



3 August 2021

Submissions  
Electricity Authority

By email: [WholesaleConsultation@ea.govt.nz](mailto:WholesaleConsultation@ea.govt.nz)

### **Permanent change to definition of disclosure information**

Meridian appreciates the opportunity to provide feedback to the Electricity Authority on the consultation paper *Permanent change to definition of disclosure information*.

Meridian does not have any fundamental concerns with the proposed permanent Code change. However, we do want to take this opportunity to express some hesitations regarding:

- the use of urgency to make this Code change in the first instance; and
- the Authority's qualitative cost benefit analysis.

### **Use of urgency**

Meridian sees no reason why the Authority could not have consulted on the Code change in March 2021 rather than use its urgent Code making powers under section 40 of the Electricity Industry Act 2010.

We wonder whether it was truly in the public interest to make the initial Code change under urgency and in the absence of even a short period of consultation. The Authority's justification for the use of urgency suggested the Rulings Panel had lowered the threshold of what should be considered "disclosure information" and that unless something was done urgently, there was a risk of non-disclosure. Meridian is not aware of any such information and is not aware of any increase in disclosure activity following the urgent Code change.

The Authority's reference to dry conditions at the time as a reason for the use of urgency seemed a stretch given that extensive hydrology information has consistently been disclosed by hydro generators and there was no risk of sudden non-disclosure of that information.

The Rulings Panel decision was dated 28 January 2021, so the Authority had already taken two months to consider it before deciding to act urgently. In Meridians opinion the small delay that would have been required for consultation would have had minimal impact on the market.

For context, this was the third time in recent years that the Authority used urgency to make Code without consultation. Meridian hopes that this does not become a trend. The bar should be set high on the Authority's use of urgency powers given the importance of consultation and regulatory impact analysis in terms of good public process and natural justice.

### **Cost benefit analysis**

The Authority's qualitative cost benefit analysis (CBA) for this Code change does not give us any confidence that benefits will result from this Code change. The CBA rightly identifies the increased complexity and costs for listed companies that would need to comply with different disclosure standards under the Code and NZX listing rules. However, the benefits identified by the Authority are far more uncertain.

The Authority points to the benefits of more information being classed as "disclosure information" (despite the urgent Code change justification earlier suggesting that the Authority was restoring the commonly understood meaning of the test).

The Authority also claims that the amendment increases the certainty of the test by better aligning with the policy intent. However, no evidence has been provided of any uncertainty amongst participants. No evidence has been provided for how industry participants interpreted the Code in practice and whether the Rulings Panel interpretation was any different. It is also unclear why the Rulings Panel interpretation came as a surprise to the Authority – the interpretation offered by the Rulings Panel was consistent with the plain meaning of the words in the Code. The Code provisions had been in place for some time and survived Authority reviews of the wholesale market information disclosure regime in 2017 and in 2020. Meridian doubts that participants faced the same uncertainty or were

under the same impression as the Authority, i.e. applying the Authority's "intent" rather than the words of the Code itself. Participants read and apply the Code itself. While we acknowledge that the application of the "disclosure information" test will always require broad judgments to be made, the only party that appears to have been uncertain about the words in the Code is the Authority itself. The new test is no more or less certain than the old test, it is simply a different test that still requires broad judgements to be made by those applying the test.

Meridian agrees in principle that better information disclosure would be beneficial, particularly in respect of thermal fuels. We are not sure that this Code change will improve the situation. To improve disclosures by participants with thermal fuel information the Authority will likely need to consider whether the exceptions in the Code are appropriate.

Please contact me if you have any queries regarding this submission.

Yours sincerely

A handwritten signature in blue ink, consisting of several overlapping loops and a long horizontal stroke extending to the left.

Sam Fleming  
**Manager Regulatory and Government Relations**