

Improving the framework for the Authority's information gathering

Online briefing – 20 July 2021

This slide set contains the slides presented at the online briefing of 20 July 2021, augmented with grey text boxes containing:

- answers and explanations provided during the briefing
- the answer to a question received by the Authority after the briefing.

These items have been added to assist interested parties prepare submissions on the Authority's consultation paper, particularly those parties that were unable to attend the briefing.

The proposed Code amendment:

The Authority may publish a notice specifying information a participant must provide to the Authority:

- on a regular basis, or
- because of an identified event

Before doing so, the Authority must:

- provide the purpose for the notice, and
- consult, and
- be satisfied there is a net benefit



What would a notice include?

A notice must include the following:

- **The participant** (e.g. retailers with more than 1,000 active ICPs)
- **The information** the participant is required to provide
- **The time and/or frequency** (e.g. quarterly, by the end of the month following the expiry of the quarter to which the quarterly disclosure report relates)
 - an alternative is an event driven trigger (e.g. plant attributes that change materially, within 30 business days of the change; disclosure of information about a CFD or option contract, within 5 business days of the trade date for the CFD or option contract)
- **The manner in which the participant must provide the information** (e.g. via email to <address>, or submitted through a defined system)
- **The date from which the notice applies from** (e.g. for Q2 2021)

And may include **any standard formats that apply** (e.g. like EIEP files)



Why propose this Code amendment?

There is scope to improve the current approaches to information gathering.

- There are issues obtaining sufficient and timely information to effectively carry out the Authority's monitoring functions
- Participants and the Authority face higher-than-necessary transaction costs
- Quality information can be used to reduce the risk of policy re-work or policy uncertainty



There are gaps within the current arrangements

Currently participants provide information regularly through:

- voluntary responses
- specific obligations under the Code, the Act, regulations
- responses to section 46 requests

However, what's missing is a structured, transparent process for informing requests and gathering information to support monitoring on an ongoing basis.



Relationship to other information provision obligations

The proposed Code amendment

The proposed Code amendment is best suited to supplying ongoing information to support monitoring (section 45(a) of the Act)

- E.g. COVID-19 monitoring, consumer care guidelines, annual retail information, internal transfer pricing, etc.

Voluntary and section 46 requests

Voluntary and section 46 requests are best suited to supporting one-off detailed investigations into specific events or aspects of the market

- E.g. UTS investigations, etc.

Bespoke Code amendments

Bespoke Code amendments are best suited to serving operational information arrangements

- E.g. submission of bids and offers, reconciliation submissions, updating registry fields, asset capability statements, etc



Confidentiality

- The Authority takes confidentiality very seriously and has given careful consideration to confidentiality in the proposed Code amendment
- Proposed confidentiality provisions are generalised and aid the Authority in giving effect to its statutory objective and effectively undertaking its statutory functions
- Participants are able to highlight any information they provide which they believe is confidential. The Authority may take a different position on whether the information is confidential.
- The Authority will publish a guideline on how the confidentiality arrangements will be applied



What would this proposed amendment mean for participants?

The proposed Code amendment would:

- Enable greater stakeholder input to information requirements
- Help improve the design of the information requests
- Provide a more standardised approach to ongoing information provision obligations
- Lower transaction costs
- Increase the transparency and clarity around information provision obligations
- Help monitoring, Code changes, and market facilitation measures be informed by more timely and better information



Examples of potential uses

These are examples of existing or proposed ongoing information provision obligations for the purpose of monitoring.

These examples are presented for illustrative purposes only to indicate the type of requests that would be expected to use the proposed notice framework in the future. This does not indicate that the Authority plans to refactor such information obligations in the form of a notice should the proposed amendment proceed.

Notices would be hosted on a webpage where participants could easily filter by participant roles to see obligations that apply to them.

Notice	Notice title	Participant	Qualifying criteria	Description	Frequency	Applies from
N1	Internal transfer price reporting	Traders	that are retailers with more than 5% of ICPs and generators with more that 5% of annual generated energy.... <read more>		Annually	DD MMM YYYY
N2	Retail gross margin reporting	Retailers	with more than 1% market share of active ICPs in the registry		Annually	DD MMM YYYY
N3	Monitoring the impact of economic shocks	Retailers	with more than 1000 ICPs	Replacement for monitoring put in place following the NZ response to Covid-19	Monthly	DD MMM YYYY
N4	Monitoring consumer care guidelines	Retailers	supplying a domestic consumer		Monthly	DD MMM YYYY
N6	Wholesale market information disclosure monitoring	Generators, Direct purchaser, Ancillary service agent, Grid owner	Generator subject to dispatch or with aggregate capacity > 30MW; Ancillary service agent providing FK or IR	Must disclose information material to prices unless exempt from doing so.	Quarterly	Quarter ending 30/06/2021
N7	Hedge disclosure regime	Traders			triggered by contracts	



Questions received... Examples

Submitted before the briefing:

“Please provide real or illustrative examples of information requests that describe the criteria that would determine whether the Authority would request information using either: (i) Section 46; (ii) a Code; or (iii) the proposed notice framework. It would be helpful if the Authority could provide at least one example for each case.”

Submitted before the briefing:

“Could you please elaborate on the examples of information the EA might be looking to access listed in para 2.13 and why this can't be collected under current arrangements. Would this information be sourced via a request of retailers or be better sourced from a survey of consumers by the EA? ”

See slide 6 for more details.

The proposed Code amendment is best suited to the ongoing provision of monitoring information to the Authority.

The proposed Code amendment introduces a standardised framework and process for the ongoing provision of information to support monitoring.

The amendment requires the Authority to consult on any notice. This consultation would consider, amongst other things, the costs and benefits of collection and alternatives. Feedback is encouraged through this process to help identify the information needed and the best way to access it.



Questions received: Consultation

The requirement to consult with affected parties is a minimum standard. It's likely that consultation would almost always be public. The Authority welcomes feedback on the information needed to inform its monitoring function.

A possible example of where the Authority might not publicly consult is as follows:

- 1) Following a public consultation, the Authority wished to expand the criteria for determining which participants were subject to an information notice.
- 2) This resulted in the notice applying to one or two more participants.
- 3) The proposed Code amendment would enable the Authority to consult only with these one or two participants.

Submitted before the briefing:

“The proposal appears to be that the EA will consult only with the participant/s that will be subject to the information request. Have you thought about making this consultation more 'public' so that others can provide feedback on the information being requested (as other people may find this information useful for purposes that the EA isn't focused on).

Consultation on the draft information request could be open to everyone or the EA could publish the draft information request that is being consulted on with others being able to opt in to providing feedback.”



Questions received: Governance controls

Submitted before the briefing:

“Please set out the governance controls within the EA for the proposed notice framework. That is, does the Authority expect a request under the notice framework to be approved at the Authority Board, the CEO or at the GM level?”

The Authority’s Board has not yet considered what, if any, delegations it would be prepared to make in relation to issuing information request notices. The Board may consider this matter should it decide to implement changes to the Authority’s information gathering framework.

The Authority monitors the impact of Code changes and market facilitation measures on the long-term benefit of consumers. Consultation on proposed Code changes may be accompanied by a proposed notice (if appropriate) to facilitate monitoring of the proposed intervention, thereby streamlining consultation and Board decision processes.



Questions received: Confidential information

Wholesale market information disclosure (WMID) rules specify possible reasons why participants may be exempt from publicly disclosing information that is material to prices.

WMID rules also include monitoring provisions that require participants to provide ongoing information to the Authority on their use of these exemptions. The Code provision is narrowly defined and, given this information is material to price and not public, the Code defines this information as confidential.

The proposed Code amendment is a generalised framework that applies both to situations where information may be confidential (e.g. WMID monitoring) and to situations where information may not be confidential. The Authority will publish guidelines on how the confidentially arrangements will work.

Submitted before the briefing:

“Draft clause 2.21 - are the reasons for holding information as confidential in this Code amendment the same as the reasons in the Code for the disclosure of wholesale information?”



Questions received: Protection from self-incrimination

Submitted before the briefing:

“Within the context of the proposed new notices, please explain the continued relevance of the protections for participants that are provided under section 48 of the Act where information is formally gathered by the Authority using its powers under section 46 of the Act. That is, could the Authority please explain how proposed new clause 2.22 is intended to work in more detail.”

A notice under the proposed Code amendment can only be issued for the purpose set out in section 45(a) of the Act. This represents a subset of the reasons for the Authority requiring an industry participant to provide information to the Authority under section 46 of the Act.

Clause 2.22 of the draft Code offers the same protections to participants for any information collected through an information notice as would be offered if the information were to be collected under section 46 of the Act. That is, participants would be able to utilise the privilege against self-incrimination to the same extent they would if the request were to be made under section 46.



Further questions?



Questions received: What's wrong with relying on section 46?

Asked during the briefing:

“What is wrong with relying on information requests issued under section 46 of the Act, particularly if the Authority is seeking information from only a few industry participants?”

The Authority considers that section 46 information requests are not well suited to ongoing information obligations and are better suited to ad-hoc / one-off information requests.

The Authority prefers to use the Code as the basis for placing ongoing obligations on participants to provide information, rather than information requests issued under section 46 of the Act.

The proposed Code amendment requires the Authority to consult and consider the net benefit of placing such obligations on participants. Section 46 has no such requirement.



Questions received: Clarity around boundaries

Asked during the briefing:

“The boundaries are not entirely clear as to when the Authority would want to gather information using section 46 of the Act, a Code amendment, or the proposed change to the Authority’s information gathering framework.”

Refer to slide 6.

The proposed framework is intended to standardise the process for providing ongoing information to the Authority for its monitoring (per section 45(a) of the Act).

If the proposed Code amendment were to proceed, the Authority would continue using bespoke Code amendments in relation to information requirements that are operational or intrinsic to the functioning of the market.

The Authority’s preference is to not use section 46 requests to gather monitoring information on an ongoing basis (although the Authority will always retain the discretion to use section 46 for this purpose).



Questions received: Examples of higher than necessary transaction costs with the current arrangements

Asked during the briefing:

“At para 2.20 in the consultation paper, what are specific examples of the Authority’s monitoring being inhibited and of where transaction costs have been higher than necessary under the current information gathering framework?”

Higher transactions costs are experienced both by participants and the Authority without a standardised framework to gather ongoing information for monitoring.

The development over time of many bespoke Code provisions that place information provision requirements on participants (that are often slightly different) places higher-than-necessary implementation cost on participants and the Authority. In addition, the absence of a framework such as that proposed makes it harder for participants to identify their obligations relating to the ongoing provision of information for the Authority’s monitoring purposes. This has a negative effect on compliance levels and increases participants’ system design costs (especially for new participants).

Voluntary requests for ongoing information (e.g. annual retail information requests) increase transaction costs in several ways, including participants first needing to decide their response, participants ignoring or missing requests, participants refusing to respond to requests or providing delayed responses, participants providing poor quality or incomplete information. Perhaps most importantly, generally voluntary requests do not adequately signal enduring obligations on participants, and thus participants’ investment in efficient systems and processes and the provision of high quality data is low.

Section 46 requests for the ongoing provision of information have typically been used for time-sensitive information (e.g. monitoring the impact of the COVID-19 response on the electricity industry). Participants and the Authority experienced issues relating to interpretation of the information required and the capability of systems providing the information. The timebound nature of section 46 requests reduce the incentive on participants to invest in efficient systems and processes and the provision of high quality information.

The Authority believes a standardised and consultative approach to developing ongoing information obligations under the proposed Code amendment will be net beneficial.



Questions received: Alignment of clauses

Asked following the briefing:

“There appears to be a disconnect between clauses 2.18(1)(c) and 2.19(1)(a): Under clause 2.18(1)(c) the Authority is required to assess “whether” the “[likely] benefits are expected to outweigh the likely costs”, but under clause 2.19(1)(a) the Authority can only require disclosure whether “the benefits ... outweigh the costs”. The term “whether” may not be suitable because the Authority would presumably only propose to require disclosure if the benefits outweigh the costs. It is also unclear why clause 2.18(1)(c) uses the term “likely” but 2.19(1)(a) does not?”

There may be situations where the likely net benefit of a proposed information request notice is slightly negative, but there are potential benefits that would make the net benefit positive and the Authority is unsure how likely these potential benefits are.

The Code has been drafted to accommodate the Authority consulting on such information request notices, while still only publishing a finalised information notice if the (expected) net benefit is positive.

We welcome any suggestions on how to refine the drafting of these clauses to clarify their meaning.



Next steps

Consultation closes 5pm 24 August 2021
Please email responses to: infoframework@ea.govt.nz

September 2021 – Consideration of submissions

October 2021 – Authority decision



Thank you for your time!

Section 45 of the Electricity Industry Act 2010

45 Purposes of exercise of Authority's monitoring, investigation, and enforcement powers

The purposes for which the powers in [section 46](#) may be exercised are as follows:

- (a) carrying out the Authority's monitoring functions, which are to—
 - (i) monitor compliance with this Act (including [Part 3](#)), the regulations, and the Code; and
 - (ii) undertake and monitor the operation and effectiveness of market-facilitation measures under [section 16\(1\)\(f\)](#); and
 - (iii) undertake industry and market monitoring, and carry out any other function referred to in [section 16\(1\)\(g\)](#);
- (b) carrying out the Authority's function of investigating breaches or possible breaches of, and enforcing compliance with, this Part, [Part 4](#), the regulations, and the Code.

