

## Electricity Industry Participation Code Amendment (Regular and Event-Driven Provision of Information to the Authority) 2022

Under section 38 of the Electricity Industry Act 2010, and having complied with section 39 of that Act, I make the following amendments to the Electricity Industry Participation Code 2010.

At Wellington on the 23rd day of June 2022



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Certified in order for signature:



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23 June 2022



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23 June 2022

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### Amendment

- 1 Title**  
This is the Electricity Industry Participation Code Amendment (Regular and Event-Driven Provision of Information to the Authority) 2022.
- 2 Commencement**  
This amendment comes into force on 1 August 2022.
- 3 Code amended**  
This amendment amends the Electricity Industry Participation Code 2010.

#### 4 Title of Part 2 amended

The title of Part 2 is amended by omitting the word “Code.”

#### 6 New subheadings and clauses 2.16 to 2.24 inserted

After clause 2.15, insert:

*Regular and event-driven provision of information to the Authority*

##### **“2.16 Authority may specify information that participants must collect, collate and/or provide regularly or in response to events**

“(1) The **Authority** may **publish** a notice specifying information that a **participant** must, on a regular basis or as a result of an identified event, provide to the **Authority**.

“(2) The **Authority** may specify information under subclause (1) only for the purposes set out in section 45(a) of the **Act** being to carry out the **Authority’s** monitoring functions which are to—

“(a) monitor compliance with the **Act**, the regulations and the **Code** under section 16(1)(c) of the **Act**; or

“(b) undertake and monitor the operation and effectiveness of market-facilitation measures under section 16(1)(f) of the **Act**; or

“(c) undertake industry and market monitoring, and carry out and make publicly available reviews, studies, and inquiries into any matter relating to the electricity industry, under section 16(1)(g) of the **Act**.

“(3) The **Authority** may not specify information under subclause (1) for the purpose of investigating or enforcing compliance with the **Act**, the regulations and the **Code** except that it may use information obtained under a notice **published** under subclause (1) in the course of making a decision to appoint an investigator under regulation 12 of the Electricity Industry (Enforcement) Regulations 2010.

##### **“2.17 Requirements that the Authority must or may specify in a notice under clause 2.16**

“(1) In a notice **published** under clause 2.16, the **Authority** must specify the following information requirements:

“(a) the **participant** who must provide the information:

“(b) the information the **Authority** requires the **participant** to provide, to a reasonable level of detail:

“(c) either:

“(i) the time and/or the frequency at which the **participant** must provide the information to the **Authority**; or

“(ii) the event following which the **participant** must provide the information to the **Authority** and the time by which the **participant** must provide the information

“(d) the manner in which the **participant** must provide the information to the **Authority**:

“(e) the date from which the notice applies, which can be different dates for different **participants**.

“(2) In a notice **published** under clause 2.16, the **Authority** may specify 1 or more standard formats in which the **participant** must provide the information to the **Authority**.

##### **“2.18 Authority must consult before publishing notice**



- “(1) Before **publishing** a notice under clause 2.16, the **Authority** must provide to the **participant** to whom the proposed notice applies—
  - “(a) the proposed notice; and
  - “(b) the **Authority’s** purpose in setting the information requirements in the proposed notice; and
  - “(c) the **Authority’s** assessment of the likely benefits of the **Authority** obtaining the information required in the proposed notice and whether those benefits are expected to outweigh the likely costs.
- “(2) The **Authority** must give that **participant** a reasonable opportunity to make submissions to the **Authority** on the proposed notice and take into account those submissions in deciding whether to—
  - “(a) make any reasonable changes to the information requirements to be included in the **published** notice; and
  - “(b) **publish** the notice.
- “(3) The **Authority** may, but is not required to, consult with any other person the **Authority** wishes, following whatever consultation process the **Authority** considers appropriate.
- “(4) If, following the consideration of submissions under subclause (2), the **Authority** proposes to extend the number of **participants** to whom it proposes the notice will apply, the **Authority** must consult with those additional **participants** following the process in subclauses (1) and (2) if it has not already.

#### **“2.19 Factors the Authority must consider before publishing notice**

- “(1) Before **publishing** a notice under clause 2.16, the **Authority** must be satisfied that—
  - “(a) the benefits of the **Authority** obtaining the information outweigh the costs of the information requirements set out in the proposed notice; and
  - “(b) the information requirements set out in the proposed notice promote the **Authority’s** objective in section 15 of the **Act**.
- “(2) Before **publishing** a notice under clause 2.16, the **Authority** must consider the impact of the proposed information requirements on each **participant** to whom it is proposed the notice apply.

#### **“2.20 Participants must provide information to Authority**

- “(1) If the **Authority publishes** a notice under clause 2.16, each **participant** to whom the notice applies must—
  - “(a) collect and record the information specified in the notice; and
  - “(b) collate from its own systems, records and/or information the information specified in the notice; and
  - “(c) provide to the **Authority** the information specified in the notice; and
  - “(d) meet the other information requirements specified in the notice.
- “(2) A **participant** does not need to provide any information to the **Authority** under subclause (1)(c) if—
  - “(a) the **participant** has legal professional privilege in respect of the information; or
  - “(b) it is not reasonably possible for the **participant** to obtain that information, including because the person that holds the information may lawfully refuse to provide the information to the **participant**.

#### **“2.21 Participants may identify confidential information**

- “(1) In supplying information under clause 2.20, a **participant** may identify any information for which confidentiality is sought by reason that—
  - “(a) disclosure of the information would unreasonably prejudice the commercial position of the **participant** or the person who is the subject of that information; or
  - “(b) confidentiality is necessary to protect information which is itself subject to an obligation of confidence; or
  - “(c) if clause 2.20 did not apply, disclosure of the information by the **participant** would be in breach of law.

**“2.22 Authority dealing with information identified as confidential**

- “(1) If a **participant** identifies to the **Authority** any information under clause 2.21, the **Authority** will determine whether—
  - “(a) there are reasons for keeping the information confidential; and
  - “(b) if there are reasons to keep the information confidential as determined by the **Authority**, those reasons are outweighed by other considerations which render it desirable for the **Authority** to make all or any part of the information publicly available in order to give effect to the objective of the **Authority** in section 15 of the **Act** and for the purposes of any of the **Authority**’s functions in either:
    - “(i) section 16 of the **Act**; or
    - “(ii) section 14 of the Crown Entities Act 2004.
- “(2) If the **Authority** does not consider under subclause 1(a) that there are reasons for keeping the information confidential, the **Authority** is not required to keep the information confidential.
- “(3) If the **Authority** considers that it is desirable under subclause 1(b) to make all or any part of the information publicly available, the **Authority**—
  - “(a) is not required to keep the information confidential; and
  - “(b) will inform the **participant** of that decision, provided that doing so is reasonably possible in the circumstances and does not compromise the reasons for making the information publicly available.
- “(4) If the **Authority** considers under subclause 1(a) that there are reasons for keeping the information confidential and does not consider that it is desirable under subclause 1(b) to make all or any part of the information publicly available, subject to subclause (5), the **Authority** must keep the information identified by a **participant** under clause 2.21 confidential.
- “(5) Subclause (4) does not prevent the **Authority** from—
  - “(a) using the information identified under clause 2.21 for any purpose in connection with the objective of the **Authority** out in section 15 of the **Act** or the **Authority**’s functions in section 16 of the **Act** or section 14 of the Crown Entities Act 2004; or
  - “(b) disclosing the information to any person in connection with a purpose referred to in paragraph (a) in anonymised form or in consolidated form with other information such that the reasons for keeping the information confidential are not compromised; or
  - “(c) disclosing the information where the **participant** who supplied the information or the person who is the subject of the information (if different from the **participant**) either:
    - “(i) has consented specifically to the disclosure of that information; or



- “(ii) has consented generally to the disclosure, even where the **participant** identifies the information as confidential under clause 2.21, of:
  - “(A) information specified in the notice **published** under clause 2.16 under which the **participant** supplied the information to the **Authority**; or
  - “(B) a category of information specified in the notice **published** under clause 2.16 under which the **participant** supplied the information and the **Authority** reasonably considers the information that it intends to disclose comes within that category; or
- “(d) disclosing the information as required by or under law.

### **“2.23 Privilege against self-incrimination**

The **Authority** must comply with section 48(2) and 48(3) of the **Act** in respect of information that is subject to privilege against self-incrimination.

### **“2.24 Authority may amend notice**

- “(1) The **Authority** may amend a notice **published** under clause 2.16 following the procedure set out in clause 2.18 and complying with clause 2.19.
- “(2) The **Authority** does not need to consult under clause 2.18 on a proposed amendment to a notice if it is satisfied on reasonable grounds that—
  - “(a) the nature of the amendment is technical and non-controversial; or
  - “(b) there is widespread support for the amendment among the **participants** to whom the notice applies and to whom the proposed amendment will apply; or
  - “(c) there has been adequate prior consultation (for instance, by or through an advisory group) so that all relevant views have been considered.

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## Explanatory Note

*This note is not part of the amendment, but is intended to indicate its general effect.*

Pursuant to section 38 of the Electricity Industry Act 2010, and having complied with section 39 of that Act, the Electricity Authority (“Authority”) gives notice of making the Electricity Industry Participation Code Amendment (Regular and Event-Driven Provision of Information to the Authority) 2022 (“amendment”).

This amendment to the Electricity Industry Participation Code 2010 comes into force on 1 August 2022.

The amendment:

- (a) permits the Authority to publish notices specifying information that a participant must, on a regular basis or as a result of an identified event, provide to the Authority; and
- (b) sets requirements that must be specified in notices, consultation requirements for the making of notices, and the matters that the Authority must be satisfied of before publishing a notice; and

- (c) requires participants to provide the information specified in a notice to the Authority;  
and
- (d) provides protections for confidential information, information subject to legal professional privilege and for any statement or document that might be self-incriminating; and
- (e) permits the Authority to amend notices.

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Date of notification in the *Gazette*: 30 June 2022