

17 November 2021

Committee Secretariat
Economic Development, Science and Innovation Committee
Parliament Buildings
Wellington

Email: edsi@parliament.govt.nz

Dear Mr Strange

1. Executive Summary

- 1.1. The Consumer Advocacy Council (the Council) recommends:
1. Establishing a consumer advocacy agency to deliver the work of the Council.
 2. Ensuring the independence of the consumer advocacy agency by requiring it in governing legislation.
 3. Providing regulation-making powers to recover the costs associated with the consumer advocacy agency by way of an industry levy.
 4. Removing any ambiguity between the Council and the Agency to clarify that the Council will deliver the work of the Agency.
 5. Amending the small business consumer definition to be consistent with the standardised definition of SMEs of less than 20 employees.
 6. Clarifying the roles and responsibilities of the regulators.
 7. Expanding the Electricity Authority's consumer protection objective to protect the interests of residential and small business consumers in relation to the supply of electricity.
 8. Ensuring the Electricity Authority can develop proportionate and targeted rules to address competition-related issues in contestable markets.
- 1.2. I wish to thank the Committee for the opportunity to submit on the Electricity Industry Amendment Bill (the Bill). I also wish to speak in support of the submission.

2. Background

- 2.1. As you will be aware, in April 2018, the Minister of Energy and Resources commissioned an independent Electricity Pricing Review (the EPR) into New Zealand's electricity market. The EPR was commissioned to investigate electricity prices, especially for residential consumers that were increasing faster than inflation over many years, which put pressure on household budgets. In comparison, prices faced by commercial and industrial customers remained relatively flat.

- 2.2. The final report was delivered to the Minister of Energy and Resources in May 2019. It contains 32 recommendations related to consumers, industry, regulation, and technology.
- 2.3. The EPR found that smaller consumers struggle to make their voice heard and influence the electricity sector. The obstacles include the sector's complexity, consumers' lack of resources, and cultural differences and language barriers. The EPR recommended the establishment of a Consumer Advocacy Council (A1¹) to be "...the trusted, credible, authoritative and independent advocate for residential and small business electricity consumers."²
- 2.4. The Government agreed to the Council's establishment in early 2020. Its role is to advocate on behalf of these consumers by "...providing evidenced-based advocacy on policy and regulatory consultations, and in decision-making processes."² Funding was announced in August 2020 as part of a \$17 million budget package for consumer advocacy and energy hardship.
- 2.5. I was announced as Chair in July 2021. Recruitment of the other Council members is expected to be announced early next year.
- 2.6. The Secretariat for the Council is already in place and includes a research capability. Research is already being advanced to underpin the work of the Council.
- 2.7. The Council represents both residential consumers and small businesses. The EPR noted the vulnerability of residential consumers and the imbalance when dealing with the electricity sector. Small businesses have similar issues as residential consumers, and it was noted this group is also under-represented.

3. Consumer Advocacy Agency

The Agency

- 3.1. The Bill enables the establishment of a consumer advocacy agency (the Agency) to assist small electricity consumers express their views about things affecting their electricity supply and power bills. Whilst the Government has ensured that an Agency is established, a legislative mandate will embed the Agency, giving it more standing and better securing its future. It will make clear our purpose and functions in a manner that stakeholders can hold us to account. It is what was intended by the EPR.
- 3.2. There are 1,891,325 residential consumers in New Zealand, all of whom could benefit from the Agency advocating on their behalf.

¹ *Electricity Price Review, 21 May 2019.*

² <https://www.mbie.govt.nz/building-and-energy/energy-and-natural-resources/energy-consultations-and-reviews/electricity-price/>

- 3.3. There are approximately 530,000 small businesses in New Zealand, according to Ministry of Business Innovation and Employment, based on the traditional definition of fewer than 20 full time equivalent employees. However, there are currently only 274,698 small and medium enterprise (SMEs) connections³. This is likely due to many working from home and having their connections not separated from their residential connections. It is widely understood that most SMEs do not have the time or resources on which to work on issues such as electricity, which typically forms a small percentage of costs and is complex to navigate. Compared to larger industrial electricity users, represented by advocacy bodies like the Major Electricity Users' Group and BusinessNZ Energy Council, SME's have little representation. Like residential consumers, SMEs would benefit from the Agency tasked with representing their interests with respect to electricity.
- 3.4. The Agency is based on an Australian model. The introduction of Energy Consumers Australia (ECA) in 2015, as an independent and national voice for consumers, has enabled residential and small business energy consumers to have their voices heard by the sector by working with other consumer groups to gather evidence-based research with a national perspective, distil it to key viewpoints, and feed it back to the market to influence outcomes.⁴
- 3.5. A New Zealand agency can, and should, provide similar effective outcomes for New Zealand residential consumers and small business consumers.
- 3.6. Many of the individuals and residential groups that submitted on the EPR noted their support and that they wanted somewhere they could go to seek information that wasn't the sector itself. A number of these individuals noted the difficulties they face due to the imbalance of power. They had difficulties getting through to the right people and felt they were not listened to, saying it was a "David and Goliath imbalance"⁵.
- 3.7. The electricity sector was also supportive of the establishment of the Agency, as it recognised customer engagement was an area that required development. Northern Energy Consumer Group, established by Top Energy, the Lines Company, Vector, Counties Power and Northpower, saw themselves as partners to a newly formed agency⁶. Other leaders in the sector, such as Contact Energy, Genesis and Mercury similarly supported the initiative.
- 3.8. In the 4 months since my appointment, consumer groups have repeatedly expressed the view that they find the electricity sector complex and challenging to engage with to ensure meaningful change. There is not one entity we have met that has the role that the Council has been established to provide, although there are many that make an enormous contribution, like

³ Electricity Authority - *EMI (market statistics and tools)*, ea.govt.nz.

⁴ <https://energyconsumersaustralia.com.au/about-us/mission-and-vision>

⁵ <https://www.mbie.govt.nz/dmsdocument/4875-kerry-ann-bryant-submission-electricity-price-review-options-paper-pdf>

⁶ <https://www.mbie.govt.nz/dmsdocument/4895-northern-energy-consumer-group-submission-electricity-price-review-options-paper-pdf>

Consumer NZ. We will complement their work and augment it. All consumer groups recognise the value that the Council's role affords.

- 3.9. Industry sector members that we have had the opportunity to meet with, including electricity retailers Aurora and Genesis, see the benefit the Council will provide. They recognise that more could be done for small consumers and are keen to collaborate, as are we for the benefit of the consumers we represent.
- 3.10. The Commerce Commission and Electricity Authority (EA) were also supportive. The Commerce Commission suggested that a similar model to Energy Consumers Australia be created and that it be well resourced⁷.
- 3.11. There is, therefore, broad support for the Agency in New Zealand.
- 3.12. We agree that currently small electricity consumers can be vulnerable in their dealings with the electricity industry and that this Agency will, like its Australian counterpart, help to rectify that imbalance of information and bargaining power. There is currently an inequitable market where smaller consumers do not have the same power when negotiating prices and conditions for electricity. The Agency will be an independent voice and will be able to advocate on their behalf.

Recommendation:

- 1. Establishing a consumer advocacy agency to deliver the work of the Council.**

Independence

- 3.13. It was envisaged by the EPR that the Agency would be independent and, in particular, able to advocate independently of Government, regulators and the sector⁸.
- 3.14. The Commerce Commission has noted there needs to be a balance to the industry's views and that independence is important. The EA suggested it "... is essential the Council is independent and is provided with sufficient resourcing to allow it to meaningfully contribute to policy development over the long-run"⁹.

⁷ <https://www.mbie.govt.nz/dmsdocument/4820-commerce-commission-submission-electricity-price-review-options-paper-pdf>

⁸ <https://www.mbie.govt.nz/assets/electricity-price-review-final-report.pdf>, pg14.

⁹ <https://www.mbie.govt.nz/dmsdocument/4839-electricity-authority-submission-electricity-price-review-options-paper-pdf>

- 3.15. Agencies such as FinCap and the Salvation Army saw an independent voice for consumers as a necessity and suggested the Agency “...needed to have teeth.”¹⁰ They supported the EPRs summation of vulnerable consumers lacking a voice to raise their issues¹¹.
- 3.16. The Council’s Terms of Reference (TOR) and purpose include the need for operating independently of industry participants, regulators and Government¹². The TOR has also been approved by Cabinet.
- 3.17. A critical factor to ensure the success of a consumer advocacy body is its independence. Such is the importance of independence we believe it should be enshrined in the legislation establishing the Agency.

Recommendation:

- 2. Ensuring the independence of the consumer advocacy agency by requiring it in governing legislation.**

Levy

- 3.18. The Bill enables a levy on industry to recover the costs associated with the Agency’s advocacy.
- 3.19. A levy has the significant benefit that it would secure an ongoing funding stream with the flexibility needed to meet the Agency’s future needs.
- 3.20. We have heard concerns raised by the sector, particularly some retailers, regarding the proposed levy on industry to pay for the Agency. Some noted they would likely pass the costs of a levy onto consumers, further increasing consumer costs.
- 3.21. It is concerning to hear the retailers suggesting this cost will be passed on to consumers, thus ensuring they will endure higher costs.
- 3.22. In the 2020-21 financial year, the big five electricity ‘gentailers’¹³ together had a combined annual revenue of some \$12B and profits posted of \$820.7M, based on their combined annual reports.

¹⁰ <https://www.mbie.govt.nz/dmsdocument/4851-fincap-submission-electricity-price-review-options-paper-pdf>

¹¹ <https://www.mbie.govt.nz/dmsdocument/4226-the-salvation-army-electricity-price-review-first-report-submission>

¹² Consumer Advocacy Council Terms of Reference.

¹³ Contact Energy, Genesis, Mercury, Meridian and Trustpower.

- 3.23. It has been estimated that the Agency will cost between \$1.5M - \$2.5M per annum. The cost of the Agency would be insignificant compared to electricity sector revenue and profits.
- 3.24. Based on \$12B revenue and the Agency costing the maximum of \$2.5M, it would mean a cost of 0.0002 cents in every dollar earned for the top five 'gentailers'¹⁴ alone. We believe it is hard to argue a levy would be unaffordable and must be passed on to consumers as an added cost to business.
- 3.25. Levy models are widely used. For example it is used by the Australian entity, Energy Consumers Australia (ECA) outlined below. Other bodies have very similar funding models; the Banking Ombudsman is funded by the banks, Maritime NZ is funded by the commercial maritime operators (both New Zealand and foreign commercial vessels), and the Broadcasting Standards Authority is funded by the broadcasting levy that is paid by any company earning more than \$10M a year from telecommunications services. There are also numerous examples within the agricultural sector where levies are placed on farmers, recognising the benefit of an overarching association meeting the needs of its members.
- 3.26. Giving small consumers an adequate voice will benefit not just consumers, but the electricity industry. It will ensure that the industry better understands the needs of its customers.
- 3.27. The way in which a levy is calculated gives the industry an opportunity to be heard on what levy is appropriate.
- 3.28. In our submission, it is reasonable and appropriate for the industry to fund the Agency. We also suggest funding the Agency via an industry levy ensures ongoing and adequate provision of its services.

Recommendation:

- 3. Providing regulation-making powers to recover the costs associated with the consumer advocacy agency by way of an industry levy.**

The Agency

- 3.29. The Bill has been silent on the relationship between the Council and the potential Agency. We understand this is to maintain flexibility to allow potentially more than one agency in the future.

¹⁴ Contact Energy, Genesis, Mercury, Meridian and Trustpower.

- 3.30. However, as the Council is already in place, we ask that this be clarified and be made less ambiguous. It could lead to issues for the Council in the future if its role were to be weakened due to this ambiguity.

Recommendation:

- 4. Removing any ambiguity between the Council and the Agency to clarify that the Council will deliver the work of the Agency.**

4. Small Business Consumer Definition

- 4.1. The Bill defines a small business consumer as consuming less than 40 MWh of power per year.
- 4.2. We understand the proposed definition was likely determined by usage or capacity and connections to the network, however it's confusing and adds yet another definition for small businesses. The electricity sector considers anything less than 200MWh per year small. 40MWh is based on a category one connection or the most basic connection and metering installation not usage.
- 4.3. We question the benefit of establishing a new definition for small businesses when there is a commonly used standard definition for small businesses in New Zealand of less than 20 employees¹⁵. This accounts for some 97% of all businesses.
- 4.4. The use of the standard definition would mean that the Agency could more easily access information and research that uses the common SME definition and use it to benefit SMEs. The counterfactual – a new definition would mean that we could not easily use that information and research and it would add a layer of complexity and cost to the work of the Agency.
- 4.5. Small businesses are diverse, although keeping definitions more standard allows the Agency to better understand who we represent and the challenges they face. The challenges of small businesses and residential consumers to engage meaningfully with the electricity sector, identified as barriers in language, time, resource and the complexity of the sector, are not necessarily reduced if they consume more than 40Mwh. Additionally, the use of the standard

¹⁵ <https://www.mbie.govt.nz/business-and-employment/business/support-for-business/small-business/>

accepted definition of SME is unlikely to skew the work of the Agency to advocate for bigger businesses.

Recommendation:

- 5. Amending the small business consumer definition to be consistent with the standardised definition of SMEs of less than 20 employees.**

5. Clarity for the Regulators

- 5.1. The Bill considers some amendments to clarify the roles and responsibilities of the regulators. These amendments are predominantly technical in nature, but any clarification regarding both the Commerce Commission's and the Electricity Authority's mandates is likely to be in the interests of small consumers.

Expanding the Electricity Authority's objectives to include small electricity consumers

- 5.2. We support the EA being given an explicit small electricity consumer protection function to protect the interests of residential and small business consumers in relation to the supply of electricity. It will strengthen its consumer protection mandate and ensure that it focuses not only on its existing objectives but those of small consumers.
- 5.3. Presently it could be argued that small consumer protection is inconsistent with the EA's statutory objective of promoting competition, reliability, and the efficient operation of the industry. It leaves the EA open to the risk that it acts outside its powers to protect small consumers.
- 5.4. The amendment will remove the uncertainty regarding the EA's ability to add consumer protection provisions to the Code or to monitor and enforce consumer protection provisions.
- 5.5. Expanding the consumer protection function for the EA is consistent with the EPR's recommendation to ensure that regulators listen to consumers.

Regulatory Agility

- 5.6. The electricity sector is facing significant change as we cut greenhouse gas emissions and transition to a low carbon economy. The regulatory environment needs to be able to meet the needs of this changing environment.
- 5.7. There is a specific risk that monopoly services, that is Transpower and distributors, could be involved in contestable activities. We are particularly concerned with evolving technologies that could assist us in combatting greenhouse gases and making electricity more affordable for consumers. Ensuring competition to enable them to be widely available and appropriately priced are essential.
- 5.8. We believe ensuring the EA has the ability to develop proportionate and targeted rules to address any competition-related issues in contestable markets is in the interests of small consumers.

Recommendations:

- 6. Clarifying the roles and responsibilities of the regulators.**
- 7. Expanding the Electricity Authority's consumer protection objective to protect the interests of residential and small business consumers in relation to the supply of electricity.**
- 8. Ensuring the Electricity Authority can develop proportionate and targeted rules to address competition-related issues in contestable markets.**

6. Conclusion

- 6.1. Again, we wish to thank the Committee for the opportunity to submit on the Bill and to speak in support of the submission.
- 6.2. If you have any further queries regarding the submission do not hesitate to contact me on phone (021) 379-244.

Yours sincerely,



Deborah Hart

Chair – Consumer Advocacy Council