



BRIEFING

Consumer Advocacy Council: Next steps

| | | | |
|---------------------------------|-----------------|-------------------------|-----------|
| Date: | 29 January 2024 | Priority: | High |
| Security classification: | Sensitive | Tracking number: | 2324-1578 |

| Action sought | | |
|---|--|-----------------|
| | Action sought | Deadline |
| Hon Andrew Bayly Minister of Commerce and Consumer Affairs | Agree to the recommendations. Agree to discuss this briefing with the Minister for Energy. | 2 February 2024 |

| Contact for telephone discussion (if required) | | | |
|--|-----------------------------|----------------------------|-------------|
| Name | Position | Telephone | 1st contact |
| Glen Hildreth | Manager, Consumer Policy | Privacy of natural persons | ✓ |
| Privacy of natural persons | Senior Policy Advisor | | |

| |
|--|
| The following departments/agencies have been consulted: |
| N/A |

Minister's office to complete:

Approved

Declined

Noted

Needs change

Seen

Overtaken by Events

See Minister's Notes

Withdrawn

Comments:



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Purpose

To advise you on options for achieving fiscal savings for the Crown related to the Consumer Advocacy Council.

Executive summary

The Consumer Advocacy Council (the **Council**) was set up in 2020 following the recommendation of the Electricity Price Review. It was established to fill the gap in evidence-based policy advocacy for small electricity consumers (residential consumers and small businesses).

As part of the Government's priority to achieve fiscal savings for the Crown, the Ministry of Business, Innovation and Employment (**MBIE**) has identified the disestablishment of the Council as one option for delivering savings (approximately \$1.6 million per year).

The other option is to retain the Council in some form and explore alternative funding arrangements, such as a levy on electricity industry participants. This option would achieve similar savings for the Crown to disestablishing the Council, but could not be completed in time for Budget 2024.

In the time available before Budget 2024 proposals must be finalised, we have not been able to undertake an in-depth review of the Council's effectiveness. However, we are not certain that the Council is providing value to consumers. Multiple groups advocate for consumers by submitting on regulatory processes and engaging with industry participants, although there are limitations in their capacity and expertise. Disestablishing the Council could create a gap in the provision of evidence-based policy advocacy for small consumers in the electricity sector. However, alternative approaches taken by regulators could mitigate this.

We recommend you discuss these two options with the Minister for Energy, Hon Simeon Brown.

Recommended action

The Ministry of Business, Innovation and Employment recommends that you:

a **Note** we have been asked to find savings of 7.5 per cent of eligible base funding through the fiscal sustainability programme and Budget 2024.

Noted

b **Note** that disestablishing or alternatively funding the Consumer Advocacy Council would achieve fiscal savings of up to \$1.6 million per year for the Crown.

Noted

c **Agree** to disestablish the Consumer Advocacy Council.

Agree / Disagree

OR

- d **Agree** to retain the Consumer Advocacy Council in some form and discuss alternative funding options with the Minister for Energy, such as a levy on electricity industry participants after the 2024/2025 fiscal year.

Agree / Disagree

- e **Agree** to forward a copy of this briefing to the Minister for Energy.

Agree / Disagree



Glen Hildreth
Manager, Consumer Policy

29 January 2024

Hon Andrew Bayly
**Minister of Commerce and Consumer
Affairs**

..... / /

Background

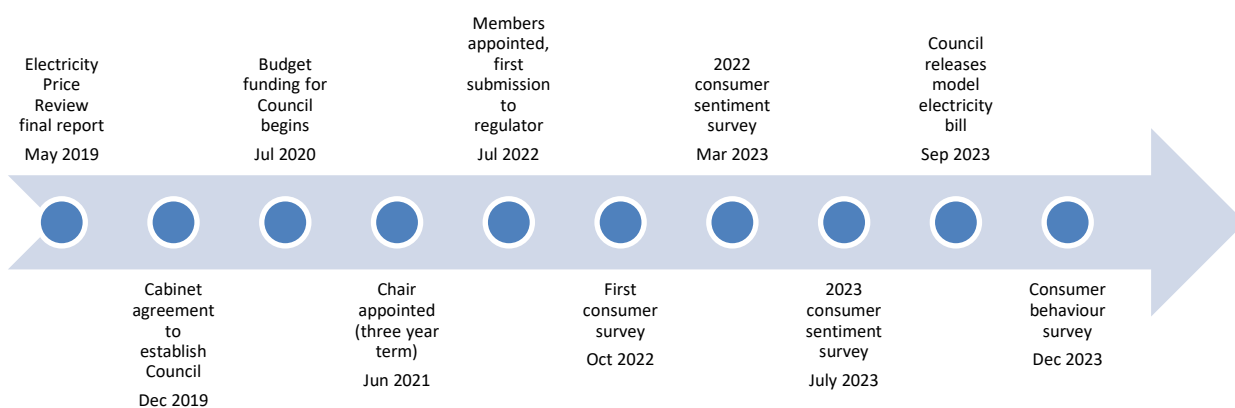
Fiscal savings in the Commerce and Consumer Affairs portfolio

1. Last year MBIE provided you with a briefing on potential savings to be made within the Commerce and Consumer Affairs portfolio [Briefing 2324-0944 refers]. One of the potential savings identified was to disestablish the Consumer Advocacy Council (the **Council**).
2. Cabinet has agreed to the following priorities for Budget 2024:
 - a. addressing the rising cost of living
 - b. delivering effective and fiscally sustainable public services
 - c. building for growth and enabling private enterprise.
3. Responsible Ministers have been asked to signal whether any potential savings they have identified will meet these priorities, and the following elements:
 - a. low value programmes
 - b. programmes that do not align with the Government's priorities
 - c. non-essential back-office functions including contractor and consultant spend.
4. It is our view that disestablishing the Council is consistent with these considerations.
5. On 12 December 2023 you enquired whether another option for cost savings would be to fund the Council through industry levies, and requested advice on both options.

About the Consumer Advocacy Council

6. The Council was established as a Ministerial Advisory Committee in 2020 with the objective of providing evidence-based policy advocacy for small business and residential electricity consumers, representing their voices to industry, regulators and Government. It followed the recommendation of the Electricity Price Review, which identified a gap in a strong consumer voice in the electricity sector. The Council and its secretariat are currently funded for approximately \$1.6m per annum by the Crown. This is funded by the *Commerce and Consumer Affairs: Consumer Advocacy Council for Small Electricity Consumers* appropriation (for which you are responsible) in Vote Business, Science and Innovation.
7. The Council has four board members, including a Chair. It is supported by a secretariat (currently three FTEs) located within MBIE, also funded out of the Consumer Advocacy Council appropriation. MBIE has been seeking the appointment of two new members [Briefing 2324-1025 refers].
8. The Council is accountable to the Minister of Commerce and Consumer Affairs, in consultation with the Minister for Energy and Minister for Small Business and Manufacturing. The Terms of Reference are provided at **Annex 1** for your information.
9. The appointment of the Chair and Council members was delayed due to COVID-19. As such the Council has only been fully operational for less than two years, as illustrated by the

timeline below.



Disestablishing the Council

10. Our earlier briefing suggested disestablishing the Council as one way of achieving fiscal savings in the Commerce and Consumer Affairs portfolio, because it is an initiative that was started within the last few years and that incurs costs that may not be justified by material improvements in consumer welfare.
11. In considering whether to disestablish the Council, we recommend the Government consider whether there is a continuing need for the functions provided by the Council.

The Council was set up to fill a gap in the provision of evidence-based advocacy

12. The Electricity Price Review recommended the Council be set up because of low levels of engagement and underrepresentation of the small consumer perspective in regulatory processes.
13. Without advocacy on behalf of small consumers of electricity, this perspective may not be fully considered in decisions made by regulators, government and industry participants. Regulatory decision-making often attracts strong industry voices, however individual consumers are unlikely to have sufficient technical knowledge to participate in consultation processes. While other consumer organisations engage in these processes from time to time, they may have limited capacity and less technical knowledge.

The Council's effectiveness is unclear

14. In the time available we have not carried out an in-depth review of the Council's effectiveness. As such, we do not have enough evidence to form a view on whether the Council has filled the gap as intended or provides substantial value beyond that provided by other consumer organisations and parts of government. The Council has only been operating since 2021, and we have not gauged the view of regulators, industry and electricity consumers. It is also difficult to draw conclusions linking the Council's work with direct benefits to consumers in the form of lower prices or higher quality services.
15. The Council has made 15 submissions, commissioned surveys and research, and regularly published media releases. Regarding the projects the Council has focused on:
 - a. The Council's model electricity bill received some positive coverage but buy-in from industry is not clear.
 - b. The Council advocates to make the Electricity Authority's Consumer Care Guidelines mandatory. The Electricity Authority is yet to release its decision.

There may be impacts if disestablished

16. Disestablishing the Council could leave a gap in evidence-based consumer advocacy. How big this gap is in practice depends on how effective the Council has been at filling it to date.
17. There is also a potential opportunity cost over the longer term, with significant reform on the horizon in the electricity sector. Having a single body advocating for small consumers could benefit regulators. While there are cost savings for the Crown from disestablishment, without ready access to evidence-based consumer advocacy there may be additional costs if regulators must spend money on other methods of engaging with the consumer perspective.
18. While there would be no single dedicated body providing an informed pan-consumer voice on technical matters, there would still be mechanisms for the consumer perspective to be heard. Multiple consumer and business groups participate in regulatory decision-making in the electricity sector in the following ways:

| <i>With the regulator</i> | | <i>With the regulated suppliers</i> | |
|---|---|--|---|
| Consumer NZ, FinCap, Community Law, Salvation Army, Community Energy Network, Northern Energy Consumer Group, BusinessNZ Energy Council, and the Major Electricity Users' Group may make submissions in regulatory processes. | Electricity Authority's advisory groups are required to have one or more members with knowledge of, and experience in, consumer issues. | Suppliers engage with consumers on their preferences. Transpower's Consumer Advisory Panel, consumer-owned Energy Trusts (with their beneficial owners), and various consumer engagement initiatives/surveys by regulated suppliers. | Certain consumer groups reach negotiated settlements with suppliers. Kāinga Ora (on behalf of tenants); and Grey Power (discounts for members). |

Potential impacts could be mitigated through alternative approaches

19. The Government could formally encourage the Electricity Authority and the Commerce Commission to lift the effectiveness of their engagement with small electricity consumers. The Electricity Industry Act 2010 was recently amended to give the Electricity Authority a statutory objective to protect the interests of small electricity consumers.
20. The Council has contributed to an evidence base by undertaking research into the perspectives of small electricity consumers. Similar research could potentially be funded by MBIE or regulators. In the absence of any new funding this would need to be funded from within existing baselines.

Fiscal savings

21. Disestablishing the Council would deliver savings of approximately \$1.597 million per year. This amount covers the Council's annual budget and the secretariat function within MBIE.

Implementation

22. The Council does not have legislative status. There is no formal process set out for its disestablishment. The Terms of Reference require any changes be made in consultation with the Minister responsible for Energy and the Minister responsible for Small Business. If you wish to proceed with disestablishing the Council, we recommend consulting the Minister for Energy and notifying Cabinet.
23. If you decide to disestablish the Council, we recommend this decision be implemented prior to Budget 2024, so you have confidence the Council would not require funding for 2024/2025 and outyears.

Explore alternative funding for the Council, such as levies

24. Another way of achieving fiscal savings would be to introduce a cost-recovery levy on industry participants to cover the Council's operations, though this is not practicable in time for Budget 2024 (meaning this option does not result in savings for Budget 2024). We recommend you discuss this option with the Minister for Energy.
25. The Electricity Industry Act 2010 includes a power to designate an agency to perform the functions of small electricity consumer advocacy. If the Council was designated, the levy-making powers in the Act could be used to fund the Council. The Council has favoured levy-funding in the past, as a way of giving it perceived independence from government.
26. An industry levy would ensure secure ongoing funding that meets Council needs. Levy-funding may be appropriate because rather than funding through general taxation, levy charges are likely to be passed through to consumer electricity bills (ie those who benefit most from the Council's advocacy). We estimate this would amount to a small increase of less than \$2.00 per year on consumer electricity bills.

Fiscal savings

27. Levy funding would potentially deliver fewer fiscal savings for the Crown than disestablishment, because while the cost of the Council's operations would move off the Crown's books, there would be some ongoing costs in setting and collecting the levy. It is not clear whether these administrative costs could be cost-recovered through the same levy.

Implementation

28. Making levies would require Cabinet agreement, designing the levy (including estimating the Council's costs), consulting regulated entities and other affected persons (as required by the Act) and amending the regulations.
29. Given the levy design process and consultation requirements take some time (at least three months after Cabinet agreement), it is unlikely levies could be in place before Budget 2024. Should you choose this option, we would therefore not include the Council as an expenditure reduction saving for 2024/25, but it could be included as a savings option for 2025/26.

Consultation

30. We have consulted with the MBIE teams responsible for energy and small business policy.
31. We have not consulted the Council or MBIE staff in the secretariat given the sensitivities of the proposal to disestablish the Council. MBIE would need to run a change process for the permanent MBIE FTEs on the secretariat.

Communications and risks

32. There is a perception risk that in disestablishing the Council, the Government does not value the perspective of small electricity consumers. This risk is exacerbated by the speed of the decision making and lack of an in-depth review into the Council's effectiveness. Disestablishing the Council may therefore attract negative media commentary.
33. Early discussion with the Council around your decision will be important. Proactive public communications may also be appropriate, given the Council's standing with the public, the industry and regulators. We can assist with preparing communications material.

Next steps

34. We anticipate the following next steps:

- Your office to forward this briefing to the Minister for Energy.
- Discuss your preferred approach with the Minister for Energy.
- Advise officials of your decision.
- *If disestablishing the Council:*
 - We will prepare a Cabinet paper for you to notify Cabinet.
 - We will assist in notifying the Council and will run a process in relation to stopping the secretariat function for staff affected by this decision.
- *If retaining the Council and exploring alternative funding options (eg an industry levy):*
 - We will work with the Minister for Energy's officials on levy design as necessary.
 - We can advise on measures to ensure the Council is effective and efficient in the future (eg through performance measures and appointment processes).

Annexes

Annex 1: Terms of Reference for the Consumer Advocacy Council.

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Terms of Reference for the Consumer Advocacy Council

This Terms of Reference describes the purpose, role, functions, membership, systems and processes of the Consumer Advocacy Council (the **Council**).

Background

1. Consumers, particularly households and small businesses, struggle to make their voices heard and exert influence over decisions affecting them in the electricity sector.
2. They struggle because:
 - the complexity of the sector makes it difficult for them to understand and express their views about things affecting their electricity supply and power bills;
 - they lack the considerable time and resources needed to get involved in decision-making processes, the outcomes of which are largely made on their behalf by industry participants, regulators and the Government; and
 - cultural differences and language barriers stand in the way.
3. This Terms of Reference sets out the parameters of the Council in undertaking consumer advocacy on behalf of household and small business electricity consumers. The Council would operate independently of industry participants, regulators and the Government.

Purpose of the Council

4. The purpose of the Council is to be the trusted, credible, authoritative advocate for small electricity consumers¹, operating independently of industry participants, regulators and Government.

Role of the Council

5. The role of the Council is to advocate on behalf of residential and small business electricity consumers by providing evidence-based advocacy on policy and regulatory consultations, in decision-making processes and on matters of strategic importance or material consequence for consumers.

Responsible Minister

The Minister of Commerce and Consumer Affairs

6. The Minister of Commerce and Consumer Affairs is the responsible Minister for the Council, similar to that Minister's current responsibilities for energy dispute resolution schemes under Part 6 of the Electricity Industry Act 2010. Members of the Council are appointed by, and report to, the responsible Minister.

¹ We see small electricity consumers as domestic consumers and small businesses. For the purposes of the Council, 'small businesses' relates to the quantity of electricity used, not to the turnover or number of employees.

Consulted Ministers

The Minister of Energy and Resources

7. The Minister of Energy and Resources will be consulted by the Minister of Commerce and Consumer Affairs in regards to the Council's membership (the appointments process), role and functions (any changes to them).

The Minister for Small business

8. The Minister for Small Business will be consulted by the Minister of Commerce and Consumer Affairs in regards to the Council's membership (the appointments process), role and functions (any changes to them).

Functions of the Council

9. The Council will:
 - establish its own work programme to meet this Terms of Reference;
 - work with the Electricity Authority, Commerce Commission, government agencies and industry participants on any electricity matters that are of importance to households and small business electricity consumers;
 - work with other consumer groups, particularly those advocating on behalf of small businesses and residential consumers, including electricity consumers in vulnerable circumstances,² Māori, Pasifika, elderly, new immigrants, those in lower socio-economic groups and youth cohorts;
 - work with other consumer groups where relevant;
 - commission specialist research and analysis to support its activities (such as making formal submissions on behalf of consumers, hosting or participating in workshops, and regularly meeting regulators, other agencies and industry participants);
 - complement, rather than replace, consumer representation on existing advisory groups and consumer panels;
 - advocate on behalf of residential and small business electricity consumers;
 - build knowledge and expertise and make it widely available; and
 - influence the regulatory system and wider market for energy.

Operation of the Council

Operations

10. The Council can determine how it meets its Terms of Reference, including its work programme.
11. The Council will receive an annual budget to undertake its work and have performance measures set by the responsible Minister in consultation with the other two Ministers.
12. The Council is accountable to the responsible Minister, and will provide regular reporting on delivery of its consumer advocacy strategy, performance measures and work programme.

² As outlined in the Council of Financial Regulators framework: <https://www.fma.govt.nz/assets/CoFR/CoFR-Consumer-Vulnerability-Framework-April-2021.pdf>

Role of the Chair

13. The Chair of the Council is responsible for:
 - chairing meetings and other stakeholder forums;
 - organising the agenda, with the assistance of Council members and the Secretariat;
 - determining what action is appropriate if a member has a potential conflict of interest;
 - ensuring the Council operates in a manner that enables it to meet its Terms of Reference;
 - overseeing the development and the delivery of an effective work programme for the Council within budget;
 - providing subject matter expertise on the work undertaken by the Council;
 - liaising with the secretariat on all matters relating to the role of the Council;
 - acting as the spokesperson for the Council; and
 - maintaining close and effective relationships with all relevant stakeholders.
14. The Chair will advise the Government directly of their intention to make public comments subject to the Chair's discretion.

Membership

15. The Minister of Commerce and Consumer Affairs may appoint up to six Council members, including a Chair. The Minister of Commerce and Consumer Affairs must make these appointments in consultation with the Minister of Energy and Resources and Minister for Small Business, and must be satisfied that any persons appointed have the necessary expertise and experience to carry out the functions of the Council.
16. Attendance of 50% of the named members will constitute a quorum.

Secretariat

17. The Ministry of Business, Innovation and Employment (MBIE) will provide the Council with a Secretariat, removed from MBIE's policy functions. The Secretariat is responsible for support and administrative services and tasks associated with the Council. The Secretariat will be given direction by the Council on its work.
18. The Secretariat will support the Council to undertake and progress the work-programme, but will not take part in decision-making, ensuring the independence of the Council members.

Expectations of Members

19. The members of the Council will support the Chair to undertake the Council work programme with support from Secretariat. Members are expected to:
 - attend meetings, unless extenuating circumstances provide otherwise;
 - prepare adequately prior to each meeting by reading all papers provided to them;
 - ensure that matters of significance are brought to the attention of the Council;
 - bring to the Council perspectives based on their experiences and interests;
 - take a whole system view to the policy advocacy of consumers in the electricity market and not regard themselves as representatives or advocates for particular sectors or interests;
 - base their advice on understanding of broader issues in society and the economy;
 - work with the Secretariat to write reports and submissions or material that progress the work programme and the Council's role and functions; and

- comment on reports or submissions or other material from market participants, regulators and Government.

Responding to proposals from regulators, government and suppliers

20. In considering and providing advice/recommendations in response to any of the proposals the Council may:
- confer with any groups that represent households and small-business, and/or individual households and small business owners, including seeking any additional necessary information; and
 - seek any other relevant external advice, including global best practice.

Working in a transparent manner

21. The Council will document systems and processes it will use to operate, including:
- the procedures for providing advice/recommendations as may be sought by decision makers;
 - how its meetings are conducted and the procedures for when the Chair is absent;
 - how information is to be treated, secured and returned where a person is no longer a member of the Council;
 - a conflict of interest policy that complies with Te Kawa Mataaho – Public Service Commission guidance³, including procedures for where members of the Council have an actual or perceived conflict of interest and the maintenance of a conflict of interest register; and
 - working relationships with stakeholders.

Meetings

22. The Council may meet as frequently as it sees fit, within budget constraints, in order to deliver on agreed outcomes. Additional meetings may be called when needed on particularly urgent or important issues. Where such issues arise between scheduled meetings, the Secretariat may contact the group by electronically to seek their views.
23. An agenda will be circulated to members prior to each meeting. Pre-reading will be made available where this will be useful for discussions. Where members cannot attend a meeting, they can provide written or verbal feedback on proposals to the Chair.

Work programme

24. The Council will have its own work programme which will be informed by its stakeholders and its response to regulatory processes and government policies. The work programme may include a consumer advocacy strategy to ensure effective engagement.
25. The Secretariat will work with the Council to develop the work programme. The Council will have decision making authority and final approval of the work programme.

Amending the Terms of Reference

26. The Chair, on behalf of the Council, can advise the Minister of Commerce and Consumer Affairs via the Secretariat, if they wish to amend the Terms of Reference.
27. The Chair will require the unanimous support of all Council members to bring a proposal to amend the Terms of Reference. Once support is established the Secretariat will draft this proposal along with the new Terms of Reference for the Council.

³ <https://www.publicservice.govt.nz/resources/conflicts-of-interest/>

28. This proposal to amend will be subject to the discretion of the Minister of Commerce and Consumer Affairs in consultation with the Minister of Energy and Resources and the Minister for Small Business.

Conditions of Appointment

29. The appointments to the Council are subject to the following conditions:
- members are appointed for a term of 2 to 3 years;
 - appointments shall be effective from the time and date specified in the notice;
 - a member may, at any time, resign membership of the Council by providing written notice to the Minister of Commerce and Consumer Affairs;
 - any member of the Council may at any time be removed from office by the Minister of Commerce and Consumer Affairs, in consultation with the Minister of Energy and Resources and Minister for Small business, for inability to perform the functions of Council, bankruptcy, neglect of duty, or misconduct, proved to the satisfaction of the Minister; and.
 - any reappointments are made for a duration that is at the Minister of Commerce and Consumer Affairs' discretion, in consultation with the Minister of Energy and Resources and Minister for Small Business.

Fees Framework

30. The Council is classified as a Group 4 Level 2 body under the Cabinet Fees Framework. Members are responsible for paying all Inland Revenue payments, other taxes and Accident Compensation Corporation levies in respect of remuneration and disbursements. The daily remuneration for all members of the Council will be claimed in accordance with Cabinet Office instructions.
31. The Secretariat will seek financial delegation from MBIE. Travel, accommodation and meals will be organised and paid by the Secretariat where practicable. Disbursements will be agreed with the Secretariat. Where travel, accommodation and meals cannot be organised by the Secretariat then actual and reasonable costs will be reimbursed in accordance with relevant policies.

Obligations of the Council

32. The Council members will:
- act in good faith, and show honesty, integrity, openness and accountability in their dealings with each other and all other stakeholders;
 - act consistently with the Te Kawa Mataaho - Public Service Commission standards of integrity and conduct;⁴
 - provide free and frank advice in relation to matters before the Council; and
 - consult and gain approval from the Chair before making public statements on any aspect of the Council.

The role of invited Experts

33. The Council may resource additional subject matter experts to undertake its work-programme. All contracting responsibility for additional subject matter experts will be held

⁴ <https://www.publicservice.govt.nz/our-work/integrityandconduct/>

with the Council. This would be any person or persons whose qualifications or experience are likely, in the opinion of the Council, to be of assistance to the Council in dealing with a particular matter which relates to the Council's work programme. That person, who is resourced as a subject matter expert, while not a member, will be subject to the same obligations of the Council members and will be paid at a market rate that is deemed appropriate. Administration of experts will be conducted by the Secretariat.

Official Information Act 1982

34. The Official Information Act applies to the records of the Council.