



**SUBMISSION TO THE JUSTICE SELECT COMMITTEE
ON
THE PRIVACY BILL**

23 May 2018

1. Contact details

- 1.1 This submission is from Electricity Retailers' Association of New Zealand (ERANZ).
- 1.2 Jenny Cameron (Chief Executive) on behalf of ERANZ wishes to appear before the Select Committee to speak to the submission in person. Please contact Jenny on:

Phone: 021 377 827

Email: jenny.cameron@eranz.org.nz

2. Submission

- 2.1 ERANZ is making a submission in support of the proposed Privacy Bill given the significant recent changes in technology and data sharing and for it to better align with international developments.

3. About ERANZ

- 3.1 ERANZ was established in August 2015 to promote and enhance an open and competitive electricity market that delivers value to New Zealand electricity consumers.
- 3.2 ERANZ represents Genesis Energy, Contact Energy, Mercury, Meridian Energy, Trustpower, Nova Energy, Pulse Energy, Prime Energy, Powershop, Black Box Power, Bosco, Energy Online, Just Energy, King Country Energy, Globug, Grey Power Electricity, Electra Energy, Powershop, Flick Electric Co., Wise Pre Pay and Tiny Mighty Power, equating to around 99% of the market by number of installation control points.
- 3.3 Privacy is a real concern for ERANZ as more data is collected and used in today's digital world. ERANZ has been proactive in creating transparency around data use through developing its Core Data Values. ERANZ has engaged with its members and the Office of the Privacy Commissioner in developing these Core Data Values which are set out in the Appendix.

4. Comments

- 4.1 Information privacy and data protection is a dynamic field that has developed rapidly against a background of technology changes such as cloud computing and data analytics; social networking; cross-border data transfers; the Internet of Things; artificial intelligence and robotics. ERANZ welcomes reform of the Privacy Act 1993 which we believe needs updating given the significant changes in information technology and data science in recent years.

- 4.2 In the electricity sector, we have seen the rollout of smart meters to over 75% of New Zealand connections with an expectation of around 90% coverage within the next few years. Smart meters record the amount of electricity a customer has used on a half-hourly, daily, or monthly basis. These meters have meant that readings are no longer estimated but are based on actual readings.
- 4.3 The roll-out of smart-meters has also provided for greater innovation and choice offerings in electricity retailing. To date, this has been to the benefit of end consumers. There is the potential for smart meters to help consumers better understand what electricity they use or produce or store. It also means other services can be developed to improve and manage the use of household appliances, and for the whole system to become more efficient as use of electricity, at a more granulated level, becomes more visible.
- 4.4 While there are opportunities with sharing smart meter data with third parties for the benefit of end consumers, it also presents opportunities for nefarious activity. Privacy, security, commercial, and access issues around the data is a serious concern for electricity retailers particularly in the context of bulk disclosure and threats to privacy from Internet of Things devices. While electricity retailers have robust privacy policies in place, loss of trust could arise if a third party used disclosed information for an unauthorised purpose, and this would likely impact negatively on retailers (even though there was no fault on their part). To maintain consumer trust and confidence in the electricity sector it is essential that any use of a consumer's private data is made with their knowledge and consent, and only used for the purposes authorised by the consumer.
- 4.5 Because of this, ERANZ agrees with the Law Commission and the Privacy Commissioner that reform is necessary in this space to promote public confidence in the way personal information is used and handled which in turn, supports innovation and effective use of personal information by organisations.
- 4.6 We support New Zealand privacy laws becoming better aligned with international developments, such as the 2013 OECD Privacy Guidelines and the European Union's forthcoming General Data Protection Regulation (GDPR).
- 4.7 The reform also supports New Zealand maintaining its 'adequacy status' of data protection determined by the European Commission.¹

¹ https://ec.europa.eu/info/law/law-topic/data-protection/data-transfers-outside-eu/adequacy-protection-personal-data-non-eu-countries_en

5. Recommendations

5.1 We support the proposed broadened powers of the Privacy Commissioner to incentivise compliance and establish a more efficient regime for dealing with complaints and breaches.

5.2 **Clause 118-119:** Although we agree with the general intent of these clauses, we suggest that the threshold for reporting breaches should be raised. We support the introduction of the mandatory reporting of privacy breaches which will increase transparency and consumer confidence, as well as be more in line with other jurisdictions.² However, the current wording could result in high unnecessary volumes of non-material reporting. This would place unnecessary cost and resource on both industry as well as the Office of the Privacy Commissioner. It could also cause unnecessary stress and concern for the notified individual. We note that in Australia, the reporting volumes of breaches are constrained by a reasonable person test, 'likeliness' test, the agency's ability to prevent harm, and a requirement for serious harm.³ Similarly, the GDPR constrains reporting volumes by a 'likeliness' test, serious harm, disproportionate effort, and the agency's ability to prevent harm.⁴

We suggest that there is a higher threshold which would limit reporting to only those cases where:

- (a) a breach has caused harm or there is a 'likely' risk that it will do so; and
- (b) the entity has not been able to prevent the risk of harm with remedial action;
and
- (c) harm is serious.

5.3 Given the effects of globalisation and data being easily transferrable we also support strengthening cross-border data flow protections as proposed.

6. Conclusion

6.1 In conclusion, privacy laws should be fit for purpose in the current environment, which is rapidly changing with more data being collected and shared by organisations.

6.2 ERANZ welcomes reform and generally supports the proposed Privacy Bill.

² Australia, Europe, United Kingdom.

³ Privacy Act 1988 (Aus) Part IIIC.

⁴ GDPR article 34.

APPENDIX – ERANZ Core Data Values

Value 1: Privacy will be an objective at the highest levels within ERANZ members' organisations, and responsibilities for securing that objective will be clearly identified by each member.

Value 2: Customer data will be managed in a way, as much as possible, that is open and transparent to customers so that they know that it is being collected, how it will be used, what the value is to them in sharing their data, and what their choices are in respect of their data.

Value 3: The primary purpose for the use of the data is to supply customers with electricity. Important secondary purposes may be to provide a benefit to customers, improving electricity retailer service or the services of the electricity sector as a whole.

Value 4: Before disclosing customer information, members will consider whether the purpose of disclosure can be satisfied by disclosing anonymised and aggregated data so as not to reveal identifiable personal information.

Value 5: Clear disclosures about who will or may have access to identifiable customer data will be made, as much as possible.

Value 6: Customer data will be stored securely.

Value 7: A comprehensive response programme will be maintained and if a data incident occurs, prompt steps will be taken to mitigate the impact of the incident and, where unauthorised access to personal information is likely to have occurred, consider notifying impacted customers and relevant authorities.