

**Guidelines for  
Managing Retailer Default Situations**

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# 1. Introduction

## 1.1 Purpose of these guidelines

The purpose of these guidelines is to:

- identify the different types of events of default that may occur; and
- set out the processes the Authority will follow if an event of default occurs, or if an event of default is possible.

These guidelines:

- identify the different types of events of default, and their risk levels;
- set out the role of the Authority in respect of events of default;
- summarise the provisions of the Code relevant to events of default, including the role of the clearing manager in responding to events of default;
- summarise the provisions of the Electricity Industry Act 2010 relevant to events of default, including section 49 which provides the Authority with certain powers in situations of retailer insolvency;
- list some of the warning signs that an event of default may occur;
- set out the process that will be followed in response to an event of default or a possible event of default;
- identify the Authority staff who are responsible for the Authority's response to an event of default; and
- include key contact details for Authority staff.

## 1.2 Scope of these guidelines

These guidelines will be used by the Authority:

- if an event of default occurs or there is the possibility of an event of default; and
- if a purchaser fails to meet a call for security or fails to meet its settlement obligations, (both of which are events of default). In that case, all references in these guidelines to a retailer must be read as references to a purchaser.

The Authority recognises that an event of default may cause a cascade effect, whereby other retailers or generators may also default (and possibly have to cease trading in the electricity market). This could have a significant impact on the wider operation of the electricity market and, ultimately, on consumers.

However, how the Authority will respond to such a situation is outside the scope of these guidelines.

### 1.3 Terms used in these guidelines

<b>Act</b>	means the Electricity Industry Act 2010
<b>Authority</b>	means the Electricity Authority
<b>Board</b>	means the Board of the Electricity Authority
<b>Code</b>	means the Electricity Industry Participation Code 2010
<b>customer</b>	means a person who purchases, or has agreed to purchase, electricity from a retailer at a specific ICP
<b>generator</b>	means a participant who sells electricity to the clearing manager
<b>purchaser</b>	means a person who buys electricity from the clearing manager
<b>retailer</b>	means a participant who supplies electricity to a consumer or another retailer and includes, for the purposes of these guidelines, a purchaser
<b>UTS</b>	means an undesirable trading situation

## 2. Events of default - background

### 2.1 What is an event of default?

The events that constitute an event of default are defined in clause 14.55 of the Code. Events of default may be divided into three categories:

*Category 1 – A retailer fails to provide security;*

*Category 2 – A retailer fails to meet its settlement obligations (i.e., pay its invoice) on settlement date;*

*Category 3 – An event happens outside of the electricity market that indicates that the retailer is in financial difficulty (e.g., the retailer cannot meet its debts or is placed into receivership or liquidation).*

All the events of default defined in clause 14.55, and their respective category are set out below:

<b>Category 1 events – failure to provide security</b>	
Clause 14.55(a)	a payer fails to comply with clauses 14.2 to 14.17 or to satisfy a call in accordance with clause 14.18(4)
<b>Category 2 events – failure to meet settlement obligations</b>	
Clause 14.55(b)	a payer fails to pay the full amount invoiced to it in accordance with clauses 14.36 to 14.54
<b>Category 3 events – appointment of a receiver, liquidator etc</b>	
Clause 14.55(c)	any action is taken for, or with a view to, the declaration of a payer as a corporation at risk under the Corporations (Investigation and Management) Act 1989
Clause 14.55(d)	a statutory manager is appointed under the Corporations (Investigation and Management) Act 1989 (or a recommendation or submission is made by a person to the Securities Commission supporting such an appointment)
Clause 14.55(e)	a person is appointed under section 19 of the Corporations (Investigation and Management) Act 1989 to investigate the affairs or run the business of a payer
Clause 14.55(f)	a payer is (or admits that it is or is deemed under any applicable law to be) unable to pay its debts as they fall due or is otherwise insolvent, or stops or suspends, or threatens to stop or suspend, or a moratorium is declared on, payment of its indebtedness, or makes or commences negotiations or takes any other steps with a view to making any assignment or composition with, or for the benefit of, its creditors, or any other arrangement for the rescheduling of its indebtedness or otherwise with a view to avoiding, or in expectation of its inability to pay, its debts
Clause 14.55(g)	a holder of a security interest or other encumbrancer takes possession of, or a receiver, manager, receiver and manager, liquidator, provisional liquidator, trustee, statutory or official manager or inspector, administrator or similar officer is appointed in respect of the whole or any part of the assets of a payer or a payer requests that such an appointment be made

## 2.2 The risk level of an event of default

An event of default may affect retail customers, and the financial security of the market may be threatened. The level of risk caused by an event of default will determine how the Authority, and others, respond to the event of default.

The table below summarises three risk levels identified by the Authority for the purpose of developing these guidelines.

Risk level	Description	Examples
Minimal risk event	<p>An event of default that can be easily resolved (generally on the same day that the default occurs), and without impacting on other participants.</p> <p>Only applies to:</p> <p>Category 1 events if there is a temporary failure to provide security; and</p> <p>Category 2 events if there is a temporary failure to meet settlement obligations.</p>	<p>A retailer:</p> <ul style="list-style-type: none"> <li>• fails to meet a call for security due to an administrative error, but provides security within 48 hours; or</li> <li>• fails to pay an invoice by 2pm on settlement day, but pays the invoice before 4pm.</li> </ul>
Low risk event	<p>An event of default that may impact on other participants, but does not involve a retailer either ceasing or potentially ceasing to trade in the electricity market.</p> <p>Only applies to;</p> <p>Category 1 events if there is an extended failure to provide security; and</p> <p>Category 2 events if there is an extended failure to meet settlement obligations.</p>	<p>A retailer:</p> <ul style="list-style-type: none"> <li>• fails to pay an invoice on settlement date so that generators received pro-rated payments, but the clearing manager is able to call on the retailer's security, or the retailer pays the amount owed to the clearing manager, within 48 hours; or</li> <li>• fails to meet a call for security, and still has not provided security 48 hours after the call.</li> </ul>
High risk event	<p>An event of default that indicates that a retailer either has ceased, or may cease, to trade in the electricity market while still having settlement obligations under the Code.</p> <p>Only applies to:</p> <p>Category 2 events if there is a failure to meet settlement obligations; and</p> <p>Category 3 events if a receiver or similar is appointed.</p>	<ul style="list-style-type: none"> <li>• A retailer fails to pay an invoice, does not have sufficient security to cover the amount owed, and is unable to pay the clearing manager 48 hours after the payment was due; or</li> <li>• A retailer cannot meet its financial obligations (including its obligations outside of the electricity market, such as repaying bank loans); or</li> </ul> <p>A receiver, liquidator, or statutory manager is appointed in respect of a retailer.</p>

The examples above provide guidance as to the level in respect of different events of default. However, at all times, the Authority will use its discretion to determine the risk level of an event of default.

The Authority recognises that, while an event of default may not be serious in itself, the event of default may indicate that there is the possibility of a more serious event of default. For example, a failure by a retailer to meet a call for security may be a minimal risk event. However, it may indicate that the retailer will soon be unable to meet its settlement obligations, or pay debts outside of the electricity market.

Whether a retailer has previously been in default is a factor the Authority will take into account in assessing the risk level.

The risk level of an event of default may change over time. An event of default that is initially minimal or low risk may escalate to being at a higher level. For example, a failure by a retailer to meet a call for security may initially be assessed as a minimal risk event, but may become a low risk event if the retailer has still not met the call for security 48 hours after the call.

### **2.3 The Authority's role in an event of default situation**

The Authority's role in an event of default situation is largely facilitative, due to the Authority's limited powers under the Code and the Act.

#### **The Code**

If the clearing manager has reasonable grounds to believe that an event of default is likely to occur, the Code requires the clearing manager to refer the matter to the Authority for its urgent consideration and instruction of an appropriate course of action to minimise the risk of default occurring (clause 14.56). The clearing manager must also refer an issue concerning an actual event of default to the Authority (clause 14.57).

However, the Code does not provide the Authority with powers to intervene to minimise the impact of an event of default, or to resolve an event of default. In contrast, the Code requires the clearing manager to take certain steps in response to an event of default. These Code requirements are discussed further in section 3 of these guidelines.

#### **The Act**

Section 49 of the Act applies to a generator or purchaser that:

- is unable to pay its debts;
- calls a meeting for the purpose of Part 14 of the Companies Act 1993;
- is adjudicated bankrupt;
- in the case of a company, society or partnership has a receiver, or statutory manager or similar person appointed in respect of it or of all or any of its assets; or
- is put into liquidation.

Section 49 provides that the Authority may suspend a generator's or purchaser's right to trade in the case of insolvency.

For the purposes of section 49, 'adjudicated bankrupt' means, in the case of a partnership, all of the partners are adjudicated bankrupt, or in the case of an individual, the individual is adjudicated bankrupt.

The Authority may determine the time from which a generator's or purchaser's trading rights are suspended, however the suspension must take effect after the event described in section 49(1).

After making a suspension order under section 49, the Authority may:

- order that any of the rights that were suspended be reinstated; or
- apply to the Rulings Panel for a termination order in respect of the generator or purchaser. A termination order terminates all or specified rights under the Code of the generator or purchaser against whom it is made, but does not affect any liability for payment of money under the Code before the date of the order (section 59).

It is an offence to fail to comply with a suspension order or a termination order (section 60).

### **Summary of the Authority's role**

The Authority's role in an event of default situation is largely facilitative, as the Authority's powers under the Code and the Act are limited, as described above.

Consistent with its statutory objective of promoting competition in, reliable supply by, and the efficient operation of, the electricity industry for the long-term benefit of consumers, the Authority will:

- monitor an event of default, or the possibility of an event of default;
- consider suspending a retailer's rights to trade or applying to the Rulings Panel for a termination order in respect of the retailer;
- provide information to participants, the public, and the Minister as required; and
- if a retailer ceasing to trade is a possibility, consider what steps can be taken, within the Authority's powers, to facilitate the orderly exit of the retailer from the market and the continuity of supply at reasonable prices for the retailer's customers.

## **3. Relevant Code and Act provisions**

### **3.1 Requirements to provide security and meet settlement obligations**

The Code requires that all payers provide security to the clearing manager, and meet settlement obligations, including by paying invoices issued by the clearing manager on settlement day.

A summary of the provisions of the Code that set out payers' security and settlement obligations is in Appendix 1.

### **3.2 Requirements in an event of default situation**

The Code sets out certain steps that must be taken if an event of default occurs.

As set out in section 2.3 of these guidelines, the Code does not provide the Authority with any direct role in managing an event of default. However, the clearing manager does have certain obligations under the Code if an event of default occurs.

As well as being required to inform the person in default and the Authority of the default under clause 14.57, the clearing manager has a number of remedies available to it under clause 14.58. These remedies include:

- applying the balance of the defaulting payer's cash deposit;
- making a demand under a guarantee, letter of credit or bond; and
- setting off the unpaid amount against any amounts payable to the person by the clearing manager.

The clearing manager must exercise rights, including any rights under the Act and the Code, as are reasonable to recover any amounts outstanding from a payer in default (clause 14.53).

In the case of a category 2 event of default (i.e., a retailer fails to pay some or all of an invoice), the Code provides that the clearing manager is responsible for managing the response.

Specifically, the Code requires that the clearing manager reduce payments to generators in accordance with clause 14.49. That means that generators effectively bear the risk of a retailer failing to pay an invoice.

If generators are unable to be paid in full, the generators are entitled to be assigned or subrogated to the rights of the clearing manager in respect of amounts payable to the clearing manager by the relevant defaulting party. The clearing manager must do all that is reasonably necessary to assist the generators in the exercise of the rights. Generators may then take steps to enforce any payments owing (clause 14.54).

A more detailed summary of the provisions of the Code that set out what must happen if an event of default occurs is set out in Appendix 1.

## 4. Warning signs of an event of default

There are a number of situations that may indicate there is an increased likelihood of an event of default occurring.

Those situations include:

1. a retailer or generator's hedge cover is insufficient when taking into account the retailer's or generator's actual electricity sales and purchases (information not necessarily available to the Authority);
2. a retailer or generator has defaulted on the payment of hedges that are not settled by the clearing manager (information not necessarily available to the Authority);
3. the market is producing high electricity spot prices for a prolonged period, or there is a significant variation in final spot prices particularly if any given NSP is significantly above the time-weighted market average price for a period exceeding four hours;
4. a retailer experiences high customer influx. This information is available from the registry manager but it is currently required only monthly although daily updates may be requested. A rate of change of >10% per month or 3% per day may indicate a future prudential exposure or invoice payment issue;
5. a retailer has high levels of net spot market exposure. There are two situations in which net spot market exposure can occur:
  - a. *net spot volume exposure* – this can be determined from information received monthly from the reconciliation manager. If a participant's exposure exceeds 50% of the participant's purchases, the participant may be at risk during adverse price times;
  - b. *net spot financial exposure* – this can be determined from information received monthly from the clearing manager but, because of the way the reconciliation process operates, it is only available monthly. If a participant's financial exposure exceeds 50% of the participant's purchases, the participant may be at risk during prolonged periods of adverse prices;
6. there has been a transmission or generator failure that has temporary but serious impacts on spot prices;
7. a service provider to a retailer withdraws service from a retailer (e.g.; a meter reading company or a metering equipment owner); or
8. the quality of a retailer's meter reading statistics and reconciliation submissions deteriorates over time, indicating a drop in compliant business activity. This information is currently required from participants but is only available monthly;
9. prudential calls where a participant has the net spot market exposure identified in 6. above, and the relevant market price exceeds \$200/MWh.

Situations 1 and 2: Situation 1 is probably the best of any KPI for the benchmarking of a retailer's risk exposure. However, amendments to the Code would be required to require participants to provide the information in situations 1 and 2.

Situation 3 could be a KPI that is calculated on a daily basis by the Market Performance Team and provided to the Operations Development Team when the threshold is exceeded, and could then be a trigger for more detailed monitoring of situations 4 to 8.

Situations 4 to 9 are monitored by the Operations Development team.

If the Authority considers that the occurrence of a situation places a retailer at risk, the Operations Development team will examine all available information to ascertain the possibility of an event of default occurring, and assess the risk level.

It must be noted that any information relating to a retailer's default may be commercially sensitive and publication may cause significant damage to the retailer.

## **5. The Authority's response to an event of default**

This section sets out the process the Authority will follow if an event of default occurs or may occur.

### **5.1 Identify the level of the risk**

Once the Authority becomes aware that an event of default has occurred or may occur, the Authority will assess the risk level of the event, as set out in section 2.2.

To assess the risk level, the Authority will need to discuss with the clearing manager (and possibly other parties such as the retailer) the circumstances of the event, the seriousness of the event, and how urgently a response is required.

The way in which the Authority will respond to the event of default will be determined by the risk level of the event of default.

### **5.2 Minimal risk events**

As set out in section 2, a minimal risk event is unlikely to impact on other participants. Minimal risk events are not uncommon, and are unlikely to give a clear indication that the retailer in default may default in the future.

Accordingly, the General Manager Operations Development will take the following steps in respect of a minimal risk event:

- 5.2.1 have further discussions with the clearing manager about the event (and the likelihood of the event being quickly resolved without impacting on other participants);
- 5.2.2 notify the Chief Executive of the event, as he/she may have to deal with media enquiries and inform the Board and the Minister's office;
- 5.2.3 monitor the event until the event is either resolved, or escalates to become a low risk or a high risk event (in which case, section 5.3 or 5.4 applies);
- 5.2.4 ensure that notification of the Code breach is provided to the Authority's Compliance team, who will then respond to the breach as required by the Act, the regulations, and any relevant guidelines;
- 5.2.5 note the event in the Chief Executive's report to the Board.

### **5.3 Low risk events**

A low risk event of default requires additional management by the Authority. The General Manager Operations Development will take the following steps in respect of a low risk event:

- 5.3.1 have further discussions with the clearing manager and other parties about the event, and what steps the clearing manager will take (and is required to take) as a result of the event;

- 5.3.2 ensure that notification of the Code breach is provided to the Authority's Compliance team, who will then respond to the breach as required by the Act, the regulations, and any relevant guidelines;
- 5.3.3 co-ordinate a communications response to ensure that participants, the public, and the Minister are aware of the situation. That will require the General Manager Operations Development to:
  - a. advise the Chief Executive of the event of default
  - b. liaise with the Authority's Communications Manager;
  - c. review any media releases made by the clearing manager;
  - d. make a recommendation to the Chief Executive as to whether the Authority should make a media release, and the content of such a release;
  - e. advise appropriate Authority staff that an event of default has occurred. The Chief Executive will notify the Board and the Minister's office of the event of default, by email, including any relevant media releases; and
- 5.3.4 prepare a risk assessment report (if required);
- 5.3.5 continue to monitor the event of default until it is either resolved, or becomes a high risk event (in which case, section 5.4 applies); and
- 5.3.6 if the event of default is resolved, continue to monitor the situation at a level appropriate given the nature of the breach. A post event review may also be appropriate.

## **5.4 High risk events**

The Authority's response to a high risk event will be determined by the nature of the event and whether the retailer has or may cease trading in the electricity market, and whether the retailer's customers can be switched to another retailer in an orderly fashion if the retailer does cease trading in the electricity market.

Broadly speaking, there are three possible outcomes if a high risk event occurs:

1. the retailer will want to continue trading; or
2. the retailer will want to sell its business; or
3. the retailer will want to or be required to cease trading in the electricity market, or will have done so already.

The General Manager Operations Development will also take the following steps:

- 5.4.1 the steps outlined in sections 5.3.1 to 5.3.4 for low risk events.
- 5.4.2 determine if it is in the interests of market participants for the Authority to suspend the retailer (or a generator) from trading or apply for a termination order in respect of the retailer;

- 5.4.3 if the retailer has not already exited the market, discuss with the retailer (or receiver, liquidator, statutory manager, or similar) whether retailer exit from the market is a possibility;
- 5.4.4 if it is possible that the retailer will cease to trade in the electricity market or if that has already happened, the General Manager Operations Development will:
- a. obtain a report from the registry manager indentifying the ICP numbers in a "LIS" file format with all associated information;
  - b. identify whether the retailer's customers will be able to be switched to another retailer in an orderly fashion, which includes identifying whether there is a retailer willing to take the exiting retailer's customers at a reasonable price;
  - c. request specific information about the retailer's customers and metering information from the retailer (or receiver, liquidator, statutory manager or similar) in an agreed format;
  - d. if that information is not available from a retailer, request information from the distributor and the primary metering contact. Note that for GXP priced networks, mass market information may not be available;
  - e. identify timeframes for exit (if the retailer has not already exited the market):
  - f. develop a media strategy;
  - g. identify what information will need to be provided to service providers, participants, interested parties (e.g., electricity and financial markets) and customers;
  - h. identify what, and when, information needs to be provided to the Chief Executive/Board/Minister;
- 5.4.5 the General Manager Operations Development will consider contacting the retailer's customers to:
- a. advise them they will need to switch to a new retailer, the timeframes within which they need to switch, and the consequences of not switching (including that the customer's power supply will be disconnected);
  - b. provide advice on how to find a new retailer; and
  - c. advise customers of their rights, and where to get more information;
- 5.4.6 if necessary, put in place a full communications response (e.g., letter writing, establishing a call centre);
- 5.4.7 contact lines businesses to ask them not to disconnect the retailer's customers within a specified period, to give the customers an opportunity to switch retailers;
- 5.4.8 contact other retailers to advise them the exiting retailer's customers may be switched; and
- 5.4.9 consider whether the UTS provisions in Part 5 of the Code can be utilised.

## 5.5 To enact additional powers in high risk events

- 5.5.1 The Authority does not have the power under the Code to disconnect or transfer the customers of a retailer who wants to or is required to cease trading in the electricity market, or does so without warning.
- 5.5.2 This means the Authority cannot intervene in the electricity market when customers are at risk of disconnection or have been disconnected and will be or are unable to obtain supply from other retailers at reasonable prices. It would be necessary to amend the Code to give the Authority such powers.
- 5.5.3 However, Part 11 of the Code can be amended to give the Authority the power to:
- a. require a retailer to exercise its powers under its customer contracts to transfer its rights and obligations under those contracts to other retailers (recipient retailers), when there is a serious event of default by the retailer (or an event of default is imminent);
  - b. require that specified recipient retailers accept a defaulting retailer's customers and take other actions to facilitate the transfers.
- 5.5.4 Urgent Code amendments can be made by the Authority and come into force on the date specified in the *Gazette* notice and expire 9 months after the date on which it comes into force. Urgent Code amendments may be made under section 40 of the Act if—
- a. the Authority considers that it is necessary or desirable in the public interest that the proposed amendment be made urgently; and
  - b. along with the notice of the amendment that is published in the *Gazette* under section 38(3)(b), the Authority publishes a statement of the reasons why the urgent amendment is needed.
- 5.5.5 Such urgent Code amendments are in draft form and are attached in section 7 of this guideline. In order to enact these Code amendments, the GM Operations Development will need to:
- a. follow the processes described in 5.4 above and ascertain that the situation is a high risk event in which customers will be stranded. Note that enacting these provisions too early will most probably result in the collapse of the defaulting retailers business;
  - b. ascertain that the draft amendments to Part 11 of the Code are still applicable, and that amendments made to other Parts of the Code or other legislation do not impact these draft amendments;
  - c. obtain Board approval for an urgent amendment to the Code;
  - d. once approval is obtained, arrange for publication of the Gazette notice, and the next day advise affected participants of the urgent Code amendment, and the implications of the urgent Code amendment for the conduct of their business;

- e. define the allocation process to be used for transferring customers to recipient retailers. Note that the allocation process should comprise one or more of the methods defined in section 5.5.7 to 5.5.9 of this guideline;
- f. ascertain if information will be available from the defaulting retailer to enable easy transfer of customers. If this is not available, contact the distributors for the networks concerned and ascertain if they have appropriate information on metering configuration and customer contact details;
- g. issue the appropriate notices described within the amendments to Part 11 to give effect to the transfer of customers, and to obtain the appropriate information required. The registry functional specifications and copies of EIEP files exchanged will contain this level of information. Where these files have not been exchanged (usually on GXP pricing networks) there are no alternatives sources of data and it may be necessary for recipient retailers to visit sites to gather this information; and
- h. check within the registry that customers are transferred appropriately.

5.5.6 Identifying one or more third party retailers to be recipient retailer(s) is not an easy task, because of the potential for the allocation of customers to significantly affect the recipient retailers' businesses. In determining a method for selecting the retailer or retailers to whom customers are allocated, it would be important to ensure, as far as reasonably possible, that recipient retailers are not unduly financially disadvantaged (or advantaged) in comparison with other retailers, and that risks are carried by those best able to manage them.

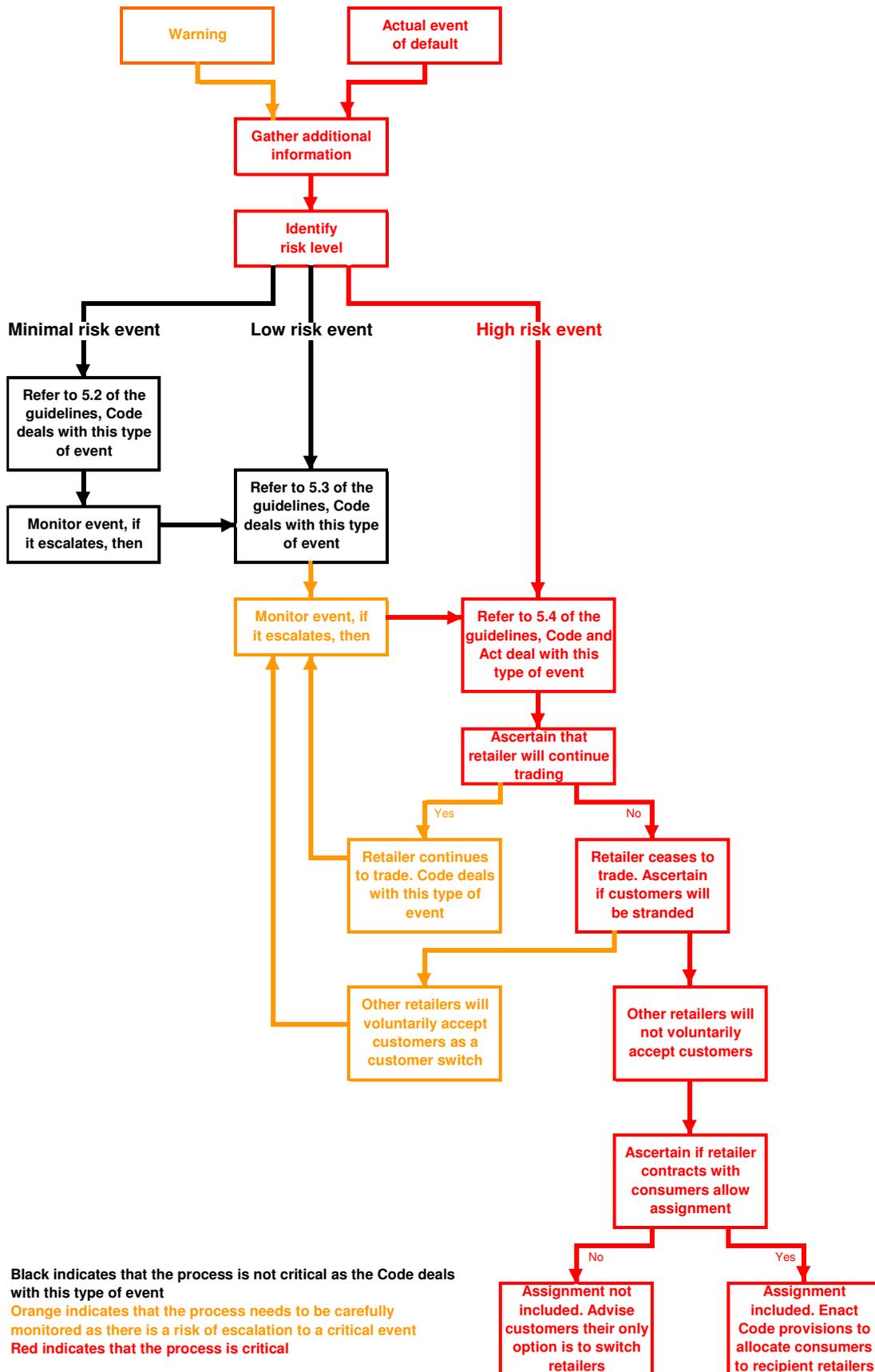
5.5.7 While it would be preferable to have only the one allocation methodology, it may be unlikely that a single allocation methodology would meet all requirements under all circumstances. The size, location and nature of the default, the events that lead to the default, wholesale price in the area, and the retailers that are active on that network, would indicate what allocation methodology should be followed. Customer allocation to a recipient retailer(s) could be based on one of the following:

- (a) **mandatory allocation** of customers in each network to the largest retailer. It is the norm for the largest retailer on a network to be significantly larger than the other retailers on that network. Because of its size, the largest retailer might have the organisational capacity to absorb into its operations the stranded consumers on that local network;
- (b) **mandatory pro-rating** of the allocation of customers on a network across all retail companies with customers on that network. However, because of the regional or national footprint of retailers in New Zealand, it is possible that other retailers on the network might also have the organisational capacity to cope with the additional customers. A pro-rating approach could be appropriate. Such an approach would be particularly appropriate if the instance of the largest retail company on a local network became unable or unwilling to supply its customers;
- (c) **voluntary competitive tender** for the right to receive stranded consumers on specific networks. Running a competitive tender for recipient retailer(s) gives the Authority the opportunity to transfer customer contracts to retailers who volunteer to be recipient retailers, rather than requiring certain retailers to be recipient retailers. This approach would provide the successful recipient

retailers with the opportunity to trade their rights and possibly reduce the cost of any financial assistance received.

- 5.5.8 Regardless of the allocation option selected, consideration needs to be given to the impact on recipient retailers' businesses. Where there is a forced acquisition of customers, there may be issues created by increased electricity market and distributor prudential requirements, data acquisition and business process issues that do not fit with the recipient retailer's business model such as tariff requirements, meter devices, or credit issues that the recipient retailer is not setup for.

## 6. Flowchart for managing an event of default



## 7. Draft changes to Part 11 to provide the power to the Authority to allocate stranded customers

### 11.1 Contents of this Part

This Part—

- (a) provides for the management of information held by the **registry**; and
- (b) prescribes a process for switching **customers** and **embedded generators** between **traders**; and
- (c) prescribes a process for a **distributor** to change the record in the **registry** of an **ICP** so that the **ICP** is recorded as being usually connected to an **NSP** in the **distributor's network**; and
- (d) prescribes a process for dealing with **retailer events of default**.

Compare: Electricity Governance Rules 2003 rule 1 part E

### 11.15A Process for retailer events of default

(1) This clause applies if the **Authority**—

- (a) is satisfied that—
  - (i) a **retailer** who is recorded in the **registry** as being responsible for 1 or more **ICPs** has committed an **event of default**; or
  - (ii) an **event of default** by a **retailer** who is recorded in the **registry** as being responsible for 1 or more **ICPs** is imminent; and
- (b) considers that the exercise of the powers in Schedule 11.4 is necessary to protect all or any of the defaulting **retailer's customers**.

(2) The **Authority** and **participants** must comply with Schedule 11.4.

## Schedule 11.4

### Process for retailer events of default

#### 1 Application of this Schedule

This Schedule applies if the **Authority**—

- (a) is satisfied that—
  - (i) a **retailer** who is recorded in the **registry** as being responsible for 1 or more **ICPs** has committed an **event of default**; or
  - (ii) an **event of default** by a **retailer** who is recorded in the **registry** as being responsible for 1 or more **ICPs** is imminent; and
- (b) considers that the exercise of the powers in this Schedule is necessary to protect all or any of the defaulting **retailer's customers**.

#### 2 Requirement that retailers transfer customers

- (1) The **Authority** may, by notice in writing to a **retailer** described in clause 1 (the "**defaulting retailer**"), direct the defaulting **retailer** to exercise any powers of the defaulting **retailer** under any **customer** contracts to which the defaulting **retailer** is a party, to transfer the defaulting **retailer's** rights and obligations under the **customer** contracts to 1 or more other **retailers** ("**recipient retailers**").
- (2) A recipient **retailer** or recipient **retailers** may be chosen by the defaulting **retailer**, unless a recipient **retailer** is or recipient **retailers** are specified in the notice given under subclause (1).
- (3) A notice given under subclause (1) may include terms and conditions of the transfer of **customer** contracts, which may include consideration to be paid by the defaulting **retailer** to a recipient **retailer**, or by a recipient **retailer** to the defaulting **retailer**.

- (4) The **Authority** must not give notice under subclause (1) unless it used reasonable endeavours to consult with the defaulting **retailer** as to the need for the notice and the terms of the notice.
- (5) A **retailer** must comply with a notice given to it under subclause (1) within the period specified within that notice.

### 3 Requirement to provide information

- (1) The **Authority** may, by notice in writing to a defaulting **retailer**, require the defaulting **retailer** to provide to the **Authority** the information about the defaulting **retailer's customers** specified in the notice, within the period specified in the notice.
- (2) The **Authority** may, by notice in writing to a **distributor** on whose network a defaulting **retailer** trades **electricity**, require the **distributor** to provide to the **Authority** the information about the defaulting **retailer's customers** specified in the notice (if the **distributor** holds the information), within the period specified in the notice.

### 4 Requirement that retailers accept customer contracts

- (1) The **Authority** may, by notice in writing to a **retailer** ("recipient **retailer**"), require the recipient **retailer** to—
  - (a) accept the transfer to it of rights and obligations under 1 or more **customer** contracts specified in the notice, being 1 or more **customer** contracts to which a notice given under clause 2 apply; or
  - (b) enter into an arrangement with 1 or more **customers** to trade **electricity** with the **customer**.
- (2) A notice given under subclause (1) may include terms and conditions of the transfer of **customer** contracts, which may include consideration to be paid by the defaulting **retailer** to the recipient **retailer**, or by the recipient **retailer** to the defaulting **retailer**.
- (3) The **Authority** must not give notice under subclause (1) to a recipient **retailer** unless it has used reasonable endeavours to consult with the recipient **retailer** as to the need for the notice and the terms of the notice.
- (4) A **retailer** must comply with a notice given to it under subclause (1) within the period specified within that notice.

### 5 Retailers may request amendments to notices

- (1) A **retailer** who receives a notice under clause 2, clause 3, or clause 4 may, by notice in writing to the **Authority**, request that the **Authority** amend the notice.
- (2) A notice given under subclause (1) must—
  - (a) be given no later than 1 **business day** after the **retailer** receives a notice under clause 2, clause 3, or clause 4, as the case may be; and
  - (b) include the reasons for the request.

### 6 Notice may be amended or revoked

- (1) The **Authority** may, at any time by notice in writing to the defaulting **retailer** or the recipient **retailer**, as the case may be, amend or revoke a notice given under clause 2, clause 3, or clause 4 as the case may be.
- (2) Clause 2, clause 3, and clause 4, as the case may be, apply to an amending notice given under subclause (1), as if the amending notice was a notice given under clause 2, clause 3, or clause 4, as the case may be.

## 8. Key contact details

<b>Key Authority Staff</b>				
<b>Name</b>	<b>Title</b>	<b>Ext</b>	<b>DDI</b>	<b>Mobile</b>
<b>Carl Hansen</b>	Chief Executive	7842	460 8842	0272 588 748
<b>Megan Harrison</b>	Executive Assistant	7840	460 8840	021 933 871
<b>Phillip Beardmore</b>	Acting GM Operations Development <sup>1</sup>	7876	460 8876	021 072 8244
<b>Ron Beatty</b>	Manager Market Operations	7879	462 0609	021 618 048
<b>Ross Hill</b>	GM Legal and Compliance	7843	460 8843	021 819 072
<b>John Rampton</b>	GM Market Development	7808	471 8360	027 471 1723
<b>Bruce Smith</b>	GM Modelling and Forecasting	7855	460 8855	021 376 639
<b>Tim Street</b>	Director Wholesale	7851	460 8851	021 376 628
<b>External service providers to the Authority</b>				
<b>Name</b>	<b>Title</b>	<b>Ext</b>	<b>DDI</b>	<b>Mobile</b>
<b>Clearing Manager</b>	NZX – Wellington – Zane Doran		498 0044	021 853 561
<b>Reconciliation Manager</b>	NZX – Wellington – Zane Doran		498 0044	021 853 561
<b>Registry Manager</b>	Jade Corporation – ChCh – help desk		0800 652 266	
<b>Participants</b>				
<b>Contact details for retailers, distributors, and meter owners can be obtained from the participant register that is available on the Authority's web site.</b>				

<sup>1</sup> In the absence of the GM Operations Development, the Manager Market Operations will carry out those tasks assigned within this guideline.

## **Appendix 1 – Relevant code provisions**

### **Security obligations**

1. The minimum required level of security for each payer is to be determined by the clearing manager at least once each week (clause 14.18(1)).
2. The clearing manager must set out the grounds for any call for additional security. (clause 14.18(3)).
3. A call must be satisfied by 1600 hours 3 business days later (clause 14.18(4)).
4. Failure to satisfy a call is an event of default (clause 14.18(5)).
5. The clearing manager will determine the required level of security by assessing the expected amount of the clearing manager's financial exposure to that payer, based on the sum of the clearing manager's estimates of amounts (including GST) to be incurred/earned by that payer in relation to:
  - a) purchasing electricity:
  - b) ancillary services:
  - c) gross revenue from sales of electricity:
  - d) hedge settlements (lodged with the clearing manager) during the complete billing period that precedes the next invoice payment date, the period from the end of that billing period up to and including the next invoice payment date and the 7 days following the next invoice payment date: and
  - e) under-frequency event charges that are not yet paid (clause 14.19)
6. This should not include washup amounts (clause 14.22).
7. The clearing manager may take into account a substantial change in the price of electricity (clause 14.20(b))

### **Settlement obligations**

1. The clearing manager must issue an invoice to each purchaser/payee (clause 14.36), and concurrently issue an invoice to each payer (clause 14.44)
2. Each payer (i.e each person who, after the issuing of invoices to payees and payers, owes the clearing manager money) must pay its invoice by the 20<sup>th</sup> day of the following month (clause 14.37(1))
3. If a payer fails to pay the total amount invoiced, the available funds are prioritised in accordance with clause 14.47. The highest priority is paying GST. Then subsequent priorities in order are making ancillary services payments, paying loss and constraint excess to the grid owner, and finally paying amounts due to generators (excluding ancillary service payments).
4. The amount paid to generators is also reduced in accordance with the formula set out in clause 14.49.
5. If a generator does not receive payment from the clearing manager on settlement date, it is entitled to receive interest from the clearing manager at the default interest rate (clause 14.50).

6. Failure of a payer to pay an invoice, or to pay the full amount invoiced to it, constitutes an event of default (clauses 14.38 and 14.55(b))
7. If an event of default occurs, the clearing manager must notify the person in default of the default, and must refer the issue to the Authority (clause 14.57).
8. If a payer makes a late payment, the clearing manager can pay out in accordance with the priorities specified in paragraph 3 above (clause 14.51).
9. The clearing manager must exercise its rights to recover any outstanding amounts (14.53).
10. Generators may be “assigned or subrogated to” the rights of the clearing manager to recover any shortfall (clause 14.54), but only if the clearing manager has not taken any action within 3 business days of an event of default or if the clearing manager has failed to recover the unpaid funds within 2 months (clause 14.63).