# Wholesale market information: review of disclosure regime

## Summary of submissions

29 May 2018

# Contents



## Tables

# 1 The Authority's consultation process

1.1 On 8 August 2017, the Authority issued the consultation paper *Wholesale market information: review of disclosure regime* (the consultation paper).

1.2 A copy of the consultation paper is available on the Authority's website at: https://www.ea.govt.nz/development/work-programme/risk-management/wholesale-market-information-clause-13-2-and-fuel/consultation/.

1.3 In the consultation paper the Authority proposed:

(a) replacing the commercial disadvantage exclusion with a reasonable person exclusion in clause 13.2A(2) of the Electricity Industry Participation Code 2010 (Code)

(b) amending the timeframe for addressing misleading, deceptive, or incorrect information in clause 13.2 of the Code

(c) amending the guidelines that help participants understand their obligations to disclose.

1.4 The Authority's review followed an investigation by the Wholesale Advisory Group (WAG) as to whether the current exclusions are appropriate and efficient. Our proposals were largely consistent with the WAG's recommendations.

1.5 The consultation period closed on 3 October 2017.

# 2 Structure of the summary of submissions

2.1 In its consultation paper the Authority suggested a format for submissions based around ten specific consultation questions. Some submitters provided their response using this format, some instead provided a letter, and some provided both.

2.2 This summary of submissions is presented in tabular format, listing responses to each consultation question by submitter (in alphabetical order). Where submitters provided a letter (either instead of responses to the questions, or as well as), that material is included as follows:

(a) if the Authority considers it relates to a particular consultation question, the material is included as part of that question, but is clearly marked as coming from the submitter's letter

(b) otherwise, the material is included as part of an 'other comments' table (Table 12) at the end of section 4.

2.3 Meridian also made drafting comments in its submission. These comments are included in Table 11.

# 3 Submissions received

3.1 The Authority received seven submissions on the consultation paper. Listed in alphabetical order, the submitters were:

(a) Contact Energy Limited (Contact)

(b) Genesis Energy Limited (Genesis)

(c) Major Electricity Users' Group (MEUG)

(d) Mercury Energy Limited (Mercury)

(e) Meridian Energy Limited (Meridian)

(f) Pioneer Energy Limited (Pioneer)

(g) Transpower New Zealand Limited (Transpower).

3.2 Copies of full submissions are on the Authority's website at: https://www.ea.govt.nz/development/work-programme/risk-management/wholesale-market-information-clause-13-2-and-fuel/consultation/.

3.3 No submissions, either partially or fully, were marked confidential.

# 4 Responses to consultation questions

4.1 This section sets out submitters' responses to each of the consultation questions in tabular form.

**Table 1: Question 1**

*Do you agree with the issues the Authority has identified?*

| Submitter | Submission |
|---|---|
| Contact | Yes. |
| Genesis | Yes, subject to the comments provided in our cover letter [above]. |
| Mercury | Yes. |
| Meridian | Yes |
| MEUG | – |
| Pioneer | – |
| Transpower | – |

**Table 2: Question 2**

*Do you think the example definition of a 'reasonable person' in section 6.9 should be the final definition adopted? If not, how would you define a 'reasonable person'?*

| Submitter | Submission |
|---|---|
| Contact | Yes. However, we believe this definition should be referenced in the Code, as it is the Code that sets out industry participants' responsibilities. |
| Genesis | Yes, subject to the comments provided in our cover letter [above]. |
| Mercury | Yes.<br>***[from cover letter]***<br>We understand and support adopting the "reasonable person" exclusion in place of "commercial disadvantage" and consider that the definition proposed by the Authority is the most appropriate. |
| Meridian | Meridian agrees the example definition should be the final definition adopted. Meridian suggests that the example definition should be included in the Code.<br>While guidelines issued by the Authority may, in practice, constrain the Authority's application of the Code, they do not 'bind' the Authority in the same way as the Code itself.<br>Further the Code can also be enforced by participants (as well as the Authority). Such participants are not bound to apply the Authority's guidelines in seeking to enforce the Code but have an obligation to report breaches of the Code and have the option of referring alleged Code breaches to the Rulings Panel. Similarly, the Rulings Panel, who must ultimately decide on the correct application of the Code (subject to appeals to the High Court on questions of law or jurisdiction), are not constrained in their interpretation of the Code by guidelines issued by the Authority.<br>Therefore if the example definition of 'reasonable person' is appropriate, (and Meridian agrees that it is and that it should be the final definition adopted, subject to our proposed additions below), then the only way to give participants comfort and certainty that the example definition is the one that will ultimately be applied, is to include it in the Code. If the Authority is seeking to provide greater assistance to participants making disclosure decisions then Meridian submits this is the only appropriate way for the Authority to proceed rather than by using guidelines to clarify the definition.<br>As well as providing clear direction on the definition that should be applied to 'reasonable person' Meridian submits that the Authority should provide additional guidance and clarification on the issue of how the 'reasonable person exclusion' |

| Submitter | Submission |
|---|---|
| | is to be applied.<br>Meridian considers that the Authority is not correct when it asserts, at para 6.7 of the consultation paper that "…interpretation of the reasonable person exclusion will be aided by a substantive body of legal precedent…" In particular we understand that there is little to no case law on the NZX 'reasonable person condition' and, even if there was, that it may be of only limited relevance because that test is a 'reasonable person condition' and not a 'reasonable person exclusion'. Further there is no other legal precedent or case law that we are aware of would be directly applicable.<br>If the Authority disagrees and still considers that there is a substantive body of legal precedent that will assist in interpreting the reasonable person exclusion we request that the Authority refer to the relevant cases in the guidelines so that participants seeking to understand the new proposed rules are 'on the same page' as the Authority in terms of the precedents or authorities that the Authority believes are relevant.<br>In the absence of clearly applicable and directly relevant precedent or authority it is incumbent on the Authority, in introducing the exclusion, to be as clear as it can be so that participants know what is, and what is not, covered by the exclusion. In particular Meridian has 2 suggestions that it believes would assist in making the proposed new rules clearer:<br>1. The 'unreasonably prejudice' test which is suggested in the draft guidelines as one of three factors to consider in applying the 'reasonable person exclusion' should be lifted out of the guidelines and put in the Code itself. Meridian suggests that unlike the other factors in the guidelines this one is sufficiently substantive that it should form part of the Code. Meridian notes that the NZX 'reasonable person condition' in the NZX Main Board Listing Rules (the NZX rules) contains by way of footnotes the following:<br>*"…a "reasonable person" would not expect the information to be disclosed if the release of the information would:*<br>*(a) unreasonably prejudice the Issuer; or*<br>*(b) provide no benefit to a person who commonly invests in securities."*<br>The NZX rules are clear on how these footnotes are to be applied. They say:<br>*"1.6.5 The footnotes to the Rules are intended as a guide for users and an aid in interpretation and, only to that extent, form part of the Rules."*<br>Meridian submits that in the absence of a similar provision in the proposed Code wording the best approach is simply to incorporate the 'unreasonable prejudice' test directly into the Code wording as indicated in our suggested wording at the end of this submission.<br>2. No reasonable person would expect a participant to disclose its aggregate hedge position or FTR position at a nodal, regional, island-wide or national level. We suggest that this is a sufficiently important principle that it should |

| Submitter | Submission |
|---|---|
| | be included in the Code itself. As the Authority's notes of the workshop it held say at page 2, "…there was general agreement that a participant's hedge book ought not to be captured by the WMI disclosure obligations and a suggestion that this be made clearer."<br>Meridian also notes that in their Guidance Note on Continuous Disclosure, NZX state at page 16 that "NZXR considers that this [reasonable person condition] has only a narrow application in practice because…" essentially the work of the "reasonable person condition" in the NZX rules is largely already done by other provisions in the NZX rules. This reasoning would not seem to be apply to the 'reasonable person exclusion' that the Authority proposes to introduce but Meridian submits that it would be useful if the Authority were to confirm this in its own guidelines.<br>***[from cover letter]***<br>• Meridian suggests the proposed 'reasonable person exclusion', although based on a similar NZX condition, is actually not the subject of any substantial precedent that is directly applicable in a wholesale electricity market context, and is not as clear as it might be.<br>• Meridian suggests the Authority should accordingly provide additional clarification of the proposed 'reasonable person exclusion'. This clarification should be contained in the Code itself. While the proposed Guidelines are useful, the Code ultimately needs to 'stand on its own two feet' and be capable of being applied to a range of situations without resort to guidelines. |
| MEUG | – |
| Pioneer | ***[from letter]***<br>**Reasonable person description – Question 2**<br>The Authority has described a 'reasonable person' as<br>7.11(b) is a sophisticated market participant familiar with the purpose and scope of the continuous disclosure regime, the market and the regulatory framework within which it operated …<br>Pioneer suggests two changes to this description:<br>1. including only 'sophisticated' market participants is not appropriate. Any market participant can hold material information. In the Consultation paper the Authority states:<br>"… all participants must consider what steps they need to take to comply with their disclosure obligations." (para 5.1)<br>We note the NZX Disclosure Guidance1 describes a reasonable person as follows: |

| Submitter | Submission |
|---|---|
| | "Reasonable person" is not defined in the rules, but in NZXR's view, a "reasonable person" is a person who commonly invests in securities, and holds such securities for a period of time, based on their view of the inherent value of the securities.<br>This does not require a person to be a "sophisticated" investor but someone that commonly invests, or participates in the investment market. In our view, all market participants are a 'reasonable person'.<br>2. being familiar with the purpose and scope of the continuous disclosure regime should not be a precondition of being a reasonable person. This familiarity is a necessary consequence of being a market participant.<br>We recommend the following changes to this description of a reasonable person:<br>7.11(b) is a ~~sophisticated~~ market participant familiar with the purpose and scope of the ~~continuous disclosure regime, the~~ market and the regulatory framework within which it operated … |
| Transpower | – |

**Table 3: Question 3**

*Do you agree the Authority should update the guidelines in the way it is proposing?*

| Submitter | Submission |
|---|---|
| Contact | We agree with the updating of the Guidelines but believe they should be referenced in the Code.<br>We support the proposed amending of clause 13.2(2) by replacing the word 'immediately' with the words 'as soon as reasonably practicable'.<br>We support the use of the Planned Outage Co-ordination Protocol (POCP) as the mechanism for disclosure of outage information, but, as noted above, think this should be referenced in the Code. We also think it is unclear as to whether end users will now be responsible for publicly disclosing planned outages.<br>***[from cover letter]***<br>As a general comment, for simplicity, and to reduce any administrative burden, we believe where possible Wholesale Market Information Disclosure Guidelines (WMI) should be aligned with the NZX Guidelines. |
| Genesis | Yes, subject to the comments provided in our cover letter [above].<br>***[from cover letter]***<br>Should the Authority proceed with the amendments as proposed in the consultation paper, Genesis urges reflection on whether the current drafting of the Guidelines is fit for purpose, including whether the proposed definition of a reasonable person accurately represents a reasonable person participating in the New Zealand electricity market.<br>***[see also Q10]*** |
| Mercury | Yes. The Guidelines will need to be reviewed from time to time to ensure they are still relevant. EA also needs to ensure that market participants know of their existence and refer to them, especially new entrants.<br>***[from cover letter]***<br>We support the amendments made to the disclosure guidelines to help participants understand their obligations to disclose. As our market becomes more sophisticated and disclosure obligations are refined and defined with greater precision to take account of this it will be necessary for market participants to review their internal procedures to ensure they understand their obligations and have systems in place to ensure compliance. Updating systems, including introducing more automation and training staff is not without cost but we see this as a necessary part of doing business and the benefits of a more robust and transparent disclosure regime will over time outweigh the costs. |

| Submitter | Submission |
|---|---|
| Meridian | Generally speaking yes although Meridian considers parts of the proposed Guidelines should instead be included in the proposed Code amendment. See our comments above in response to Question 2 and our suggestions below in response to Question 10.<br>In addition, Meridian considers that the following provisions could be made clearer in terms of their intent and effect:<br>- Clause 6.23: It is clear from the definition of wholesale market that the issue of 'material impact on prices' is not to be tested by reference to the retail market. The wording of this part of the guidelines however confuses the issue by suggesting that the retail market may be relevant 'to the extent there is an overlap' with the wholesale market. What this means isn't clear. Meridian suggests clause 6.23 should be deleted or expanded. At the moment it is confusing.<br>- Clause 6.28(a): Some indication of what the Authority considers to be 'major' new generation or transmission assets would be very useful and potentially vital to achieving a settled and consistent approach by participants. Without such an indication there is scope for disagreement on what amounts to 'major' – one person's 'major' may not be another's.<br>- Clause 6.28(b): Some indication of what the Authority considers to be 'significant' in terms of the measures listed (e.g. a 'significant' quantity of coal) would be very useful and, again, potentially vital to achieving a settled and consistent approach by participants.<br>- Clause 6.28(c): Again, some measurable indication of what the Authority considers to be a 'significant' reduction in generation capability or 'significant' change in this context would be very useful and potentially vital.<br>- The same comments re the word 'significant' apply to clauses 6.28(d), (e) and (f).<br>- Clause 7.7: It would be useful if the Authority could include additional explanation in the guidelines with respect to what is meant by paragraph (a) of the definition of 'excluded Code information' "…relates to bids, offers, reserve offers…etc" and how far this extends i.e. what, in the Authority's view is information that "relates to bids, offers, reserve offers…."<br>- Clause 7.18: Where two parties sign a contract containing a confidentiality provision the purpose of that confidentiality provision will be to preserve the confidentiality of the agreement in a wide variety of scenarios and as against a wide variety of potential third parties or 'potential audiences' of that information i.e. it will have multiple purposes. Meridian submits that the wording of the guidance in this clause and the wording of clause 13.2A(7) of the Code should be clarified to make it clear that it is only those situations where a confidentiality agreement has been entered into for the sole purpose of avoiding making disclosure information readily to the public that the prohibition applies. Otherwise the provision and clause 13.2A(2)(c) of the proposed Code are unworkable as any time a participant signs an agreement containing a confidentiality clause that participant will potentially be in breach |

| Submitter | Submission |
|---|---|
| | of clause 13.2A(7) of the Code if the information would otherwise be disclosure information.<br>- Clause 7.33: It would be useful if the Authority could give examples of the types of things it considers might be 'trade secrets' in a wholesale electricity market context.<br>- At 10.4(b) in relation to the requirement that disclosure information be readily available to the public the guidelines say that '…an interested party should be able to locate the information using a straightforward internet search with suitable search engine…and appropriate keywords." Meridian requests that the Authority provide some guidance on whether the POCP website currently meets this requirement. |
| MEUG | – |
| Pioneer | ***[from letter]***<br>**Draft Guidelines**<br>Pioneer supports the Authority publishing Guidelines to improve participants understanding of, and compliance with, the disclosure requirements in the Code. However, it is important the Guidelines improve certainty for market participants. We have the following comments about the changes to the Guidelines.<br>**Information Asymmetry**<br>In Section 2, on why an effective disclosure regime is important, there has been, in our view, a significant change to the 'definition' of information asymmetry. The change to the Guideline has introduced the concept of 'inefficient' information asymmetry. This implies information can be categorised (by the person trying to be compliant with the disclosure regime) into two types of information asymmetry – inefficient and efficient information asymmetry. The proposed change to the Guideline is:<br>"2.4(c) reduce ~~any~~ <u>inefficient</u> information asymmetry between informed and uninformed market participants and interested parties."<br>This change is not explained in the Consultation Paper. Pioneer interprets this change as introducing a new test - in effect, the Authority is stating that information that creates efficient information asymmetry does not need to be disclosed.<br>Further, the description in Section 4 of the reasons for designing the disclosure regime talks about addressing all information asymmetry:<br>"4.1 The WMI disclosure obligations in the Code provide a mechanism to ensure that the stakeholders in the New Zealand wholesale electricity market (interested parties) are informed of relevant information at all times. The WMI disclosure obligations are designed to reduce information asymmetry in the wholesale electricity |

| Submitter | Submission |
|---|---|
| | market so that an interested party:<br>(a) is not materially disadvantaged against another<br>(b) can make informed decisions."<br>The NZX Disclosure Rules make no distinction between 'efficient' and 'inefficient' information. In economic theory, information asymmetry is where at least one party has relevant information, whereas the other/s do not. Therefore any information asymmetry is a concern or essentially 'inefficient'.<br>This distinction does not appear in the Code but, in our view, including this in the Guidelines potentially imposes an additional test as to whether a particular piece of information should be disclosed.<br>We strongly submit that no change be made to paragraphs 2.2 and 2.4(c) to introduce the concept of 'inefficient information asymmetry'.<br>**Making disclosure information available via the POCP platform**<br>We note the Authority concludes that the obligation to put outage information on POCP satisfies the obligation under this continuous disclosure regime (our interpretation of paragraph 10.13). Pioneer queries whether:<br>• all market participants have access to POCP (eg small retailers without generation assets); and<br>• the information available on the POCP platform is in a form that makes it clear to all market participants that a particular outage is 'material'.<br>We request the Authority review whether the convenience of entering data in only one format / platform achieves the objectives of this continuous disclosure regime. |
| Transpower | – |

**Table 4: Question 4**

*Can you suggest one or more case studies the Authority could consider using in the guidelines where parties have either disclosed, or not disclosed, information relating to wholesale markets in an effective way?*

| Submitter | Submission |
|---|---|
| Contact | By and large we believe the disclosure requirements are working well. |
| Genesis | No comment. |
| Mercury | We consider that the examples collected at the workshop on the proposed guidelines will make helpful inclusions. In addition we would like case studies around counterparty disclosure included. |
| Meridian | Meridian suggests that the Authority should develop case studies for the guidelines that are based on the scenarios that parties say they have observed and which are referenced at clause 5.4 of the consultation paper, namely:<br>(a) participants announcing plant outages after OM Financial Limited and NZX Limited release their daily reports, to avoid distributing outage information before the trading window<br>(b) plant dispatched in a manner inconsistent with outage declarations made in the planned outage co-ordination process (POCP) database<br>(c) plant running when it is declared unavailable in POCP<br>(d) permanently retired plant returning to service without notice<br>(e) hedge trading activity in advance of major market announcements, suggesting some parties may have been aware of the impending announcement. |
| MEUG | – |
| Pioneer | – |
| Transpower | – |

**Table 5: Question 5**

*Do you agree with the objectives of the proposed Code amendment? If not, why not?*

| Submitter | Submission |
|---|---|
| Contact | Yes. |
| Genesis | Yes. |
| Mercury | Yes. |
| Meridian | Yes. |
| MEUG | – |
| Pioneer | – |
| Transpower | – |

**Table 6: Question 6**

*Do you agree the costs of the proposed Code amendment to the exclusions will be minimal? If not, why not?*

| Submitter | Submission |
|---|---|
| Contact | Yes. We agree the costs of the proposed Code amendment will be minimal but think that parties may incur some costs in trying to understand the Code and guidelines. |
| Genesis | Yes. |
| Mercury | Yes. |
| Meridian | Provided sufficient clarity can be given to the proposed Code amendment by the use of the additional wording suggested below, Meridian agrees the costs of the proposed Code amendment will be minimal. If not Meridian considers that the costs of the proposed amendment may be significant as parties seek to understand and comply with their Code obligations. |
| MEUG | – |
| Pioneer | – |
| Transpower | – |

**Table 7: Question 7**

*Do you agree the benefits of the proposed Code amendment outweigh its costs?*

| Submitter | Submission |
|---|---|
| Contact | Yes. |
| Genesis | Yes. |
| Mercury | Yes. |
| Meridian | Yes, subject to the proposed amendment being clarified in the way we suggest below. |
| MEUG | ***[from letter]***<br>The cost-benefit-analysis supporting the proposed change is qualitative. In our submission to WAG last year we were reluctant to agree any changes until a quantitative analysis had been completed. Though not ideal, we accept in this case that based on the qualitative analysis the likely outcome will have a net benefit. We are also persuaded to accept the changes because the Authority and System Operator have and we believe will continue to support the industry in understanding how to implement the proposal to act as a "reasonable person". The sense we have is that neither wishes to add unnecessary compliance costs onto market participants. |
| Pioneer | – |
| Transpower | – |

**Table 8: Question 8**

*Do you agree the proposed Code amendment is preferable to other options? If you disagree, please explain your preferred option in terms consistent with the Authority's statutory objective in section 15 of the Act.*

| Submitter | Submission |
|---|---|
| Contact | Yes. |
| Genesis | Yes, subject to the comments provided in our cover letter [above].<br>***[from cover letter]***<br>**Next steps: the best pathway forward**<br>While Genesis supports the Authority in improving the wholesale information disclosure regime where warranted, we are unconvinced that the amendments to the Code and Guidelines in the consultation paper will facilitate a more competitive, efficient and reliable electricity market for the benefit of consumers.<br>Our recommendations are provided with the hope you will pause and reflect on the interaction between the Code and Guidelines as drafted, and whether there are other ways that may more efficiently address the concerns identified by some parties e.g. industry-led review to improve timely and consistent disclosure to POCP.<br>We look forward to further engagement with the Authority and industry stakeholders. |
| Mercury | Yes. |
| Meridian | Yes, subject to the proposed amendment being clarified in the way we suggest below. |
| MEUG | ***[from letter]***<br>The last submission by MEUG on this topic was in August last year with a submission to the Wholesale Advisory Group (WAG). We prefaced submissions on WAG's specific questions as follows:<br>"MEUG welcomes the Electricity Authority requesting WAG to review the disclosure exclusions in cl. 13.2A because at least one of those exclusions, namely (b) "commercially disadvantage", has been questionable for some time. Removal of that clause is supported. Other changes are not supported until quantification of the qualitative views in the paper can either confirm or not that analysis."<br>This submission:<br>a) Re-affirms our concerns with the use of the "commercially disadvantage" exclusion as noted [above]; |

| Submitter | Submission |
|---|---|
| | b) Confirms MEUG's agreement with the proposal to replace the "commercially disadvantage" exclusion with the exclusion whereby "a reasonable person would not expect the disclosure information to be made readily available"; and<br>c) Confirms MEUG's agreement to replace "immediately" with "as soon as reasonably practicable" in cl. 13.2(2). |
| Pioneer | – |
| Transpower | – |

**Table 9: Question 9**

*Do you agree the proposed Code amendment complies with section 32(1) of the Act?*

| Submitter | Submission |
|---|---|
| Contact | Yes. |
| Genesis | Yes. |
| Mercury | Yes. |
| Meridian | Yes, subject to the proposed amendment being clarified in the way we suggest below. |
| MEUG | *[no comment, but the submission supports the amendment]* |
| Pioneer | – |
| Transpower | – |

**Table 10: Question 10**

*Do you have any comments on the drafting of the proposed Code amendment?*

| Submitter | Submission |
|---|---|
| Contact | No. |
| Genesis | No comment.<br>***[from cover letter]***<br>**Code vs. Guidelines: Workability of amendments is crucial**<br>Genesis is wary of the Authority's desire to proceed with non-prescriptive Code amendments supplemented by amended Guidelines. We believe that unless those Guidelines are capable of absolute, consistent interpretation, it risks creating an environment where any challenge of market participant disclosure behaviour is extremely difficult, if not impossible, to rule on.<br>We note that in the Guidelines' disclaimer it states that the information enclosed is not intended to be definitive, and, should there be any inconsistency between the Guidelines and the Code, the Code will take preference. This is a clear marker that should there be any challenge, on which the Guidelines is ambiguous or silent, then the Code provisions will determine if there has been a breach or not.<br>At this point, returning to the Code, participants will find that the Code provisions are non-prescriptive and written with the intention participants will be able to use the Guidelines to decide when they need to disclose information. This will trigger a circular reference of Guidelines-to-Code-to-Guidelines-to-Code, neither of which can resolve the issue.<br>To avoid this type of scenario, the Authority might like to draft the Code amendment so that it does not require reliance on Guidelines.<br>Should the Authority proceed with the amendments as proposed in the consultation paper, Genesis urges reflection on whether the current drafting of the Guidelines is fit for purpose, including whether the proposed definition of a reasonable person accurately represents a reasonable person participating in the New Zealand electricity market.<br>We note that the disclosure regime has been designed to be analogous to requirements for companies listed on the New Zealand Stock Exchange (**NZX**), but modified for the electricity market context. The 'modified for the electricity market context' is key, because in the electricity market, participants are primarily purchasing a physical product for delivery in a commodity market. This is very different to companies looking to make a return on an investment in an equity market.<br>Genesis also recommends the Authority redrafts its Code amendment to include reference to the existence of the |

| Submitter | Submission |
|---|---|
| | Guidelines in the Code and a requirement that those Guidelines cannot be amended without industry consultation. |
| Mercury | Mercury agrees with the EA that it is preferable not to incorporate the guidelines into the rules on the basis that including the guidelines in the rules would add too much technical detail and limit the flexibility of the regime and add compliance costs and uncertainty. The guidelines should be for guidance only, it is not possible to cover off every eventuality and to try and do so will result in too much time and effort being expended relative to the benefits.<br>***[from cover letter]***<br>We support the proposed changes to the disclosure regime. We believe the Authority has struck the right balance between being too prescriptive and being too vague…. Likewise we support amending the timeframe for addressing misleading, deceptive, or incorrect information. We agree that "immediately" is not a practical requirement and that "as soon as reasonably practical" is a more workable requirement. |
| Meridian | Meridian has no comments on the proposed drafting of clause 13.2 and Meridian supports that drafting in full.<br>In relation to clause 13.2A Meridian considers that it is critical that the drafting of the proposed Code amendment is clarified. Meridian's suggested clarification is set out immediately below this table. In addition to the points of clarification already discussed we suggest the definition of 'disclosure information' should be clarified to make it clear that a model or application developed by a participant is not information 'about' that participant and therefore need not be disclosed. As the Authority points out at para 4.5(c) of the consultation paper if this wasn't the case then the disclosure rules could have the adverse impact of reducing incentives to invest in such models or applications. We suggest that the Code wording should be amended to make clear that such a result is not intended. |
| MEUG | – |
| Pioneer | ***[See response in Q2 above]*** |
| Transpower | – |

**Table 11: Drafting comments**

| Submitter | Submission |
|---|---|
| Meridian | ***[proposed drafting changes to clause 13.2A shown with revision marks]***<br><br>**13.2A Participant must make disclosure information readily available**<br><br>(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.<br><br>(2) Despite subclause (1), a **participant** is not required to make **disclosure information** readily available to the public if—<br><br>(a) the **disclosure information** is **excluded Code information**; or<br><br>(ba) a reasonable person would not expect the **disclosure information** to be made readily available; or<br><br>(c) the **participant** is bound by a legal obligation to keep the **disclosure information** confidential; or<br><br>(d) doing so will be a breach of law; or<br><br>(e) the **disclosure information** is already readily available to the public; or<br><br>(f) the **disclosure information** concerns an incomplete proposal or negotiation; or<br><br>(g) the **disclosure information** comprises matters of supposition or is insufficiently definite to warrant being made readily available to the public; or<br><br>(h) the **participant** claims legal professional privilege or privilege against self incrimination in respect of the **disclosure information**; or<br><br>(i) the **disclosure information** is a trade secret.<br><br>(3) In subclause (2)(ba) a 'reasonable person'<br><br>(a) is not 'the person on the street'<br><br>(b) is a sophisticated **participant** in the **wholesale market** familiar with the purpose and scope of clause 13.2A, the market and regulatory framework within which it operates, and publicly known circumstances;<br><br>(c) would not expect a **participant** to make **disclosure information** readily available if doing so would unreasonably prejudice that **participant's** position and activities in the **wholesale market** or in their commercial operations more generally; and |

| Submitter | Submission |
|---|---|
| | (d) would not expect a **participant** to disclose its aggregate electricity hedge market position or **FTR** position, whether at a nodal, regional, island-wide or national level.<br><br>(4) 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**.<br><br>(5) If information ceases to be **disclosure information**, a **participant** is no longer required to make the information readily available to the public.<br><br>(6) A **participant** that does not make information readily available to the public under this clause must, if required to do so by the **Authority**,—<br><br>(a) satisfy the **Authority** that subclause (2) applies to the **disclosure information**, if the **participant** relies on subclause (2); or<br><br>(b) satisfy the Authority that the information is not **disclosure information**.<br><br>(7) A **participant** must not enter into a confidentiality agreement with another person for the sole purpose of avoiding making **disclosure information** readily available to the public under this clause.<br><br>**disclosure information**, in relation to a **participant**, means information that—<br><br>(a) is about the **participant** (for example, a model or application developed by the **participant** is not information about the **participant**); and<br><br>(b) is held by the **participant**; and<br><br>(c) the **participant** expects, or ought reasonably to expect, if made publicly available, will have a material impact on the prices in the **wholesale market**. |

**Table 12: Other comments**

| Submitter | Submission |
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| Contact | ***[from other comments row in table]***<br>While we are generally supportive of the Authority's proposal, we would also welcome a review of the disclosure requirements for electricity contracts to the Hedge Disclosure site for the following reasons:<br>(a) Daily ASX trade data is publicly available on the ASX website. Complete historic datasets for all instruments can also be accessed through a range of providers. The use of the Hedge Disclosure site to access this information is not fit for purpose.<br>(b) Given the different disclosure requirements for participants versus non-participants (as defined by the Code), the dataset that is available on Hedge Disclosure is incomplete and difficult to interpret.<br>(c) The annual statutory declaration requirement under the Code to disclose electricity futures transactions is administratively burdensome and expensive to undertake, particularly given the ASX provides significant reporting on trading activity on a monthly and quarterly basis. This includes information on the level of trading undertaken by market makers versus other participants.<br>In relation to other hedge contracts:<br>(a) We would not support the public disclosure of counterparty names in transactions, as this may hinder the willingness of some parties to trade.<br>(b) There is some discrepancy between the disclosure requirements for contracts for difference (CFD) Planned Outage Co-ordination Protocol and option transactions.<br>(c) There is a discrepancy between disclosing 'as soon as practicably possible' and the five to 10 business days allowed to disclose a transaction.<br>(d) The disclosure requirements for fixed price variable volume (FPVV) contracts are poorly defined. |
| Genesis | ***[from cover letter]***<br>The Authority considers that an effective information disclosure regime is a fundamental feature of a well-functioning electricity market. Genesis agrees. We will support any improvements to the regime should they better facilitate a more competitive, efficient and reliable electricity market for the benefit of consumers.<br>**Summary of key points**<br>In the consultation paper the Authority proposes to amend clauses 13.2A(2) and 13.2(2) of the Electricity Industry Participant Code (2010) (**Code**) with the view to reducing inefficient information asymmetry between informed and |

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| | uniformed market participants. It also intends to amend the Guidelines for Participants on wholesale market information disclosure obligations (**Guidelines**).<br><br>Genesis generally supports what the Authority is trying to achieve in amending the Code and Guidelines. We do however have the following key concerns, which are explained in the remainder of our submission:<br><br>• Whether the proposed amendments will be workable, particularly accounting for the interaction of the Code with the Guidelines, and;<br>• Whether the amendments will address the underlying causes of the anecdotal evidence of participant behaviour that triggered this review.<br><br>***[see also Q2, Q8 and Q10]***<br><br>**Room for improvement on timeliness, consistency of disclosure**<br><br>Genesis notes that the proposed amendments follow the Wholesale Advisory Group's (**WAG**) 2016 review, which was triggered by concerns of inefficient behaviour raised by parties, including the behaviour described in the scenarios found in section 5.4 of the consultation paper.<br><br>We agree with WAG and the Authority that it might be information was not disclosed in these scenarios because it did not meet the definition of disclosure information or because an exclusion was applied i.e. there is no conclusive evidence of the disclosure regime failing to operate as intended. Despite this, we agree it is useful to review the regime at this time to provide greater clarification to market participants as to what disclosure behaviour is expected.<br><br>For the review to be meaningful, we need to consider what will best address the underlying cause of the behaviour that may be giving certain parties cause for concern. Genesis suggests that in each of the scenarios, it is likely that market participants were not purposefully withholding information from interested parties, but, perhaps, not making their best efforts to disclose the information as efficiently as possible i.e. in a consistent place; in a timely manner.<br><br>To this end, we welcome the Authority's clarifying how market participants can use the Planned Outage Co-ordination Platform (**POCP**) database and Hedge Disclosure Regime (**HDR**) to make disclosures. We also recognise that because the Authority does not own or mandate use of POCP, there is a limit to its ability to require parties to best utilise it. We suggest the industry reconvenes a working group on the POCP platform to look at how to improve consistency and timeliness of disclosures to this database, and that this might be a very effective way to address the concerns that have led to the Authority's proposed amendments as drafted.<br><br>In addition to POCP and the HDR, listed market participants including Genesis have certain disclosure obligations to the NZX. It is here that you will find any disclosures about significant fuel contracts that will have a material impact on electricity market prices, and we consider that this sufficiently discharges any disclosure obligation in respect of fuel contracts. |

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| | We disagree with the Authority in section 7.23 of the Guidelines that information submitted to the NZX would not satisfy the requirements to make information readily available to the public. Any person can search 'Genesis Energy NZX' in Google and the top result will take them directly to our latest disclosures to the market. Further, any person can also set up email notifications to be updated when any listed market participant makes a market announcement. |
| Mercury | ***[from cover letter]***<br>We are pleased with the progress made in reviewing the disclosure regime and support the proposed changes.<br>It will be important that the revised guidelines are promoted and that new entrants are reminded to refer to them. We support the Authority allocating resources towards further education and monitoring of how the guidelines are being implemented by market participants. The guidelines should, in our view, be reviewed regularly to ensure they remain fit for purpose. |
| Meridian | ***[from cover letter]***<br>We are [also] grateful to the Authority for organising the recent workshop on this subject at which very helpful presentations were made by the Authority and the System Operator, and the Authority had various key staff and advisers for this project in attendance.<br>***[from cover letter]***<br>In relation to the questions in the consultation paper, our detailed comments are set out in the attachment using the Authority's requested format for submissions. However, at a high level:<br>• Meridian commends the Authority for:<br>o seeking to clarify its expectations for information disclosure in certain areas, particularly relating to outages and hedge contract information; and<br>o providing greater assistance to participants making disclosure decisions in those areas.<br>• Meridian agrees with the WAG and the Authority that the 'commercial disadvantage exclusion' should be removed and replaced with a 'reasonable person exclusion'. |
| MEUG | ***[from letter]***<br>One of the topics discussed on the conference call on 22 September was the role of the planned outage co-ordination process (POCP) as a vehicle for informing the market. We will be taking up an offer by the System Operator to discuss how MEUG members might more actively engage in POCP. |

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| Pioneer | ***[from letter]***<br>We support the change to a 'reasonable person' test if the consensus is that this will improve the effectiveness of the continuous disclosure regime. We also agree that confidence in the wholesale market depends on all participants having access to information that is material to their day-to-day involvement in the market. |
| Transpower | ***[from letter]***<br>This brief submission discusses how asset owners and the system operator can meet obligations for planned outage information under Part 8 by efficient use of the existing planned outage co-ordination protocol (POCP).<br>The consultation paper explains "asset owners using the POCP platform notify the system operator by logging into the POCP platform and entering the planned outage information directly. The information is then visible, and thus publicly available, without further action by either the asset owner or the system operator."<br>The paper also states the Authority and the system operator "encourage asset owners to use the POCP platform to meet their Technical Code D planned outage notification obligations, as it provides a timely, efficient and standardised process for planned outage co-ordinating and publication."<br>We would prefer that asset owners respond to encouragement to use POCP. However, we are concerned by the view noted from the September workshop:<br>*"it might be useful if the system operator was given user access so it could include outages notified to it by email."*<br>We strongly disagree with the suggestion that the planned outage information could be improved if the system operator has user access so it could input planned outages notified by email. The suggestion would create double handling, which is inefficient.<br>Although an asset owner may technically have met its obligation by sending an email to the system operator, the more efficient practice by most industry participants is direct input of their information to POCP. Double handling would also add to the time taken to convey information to POCP, reducing timely disclosure.<br>We consider inefficient and un-transparent outage notification practice could potentially have negative impacts for competition.<br>If inefficient notification remains, then we would support an alternative approach to mandating a single repository for all asset owner planned outage information. |