is passed on, but that might not always be the case.

11 We consider that trying to fit broader energy emission reductions into EECA initiatives funded through the electricity levy too far a stretch of the principles of policy setting for levies, especially when justified on the grounds that “*electricity use is universal and people who use electricity generally also use transport fuels*”<sup>2</sup>. There would be no end to efforts that the electricity levy could be applied if that were accepted.

12 We believe the issues needs to be addressed at a wider strategic level. The wordsmithing being required by MBIE has occurred because of the narrow interpretation of “efficiency” such that it can only mean a *reduction* in the use of the energy. We do not agree with the statement that “*EECA’s current funding model limits about half of its funding to electricity (not energy) efficiency activities. This is because it comes from a levy on electricity-industry participants that can only be used in relation to the “encouragement, promotion, and support of electricity efficiency”. The promotion of EVs...cannot be funded by this [electricity] levy because increased uptake results in greater use of (largely renewable) electricity, not improved electricity efficiency.*”

13 ERANZ contends that the Electricity Levy as it is currently worded should be able to fund electricity related activities that result in an increase in net benefits per unit of electricity even if that means an overall increase in electricity demand, and this would include the use of electric vehicles. I.e. The electricity levy can be used for this purpose already without needing to expanding the scope in a way that would not be in line with broader public policy principles.

14 It is clear that the functions of EECA, as set out under section 21 of the Energy Efficiency and Conservation Act 2000 (‘EECA Act’), are broader than the activities that can be funded by the Levy under section 128 of the Electricity Industry Act 2010 (‘EI Act’) (see [Attachment A for legal reasoning](#)). The two principal differences being, under the EECA Act, EECA is to encourage, promote, and support **energy efficiency, energy conservation**, and the use of

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<sup>1</sup> Treasury “Guidelines for setting charges in the public sector” December 2002; Controller and Auditor-General “Charging fees for public sector goods and services”

<sup>2</sup> Consultation paper, para 53

renewable sources. Whereas under the EI Act, the Levy is to be used to fund EECA's functions in relation to the encouragement, promotion, and support of **electricity efficiency**.

15 A principal difference between the two Acts is the omission, in the case of the EI Act, of the term "conservation". Conservation equals reduction, but efficiency does not. This is an important distinction, as MBIE appear to favour a restrictive interpretation of efficiency under the EI Act that requires a reduction in electricity demand and consumption for the activity to be funded by the Levy. For example, in the Discussion Paper MBIE states the promotion of EVs cannot be funded by the Levy because an increased uptake would result in greater use of electricity, not improved electricity efficiency.

16 ERANZ believes a less-restrictive interpretation of "efficiency" could be reasonably justified to include a broader range of electricity efficient activities (which may include activities that increase electricity demand and consumption, such as the promotion of EVs). The reason for this is twofold; first, if Parliament had intended the Levy to fund electricity reducing or conservation activities it would have explicitly stated so. It seems contrary to Parliament's intention to read into the definition of "efficiency", that of conservation. Parliament clearly intended EECA to encourage, promote, and support energy conservation by including "conservation" in the EECA Act. Further, in the EECA Act Parliament provided a definition of conservation to mean a reduction in use which aligns with the ordinary meaning of "conservation". However, when passing the EI Act 10 years later Parliament omitted any reference to conservation in relation to EECA costs the Levy can fund. A strong case can be made that it was never Parliament's intention to limit the use of the Levy to electricity conservation but rather electricity efficiency.

17 Second, applying an ordinary meaning to the term "efficiency" does not necessarily mean a reduction in a process or output. Likewise a reduction in a process or output does not necessarily mean it is being conducted more efficiently. By way of guidance we note that the EECA Act provides a definition for "energy efficiency" which means a change to energy use that results in an increase in net benefits per unit of energy. It is reasonable to argue that the same definition should be applied to "electricity efficiency" under the EI Act.

18 If net benefits were interpreted as those also having a carbon emission reduction, then activities that promote the "electrification" of other sectors within the energy market, such as transport and industrial heat, would naturally fall into areas to which the electricity levy could be applied.

### ***Levy Allocation Model – Volume based/ ICP/ based on generation?***

19 ERANZ would support that the status quo is maintained for allocation of costs, ie. the electricity levy as used for EECA activities is funded by purchasers of electricity from the wholesale market based on volume. The reason being that most levies are based on a quantity model, ie. raising the revenue from those that use it the most, or those that would benefit most from the behaviour change.

20 Please do not hesitate to get in contact if you have any questions. We are happy for this submission to be released to the public.

21 Please see Attachment B for responses to the questions posed in the MBIE Options paper.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Jenny Cameron', with a stylized, cursive script.

Jenny Cameron  
Chief Executive  
Electricity Retailers' Association of New Zealand  
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Attachment A: Legal reasoning regarding electricity efficiency interpretation

Attachment B: Consultation Paper questions

## ATTACHMENT A

### The Law

#### *General principles of statutory interpretation*

The Interpretation Act 1999 provides that the meaning of an enactment must be ascertained from its text and in the light of its purpose.<sup>3</sup>

The object in construing an enactment is to ascertain the intention of Parliament as expressed in the enactment, considering it as a whole and in its context, and in a way that gives effect to its purpose.<sup>4</sup> The meaning of an enactment that corresponds to this intention is known as its “legal meaning”.

The legal meaning of an enactment is the meaning arrived at by applying to the enactment any other relevant and admissible material, the rules, principles, and presumptions which govern statutory interpretation.<sup>5</sup>

#### *Energy Efficiency and Conservation Act 2000*

The purpose of the EECA is to:<sup>6</sup>

*... encourage, promote, and support energy efficiency, energy conservation, and the use of renewable sources of energy by...*

Energy conservation means:<sup>7</sup>

*... a reduction in energy use*

Energy efficiency means:<sup>8</sup>

*... a change to energy use that result in an increase in net benefits per unit of energy*

#### *Electricity Industry Act 2010*

The purpose of the Electricity Act is:<sup>9</sup>

*... to provide a framework for the regulation of the electricity industry.*

Electricity Authority is empowered to collect a levy from electricity industry participants:<sup>10</sup>

*... every industry participants (or prescribed class of industry participants) must pay to the Authority on behalf of the Crown a levy prescribed by regulations.*

The levy must be prescribed on the basis that the following costs should met fully out of the levy:<sup>11</sup>

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<sup>3</sup> Section 5, Interpretation Act 1999.

<sup>4</sup> *Donselaar v Donselaar* [1982] 1 NZLR 97 (CA) at [114].

<sup>5</sup> *Laws of New Zealand* Statutory Interpretation (online ed) at [123].

<sup>6</sup> Section 21, Energy Efficiency and Conservation Act 2000.

<sup>7</sup> Section 3, Energy Efficiency and Conservation Act 2000.

<sup>8</sup> Section 3, Energy Efficiency and Conservation Act 2000.

<sup>9</sup> Section 4, Electricity Industry Act 2010.

<sup>10</sup> Section 128(1), Electricity Industry Act 2010.

<sup>11</sup> Section 128(3)(c), Electricity Industry Act 2010.

*... a portion of the costs of the Energy and Conservation Authority in performing its functions and exercising its powers and duties under the Energy Efficiency and Conservation Act 200 in relation to the encouragement, promotion, and support of electricity efficiency, where the size of the portion to be met by levies under the Act is determined by the Minister ...*

### **Reasoning**

It is clear that the functions of EECA, as set out under section 21 of the EECA Act, are broader than the activities that can be funded by the Levy under section 128 of the EI Act.

The two principal differences being, under the EECA Act, EECA is to encourage, promote, and support **energy efficiency, energy conservation**, and the use of renewable sources. Whereas under the EI Act, the Levy is to be used to fund EECA's functions in relation to the encouragement, promotion, and support of **electricity efficiency**.

A principal difference between the two Acts is the omission, in the case of the EI Act, of the term "conservation". Conservation equals reduction, but efficiency does not. This is an important distinction, as MBIE appear to favour a restrictive interpretation of efficiency under the EI Act that requires a reduction in electricity demand and consumption for the activity to be funded by the Levy. For example, in the Discussion Paper MBIE states the promotion of EVs cannot be funded by the Levy because an increased uptake would result in greater use of electricity, not improved electricity efficiency.



ATTACHMENT B

**Responses to Options paper questions**

Name:	Jenny Cameron, Chief Executive
Email address:	Jenny.cameron@eranz.org.nz
Organisation:	Electricity Retailers' Association of New Zealand (ERANZ)
Please identify your sector:	Retail
What are your views on the objective of this proposal? Do you agree or disagree with it? Why?	<p>ERANZ agrees with the principle that it is more appropriate in the New Zealand context for EECA to widen its scope to target <i>energy</i> efficiency rather than just <i>electricity</i> efficiency if the intent is to reduce carbon emissions, given that our electricity is predominantly generated via renewable resources. As such it is also appropriate that the burden for the levy should fall more widely to other energy sources.</p> <p>Promoting electricity efficiency does not have to be constrained by seeking a reduction in the use of energy.</p>
What do you think is the appropriate balance between 'administrative simplicity/transparency' and the 'causer or beneficiary pays' and 'rationality' criteria? Should more weight be given to one over the others?	ERANZ favours rationality then administrative simplicity/transparency. What the purpose for which the levy is being collected must be established first and then look at how. If the rationale is not clearly established then the justification for collecting that money from the sector cannot be established or measured.
Which option do you think provides the best balance?	Option 3
What is your preferred option?	Option 3
Why do you consider this the best option?	We believe that there would be an equity issue created if electricity consumers are the sole contributors funding energy efficiency initiatives. It makes sense to include a contribution from consumers of other energy types via their existing levies (ie. Petrol and gas). Oil is the most consumed source of energy. Transport contributes to

	17.2% of New Zealand's emissions. It makes sense to place the burden of the emissions externalities on this sector.
Of the options you do not prefer, what issues or reasons do you think are most important for us to consider?	It is not appropriate to apply the full burden of the levy on the electricity sector (Option 1) as it is largely generated from renewable sources. Improvements in efficient usage of electricity are largely driven by new technologies which are promoted by the market in any case.
Are there other options for providing transparency in the use of levy money (besides requiring annual consultation and reporting)?	EECA must continue to ensure it does a sound consultation on its initiatives to ensure its programmes are effective, measurable and targeted.