

Non-discrimination obligations Guidance

26 May 2026

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This guidance is provided for general information only and not as legal advice. This guidance does not establish any legal obligations in themselves.

While this guidance is provided to assist gentailers to understand and comply with the non-discrimination obligations, it is not a substitute for, nor does it form part of, the Electricity Industry Participation Code 2010 (Code). It also does not address other obligations gentailers may have under other parts of the Code.

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1. Purpose

- 1.1 This document provides guidance on how the Authority expects gentailers to comply with the non-discrimination obligations (NDOs) set out in Part 13 of the Electricity Industry Participation Code 2010 (Code).
- 1.2 All participants are expected to understand and comply with their obligations under the Electricity Industry Act 2010 (Act) and the Code.
- 1.3 The Authority is responsible for monitoring and enforcing compliance with the Code.
- 1.4 This version 1.0 supports compliance with the NDOs coming into effect on 1 July 2026. The Authority may update this guidance from time to time.

2. Guidance on non-discriminatory supply (Obligation 1)

- 2.1 The sub-paragraphs of Obligation 1 are based on a duty not to discriminate.
- 2.2 Discrimination is defined in clause 13.236P as follows: discrimination means engagement in differential treatment except to the extent a particular difference in treatment is objectively justifiable; and discriminate and discriminatory have corresponding meanings.
- 2.3 Any material difference in treatment that is not objectively justifiable will be considered discriminatory.
- 2.4 For the purposes of the non-discrimination obligations, “objectively justifiable” is intended to require gentailers to apply an evidence-based approach that is reasonable, consistent and transparent. For the avoidance of doubt, when assessing whether a gentailer’s reasons for the difference in treatment are objectively justifiable, the Authority will consider whether the gentailer has acted in a way which is consistent with the purpose of the NDO Code.
- 2.5 The concept of objective justification should be viewed as relatively broad and flexible, but one which requires adequate supporting evidence and the difference in treatment to be proportionate, having regard to the justification offered.
- 2.6 A gentailer’s non-discrimination policy should list the objectively justifiable reasons it expects to rely on. While we understand that this list may not be exhaustive, we would expect it to identify the objectively justifiable reasons that might relate to a difference in treatment that would apply to the large majority of transactions.
- 2.7 For each reason, gentailers’ non-discrimination policies should clearly set out:
 - (a) criteria for determining when an objectively justifiable reason exists; and
 - (b) evidence that is likely to be needed to establish that any difference in treatment is objectively justified.

(1) Non-discriminatory supply of risk management contracts between buyers

- 2.8 A gentailer should deal or offer to deal with buyers on substantially the same price and non-price terms and conditions (including quality, reliability and timeliness of service) as those made available (either expressly or implicitly) to other buyers.
- 2.9 To the extent that a gentailer discriminates between one buyer and another, the differences in treatment should be based on objectively justifiable reasons.
- 2.10 For Obligation 1(1), we expect that these reasons may relate to the details of the risk management contract, the gentailer’s business, the market conditions, how the contract is sold or other factors which may include:

- (a) the timing, shape, location and duration of the contract
- (b) load factors (including seasonal demand), conditions of interruptibility, plant commitments, prudential requirements, scale efficiencies but only where there is evidence of a difference in cost drivers
- (c) if market conditions have changed / timing of request
- (d) if prices are set by inclusive competitive processes such as open tenders or auctions, the price of a risk management contract
- (e) discount for social purposes such as serving vulnerable customers; however, the level of the discount should be reported to the Authority so that the data on hedge transactions remains reasonably comparable.

(2) Non-discriminatory access to risk management contracts: gentailer internal business units vs buyers

- 2.11 A gentailer must supply risk management contracts on a non-discriminatory basis, such that the gentailer does not prioritise supplying actual or implied risk management contracts to its internal business units over the supply of risk management contracts to buyers without an objectively justifiable reason.
- 2.12 Obligation 1(2), starts from the premise that gentailers will offer risk management contracts in response to all reasonable requests from buyers. An “objectively justifiable reason” for not doing so is likely to exist where providing a buyer with a risk management contract would result in an “intolerable risk position” for the gentailer in respect of its existing commitments. Such a position may arise where the gentailer’s reasonable forecast ability to back the requested risk management contract with generation is insufficient having regard to:
- (a) the amount of generation that the gentailer reasonably expects to need to supply electricity to its existing end customers
 - (b) the amount of generation that the gentailer reasonably expects to need to supply risk management contracts to prospective buyers, with whom the gentailer is engaged in final, exclusive negotiations, prior to contract execution, and which are expected on reasonable commercial grounds, to conclude imminently
 - (c) the gentailer’s wholesale commitments, comprised of gentailer market making commitments (regulated or voluntary) and existing risk management contracts entered into with buyers.
- 2.13 When calculating the generation the gentailer reasonably expects to use to supply electricity to its existing end customers it may only have regard to its customer commitments at the time of assessment, accounting for existing consumption plus any documented and evidenced assessment of the gentailer’s reasonable expectations of aggregate increased/decreased consumption for those customers over the relevant period of consideration. For the avoidance of doubt, this does not include supply to anticipated new customers, other than those prospective buyers expressly covered by the carve-out at paragraph 2.12(b) above.
- 2.14 For the period, or circumstance, for which a gentailer has indicated that the supply of a risk management contract to a buyer would result in an “intolerable risk position”, the gentailer should not supply actual or implied risk management contracts of comparable duration, volume and shape, backed by its own generation, to its internal business units, except where those contracts are for the purposes of meeting the existing commitments described above.

Should it do so, this could be an indicator of discrimination, prompting assessment of a potential breach of the NDOs.

(3) Non-discriminatory pricing of risk management contracts: gentailer internal business units vs buyers

- 2.15 The Authority expects that gentailers will primarily demonstrate compliance with Obligation 1(3) by demonstrating an economically justifiable link between the expected cost of electricity supply and its retail price offers, ie, shown by the retail price consistency assessment (RPCA) that it is required to regularly perform.
- 2.16 The Authority has published guidance on the RPCA on its website that will assist parties in understanding how the RPCA should be applied.

3. Guidance on obligation to trade in good faith (Obligation 2)

- 3.1 The confidence in and efficiency of trading of risk management contracts is improved through encouraging high integrity conduct from all counterparties - which includes gentailers acting fairly, consistently and in good faith, and enabling their staff with the requisite skills, training, and support to perform their roles efficiently, effectively and professionally.
- 3.2 Gentailers should adopt trading practices and processes that are transparent, efficient, and objectively justifiable, and commit to ongoing improvement and monitoring of performance, both of the market as a whole and the individual participants, so as to ensure ongoing confidence in and efficiency of trading of risk management contracts.
- 3.3 Gentailers are expected to engage with buyers in a timely and constructive manner, for example by:
- (a) responding to buyers' requests for risk management contracts within 5 business days; and
 - (b) allowing buyers at least 5 business days to respond to offers made in response, unless there is an objectively justifiable reason for a longer timeframe being necessary.

Matters that may be taken into account

- 3.4 The Authority expects that the following list of matters will be relevant in determining whether the gentailer has engaged with buyers in good faith:
- (a) whether the gentailer has acted honestly
 - (b) whether the gentailer has been responsive and communicative
 - (c) whether the gentailer has not acted arbitrarily, capriciously, unfairly, or unreasonably
 - (d) whether the gentailer has not acted in a way that constitutes retaliation against a buyer for past complaints and disputes
 - (e) whether the gentailer has observed confidentiality requirements relating to buyer confidential information (including in accordance with Obligation 5)
 - (f) whether a buyer's requests for risk management contracts are reasonable (for example, by providing reasonable timelines, by providing reasonably required information and being issued where there is a genuine intention to transact), and made in good faith.
- 3.5 The matters set out above are not exhaustive, however, and do not limit the obligation on gentailers to engage with buyers in good faith and in a timely and constructive manner in accordance with Obligation 2.

4. Guidance on credit assessments (Obligation 3)

4.1 The credit terms and collateral arrangements offered by a gentailer in relation to the supply of risk management contracts to buyers should be a reasonable reflection of the risks of trading with the buyer. For this purpose, a gentailer should:

- (a) assess the credit worthiness of the buyer by reference to a range of relevant information, including information submitted by the buyer
- (b) follow an established and transparent process for assessing creditworthiness
- (c) consider, and where appropriate, discuss a range of credit options with the buyer
- (d) ensure that the credit terms and collateral arrangements offered reflect the outcome of the assessment, consideration and discussion under (a) and (b).

Additionally, the gentailer should also be able to demonstrate to the Authority that it has done so.

4.2 The gentailer should process credit applications and conduct reviews in a timely, efficient and transparent manner. This includes:

- (a) providing an indication of when a decision might reasonably be made, subject to the applicant satisfying all reasonable information requirements in a timely manner
- (b) proactively notifying the applicant of any progress, including delays, issues or final decisions, when they become known.

4.3 The gentailer should submit to the buyer, with its offer, the basis for its credit decision.

5. Guidance on equal access to commercial information (Obligation 4)

5.1 A gentailer should ensure that any commercial information relating to risk management contracts made available to its internal business units, that compete with buyers, is also made available to buyers at the same time. Or alternatively, that information should be withheld from both its internal business units and buyers.

5.2 This is intended to ensure a gentailer's retail internal business unit does not receive a competitive advantage through access to commercial information regarding risk management contracts.

5.3 For example, if a gentailer shares information with its internal business unit, that competes with buyers, about risk management contract availability or changes to the standard terms for risk management contracts, it must make that information available to buyers at the same time.

5.4 In determining how it will comply with Obligation 4, the Authority considers a gentailer should avoid sharing information with its internal business unit, that competes with buyers, if the information sharing could facilitate tacit collusion or affect competitive dynamics. Examples of information that would fall into this category would be the methodologies for pricing of risk management contracts, and forecasts of the gentailer's own internal capacity.

5.5 Obligation 4 may cover commercially sensitive information related to risk management contracts. If a gentailer wishes to protect commercially sensitive information, the gentailer should consider not releasing the information to its internal business units, that compete with buyers, unless it is also comfortable disclosing that same information to buyers.

5.6 For the avoidance of doubt, Obligation 4 does not apply to information generated by third parties that aggregates information from more than one gentailer.

6. Guidance on protection of confidential information (Obligation 5)

6.1 In relation to the supply of risk management contracts by gentailers to buyers:

- (a) a gentailer should not disclose to an internal business unit, that may compete with the buyer, information the gentailer has obtained through its dealings with a buyer where the disclosure would, or would be likely to, provide an advantage to the internal business unit
- (b) a gentailer should keep all buyer confidential information in confidence and should not disclose buyer confidential information to any third party other than as necessary for the provision of risk management contracts to that buyer, or where disclosure is:
 - (i) properly made pursuant to a relevant legal or regulatory obligation
 - (ii) to the Authority
 - (iii) properly and reasonably made to a court
 - (iv) authorised by the buyer
- (c) a gentailer should not use buyer confidential information any purpose other than the purpose for which it was provided to the gentailer
- (d) a gentailer should have robust processes in place to ensure that any buyer confidential information that is inadvertently disclosed to an internal business unit is not used by that internal business unit to gain an advantage.

7. Guidance on public reporting (clause 13.236X)

7.1 Clause 13.236X requires gentailers to publish public version of their annual report and RPCAs. Sub-clause (2) provides that: “[w]hen preparing a public version of an annual report, or retail price consistency assessment, a gentailer may redact information that it reasonably considers is commercially sensitive or otherwise confidential, but any such redactions should be kept to a minimum to promote transparency.”

7.2 The Authority would expect gentailers to redact information that could affect competitive dynamics. Examples of information that would fall into this category would be the methodologies for pricing of risk management contracts, and forecasts of the gentailer’s own internal capacity.

8. Guidance on reporting of breaches

Complaints to industry participants

8.1 Any person may make a complaint in writing to a participant about any business activity that the person believes may constitute a breach of the Code¹. Complaints do not need to be made through the Authority in the first instance.

8.2 Where a complaint is made, the participant is required to ensure that the complaint is investigated promptly, thoroughly and fairly, and that appropriate action is taken in response.

¹ Regulation 5 of the Electricity Industry (Enforcement) Regulations 2010

- 8.3 Following completion of the investigation, the participant must promptly provide written notice of the outcome and the action taken (if any). This written notice must be provided to both the person who made the complaint and the Authority.

Reporting of alleged breaches

- 8.4 In addition to responding to complaints made to them, industry participants have a mandatory obligation to report alleged breaches of the Code by other participants². A participant that, on reasonable grounds, believes that another industry participant has breached the Code must report the alleged breach to the Authority as soon as possible. This includes circumstances where a participant believes that a gentailer has breached the NDOs or related Code obligations.
- 8.5 Reports of alleged breaches must be made in writing and must include sufficient detail to enable assessment by the Authority. This includes identifying the participant alleged to have breached the Code, specifying the relevant Code provision or provisions, describing the circumstances relating to the alleged breach, and the date and time at which the alleged breach occurred. Alleged breaches can be reported via our [Compliance portal](#).
- 8.6 This mandatory reporting obligation operates alongside, and does not limit, any other specific breach reporting requirements imposed on industry participants under the Code or the regulations.
- 8.7 Under clause 13.236Y, if a gentailer believes on reasonable grounds, that it may have breached subpart 5C (NDOs) it must report the alleged breach to the Authority as soon as reasonably practicable, and no later than 20 business days after the gentailer becomes aware of the alleged breach. For the avoidance of doubt, nothing in clause 13.236Y affects or limits any claim for legal professional privilege.
- 8.8 Persons other than industry participants may also play a role in supporting compliance with the NDOs. Any person who is not an industry participant and who believes, on reasonable grounds, that an industry participant has breached the Code may report the alleged breach to the Authority.

² Regulation 8 of the Electricity Industry (Enforcement) Regulations 2010