

Compliance with the Electricity Industry Participation Code

As the regulator of New Zealand's electricity industry, the Electricity Authority's (Authority) statutory objective is to promote competition in, reliable supply by, and the efficient operation of, the electricity industry for the long-term benefit of consumers. Consistent with its statutory objective, the Authority provides education and information on compliance matters and monitors, investigates and enforces compliance with the Electricity Industry Participation Code 2010 (Code).

This fact sheet looks at the Authority's approach to compliance, what constitutes a breach of the Code, how to report an alleged breach of the Code and the process the Authority follows in investigating an alleged breach of the Code.

More information about the Authority's other compliance roles is available on the Authority's website, www.ea.govt.nz/act-code-regs/compliance.

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The Authority's approach to compliance

The Authority's approach to compliance is set out in its compliance philosophy. The Authority's compliance philosophy includes:

- seeking evidence that industry participants are learning when things go wrong
- ensuring that mitigating actions are taken to correct the problem and avoid recurrence
- encouraging informal resolution agreements (called 'settlements') between the affected parties.

What constitutes a breach of the Code?

Under section 6 of the Electricity Industry Act 2010, the term 'breach' has an extended meaning. As well as actually breaching the Code, a person can also be in breach if they:

- attempt to breach the Code
- aid, abet, counsel or procure another person to breach the Code
- induce, or attempt to induce, another person to breach the Code
- are in any way, directly or indirectly, knowingly concerned in, or party to, the breach of the Code by any other person
- conspire with any other person to breach the Code.

Reporting an alleged breach of the Code

Mandatory reporting of breaches

Regulations 7 and 8 of the Electricity Industry (Enforcement) Regulations 2010 (Enforcement Regulations) require mandatory reporting of alleged breaches of the Code.

Under regulation 7, an industry participant that believes it or another industry participant has breached a provision in parts 7, 8, 9 or 13 of the Code about common quality or security, or a related provision in part 17 of the Code, must report the alleged breach as soon as possible after becoming aware of it.

Under regulation 8, an industry participant that believes another industry participant has breached the Code must report the alleged breach as soon as possible.

Voluntary reporting of breaches

Regulation 9 provides that any person who believes an industry participant has breached the Code can report the alleged breach to the Authority.

All mandatory and voluntary reports should include:

- the name of the industry participant alleged to have breached the Code
- the provision of the Code allegedly breached
- the circumstances of the alleged breach
- the date and time the alleged breach occurred.

Reporting breaches through the Authority's compliance database

Industry participants can report breaches of the Code through the Authority's compliance database at www.compliance.ea.govt.nz. Login details and a database manual are available by emailing compliance@ea.govt.nz with 'Compliance database login' in the subject line.

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Reporting breaches by email

Industry participants can also report breaches of the Code by email.

To report a breach of the Code by email, complete the form at www.ea.govt.nz/act-code-regs/compliance/how-to-allege-a-code-breach and email it to compliance@ea.govt.nz.

The Code breach process

The process for dealing with alleged breaches of the Code is set out in the Enforcement Regulations. A brief overview of the process follows:

Fact finding

When a report of an alleged breach of the Code is received, the Authority considers the information provided by the reporting party. If necessary, the reporting party, or other relevant parties, will be requested to provide further information.

Compliance Committee

Based on the information gathered, a report on the alleged breach is presented to the Authority's Compliance Committee. The Compliance Committee is made up of three members of the Authority's Board and makes most of the decisions on the Authority's compliance matters.

The Compliance Committee decides what action to take regarding the alleged breach. This may involve:

- deciding to take no further action
- issuing a warning letter
- appointing an investigator to more fully investigate the alleged breach.

Investigation

If an investigator is appointed, the investigation is publicised on the Authority's website at www.ea.govt.nz/act-code-regs/compliance/investigations-settlements-decisions. Industry participants that consider they are affected by the matter being investigated can become parties to the investigation by advising the investigator within 10 business days after the investigation is publicised.

The investigator must attempt to settle the matter informally between the parties and prepares a report and recommendation for the Compliance Committee.

Compliance Committee decision on an investigation

On receiving an investigator's report, the Compliance Committee decides what action should be taken. This may involve:

- approving the settlement
- rejecting the settlement and recommending the Authority's Board lay a formal complaint with the Rulings Panel
- if no settlement can be reached, recommending the Authority's Board lay a formal complaint with the Rulings Panel or discontinuing the investigation.

The Compliance Committee's decisions regarding investigations are publicised at www.ea.govt.nz/act-code-regs/compliance/investigations-settlements-decisions.

Formal complaint to the Rulings Panel

The Rulings Panel is an independent body whose role includes dealing with formal complaints of breaches of the Code. If the Rulings Panel upholds a complaint, it has a number of remedial orders it may make, including imposing penalties, awarding costs or compensation, issuing suppression or termination orders and recommending Code amendments.

In certain situations, industry participants can also lay a formal complaint with the Rulings Panel.

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Detailed operating procedures

A more detailed description of the process for dealing with alleged breaches of the Code is in the Authority's Operating Procedures available at www.ea.govt.nz/act-code-regs/compliance/how-breach-notifications-are-processed.

Compliance Update

After each Compliance Committee meeting, the Authority publishes a *Compliance Update* that includes information on the Committee's decisions, an overview of the matters considered by the Committee and updates on any initiatives or developments regarding the Authority's compliance functions. *Compliance Updates* are available at www.ea.govt.nz/act-code-regs/compliance/update.

 Further fact sheets regarding the electricity industry are available at www.ea.govt.nz/consumer/factsheets. We welcome suggestions for further topics.