

Electricity Industry Participation Code Amendment (Updating and Clarifying Part 6A Obligations) 2024

Under section 38 of the Electricity Industry Act 2010, and having complied with section 39 of that Act, I make the following amendment to the Electricity Industry Participation Code 2010.

At Wellington on the 16th day of April 2024



Anna Kominik
Chair
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Certified in order for signature:



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5 April 2024

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Amendment

1 Title

This is the Electricity Industry Participation Code Amendment (Updating and Clarifying Part 6A Obligations) 2024.

2 Commencement

This amendment comes into force on **1 June 2024**.

3 Code amended

This amendment amends the Electricity Industry Participation Code 2010.

4 Clause 6A.1 amended (Purpose and outline of this Part)

- (1) In clause 6A.1(2)(c), replace “persons involved in **distributors** from paying” with “payments to”.
- (2) In clause 6A.1(2)(d), replace “**distributors**, or electricity trusts or consumer co-operatives involved in distributors,” with “**distributors or specified persons**”.

5 Clause 6A.3 amended (Corporate separation and arm’s-length rules applying to distributors and connected generators and connected retailers)

- (1) In clause 6A.3(1), replace “The person or persons who carry” with “Every **participant** and **specified person** who carries”.
- (2) Replace clause 6A.3(2) with:

“(2) The following persons must comply, and ensure that the person’s businesses comply, with the arm’s-length rules:

 - (a) every **distributor** in respect of which there is a connected generator or a connected retailer, and any other **participant** involved in that **distributor**;
 - (b) a connected generator in respect of the **distributor**, and any other **participant** involved in the connected generator;
 - (c) a connected retailer in respect of the **distributor**, and any other **participant** involved in the connected retailer;
 - (d) a **specified person** who is involved in the **distributor**, and either a connected generator or a connected retailer in respect of the **distributor**.”

6 Clause 6A.4 amended (Distributor agreements)

- (1) In clause 6A.4(1)—
 - (a) delete “director of a”;
 - (b) delete “ensure that”;

- (c) in paragraph (a), replace “the **distribution** business has” with “have”;
- (d) in paragraph (b), insert “ensure that” before “the terms of that **distributor agreement**”;
- (e) in paragraph (c), replace “the business operates” with “operate”; and
- (f) in paragraph (d):
 - (i) replace “the business **publishes**” with “**publish**”; and
 - (ii) replace “provides” with “provide”.
- (2) In clause 6A.4(4), replace the chapeau with:

“(4) A **distributor** required to have a **distributor agreement** under this clause must submit to the **Authority** a statement indicating whether, in the preceding calendar year,—”
- (3) After clause 6A.4(4), insert:

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

 - (a) in the **prescribed form**;
 - (b) signed and dated by a director of the **distributor** and either—
 - (i) another director of the **distributor**; or
 - (ii) the **distributor’s** chief financial officer, or a person holding the equivalent position; or
 - (iii) the **distributor’s** chief executive officer, or a person holding the equivalent position; and
 - (c) submitted by 31 March in respect of the preceding calendar year.

(4B) The statement provided under subclause (4) must be **published** by the **distributor**.”
- (4) Replace clause 6A.4(5) with:

“(5) A **distributor** must not **publish** or provide the **Authority** with any information under this clause that, at the time the information was **published** or provided, was false or misleading in a material particular.”

7 Clause 6A.5 amended (Person involved in distributor must not pay for transfer of retail customers to connected retailers)

- (1) In the heading to clause 6A.5—
 - (a) replace “**Person involved in distributor must not pay**” with “**Payments**”; and
 - (b) after “**connected retailers**”, insert “**prohibited**”.
- (2) Replace clause 6A.5(2) with:

“(2) The following persons must comply with subclause (1):

 - (a) the **distributor** and any other **participant** involved in the **distributor**;
 - (b) a connected generator in respect of the **distributor** and any other **participant** involved in the connected generator;
 - (c) a connected retailer in respect of the **distributor** and any other **participant** involved in the connected retailer;
 - (d) a **specified person** who is involved in the **distributor** and either a connected generator or connected retailer in respect of the **distributor**.”
 - (3) Revoke clause 6A.5(4).

8 Clause 6A.6 amended (No discrimination when paying rebates or dividends)

- (1) Replace clause 6A.6(3) with:

- “(3) The persons are—
 - (a) the **distributor**, and any director of the **distributor** who is involved in the connected retailer; and
 - (b) any customer trust or community trust that is involved in the **distributor** and the connected retailer, and the trustees of that consumer trust or community trust; and
 - (c) any customer co-operative that is involved in the **distributor** and the connected retailer, and the directors of that customer co-operative.”
- (2) Revoke clause 6A.6(5).

9 Clause 6A.7 amended (Disclosure of information to Authority)

- (1) In clause 6A.7(1):
 - (a) delete “director of a”; and
 - (b) replace “ensure that the **distributor** discloses” with “disclose”.
- (2) Replace clause 6A.7(3) with:
 - “(3) The statement provided under subclause (2) must be:
 - (a) in the **prescribed form**; and
 - (b) signed and dated by a director of the **distributor** and either—
 - (i) another director of the **distributor**; or
 - (ii) the **distributor’s** chief financial officer, or a person holding the equivalent position; or
 - (iii) the **distributor’s** chief executive officer, or a person holding an equivalent position.”
- (3) In clause 6A.7(4), after “The statement”, insert “provided under subclause (2)”.
- (4) Replace clause 6A.7(5) with:
 - “(5) A **distributor** must not **publish** or provide the **Authority** with any information under this clause that, at the time the information was disclosed, was false or misleading in a material particular.”

10 Clause 6A.8 amended (Directors must report compliance with arm’s-length rules)

- (1) In the heading to clause 6A.8, replace “**Directors must report**” with “**Reporting**”.
- (2) In clause 6A.8(1):
 - (a) replace “director of a business to which the arm’s-length rules apply” with “person referred to in clause 6A.3(2)”; and
 - (b) replace “the director” with “the person”.
- (3) After clause 6A.8(1), insert:
 - “(1A)The statement provided under subclause (1) must be:
 - (a) in the **prescribed form**; and
 - (b) unless subclause (1B) or (1C) applies, signed and dated by a director of the **participant** and either—
 - (i) another director of the **participant**; or
 - (ii) the **participant’s** chief financial officer, or a person holding the equivalent position; or
 - (iii) the **participant’s** chief executive officer, or a person holding an equivalent position.

- (1B) If the person providing the statement under subclause (1) is a natural person, the statement must be signed and dated by that person.
- (1C) If the person providing the statement under subclause (1) is a **specified person** but is not a natural person, the statement must be signed and dated by an authorised representative of that **specified person**.”
- (4) Replace clause 6A.8(2) with:
“(2) Statements provided under subclause (1) must be **published** by the **Authority** and, if the person who provided the statement is a **participant**, the **participant**.”
- (5) Replace clause 6A.8(3) with:
“(3) A person must not **publish** or provide the **Authority** with any information under this clause that, at the time the information was **published** or provided, was false or misleading in a material particular.”
- 11 Schedule 6A.1, clause 1 amended**
In Schedule 6A.1, clause 1(1), replace “businesses” with “the **distributors**, connected retailers and connected generators”.
- 12 Schedule 6A.1, clause 2 amended**
In Schedule 6A.1, clause 2(1), definition of **common parent**, replace “person” with “**participant or specified person**”.
- 13 Schedule 6A.1, clause 3A replaced**
Replace Schedule 6A.1, clause 3A with:
“**3A Duty to ensure arm’s-length objective is met**
Business A, business B and every parent of either business A or B (where that parent is a **participant or specified person** involved in both business A and business B) must take all reasonable steps to ensure that the arm’s-length objective in clause 1 is met.”
- 14 Schedule 6A.1, clause 3B amended**
In Schedule 6A.1, clause 3B, replace “every parent of business A,” with “every parent of business A (where that parent is a **participant or specified person** involved in both business A and business B),”.
- 15 Schedule 6A.1, clause 3C replaced**
Replace Schedule 6A.1, clause 3C with:
“**3C Duty not to prefer interests of business B**
Business A, and every director or manager of business A who is also involved in business B, must not, when exercising powers or performing duties in connection with business A, act in a manner that they know or ought reasonably to know would prefer the interests of business B over the interests of business A.”
- 16 Schedule 6A.1, clause 3E amended**
In Schedule 6A.1, clause 3E, replace “A director or manager of business A” with “Business A, and every director or manager of business A who is also involved in business B,”.

17 Schedule 6A.1, clause 3F replaced

Replace Schedule 6A.1, clause 3F with:

“3F Duty on parents of business A

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

18 Schedule 6A.1, clause 3J amended

In Schedule 6A.1, clause 3J(1), replace “no person” with “no **participant** or **specified person**”.

19 Schedule 6A.1, clause 3K amended

In Schedule 6A.1, clause 3K(2), after “every parent of trust A”, insert “(where trust A, or the parent of trust A, is a **participant** or **specified person** involved in both business A and business B)”.

20 Schedule 6A.1, clause 3M amended

- (1) In Schedule 6A.1, clause 3M(1), after “every parent of business A”, insert “(where that parent is a **participant** or **specified person**)”.
- (2) In Schedule 6A.1, clause 3M(2), after “every parent of business A”, insert “(where that parent is a **participant** or **specified person**)”.

Explanatory Note

This note is not part of the amendment, but is intended to indicate its general effect.

This amendment to the Electricity Industry Participation Code 2010 (“Code”) comes into force on 1 June 2024.

The amendment updates and clarifies the scope and effect of obligations in Part 6A of the Code, which relates to the separation of distribution from certain generation and retailing. Part 6A was inserted into the Code by the Electricity Industry Amendment Act 2022, and this amendment makes consequential changes to:

- (a) update and clarify who has obligations under Part 6A in a way that is appropriate in the context of the Code and consistent with the Act;
- (b) remove the requirement for a mental element to establish a breach of some of the Part 6A rules, which is no longer necessary now that breaches are dealt with under the Code’s enforcement regime; and

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

More information about the amendment is available on the Electricity Authority's website <https://www.ea.govt.nz/projects/all/code-amendment-omnibus/>
