

21 March 2023

Post implementation review of wholesale information disclosure obligations

1. Executive summary

- 1.1. This paper reviews the results of the changes to the wholesale information disclosure obligation guidelines and related sections of the Code.
- 1.2. Following the implementation of the new wholesale disclosure information portal, major participants have shown a high level of compliance towards the Guidelines in their quarterly submissions.
- 1.3. Approximately half of major participants have wholesale information to disclose each quarter.
- 1.4. The most common information to disclose is outage information released through Planned Outage Coordination Process ("POCP").
- 1.5. Outside of POCP a significant portion of wholesale information is scattered across different participant websites.
- 1.6. Only a handful of major participants have used exclusions so far.
- 1.7. Outside of the list of websites compiled by the Authority for thermal disclosure information, thermal disclosure information has appeared on Nova and Todd's websites.
- 1.8. It is recommended to reduce information asymmetry a central platform is created for participants to post industry announcements. To improve thermal fuel availability information, it is recommended that the Authority work with the Gas Industry Company (GIC) to obtain information from participants outside the electricity industry. These two actions are also recommended in the Wholesale Market Review and will be actioned as a result of the review.
- 1.9. If late disclosures persist it is also recommended that the quarterly reporting obligations are abolished and replaced with a requirement to report any non-compliances and undisclosed information to the Authority as soon as reasonably practicable. Currently, these recommendations are seen as medium priority and the Authority will be actioning them when resources permit.

Contents

1. Executive summary 1
2. Background 3
3. Disclosure Obligation Report Statistics 4
4. Disclosed items 5
5. Non-disclosure items 7
6. Thermal fuel disclosure 9
7. Conclusion 9

2. The information disclosure obligations are designed to reduce information asymmetry

- 2.1. Information disclosure regulation is a tool for eliminating information asymmetry amongst market participants. Information asymmetry leads to transfers of wealth from uninformed to informed market participants when they trade with each other. This can potentially lead to inefficient market outcomes. An effective information disclosure regime is a fundamental feature of a well-functioning competitive market.
- 2.2. To improve information disclosure regulation in the New Zealand electricity wholesale market the Electricity Industry Participation Code (the Code) was amended in 2013. On 1 October 2013 the Disclosure Obligations Code Amendment 2013, which inserted clause 13.2A, came into force. The amendment updated and clarified the obligations of participants in relation to making information readily available to the public. Participants are obliged to make information readily available to the public if the information is likely to affect prices in the wholesale market. The disclosure obligations in clause 13.2A of the Code are the core of the wholesale market information disclosure regime.
- 2.3. Since 2013, further amendments were made to the Code. On 21 June 2018, after the exclusions from making wholesale market information readily available to the public under subclause 13.2A(2) were reviewed, the 'commercial disadvantage' exclusion was replaced with a 'reasonable person' exclusion.
- 2.4. On 1 April 2021 further obligations on a new class of participants, called major participants, including an obligation to report to the Authority on how they are meeting their disclosure obligations under clause 13.2A were imposed. Clauses 13.2B to 13.2L were added which require major participants, as defined under clause 1.1 of the Code, to submit a quarterly report to the Authority setting out how they meet their continuous disclosure obligations. The amendment was intended to allow the Authority and market participants to understand the extent to which major participants are relying on exclusions and cause major participants to focus more strongly on making sure they meet their obligations under clause 13.2A as well as improve the availability of thermal fuel information.
- 2.5. On 26 October 2021 the definition of 'disclosure information' was amended. Currently, clause 13.2A of the Code requires participants to disclose information that they hold about themselves that they expect, or ought reasonably to expect, if made available to the public, will, or is likely to, have a material impact on prices in the wholesale market.
- 2.6. The intention behind these decisions is that participants will have more visibility of market activities, allowing them to build market confidence and better manage market risk. This will benefit consumers in the long term through more efficient prices.
- 2.7. This post implementation review is intended to review some of these amendments. This includes assessing which exclusions, if any, may be being excessively relied on to withhold information and encourage information asymmetry, how participants have been disclosing information and how well participants have been complying with their wholesale information disclosure obligations.
- 2.8. To help participants better understand, and comply with, their obligations the Authority has "Guidelines for participants on wholesale market information disclosure obligations"¹ (Guidelines) for participants to follow. The Guidelines aim to clarify what is information disclosure, whom the obligations apply to, when the exclusions apply and how information should be made available to the public. These Guidelines may be referenced throughout the review.

¹ <https://www.ea.govt.nz/operations/wholesale/information-disclosure/reporting-on-information-disclosure/>

2.9. The timeline of the development of wholesale market information disclosure related code and Guidelines can be found [here](#).

3. There were only two cases of non-compliance in 1.5 years

3.1. The Authority developed a website in June 2021 called the wholesale market information disclosure portal to assist major participants in meeting their wholesale market information disclosure obligations. For each quarter, major participants must submit a report on whether they held or were aware of any disclosure information, whether they complied with clause 13.2A, and if not details of any non-compliance.

3.2. There are different levels of disclosure reporting required depending on the kind of information held.

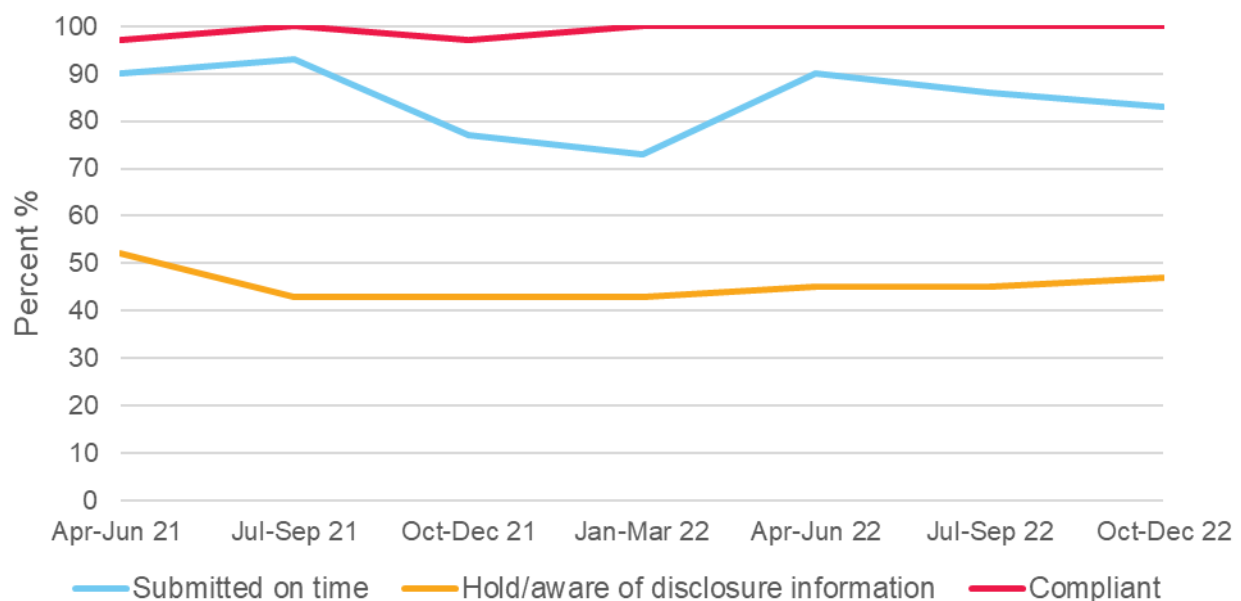
3.3. Each report is due at the end of each month following the expiry of the quarter to which the report relates.

3.4. Since the June quarter of 2021 there have been an average of 30 major participants submitting through the wholesale market information disclosure website.

3.5. Figure 1 shows some statistics on the report submissions. On average participants submitted information on time around 85 percent of the time. The lowest occurrence of on time submissions was at the end of the January to March 2022 quarter when the rate dropped to 73 percent. Participants held or were aware of disclosure information to which clause 13.2A(1) applied around 45 percent of the time in each quarter, with little change between quarters. Participants were 100 percent compliant with clause 13.2A in all quarters except the April to June 2021 and October to December 2021 quarters when the rate of compliance was 97 percent.

3.6. The drop in the rate of compliance in those quarters was due to a single case of non-compliance in each quarter. Both cases of non-compliance concerned the usage of the POCP platform, namely being unable to gain access to the portal in a timely manner and uncertainty around the requirements for data to be posted.

Figure 1: Quarterly report statistics



3.7. 80 percent of participants indicated they had a written policy, procedure and/or process for information disclosure in the December 2022 quarter. This is the highest percentage since the start of collection of wholesale disclosure information and indicates the majority of

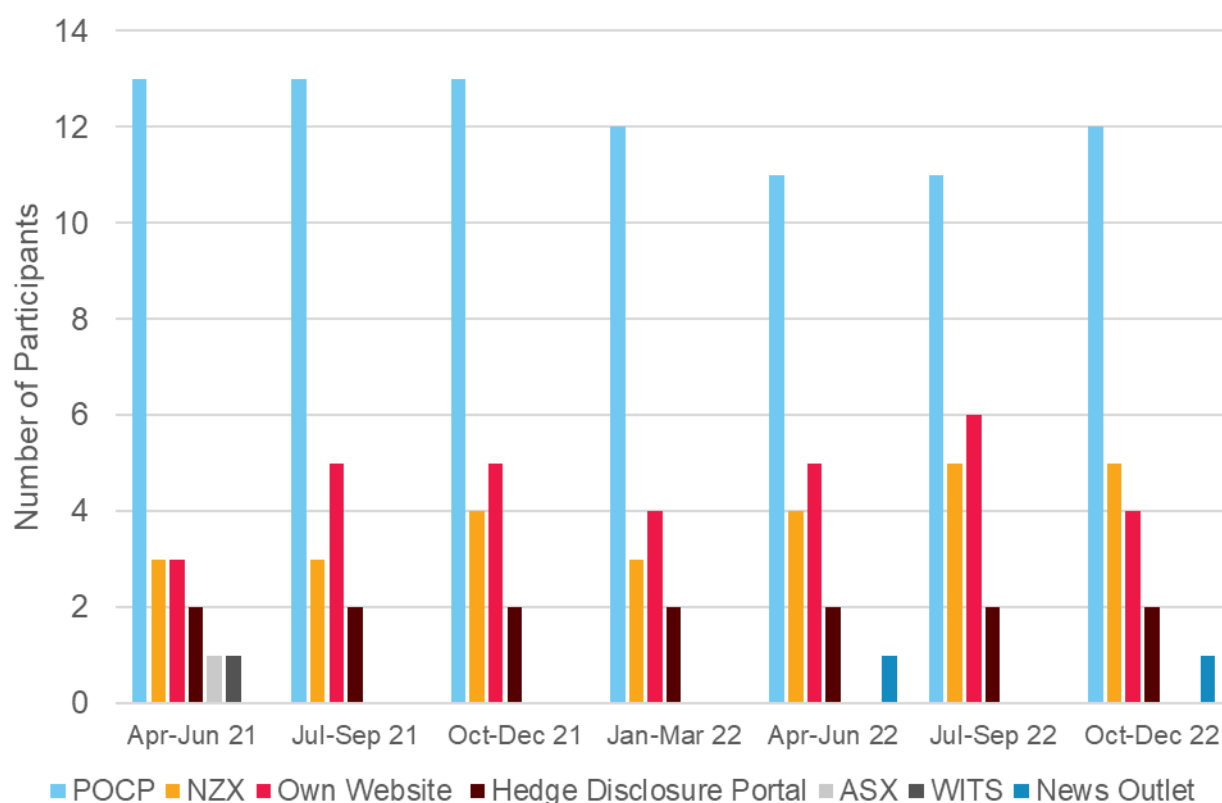
participants have adapted to the Guidelines (this percentage ranged between 69 percent to 77 percent in previous quarters).

- 3.8. Though there are overall high levels of compliance, the rate of meeting submission deadlines could be higher. Due to this, the Authority will look at increasing the number of reminder notices leading up to due dates and communicating with participants to understand the causes of late submissions.
- 3.9. It is important to note the disclosure regime is reliant on participants' cooperation so has some natural limitations. However, should a participant not fulfil their information disclosure obligations and the undisclosed information has a material impact on prices in the wholesale market the Authority will identify this through its trading conduct reporting and general monitoring functions. The wholesale market information disclosure obligations form a proactive part of the Authority's surveillance framework, and the Authority actively monitors participants for compliance with clauses 13.2 and 13.2A. Reports are submitted to the Compliance Committee every 6 months and any non-compliance identified is evaluated and may be notified as a breach.

4. Participants have mainly used POCP, NZX, the hedge disclosure portal, and their own websites to disclose information

- 4.1. Approximately half of respondents reported nothing to disclose each quarter.
- 4.2. Of the participants with information to disclose the methods used to publicly disclose information in each quarter are shown below in Figure 2. POCP, NZX, the hedge disclosure portal and the participants' own websites were the most consistently used means of disclosing information each quarter.
- 4.3. POCP is primarily used to disclose outage information while NZX and participants' own websites are used for new project and infrastructure announcements.

Figure 2: Methods of disclosure



- 4.4. POCP was the most heavily used platform with the majority of participants who needed to disclose only using POCP to disclose information. From this we can infer that most participants only need to disclose outage information. Easy access to POCP therefore is key to wholesale information disclosure and it is important to make sure the service is easy to use for those submitting and receiving information.
- 4.5. NZX and participants' own websites are the next most commonly used methods for participants to publicly disclose information. While participants' websites can contain more significant one-off market-influencing information, due to their number, they require more effort for an individual to find relevant information. In contrast, POCP and NZX provide dedicated centralised locations, making the search for information much easier. Therefore, for more efficient information sharing it would be more convenient to have a single dedicated platform for non-outage information disclosure.
- 4.6. The hedge disclosure portal while consistently used by a couple of participants is not used by as many participants to disclose wholesale information as the other means of information dissemination. The type of information that is submitted through the hedge disclosure portal would also be covered by the hedge arrangement disclosure in subpart 5 of part 13 of the Code. Therefore, even without the wholesale disclosure obligations, data submitted through the hedge disclosure portal would likely be submitted anyway. The additional information required to meet wholesale market information disclosure obligations around contracts that is not specified in hedge disclosure obligations means these additional details would need to be publicly disclosed through other channels. Thus, this makes reporting the use of the hedge disclosure portal relatively redundant.
- 4.7. There appear to be sufficient avenues for participants to make their information publicly available, with each avenue suited to different kinds of information. By being able to access POCP data, NZX announcements and visit other participants' websites, anyone needing access to wholesale market information should be able to stay sufficiently informed such that no single participant has an undue information advantage. However, due to the lack of

a centralised form of notification, when a participant posts information on their own website the information can go unnoticed. This can still create some form of information asymmetry despite the participant fulfilling their public disclosure obligations. As such it would be easier and more convenient – and potentially reduce information asymmetry for market participants if there was a centralised location for non-outage information disclosure.

5. Participants rarely use the exclusions

- 5.1. A participant is not required to make information readily available to the public if certain exclusions specified in clause 13.2A(2) apply. If during the quarter, they decide not to make such disclosure information readily available to the public, as part of the required quarterly disclosure reports they must specify:
- the number of times they have not disclosed information;
 - the relevant dates on which they decided not to make the disclosure information available to the public;
 - a description of the non-disclosed information or the non-disclosed information itself; and
 - the grounds they relied on under clause 13.2A(2) to not make the disclosure (unless the grounds are clause 13.2A(2)(h)).
- 5.2. From the June 2021 quarter to the December 2022 quarter five participants have used the exclusions laid out in clause 13.2A(2), submitting on a total of nine distinct non-disclosure items. There were four non-disclosure items beginning in the June 2021 quarter, two beginning in the December 2021 quarter, one beginning in the March 2022 quarter and two beginning in the June 2022 quarter as shown below in Figure 3.

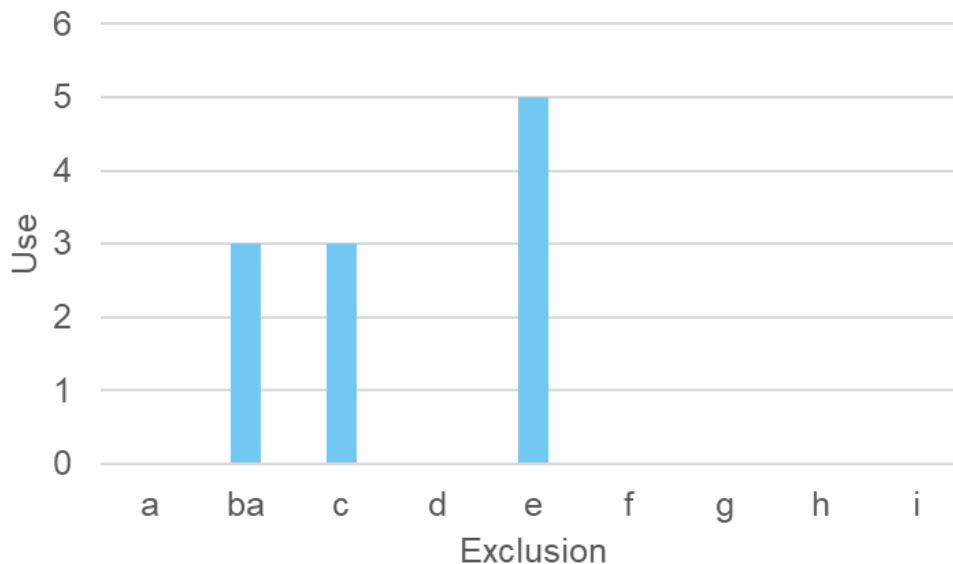
Figure 3: Exclusion items

Exclusion	Quarter						
	Apr-Jun 21	Jul-Sep 21	Oct-Dec 21	Jan-Mar 22	Apr-Jun 22	Jul-Sep 22	Oct-Dec22
ba							
ba/c							
ba/c							
c							
e							
e							
e							
e							
e							

- 5.3. For those nine non-disclosure items only three exclusion reasons have been used:
- 13.2A(2)(ba): a reasonable person would not expect the disclosure information to be made readily available
 - 13.2A(2)(c): the participant is bound by a legal obligation to keep the disclosure information confidential
 - 13.2A(2)(e): the disclosure information is already readily available to the public

- 5.4. As shown in Figure 4, exclusion 13.2A(2)(ba) was used three times, 13.2A(2)(c) three times and 13.2A(2)(e) five times. There were some items where exclusion 13.2A(2)(ba) and 13.2A(2)(c) were used in conjunction with one another.
- 5.5. Non-disclosure items submitted under exclusion 13.2A(2)(e) were publicly disclosed prior to the initial submission date.

Figure 4: Use of exclusions between April 2021-December 2022



- 5.6. The use of the new (ba) exclusion has shown the amendment of 13.2(A) in replacing the 'commercial disadvantage' exclusion with a 'reasonable person' exclusion² has been an effective replacement based on a review of the items which have used the (ba) exclusion. The (ba) exclusion appears to serve as a better fit for the non-disclosed items than the replaced (b) exclusion.
- 5.7. The effectiveness of the use of the (e) exclusion is debatable. For the items submitted the disclosure information submitted was already readily available to the public at the time the disclosure information had an impact, with the public aware of the information well before it reached the Authority in the quarterly submission. In this case making the report seemed like a superfluous motion that simply served as a notice specifically for the Authority.
- 5.8. With less than five percent of submissions containing non-disclosed items it appears that participants rarely use the disclosure obligation exclusions and follow the Guidelines as they were intended.
- 5.9. Participants seem to show an understanding of their obligations and have not taken advantage of exemptions to unduly withhold important information from the market so modifying existing exclusions would not give any advantages. While the other exclusions have not been used following the amendment to the Guidelines, they feel like sensible options to have available. There would be little benefit in changing the Code, so our recommendation is that the exclusions should remain as they are now.
- 5.10. One possible issue with the current system of quarterly submissions is that we can only learn about non-disclosure items up to three months after they have been known by a participant. In some cases, longer for submissions which have been submitted late, a trend which has been increasing since June 2022. This means any judgement on whether an exclusion has been appropriately applied is retroactive. It would make more sense to require participants to submit a description of non-disclosure items to the Authority in

² (b): doing so will commercially disadvantage the participant in a material manner. (ba): a reasonable person would not expect the disclosure information to be made readily available.

confidence as soon as the participant is aware of the information. Should the trend of declining on time submissions continue the Authority will consider switching the quarterly reporting requirement to reporting to the Authority as soon as reasonably practicable after the participant chooses not to disclose the information.

6. The change in guidelines does not appear to have impacted thermal fuel disclosure

- 6.1. The new definitions for major participants added to Part 1 of the Code and new clauses 13.2B to 13.2L inserted into Part 13 of the Code were added as part of a review of thermal fuel information disclosure. The Guidelines were updated to provide greater clarity regarding disclosure obligations, specifically for the purposes of improving thermal fuel disclosure and to reflect recent developments in the wholesale market.
- 6.2. The new Disclosure Obligations Platform (as covered in paragraph 3.1) was built to deliver the following benefits:
 - enable full realisation of the benefits of the disclosure reporting proposal, by delivering automated data flows for monitoring
 - provide participants who hold thermal fuel information with certainty regarding where they should publish thermal fuel information
 - enable participants to easily comply with the proposed new disclosure reporting obligations
 - enable participants who do not hold thermal fuel information to easily find thermal fuel information, therefore reducing the real and perceived information asymmetry
- 6.3. While the creation of the platform and submission of quarterly reports has enabled automated monitoring of wholesale disclosure exclusion usage, participants who hold thermal fuel information have not significantly changed how they disclose thermal fuel information outside of sites published in a list by the Authority³.
- 6.4. Submissions around wholesale information disclosure for thermal fuels specifically have been limited to a handful of disclosures linked to public notice releases on the participants Todd and Nova's websites. Therefore, it is hard to see whether the change in Guidelines has had an impact on thermal fuel disclosure. Major participants who received gas referred the Authority to their gas supplier for thermal fuel information, however these suppliers were not covered by the "major participants" definition. This would also imply that all the thermal fuel related information that can be disclosed by electricity market participants is currently being disclosed.
- 6.5. Based on current disclosures the Authority will look to add Todd and Nova's websites to the list of thermal fuel information sites. Additionally, the Authority will work with the GIC to try gain access to the thermal fuel information currently held by gas suppliers not covered by the "major participants" definition based on recommendations in the Wholesale Market Review

7. Conclusion

- 7.1. Overall, the Code Amendments and changes to the Guidelines have given the Authority more visibility over major participants' knowledge of wholesale information.
- 7.2. Participants have shown a high level of compliance towards the Code and a reasonable use of the disclosure exclusions. Participants appear to be releasing wholesale information

³ <https://www.emi.ea.govt.nz/Wholesale/InformationDisclosure>

where appropriate. Potential ongoing issues however include potential information asymmetry still existing within the market despite participants meeting their disclosure obligations when they release information on their websites. Given the number of different websites, finding information is more arduous and could potentially lead to information asymmetry if participants are not aware of all the different sites on which information is disclosed. One solution for this, and a recommendation in the Wholesale Market Review⁴, is to have one centralised platform to release announcements on, similarly to how all outage information is disclosed through POCP. The Authority could provide such a space on the Authority's EMI website, which is already well known in the industry and currently provides a variety of industry information and statistics. This recommendation from the Wholesale market review has a medium priority. This will be progressed as resources permit.

- 7.3. The high usage rate of POCP to disclosure information combined with the only cases of non-compliance being caused by an inability to disclose through POCP in a timely manner, makes easy access to POCP appear to be of key importance to wholesale information disclosure.
- 7.4. Most participants have nothing to disclose, there is a high rate of compliance, and low use of exclusions. There is a time delay between an item being withheld from disclosure and the Authority being notified of the item and there is a decline in on-time submission rates. If the trend of declining on-time submission rates continues, the Authority could consider amending the Code so that when a disclosure item requires the use of exclusions, or a case of non-compliance occurs the participant is required to notify the Authority as soon as reasonably practicable after the participant becomes aware of the non-compliance or non-disclosure.
- 7.5. The minor amount of thermal fuel information "major participants" disclosed following the latest changes to the Guidelines suggests that all the thermal information that can be disclosed within the electricity industry has been. The Wholesale Market Review has stated the Authority will work with MBIE and the GIC on options to gain a complete picture of thermal fuel availability.
- 7.6. Currently the Code amendments and the Guidelines appear to be functioning as intended. Outside of the actions outlined above further work around wholesale information disclosure will be centred around monitoring the market for non-compliance which the Authority will continue to do by assessing the wholesale information submitted by participants.

⁴ The Wholesale Market Review Issues Paper (Promoting competition in the wholesale electricity market in the transition toward 100% renewable electricity, Oct 2022) proposed the action "clarify disclosure requirements (and consider amending the Code to provide certainty about such requirements) about current or expected constraints that could impact generation capacity, and arrange a centralised location for disclosure". The Authority will be making its decisions on which actions to take forward on consideration of submissions and prioritisation of resources.