

14 June 2024

Privacy Amendment Bill Review
Committee Secretariat
Justice Committee
Parliament Buildings
Wellington

Submitted via online form

To whom it may concern,

Electricity Networks Aotearoa (ENA) appreciates the opportunity to submit on the Justice Select Committee's review of the Privacy Amendment Bill (the Bill).

ENA is the industry membership body that represents the 27 electricity distribution businesses (EDBs), listed in Appendix B, that deliver electricity to homes and businesses across Aotearoa. ENA harnesses the collective expertise of members to promote safe, reliable and affordable power for our members' consumers.

The EDBs of New Zealand own and maintain over 150,000 km of electricity lines across the country, serving approximately 2.3 million consumers. This critical national infrastructure supports the day-to-day wellbeing of New Zealanders and is vital to the functioning of the economy. In order to perform this function EDBs rely upon the provision of data from other industry participants, most notably electricity retailers. The electricity sector has well established, routine and ongoing processes for the exchange of this data between participants. Many of these processes are regulated by the Electricity Authority via the Electricity Industry Participation Code (the Code).

Most EDBs do not have a direct commercial or contractual relationship with the majority of electricity consumers. Their relationship with consumers is typically managed through an interposed arrangement, whereby the EDB has an agreement with the electricity retailers to provide lines services, and the electricity retailer has a contract with the customer. Some elements of these agreements are mandated by the Default Distributor Agreement (DDA) contained in the Code. As EDBs mostly do not have a direct relationship with consumers they rely on electricity retailers to supply the consumer information the EDB requires to operate its network e.g. name, address, telephone number and any disconnection restrictions. This information is provided through an industry standard file exchange format known as EIEP4.

Given the above arrangements, there is therefore potential for the new disclosure obligation IPP3A in the Bill to require:

- Changes to the DDA (and by extension the Code) to ensure that all electricity retailers include in their contracts with customers information disclosing the use of personal data by EDBs. However, it is not clear how these changes could be implemented in the existing 'live' agreements between EDBs and retailers.
- EDBs to contact consumers directly – though they do not in all cases have contact information for consumers on their networks – to advise that they have received personal data from the consumer's electricity retailer. This notification would potentially need to be done on some ongoing basis to ensure that consumers who move into the EDBs network area, or are new connections to the network, are notified in a timely manner that there is an ongoing provision of their personal data to the EDB.

ENA is working with its members to better understand the practical implications of complying with IPP3A in the context of the routine and ongoing operation of the electricity sector. We want to ensure that any new arrangements the sector puts in place are both compliant with the new obligation but also practicable and useful to consumers.

We have a specific drafting note to recommend to the Committee, related to section 11 of the Privacy Act 2022, which we have included as Appendix A of this letter. The intent of this note is to ensure that the passing of personal information to contractors for the purpose of providing the electricity lines service does not require further unnecessary disclosure to consumers.

Otherwise, our submission is intended to provide some elucidation to the Committee on the current operation and regulation of the electricity sector with respect to the ongoing exchange of data, as well as some of our early thoughts as to how compliance with IPP3A as drafted might be achieved.

ENA is happy to provide further information and assistance to the Committee if that would be helpful. Please contact Richard Le Gros, Policy and Innovation Manager, in the first instance – richard@electricity.org.nz.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Richard Le Gros', with a horizontal line underneath.

Richard Le Gros
Policy and Innovation Manager

Appendix A: Drafting notes

The concern

IPP3A will apply to any agency that “collects” personal information from another agency. “Collect” means “to take any step to seek or obtain”. On its face, this leaves room for argument as to whether an agency receiving personal information solely for the purpose of processing on behalf of another agency (e.g. a service provider processing information solely on behalf of its customer) is nonetheless “collecting” that information, especially in cases where the service provider specifically requires the customer to supply particular pieces of personal information in order to carry out the services. In that case there is at least some room to argue that the service provider is “taking steps to seek” that personal information.

We think that the policy behind the Bill (and the existing approach taken with IPPs 11 and 12) suggest that IPP 3A should not apply to such a transfer, since the customer and not the service provider remains in control of the personal information, and the information is being processed solely for the customer’s purposes. We would hope that the Act (as amended by the Bill) will be interpreted accordingly even without any changes, but this is a sufficiently important point that greater clarity would be desirable.

The solution

The best place to address this is [section 11 of the Privacy Act](#), which already states that an agency processing information solely for or on behalf of another agency is not deemed to be “holding” that information for Privacy Act purposes, and transfer of that information between the two agencies is not “disclosure” under Act. It would be entirely consistent with the policy of s 11(5) to amend it as follows:

To avoid doubt, if, under subsection (2), B is treated as holding personal information,—

(a) the transfer of the information to A by B is not a use or disclosure of the information by B, [or a collection of the information by A](#); and

(b) the transfer of the information, and any information derived from the processing of that information, to B by A is not a use or disclosure of the information by A, [or a collection of the information by B](#).

Appendix B: ENA Members

Electricity Networks Aotearoa makes this submission along with the support of its members, listed below.

Alpine Energy
Aurora Energy
Buller Electricity
Centralines
Counties Energy
Electra
EA Networks
Firstlight Network
Horizon Energy Distribution
MainPower NZ
Marlborough Lines
Nelson Electricity
Network Tasman
Network Waitaki
Northpower
Orion New Zealand
Powerco
PowerNet
Scanpower
The Lines Company
Top Energy
Unison Networks
Vector
Waipa Networks
WEL Networks
Wellington Electricity Lines
Westpower