

Improving retail market monitoring: clause 2.16 information notice

Introduction

1. We welcome the chance to submit on this consultation paper.
2. Under the Privacy Act 2020, the role of the Privacy Commissioner includes monitoring emerging privacy issues and offering guidance on how people in industry, government agencies, and across broader society can uphold their privacy obligations.

Summary of our response to the consultation paper

3. The consultation paper from The Electricity Authority Te Mana Hiko sets out a proposal for a new process to gather information on retail electricity markets. The goal is to support comprehensive, mandatory, consolidated, transparent, and cost-effective collection of this information, to support evidence-based policy and trackable outcome measures. The paper also discusses stakeholder concerns about socio-economic factors and consumer hardship in retail electricity markets, and says that gathering this information will help with work to understand and address these concerns.
4. We agree these are important policy goals for the Electricity Authority, and we support work to achieve them while upholding privacy interests.
5. Everyone in New Zealand participates in and relies on the electricity market. This makes the regulatory goals here important, but it also means that a huge amount of personal information is likely to be collected in the proposed monitoring process.

We commend proactive consideration of privacy in this process

6. Firstly, we commend the decision to consult, and the proactive work to consider privacy issues in this process. The consultation paper shows clear attention to privacy, setting out potential privacy risks and mitigations. We agree these are important matters to raise for public consultation.
7. We particularly welcome work to assess the proportionality of privacy impacts against policy objectives. The paper sets out potential benefits of collecting more personal information, potential costs in terms of resulting privacy impacts, and offers a cost-benefit evaluation of proportionality: whether the benefits outweigh the privacy costs.
8. We also look forward to seeing the full privacy impact assessment (PIA) promised at the next stage of consultation.

We agree that robust privacy monitoring and mitigations are needed

9. Looking at the privacy proportionality assessment in the consultation paper, we agree that the privacy risks can be kept proportional to the policy benefits of the proposed notice, but only if a full range of privacy mitigations are resourced and implemented.

10. The consultation paper identifies potential privacy risks relating to data collection at the installation control point (ICP) level for a specific home or business, where information such as half-hourly electricity usage, debt, and medical status might be linked with identifiable individuals. We agree that this is the key way in which the proposed Clause 2.16 notice gives rise to potential privacy risks.
11. The discussion paper identifies potential privacy risks and mitigations as including:
- **Risks from publishing ICP level information in quarterly reports**, to be mitigated by publishing only aggregated information [at 6.62];
 - **Potential linking of ICP level information with identifiable individuals**, to be mitigated by treating this as personal information under the Privacy Act [at 6.67];
 - **Collection without direct notice to individuals**, to be mitigated by asking retailers to update and improve their privacy notices [at 6.72];
 - **Risks of storing and securing information digitally**, to be managed by upholding strong data security and governance practices [at 6.74 – 6.76];
 - **Retaining information for an extended period of time**, to be mitigated by deleting ICP level data where aggregate data is sufficient, and using pseudonymisation where possible [at 6.77 – 6.78];
 - **Potential subsequent use of information** for example in Electricity Authority compliance work, though this is subject to non-self-incrimination provisions that will generally make it inadmissible in criminal or civil proceedings [at 6.80];
 - **Acquisition and use of data by Statistics New Zealand** under the Data and Statistics Act 2022 [at 6.84].
12. The level of privacy risk depends on how much information is involved, how sensitive it is, and how easily it can be linked to identifiable individuals. The retail electricity market involves everyone in New Zealand, and the information includes sensitive details such as debts and medical dependency status, so the key question for privacy risk is how easily this information can be linked to identifiable individuals. Our understanding of the proposed notice is that the key fields which could link information to individuals are:
- the ICP number associated with a home or business, and
 - the customer identifier (for example a retailer's customer number).
13. It is very easy to link these identifiers with other personal information. As well as electricity retailers having internal records linking these details with personal information such as billing details and history, the Electricity Authority offers a public website to look up street addresses by ICP number and vice versa, and it might be possible to do this in an automated way.

14. We agree that information collected under the proposed notice needs to be treated as personal information to manage privacy risks. Given current and growing access to automation tools, it is likely possible to link ICP level information to individuals in ways that harm privacy interests at scale, for example third parties could potentially gather ICP level information to build credit profiles on people based on this information.
15. Given the economy-wide scale, the inclusion of sensitive information, and the potential for linking of this information to individuals at scale, we do see serious privacy risks from the proposed notice. We agree that all the mitigation measures listed in the consultation paper are needed not just as a matter of good practice, but also to manage these risks and uphold New Zealanders' privacy. It will be important to keep up ongoing work to assess privacy impacts and benefits from collecting information as this work develops. For example, if the intended purpose for collecting information is to conduct data analysis, but there are resourcing or other barriers to doing this analysis, that may mean it is no longer justifiable to be collect or retain relevant information.

We recommend a cautious approach to re-identification as technology evolves

16. Pseudonymisation means using new internal identifiers rather than existing names. It is a form of de-identification which can make it harder to link information with identifiable individuals. However, as technology changes and becomes more accessible it may be easier to re-identify information and link it with individual people, making effective de-identification a moving target.¹ There are many examples of information being re-identified after it has been published or leaked. To manage this risk it will be important for the Electricity Authority to implement robust de-identification measures, and to review whether these remain effective over time as part of work to keep privacy impact assessments up to date.

Robust privacy protections will help to uphold privacy requirements

17. We agree that there are potentially serious privacy risks, and that it is critical to mitigate these risks by:
 - maintaining security of collected data,
 - publishing data only in aggregated form,
 - retaining ICP level data only for as long as needed,
 - using effective de-identification measures, and
 - keeping privacy assessments and mitigations up to date over time.

¹ Privacy Foundation NZ, "Seeing the forest and the trees: using de-identification effectively to protect privacy" (February 2023) <[privacyfoundation.nz](https://www.privacyfoundation.nz/)>

18. Taking these measures will help the Electricity Authority to be confident it is upholding privacy while achieving the policy objectives of the proposed notice.

We answer the consultation questions on privacy in more detail below

19. Below we offer a response to the consultation questions which focus on privacy.
20. Please feel free to contact us with further questions or comments.

Noho ora mai,



Michael Webster
Privacy Commissioner

Consultation questions on privacy

Q15. What information do you believe the Authority should or should not publish? What level of detail do you consider appropriate for publication and why?

We understand the goal of providing information and transparency on the retail electricity market. However, given the ease of linking ICP level information to home and business addresses, and therefore identifiable individuals, it is critical to publish only aggregate level information, to avoid potential privacy harms.

Q17. What are your views on the privacy implications of this clause 2.16 notice and the methods we have outlined to manage these?

We welcome proactive consideration of privacy risk and mitigations, including an assessment of whether privacy impacts are proportional to the benefits of the proposed approach.

We agree that there are potentially serious privacy risks from the proposed notice, as it is easy to link ICP level information with home and business addresses. As a result, it will be critical to implement the mitigations proposed, and to ensure that these mitigations remain effective and fit for purpose over time by keeping privacy assessments up to date.

We also welcome the proactive consideration of improving privacy and security policies and procedures, including potential notifications that retailers and other third parties may need to look at their privacy practices. Everyone in New Zealand participates in the electricity market, so it is important that people are well informed about how their electricity information is collected and used. Transparency about collection of personal information will help to build trust and support the goals of the Electricity Authority in this process and as a regulator.

It will be important to apply privacy thinking to the collection, use, and retention of information under the notice over time, minimising the collection and retention of information based on the purposes for which it is collected. For example, if there is limited resourcing for data analysis, this might mean limiting the collection of information for that purpose.

In addition to improving policies and procedures, we would like to see further consideration of potential steps to further limit privacy risk from this information, including mechanisms for limiting the onward use of information gathered. (as a comparison, sections 47A and 47B of the Electricity Industry Act allow for conditions on the use of information supplied to statutory bodies or overseas regulators). De-identification is one such step, but presents a moving target as technology makes it easier to link and re-identify information.

Implementing the proposed privacy risk mitigations, and keeping them up to date over time, will be critically important for the Electricity Authority to satisfy itself that it is upholding privacy while achieving the goals of the proposed Clause 2.16 notice.