

17 November 2021

Utilities Disputes Submission on the Electricity Industry Amendment Bill

Utilities Disputes: Tautohetohe Whaipainga (UDL) welcomes the opportunity to submit to the Economic Development, Science, and Innovation Committee on the Electricity Industry Amendment Bill (Bill).

Summary of submission

UDL has focused its submissions on the new consumer elements of the Bill in clauses 9 and 11. We welcome any change that strengthens the consumer voice in the electricity industry. We have also commented on clauses 13, 19, 32 and 37.

Background of UDL

UDL is an independent, not-for-profit company that provides resolution for complaints in the utilities sector that companies have not been able to resolve, including electricity complaints. We consider cases between consumers and scheme members, and indemnity disputes between scheme members.

Our aim is to facilitate a strong relationship of trust between consumers and utilities organisations. Our focus is on three key aspects of effective complaints resolution: Prevent, Educate and Resolve.

We currently operate three dispute resolution schemes: The Government approved Energy Complaints Scheme and Broadband Shared Property Access Disputes (BSPAD) Scheme, and the voluntary Water Complaints Scheme. Our model includes early resolution, conciliation, investigation and if needed a binding determination by a centralised decision maker.

Small consumer advocacy agency

The Bill, at clause 11 provides for the establishment of a Small Electricity Consumers Agency with its function being to represent and advocate for the interests of domestic consumers and small business consumers, including promoting their interests to public service agencies and Crown entities.

We support this change. We note the 2017 International Energy Agency report into New Zealand¹ noted the absence of a consumer advocate in the New Zealand electricity sector.

The report identifies European Union governments have *expanded the consumers' protection work of their regulatory authorities by creating separate consumer boards or consumer functions at the regulator*. Australia has established a separate, independent consumer advocacy body called Energy Consumers Australia to *provide input and advice on national energy market matters of strategic*

¹ Available at: <https://iea.blob.core.windows.net/assets/252d9b8a-f43c-4314-8790-e0408381d080/EnergyPoliciesofIEACountriesNewZealand2017.pdf>

importance for energy consumers, with the aim of promotion of the long-term interests of energy-users with respect to price, quality, safety, reliability and security of supply of energy services.

UDL's role is bridging the gap between industry and consumers, reporting to Ministers and regulators, and effectively ensuring both consumer and industry voices are heard. We observe first-hand the power imbalances between consumers (both residential and small business) and industry participants. While we are not a consumer advocate, we note that a consumer advocate can refer consumers to dispute resolution. We believe our dispute resolution mechanism is complementary to, and will be well utilised, by a consumer advocate.

The Bill requires at clause 37 for either a portion of, or all, the costs of a Small Electricity Consumers Agency to be recovered by an industry levy, subject to any levy regulations being made. We submit that it is important for a consumer advocacy agency to remain free to consumers. UDL's energy scheme is free for consumers with its funding coming directly from electricity and gas retailers and distributors (all of which are required to join). In our experience the consumers who stand to benefit most from an advocate are often unable to afford to pay for such services or would be otherwise deterred from using them should there be any associated cost.

A Small Electricity Consumers Agency could advocate for consumers over a range of industries with appropriate funding from each industry. We submit the proposed levy function allows a Small Electricity Consumers Agency to remain sufficiently flexible and extend its remit to areas outside of electricity in the future as appropriate.

Expanding the jurisdiction of the Electricity Authority to protect household and small business consumers in relation to the supply of electricity

The Bill, at clause 9 proposes to expand the jurisdiction of the Electricity Authority to include an ability to amend the Code to protect domestic and small business consumers in relation to the supply of electricity. Small business consumers are described as those that consume less than 40 MWh of electricity per year.

As part of our dispute resolution work, we observe power imbalances between consumers (both residential and small business) and industry participants, and we believe this change will help level the playing field and we therefore support it.

As noted, the 2017 International Energy Agency report into New Zealand shows adding this requirement to the regulator's jurisdiction is consistent with the approach taken in comparable countries.

We believe consideration needs to be given to any Electricity Authority Code change around the intersection with existing consumer law and its enforcement. Requirements between the Electricity Authority Code and other legislation should be consistent with care taken to avoid situations where retailers and distributors may be subject to claims about the same issue under different legislation such as, for example, the electricity specific provisions in the Fair Trading Act.

Regulating distribution terms and conditions

The Bill, at clause 13 allows the Electricity Authority Code to regulate distribution access terms and conditions. We receive complaints from consumers about having to pay different distribution charges between different regions. We believe more standardisation of the agreements could partially lead to more consistent fees, meaning consumers are less likely to be at disadvantaged by their location. We therefore support this amendment.

Minister may amend Code to include specified matters

The Bill, at clause 19 proposes to allow the Minister to make changes to the Electricity Authority Code for certain amendments. The Minister must still comply with the consultation process in the Electricity Industry Act as though the amendment were introduced by the Electricity Authority. We query whether this amendment is necessary and whether this could impact on the Electricity Authority's role as an independent Crown Entity.

Membership of dispute resolution scheme, repeal of 96(6)

The Bill proposes to repeal Electricity Industry Act 2010 section 96(6). The reason for this change is unclear, but it does not appear to have a material impact.

Next steps

If we can be of further assistance, please contact Paul Moreno, Research and Reporting Manager directly at paul@udl.co.nz or on 04 914 4535.

Nāku, nā

A handwritten signature in blue ink, appearing to read 'M Ollivier'.

Mary Ollivier

Commissioner; Komihana

Utilities Disputes: Tautohetohe Whaipanga