

# Part 4 Targeted Information Disclosure Review

## Framework paper

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## Associated documents

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## Framework for our decisions

### Purpose of this framework paper

1. This paper sets out the legal framework we apply when setting or amending ID (information disclosure) requirements that will apply to EDBs (electricity distribution businesses). It explains:
  - 1.1 the function of ID regulation;
  - 1.2 the purpose of ID regulation;
  - 1.3 our role in regulating EDBs under ID regulation; and
  - 1.4 the decision-making criteria we apply when determining whether to set ID requirements for EDBs.

### The function of information disclosure regulation

2. Information disclosure regulation or 'ID regulation' is a specific form of regulation we use under Part 4 of the Act (Part 4) to regulate certain markets where there is little or no competition (and little prospect of future competition).<sup>1</sup> This form of regulation requires a supplier of goods or services in a regulated market to publicly disclose information in accordance with requirements we determine.<sup>2</sup> We call these requirements information disclosure requirements or 'ID requirements', and set them out in determinations we make under section 52P of the Act (ID determinations).
3. All EDBs, as suppliers of electricity distribution services, are subject to ID regulation under Part 4 because they operate as natural monopolies (ie, there is little or no competition in the markets for the electricity distribution services they offer).<sup>3</sup>
4. The effect of being subject to ID regulation is set out in section 53B of the Act. Section 53B(1) provides:

Section 53B Effect of being subject to information disclosure regulation

(1) Every supplier of goods or services that are subject to information disclosure regulation must—

(a) publicly disclose information in accordance with the information disclosure requirements set out in the relevant section 52P determination; and

(b) supply to the Commission a copy of all information disclosed in accordance with the section 52P determination, within 5 working days after the information is first made publicly available; and

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<sup>1</sup> Commerce Act 1986, section 52.

<sup>2</sup> Commerce Act 1986, section 52B(2)(a).

<sup>3</sup> Section 54F of the Commerce Act 1986 provides that electricity lines services are subject to information disclosure regulation.

(c) supply to the Commission, in accordance with a written notice by the Commission, any further statements, reports, agreements, particulars, or other information required for the purpose of monitoring the supplier's compliance with the section 52P determination.

5. The relevant ID determination that sets out the ID requirements that apply to all EDBs is the *Electricity Distribution Information Disclosure Determination 2012* [2012] NZCC 22. A consolidated version of this determination (ie, including subsequent amendment determinations for ease of references) is available on the Commission's website.<sup>4</sup>

### **The purpose of information disclosure regulation**

6. The purpose of ID regulation is to ensure that sufficient information is readily available to interested persons to assess whether the purpose of Part 4 is being met: section 53A.
7. When the purpose of ID regulation is achieved, it helps promote the purpose of Part 4 itself by incentivising regulated businesses to improve their performance.
8. The purpose of Part 4 is set out in section 52A(1):
  - (1) The purpose of this Part is to promote the long-term benefit of consumers in [regulated markets] by promoting outcomes that are consistent with outcomes produced in competitive markets such that suppliers of regulated goods or services—
    - (a) have incentives to innovate and to invest, including in replacement, upgraded, and new assets; and
    - (b) have incentives to improve efficiency and provide services at a quality that reflects consumer demands; and
    - (c) share with consumers the benefits of efficiency gains in the supply of the regulated goods or services, including through lower prices; and
    - (d) are limited in their ability to extract excessive profits.

### **Key terms that form part of the information disclosure purpose under section 53A**

#### *“Interested persons”*

9. We interpret the reference to ‘interested persons’ in section 53A broadly to include persons who are or may be affected by the way in which electricity distribution services are provided.
10. We therefore consider that interested persons include (though are not limited to):
  - 10.1 regulated suppliers;

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<sup>4</sup> A copy of the current consolidated determination, which is not the legal authority, can be accessed via our website [Commerce Commission. "Electricity-Distribution-Information-Disclosure-Determination-2012"](#).

- 10.2 consumers and consumer groups;
- 10.3 energy retailers and their representative groups;
- 10.4 providers of flexibility resources;<sup>5</sup>
- 10.5 central government and regional authorities;
- 10.6 other regulatory agencies (such as the Electricity Authority and the Gas Industry Company Ltd);
- 10.7 any other stakeholder of the regulated supplier, including investors; and their advisers (such as equity analysts and other professional advisors);
- 10.8 owners of regulated suppliers; and
- 10.9 the Commission.<sup>6</sup>

*“Sufficient information”*

- 11. The purpose in section 53A is to ensure that ‘sufficient’ information is readily available to interested persons to assess whether the Part 4 purpose is being met. To understand whether the relevant outcomes consistent with workably competitive markets are being promoted, interested persons should have sufficient information to assess suppliers’ actual performance. Having ‘sufficient’ information will encompass both quantitative and qualitative information, with information being sufficiently disaggregated to allow interested persons to understand what is driving suppliers’ performance.<sup>7</sup>
- 12. ID regulation is a specific form of regulation under Part 4, with its own clearly defined purpose in section 53A, independent of other regulatory instruments.<sup>8</sup> As such, we consider the requirement that there is ‘sufficient’ information to enable informed assessments against the Part 4 purpose is independent of whether or not an EDB is also subject to price-quality (PQ) regulation.
- 13. The part of the section 53A purpose referring to ‘sufficient’ information to allow interested persons to make informed assessments against the Part 4 purpose should be separate from the question of whether suppliers are also subject to price-quality regulation.
- 14. The purpose of Part 4 in section 52A highlights the importance of incentives:

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<sup>5</sup> Flexibility resources are delivered through distributed electricity generation (DER) that is controlled. DER and larger resources like grid-connected generation or batteries are flexible resources.

<sup>6</sup> See [Commerce Commission, “Information disclosure for EDBs and GPBs – Final Reasons Paper” \(1 October 2012\)](#), p 17.

<sup>7</sup> We discuss the meaning of “sufficient information” in [Commerce Commission, “Information disclosure for EDBs and GPBs – Final Reasons Paper” \(1 October 2012\)](#).

<sup>8</sup> For example, default/customised price-quality regulation has its own distinct purpose under s 53K of the Act.

- 14.1 to innovate and to invest (section 52A(1)(a)); and
  - 14.2 to improve efficiency and provide services at a quality that reflects consumer demands (section 52A(1)(b)).
15. We consider the practical test of whether incentives are working is whether suppliers are responding to those incentives. We therefore consider that interested persons can only assess whether these elements of the Part 4 purpose are being met by examining evidence of suppliers' performance – historical, current and expected future performance.

*“Readily available”*

16. The form in which information is disclosed affects interested persons' ability to use that information to assess performance. We consider that relevant factors in ensuring information is 'readily available' are the extent to which information is:
- 16.1 consistent;
  - 16.2 accessible; and
  - 16.3 comprehensible.
17. Consistent disclosure of data in a standardised form that can be compared over time and across regulated providers helps interested persons to compare regulated providers' performance and identify potential trends in their performance.
18. A lack of consistency in data may mean that it is not “readily available”. We therefore require most of the disclosures to be provided in a standardised format.<sup>9</sup> Without requirements ensuring consistency, the disclosed data may not be useful for gaining valuable insights, or time-consuming processes may be needed to provide consistency and comparability of data.
19. Accessibility of information refers to the ease with which the information can be accessed (for example, on a website) and the format in which it is available (for example, in a PDF report or a spreadsheet).
20. Comprehensibility refers to the ease with which an interested person can navigate quantitative or qualitative information in order to access the key insights relevant to them.

## **Our role in regulating electricity distribution businesses under information disclosure regulation**

21. Our role under ID is to:

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<sup>9</sup> As required by section 53C(1)(e), for example, in a standardised spreadsheet template or online disclosure system.

- 21.1 decide what information a supplier must disclose to the public, and the form in which it must disclose it. We do this by setting ID requirements;<sup>10</sup>
- 21.2 publish a summary and analysis of any information a supplier publicly discloses under our ID requirements;<sup>11</sup> and
- 21.3 monitor and analyse disclosed information,<sup>12</sup> including analysing how effective our ID requirements are in promoting the purpose of Part 4.<sup>13</sup> If we assess that our ID requirements are not effective, we may decide different requirements (or changes to existing requirements) are necessary.

**We decide what information electricity distribution businesses must disclose, and how they must disclose it**

- 22. As discussed above, the effect of EDBs being subject to ID regulation is that they must publicly disclose information in accordance with any ID requirements that apply to it. ‘Publicly disclose’ means to disclose information to the public in the manner required by an ID determination.<sup>14</sup>

*Information that must be included in our information disclosure determination*

- 23. Section 53C governs the content of any ID determination we make. Section 53C(1) provides that the ID determination must specify the following:<sup>15</sup>
  - 23.1 the goods or services to which it applies;
  - 23.2 the suppliers to which it applies;
  - 23.3 the information to be disclosed;
  - 23.4 the manner in which the information is to be disclosed;
  - 23.5 the form of disclosure;
  - 23.6 when, and for how long, information must be disclosed;
  - 23.7 the input methodologies that apply; and
  - 23.8 any other methodologies that are required in the preparation or compilation of the information.

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<sup>10</sup> Section 53C. Refer to paragraphs 22-24 in Attachment A.

<sup>11</sup> Section 53B(2)(b).

<sup>12</sup> Section 53B(2)(a).

<sup>13</sup> Section 53B(3).

<sup>14</sup> The definition of “publicly disclose” is provided in section 52C of the Act, which states “publicly disclose, in relation to information required to be disclosed under information disclosure regulation, means to disclose information to the public in the manner required by a section 52P determination”. The determination itself defines “publicly disclose” at clause 1.4.3.

<sup>15</sup> Section 53C(1)(a)-(h) of the Commerce Act 1986 sets out a list of things a section 52P determination must specify.



24. The requirement to specify the ‘manner’ and ‘form’ by which information is disclosed means we can specify in an ID determination how a regulated supplier will be required to disclose information to the public. This can be important in circumstances where we consider certain information should be expressed in a particular way to ensure interested persons can understand it and access the key insights relevant to them.
25. For example, if we set an ID requirement that required a supplier to publicly disclose all of its current prices, we could require that the disclosed pricing information must be expressed in a manner that enables consumers to determine which of those prices will impact them.<sup>16</sup> Similarly, we could require that the supplier publicly discloses that pricing information by publishing it on their website, publishing it in the newspaper, making copies of the information available, providing written notice to each affected consumer, or providing the information to its consumers in a public forum.

*Information that may be required to be disclosed*

26. We have a wide discretion in determining the types of information that must be disclosed by regulated suppliers under ID requirements. Section 53C(2) provides that an ID determination may specify (without limitation) any or all of the following:<sup>17</sup>
- 26.1 financial statements (including projected financial statements);
  - 26.2 asset values and valuation reports;
  - 26.3 prices, terms and conditions related to prices, and pricing methodologies;
  - 26.4 contracts;
  - 26.5 transactions with related parties;
  - 26.6 financial and non-financial performance measures;
  - 26.7 plans and forecasts, including (without limitation) plans and forecasts about demand, investments, prices, revenues, quality and service levels, capacity and spare capacity, and efficiency improvements;
  - 26.8 asset management plans;
  - 26.9 quality performance measures and statistics;
  - 26.10 assumptions, policies, and methodologies used or applied in these or other areas; and
  - 26.11 consolidated information that includes information about unregulated goods or services.

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<sup>16</sup> For example, the price is broken down by a category of consumer.

<sup>17</sup> Section 53C(2)(a)-(k).

27. In exercising the discretion under section 53C(2), we must promote the purpose of ID regulation under the Act. Accordingly, any information we require EDBs to disclose under an ID requirement must be for the purposes of ensuring that sufficient information is readily available to interested persons to assess whether the purpose of Part 4 is being met.

*Other things an information disclosure determination may do*

28. Section 53C(3)(a)-(e) provides that the ID determination may do one or more of the following:<sup>18</sup>
- 28.1 require disclosed information, or information from which disclosed information is derived (in whole or in part), to be verified by statutory declaration;
  - 28.2 require independent audits of disclosed information;
  - 28.3 require the retention of data on which disclosed information is based, and associated documentation;
  - 28.4 exempt any person or class of persons, or provide for exemptions, from any requirements of the determination, and provide for the revocation of exemptions; and
  - 28.5 provide for transitional provisions.
29. Section 53C(3)(f) means that we can set any other requirement in an ID determination that we consider is “necessary or desirable” to ensure that sufficient information is readily available to interested persons to assess whether the Part 4 purpose is being met. For example, we may consider it is necessary or desirable for the purposes of ID to require a supplier to do ‘a particular thing’ in relation to the information it is disclosing, which may be to provide us (and other interested persons) with assurances relating to that information (as an independent audit or statutory declaration would do under section 53C(3)(a) and (b)).
30. In setting ID requirements for suppliers of electricity lines services, section 54Q of the Act also requires us to promote incentives, and avoid imposing disincentives, for suppliers to invest in energy efficiency and demand side management, and to reduce energy losses.
31. Any ID determination we make under section 52P must “specify the suppliers to which it applies”<sup>19</sup> and “set out the requirements that apply to each regulated supplier”.<sup>20</sup> This means that any ID determination we make must specify who (ie, which regulated suppliers) must comply with each ID requirement in that determination. For example, we may specify that all the ID requirements in an ID determination apply to every regulated supplier subject to that determination, or we

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<sup>18</sup> See section 53C(3)(a)-(f) for a full list of things a section 52P determination may do.

<sup>19</sup> Commerce Act 1986, section 53C(1)(b).

<sup>20</sup> Commerce Act 1986, section 52P(3)(a).

may specify that certain ID requirements only apply to one regulated supplier (or a sub-set of the regulated suppliers) subject to that determination.

### **Our decision-making criteria for setting information disclosure requirements**

32. Our key consideration in setting ID requirements (or amendments to ID requirements) must be to require the disclosure of information that will ensure that interested persons have sufficient information readily available to assess whether the Part 4 purpose is being met (consistent with the purpose of ID regulation).<sup>21</sup>
33. In other words, we must consider the information that will allow an interested person to assess whether the performance of a regulated supplier is consistent with the performance outcomes one would expect to find in a workably competitive market (the outcomes listed in the purpose of Part 4, section 52A(1)(a)-(d)). In particular, we must consider the information that would be sufficient to answer certain key questions related to regulated suppliers' historical, current and future performance, for example:
  - 33.1 is the supplier operating and investing in their assets efficiently? (section 52A(1)(a)-(b));
  - 33.2 is the supplier innovating where appropriate? (section 52A(1)(a));
  - 33.3 is the supplier providing services at a quality that reflects consumer demands? (section 52A(1)(b));
  - 33.4 is the supplier sharing the benefits of efficiency gains with consumers, including through lower prices? (section 52A(1)(c));
  - 33.5 do the prices set by the supplier promote efficiency? (section 52A(1)(a)-(b)); and
  - 33.6 is the supplier earning an appropriate economic return over time? (section 52A(1)(d)).
34. Our view is that in order to answer these key performance questions, interested persons need a package of different types of information (both quantitative and qualitative) – including how the network is being (or plans to be) managed, especially given changes in the environment the network is operating in, expenditure on different activities (both historic and forecast), quality outcomes and pricing.<sup>22</sup>
35. In terms of how we decide what is “sufficient information”, as mentioned at 11 above, having ‘sufficient’ information requires interested persons having both quantitative and qualitative information, with certain information sufficiently

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<sup>21</sup> We discuss our decision-making framework in our final reasons paper for the EDB ID requirements we set in the original EDB ID Determination in 2012 (Commerce Commission *Information Disclosure for Electricity Distribution Businesses and Gas Pipeline Businesses: Final Reasons Paper* (1 October 2012)).

<sup>22</sup> The range of information that interested persons need is discussed in more detail at paragraphs 2.46-2.58 of our paper: [Commerce Commission “Information Disclosure for Electricity Distribution Businesses and Gas Pipeline Businesses: Final Reasons Paper” \(1 October 2012\)](#).

disaggregated to allow them to understand what is driving the supplier's performance.

### **Our approach to ensuring information disclosure requirements are cost-effective**

36. In setting ID requirements that enable stakeholders to assess EDBs' performance we are required to give effect to the purpose of ID in section 53A. In particular, we must determine ID requirements to ensure that sufficient information is readily available to interested persons to assess whether the purpose of Part 4 in section 52A is being met.
37. We recognise however that the information we require EDBs to disclose comes at a cost to EDBs, some of which is ultimately borne by consumers.
38. We have therefore sought to balance the benefits from greater transparency that more comprehensive and detailed ID requirements would provide against the costs of complying with the requirements. In particular, we intend to:
  - 38.1 take account of suppliers' existing practices and capability;
  - 38.2 introduce new requirements, or require disaggregated information only where we consider it valuable to meeting the ID purpose in section 53A;
  - 38.3 align ID with other parts of the Part 4 regime;
  - 38.4 seek technical input from the electricity sector stakeholders; and
  - 38.5 consider relevant obligations imposed on EDBs by other agencies.

### **Addressing overlap between the role of the Commission and that of the Electricity Authority**

39. EDBs are subject to various statutory obligations, for example those imposed by the Electricity Authority. While the obligations imposed by different agencies on the same matters can be complementary, we acknowledge the concern from submitters that where there is duplication this can lead to increased compliance costs or result in conflicting obligations.
40. The relevant legislation explicitly sets out an overlap of responsibility for EDB pricing between the EA and the Commission (section 32(2)(b) of the Electricity Industry Act 2010). As far as any duplication that may arise as a result of overlaps between our role and that of the EA, we coordinate with the EA to avoid poor outcomes.
41. Under section 54V(4) of Part 4, we must take into account a number of matters made under the Electricity Industry Act 2010 before exercising any powers or performing functions under Part 4. These matters include provisions of the Electricity Industry Participation Code 2010 (the Code) that relate to pricing methodologies,

decisions of the EA under that Code, or relevant EA guidelines of which we receive advice.<sup>23</sup>

42. We and the EA regularly and proactively coordinate our respective work programmes to ensure that our workstreams are aligned, maximise opportunities for complementary activities and to avoid inefficient duplication. This is consistent with the purpose and intent of the Memorandum of Understanding (MOU) signed by the Commission and the EA in December 2010.<sup>24</sup>

### **We summarise and analyse the information electricity distribution businesses disclose**

43. We are required, as soon as practicable after any information is publicly disclosed, to publish summary and analysis of the disclosed information to promote greater understanding of supplier performance.<sup>25</sup>
44. This requirement confers an ongoing, active role on us in respect of the information disclosure regime after the ID requirements have been set. We must analyse the information regulated suppliers publicly disclose and then publish that analysis for the public (along with a summary of the disclosed information). As information is disclosed and analysed over the years, it provides an ongoing source of information so that performance trends can be identified and monitored over time.
45. The summary and analysis we produce assists interested persons in assessing whether the purpose of Part 4 is being met by helping people to better understand the information publicly disclosed by the regulated supplier.
46. Our analysis role under ID is not simply to explain the information disclosed under ID, but to promote greater understanding of a supplier's performance. This means the scope of the analysis we undertake of information that a supplier discloses can be broad. For example, if we are analysing the information EDBs have publicly disclosed under ID, part of our analysis may extend to considering what factors are impacting EDBs' performance.

### **We may ask a supplier for more information**

47. The active nature of our role under ID is also supported by section 53B(2)(a) of the Act, which allows us to "monitor and analyse" all information that a supplier discloses under our ID requirements.
48. If we have questions regarding the information a supplier has publicly disclosed, or if our analysis of the information a supplier has publicly disclosed raises concerns regarding that supplier's compliance with a section 52P determination (ie, in this

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<sup>23</sup> See s 54V(4)(c)-(d) of the Act.

<sup>24</sup> Among other things this MOU outlines the respective responsibilities of the Commission and the EA, for the electricity sector, and obliges the two parties to work together to take account of the activities and responsibilities of the other party when developing regulatory requirements for the electricity sector. See [Memorandum of Understanding between the Electricity Authority and the Commerce Commission, December 2010](#).

<sup>25</sup> Commerce Act 1986, s 53B(2)(b).

context, information disclosure requirements), we may decide we need to engage with that supplier further to gather more information.

49. Part of that further engagement may involve us issuing a regulated supplier with a notice under section 53B(1)(c) to supply us with further information (eg, further statements, reports, agreements, particulars or other information), for the purpose of monitoring that supplier's compliance with our ID requirements.

### **We may analyse if our information disclosure requirements are working effectively...**

50. When we analyse the information that a supplier has disclosed, we may, as part of that analysis, assess whether the existing ID requirements imposed on that supplier are working effectively to promote the purpose of ID, and the overall purpose of Part 4.<sup>26</sup>
51. The more effective our ID requirements are in promoting the purpose of ID, the more likely it is that those requirements are promoting the overall purpose of Part 4.
52. Under section 53B(3), we may choose to publish this analysis for the public. Section 53B(3) states:

To avoid doubt, the Commission may, as part of a summary and analysis, include an analysis of how effective the information disclosure requirements imposed on the goods or services are in promoting the purpose of this Part.

### **...and if they are not working effectively, we may seek to impose different requirements on the supplier**

53. If we assess that our ID requirements are not working effectively to promote the purpose of Part 4, we may decide different ID requirements (or changes to existing ID requirements) are necessary. We may amend an ID determination at any time to set new ID requirements or revise existing ID requirements, provided we consult with interested parties on material changes first.<sup>27</sup>

### **Exemptions from information disclosure requirements**

54. As set out in paragraph 28.4, we have wide powers to exempt any person or class of persons from any requirements of the determination, or to provide for exemptions, under section 53C(3)(d).
55. We consider that the general power to provide for exemptions in section 53C(3)(d) includes the power to set ID requirements that only require disclosure of information to the Commission.
56. In addition to our general power to exempt persons from any ID requirements, or provide for exemptions in the ID determination itself, section 53ZG of the Act gives us the specific power to exempt the disclosure of commercially sensitive information

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<sup>26</sup> Section 53B(3)

<sup>27</sup> Under section 52Q(1) of the Commerce Act 1986, we must consult with interested parties before we make a material amendment to an ID determination. We may amend an ID determination in a non-material way without prior consultation.

from public disclosure as part of the requirements of ID or PQ regulation on application by a regulated provider.<sup>28</sup> We consider that this provision does not limit our power to exempt persons or provide for exemptions in an ID determination. Rather, it is a complementary provision that enables regulated providers to seek exemptions from public disclosure over and above those that are already provided for in the ID determination or in the Act itself.

57. We will follow the mandated process set out in section 53ZG if, after we have made the ID determination, regulated providers seek exemptions on the grounds that information they are required to disclose is commercially sensitive.<sup>29</sup>

#### **Section 53ZD – broader powers of the Commission under Part 4**

58. The Act provides that in carrying out its functions and exercising its powers under Part 4 of the Act, we may exercise certain information gathering powers under section 53ZD of the Act. Section 53ZD sets out powers for the Commission “for the purpose of carrying out its functions and exercising its powers” under Part 4 of the Act more broadly (for example, investigating compliance with the Act).
59. For example, if our ID analysis raised concerns that a supplier was not complying with the ID requirements, we may investigate further,<sup>30</sup> and may under section 53ZD require the supplier to:
- 59.1 prepare and produce forecasts, forward plans, or other information;<sup>31</sup>
  - 59.2 apply any methodology specified by us in the preparation of forecasts, forward plans, or other information;<sup>32</sup>
  - 59.3 in circumstances where we are conducting an investigation, audit, or inquiry, produce “documents and information in relation to the goods or services, or the prices or operations of the person in respect of the goods or services”, and “to answer any questions about any matter that the Commission has reason to believe may be relevant to the investigation, audit, or inquiry”,<sup>33</sup>
  - 59.4 provide us with an expert opinion in relation to that matter.<sup>34</sup>

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<sup>28</sup> This exemption power would exist even if we did not provide for exemptions under s 53C(3)(d).

<sup>29</sup> We must give public notice of the exemption and the reasons for our decision if we decide to grant the exemption.

<sup>30</sup> Under section 53ZD(1)(b)(i) of the Commerce Act 1986, for the purposes of carrying out our functions and exercising our powers under Part 4, we may investigate how effectively and efficiently any supplier of the goods or services is supplying the goods or services.

<sup>31</sup> Commerce Act 1986, section 53ZD(1)(d)(i).

<sup>32</sup> Commerce Act 1986, section 53ZD(1)(d)(ii).

<sup>33</sup> Commerce Act 1986, section 53ZD(1)(e).

<sup>34</sup> Commerce Act 1986, section 53ZD(1)(f).

## Enforcement

### We may take enforcement action against contraventions of information disclosure requirements

60. Under Part 6 of the Act, we may take enforcement action in response to any contraventions of information disclosure requirements:
- 60.1 section 86B(1)(a) establishes an offence where a person “knowing that particular goods or services are subject to information disclosure regulation, intentionally contravenes any information disclosure requirement relating to those goods or services”;<sup>35</sup> and
  - 60.2 section 86 provides that we can apply to the court for a pecuniary penalty against any person who has contravened (or attempted to contravene) any information disclosure requirement.<sup>36</sup>
61. Contravention of an ID requirement includes failing to disclose information required to be disclosed, failing to disclose information in the form or within the time specified, or disclosing information under an information disclosure requirement that is false or misleading.<sup>37</sup>
62. The maximum fine for a conviction under section 86B(1) for an individual is \$200,000 and for any other case \$1 million.<sup>38</sup> The maximum pecuniary penalty under section 86 for an individual is \$500,000 and for any other case is \$5 million.<sup>39</sup>
63. Section 79B(1) provides that once criminal proceedings against a person for an offence under section 86B are determined, the High Court may not order the person to pay a pecuniary penalty in respect of the conduct, events, transactions, or other matters that were the subject of the criminal proceedings. Similarly, once civil proceedings against a person for a pecuniary penalty are determined, the person may not be convicted of an offence in respect of the conduct, events, transactions, or other matters that were the subject of the criminal proceedings (section 79B(2)).

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<sup>35</sup> A person also commits an offence if the person is subject to an order from the court to comply with an information disclosure requirement and fails to comply with that order by the time specified (section 86B(1)(b)).

<sup>36</sup> Commerce Act 1986, section 86(1)(a)-(b). Section 86(1)(c)-(f) sets out a range of other conduct for which a Court may (on application by the Commission) order a pecuniary penalty. These include (c) where the Court is satisfied a person has aided, abetted, counselled, or procured any other person to contravene an ID requirement, or (d) has induced, or attempted to induce, any other person, whether by threats or promises or otherwise, to contravene any such requirement; or (e) has been in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by any other person of any such requirement; or (f) has conspired with any other person to contravene any such requirement.

<sup>37</sup> Commerce Act 1986, section 86(2).

<sup>38</sup> Commerce Act 1986, section 86B(2).

<sup>39</sup> Commerce Act 1986, section 86(3).