



COVERSHEET

Minister	Hon Simon Watts Hon Shane Jones	Portfolio	Energy Resources
Title of Cabinet paper	Progressing the Energy Package: Building Better Markets	Date to be published	23 February 2026

List of documents that have been proactively released		
Date	Title	Author
December 2025	Progressing the Energy Package: Building Better Markets	Offices of the Ministers for Energy and Resources
9 December 2025	Progressing the Energy Package: Building Better Markets EXP-25-MIN-0132 Minute	Cabinet Office
1 December 2025	Regulatory Impact Statement: Strengthening the Electricity Regulatory Regime	MBIE

Information redacted

YES / NO (please select)

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.

Some information has been withheld for the reasons of:

- Legal professional privilege
- Confidential advice to Government
- Free and frank opinions
- Maintenance of the law
- Privacy of natural persons



Regulatory Impact Statement: Strengthening the Electricity Regulatory Regime

Decision sought	Analysis produced for the purpose of informing Cabinet decisions on a proposal to strengthen the regulatory regime under the <i>Electricity Industry Act 2010</i> .
Agency responsible	Ministry of Business Innovation and Employment (MBIE)
Proposing Ministers	Minister for Energy
Date finalised	28 November 2025

The Minister for Energy proposes to modernise and strengthen regulation of the electricity industry administered by the Electricity Authority (**the Authority**). This includes proposed amendments to the *Electricity Industry Act 2010* (**the Act**) and the *Electricity Industry (Enforcement) Regulations 2010* (**the Regulations**).

This Regulatory Impact Statement (**RIS**) includes an assessment of options to amend the Act. A separate RIS will be prepared for options to amend the Regulations.

The full set of amendments includes some that are not included in this RIS. The Ministry for Regulation has determined these are exempt from the requirement to provide a RIS on the grounds that they have no, or only minor economic, social, or environmental impacts.

The preferred options are expected to benefit electricity consumers by:

- strengthening incentives for compliance with the *Electricity Industry Participation Code 2010* (**the Code**)¹
- improving efficiency and timeliness of the Authority's compliance activities
- improving the Authority's access to information to enable more effective regulation.

¹ The Code is secondary legislation that is made and enforced by the Electricity Authority.
MBIE-MAKO-181070518

Summary: Problem definition and options

What is the policy problem or opportunity?

The electricity industry is subject to regulation administered by the Authority under the Act. An independent review of electricity market performance was commissioned by the Minister for Energy and the Minister for Resources in late 2024, in response to high wholesale prices linked to a shortage of fuel for electricity generation. The review was undertaken by consultants Frontier Economics (**Frontier**) between January and June 2025.

On 1 October 2025 the Minister for Energy, following the independent review, announced an 'energy package' of ten actions to build resilient, competitive and forward-looking energy markets.² Actions include commencing a procurement process for a liquified natural gas facility and improving gas market transparency. One action is to ensure regulation by the Authority is fit for purpose and that it has the right tools to do the job. That action is the focus of this RIS.

Frontier found that the electricity regulatory regime is fundamentally sound but could be improved. Frontier recommended some regulatory improvements that can be addressed by the Authority and are therefore not covered in this RIS. In parallel, the Authority identified problems that could be addressed by amending the Act. These problems are addressed in this RIS.

The overall policy problem is that some elements of the electricity regulatory regime have not kept pace with changes in the industry and the associated development of regulatory requirements in the Code. The types of conduct regulated by the Code have evolved over the last decade, during which the Authority has increasingly focused on concerns about insufficient wholesale and retail market competition and the treatment of domestic and small business consumers by retailers.

The Authority's evolving regulatory focus resulted, in part, from the findings of a ministerial review in 2019 (the Electricity Price Review). It also reflects changing electricity market dynamics in response to a faster-than-expected decline in production of natural gas, which continues to be a critically important fuel for electricity generation. As a result, the Code now includes requirements for retail and wholesale market conduct that have greater commercial impact than the technical requirements and procedures that were first codified when these markets were established in the 1990s.

The following categories of problems arise from recent and expected evolution of the Code:

- compliance incentives are weak relative to the potential commercial gains or losses that could result from non-compliance with some requirements recently added to the Code or currently under development
- the Authority has limited tools to encourage compliance with the Code, which can result in compliance activity that is disproportionate to the requirement or the harm from non-compliance

² See [At a Glance - New Zealand's Energy Package.pdf](#)

- recent investigations by the Authority have highlighted limitations on the Authority's ability to obtain certain information to effectively perform its functions.

What is the policy objective?

The policy objective is to improve the regulation of the electricity industry, particularly the efficiency and proportionality of the Authority's compliance monitoring and enforcement activities. This objective supports the Authority's ability to achieve its statutory objective, which is to promote competition in, reliable supply by, and efficient operation of the electricity industry, for the long-term benefit of consumers. The policy objective in this RIS, is therefore, to promote the long-term benefit of all electricity consumers in terms of affordable and reliable supply of electricity, which is essential to New Zealand's social and economic well-being.

What policy options have been considered, including any alternatives to regulation?

This RIS is limited to regulatory options given the objective to improve electricity regulation.

Potential non-regulatory options, not assessed in this RIS, include increasing the Authority's resources/budget, strengthening the Authority's governance and accountability, and improving the Authority's own processes and systems. Those non-regulatory options remain available as complementary measures, rather than alternatives, to the options assessed in this RIS.

The preferred regulatory options are set out below.

1. Provide more proportionate incentives for compliance by:
 - (i) increasing the maximum pecuniary penalty for a breach of the Code
 - (ii) increasing the maximum daily penalty for an ongoing breach
 - (iii) creating an offence for misleading or attempting to deceive the Authority.
2. Extend the Authority's compliance toolkit to enable efficient use of proportionate incentives and remedies for a breach, including:
 - (i) an infringement regime for minor Code breaches, incorporating improvement notices and fines for breaches where there is strict liability
 - (ii) the ability to regulate entry requirements for a new electricity retailer
 - (iii) the ability to suspend of an industry participant to protect supply security or market integrity
 - (iv) the ability to accept an enforceable undertaking in lieu of pursuing other remedies.
3. Improve the Authority's ability to acquire information it needs to undertake its functions, including:
 - (i) a power to require certain information from parties who are not electricity industry participants

- (ii) issuing and enforcing a comprehensive confidentiality order applying to certain information for a limited period.

What consultation has been undertaken?

The Authority identified the initial set of issues to address. The Authority was then closely involved with MBIE in refining the list of issues and developing the options to address them. The Authority did not raise concerns about its ability to implement preferred options.

Other interested parties were not consulted due to the time constraint imposed by the Minister's report back to Cabinet.

Industry participants were consulted in 2021 on a proposal to increase the maximum pecuniary penalty from \$200,000 to \$2 million. Some participants at that time favoured a higher maximum penalty which is the preferred option identified in this RIS.

The Ministry of Justice (MoJ) was consulted on a draft of this RIS. MoJ is generally comfortable with the proposed approach to increasing maximum pecuniary penalties but noted that further engagement will be needed when specific offences are set. MoJ does not support the proposal to give the Authority power to issue confidentiality orders that would override the Official Information Act.

Is the preferred option in the Cabinet paper the same as preferred option in the RIS?

The preferred options in the Cabinet paper are the same as preferred options in the RIS.

Summary: Minister's preferred option in the Cabinet paper

Costs (Core information)

An industry participant that breaches the Code will be subject to a broader suite of remedies, including infringement penalties for minor breaches and higher pecuniary penalties for more significant breaches. This may have the effect of increasing participants' costs, either through the pecuniary impact of being subject to more and/or higher penalties, or changes in behaviour required to be compliant.

The Authority will require additional resources so that it can effectively implement the new suite of compliance and enforcement tools.

Additional parties may be compelled to provide information to the Authority to support its compliance or investigative functions. The cost of providing information is not expected to be significant.

Benefits (Core information)

By facing more proportionate enforcement action, industry participants are expected to have stronger incentives to comply. This is expected to improve competition, reliability and efficient operation of the market.

Improving the Authority's access to information is expected to improve the performance of its functions and thereby improve electricity supply reliability and affordability for consumers.

Balance of benefits and costs (Core information)

The RIS does not quantify costs and benefits, but benefits are qualitatively assessed as exceeding the costs.

Implementation

The proposals will be implemented by the Authority. Any pecuniary penalty above the current maximum will be determined by the High Court.

Some preferred options (including a higher maximum penalty) require enabling regulations, to be developed by MBIE in 2026. Regulatory impacts of these and other options to amend the same regulations will be assessed separately.

Limitations and Constraints on Analysis

The Minister's timeframe for reporting to Cabinet was insufficient to undertake fulsome consultation with interested parties on all the options in the RIS. However, the most significant proposal – increasing the maximum pecuniary penalty – was consulted with industry participants in 2021.

All options have been assessed in consultation with the Authority, which provided information to inform the qualitative assessment of costs and benefits.

I have read the Regulatory Impact Statement and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the preferred option.

**Responsible Manager(s) signature:
Tamara Linnhoff
Manager, Electricity Markets Policy**

Privacy of natural persons

1 December 2025

Quality Assurance Statement	<i>[Note this isn't included in the four-page limit]</i>
Reviewing Agency: MBIE internal QA Panel	QA rating: Partially meets
Panel Comment:	
<p>A Quality Assurance Panel from MBIE has reviewed the Regulatory Impact Statement (RIS) prepared by MBIE titled Strengthening the Electricity Regulatory Regime on 27 November 2025. The Panel consider that the information and impact analysis summarised in the RIS partially meets the Quality Assurance criteria. Specifically, the Panel considered the RIS only partially met the “consulted” criterion. Because the proposals contain broad changes to the powers of the Electricity Authority, the Panel recommends that wider consultation with the sector and the public should be undertaken through the implementation process to ensure the changes achieve their intended impact.</p>	

Section 1: Diagnosing the policy problem

What is the context behind the policy problem and how is the status quo expected to develop?

1. The electricity market is regulated by the Electricity Authority with a statutory objective to promote competition in, reliable supply by, and efficient operation of the electricity industry for the long-term benefit of consumers. An additional objective is to protect the interests of residential and small-scale business consumers in relation to their dealings with industry participants.
2. An independent review of the electricity market by Frontier was commissioned by ministers due to concerns about the electricity industry’s performance in terms of competition and reliability. The review identified a range of issues affecting the industry’s performance, including barriers to investment in certain fuels and generation capacity and barriers to improved efficiency in distribution services. The Government’s response to the review includes actions relating to the key issues identified, including an action to ensure the Authority is an effective regulator with access to the right tools for the job.
3. Good electricity regulation is important because reliable and affordable electricity supply is critical to social and economic wellbeing. Economic modelling suggests that high electricity prices between 2017 and 2025 are estimated to have reduced New Zealand’s Gross Domestic Product by \$5.2b (1.25%), lowered real wages by 1.4% and cut household spending by 1.65%. Further modelling suggests the economy might be \$3.76 billion larger by 2035 if electricity wholesale prices were to fall by 2% a year from their current trajectory.
4. The electricity industry includes participants ranging in size from small retailers supplying just a few customers, to some of NZ’s largest corporations (such as Meridian

Energy and Vector Networks) with market capitalisations measured in billions of dollars.³ As in some other industries in NZ, including banking and finance, telecommunications, fuel supply and groceries, electricity markets are dominated by a small number of large firms. This market concentration fosters concern about the adequacy of competition to deliver desired outcomes and suspicion that a small number of large firms might exert undue influence on regulation through their sizeable resources for advocacy and litigation.

5. Electricity firms are somewhat disincentivised from non-compliance by the reputational impact of compliance action being taken against them. However, good regulation cannot rely solely on the strength of reputational incentives when significant commercial gains or losses are at stake.
6. This sets the context for the policy objectives listed at paragraph 23 below. This RIS is necessarily informed by best practice regulatory tools from the *Commerce Act 1986*, *Financial Markets Conduct Act 2013*, *Telecommunications Act 2001*, *Fuel Industry Act 2020* and *Grocery Industry Competition Act 2023*.
7. The objective of equipping the Authority with sufficient tools, so that it can bolster the efficiency and effectiveness of electricity regulation, acknowledges that the electricity regulatory regime has not kept pace with recent and emerging changes in the industry, and with associated changes in the Code. Much of the Code was initially developed in the 1990s to govern the technical procedures needed to operate wholesale and retail electricity markets. The Code has grown and evolved over time as the markets have matured, and in recent years it has included new conduct requirements directed at promoting competition and protecting small consumers.
8. The RIS draws on some examples from the Authority's past experience but is more focused on potential opportunities to improve future outcomes. This is in light of the changing nature of the Code, and the associated need for commensurate changes in compliance incentives and compliance tools.
9. For example, in response to growing concerns about wholesale market competition and barriers to entry and growth by new market participants, the Authority recently amended the Code to impose trading obligations on major participants – called 'market-making'.
10. The market-making obligations have succeeded in improving depth and liquidity of risk management contract markets. However, the obligations impose material compliance costs on the regulated parties, particularly at times of market stress and elevated price

³ The electricity industry includes a variety of participants with different roles. Generators build and operate generation plant and sell electricity in a wholesale market. Retailers buy electricity at wholesale and sell to end consumers (ranging in size from households to very large industrial businesses). Transpower and distributors build and operate the networks of lines and substations that transport electricity around the country. Other participants include market service providers that operate trading platforms and manage market information flows.

volatility. The materiality of these compliance costs is not aligned with the incentive to comply, represented by a maximum pecuniary penalty of \$2 million.

11. The opportunity to profit from singular breaches of these new obligations can be far in excess of \$2 million. For example, as part of an investigation into whether two industry participants had breached trading conduct provisions in 2019, the independent investigator noted the two participants were alleged to have extracted excess revenues of \$38 million and \$23 million. While no breach was found in this case, it illustrates the potential scale of commercial gains available from non-compliance.
12. Examples of this kind are expected to increase as the Authority moves to consider and implement other Code requirements that have significant financial impacts on industry participants. Many participants are large businesses with multi-billion dollar annual turnovers. In this context, pecuniary penalties need to be commensurate with the potential commercial gains to be made from non-compliance with current and future Code requirements. Currently, the maximum penalty is an order of magnitude or lower than the potential for commercial gain, despite being increased from \$200,000 to \$2 million in 2022.
13. Examples of ineffective or inefficient compliance action can also be found involving minor Code breaches, such as when a participant fails to comply with dispatch instructions by the required time.⁴ Enforcement action is limited to issuing a warning letter or opening a formal investigation and referring the breach to the Rulings Panel. The former is not always effective, and the latter is time-consuming and costly. Access to more efficient and proportionate compliance tools, such as issuing an infringement notice, would enable the Authority to better incentivise compliance across a range of Code requirements.
14. The Authority undertakes investigations and reviews on its own initiative and when requested by the Minister for Energy. In one recent investigation into the collapse of a transmission tower that reduced electricity supply to the Northland region for several days, the Authority was frustrated in its ability to acquire critical information from the party that had been maintaining the tower. The Authority could not exercise its statutory power to compel the provision of this information because its power is limited to industry participants and the party is not a participant. While the incidence of such examples might be relatively rare, the detrimental impact of not being able to obtain information to properly carry out the compliance and enforcement function is significant.
15. In another example, the Authority has invited information to assist with an investigation but has found that some parties are reluctant to provide sensitive information out of fear it will be released to competitors or other parties that can use it to cause them harm. The Authority cannot give solid assurances that sensitive information won't be released because it is subject to the *Official Information Act 1982*.

⁴ Electricity Industry Participation Code 2010, clause 13.82.

What is the policy problem or opportunity?

16. The overall policy problem is that the Authority's compliance regime is not proportionate to some categories of industry conduct that are subject to regulation or are expected to become subject to regulation in the Code. Also, recent experience has highlighted weaknesses in the Authority's ability to obtain certain information necessary for some of its functions.
17. These problems can be grouped into three categories:
 - a. compliance incentives are weak relative to the potential commercial gains or losses that could result from non-compliance with some requirements recently added to the Code or currently under development
 - b. the Authority has limited tools to encourage compliance with the Code, which can result in compliance activity that is sometimes disproportionate to the harm and unduly resource-intensive
 - c. recent investigations by the Authority have highlighted limitations to the Authority's ability to obtain information that is necessary to undertake its functions.
18. Each of the problem categories includes several distinct problems:
 - a. inadequate compliance incentives:
 - (i) the maximum pecuniary penalty for a breach of the Code is not large enough to incentivise compliance
 - (ii) the maximum daily penalty for an ongoing breach is low, relative to the potential harm caused
 - (iii) participants face little deterrent for misleading or attempting to deceive the Authority.
 - b. limited compliance tools result in disproportionate and resource-intensive compliance activity:
 - (i) the Authority lacks tools to address low-level and repetitive non-compliance
 - (ii) the Authority lacks powers to prevent entry of an industry participant that is likely incapable of complying with Code obligations
 - (iii) the Authority has limited ability to suspend an industry participant that threatens supply security or market integrity
 - (iv) the Authority cannot accept an enforceable undertaking in lieu of higher cost enforcement remedies.
 - c. the Authority has limited ability to acquire information it needs to undertake its functions:
 - (i) the Authority has no power to require information from parties that are not electricity industry participants

- (ii) parties withhold information because the Authority cannot assure them that sensitive information will be protected.

19. Options addressing each of these problems draw on the design and operational experience under other regulatory regimes. The table below summarises and compares compliance tools available to the Authority, the Commerce Commission and the Financial Markets Authority (FMA). It highlights the Authority's limited compliance toolkit relative to the other regulators.

Table 1: Compliance toolkit comparison between the Authority, Commerce Commission and FMA

Compliance Tools	Electricity Authority	Commerce Commission	Financial Markets Authority
Maximum penalty	\$2 million	Greater of - \$10 million, 3 times commercial gain, 10% of turnover	Greater of - \$5 million, 3 times the gain made, or loss avoided, consideration for the transaction
Offence to mislead or deceive	No	Yes	Yes
Infringement regime	No	Yes, \$1000 to \$2000	Yes, \$5000 to \$20,000 depending on the offence
Impose entry criteria/conditions	No	No	Yes, some financial market services providers must be licensed
Power to suspend a participant	Limited to cases of insolvency	Government has agreed a new power to suspend a merger for up to 40 days while it investigates	Yes, can direct a licensed market operator to suspend trading
Enforceable undertakings	No	Yes	Yes

Insights from recent Rulings Panel cases

20. The Authority's Rulings Panel helps enforce the Code. It determines breaches, hears appeals against certain decisions and resolves disputes. Table 2 summarises recent cases where the Panel found breaches and imposed pecuniary penalties.

Table 2: Recent Panel Rulings cases

Case ID	Finding	Penalty
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<p><i>Electricity Authority v Transpower</i> [2024] C-2024-001</p>	<p>Transpower breached Clause 8.14 of the Code</p> <p><i>Clause 8.14 of the Code states that the System Operator may depart from the policies set out in a policy statement when a system security situation arises, and such departure is required for the system operator to comply with clause 7.1A(1).</i></p>	<p>\$65,000 plus costs of \$3,820.00</p>
<p><i>Electricity Authority v Ecotricity Limited Partnership</i> [2023] Rulings Panel Decision C-2022-003</p>	<p>Ecotricity breached clauses 11.32A, 11.32B, 11.32E, 11.32EA and 11.32EB of the Code</p> <p><i>Clauses 11.32A to 11.32EB of the Code sets out retailers' obligations to provide consumers and their agents with information about the consumers' electricity consumption.</i></p>	<p>\$57,000 plus costs of \$3,820.00</p>
<p><i>Electricity Authority v Transpower</i> [2023] C-2022-002</p>	<p>Transpower breached clause 80 of the System Operator's Policy Statement and Clause 7.1A(1) of the Code</p> <p><i>Clause 80 of the System Operator's Policy Statement prescribes the methodology that the System Operator must use when it judges it appropriate to re-allocate demand in a grid emergency.</i></p> <p><i>Clause 7.1A(1) of the Code states that the System Operator must carry out its obligations under the Code with skill, diligence, prudence, foresight, good economic management, and in accordance with recognised international good practice.</i></p>	<p>\$150,000 plus costs of \$6,207.50</p>
<p><i>Electricity Authority v Transpower</i> [2022] C-2022-001</p>	<p>Transpower breached clause 4(4)(a) of Technical Code A of schedule 8.3 of the Code</p> <p><i>Technical Code A, Schedule 8.3 of the Code defines obligations for asset owners and technical standards for assets to enable the System Operator to plan to comply, and to comply, with the principal performance obligations.</i></p>	<p>\$70,000 plus costs of \$12,415.00</p>

	<i>Clause 4(4)(a) specifically states that Asset owners must provide and maintain grid protection systems for all assets connected to the grid. These systems must quickly and selectively disconnect faulted assets to minimise disruption while supporting the system operator's performance obligations.</i>	
<i>Electricity Authority v Transpower [2022] C-2021-001</i>	<p>Transpower breached Clause 13.141(2) of the Code</p> <p><i>Clause 13.141(2) of the Code states that each grid owner must give the information required by subclause (1) (b) to the pricing manager by 0730 hours on trading day for each trading period of the previous trading day. This must be provided in the form specified by the pricing manager.</i></p>	No pecuniary penalty but ordered to pay costs of \$8,117.50

21. Maintenance of the law
- The highest penalty ever imposed was for Electricity Authority v Transpower [2023] C-2022-002 which ordered Transpower to pay a penalty of \$150,000.
22. Once a complaint has been filed with the Rulings Panel, it can take between 12-24 months for it to be heard and determined. These factors create a disincentive to pursue enforcement, particularly where the breach is considered relatively minor.

What objectives are sought in relation to the policy problem?

23. The objective is to improve the efficiency and effectiveness of electricity regulation by ensuring:
- a. participants have adequate compliance incentives, including liability to penalties that are commensurate with their potential commercial gains from non-compliance
 - b. the Authority has access to enforcement tools that support efficient and proportionate compliance action, and
 - c. the Authority has access to information necessary to undertake its functions.
24. This objective, and its component parts, will support the Authority's ability to achieve its statutory objective, which is to promote competition in, reliable supply by, and efficient operation of the electricity industry for the long-term benefit of consumers. Consumers benefit from more affordable and more reliable supply of electricity, which is essential to their social and economic well-being.

What consultation has been undertaken?

25. MBIE consulted the Authority on all the options in the RIS. Other interested parties were not consulted, but options to increase the maximum pecuniary penalty were identified during previous consultation with industry participants in 2021. The Authority is generally supportive of the preferred options, however their position as industry regulator has created an incentive to advocate for stronger and broader powers. For example, the Authority prefers a wider information gathering power to address problem (viii), however MBIE is recommending a limited power for the reasons explained in that section.
26. To obtain policy decisions by the end of the 2025, there has been no public consultation on the specific proposals that are being recommended.
27. MBIE intends to consult publicly (subject to Cabinet approval) in 2026 on the specific types of conduct that might attract both the higher pecuniary penalty and infringements fees should either of these proposals be progressed. MBIE also plans to consult on other potential changes to the Regulations, to be assessed in a separate RIS.

Section 2: Assessing options to address the policy problem

What criteria will be used to compare options to the status quo?

28. The following criteria are used to assess options for each of the problems and opportunities identified in Section 1:
 - **Effectiveness:** is the option aligned with objectives, likely to have a material impact, be readily implemented, and durable over time?
 - **Proportionality:** does the option provide or enable proportionate incentives and actions? Is the option fair and consistent and appropriately scaled to the harm or risk being addressed?
 - **Efficiency:** does the option enable timely and low-cost regulatory actions that are clear and predictable for regulated parties?

What scope will options be considered within?

29. This section considers regulatory options, comprising amendments to the Act, addressing each of the problems set out in the previous section. Each option (amendment) is evaluated against the status quo (do nothing option).

What options are being considered?

(1) Strengthening compliance incentives

Problem (i) - The maximum pecuniary penalty is not large enough to incentivise compliance

30. The proposed pecuniary penalty would strengthen incentives at the upper end of the Authority's compliance enforcement hierarchy. The highest pecuniary penalty currently available for a breach of the Code is \$2 million. The highest penalty imposed by the Rulings Panel, to date, is \$175,000 (but reduced to \$150,000 due to mitigating circumstances). While the maximum penalty was increased to \$2 million just three years ago, the Code has since been amended to impose obligations on some participants that suggest \$2 million is no longer commensurate with costs of compliance.⁵
31. The *Commerce Act* contains a higher maximum penalty for certain offences relating to breach of competition provisions, with different maxima for individuals and body corporates. The *Grocery Industry Competition Act* also provides for higher maximum penalties for breach of industry codes. Regulations prescribe different maximum penalties for different classes of offence.

Option One – Status quo

32. Under the status quo, the Authority can only seek a remedy, including a pecuniary penalty, through the Rulings Panel. In many cases the pecuniary penalty is limited by total liability limits that are set in Regulations.⁶

Option Two – Create a higher pecuniary penalty of \$10 million, 3 times commercial gain, or 10% of turnover, enforceable through the High Court

33. Under this option, the headline maximum penalty would be specified in the Act, along with an enabling provision to prescribe in regulations the specific obligations in the Code to which the maxima apply. This would form part of an implementation workstream that will seek Cabinet agreement in 2026 to determine specific Code obligations that can trigger the headline penalty, in a manner similar to the *Grocery Industry Competition Regulations 2023*.
34. This option would have some clear advantages over the status quo:
 - the existence of the higher penalty would provide a strong disincentive against non-compliance in respect of the offences specified in regulations
 - additional offences might be added or removed over time by amending the regulations, providing some flexibility and Cabinet oversight
 - the penalty would potentially be able to negate all *unlawful commercial gain* in one successful application to the High Court
 - when seated alongside other compliance tools the Authority could better determine the forum for deciding a pecuniary remedy based on the seriousness of the conduct (e.g. infringement fee for minor breaches, Rulings Panel for more serious breaches, and High Court for only the most serious breaches as prescribed in regulations)

⁵ This Code amendment is the market-making obligation discussed in the previous section.

⁶ *Electricity Industry (Enforcement) Regulations 2010*, pt 2, sub-pt 2.

- conduct that has a significant impact on individuals (such as loss of life) is also deterred.
35. The Ministry of Justice has indicated its broad comfort with the higher pecuniary penalty, with the main interest being the potential impact on Court time. This support is contingent on the High Court being the appropriate forum to award such significant pecuniary penalties.
36. The Electricity Authority anticipate one to three cases brought before the High Court each year. This will come at a cost to both the High Court, the EA, and the respondent. The cost of taking matters to the High Court varies significantly from tens of thousands, to several hundred thousand dollars.⁷ In complex litigation, engaging specialist legal counsel can approach \$1 million, as happened when the Commerce Commission prosecuted Bunnings Warehouse over allegations that price claims were misleading.⁸

Option Three – Increase the Rulings Panel’s maximum pecuniary penalty to \$10 million

37. Alternatively, the Act could be amended to simply increase the Rulings Panel’s pecuniary penalty limit to \$10 million. This has the advantage of not contributing to an increase in the High Court’s workload and retaining the sector specific expertise of the Rulings Panel in assessing the penalty and associated compensation.

Free and frank opinions

How do the options compare to the status quo/counterfactual?

	Option One – Status Quo	Option Two – Create a higher pecuniary penalty of \$10 million, 3 times commercial gain, or 10% of turnover, enforceable through the High Court	Option Three – Increase the Rulings Panel’s maximum pecuniary penalty to \$10 million
Effectiveness	0	++ <i>This option aligns strongly with the objective to credibly deter non-compliance, setting the offences in regulations will also add durability and flexibility if offences become redundant and new offences are needed to address new risks</i>	+ <i>A higher penalty will credibly deter non-compliance but is less flexible as the option does not capture commercial gain, or turnover (which is where the flexibility of Option Two if found)</i>
Proportionality	0	+	-

⁷ <https://martindillon.nz/civil-problems/civil-litigation-costs/>

⁸ <https://www.jwlegal.co.nz/insights/bunnings-very-expensive-law-suits-tips-to-avoid-them>

		<i>This option is proportionate as it is targeted at conduct that either has market making implications, or could have a significant impact on individuals</i>	<i>The outcomes are not as proportionate as the option provides the Rulings Panel with no ability to recover commercial gain or turnover</i>
Efficiency	0	- <i>This option will come at additional cost to the EA and the High Court, for the EA, this may require reprioritisation or additional funding to take cases through the High Court</i>	+ The Authority will not face additional expenses above those already incurred by taking matters to the Rulings Panel
Overall assessment	0	++	+

39. The preferred option is to amend the Act to create a new pecuniary penalty enforceable through the High Court (Option Two).

What are the marginal costs and benefits of the preferred option in the Cabinet paper?

Preferred option: Create a higher pecuniary penalty of \$10 million, 3 times commercial gain, or 10% of turnover, enforceable through the High Court

Affected groups	Comment	Impact	Evidence Certainty
Additional costs of the preferred option compared to taking no action			
Regulated groups	Regulated parties may respond by adopting a more conservative approach to delivering services, including over-investment in systems to hedge against failures.	Non-monetised, low.	Low – it is not clear how regulated groups will respond.
Regulators	The Authority will need to uplift its litigation function and potentially reprioritise funding to boost its litigation fund.	Non-monetised, Medium.	Medium – the Authority has existing capability, including a litigation fund.
Others (eg, wider govt, consumers, etc.)	Consumers may face increased costs if regulated parties adopt a more conservative approach to delivery.	Non-monetised, low.	Medium – the proposal is aligned with similar powers used by other regulators.
Total monetised costs			

Non-monetised costs		Low	
Additional benefits of the preferred option compared to taking no action			
Regulated groups	Greater confidence that competitors are complying, and that the regulatory system is fair. Some additional certainty for future investment knowing that the market is tightly regulated.	Non-monetised, medium.	Medium.
Regulators	Despite litigation costs the Authority will be able to recover part of their costs if the prosecution is successful.	Non-monetised, medium.	High – costs may be awarded by the High Court.
Others (eg, wider govt, consumers, etc.)	Consumers will have greater confidence that regulated parties are delivering services lawfully (for example, not knowingly disconnecting medically dependent consumers).	Non-monetised, medium.	Low – it is not clear how consumers will respond.
Total monetised benefits			
Non-monetised benefits		Medium	

Problem (ii) - The maximum daily penalty is not sufficient to capture potential damage caused by an ongoing breach

40. For continuing breaches, the Rulings Panel may impose a daily penalty not exceeding \$10,000, the EA have suggested increasing this to between \$50,000 and \$500,000.
41. For ongoing breaches that might result in continuing damage to consumers or other industry participants, the Rulings Panel needs to be able to impose a daily penalty that is proportionate to the potential for harm. Metering errors, for example, can cause losses in the \$ millions to consumers and industry participants.

Option One – Status quo

42. Under the status quo the penalty for a continuing offence would remain at \$10,000. For large industry participants, a continuing penalty maximum of \$10,000 might be viewed as the cost of doing business, with a weak incentive to promptly correct an ongoing

breach. The status quo is also out of step with comparable infrastructure regulation such as:

- Telecommunications –the maximum daily penalty is \$500,000.⁹
- Water Services –the maximum daily penalty is \$250,000.¹⁰

Option Two – Increase the daily penalty for a continuing offence to \$50,000

43. Increasing the daily penalty to \$50,000 for a continuing offence provides a stronger disincentive to stop a continuing breach of the Code, while remaining proportionate to the level of harm, and the pecuniary value of a continuing breach.
44. The proportionality of the penalty is preserved as it rises from 0.5% to 2.5% of the maximum pecuniary penalty of \$2 million. This level is still well below Australia where the daily penalty is between 5-10% of the maximum penalty administered by the Australian Energy Regulator.¹¹
45. Option Two will also provide the Rulings Panel with greater scope to impose penalties for continuing breaches. In the electricity market context, metering breaches are an obvious candidate for a daily penalty, such as that seen in *Electricity Authority v Transpower* [2022] Rulings Panel Decision –C-2021-001. Due to the Grid Owner’s metering error, generators were overpaid \$31.6m and consumers were overpaid \$32.6m between 27 November 2020 to 14 December 2020.¹²

Option Three – Increase the daily penalty for a continuing offence to 2.5% of the maximum penalty for both the Rulings Panel and the High Court

46. Option three has the same benefits as Option Two, but provides a further option, a \$250,000 daily penalty would only be accessible through the High Court. This option will require a review of the liability limits in Regulations to be effective as it will exceed some of the limits set by Regulations.
47. Should the daily penalty be increased and brought within the High Court’s jurisdiction (with an equivalent 2.5% penalty remaining with the Rulings Panel), its justification is undermined should a higher pecuniary penalty be introduced that aligns with the *Commerce Act*. This is because the *Commerce Act* style penalty is capable of capturing commercial gain and turnover, making an additional daily penalty less effective.

How do the options compare to the status quo/counterfactual?

	Option One – Status Quo	Option Two – Increase the daily penalty for a continuing offence to \$50,000	Option Three – Increase the daily penalty for a continuing offence to 2.5% of the maximum penalty for
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⁹ *Telecommunications Act 2001*, s 156M.

¹⁰ *Local Government (Water Services Preliminary Arrangements) Act 2024*, s 95.

¹¹ *National Electricity (South Australia) Act 1996*, s 2AB.

¹² While the Grid Owner is shielded from liability for metering breaches under the *Electricity Industry (Enforcement) Regulations 2010* other industry participants are not. The liability limits are not within the scope of this analysis but will be looked at in a follow-up workstream.

			both the Rulings Panel and the High Court
Effectiveness	0	+	+
		<i>This is both a credible and flexible deterrent accessible through the Rulings Panel</i>	<i>This is a stronger deterrent but less flexible, requiring an application to the High Court</i>
Proportionality	0	+	+
		<i>A \$50,000 daily penalty is proportionate to the damage that can be caused by a continuing breach in the electricity market. This is 2.5% of the current maximum pecuniary penalty</i>	<i>The option is proportionate, providing the Authority options to seek a remedy through the Rulings Panel, or the High Court</i>
Efficiency	0	+	-
		<i>An increased daily penalty that sits with the Rulings Panel will fit neatly into the existing enforcement framework and is not impacted by the Te Au Reka moratorium</i>	<i>A High Court-imposed penalty will require primary legislation and is a new remedy subject to the Te Au Reka moratorium, not merely an increase in an existing remedy</i>
Overall assessment	0	++	+

48. The preferred option is to increase the daily penalty for a continuing offence to \$50,000 from \$10,000 (Option Two).

What are the marginal costs and benefits of the preferred option in the Cabinet paper?

Preferred option: Increase the daily penalty for a continuing offence to \$50,000 from \$10,000.

Affected groups	Comment	Impact	Evidence Certainty
Additional costs of the preferred option compared to taking no action			
Regulated groups	Regulated parties may respond by adopting a more conservative approach to delivering services, including gold plating by adding additional levels of assurance or more processes, above what is efficient.	Non-monetised, low.	Low – it is not clear how regulated groups will respond.
Regulators	Potential increase in litigation costs if the	Non-monetised, low.	Medium – there is the

	<p>Authority pursues a more aggressive compliance policy with the new penalty.</p> <p>The Rulings Panel may hear more cases and incur additional costs although panel remuneration is already very low annually.</p>		<p>assumption that the Authority will pursue additional Rulings Panel cases.</p>
Others (eg, wider govt, consumers, etc.)	<p>Consumers may face increased costs if regulated parties adopt a more conservative approach to delivery.</p>	Non-monetised, low.	<p>Medium –this is dependent on how industry participants and service providers respond.</p>
Total monetised costs			
Non-monetised costs		Low.	
Additional benefits of the preferred option compared to taking no action			
Regulated groups	<p>Greater confidence that service providers and other industry participants are complying with the Code on an ongoing basis.</p>	Non-monetised, low.	<p>Medium –a higher continuing penalty will moderately boost confidence in the system.</p>
Regulators	<p>The Authority will not require additional funding, the penalty will increase but the Rulings Panel will remain the forum for determining the level of penalty.</p>	Non-monetised, low.	<p>High –likely to incur no additional cost to the Authority.</p>
Others (eg, wider govt, consumers, etc.)	<p>Consumers will have greater confidence that regulated parties are delivering services lawfully.</p>	Non-monetised, low.	<p>Low –it is not clear how consumers will respond.</p>
Total monetised benefits			
Non-monetised benefits		Low.	

Problem (iii) - There is no deterrent for misleading or attempting to deceive the Authority

49. The Authority, as the electricity market regulator, relies on the veracity of the information and representations that it receives from industry participants so that it can carry out its functions and use the information to carry out accurate forecasting, assess compliance and make robust decisions.
50. The Authority has provided some evidence that the lack of a deterrent offence has resulted in industry participants submitting Consumer Care Guideline alignment statements that are inconsistent with what has been stated in submissions to the Authority on the proposed Code amendment to mandate the Consumer Care Guidelines.
51. The Authority has noted that industry participants had ‘varied interpretations of the Guidelines and differences in how retailers who reported alignment were doing so in practice.’ This observation is not conclusive evidence of deceptive or misleading conduct, but it illustrates the risk that opportunist, or even intentional, non-compliance may occur in the absence of a deterrent offence. This risk is greatest for Code provisions that rely on participants monitoring and accurately reporting their own compliance. A new offence for misleading or attempting to deceive the Authority will provide a disincentive to the provision of false information. A similar offence is available to the Commerce Commission, creating a similar offence that the Authority may access will align the two regulatory systems.¹³

Option One – Status quo

52. There is no offence that might deter participants from providing false or misleading information to the Authority.

Free and frank opinions

54. The Rulings Panel has no jurisdiction to impose remedies on individual directors, leading to the absence of a deterrent effect on senior decision-makers and corporate culture.

Option Two – Create a new criminal offence for misleading or attempting to deceive the Authority

55. A new criminal offence would carry the benefit of disincentivising misleading or deceptive conduct, both for individuals (including directors), and body corporates. The option would replicate the equivalent power in the *Commerce Act*:
 - In the case of an individual, a fine not exceeding \$100,000.

¹³ Commerce Act 1986, s 103(2).

- In any other case, a fine not exceeding \$300,000.
56. The offence would incorporate the design elements of the *Commerce Act* offence, including the mental element (mens rea), to ensure that intentional behaviour is targeted by the offence, and placing the burden of proof on the prosecution.
57. Option Two would drive an effective compliance culture and improve the quality of information provided to the Authority.

How do the options compare to the status quo/counterfactual?

	Option One – Status Quo	Option Two – Create a new offence for misleading or attempting to deceive the Authority (preferred)
Effectiveness	- <i>The counterfactual provides no credible deterrent to non-compliance</i>	+ <i>A new offence will provide a credible deterrent to non-compliance as it will apply to both individuals and body corporates</i>
Proportionality	- <i>The counterfactual is not proportionate for the potential harm, particularly if non-discrimination measures are introduced</i>	+ <i>The option is proportionate to the potential for harm, deterring both non-compliant corporate behaviour and deceptive conduct by individual directors</i>
Efficiency	0 <i>The option will lead to no additional cost on the Authority</i>	0 <i>There is likely to be additional cost on the Authority, however this is contingent on how often the new offence is used</i>
Overall assessment	--	++

58. The preferred option is to create a new offence for misleading or attempting to deceive the Authority (Option Two).

What are the marginal costs and benefits of the preferred option in the Cabinet paper?

Preferred option: Create a new offence for misleading or attempting to deceive the Authority

Affected groups	Comment	Impact	Evidence Certainty
Additional costs of the preferred option compared to taking no action			
Regulated groups	Minor increase in compliance costs, and ensuring information and representations are accurate.	Non-monetised, low.	Medium – the offence will create a strong incentive to comply.

Regulators	Potential increase in litigation costs if the Authority pursues a more aggressive compliance policy with the new civil offence.	Non-monetised, medium.	Medium – there is an assumption that the Authority will prosecute breaches where appropriate.
Others (eg, wider govt, consumers, etc.)	Likely no cost to consumers. Unless industry participants and service providers adopt a more conservative approach to delivery, with more expensive manual processes to reduce the probability of a breach.	Non-monetised, low or no cost.	Medium – this is dependent on how industry participants and service providers respond.
Total monetised costs			
Non-monetised costs		Low.	
Additional benefits of the preferred option compared to taking no action			
Regulated groups	Greater confidence that service providers and other industry participants are complying with the Code, particularly for smaller participants.	Non-monetised, low.	Medium – a deterrent offence is a strong incentive.
Regulators	The Authority will not require additional funding; they may need reprioritise funds if they prosecute a large number of cases.	Non-monetised, low.	Medium – likely to incur no additional cost to the Authority.
Others (eg, wider govt, consumers, etc.)	Consumers will have greater confidence that regulated parties are delivering services lawfully.	Non-monetised, low.	Low – it is not clear how consumers will respond.
Total monetised benefits			
Non-monetised benefits		Low.	

(2) Extending the Authority’s compliance toolkit

Problem (iv): The Authority lacks tools to address low-level and repetitive non-compliance

59. The Authority lacks compliance tools at the lower end of the enforcement hierarchy. Currently, the Authority can only issue informal warning letters to participants that have been investigated and found to have breached the code for minor breaches. Three examples of conduct that could be addressed by new tools include:
- a. requirements relating to the submission of quarterly disclosures
 - b. failure to comply with dispatch instructions
 - c. missing the deadline for payments to the clearing manager.¹⁴
60. Almost all other compliance tools are situated with the Rulings Panel, which the Authority can only access by making an application and submitting evidence so that the Rulings Panel can adjudicate and determine a remedy.¹⁵

Option One – Status quo

61. The status quo leaves the Authority with very few options to deter and remedy low level repetitive non-compliance. This puts the Authority in a difficult position between issuing too many warning letters, or too few by attempting to use them judiciously for the greatest impact.

Option Two – Introduce an infringement regime for minor code breaches

62. Option Two would involve introducing an infringement regime for minor and repetitive code breaches. The conduct attracting an infringement offence would be subject to a strict liability test, and therefore easy to prove or disprove, without any consideration of mental element.
63. The proposed fee for a new infringement regime is \$2000. A lower amount would not have the desired deterrent effect on industry participants, and a higher amount would incentivise industry participants to appeal the infringement to the District Court. This amount also aligns with the fee available to the Commerce Commission.¹⁶

Options Three – Introduce an infringement regime, supported by improvement notices and enabling transparent compliance outcomes

64. Option Three is the same as Option Two, however it would be bolstered by two complementary proposals:
- Empowering the Authority to issue improvement notices, already in use in Civil Aviation regulation¹⁷, to direct an industry participant to undertake action to correct a breach. The option would involve the improvement notices being used

¹⁴ The clearing manager ensures that industry participants pay or are paid the correct amount for the electricity they generate, or consume, and for market-related costs.

¹⁵ The Authority can suspend trading due to insolvency, but otherwise the Rulings Panel is responsible for imposing remedies.

¹⁶ *Telecommunications Act 2001*, s 156D.

¹⁷ *Civil Aviation Act 2023*, s 298.

in conjunction with an infringement notice, or as an alternative, depending on the Authority's approach to compliance and the breach in question.

- Legislating to allow the Authority to publish enforcement outcomes, including informal outcomes such as warning letters. This power would be moderated by focusing only on enforcement outcomes. This ensures that evidence of the alleged conduct has been considered by the relevant decision-maker, whether this is the Authority, the Rulings Panel, or the Court.

65. Having all three options available to the Authority would embed significant flexibility at the lower end of the compliance hierarchy and provide for the more judicious use of all tools, including warning letters, and referral to the Rulings Panel.

How do the options compare to the status quo/counterfactual?

	Option One – Status Quo	Option Two – Introduce an infringement regime for minor code breaches	Option Three – Introduce an infringement regime, supported by improvement notices and enabling transparent compliance outcomes (preferred)
Effectiveness	0	+ <i>Introducing an infringement regime in isolation will provide a moderate deterrent to non-compliance</i>	++ <i>With a package of changes at the lower end of the enforcement hierarchy there will be a credible deterrent to non-compliance</i>
Proportionality	0	+ <i>The option addresses the level of harm caused by low level repetitive breaches</i>	0 <i>While confidence in the Authority may be boosted, publishing informal enforcement outcomes may have natural justice risks by presenting industry participants as non-compliant without adjudication by the Rulings Panel or the Court</i>
Efficiency	0	0 <i>The option will likely require additional compliance resources although funding could be reprioritised to manage this</i>	0 <i>The option will likely require additional compliance resources although funding could be reprioritised to manage this</i>
Overall assessment	0	++	++

66. The preferred option is to introduce an infringement regime, supported by improvement notices and enabling transparent compliance outcomes (Option Three).

What are the marginal costs and benefits of the preferred option in the Cabinet paper?

Preferred option: Introduce an infringement regime, supported by improvement notices and enabling transparent compliance outcomes

Affected groups	Comment	Impact	Evidence Certainty
Additional costs of the preferred option compared to taking no action			
Regulated groups	Minor increase in compliance costs. Ensures that Code obligations are complied with in time.	Non-monetised, low.	Medium – the new tools will create a strong incentive to comply.
Regulators	Potential increase in compliance resources to administer the new tools.	Non-monetised, medium.	Medium – there is the assumption that the Authority will create a new team to administer infringements.
Others (eg, wider govt, consumers, etc.) <i>For fiscal costs, both increased costs and loss of revenue could be relevant</i>	Likely no cost to consumers as the infringement fee is low.	Non-monetised, low or no cost.	Medium – this is dependent on how industry participants and service providers respond.
Total monetised costs			
Non-monetised costs		Low.	
Additional benefits of the preferred option compared to taking no action			
Regulated groups	Greater confidence that service providers and other industry participants are complying with the Code.	Non-monetised, low.	Medium – the new tools include transparent compliance outcomes.
Regulators	It is proposed that the fees will be paid to the Crown account and therefore will not benefit the Authority.	Non-monetised, none.	High – This is a feature of the infringement regime.
Others (eg, wider govt, consumers, etc.)	Consumers will have greater confidence that industry participants are capable of meeting Code obligations.	Non-monetised, low.	Medium – it is not clear how consumers will respond, although fees paid to the

	Crown accounts will benefit from fee receipts.		Crown are a feature of the infringement regime.
Total monetised benefits			
Non-monetised benefits		Low.	

Problem (v): The Authority cannot prevent industry participants that are incapable of complying with the Code from registering

- 67. Industry participants, as defined under the Act, are subject to regulation by the Authority.¹⁸ Participants are required to register as participants, subject to any exemptions in regulations.
- 68. Currently, there are no entry requirements for persons registering as participants under the Act. This means there is no opportunity, ex ante, to ensure a prospective participant is capable of complying with its obligations in the Code.

Option One – Status quo

- 69. The Authority has advised that it spends a disproportionate amount of time and resource on addressing compliance by some new retailers (often supplying only a few consumers) who repeatedly breach the prudential requirements for traders. Failure to meet these requirements triggers a trader default process, which then stops once the retailer meets the requirements. The Authority has identified one example involving repeat breaches of prudential requirements, where the company was in insolvency and the director of the company had been a director of multiple companies that all went into insolvency in the past.
- 70. A trader default can result in significant costs to affected consumers as well as to the Authority. When triggered, affected consumers have five days to secure another retailer. The Authority will assign affected consumers to other retailers if they cannot find one themselves. This can result in affected consumers paying higher electricity prices than they were paying under their previous contract with the defaulting trader.
- 71. The Authority has no power to remove the retailer as a participant and it can only suspend the retailer if it pursues enforcement with the Rulings Panel and the retailer subsequently fails to comply with an order made by the Rulings Panel.
- 72. A single trader default event can tie up several staff for up to three weeks or more. Enforcement action involves fewer staff but over a longer period of time. The cost of repeatedly starting and stopping the trader default process is difficult to quantify, but it clearly diverts valuable resources away from other priorities, delaying market development initiatives that would benefit consumers. Repeated trader defaults can also place a disproportionate burden on the clearing manager.

¹⁸ Participants are persons with roles in the energy system, including generators, retailers, distributors and the system operator.

Option Two – Empower the Authority to set and enforce eligibility requirements for new electricity retailers

73. This option would give the Authority the ability to set and enforce minimum standards for registration of retailers so that consumers and other industry participants are protected from unsuitable parties becoming participants (either at the entry point or subsequently). It could also reduce the frequency of breaches that require disproportionate application of the Authority's time and resources.
74. The Act could be amended to provide powers for the Authority to introduce minimum eligibility thresholds or criteria that must be declared as met by persons registering as participants, with an ongoing requirement to report a change in this position to the Authority.
75. The eligibility criteria would be confirmed in a declaration by the participant applicant, and cover persons with control of the business (for example directors of a company or trustees or a general partner). It is not uncommon for registries to include eligibility requirements of this nature, and the requirement is not expected to present material cost.
76. The intention is that entry requirements focus on matters such as recent bankruptcy, involvement with two or more insolvent companies, or criminal convictions for certain offences. This could be achieved by cross-referencing or replication of eligibility criteria from other regimes (for example, director requirements in the *Companies Act*).
77. Under this option, the Authority could also approve a person applying to be an applicant who does not meet the eligibility criteria if the Authority is satisfied the person is otherwise suitable. Such approvals could be given with conditions, if necessary. This discretion would align with the Authority's existing power to grant conditional exemptions from obligations to comply with the Code, under section 11 of the Act.
78. The eligibility requirements would operate as a minimum threshold to avoid participants registering that are operated by persons whose past actions demonstrate that they have been unscrupulous, incompetent or irresponsible. This could act as a deterrent or filter, reducing the frequency of participants breaching the Code as a result of poor financial capability or poor approach to compliance. This would avoid disproportionate use of Authority resources and other service providers' resources, such as the clearing manager. It will also enable the Authority to take appropriate action if it discovers the threshold has not been met. More broadly, it could help set expectations of good standards in the industry.
79. There is a risk that the Authority might set eligibility criteria that act as a barrier to entry or unfairly prevent participants from registering. This might inadvertently lessen competition or hamper innovation in the industry by excluding new entrant retailers that bring novel approaches but have a history of business failure or poor financial performance.
80. The risk of harming innovation could be managed by requiring the Authority to set entry criteria in accordance with its statutory objectives, which include promoting competition, reliability and efficiency in the electricity market. These objectives should

guide the Authority away from eligibility criteria that might unduly deter new entrant retailers or limit competition.

81. There is a risk the costs of administering and monitoring eligibility thresholds would outweigh any intended benefits introducing these criteria. This risk could be mitigated by including criteria the Authority must apply when determining any eligibility criteria (for example the costs of administering the eligibility criteria should not exceed the potential benefits).

Option Three – Empower the Authority to set and enforce eligibility criteria for all new participants (including generators, distributors, metering service providers, etc)

82. This option would give the Authority the ability to set and enforce minimum standards for registration of any class of industry participant.
83. This option would offer more benefits than Option Two assuming there is harm from other classes of new entrant participants being unsuitable, imposing unwarranted costs on consumers, other participants and the Authority.
84. However, the Authority has not identified any examples of concerns with new participants other than retailers, which may suggest this option represents a disproportionate means of addressing the identified issue.
85. This option would also likely involve greater administration costs and would increase the risk that the Authority’s eligibility criteria could present a barrier to innovation by limiting entry of participants with novel technologies, systems or business models.

How do the options compare to the status quo/counterfactual?

	Option One – Status Quo	Option Two – give Authority limited power to set eligibility criteria for new retailers	Option Three – give Authority wider power to set eligibility criteria for all new participants
Effectiveness	0	+ <i>Would reduce risk of entry by an incompetent retailer that subsequently defaults</i>	+ Would reduce risk of entry by any incompetent participant
Proportionality	0	+ Targets the known problem – retailers that fail to maintain compliance with prudential requirements	- Risks imposing costly entry assessments or conditions on participants that pose little risk of harm
Efficiency	0	+	-

		The Authority will need to develop entry criteria, assess eligibility and consider whether to impose entry conditions	The Authority might develop criteria for all categories of participant, whether or not they are needed
Overall assessment	0	++	

86. The preferred option is to amend the Act to give the Authority a limited power to set eligibility criteria for new retailers (Option Two). This is also the Minister’s preferred option in the Cabinet paper.

What are the marginal costs and benefits of the preferred option in the Cabinet paper?

Preferred option: Give Authority power to set and enforce entry requirements for new retailers

Affected groups	Comment.	Impact	Evidence Certainty.
Additional costs of the preferred option compared to taking no action			
Regulated groups	Parties subject to entry requirements will face additional obligations.	Non-monetised, low.	Medium.
Regulators	The Authority will incur some cost in setting and enforcing entry requirements.	Non-monetised, low.	Medium.
Others (eg, wider govt, consumers, etc.)	Potential cost if entry requirements deter innovative retailers that would benefit consumers.	Non-monetized, low.	Low.
Total monetised costs			
Non-monetised costs		Low.	Medium.
Additional benefits of the preferred option compared to taking no action			
Regulated groups			
Regulators	The Authority will incur less cost due to fewer trader defaults.	Low.	Medium.
Others (eg, wider govt, consumers, etc.)	Other retailers, consumers and clearing managers will benefit from fewer trader defaults.	Low.	Medium.
Total monetised benefits			

Non-monetised benefits		Low.	Medium.
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Problem (vi) – The Authority has only limited ability to suspend industry participants that threaten security of supply or market confidence

- 87. The Authority can currently suspend an industry participant’s right to trade in the market in cases of insolvency.¹⁹ There is no power to suspend a participant in circumstances that do not involve insolvency, such as for serious misconduct, but warrants prompt action to maintain supply security or to market confidence.
- 88. A new suspension power would expand the circumstances in which the EA can suspend a participant where there is a risk to the integrity, reliability, or security of the electricity market.

Option One – Status quo

- 89. The Authority could seek an injunction through the High Court to address conduct that threatens supply security or undermines confidence in the market, but the burden of convincing the High Court to intervene quickly will fall on the Authority. Injunctions require formal legal proceedings which can be costly and are not always suited to situations requiring rapid regulatory intervention.

Option Two – Introduce a new power for the Authority to suspend participants for 15 days if specific criteria are met

- 90. Option Two addresses the lack of compliance powers that the Authority has direct access to. This option will enable a stronger and more agile regulator that can respond to fast emerging situation by suspending industry participants where those participants are posing a risk to the integrity, reliability, or security of the electricity market (the criteria).
- 91. The option describes a suspension power that is limited to 15 working days so that the Authority is not incentivised to use the power as a panacea for non-compliance generally. This would align the power with a suspension power available to the Financial Markets Authority.²⁰
- 92. The suspension must not have an adverse impact on the consumers of the participant in question. The power should therefore be limited to situations where the Authority can manage flow-on effects to consumers and other industry participants.²¹

How do the options compare to the status quo/counterfactual?

	Option One – Status Quo	Option Two – Introduce a new power for the Authority to suspend participants for 15 days if specific criteria are met
Effectiveness	0	+

¹⁹ Electricity Industry Act 2010, s 49.

²⁰ Financial Markets Conduct Act 2013, s 361.

²¹ For example, avoiding a situation where a suspended retailer cannot supply electricity to their customers.

		<i>The option will help create a more agile Authority that can address risks to the electricity market quickly</i>
Proportionality	0	0 <i>The option includes limitations both in its duration, and the criteria for its triggering. Further development of the option will mitigate unintended consequences</i>
Efficiency	0	++ <i>The option could be efficiently deployed and leverage existing capability</i>
Overall assessment	0	++

93. The preferred option is to introduce a new power for the Authority to suspend participants for 15 days if specific criteria are met (Option Two).

What are the marginal costs and benefits of the preferred option in the Cabinet paper?

Preferred option: Introduce a new power for the Authority to suspend participants for 15 days if specific criteria are met.

Affected groups	Comment	Impact	Evidence Certainty
Additional costs of the preferred option compared to taking no action			
Regulated groups	The new suspension power might drive more conservative behaviour among industry participants.	Non-monetised, low.	Medium –the suspension power will create an incentive not to create risks to the electricity market.
Regulators	The Authority already have a limited suspension power; an expanded suspension power is within their existing capability.	Non-monetised, low or no cost.	Medium –the new power is not a substantive enforcement tool and therefore is likely to incur only nominal costs.
Others (eg, wider govt, consumers, etc.) <i>For fiscal costs, both increased costs and loss of revenue could be relevant</i>	There is potentially a moderate cost to consumers if the exercise of the power leads to a loss.	Non-monetised, medium.	Medium –this is dependent on how carefully the Authority exercise the power.
Total monetised costs			
Non-monetised costs		Low.	

Additional benefits of the preferred option compared to taking no action			
Regulated groups	Greater confidence that other industry participants are not putting the electricity market at risk.	Non-monetised, low.	Medium – the power will create a strong incentive for all industry participants to avoid putting the market at risk.
Regulators	The benefit to the Authority is likely to be neutral other than bolstering its functions under the Act.	Non-monetised, low or no benefit.	Medium – the new power is not a substantive enforcement tool.
Others (eg, wider govt, consumers, etc.)	Consumers will have greater confidence that regulated parties are delivering services and not creating unnecessary risks for the electricity market.	Non-monetised, low.	Low – it is not clear how consumers will respond or acknowledge a suspension power.
Total monetised benefits			
Non-monetised benefits		Low.	

Problem (vii) - The Authority is unable to accept undertakings from industry participants in lieu of more costly enforcement action

94. Enforceable undertakings differ from infringement notices in both their nature and how they are enforced. While infringement notices would typically involve a straightforward determination of whether a Code provision has been breached, enforceable undertakings focus on the actions taken in response to a breach.
95. When an order from the High Court is sought in response to an enforceable undertaking, the issue is not likely to be whether a breach occurred, but rather whether the remedial steps proposed or taken are adequate and enforceable.
96. Enforceable undertakings are agreed to by the regulator and is used by other regulators such as the FMA, Commerce Commission, WorkSafe and Maritime New Zealand. While the High Court has jurisdiction to enforce them, this is rarely necessary as parties typically comply without court intervention.

Option One – Status quo

97. There is currently no means by which industry participants can give voluntary undertakings to rectify any current or ongoing breaches of the Code, and for the Authority to enforce those undertakings. Authority's ability to take enforcement action in

response to reported breaches of the Code is limited under the current statutory framework.

98. The Authority can bring proceedings before the Rulings Panel and seek a compliance order under section 54 of the *Electricity Industry Act*.
99. While appropriate for serious or contested breaches, this process is resource-intensive and slow, making it impractical for lower-level or recurring non-compliance. The delay inherent in formal proceedings may reduce the effectiveness of the response and limit the Authority's ability to ensure timely corrective action.

Option Two – Introduce new powers for industry participants to give (and for the Authority to accept) enforceable undertakings

100. This option would empower the Authority to accept enforceable undertakings from industry participants to address and prevent breaches of the Code. Such undertakings would be bilateral agreements, enforceable through the High Court, and could include commitments to improve processes, rectify systemic issues or prevent recurrence.
101. This approach draws on precedents from other regulatory regimes (e.g. Commerce Commission under the *Telecommunications Act*) and offers a more flexible, efficient, and targeted compliance tool.
102. It would allow the Authority to improve compliance outcomes without the delays and costs associated with formal Rulings Panel proceedings, while retaining judicial oversight for enforcement.

Option Three – Using settlement agreements

103. The Authority could potentially use settlement agreements which are a binding contracts between two or more parties that resolves a dispute without continuing to trial or formal legal proceedings. However, they are very limited in effectiveness due to the following regulatory constraints:
 - the Authority is rarely a party to a settlement
 - settlements are only between parties to an investigation: the Authority is only a party where the breach was reported by someone other than an industry participant which is a rare occurrence
 - the Authority has limited ability to impose obligations or monitor compliance post-settlement
 - where a breach is self-reported by a participant²², and no participant joins as a party to an investigation, settlement is not available.

How do the options compare to the status quo/counterfactual?

	<i>Option One – Status Quo</i>	<i>Option Two – Introduce new powers for industry participants to give (and for the Authority to</i>	<i>Option Three – Use of settlement agreements</i>
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²² Electricity Industry (Enforcement) Regulations 2010, r 7.

		accept) enforceable undertakings	
Effectiveness	0	++ <i>Strengthens regime with enforceable mechanism</i>	+ <i>Limited enforcement capability</i>
Proportionality	0	0 <i>Limited transparency on process can lead to perception of low accountability</i>	0 <i>Limited scope and visibility</i>
Efficiency	0	++ <i>Avoids formal proceedings and allows for tailored process</i>	+ <i>Inefficient due to limited Authority involvement</i>
Overall assessment	0	++ Strengthens enforcement while allowing for flexibility	+ Very limited utility

104. The preferred option is to introduce new powers for industry participants to give (and for the Authority to accept) enforceable undertakings (Option Two).

What are the marginal costs and benefits of the preferred option in the Cabinet paper?

Preferred option: Introduce new powers for industry participants to give (and for the Authority to accept) enforceable undertakings.

Affected groups	Comment	Impact	Evidence Certainty
Additional costs of the preferred option compared to taking no action			
Regulated groups	Industry participants may face a minor administrative burden in familiarising themselves with the new enforceable undertaking process and integrating it into their compliance practices.	Low.	Medium – Based on similar regimes (e.g. FMA, Commerce Commission), costs are manageable and offset by avoiding formal proceedings.
Regulators	Potential one-off costs to establish processes and legal frameworks; ongoing costs for monitoring and enforcement.	Low.	Medium – Authority already has enforcement functions; this adds a flexible tool.

Others (eg, wider govt, consumers, etc.)	No direct fiscal costs.	Non-monetised, low or no cost.	Medium –this is dependent on how industry participants and service providers respond.
Total monetised costs			
Non-monetised costs		Low.	
Additional benefits of the preferred option compared to taking no action			
Regulated groups	Provides a more flexible and efficient compliance pathway.	Non-monetised, medium.	Medium –Based on uptake in other sectors, undertakings are often preferred over formal enforcement.
Regulators	Gains a targeted enforcement tool that improves responsiveness and compliance outcomes.	Non-monetised, medium.	Medium – Authority can tailor undertakings to specific breaches leads to enforcement efficiency.
Others (eg, wider govt, consumers, etc.)	Improved industry compliance leads to better service quality, reliability, and consumer trust.	Non-monetised, low.	Medium – Benefits depend on how effectively undertakings are used and enforced.
Total monetised benefits			
Non-monetised benefits		Low.	

(3) Improving the Authority’s ability to obtain information

Problem (viii) - The Authority is unable to require information from non-participants

105. The Authority has powers to require information from industry participants and specified persons for the purposes set out in section 45 of the Act. Broadly, these are the Authority’s monitoring functions (monitoring compliance, undertaking and monitoring market-facilitation measures, and industry and market monitoring), investigating breaches and enforcing compliance and carrying out reviews in response to a request from the Minister under section 18. If an industry participant fails to comply with a requirement of the Authority, the Authority can treat it as a breach of the Code and apply to the Rulings Panel for remedial orders.

106. The Authority cannot require information from non-participants²³ (it can only request the information, and the respondent is not compelled to provide it). This prevents the Authority from seeking and obtaining information to investigate possible breaches and enforce compliance, where that information is held by non-participants. For instance, the Authority carried out a Ministerial review under section 18 of the Act into the collapse of a transmission tower in Northland in 2024. It requested information from a contractor who had supplied services to Transpower, but was unable to compel the company to comply with the request when it did not do so voluntarily, as it was not an industry participant under the Act.
107. In some cases, people may be willing to provide information to the Authority but are prevented from doing so by contractual arrangements or by their interest in preserving a commercial relationship, particularly if that information could then be disclosed under the *Official Information Act* or in a complaint to the Rulings Panel.

Option One – Status quo

108. Under the status quo, the Authority would have no greater powers to require information from non-participants. The preferred option for protecting confidential information (see opportunity (ix) below) might mean, in some circumstances, that non-participants who would otherwise have withheld information to preserve a commercial relationship would be more willing to provide that information. However, it is difficult to say conclusively whether this is the case. That would also not have any effect on those who are prevented from withholding information because of contractual obligations

Option Two – Limited power to require information from non-participants

109. This option would give the Authority a power to seek information for the purposes of monitoring compliance, investigating breaches and enforcing compliance and carrying out reviews in response to a request from the Minister under section 18.

Option Three – Wider power to require information for all elements of the Authority's purpose

110. This option would give the Authority a power to require information for any of the purposes in section 45, which includes:
- a. carrying out all of the Authority's monitoring functions (monitoring compliance, undertaking and monitoring market-facilitation measures, and industry and market monitoring)
 - b. investigating breaches and enforcing compliance

²³ Section 46(1)(b) of the Act provides for seeking information from a 'specified person'. Specified persons are not industry participants themselves but are involved in two classes of industry participation, for example, a holding company that has a generator subsidiary and a distributor subsidiary, or an individual who is who is a director of both a generator and a distributor.

- c. carrying out reviews in response to a request from the Minister under section 18. This is a broader set of reasons for which the Authority could require information than Option Two.

111. Similar powers exist for the Commerce Commission (section 98 of the *Commerce Act*) and the Financial Markets Authority (section 25 of the *Financial Markets Authority Act*). However, the Authority regulates a narrow subset of individuals and businesses (the electricity industry), whereas the Commerce Commission and Financial Markets Authority have powers of regulation for a much broader group of individuals and businesses.
112. Although the power would enable the Authority to seek information efficiently from prospective developers to improve its understanding of security of supply, its use would add to the regulatory burden on prospective developers and may result in poor quality information. Additionally, the Legislation Guidelines state that new search powers should “be granted only if the policy objective cannot be achieved by other means”. This information can be obtained by the Authority when a developer makes a request to Transpower for connection to the grid.

How do the options compare to the status quo/counterfactual?

	Option One – Status Quo	Option Two – limited power to require information from non-participants	Option Three – wider power to require information from non-participants
Effectiveness	0	++ <i>This option would enable the Authority to more effectively carry out its compliance and enforcement role</i>	++ <i>This option would enable the Authority to more effectively carry out its compliance and enforcement role</i>
Proportionality	0	+ <i>This option is generally proportionate to the problem</i>	- <i>This option is not proportionate to the scale of the problem and risks being overused or used inappropriately</i>
Efficiency	0	+ <i>This option enables effective and timely compliance and enforcement</i>	+ <i>This option enables effective and timely compliance and enforcement</i>
Overall assessment	0	++	++

113. The preferred option is to amend the Act to give the Authority a limited power to require information from non-participants. This is also the Minister's preferred option in the Cabinet paper.

What are the marginal costs and benefits of the preferred option in the Cabinet paper?

Preferred option: Give Authority limited power to compel information from non-industry participants

Affected groups	Comment	Impact	Evidence Certainty
Additional costs of the preferred option compared to taking no action			
Regulated groups	Parties subject to information requirements will face additional obligations and may be more inclined to seek legal representation.	Non-monetised, low.	Medium.
Regulators	The Authority will need to ensure it is exercising these powers within the law.	Non-monetised, low.	Medium. The Authority has existing capability and the powers are similar to those of other regulators.
Others (eg, wider govt, consumers, etc.)			
Total monetised costs			
Non-monetised costs		Low.	Medium.
Additional benefits of the preferred option compared to taking no action			
Regulated groups			
Regulators	Compliance action will be more efficient through being able to seek information more readily.	Non-monetised, medium.	Medium.
Others (eg, wider govt, consumers, etc.)	May make enforcement more effective, which could have flow-on impacts on rates of compliance in the overall system.	Non-monetised, low.	Medium.
Total monetised benefits			
Non-monetised benefits		Medium.	Medium.

Problem (ix) - The Authority cannot protect confidential information or deter breaches of confidentiality orders

114. All information held by the Authority is subject to the *Official Information Act* (OIA). Under the status quo, the Authority applies the OIA every time it receives a request for information obtained when undertaking investigations, reviews and compliance enforcement. This includes applying the public interest balancing test in section 9(1) of the OIA, even where information is clearly commercially sensitive or was provided voluntarily in confidence. This often involves a line-by-line analysis of documents, consultation with the original information provider, and legal assessment of the public interest in disclosure. This is time-consuming, legally uncertain and exposes the Authority to risk of error.
115. The Authority informs parties at the outset that any information they provide may be subject to disclosure under the OIA. The Authority has advised the current application of the OIA creates reluctance among businesses and individuals to provide sensitive or commercially confidential information, due to fears that it may be disclosed. Parties are concerned that commercially sensitive material could be accessed by competitors, while whistleblowers and complainants are concerned about the risk of retaliation if their identity is disclosed.
116. The same issues were identified in a recent targeted review of the *Commerce Act*.

Option One – Status quo

117. The Authority could seek to improve its internal procedures to protect confidential information requested under the OIA. This could include providing stronger assurances to parties that are reluctant to provide information.
118. While operational improvements may marginally improve confidence in the Authority's handling of confidential information, they cannot resolve the core issue that information provided to the Authority remains subject to potential disclosure under the OIA, which undermines the willingness of parties to provide it.

Option Two – Empower the Authority to issue confidentiality orders, including the creation of an offence for breaching a confidentiality order

119. This option would give the Authority a power to issue confidentiality orders similar to those available to the Commerce Commission under section 100 of the *Commerce Act*.²⁴ The Authority would be able to issue a confidentiality order where it considers it necessary or desirable to do so to protect the integrity of investigations, reviews or compliance enforcement functions. These orders would protect specific information or documents from being published, communicated, or given in evidence.
120. This option would enable the Authority to refuse requests for confidential information under the OIA, for a limited period. This would improve business confidence when providing information to the Commission.

²⁴ The Government recently agreed to introduce legislation to extend the provisions in s100 of the *Commerce Act*. The preferred option in this RIS draws on that decision.

121. Similar protections already exist for other economic regulators in New Zealand. For example, the Commerce Commission (section 100 of the *Commerce Act*), FMA (sections 59 and 60 of the *Financial Markets Authority Act*) and the Reserve Bank (RBNZ) (section 269 of the *Reserve Bank of New Zealand Act 2021*) have confidentiality protections that restrict disclosure of information collected in the course of their functions.
122. An associate offence is proposed under Option Two so that breaches of confidentiality orders can be credibly deterred. The remedies would align with those available under the Commerce Act:²⁵
- a. In the case of an individual – a fine not exceeding \$4000.
 - b. In any other case – a fine not exceeding \$12,000.
123. The Ministry of Justice (MoJ) has previously indicated its discomfort with legislative exemptions to the OIA and would prefer to maintain the current legal framework, supplemented by procedural enhancements. This view is consistent with New Zealand’s commitment to the Open Government Partnership, which MoJ is leading.²⁶
124. Nevertheless, we consider there is a principled case for stronger protections, especially where the Authority is exercising significant investigative powers and where similar protections already exist for other regulators such as the Commerce Commission, RBNZ and FMA.

How do the options compare to the status quo/counterfactual?

	<i>Option One – Status Quo</i>	<i>Option Two – Empower Authority to issue confidentiality orders, including the creation of an offence for breaching a confidentiality order</i>
Effectiveness	0	+ <i>Would improve certainty of information protection and improve confidence of parties to provide sensitive information</i>
Proportionality	0	+ Improved confidence in confidentiality is more proportionate to the value of the information and the potential harm from inadvertent release of sensitive information
Efficiency	0	+ Would streamline information handling and reduce costs of assessing OIA requests

²⁵ Commerce Act 1986, s 100(4).

²⁶ <https://www.opengovpartnership.org/members/new-zealand/>

Overall assessment	0	++
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125. The preferred option is to amend the Act to give the Authority a power to issue confidentiality orders (Option Two). This is also the Minister’s preferred option in the Cabinet paper.

What are the marginal costs and benefits of the preferred option in the Cabinet paper?

Preferred option: Empower Authority to issue confidentiality orders

Affected groups	Comment	Impact	Evidence Certainty
Additional costs of the preferred option compared to taking no action			
Regulated groups	Parties subject to confidentiality orders may face additional obligations. Clear and unambiguous conditions would mitigate this burden.	Non-monetised, low.	Medium – assuming conditions are clear.
Regulators	The Authority will need to develop processes and systems to manage its use of confidentiality orders.	Non-monetised, low.	Medium – the Authority has existing capability.
Others (eg, wider govt, consumers, etc.)	Less information may be disclosed under the OIA, including where disclosure might be in the public interest. This cost is balanced by greater provision of confidential information to support the Authority’s functions.	Non-monetised, low.	Medium – the proposal is aligned with similar powers used routinely by other regulators.
Total monetised costs			
Non-monetised costs		Low	
Additional benefits of the preferred option compared to taking no action			
Regulated groups	Greater confidence that sensitive information will be protected.	Non-monetised, medium.	Medium – supported by evidence from targeted review of <i>Commerce Act</i> .

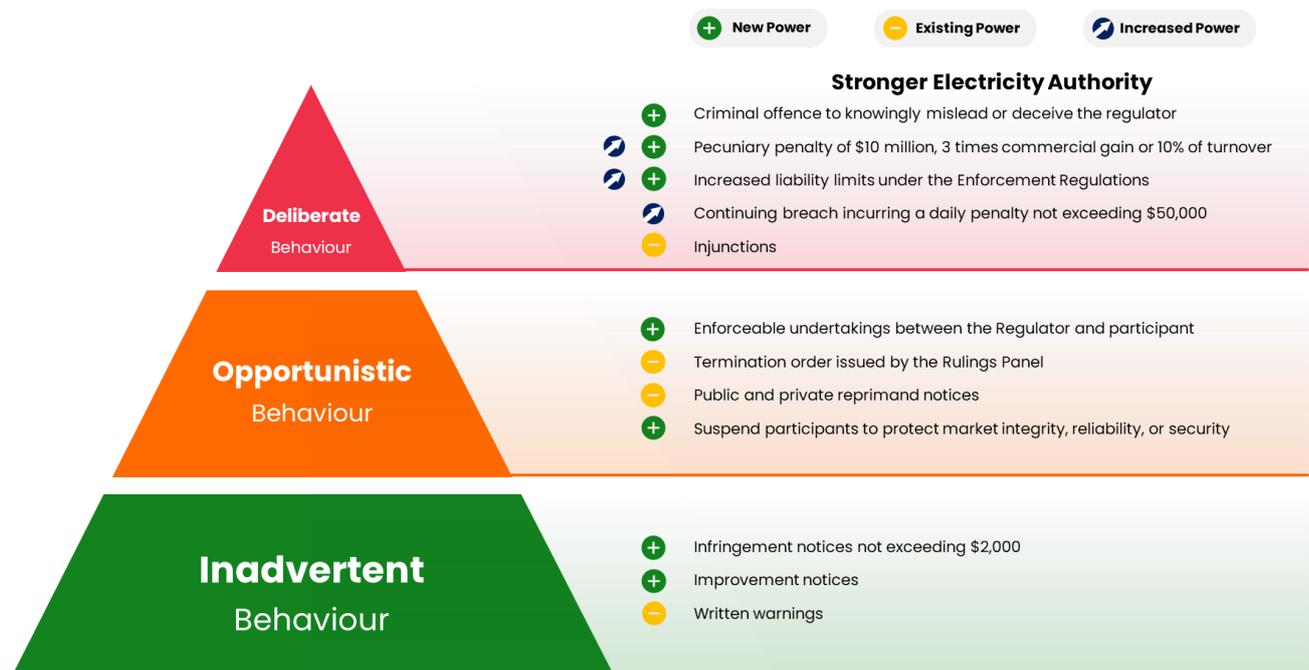
Regulators	Greater ability to use confidential information to support the Authority's functions.	Non-monetised, medium	Medium – supported by experience of other regulators.
Others (eg, wider govt, consumers, etc.)	Greater confidence that improved access to information will make the Authority a more effective regulator.	Non-monetised, medium	Medium – supported by evidence from targeted review of <i>Commerce Act</i> .
Total monetised benefits			
Non-monetised benefits		Medium	

Section 3: Delivering an option

How will the proposal be implemented?

126. The preferred options will be implemented via a Bill amending *the Electricity Industry Act 2010*. A bill is expected to be introduced in 2026.
127. Some preferred options will require the Authority to review its compliance strategy and develop new procedures and systems to implement new compliance tools – particularly for the infringement regime, and new retailer entry criteria.

Figure 1. Stronger Electricity Authority – Responsive Regulation Model



128. The Authority has indicated administering infringement notices would require the establishment of a new compliance team. It notes that issuing infringements is a distinct regulatory function which differs significantly from the Authority's current focus on investigating conduct. It is ultimately up to the Authority to determine how best to implement this within its organisational priorities. Depending on how the Authority intends to fund an increase in compliance capability, MBIE will need to consider whether to support an increase in the electricity levy, or whether to suggest that reprioritisation is more appropriate.
129. Increasing the maximum penalty available on application to the High Court could increase the Authority's litigation costs, for which it has a contingent appropriation. MBIE will monitor the Authority's use of litigation funding over time.
130. Increasing the maximum penalty will also require enabling regulations that prescribe the particular matters in the Code for which a breach would qualify for a penalty greater than \$2 million. These regulations are to be developed during the second phase of the Government's action to improve electricity regulation. That phase will also review the existing regulated limits on liability applying in relation to certain types of breaches.
131. The offences that attract higher pecuniary penalties will have an extended implementation period so that they do not add pressure to the Ministry of Justice's Te Au Reka case management reforms. For this reason, offences that use High Court time are likely to be delayed until the end of 2027.

How will the proposal be monitored, evaluated, and reviewed?

132. The Authority monitors the performance of the electricity industry and undertakes post-implementation reviews of changes to the Code and its other functions. The Authority reports quarterly and annually to the Minister for Energy on its performance as an independent crown entity. MBIE has a statutory role monitoring the Authority and routinely advises the minister on the Authority's performance and related electricity policy outcomes as part of its energy regulatory stewardship responsibilities.²⁷
133. MBIE's Energy Markets branch is responsible for energy policy and will play a role in monitoring the efficiency and effectiveness of the preferred options when they are implemented. MBIE has a positive working relationship with the Authority, and there is an expectation that the Authority will communicate (to the monitoring agency, and through annual reporting) whether the options are effective following implementation.

²⁷ Crown Entities Act 2004, s 27A.