Code amendment omnibus two: December 2023

Consultation paper

15 December 2023

ELECTRICITY AUTHORITY
TE MANA HIKO

Executive summary

The Electricity Authority Te Mana Hiko (Authority) is committed to ensuring regulation keeps up with the transformation underway across the electricity sector. We have reintroduced the omnibus as a vehicle to consult on multiple discrete proposals to amend the Electricity Industry Participation Code 2010 (Code). The intent is to move quicker on amendments and alleviate consultation overload by reducing the number of different consultation papers we publish.

Section 1 of this consultation paper contains guidance on how to make a submission.

Amending Part 6A to include all generation technology

Section 2 proposes changes to Part 6A of the Code to ensure it covers all generation technology, including solar (PV) arrays and batteries connected to the distributor's network. As we move to a low-emissions economy we are committed to clarifying regulatory issues for distributed energy resources.

When Parliament moved the rules from Part 3 of the Electricity Industry Act 2010 (Act) to Part 6A of the Code there was a definition linked back to the Act that limited the scope of Part 6A to "rotating machinery". Solar and battery technology has evolved, and the commercial viability of the technology has improved since the original definition in the Act was enacted in 2010. The Authority is proposing to amend Part 6A to include all generation technology.

Permanent Code amendment to clarify use and availability of controllable load

Section 3 sets out the Authority's proposal to make an urgent Code amendment relating to Option E from our winter 2023 work programme permanent.

On 28 April 2023, the Authority made an urgent Code amendment to provide greater information on the level of discretionary demand available under a grid emergency, allow other market participants to see how much discretionary demand is available, and inform resource commitment decisions.

We propose an enhancement to the existing urgent Code amendment to create two price bands for the difference bids. This reflects that distributors may have some load that could be controlled before a grid emergency is declared. We also propose minor drafting changes to the existing urgent Code drafting.

The urgent Code amendment will expire in February 2023. If the Authority decides to proceed with this proposal, the Code amendment will be made by winter 2024.

Updating and clarifying the scope and effect of Part 6A obligations

Section 4 proposes changes to Part 6A of the Code which are consequential to Parliament's decision to move the rules from Part 3 of the Act to the Code. In particular, the Authority is proposing to:

a) update and clarify who has obligations under Part 6A, in light of the permitted scope of the Code

b) remove elements of the Part 6A rules which are no longer necessary or desirable given breaches of the rules no longer attract criminal liability, and

c) align reporting requirements in Part 6A with standard Code reporting requirements.

We welcome feedback on any or all sections of the omnibus by **9 February 2024**. We will consider all submissions before making our final decisions. We also welcome feedback on the format of the omnibus consultation and possible improvements for the future.

Contents

1. Background

What this consultation is about

1.1. The purpose of this paper is to consult with interested parties on the Authority's proposals to:

(a) amend Part 6A to include all generation technology

(b) make a permanent Code amendment to clarify use and availability of controllable load

(c) update and clarify the scope and effect of Part 6A obligations.

1.2. These proposals are being presented in omnibus form to streamline the number and frequency of consultations on Code amendment proposals. This paper is the second in the series.[1] We intend to use omnibus consultations more regularly in future to consolidate discrete Code amendment proposals when appropriate to do so.

1.3. Each proposal is set out in a separate section of this paper, along with a regulatory statement for each proposal which includes a statement of the objectives of the proposed amendment, an evaluation of the costs and benefits of the proposed amendment, and an evaluation of alternative means of achieving the objectives of the proposed amendment.[2] The draft wording of each proposed Code amendment is included in appendices A to C.

How to make a submission

1.4. The Authority's preference is to receive submissions in electronic format (Microsoft Word) in the format shown in Appendix B. Submissions in electronic form should be emailed to policyconsult@ea.govt.nz with "Omnibus two consultation" in the subject line.

1.5. If you cannot send your submission electronically, please contact the Authority info@ea.govt.nz or 04 460 8860) to discuss alternative arrangements.

1.6. Please note the Authority intends to publish all submissions it receives. If you consider that the Authority should not publish any part of your submission, please:

(a) indicate which part should not be published,

(b) explain why you consider we should not publish that part, and

(c) provide a version of your submission that the Authority can publish (if we agree not to publish your full submission).

1.7. If you indicate part of your submission should not be published, the Authority will discuss this with you before deciding whether to not publish that part of your submission.

1.8. However, please note that all submissions received by the Authority, including any parts that the Authority does not publish, can be requested under the Official Information Act 1982. This means the Authority would be required to release material not published unless good reason existed under the Official Information Act to withhold it. The Authority would normally consult with you before releasing any material that you said should not be published.

---

1 The first omnibus consultation took place in 2018 and related to a set of four market enhancement proposals.

2 As required under section 39 of the Act.

When to make a submission

1.9. Please deliver your submission by 5pm on Friday **9 February 2024**

1.10. Authority staff will acknowledge receipt of all submissions electronically. Please contact the Authority info@ea.govt.nz or 04 460 8860 if you do not receive electronic acknowledgment of your submission within two business days.

2. Amending Part 6A to include all generation technology

The existing arrangements

2.1. Potential competition issues in the electricity market are managed by requiring separation of distribution from certain generation and retailing. Part 3 of the Act imposes ownership separation when an involvement may create incentives and opportunities to inhibit competition. Part 6A of the Code imposes corporate separation and arm's-length rules when relationships between a distributor and a generator or a retailer may not otherwise be at arm's length. Promoting competition promotes the long-term benefit of consumers as healthy workable competition tends to reduce prices.

2.2. The provisions in the Act require full ownership separation if the distributor owns generation connected to the national grid. These rules only apply for generation over 250MW for grid connected generation (section 73 of the Act). The threshold for corporate separation and arm's-length rules is 50MW for distributor network connected generation (Part 6A of the Code). Part 6A also imposes rules for distribution agreements where distributors own more than 10MW of generation.

2.3. The obligations in Part 6A were originally contained in Part 3 of the Act but were moved into the Code in 2022 by the Electricity Industry Amendment Act 2022 (Amendment Act). In moving the obligations into the Code, the intent was to provide for more flexible and responsive regulation in response to a rapidly evolving electricity system[3].

2.4. The proposal in this paper only applies to Part 6A of the Code. If the Authority considers a similar solution is needed in the Act, it will pass this onto the Ministry of Business, Innovation and Employment (MBIE) who administer the Act.

2.5. The corporate separation and arm's-length rules apply in relation to 'connected retailers' and 'connected generators'. The definition of a 'connected generator' for this purpose means:

a generator that has a total capacity of more than 50 MW[4] of generation that is connected to any of the distributor's networks

2.6. Clause 6A.2 then defines 'total capacity' as having the meaning given in section 73(3) of the Act, which defines total capacity as:

total nominal capacity of a generator in a financial year (determined according to the nameplates of all of the generator's generating plants)

2.7. Section 73(3) defines 'nameplate' as:

the full-load continuous rating of a generating plant under specific conditions as designated by its manufacturer and measured in megawatts in accordance with International Electrotechnical Commission Standard 60034-1 or any successor to that standard or any recognised equivalent standard

2.8. The scope of IEC standard 60034-1[5] only applies to:

rotating electrical machines, except rotating electrical machines for rail and road vehicles, which are covered by the IEC 60349 series of standards.

---

3 Cabinet Paper (February 2020): Progressing the Electricity Price Review's recommendations (mbie.govt.nz).

4 The threshold is different in clause 6A.4 (distribution agreements) and imposes obligations on distributors where the 'total capacity' of connected generation is more than 10MW.

5 IEC 60034-1:2022 | IEC Webstore

2.9. Taken together, the 'total capacity' of a generator's generating plants can only be determined in accordance with the IEC Standard 60034-1, or any successor to that.

2.10. IEC standard 60034-1 defines the 'full load continuous rating' referred to under the Act as the rating at which the machine can be operated for an unlimited period, while complying with the requirements of this standard. The IEC standards for non-rotating generators such as batteries do not contain a MW rating equivalent to the 'full load continuous rating' required by section 73 of the Act[6]. This is because batteries and solar are not capable of running 'continuously' at a constant load for an unlimited period of time.

2.11. In light of the above, the Authority's position is that:

(a) non-rotating generation falls outside the definition of 'total capacity' in the Act because that definition is limited to rotating generation

(b) as such, non-rotating generation does not fall within the definition of a 'connected generator' in Part 6A of the Code as the 'total capacity' limits do not apply

(c) for this reason, Part 6A does not apply to any distributor involved in non-rotating generation.

Problem definition

2.12. The chain of definitions described above means that any non-rotating generation such as solar or batteries is not included when assessing a connected generator's total capacity.

2.13. The ability of a distributor to inhibit (or not promote) competition is no different if the generation is rotating or non-rotating. The generation technology does not affect the incentives on the distributor.

2.14. When these provisions were written, grid scale solar or batteries were rare. As generation can have different ratings depending on circumstances, for clarity, the Act sought to be definitive and prescriptive as to how the rating would be calculated.

2.15. This type of issue is commonly referred to as 'technology outpacing regulation'.

2.16. The Code has a definition of 'nameplate capacity' that is technology agnostic. Because of the way the Amendment Act 2022 moved the provisions from Part 3 of the Act into Part 6A of the Code, the term 'total capacity' continued to refer to the definition of 'nameplate' in the Act rather than 'nameplate capacity' in the Code.

2.17. The Code definition of 'nameplate capacity' is used in Part 6 of the Code[7]. Part 6 of the Code is concerned about the ability of the distributor's network to manage the distributed generation. There are several different ways to assess inverter-based generation capacity depending on time period of generation and loading ability of the electronic componentry. Part 6A does not need to account for the technical and engineering possibilities as it only needs a definition that accounts for the ability of the generation to affect competition.

Proposal

2.18. The Authority proposes to amend the Code to create a new definition for 'connected generation' and revoke the definition of 'total capacity'. The new term 'connected generation' would be used where needed throughout Part 6A. Amending Part 6A in this way captures all generation regardless of generation technology and links the corporate separation and

---

6 Refer International Electrotechnical Commission Standard 62933-21 for batteries.

7 And other parts of the Code not related to the relationship between a distributor and generation.

arm's-length rules to the way the generation is used rather than the physical capability of the generation.

2.19. The proposal is for the new term 'connected generation' to refer to the sum of the capacity of the connected generator's generating units. The capacity of each generator is the sum of the maximum amount of each generating unit, in MW, that is any combination of:

(a) offered into[8], or gifted to[9], the wholesale market as energy; or

(b) offered into, or gifted the wholesale market as reserves, or

(c) contracted to the system operator as an ancillary service, or

(d) for generation that is not included in (a), (b), or (c) above, the nameplate capacity as defined in the Code.

2.20. For smaller plant that is not offered into the wholesale market or used as an ancillary service, the current definition in the Code is sufficient. This is the definition currently used for the connection of distributed generation to the distributor's network under Part 6. The Authority is not aware of any issues with this definition.

2.21. The proposal removes all reference to 'total capacity' and therefore the prescriptive IEC standard. It instead assesses the capacity of generation by its ability to affect competition by being offered into (or gifted to) the wholesale market.

2.22. The primary advantage of the proposal is it removes the need to calculate the maximum capacity for larger generation units and to choose between several options for determining the actual capacity of the generation unit. The proposal also futureproofs Part 6A by using an outcome-based assessment of generation, rather than by prescribed international standards that may become out of date. This moves the assessment away from technology type, thus ensuring future technology changes are provided for.

2.23. Generation capacity may change over time as conservative limits (due to warranty or operating contracts) expire. Where the generator is physically capable of exporting more and the amount offered (and/or contracted) in the future exceeds the threshold, the distributor may then be in breach of the corporate separation and arm's-length rules. However, the Authority considers this issue can accounted for and be managed by the generator at the time the initial investment decisions are being made. Information on offers and ancillary services contracts are available to the Authority to enable monitoring of the threshold if required.

2.24. The proposed Code amendment is attached as Appendix A.

Q1.1. Do you support the Authority's proposal to include all generation technology under Part 6A?

Q1.2. Do you support the Authority's proposal to create a new definition for "connected generator"?

Please explain your answers.

[8] Under subpart 1 of Part 13

[9] By giving notice under clause 15.13 that the generation is not receiving payment from the clearing manager

Regulatory statement

Objectives of the proposed amendment

2.25. The objective of the proposed amendment is to ensure the provisions of Part 6A continue to meet the purpose of Part 6A by including changes in technology that were unforeseen at the time the provisions were originally written.

2.26. A second objective is to future-proof the application of Part 6A.

Evaluation of the cost and benefit of the proposed amendment

2.27. The primary benefit is to ensure competition is not inhibited and continues to be promoted by the provisions of Part 6A regardless of the generation's technology type.

2.28. The Authority considers there are no costs associated with the proposed amendments. Some distributors may already own some non-rotating generation and this amendment will apply to any existing generation. The Authority is unaware of any existing generation that is near or over the 50MW threshold. Although the proposed amendment will not impose any immediate costs, distributors in future will need to assess all of their generation (both rotating and non-rotating) against the thresholds to ensure they comply with Part 6A.

Evaluation of alternative means of achieving the objectives of the proposed amendment

Alternative options	Reasons not favoured
Amend the definition of total capacity to include a reference to a suitable standard for non-rotating generation (discussed in paragraphs 2.18 to 2.21 above)	This option addresses the objectives in a less optimal way than the preferred option. The Code would need to be amended whenever the prescribed standard is updated, or if other suitable standards are published as technology evolves
A full review of Part 6A. This would look at the need for the obligations, underlying principles of the obligations and the details of the obligations such as the thresholds for connected generation and retail. This is a much wider scope than the current situation.	A full review could take between 12 and 18 months to be completed. Until such a review is commissioned, reaches its recommendations, and a final decision is made, there is uncertainty for distributors and other industry participants over the status of any proposed investments and that will introduce regulatory uncertainty into their business cases. During this time the current uncertainty would remain. The Authority would prefer to resolve the situation quickly to give distributors and other industry participants more certainty for investment.

Assessment of the proposed Code amendment against section 32(1) of the Act

2.29. The Authority's main objective under section 15(1) of the Act is to promote competition in, reliable supply by, and efficient operation of, the electricity industry for the long-term benefit of consumers. The Authority's additional objective under section 15(2) of the Act is to protect the interests of domestic and small business consumers in relation to their supply of electricity. The additional objective only applies to the Authority's activities in relation to dealings between participants and these consumers.

2.30. Section 32(1) of the Act says that the Code may contain any provisions that are consistent with the Authority's objectives and are necessary or desirable to promote any or all of the matters listed in section 32(1).

2.31. The Authority considers that the proposed amendment is necessary or desirable to promote competition by ensuring the provisions of Part 6A are applied to distributors regardless of generation technology type.

Assessment against Code amendment principles

2.32. The proposed Code amendment is consistent with the Authority's statutory objectives, and with section 32(1) of the Act and the Code amendment principles as required by the Authority's Consultation Charter

Q1.3. Do you agree the proposed amendment is preferable to the other options? If you disagree, please explain your preferred option in terms consistent with the Authority's statutory objective in section 15 of the Electricity Industry Act 2010

Q1.4. Do you agree with the analysis presented in this Regulatory Statement? If not, why not?

3. Permanent Code amendment to clarify use and availability of discretionary demand control

Problem definition

3.1. On 28 April 2023, the Authority made an urgent Code amendment: *Electricity Industry Participation Code Amendment (Discretionary Demand Control) 2023* under sections 38 and 40 of the Electricity Industry Act 2010. [10]

3.2. This amendment implemented 'Option E' from our winter 2023 work programme. Option E facilitated greater information on the level of discretionary demand that could be disconnected if required under a grid emergency and allowed all market participants to see estimates of the quantity available.

3.3. The urgent Code amendment created an obligation on distributors to submit difference bids – which are only required when the system operator releases a Customer Advice Notice advising of a potential low residual situation.[11] This reduced the need for the system operator to contact each distributor individually in the lead up to an event. This also meant that the level, and market impact, of available discretionary demand was visible to market participants through the market schedules.

3.4. The urgent amendment will expire in February 2024. We now propose to amend the Code to implement Option E permanently. We also propose two changes from the urgent Code to ensure that permanent arrangements best meet the objectives.

3.5. We are interested in your feedback on the proposed changes from the urgent Code amendment and on the permanent Code amendment as a whole.

Proposal

3.6. The Authority proposes to amend Part 8 Schedule 8.3 Technical Code B to:

(a) permanently implement the intent of the existing urgent amendment, the *Electricity Industry Participation Code Amendment (Discretionary Demand Control) 2023*

(b) enable a broader range of tools that distributors have available to be included in difference bids

(c) create two price bands for controllable load difference bids

3.7. The proposed Code amendment, and a tracked change version of the Code amendment (compared to the existing urgent Code amendment) are attached as Appendix B.

Q2.1. Do you support the Authority's proposal to permanently implement the intent of the urgent Code amendment, *Electricity Industry Participation Code Amendment (Discretionary Demand Control) 2023*? Please explain your answer.

---

10 New Zealand Gazette, *Notice of the Electricity Industry Participation Code Amendment (Discretionary Demand Control) 2023*, April 2023.

11 It can also occur under Warning Notices and Grid Emergency Notices. There are also some allowances for distributors to provide this information in an alternative form to a difference bid.

Drafting changes

3.8. The Authority proposes shifting from the term ‘discretionary demand’ to ‘controllable load’. The change would align the terminology in the Code with existing industry practice.

3.9. We also propose adopting the term “quantity of resources” over “quantity of demand”. This is intended to reflect the characteristics of different distributors which may have a broader range of resources available than just demand control. This would enable a difference bid to reflect the total net reduction in load at a grid exit point that is available to be utilised (whether by controlling demand or increased network support generation). Note that market offered embedded generation is still proposed to be excluded from controllable load difference bids.

Q2.2. Do you support adopting the term controllable load? Please explain your answer.

Q2.3. Do you support the use of the term ‘resources’ over ‘quantity of demand’? Please explain your answer.

Two price bands for difference bids

3.10. Under the urgent Code amendment arrangements, load in a difference bid can be requested to be controlled under a Warning Notice (WRN), and instructed to be controlled under a Grid Emergency notice (GEN). These bids are all priced at scarcity-like conditions ($9000/MWh).

3.11. In real time, this makes it difficult to determine what may be controlled under a WRN, and what load will only be controlled under a GEN. This could impede the system operator’s ability to accurately understand how distributors are responding to a low residual situation in the lead up to declaring a GEN.

3.12. The Authority proposes to create two price bands for controllable load in difference bids. This would enable distributors to signal what would be available to control load when a formal notice[12] is issued (‘Requested Controllable Load’). The load could also be instructed under a GEN, but the intention would be for this load to be requested under a WRN first (dependent on overall market conditions during a low residual situation). The second band is load that the distributor signals will only be controlled when instructed to under a GEN.

3.13. We see this change as being consistent with the intent of the existing urgent Code amendment and would enhance its effect.

Q2.4. Do you support the proposal to introduce two price-bands? Please explain your answer.

Price of requested controllable load in forward price responsive schedules

3.14. We propose that requested controllable load is priced at $0.01/MWh. This price would mean that the resources offered in the difference bid tranche would be reflected in the forward price responsive schedules (PRS). The pricing in the PRS would therefore be more aligned with the likely real time price during these periods.

---

12 Clause 5 of Technical Code B, Part 8 of the Code.

3.15. A potential risk with this approach is that this load would need to be controlled for the time periods it relates to – regardless of whether the system operator requests it. This is because the load reduction would be in the forward PRS and not marked as contingent on the system operator requesting or instructing load control. If this load was not reduced, this could result in a discrepancy between the PRS and the real time dispatch price.

3.16. While this does have an impact on the short-term forecast accuracy of the pricing schedules, this would only have a material impact on the final price if the publication of the first dispatch instruction of the trading period was delayed. In this event, the lower PRS price would form a time weighted average component of the final price. This may have the effect of slightly reducing the final price from where it would otherwise have been calculated. If the final price does not reach scarcity levels, because a reduction in the instructed controllable load was not called, then the difference in price would likely be minimal.

Q2.5. Do you support pricing requested controllable load at $0.01/MWh? Please explain your answer

Regulatory statement

Objectives of the proposed amendment

3.17. There are two objectives of the proposed amendment:

(a) provide improved information to the system operator and participants ahead of a grid emergency. This is intended to inform participant responses and the scale of response needed to maintain security of supply. This objective is consistent with the intent behind the urgent code amendment outlined in our previous decision paper.[13]

(b) for any proposal to be implementable by winter 2024 with minimal impact to participants and the system operator

Counterfactual

3.18. The counterfactual to this proposal is to let the existing urgent Code amendment expire without replacement. This would mean that controllable load would return to being invisible to both participants and the system operator.

3.19. This would make resource commitment decisions more difficult for participants and could hinder the ability of the system operator to maintain power system security.

3.20. The Authority considers that this would be detrimental to the management of grid emergencies and does not meet the stated objectives. We note that this approach would also not align with the recommendation of the Hodgson report to improve visibility of discretionary load available to the system operator.[14]

Evaluation of the cost and benefit of the proposed amendment

3.21. The Authority considers the proposed Code amendment would have a positive net benefit, for the reasons set out below.

---

13 Electricity Authority, Driving efficient solutions to promote consumer interests through winter 2023, March 2023

14 See Recommendation 6 of the Investigation into electricity supply interruptions of 9 August 2021.

Costs

3.22. We anticipate very low marginal costs associated with the proposal because the system is already implemented. There may be some additional costs associated with the operational changes we have proposed, but we expect these to be minimal.

3.23. We anticipate that there may be costs associated with development or enhancement of the system operator's tools. We consider these costs to be minor when compared to the potential cost of disconnecting consumers due to poor coordination of the available resources. Discussions with the system operator have indicated that these tool development requirements (including any delay in development) would be unlikely to prevent implementation ahead of winter 2024.

3.24. If a decision to implement this proposal is made, the Authority will work with the system operator to ensure a smooth implementation of the proposal, and for development of tools over time to support an enduring solution.

Benefits

3.25. We have been unable to perform a quantitative analysis of the benefits. We are comfortable that the proposal presents a net benefit to participants, we see the key benefits as:

(a) supporting the Authority's longer-term intention for this option to help facilitate the offering of demand response into the wholesale market

(b) improving the efficiency of the price signals to the market in the forward schedules. This helps spot-exposed participants to manage their risk through, for example, contracting for demand response.

(c) more efficient use of load that can shed for short time periods with minimal consequences (such as hot water heating). Inclusion of two price bands will further improve the ability for the system operator to maintain power system security in real time.

(d) supporting the Authority's longer-term intention for this option to help facilitate the offering of demand response into the market

(e) helping the system operator to manage these types of events in real time by providing greater assurance to the system operator on the visibility of the expected quantity of available controllable load that during a low residual situation.

Evaluation of alternative means of achieving the objectives of the proposed amendment

3.26. The Authority considered two alternative proposals around how the price-bands may be implemented. The Authority determined these as inferior to the proposed approach:

Alternative options	Reasons not favoured
Updating prices of difference bids when requested by system operator	This would increase complexity for distributors when managing a tight supply situation. Increases in organisation overhead and complexity during an event creates risks for mistakes, undermining the effective management of low residual situations by the system operator and distributors.

Requested controllable load in difference bids priced at an arbitrary price point below instructed controllable load	A high price would be reflected in the PRS, giving a price signal that would indicate if requested controllable load would be sufficient to avoid a GEN. However, a WRN does not reflect actual scarcity conditions – only the future potential for such a situation. Using scarcity-like pricing would increase the discrepancy between the PRS and likely real time market conditions.

Assessment of the proposed Code amendment against section 32(1) of the Act and Code amendment principles

3.27. The proposed Code amendment is consistent with the Authority's statutory objectives, and with section 32(1) of the Act and the Code amendment principles as required by the Authority's Consultation Charter.

Q2.6. Do you agree the proposed amendment is preferable to the other options? If you disagree, please explain your preferred option in terms consistent with the Authority's statutory objective in section 15 of the Electricity Industry Act 2010.

Q2.7. Do you agree with the analysis presented in this Regulatory Statement? If not, why not?

4. Updating and clarifying the scope and effect of Part 6A obligations

Problem definition

4.1. The provisions in Part 6A were largely unchanged when they were shifted from Part 3 of the Act into the Code in 2022. The Authority is now proposing several amendments which are consequential to Parliament's decision to shift the provisions from the Act to the Code.

Problem 1: It is unclear who has obligations under Part 6A

4.2. Section 32 of the Act governs the content of the Code. It states that the Code may not impose obligations on any person other than:

(a) an industry participant, a person acting on behalf of an industry participant, or the Authority;[15] or

(b) a specified person, for the purpose of restricting relationships between 2 classes of industry participants, where those relationships may not otherwise be at arm's length.[16]

4.3. Many of the provisions in Part 6A are not worded in a way that limits their application to these groups. Clause 6A.3(2), for example, purports to impose an obligation on 'every person who is involved in a distributor, and every person who is involved in a connected generator or a connected retailer'. Section 33(2) of the Act states that the Act prevails if any provision of the Code conflicts with the Act. Nonetheless, we consider it is appropriate that the Code be worded in a way that is consistent with the extent of its jurisdiction, as prescribed in section 32 of the Act.

4.4. Other provisions in Part 6A impose obligations on directors or managers of a participant, but not also on the participant itself. In this respect Part 6A departs from the usual starting point under the Code, which is to impose primary obligations on the participant. In light of Parliament's decision to shift the rules in Part 6A from the Act to the Code, the Authority considers there is merit in imposing primary obligations on participants in addition to directors or managers where they may also be subject to the Code under section 32 of the Act.

Problem 2: Some requirements to establish a breach are no longer appropriate

4.5. Some provisions in Part 6A specify an additional mental element to establish a breach of the Code (refusing or knowingly failing to comply with a clause).[17] These elements were brought over from the Act, but when they were in the Act they were only required to establish criminal liability for breaching one of the arm's-length rules.[18] It was not necessary to establish this additional mental element if the Authority took enforcement action in the High Court for a breach of the arm's-length rules under section 80 of the Act (pecuniary penalties).

---

15 Section 32(2)(a) of the Act.

16 Section 32(3) of the Act. A 'specified person' is defined in section 32(6) as 'a person (other than an industry participant) who is involved in both classes of industry participant that are the subject of any provisions made in accordance with subsection (3)'

17 Clauses 6A.4(5)(a), 6A.5(4), 6A.6(5), 6A.7(5)(a), 6A.8(3)(a).

18 Part 3 specified offences in sections 77(5)(a), 78(5), 79(5), 88(5), 89(3).

4.6. Now that the arm's-length rules are in the Code, breaches are dealt with solely under the enforcement regime established under the Act. It is no longer an offence to breach any of the provisions in Part 6A. On this basis, the Authority considers it is no longer necessary or appropriate for the Code to specify an additional mental element to establish a Code breach. Rather, the threshold for establishing a breach of the Part 6A provisions should be the same as it was for pecuniary penalties under Part 3 of the Act.

Problem 3: Information disclosure requirements do not follow normal drafting approach for the Code

4.7. Some provisions in Part 6A impose obligations in relation to the provision of information to the Authority and the publication of that information.[19] The procedural requirements in these provisions do not follow the Authority's normal drafting approach for requiring information disclosure under the Code. In addition, the information disclosure provisions specify that knowingly providing false or misleading information breaches the Code. This additional mental element, as with the provisions addressed under problem two above, was originally only required to establish criminal liability under the Act and is not appropriate in the context of a Code breach.[20]

Proposal

4.8. To address these problems, the Authority proposes to amend Part 6A of the Code to:

(a) update and clarify who has obligations under the Part 6A rules, in a way that is appropriate in the context of the Code and consistent with the Act, by:

(i) imposing some of the obligations in Part 6A on participants directly, rather than on their directors or managers; and

(ii) redrafting some of the Part 6A rules to clarify that their application is limited to the permitted groups under section 32 of the Act

(b) remove the requirement for a mental element to establish a breach of some of the Part 6A rules, and

(c) align the information disclosure obligations in Part 6A with the Authority's normal Code drafting approach.

4.9. In one instance (the reporting obligations in clause 6A.8), we have proposed to impose the obligation on participants and specified persons involved in them. By contrast, the existing provision refers to all directors of a business to whom the arm's-length rules apply (whether they are specified persons or not). The effect of this proposed update would be that new reporting obligations would be imposed on specified persons who are not directors. However, the Authority considers that these individuals/entities should already be aware of their status as specified persons and that they need to comply with Part 6A. We further note that the obligation is not onerous, amounting to a single form confirming whether they have complied with the arm's-length rules in the preceding year.

4.10. The proposed Code amendment is attached as Appendix C.

---

19 Clauses 6A.4, 6A.7 and 6A.8.

20 See, for example, clauses 13.2 and 13.234 of the Code.

Q4.1. Do you agree the problems identified need addressing?

Q4.2 Do you agree with the proposals?

Please explain your answers

Regulatory statement

Objectives of the proposed amendment

4.11. The objective of the proposal is to clarify the scope and effect of Part 6A, consequential to Parliament's decision to shift the arm's-length rules from the Act to the Code. The proposal does not revisit or propose changes in the policy underpinning the Part 6A provisions.

Evaluation of the costs and benefits of the proposed amendment

4.12. The Authority considers the proposed Code amendment would have a positive net benefit, for the reasons set out below.

Costs

4.13. The Authority considers the proposed amendments would place little, if any, additional costs on participants or specified persons. While some of the proposed amendments will impose obligations on participants directly (and, in some instances, in place of obligations on others), the Authority does not consider this would result in any substantial change in compliance cost. These obligations have existed in legislation since at least 2010,[21] but were imposed on directors and managers of participants rather than the participants themselves. Accordingly, in practice the Authority envisages that compliance may often fall to the participant to monitor in any event. In addition, clause 6A.8 imposes an additional reporting obligation on some further specified persons, but as discussed above the Authority expects the impact of this to be minor. The proposals do not otherwise make substantive changes to existing obligations beyond those necessary or desirable to reflect Parliament's decision to shift the Part 6A provisions into the Code.

Benefits

4.14. We expect the main benefit of the proposed amendment will be to make it easier for participants and others to understand and comply with their obligations under Part 6A, thereby promoting compliance with the Code and reducing compliance costs.

4.15. Another benefit is that the proposed amendments would streamline the Authority's administration of Part 6A (by aligning information disclosure obligations with the Authority's normal drafting approach) and its compliance function (by making the scope and effect of Part 6A obligations clearer).

Evaluation of alternative means of achieving the objectives of the proposed amendment

4.16. The Authority has not identified an alternative means of achieving the objectives of the proposed Code amendment.

---

[21] Some of the rules in Part 6A, including the corporate separation and arm's-length rules, originated in the Electricity Industry Reform Act 1998.

Assessment of the proposed Code amendment against section 32(1) of the Act

4.17. The proposed Code amendment is consistent with the Authority's statutory objectives, and with section 32(1) of the Act, because clarifying the scope and effect of Part 6A will:

(a) promote competition in the electricity industry (which is the purpose of Part 6A), by making the Part 6A provisions more workable

(b) promote the efficient operation of the electricity industry, as it will be easier for participants and others to understand what is required of them under Part 6A, and

(c) promote the performance by the Authority of its functions, by streamlining the Authority's role in administering Part 6A.

4.18. The proposed Code amendment is expected to have no effect on the reliable supply of electricity or the interests of domestic and small business consumers in relation to the supply of electricity to those consumers.

Assessment against Code amendment principles

4.19. The Authority is satisfied the proposed Code amendment is consistent with the Code amendment principles, to the extent they are relevant. In particular, the proposed Code amendment:

(a) is lawful and consistent with the Authority's statutory objectives as discussed above, and

(b) addresses an identified problem with the Code, which requires a Code amendment to resolve.

4.20. It has not been practicable to quantify the costs and benefits of the Code amendment. Hence, a qualitative assessment of the proposed amendment's costs and benefits has been undertaken which indicates the proposed Code amendment would have a positive net benefit, as set out above.

Q4.3. Do you agree with the analysis presented in this Regulatory Statement? If not, why not?

Appendix A Proposed Code amendment: Include all generation technology in Part 6A

Note for submitters:

These proposed Code amendments are independent of, and do not include, the Code amendments proposed in the consultation: *Clarifying the scope and effect of Part 6A obligations* (Appendix C of this paper) and the technical and non-controversial Code amendments proposed in *Code review programme number 5.*[22] Any proposals the Authority decides to implement will be integrated to ensure there are no conflicts.

6A.1 Purpose and outline of this Part

(1) The purpose of this Part is to promote competition in the electricity industry by restricting relationships between a distributor and a generator or a retailer, where those relationships may not otherwise be at arm's length.

(2) In general terms, this Part imposes rules in respect of distributors as follows:

(a) corporate separation and arm's-length rules, if a person is involved both in a distributor and in either or both of—

(i) a generator ~~that generates~~ with **connected generation** of more than 50 MW of generation connected to the distributor's network:

(ii) a retailer that retails more than 75 GWh per year to customers connected to the distributor's network:

(b) distribution agreement rules, if—

(i) a connected retailer retails more than 5 GWh per year to customers connected to the distributor's local network; or

(ii) a connected generator has ~~a capacity~~ **connected generation** of more than 10 MW of generation that is connected to any of the distributor's networks:

(c) rules preventing persons involved in distributors from paying retailers in respect of the transfer of retail customers:

(d) no-discrimination rules that apply when distributors, or electricity trusts or customer co-operatives involved in distributors, pay dividends or rebates.

(3) Subclause (2) is intended only as a guide to the general scheme and effect of this Part.

6A.2 Interpretation

In this Part, unless the context otherwise requires,—

…

connected generation means the sum of any combination of the maximum amount of each **generating unit** in **MW**, that is:

(a) offered into to, the wholesale market as energy or reserves under subpart 1 of Part 13; or

(b) gifted to the wholesale market as energy or reserves by giving notice under clause 15.13 that the generation is not receiving payment from the **clearing manager**; or

(c) contracted to the **system operator** as an **ancillary service**; or

[22] The technical and non-controversial Code amendments proposed for Part 6A are listed in the Code review programme number 5 consultation paper, available on our website: Consultation paper - Code review programme 5 (ea.govt.nz)

(d) for generation that is not included in (a), (b), or (c) above, the **nameplate capacity** of the **generating unit**

…

~~**total capacity** has the meaning given in section 73(3) of the Act.~~

…

6A.3 Corporate separation and arm's-length rules applying to distributors and connected generators and connected retailers

(1) The person or persons who carry on the business of distribution must carry on that business in a different company from the company that carries on the business of a connected generator or a connected retailer.

(2) Every person who is involved in a distributor, and every person who is involved in a connected generator or a connected retailer, must comply, and ensure that the person's businesses comply, with the arm's-length rules.

(3) In this clause, unless the context otherwise requires,—

connected generator, in relation to a distributor, means a generator—

(a) that has ~~a total capacity~~ **connected generation** of more than 50 MW of generation that is connected to any of the distributor's networks; and

(b) in respect of which the distributor, or any other person involved in the distributor, is involved

...

6A.4 Distribution agreements

(1) Every director of a distributor in respect of which there is a connected retailer or a connected generator must ensure that—

(a) the distribution business has a comprehensive, written distribution agreement that provides for the supply of line function services and information to the connected retailer or connected generator (as the case may be); and

(b) the terms of that distribution agreement do not discriminate in favour of one business and do not contain arrangements that include elements that the business usually omits, or omit elements that the business usually includes, in distribution agreements with parties that are—

(i) connected or related only by the transaction or dealing in question; and

(ii) acting independently; and

(iii) each acting in its own best interests; and

(c) the business operates in accordance with that distribution agreement; and

(d) the business publicises that distribution agreement and provides it to the Authority.

(2) A distribution agreement required by subclause (1)(a) must be entered into, in the case of a business to which the corporate separation rule does not apply, as if the distribution business and the connected retailer or connected generator were separate legal persons.

(3) In this clause, unless the context otherwise requires,—

connected generator, in relation to a distributor, means a generator—

(a) that has ~~a total capacity~~ **connected generation** of more than 10 MW of generation that is connected to any of the distributor's networks; and

(b) in respect of which the distributor, or any other person involved in the distributor, is involved

…

Separate management rule

9(1) This clause applies if business A is involved in—

(a) a generator that has ~~a total capacity~~ **connected generation** of more than 50 MW and that is connected to any of business A's networks; or

…

Q1.5. Do you have any comments on the drafting of the proposed amendment?

Appendix B Proposed Code amendment: Clarify use and availability of discretionary demand control

Proposed Code amendment

1.1 Interpretation

(1) In this Code, unless the context otherwise requires,—

…

controllable load means, in respect of a **connected asset owner**, both available **instructed controllable load** and available **requested controllable load.** The available **controllable load** must exclude—

(i) resources a **connected asset owner** intends to use for its own network demand management purposes; and

(ii) any resources offered into the **instantaneous reserves** market; and

(iii) any resources bid or offered on behalf of a **dispatch-capable load station** or **dispatch notification purchaser** or **dispatch notification generator**.

…

instructed controllable load means the quantity of resources (in **MW)** that a **connected asset owner** estimates will be available for use by the **system operator** when required under a **grid emergency**.

…

requested controllable load means the quantity of resources (in **MW**) that a **connected asset owner** estimates will be available for use by the **system operator** when requested under a **formal notice**.

…

Schedule 8.3
Technical codes

Technical Code B – Emergencies

…

5A Request to inform the system operator of available controllable load

(1) A **connected asset owner** must, as soon as reasonably practicable following a request by the **system operator**, inform the **system operator** of their available **controllable load** using a method or form agreed with the **system operator**.

(2) The **connected asset owner** must submit **difference bids to** provide the information required under subclause (1) to the **system operator** unless the **connected asset owner** agrees an alternative form or method for providing this information with the **system operator**.

(3) For the purposes of subclauses (4) and (5), a **connected asset owner** who submits **difference bids** to the **system operator** under subclause (1) is deemed to be a **purchaser** who purchases **non-dispatch-capable load** at a **conforming GXP** for the purposes of clauses 13.7AA, 13.7AC, 13.7AD, 13.13(2), 13.15, 13.16 and 13.19A.

(4) If the **system operator** requests information regarding available **controllable load** under subclause (1), a **connected asset owner** who submits **difference bids** must, as soon as reasonably practicable following a request by the **system operator**—

(a) submit to the **system operator** for each **trading period** notified by the **system operator** a **difference bid** that represents a reasonable estimate of the available **instructed controllable load** and available **requested controllable load** which the **connected asset owner** can use to decrease its **demand**—

(i) at each **conforming GXP** in the **connected asset owner's** network or at a **conforming GXP** nominated by the **system operator** and agreed with the **connected asset owner**; and

(ii) for the **trading period**; and

(iii) at the following price bands:

(A) for available **instructed controllable load**, at a price band of $9,000 per **MWh**; and

(B) for available **requested controllable load**, at a price band of $0.01 per **MWh**; and

(b) following any **difference bids** submitted under paragraph (a), submit revised **difference bids** to reflect any changes in the **connected asset owner's** estimate of available **instructed controllable load** or **requested controllable load**, as soon as reasonably practicable following such changes.

(5) No later than 5 **business days** following a request or requirement from the **system operator** under this **technical code** to reduce or disconnect **controllable load**, a **connected asset owner** who submits **difference bids** to the **system operator** must provide data as reasonably requested by the **system operator** to enable it to confirm the **connected asset owner's** compliance with subclause (4).

(6) For the purposes of this clause 5A and the definition of **controllable load**, **instructed controllable load** and **requested controllable load** in Part 1, a **connected asset owner** means a **distributor** in its capacity as the owner or operator of a **local network**, but excludes—

(a) an **embedded generator**; and

(b) an owner or operator of an **embedded network**.

Q2.8. Do you have any comments on the drafting of the proposed amendment?

Comparison of the permanent Code amendment (as proposed) against the urgent Code amendment (commenced 3 May 2023)

This comparison shows the changes between the Authority's proposed permanent Code amendment and the existing urgent Code amendment. Changes are indicated in red.

1.1 Interpretation

(1) In this Code, unless the context otherwise requires,—

~~discretionary demand~~ controllable load means, in respect of a connected asset owner, both available instructed controllable load and available requested controllable load. ~~the quantity of **demand** that a **connected asset owner** estimates will be available for use by the **system operator** under a **grid emergency**. For the avoidance of doubt,~~ The available **controllable load** must exclude—

(i) **~~discretionary demand~~ resources** a **connected asset owner** intends to use for its own network demand management purposes; and

(ii) any **~~discretionary demand~~ resources** offered into the **instantaneous reserves** market; and

(iii) any **~~discretionary demand~~ resources** bid or offered on behalf of a **dispatch-capable load station** or **dispatch notification purchaser** or **dispatch notification generator**."

…

instructed controllable load means the quantity of resources (in **MW)** that a **connected asset owner** estimates will be available for use by the **system operator** when required under a **grid emergency**.

…

requested controllable load means the quantity of resources (in **MW**) that a **connected asset owner** estimates will be available for use by the **system operator** when requested under a **formal notice**.

Schedule 8.3
Technical codes

Technical Code B – Emergencies

…

5A Request to inform the system operator of available ~~discretionary demand~~ controllable load

(1) A **connected asset owner** must, as soon as reasonably practicable following a request by the **system operator**, inform the **system operator** of their available **~~discretionary demand~~ controllable load** using a method or form agreed with the **system operator**.

(2) The **connected asset owner** must submit **difference bids to** provide the information required under subclause (1) to the **system operator** unless the **connected asset owner** agrees an alternative form or method for providing this information with the **system operator**.

(~~3~~2) For the purposes of subclauses (4) and (5), a **connected asset owner** who submits **difference bids** to the **system operator** under subclause (1) is deemed to be a **purchaser** who purchases **non-dispatch-capable load** at a **conforming GXP** for the purposes of clauses 13.7AA, 13.7AC, 13.7AD, 13.13(2), 13.15, 13.16 and 13.19A.

(~~4~~3) If the **system operator** requests information regarding available **~~discretionary demand~~ controllable load** under subclause (1), a **connected asset owner** who submits **difference bids** must, as soon as reasonably practicable following a request by the **system operator**—

(a) submit to the **system operator** for each **trading period** notified by the **system operator** a **difference bid** that represents a reasonable estimate of the available ~~**discretionary demand**~~ **instructed controllable load** and available **requested controllable load** which the **connected asset owner** can use to decrease its **demand**—

(i) at each **conforming GXP** in the **connected asset owner's** network or at a **conforming GXP** nominated by the **system operator** and agreed with the **connected asset owner**; and

(ii) for the **trading period**; and

(iii) ~~at a single price band of $9000 per **MWh**~~ at the following price bands:

(A) for available **instructed controllable load**, at a price band of $9,000 per **MWh**; and

(B) for available **requested controllable load**, at a price band of $0.01 per **MWh**; and

(b) following any **difference bids** submitted under paragraph (a), submit revised **difference bids** to reflect any changes in the **connected asset owner's** estimate of available ~~**discretionary demand**~~ **instructed controllable load** or **requested controllable load**, as soon as reasonably practicable following such changes.

(5~~6~~) No later than 5 **business days** following a request or requirement from the **system operator** under this **technical code** to reduce or disconnect ~~**discretionary demand**~~ **controllable load**, a **connected asset owner** who submits **difference bids** to the **system operator** must provide data as reasonably requested by the **system operator** to enable it to confirm the **connected asset owner's** compliance with subclause (4).

(6~~5~~) For the purposes of this clause 5A and the definition of ~~**discretionary demand**~~ **controllable load**, **instructed controllable load** and **requested controllable load** in Part 1, a **connected asset owner** means a **distributor** in its capacity as the owner or operator of a **local network**, but excludes—

(a) an **embedded generator**; and

(b) an owner or operator of an **embedded network**.

Appendix C Proposed Code amendment – Clarifying the scope and effect of Part 6A obligations

Note for submitters:

These proposed Code amendments are independent of, and do not include, the Code amendments proposed in the consultation: *Include all generation technology in Part 6A* (Appendix A of this paper) and the technical and non-controversial Code amendments proposed in *Code review programme number 5.*[23] Any proposals the Authority decides to implement will be integrated to ensure there are no conflicts.

6A.1 Purpose and outline of this Part

(1) The purpose of this Part is to promote competition in the electricity industry by restricting relationships between a distributor and a generator or a retailer, where those relationships may not otherwise be at arm's length.

(2) In general terms, this Part imposes rules in respect of distributors as follows:

(a) corporate separation and arm's-length rules, if a person is involved both in a distributor and in either or both of—

(i) a generator that generates more than 50 MW of generation connected to the distributor's network:

(ii) a retailer that retails more than 75 GWh per year to customers connected to the distributor's network:

(b) distribution agreement rules, if—

(i) a connected retailer retails more than 5 GWh per year to customers connected to the distributor's local network; or

(ii) a connected generator has a capacity of more than 10 MW of generation that is connected to any of the distributor's networks:

(c) rules preventing payments to ~~persons involved in distributors from paying~~ retailers in respect of the transfer of retail customers:

(d) no-discrimination rules that apply when distributors or **specified persons**~~, or electricity trusts or customer co-operatives involved in distributors,~~ pay dividends or rebates.

(3) Subclause (2) is intended only as a guide to the general scheme and effect of this Part.

…

Corporate separation and arm's-length rules

6A.3 Corporate separation and arm's-length rules applying to distributors and connected generators and connected retailers

(1) Every **participant** and **specified person** ~~The person or persons~~ who carries ~~carry~~ on the business of distribution must carry on that business in a different company from the company that carries on the business of a connected generator or a connected retailer.

---

[23] The technical and non-controversial Code amendments proposed for Part 6A are listed in the Code review programme number 5 consultation paper, available on our website: Consultation paper - Code review programme 5 (ea.govt.nz)

(2) The following persons ~~Every person who is involved in a distributor, and every person who is involved in a connected generator or a connected retailer,~~ must comply, and ensure that the person's businesses comply, with the arm's-length rules~~.~~:

(a) every **distributor** in respect of which there is a connected generator or a connected retailer, and any other **participant** involved in that **distributor**;

(b) a connected generator in respect of the **distributor**, and any other **participant** involved in the connected generator; and

(c) a connected retailer in respect of the **distributor** and any other **participant** involved in the connected retailer; and

(d) a **specified person** who is involved in the **distributor** and either a connected generator or a connected retailer in respect of the **distributor**.

(3) In this clause, unless the context otherwise requires,—

connected generator, in relation to a distributor, means a generator—

(a) that has a total capacity of more than 50 MW of generation that is connected to any of the distributor's networks; and

(b) in respect of which the distributor, or any other person involved in the distributor, is involved

connected retailer, in relation to a distributor, means a retailer—

(a) that is involved in retailing more than 75 GWh of electricity in a financial year to customers who are connected to any of the distributor's networks; and

(b) in respect of which the distributor, or any other person involved in the distributor, is involved.

Other rules

6A.4 Distribution agreements

(1) Every ~~director of a~~ distributor in respect of which there is a connected retailer or a connected generator must ~~ensure that~~ —

(a) have ~~the distribution business has~~ a comprehensive, written distribution agreement that provides for the supply of line function services and information to the connected retailer or connected generator (as the case may be); and

(b) ensure that the terms of that distribution agreement do not discriminate in favour of one business and do not contain arrangements that include elements that the business usually omits, or omit elements that the business usually includes, in distribution agreements with parties that are—

(i) connected or related only by the transaction or dealing in question; and

(ii) acting independently; and

(iii) each acting in its own best interests; and

(c) ~~the business~~ operate~~s~~ in accordance with that distribution agreement; and

(d) **publish** ~~the business publicises~~ that distribution agreement and provide~~s~~ it to the Authority.

(2) A distribution agreement required by subclause (1)(a) must be entered into, in the case of a business to which the corporate separation rule does not apply, as if the distribution business and the connected retailer or connected generator were separate legal persons.

(3) In this clause, unless the context otherwise requires,—

connected generator, in relation to a distributor, means a generator—

(a) that has a total capacity of more than 10 MW of generation that is connected to any of the distributor's networks; and

(b) in respect of which the distributor, or any other person involved in the distributor, is involved

connected retailer, in relation to a distributor, means a retailer—

(a) that is involved in retailing more than 5 GWh of electricity on the distributor's local network in a financial year to customers who are connected to that network; and

(b) in respect of which the distributor, or any other person involved in the distributor, is involved

local network means a network operated by a distributor in a contiguous geographic area or areas.

(4) A ~~The directors of the~~ distributor required to have a distribution agreement under this clause must submit to the **Authority** a statement indicating ~~ensure that there is also publicised, and provided to the Authority, a certificate signed by those directors stating~~ whether, in the preceding calendar year,—

(a) the terms in the distribution agreement are a true and fair view of the terms on which line function services and information were supplied in respect of the retailing or generating to which the agreement relates; and

(b) this clause was otherwise fully complied with.

(4A) The statement provided under subclause (4) must be:

(a) in the **prescribed form**; and

(b) signed and dated by a director of the **distributor** and either—

(i) another director of the **distributor**; or

(ii) the **distributor's** chief financial officer, or a person holding the equivalent position; or

(iii) the **distributor's** chief executive officer, or a person holding an equivalent position; and

(c) submitted by 31 March in respect of the preceding calendar year.

(4B) The statement provided under subclause (4) must be **published** by the **distributor**.

(5) A **distributor** must not **publish** or provide the **Authority** with any information under this clause that, at the time the information was **published** or provided, was ~~A director breaches this Code if the director—~~

~~(a) refuses or knowingly fails to comply with this clause; or~~

~~(b) allows a distribution agreement or a certificate to be publicised or provided to the Authority knowing that it is~~ false or misleading in a material particular.

6A.5 Payments ~~Person involved in distributor must not pay~~ for transfer of retail customers to connected retailers prohibited

(1) A distributor, and any other person listed in subclause (2), must not pay, or offer to pay, any consideration to a retailer in respect of the transfer to a connected retailer of any retail customers who are connected to the distributor's networks.

(2) The following persons must comply with subclause (1) ~~are~~—

(a) the **distributor** and ~~or~~ any other **participant** ~~person~~ involved in the distributor:

(b) a connected generator in respect of the distributor or any other **participant** ~~person~~ involved in the connected generator:

(c) a connected retailer in respect of the distributor or any other **participant** ~~person~~ involved in the connected retailer; and

(d) a **specified person** who is involved in the **distributor** and either a connected generator or connected retailer in respect of the distributor.

(3) To avoid doubt, subclause (1) includes a prohibition on—

(a) any agreement to acquire the assets or voting securities of another retailer (regardless of whether any, or only nominal, consideration is attributed to customers) as a result of which there is a transfer of responsibility for retailing electricity to customers; and

(b) any consideration that is directly or indirectly or in whole or in part in respect of the transfer of any of another retailer's customers or customer accounts.

(4) *[Revoked]*~~A person who knowingly fails to comply with this clause breaches this Code.~~

(5) In this clause,—

agreement has the same meaning as in clause 10 of Schedule 2 of the Act

connected generator has the same meaning as in clause 6A.4

connected retailer has the same meaning as in clause 6A.4.

6A.6 No discrimination when paying rebates or dividends

(1) This clause applies if a distributor has a connected retailer.

(2) Every person listed in subclause (3) must ensure that any rebates or dividends or other similar payments paid do not discriminate between—

(a) customers of the connected retailer; and

(b) customers of other retailers where those customers are connected to the distributor's networks.

(3) The persons are—

(a) the ~~directors of the~~ distributor, and any director of the distributor who is involved in the connected retailer:

(b) ~~the trustees of~~ any customer trust or community trust that is involved in the distributor and the connected retailer, and the trustees of that customer trust or community trust:

(c) ~~the directors of~~ any customer co-operative that is involved in the distributor and the connected retailer, and the directors of that customer co-operative.

(4) In this clause, **connected retailer** has the same meaning as in clause 6A.4.

(5) *[Revoked]*~~A director or trustee who knowingly fails to comply with this clause breaches this Code.~~

Disclosure and reporting to Authority

6A.7 Disclosure of information to Authority

(1) Each ~~director of a~~ distributor referred to in clause 6A.4(1) (distribution agreements) must ~~ensure that the distributor~~ disclose~~s~~ the quantity of electricity sold each financial year by connected retailers to customers who are connected to its local network (within the meanings in that clause).

(2) The disclosure must be made in a statement to the Authority within 2 months after the end of the financial year.

(3) The statement provided under subclause (2) must be:

(a) in the **prescribed form**; and ~~form prescribed by the Authority from time to time.~~

(b) signed and dated by a director of the **distributor** and either—

(i) another director of the **distributor**; or

(ii) the **distributor**'s chief financial officer, or a person holding the equivalent position; or

(iii) the **distributor**'s chief executive officer, or a person holding an equivalent position; and

(4) The statement provided under subclause (2) must be publicised by the Authority and the distributor.

(5) A **distributor** must not **publish** or provide the **Authority** with any information under this clause that, at the time the information was disclosed, was ~~director breaches this Code if the director—~~

~~(a) refuses or knowingly fails to comply with this clause; or~~

~~(b) provides the statement to the Authority knowing that it is~~ false or misleading in a material particular.

6A.8 Reporting ~~Directors must report~~ compliance with arm's-length rules

(1) Each person referred to in clause 6A.3(2) ~~director of a business to which the arm's-length rules apply~~ must provide to the Authority, no later than 31 March in each year, a statement confirming whether the person ~~director~~ has complied with all of the arm's-length rules during the preceding calendar year.

(1A) The statement provided under subclause (1) must be:

(a) in the **prescribed form**; and

(b) unless subclause (1B) or (1C) applies, signed and dated by a director of the **participant** and either—

(i) another director of the **participant**; or

(ii) the **participant's** chief financial officer, or a person holding the equivalent position; or

(iii) the **participant's** chief executive officer, or a person holding an equivalent position.

(1B) If the person providing the statement under subclause (1) is a natural person, the statement must be signed and dated by that person.

(1C) If the person providing the statement under subclause (1) is a **specified person** but is not a natural person, the statement must be signed and dated by an authorised representative of that **specified person**.

(2) Statements provided under subclause (1) must be **published** by the **Authority** and, if the person who provided the statement is a **participant**, the **participant**. ~~The directors and the Authority must ensure that the statement is publicised.~~

(3) A person must not **publish** or provide the Authority with any information under this clause that, at the time the information was **published** or provided, was ~~director breaches this Code if the director—~~

~~(a) refuses or knowingly fails to comply with this clause; or~~

~~(b) provides the statement to the Authority knowing that it is~~ false or misleading in a material particular.

6A.9 Authority may grant Part 6A dispensation to specified person

(1) A **specified person** may apply to the **Authority** for a **Part 6A dispensation** in respect of their involvement in two or more classes of industry **participant** that are the subject of this Part, or specific provisions of this Part.

(2) The application must be submitted in the form and by the means specified by the **Authority**.

(3) Where the **Authority** receives an application under this clause, it may grant a P**art 6A dispensation** to a **specified person** if the **Authority** is satisfied that—

(a) it is not necessary, for the purpose of achieving the **Authority's** objectives under section 15 of the **Act**, for the **specified person** to comply with this Part or the specific provisions of this Part; or

(b) granting a **Part 6A dispensation** in respect of the **specified person** would better achieve the **Authority's** objectives than requiring compliance.

(4) The **Authority** must give reasons for its decision under subclause (3).

(5) The **Authority** may grant a **Part 6A dispensation** on any terms or conditions that it reasonably considers are necessary.

(6) The **Authority** may amend or revoke a **Part 6A dispensation** granted under subclause (3) by issuing a notice that identifies the **specified person** subject to the **Part 6A dispensation** and gives reasons for the amendment or revocation, but only if the **Authority**—

(a) has given notice of the proposed amendment or revocation to the **specified person** subject to the **Part 6A dispensation** and given them a reasonable opportunity to comment; and

(b) in relation to an amendment, is satisfied that the amendment is necessary or desirable for the purpose of achieving the **Authority's** objectives in section 15 of the **Act**; and

(c) in relation to a revocation, is no longer satisfied of the matters in subclause (3).

(7) The **Authority** must publish a list of all current **Part 6A dispensations** granted under this clause.

Schedule 6A.1 cl 6A.2
Arm's-length rules

1 Objective

(1) The objective of this schedule is to ensure that the **distributors**, connected retailers and connected generators ~~businesses~~ to which clause 6A.3 applies operate at arm's-length.

(2) Without limiting the ordinary meaning of the expression, **arm's-length** includes having relationships, dealings, and transactions that, if the parties were in the position described in subclause (3),—

(a) do not include elements that parties in that position would usually omit; and

(b) do not omit elements that parties in that position would usually include.

(3) The position of the parties referred to in subclause (2) is one in which the parties are—

(a) connected or related only by the transaction or dealing in question; and

(b) acting independently; and

(c) each acting in their own best interests.

2 Interpretation

(1) In this schedule,—

business A means a business that is required to be carried out in one company under clause 6A.3, and **business B** then refers to a business that is required to be carried out in another company under that clause

common parent, in relation to business A and business B, means a **participant** or **specified person** ~~person~~ that is involved in both business A and business B

electricity trust means a community trust or a customer trust or a customer co-operative

parent, in relation to a business, means every person that is involved in the business.

(2) In this schedule, a person is **interested** in a transaction if the person, or an associate of that person,—

(a) is a party to, or will derive a material financial benefit from, the transaction; or

(b) has a material financial interest in a party to the transaction; or

(c) is a director or manager of a party to, or a person who will or may derive a material financial benefit from, the transaction; or

(d) is otherwise directly or indirectly materially interested in the transaction.

(3) Where this schedule applies to business A, it applies equally to business B, and vice versa.

(4) References to trust A and trust B have corresponding meanings and application.

3 Arm's-length rules

The arm's-length rules are as follows:

Duty to ensure arm's-length objective is met

1 Business A, business B and every parent of either business A or B (where that parent is a **participant** or a **specified person** involved in both business A and business B), and business B and every parent of business B, must take all reasonable steps to ensure that the arm's-length objective in clause 1 is met.

Arm's-length test

2 Business A, and every parent of business A (where that parent is a **participant** or a **specified person** involved in both business A and business B), must not enter into a transaction in which business B, or any parent of business B, is interested if the terms of the transaction are terms that unrelated parties in the position of the parties to the transaction, each acting independently and in its own best interests, would not have agreed to.

Duty not to prefer interests of business B

3 Business A, and every A director or manager of business A who is also involved in business B, must not, when exercising powers or performing duties in connection with business A, act in a manner that they director or manager knows or ought reasonably to know would prefer the interests of business B over the interests of business A.

Duty not to discriminate in favour of business B

4 Business A must not, in providing services or benefits, discriminate in favour of business B or the customers, suppliers, or members of business B.

Duty to focus on interests of right ultimate owners

5 Business A, and every A director or manager of business A who is also involved in business B, must, when exercising powers or performing duties in connection with business A, act in the interests of the ultimate members of business A in their capacity as such, and must neither subordinate the interests of those members to the interests of the members of business B nor, to the extent that the members or ultimate beneficial members of each business overlap, take account of that fact or have regard to their dual capacity as members of business B and business A.

Duty on of directors and managers of parents of business A

6 Any parent of business A (where that parent is a **participant** or a **specified person** and involved in both business A and business B), and any A director or manager of a parent of business A (where that director or manager is a **specified person** who is also involved in business B), must not, when exercising powers or performing duties in connection with business A, act in a manner that they director or manager knows or ought reasonably to know would favour the interests of business B, or of the customers, suppliers, or members of business B in that capacity, over the interests of business A or the customers, suppliers, or members of business A.

At least 2 independent directors

7 At least 2 directors of business A must—

(a) be neither a director nor a manager of business B; and

(b) not be an associate of business B, other than by virtue of being a director of business A.

No cross-directors who are executive directors

8 A director of business A may be a director of business B, but must not—
(a) manage business B on a day-to-day basis; or
(b) be an associate of business B, other than by virtue of being a director of business A or business B; or
(c) be involved in business B (other than by having material influence over business B by virtue of being a director of business B).

Separate management rule

9(1) This clause applies if business A is involved in—
(a) a generator that has a total capacity of more than 50 MW and that is connected to any of business A's networks; or
(b) a retailer that retails more than 75 GWh of electricity in a financial year to customers who are connected to any of business A's networks.

(2) A manager of business A must not—
(a) be a manager of business B; or
(b) be an associate of business B, other than by virtue of being a manager of business A; or
(c) be involved in the business of business B.

Directors and managers must not be placed under certain obligations

10(1) Subject to subclause (2), no **participant** or **specified person** ~~person~~ may place a director or manager of business A under an obligation, whether enforceable or not, to act in accordance with the directions, instructions, or wishes of business B, or any director or manager or associate of business B, or any parent of business B, and no director or manager may submit to any such obligation.

(2) A common parent, or a cross-director or a cross-manager, of both business A and business B may place a director or manager under an obligation referred to in subclause (1) if doing so does not contravene another of the arm's-length rules.

Restriction on use of information

11(1) Business A must not disclose or permit the disclosure to business B, or use or permit the use for the purposes of business B, of restricted information of business A.

An electricity trust that is a parent of business A (**trust A**), business A, and every parent of trust A (where trust A, or the parent of trust A, is a **participant** or a **specified person** involved in both business A and business B) must not disclose or permit the disclosure to business B, an electricity trust that is a parent of business B (**trust B**), or any parent of trust B, or use or permit the use for the purposes of business B or trust B, of restricted information of business A or trust A.

In these rules, **restricted information** is information received or generated, and held, by business A or trust A that is connected with its business, being information that—
(a) is not available to the competitors or potential competitors of business B or trust B; and
(b) if disclosed to business B or trust B, would put, or be likely to put, business B or trust B in a position of material advantage in relation to any competitor or potential competitor.

(2) This rule does not prevent cross-directors under rule 8 from having access to normal board information.

(3) A manager of business A who is not prohibited from being a manager of business B under rule 9 may use restricted information of both business A and business B, but only to the extent that the use does not contravene another of the arm's-length rules.

Records

12 Every business to which this schedule applies must keep at its registered office a register of transactions entered into between business A, or any parent of business A, and business B, or any parent of business B.

13 Business A must, within 10 working days of entering into such transaction, enter in its register details sufficient to identify the nature and import of the transaction.

Practical considerations

14 Business A and every parent of business A (where that parent is a **participant** or **specified person**) must ensure that its practical arrangements, such as use of accommodation, equipment, and services, do not contravene this schedule.

15 Business A and every parent of business A (where that parent is a **participant** or **specified person**) must ensure that its selection and appointment of advisors does not prejudice compliance with rules 7 to 11.

4 Rules do not limit objective

The arm's-length rules in clause 3 do not limit the generality of the arm's-length objective in clause 1.

Q3.4. Do you have any comments on the drafting of the proposed amendment?

Appendix D Format for submissions

Submitter	

Include all generation technology in Part 6A

Questions	Comments
Q1.1. Do you support the Authority's proposal to include all generation technology under Part 6A? Please explain your answer	
Q1.2. Do you support the Authority's proposal to create a new definition for "connected generator" Please explain your answer	
Q1.3. Do you agree the proposed amendment is preferable to the other options? If you disagree, please explain your preferred option in terms consistent with the Authority's statutory objective in section 15 of the Electricity Industry Act 2010	
Q1.4. Do you agree with the analysis presented in this Regulatory Statement? If not, why not?	
Q1.5. Do you have any comments on the drafting of the proposed amendment?	

Clarify use and availability of discretionary demand control

Questions	Comments
Q2.1. Do you support the Authority's proposal to permanently implement the	

intent of the urgent Code amendment, Electricity Industry Participation Code Amendment (Discretionary Demand Control) 2023? Please explain your answer.	
Q2.2. Do you support adopting the term controllable load? Please explain your answer.	
Q2.3. Do you support the use of the term ‘resources’ over ‘quantity of demand’? Please explain your answer.	
Q2.4. Do you support the proposal to introduce two price-bands? Please explain your answer	
Q2.5. Do you support pricing requested controllable load at $0.01/MWh? Please explain your answer	
Q2.6. Do you agree the proposed amendment is preferable to the other options? If you disagree, please explain your preferred option in terms consistent with the Authority’s statutory objective in section 15 of the Electricity Industry Act 2010	
Q2.7. Do you agree with the analysis presented in this Regulatory Statement? If not, why not?	
Q2.8. Do you have any comments on the drafting of the proposed amendment?	

Updating and clarifying the scope and effect of Part 6A obligations

Questions		Comments
Q3.1.	Do you agree the problems identified need addressing? Please explain your answer	
Q3.2	Do you agree with the proposals? Please explain your answer	
Q3.3.	Do you agree with the analysis presented in this Regulatory Statement? If not, why not?	
Q3.4.	Do you have any comments on the drafting of the proposed amendment?	

Feedback on the omnibus format

Questions		Comments
Q4.1	Do you consider the omnibus format should be continued as a way of consulting on several small but independent separate Code amendments?	
Q4.2.	Do you have any comments on the omnibus format or suggestions to improve the omnibus format?	