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Submission on the Draft Compliance Strategy

Introduction

1. This is Vector Limited's (Vector) submission on the Electricity Authority's (the Authority) *Draft Compliance Strategy* (the Draft Strategy), published for consultation on 12 October 2021.
2. Vector agrees with the Authority's five key sector ambitions that compliance functions are intended to support: consumer centricity, low-emissions energy, trust and confidence in the industry, thriving competition, and innovation flourishing. We broadly agree with the purpose, outcomes and strategic focus of the Draft Strategy, and that the Authority should focus its resources on the most serious and highest priority risks.
3. We set out our feedback on the Draft Strategy below and make some suggestions we believe would enable industry participants to better promote and deliver the Strategy's intended outcomes.
4. Most of the issues raised in this submission are related to metering and related services, which have been the subject of multiple compliance processes in recent years and have implications for our smart metering business (Vector Metering). With the rapid evolution of technologies and the electricity market, we expect new issues around smart metering compliance to emerge in the coming years, and as smart metering becomes critically important in industry participants' transition to a digital and low carbon energy future.

Approach to compliance

5. Vector agrees with the principles guiding the development of the Draft Strategy, which include fairness, consistency, transparency and openness, targeted strategies, supporting good practice, and the right intervention for the job.
6. We agree that the Authority should "seek the highest possible levels of voluntary compliance"¹ and promote a "voluntary compliance culture"² across the industry, with enforcement acting as "the incentive for voluntary compliance".³
7. We consider statements the Authority made in previous reports regarding its approach to compliance to be highly relevant today. The Authority stated that it:

...take[s] a risk-based and proportionate approach to compliance, recognising that most industry participants want to comply with their regulatory obligations voluntarily, or can be encouraged or induced to do so;⁴

¹ Draft Compliance Strategy, page 5

² *Ibid.*, page 6

³ *Ibid.*, page 7

⁴ <https://www.ea.govt.nz/assets/dms-assets/24/24217Annual-report-2018.pdf>, page 43

...focus[es]...on facilitating voluntary compliance by providing information, education, encouragement and assistance;⁵ and

...[recognises that a] key risk of non-compliance is that innovation is stifled, but heavy-handed compliance can also stifle innovation and new competitors.⁶

8. We wish to see the above approach applied in audits of participants' compliance with the *Electricity Industry Participation Code 2010* (the Code). We believe a more flexible or voluntary approach is appropriate where non-compliance has not harmed any industry participants or consumers while a strict interpretation of the Code would have imposed costs on these parties or would not deliver any significant consumer benefit. In such cases, we suggest that the Authority consider: 1) the application of materiality thresholds before non-compliance is required to be reported or penalised, or 2) coming to an agreement with the relevant parties on a lower-cost resolution to a Code breach. We agree that compliance interventions should be "proportionate to the risk and actual or potential impact posed by the non-compliant behaviour".⁷
9. The further development of the Strategy could usefully be informed by the findings of more recent audits and the systemic breaches identified in those audits, i.e. 'practice imagined is practice actuated'. A risk profile of various breaches would signal to participants which types of breaches are likely to be serious and high risk or high impact. In our general view, only breaches that are likely to have a material impact on other participants or the market should be required to be reported, i.e. breach reporting should be subject to thresholds.

Barriers to compliance

10. As part of the development of policies and procedures that will support the proposed Strategy, we suggest that the Authority identify common barriers to achieving compliance and work with participants in minimising or removing those barriers. This supports the Authority's intention of "focus[ing] on eliminating problems".⁸
11. In Vector's experience, commonly experienced problems are driven by the following, among other factors:

- a. Complexity of some Code provisions

There are processes in the Code that are incredibly complex, making it challenging to achieve compliance or full compliance.

We support the development of guidelines and practice notes, to help participants better understand new/amended Code requirements (or even before a Code change is contemplated) and their implications for business operations. Guidelines could provide examples that have practical relevance, illustrating how compliance with specific requirements could look like in practice.

While the purpose of Code amendments is usually already discussed during consultations on those amendments, we suggest that, for greater clarity, the Authority include an explanatory note with all published Code amendments (i.e. prior to these amendments 'going live').

⁵ <https://www.ea.govt.nz/assets/dms-assets/24/24217Annual-report-2018.pdf>, page 43

⁶ <https://www.ea.govt.nz/assets/dms-assets/22/22210Electricity-Authority-SOI-2017-2021.pdf>, page 29

⁷ Draft Compliance Strategy, page 8

⁸ *Ibid.*, page 9

We also suggest that the Authority consider refreshing operational provisions of Part 10 of the Code that have been the source of confusion in the industry or the trigger for many non-compliances.

We further suggest that the Authority re-activate its annual omnibus Code review. While this review only considers technical and non-controversial changes to the Code, and amendments to improve clarity and consistency of Code provisions, it could help identify more complex issues that require further consideration by the Authority.

b. Reliance on third parties

There are requirements in the Code that require the cooperation of third parties (for example, to provide information) for the participant to become fully compliant. Issues affecting a number of our Commercial & Industrial (C&I) meters are beyond our control. Where third parties are not industry participants, it may be impossible for the obligated participant to ever achieve full compliance.

Examples of issues beyond the responsible participant's control include the following:

- There are sites that are non-certifiable, such as those that do not meet electrical compliance requirements, or the power quality is so bad. We propose an additional category for these sites.
- There are third party metering equipment owners (MEOs) who are causing switchboard issues or not fulfilling their obligation to ensure their assets are kept certified. Metering equipment providers (MEPs) responsible for compliance for 'mixed asset' sites are currently being penalised and 'called out' in performance audits. Vector Metering could go as far as displacing third party assets to ensure compliance at our cost, but this is not always practical or possible.
- From a network distribution perspective, wash-up files submitted by a retailer after our electricity distribution business has done the wash-up has been causing billing inefficiencies. We understand the Authority intended to investigate this matter as part of the Standing Data Formats Group (SDFG) workplan. We encourage the Authority to consider options to address billing timeline issues such as this as a matter of priority.

We seek clarity on how the Draft Strategy will deal with requirements that are impossible to comply with or can only be complied at great cost to the participant and its customers.

c. Impact of COVID-19

A considerable number of our metering jobs are put on hold because of the lack of access to sites due to COVID-19 restrictions. We expect to see this number decline with the relaxation of COVID-19 restrictions.

d. Impact of new technology

New technology could impact how compliance activities can be undertaken. For example, the life of some meters could be extended with new technology, rather than resorting to inspections or replacement.

Electric vehicle charging could also have implications for metering processes where the metering is not set up for bi-directional power flows, i.e. import-export.

e. Shortage of field service personnel

As our field service personnel are getting older, we are finding it more difficult to replace them with similarly skilled workers. This is impacting how we could comply with some requirements efficiently and in a timely manner. We acknowledge that the solutions to this issue require consideration of factors outside of the electricity sector, e.g. immigration.

Stakeholder engagements

12. For industry participants, the road to compliance and understanding the implications of new/amended requirements on multiple parts of their business operations are, in many respects, a discovery process. This is particularly the case for requirements that have not been tested in practice or for cases in unique circumstances.
13. Consistent with the Authority's key strategic capability of "listening and empathy",⁹ we support more education on compliance through the issuance of guidance and more informal and frequent Authority-industry engagements. We support using 'carrots and education' over a punitive compliance regime that could unintendedly limit innovation.
14. The Authority could spend more time understanding how market participants operate at a working and practical level. We believe many participants strive to comply with their requirements and may have developed innovative ways of dealing with issues that better meet their customers' needs. Competitive businesses such as MEPs face strong incentives to comply (to avoid penalties or an investigation) and focus on delivering improved services to their customers. Taking stakeholders along the journey, particularly those with direct relationships with consumers, help ensure that compliance processes better promote the interest of consumers.
15. We therefore suggest more informal engagements between the Authority and participants around compliance issues than is currently the case. This would improve the predictability of rule enforcement (avoiding surprises) and create a shared understanding of the current problems and shared expectations on the potential pathways to resolving those problems. In our view, parties cannot over-communicate or over-collaborate in this regard.
16. To facilitate ongoing communication between the Authority and participants on metering and related issues, we suggest that the Authority facilitate a 'Metering Compliance Forum' (the Forum) for industry participants every three to four months. Vector holds a regular Metering Forum with our customers and contractors every few months.
17. We also suggest that to support the above proposed Forum, or as an alternative, the Authority establish a 'Metering Compliance Working Group' (the Working Group) with an independent chair or facilitator. This Working Group would consider metering and related issues, e.g. approved test house (ATH) related issues, on a day-to-day basis and could become the first point of contact for industry participants on metering compliance issues or any proposals for improvement. It could include representatives from MEPs, ATHs, retailers, auditors, consumer groups, and other interested parties.
18. We further suggest that the Authority be involved in the above proposed Forum and/or Working Group so their recommendations could inform future Code changes and the development of guidelines.

⁹ Draft Compliance Strategy, page 4

Specific proposals for consideration

19. Vector's submission (dated 23 April 2021) on the Ministry of Business, Innovation and Employment's consultation on the compliance framework for electricity made suggestions around investigation delays and Code change notifications. We reiterate those suggestions below for the Authority's consideration as part of the next steps for the Draft Strategy:

Investigation delays

Vector suggests that...a decision on any investigation by the Authority of an alleged Code breach be made within a reasonable timeframe. It has been our experience that an investigation could still be ongoing almost a year following its commencement, without any certainty around the timing of when a decision will be issued, or regular updates from the investigator around timeframes.

Delays in Code breach investigations create uncertainty that could have significant implications for the relevant participants' pending applications for exemption from certain Code provisions, or the actions they intend to undertake in response to various audit recommendations. This could, in turn, potentially have a significant impact on their customers. This lack of certainty could place a participant 'between a rock and a hard place' on how to proceed to address ongoing issues, pending a decision, and make cost-effective operational plans and decisions.

To help further ensure the timeliness of Code breach investigation decisions, we suggest that the Authority be required to ensure its investigators have a good understanding of the Code. This would enable the investigator and the relevant participant(s) to reach a shared understanding of the circumstances of a breach more efficiently (e.g. participants can avoid spending an inordinate amount of time describing/explaining in various ways or multiple times aspects of the breach, or why a self-reported breach is a breach of the Code). This would help avoid lengthy investigation timeframes and reduce the regulatory burden on both parties.

Notification of Code change commencement dates

Vector proposes that the Authority be required to provide a reasonable amount of time between its last notice/reminder to industry participants...[and] the 'go live' date of any Code change. This is particularly important where a Code change requires changes to participants' systems and processes that are likely to have a significant impact on customers. Major Code changes take time to 'bed in' and enable participants to fully comply with the new requirements. For example, we do not consider a six-week notice (including the Christmas period) for a major Code change (that requires, for example, a transition period of six months) to be reasonable.

Where Code changes require massive amounts of resources to be mobilised or (re)allocated, we suggest that the Authority err on the side of over-communicating. This also applies where the development of a Code change has been going on for a lengthy period (e.g. at least two years) within which significant market and technological developments may have occurred – something that is not unreasonable to assume in the rapidly evolving electricity sector. A series of face-to-face and/or virtual forums with participants leading to the 'go live' date would also help avoid any 'surprises'.

Concluding comments

20. Vector is committed to working with the Authority to ensure compliance processes deliver the Draft Strategy's intended outcomes and makes some suggestions in this submission to ensure this. To recap, we suggest that the Authority:

- a. canvass or undertake an inventory of systemic and high impact compliance issues and examine the causes for non-compliance, determine the materiality of these types of breaches, consider appropriate reporting thresholds for particular breaches, and consider whether compliance is entirely within one party's control (and if not, consider other measures);
 - b. as part of the further development and implementation of the Draft Strategy, facilitate a Metering Compliance Forum every three to four months to discuss and clarify Part 10 (metering) provisions of the Code causing confusion or generating implementation difficulties and issues that cannot be currently addressed (or fully addressed) under the Code, e.g. how to deal with uncertifiable sites;
 - c. alternatively, or in support of the above proposed Forum, establish a Metering Compliance Working Group with an independent chair or facilitator that could become the first point of contact for industry participants about metering compliance issues. This Group could include representatives from MEPs, ATHs, auditors, consumer groups, and other interested parties. Recommendations from this Working Group and the above Forum could inform future Code changes and the development of guidelines;
 - d. re-activate the Authority's annual omnibus Code review that considers technical and non-controversial changes to the Code, including consideration of issues raised by the above proposed Forum and/or Working Group and currently unresolved issues such as the extended timeline for submission of wash-up files for billing purposes; and
 - e. for the longer term, focus on developing guidelines and practice notes, in conjunction with industry participants, to help the latter better understand new/amended Code requirements (or even before a Code change is contemplated) and what compliance with those requirements could look like in practice.
21. We are happy to discuss this submission with the Authority. For metering and ATH related issues, please contact Andrew Baken (Compliance Manager - Metering) at Andrew.Baken@vectormetering.com. For all other issues, please contact Luz Rose (Senior Regulatory Partner) at Luz.Rose@vector.co.nz.
22. No part of this submission is confidential, and we are happy for the Authority to publish it in its entirety.

Yours sincerely
For and on behalf of Vector Limited



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