

22 November 2021

Submitted via: compliance@ea.govt.nz

James Stevenson-Wallace
Chief Executive
Electricity Authority
Wellington

RE: Electricity Authority Draft Compliance Strategy

Energy is an essential service, whānau need it for their health wellbeing and social participation. Clear protections to ensure all whānau can readily access the energy they need under fair arrangements are critical to wellbeing in our communities as our energy system transitions.

FinCap welcomes the opportunity to comment on the Electricity Authority Draft Compliance Strategy (**Draft Strategy**). We strongly support the Electricity Authority striving to build the confidence of stakeholders in our electricity system that delivers our essential electricity services. We support the approach taken to the Draft Strategy so far and recommend some additions as it is further developed.

Effective enforcement from regulators is a critical cornerstone for achieving a well-functioning consumer protection framework in Aotearoa. As the Electricity Industry Amendment Bill is currently progressing through parliament, we encourage the Electricity Authority ready the Draft Strategy for a clear consumer protection function. We are also conscious that a broader range of emerging businesses might become industry participants without consideration for the consumer protections vital to providing an essential service and encourage the Electricity Authority to consider this. We expand on this and make some other comments on the Draft Strategy in the submission below.

About FinCap

FinCap (the National Building Financial Capability Charitable Trust) is a registered charity and the umbrella organisation supporting the 200+ local, free financial mentoring services across Aotearoa. These services support more than 70,000 people in financial hardship annually. We lead the sector in the training and development of financial mentors, the collection and analysis of client data and encourage collaboration between services. We advocate on issues affecting whānau to influence system-level change to reduce the causes of financial hardship.

Further develop the strategy so it is appropriate for a consumer protection function

FinCap has recently submitted¹ in response to the Electricity Industry Amendment Bill² and anticipates that the Electricity Authority will soon have a clear consumer protection function through this reform.

Consideration of current proposed amendments in that Bill will save the Electricity Authority having to immediately review this work. Effective consumer protections regimes are essential to the wellbeing of our communities, particularly in relation to the supply of essential services. Financial mentors too often see the conduct of industry participants leading to avoidable harm for whānau. We therefore recommend the Electricity Authority ensures the Draft Strategy is developed in a way that clearly articulates consumer protection as a priority.

Recommendation: Clearly articulate consumer protection as a priority in the Draft Strategy to ensure work on compliance is in line with public expectations around consumer protection work from the Electricity Authority.

Ensure redress for harm experienced in the community

It is vital that the Electricity Authority not only prevents further harm but also ensures redress for any harm already caused for whānau when working on compliance. This is as a matter of fairness and resolving previous harm helps deterrence of further non-compliance.

We support the proposed VADE model and articulate on this below, but also point out that redress for harm caused should be addressed in the outcomes from compliance work at all levels.

In our work supporting financial mentors we regularly hear of cynicism when we raise the prospect of reporting potential non-compliance to a regulator. This cynicism is based on the valid perception that it takes a significant amount of work to report a breach in detail, that it sees a whānau who has been harmed have to repeatedly recall and interrogate an awful experience they would rather forget and that often there is barely anything beyond an acknowledgement of the contact, if anything at all, in response. There is also a perception that businesses get off lightly for non-compliance where action does occur, particularly where the harm that was caused is now embedded in ongoing issues for whānau. Examples of such harm could be unnecessary insolvency from a debt spiral related to a billing issue or ongoing health problems from an unjustified disconnection.

Some regulators also require whānau impacted by non-compliance to participate in some forms of enforcement action. It is vital that the Electricity Authority commit to support people impacted by potential non-compliance, especially where they are involved in informing enforcement. Whānau should not be further harmed, but instead empowered by the process and the regulator getting this right will make it more likely that whānau are interested in participating in potential enforcement action or are more likely to go ahead with reporting concerns.

While dispute resolution is the place to go for resolving individual disputes, we need our regulators to resolve systemic issues causing harm or to highlight where they need more powers. We recommend adding a clear commitment to recognising and resolving previous harm to the community in the Draft Strategy. This can shape a future where financial mentors and the whānau they support are more likely to engage with the Electricity Authority and see fair outcomes.

¹ <https://www.fincap.org.nz/electricity-industry-amendment-bill-submission/>

² https://www.parliament.nz/en/pb/bills-and-laws/bills-proposed-laws/document/BILL_115788/electricity-industry-amendment-bill

Recommendation: Add a clear commitment to recognising and resolving harm to the community and to lower barriers for any whānau impacted to inform compliance work in the Draft Strategy.

It is important that financial mentors, other community workers and Utilities Disputes' concerns around harm caused by potential non-compliance are taken seriously. These organisational or worker concerns can keep the Electricity Authority 'on the pulse' with compliance work. Financial mentors have an expert view on the conduct causing harm to our communities that can keep the regulator well informed. However, they must juggle an often high caseload involving complex overlapping interactions with the many organisations involved in the lives of the whānau they assist. Taking the time to gather information on an issue and send it to the regulator is at the expense of other potential actions on a never-ending list of work. The decision to go ahead and bring something to the regulator's attention is therefore not taken lightly and presents significant concern about non-compliance. Utilities Disputes also should be referring systemic issues that need action to the regulator off the back of support workers and whānau raising valid disputes.

Given the above, we recommend the Electricity Authority ensure the Draft Strategy is developed further to include the following:

- Specifically naming financial mentors and other community support workers as key stakeholders that the Electricity Authority will regularly communicate with in compliance work and work with to continuously lower any barriers to providing information. The Commerce Commission's approach to community outreach with its Red Flags³ resource and surrounding processes including new ways to quickly gather intelligence could be replicated to action this inclusion.
- The publishing of a complaints register that gives the public confidence that any concerns raised from Utilities Disputes, community workers or whānau are assessed and acted upon. The complaints register should name traders complained against over a certain threshold of times for transparency. Replicating the effective New South Wales Fair Trading Complaints register⁴ model would demonstrate the value in raising concerns for the public which would improve the Electricity Authority's oversight.

Recommendation: The draft strategy is developed further to include specific mention of financial mentors and other community support workers as cohorts that will improve the Electricity Authority's visibility of compliance.

Recommendation: The draft strategy is developed to include commitment to transparency through the publishing of best practice complaints register that informs the public of non-compliance concerns and relevant actions taken.

Ensure the VADE operating model delivers

We support using the VADE operating model to get the most impact from the available resources but recommend regular evaluation of this approaches' effectiveness. Commentators overseas have pointed to a culture of hesitancy from many regulators in relation to moving to enforcement action.⁵ To avoid this the Electricity Authority should regularly run an evaluation and review process with consumer input to ensure it is escalating within VADE effectively and also, whether the model is fit for purpose in practice.

³ <https://comcom.govt.nz/business/resources-for-consumer-organisations/red-flags>

⁴ <https://www.fairtrading.nsw.gov.au/help-centre/online-tools/complaints-register>

⁵ <https://consumeraction.org.au/report-regulator-watch/>

Recommendation: The draft strategy is further developed to include a clear commitment to an evaluation and review process with consumer input on the VADE operating model at least every 24 months.

Where industry participants recognise they are non-compliant and this has the potential to have, or actually caused, significant harm to the community they should be required to immediately self-report to the Electricity Authority. It should not be up to the community to raise issues in between reporting periods for some industry participants. The disconnection of a medically dependent consumer through a failure of process could be a clear example of something the Electricity Authority may need immediate visibility of. We therefore recommend that the Draft Strategy is developed further to include a clear commitment from the Electricity Authority to making a framework where participants must self-report significant issues and any steps to resolve these significant issues immediately.

Recommendation: The Electricity Authority improve visibility by further developing the Draft Strategy to deliver a robust immediate self-reporting regime for industry participants who are non-compliant.

Expand guiding principles and signal what will happen if the Electricity Authority needs more tools

Where whānau or their representatives perceive that the Electricity Authority is the regulator to complain to about an issue, but their concern is out of jurisdiction; this should be recorded if there is not a process in place already. Such circumstances are valuable insights as to who will be most effective as a regulator in consumer's eyes especially where a service is bundled.

The electricity system is in the process of transitioning to new technology. It is important that the Draft Strategy signals that the Electricity Authority will act where out of jurisdiction issues, that would be non-compliance if not for a loophole, will trigger a response. There may also be times where the Authority recognises its powers are insufficient to address systemic issues. We recommend the addition of a sentence in the Draft Strategy 'tools for job section' signalling that the Electricity Authority will escalate to decision makers and recommend action wherever the regulator is concerned it does not have the right tools for the job, or the jurisdiction to address, a problem appropriately.

Recommendation: Signal that the Electricity Authority will recommend reform if it finds relevant matters technically out of jurisdiction, or where it finds there are not adequate powers to achieve the Electricity Authority functions effectively.

The electricity system provides an essential service to whānau. Given this, it is important that compliance work is guided by delivering timely outcomes to prevent harm to community wellbeing. These reflect the ultimate purpose of the system, to deliver wellbeing in Aotearoa and maintain it. With this in mind, we recommend the inclusion of further guiding principles.

We recommend wellbeing, perhaps as specific reference to He Ara Waiora,⁶ as a principle embedded in compliance work. Having this as a guiding principle to approaches taken as a regulator will help decision making get closer to delivering the outcomes in the long-term interest of consumers with consumer centricity. He Ara Waiora is increasingly used to improve understanding of community

⁶ <https://www.treasury.govt.nz/information-and-services/nz-economy/higher-living-standards/he-ara-waiora>

needs and decision making across different government entities and the Electricity Authority should keep pace with this standard.

We also recommend that timeliness is also discussed under the 'Fairness' guiding principle in the draft strategy. Timeliness is a helpful concept already referenced otherwise in the Draft Strategy. Including it within guiding principles will guide the Electricity Authority to work out what stakeholders are impacted by non-compliance, and what ongoing harm the stakeholders who should be prioritised may face until non-compliance is resolved. We recognise that action is not often as timely as stakeholders like but including this within guiding principles will at least prompt thinking around how to best communicate any restraints the Electricity Authority is facing while taking action.

Recommendation: An ultimate focus on wellbeing and timeliness are included in the Draft Strategy principles as it is further developed.

Please contact Jake Lilley, senior policy advisor at FinCap on 027 278 2672 or at jake@fincap.org.nz to discuss any aspect of this submission.

Ngā mihi,



Ruth Smithers
Chief Executive
FinCap