

# **Monitoring approach**

## **Non-discrimination obligations and Retail Price Consistency Assessment**

**June 2026**

## Disclaimer

The Electricity Authority Te Mana Hiko (Authority) provides this document to inform participants about the approach and data the Authority intends to use to monitor compliance with the non-discrimination obligations of the Electricity Industry Participation Code 2010 (Code).

The monitoring process is designed to identify issues, unusual patterns, anomalies, or other matters that may warrant further enquiry. In some cases, those matters may then be considered further through the Authority's usual compliance and enforcement processes. Importantly:

- (a) This document is not intended to provide participants with guidance on how to meet their obligations under the Code. Nor is it intended to outline how the Authority interprets the relevant Code provisions beyond how this is relevant to the monitoring process.
- (b) This document does not set out the approach that the Authority will take to assessing an alleged breach of the Code identified through monitoring and reported to the Authority's compliance function. Conduct may still be in breach of the Code even if it is not detected by the Authority's monitoring systems, and conduct identified through monitoring will not necessarily be in breach of the Code. Where an alleged breach is reported, it will be progressed in accordance with the process prescribed by the Electricity Industry (Enforcement) Regulations 2010 and the Authority's Enforcement and Prosecution Policy.

The information in this document does not form part of the Code. It is provided for general information only and not as legal advice, and does not establish any legal obligation in itself.

Although the Authority has taken every care in the preparation of the content of this information paper, the Authority offers no warranty (express or implied) as to the accuracy, completeness, or legality of that content. The Authority is not liable or responsible to any persons for direct or indirect loss or damage that may result from the action or failure to act by any person in reliance on this information paper.

The publishing of this information paper does not place any obligation on the Authority to follow any interpretation contained in it when carrying out any of its functions under the Electricity Industry Act 2010. The approach detailed in this document is subject to change if additional information is obtained through post-implementation reviews, compliance investigations, Rulings Panel or court decisions, or from other information sources that may inform our approach.

For the avoidance of doubt, any indicators, examples, metrics, ranges, timeframes, or analytical comparisons referred to in this document are included for monitoring and prioritisation purposes only. They are not binding legal tests, presumptions of compliance or non-compliance, safe harbours, or automatic triggers for enforcement action. Whether conduct complies with the Code will depend on the text and purpose of the relevant provision, the full factual context, and any explanation provided.

## Executive summary

Clauses 13.236P-Y of the Electricity Industry Participation Code 2010 (Code) that come into force on 1 July 2026 introduce new non-discrimination obligations (NDOs) that the Electricity Authority Te Mana Hiko (Authority) will be monitoring and enforcing. This includes a new retail price consistency assessment (RPCA). The NDOs, including the RPCA requirements, apply to the four major gentailers.<sup>1</sup>

### Data used in monitoring

The Authority will draw on gentailers' non-discrimination policies, implementation plans, annual reports, and audit reports for its monitoring. It will also use a range of data to monitor the NDOs and test the RPCA:

- (a) Hedge disclosure obligation and Australian Securities Exchange data will be used to analyse risk management contracts that have been traded.
- (b) Over-the-counter (OTC) bids and offers data will be used to analyse the success rate of requesting specific OTC risk management contracts and the pricing of such offers.
- (c) Retail gross margins data will be used as a point of comparison to RPCA margins and components.
- (d) The RPCA will be used to help monitor whether gentailers appear to be offering lower generation pricing to their own retail arms.
- (e) Retail market data will be used to broadly check the retail prices used in the RPCA.
- (f) Reconciled injection and offtake data, retail switching data and other monitoring datasets may also be used.

### Monitoring approach

The approach to monitoring the NDOs will be similar to the monitoring approach for [trading conduct](#). This will involve:

- (a) proactively identifying issues, anomalies, unusual patterns, or other matters that may warrant further enquiry, including through analysis of available data and consideration of matters reported by third parties or self-reported by gentailers
- (b) undertaking further analysis where appropriate, which may include requesting further information or explanation from those involved and assessing that information against the available data
- (c) where appropriate, referring matters to the compliance function for consideration under the Authority's usual compliance and enforcement processes.

There will be no bright lines or binding tests that would lead to automatic escalation to compliance or enforcement beyond failure to submit the required information.

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<sup>1</sup> Contact Energy Limited, Genesis Energy Limited, Mercury NZ Limited and Meridian Energy Limited.

Planned monitoring tests that may trigger further analysis	
RPCA	Broadly check retail price component and retail load against retail market data, assess the electricity cost component against hedge market data and the gentailers' own sales, analyse approach to cost calculation and allocation, and check for internal inconsistencies, and inconsistencies compared to our own data.
Obligation 1: Non-discriminatory supply	Check whether trade or offer prices differ for similar contracts traded at similar times across different markets and different buyers. Assess whether some buyers receive less frequent or lower volume offers compared to their requests, whether gentailers are not offering generation volume that is available to be sold, types of requests that are not as offered, reasons for declining to offer, and negative or narrow positive RPCA margins.
Obligation 2: Trade in good faith	Check timeframes of responses to requests, timeframes of open offers, and unusual trading processes.
Obligations 3-6	Check when credit is given as a reason to not offer, incidents brought to our attention, and lack of records when further information is requested.

### Publication of monitoring and results

The Authority plans to publish, subject to any information withheld by gentailers on permitted confidentiality grounds:

- (a) the RPCA results and components
- (b) commentary of the RPCA results
- (c) results of NDO monitoring
- (d) what we have identified for further analysis.

### Assessment of gentailer implementation plans, non-discrimination policies and reports

The Authority will assess gentailers' non-discrimination policies, implementation plans, audits and annual reports as part of its broader monitoring framework. This includes checking that the required documents are provided and meet Code requirements.

The policies, plans, annual reports and audits are intended to support gentailers' compliance with the NDOs, increase transparency, and support the Authority's monitoring of compliance. Our assessments of these documents do not constitute an approval process, or on their own, demonstrate compliance with the NDOs. Instead, they form one input into the Authority's overall view of compliance, alongside monitoring data and other information.

Where issues are identified, such as deficiencies in policies or reports, inconsistencies across information sources, or indications of potential non-compliance, the Authority may seek further information, undertake additional analysis, or refer matters to its compliance function.

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## 2. Purpose

2.1 Clauses 13.236P-Y of the Electricity Industry Participation Code 2010 (Code) that come into force on 1 July 2026 introduce new non-discrimination obligations (NDOs) that the Electricity Authority Te Mana Hiko (Authority) will be monitoring. This includes a new retail price consistency assessment (RPCA). This document details the Authority’s approach to monitoring the new NDOs and RPCA.

## 3. The new non-discrimination obligations and retail price consistency assessment

### Non-discrimination obligations

- 3.1 The NDOs will come into force from 1 July 2026. This decision was announced in the [Level playing field measures – Code amendment decision paper](#). The NDOs and RPCA submission will apply to the four major gentailers as defined in the Code.
- 3.2 The objectives of the NDOs are to promote competition by requiring gentailers to supply risk management contracts on a non-discriminatory basis to:
- (a) ensure the even-handed supply of risk management contracts
  - (b) support the liquidity and competitive pricing of risk management contracts
  - (c) facilitate investment in the electricity industry.
- 3.3 The new NDOs are summarised in the table below:

Non-discrimination obligations	
Obligation 1: Non-discriminatory supply	(1) A gentailer must not discriminate between buyers for the supply of risk management contracts. (2) A gentailer must not discriminate against buyers in favour of its own internal business units for the supply of risk management contracts. (3) A gentailer must not discriminate against buyers in favour of its own internal business units when pricing risk management contracts. (4) For the avoidance of doubt, subclause (3) requires pricing of risk management contracts in such a way as to ensure that any buyer that supplies electricity to end users at retail, that is as efficient with regard to operating costs as the gentailer’s own retail internal business unit, and adopts a reasonable risk management approach, is not unduly deterred from operating profitably.
Obligation 2: Obligation to trade in good faith	A gentailer must engage with buyers in good faith and in a timely and constructive manner in relation to the supply of risk management contracts.
Obligation 3: Objective credit assessments	A gentailer’s credit terms and collateral arrangements relating to the supply of risk management contracts to buyers must reflect a reasonable, consistent and transparent assessment of the risk of trading with a buyer.
Obligation 4: Equal access to commercial information	A gentailer must 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.
Obligation 5: Protection of confidential information	A gentailer must: (a) protect buyer confidential information: (b) not use buyer confidential information other than for a purpose for which it was provided to the gentailer: (c) establish robust processes to prevent disclosure of buyer confidential information to, and use of buyer confidential information by, any of the gentailer’s internal business units that may compete with the buyer.
Obligation 6: Record-keeping	A gentailer must establish, maintain and keep records that demonstrate its compliance with these non-discrimination obligations.

## Retail price consistency assessment

- 3.4 The Authority has also codified the RPCA. The RPCA will be the primary way gentailers will demonstrate compliance with Obligation 1(3), by demonstrating an economically justifiable link between the expected cost of electricity supply and their retail price offers.
- 3.5 The key characteristics of the RPCA are as follows:
- (a) The RPCA margin equals the retail revenue for the period ahead less expected non electricity costs and less expected cost of electricity. This RPCA margin is generally expected to be positive.
  - (b) The expected cost of electricity is valued at observed market prices as if the cost of all retail load was fixed with risk management contracts at observed market prices.
  - (c) All expected prices and costs should be excluding GST and presented as if they will apply for the year ahead (that is, annualised).
- 3.6 More details can be found in the [RPCA guidance](#).

## Monitoring of obligations and RPCA

- 3.7 The Authority's monitoring will enhance visibility of gentailer conduct in the hedge market through increased transparency and regular publication. Our monitoring approach will draw on a range of information sources, including gentailers' non-discrimination policies, RPCAs, and information obtained through the Authority's broader monitoring activities.
- 3.8 The remaining sections of this document detail:
- (a) the data that will be used to monitor the NDOs and assess the RPCA
  - (b) how it will be used to test the RPCA and monitor each obligation
  - (c) publishing and timing of monitoring
  - (d) our approach to assessment of the gentailer non-discrimination policies, implementation plans, audits and annual reports.

## 4. Data the Authority will use to assist with monitoring assessment

- 4.1 The Authority collects a variety of data that may be used in the monitoring of the NDOs. We are also collecting new data as part of the RPCA and continuing to collect [retail gross margin \(RGM\)](#) data for comparability.
- 4.2 This section explains the key datasets the Authority will use to monitor the NDOs.

### Australian Securities Exchange and hedge disclosure obligations data

- 4.3 The Authority has two datasets that update regularly and provide information about the risk management contracts that have been traded.
- 4.4 There are several [standard futures and options contracts](#) that can be traded on the [Australian Securities Exchange \(ASX\)](#). The Authority receives data from the ASX every

business day that provides every order and trade that takes place in the ASX New Zealand electricity market. In the past we have used this data to track ASX trading activity, indicate futures price sentiment, and assess ASX market making.

- 4.5 All risk management contracts that are not traded on the ASX are over-the-counter (OTC) contracts. In the OTC market, both standard and non-standard contracts are traded through direct communication between participants or through a broker. Participants are required to disclose their OTC contracts above a minimum volume via the [hedge disclosure obligations](#) (HDOs).<sup>2</sup> When the counterparty of a disclosure is also an industry participant, they are then required to confirm that the details are correct.
- 4.6 Participants are given 5-10 business days to submit their disclosures as the disclosing party and 2 business days to verify disclosures as the counter party. Therefore, while we receive updated data every business day, some traded contracts may not be immediately present in the data.
- 4.7 With both the ASX and HDO datasets we have a relatively complete view of the financial hedging of the participants and the pricing of these different hedges.

### Over-the-counter bids and offers

- 4.8 While the HDO data provides the Authority with OTC trades, it does not give us insight into the negotiation that led to the trades and how well the offered contracts and final trades reflect the requests participants made. In September 2025, the [2.16 OTC bids and offers notice](#) came into force, which requires participants to disclose their initial requests, and the final offers they received when negotiating OTC contracts.
- 4.9 This data is provided every quarter by the requesters. Each submission covers a quarter of activity and submissions are due no later than 10 business days after a quarter ends.
- 4.10 This bids and offers data allow us better visibility of the OTC market, which we can use to indicate when types of contracts are not well-supplied or where offer prices don't seem competitive. This also provides visibility of whether particular participants receive fewer offers of supply or offers with higher prices compared to other participants. These features make the OTC bids and offers dataset particularly useful for monitoring the NDOs.

### Retail gross margins and gentailer costs

- 4.11 RGM data is submitted by retailers with more than 1% of installation connection points (ICPs). It is a backwards look at the retail margins over the previous financial year. Gentailers previously estimated their electricity cost using a calculated internal transfer price. This was intended as a tool to assess retail market competition.
- 4.12 A [post implementation review](#) of RGMs and internal transfer pricing found that retail gross margins and internal transfer prices had limited usefulness. This has led to discontinuation of internal transfer price disclosures in favour of the new RPCA. However, the RGM data will continue to be disclosed by non-gentailer retailers so it can be used for comparison. Gentailers will still disclose their costs, but are no longer required to disclose their backwards looking revenue, electricity cost and electricity sold.
- 4.13 RGMs and gentailer costs are disclosed annually. We receive them no later than 90 days after the end of the financial year.

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<sup>2</sup> Contained in Part 13 subpart 5 of the Code

4.14 More details on the RGM and gentailer cost data can be found in the RGM and gentailer cost form.

## Retail price consistency assessment

- 4.15 The RPCA, was created to assess whether a gentailer is discriminating against buyers in favour of its own internal business units when pricing risk management contracts. It was designed as a tool to monitor Obligation 1(3) of the NDOs. All gentailers must submit RPCAs.
- 4.16 Unlike the RGMs, the RPCA takes a forward-looking approach reflecting how independent retailers must hedge their load. It also specifies that gentailers must estimate the cost of electricity by choosing risk management contracts as if hedging their probable retail load. These risk management contracts must be chosen and priced based on observable market prices.
- 4.17 The data must be submitted up to 45 business days after the assessment date. It will be submitted every six months after every 1 January and 1 July, and the data will cover the period of 12 months from the assessment date. For example, for the first assessment date of 1 July 2026, the submission will be due on 3 September at the latest and the data will cover all of July 2026 to June 2027.
- 4.18 More details on the RPCA can be found in the [RPCA guidance](#) and the RPCA form.

## Retail market data

- 4.19 The Authority published a [retail market monitoring 2.16 notice](#) in 2025 so that we would receive detailed retail market data. The notice applied from 1 January 2025 and provides retail demand and prices at an ICP and account level. Retailers with at least 1000 ICPs are required to submit this data.
- 4.20 This retail market data is part of a larger initiative to increase monitoring of the electricity retail market. It will be useful for confirming that the retail loads and retail prices submitted by the gentailers within the RPCA are reasonable.
- 4.21 Retail data is submitted monthly, on the last day of the month following the month that the data covers.

## Other data that may be useful

- 4.22 The above datasets are likely to be the primary data sources used in the monitoring of the NDOs and RPCA. However, the Authority has access to a number of other datasets that may also be useful. In particular:
- (a) the reconciled injection and offtake data that gives a historic view of the generation injected to and demand taken off the electricity grid by participant
  - (b) the retail switching data that shows the net number of customers retailers have lost or gained each month.

## 5. The Authority's approach to monitoring the new obligations

### The overall monitoring approach

- 5.1 The approach to monitoring the NDOs will be similar to the monitoring approach for [trading conduct](#). This will involve:
- (a) proactively identifying issues, anomalies, unusual patterns, or other matters that may warrant further enquiry, including through analysis of available data and consideration of matters reported by third parties or self-reported by gentailers
  - (b) undertaking further analysis where appropriate, which may include requesting further information or explanation from those involved and assessing that information against the available data
  - (c) where appropriate, referring matters to the compliance function for consideration under the Authority's usual compliance and enforcement processes.
- 5.2 There will be no bright lines or binding tests that would lead to automatic escalation to compliance or enforcement beyond failure to submit the required information. Further monitoring/analysis is not necessarily an indication that a participant has breached the NDOs. Rather, it reflects the Authority undertaking due diligence to understand behaviour or data that appears unusual or inconsistent with the NDOs.
- 5.3 However, if a satisfactory explanation is not provided in a timely manner, the matter may be escalated to compliance.
- 5.4 The Authority's monitoring approach will be evidence-driven, drawing on a range of information sources including:
- (a) gentailers' non-discrimination policies, RPCAs, implementation plans, annual reports, and audit reports
  - (b) Code-mandated disclosures and market data (as explained in Section 4 above)
  - (c) information obtained through the Authority's broader monitoring activities
  - (d) alleged breach reports, and issues raised by market participants or stakeholders.
- 5.5 The rest of this section will detail some of the analysis that monitoring is likely to carry out to assess the RPCAs and identify potential breaches of the NDOs. It is not necessarily exhaustive, and other additional analysis may also be undertaken. Likewise, certain analysis may be retired if it is deemed unnecessary, or adjusted if it can be improved.
- 5.6 The indicators, examples, comparisons and potential follow up steps described in this section are non-exhaustive monitoring tools only. They are intended to help the Authority prioritise monitoring activity and decide whether further enquiry may be warranted. They do not create separate legal requirements, do not limit the matters the Authority may consider, and do not predetermine whether any conduct is or is not compliant with the Code.

## Retail price consistency assessment

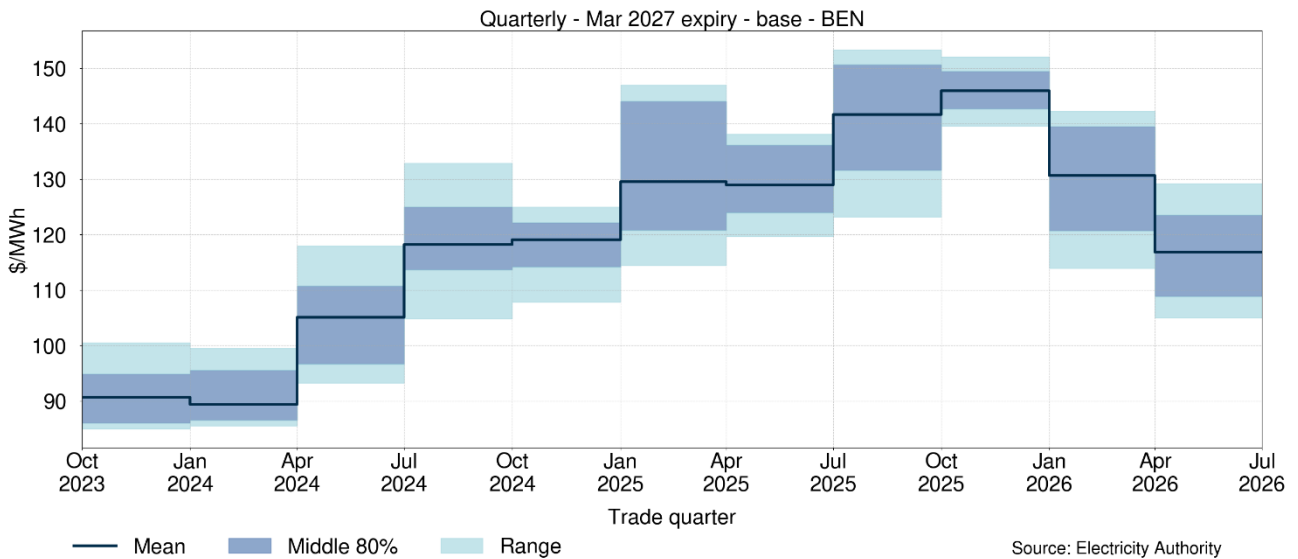
- 5.7 How the RPCA results will be used to monitor the NDOs will be detailed later. This subsection explains the checks we will apply to the RPCA submissions themselves. These checks will help the Authority and the market participants be more confident in the RPCA margin results.
- 5.8 The Authority will review the RPCA reports and assess if the methodology described by each gentailer appears appropriate and carry out data-driven checks where possible. What we seek to identify will include:
- (a) non-responsive and opaque disclosures
  - (b) inconsistent application of justifications
  - (c) internal inconsistencies within submissions and between submissions
  - (d) inconsistencies with our own data
  - (e) unrealistic assumptions, including around the 'as if' hedge portfolio.
- 5.9 After the period the RPCA data covers has lapsed, we may also compare the expected non-electricity costs to the actual reported costs and ask further questions if there are major, unexplained and consistent differences in a gentailer's expected and actual costs across multiple reporting periods. We do not expect exact agreement between the RPCA components and the backwards-looking gentailer costs, but if they are consistently very different for several submissions, we may seek an explanation.
- 5.10 The aggregate retail price reported in the RPCA will likely be compared to aggregates we calculate using the retail market data we receive. As with the gentailer cost comparison, we will not be expecting exact agreement between these different sources, but especially large differences may prompt requests for further explanation. Likewise, we will compare the retail load disclosed in the RPCA to retail load derived from the retail market data.
- 5.11 As part of the RPCA, we are requesting details on the 'as if' hedges gentailers have chosen to estimate their expected cost of electricity. These details include hedge type, price, volume, effective dates, effective time periods, location, and quarter traded. We will be checking these 'as if' hedges while considering the explanations provided and may carry out further analysis if:
- (a) similar hedges<sup>3</sup> cannot be found in the ASX and HDO datasets
  - (b) the hedges are not standardised or common hedges and similar hedges have not been sold by the gentailer or are not commonly offered when requested
  - (c) the pricing of the hedges does not reasonably align with market prices or prices the gentailer has sold similar hedges at
  - (d) hedge prices are consistently at the low end of possible prices in a way that is unlikely to be available if they were an independent retailer buying real hedges
  - (e) hedge prices are unlike those the gentailer is shown to offer for similar hedges in the OTC bids and offers data
  - (f) hedges were all traded in a very limited period of time.

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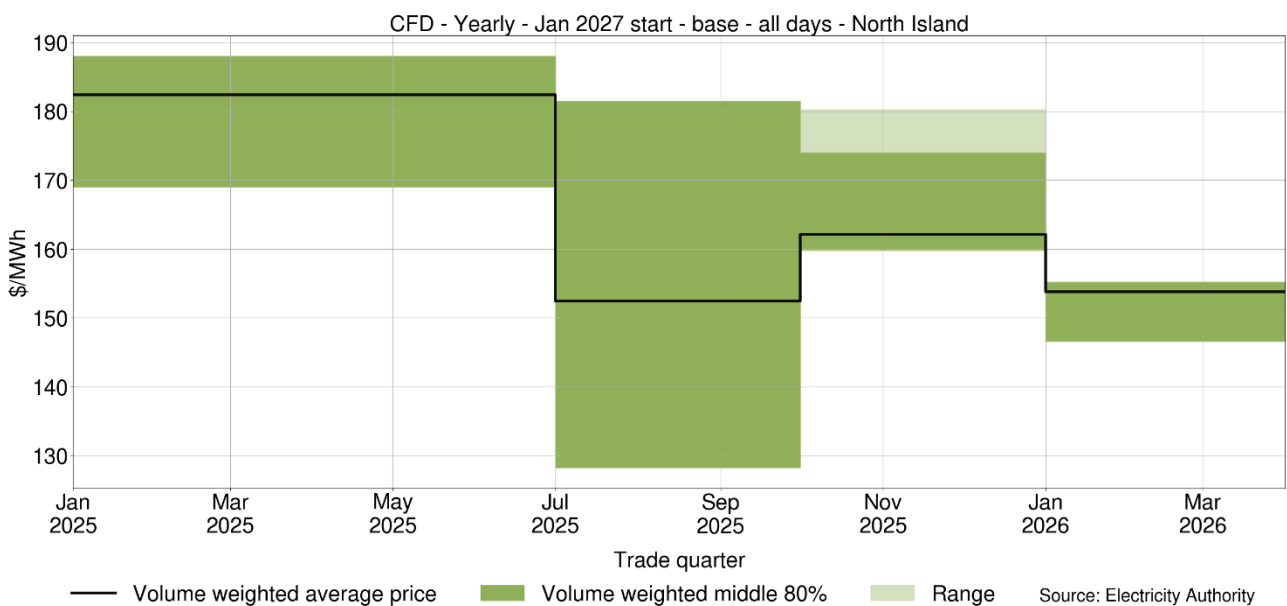
<sup>3</sup> Hedges will be deemed similar if they are roughly the same type, duration, effective period, effective days covered, shape, and location.

5.12 To assess the pricing of hedges we may compare them to closing ASX prices within a trading quarter for a similar ASX contract (Figure 1) or volume weighted statistical prices of similar OTC hedges (Figure 2).

**Figure 1 – The ASX closing price mean, middle 80% and range within trading quarters for 2027 Q1 baseload Benmore futures**



**Figure 2 – The OTC hedge price volume weighted average, volume weighted middle 80% and range for year-long baseload contracts effective over 2027**



5.13 As part of our monitoring analysis, we may develop analytical comparators or reference scenarios for ‘as if’ hedging of load to help assess whether a submission appears internally coherent and whether further enquiry may be warranted. Any such comparator or reference scenario would be used as an analytical tool only and would not, by itself, determine whether an RPCA assessment indicates non-compliance with the NDOs.

## Obligation 1: Non-discriminatory supply

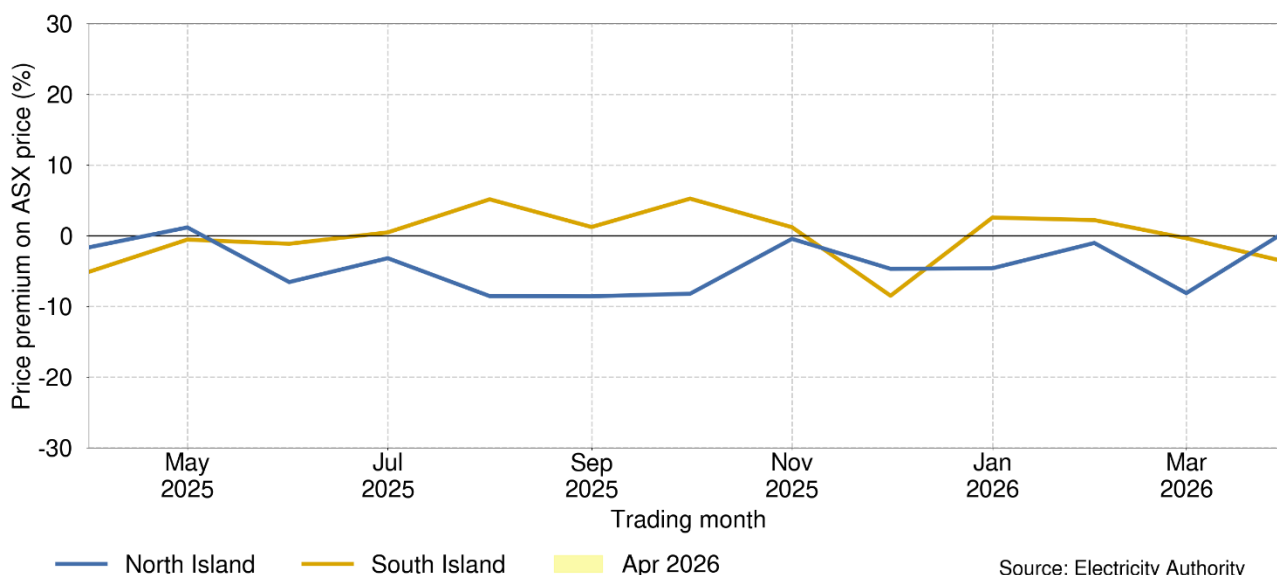
### 1(1): No discrimination between buyers

5.14 To test for discrimination between buyers we plan to assess whether:

- (a) there are major price differences between similar contracts on the ASX and OTC markets traded at similar times
- (b) certain buyers tend to consistently get lower or higher than market average prices for similar OTC contracts
- (c) certain buyers tend to consistently get offered higher or lower prices or volumes during the negotiation process, or receive offers at a different frequency.

5.15 We will calculate the premium between ASX baseload monthly and quarterly contracts and equivalent OTC contracts sold by the gentailers to assess if there is discrimination between buyers on the ASX and OTC markets. This is similar to analysis presented in the monthly [Hedge Market Summary](#) reports. Figure 3 provides an example of the concept. Unusually large positive or negative price premiums may trigger further analysis.

**Figure 3 – Volume weighted average price premium of baseload OTC monthly and quarterly hedge contracts for difference relative to equivalent ASX baseload prices, April 2025 to April 2026**

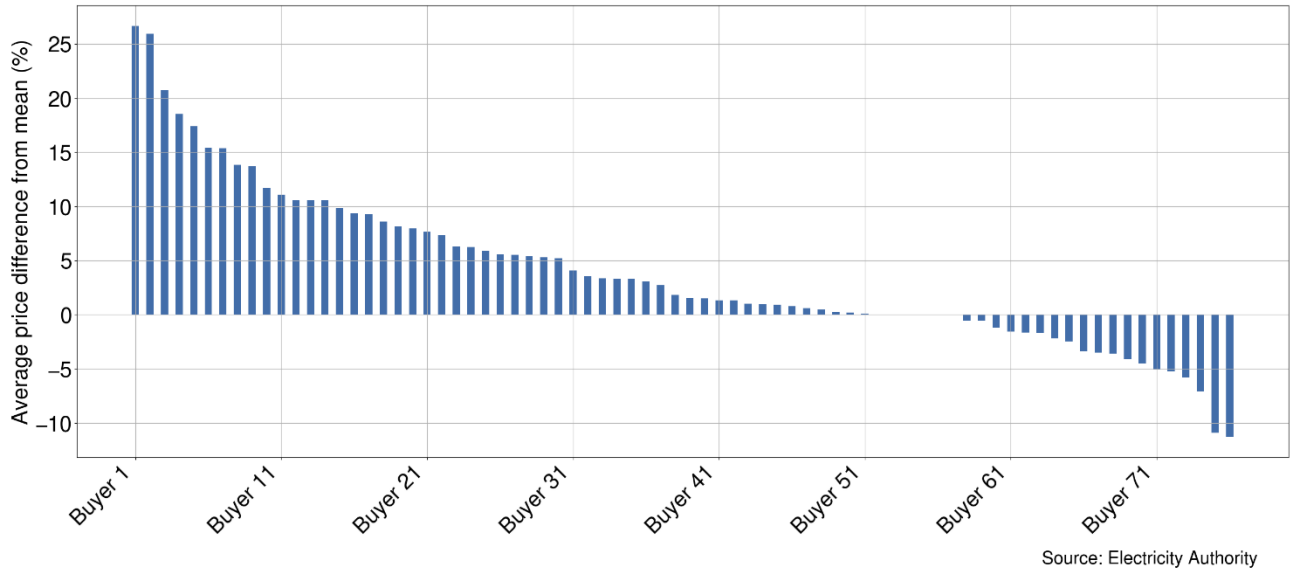


5.16 We plan to analyse HDO data to identify discrimination between buyers across what is traded. This will involve

- (a) grouping OTC contracts with similar features and trading times together
- (b) calculating the volume weighted average price within the group
- (c) calculating the percentage difference between the price of each contract and the group average
- (d) averaging these percentage differences by seller and buyer to identify participants who tend to have lower and higher price premiums from any gentailer and across all the gentailers
- (e) averaging the percentages by buyer type to identify types of participants who tend to have lower and higher price premiums from any gentailer and across all the gentailers.

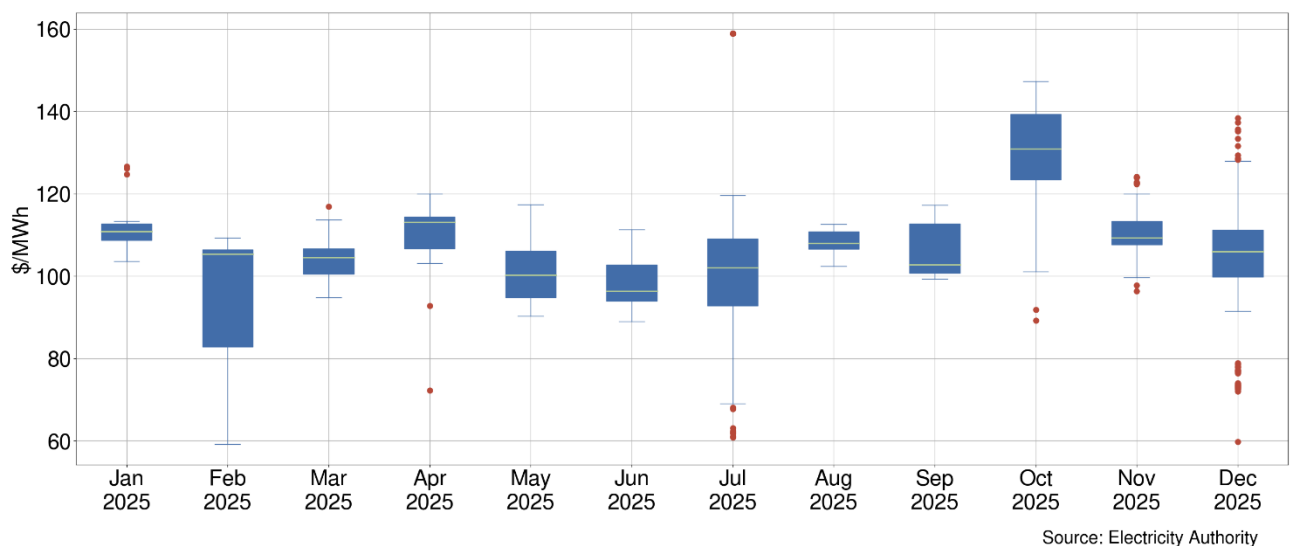
5.17 Figure 4 shows an anonymised example of the average price premium buyers pay across all gentailers. Large positive or negative price premiums for individual buyers or types of buyers may trigger further analysis. However, while employing this method we will be mindful of larger volume contracts skewing the group averages. We will also consider that major price differences may arise due to varying negotiation tactics or specific contract features and there may be reasonable explanations for these price differences.

**Figure 4 – Average price premiums different buyers pay relative to the volume weighted average price of similar OTC contracts traded at similar times when buying from gentailers (anonymised)**



5.18 Since larger volume contracts may skew the above analysis, we will also look at raw prices within these similar contract groups to identify outlier prices. Figure 5 provides an example of this, where possible outliers have been coloured red. These possible outliers may trigger further analysis.

**Figure 5 – Price distribution of North Island OTC fixed-price variable volume baseload contract components effective for non-business days over a month in Q4 2026 by month traded**



5.19 The same type of price premium and price outlier analysis will be carried out on offer prices within the OTC bids and offers data. We will assess if certain participant or participant types tend to get offered lower or higher volumes relative to the volume requested when compared to other participants. The number of conforming and nonconforming offers per request by

participant and participant type will also be analysed. Major differences between participants and participant types by a gentailer or across all gentailers may trigger further analysis.

## 1(2): No discrimination in supply in favour of its own retail arm

5.20 To assess whether gentailers may be discriminating in the supply of risk management contracts in favour of its own retail arm, we plan to test whether, given their current generation capacity and contractual position:

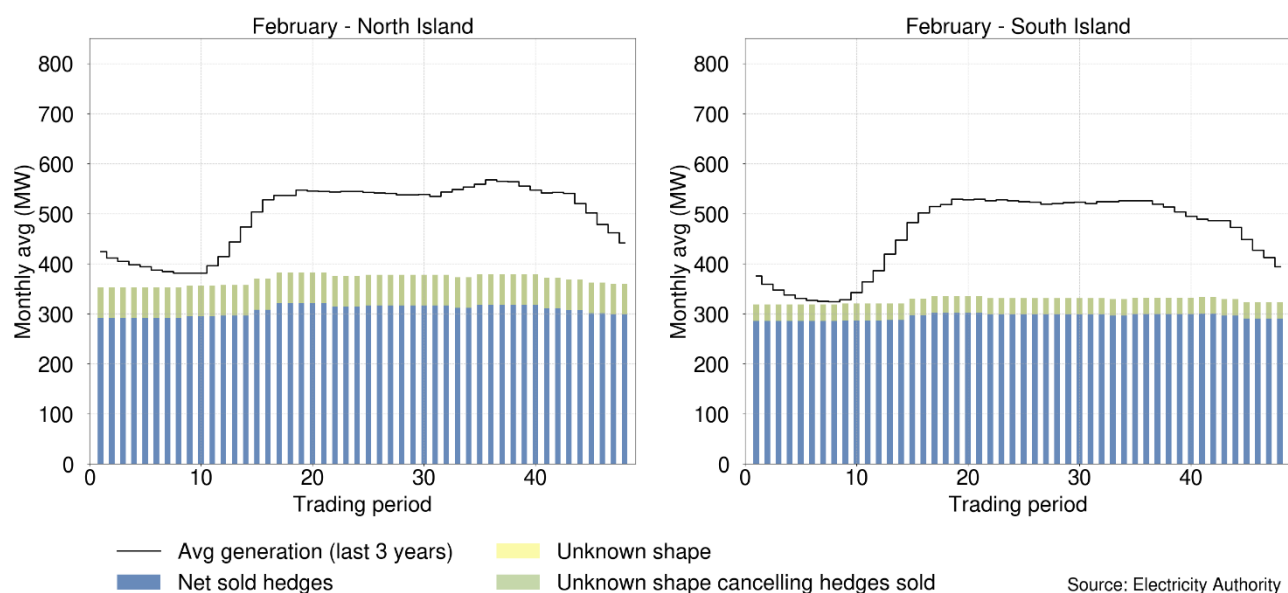
(a) gentailers are consistently not offering hedge types, volumes or shapes that were requested

(b) the reasons gentailers have given for declining to offer seem reasonable.

5.21 To assess whether gentailers are limiting supply, we will use the OTC bids and offers data to obtain a ratio of volume offered compared to volume requested. If gentailers are offering significantly less volume than what was requested, we will check their net position to see if their unhedged generation is limited, not considering their own retail load (Figure 6). If it does not appear limited, we may ask for further explanation as to why the full volume was not offered.

5.22 We will also use the OTC bids and offers data to assess if gentailers tend to not offer certain shapes that were requested. We will consider any justification provided, generation portfolio and net position, but may decide to ask further questions.

**Figure 6 – Net volume of hedges sold by gentailers on the ASX and OTC markets that will be effective over February 2026, averaged by trading period and compared to historic generation**



5.23 We will use OTC bids and offers data to assess the rate of response for different types of contracts and how well offers conform. If there are certain types of contracts that have low response rates from a gentailer then we may analyse this further.<sup>4</sup> If there are common ways that offers are non-conforming compared to the requests, we may analyse this further as well.

5.24 We plan to analyse the reasons given by gentailers for not offering on a request, declining an offer, or providing a non-conforming offer. We may check the logic behind these reasons or ask for further clarification. If we find the reasoning unsatisfactory we may analyse this further.

<sup>4</sup> This may also be relevant to Obligation 2.

### **1(3) and 1(4): No price discrimination in favour of its own retail arm**

- 5.25 To test for discrimination in the pricing of risk management contracts in favour of gentailers' retail arms, we plan to primarily use the results of the RPCA. However, this is provided the RPCA passes our initial checks that assess whether the RPCA assumptions, methodology or reasoning raise concerns. We plan to review all explanations for negative and narrow positive margins provided in a gentailer's RPCA report.
- 5.26 We may undertake further analysis where RPCA results, considered in context, appear unusual, difficult to reconcile, or potentially inconsistent with the objective of the RPCA and the requirements of the Code. This is mostly likely to be cases where margins are negative. We may also look at narrow positive margins and margins or components that are outliers compared to other retailers to understand the reasons for this.
- 5.27 While there is no expectation that RPCA margins should align closely with retailer RGM margins, we may draw comparisons as reference and carry out further analysis if gentailer RPCA margins or costs are consistently and significantly smaller.<sup>5</sup> We may also consider broader market information such as measures of competition like retail switching data.
- 5.28 We may estimate our own margins from available hedge, retail and other market data to use as a reference.

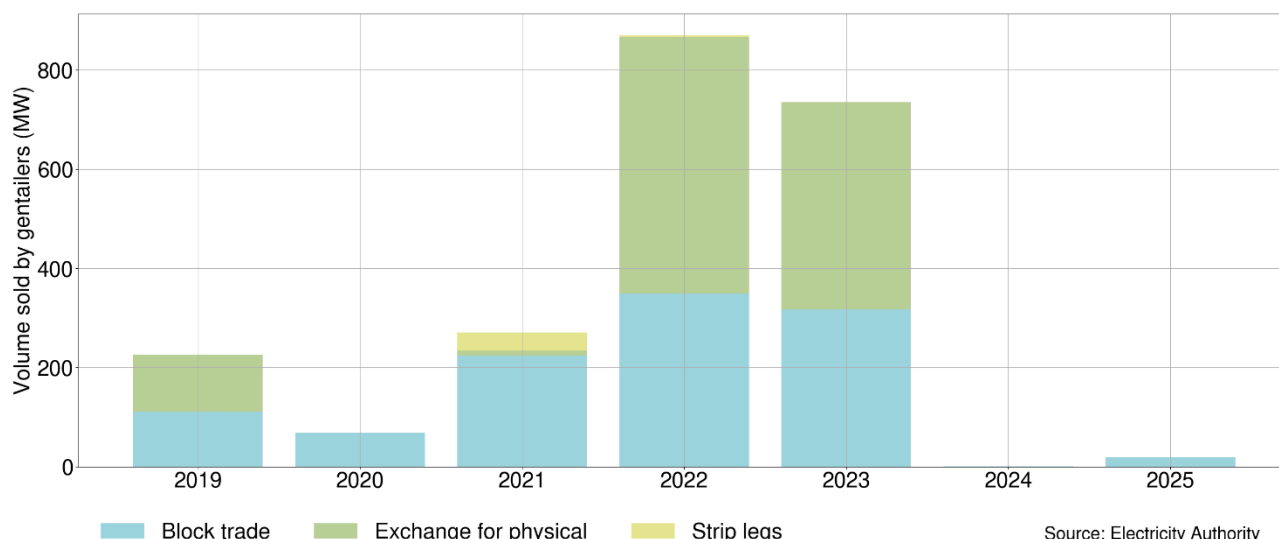
### **Obligation 2: Obligation to trade in good faith**

- 5.29 To assess whether participants are meeting their obligations to trade in good faith, we plan to test whether:
- (a) participants respond to requests in a reasonable timeframe
  - (b) participants allow their offers to be valid for a reasonable timeframe
  - (c) gentailers are often avoiding normal bid-offer process or written communication when negotiating trades.
- 5.30 We plan to use the OTC bids and offers data to assess how quickly gentailers respond to requests. If a gentailer's response times are longer than we would expect to meet the requirements of Obligation 2 we may, on a case-by-case basis, seek justification and analyse this further, taking into account the relevant circumstances.
- 5.31 Likewise, we plan to use the OTC bids and offers data to assess how long gentailers allow offers to be valid. Where validity periods do not appear reasonable, we may seek justification and analyse this further, taking into account the relevant circumstances.
- 5.32 We plan to cross-reference the HDO trades with the OTC bids and offers data to identify trades that should be present in the bids and offers data but are not. If we identify a trend in certain participants being absent from bid-offer data with respect to their trading activity, we may look into this further.
- 5.33 Similarly, we plan to analyse ASX trades that were negotiated off-market (Figure 7). We may choose to do further analysis on off-market ASX trades where gentailers are the sellers.

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<sup>5</sup> There is no requirement or expectation that gentailer margins or costs should be equal to or greater than those of independent retailers or some hypothetical reasonably efficient operator. The RPCA is to assess whether gentailers price risk management contracts in such a way as to ensure that an independent retailer that is as efficient with regard to operating costs as a gentailer's own retail internal business unit, and adopts a reasonable risk management approach, is not prevented from operating profitably.

**Figure 7 – ASX volume sold by gentailers off-market since 2019**



### Obligation 3: Objective credit assessments

- 5.34 To monitor the use of credit terms, we plan to check the OTC bids and offers data to find when gentailers declined to offer due to credit-related reasons. We may analyse further when this is the reason to confirm whether they are consistent with a gentailer’s non-discrimination policy. This may include asking a gentailer to explain how they have applied their non-discrimination policy. We also plan to analyse incidents brought to our attention.

### Obligation 4: Equal access to commercial information

- 5.35 This obligation requires gentailers to ensure that commercial information relating to the supply of risk management contracts that is made available to internal business units that compete with external buyers is also made available to those buyers at the same time. The intent of this obligation is to address the risk of gentailers’ internal retail business units gaining a competitive advantage through preferential access to information about the supply of risk management contracts that is not available to the wider market. In monitoring this obligation, the Authority may focus on information that could reasonably confer, or have the potential to confer, such an advantage, having regard to the nature of the information and how it is used in practice.
- 5.36 This obligation does not prescribe any particular organisational structure such as full separation between wholesale and retail functions. In monitoring compliance, the Authority may consider whether gentailers have implemented robust controls to manage information flows, including clearly defined processes governing who has access to relevant information, for what purpose, and how that information may be used or shared.
- 5.37 Clause 13.236R requires gentailers to maintain a non-discrimination policy that includes an information control policy for the purposes of this obligation. While the Code does not require a specific methodology for identifying “commercial information” for the purposes of this obligation, the Authority may consider whether gentailers have a clear and documented approach to identifying and managing such information. Gentailers are generally best placed to assess what information falls within scope given their knowledge of their own operations and information flows, and may engage with the Authority, to agree, in writing, on types of information that do not amount to commercial information for the purposes of this obligation.

- 5.38 In monitoring compliance with this obligation, the Authority may consider a range of information sources, including gentailers' non-discrimination policies, implementation plans, audits, and record keeping. The Authority may also undertake analytical comparisons, including cross referencing gentailer wholesale market disclosure quarterly reports with other available information. Where potential inconsistencies or gaps are identified, the Authority may undertake further analysis or seek additional information to determine whether further enquiry is warranted.

### **Obligation 5: Protection of confidential information**

- 5.39 We do not plan to actively monitor Obligation 5, but we may analyse incidents brought to our attention to ensure they are consistent with the gentailer's non-discrimination policy.

### **Obligation 6: Record-keeping**

- 5.40 As part of our further analysis, we may ask gentailers for further information on their trading of risk management contracts. If gentailers are consistently unable to respond to our queries due to insufficient records, we may seek an explanation or escalate the issue to compliance.
- 5.41 We also plan to assess the audits that the gentailers are required to undergo as part of their record-keeping obligations.

## **6. Publishing and timing of monitoring**

- 6.1 The Authority may publish RPCA results, components and commentary in a form it considers appropriate, subject to applicable confidentiality obligations and any other legal constraints. Where publication occurs, the Authority may determine the appropriate level of aggregation, disaggregation, anonymisation, and explanatory commentary, having regard to the purpose of publication and the circumstances of the case. More information is available in [our Information Management policy](#).
- 6.2 The Authority may also publish monitoring outputs and commentary from time to time, including aggregated or anonymised information about trends, themes, metrics, or issues identified through monitoring, where it considers publication to be appropriate and lawful. For example, we may consider publishing commentary or updating guidance if it may facilitate compliance with the NDOs. Any decision to publish participant-specific information would be considered separately, having regard to applicable confidentiality obligations, procedural fairness, and the status of any compliance or enforcement process.
- 6.3 This reporting will likely be similar in principle to our [Trading Conduct reporting](#) but with a lower publication frequency. Quarterly reporting seems most likely at this stage, as the OTC bids and offers data that will be used in a large portion of the NDO monitoring is received on a quarterly basis. However, the RPCA-related reporting would be a six-monthly addition due to its own submission frequency.

## **7. Assessment of implementation plans, non-discrimination policies, audits and annual reports**

### **Non-discrimination policies and implementation plans**

- 7.1 The NDOs require gentailers to maintain an internal non-discrimination policy that must be reviewed by a gentailer's board annually, and to prepare an implementation plan detailing their approach to complying with the NDOs. Implementation plans must be provided to the Authority and published within the required timeframe, and must include (without limitation) the gentailer's non-discrimination policy, as well as its approach to training and to ensuring ongoing compliance.
- 7.2 The purpose of the non-discrimination policy requirement is to ensure the gentailer has documented operational controls, methodologies, processes and accountability mechanisms that support compliance with the NDOs. The purpose of the implementation plan is to document how the gentailer will implement and maintain compliance in practice, including through training and ongoing assurance processes.
- 7.3 The Authority will assess gentailers' non-discrimination policies and implementation plans to ensure they meet the requirements of the Code, including the prescribed content set out in clauses 13.236R and 13.236S.
- 7.4 In relation to non-discrimination policies and implementation plans, the Authority will assess whether they appear to address the matters required by the Code and whether any apparent omissions, inconsistencies, or deficiencies warrant further enquiry. In doing so, the Authority may have regard to the nature, scale, and complexity of the gentailer's operations, but the Authority's assessment is not an approval process and does not of itself determine whether the gentailer has complied with the NDOs.
- 7.5 Where the Authority considers that a gentailer's non-discrimination policy or implementation plan does not meet the requirements of clause 13.236R or 13.236S, the matter may be referred to compliance and addressed in accordance with the Authority's usual compliance and enforcement processes. Where the Authority identifies other concerns or requires clarification, we may provide feedback to the relevant gentailer.
- 7.6 While non-discrimination policies are intended to support gentailers in their compliance with the NDOs, compliance with, or the existence of, a non-discrimination policy or implementation plan does not in itself demonstrate compliance with the NDOs. However, a failure to follow a gentailer's non-discrimination policy, or to maintain a policy that meets the Code requirements, may be relevant to assessing compliance with the NDOs. Nothing in this section limits the matters that may be relevant to compliance with the Code, or prevents the Authority from considering the participant's actual conduct and the full factual context.

### **Annual reports and audits**

- 7.7 Gentailers are required to support compliance with the NDOs through independent assurance and annual reporting:
  - (a) Annual independent audit: gentailers must appoint a suitably qualified independent auditor to audit compliance with the NDOs each year (from 1 July 2027), covering the previous 12 months. A written audit report must be provided to the Authority by 30 September.

- (b) Annual compliance report: gentailers must also provide an annual report to the Authority (by 30 September each year) demonstrating how they have met the NDOs over the previous 12 months. The report is to be published within five business days of it being provided to the Authority.
  - (c) Director certification: the annual report must include certification by at least two directors confirming compliance with the NDOs (except for any disclosed breaches), supported by confirmation that reasonable enquiries have been undertaken.
- 7.8 These requirements are intended to provide transparency, support monitoring, and strengthen accountability for compliance with the NDO regime.
- 7.9 The Authority will assess compliance with the audit and annual reporting obligations, including verifying that gentailers have appointed suitably qualified and independent auditors, completed audits covering the relevant period, and submitted audit reports within prescribed timeframes. The Authority will review audit reports to understand the auditor's assessment of compliance, including any identified issues, qualifications, or recommendations, and may seek further information where findings are unclear or indicate potential non-compliance.
- 7.10 The Authority will also assess annual reports to determine whether they adequately demonstrate how the gentailer has met the NDOs in practice. This will include reviewing the completeness and quality of reporting against required matters, consistency with other information available to the Authority (including monitoring data and any alleged breaches), and director certification.
- 7.11 Where issues are identified, such as late or incomplete reporting, inconsistencies across reporting, or indications of potential breaches, the Authority may seek further information, undertake additional analysis, or refer matters to its compliance function.
- 7.12 The Authority's review of audit reports and annual reports is one input into its broader monitoring and compliance functions. A report or audit that appears complete on its face does not preclude further enquiry, and an apparent deficiency in a report or audit does not, of itself, establish a breach of the NDOs.