

Introduction

**\* 1. Name (first and last name)**

Paul Baker

**\* 2. Email**

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**\* 3. Is this an individual submission, or is it on behalf of a group or organisation?**

- Individual  
 On behalf of a group or organisation

**\* 4. Which group do you most identify with, or are representing?**

- |   |  |
|---|--|
| <input type="checkbox"/> Industry or industry advocates     | <input checked="" type="checkbox"/> Electricity retailer                             |
| <input type="checkbox"/> Market operation service provider  | <input type="checkbox"/> Electricity distributor                                     |
| <input type="checkbox"/> Metering equipment provider        | <input checked="" type="checkbox"/> Electricity generator                            |
| <input type="checkbox"/> Metering equipment owner           | <input type="checkbox"/> Line owner  |
| <input type="checkbox"/> Operator of an approved test house | <input type="checkbox"/> Transpower  |
| <input type="checkbox"/> Load aggregator                    | <input type="checkbox"/> Electricity consumer with direct connection to the grid     |
| <input type="checkbox"/> Ancillary service agent            | <input type="checkbox"/> Person who generates electricity that is fed into a network |
| <input type="checkbox"/> Electricity trader                 | <input type="checkbox"/> Person who purchases electricity from a clearing manager    |
|   | <input type="checkbox"/> Other (please specify)                                      |

**\*5. Business name or organisation (if applicable)**

Nova Energy Limited

**\*6. Position title (if applicable)**

Commercial & Regulatory Manager

**\* 7. Important information about your submission (important to read)**

The information provided in submissions will be used to inform the Ministry of Business, Innovation and Employment's (MBIE's) work on the *Electricity Compliance Framework*.

We will upload the submissions we receive and publish them on our website. If your submission contains any sensitive information that you do not want published, please indicate this in your submission.

The Privacy Act 1993 applies to submissions. Any personal information you supply to MBIE in the course of making a submission will only be known by the team working on the *Electricity Compliance Framework*.

Submissions may be requested under the Official Information Act 1982. Submissions provided in confidence can usually be withheld. MBIE will consult with submitters when responding to requests under the Official Information Act 1982.

**We intend to upload submissions to our website at [www.mbie.govt.nz](http://www.mbie.govt.nz). Can we include your submission on the website?**

Yes

No

**\* 8. Can we include your name?**

Yes

No

**\* 9. Can we include your organisation (if submitting on behalf of an organisation)?**

Yes

No

10. All other personal information will not be proactively released, although it may need to be released if required under the Official Information Act.

**Please indicate if there is any other information you would like withheld.**

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## Compliance Framework: Electricity - Have your say

Areas you wish to provide feedback on

The ***Compliance Framework: Electricity*** discussion document seeks feedback on the Electricity Compliance Framework. The document is divided into five sections:

- Introduction
- Institutional Structure
- Amendments to the Act
- Amendments to the Regulations
- Any other issues

You are invited to provide feedback and respond to questions in as many, or as few of the sections as you would like, depending on your interests.

Submissions on these proposed amendments are sought **by 5pm on Friday 23 April 2021.**

## Institutional Structure

### Options and impacts

1	<p>Should the rule making and enforcement functions of the Authority be split? No. The benefits of such a split are unclear. Given the complexities of the industry, the Authority is best placed to perform both the rule making and enforcement functions.</p> <p>Are there any examples of problematic ‘blurring of functions’ by the Authority in its decision making? Nova has not identified any instances where this has occurred.</p> <p>Is there a case for a separate agency approving and publicising settlements? Nova agrees with the sentiments outlined in the Consultation Document, that the approval of settlements by the same body (the Authority), does not currently appear to be an issue. To justify a move to a separate agency, an increased volume of settlements would need to occur.</p>
2	<p>Do the Regulations provide sufficient transparency and definitive guidance for industry through the requirements to publicise approved settlements and decisions by the Authority? Yes - although key decisions and the implications on the industry should be communicated. The recently launched Rulings Panel website is a step in the right direction.</p> <p>If not, what additional measures would you suggest and why?</p>
3	<p>Should the Authority continue to be responsible for administrative arrangements for the Panel? Yes. The compliance process is that it requires a high level of industry knowledge. Even where the Code requirements are clear, it is important that the practical circumstances surrounding any alleged breaches and their impact are well understood, which not always apparent to persons not familiar with the electricity sector.</p>

# Amendments to the Act

## Limits on liability

4	<p>Should the maximum penalty set out in s 54 of the Act be increased, or are current penalty levels adequate to deter harmful behaviour?</p> <p>The current maximum penalty, coupled with the reputational risk that comes from a breach, is already a significant deterrent for industry participants to not breach the Code. Given the increasing change of technology in the electricity sector (as New Zealand moves towards a zero-carbon future) an increase in the maximum penalty may discourage the implementation of such technology, as new market participants are less likely to be able to meet penalty costs and therefore this creates a barrier to entry for new participants.</p> <p>Should additional penalties for a continuing breach be introduced? Yes –this would provide an additional deterrent for market participants to not breach the Code. However, the market participant who is continuing to commit the breach, should be made expressly aware of this by the Authority.</p> <p>Are there alternative approaches to penalties which you would recommend? No</p>
5	<p>If either or both of the above changes are introduced, should any changes be made to the limits to liability set out in the Regulations?</p> <p>The cap of liabilities should be related to risk and the particular role of the market participant.</p>
6	<p>How should closely related events be dealt with for breach and penalty purposes?</p> <p>Unless a market participant wilfully intends to not comply with the Code, closely related events should be considered as a single breach for penalty purposes.</p> <p>Should the Act clarify that “a series of closely related events” would be treated as a single breach?</p> <p>Yes, as noted above.</p>

## Awarding of costs

- Should s 54 of the Act be amended to allow the Panel greater discretion to award costs?
- 7 Yes. This is particularly important if parties are allowed to take allegations of breaches directly to the Rulings Panel in order to minimise the risk of frivolous claims.

## Amendments to the Regulations

### Options and Impacts

- Should participants be able to lay complaints directly with the Panel if the Authority, after making preliminary inquiries, decides not to investigate an alleged breach?
- 8 Yes. The Authority's decision to not investigate alleged breaches should be open to challenge. However, as noted above, the Panel should be able to award costs against the complainant in the event of the complaint not being upheld. Frivolous complaints can be time consuming and expensive to respond to.

Do mandatory attempts to settle create needless administrative burden and cost, and on-going uncertainty?

- 9 Yes. In some instances, a settlement is not possible or viable.

Should the Regulations provide that an investigator "may", rather than "must", attempt to effect a settlement as part of the enforcement process?

Yes

Does the Authority need more oversight and control of the enforcement of settlements?

- 10 Further clarity is required on what "oversight" and "control" means in this context before Nova can make a conclusive argument.

Should a breach of a settlement be enforceable as though it were a breach of the Code?

Yes

Does the requirement for the investigator to endeavour to reach a settlement within 30 working days (or longer period agreed in writing by the investigator) create incentives for efficient process, given that it is rarely completed within this time?

11 Settlement processes are dependent on the nature of the breach. A requirement for the investigator to reach a settlement within 30 working days creates incentives for an efficient process.

Should the requirement to endeavour to reach a settlement within 30 working days (or longer period agreed in writing by the investigator) in Regulations 22(2) and 23(1) be removed?

Yes

Are there circumstances where mandatory settlement is inappropriate?

12 In some instances, due to the nature of the breach, a mandatory settlement within 30 days is not practical or possible.

Should the Regulations be amended to provide that an investigator “may”, rather than “must”, attempt to effect a settlement as part of the enforcement process?

Yes

Should the Regulations expressly provide that the Authority can report a breach under Regulation 9?

13

Yes, it should be expressly provided for and made clear in the Regulations.

Are the Authority’s obligations in relation to the treatment of information sufficiently balanced?

Yes.

Should the ‘must keep confidential’ obligations in Regulations 10 and 15 expressly provide that information which is not confidential in nature may be published?

14

Yes – Regulations 10 and 15 are not clear that only “information which is not confidential” can be disclosed.

Should the ‘must publish’ obligations in Regulations 28 and 30(3) expressly provide that where appropriate confidential information can be redacted from published reports?

Yes

15	Should there be an express obligation on parties who receive confidential information during the investigation of a complaint or Panel process to hold that information in confidence?  Yes
16	Is it inappropriate that enforcement of the mandatory reporting obligations in the Regulations are undertaken by the Courts?  Yes  Should the Regulations be amended to allow enforcement by the Panel of the mandatory reporting obligations as though it were a breach of the Code?  Yes
17	Have we correctly characterised the impact of the changes, in terms of additional compliance costs?  Yes

## Any other issues

18	Are there any other issues that we need to consider in relation to the compliance framework for the electricity industry?  Further consideration will need to be given to proposed amendments relating to penalties and settlements.
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