

Compliance Strategy

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Version control

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1.0	June 2022	Created
2.0	December 2022	Updated in light of Electricity Industry Amendment Act 2022

Electricity Authority Compliance Strategy

The Electricity Authority (Authority) is the government agency with responsibility for providing regulatory oversight of the electricity sector (the “regulator”).

Our primary function is to regulate New Zealand’s electricity system and markets, enforcing the rules and holding industry participants to account through active monitoring and enforcement. When the Authority’s additional objective comes into effect from 31 December 2022 another important function will be to protect the interests of domestic and small business consumers in relation to the supply of electricity to those consumers. Where required, we also facilitate the development and enhancement of the markets to ensure their robustness and the delivery of long-term benefits to consumers.

Purpose

The Authority has developed this Compliance Strategy to structure its compliance approach and focus its resources on the most serious and highest-priority risks.

This strategy outlines the Authority’s compliance approach for participants operating in the electricity sector. It is intended to establish the guiding principles for the Authority, under which further policies and procedures may be developed for specific compliance activities such as participant registration, participant auditing, education, monitoring, investigation, domestic and small business consumer protection and enforcement.

A successful Compliance Strategy will draw on a range of options for encouraging and enabling compliance and for responding to non-compliance. Compliance tools can range from educating and assisting a participant to comply where the risk presented is minor, to laying a complaint with the Rulings Panel.

Having a range of compliance tools enables the Authority to respond proportionately to the risk posed by the non-compliance and to adjust its response in an individual case by escalating or de-escalating the level of its approach as necessary.

Outcomes

The Authority expects the Compliance Strategy to deliver the following key outcomes:

- Authority staff, industry participants and stakeholders will have a clear understanding of the Authority’s Compliance Strategy and compliance approach
- Authority staff will have a clear understanding of the function of Compliance across the Authority and their role under the Compliance Strategy
- confirm the Authority has the appropriate tools and uses them appropriately to support the strategy
- streamline and make efficient use of Authority resources to encourage participant compliance
- signal to participants, and to the wider regulated sector, the level of seriousness with which the Authority views compliance and the risks breaches pose.

Compliance Strategic Focus



The Authority is setting its Compliance Strategy to align with its organisational strategy reset of 2020

The Authority's primary function remains to regulate New Zealand's electricity system and markets, actively monitoring behaviour, enforcing the rules and holding industry participants to account. However, we recognise that as the regulator, our work also provides a platform for the country to achieve its aspirations for enhanced quality of life, prosperity and environment.

Five key sector ambitions now focus us:

- we want consumer centricity to guide regulation and the industry
- we want low-emissions energy to electrify the economy
- we want to build trust and confidence in the industry for all stakeholders
- we want to see thriving competition delivering better outcomes for New Zealanders
- we want to see innovation flourishing.

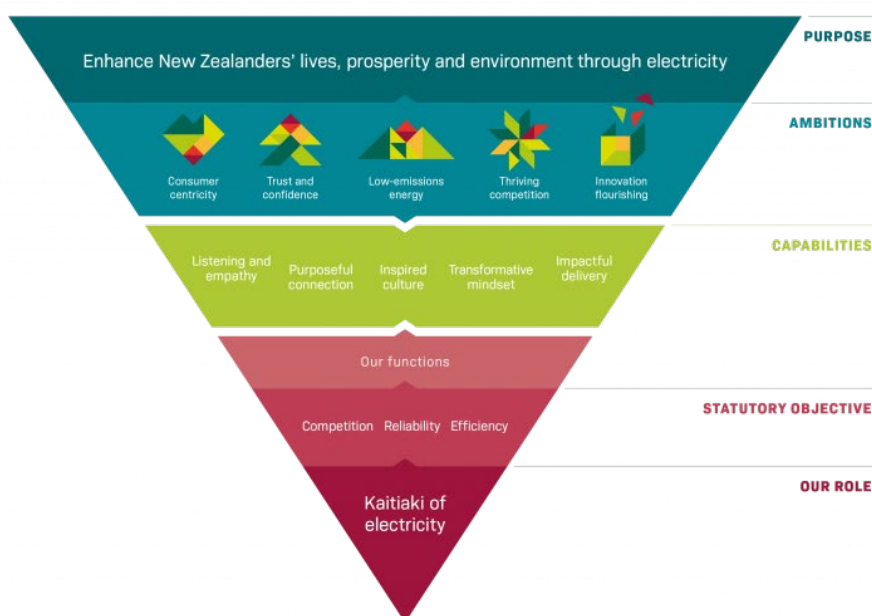
The compliance functions support and are guided by the Authority's strategic sector ambitions, with a focus on building trust and confidence in the industry for all stakeholders. Demonstrating that participants are held to account for high standards and improved industry practices drives support for the market-based regime and confidence in the Authority as the regulator. Transparent and predictable enforcement of rules builds trust and confidence that all participants are held to the same standard solidifying regulatory confidence.

Five key strategic capabilities underpin our success:

- listening and empathy
- purposeful connection
- inspired culture
- transformative mindset
- impactful delivery.

This ensures delivery against our main statutory objective to promote competition in, reliable supply by, and efficient operation of, the electricity industry for the long-term benefit of consumers, and creates a platform for economic recovery, growth and wider long-term benefit for New Zealand. This also ensures delivery against the Authority's additional statutory objective, which takes effect from 31 December 2022, to protect the interests of domestic and small business consumers in relation to the supply of electricity to those consumers.

We recognise that high levels of trust and confidence by both consumers and industry participants will drive support and advocacy for a market-based electricity regime. Demonstrable enforcement activity, and high levels of voluntary compliance by participants furthers the competition, reliability and efficiency objectives set out in the legislation and underpins confidence in the markets that we operate.



Legislation

The Authority was established by the government in 2010 under the Electricity Industry Act 2010 (Act) to oversee the governance and operation of New Zealand's electricity market. The Act authorises the making of regulations and the Electricity Industry Participation Code 2010 (Code).

The Authority is empowered by the following legislation in carrying out its activities:

- The Electricity Industry Act 2010 (Act)
- Electricity Industry Amendment Act 2022 (Amendment Act)
- Electricity Industry Participation Code 2010 (Code)
- The Electricity Industry (Enforcement) Regulations 2010
- The Electricity (Low Fixed Charge Tariff Option for Domestic Consumers) Regulations 2004
- Electricity Industry (Levy of Industry Participants) Regulations 2010
- Electricity Industry (Participants and Roles) Regulations 2012.

The Act sets out our functions, describing the activities we perform and the tools through which we can pursue our statutory objectives and ambitions. They can be summarised into four main functions.

Operate the electricity system and markets

We are responsible for the day-to-day operation of the electricity system and markets. To achieve this, we contract out some services including the role of system operator, which provides the real-time coordination of sending generated electricity across the national grid to meet demand from consumers.

Monitor, inform and educate

Transparency and understanding are vital to the operation of the electricity markets. Our market monitoring, information and education work focuses on making data, information and tools available and improving awareness of how electricity markets function.

Enforce compliance

We ensure the Act, regulations made under the Act, and the Code are followed by electricity industry participants. Our compliance function also helps improve the industry generally, by sharing lessons learned to support the education of participants, and by identifying and resolving ongoing or systemic issues.

Promote market development

To enable New Zealand's electricity markets to deliver better outcomes for consumers, we maintain a responsive regulatory environment that both reflects industry's current state and supports innovation and change. Key tools for market development include market facilitation measures and amending the Code. We have accountability through well-informed, well-structured rulemaking to ensure Code reform is well designed, with consideration of implementation issues.

The combined functions give us a range of tools to promote certain behaviours or outputs from the sector.

Our approach to compliance

Compliance means meeting or exceeding the requirements of the regulatory framework. Voluntary compliance means that participants are choosing to comply. We seek the highest possible levels of voluntary compliance. In terms of Authority activity, "compliance interventions" refers to the full range of actions aimed at achieving compliance in the electricity sector.

Proactive problem-solving

We take a proactive problem-solving approach to addressing risks. Sometimes, a pattern of non-compliance will have an underlying cause and addressing that cause will solve the problem of non-compliance. We are open to exploring ways of addressing the underlying issues.

To identify these patterns, we will draw together and use all the information sources legally available to us, including:

- participant audits
- education
- monitoring
- investigation
- enforcement.

We will combine this with information we are permitted to access from other compliance agencies, participants, members of the public and others. All these information sources will help build a picture – showing patterns of risk, attitude, behaviour, and capability.

Our responsibility is to maximise participants' compliance for the benefit and protection of consumers

The Authority is responsible for maximising participant compliance with the regulatory framework. To achieve this, we will focus our efforts and tailor our interventions in line with the levels of risk, the actual or potential consequences, compliance history, behaviour, attitude and capability of participants.

The Authority is focused on working with participants to improve industry practice and consumer outcomes. Poor compliance is at the expense of the consumer and in favour of commercial participants (unless the action by the participant was purely negligent or careless).

Continuous improvement

We strive to continually improve and make ongoing improvements in outcomes by working with participants and industry bodies to promote voluntary compliance culture across the industry.

Focus on risk

We think it is important to focus on competition, reliability, efficiency and consumer protection but we also believe we need to focus on the biggest risks. By risk we mean two things:

- the magnitude of the consequences that would eventuate should an event occur
- the likelihood of that event occurring.

The Authority has previously had a focus on reactive activities – responding to breaches after they have occurred. The expectation for participants to self-report breaches remains, as does the obligation on participants to report other participants breaching the Code. While this continues to be important, we believe focusing on preventing breaches is equally important, and we will do this through proactive activities. The Compliance Monitoring Framework will help inform our proactive monitoring activities.

In addition, we will concentrate our activities where we see a pattern of problems or issues. These patterns might occur in certain parts of the electricity sector, with individual or types of participants, types of infrastructure, or practices, or in particular geographic areas.

Risk, attitude, behaviour and capability will influence the type of compliance approach we take

We expect participants to operate competitively, reliably and efficiently, and most want to do so, but it may be that:

- barriers such as a lack of awareness, understanding, or capability may prevent some participants from operating in a compliant manner
- some will make efforts in these areas only in proportion to their perceived risk of non-compliance.

The number of participants in these different categories varies in different parts of the electricity sector. Even within organisations, different staff will have different attitudes to compliance.

We aim to:

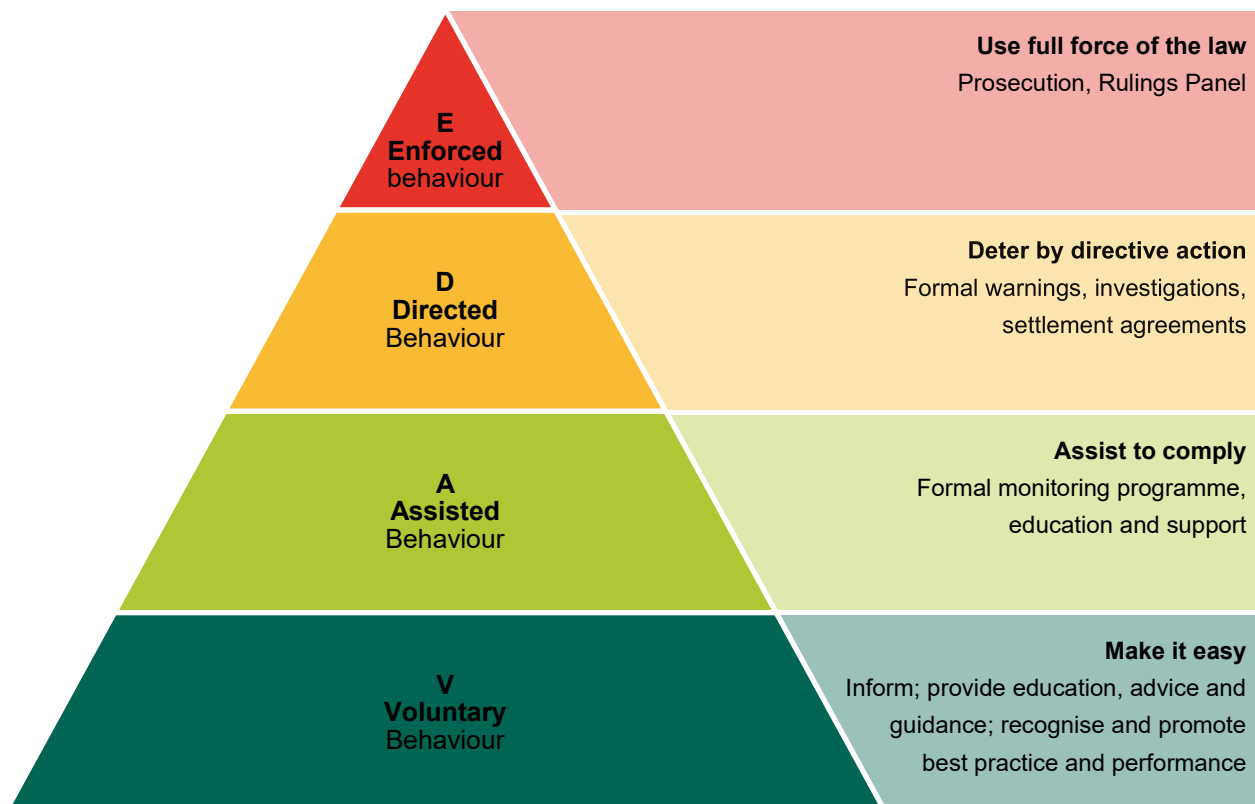
- provide accessible, timely information and support to help regulated parties understand and meet their regulatory obligations
- deter, through monitoring, those who are reluctant to comply
- use the full force of the law for those who do not want to comply or are wilfully negligent.

A pattern of problems or issues with a participant is likely to indicate issues with that participant's attitude to compliance, and vice versa. Where risk and attitude issues coincide, we will be more likely to act and that response is more likely to be at the higher end of the enforcement spectrum. Where there are low risks and good attitudes, we are more likely to focus on providing information, education and encouragement.

Electricity Authority's Compliance Operating Model is based on VADE

The Compliance Strategy is underpinned by what is referred to as the VADE operating model. VADE is an acronym (Voluntary, Assisted, Directed, Enforced), the specific components of which are set out in more detail below. The VADE model spans the full spectrum of compliance elements. However, the principle is that enforcement (such as prosecution) acts as the incentive for voluntary

compliance. The model allows Authority staff to exercise discretion and ensures that any compliance intervention is commensurate with the level of non-compliance. The VADE model below sets out some of the interventions and regulatory tools available to the Authority.



The Authority’s compliance activity spans a range of different activities, from education to laying a formal complaint to the Rulings Panel, or prosecution. The shape of the triangle indicates the amount of work the Authority expects to do in each activity area. Most activity will be in the bottom half of the triangle, focused on supporting participants’ compliance. Further up the triangle indicates more serious participant behaviour and therefore compliance activity, of which there will be fewer instances.

Voluntary Compliance

Voluntary compliance is the goal of any compliance regime. Ideally, participants are aware of relevant legislation and voluntarily comply. The compliance focus is on educating and informing participants and maintaining positive relationships. By focusing resources on education, we expect to prevent compliance matters escalating.

Assisted Compliance

Participants wish to comply with relevant legislation but may not be sufficiently informed. The compliance approach is intended to be pragmatic, with a focus on providing effective compliance advice to participants. This approach is most applicable to situations where consequences of non-compliance are not serious.

Directed Compliance

Non-compliance may be opportunistic due to, for example, competing operational priorities, or may be inadvertent. Directed compliance refers to the compliance tools that are available to effect a desired behavioural change. Examples include breach recorded against a participant, issuance of a written warning, formal investigation.

Enforced

Enforced compliance will be used in the most serious breaches to the Code. The full extent of the law will be applied, and cases will be formally investigated and potentially a Rulings Panel decision will be sought.

The right tools for the job

The Authority has a range of interventions and tools available. Some are designed to assist electricity sector participants to achieve compliance, and others are about using enforcement where necessary, including:

- amending the Code
- contractual arrangements with MOSPs
- audits
- monitoring and information requests
- approving exemptions from complying with Code
- education and training for participants
- issuing guidance
- issuing warnings
- formal investigations
- facilitating settlements
- complaints to the Rulings Panel.

Our approach is tailored to the circumstances. We select interventions we think will have the most effect on achieving our outcomes, considering risk, attitude and capability, plus the likely consequences of non-compliance occurring.

Decision-making on compliance interventions

Decisions regarding the Authority's compliance interventions will consider the participant's attitude towards compliance and will be:

- logical, timely and considered
- evidence-based
- fair, impartial, responsible and trustworthy
- sufficiently robust and well documented to withstand judicial review
- proportionate to the risk and actual or potential impact posed by the non-compliant behaviour
- consistent with the law, the public interest, and the Authority's policies and values.

How we will operate

We will take whatever action we consider will have the greatest impact in achieving our outcomes.

Interventions form a sequence or a hierarchy, starting with low-level activity and moving to more severe measures. However, when selecting the right tool for the right job sometimes more severe interventions will be justified as the first action the Authority takes.

Engagement with the sector

We will look to engage with the relevant parts of the electricity sector and other stakeholders to access their thinking on what strategies and information would be most effective in promoting our competitive, reliable, efficient and consumer protection outcomes. The Authority will introduce compliance-specific forums focused on improving overall industry performance.

Insights

We will promote a compliance culture by providing industry insights. We will embrace regulatory reporting to benchmark performance, and support participants to learn more about their business through data insights, enhancing competitiveness, efficiency and risk management.

Our approach to our relationships

We will develop relationships appropriate to the circumstances, with:

- partners (e.g. Commerce Commission): we will work together where we share long-term common goals, and will consider setting up formal arrangements where appropriate
- stakeholders: we will seek the views of those affected by our activities
- the sector: we will engage with sector participants based on our assessment of risk, their attitude, behaviour, and capability.

Guiding Principles

Fairness

We expect our people to act with the highest levels of integrity, as set out in the *State Services - Standards of Integrity and Conduct*. Our interventions will be fair, impartial, responsible and trustworthy.

Consistency

We aim to be consistent. This means we will generally take similar approaches in similar circumstances. This does not mean uniformity of decision-making. Each case is unique and must be handled as such.

Timeliness

We will respond in an effective and timely manner in accordance with our legislative and organisational obligations.

Transparency and openness

We are clear about our approach to compliance and how we make our decisions. Those affected by our decisions can ask questions and ask us to review our decisions. We will always be able to explain our actions and reconsider them in the light of new information.

Targeted strategies for sub-sectors or types of participants/practices/equipment

From time to time, we will develop specific plans or programmes for specific parts of the electricity sector, possibly in conjunction with other agencies and/or with sector organisations and participants. Typically, these will be driven by our understanding of changes in risk profiles and the need to respond to problems with a more targeted approach than is provided by our general regulatory and compliance activities.

Supporting good practice

The Authority's priority is to get the basics in place, and to focus on eliminating problems. We will, however, always be looking to explore ways of recognising excellence and promoting good practice.

Our compliance interventions

The Authority will select the right intervention for the job, based on the circumstances of the case.

Review of this Strategy

Every two years from the publication of this Strategy, the Authority will undertake a review of the effectiveness of this strategy. Input will be sought from a range of stakeholders including participants and consumers.