

Advisory Group

Wholesale Market Information: Review of disclosure exclusions

WAG discussion paper

28 June 2016

Note: The WAG has prepared this paper to seek stakeholder views on the issues canvassed. Content should not be interpreted as representing the views or policy of the Electricity Authority.

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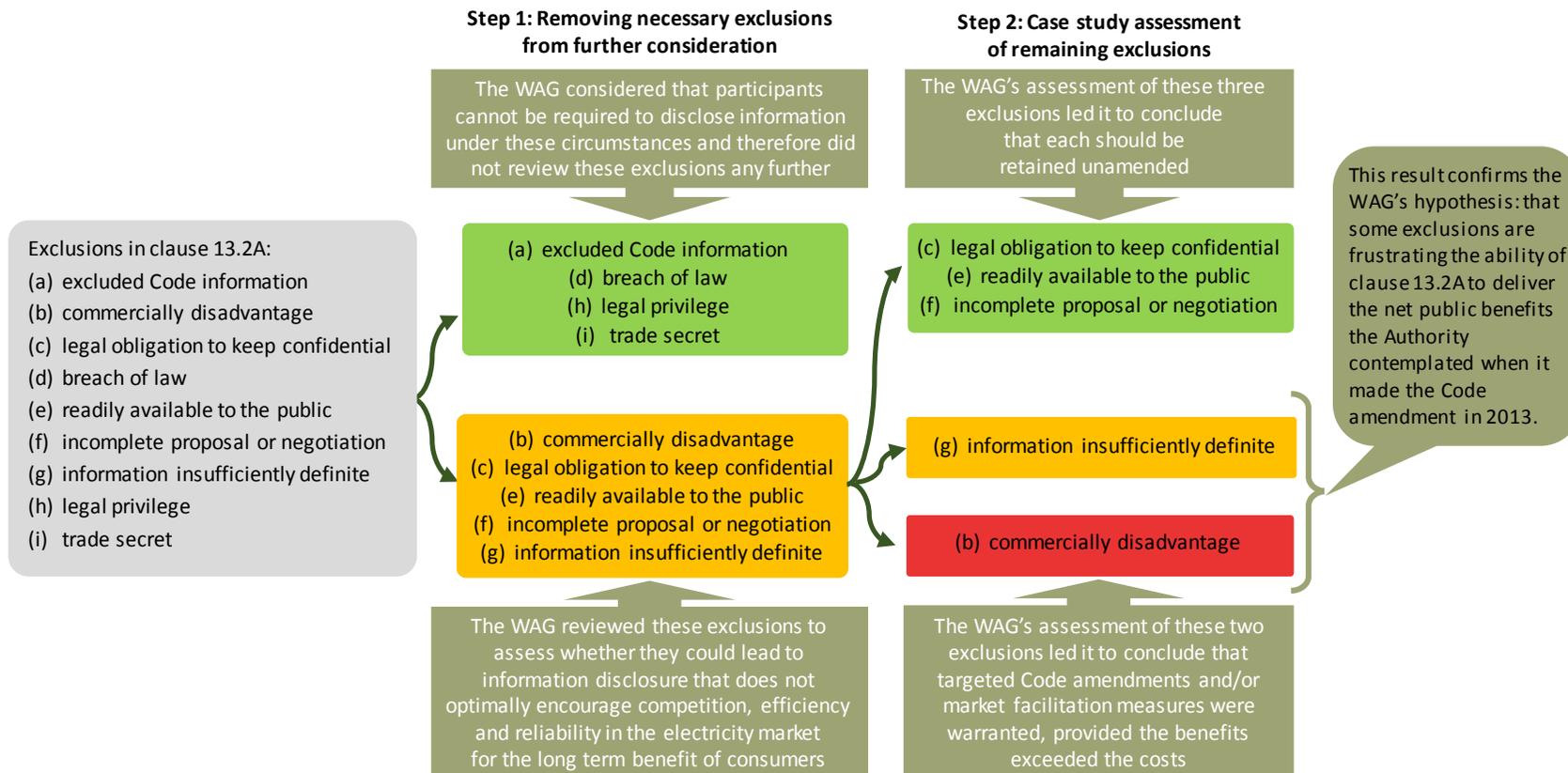
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What this paper is about

The Wholesale Advisory Group (WAG) has reviewed the exclusions from making wholesale market information readily available to the public under subclause 13.2A(2) in the Electricity Industry Participation Code 2010 (Code). The purpose was to assess which exclusions, if any, may be leading to information disclosure that does not optimally encourage competition, efficiency and reliability in the electricity market for the long-term benefit of consumers. The WAG followed a three step process for assessing the exclusions. Steps one and two are outlined below in Figure 1. Step three involved the WAG developing promising options to address the concerns the WAG identified.

Figure 1: The WAG’s step-wise consideration of the exclusions in clause 13.2A of the Code

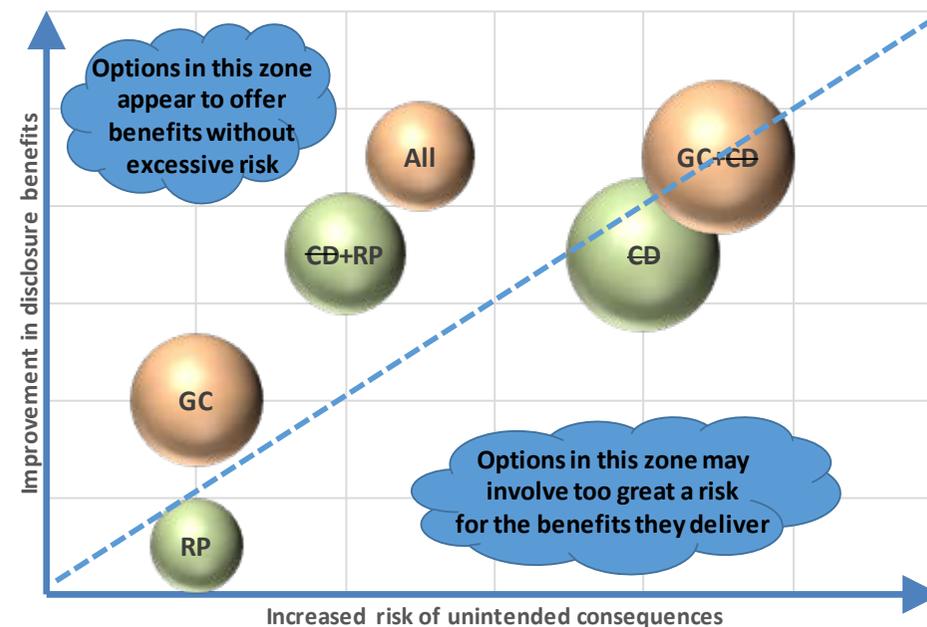


The WAG considered several Code Amendment options (as shown in Table 1) for improving information disclosure. On the basis of this assessment the WAG has concluded there are three promising Code amendment options (as shown in Figure 2) and several possible market facilitation measures available.

Table 1: Code amendment options the WAG is considering

Option	Label	Description
Option 1	GC	Add Good Conduct provision
Option 2	CD	Remove Commercial Disadvantage exclusion
Option 3	RP	Include Reasonable Person exclusion
Option 4 - Options 2,3 combined	CD+RP	Replace Commercial Disadvantage exclusion with Reasonable Person exclusion
Option 5 - Options 1,2 combined	GC+CD	Add Good Conduct provision AND remove Commercial Disadvantage exclusion
Option 6 - Options 1,2,3 combined	All	Add Good Conduct provision AND replace Commercial Disadvantage exclusion with Reasonable Person exclusion

Figure 2: Assessment of Code amendment options



In this bubble chart:

- the vertical axis shows the WAG's assessment of the improvement in disclosure benefits
- the horizontal axis shows the WAG's assessment of the increased risk of unintended consequences
- the size of each bubble illustrates the uncertainty in estimating the magnitude of benefits and of the risk of unintended consequences
- the colour of each bubble illustrates likely implementation and administration costs (green is low cost, orange is modest cost)

The WAG considers that all three of the Code amendment options above the diagonal line in Figure 2 offer the potential for addressing the concerns identified and improving Wholesale Market Information (WMI) disclosure outcomes without imposing undue risk of unintended consequences. These three options are:

- add a good conduct provision
- replace the commercial disadvantage exclusion with a reasonable person exclusion
- do both: add a good conduct provision and replace commercial disadvantage with a reasonable person exclusion.

The WAG considers that any of these three options would have a net public benefit relative to the status quo. Furthermore, the WAG considers that any of these three options would improve delivery of the net public benefits of wholesale market information disclosure that the Authority contemplated when it introduced clause 13.2A in 2013.

The WAG does not have a preferred option at this time. It seeks stakeholder feedback on the options, particularly the benefits, risks and costs of each.

The WAG has also developed a number of possible market facilitation measures that could further assist with addressing the concerns it has identified. The WAG considers that the potential benefit of these market facilitation measures is independent of, and incremental to, the benefits of the possible Code amendment options. The WAG suggests these measures should be considered even if the Authority decides not to pursue Code amendments. These measures are:

- encourage improvements in the functionality and use of Planned Outage Coordination Protocol (POCP)
- raise participant awareness and understanding of the WMI disclosure obligations
- improve the WMI disclosure guidelines.

The WAG intends to explore these options in enough detail to develop recommendations to the Authority, and is now seeking feedback on these options.

This discussion paper is published by the WAG, and the WAG will be responsible for considering submissions received.

Submissions should be received by 5.00pm on 23 August 2016.

The members of WAG, as at the date of the publication of this paper, are:

John Hancock (Chair)

Phillip Anderson

Neal Barclay

John Carnegie

James Collinson-Smith

Stephen Drew

Graeme Everett*

Alan Eyes

Chris Jewell

Stephen Peterson

** Mr Everett was granted a leave of absence in August 2015 and has therefore not been involved in the preparation of this discussion paper*

Note: The WAG has prepared this paper to seek stakeholder views on the issues canvassed. Content should not be interpreted as representing the views or policy of the Electricity Authority.

1 Introduction

1.1 The WAG is reviewing aspects of the disclosure regime

The Authority has asked the WAG to:

“investigate whether the current exclusions from making wholesale market information readily available to the public under subclause 13.2A(2) of the Code are appropriate and efficient”

The exclusions from making disclosure information readily available to the public are part of the wholesale market information (WMI) disclosure obligations in clause 13.2A of the Code. Clause 13.2A creates a ‘continuous disclosure’ obligation for participants for information relevant to the wholesale electricity markets.

The WAG is part-way through its review of the current WMI disclosure obligations, focussing on the exclusions.

The WAG considers that some of the exclusions in clause 13.2A may lead to information disclosure that does not optimally encourage competition, efficiency and reliability in the electricity market for the long-term benefit of consumers.

1.2 The WAG wants your feedback

This paper explores the concerns the WAG has identified. The paper also proposes some options for amending clause 13.2A of the Code to enhance the disclosure of relevant information.

The WAG would like your feedback on the concerns identified and options for addressing them.

1.3 A disclosure regime is a common market feature

Information disclosure obligations are common in wholesale markets for electricity. In our system these markets include:

- spot markets
- hedge markets
- markets for ancillary services and financial transmission rights.

An effective wholesale market information disclosure regime can:

- a) help build confidence in the electricity market
- b) promote efficient monitoring and information provision
- c) reduce any information asymmetry between informed and uninformed market participants and interested parties.

1.4 Current WMI disclosure regime has delivered improvements but can be further enhanced

The current disclosure obligations in clause 13.2A of the Code came into force on 1 October 2013. The WAG was involved in the review that led to the current regime.

Experience and participant feedback suggest that the availability and accessibility of wholesale market information has generally improved since the current obligations came into force. However, some observed behaviour suggests some information has not been disclosed, or has not been disclosed in a timely fashion. The WAG’s assessment of some hypothetical scenarios also highlighted some weaknesses.

The WAG considers that the current regime can be further improved by adopting one or more of the options it has identified.

1.5 How to make a submission

This discussion paper is published by the WAG, and the WAG will be responsible for considering submissions received.

Submissions should be received by 5.00pm on 23 August 2016.

If possible, submissions should include responses to the questions the WAG has included in this discussion paper (refer Appendix A).

1.5.1 Electronic submissions are preferred

The WAG prefers submissions in electronic format (in Microsoft Word).

Submissions should be emailed to wag@ea.govt.nz with “Wholesale Market Information: Review of Disclosure Exclusions” in the subject line.

1.5.2 Submissions can be made in hard copy

If you do not wish to send your submission electronically, you must post a hard copy of your submission to one of these addresses:

Submissions WAG Chair c/- Electricity Authority PO Box 10041 Wellington 6143	or	Submissions WAG Chair c/- Electricity Authority Level 7, ASB Bank Tower 2 Hunter Street Wellington
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Tel: 0-4-460 8860
Fax: 0-4-460 8879

Sending a hard copy is not necessary if you have sent your submission electronically.

1.5.3 The Authority will acknowledge receipt of submissions

The Authority, on behalf of the WAG, will acknowledge receipt of all submissions electronically.

Please contact the Submissions Administrator at the Authority if you do not receive electronic acknowledgement of your submission within two business days.

1.5.4 The WAG intends publishing all submissions

Please note that the WAG intends publishing all submissions it receives. This is the usual practice with submissions.

If you consider that we should not publish any part of your submission, please indicate what part, and set out the reasons why you consider we should not publish it.

If you indicate that there is a part of your submission that should not be published, we will discuss it with you. We will ask whether you can provide us with a version that we can publish (if you haven't already done this).

1.5.5 Submissions are subject to the Official Information Act

Please note that all submissions we receive, including any parts that we may not have published, can be requested under the Official Information Act (OIA). This means that we would be required to release them unless good reason exists under the OIA to withhold them.

We will normally consult with you before releasing any material that you had identified should not be published.

1.6 What happens next

The WAG will consider all submissions on this discussion paper. We will publish a summary of submissions, including a response to the points raised.

Depending on the points raised, the WAG may:

- develop the proposal through a further discussion paper, or
- make high level recommendations to the Board for the Authority to develop the proposal further.

The WAG hopes to report back to the Authority Board before the end of 2016, after considering submissions on this discussion paper.

2 Setting the scene for the WAG's review

2.1 Why information is so important in markets

A well-functioning competitive market is central to delivering the government's objectives for the electricity sector¹. Information plays a very important role in facilitating this.

Access to high quality market information is of great value to market participants, and to interested parties more generally. It also helps the Authority meet its objectives and functions under the Act.

Wholesale market information can be thought of as being:

“the set of information that supports orderly and efficient participation in, and operation of, the wholesale electricity markets (including the spot, contracting and ancillary services markets), and efficient investment decision-making by participants in those markets”²

The role of information in the effective functioning of markets has attracted considerable attention in economics.

Here are some of the key issues (including benefits and potential for adverse effects) that are relevant for electricity markets.³

¹ New Zealand Energy Strategy 2011–2021, August 2011, <https://www.eeca.govt.nz/assets/Resources-EECA/nz-energy-strategy-2011.pdf>

² Wholesale Market Information Project WAG Discussion Paper, 23 March 2012 <http://www.ea.govt.nz/dmsdocument/12741>

³ This section draws heavily on “Transparency and Confidentiality in Competitive Electricity Markets”, sponsored by the U.S. Agency for International Development and the National Association of Regulatory Utility Commissioners, June 2009. The report was prepared by Liz Hooper, Paul Twomey & David Newbery.

2.1.1 Information disclosure has benefits

In any market, free-flowing information is a key element in facilitating competition and effective market performance. These are some of the key benefits.

Disclosure can help eliminate information asymmetry

Effective information disclosure can help eliminate information asymmetry between informed and uninformed market participants.

Information asymmetry can lead to:

- a) transfers of wealth from uninformed to informed market participants when they trade with each other
- b) discourage participation in the market
- c) facilitate market manipulation
- d) reduce entry and new investment.

These in turn can lead to inefficient market outcomes.

Disclosure can reduce risk and uncertainty

Effective information disclosure can also reduce risk and uncertainty. To make efficient decisions, participants need good information about factors that can affect the market, both now and in the future. A lack of this information will increase risk and uncertainty, which can lead to poorer decisions.

Disclosure can facilitate market monitoring

Improved information availability can assist other participants, or a regulator, to detect potential or actual:

- a) exercise of market power, or
- b) other anti-competitive behaviour.

Facilitating improved market monitoring fosters greater confidence in the market.

2.1.2 There can be some adverse impacts too

There are some possible adverse impacts of information disclosure, and these need to be balanced against the benefits. These include:

- a) information infrastructure costs
- b) facilitating collusion
- c) reduced incentive to innovate.

2.2 What this means for electricity market information

Drawing on the economic literature and a number of Authority consultations that explored the importance of information in the wholesale electricity market⁴, the Authority considers that providing high quality information to all participants:

- a) encourages greater participation in the wholesale markets
- b) enables more efficient investment and operating decisions
- c) promotes more active hedge trading and more liquid markets
- d) provides a more robust view of forward electricity prices

⁴For instance, the Authority Wholesale Market Information Project (2011-13) <http://www.ea.govt.nz/development/work-programme/wholesale/wholesale-market-information>, and consultation on improving the opportunities to hedge NZ electricity prices (2011) <http://www.ea.govt.nz/dmsdocument/11119>.

- e) enables more effective market monitoring
- f) improves confidence in the electricity market

The WAG supports this Authority view. More specifically, the WAG considers that access to high quality information by a wide range of participants is important to electricity markets generally, and to electricity futures markets in particular.

2.3 Delivering effective information disclosure

The Authority considers that an effective information disclosure regime is a fundamental feature of a well-functioning electricity market.⁵ A well-targeted regulatory regime can deliver the benefits of effective information disclosure described above. Information disclosure regulation is a common part of wholesale electricity market arrangements in other jurisdictions.

Recognising this, in October 2013 the Authority, supported by the WAG's earlier review, established the WMI disclosure obligations in Clause 13.2A of the Code. It considered the costs and benefits of information disclosure (summarised in section 2.1 of this paper) and concluded that the regime would deliver a net public benefit.

The WAG continues to support a well-targeted regulatory regime for delivering effective wholesale market information disclosure.

⁵ Wholesale Market Information Disclosure Obligations – Authority Code amendment consultation paper, 9 November 2012, page B <http://www.ea.govt.nz/dmsdocument/13939>

3 How the current disclosure obligations work

3.1 A wide-ranging review led to the current obligations

The current WMI disclosure obligations in clause 13.2A of the Code became operational on 1 October 2013, after:

- a wide-ranging review of wholesale market information issues by the WAG in 2011 and 2012
- Authority consultation on proposed changes to clause 13.2 of the Code (including adding clause 13.2A) in 2012 and 2013.

Appendix A summarises the key steps in the review and Code development process that led to the current obligations.

3.2 Current regime includes a number of elements

The Authority's current WMI disclosure regime is broader than clause 13.2A of the Code, and includes a number of other elements:

- a) Authority guidelines to assist participants with meeting their disclosure obligations under clause 13.2A
- b) provisions in clause 13.2 regarding misleading, deceptive or incorrect wholesale market information
- c) specific provisions in the Code requiring publication of market information such as spot prices and bids/offers through the Wholesale Information and Trading System (WITS)
- d) the hedge disclosure and spot price risk disclosure obligations in the Code
- e) the Authority's monitoring and compliance arrangements.

The Authority also encourages and facilitates voluntary disclosure of wholesale market information through a variety of means. An example is the voluntary publication of snowpack information by key hydro generators.

3.3 This review focusses on the obligations and exclusions in clause 13.2A

The disclosure obligations in clause 13.2A of the Code are the core of the WMI disclosure regime. The focus of this WAG discussion paper is the WMI disclosure obligations in clause 13.2A of the Code, and in particular, the exclusions in subclause 13.2A(2) (as set out in Table 2).

3.4 A closer look at the details of clause 13.2A

The WMI disclosure obligations in clause 13.2A provide a mechanism to ensure that the stakeholders in the wholesale electricity market (interested parties) are informed of relevant information at all times.

The disclosure obligations are designed to reduce information asymmetry in the wholesale electricity market so that:

- a) an interested party is not materially disadvantaged against another, and
- b) interested parties are able to make informed decisions.

Clause 13.2A creates a 'continuous disclosure' obligation for participants that hold information that is about themselves and relevant to the wholesale electricity market.

Relevant information is information the participant expects, or ought reasonably to expect, if made publicly available, will have a material impact on prices in the wholesale markets. The guidelines assist participants apply the ‘material impact on prices’ test, setting out the Authority’s expectations and the factors participants might usefully consider.

Relevant information can only be information that the participant holds about itself. A participant is not required by clause 13.2A to disclose information that it holds about another party.

The central obligation is that participants must make relevant information readily available to the public unless an exclusion applies. These exclusions are the focus of this review. They are listed in Table 2 and are discussed in detail in the remainder of this paper.

It is the responsibility of the participant to determine if the information they hold must be disclosed under clause 13.2A.

Figure 3 is a flowchart showing how a participant can apply clause 13.2A to determine whether information they hold must be disclosed.

The key elements of the clause 13.2A disclosure obligations are described in more detail in

Table 2. The description is based on the wording in the Code itself.

Figure 3: Deciding if information must be disclosed under 13.2A

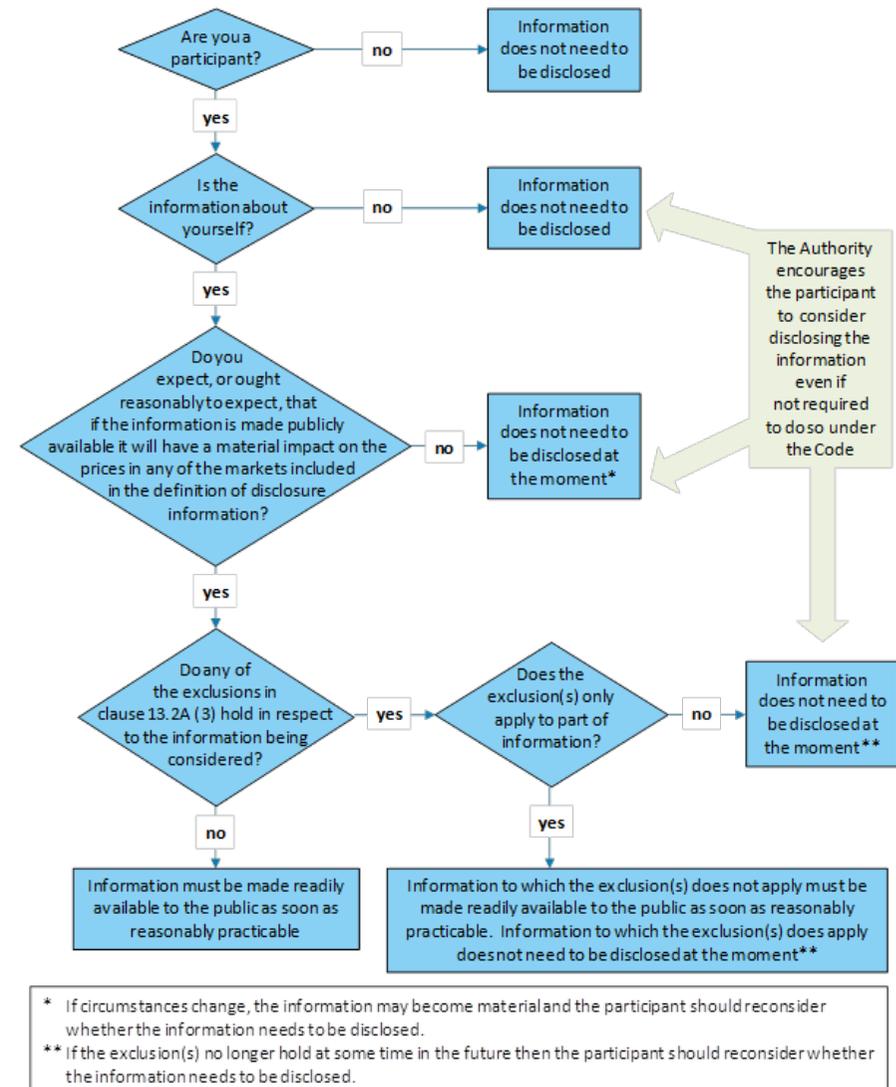


Table 2: Summary of the current WMI disclosure obligations in clause 13.2A of the Code

Who do the disclosure obligations apply to?	The disclosure obligation applies to all participants, as defined in Part 1 of the Code and in the Act. Each participant must make disclosure information readily available to the public, free of charge.
What is disclosure information?	For these disclosure obligations, “disclosure information” means information which: <ul style="list-style-type: none"> (a) the participant holds about itself; and (b) the participant expects, or ought reasonably to expect, if made publicly available, will have a material impact on prices in: <ul style="list-style-type: none"> i) the spot market for electricity, including the process for setting: <ul style="list-style-type: none"> – real time prices – forecast prices and forecast reserve prices – provisional prices and provisional reserve prices – interim prices and interim reserve prices – final prices and final reserve prices or ii) the markets for ancillary services or iii) the hedge market for electricity, (including Financial Transmissions Rights (FTRs)).

What exclusions apply?	<p>A participant is not required to make the information readily available to the public, if:</p> <ul style="list-style-type: none"> (a) the disclosure information is excluded Code information (as defined in Part 1 of the Code); or (b) making the disclosure information readily available to the public will commercially disadvantage the participant in a material manner; or (c) the participant is bound by a legal obligation to keep the disclosure information confidential; or (d) making the disclosure information readily available to the public will be a breach of law; or (e) the disclosure information is readily available to the public; or (f) the disclosure information concerns an incomplete proposal or negotiation; or (g) the disclosure information comprises matters of supposition or is insufficiently definite to warrant being made publicly available; or (h) the participant claims legal professional privilege or privilege against self-incrimination in respect of the disclosure information; or (i) the disclosure information is a trade secret. <p>A participant must not enter into a confidentiality agreement with another person with the intent of avoiding the disclosure obligations.</p>
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Who has to demonstrate that an exclusion applies?	If requested by the Authority, a participant who relies on an exclusion must demonstrate that the disclosure information continues to be the subject of an exclusion.
When should the information be readily available to the public?	<p>The participant must make disclosure information readily available to the public:</p> <p>(a) as soon as practicable after becoming aware of the information; or</p> <p>(b) if one of the exclusions applies, as soon as practicable after the information ceases to fall within one of those exclusions, provided it is still disclosure information.</p> <p>If information ceases to be disclosure information, a participant is no longer required to keep making the information readily available to the public.</p>
What does readily available to the public mean?	Readily available to the public means the information is available to the public, free of charge in a readily accessible place and in a useable form.

3.5 Authority guidelines help explain the 13.2A obligations

The Authority has published guidelines on the WMI disclosure obligations.⁶

The purpose of the guidelines is to:

⁶ The guidelines are available at: <http://www.ea.govt.nz/dmsdocument/15138>

- a) set out the Authority's expectations for participants' compliance with their disclosure obligations in the Code
- b) provide guidance to participants bound by the disclosure obligations to assist them in making disclosure decisions
- c) provide guidance to interested parties as to what information is likely to be available under the disclosure obligations.

The guidelines cover:

- a) why an effective information disclosure regime is important
- b) what the disclosure obligations in the Code are
- c) who the disclosure obligations apply to
- d) what disclosure information is
- e) what exclusions apply to disclosure information
- f) who has to demonstrate an exclusion applies
- g) when and for how long information should be made readily available to the public
- h) how the information should be made readily available to the public.

3.6 NZX continuous disclosure obligation was a model

Clause 13.2A was modelled on comparable provisions for companies listed on the New Zealand stock exchange (NZX). The Authority modified the drafting for an electricity market context, shifting the focus from share prices to electricity market prices.

NZX continuous disclosure rules require issuers to disclose material information immediately. This is defined as information in relation to an issuer that:

- a) a reasonable person would expect, if it were generally available to the market, to have a material effect on the price of the issuer's quoted securities, and
- b) relates to particular securities, a particular issuer, or particular issuers, rather than to securities generally, or issuers generally.

However, material information does not need to be released when:

- a) a reasonable person would not expect the information to be disclosed, and
- b) the information is confidential and its confidentiality is maintained, and
- c) one or more of the following [exclusions] applies:
 - the release of information would be a breach of law, or
 - the information concerns an incomplete proposal or negotiation, or
 - the information comprises matters of supposition or is insufficiently definite to warrant disclosure, or
 - the information is generated for the internal management purposes of the issuer, or
 - the information is a trade secret.

Some of the exclusions now in clause 13.2A of the Code already existed in the earlier Code provisions (prior to the 2013

amendment). Others came through from the exclusions in the NZX regime.

Table 3 compares the current clause 13.2A exclusions with those in the NZX provisions.

The WAG also noted that the NZX rules prohibit insider trading, and there are substantial penalties if a party breaches these rules. No such insider trading prohibition exists in the Code.

Table 3: Comparing Code and NZX exclusions

Code exclusion	Comparable exclusion in NZX?	Comment
a) excluded Code information	✘	This is information required to be kept confidential under the Code or Act. In effect, this exclusion was in the Code prior to the 2013 Code amendment (definition of relevant information)
b) commercial disadvantage	✘	This exclusion was in the Code prior to the 2013 Code amendment (clause 13.2A) and was retained with minor modifications
c) legal obligation to keep confidential	?	NZX: "information is confidential and its confidentiality is maintained" is one of three 'safe harbour' provisions

Code exclusion	Comparable exclusion in NZX?	Comment
d) breach of law	✓	NZX: "the release of information would be a breach of law"
e) readily available to public	✗	In effect, this exclusion existed in the Code prior to the 2013 Code amendment (definition of relevant information)
f) incomplete proposal or negotiation	✓	NZX: "information concerns an incomplete proposal or negotiation"
g) information insufficiently definite	✓	NZX: "information comprises matters of supposition or is insufficiently definite to warrant disclosure"
h) legal privilege	✗	
i) trade secret	✓	NZX: "the information is a trade secret"

3.7 The Authority explored concerns with the commercial disadvantage exclusion before finalising clause 13.2A

In mid-2013, before finalising the Code amendments that are now clause 13.2A, the WAG notes that the Authority further considered concerns with exclusion (b) commercial disadvantage in light of:

- submissions on the draft Code amendments in late 2012
- feedback at the participant workshop held February 2013
- experience with preparing worked examples for the guidelines.

The Authority also observed that the commercial disadvantage exclusion likely meant that, overall, the Code disclosure regime was less onerous than the NZX disclosure regime which did not include such a provision.

The Authority's thinking was set out in its WMI disclosure guideline consultation paper (26 March 2013).⁷

On balance, the Authority considered it appropriate to retain the commercially disadvantage exclusion. Its rationale can be summarised as follows:

- a) retaining the exclusion was consistent with the Code amendments proposed by the WAG and then consulted on by the Authority in late 2012
- b) there was no evidence brought forward through either the WAG process nor submissions that indicated a net public benefit would be achieved by removing this exclusion:
 - on the one hand, removing the exclusion would likely improve the availability of information which could improve decision making and result in efficiency improvements, especially allocative and productive efficiency
 - however, on the other hand, removing this exclusion would likely reduce the incentives on participants to innovate and

⁷ <http://www.ea.govt.nz/dmsdocument/14570>

improve their systems and services because their “property right” over information pertaining to these would be reduced as they would have to make it available to third parties

- c) retaining the exclusion was closer to the status quo and therefore less likely to impose greater compliance costs
- d) the Authority had noted a greater willingness amongst participants to share information than had been observed in the past.

3.8 The Authority anticipated this review of the WMI disclosure regime

At the time that it finalised the Code amendments in mid-2013, the Authority also stated its intention to monitor the effectiveness of the new WMI disclosure regime following implementation.

The Authority noted that it could take further action (including further Code amendment proposals) if it considered that the arrangements were failing to deliver the WMI disclosure sought.

The Authority’s request to the WAG in late 2015 to review the WMI disclosure regime, particularly the exclusions, stems largely from this stated intention.

4 The WAG has identified concerns with the current exclusions in clause 13.2A

4.1 The WAG has drawn on a number of sources

The Authority asked the WAG to investigate whether the current exclusions are appropriate and efficient. The WAG began its investigation by drawing on a number of sources to identify possible concerns with the current arrangements. These sources include:

- a) the Authority's 2014 hedge market survey
- b) discussions with key parties (either directly or through the secretariat) including:
 - WAG members' own constituencies
 - correspondence from participants relating to information disclosure concerns
 - the Gas Industry Company (co-regulator for the gas sector)
 - NZX stock exchange staff
 - System Operator staff involved with the Planned Outage Co-ordination Protocol (POCP)
- c) comparison with NZX obligations and arrangements in some key overseas jurisdictions

4.1.1 Availability and accessibility of wholesale market information has improved with the new arrangements

Observations suggest that the availability and accessibility of wholesale market information has generally improved since the new WMI disclosure regime came into force on 1 October 2013.

For instance, the Authority's 2014 hedge market survey identified:

- a) That most respondents believed that there was sufficient information available to determine the market price for contracts in 2014.
- b) Respondents did not suggest there was any shortage of information available on how to manage risk.
- c) Respondents generally agreed that the Authority did have a role in providing information that helped promote competition and in educating consumers about the industry. Some felt the key role of the Authority was to ensure information was provided to enable a level playing field.

4.1.2 Some information is not being disclosed, or is not being disclosed in a timely fashion

Some parties have observed to the Authority that there has been information that they would have expected to be disclosed that has not been disclosed:

- in some cases this information has not been disclosed because it does not meet the definition of disclosure information or because an exclusion applies
- but there may also be cases where information has not been disclosed despite the information meeting the definition of disclosure information and no exclusions applying.

Behaviour that some parties have observed includes:

- a) plant outage announcements made after the OM Financial Limited (OMF) and NZX daily reports so that the information is not disseminated before the trading window

- b) plant dispatched in a way that was inconsistent with POCP declarations
- c) plant running when it is declared unavailable in POCP
- d) permanently retired plant coming back into service without notice
- e) information about major gas outage known by parties with gas contracts earlier than by other parties
- f) hedge trading activity in advance of major market announcements that might suggest some parties may have been aware of the impending announcement.

Some parties have also noted that even if failure to disclose information is not a significant issue yet, there is the potential for some of the disclosure exclusions to allow participants to withhold information that should be disclosed. This would create information asymmetries that may:

- a) discourage new entrants from entering the market, and/or
- b) lead to participants that do not have access to the information leaving the market.

In turn, this would reduce confidence and competition in the wholesale market.

4.2 Problem definition: some of the disclosure exclusions may not support the Authority's statutory objective

Clause 13.2A of the Code includes disclosure exclusions to accommodate instances where it would not be appropriate for disclosure information to be disclosed.

Based on the observations noted, the WAG considers there may be cases where some of the exclusions are allowing participants to avoid disclosing information that should be disclosed.

This potentially means that some exclusions may be frustrating the effectiveness of the WMI disclosure regime in delivering the outcomes the Authority seeks.

The WAG has therefore characterised the problem definition as follows:

Some of the exclusions in clause 13.2A of the Code may lead to information disclosure that does not optimally encourage competition, efficiency and reliability in the electricity market for the long-term benefit of consumers.

This problem definition links the exclusions in clause 13.2A of the Code to the Authority's statutory objective in section 15 of the Electricity Industry Act 2010 (Act):

To promote competition in, reliable supply by, and the efficient operation of, the electricity industry for the long-term benefit of consumers.

The WAG has reviewed the disclosure exclusions to assess which exclusions, if any, may be leading to information disclosure that does not optimally encourage competition, efficiency and reliability in the electricity market for the long-term benefit of consumers.

4.3 The WAG's review has identified other WMI disclosure issues outside the scope of this investigation

Some of the issues the WAG has identified when reviewing the exclusions are outside scope of this project and/or more appropriately considered by the Authority.

For these issues, the WAG intends making recommendations to the Authority on possible future Authority development work.

Insider trading issues

The WAG noted that there is no prohibition on insider trading under the Code. This is in contrast to some overseas wholesale electricity markets.

There is a close relationship between WMI disclosure and insider trading.

The WAG intends recommending that the Authority consider including the following in the Authority's future work programme:

- a) research on electricity market insider trading and market conduct regimes in other jurisdictions (eg Europe, Australia, North America)
- b) consideration of international practice in the context of the NZ electricity market, and whether Code amendments might be warranted in this area in the future.

Interaction between NZ electricity market and ASX trading regime

The WAG notes that the interaction between the NZ electricity markets and the ASX trading regime is increasing in scope and

complexity. This interaction has potential implications for WMI information disclosure here.

The WAG intends recommending that the Authority consider including the following in the Authority's future work programme:

- a) liaise with relevant Australian regulatory bodies to explore trading and disclosure obligations for NZ market participants who are also trading on ASX
- b) publicise trading and disclosure obligations for NZ market participants who are also trading on ASX
- c) include relevant material in the WMI disclosure guidelines.

5 How the WAG reviewed the exclusions

5.1 The WAG adopted a three-step assessment framework

The WAG has used a three-step assessment framework to review the disclosure exclusions in clause 13.2A (2) of the Code, described in Table 4.

Table 4: The three-step assessment framework

<p>Step 1 Remove 'necessary exclusions' from further review</p>	<p>The WAG considers an exclusion is 'necessary' if it is not considered reasonable under any circumstance to require a participant to disclose under the exclusion.</p> <p>Where the WAG has determined that an exclusion is a necessary exclusion, that exclusion was not considered further in the WAG's review process.</p>
<p>Step 2 Case study assessment of remaining exclusions</p>	<p>The WAG tested each of the remaining disclosure exclusions using hypothetical scenarios.</p> <p>This assessment assisted the WAG's understanding of whether each disclosure exclusion is optimally encouraging competition, efficiency and reliability in the electricity market for the long-term benefit of consumers.</p>
<p>Step 3 Identify practicable options to address concerns</p>	<p>The WAG explored a range of possible options to address the concerns identified in Step 2.</p> <p>The WAG undertook a qualitative assessment of the options to identify a short list of options it considers have the potential to deliver cost-effective solutions.</p>

5.2 A quantitative assessment was neither practicable nor warranted at this stage of the review process

The WAG was tasked with reviewing the exclusions within the framework of the existing WMI disclosure regime. A quantitative assessment of the costs and benefits of WMI disclosure, per se, was outside the scope of its review.

Furthermore, the WAG acknowledged that it was not well-placed to quantify the incremental costs and benefits various parties might face if one or more exclusions were to be amended. Rather, the WAG notes that a key objective of this discussion paper is to seek feedback from interested parties on the costs and benefits associated with the options the WAG is exploring.

The WAG considered therefore that a detailed quantitative assessment was neither practicable nor warranted at this stage of the review process.

The WAG considers that a case study analysis combined with a qualitative assessment of the options it identified is appropriate for this review.

In undertaking its review, the WAG has, however, been mindful of the economic framework the Authority developed as part of its earlier work to establish what is now clause 13.2A.⁸

In summary, the Authority considered that:

⁸ "Wholesale Market Information Disclosure Obligations – consultation paper", Electricity Authority, 9 November 2012, <http://www.ea.govt.nz/dmsdocument/13939>

- a) the economic benefits of Clause 13.2A would come from:
 - enhanced confidence in the electricity market
 - reduced monitoring costs
 - reductions in risk, uncertainty and the costs of obtaining information
- b) economic benefits need to be considered against possible costs of information provision in a market:
 - reduction in incentives to innovate
 - facilitation of collusion
 - information infrastructure costs

The WAG considers that its case study analysis and the qualitative assessment of the options it identified is consistent with this economic framework.

Submitters are invited to consider this economic framework when making their submissions on the costs and benefits associated with the options the WAG is exploring.

6 WAG assessment Step 1: Ruling out ‘necessary exclusions’ from further investigation

There are some disclosure exclusions that the WAG considers do not need to be investigated further as they are necessary exclusions. That is, the WAG considers it would not be reasonable under any circumstance to require a participant to disclose under that exclusion.

Table 5 lists all nine exclusions in clause 13.2A along with the WAG’s comment on whether each of the exclusions is a necessary exclusion. The rows show a traffic light colour-coding:

- **green** for necessary exclusions that are not reviewed further
- **orange** for exclusions that require further assessment

Table 5: Step 1 – is the exclusion necessary?

A necessary exclusion?		Comment
a) the disclosure information is excluded Code information	Yes	Excluded Code information is information that is required to be kept confidential under the Code or Act.
b) doing so will commercially disadvantage the participant in a material manner	No	To be considered further in the case study assessment (step 2)
c) the participant is bound by a legal obligation to keep the disclosure information confidential	No	To be considered further in the case study assessment (step 2)

A necessary exclusion?		Comment
d) doing so will be a breach of law	Yes	Cannot require participants to disclose information when it would be a breach of law to do so.
e) the disclosure information is already readily available to the public	No	To be considered further in the case study assessment (step 2)
f) the disclosure information concerns an incomplete proposal or negotiation	No	To be considered further in the case study assessment (step 2)
g) the disclosure information comprises matters of supposition or is insufficiently definite to warrant being made readily available to the public	No	To be considered further in the case study assessment (step 2)
h) the participant claims legal professional privilege or privilege against self-incrimination in respect of the disclosure information	Yes	Cannot require participants to disclose when they claim legal professional privilege or privilege against self-incrimination.
i) the disclosure information is a trade secret	Yes	Cannot require participants to disclose wholesale market information that is a trade secret.

7 WAG assessment Step 2: Case study assessment of the remaining exclusions

7.1 Five hypothetical scenarios tested the remaining exclusions

In the second part of the assessment, the WAG tested the remaining exclusions (that is, exclusions (b), (c), (e), (f) and (g)) using the five hypothetical scenarios described in Table 6.

The WAG considers that the information examined in each of the scenarios would have a material impact on wholesale market prices and should be disclosed. Thus these hypothetical scenarios help assess whether the disclosure exclusions are optimally encouraging competition, efficiency and reliability in the electricity market.

Table 6: Five hypothetical scenarios to test exclusions

Hypothetical scenario	Description
generation outage	a major (partially) planned outage of generation
gas facility outage	a major (partially) planned outage of gas processing facilities that leads to a major (partially) planned outage of a gas generator
direct consumer outage	a major (partially) planned change in demand by a large direct consumer
distribution or transmission outage	a major (partially) planned outage of a distribution or transmission asset
financial hedge contract	a participant enters a major new hedge contract

For each hypothetical scenario, the WAG applied the provisions of clause 13.2A of the Code.

The WAG did this by considering each of the questions in the flowchart in Figure 3 to determine whether the information would need to be disclosed under clause 13.2A.

Some further notes about the scenarios:

- Scenarios exploring different types of outage are based on ‘partially planned’ outages – the outage is planned in the sense that the asset owner knows they need to have a major outage, but there is some scheduling flexibility for that outage.
- For the gas facility outage scenario, the WAG has applied the provisions of clause 13.2A for information relating to both the gas processing facilities and the gas generator.

The WAG then considered the combined results of the scenario assessment to identify which of the exclusions assessed may be frustrating delivery of an effective disclosure regime.

It is important to emphasise that the exclusions in clause 13.2A are separated by ‘or’. This means that a participant only needs to find one exclusion it can rely on to be able to avoid disclosure.

7.2 Combining the assessment across all five scenarios

The WAG’s summary assessment across all five scenarios is shown in Table 7.

Table 7: Summary assessment across all five hypothetical scenarios

	Generation outage	Gas facility outage		Direct consumer outage	Distribution or Transmission outage		Financial position
	a major (partially) planned outage of generation	a major (partially) planned outage of gas processing facilities	a major (partially) planned outage of a gas-fired generator	large direct consumer, planned change in demand	a major (partially) planned outage of a distribution asset	a major (partially) planned outage of a transmission asset	taking a significant new position, or entering a major new contract
Are they a participant?	yes	no	yes	yes	yes	yes	yes
Is it info about itself?	yes		yes	yes	yes	yes	yes
Have material impact on wholesale price?	yes		yes	maybe	maybe	yes	maybe
Do the exclusions under the current regime apply?							
b) commercial disadvantage	yes		yes	maybe	no	no	yes
c) Legal obligation	no		yes	yes	no	no	maybe
e) public info	maybe		no	no	maybe	maybe	partial
f) Incomplete negotiation	maybe		maybe	maybe	no	no	no
g) info insufficiently definite	yes		yes	yes	maybe	maybe	no
Can a party rely on an exclusion to avoid disclosure?	probably yes	n/a	probably yes	probably yes	probably no	probably no	probably yes

Here are the WAG's key conclusions from its assessment using the hypothetical scenarios:

7.2.1 Timely and accurate information disclosure on outages potentially undermined by some of the exclusions

Four of the five scenarios explore various types of outage information. The WAG considers that timely access to accurate information on outages is very important, noting:

- a) the WAG's earlier work on wholesale market information (2012/13) identified outage information as critical to forward price discovery
- b) the hedge market survey identified outage information as an area where participants wanted more information⁹
- c) many of the concerns around lack of disclosure relate to outage information, particularly generation outages (see section 4.1.2)
- d) some overseas jurisdictions (for instance European Union energy markets) have specific obligations around outage disclosure¹⁰

For all outage scenarios the WAG's assessment suggests it is likely that a participant with outage information can rely on at least one exclusion to avoid disclosing outage information if it wants to do so.

While all five exclusions have some potential to undermine disclosure, as shown in Table 6, three exclusions feature more prominently:

- exclusion (b) commercially disadvantage
- exclusion (c) legal obligation to maintain confidentiality

⁹ <http://www.ea.govt.nz/dmsdocument/19443>

¹⁰ https://www.acer-remit.eu/portal/custom-category/remit_doc

- exclusion (g) insufficiently definite

The WAG concludes that exclusions (b), (c), and (g) have the potential to frustrate effective operation of the disclosure regime in relation to outage information.

7.2.2 Timely and accurate information disclosure on major financial contracts potentially undermined by one exclusion

The fifth scenario explores information relating to major financial contracts or hedges. The WAG considers that timely access to accurate information in this area is very important, noting:

- a) the WAG's earlier work on wholesale market information (2012/13) identified hedge disclosure as critical to forward price discovery
- b) the Authority's work in the area of hedge disclosure.¹¹

The WAG's assessment suggests that it is likely that a participant can rely on exclusion (b) to avoid disclosing major financial contract information if it wants to do so.

The WAG concludes that exclusion (b) has a strong potential to frustrate effective operation of the disclosure regime in relation to major financial contract information.

7.3 Conclusion: two exclusions have the potential to frustrate effective operation of the disclosure regime

Drawing on insights from scenario assessment, the WAG has explored the exclusions further. It has focussed on:

¹¹ <http://www.ea.govt.nz/operations/wholesale/hedges/electricity-hedge-market-disclosure-system/>

- factors that might suggest retaining the exclusion
- factors that might suggest removing or modifying the exclusion.

These factors are set out in Table 8. A traffic light colour coding shows the WAG's assessment of each exclusion based on its assessment:

- green for exclusions that do not appear to be problematic
- orange for exclusions that the WAG considers have some potential to frustrate effective operation of the disclosure regime
- red for exclusions the WAG considers have a strong potential to frustrate effective operation of the disclosure regime.

Based on this assessment the WAG has concluded that the existing WMI disclosure regime could be enhanced if concerns with the following exclusions could be addressed in a cost-effective way:

- exclusion (b) commercial disadvantage
- exclusion (g) information insufficiently definite.

The WAG also notes that the Authority itself had some residual concerns about exclusion (b) commercial disadvantage at the time that it made the Code amendment in 2013.

The outcome of the first two steps of the WAG's assessment of the exclusions is summarised in Figure 4.

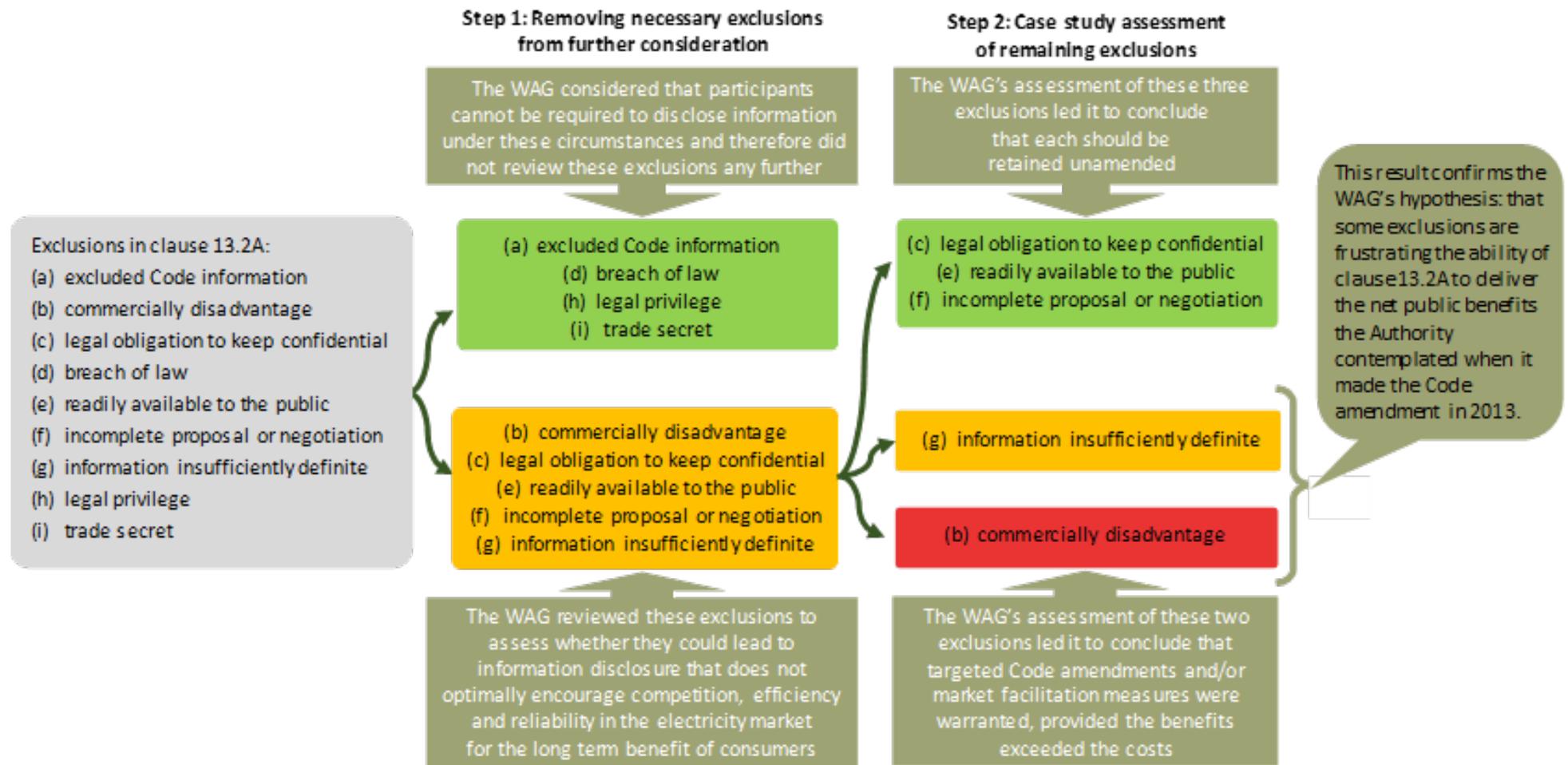
Q.1. What comment do you have on the WAG conclusion that the existing WMI disclosure regime could be enhanced if concerns with exclusions (b) and (g) could be addressed in a cost-effective way?

Table 8: Conclusions from hypothetical scenarios

Exclusion	Some factors that suggest retention	Some factors that suggest removal	WAG Conclusion
b) commercial disadvantage	<ul style="list-style-type: none"> • ‘edge of the wedge’ – if removed, participants could be required to disclose commercially sensitive information (eg hedge book), potentially adversely affecting competition • removal could result in shifting of risk and change of behaviour as people seek to minimise their risk • participants with business in electricity and other markets could be disadvantaged in other markets if required to disclose information under the Code yet their competitors are not under the same obligation • potential for this exclusion to be amended to strike a better balance 	<ul style="list-style-type: none"> • a very broad exclusion, easy to claim in many circumstances, and therefore an ‘out’ for participants not wanting to disclose • likely to result in information asymmetry • trading on undisclosed material information is a form of ‘insider trading’ often banned in organised markets • appears likely to lead to information disclosure that does not optimally encourage competition, efficiency and reliability in the electricity market for long term benefit of consumers • markets more liquid now than when this exclusion was last considered • no comparable exclusion in NZX 	remove or tighten
c) legal obligation not to disclose	<ul style="list-style-type: none"> • legal confidentiality is a commercial reality • clause 13.2A(6) lessens participants’ ability to use this to frustrate disclosure provisions 	<ul style="list-style-type: none"> • could result in information asymmetry amongst participants 	retain
e) readily available to public	<ul style="list-style-type: none"> • a sensible exclusion for efficiency purposes, as it avoids duplicate disclosure obligations • exclusion does not seem to present a problem 		retain

Exclusion	Some factors that suggest retention	Some factors that suggest removal	WAG Conclusion
f) incomplete proposal or negotiation	<ul style="list-style-type: none"> • a participant should not be required to disclose negotiations • potential for such information, if disclosed, to be inaccurate or misleading as it is subject to further change while the proposal or negotiations are not settled • continual updates to such information over time would be costly • comparable exclusion exists in NZX provisions • exclusion does not seem to present a problem 	<ul style="list-style-type: none"> • arguably some overlap with exclusion (g) - information insufficiently definite, although both (f) and (g) are included in NZX list of exclusions 	retain
g) information insufficiently definite	<ul style="list-style-type: none"> • balances provision of information, while avoiding misleading/confusing those accessing that information • comparable exclusion exists in NZX provisions • tighter drafting could possibly limit the use of this exclusion (eg require disclosure of any parts of the information that are sufficiently definite) and improve outcomes • further guidance could assist participants better understand their obligations in this area (eg, guidance on determining when information becomes sufficiently definite) 	<ul style="list-style-type: none"> • a broad exclusion, and potentially easy to claim • may lead to information disclosure that does not optimally encourage competition, efficiency and reliability in the electricity market for long term benefit of consumers 	retain or tighten

Figure 4: The WAG’s step-wise consideration of the exclusions in clause 13.2A of the Code



8 Step 3: Developing promising options to address the concerns the WAG has identified

8.1 Towards a package of WAG recommendations

The WAG's review of the exclusions has identified a number of concerns with the current WMI disclosure regime. Most of these explicitly relate to the exclusion themselves, but others are outside the scope of this project.

The WAG has explored two types of options for addressing concerns with the exclusions:

- Code amendments
- market facilitation measures.

The WAG acknowledges that a mixture of these might provide the most appropriate means of addressing its concerns (Figure 5).

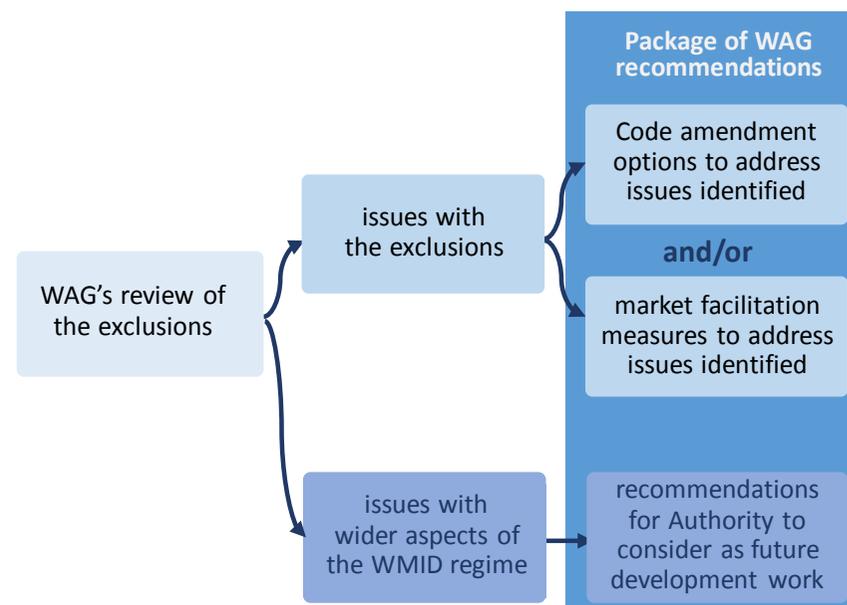
The WAG considers it is outside the scope of this review to propose options to address concerns with the wider regime. For these concerns it intends proposing some recommendations for the Authority to consider as future development work (section 4.3).

The remainder of this section focuses on options to address concerns with the exclusions.

8.2 A long list of possible Code amendments

The WAG sought input from Authority legal and compliance staff to explore possible Code amendment options. The WAG also drew on approaches in NZX and other relevant jurisdictions, and from its own work in earlier projects for the Authority (such as the Net Pivotal project).

Figure 5: Towards a package of WAG recommendations



The 'long list' of possible Code amendments the WAG identified is set out in Table 9. Some of the possible amendments could be used in combination with others (such as the "good conduct" provision), and some are mutually exclusive (such as keep versus delete exclusion (b)).

The long list is presented in Table 9 with no commentary on the relative merits of each. The WAG's consideration of each Code amendment is subsequently set out in:

- section 8.3 and Table 10 which discusses the Code amendments the WAG does not favour and why
- sections 8.4 and 8.5, and Table 12 which set out the WAG's assessment of the remaining Code amendments.

Table 9: Possible Code amendments – the ‘long list’

Possible Code amendment	
i) Good Conduct	Add a “good conduct” provision (based on the net pivotal obligation) <i>“Each participant must ensure that its conduct in relation to making disclosure information readily available under clause 13.2A is consistent with a high standard of trading conduct”</i>
ii) Purpose Statement	Add a “purpose statement” (drawn from the WMI disclosure regime purpose set out in the Guidelines) <i>“The purpose of [this clause 13.2A] is to:</i> <ul style="list-style-type: none"> <i>– build confidence in the electricity market</i> <i>– promote efficient monitoring and information provision</i> <i>– reduce any information asymmetry between informed and uninformed market participants and interested parties”</i>
iii) Reasonable Person (condition)	Add a “reasonable person would not expect disclosure” test (based on similar NZX provision) as a <u>condition</u> for the use of any exclusion <i>“... a participant is not required to make disclosure information readily available to the public if –</i> <i>(aa) a reasonable person would not expect the disclosure information to be made readily available; and</i> <i>(ab) one or more of the following [existing list of exclusions] apply:</i> <ul style="list-style-type: none"> <i>(a) the disclosure information is excluded Code information; or</i> <i>(b) ...”</i>
iv) Reasonable Person (exclusion)	Include a “reasonable person would not expect disclosure” test as an <u>exclusion</u> <i>“... a participant is not required to make disclosure information readily available to the public if –</i> <ul style="list-style-type: none"> <i>(a) the disclosure information is excluded Code information; or</i> <i>(b) ...</i> <i>(j) a reasonable person would not expect the disclosure information to be made readily available”</i>
v) Delete (b)	Delete exclusion (b) commercial disadvantage
vi) Tighten (b)	Tighten exclusion (b) commercial disadvantage to limit its scope to commercial disadvantage in another market
vii) No Trading	Include a provision preventing participants trading on disclosure information until it is disclosed
viii) Notify for (b)	Require a participant to formally notify the Authority whenever it is not disclosing relevant information because it is relying on exclusion (b) ¹²

¹² A similar reporting requirement is included in the European REMIT regime (Regulation on Wholesale Energy Market Integrity and Transparency) which is binding on all member states. More information can be found here <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:326:0001:0016:EN:PDF>

8.3 Some possible Code amendments on the ‘long list’ are not favoured

The WAG considered the set of possible Code amendments and took advice from Authority legal staff. It concluded that some of the possible Code amendments were not favoured, and therefore did not consider them further. These are set out in Table 10 with the WAG’s reasoning.

Table 10: Code amendment options not favoured

Possible Code amendment	Comment
ii) Purpose Statement	<ul style="list-style-type: none"> (a) adding a “good conduct” provision seems to be a better means of achieving similar outcomes (b) the objective of an effective WMI disclosure regime is set out in detail in the Guidelines (c) the use of “purpose statements” in one area of the Code can create difficulties in another area of the Code where there is no purpose statement
iii) Reasonable Person (condition)	<ul style="list-style-type: none"> (a) this would tighten the use of all exclusions, with arguably a significant potential for unintended consequences: <ul style="list-style-type: none"> - if this condition is not satisfied, the information must be disclosed regardless of whether an exclusion applies - if this condition is satisfied but none of the exclusions applies, the information must be disclosed (b) adding this test as an exclusion (rather than as a condition on the use of any exclusion) seems to be a better means of achieving the objectives, particularly if it is included as a replacement for exclusion (b) commercial disadvantage
vi) No Trading [on undisclosed information]	<ul style="list-style-type: none"> (a) this would involve significant policy considerations around insider trading across the market that are outside the scope of this review (b) the WAG could suggest that the Authority explore insider trading provisions in other jurisdictions (eg Europe) as input to considering whether a review should be added to the Authority’s work programme in the future
vii) Tighten exclusion (b)	<ul style="list-style-type: none"> (a) this is unlikely to address the concerns the WAG has identified with exclusion (b) (b) other options provide a preferable means of achieving better outcomes
viii) Notify for exclusion (b)	<ul style="list-style-type: none"> (a) this would increase accountability on participants and improve visibility of participants’ use of this exclusion (b) reporting obligation could create an administrative burden for participants/Authority that outweighs benefits

8.4 The remaining three potential Code amendments were assessed individually and in combination

The WAG explored the remaining potential Code amendments, individually and in combination, as described in Table 11.¹³

Table 11: Code amendment options the WAG is considering

Option	Label	Description
Option 1	GC	Add Good Conduct provision
Option 2	CD	Remove Commercial Disadvantage exclusion
Option 3	RP	Include Reasonable Person exclusion
Option 4 - Options 2,3 combined	CD+RP	Replace Commercial Disadvantage exclusion with Reasonable Person exclusion
Option 5 - Options 1,2 combined	GC+CD	Add Good Conduct provision AND remove Commercial Disadvantage exclusion
Option 6 - Options 1,2,3 combined	All	Add Good Conduct provision AND replace Commercial Disadvantage exclusion with Reasonable Person exclusion

These Code amendment options would also require consequential additions to the existing WMI disclosure guidelines as appropriate:

¹³ The combination of Good Conduct and the Reasonable Person exclusion was not considered as other options better address the concerns with exclusion (b).

- a new guidelines section to assist stakeholders understand the Authority's expectations for a Good Conduct provision and/or for a Reasonable Person exclusion
- removal from the guidelines of existing material relating to the Commercial Disadvantage exclusion.

8.5 The options can enhance information disclosure but there is a risk of unintended consequences

The WAG undertook a high level qualitative assessment of the options, exploring:

- a) the potential for the option to address the concerns identified and thereby deliver enhanced information disclosure relative to the status quo
- b) the potential for the option to increase the risk of unintended consequences (relative to the status quo), such as:
 - wider disclosure than anticipated
 - perverse risk management behaviours
- c) the uncertainty in estimating the magnitude of benefits and of the risk of unintended consequences
- d) the implementation and administration cost associated with the option (including amending Code and guidelines, participants changing their compliance procedures).

The WAG's high level assessment of these factors for each option is set out in Table 12 and illustrated in Figure 6. The assessment uses a scale of 1 to 10, relative to the status quo. It involves subjective judgements, and others may make a different assessment.

Table 12: Assessment of the Code amendment options

Option	Description	Commentary	Improved disclosure benefits	Increased risk of unintended consequences	Uncertainty of benefits & risk of unintended consequence	Impl. & admin Cost
Option 1 GC	Add Good Conduct	<ul style="list-style-type: none"> tightens whole WMI disclosure regime, including use of exclusions (b) and (g), by imposing overall good conduct requirement supports compliance regime by providing a “touchstone” when investigating an alleged breach conduct provisions are fairly common in market arrangements 	4	2	6	modest
Option 2 CD	Remove Commercial Disadvantage	<ul style="list-style-type: none"> removes ability for participants to claim commercial disadvantage exclusion (b) but has no effect for any other exclusions risk that disclosure obligations might over-reach and inadvertently require more disclosure than anticipated, potentially adversely affecting participants’ risk management behaviour 	7	8	8	low
Option 3 RP	Include Reasonable Person	<ul style="list-style-type: none"> a pragmatic exclusion, arguably already implied by the guidelines similar test included in NZX disclosure rules (but as a condition) 	1	2	3	low
Option 4 CD+RP	Replace Commercial Disadvantage with Reasonable Person	<ul style="list-style-type: none"> removes ability for participants to claim commercial disadvantage exclusion reduces option 2 risk of obligations over-reaching and inadvertently requiring more disclosure than anticipated, thereby reducing potential for adverse consequences on behaviour 	7	4	5	low
Option 5 GC+CD	Add Good Conduct & remove Commercial Disadvantage	<ul style="list-style-type: none"> combined effects of option 1 (GC) and option 2 (CD) tightens use of all exclusions, but risk that disclosure obligations might over-reach and inadvertently require more disclosure than anticipated, potentially adversely affecting participants’ risk management behaviour 	9	9	8	modest
Option 6 All	Add Good Conduct & replace Commercial Disadvantage with Reasonable Person	<ul style="list-style-type: none"> combined effects of option 1 (GC) and option 4 (CD+RP) tightens whole WMI disclosure regime and supports compliance regime lower risk means of removing commercial disadvantage exclusion 	9	5	4	modest

In this bubble chart:

- the vertical axis shows the WAG's assessment of the improvement in disclosure benefits
- the horizontal axis shows the WAG's assessment of the increased risk of unintended consequences
- the size of each bubble illustrates the uncertainty in estimating the magnitude of benefits and of the risk of unintended consequences
- the colour of each bubble illustrates likely implementation and administration costs:
 - green is low cost
 - orange is modest cost

8.6 There are three promising Code amendment options

On the basis of this assessment the WAG has drawn a number of key conclusions, summarised here.

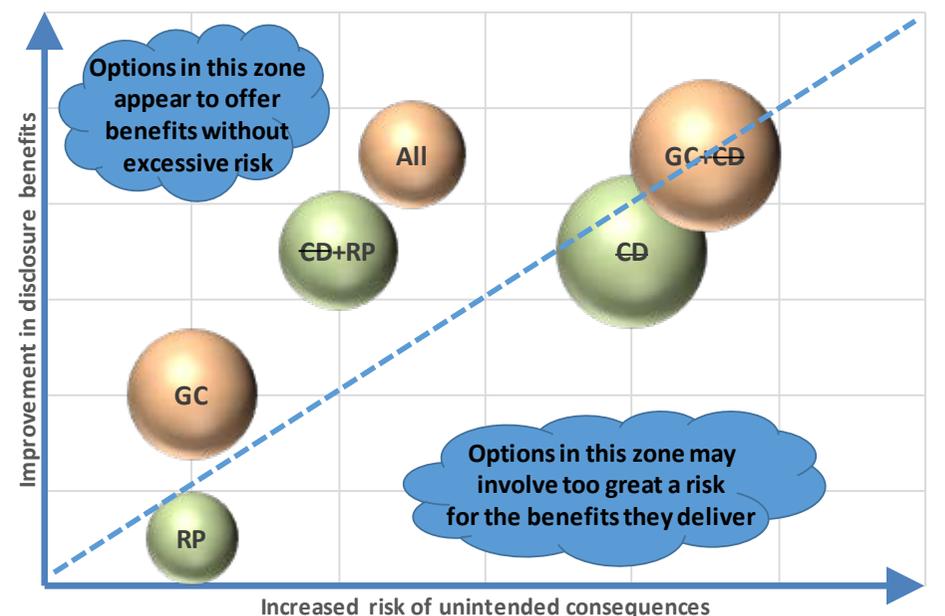
One of the options is in a zone below the 45° line where the potential risk of unintended consequences would appear to outweigh the benefits of increased disclosure. Two other options are largely in this zone. The WAG therefore considers that these three options are not favoured:

- €D – remove commercial disadvantage
- RP – add Reasonable Person exclusion
- GC+ €D – Good Conduct provision and remove Commercial Disadvantage

The remaining three options are promising, although there are trade-offs between them:

- adding a Good Conduct provision (GC) provides a small improvement for relatively low cost and risk of unintended consequences
- replacing the Commercial Disadvantage exclusion with the Reasonable Person exclusion (€D +RP) would deliver greater benefit, but with greater risk
- the ALL option has the greatest benefit, but the greatest risk.

Figure 6: Assessment of the Code amendment options



The WAG therefore considers that all three of the following Code amendment options offer the potential for addressing the concerns identified and improving WMI disclosure outcomes without imposing undue risk of unintended consequences:

- GC – add Good Conduct provision
- CD+RP – replace Commercial Disadvantage with Reasonable Person exclusion
- All – add Good Conduct provision and replace Commercial Disadvantage with Reasonable Person exclusion

The WAG considers that any of these three options would have a net public benefit relative to the status quo. Furthermore, the WAG considers that any of these three options would improve delivery of the net public benefits of wholesale market information disclosure that the Authority contemplated when it introduced clause 13.2A in 2013.

The WAG does not have a preferred option at this time. It seeks stakeholder feedback on the options, particularly the benefits, risks and costs of each. Submitters are invited to consider the economic framework summarised in section 5.2 in making their submissions.

Q.2. What comments do you have on the WAG's assessment of these Code amendment options?

Q.3. What comments do you have on the potential benefits, risks and costs of each option?

Q.4. What is your preferred option, and why?

8.7 Market facilitation measures could deliver additional benefits

The WAG has also developed a number of possible market facilitation measures that could further assist with addressing the concerns it has identified. These measures emerged from the WAG's consideration of particular areas of concern such as:

- a) participant's use of the system operator's POCP platform to simultaneously meet their outage co-ordination and WMI disclosure obligations under the Code
- b) participant's use of the Authority's hedge disclosure platform to simultaneously meet their hedge disclosure and WMI disclosure obligations under the Code
- c) possible lack of awareness or detailed understanding of WMI disclosure obligations, particularly for new entrant participants.

The WAG considers that the potential benefit of these market facilitation measures are independent of, and incremental to, the benefits of the possible Code amendment options considered in the previous section. The WAG suggests these measures should be considered even if the Authority decides not to pursue Code amendments.

8.7.1 Improve the WMI disclosure guidelines

The WAG endorses the value of the Authority's existing WMI disclosure guidelines. The purpose of the guidelines is to:¹⁴

- a) set out the Authority's expectations for participants' compliance with their WMI disclosure obligations in the Code

¹⁴ The guidelines are available at: <http://www.ea.govt.nz/dmsdocument/15138>

- b) provide guidance to participants bound by the WMI disclosure obligations to assist them in making disclosure decisions
- c) provide guidance to interested parties as to what information is likely to be available under the WMI disclosure obligations.

The WAG considers that the existing guidelines could be enhanced in the following areas:

- a) include more worked examples to assist participants
- b) include more specific guidance for participants using the system operator's POCP platform for meeting their clause 13.2 WMI disclosure obligations relating to outages
- c) include more specific guidance for participants using the Authority's hedge disclosure regime for meeting clause 13.2 obligations relating to hedges.

8.7.2 Raise participant awareness and understanding

The WAG acknowledges that the Authority's work in the area of WMI disclosure was undertaken several years ago. Since that time the emergence of new entrant participants, coupled with changes within existing participant organisations, may have reduced overall awareness and understanding of the WMI disclosure regime.

This suggests that there could be value in refreshing participant awareness and understanding of the WMI disclosure regime.

The WAG suggests the following market facilitation measures be considered:

- a) hold a participant workshop as part of the current WMI disclosure project

- b) include a section on WMI disclosure obligations and the value of enhanced disclosure in a suitable Authority publication
- c) publicise the guidelines to raise awareness, and relocate the guidelines to a more prominent page on the Authority website.¹⁵
- d) ensure the documentation for new entrant participants includes suitable material on the WMI disclosure regime.

The improvements to the guidelines suggested in the previous section will also assist with raising participant awareness and understanding.

8.7.3 Encourage improvements in the use of POCP

The WAG acknowledges that POCP is run by the system operator on behalf of participants, and is a voluntary platform designed to assist:

- a) asset owners (generators, directly connected end users, owners or transmission and distribution assets) to meet their obligation to notify planned outages of assets that affect common quality
- b) the system operator to meet its obligations in relation to outage co-ordination and the provision of timely advice to asset owners on the security implications of notified planned outages.

These obligations are set out in Technical Code D of schedule 8.3 of part 8 of the Code.

¹⁵ The existing location is part of the WMI development project dating back to 2012-13 and now closed. New entrant participants may not be aware of this project and that guidelines were published as part of the implementation work.

The WMI Code amendment drafting and implementation timetable in 2013 explicitly noted the importance of avoiding requiring duplicate disclosure to meet the respective obligations. In particular, the implementation date was delayed to enable POCP amendments that allowed public access to key outage information. This meant that outage information in POCP met the “readily available to the public” test in the WMI disclosure obligations.

The WAG observes that many, if not all, assets owners appear to rely heavily on POCP to also meet their WMI disclosure obligations under clause 13.2 of the Code. This is an efficient outcome, provided the required WMI disclosure outcomes are delivered.

The WAG considers that WMI disclosure outcomes could be enhanced through encouraging improvements in the functionality of POCP and the way POCP is used. In particular:

- a) encourage better and/or more consistent use of the ‘tentative’ flag for outages posted in POCP
- b) encourage direct consumer participants and gas facility owners to make better use of POCP for outages
- c) investigate providing in POCP access to information from OATIS (the Open Access Transmission Information System for gas), ideally through an automated process.

Q.5. What comments do you have on the possible market facilitation measures the WAG has identified?

Q.6. Are there other market facilitation measures that should be considered?

Appendix A. Summary of key questions

Questions for submitters are listed here. They are also posed at various points throughout this discussion paper according to context.

Question No.	Question	Response
1	What comment do you have on the WAG conclusion that the existing WMI disclosure regime could be enhanced if concerns with exclusions (b) and (g) could be addressed in a cost-effective way?	
2	What comments do you have on the WAG's assessment of these Code amendment options?	
3	What comments do you have on the potential benefits, risks and costs of each option?	
4	What is your preferred option, and why?	
5	What comments do you have on the possible market facilitation measures the WAG has identified?	
6	Are there other market facilitation measures that should be considered?	

Appendix B. Timeline of wholesale market information disclosure development

Date	Development	Outcome
July 2011	WAG accepts Wholesale Market Information Project (WMIP) as work plan item	WAG considered a range of issues relating to the role of information in markets, the availability and accessibility of WMI, and the effectiveness of the existing disclosure arrangements.
23 March 2012	WAG publishes its WMIP discussion paper for consultation	WAG presented its review of existing arrangements and outcomes. WAG proposed amendments to clause 13.2 of the Code. WAG identified a number of areas for enhancing information including thermal fuel quantity, snowpack information, transmission and generation outage information.
9 August 2012	WAG submits its WMIP recommendations to the Authority Board	WAG recommended (amongst other things) that the Authority: <ul style="list-style-type: none"> • pursue amendments to clause 13.2 of the Code • pursue a 'facilitated disclosure' approach to enhancing availability and accessibility of thermal fuel quantity and snowpack information • initiate with Transpower a review of the Planned Outage Co-ordination Protocol (POCP) with a view to enhancing information on transmission and generation availability and outages of relevance to forward price curve evaluation and security of supply.
9 November 2012	Authority publishes a Code amendment consultation for clause 13.2	Authority proposed revised drafting for clause 13.2 including a new clause 13.2A, drawing heavily on the WAG recommendations.
15 February 2013	Authority holds participant workshop on draft guidelines	Authority presented revised WMI disclosure regime and draft guidelines to interested parties and sought feedback.

Date	Development	Outcome
26 March 2013	Authority consults on draft guidelines for clause 13.2	Authority published draft guidelines to assist participants understand the (draft) WMI disclosure obligations. Authority also provided feedback from submissions on the Code amendment consultation, but holds over decisions pending consultation on the guidelines.
14 June 2013	Code amendment gazetted	After considering submissions, the Authority finalised and published the Code amendment and guidelines. The revised clause 13.2 and new clause 13.2A were gazetted, but the operational date was set as 1 October 2013. The delay was to enable parties to take steps to be ready for compliance with the new regime, and for POCP amendments to be implemented (in particular, open access to POCP).
1 October 2013	Code amendment comes into effect	Revised clause 13.2 and new clause 13.2A became operational.