

Wholesale Market Information: Review of disclosure exclusions

WAG recommendations paper

5 December 2016

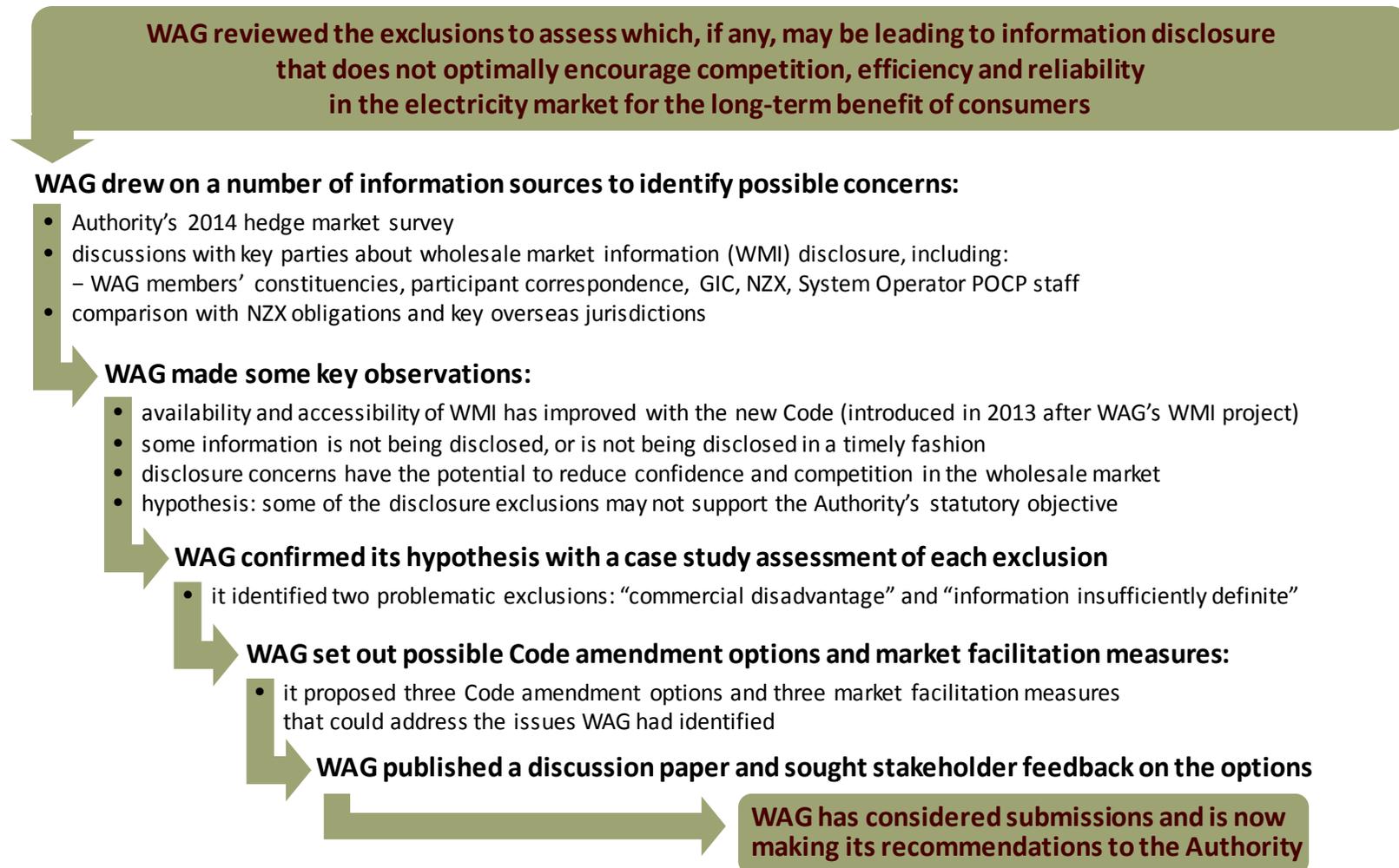
Note: The WAG has prepared this paper as its recommendations to the Electricity Authority Board. Content should not be interpreted as representing the views or policy of the Electricity Authority.

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The WAG's key conclusions and recommendations to the Authority

At the request of the Electricity Authority (Authority), the Wholesale Advisory Group (WAG) has reviewed the exclusions from making wholesale market information readily available to the public under clause 13.2A(2) in the Electricity Industry Participation Code 2010 (Code).



The WAG received seven submissions on its discussion paper published 28 June 2016.¹ The WAG has now completed its consideration of those submissions and its own further analysis. The submissions are summarised and available in full from the Authority's website.²

The WAG's key conclusions and recommendations are all listed here in Table 1. In this list, the WAG's recommendations to the Authority are highlighted in **bold red text** and marked with arrows. All conclusions and recommendations appear in shaded green boxes in the body of this recommendations paper, where they are explained in detail. Further background material can be found in the WAG's discussion paper.

Table 1: The WAG's key conclusions and recommendations to the Authority

1.	The WAG continues to support the Authority view that disclosure of high quality wholesale market information has significant benefits. More specifically, the WAG considers that access to high quality wholesale market information by a wide range of participants is important to electricity markets generally, and to electricity futures markets in particular.
2.	The WAG continues to support a well-targeted regulatory regime for delivering effective wholesale market information disclosure. It agrees with the Authority view that the WMI disclosure regime delivers a net public benefit.
3.	The WAG acknowledges that the WMI disclosure regime has delivered significant improvements, but there appear to be cases where some exclusions have allowed, and will continue to allow, participants to legitimately avoid disclosing information that would support an orderly and efficient wholesale market. Thus the WAG therefore considers that some exclusions may lead to disclosure outcomes that do not optimally support the Authority's statutory objective. It also considers that uncertainty around application of the exclusions could be creating difficulties in enforcing compliance with clause 13.2A.
4.	Based on its case study assessment the WAG concluded that the existing WMI disclosure regime could be enhanced if concerns with the following exclusions could be addressed in a cost-effective way: <ul style="list-style-type: none"> • exclusion (b) commercial disadvantage • exclusion (g) information insufficiently definite.

¹ Wholesale Market Information: Review of disclosure exclusions, WAG discussion paper, 28 June 2016, <http://www.ea.govt.nz/dmsdocument/20822>

² <http://www.ea.govt.nz/development/work-programme/risk-management/wholesale-market-information-clause-13-2-and-fuel/consultation/#c16099>

5.	<p>The WAG remains firmly of the view that the existing commercial disadvantage exclusion:</p> <ul style="list-style-type: none">a) allows participants to legitimately avoid disclosing wholesale market information that would support an orderly and efficient wholesale marketb) risks undermining confidence in the wholesale marketc) is frustrating the effectiveness of the WMI disclosure regime in delivering the outcomes the Authority seeksd) may lead to disclosure outcomes that do not optimally support the Authority's statutory objectivee) is likely to create difficulties in enforcing compliance with clause 13.2A due to uncertainty around application of this exclusion.
6.	<p>The WAG has concluded that possible risks with the 'information insufficiently definite' exclusion are outweighed by the benefits of this exclusion and there is no clear argument for its removal.</p>
7.	<p>The WAG considers that an increased Authority focus on monitoring and enforcement of clause 13.2A, and, in particular, use of its 'please explain' power under clause 13.2A(5)(a), is likely to:</p> <ul style="list-style-type: none">a) improve disclosure performance by participantsb) provide reliable data detailing which exclusions participants are relying on when not disclosingc) give further insights into options to improve disclosure outcomes, and the costs and benefits of eachd) enable more quantitative analysis of the current concerns.

8.	<p>The WAG's significant concerns with the commercial disadvantage exclusion can only be adequately addressed through a Code amendment that removes this exclusion from clause 13.2A.</p> <p>Adding a reasonable person exclusion mitigates the risk of unintended consequences associated with removing the commercial disadvantage exclusion, and has other benefits.</p> <p>➔ The WAG recommends that the Authority remove the commercial disadvantage exclusion and replace it with the reasonable person exclusion – the WAG's 'CD+RP' option. The WAG's qualitative assessment leads it to conclude that this Code amendment will yield a net public benefit, supports the Authority's statutory objective and is consistent with the Code amendment principles.</p> <p>The Authority could also consider including a good conduct provision in clause 13.2A (the WAG's 'ALL' option), which could provide further net benefits.</p> <p>➔ The WAG recommends that the Authority immediately increase its focus on monitoring and enforcement of clause 13.2A, particularly participants' use of the exclusions using the existing 'please explain' clause 13.2A(5)(a). This market facilitation measure is very likely to have significant net benefits in its own right, irrespective of the Authority's Code amendment decision.</p> <p>The WAG acknowledges that the Code amendment may take time to progress, and that the Authority may need further information to support the case. The WAG's recommended increased monitoring and enforcement of clause 13.2A will assist with this.</p>
9.	<p>The WAG remains of the view that all three of the market facilitation measures it has identified have significant potential to:</p> <ol style="list-style-type: none"> assist with addressing the WAG's concerns with the existing WMI disclosure regime further enhance WMI disclosure outcomes, thereby supporting the Authority's statutory objective. <p>➔ The WAG recommends that the Authority pursue these market facilitation measures as part of its on-going WMI disclosure project:</p> <ol style="list-style-type: none"> improve the WMI disclosure guidelines raise participant awareness and understanding of the WMI disclosure regime encourage improvements in the use of POCP. <p>The WAG considers that the potential benefits of these three market facilitation measures are independent of, and incremental to, the benefits of the Code amendment and enhanced monitoring and enforcement the WAG is also recommending.</p> <p>➔ The WAG recommends that the Authority work closely with the system operator (and POCP working group) regarding the POCP aspects of its recommended market facilitation measures.</p>

10.	<p>The WAG acknowledges that some submitters have wider concerns with hedge disclosure issues.</p> <p>➔ The WAG recommends that the Authority amend the WMI disclosure guidelines to clarify its expectations regarding disclosure of confidential aspects of participants' contract books.</p> <p>➔ The WAG recommends that the Authority consider the other matters submitters have raised in relation to hedge disclosure issues as part of the wider review of the hedge disclosure regime being contemplated for the Authority's future work programme.</p>
11.	<p>The WAG notes that some submitters have raised other issues with the WMI disclosure regime, but it considers these to be outside the scope of its review of the exclusions.</p> <p>The WAG refers these other matters raised in submissions to the Authority to be addressed in a manner the Authority considers appropriate.</p>
12.	<p>The WAG identified potentially relevant arrangements for insider trading and market conduct in other jurisdictions, but these were outside the scope of its review.</p> <p>➔ The WAG recommends that the Authority consider including the following in the Authority's future work programme:</p> <ul style="list-style-type: none"> 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.
13.	<p>The WAG identified possible disclosure issues for NZ participants trading on the ASX exchange that were outside the scope of its review.</p> <p>➔ The WAG recommends that the Authority consider including the following in the Authority's future work programme:</p> <ul style="list-style-type: none"> 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.

The members of WAG, as at the date of making these recommendations to the Electricity Authority Board, are:

John Hancock (Chair)

Phillip Anderson

Neal Barclay

John Carnegie

James Collinson-Smith

Stephen Drew

Alan Eyes

Chris Jewell

Stephen Peterson

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1 Introduction

1.1 The Authority asked the WAG to review aspects of the wholesale market information disclosure regime

The Authority 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 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.

At the time that it finalised the WMI 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.

1.2 The WAG published a discussion paper and sought feedback

Based on observations, comment from interested parties and its own analysis, the WAG formed a preliminary view 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.

The WAG published a discussion paper on 28 June 2016 that explored the concerns it had identified. The paper proposed some options for amending clause 13.2A of the Code, and some market facilitation measures, that might address the concerns. The WAG received seven submissions on the concerns identified and options for addressing them.

1.3 Summary: the current WMI disclosure regime has delivered improvements but can be further enhanced

The WAG has now completed its review of the current WMI disclosure obligations, focussing on the exclusions.

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 in the current WMI disclosure regime.

The WAG considers that the current regime can be further improved by adopting one or more of the Code amendments or market facilitation measures it has identified.

2 Why information is so important in markets

A well-functioning competitive market is central to delivering the government's objectives for the electricity sector.³ 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”.*⁴

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.⁵

³ New Zealand Energy Strategy 2011–2021, August 2011, <https://www.eeca.govt.nz/assets/Resources-EECA/nz-energy-strategy-2011.pdf>

⁴ Wholesale Market Information Project, WAG Discussion Paper, 23 March 2012, <http://www.ea.govt.nz/dmsdocument/12741>

⁵ 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 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, which would otherwise 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 exercise of market power, or other anti-competitive behaviour.

2.2 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.

2.3 Disclosure of high quality wholesale market information has significant benefits

Drawing on the economic literature and a number of Authority consultations that explored the importance of information in the wholesale electricity market⁶, the Authority considers that providing high quality wholesale market 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
- e) enables more effective market monitoring
- f) improves confidence in the electricity market.

Key WAG conclusion 1:

The WAG continues to support the Authority view that disclosure of high quality wholesale market information has significant benefits. More specifically, the WAG considers that access to high quality wholesale market information by a wide range of participants is important to electricity markets generally, and to electricity futures markets in particular.

⁶For 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>.

2.4 Effective wholesale market information disclosure regulation delivers net benefits

Information disclosure regulation is a common part of wholesale electricity market arrangements in other jurisdictions. This is in preference to voluntary or ad hoc disclosure arrangements.

The Authority considers that an effective information disclosure regime is a fundamental feature of a well-functioning electricity market.⁷ A well-targeted regulatory regime can deliver the benefits of effective information disclosure described above.

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 above) and concluded that the regime would deliver a net public benefit.

Key WAG conclusion 2:

The WAG continues to support a well-targeted regulatory regime for delivering effective wholesale market information disclosure. It agrees with the Authority view that the WMI disclosure regime delivers a net public benefit.

⁷ 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 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) hedge disclosure and spot price risk disclosure obligations
- 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.

3.2 This review focussed 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 the WAG review and this recommendations paper is the WMI disclosure obligations in clause 13.2A of the Code, and in particular, the exclusions in clause 13.2A(2) (as set out in Table 2).

3.3 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.

Clause 13.2A is set out in full in Table 2 below. Figure 1 is a flowchart showing how a participant can apply clause 13.2A to determine whether information they hold must be disclosed.

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

Relevant information is referred to with the term 'disclosure information' in the Code. Disclosure 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 Authority published guidelines to assist participants apply the 'material impact on prices' test, setting out the Authority's expectations and the factors participants might usefully consider.

The central obligation is that participants must make disclosure information readily available to the public unless an exclusion applies. The set of exclusions, the focus of this review, are listed in Table 2.

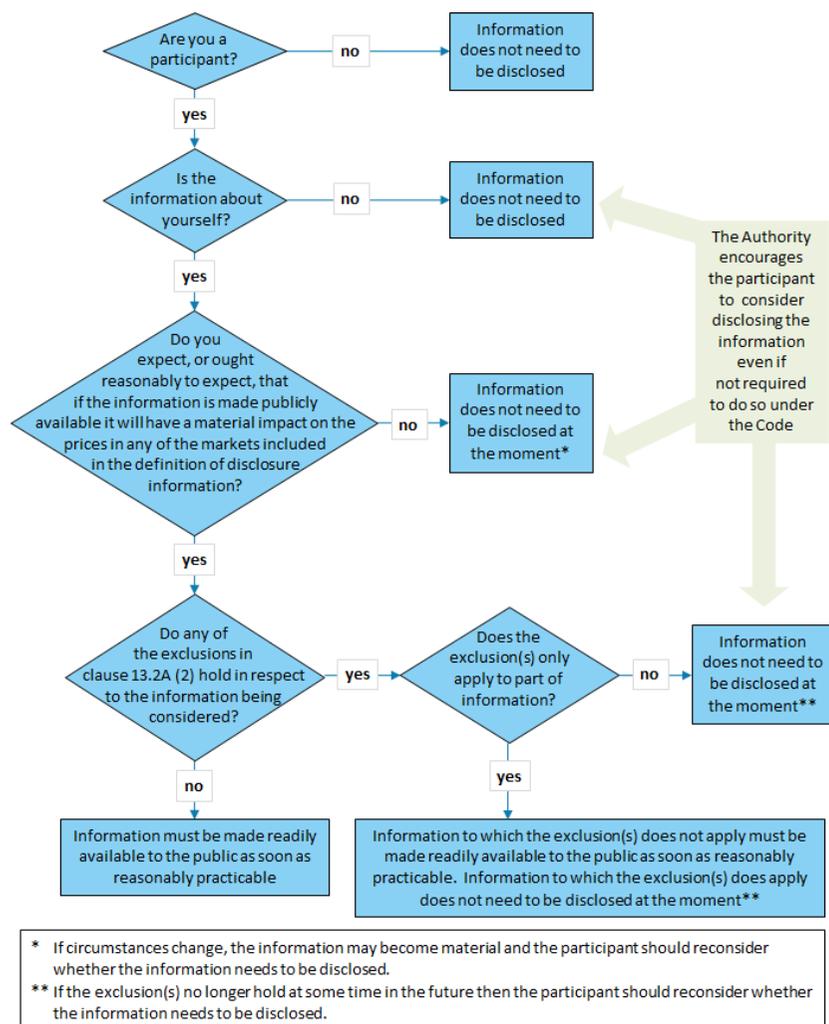
It is the responsibility of the participant to determine if the information they hold must be disclosed under clause 13.2A. If requested by the Authority, a participant who relies on an exclusion must demonstrate that the disclosure applies.

Table 2: Clause 13.2A of the Code

- 13.2A **Participant** must make **disclosure information** readily available
- (1) Each **participant** must make all **disclosure information** in relation to the **participant** readily available to the public, free of charge, as soon as reasonably practicable after the **participant** becomes aware of the information.
 - (2) Despite subclause (1), a **participant** is not required to make **disclosure information** readily available to the public if—
 - (a) the **disclosure information** is **excluded Code information**; or
 - (b) doing so 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) doing so will be a breach of law; or
 - (e) the **disclosure information** is already 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 readily available to the public; 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.
 - (3) A **participant** that relies on subclause (2) must, as soon as reasonably practicable, make the **disclosure information** readily available to the public, free of charge, if subclause (2) ceases to apply to the **disclosure information**.
 - (4) If information ceases to be **disclosure information**, a **participant** is no longer required to make the information readily available to the public.
 - (5) A **participant** that does not make information readily available to the public under this clause must, if required to do so by the **Authority**,—
 - (a) satisfy the **Authority** that subclause (2) applies to the **disclosure information**, if the **participant** relies on subclause (2); or
 - (b) satisfy the **Authority** that the information is not **disclosure information**.
 - (6) A **participant** must not enter into a confidentiality agreement with another person for the purpose of avoiding making **disclosure information** readily available to the public under this clause.

**focus of
this WAG
review**

Figure 1: Deciding if information must be disclosed under 13.2A



3.4 Authority guidelines help explain the 13.2A obligations

The Authority has published guidelines on the WMI disclosure obligations. The purpose of the guidelines is to:

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

3.5 NZX continuous disclosure obligation was a model

Some aspects of clause 13.2A were 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.

The WAG review considered a comparison⁸ of the NZX exclusions with the existing exclusions in clause 13.2A of the Code:

- some of the exclusions now in clause 13.2A already existed in the earlier Code provisions (prior to the 2013 amendment)
- others came through from the exclusions in the NZX regime.

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.

⁸ Table 3 of the WAG discussion paper compared current clause 13.2A exclusions with those in the NZX provisions.

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

4.1 The WAG drew 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 included:

- 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.

4.2 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) 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.

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

Some parties have observed to the Authority and/or to the WAG 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 returning to 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.

4.4 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.

Some parties have noted, and the WAG agrees, that even if failure to disclose information is not a significant issue yet, there is always the potential for some of the disclosure exclusions to allow participants to withhold information that should be disclosed. This on-going potential for non-disclosure is of significant concern.

Non-disclosure 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.

Based on the observations noted, the WAG concluded:

- a) there appear to be cases where some exclusions have allowed, and will continue to allow, participants to legitimately avoid disclosing information that would support an orderly and efficient wholesale market
- b) uncertainty around application of some exclusions could be creating difficulties in enforcing compliance with clause 13.2A.

The effect is 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, linking it to the Authority's statutory objective:

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.

Key WAG conclusion 3:

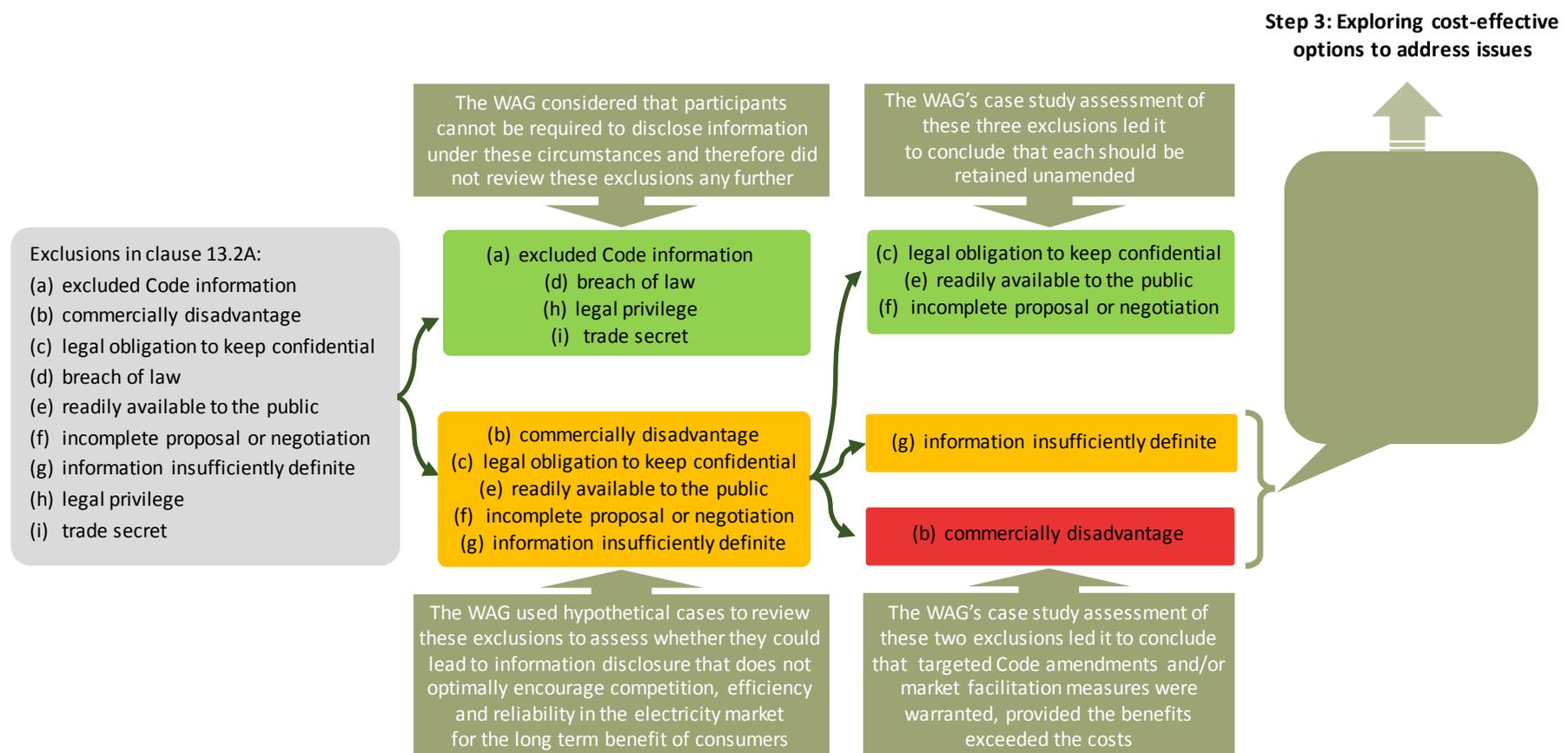
The WAG acknowledges that the WMI disclosure regime has delivered significant improvements, but there appear to be cases where some exclusions have allowed, and will continue to allow, participants to legitimately avoid disclosing information that would support an orderly and efficient wholesale market. Thus the WAG considers that some 13.2A exclusions may lead to disclosure outcomes that do not optimally support the Authority's statutory objective. It also considers that uncertainty around application of the exclusions could be creating difficulties in enforcing compliance with clause 13.2A.

5 How the WAG reviewed the exclusions

5.1 The WAG adopted a three-step assessment framework

The WAG used a three-step assessment framework to review the disclosure exclusions in clause 13.2A(2), as shown in Figure 2. Each of the steps is explained in detail in the WAG’s discussion paper, including, in particular, the case studies the WAG applied and its assessment.

Figure 2: WAG’s approach to reviewing the exclusions



5.2 Step 1: removing necessary exclusions from further consideration

The WAG determined that an exclusion was ‘necessary’ if it would not be reasonable under any circumstances to require a participant to disclose under that exclusion.

Four of the nine exclusions were removed from further consideration at this stage of the WAG’s assessment.

5.3 Step 2: case study assessment of the remaining five exclusions

The WAG developed hypothetical scenarios relating to outages of plant (generation, gas facilities, direct consumer plant and distribution/transmission) and new financial contracts. It chose these because:

- a) the WAG’s earlier work on wholesale market information (2012/13) identified timely and accurate information on outages and hedges 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
- d) some overseas jurisdictions (for instance European Union energy markets) have specific obligations around outage disclosure.¹⁰

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

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

The WAG considered 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 helped assess whether the disclosure exclusions are optimally encouraging competition, efficiency and reliability in the electricity market.

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 1 to determine whether the information would need to be disclosed under clause 13.2A.

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.

Key WAG conclusion 4:

Based on its case study assessment the WAG 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’s views on these two exclusions are set out in Table 3. Section 7 of the WAG discussion paper sets out the scenarios and WAG’s case study assessment in full detail.

The WAG also noted that the Authority itself had some residual concerns about exclusion (b) commercial disadvantage at the time that it made the Code amendment in 2013.¹¹

¹¹ See section 3.7 of the WAG’s discussion paper.

Table 3: Results of the case study assessment – WAG has concerns with two exclusions

Exclusion	Some factors that suggest retention	Some factors that suggest removal	Conclusion
b) commercial disadvantage  WAG gave this exclusion a red light assessment	<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 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
g) information insufficiently definite  WAG gave this exclusion an orange light assessment	<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

5.4 Step 3: developing promising options to address the concerns the WAG identified

The WAG's review of the exclusions identified a number of concerns with the current WMI disclosure regime. The WAG explored two types of options for addressing these concerns:

- Code amendments
- market facilitation measures.

The WAG acknowledges that a mixture of these might provide the most appropriate means of addressing its concerns (Figure 3).

The WAG also identified concerns with wider aspects of the WMI regime. It did not explore options to address these as they were outside scope. Instead the WAG has made recommendations for the Authority to consider as future development work (section 8).

5.4.1 The WAG identified and assessed a short list of Code amendment options

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).

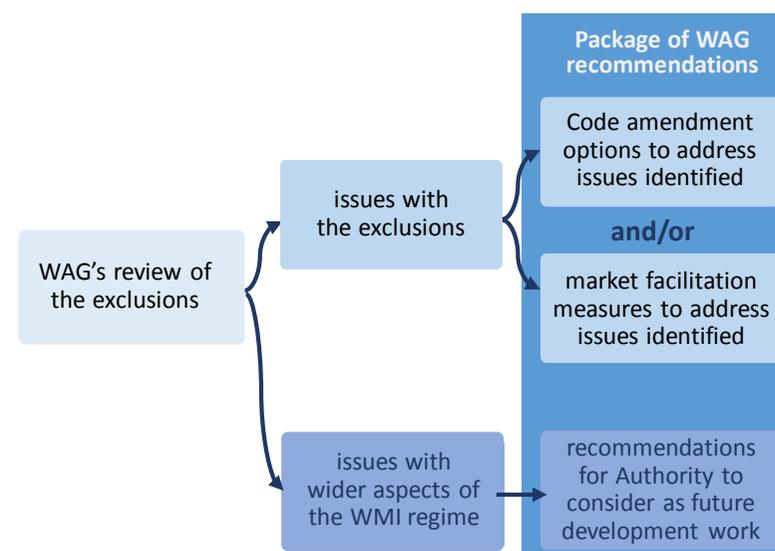
The WAG developed a long list of Code amendment options. It then reduced this to a short list after its own consideration and with input from Authority legal staff. The WAG undertook a qualitative assessment of the short list of Code amendment options, both individually and in combination. The short-listed options and assessment are discussed in section 6 of this paper.

5.4.2 The WAG identified possible market facilitation measures

The WAG also developed a number of possible market facilitation measures (section 7) that could further assist with addressing the concerns it identified. These measures emerged from the WAG's consideration of particular areas of concern such as:

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

Figure 3: Towards a package of WAG recommendations



5.5 A quantitative assessment is neither practicable nor warranted at this stage of the review process

The WAG was tasked with reviewing one aspect of the regime – the exclusions – within the framework of the existing WMI disclosure regime. It therefore decided that a quantitative assessment of the full WMI disclosure regime was outside the scope of its review.

The WAG considered that a case study analysis of the exclusions, combined with a qualitative assessment of the options identified, was appropriate for this review. The WAG acknowledged 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, through its discussion paper, sought feedback on the costs and benefits associated with the options it explored.

The WAG remains of the view that a detailed quantitative assessment is neither practicable nor warranted at this stage of the review process. It notes that if the Authority adopts the WAG recommendation to pursue Code amendments, then a regulatory statement and further consultation will be required.

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.¹² In summary:

- a) the economic benefits of Clause 13.2A would come from:
- enhanced confidence in the electricity market
 - reduced monitoring costs
 - reduction in risk, uncertainty and cost of obtaining information

¹² Wholesale Market Information Disclosure Obligations – consultation paper, Authority, 9 November 2012, <http://www.ea.govt.nz/dmsdocument/13939>

- 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 (refer section 6) is consistent with this economic framework.

5.6 The WAG published a discussion paper and sought stakeholder feedback

The WAG developed a discussion paper to engage with stakeholders. The paper was published on 28 June 2016 for an eight week submission period.

The WAG received submissions from seven stakeholders (Table 4). It considered the submissions received and held informal discussions with some parties who did not make formal submissions as input to developing this recommendations paper.

Table 4: Stakeholders who made submissions

Generators /Retailers	Consumers and Consumer groups	Other
<ul style="list-style-type: none"> • Genesis Energy • Mercury • Meridian Energy • Nova Energy • Pioneer Energy 	<ul style="list-style-type: none"> • Major Electricity Users' Group (MEUG) 	<ul style="list-style-type: none"> • Transpower

6 The WAG recommends a Code amendment, with enhanced monitoring and enforcement

The WAG's short list of possible Code amendments is shown in Table 5. The WAG discussion paper (section 8) provides more detail on these, and on the options that did not make the short list.

Table 5: Short list of possible Code amendments

Amendment	Description
1. Add Good Conduct	Add a "good conduct" provision (based on the net pivotal obligation) to clause 13.2A <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>
2. Remove Commercial Disadvantage exclusion	Delete exclusion (b) commercial disadvantage from the list of exclusions in clause 13.2A(2)
3. Include Reasonable Person exclusion	Include a "reasonable person would not expect disclosure" test (based on similar NZX provision) as an <u>exclusion</u> in clause 13.2A(2) <i>"... a participant is not required to make disclosure information readily available to the public if –</i> <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>

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

- 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.

6.1 The WAG identified six Code amendment options

The WAG considered the short list of possible Code amendments individually and in combination, as described in Table 6.

Table 6: Code amendment options the WAG considered

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

6.2 All six options can enhance information disclosure, but there is a risk of unintended consequences

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

- the potential for the option to address the concerns identified and thereby deliver enhanced information disclosure relative to the status quo
- 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
- the uncertainty in estimating the magnitude of benefits and of the risk of unintended consequences
- 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 7 and illustrated in Figure 4 (unchanged from its discussion paper). 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.

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.

Figure 4: Assessment of the six Code amendment options

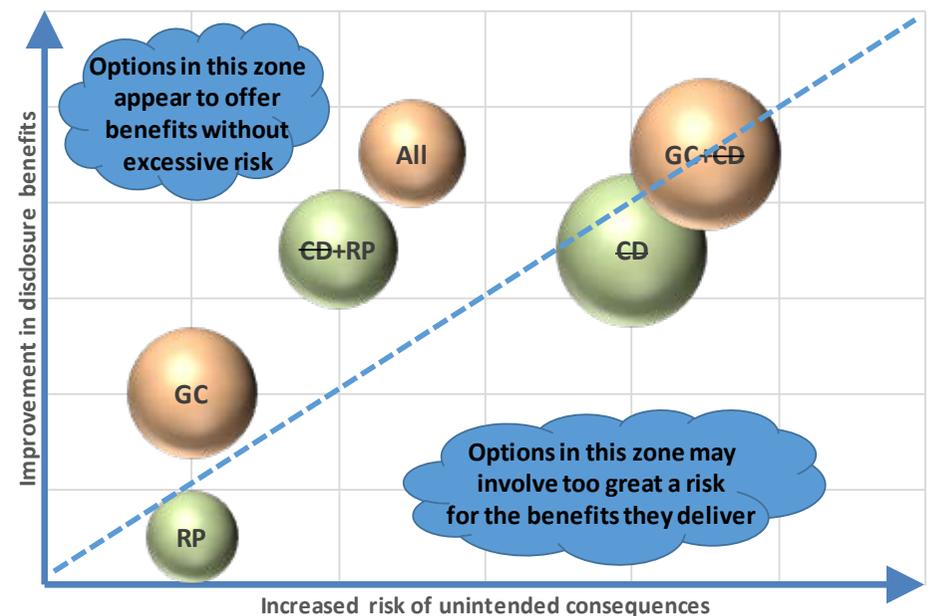


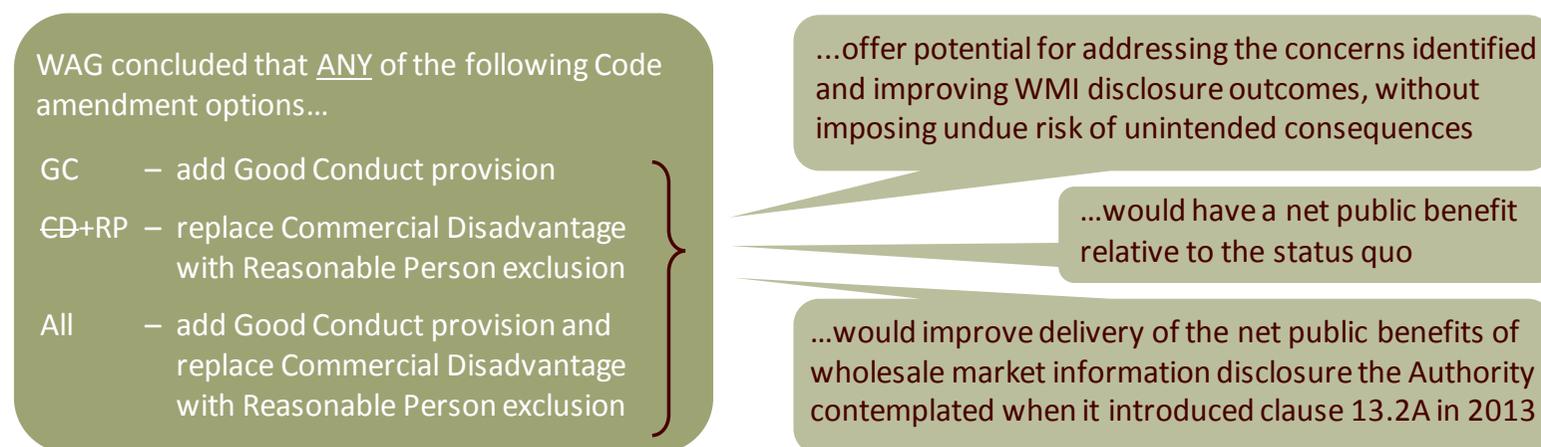
Table 7: The WAG's assessment of the six Code amendment options relative to the status quo, as set out in its June 2016 discussion paper

Option	Description	Commentary (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)	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

6.3 Three of the Code amendment options appeared to offer benefits that outweigh potential risks

On the basis of this assessment the WAG favoured the three options which were in the zone above the 45° line in the bubble chart (Figure 4). This is because options in this zone appear to offer benefits that outweigh potential risks. By the same reasoning, the WAG did not favour the three options which were on or below the 45° line, where the potential risk of unintended consequences would appear to outweigh the benefits of increased disclosure. Figure 5 summarises the three options WAG favoured, and its rationale.

Figure 5: The WAG's conclusions on its assessment of the Code amendment options it identified



The WAG acknowledged there are trade-offs between these three promising options:

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

The WAG did not express a preference in its discussion paper, and instead sought stakeholder feedback on these options, particularly the benefits, risks and costs of each.

6.4 The WAG has considered submitters' views on possible Code amendments

6.4.1 Submitters expressed a diverse range of views

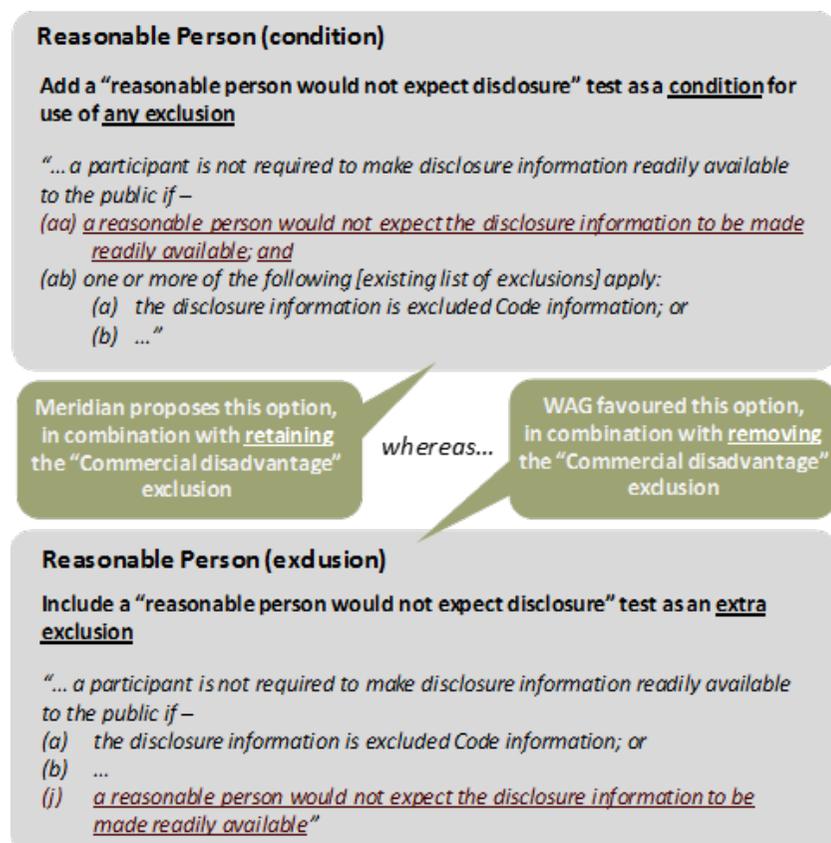
There was a diverse range of views amongst those who submitted on possible Code amendments. Submitters' views on each of the possible Code amendments in the WAG's short list (refer Table 5 above) are summarised in Table 8. A tabular summary of all submissions is available on the [Authority website](#). The WAG also received informal feedback via members and the Chair from some parties who had not made formal submissions. Those views were considered by WAG in formulating its recommendations to the Authority, but are not formally reported here.

Table 8: Submitters' views on possible Code amendments

Submitter	Remove Commercial disadvantage	Add Reasonable person exclusion	Add Good conduct
Genesis	✗ no change supported - pending further market monitoring and analysis (incl. commodity markets)	✗ no change supported - pending further market monitoring and analysis	✗ no change supported - pending further market monitoring and analysis
MEUG	✓ removal supported - but without replacing it with Reasonable person exclusion (ie WAG's rejected "CD" option)	✗ no change supported - pending further quantitative analysis	✗ no change supported - pending further quantitative analysis
Mercury	✓ removal supported - combined with adding Reasonable person exclusion and Good conduct (ie WAG's "ALL" option)	✓ addition supported - as part of WAG's "ALL" option	✓ addition supported - as part of WAG's "ALL" option
Meridian	✗ removal not supported	? addition supported, but as a CONDITION (not as exclusion) - Commercial disadvantage exclusion retained	✗ addition not supported
Nova	✗ removal not supported - pending addition of good conduct, further review	✗ addition not supported - pending addition of good conduct, further review	✓ addition supported - ie WAG's "GC" option
Pioneer	no specific comment, but supports timely and accurate disclosure of outages and contracts		

The WAG noted in particular that Meridian favoured inclusion of the ‘reasonable person’ test, but as a **condition** on the use of any exclusion (including the ‘commercial disadvantage’ exclusion). The WAG had considered, then rejected, this option when forming its short-list. The WAG instead preferred the ‘reasonable person’ test as an **exclusion**, replacing the ‘commercial disadvantage’ exclusion (ie, the CD+RP option). The different forms are shown in Figure 6.

Figure 6: Different forms of the ‘reasonable person’ test



Meridian’s rationale for supporting the ‘reasonable person (condition)’ can be summarised as:

- it enhances the effectiveness of the current regime by introducing an appropriate threshold of reasonableness as a test on the application of all existing exclusions
- it enables retention of the ‘commercial disadvantage’ exclusion, subject to a reasonableness test – commercial disadvantage is a valid and fair reason for withholding information in some cases
- including the reasonable person (exclusion) would broaden the range of exclusions available.

The WAG’s rationale for rejecting the ‘reasonable person (condition)’ from its short list of possible Code amendments was:

- this would tighten the use of all exclusions, with arguably a significant potential for unintended consequences:
 - if this condition is not satisfied, the information must be disclosed regardless of whether an exclusion applies
 - if this condition is satisfied, but no exclusion applies, the information must be disclosed
- adding this test as an exclusion (rather than as a condition on the use of any exclusion) seems a better means of achieving the objectives, particularly if it is included as a replacement for the commercial disadvantage exclusion (ie the CD+RP option).

The WAG discussed Meridian’s views. It noted a key concern related to possible forced disclosure of hedge books. The WAG does not consider that hedge books should be captured by the WMI disclosure regime. It considers that this is better addressed through the reasonable person test as an exclusion (not as a condition) and enhanced WMI disclosure guidelines.

6.4.2 The WAG has significant concerns with the ‘commercial disadvantage’ exclusion

The WAG noted that several submitters expressed concern with the commercial disadvantage exclusion, as did the Authority itself when it introduced clause 13.2A in 2013. Others, however, did not hold the same concerns or were not yet convinced.

The WAG has not received any new information that would cause it to change its views. As has been noted (and confirmed by the WAG’s case study assessment), even if failure to disclose information is not a significant issue yet, there is always the potential for the commercial disadvantage exclusion to allow participants to legitimately withhold information that ought to be disclosed. This on-going potential for non-disclosure is of significant concern and risks undermining confidence in the wholesale market.

Key WAG conclusion 5:

The WAG remains firmly of the view that the existing commercial disadvantage exclusion:

- a) allows participants to legitimately avoid disclosing wholesale market information that would support an orderly and efficient wholesale market
- b) risks undermining confidence in the wholesale market
- c) is frustrating the effectiveness of the WMI disclosure regime in delivering the outcomes the Authority seeks
- d) may lead to disclosure outcomes that do not optimally support the Authority’s statutory objective
- e) is likely to create difficulties in enforcing compliance with clause 13.2A due to uncertainty around application of this exclusion.

6.4.3 Possible risks with the ‘information insufficiently definite’ exclusion are outweighed by the benefits

The WAG has also considered its earlier views, and submitters’ feedback, on the ‘information insufficiently definite’ exclusion – this was the only other exclusion that the WAG had concerns about following the case study assessment.

While it acknowledges that this exclusion has the potential to allow participants to withhold information that should be disclosed, the WAG considers that the risk is outweighed by the benefits of this exclusion. In particular, this exclusion avoids the obligation to publish information that is not definite and therefore also potentially misleading/confusing, and reduces administrative cost associated with updating that information if it changes.

Key WAG conclusion 6:

Having considered submissions, reviewed its own earlier analysis, and discussed the issues further, the WAG has concluded that possible risks with the ‘information insufficiently definite’ exclusion are outweighed by the benefits of this exclusion and there is no clear argument for its removal.

6.4.4 Strong support for enhanced Authority monitoring and enforcement, and further Authority analysis

The WAG noted that several submitters, including those supporting Code amendments, considered that the Authority should enhance its monitoring and enforcement of clause 13.2A. This is consistent with the view the WAG expressed early in the review process: that enhanced monitoring and enforcement would strengthen the effectiveness of the existing WMI disclosure regime.

Several submitters also suggested that the Authority should undertake further analysis to better understand the current situation, including, in particular:

- a) analysis of WMI disclosures made by participants
- b) analysis of participants' reliance on particular exclusions.

The WAG notes that an existing provision in clause 13.2A may provide a simple, low key, low cost mechanism for the Authority to enhance its monitoring, compliance and analysis of disclosure outcomes under the current WMI disclosure regime.

Under clause 13.2A(5)(a), the Authority can require a participant to demonstrate to the Authority's satisfaction that an exclusion applies if it has not published disclosure information. This 'please explain' clause was included to facilitate monitoring and enforcement of clause 13.2A. The Authority also has existing generic powers to gather information and enforce the Code.

Key WAG conclusion 7:

The WAG considers that an increased Authority focus on monitoring and enforcement of clause 13.2A, and, in particular, use of its 'please explain' power under clause 13.2A(5)(a), is likely to:

- a) improve disclosure performance by participants
- b) provide reliable data detailing which exclusions participants are relying on when not disclosing
- c) give further insights into options to improve disclosure outcomes, and the costs and benefits of each
- d) enable more quantitative analysis of the current concerns.

6.5 The WAG favours replacing 'commercial disadvantage' with a 'reasonable person' exclusion, coupled with enhanced monitoring and enforcement

As outlined above (section 6.4.2), the WAG has significant concerns with the commercial disadvantage exclusion. It considers that these concerns can only be adequately addressed through a Code amendment that removes this exclusion from clause 13.2A.

It acknowledges that straight removal could introduce the risk of unintended consequences. Replacement with the 'reasonable person' exclusion mitigates this risk.

Therefore, based on its own analysis, and having considered submissions, the WAG recommends that the Authority remove the commercial disadvantage exclusion and replace it with the reasonable person exclusion – the WAG's 'CD+RP' option in Table 7.

The Authority could also consider including a good conduct provision in clause 13.2A which could provide further benefits (the WAG's 'ALL' option in Table 7).

The WAG now holds the view that none of the other Code amendment options it explored earlier in this review will adequately address the concerns identified.

The WAG acknowledges that the Authority's Code amendment principles¹³ require, amongst other things that there is a clearly identified efficiency gain or market or regulatory failure (principle 2), that is, one of the following:

¹³ Authority's consultation charter <http://www.ea.govt.nz/dmsdocument/14242>

- it can be demonstrated that amendments to the Code will improve the efficiency of the electricity industry for the long-term benefit of consumers
- market failure is clearly identified, such as may arise from market power, externalities, asymmetric information and prohibitive transaction costs
- a problem is created by the existing Code, which either requires an amendment to the Code, or an amendment to the way in which the Code is applied.

Principle 3 requires that net benefits are quantified, although the Authority recognises that quantitative analysis will not always be possible.

The WAG has been mindful of the Code amendment principles.

The WAG considers that its recommendation for increased Authority focus on monitoring and enforcement of clause 13.2A, particularly using the 'please explain' clause to query participants' use of the exclusions:

- a) is a market facilitation measure that is very likely to have significant net benefits in its own right, and should therefore proceed immediately, irrespective of the Authority's views on the WAG's Code amendment recommendations
- b) provides an excellent means of assisting the Authority undertake further analysis of problems with the current regime if the Authority considers that there is insufficient evidence to proceed with the recommended Code amendment at this time.

The WAG's conclusions and **recommendations** in this area of its review can be summarised as follows:

Key WAG conclusion 8:

The WAG's significant concerns with the commercial disadvantage exclusion can only be adequately addressed through a Code amendment that removes this exclusion from clause 13.2A.

Adding a reasonable person exclusion mitigates the risk of unintended consequences associated with removing the commercial disadvantage exclusion, and has other benefits.

The WAG recommends that the Authority remove the commercial disadvantage exclusion and replace it with the reasonable person exclusion – the WAG's 'CD+RP' option. The WAG's qualitative assessment leads it to conclude that this Code amendment will yield a net public benefit, supports the Authority's statutory objective and is consistent with the Code amendment principles.

The Authority could also consider including a good conduct provision in clause 13.2A (the WAG's 'ALL' option), which could provide further net benefits.

The WAG recommends that the Authority immediately increase its focus on monitoring and enforcement of clause 13.2A, particularly participants' use of the exclusions using the existing 'please explain' clause 13.2A(5)(a). This market facilitation measure is very likely to have significant net benefits in its own right, irrespective of the Authority's Code amendment decision.

The WAG acknowledges that the Code amendment may take time to progress, and that the Authority may need further information to support the case. The WAG's recommendation for increased monitoring and enforcement of clause 13.2A will assist with this.

7 Further market facilitation measures could deliver additional benefits

7.1 The WAG identified three possible market facilitation measures in its discussion paper

The WAG also set out in its discussion paper three 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.

7.1.1 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
- b) provide guidance to participants bound by the WMI disclosure obligations to assist them in making disclosure decisions

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

- 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, in particular by 'crowd-sourcing' relevant disclosure case studies from participants based on their experience with the regime
- 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.

7.1.2 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 on the WMI disclosure regime, particularly the worked examples, as part of this WMI 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 of their existence, and relocate the guidelines to a more prominent page on the Authority website¹⁵
- 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.

7.1.3 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 which is 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, asset 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.

7.2 The WAG recommends the Authority pursue the three market facilitation measures it has identified

The WAG notes that there was strong support for each of the market facilitation measures amongst submitters on its discussion paper (refer section 6.4.1 for a link to the summary of submissions).

The WAG is not aware of any new information that would cause it to change its views on the merits of these measures.

However, the WAG acknowledges that Transpower (as system operator) manages the POCP arrangements, and is therefore an important stakeholder in any matters relating to POCP. In its submission, Transpower set out its views on the four POCP aspects of the WAG's proposed market facilitation measures:

- 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
- encourage better and/or more consistent use of the 'tentative' flag for outages posted in POCP
- encourage direct consumer participants and gas facility owners to make better use of POCP for outages
- investigate providing in POCP access to information from OATIS, ideally through an automated process.

The WAG welcomes Transpower's support for the first two items and notes Transpower's offer to assist with these developments in collaboration with participants and the Authority.

The WAG acknowledges that Transpower has expressed concerns with the last two items, including the possible implications (eg, cost, complexity) of expanding the POCP role. The WAG considers that these concerns are best addressed by the Authority and Transpower, in collaboration with the POCP working group. The WAG notes that other submitters also made suggestions regarding POCP improvements, and it considers that these should be addressed in the same way.

Key WAG conclusion 9:

The WAG remains of the view that all three of the market facilitation measures it has identified have significant potential to:

- a) assist with addressing the WAG's concerns with the existing WMI disclosure regime
- b) further enhance WMI disclosure outcomes, thereby supporting the Authority's statutory objective.

The WAG recommends that the Authority pursue these market facilitation measures as part of its on-going WMI disclosure project:

- a) **improve the WMI disclosure guidelines**
- b) **raise participant awareness and understanding of the WMI disclosure regime**
- c) **encourage improvements in the use of POCP.**

The WAG considers that the potential benefits of these three market facilitation measures are independent of, and incremental to, the benefits of the Code amendment and enhanced monitoring and enforcement the WAG is also recommending.

The WAG recommends that the Authority work closely with the system operator (and POCP working group) regarding the POCP aspects of its recommended market facilitation measures.

8 The WAG has considered other matters raised in submissions

8.1 Hedge disclosure issues are referred to the Authority for consideration as part of a possible review of the hedge disclosure regime

The WAG acknowledges that some submitters raised wider concerns with hedge disclosure aspects of the WMI disclosure regime. In particular:

- a) Meridian Energy believed that compliance with obligations on hedge disclosure should be considered to fulfil the more general disclosure obligations in clause 13.2A for hedge contracts. Meridian submitted that the Code should be amended to explicitly state this
- b) Meridian also submitted that the Code should be amended to explicitly state that “Nothing in clause 13.2A requires a participant to disclose the details of its contract book that it reasonably considers to be confidential”. Meridian suggested that this should also be clarified in the WMI disclosure guidelines
- c) Mercury proposed that the Authority should prescribe the hedge disclosure platform as the mechanism for disclosing contract information
- d) Mercury also made other proposals relating to more detailed aspects of hedge disclosure requirements (eg, information about options products and fixed price variable volume contracts).

The WAG notes that some of these issues could be addressed with market facilitation measures, but others would require Code amendments. The WAG has not considered the suggested Code amendments, and believes they are outside its scope.

As noted above (section 6.4.1), the WAG does not consider that hedge books should be captured by the WMI disclosure regime. It considers that this is better addressed through its proposed Code amendment and through enhanced WMI disclosure guidelines.

The WAG has been advised that the Authority may review the hedge disclosure arrangements in subpart 5 of part 13 of the Code next year. This review is being considered for inclusion in the Authority’s work programme for 2017-2018, and the WAG understands that the Authority has informally started preparations for this project. In light of this, the WAG considers that the Code amendment matters submitters have raised regarding hedge disclosure are more appropriately referred to the Authority for it to consider as part of any review of the hedge disclosure regime.

Key WAG conclusion 10:

The WAG acknowledges that some submitters have wider concerns with hedge disclosure issues.

The WAG recommends that the Authority amend the WMI disclosure guidelines to clarify its expectations regarding disclosure of confidential aspects of participants’ contract books.

The WAG recommends that the Authority consider the other matters submitters have raised in relation to hedge disclosure issues as part of the wider review of the hedge disclosure regime being contemplated for the Authority’s future work programme.

8.2 Other matters are referred to the Authority for consideration

The WAG notes that some submitters have raised other issues with the WMI disclosure regime. These include the following:

- Mercury submitted that POCP should be mandated in the Code as the required mechanism for reporting generation and transmission outage information
- Mercury submitted that all WMI disclosure information relating to contract information should be disclosed through the Authority's hedge disclosure platform
- Meridian suggested that the Authority consider developing a centralised disclosure platform to assist with monitoring and compliance
- Genesis suggested that the Authority look to other physical commodity markets (not equity investment markets) for good practice when setting regulatory settings for information disclosure in a commodities market
- MEUG recommended that the Authority further consider information disclosure issues once it has completed its market performance review of the high spot price event of 2 June 2016.

The WAG considers that such matters are outside the scope of its review of the exclusions. It therefore refers the other matters raised in submissions to the Authority for its consideration at a suitable time and in an appropriate manner.

Key WAG conclusion 11:

The WAG notes that some submitters have raised other issues with the WMI disclosure regime, but it considers these to be outside the scope of its review of the exclusions.

The WAG refers these other matters raised in submissions to the Authority to be addressed in a manner the Authority considers appropriate.

9 The WAG identified other WMI disclosure issues outside the scope of this review

Some of the issues the WAG identified when reviewing the exclusions are outside the scope of this project and/or more appropriately considered by the Authority. For these issues, the WAG recommends that the Authority consider including possible future 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. The WAG considers that there is a close relationship between WMI disclosure and insider trading – this should be further explored in the context of the WMI disclosure regime and other aspects of the trading arrangements in the Code.

Key WAG conclusion 12:

The WAG identified potentially relevant arrangements for insider trading and market conduct in other jurisdictions, but these were outside the scope of its review.

The WAG recommends 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 Australia's ASX trading regime is increasing in scope and complexity.

This interaction has potential implications for WMI information disclosure here in the New Zealand electricity market.

Key WAG conclusion 13:

The WAG identified possible disclosure issues for NZ participants trading on the ASX exchange that were outside the scope of its review.

The WAG recommends 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.**