



## COVERSHEET

<b>Minister</b>	Hon Dr Megan Woods	<b>Portfolio</b>	Energy and Resources
<b>Title of Cabinet paper</b>	Electricity Industry Act 2010 and the Electricity Industry (Enforcement) Regulations 2010: Proposed Amendments	<b>Date to be published</b>	4 May 2022

<b>List of documents that have been proactively released</b>		
<b>Date</b>	<b>Title</b>	<b>Author</b>
February 2022	Electricity Industry Act 2010 and the Electricity Industry (Enforcement) Regulations 2010: Proposed Amendments	Office of the Minister of Energy and Resources
9 February 2022	Electricity Industry Act 2010 and the Electricity Industry (Enforcement) Regulations 2010: Proposed Amendments DEV-22-MIN-0005 Minute	Cabinet Office
January 2022	Regulatory Impact Statement: Electricity Compliance Framework	MBIE

### **Information redacted**

**NO**

Any information redacted in this document is redacted in accordance with MBIE's policy on Proactive Release and is labelled with the reason for redaction. This may include information that would be redacted if this information was requested under Official Information Act 1982. Where this is the case, the reasons for withholding information are listed below. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

## In Confidence

Office of the Minister of Energy and Resources

Chair, Cabinet Economic Development Committee

## Proposals to amend the Electricity Industry Act 2010 and the Electricity Industry (Enforcement) Regulations 2010

### Proposal

- 1 This paper seeks approval for proposals to:
  - a. amend the Electricity Industry Act 2010 (**the Act**) in response to submissions received in late 2021 by the Economic Development, Science and Innovation Committee (**EDSI Committee**) on the Electricity Industry Amendment Bill 2021 (**the Bill**), and
  - b. amend the Act and the Electricity Industry (Enforcement) Regulations 2010 (**enforcement regulations**) following consideration of submissions received during a targeted review of the electricity industry compliance framework in early 2021.
- 2 Subject to Cabinet agreement, amendments to the Act will be recommended to the EDSI Committee via the Departmental Report in early February 2021.

### Relation to government priorities

- 3 The proposals in this paper result from the 2018-19 Electricity Price Review (**EPR**) to ensure the electricity sector delivers fair and equitable prices to consumers.

### Background

- 4 In December 2019 Cabinet invited me to prepare legislation, amending the Act to implement several of the EPR's recommendations to improve the regulatory framework for the electricity industry. [DEV-19-MIN-0325 refers]
- 5 The Bill was introduced on 9 September 2021, with the first reading on 29 September. It was referred to the EDSI Committee. The committee received 41 written submissions and heard 18 oral submissions.
- 6 Separately, the Ministry of Business, Innovation and Employment (**MBIE**) undertook a targeted review of the electricity industry compliance framework in 2021. The compliance framework review identified some matters that require amendment of the Act and some matters that require amendment of the enforcement regulations.
- 7 The electricity compliance framework comprises the functions, duties and powers of the Electricity Authority (**the Authority**) and the Rulings Panel in relation to monitoring, investigating, and enforcing the rules of the electricity

market. These are set out in the Act, the enforcement regulations, and the Electricity Industry Participation Code 2010 (**the Code**).

- 8 The EPR recommended in 2019 that the Government update the electricity compliance framework. The EPR noted that the framework dates back almost 20 years and is based on contracts between industry participants that were incorporated into the regulatory framework when self-regulation ended in 2003.
- 9 Given the technical and procedural nature of the content, targeted consultation was undertaken in the first half of 2021 with electricity industry participants and other interested parties, including gas market participants. MBIE prepared a consultation document, liaising with the Authority and the Rulings Panel during its preparation.<sup>1</sup>

### **Proposed changes to the Act resulting from submissions on the Bill**

- 10 The Electricity Industry Amendment Bill 2021, as introduced:
  - a. provides for the responsible Minister to appoint a suitably constituted and qualified body, a Small Electricity Consumers Agency, to represent and advocate for the interests of household and small business electricity consumers;
  - b. enables the recovery of all costs of Small Electricity Consumers Agency incurred from 1 July 2021 from electricity industry participants, subject to consulting levy payers on any cost recovery via levy regulations;
  - c. removes ambiguity in the Authority's ability to regulate for the protection of household and small business consumers, including vulnerable and medically dependent consumers;
  - d. provides more regulatory agility to promote competition in evolving contestable markets by shifting provisions relating to an electricity distributor's involvement in contestable activities from primary legislation into the Code, which the Authority can then develop and amend;
  - e. clarifies that the Authority should be able to regulate all parts of electricity distribution agreements, as it already does for transmission agreements;
  - f. clarifies the Authority's powers to gather information from industry participants for the purpose of carrying out reviews or investigations requested by the Minister in accordance with the Act;

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<sup>1</sup> The consultation document was sent to 53 parties and submissions were received from ten: Business NZ Energy Council (BEC); Electric Kiwi & Haast Energy; Electricity Authority; Flick Energy; Major Energy Users Group (MEUG); Meridian Energy; Nova Energy; Transpower; Trustpower; and Vector.

- g. enables the Authority to share information with other government agencies or regulators, subject to safeguards relating to the use and storage of that information; and
  - h. enables the Minister of Energy and Resources to amend the Code, not earlier than two years after and not later than four years after the date of enactment, if the Minister is not satisfied with progress on specified matters.
- 11 MBIE officials assisting the EDSI Committee have considered the submissions and identified a small number of relatively minor revisions to the previously agreed proposals reflected in paragraph 10 above. They have also identified a small number of new proposals to amend the Act. This section discusses those new and revised policy proposals.

*Revised proposal: enable the Authority to share information with overseas regulators and the Gas Industry Company, with safeguards on the use of information*

- 12 The Bill provides for the Authority to share information with other government agencies or regulators, subject to safeguards relating to the use and storage of that information. This provision, agreed by Cabinet when the Bill was approved for introduction, is largely the same as a provision in the Commerce Amendment Bill 2021, applying to information sharing by the Commerce Commission.
- 13 The Authority submitted that it would be valuable to extend this provision to include overseas regulators, particularly the Australian Securities and Investment Commission (**ASIC**). This is because ASIC regulates the Australian Securities Exchange (**ASX**) on which New Zealand electricity futures contracts are commonly traded.
- 14 I agree that the Authority should be able to share information with overseas regulators whose functions or powers could assist the Authority in pursuing its objective, subject to conditions on the use of that information. Such conditions, as in section 99J of the Commerce Act, would ensure that compulsorily acquired information may not be used by an overseas regulator to incriminate the person who provided the information.
- 15 MBIE also identified that it would be valuable to provide for the Authority to share information with the Gas Industry Company, which is the gas industry co-regulator approved under section 43ZL of the Gas Act 1992. The electricity and gas industries are closely related, and sharing information could be valuable for the exercise of functions of both regulators. The Gas Industry Company has indicated that it agrees. The Bill, as introduced, does not provide for such information sharing because the Gas Industry Company is not a crown entity or public agency.
- 16 I propose that the existing provision in the Bill relating to information sharing by the Authority be extended to include overseas regulators and the gas industry body approved under section 43ZL of the Gas Act 1992, subject to conditions on the use of that information.

*Revised proposal: the Minister may make amendments to the Code on specified matters not earlier than one year after and not later than three years after date of enactment*

- 17 The Bill enables the Minister of Energy and Resources to amend the Code in relation to specified matters, not earlier than two years after and not later than four years after the date of enactment, if the Minister is not satisfied with how the Code addresses the specified matters.
- 18 Some submitters supported this proposal, and some suggested removing the time constraints on the minister's ability to exercise it. Some others, including the Authority, submitted that the Code has already been amended to deal with most, if not all, of the specified matters, and they considered the backstop regulation power could undermine the independence of the Authority and increase regulatory uncertainty.
- 19 While the Authority has now amended the Code in respect of most of the specified matters, I am not minded to recommend removal of the backstop Code-making power in case those Code amendments are considered to be unsatisfactory after the Bill is enacted.
- 20 However, I accept that the Authority has made progress in addressing the specified matters, and I propose to bring forward, by one year, the period during which the backstop power may be exercised: not earlier than one year after and not later than three years after date of enactment. This should help lessen any regulatory uncertainty that arises from the backstop Code-making power.

*New proposal: clarify the ability to define a new industry participant by regulation*

- 21 The Bill provides more regulatory agility to promote competition in evolving contestable markets by shifting provisions relating to a distributor's involvement in contestable activities from primary legislation into the Code, which the Authority can then develop and amend.
- 22 The Authority submitted that one of the Bill's provisions relating to this policy be further extended to enable the Code to apply to a person that is not an industry participant but has a relationship with a participant that is not at arms-length. Following discussion with MBIE, the Authority agreed the intent of its submission could also be given effect through existing section 109 of the Act, which enables a new industry participant to be defined via regulations.
- 23 The Authority and MBIE, however, observed that the regulation-making power in section 109 of the Act is not clear in respect of the type of business that may be defined as a new participant, because it uses the term "industry service provider". One interpretation is that any additional participants are limited to persons who provide services to industry participants. Another interpretation is that it is not limited. For example, the list of industry service providers in section 7 of the Act includes "load aggregator" and "energy trader", neither of which clearly provides services to industry participants.

- 24 I propose the Act be amended to clarify that a new industry participant defined in regulations is not limited to a person providing services to the electricity industry. Additional industry participants should be limited to persons whose type of activity or roles in the electricity industry are material to the Authority's statutory objectives in section 15 of the Act.

**Proposed changes to the Act resulting from compliance framework review**

- 25 This section discusses proposals arising from MBIE's targeted consultation on the electricity compliance framework in 2021. Unless otherwise specified, references to submitters and submissions in this section relate to responses received during that consultation. The first of these (increase the maximum penalty) was also raised by the Authority in its submission on the Bill.

*New proposal: increase the maximum penalty for breach of Code and add a penalty for continuing breach*

- 26 The Rulings Panel, which enforces the Code, may make a pecuniary penalty order not exceeding \$200,000 on a participant it has determined to have breached the Code. However, some Code breaches could result in commercial gain in the tens of millions. Therefore, a \$200,000 penalty may not be a meaningful deterrent to a breach that results in a financial gain many times the value of the maximum penalty. The consultation document proposed that the maximum penalty should be increased to \$2 million.
- 27 Submitters had mixed responses to this proposal and only two fully supported it. One strongly disagreed with the proposal and submitted that an increase in the maximum penalty could be a barrier to entry for new participants. The Ministry of Justice also questioned whether a \$2 million penalty could be disproportionate for a small participant, and questioned the expertise of the Rulings Panel (relative to a Court) to make an appropriate penalty order.
- 28 Other submitters were partially supportive. Some favoured an increase to \$2 million if it were coupled with organisational separation of the Authority's Code-making function and compliance monitoring function. One supported an increase in the maximum penalty with a materiality threshold and a sliding penalty scale based on market impact. One suggested a maximum penalty of \$1 million.
- 29 Some submitters, on the other hand, suggested that \$2 million may not be high enough. They considered the penalty for market manipulation and other abuses of market power could be a multiple of the commercial gain. One pointed to Part XICA of the Australian Competition and Consumer Act 2010, which provides that the maximum pecuniary penalty for a breach would be the greater of AUS\$10 million; three times the value of the benefit obtained; or ten per cent of annual turnover of the corporation in the preceding twelve months if the value of the benefit cannot be determined.
- 30 I note that the Rulings Panel will apply its judgement when making a penalty order and any other remedial orders. Section 56 of the Act sets out a number of matters the Rulings Panel must consider when determining a penalty order,

including the severity of the breach, the benefit the participant obtained and the impact on other participants. A participant subject to a penalty order by the Rulings Panel may appeal that order in the High Court if it considers the Rulings Panel has not considered relevant matters.

- 31 I propose the maximum penalty be raised to \$2 million. I also propose there be an additional penalty of up to \$10,000 for every day or part of a day that a breach continues (which was almost universally supported by submitters).
- 32 To provide greater assurance that a penalty order will not be disproportionate, I propose the Rulings Panel also be required to consider, when determining a penalty order, the impact of that penalty on the participant and on the electricity industry.

*New proposal: enable awarding of costs*

- 33 The Rulings Panel may only award costs if it finds that there has been a breach of the Code. However, responding to an allegation that is found not to be a breach could impose significant costs on the responding participant. I propose that the responding participant should be able to recover costs from the party laying an unsuccessful complaint.
- 34 While most submitters agreed with this proposal, some disagreed and considered it would have a chilling impact on participants' willingness to make a complaint.
- 35 I consider this proposal would reduce the risk of frivolous or vexatious litigation, particularly if the enforcement regulations are also amended (as proposed below) to enable a participant to lay a complaint directly with the Rulings Panel that the Authority has previously decided not to investigate.

*New proposal: clarify treatment of breach involving a series of closely related events*

- 36 The consultation document sought feedback on whether the Act should clarify how a series of closely related events should be treated for the purposes of pecuniary penalty orders. This is especially relevant in the context of an increase to the maximum penalty for a breach of the Code. Continuing potential breach event(s) could be treated as either separate breaches, each subject to the maximum penalty, or a single breach with additional fines for each day or part of a day it continued.
- 37 All submitters agreed with the proposal that the Act be clarified and that a series of closely related events should be treated as a single breach. I agree with this.

**Proposed changes to the enforcement regulations**

- 38 This section discusses proposals to amend the enforcement regulations, which result from MBIE's review of the compliance framework in 2021. Unless otherwise specified, references to submitters and submissions in this section

relate to responses received during the compliance framework consultation. These proposals, with the exception of the first (laying a complaint directly with the Rulings Panel), are not dependent on the passage of the Bill. I intend to progress amendment of the regulations after enactment of the Bill.

*Laying a complaint directly with the Rulings Panel*

- 39 Under the enforcement regulations, an industry participant can only lay a complaint with the Rulings Panel if the Authority has investigated an alleged breach and decided not to refer it to the Rulings Panel. If the Authority decides not to investigate the alleged breach then the participant cannot complain directly to the Rulings Panel. The advantage of having the Authority acting in this 'gatekeeper' role is that it can dismiss complaints that have no basis or are vexatious.
- 40 Most submitters supported the proposal that participants should be able to lay a complaint directly with the Rulings Panel, should the Authority choose not to investigate. One noted that the possibility of awarding of costs (refer paragraphs 33 to 35 above) should deter complaints which have no basis or are vexatious. However, another submitter thought that if participants could lay complaints directly with the Rulings Panel it would lead to a proliferation of complaints which would clog up the Rulings Panel's time.
- 41 I propose that participants should be able to lay complaints directly with the Rulings Panel if the Authority chooses not to investigate them, provided the Rulings Panel has authority to award costs (as proposed above).

*Settlement is a mandatory step for investigators*

- 42 The regulations provide that an investigator must attempt to reach settlement between parties where there is an alleged breach of Code. Where it is clear parties will not settle, this requirement can result in needless administrative burden and costs, as well as ongoing uncertainty for the market. The consultation document suggested amending the regulations to provide that an investigator "may", rather than "must", attempt to reach a settlement.
- 43 All submitters on this proposal noted it appeared straight forward and sensible. I agree with this.

*Obligation to endeavour to reach settlement within 30 working days*

- 44 Under the current regulations, the investigator is required to endeavour to reach settlement within 30 working days. In practice this is rarely achieved. The consultation document suggested removing this requirement.
- 45 All submitters seemed to accept that the 30 working day requirement was aspirational rather than realistic. However, many thought that having a timeframe for settlement created incentives for an efficient process. One suggested this be increased to 45 working days and other suggested 90 working days.



- 46 One suggested replacing the target settlement date with guiding principles which stressed the importance of early resolution of complaints and seeking settlement in suitable circumstances. The Authority has advised officials that it supports this approach and it will update its published *Enforcement Policy*<sup>2</sup> document accordingly if the 30 day requirement were removed.
- 47 I propose removing the target date and will request the Authority to publish guiding principles for effecting settlements as soon as is practicable.

*Enforcement of a breach of settlement*

- 48 The Authority is powerless to ensure compliance with a settlement unless a new breach arises. I propose that a breach of settlement be enforceable as though it were a breach of Code. This would allow the Authority's compliance process to apply and bring it within the jurisdiction of the Rulings Panel.
- 49 All submitters supported this proposal.

*Reporting a breach under the regulations*

- 50 There is uncertainty under the regulations as to whether the Authority can report a breach. The Authority takes the view that this is a necessary part of its work and essential to its monitoring and compliance functions. I propose that the regulations expressly provide for this.
- 51 All submitters supported this proposal.

*Treatment of confidential information*

- 52 The Authority currently has little discretion in what it can choose to publish about an investigation into a breach. The Authority believes that this impedes its ability to undertake proactive education of participants in relation to previously occurring breaches or allegations of breaches. Furthermore, there is no express obligation on parties receiving confidential information during an investigation to hold that information in confidence, as is standard practice in litigation.
- 53 I propose amending the regulations to expressly provide that:
- a. information that is not confidential in nature may be published;
  - b. confidential information provided by parties during an investigation can be redacted from the investigator's report;
  - c. parties who receive confidential information during the investigation of a complaint or Panel process must hold that information in confidence.
- 54 All submitters agreed with this proposal.

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<sup>2</sup> The Authority's *Enforcement Policy* was last updated in 2017, amalgamating its previous guidance documents on compliance philosophy and operating procedures for processing alleged breaches of the Code.

### *Enforcement of breach reporting obligation*

- 55 The regulations require Court action to remedy a failure to report a breach and the penalty is relatively low (\$20,000) despite the nature of the breach being similar to a breach of the Code.
- 56 I propose the regulations be amended to allow enforcement of the breach reporting obligation as though it were a breach of the Code.
- 57 All submitters supported this proposal.

### **Financial Implications**

- 58 There are no financial implications from the proposals in this Cabinet paper.

### **Legislative Implications**

- 59 The proposed changes reflected in this Cabinet paper will require redrafting of provisions in the Bill and, if agreed, will be reflected in the Bill when it is reported back to the House in March 2021.

### **Impact Analysis**

#### **Regulatory Impact Statement**

- 60 MBIE's Regulatory Impact Analysis Review Panel has reviewed the attached Regulatory Impact Statement: Electricity Compliance Framework, prepared by MBIE. The Panel considers that the information and analysis summarised in the Regulatory Impact Statement meets the criteria necessary for Ministers to make informed decisions on the proposals in this paper.

#### **Climate Implications of Policy Assessment**

- 61 The Climate Implications of Policy Assessment (**CIPA**) team at the Ministry for Environment has been consulted and confirms that the CIPA requirements do not apply to this proposal as the threshold for significance is not met.

#### **Population Implications**

- 62 There are no material population group implications from the proposals reflected in this Cabinet paper.

#### **Human Rights**

- 63 The section 7 report found the Bill to be consistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993. The proposals in this paper do not amend any aspects that may have human rights implications.

#### **Consultation**

- 64 The Ministry of Justice and Treasury have been consulted on this Cabinet paper. The Electricity Authority was consulted on the proposals relating to its

compliance framework and other proposals relating to its powers and functions. The Department of Prime Minister and Cabinet was informed.

### Communications

- 65 Any significant changes to the Bill resulting from this paper will be communicated in my Second Reading speech after the EDSI Committee has reported back to the House.

### Proactive Release

- 66 I propose that this Cabinet paper be proactively released, with any redactions as appropriate under the Official Information Act 1982, on the MBIE website, after the EDSI Committee has tabled its report on the Bill in the House.

### Recommendations

The Minister of Energy and Resources recommends that the Committee:

- 1 **Note** that the Electricity Industry Amendment Bill 2021, as introduced:
  - 1.1 provides for the responsible Minister to appoint a suitably constituted and qualified body, a Small Electricity Consumers Agency, to represent and advocate for the interests of household and small business electricity consumers;
  - 1.2 enables the recovery of all costs of Small Electricity Consumers Agency incurred from 1 July 2021 from electricity industry participants, subject to consulting levy payers on any cost recovery via levy regulations;
  - 1.3 removes ambiguity in the Electricity Authority's ability to regulate for the protection of household and small business consumers, including vulnerable and medically dependent consumers;
  - 1.4 provides more regulatory agility to promote competition in evolving contestable markets by shifting provisions relating to a distributor's involvement in contestable activities from primary legislation into the Electricity Industry Participation Code, which the Electricity Authority can then develop and amend;
  - 1.5 clarifies that the Electricity Authority should be able to regulate all parts of distribution agreements, as it already does for transmission agreements;
  - 1.6 clarifies the Electricity Authority's powers to gather information from industry participants for the purpose of carrying out reviews or investigations requested by the Minister in accordance with the Electricity Industry Act 2010;

- 1.7 enables the Electricity Authority to share information with other government agencies or regulators, subject to safeguards relating to the use and storage of that information;
- 1.8 enables the Minister of Energy and Resources to amend the Electricity Industry Participation Code, not earlier than two years after and not later than four years after the date of enactment, if the Minister is not satisfied with progress on specified matters.

*Changes to the Act following consideration of submissions on the Bill*

- 2 **Note** that amendments to the policies set out in recommendations 1.7 and 1.7 above are proposed in light of submissions on the Bill.
- 3 **Agree** that the Minister of Energy and Resources may amend the Electricity Industry Participation Code in relation to specified matters, not earlier than one year after and not later than three years after the date of enactment, if the Minister is not satisfied with progress on the specified matters.
- 4 **Note** that the Electricity Authority is unable to share certain information with the Australian Securities and Investment Commission, which regulates the Australian Securities Exchange on which New Zealand Electricity Futures are traded.
- 5 **Agree** that the Electricity Authority may share information with overseas regulators, subject to conditions on the use of that information.
- 6 **Note** that the Electricity Authority is unable to share certain information with the Gas Industry Company, which has statutory functions and powers under the Gas Act 1992 relating to the gas industry.
- 7 **Agree** that the Electricity Authority may share information with the industry body approved under section 43ZL of the Gas Act 1992, subject to conditions on the use of that information.
- 8 **Note** that it is unclear whether section 109 of the Act, which enables regulations that define a new industry participant, is unduly broad or unduly narrow (in terms of the types of persons who may be defined as industry participants).
- 9 **Agree** the Act be amended to clarify that a new industry participant defined in regulations under section 109 is not limited to a person providing services to the electricity industry, but may include classes of persons whose activities or roles in the electricity industry are material to the Electricity Authority's statutory objectives in section 15 of the Act.

*Changes to the Act following a review of the electricity compliance framework*

- 10 **Note** that three proposals to amend the Act result from a targeted review of the electricity industry compliance framework in 2021.

*Increase maximum penalty for breach of Code and add penalty for continuing breach*

- 11 **Note** that the Rulings Panel, on determining an industry participant has breached the Code, may make a pecuniary penalty order not exceeding \$200,000.
- 12 **Agree** that the Rulings Panel, on determining an industry participant has breached the Code, may make a pecuniary penalty order not exceeding \$2 million.
- 13 **Agree** that the Rulings Panel may make an additional penalty order of up to \$10,000 for each day or part of a day that a breach continues.
- 14 **Agree** that the Rulings Panel must consider, when determining a penalty order, the impact of that penalty on the participant and on the electricity industry.

*Enable awarding of costs*

- 15 **Note** that the Rulings Panel may only award costs if it has determined a breach of the Code.
- 16 **Agree** to allow the Rulings Panel discretion to award costs when it has not determined a breach of the Code.

*Series of closely related events*

- 17 **Note** that there is ambiguity in the Act as to whether a continuing or recurring breach of the Code is subject to a single penalty or recurring penalties.
- 18 **Agree** to amend the Act to provide that a series of closely related events will be treated as a single breach and subject to a single penalty.

*Changes to the enforcement regulations*

- 19 **Note** that proposals to amend the enforcement regulations result from a targeted review of the electricity industry compliance framework in 2021.

*Allow complaint to be made directly to the Rulings Panel*

- 20 **Note** that the enforcement regulations do not allow an industry participant to make a complaint directly to the Rulings Panel if the Electricity Authority has decided not to investigate the complaint.
- 21 **Agree** that an industry participant may make a complaint directly to the Rulings Panel if the Electricity Authority chooses not to investigate it, provided the Rulings Panel is able to award costs (as per recommendation 16 above).

*Make settlement an optional step for investigators*

- 22 **Note** that the enforcement regulations require an investigator to attempt to reach settlement between parties where there is an alleged breach of the Code.
- 23 **Agree** that an investigator may, rather than must, attempt to reach a settlement.

*Remove target timeframe for a settlement*

- 24 **Note** that the enforcement regulations require an investigator to endeavour to reach a settlement within 30 working days, which is unduly restrictive.
- 25 **Note** that the Electricity Authority will publish guiding principles on process and timeframe for effecting a settlement, if no longer limited by a regulated timeframe.
- 26 **Agree** to remove the target of 30 working days for the investigator to endeavour to reach a settlement.

*Treat a breach of settlement as a breach of Code*

- 27 **Note** that the enforcement regulations do not provide for the Electricity Authority or Rulings Panel to enforce a settlement unless a new breach arises.
- 28 **Agree** that a breach of a settlement be treated as though it were a breach of the Code.

*Allow Authority to report a breach*

- 29 **Note** that the enforcement regulations are unclear as to whether the Electricity Authority can report a breach of the Code.
- 30 **Agree** that the enforcement regulations expressly provide the Electricity Authority may report a breach of the Code.

*Clarify treatment of confidential information*

- 31 **Note** that the enforcement regulations are not clear about the treatment of confidential information and provide the Electricity Authority little discretion as to what information it may publish following investigation of a breach of the Code.
- 32 **Agree** that the enforcement regulations expressly provide that:
- 32.1 the Electricity Authority may publish information that is not confidential;
  - 32.2 confidential information may be redacted from the published report;
- and

- 32.3 parties that receive confidential information during an investigation or Rulings Panel consideration of a complaint must hold that information in confidence.

*Treat failure to report a breach as a breach of Code*

- 33 **Note** that the enforcement regulations provide for the Court to enforce the obligation on industry participants to report a breach of the Code, and the maximum penalty for a failure to report a breach is \$20,000.
- 34 **Agree** that a breach of the mandatory reporting obligation be enforceable as though it were a breach of the Code.

*Implementation*

- 35 **Note** that, if agreed by Cabinet, the decisions in recommendations 2 to 16 above will be reflected in the Departmental Report to be presented by officials to the EDSI Committee on 14 February 2022.
- 36 **Invite** the Minister of Energy and Resources to prepare drafting instructions for amendments to the Electricity Industry (Enforcement) Regulations 2010 giving effect to recommendations 21 to 34 above.
- 37 **Authorise** the Minister of Energy and Resources to make any minor and technical changes to the recommendations above that are consistent with the policy intent.
- 38 **Note** that this Cabinet paper will be proactively released, with appropriate redactions, after the EDSI Committee has reported the Bill back to the House.

Authorised for lodgement

Hon Dr Megan Woods  
Minister of Energy and Resources