

14 June 2024

Committee Secretariat
Justice Committee
Via portal

Tēnā koe,

Privacy Amendment Bill

Powerco is one of Aotearoa's largest gas and electricity distributors, supplying around 357,000 (electricity) and 114,000 (gas) urban and rural homes and businesses in the North Island. Our energy networks supply around one million kiwis and in order to provide these essential services, we collect personal information about our customers indirectly, primarily from electricity and gas retailers.

We support the changes proposed in the Privacy Amendment Bill.

As is common across the New Zealand electricity and gas sectors, the majority our customers have an 'interposed' arrangement for the supply of power to their homes and businesses. Our interposed customers contract with retailers, and retailers in turn contract with us, for the supply of electricity and gas via our networks. The regular exchange of customer information between us and retailers is essential to the ongoing operation and efficiency of this interposed arrangement.

The changes proposed in the Privacy Amendment Bill will provide clarity for agencies like us who rely on the indirect collection of personal information to provide essential services to our customers, as to what our obligations are when we collect such information. And importantly, the proposed changes will improve transparency for individuals.

The improved transparency is consistent with our tikanga and our commitment to our customers.

The proposed changes will give individuals an opportunity to engage with the agencies collecting their information and to exercise their rights, such as the right to update their personal information (increasing the likelihood that the information will be accurate and complete).

Clause 3 of IPP3A

The clarification in clause 3 of IPP3A (that agencies are not required to notify individuals who have previously been made aware of the matters specified in clause 1 of IPP3A) reduces the risk to consumers of 'notification fatigue' (that may cause them to be *less* engaged in their privacy rights). It would be appropriate to consider a staged introduction of the notification requirement as well.

We also support the clarification in clause 3 because it reduces the risk to agencies of duplicated processes and administrative inefficiency. In our industry for example, individuals may receive sufficient notification from their electricity and gas retailers under IPP3.

We consider that the risk of individuals being confused when they receive similar notifications from multiple agencies can be managed through industry coordination and effective communication with customers, and does not outweigh the benefits to individuals of improved transparency.

Clause 1 of IPP3A

We support the reference to reasonableness in clause 1 of IPP3A i.e., that agencies must take “steps that are, in the circumstances, reasonable” to make individuals aware of the indirect collection of their personal information. Given the wide range of contexts in which personal information may be collected indirectly and the differing levels of privacy risk to individuals, it would be useful to have guidance from the Office of the Privacy Commissioner on steps that are or are not reasonable in specific circumstances, ideally developed in consultation with industry stakeholders.

Clause 4(e) of IPP3A

There will be situations where it is not practical for notification to be given under IPP3A. We support the exception in clause 4(e) of IPP3A which mirrors the equivalent exception in IPP3 i.e., that compliance is not required where an agency believes on reasonable grounds that compliance is not reasonable practicably in the circumstances of the particular case.

We note, however, that in the context of IPP3 (which relates to the collection of personal information *directly* from the individual concerned) the words “of the particular case” have been emphasised in the interpretation of the exception so that it applies to one-off or exceptional issues. In our view the words “of the particular case” may be overly restrictive in the context of *indirect* collection of personal information where there may be more practical challenges to notifying individuals, noting that agencies can implement practices and systems that mitigate the risk of improper indirect collection of personal information.

As an alternative to deleting the words “of the particular case”, there would be value in providing clarification by way of non-exhaustive examples of circumstances that are ‘not reasonably practical’ to guide the interpretation of IPP3A, similar to those provided in relation to IPP3A(3) and IPP3A(4)(h)(i).

Processing and transfer of personal information

We agree with the Electricity Networks Aotearoa (ENA) that the policy behind the Bill should not apply to an agency that receives 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.

We support the ENA’s submission that section 11 of the Privacy Act should be amended to clarify this and the amendments in Appendix A of the ENA’s submission.



If you have any questions regarding this submission or would like to talk further on the points we have raised, please contact our Privacy Officer, Jessie McKenzie, Head of Legal (jessie.mckenzie@powerco.co.nz)

Nāku noa, nā,

A handwritten signature in black ink, appearing to read "Jessie McKenzie", with a long horizontal stroke extending to the right.

Jessie McKenzie

Head of Legal

POWERCO

Attachment 1 – Information about Powerco and our network

Providing an essential service

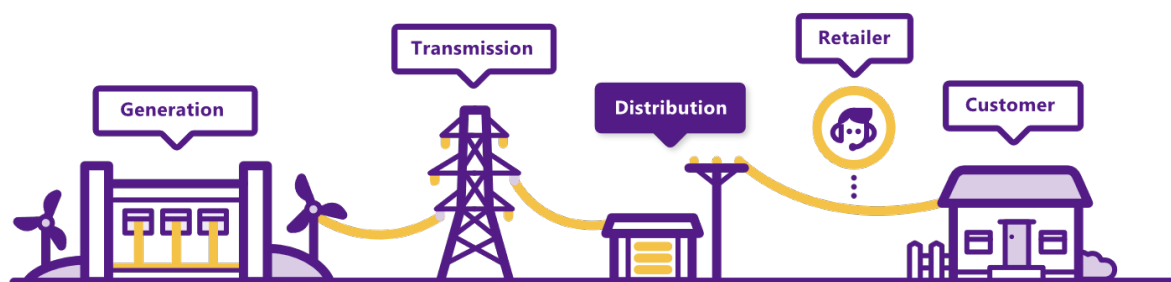
We bring electricity and gas to around 1 million kiwis across the North Island. We're one part of the energy supply chain. We own and maintain the local lines, cables and pipes that deliver energy to the people and businesses who use it. Our networks extend across the North Island, serving urban and rural homes, businesses, and major industrial and commercial sites. We are also a lifeline utility. This means that we have a duty to maintain operations 24/7, including in the case of a major event like an earthquake or a flood.

The cost of operating our business is not dependent on the amount of gas or electricity we distribute in our networks. These costs reflect the need to maintain the safe operation of the network and are mostly driven by compliance with safety regulations. This includes replacing assets when they reach their end of life. Additional costs to grow the size or the capacity of the network are often met by customers requiring the upgrade or new connection.

Under Part 4 of the Commerce Act, Powerco's revenue and expenditure are set by the Commerce Commission as part of monopoly regulation. We are also subject to significant information disclosure requirements, publicly publishing our investment plans, technical and financial performance, and prices. The regulatory regime allows us to recover the value of our asset base using a regulated cost of capital (WACC) set by the Commission, and a forecast of our expenditure. Every five years, the Commission reviews its forecasts and resets our allowable revenue. This process is designed to ensure the costs paid by customers for us to manage and operate our network is efficient given we are a monopoly and an essential service.

Our electricity customers

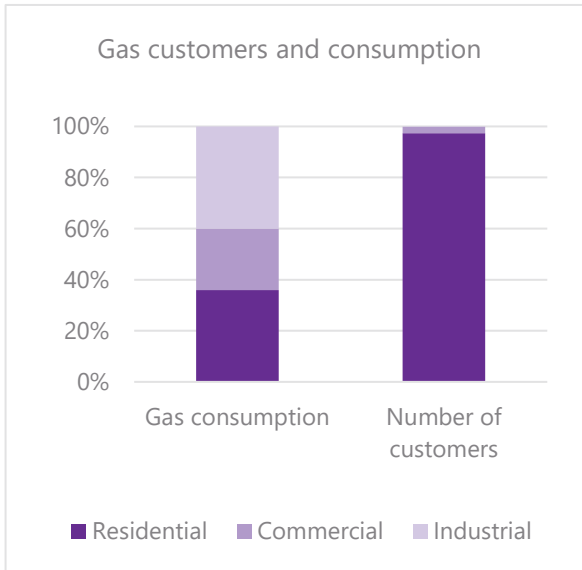
Powerco is New Zealand's largest electricity utility by the area we serve. Our electricity networks are in Western Bay of Plenty, Thames, Coromandel, Eastern and Southern Waikato, Taranaki, Whanganui, Rangitikei, Manawatu and Wairarapa. We have over 29,000 km of electricity lines and cables connecting around 357,000 homes and businesses. Our place in the electricity sector is illustrated below.



Our network contains a range of urban and rural areas, although is predominantly rural. Geographic, demographic, and load characteristics vary significantly across our supply area. Our development as a utility included several mergers and acquisitions that have led to a wide range of legacy asset types and architecture across the network.

Powerco is one of 29 electricity distribution companies. Our customers represent around 13% of electricity consumption (similar in magnitude to the Tiwai aluminium smelter) and around 14% of system demand. Powerco's network is almost three times the size of Transpower's in terms of circuit length. The peak demand on our combined networks (2023) was 974 MW, with an energy throughput of 5,225 GWh.

Our gas customers



Powerco is New Zealand's largest gas distribution utility. Our gas pipeline networks are in Taranaki, Hutt Valley, Porirua, Wellington, Horowhenua, Manawatu and Hawke's Bay. We have over 6,200 km of gas pipes connecting to around 114,000 homes and businesses. Our customers consume around 8.6 PJ of gas per year.

Our industrial customers are less than 1% of our customer base and consumer approx. 40% of gas on our network. Our residential customers are 97% of our customer base and consume approx. 35% of gas on our network. The remaining 25% of gas is consumed by our commercial customers.

Around 30% of our larger customers are in the food processing sector, around 20% in the manufacturing sector and around 10% in the healthcare sector.

Our network footprint

Our network represents 46% of the gas connections and 16% of the electricity connections in New Zealand. We operate assets within six regions and across 29 district or city council areas.

