Wholesale market information disclosure

Review of thermal fuel informaton disclosure

Decision

26 January 2021

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Executive summary

An effective information disclosure regime is a fundamental feature of a well-functioning electricity market. Enhanced information disclosure is generally viewed as a tool for reducing inefficient information asymmetry between informed and uninformed market participants. Effective information disclosure regulation can also reduce information costs, assist existing and potential market participants in making informed decisions, and enhance confidence in the integrity of the market.

Clause 13.2A of the Electricity Industry Participation Code 2010 (Code) requires participants to disclose information they hold about themselves that they expect, or ought reasonably to expect, if made available to the public, will have a material impact on prices in the wholesale market. The rules apply to all participants, who must make this information readily available to the public, free of charge, as soon as they become aware of it. There are nine exclusions which participants can use to avoid disclosing information.

The Authority commenced a review of these obligations in January 2020. The scope of the project focused on the disclosure of thermal fuel information, considering Authority and stakeholder concerns stemming from the Spring 2018 situation (when extended Pohokura gas supply outages caused wholesale electricity prices increases), which highlighted that they may not be fit for purpose. The specific concern regarded a perceived or real information asymmetry between holders and users of thermal fuel information.

Given the important linkages of this issue to the gas market, the Authority has worked closely with the Gas Industry Company (Gas Industry Co) throughout the project.

Along with other projects within the Authority's Wholesale Programme, this project primarily supports the strategic ambitions 'Thriving Competition' and 'Trust and Confidence' in the wholesale electricity market. Competition is a key enabler to deliver a better energy future – driving innovation, affordability and efficiency for New Zealand. These projects are together working to ensure parties remain confident in wholesale market competition, and the efficiency of the prices and the forward price curve it produces.

This decision paper marks the completion of our review on thermal fuel information disclosure. The Authority's key findings are:

- the existing information disclosure obligations are largely fit for purpose;
- participants have mixed opinions on the size of the information asymmetry or gap;
- improvements can be made to:
    - support participants interpreting and applying this obligation to thermal fuels;
    - understand how participants are relying on exclusions; and
    - ensure participants can more easily access information that is disclosed.

The Authority has made the following decisions:

- introduce a Code amendment to require quarterly reporting of disclosure activities;
- update the Guidelines regarding thermal fuel information disclosure;
- raise awareness of existing disclosures via a disclosure reference webpage and publish educational material; and
- create a Disclosure Obligations Platform to enable participants to disclose thermal fuel information and enable them to meet their reporting obligations stemming from the Code amendment.

In making those decisions, the Authority listened to stakeholder feedback and made various changes including changes designed to reduce the costs of complying with the Code amendment.

These decisions the Authority is now implementing will ensure participants are complying with their disclosure obligations and enable the Authority to better monitor and enforce participants' compliance. Additionally, the Authority has some concerns that participants' use of the exclusions may not be delivering the best outcomes for consumers, and the changes we are implementing will enable the Authority to conduct an evidence-based review of these in future.

The Authority has already implemented quick wins to support participants to access disclosed information.

The next steps for the project include:

- a Disclosure Obligations Platform will be developed by June 2021; and
- the Code amendment will go live on 1 April 2021.

These decisions help build confidence for participants in the market by allowing them to better manage risk by giving them more visibility of market activities, which will ultimately benefit consumers in the long term through more efficient prices.

This decision paper:

- summarises themes from submissions received on the July – September 2020 consultation and subsequent October – November 2020 consultation on Guidelines;
- summarises the Authority's response to submissions; and
- sets out the Authority's decision in full.

If you have any questions or feedback for the project team, please contact WMID@ea.govt.nz.

1 Decision

1.1 Following a consultation process in July – September 2020 the Authority has decided to amend the Code to improve the availability of thermal fuel information.

1.2 The Code amendment will allow the Authority and market participants to understand the extent to which certain participants, called major participants, are relying on exclusions to the market disclosure obligation in clause 13.2A(2) of the Code, and cause major participants to focus more strongly on making sure that they meet their obligations under clause 13.2A of the Code

1.3 The Authority's decisions were also informed by a subsequent consultation on *Guidelines for participants on wholesale market information disclosure obligations* in October – November 2020.

1.4 The Authority has made decisions to progress all four proposals consulted on:

(a) introduce a Code amendment to require quarterly reporting of disclosure activities (by amending part 13 of the Code);

(b) update the Guidelines regarding thermal fuel information disclosure;

(c) raise awareness of existing disclosures via a disclosure reference webpage and publish educational material; and

(d) create a Disclosure Obligations Platform to enable participants to disclose thermal fuel information and enable them to meet their reporting obligations under (a).

1.5 The Code amendment will go live on 1 April 2021.

2 The Authority is seeking improvements to disclosure of thermal fuel information

The Authority consulted on four proposals

2.1 As part of its work on the wholesale Electricity Price Review (EPR) Panel recommendations, the Authority suggested a suite of four proposals aimed at ensuring the Code's disclosure requirements are being met and making thermal fuel information easier to find and use (see Box 1). Together with the work being undertaken by Gas Industry Co, we believed these proposals would improve thermal fuel information in a way that is in the long term interests of consumers.

Box 1 The Authority consulted on four proposals

1. Introduce a Code amendment to require quarterly reporting of disclosure activities
2. Update the Guidelines regarding thermal fuel disclosure
3. Raise awareness of existing disclosures via a disclosure reference webpage and publish educational material
4. Investigate a centralised disclosure webpage

We have listened to the submissions received and adapted our proposals in making this decision

2.2 The Authority consulted on these proposals during July – September 2020. The consultation paper and submissions are available on the Authority's website .[1] Overall stakeholders were highly supportive of proposals 2, 3 and 4. Responses to the Code amendment (proposal 1) were more mixed, with half of respondents in support, and the rest providing caveated support or opposition.

2.3 Participants had differing views on the extent of the gap in thermal fuel disclosure. A perception of an information asymmetry could be as damaging to market confidence as a real asymmetry. Proposals 1 and 2 in the consultation paper were designed to tackle this perception.

2.4 Participants agreed there was difficulty in accessing or using information currently disclosed, and proposals 3 and 4 were designed to address this. Given the unanimous support for proposal 3, we treated it as a quick win and progressed it in October by publishing a disclosure reference webpage.[2]

2.5 The aim of the Code amendment is two-fold:

(a) primarily to encourage participates to ensure they are following good disclosure practises and disclosing the appropriate thermal fuel information; and

(b) secondly, to give the Authority a better understanding of how participants are using exclusions, with a view to reviewing them in future if needed.

2.6 Accordingly, the amendment captures more than just participants with thermal assets. This is to ensure the Authority has access to sufficient data to enable an evidence-based review.

[1] Refer: https://www.ea.govt.nz/development/work-programme/risk-management/wholesale-market-information-disclosure/consultation/#c18525

[2] Refer: https://www.emi.ea.govt.nz/Wholesale/InformationDisclosure

The Authority's information disclosure workstream will continue into 2021

2.7 In 2021 the Authority's information disclosure workstream will divide into two main workstreams:

(a) implementation of the Code amendment and software build of the Disclosure Obligations Platform; and

(b) commencing the second phase of the review which will investigate other information disclosure issues, starting with hydro spill disclosure.

2.8 The Authority will continue to engage with stakeholders and seek their feedback throughout those workstreams.

3 Our decisions will benefit consumers in the long term

3.1 Implementing the decisions in this paper is expected to improve the availability, accessibility and quality of thermal fuel information to market participants. These benefits are a direct result of narrowing information asymmetry between market participants. Benefits can also be indirectly observed through incremental improvements in one or more aspects of the market, including price discovery and operational decision-making.

3.2 The benefits are expected to have various positive effects on market outcomes:

(a) ***Build confidence in the electricity market by reducing risk and uncertainty*:** market participants need sufficient information to make decisions about the future. Poor information can lead to increased risk and uncertainty. Potential consequences may include uninformed decisions and increased costs. For example, if parties had poor information about the effect of planned gas outages on thermal generation, this could lead to less reliable supply and / or unnecessarily high costs to maintain stand-by resources;

(b) ***Improve trust in the market*:** unequal access to relevant information can discourage participation in the market, facilitate market manipulation and reduce entry and new investment. Providing more uniform access to information may increase trust in the market, and hence improve liquidity. This is the primary justification for provisions that prohibit insider trading in financial markets;

(c) ***Facilitate market monitoring:*** market monitoring can assist in the uncovering of problematic short run behaviours. Improved market monitoring can therefore provide increased assurance to consumers and their representatives about market outcomes and reduce the risk of ad hoc intervention; and

(d) ***Improve security of supply:*** by helping to avoid unserved energy at times of scarcity in cases where this scarcity results in part from fuel constraints on thermal generation and avoid the need for various dry-year measures in cases where the dry year is exacerbated by fuel constraints on thermal generation.

3.3 Although both the costs and benefits from implementing the recommended options are uncertain, the nature of the options themselves pose a low risk of unexpected large costs incurred by the disclosing parties. The expected costs to the disclosing party would largely involve the need to strengthen the administrative and internal processes to meet the existing Code disclosure obligations (given the clause 13.2A disclosure obligations already exist). One of the aims of the Disclosure Obligations Platform is to minimise the compliance burden of the new reporting obligation on participants.

3.4 The potential benefits from enhancing thermal fuel information disclosure could be substantial, and we therefore consider the proposals will have a significant net benefit for consumers, because reducing information asymmetries between market players would be likely to:

(a) reduce the frequency of instances when the market operated inefficiently;

(b) reduce the scale and persistence of unexpected price spikes; and

(c) reduce the risk premium to market participants and narrow the bid-ask spreads in the futures market.

4 Stakeholder submissions were generally supportive of the Authority's proposals

4.1 This section outlines the general themes of the submissions on the consultation paper and consultation on Guidelines and the Authority's responses. Themes covered include;

(a) thermal fuel is the most pressing issue;

(b) problem statement;

(c) each of the four proposals contained in the consultation paper;

(d) cost benefit analysis;

(e) exclusions; and

(f) other information disclosure issues.

4.2 The Authority received 16 submissions on the July – September 2020 consultation and 7 submissions on the October – November 2020 consultation on Guidelines. Appendix B provides a full list of submitters.

4.3 In terms of the main consultation paper, overall stakeholders were highly supportive of three of the four proposals. Responses to the Code amendment proposal were mixed, with half of respondents in support, and the rest providing caveated support or opposition.

4.4 Six of the seven participants who responded to the October – November 2020 consultation on Guidelines were supportive of the proposed changes to the Guidelines.

4.5 The Authority has endeavoured to accurately summarise views expressed in the submissions. However, the summary is not exhaustive and compresses the information provided in submissions. Individual submissions can be read to obtain a full account of submitters' views.

Thermal fuel is the most pressing issue

What we proposed

4.6 The Authority's consultation focussed on addressing issues related to thermal fuels because of the allegations of inadequate disclosure contained within the 15 September 2018 Undesirable Trading Situation (UTS) claim, the context of the EPR's final recommendations, feedback from stakeholders and undertaking a stocktake of disclosure showed it to be the priority issue. We proposed to address other issues in a second phase of the review.

Submitters' views (question 3)

4.7 Mercury, Meridian and Transpower all agreed thermal fuel information disclosure is the most pressing issue, and Vector said it was among the most pressing disclosure issues.

4.8 Genesis and Nova commented it is the most important issue for some participants, and Contact noted it has been an important issue, but has reduced due to the recent improvements in gas market disclosure. Contact also noted poor disclosure of demand response by major users as important. Genesis added lack of disclosure from private businesses needs consideration. Trustpower considered there is no significant issue with thermal disclosure.

4.9 Pioneer submitted that information about the prices that participants are prepared to contract future electricity transactions at is equally important.

Authority's response

4.10 The Authority still considers thermal fuel the most pressing current disclosure issue, noting the improvements in disclosure from the gas market have narrowed the size of the problem. We consider pragmatic steps should be taken now to ensure the appropriate level of disclosure is being achieved.

Problem statement

What we proposed

4.11 The Authority characterised the problem definition addressed in the consultation paper as follows:

> *The key outcome for an effective wholesale market is confidence in efficient prices, and currently there is a widespread view that prices are not as efficient as they could be because some useful and important thermal fuel information is absent from the market.*

4.12 The Authority considered that there are some material gaps in thermal fuel information disclosure, and some parties have difficulty accessing and / or interpreting the thermal fuel information that is disclosed. The Authority presented some reasons why that might be the case.

4.13 The factors leading to non-disclosure of thermal fuel information included exclusions to disclosure obligations under the Code applying, obligations not applying due to information not meeting the definition of 'disclosure information', reluctance to disclose, misinterpretation or lack of awareness of disclosure obligations and logistical difficulties.

4.14 The barriers to using thermal fuel information included lack of awareness of what information is disclosed, cost of accessing information, requiring further information to interpret what the information means, how information is published eg, differing formats and lack of resourcing and expertise.

Submitters' views

Problem statement (question 1)

4.15 Mercury supported the whole statement while Contact, Genesis and Pioneer supported *confidence in efficient prices being the key outcome for an effective wholesale market.*

4.16 Other participants provided caveated support or suggested changes. Transpower considered the statement should also relate to reliability, Vector considered the timely and equal dissemination of information was also important, and Electric Kiwi & Haast and E, FE & P (Ecotricity NZ, Flick Electric Co and Pulse Energy) thought the efficiency of prices is hampered by more things than just a lack of thermal fuel information. Genesis submitted we should clarify which areas represent problems and which merely represent perceived problems. Meridian submitted the key outcome is efficient prices, rather than *confidence in* efficient prices.

4.17 Genesis, Nova and Trustpower considered information asymmetry is not a material issue in the wholesale market or that there was no useful information currently missing. Contact submitted the Authority should provide more examples of where disclosure is lacking.

Do you have concerns with what thermal fuel information is disclosed? (question 2)

4.18 There was disagreement from parties regarding whether there are problems with what information is disclosed. Mercury, Meridian, Transpower, Vector and E, FE & P all agree

there are problems with what thermal fuel information is disclosed, although Transpower noted that information disclosure had improved considerably. Contact, Trustpower and Genesis considered the right information is being published, or concerns about a lack of disclosure are unfounded, although Contact and Genesis also considered that there is inconsistency between the level of information disclosure by publicly listed companies and that disclosed by non-publicly listed companies. Nova thought there is an overstatement of the usefulness of the missing information, as future gas supply and demand balance is difficult to forecast.

Do you agree with the factors leading to non-disclosure of thermal fuel information? (question 7)

4.19 Mercury and Meridian agreed with the factors leading to non-disclosure of thermal fuel information. Genesis considered the main factor leading to non-disclosure was that the disclosure obligations do not apply to many circumstances (either because the information does not meet the definition of 'disclosure information' under the Code or because one or more of the exclusions listed in clause 13.2A applies). They also considered some participants, particularly those that are not publicly listed companies, do not face the same continuous disclosure obligations as listed companies and appear reluctant to disclose material information from time to time. Nova agreed that the factors the Authority set out may be leading to non-disclosure but there was no evidence this is causing inefficient prices. Contact and Meridian submitted there is room for different interpretations in terms of materiality which could cause inconsistent approaches to disclosure. Contact submitted that the intention of clause 13.2A of the Code is not to require disclosure of commercially sensitive information

Do you have concerns with the ability to access, interpret and use thermal fuel information? (question 2)

4.20 There was broad agreement that there are issues accessing or interpreting information that is disclosed. Contact and Meridian both considered a centralised repository would help with this. Contact and Genesis submitted it is the responsibility of market participants to resource themselves to interpret information. GIC is developing an information portal containing up to date information on the gas market.

Do you agree with barriers to accessing and interpreting thermal fuel information? (question 8)

4.21 Mercury, Meridian and Transpower agreed that the barriers the Authority suggested could be leading to inefficient prices. Genesis disagreed, stating there was a lack of evidence this problem was causing inefficient prices. Nova highlighted the lack of resourcing and expertise in understanding gas market information is a common barrier. Contact and Genesis both considered there could be benefit to improving the way information is presented and located.

Authority's response

Problem statement

4.22 The Authority has amended the problem statement to reflect submitters' feedback.

> *A key outcome for an effective wholesale market is confidence that prices are efficient. Currently there is a widespread perception that there is an information asymmetry between players related to some useful and important thermal fuel information being absent from the market which is causing a lack of confidence that prices are efficient.*

4.23 The Authority supports the suggested additions to the problem statement however the problem statement was intentionally kept short to try to keep it focussed on the most important issues.

4.24 'A key outcome' reflects there are other outcomes such as reliability. The change from *'confidence in efficient prices'* to '*confidence that prices are efficient'* picks up on Meridian's point about the importance of efficient prices directly, rather than confidence in efficient prices. The purpose of information disclosure is to ensure all participants can form their views about price using the same information, which in turn will promote more efficient prices, and support participants' confidence in them.

4.25 We acknowledge the difference in participants' views regarding whether there is information missing from the market or not. To reflect this, we have added the words *perception of information asymmetry* to the problem definition. The perception of an information asymmetry could be as damaging to market confidence as a real asymmetry. The proposals outlined in the consultation paper are designed to tackle this perception. The proposals are not changing the disclosure rules themselves, but adding a reporting requirement to encourage parties to comply with those rules.

Factors leading to non-disclosure of thermal fuel information

4.26 Within a principles-based regime that allows participants discretion in interpretation of the term '*material'*, it is a given that participants may interpret things differently. This inevitably will lead to some degree of questioning whether participants are holding themselves to the same level of disclosure as others. This can only be tested by the Authority looking into individual disclosure cases. The Authority considers more regular monitoring of disclosure behaviour should help give participants' confidence that other participants are following the rules. The Authority also encourages participants to err on the side of disclosing more if they are uncertain.

4.27 The exclusion allowing participants not to publish commercially sensitive information was removed in 2018. Therefore, it may be necessary for participants to publish commercially sensitive disclosure information, if no other exclusions apply.

Accessing and interpreting thermal fuel information

4.28 The Authority agrees with Contact and Genesis that it is the responsibility of participants to interpret published information. However, there needs to be a base level of quality information published to enable participants to do this from; participants should not have to speculate on or infer things which are of fundamental importance to the supply or demand balance in the wholesale market.

Proposal 1: Code amendment to require reporting of disclosure activities

What we proposed

4.29 The Authority proposed a Code amendment to require mandatory quarterly reporting of disclosure activities by certain participants, called "major participants", who held disclosure information during the period. Annually, a directors' declaration and an annual report on policies would be required to accompany the reporting. A summary of the reporting (but not the declarations) would be published on the Authority's website.

4.30 The Authority also proposed including the ability to audit the information received from major participants at the Authority's discretion.

Submitters' views (questions 9-15, 22-26)

4.31 Electric Kiwi and Haast, E, FE & P, Mercury, Nova, Pioneer and Vocus all supported the proposal. Genesis and Vector provided caveated support. Contact, Meridian, and Major Electricity Users' Group (MEUG) didn't support the proposal, but Contact and Meridian suggested some improvements if the proposal was implemented. Transpower submitted the proposal was not warranted.

Reasons for not supporting the proposal

4.32 Four submitters did not support the proposal for the reasons below:

(a) Contact considered it would increase cost and complexity without a commensurate benefit.

(b) Meridian submitted the Authority should use its Section 46 information gathering powers to request reporting information from specific parties to reduce the compliance burden. Meridian also noted that the proposed drafting of the Code amendment may cause a contradiction with the NZX disclosure rules in relation to the provision of confidential information to the Authority.

(c) MEUG argued that raising awareness and increasing monitoring would be more cost effective, and it would be unfair to add reporting cost on to already compliant parties.

(d) Transpower considered the Code amendment was not warranted if there were clear guidelines and obligations.

4.33 Submitters also commented on various aspects of the design of the Code amendment.

Obligated participants

4.34 Vector submitted distributors should not be in scope of the Code amendment because they do not hold thermal fuel information that is likely to be material to electricity prices and are already subject to a detailed information disclosure regime under Part 4 of the Commerce Act. Contact, Nova and Transpower suggested the obligation should apply to fewer parties, for example Transpower suggested only including participants that hold information on thermal fuel.

4.35 Conversely, Genesis and Meridian argued the scope should be broader, for example Meridian suggested the obligation should align with the existing 13.2A rule and apply to any participant that may hold material information.[3]

Frequency of reporting and certification signoff

4.36 Submitters had a variety of suggestions on the appropriate timing for reporting. Genesis and Meridian both thought quarterly reporting was too onerous — Genesis considered annual reporting was more appropriate, while Meridian suggested half-yearly reporting. Electric Kiwi and Haast and E, FE & P thought quarterly reporting was appropriate.

4.37 Genesis considered Director signoff for the annual certifications was unnecessary and executive signoff would be sufficient.

Use of reported information and proposed approach to privilege

4.38 E, FE & P considered the Authority should publish reports on the information received annually and quarterly.

[3] However, Meridian also indicated in their cover letter that the Code amendment should target those with thermal fuel information.

4.39 Genesis and Meridian were opposed to the approach the Authority had proposed to privilege, arguing it was inconsistent with the Act and the Authority cannot require disclosure of material subject to legal professional privilege. Nova and Mercury considered the Authority's approach was acceptable.

4.40 Meridian raised an issue regarding how the proposed Code amendment might interact with the NZX listing disclosure rules. It suggested a discussion concerning a confidential but incomplete proposal or negotiation would need to be disclosed to the Authority, which would then trigger required disclosure under the NZX listing rules as confidentiality was no longer maintained.

Proposed audit power

4.41 Electric Kiwi and Haast, Vector and Vocus supported the proposed audit power, with Vocus considering the Authority should also undertake random audits. Genesis was supportive of the concept of an audit power, but suggested the Authority should pay for any audits where it is established the participant is compliant and that the auditor should not be able to determine whether a participant has breached the Code. Meridian considered the Authority should undertake the audits rather than a third party. Nova submitted the Authority should determine some criteria to find an appropriate auditor and suggested we develop terms of reference to ensure a consistent approach to the audits.

Other suggestions and concerns raised in relation to proposed audit power

4.42 Some other suggestions and concerns raised by submitters included:

(a) Electric Kiwi and Haast suggested some ways in which the proposal could be aligned more closely to Part 4 of the Commerce Act.

(b) Genesis and Nova both submitted that the Authority shouldn't be given the power to share participants' confidential information with other regulators.

(c) Contact and Genesis submitted that the Authority needed to ensure that confidential information disclosed to it under this proposal would not be required to be disclosed under the Official Information Act.

Authority's response

4.43 The Authority has decided to proceed with its proposed Code amendment, with some changes. The Authority considers it is important for the regulator to be able to monitor participants' compliance with this Code obligation. Events of Spring 2018 have shown the importance of the information disclosure obligations and it is important the Authority has sufficient data to be able to monitor compliance closely.

4.44 The aim of this proposal is two-fold. Primarily, it is to encourage participates to ensure they are disclosing the appropriate information under clause 13.2A (thermal information and other information). Secondly, to give the Authority a better understanding of how participants are using exclusions, with a view to reviewing them in future if needed.

4.45 Accordingly, the amendment captures more than just thermal participants. This is to ensure the Authority has access to sufficient data to enable an evidence-based review. This is also consistent with the existing clause 13.2A(5) which requires participants to satisfy the Authority that an exclusion applies or the information is not disclosure information.

4.46 The intention of the Code amendment is to provide the Authority with data on a broad selection of participants' use of exclusions on an ongoing basis, in addition to improving the availability of thermal fuel information. This has informed some of the design choices

we have made. Intermittent or time limited data-streams from only a small selection of participants would limit the usefulness of the data.

4.47 The Authority considered the benefits of Meridian's suggested use of Section 46 powers. The Authority considers the Section 46 powers should be used on a limited, and more 'last resort' basis for needs that were not possible to anticipate. As we are already aware of the need for this reporting requirement and anticipate needing the information on an ongoing basis, the Authority considers it would not be appropriate to use Section 46 powers in this case. Similar to the stress testing regime, the certification element of this regime will ensure the disclosure obligations in the Code are given sufficient attention within each organisation.

4.48 Table 1 summarises the key areas of the Code amendment that have changed since consultation (what was proposed and what has been decided).

Table 1 Summary of key changes since the proposal was consulted upon

Proposal	**Revised**
major participant means— (a) a **generator**; or (b) an **ancillary service agent**; or (c) a **direct purchaser**; or (d) a **distributor**; or (e) a **grid owner**.	Distributors have been removed from scope. The definitions of generator and ancillary service agent have been narrowed to captures a smaller group of participants. major participant means— (a) a **generator** who is subject to **dispatch** or a **generator** with aggregated national generation capacity in excess of 30MW; or (b) an **ancillary service agent** providing **frequency keeping** or **instantaneous reserve**; or (c) a **direct purchaser**; or (d) ~~**a distributor**; or~~ (e) a **grid owner**.
Old Clause 13.2B(2) (c)(ii) and (d)(i) required a major participant to provide the **disclosure information**	New clause 13.2B (2) (c)(ii) and (d)(i) Amended to: subject to subclause(3), the **disclosure information** or a description of the **disclosure information** Added clause 13.2C to ensure, where a major participant chooses to provide a description of the disclosure information, the Authority receives a sufficient description of disclosure information to enable it to identify whether the information is a) actually disclosure information and b) whether it is likely that grounds under clause 13.2A(2) apply.
Old Clause 13.2B(5): The requirement to provide information under subclause (1)-	New Clause 13.2B(5): Subject to clause 13.2E(3), the requirement to provide information under subclause (1)-

Proposal	Revised
(a) overrides any legal obligation to keep the **disclosure information** confidential but shall not be deemed a breach of any such obligation; and …	(a) ~~overrides~~ applies despite any legal obligation to keep the **disclosure information** confidential ~~but~~ and shall not be deemed a breach of any such obligation; and … Amended to reflect Authority's obligation to keep information confidential
Old clause 13.2E: Annual certification of quarterly reports under clause 13.2B Certification signed by director *and* another director or senior manager (chief executive, chief financial officer or person holding equivalent position) that the board of a major participant has considered each quarterly report and considers each disclosure report is complete and is a true and correct record of the matters stated in the quarterly disclosure report	Now included in new clause 13.2D Amended so that a person holding senior office of a major participant provides certification with each quarterly disclosure with no requirement for the board of a major participant to consider the quarterly disclosure reports. No annual certification obligation.
Old clause 13.2D: Annual reporting on whether a major participant has a written policy, procedure and/or process for identifying and determining whether any information held by the major participant is disclosure information, and whether there are grounds under clause 13.2A(2) for not making that information readily available to the public.	Now included in new clause 13.2D Amended so that the reporting is included with each quarterly disclosure report. No annual reporting obligation.
Audit clauses Old clauses 13.2H to 13.2J	New clause 13.2G to 13.2K Audit changed to *review.* Added new clause 13.2I setting out factors the Authority would consider in determining an appropriate reviewer. New clause 13.2J(3) amended to clarify reviewer cannot determine a breach of the Code. New clauses 13.2J(4) added: to provide the Authority with flexibility in what the report will contain.

Proposal	Revised
New clauses	
Added new clause 13.2B(2)(d)(i)(B) to avoid requiring a major participant to provide the same disclosure information repeatedly if it is withholding that information over multiple quarters.	
Added new clause 13.2B(3) to cover exception to providing privileged information.	
Added new clause 13.2B(4) to reduce concerns that participants might breach the reporting obligation when they didn't think (on a reasonable basis) that information was disclosure information.	
Removed clauses	
Old clause 13.2H(1)(c): The Authority may share reported disclosure information with another regulator.	
Old clause 13.2F(5): Legal professional privilege or privilege against self-incrimination.	

Obligated participants

4.49 We have amended the obligated parties. The intention behind creating the new definition of 'major participant' is to narrow the participants who will be obligated by the Code amendment. While the general disclosure obligation is broad, for the reporting obligation the Authority only wishes to target a subset of participants who are most likely to hold material information on a more regular basis. We want to take a pragmatic approach and limit the costs of the reporting obligation by not extending it to everyone, and avoid creating a disproportionately large compliance burden. The Authority has made the following changes:

(a) Amended the generator category to capture only those generators who are subject to dispatch or generators with aggregated national generation capacity in excess of 30MW.

(b) Amended the ancillary service agent category to capture only those participants who provide instantaneous reserve or frequency keeping (the ancillary services most likely to materially affect prices).[4]

(c) Excluded distributors from the definition of 'major participant' as most distributors are unlikely to be able to materially affect electricity prices.

4.50 The amendment will capture more than just thermal participants. We have decided not to limit it to just thermal fuel information because of the secondary aim of the proposal, whereby the Authority gathers data on the use of exclusions. If we only captured data on the use of exclusions with regard to thermal fuel this would not provide sufficient information to enable an accurate assessment.

[4] The remaining three ancillary services (black start, over frequency arming and voltage support) are purchased in period contracts so don't impact directly on the market.

Frequency of reporting and certification signoff

4.51 The Authority has decided to streamline the design of the reporting obligation, with the intention of minimising the compliance burden. All three requirements (quarterly report, certification and report on policies) now have the same level of signoff, and are required at the same time, which should simplify and streamline the processes for participants.

4.52 The initial design of the obligation featured quarterly disclosure reports, and separate annual certification that these reports are correct plus an annual report on policies. The simplified design requires all three aspects to be provided each quarter, ie, each quarter a major participant must provide quarterly disclosure reports, certification that these reports are correct and a report they have a policy in place. The Authority has decided to maintain the requirement for quarterly reporting as it strikes a balance between the Authority receiving relatively recent data and not making the compliance burden too large.

4.53 The Authority has decided to lower the annual certification signoff requirement in response to some submitters' feedback. The consultation proposed that a Director plus another senior manager (director, chief executive, chief financial officer or person holding equivalent position) would certify that the board of a major participant had considered each quarterly disclosure report for the year and that the board considered that each quarterly disclosure report is complete and is a true and correct record of the matters stated in the each quarterly disclosure report.

4.54 We have decided to remove the requirement for the additional Director signoff and to remove the explicit requirement that the board of the major participant consider each quarterly disclosure report. A senior manager of the major participant will now certify that a quarterly disclosure report is complete and is a true and correct record of the matters stated in each quarterly disclosure report and report as to whether a major participant has policies in relation to identifying and withholding disclosure information at the time the major participant submits each quarterly disclosure report. There will no longer be any additional annual requirements.

4.55 This now aligns with the quarterly disclosure report signoff requirements and will further reduce the compliance costs faced by obligated participants. A governance board does not need to be involved in this signoff unless they choose to be.

4.56 The Authority does not consider requiring certification and the report on policies on a quarterly basis an increase in the size of the overall obligation. Once participants have a policy in place, it will just be a matter of ticking a box each quarter, having ensured it is still up to date. Given the certification can be completed by the same party as that who reports on the data (a director, or the chief executive officer, or the chief financial officer, or a person holding a position equivalent to one of those positions, of the major participant), it makes sense for this to happen at the time the party is reporting on that data.

Use of reported information and proposed approach to privilege

a) Confidentiality

4.57 We acknowledge that there remains a strong interest in the confidential information required to be provided to the Authority under the new Code provisions. The Authority has considered carefully how it will manage and maintain the confidentiality of the information once it is provided to us by a major participant.

4.58 For example, in the context of any request made under the Official Information Act 1982 (OIA) for such information (or that may include such information within its scope), the Authority will consider whether there are good grounds (pursuant to section 9 of the OIA) to withhold that information in each instance. We recognise that in each case without the new Code provisions the Authority would otherwise be unable to obtain such information (without resorting to using other powers contained in the Act), and that such information would not otherwise be made public. Those factors seem to us to be strong factors going toward withholding confidential information in accordance with the OIA.

4.59 Further, the Authority considers that there would likely need to be some significant factors (which render it desirable, in the public interest, to make that information available) for the withholding of that information to be outweighed by the public interest in the information.

4.60 In any such scenario the Authority's intention would be to consult with the relevant major participant(s) prior to making any final decision in accordance with the OIA.

4.61 In a scenario where any confidential information is included as part of a complaint to the Authority and any subsequent investigation by an investigator, there are already stringent confidentiality requirements imposed on the Authority and any investigator by the Electricity Industry (Enforcement) Regulations 2010.[5]

4.62 Regarding Meridian's point about interaction with the NZX listing rules, the Authority considers, after consulting the NZX, that disclosure of confidential information to the Authority under the proposal would not in itself defeat the exception to continuous disclosure contained in NZX Listing Rule 3.1.2, as confidentiality in the information would continue to be maintained despite providing it to the Authority in accordance with the Code.[6] Small changes to the wording of the relevant parts of the Code amendment have been made to re-enforce this.

4.63 The Authority intends to release public quarterly summaries of the reporting data received. Any such reporting would be aggregated and anonymous, eg, number of times each exclusion was used per month in the last quarter. The Authority is limited in what information it may publish by clause 13.2F. This includes the Authority being prevented from publishing any confidential information identified as such by a major participant (clause 13.2E(3)). Clause 13.2E(4), however, allows the Authority to publish confidential information where it does not consider on reasonable grounds that the relevant major participant is bound by any legal obligation to keep the disclosure information confidential or that disclosure of that information by the major participant would be a breach of the law.

4.64 To address Meridian's point in relation to old clause 13.2F(4) (now clause 13.2E(4)), one of the concerns we have identified is that participants may use the clause 13.2E(3) provision inappropriately (for example, claiming confidentiality in the information without a proper basis for doing so). The aim of clause 13.2E(4) is therefore to prevent any flagrant application, or abuse, of clause 13.2E(3) by any major participant.

4.65 Within the quarterly disclosure reports, we have also decided to provide major participants with the option to provide a 'description' of the disclosure information, instead of the disclosure information itself. This means participants who hold sensitive information that they have not disclosed may choose not to disclose the entirety of that

[5] See, for example, regulations 10 and 15.

[6] For more information, refer p21 of the NZX Guidance Note on Continuous Disclosure: *https://www.nzx.com/regulation/nzx-rules-guidance/nzx-mo-announcements/guidance-notes*

information to the Authority if they provide a sufficient description of that disclosure information.

4.66 The Guidelines include some examples of what a sufficient description of the information means. The Code (at clause 13.2C(1)) now requires that enough information be provided to reasonably enable the Authority to identify whether it is likely that the major participant held or continues to hold disclosure information, and held or continues to hold reasonable grounds to not make the disclosure information readily available to the public. This approach, together with the Authority's decision in relation to provision of privileged information discussed below, strikes a balance between the Authority obtaining information necessary to achieve the aim of the Code amendment whilst recognising the points made in submissions.

4.67 The Code amendment proposed three uses of the reported information. The Authority has decided to remove the provision relating to the Authority's ability to provide disclosure information to any other regulatory agency for a purpose related to that agency. We agree with some respondents that this may be going beyond our purposes contained in the Act and have removed this clause.

b) Legal professional privilege and privilege against self-incrimination

4.68 We note the concern expressed by some submitters in relation to providing disclosure information subject to legal professional privilege or privilege against self-incrimination. Although the Authority does not necessarily agree with the arguments put forward by those submitters, it has decided to include an exception where if the major participant has not made the disclosure information readily available to the public on one of the grounds set out in clause 13.2A(2)(h) of the Code (relating to disclosure information subject to legal professional privilege or privilege against self-incrimination), the major participant does not need to provide the disclosure information (or a description of it) to the Authority if doing so would undermine the ground for not making the disclosure information readily available to the public.

4.69 The Authority expects that there will not be much disclosure information that is not made readily available to the public in reliance on clause 13.2A(2)(h), and therefore the exception noted above should not significantly undermine the objectives of the proposal.

4.70 If, however, it appears that major participants are relying on clause 13.2A(2)(h) reasonably routinely then the Authority will review whether a further Code amendment is required to address this.

4.71 As a result of some submissions received we have made the decision to include a provision to expressly provide that a major participant does not breach the obligation to submit a quarterly disclosure report if a report fails to include information which the major participant did not believe was disclosure information and there was a reasonable basis for that belief (clause 13.2B(4)(a)). This will reduce concerns that major participants could breach the reporting obligation in situations where they didn't believe (on a reasonable basis) that information was disclosure information.

Proposed audit power / independent review

4.72 The Authority has made some changes to the proposed clauses related to auditing, including removing references to 'audit' and 'auditor' (both defined terms under the Code) and replacing them with 'review' and 'independent person' in order to lessen the perceived formality and implications associated with an audit under the Code. The intention behind the proposed review power is to provide an incentive for participants to provide accurate reports and to ensure that the Authority is able to obtain an

independent opinion on the state of a major participant's compliance with the new clauses. A review would be undertaken in an ad hoc manner rather than regularly (similarly to the stress-testing regime).

4.73 We have decided it is most efficient for an independent third party to undertake the review and produce the resulting report as this is not something the Authority is specialised in. Before the Code amendment goes live the Authority will develop a standard terms of reference for the review and may also develop a list of potential persons (ie, companies) to undertake reviews participants could choose from. However, the person nominated by a major participant to undertake the review will need to be considered by the Authority on a case-by-case basis to ensure that the nominated person is sufficiently independent from the major participant and is otherwise a suitable person to undertake the review. To this end, the Authority has made additional amendments to the Code provisions to clarify this and provide major participants with the types of factors the Authority will be considering (see new clause 13.2I).

4.74 Any risk coming from the person undertaking a review seeing confidential or sensitive information will be minimised as there is likely to be a significant time lag between when the review is conducted and when the information subject to the review relates to, and we would expect the contract in relation to the review to provide strict confidentiality provisions.

4.75 We consider the cost structure we proposed (participant pays if the person undertaking the review establishes, to the Authority's reasonable satisfaction, that a major participant may not have complied with the new provisions, costs may be split in the case of a minor breach, or otherwise the Authority pays) is a fair and proportionate approach. In developing a terms of reference the Authority will keep the scope tight to help limit costs involved.

4.76 The person undertaking the review is not able to determine a breach of the Code, only the Rulings Panel can do that. A person undertaking the review would provide an opinion on compliance which may then, if the Authority considers appropriate, be investigated by an Authority appointed investigator. Minor drafting changes have been made to re-enforce this.

Proposal 2: Updating the Guidelines

What we proposed

4.77 In the July – September 2020 consultation, the Authority proposed updating the *Guidelines for participants on wholesale market information disclosure obligations* to provide greater clarity on where, when and how thermal generators should disclose information. Specific changes would involve making the guidelines more prescriptive and incorporating recent examples and extracts from compliance investigation reports.

4.78 The Authority subsequently ran a two-week consultation on revised Guidelines in October – November 2020[7], informed by a focus group meeting with participants. The proposed changes included a list of thermal fuel situations that could be examples of disclosure information and factors participants may find helpful in deciding what to publish, and a suggested approach to format of regular disclosure, whereby participants can regularly disclose the estimated firm and non-firm fuel they have access to.

[7] Refer: https://www.ea.govt.nz/development/work-programme/risk-management/wholesale-market-information-disclosure/consultation/#c18718

Submitters' views

July – September 2020 consultation (question 16)

4.79 Responding to the July – September 2020 consultation, a majority of submitters voiced unconditional support for updating the Guidelines. Electric Kiwi and Haast, E, FE & P and Vocus all suggested that more of what is currently in the Guidelines should be in the Code. Nova wanted the updated Guidelines to be in place before any Code amendment comes into force. Genesis wanted to be involved in the development of the Guidelines, while Meridian suggested the inclusion of case studies and Vector supported the inclusion of materiality thresholds. These views were addressed in the October – November 2020 consultation on Guidelines.

October – November 2020 consultation

4.80 Seven participants responded to the October – November 2020 consultation, with six voicing support and / or small tweaks to the suggested changes to the Guidelines. Key points from submitters and the Authority's response are summarised in Appendix C.

4.81 Genesis did not support the changes, arguing it would create an unrealistic expectation of disclosure. They suggested disclosures from gas producers without the subjective input of generators enables all parties to operate on the same information, and any additional disclosure by a gas generator would likely amount to speculation.

Authority's response

4.82 The revised Guidelines are attached in Appendix E. The Authority is largely proceeding with the changes that were consulted upon, with some changes to reflect stakeholder submissions.

4.83 Examples are being added to the Guidelines to clarify the types of situations where disclosure is most likely required. These examples are focused around the different situations where coal, gas or any other thermal fuel supply could impact the availability of electricity generation.

4.84 Based on the evidence we have, the Authority considers clause 13.2A strikes the right balance between the costs and benefits of disclosure. However evidence and feedback indicates more is now known about the types of situations that could warrant disclosure. The changes to the Guidelines will assist participants to disclose appropriately in these situations. The changes to the Guidelines reflect the Authority's current thinking on how the Code should be interpreted and applied – this is the basis on which it will enforce compliance with the Code.

4.85 The additions to Section 6 of the Guidelines provide a list of thermal fuel situations that could be examples of disclosure information and factors participants may find helpful in deciding what to publish. The additions to Section 10 describe a suggested approach to format of disclosure, whereby participants can regularly disclose the estimated firm and non-firm fuel they have access to. There are also some minor changes throughout the document to ensure it is up to date and to improve accuracy.

4.86 The aim of updating the Guidelines is to improve disclosure of information about the availability of thermal fuels for electricity generation. This will support participants to stay informed about potential impacts on electricity prices and ensure the forward price curve accurately reflects all relevant information, which will benefit consumers in the long term through more efficient prices.

4.87 The Authority has also taken the opportunity now to add material to the Guidelines to support participants' understanding of the Code amendment requiring reporting on

disclosure activities. These changes are consequential to the Code amendment and assist major participants to understand their new obligations.

Proposal 3: Raise awareness and utilisation of existing disclosures

What we proposed

4.88 The Authority proposed to raise awareness of disclosure information by establishing a disclosure information web page on the Authority website which will serve as a reference for participants. The Authority would also include 'disclosure help' information which would assist participants in understanding and applying disclosure information.

Submitters' views (question 17)

4.89 No submitter opposed this proposal. Some submitters suggested where this reference website should be hosted eg, Authority website (Contact), Electricity Market Information (EMI) website (Electric Kiwi and Haast), or attached to a general disclosure website (Genesis). E, FE & P and Genesis suggested the scope of this reference webpage could be broader than just thermal fuel information. Trustpower pointed out the Authority shouldn't attempt to provide advice to, or elucidate the information for, participants.

Authority's response

4.90 Submitters were very supportive of this proposal and considered this a low cost, no regrets action. Therefore we have already published a list of websites containing information that is disclosed about thermal fuels.[8] The list is not exhaustive, but aims to help participants find information that may be useful to them in understanding the thermal fuels market. It is hosted on EMI to allow participants to use the Forum functionality to suggest other useful websites.

4.91 Staff are also collaborating with the Gas Industry Co to develop educational material to explain the interactions of the thermal fuel and electricity markets. This will be released as short accessible videos over the coming months.

4.92 For now the scope of the reference website and educational material is focussed on thermal fuels, in line with the scope of this project. The Authority is open to hearing if there is a need for this to be expanded in future.[9]

Proposal 4: Centralised disclosure website

What we proposed

4.93 The fourth proposal is to add detail to the guidelines or Code to make clear where we expect thermal fuel generators, predominantly gas and coal, to disclose information on how their generation capacity will be impacted by current or expected fuel constraints. This disclosure obligation is already found in clause 13.2A but the Code is silent on the 'right' location to disclose information.

Submitters' views (question 18)

4.94 Submitters supported the development of a centralised disclosure website, although Contact submitted that more scoping is needed to understand what compliance burden this would place on participants.

[8] Refer: https://www.emi.ea.govt.nz/Wholesale/InformationDisclosure

[9] Feedback is welcome and should be directed to WMID@ea.govt.nz

4.95 Some participants had opinions on where the site should be hosted. Meridian suggested the wholesale information and trading system (WITS) or the Planned Outage Co-ordination Process (POCP). However Genesis suggested POCP shouldn't be used, as that should be reserved for outage information for the purposes of coordinating maintenance to secure security of supply, and instead suggested EMI or somewhere else hosted by the Authority or system operator.

4.96 Other participants commented on the functionality. Genesis suggested it should be a bespoke platform to ensure it is fit for purpose. E, FE & P submitted it should be able to send an alert when new information is published, and it could be automatically populated from other disclosure webpages. Nova submitted that market participants should be able to set up a live feed for updates and Meridian considered information disclosed needs to be made available in a usable, downloadable format.

4.97 In terms of what information the disclosure website should contain, Electric Kiwi and Haast and E, FE & P agreed with the Authority that it should cover information on whether thermal generation capacity will be impacted by current or expected fuel constraints. MEUG submitted a broader scope should be considered including the needs of the system operator to manage security of supply, and opportunities for governance and operational co-benefits should be sought. Nova considered the same location should be used for recording hydro spill information. Vector was also in favour of a scope broader than just thermal fuels, suggesting a 'gold-plated', costly thermal-only tool should be avoided.

4.98 Electric Kiwi and Haast and E, FE & P suggested the Code should detail the 'right' location for disclosure. Genesis submitted the development cost should be distributed fairly, not necessarily just to the participants who are required to disclose. Regarding timing, MEUG submitted work should begin as soon as possible, but Vector agreed with the Authority that conducting work in the second phase of the project made sense.

Authority's response

4.99 Given the supportive feedback from participants the Authority has decided to proceed to build a centralised disclosure website. This will be combined with the software to allow participants to report under clause 13.2B – L. See section 5 of this paper for more details.

Cost benefit analysis

What we proposed

4.100 The Authority undertook a qualitative cost benefit analysis (CBA, Appendix G in the consultation paper) which analysed the costs and benefits of the suite of four proposals. The CBA showed the proposal could result in a significant increase in and awareness of disclosure activity and provide important data points for the future development of the code, for a modest reporting cost.

Submitters' views (question 23)

4.101 Five parties indicated support for the Authority's assessment of costs and benefits of the proposal. E, FE & P suggested the benefits should not be underestimated in terms of enabling easier and better monitoring.

4.102 A number of parties had suggestions regarding the assessment of costs. Electric Kiwi and Haast did not consider the costs of negative impacts on innovation from the reforms would be significant. Genesis submitted the costs would be reduced if their other suggestions for changes were adopted. Vector suggested costs could be reduced by

more tightly defining the thermal fuel information that must be disclosed and encouraged the Authority to coordinate closely with other relevant bodies and to avoid unnecessary compliance costs. OMV were mindful of any new costs on thermal generators.

4.103 Meridian considered the costs would outweigh the benefits, and using Section 46 powers on a narrower group of participants would be more appropriate. Nova remained unconvinced there is a problem that needs to be solved and that the costs of compliance would be significant given the reputational risks and need for legal input to verify correct interpretation of the rules.

Authority's response

4.104 No significant new evidence was raised during consultation regarding the costs and benefits of the proposal. Based on the qualitative assessment of the benefits and costs of this proposal the Authority is still of the opinion that the proposal will have a significant net benefit for consumers.

4.105 The Authority has listened to some stakeholders' concerns about the potential compliance costs and has made changes to the Code amendment to reduce this (eg, reducing the types of parties obligated, providing flexibility about the information required to be provided, and providing more flexibility in who can certify quarterly disclosure requirements).

4.106 In designing the reporting platform the Authority will also take steps to minimise compliance costs. One participant mentioned compliance costs would be significant due to the software costs they would incur in building a tool to interact with the Authority's reporting software. It is up to individual participants to determine how they will interact with this tool, and any software cost they choose to incur to facilitate this is up to them.

4.107 Crucially, the Code amendment is not changing the fundamental disclosure obligation. To Nova's point, participants should already have processes in place to determine when they hold disclosure information and when and how it should be published. Participants shouldn't confuse the costs of complying with existing disclosure obligations, with the costs of demonstrating that compliance under the new reporting obligation.

Exclusions

What we proposed

4.108 The Authority considered the exclusion provisions in clause 13.2A(2) to be largely appropriate, and we had some specific concerns about the confidentiality exclusion, in that it may unjustifiably prevent relevant disclosures and proposed that we would monitor reliance on the confidentially exclusion with a view to modifying or removing the exclusion as merited in conjunction with the next wholesale market information disclosure review.

Submitters' views (question 6 & 20)

4.109 Submitters had a variety of opinions on the exclusions. Meridian considered the exclusions are largely appropriate, but the Authority should consider better aligning the exclusions with the NZX disclosure requirements. E, FE & P and Mercury considered that monitoring and review later is appropriate, though E, FE & P also supported a review of the confidentiality exclusion this financial year. Electric Kiwi and Haast said that the confidentiality exclusion needed to be reviewed as a matter of priority and also had concerns about exclusion (g), suggesting reference to information which "is insufficiently definite" should be removed.

4.110 Contact and Genesis considered no changes were needed to the exclusions. Genesis and Nova agreed that confidentiality exclusion (c) was necessary. Genesis submitted that they have made use of the 'matters of supposition or insufficiently definite' exclusion (g) in a variety of situations, as disclosing this type of information could be misleading or confusing. Transpower submitted that they have received information that has been the subject of a variety of exclusions, including (c) confidentiality clauses, (f) incomplete proposal or negotiation, and (g) matters of supposition or insufficiently definite.

Authority's response

4.111 The Authority remains concerned about the confidentiality exclusion. Additionally, throughout the course of this review we have become concerned about some other exclusions. However we do not intend to make any changes at this stage as we lack evidence on which to base such a decision. We intend to use the data received under the new reporting regime to monitor reliance on all the exclusions and will conduct a specific review in future if required.

Other information disclosure issues

What we proposed

4.112 The Authority asked stakeholders to tell us about other information disclosure issues they were aware of in the wholesale market.

Submitters' views (question 4)

4.113 Submitters provided a variety of suggestions about other issues that needed addressing and a full list is provided in Appendix D.

Authority's response

4.114 The Authority assessed each issue against a prioritisation framework based on our strategic framework to come up with the issues most in need of our attention.

4.115 The proposed scope of the second phase of the disclosure review is:

(a) investigate mandating hydro spill disclosure; and

(b) review the exclusions within the information disclosure regime (clause 13.2A(2)) after the Phase 1 Code amendment has been in place for at least one year.

4.116 Two other priority topics emerged from the list of issues: operational uncertainties[10] and improving hedge contract disclosure, which may also be progressed depending on Authority resource constraints.

4.117 The Authority will review the availability of hydro data (with an anticipated focus on hydro spill data) and participants' use of disclosure obligations because:

(a) the issues with availability of hydro spill data are relatively well defined, they link to the 2019 Undesirable Trading Situation (UTS) investigation and *Review of High Standard of Trading Conduct provisions* project and addressing them has clear benefits for consumers; and

[10] Operational uncertainties relates to a variety of issues that cause uncertainty about the status or expected capacity of a plant, which means other participants lack information to accurately assess bid, offers and prices, reducing the efficiency of prices and competition; and causing issues for the system operator to efficiently manage security of supply.

(b) staff consider some of the exclusions may not be fit-for-purpose, and a new data flow will become available to conduct monitoring on their use to ensure they do not frustrate the purpose of the existing disclosure obligations.

4.118 More information will be made available about the Authority's approach to understanding and addressing these issues on the website in early 2021 and participants will be engaged throughout.

5 Implementation of decisions – guidelines and reporting software will be developed

5.1 The Code amendment will be effective from 1 April 2021. The first quarterly disclosure report (reporting on April – June 2021, including certification and report on policies) will be due by 31 July 2021.

Development of a Disclosure Obligations Platform

5.2 The Authority intends to develop reporting software (*Disclosure Obligations Platform*) to assist parties to meet new their obligations under clause 13.2B – L (proposal 1) and provide a centralised location for disclosure (proposal 4). The scope of the site will be disclosure of information relating to thermal fuel information and information captured under 13.2B – L.

5.3 A *Disclosure Obligations Platform* would deliver the following benefits;

(a) enable full realisation of the benefits of the disclosure reporting proposal, by delivering automated data flows for monitoring;

(b) provide participants who hold thermal fuel information with certainty regarding where they should publish thermal fuel information;

(c) enable participants to easily comply with the proposed new disclosure reporting obligations; and

(d) enable participants who do not hold thermal fuel information to easily find thermal fuel information, therefore reducing the real and perceived information asymmetry.

Next steps

5.4 The Authority has already conducted some initial scoping work to determine what functionality this website should have including engaging selected stakeholders. Identification of the specific disclosure platform and detailed functionality requirements will take place in the next phase of our wholesale market information disclosure work. It is planned the site will be available by the middle of calendar year 2021. Participants will continue to be engaged throughout this development process to ensure the software meets their needs as closely as possible. Table 2 identifies the key activities involved in implementing the decisions outlined in this paper.

Table 2 Key activities to implement decisions

Activity	Target
Identification of detailed functionality requirements Gathering of user needs and testing with users Development of disclosure platform	By June 2021

Appendix A Code amendment

A.1 We have decided to amend Part 1 and Part 13 of the Code as set out below.

New definitions to add to Part 1 of the Code:

major participant means—

(a) a **generator** who is subject to **dispatch** or a **generator** with aggregated national generation capacity in excess of 30MW; or

(b) an **ancillary service agent** providing **frequency keeping** or **instantaneous reserve**; or

(c) a **direct purchaser**; or

(d) a **grid owner**.

quarterly disclosure report means a report provided by a **major participant** under clause 13.2B.

Insert new clauses 13.2B to 13.2L in Part 13 of the Code:

13.2B Submission of quarterly disclosure reports by major participants

(1) Each **major participant** must submit **quarterly disclosure reports** to the **Authority**.

(2) Each **quarterly disclosure report** must contain the following information relating to the **major participant's** activities in each quarter beginning 1 January, 1 April, 1 July and 1 October:

(a) whether or not it held or was aware of any **disclosure information** to which clause 13.2A(1) applies during the quarter:

(b) subject to clause 13.2C(2), the means by which it made any such **disclosure information** readily available to the public during the quarter:

(c) if during the quarter it decided not to make any such **disclosure information** readily available to the public:

(i) the number of times it decided to do so; and

(ii) subject to subclause (3), the **disclosure information** or a description of the **disclosure information**; and

(iii) the date on which it decided to not make the **disclosure information** readily available to the public; and

(iv) the grounds it relied on under clause 13.2A(2) to not make the **disclosure information** readily available to the public; and

(v) if it subsequently decided to make the **disclosure information** readily available to the public during the quarter in accordance with clause 13.2A(3), as the ground in clause 13.2A(2) no longer applies, the date on which it decided to make the **disclosure information** readily available to the public:

(d) if it decided during a previous quarter not to make any **disclosure information** readily available to the public, and continues to not make that information readily available to the public in the quarter to which the **quarterly disclosure report** relates ("the current quarter"):

(i) subject to subclause (3), either:

(A) the **disclosure information** or a description of the **disclosure information**; or

(B) a reference to the earlier **quarterly disclosure report** containing the **disclosure information** or the description of the **disclosure information** sufficient to enable the **Authority** to identify the **disclosure information** or the description of the **disclosure information**; and

(ii) the grounds it is relying on under clause 13.2A(2) to not make the **disclosure information** readily available to the public in the current quarter:

(e) if it decided during a previous quarter not to make any **disclosure information** readily available to the public but subsequently decided, upon the ground in clause 13.2A(2) no longer applying, to make that **disclosure information** readily available to the public in the current quarter in accordance with clause 13.2A(3):

(i) subject to clause 13.2C(2), the means by which it made any such **disclosure information** readily available to the public during the current quarter; and

(ii) the **disclosure information**; and

(iii) the date it made the **disclosure information** readily available to the public; and

(iv) the previous quarter or quarters it decided to not make the **disclosure information** readily available to the public:

(f) whether or not it complied with clause 13.2A during the quarter:

(g) if it did not comply with clause 13.2A at any time during the quarter, the details of that non-compliance.

(3) If the **major participant** has not made the **disclosure information** readily available to the public on one of the grounds set out in clause 13.2A(2)(h), the **major participant** does not need to provide the **disclosure information** or a description of it under subclause (2)(c)(ii) or (2)(d)(i) to the **Authority** if doing so would undermine the ground for not making the **disclosure information** readily available to the public.

(4) For the purposes of each **quarterly disclosure report**, each **major participant—**

(a) does not breach subclause (2) if it fails to include in a **quarterly disclosure report** information which it did not believe was **disclosure information** and there was a reasonable basis for that belief; but

(b) must treat any information that came within the definition of **disclosure information** to which clause 13.2A(1) applies at any time during the quarter as **disclosure information**, even if it ceased to be **disclosure information** during the quarter.

(5) Subject to clause 13.2E(3), the requirement to provide information under subclause (1)**—**

(a) applies despite any legal obligation to keep the **disclosure information** confidential and shall not be deemed a breach of any such obligation; and

(b) does not put the **major participant** in breach of any law.

13.2C Specific requirements under clause 13.2B

(1) Each **major participant** who provides a description of the **disclosure information** for the purposes of clause 13.2B(2)(c)(ii) or 13.2B(2)(d)(i) must provide a sufficient description to

reasonably enable the **Authority** to identify whether it is likely that the **major participant** held or continues to hold—

(a) information that is **disclosure information** for the purposes of clause 13.2A(1); and

(b) reasonable grounds to not make the **disclosure information** readily available to the public in accordance with clause 13.2A(2).

(2) Each **major participant** must provide sufficient information to the **Authority** under clauses 13.2B(2)(b) and 13.2B(2)(e)(i) to enable the **Authority** to find the **disclosure information** made readily available to the public during the quarter, including any website addresses.

13.2D Timing and form of quarterly disclosure reports under clause 13.2B

(1) Each **major participant** must submit the **quarterly disclosure report** to the **Authority** together with the following:

(a) a certification that a person to whom subclause (3)(a) applies considers, on reasonable grounds and to the best of that person's belief, that the **quarterly disclosure report** is complete and is a true and correct record of the matters stated in the **quarterly disclosure report**; and

(b) a report as to whether or not the **major participant** has a written policy, procedure and/or process for identifying and determining whether—

(i) any information held by the **major participant** is **disclosure information** to which clause 13.2A(1) applies; and

(ii) there are grounds under clause 13.2A(2) for not making that information readily available to the public.

(2) Each **major participant** must submit the **quarterly disclosure report**, the certification required by subclause (1)(a) and the report required by subclause (1)(b) to the **Authority**—

(a) by the end of the month following the expiry of the quarter to which the **quarterly disclosure report** relates; and

(b) in the form specified by the **Authority**.

(3) Each **major participant** must ensure that the **quarterly disclosure report**, the certification required by subclause (1)(a) and the report required by subclause (1)(b) are either—

(a) signed and dated by a director, or the chief executive officer, or the chief financial officer, or a person holding a position equivalent to one of those positions, of the **major participant**; or

(b) otherwise marked in a way specified by the **Authority** or linked in a way specified by the **Authority** to evidence such a person's approval of the **quarterly disclosure report** and—

(i) the certification required by subclause (1)(a); and

(ii) the report required by subclause (1)(b).

13.2E Publication of information in quarterly disclosure reports by the Authority

(1) The **Authority** may publish any information submitted to it in a **quarterly disclosure report**, the certification required by clause 13.2D(1)(a) and the report required by clause 13.2D(1)(b), provided any such publication does not involve the publication of—

(a) any **disclosure information** that the **major participant** did not make readily available to the public by reason of clauses 13.2A(2)(ba) to 13.2A(2)(d), 13.2A(2)(f) to 13.2A(2)(g), or 13.2A(2)(i); or

(b) information from which the nature of any **disclosure information** that the **major participant** did not make readily available to the public by reason of clauses 13.2A(2)(ba) to 13.2A(2)(d), or 13.2A(2)(f) to 13.2A(2)(i) can reasonably be identified by another **participant** or member of the public; or

(c) the grounds relied on under clauses 13.2A(2)(ba) to 13.2A(2)(d), or 13.2A(2)(f) to 13.2A(i) by the **major participant** to not make **disclosure information** readily available to the public, where the disclosure of those grounds would enable another **participant** or a member of the public to reasonably identify the **disclosure information**.

(2) The limitations in subclause (1)(a) to (1)(c) do not apply if the grounds under clauses 13.2A(2)(ba) to 13.2A(2)(d), or 13.2A(2)(f) to 13.2A(2)(i) no longer apply to the **disclosure information**.

(3) If a **major participant** identifies to the **Authority** that the **major participant** is bound by a legal obligation to keep confidential any **disclosure information** provided to the **Authority** in a **quarterly disclosure report** or that disclosure of the **disclosure information** by the **major participant** would be a breach of law, the **Authority** is required to keep that **disclosure information** confidential, except that this subclause does not prevent the use of the **disclosure information** for the purposes of clause 13.2F(1)(b).

(4) The **Authority** is not required to keep **disclosure information** to which subclause (3) applies confidential if it does not consider on reasonable grounds that the **major participant** is bound by a legal obligation to keep the **disclosure information** confidential or that disclosure of the **disclosure information** by the **major participant** would be a breach of law.

13.2F Use of information in quarterly disclosure reports by the Authority

(1) The **Authority** may use the **disclosure information** set out in a **quarterly disclosure report—**

(a) as provided in clause 13.2E(1); or

(b) for the purposes set out in section 16(1)(b), (c), (d), (f), and (g) of the **Act**.

(2) The **Authority** may not use any information subject to legal professional privilege for the purposes in subclause (1)(b) above other than for the purpose of monitoring and enforcing compliance with clause 13.2A.

(3) 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.

13.2G Authority may require review of disclosure requirements or certification by independent person

(1) The **Authority** may, in its discretion, require a review by an independent person of whether a **major participant** may not have complied with any or all of clauses 13.2B to 13.2D.

13.2H Nomination of independent person to undertake review

(1) If the **Authority** requires a review under clause 13.2G**—**

(a) the **Authority** must require the **major participant** to nominate an appropriate independent person to undertake the review; and

(b) the **major participant** must provide that nomination within a reasonable timeframe.

(2) The **Authority** may direct the **major participant** to appoint the person nominated under subclause (1) or to nominate another person for approval.

(3) If the **major participant** fails to nominate an appropriate person under subclause (1) within 5 **business days**, the **Authority** may direct the **major participant** to appoint a person of the **Authority's** choice.

(4) The **major participant** must appoint a person to undertake the review in accordance with a direction made under subclause (2) or subclause (3).

13.2I Factors relevant to a direction under clause 13.2H

(1) In making the direction required by clause 13.2H(2) or clause 13.2H(3), the **Authority** may have regard to any factors it considers relevant in the circumstances, including the following:

(a) the degree of independence between the **major participant** and the person nominated under clause 13.2H(1);

(b) the expected quality of the review; and

(c) the expected costs of the review.

(2) For the purposes of subclause (1)(a), the **Authority** may have regard to the special definition of independent under clause 1.4 but is not bound by that definition.

13.2J Carrying out of review by independent person

(1) A **major participant** subject to a review under clause 13.2G must, on request from the person undertaking the review, provide that person with such information as the person reasonably requires in order to carry out the review.

(2) The **major participant** must provide the information no later than 10 **business days** after receiving a request from the person for the information.

(3) The **major participant** must ensure that the person undertaking the review—

(a) produces a report on whether, in the opinion of that person, the **major participant** may not have complied with clauses 13.2B to 13.2D (as specified by the **Authority**) under clause 13.2G; and

(b) submits the report to the **Authority** within the timeframe specified by the **Authority**.

(4) The report produced under subclause (3)(a) must include any other information that the **Authority** may reasonably require.

(5) Before the report is submitted to the **Authority**, any identified failure of the **major participant** to comply with clauses 13.2B to 13.2D must be referred back to the **major participant** for comment.

(6) The comments of the **major participant** must be included in the report.

(7) The **major participant** may require that the person does not provide the **Authority** with a copy of any information that the **major participant** has provided to the person in accordance with subclause (2).

13.2K Payment of review costs

(1) If a report received under clause 13.2J(3)(a) establishes, to the **Authority's** reasonable satisfaction, that the **major participant** may not have complied with clauses 13.2B to 13.2D (whether or not the **Authority** appoints an investigator to investigate the alleged breach), the **major participant** must pay the costs of the person who undertook the review.

(2) Despite subclause (1), if a report establishes, to the **Authority's** reasonable satisfaction that any non-compliance of the **major participant** is minor, the **Authority** may, in its discretion, determine the proportion of the person's costs that the **major participant** must pay, and the **major participant** must pay those costs.

(3) If a report establishes to the **Authority's** reasonable satisfaction that the **major participant** has complied with clauses 13.2B to 13.2D, the **Authority** must pay the person's costs.

13.2L Requirement to provide complete and accurate information

(1) In addition to the requirements of clause 13.2, the **major participant** must take all practicable steps to ensure that the information that the **major participant** is required to provide to any person under clauses 13.2B to 13.2D is complete and correct.

(2) If a **major participant** becomes aware that any information the **major participant** provided under clauses 13.2B to 13.2D does not comply with subclause (1) or clause 13.2, even if the **major participant** has taken all practicable steps to ensure that the information complies, the **major participant** must, as soon as practicable, provide such further information as is necessary to ensure that the information provided complies with clauses 13.2B to 13.2D and clause 13.2.

Appendix B List of submitters

July – September 2020 consultation

B.1 The Authority received individual written submissions from Contact Energy, Gas Industry Company, Genesis Energy, Greymouth Petroleum, Mercury NZ, Meridian Energy, Nova, OMV, Pioneer Energy, Transpower, Trustpower, Vector and Vocus.

B.2 The Authority also received joint written submissions from Electric Kiwi and Haast Energy, the Major Electricity Users' Group (MEUG), and a joint submission from Ecotricity NZ, Flick Electric Co and Pulse Energy (referred to as E, FE & P).

October – November 2020 consultation on Guidelines

B.3 The Authority received individual written submissions from Genesis Energy, Meridian Energy, Transpower and Vocus.

B.4 The Authority also received joint written submissions from Electric Kiwi and Haast Energy, the Major Electricity Users' Group (MEUG), and a joint submission from Ecotricity NZ, Flick Electric Co and Pulse Energy (referred to as E, FE & P).

Appendix C Summary of key points from consultation on Guidelines

C.1 Seven participants responded to the October – November 2020 consultation on Guidelines, with six voicing support and / or small tweaks to the suggested changes to the Guidelines. Key points from submitters and the Authority's response are summarised in Table 3 below.

Table 3 Summary of key points from consultation on Guidelines

Submitter point	Authority response
Transpower suggested the example 3 (paragraph 6.28(c)) was amended to be fuel-neutral.	Agree, update made
MEUG suggested the Authority should clarify that NZX is a suitable location for disclosure (paragraph 7.23)	Agree, update made
E, FE & P suggested including an expectation that a generator must provide notice a specific period of time before putting / not putting plant back into service.	We have decided not to make this change. We consider the risk to security of supply of a plant not being able to be available for a period of time as it has to wait to provide the specified notice period outweighs the benefit this additional disclosure would yield.
Electric Kiwi and Haast, Genesis and Transpower all suggested adding a definition of 'material impact', 'major' or 'significant'.	We have also decided not to add a definition of 'material impact', 'major' or 'significant' at this time as these definitions will always depend on the relevant situation and participant.
MEUG suggested an additional example is added to clarify how a material change in the price of thermal power station fuel should be communicated. Similarly, Electric Kiwi and Haast suggested the Authority clarify material information includes both changes in fuel supply price and volume, not just volume.	The Authority has decided not to add an example on how a material change in the price of thermal power station fuel should be communicated. This is because the focus of this review has been on ensuring the right information about the quantity available to generate is published, for security of supply reasons.
Regarding the suggested approach to format of disclosure (10.6-9 of the Guidelines), Transpower submitted participants would be unlikely to do this disclosure on a monthly basis unless they were compelled to. MEUG thought relevant suppliers should develop reporting options themselves. Genesis considered this approach would go beyond what is required by the Code and it is not reasonable for a business to disclose its entire forward fuel position.	The Authority has decided to retain this suggested approach. This format is entirely optional and is designed to help participants to assess the materiality of information. Participants should feel free to adapt this approach to suit their needs. This format was originally developed by the Wholesale Advisory Group, an advisory group to the Authority, in 2012.

Submitter point	Authority response
	For NZX listing rules, many parties follow a similar approach of monthly disclosures plus additional ad hoc disclosures when required.
Add to the end of proposed new paragraph 6.28(b)(ii): *and requirements to post offers for pre-dispatch schedules starting a week ahead of real-time* (MEUG).	There is no requirement to post offers beyond 71 hours so it would not be appropriate to include that in this list.
Some submitters suggested more information from the Guidelines should be moved into the Code, eg, paragraph 6.27 (Electric Kiwi and Haast, Vocus).	For now we have not added any more prescription into the Code as it is appropriate these remain purely principles based. The benefit of more detailed rules is limited as they would always need to be applied by participants to their specific situations. Our preference is to put the onus on participants to consider their individual circumstances.
Authority should make that details of when electricity is supplied under a swaption, as well as information about the start / end dates and trigger conditions for hedge contracts should be within scope of 13.2A (E, FE & P).	Swaptions and other types of hedge contracts were not specifically in scope of this review so we have not made a change here at this stage. The Code amendment will assist the Authority in understanding how parties are using exclusions in relation to swaptions. Parties are reminded that if exercising a swaption, or any financial instrument, is likely to lead to a material impact on prices, the information should be disclosed.
Add detail to the Guidelines around what information should be provided in relation to ancillary services eg, reserves (E, FE & P).	Ancillary services have not been the focus of this review. The Authority may look at this in future.
Change use of the word 'significant' in 6.27 to 'material' for consistency (MEUG).	The Authority has chosen to retain the use of the word 'significant'. The use of 'significant' here is deliberate and reflects that the changes / events included in the examples provided in this section would likely (although not necessarily always) need to be 'significant' in order to have a 'material impact on prices'.
The Guidelines should clarify the level of control of the parent company over subsidiaries is a relevant consideration and should guide whether information held by the related entities is information that the parent company should be disclosing (E, FE & P).	This change is likely to require a Code amendment so the Authority is not making this change now. The level of control of a participant over another company is likely immaterial for the purposes of disclosure obligations.

Appendix D Other potential information disclosure issues

D.1 In conducting the review of thermal fuels information disclosure, participants raised concerns about other wholesale information disclosure topics, not related to thermal fuel information directly. The following table summarises the long list of issues we heard. To help us determine which issues should be investigated further, we assessed each issue against two criteria;

(a) Authority's view on contribution to statutory objective / strategic ambitions

(b) Authority's view on size and / or urgency of issue.

D.2 The Authority's statutory objective is to promote competition in, reliable supply by, and the efficient operation of, the electricity industry for the long term benefit of consumers. The Authority's strategic priorities are; consumer centricity, low-emissions energy, trust and confidence, thriving competition and innovation flourishing.

Table 4 Summary of other potential information disclosure issues and key to prioritisation symbols

Interpretation of symbol	**Contribution to statutory objective / strategic ambitions**	**Size / urgency of issue**
✔✔	Contributes strongly	Very urgent / large sized impact
✔	Contributes somewhat	Somewhat urgent / medium sized impact
	Does not contribute	Not urgent / small sized impact

	Information disclosure concern	**Raised by**	**Contribution to statutory objective / strategic ambitions**	**Size / urgency of issue**
Monitoring and Enforcement; clarity of the rule				
1	Lack of enforcement of the current rules	Submissions on the EPR Options Paper by Contact, Electric Kiwi and Haast, and the ENA	✔	✔
2	Monitoring of the Hedge Disclosure website	E, FE & P; Pioneer	✔✔	✔✔

	Information disclosure concern	Raised by	Contribution to statutory objective / strategic ambitions	Size / urgency of issue
3	Update the Guidelines to clarify whether WITS, ASX and NZX are all 'readily available to the public' or not.	Contact's submission on the EPR Options Paper		
4	Parties only need to disclose information about themselves and not information that is not about them but impacts on their operations	NZ Steel's submission on the EPR Options Paper		
5	The need for a centralised database (for improving transparency and enhancing market participation)	Genesis' submission on the EPR First Report	✔✔	✔✔
Outages				
6a	Operational uncertainties – how to indicate reductions in capability associated with things like river temperature, limited number of running hours, contingent availability, sufficient fuel for *x* number of running hours etc	Various Authority projects	✔	✔
6b	Uncertainties around the interaction of clause 13.2A and Schedule 8.3, Technical Code D disclosure obligations	POCP review	✔	✔
7	Important to know not just when but also why a plant is not operating at full capacity and a forecast for when it would be available	E, FE & P	✔	
8	Include a requirement in the Code so that a generator must provide notice a specific period of time before putting plant back into service	E, FE & P	✔	
9	Make use of the System Operator's POCP platform mandatory	E, FE & P; POCP review	✔	
Contracting				
10a	Shorten the disclosure period for contracts on the Hedge Disclosure System	Mercury, Nova	✔	
10b	The Hedge Disclosure System needs to be updated	Nova, Pioneer	✔✔	✔✔
11	Internal hedge transfer prices	E, FE & P; Pioneer	✔✔	✔✔

	Information disclosure concern	Raised by	Contribution to statutory objective / strategic ambitions	Size / urgency of issue
12	When Meridian calls swaption with Genesis and other transactions	E, FE & P; Pioneer	✔	
13	Information on large commercial contracts that are not hedge contracts	E, FE & P	✔	
14	Information on whether and to what extent non-market making participants are active in trading on the ASX	Genesis	✔	
Operational				
15	Inaccuracies in the system operator demand forecast	Meridian, Nova		
16	Poor disclosure of demand response by major users	Contact		✔
17	The lack of reporting of hydrological spill data	Electric Kiwi & Haast, Mercury, Nova, Transpower, Dec-19 UTS	✔ ✔	✔ ✔
18	Reserves: information to understand if the quantity or prices offered for reserves are used to influence spot prices	E, FE & P		
19	Trustpowers' generation data is missing from EM6 generation files	Meridian		
Other				
20	That an explicit prohibition on insider trading is required	Nova	✔	✔
21	Having secured data from disclosure reporting, review the exclusions (clause 13.2A(2))	Authority	✔	✔
Gas				
22	Spot price of gas	MEUG		✔
23	Facilitating publicly accessible longer term future curve for gas prices	MEUG		✔

Appendix E Guidelines for participants on wholesale market information disclosure obligations – update

E.1 Changes to Guidelines proposed in the Guidelines consultation are marked in red underline. Changes to Guidelines since the Guidelines consultation are marked in green underline (dotted).