Retail Advisory Group

Proposed retailer default arrangements - submissions on discussion paper

A RAG briefing paper

24 October 2012

Note: This paper has been prepared for the purpose of the Retail Advisory Group (RAG). Content should not be interpreted as representing the views or policy of the Electricity Authority or the RAG.

Contents

1 Introduction

1.1 Purpose of paper

1.1.1 At the request of the Electricity Authority (the Authority), the Retail Advisory Group (RAG) is identifying arrangements to facilitate the orderly resolution of a default situation should an electricity retailer become insolvent or otherwise rapidly exit the market, leaving its customers without a retailer.

1.1.2 The RAG published an initial discussion paper in February 2012. This first discussion paper considered the implications for consumer and industry participants in the event a retailer defaults on amounts owed to the clearing manager or a distributor, or in the event of the appointment of a receiver or statutory manager to the retailer, or if the retailer becomes insolvent or enters liquidation.

1.1.3 Following receipt of stakeholder submissions on the first discussion paper, a second discussion paper was released in August 2012. The second discussion paper outlined the RAG's proposed approach for addressing a retailer default situation. Submissions were invited on the approach as a whole and on the design choices for each step in the preferred approach. Submissions were due 25 September 2012.

1.1.4 The purpose of this briefing paper is to provide a summary of the key themes emerging from stakeholder submissions, and to outline possible changes to the approach in response.

2 Stakeholder submissions

2.1.1 In total 18 submissions were received from stakeholders. Three cross-submissions were also received. The submissions can be found on the Authority's website at: http://www.ea.govt.nz/our-work/consultations/advisory-group/arrangements-for-managing-retailer-default-situations/submissions/.

3 Overall support

3.1.1 All submissions, except the one from Genesis Energy, supported the problem definition and general thrust of the solution proposed by the Group. The cross-submissions do not introduce significant new issues not already considered by the Group. The submissions provide high level comments (mostly in favour of the approach recommended by the Group), as well as specific comments on the detailed design. All submissions are thoughtful and considered.

3.1.2 Genesis Energy remains of the view that normal commercial processes will be sufficient to resolve all default events. It considers that the Clearing Manager should be enabled to appoint a receiver to facilitate this. This option received widespread support in the first round of consultation by the Group. However, a power to appoint a receiver was not perceived by submitters on the first discussion document to be a complete solution. The submissions and legal advice raised practical problems with this option that outweighed the benefits in the Group's view (refer to paragraph 4.3.5 of the Second Discussion paper). Genesis has not elaborated on the benefits that it considers have not been included by the Group in its analysis to date. Vector also submitted that the Authority should be able to appoint a receiver.

3.1.3 Wellington Electricity Lines Ltd expressed a preference for a more fulsome retailer of last resort (ROLR) scheme. They noted that the Group considered the costs of such would outweigh its benefits, and accepted the proposed solution if a ROLR were not implemented.

3.1.4 No change is recommended to the overall form of the process as a result of this feedback. The details are considered in following sections.

4 Distributors' ability to activate the process

4.1 Majority view that distributors should be able trigger Authority role in specific circumstances

4.1.1 In general, submitters agreed that there are circumstances in which distributors should be able to activate the process. These submitters agreed that it is not realistic to consider that distributors would disconnect customers en masse where those customers are paying their bills. Once a distributor reaches the point at which disconnection is their next course of action, this should be considered an event of default in terms of the Code, triggering action by the Authority.

4.1.2 Contact noted that "in our view, the distributor should have an obligation to advise the Authority rather than a mere 'option'."

4.1.3 Meridian Energy submitted that ideally non-payment by the retailer should be dealt with under the UoSA "Meridian also accepts, however, that distributors will be very sensitive to the public relations issues associated with disconnection, meaning they may be reluctant to pursue disconnection as a course of action. Meridian agrees that distributors should have the option of prompting the proposed Code prescribed process for transferring customers, provided the Authority can first satisfy itself that the event involves more than minimal risks for the market."

4.1.4 There was general agreement that the Authority does not have a role in determining whether the process in a UoSA has been complied with, this is a matter for the contracting parties and ultimately the courts.

4.1.5 There is a difference of view between these submitters on whether the event of default in terms of the Code should occur: before or after the termination of the Use of System Agreement (UoSA), and whether there should be other triggers.

4.1.6 PricewaterhouseCoopers (PwC) on behalf of 21 distributors submitted that the trigger should be when the retailer is insolvent, or an event of default in terms of the distributor's UoSA has occurred. These are the grounds for termination of a UoSA in clause 21.2 of the new model UoSA. An event of default under a UoSA is defined (cl.20.4) as:

a) A serious financial breach, being:

   i) failure to pay an amount due that exceeds $100,000 or 20% of line charges per month

   ii) failure to satisfy a distributor's prudential requirements under clause 12

b) A material breach of the defaulting party's obligations that is not in the process of being remedied to the reasonable satisfaction of the distributor

c) The defaulting retailer has failed on at least two previous occasions within the last 12 months to meet an obligation under the agreement and these breaches, while not necessarily being material in their own right, cumulatively materially impact the distributor's ability to carry out its obligations under the agreement.

4.1.7 The difference of view then is whether the trigger is an event of default as defined in cl20.4, or a termination of the UoSA for one of the reasons defined in cl20.4. In either case, cl.20.4 of the UoSA must be satisfied.

4.1.8 PwC argues that distributors may choose not to terminate a UoSA because it affects their rights in a receivership and/or because arguably the act of terminating the UoSA would require the distributor to disconnect the retailer's customers under s77 of the Electricity Industry Act (the Act).[1] We note that insolvency is an event of default under cl.14.55 of the Code so this would activate the process independently of other triggers.

4.1.9 The issue with triggering the process on the criteria for terminating the UoSA rather than the termination of the agreement itself is, as a number of submitters recognised, that distributors may seek to use the process to resolve a commercial dispute.

4.1.10 The ENA and Unison offer a set of criteria for triggering the process that would protect a retailer's commercial position by only allow distributors to call for the Authority to assist in the orderly exit of that retailer from a network when:

a) the retailer is no longer entitled to trade on the network (their UoSA has been terminated)

b) there are no unresolved disputes between the retailer and the distributor in relation to the termination; and

c) the retailer has not taken timely steps to arrange for consumers to switch to another valid retailer or its consumers have refused to switch.

4.1.11 Adopting these criteria should eliminate concerns around commercial disputes. It would avoid the Authority becoming involved in any commercial dispute, and the Authority process would initiated only once all disputes are resolved (including for example by a Court or arbitrator).

4.1.12 Vector and Powerco submitted that a breach of prudentials should be included in the criteria, we note that failure to satisfy prudential requirements is a serious financial breach under cl.20.4 and would therefore be included in the trigger discussed above.

4.2 Opposing view

4.2.1 Three submitters disagreed with distributors being able to trigger the retailer default process (Genesis Energy, Pulse Utilities and Simply Energy): they express the view that contractual remedies should be relied upon. Pulse submitted that the event of default trigger should be at a market level, not a network level. They consider the appropriate choice for the lines company is to make the retailer insolvent by appointing a receiver (which we note would then trigger the proposed Authority retailer default process).

4.2.2 Pulse's submission that the event of default trigger should be at a market level, not a network level, is reasonable. However, a responsible retailer who found themselves overextended (i.e. was defaulting in one network only) might act to remedy the situation perhaps by negotiating terms with the distributor, or exiting that network. To the extent that the retailer is not taking action, or their action is unsuccessful, then the default is likely to broaden to other areas, and the process become relevant. It seems reasonable then to define the termination of a UoSA on one network as an event of default in the Code. The proposed default event process allows further time for the retailer to resolve the issue.

[1] Section 77 however applies to retailers "connected" to a distributor (that is, retailers owned or controlled by the distributor).

5 Definition of a default event

5.1.1 Question 4 of the discussion paper asks if any other events not currently captured by cause 14.55 should be defined as an event of default.

5.1.2 The primary source of contention amongst submitters on this question is whether a default event should include a termination of an agreement arising from a serious financial breach of a use of system agreement. Two submitters feel that a broader definition of distributors' circumstances should be taken into account. Two submitters argued that no distributors' circumstances should be considered a default event. The issue of distributors being captured by these rules is considered above

5.1.3 A related issue that was raised was the issue of how the Authority distinguished between an event that should be acted on and one that shouldn't. Question 8 asked whether the authority should investigate and determine, where an event exists, what that event is minimal risk arising from a technical or administrative failure that may be corrected within one day or a commercial disagreement that doesn't undermine a retailers' long term ability to trade. Submitters were also asked if any assessment by the authority of whether the event is a minimal risk include a materiality threshold.

5.1.4 There was general agreement that the requirement for the Authority's assessment should be done quickly with 1 submitter suggesting the assessment to be restricted to 1 **calendar** day.

5.1.5 Several submitters (Trustpower, Simply Energy, Contact and Powerco) thought that a threshold (i.e. a monetary level of default under which the process would not be triggered) was a good idea. Powerco suggested it be lower to capture retailers who had smaller defaults across multiple networks. Genesis and Meridian thought that it was useful as part of determining whether the event was a 'minimal risk event' but that the monetary value was not determinative of the status of the event. MRP (similar to Genesis and Meridian) felt that there should be other non-monetary factors in the threshold. NZX/the Clearing Manager submitted that a threshold was a good idea but there also needed to be a mechanism to capture 'outright non-compliance'. Overall the submissions converge on support for some type of threshold or evaluation of whether the default is sufficiently material to be considered an event in terms of the proposed process.

5.1.6 PwC submitted that non-payment to metering equipment and service providers should be included as an event of default. This matter has already been considered by the Group.

6 Timeframe allowed for managing retailer default

6.1.1 As set out in the discussion paper it is most likely that a "default event" begins some time before the clearing manager notifies the Authority of a possible default. Retailers receive invoices for payment from a variety of counterparties including the clearing manager, the bank, IRD, lines companies, wholesale energy suppliers, meter and metering information providers, staff and general creditors. For the retailer to arrive at the point where they find themselves in a default situation with the clearing manager it is inevitable that they will be in a similar situation with other creditors. It is possible that by the time the clearing manager assesses a default event the defaulting retailer will have already explored possible trade sale opportunities.

6.1.2 The discussion paper also went through the timeframes for actions around an event of default and concluded that 8 days was aligned with existing time frames operating in the industry and allowed sufficient time to provide for those actions. Having taken into account the need for

urgency, the point the retailer has reached and the requirement for enough time to work through the situation the proposal is for the defaulting retailer to have 8 days to remedy the situation or face more interventionist action by the Authority.

6.1.3 Two submitters argued that where a receiver was appointed more than 8 days be allowed for the process, one argued that it was important that they be able to complete their processes "without third party interference" and the other submitted the time frame should be 21 days.

6.1.4 The remaining submitters confirmed the 8 day proposal, though recognising the difficulty with the judgement involved in arriving at a timeline. It was noted that 8 days reached "the balance between providing sufficient time for retailers to attempt to resolve the situation and managing the financial exposure of generators" (Meridian). The main qualification to this was a number of submitters who added that the time might be less than 8 days or "as quickly as possible but no more than 8 working days" (Orion)

7 Switching

7.1.1 During the second phase of the proposed scheme affected consumers would switch voluntarily. These switches would take place under normal switching rules and submitters raised two points resulting from that process that did not appear to have been addressed: the counterparty to the switching process and the time frame for the switch to be processed.

7.1.2 Section 11 of the Code sets out the switching process. The losing trader (in this case the obligation lies with the defaulting retailer or their agent) must determine the date of the expected transfer within 3 business days of being notified of the switch[2] and that date the transfer takes place must be within 10 days of notification.[3] The losing trader must provide certain information in respect of the switch within 3 business days of the transfer.[4]

7.1.3 On the first point where the losing trader is a retailer under a default event or its agent there is likely to be a lack of motivation to achieve much more than the maximum Code requirements. Any implications of this would have to be taken into account in the final detailed design and Code amendments.

7.1.4 While an industry review of non half hour switching performance completed in October 2011 showed the industry to be completing non half hour switches within a weighted average timeframe of less than 4 business days they can take up to 10 business days. Thus switches may not have been finally registered at the time any allocation of customers takes place in the third stage of the proposed regime. Any implications of this would have to be taken into account in drafting Code amendments.

8 Customer list

8.1.1 Where a defaulting retailer fails to resolve the default event or complete a trade sale it is proposed that the Authority would communicate with all of the affected consumers inviting them to change retailers. Once that process is exhausted it is proposed that any remaining consumers are assigned to the other retailers operating within the networks. For these two steps the Authority needs access to a comprehensive list of affected consumers.

[2] Electricity Industry Participation Code Schedule 11.3 section 3

[3] Electricity Industry Participation Code Schedule 11.3 section 4

[4] Electricity Industry Participation Code Schedule 11.3 section 5

8.1.2 As outlined in the Discussion Document, Code amendments will be required to include an obligation on retailers to include in their retail contracts a clause allowing the retailer to provide the customer's details to the Authority for this purpose.

8.1.3 Each retailer maintains a comprehensive list of customers including data for each account as follows:

a) Name

b) Billing address

c) Physical address

d) Account balance

e) ICP no.

f) Invoices to date

g) Meter(s) identifier

h) Register

i) Content code (includes the tariff)

j) Last read date

k) Last read

8.1.4 Replicating the full list of affected customers with a full set of relevant information through any other data source may not provide a sufficiently robust list for the purpose of the proposed scheme. It may be possible for the Registry to compile a list and for distributors to compile a list. However neither list will include all of the necessary fields and they won't necessarily have the same level of up to date accuracy as the list the retailer holds. The retailer is the most motivated to have an up to date and comprehensive list as it forms the basis for billing.

8.1.5 One possible remedy is to oblige retailers to include more information on the Registry. Another is to require a defaulting retailer or their agent to make their customer list available at the point that a default event is called.

8.1.6 Questions 18 and 19 of the discussion paper asked if the Authority should be able to communicate directly with affected customers and whether all retailers should be obliged to make their comprehensive up to date lists available to the Authority.

8.1.7 Amongst submitters 9 clearly favoured allowing the Authority to communicate directly with affected consumers and 8 agreed that the comprehensive customer lists should be required to be made available by the defaulting retailer. These possibilities may have to be provided for in retail contracts and any privacy issues would have to be accounted for.

8.1.8 Two submitters oppose the Authority being allowed to communicate directly with affected consumers and 3 opposed the lists being made available. These submitters prefer to allow the receivers to complete their processes "without third party interference". They also favour providing the clearing manager the ability to appoint a receiver.

8.1.9 These issues have already been worked through in arriving at the proposed scheme. The scheme relies on three stages that would ensure all consumers are transferred one way or another to an

alternative retailer. At each step the market regulator has a stronger role so that this outcome is exhaustive.

8.1.10 The first stage of the scheme, the 8 day period, would only have come after a series of events within the retailer so it is unlikely to be a surprise thus the high expectation that a receiver would be appointed and matters would conclude with a trade sale. The remaining two stages are essentially backstop arrangements. It is important that the final limb of these arrangements would satisfy the primary objective which is to resume a customer-retailer arrangement with a solvent retailer for every customer.

9 Allocation of customers

9.1.1 There was general (but not universal) agreement amongst those who commented on the allocation of customers who did not voluntarily switch that it should be done by mandatory pro-rating across all retailers at a GXP who currently serve that market segment. Contact defined the segments as:

a) Non-half-hourly (NHH or mass market) customers for which they submitted market shares of the number of ICPs be used

b) Half-hourly (HHR) customers they felt would be more difficult to allocate fairly and suggested a random allocation of ICPs based on the HHR volume market share.

9.1.2 A caveat to this system was commonly mentioned that the allocations should be evaluated for "potential flow-on implications" (Meridian). Contact noted that "a large-scale default has the potential to create systemic risk and therefore needs to be dealt with appropriately". Orion submits that the process should consider whether the retailer is in a financial position to take on the customers. TrustPower observed that the rational for pro-rating was problematic in situations where the failed retailer has a large market share (e.g., 70%) on a particular network.

9.1.3 Mighty River Power also submitted that to avoid cost and complexity only retailers with market share greater than 10% should be part of the allocation. Simply Energy submitted that a minimum number of transferring customers should be set for similar reasons, they suggest 100. A smaller number of HHR customers represents a larger volume of demand, so it seems logical to adopt a percentage threshold for these customers to ensure the allocation is spread fairly. Mass market customers are likely to represent a lesser individual demand and a threshold based on the number of ICPs seems reasonable.

9.1.4 Taken together the submissions suggest support for a pro-rata allocation of customers at each GXP based on:

a) the volume of ICPs served by other retailers for NHH customers with a minimum threshold of 100 customers transferring, and

b) the volume of HHR demand served by other retailers where those retailers have at least 10% of the market for HHR customers

as long as the Authority undertakes an evaluation of the risk to the receiving retailers of the allocation and where there are potential flow on implications or systemic risk alternative options are discussed with the retailers. We envisage such alternatives could include exclusion of a retailer from the allocation if that retailer has specific issues, or allocation on another basis, such as net generation or hedge position if the issues are at a market level.

9.1.5 Trustpower raised a concern about the possible impact of the transfer of commercial customer contracts and the outcome for these customers if wholesale prices were high at the time. Trustpower submits consideration be given to capping the wholesale price at "something like $300/MW, or at some rate that creates certainty for retailers, or could reasonably be passed on to consumers". We consider that in general intervening in the wholesale market is undesirable, and the evaluation referred to above could consider these types of issues.

9.1.6 Submitters were generally not in favour of the possibility that the Authority tender the customer base. Submitters felt that this was the role of the receiver. Submitters do not appear to have given weight to the argument that a tender by the Authority might be more attractive because the customers would transfer to be supplied on terms set by the receiving retailer, whereas the receiver would transfer the customer contracts of the defaulting retailer.

10 Distributors' risk

10.1.1 A number of submissions focused on the level of risk perceived to be facing distributors under the model interposed UoSA. Two key points were raised – the use of conveyance agreements and the level of prudential security available to distributors.

10.1.2 Many submitters stated that conveyance-only UoSA were not the solution to distributors' problems. A number of distributors commented that they had invested considerable resources in their current models and indicated reluctance to write that investment off. Retailers also generally did not support conveyance-only agreements. Some distributors also felt that they could not offer a mix of conveyance and interposed agreements on their network, although Orion commented that "Orion has been offering and operating both conveyance and interposed arrangements from the beginning of this regulatory regime". They went on to note that under their conveyance agreements they bill some customers directly, and some are billed via a retailer.

10.1.3 The benefits of conveyance agreements were questioned by a number of submitters, with PwC noting that a number of retailers do not comply with the requirement to hold line charges separately and "such arrangements are rarely enforced". They also expressed concern that in the event of a default "there is no guarantee that the retailer will honour this commitment".

10.1.4 Taken together the submissions suggest that some of these concerns are genuine (such as transaction costs to change billing models), while some are more apparent than real (such as operating a mix of models on one network). However, if the termination of a UoSA (or similar) be considered an event of default in terms of the Code prescribed process – subject to there being no unresolved disputes between the retailer and the distributor - then the arrangements should not push distributors to favour conveyance only agreements .

10.1.5 A second issue that was raised in relation to risk was the mandatory cap on the level of prudential security distributors can require in Part 12A of the Code. Distributors are able to require security equivalent to 2 weeks' line charges, or up to 2 months' lines charges if they pay the retailer the rate of interest on the incremental security. It seems that distributors are uniformly very dissatisfied with this arrangement given the risk they perceive they face relating to the length of time it would take to switch customers if an Event of Default (in terms of cl20.4 of the UoSA) occurred on their network.

10.1.6 The Group has acknowledged the link between prudential security in the wholesale market and the length of time it takes a retailer to fully exit the market throughout this process. This

acknowledgement is specifically made through the link with the Wholesale Advisory Group work on prudential requirements. A similar link exists for distributors between the length of time the Authority has allowed in the model UoSA (which it expects distributors to adopt) for termination of the agreement. Contact Energy submits: "In our view, the best way to deal with the risk being faced by distributors is by strengthening prudential requirements in the model use-of-system agreements – two weeks is not sufficient."

10.1.7 A number of the distributors query whether the weighted average cost of capital (WACC) set by the Commerce Commission pre-dates the reduction in allowed prudential requirements by the Authority and asks the Authority to ensure that they are fairly compensated.

10.1.8 The level of prudential security available to distributors is not a matter on which the Authority Board has sought advice from the RAG.

11 Additional issues raised

11.1.1 Meridian and MRP asked for the legal advice obtained by the Authority on behalf of the Group, or a summary of it, to be released. This advice was provided with the RAG meeting papers; earlier advice received by the former Electricity Commission may not have been released but the Authority will consider whether there are any impediments to doing so.

11.1.2 Meridian questioned whether the Authority intended to establish a technical group to assist the Authority in drafting the Code. There may be some value in this as the drafting changes to Part 14 are significant and important, and the Group should consider recommending it to the Authority Board.

11.1.3 Questions were raised about what reporting and recording of investigations into events of default and actual events of default would be undertaken. Submitters asked whether trends would be monitored through the recording of remedied breaches. The Group could consider whether there would be value in this – for example, would it provide an indicator of market health? What would be done with this information (e.g. would it be published)?

11.1.4 Vector submitted that a combined gas and electricity default scheme is preferable given the existence of dual fuel retailers. The Gas Industry Company is in the process of introducing a retailer of last resort scheme. A representative from the Gas Industry Company will be invited to the 28 October 2012 RAG meeting.

11.1.5 PwC suggested that the Authority develop guidelines to set out the practicalities of how it will administer the proposed arrangements. Meridian suggested that detailed flow charts be developed to test whether the actions associated with each step were feasible in the timeframe. We recommend that flow charts and other guideline documentation be prepared by the Authority in the process of, and based on, drafting the Code changes.

12 Recommendation to the Electricity Authority Board

12.1.1 The recommendations discussed above would result in some further refinements to the overall form of the preferred approach developed by the Group as a result of the submissions, but no fundamental change. Subject to the Group's discussion of the submissions and the refinements discussed above we recommend that the Group:

a) Consider and approve the attached paper recommending to the Electricity Authority Board that a new process is introduced to the Electricity Industry Participation Code for managing a default by an electricity retailer.

13 Summary of submissions

Submitter	Comment
Q1 Do you agree with the summary of the options available to a distributor in the event of a default by a retailer, or are there other remedies available to a distributor?	
Contact	In our view, this question is best answered by distributors. While a conveyance use-of-system agreement with direct billing of line charges (The Lines Company model) may reduce the exposure for distributors, we don't consider this an appropriate solution in the short or long-term interests of consumers. It is noted that the discussion paper does not accurately reflect the current default model for billing line charges where there is a conveyance use-of-system agreement. In the case of Vector and MainPower (as opposed to The Lines Company, which bills customers directly), the retailer bills customers for the line charges as an agent of the distributor, and settlement with the distributor is based on the actual line charges billed to the consumers (implicitly or explicitly). The lines charges are not "collected by the retailer on behalf of the distributor and held in trust" as suggested in paragraph 3.4.9, nor does the model conveyance agreement anticipate this. As noted earlier, one distributor has recently tabled a new interposed use-of-system agreement that proposes steps that are additional to the termination option in the model use-of-system agreement, namely it includes a right to appoint a receiver itself and/or facilitate the rapid transfer of the retailer's customers to other retailers.
Eastland Network	These are currently the only options available.
Genesis	Distributors are able to manage their risk through other aspects of their bilateral contracts with retailers. They are not, as implied by the consultation paper's summary, limited to the contractual remedies set out under the terms of the Authority's draft model use of system agreement ("the model UoSA"). For example, distributors can establish a right to appoint a receiver or place a retailer into liquidation.
MRP	This is a reasonable summary that captures the main elements of available options. We do believe that additional lessons could be learnt from the recent E-gas experience and the legal parameters between the Authority and retailers need to be clearly established.
Meridian	Meridian agrees the paper appears to provide an accurate summary of options available to distributors in the event of default. Meridian is not able to comment definitively on the likely effectiveness of a conveyance agreement (with a retailer billing) from a legal perspective, having not undertaken any detailed analysis of the strength of a distributor's ability to access any funds held in trust with a defaulting retailer. We do, however, consider there are significant risks that a conveyance

	arrangement will prove to be of limited effectiveness from a practical perspective, given the situation of default is likely to alter incentives around meeting the terms of the agreement, including the placing of received monies into / retaining monies in a Trust account.
Orion	We do not consider that the paper clearly articulates the options available to a distributor in the event of a default by the retailer. One of the options available to distributors is to disconnect customers, however we agree with the paper that it would be untenable for a distributor to disconnect en-mass customers because the retailer had not paid its bill. It is for this reason that distributors (and others) where strongly opposed to the recent Code changes reducing the level of prudential security that a distributor could require. As we noted in our early submission of 19 March 2012 "*we believe that the Authority has exacerbated the possibility of disconnect in the event of a retailer default with its recent changes to the prudential requirements*". A first priority must be putting the fence at the top of the cliff by restoring adequate prudential requirements this should help avoid the use of the ambulance at the bottom to transfer customers to another retailer. We question whether it is actually as straightforward as the paper appears to suggest for distributors to insist on only offering an conveyance agreement. We would expect explicit regulation would be required.
Powerco	Agree. However, this highlights the inadequacies of options available to distributors as neither provides a solution that is practical or beneficial to industry parties or customers. Due to the recent reduction in prudential requirements, a distributor has little option other than to terminate a use-of-system agreement (UoSA) with a retailer and subsequently disconnect customers as soon as contractually and practically possible, thus minimising the increasing financial losses. Powerco considers this a last resort measure but in reality it would have to happen unless other arrangements to manage retailer default are put in place.
Pulse Utilities	No Pulse does not agree. It is not surprising that some distributors would support the notion of being included in the review of retailer events of default. The RAG is missing the point that retailer default provisions are designed around the notion of a blind and compulsory wholesale pool to protect the integrity of the wholesale market and the generators which are bound only by the Code without any direct contract capability. A distributor has direct contract capability and normal contractual remedies available to it including the contract itself, applying to the courts, increasing prudentials, use of prudentials as an offset, entering into payment agreements and as a supplier threatening and filing for insolvency, etc. The current analysis is back to front and attempts to assume that given

	consumers may be required to exit a retailer at a network level (due to current use of system agreement rules) c.f. a market level then how this situation is dealt with should be expressly defined. Pulse's view is that the rule itself is unworkable and a distributor should not be able to undertake such action. A distributor already has excessive power and the ability to quadruple prudentials on very short notice systemically creating the environment which could indeed put a small retailer under financial pressure particularly if all lines companies do it at the same time. They also have a history of negligible bad debt and require no further Code provisions to increase their power. The RAG is at risk of altering the fundamental market design and indeed the model use of systems agreement review by attempting to link distributors and retailer default provisions. Neither the RAG nor the EA are qualified to interfere or judge on the commercial contracts and commercial market dynamics. The relationship between retailers and lines companies is a commercial arrangement governed by commercial law and commercial remedies. Lines companies are able to trigger the retailer default provisions already by making a retailer insolvent. This is the correct trigger both in terms of process and timing given the commercial relationship which includes prudentials as a buffer for default against actual revenue due.
Simply Energy	Disagree. Distributors have flexibility in setting prudential arrangements with Purchasers including the right to call for up to two months of prudential security. Distributors are not compelled to enter into Use of System agreements with Purchaser; we are aware of a specific instance where a Distributor has not entered into a contract with an end consumer wishing to become a direct purchaser of electricity.
TrustPower	Distributors, like any creditors, have a path that would allow them to appoint a liquidator. That ultimately triggers an event of default under the Code.
Vector	Cover letter: *Use-of-system agreements (UoSA)* The RAG suggests that an option for distributors to manage the risk of a retailer default would be to shift retailers to a conveyance UoSA. For the reasons set out below, Vector does not agree that this is a practicable option. While there are additional protections for a distributor if a retailer defaults under a conveyance UoSA, it may not be practicable to 'shift' a retailer from an interposed UoSA to a conveyance UoSA. Billing methods cannot be easily or quickly changed, nor is a different billing method/type of contract (e.g. a mixed method) on the same network realistic. Furthermore, there is an assumption that under a conveyance UoSA, funds collected for distributors are "*generally* held in trust" and "*may not* be available to other creditors" (see paragraph 3.4.9 of consultation document, emphasis added). This cannot be guaranteed to be the case, hence the equivocal language.

	Appendix: Vector does not view the options identified in the consultation paper as practicable options for a distributor. It may not be practicable to 'shift' a customer from an interposed UoSA to a conveyance UoSA. Billing methods cannot be easily or quickly changed, nor can a mixed method be used. Furthermore, there is an assumption that retailers on a conveyance UoSA hold the funds in a Trust to ensure distributors are paid in a default situation. However, this cannot be guaranteed (see paragraph 3.4.9 of the consultation paper and paragraph 13 above). To be clear, Vector does not view disconnecting customers as an acceptable option. It is not a practicable solution to a default situation and does not promote consumer confidence in the electricity market. Therefore, our views on any options to address retailer default start from this perspective.
Q2. Do you consider that a distributor could be sufficiently concerned about the prospect of a default by a retailer to insist on a conveyance use-of-system agreement for the use by retailers of its network, and if so, would this be an undesirable outcome?	
Contact	Contact is **not** supportive of a conveyance use-of-system agreement. In our view, the best way to deal with the risk being faced by distributors is by strengthening prudential requirements in the model use-of-system agreements – two weeks is not sufficient.
Eastland Network	Yes, there could perceivably be sufficient concern to insist on a conveyance use-of-system agreement but this would be an undesirable outcome not only because of the costs involved but also because of the uncertainty around funds actually being held in trust by the retailer.
Genesis	We consider it is more likely that a distributor would pursue options under an interposed UoSA with a retailer, rather than insist on a conveyance UoSA. As discussed in question one above, we consider that these bilateral contracts should provide distributors with a level of comfort so that they can continue to rely on their interposed UoSA.
MRP	Yes, it is an undesirable outcome
Meridian	As the paper correctly points out, a distributor's choice of contractual arrangement will ultimately depend on the distributor's judgement as to whether perceived benefits, including from a risk management perspective, are sufficient to outweigh costs of renegotiating and changing their contractual arrangements. The scale of these costs will vary on a case by case basis but could potentially be significant. Meridian does, however, consider it is a distinct possibility that a number of distributors would be sufficiently concerned about the prospect of default to seriously entertain the idea of insisting on conveyance agreements. As conveyance agreements can be complex to deal with for retailers, Meridian would be concerned if distributors were to seek to move to wide-spread use of conveyance agreements, particularly given that a

	finalised model conveyance agreement has only recently been supplied and in the absence of suggested retail minimum terms and conditions for conveyance style relationships.
Orion	We do not believe that we would change our contracting model as a result of our concerns in relation to retailer default. However, we believe that there have been a number of Code changes and issues such as: Reduced prudential requirements Indemnification of retailers under section 12A Additional registry requirements The introduction of MEPs Standardised pricing formats Retailer default that of themselves may not cause a distributor to be sufficiently concerned about their contracting arrangements but when taken together do raise questions. Whether this would be an undesirable outcome possibly goes to the heart of the industry reforms that created the current regime. If all distributors moved to interposed agreement and billed their customers directly the role of retailers has to be questioned. However, an option could emerge where distributor bill the energy component for the retailer as a service, (effectively the completion at the generation level) this may prove to be more efficient than the status quo. Whether or not distributors moving to only a interposed agreement (whether billed directly or via the retailer) would result in a desirable or undesirable outcome requires far more consideration and consultation than is possible under this paper. However, Orion has been offering and operating both conveyance and interposed arrangements from the beginning of this regulatory regime. The interposed arrangements we provided are to meet customer requests for a direct contracting arrangement with Orion and may be either in the form of an arrangement where we directly bill the customer or our services may be billed via a retailer.
Powerco	The issue of a default by a retailer is a significant concern for Powerco and while a conveyance UoSA could be a mechanism to reduce the financial risks, it is not necessarily the most efficient or cost effective solution for all distributors. Distributors have invested substantial time and money developing business models and commercial relationships with retailers on interposed agreements, changing these could have undesirable outcomes. As a more cost effective alternative to moving to conveyance agreements exist in the form of arrangements under the Code, we see an approach of ensuring clear process and customer allocation in the event of retailer default/insolvency as the better solution for the industry.
Pulse Utilities	No, there is negligible chance and if it is undesirable then the option should be removed. However it serves a purpose in proving that the current rules are sufficient for distributors to be satisfied with the status

	quo without requiring additional rule changes in their favour.
Simply Energy	We do not think the increased use of Conveyance agreements would be an undesirable outcome. Conveyance use-of-system agreements exist; e.g. Vector. The Lines Company bills its customers directly. There does not appear to be any practical reason why a network company can't bill its customers directly. As a Retailer I would be happy for network companies to bill their customers directly. Network billing is extremely complex. I have to take on the administrative burden of billing network charges and credit risk of consumers not paying for those line charges for which I receive no compensation.
TrustPower	Given the Authority's recent work to reduce the level of security held by distributors, it seems logical distributors would look to other mechanisms to manage any perceived risk. TrustPower's concern is that a distributor faced with material concerns associated with one retailer may ultimately apply a one-size-fits-all approach to all retailers in order to regain efficiency and simplify business processes. This would be undesirable.
Vector	See above answer to Q1.
Q3. Should a distributor, after terminating a use-of-system agreement with a retailer as a result of an unresolved serious financial breach by that retailer, have an option of advising the Authority that it considers an event of default exists and that this event should be subject to the proposed arrangements under the Code to manage an event of default?	
Contact	In our view, the distributor should have an obligation to advise the Authority rather than a mere 'option'.
Eastland Network	ENL agrees that there should be an option to advise the Authority and for the Authority to manage the event under the Code. However, the Authority should be advised as soon as an event of default occurs not **after** terminating the use-of-system agreement. Once the termination of the use-of-system agreement occurs, the process is already underway. The process needs to commence prior to termination of the agreement and if the Authority is to manage this process, then they will need to be aware of events prior to termination of the use-of-system agreement.
Genesis	We do not support creating a statutory role for the Authority to manage non-payment by a retailer to distributor as an event of default under the Code As noted in our cover letter, we consider that distributors should be encouraged to exercise effective risk management through existing bilateral contracts with retailers. We also consider that there may be issues with the Authority seeking to get involved in commercial disputes between parties.
MRP	In principle yes as long as the Authority has the power to do so, and if it makes a thorough assessment of the validity of the claim by the distributor.
Meridian	Meridian strongly agrees with the RAG's premise that non-payment by a retailer should ideally be dealt with by the retailer and the distributor

	under their use-of-system agreement, for instance, by seeking additional prudential cover to the maximum amount allowed for under Part 12A of the Code. As per the comments made in our last submission[5], Meridian also accepts, however, that distributors will be very sensitive to the public relations issues associated with disconnection, meaning they may be reluctant to pursue disconnection as a course of action. Meridian agrees that distributors should have the option of prompting the proposed Code prescribed process for transferring customers, provided the Authority can first satisfy itself that the event involves more than minimal risks for the market.
Orion	Yes, we believe that this is a positive improvement. It will also allow the Authority to be aware any pending default issues eg a retailer that may be under financial stress from defaulting on a distributor while continuing to pay the clearing manager to avoid regulatory intervention. We also consider that besides introducing this step the Authority should also revoke the recent change to the Code to limit the prudential requirements that distributors may require from distributors.
Powerco	Yes. Having the ability to have a serious financial breach by a retailer considered and managed under the Code as an event of default would create positive outcomes for the industry and customers. This would also address the potential issue of a retailer continuing to pay the clearing manager but defaulting on a distributor to avoid regulatory intervention. For the arrangements to meet distributor needs, the timing of when notification to the Authority is raised needs further discussion as notification after the termination of a UoSA would extend a distributor's exposure to financial loss and does not consider the situation when a receiver has been appointed. We recommend the RAG further consider the timing in which a distributor can notify the Authority of an event that it considers to be a retailer default. Additionally, we consider that distributors should not only have the option to advise the Authority of an unresolved financial breach but also the option to notify the Authority when a retailer has been in breach but has remedied the current amount owing. This will allow the Authority to develop a picture of industry health and highlight potential future issues.
Pulse Utilities	No. As per our response to Q1, the RAG is missing the point that retailer default provisions are designed around the notion of a blind and compulsory wholesale pool to protect the integrity of the wholesale market and the generators which are bound only by the Code without any direct contract capability. A distributor has direct contract capability and normal contractual remedies available to it including the contract itself, applying to the

[5] Available at the following link: http://www.ea.govt.nz/document/16246/download/our-work/consultations/advisory-group/retail-customers-default-situations/submissions-on-retail-advisory-group-discussion-paper-retail-customers-in-retailer-default-situations/

	courts, increasing prudentials, use of prudentials as an offset, entering into payment agreements and as a supplier threatening and filing for insolvency, etc. The current analysis is back to front and attempts to assume that given consumers may be required to exit a retailer at a network level (due to current use of system agreement rules) c.f. a market level then how this situation is dealt with should be expressly defined. Pulse's view is that the rule itself is unworkable and a distributor should not be able to undertake such action. A distributor already has excessive power and the ability to quadruple prudentials on very short notice systemically creating the environment which could indeed put a small retailer under financial pressure particularly if all lines companies do it at the same time. They also have a history of negligible bad debt and require no further Code provisions to increase their power. The RAG is at risk of altering the fundamental market design and indeed the model use of systems agreement review by attempting to link distributors and retailer default provisions. Neither the RAG nor the EA are qualified to interfere or judge on the commercial contracts and commercial market dynamics. The relationship between retailers and lines companies is a commercial arrangement governed by commercial law and commercial remedies. Lines companies are able to trigger the retailer default provisions already by making a retailer insolvent and this is the correct trigger both in terms of process and timing given the commercial relationship which includes prudentials.
Simply Energy	We do not support distributors being able to advise the Authority of an event of default under the Code such that they can trigger an event of default. The proper place for managing default events between a distributor and a retailer are within their use-of-system agreements. The scope for a genuine commercial dispute, for which the Authority is not in a position to assess, is higher with a distributor than with the Clearing Manager because of the variation and complexity of line tariffs and billing arrangements, therefore there is a material risk that a genuine commercial dispute could be escalated into a broader and un-necessary default event for a retailer.
TrustPower	Yes, however advising the Authority should be more than just an option – it should be mandatory.
Unison	Scope of the Authority's role in event of default: Unison supports amendments to the Code that would regulate the process and timeline for the transfer customers from a defaulting retailer to other retailers. The RAG asks (question three) whether a distributor "*after terminating a use-of-systems agreement with a retailer, have an option of advising the Authority that it considers an event of default exists and that this event should be subject to the proposed arrangements under the Code to manage an event of default?*" Unison submits that:

	1. Once a retailer is no longer entitled to trade on a distributor's network (and there is no unresolved dispute over a termination); and 2. The retailer has not taken timely steps to terminate contracts with consumers and have them switch to an alternative retailer, or consumers ignore the retailer's requests; 3. Then the distributor should have recourse to the Authority's arrangements to facilitate switching to an alternative retailer who is entitled to trade on the distributor's network. Unison submits that such a process would protect retailer's commercial positions by only allowing distributors to call for the Authority to assist in the orderly exit of that retailer from a network when there are no unresolved disputes, as well as giving the retailer sufficient time to sell the customer base, but also protect distributors from retailers who may lack incentives to terminate arrangements with customers, and end-users from a situation where the only remedy available to a distributor is to disconnect customers of the retailer who is no longer entitled to trade on the network. Unison submits that it need not be a situation of default to the distributor that may trigger termination of a Use of Systems Agreements (UoSAs). Retailers have other duties which they must perform under UoSAs, and provisions exist to terminate in exceptional circumstances (e.g., a UoSA may be terminated when Notice of Serious Financial Default has been issued three times in any year). We do not believe the Authority has a role in respect to resolving commercial disputes, such as making a decision whether the late payment by a retailer constitutes an actual default. Once the dispute has been resolved, and the arbitrator or court's decision is that retailer's right to trade on network is terminated, we strongly support the implementation of a regulated process by the Authority for market participants to follow. The alternative, of distributors disconnecting the electricity supply to customers, is not a realistic or practical option. Customers are often not in the position to assess the solvency of a retailer, and implicitly have an expectation that they will receive an electricity supply if they have paid their electricity bill received from their retailer. We agree with the commonly held industry view, that disconnection of customers who have paid their bills is not a tenable solution. It is fundamental that there are Code provisions in place to ensure certainty of how the insolvency will be managed, and that financial impacts to other industry participants are minimised. Without regulatory intervention to correct such a market failure, there is also a risk of disruption, in some manner, to consumers. In response to the question, whether a distributor would not be sufficiently concerned about the prospect of default to insist on a conveyance UoSA for the use by retailers of its network; Unison believes such an option to mitigate the risk would be a costly exercise and practically very difficult to manage compared to a termination clause in the UoSA (once the retailer has defaulted) initiating a regulated process

	to transfer customers.
Vector	**Cover letter:** *Definition of event of default* The RAG proposes to define events of default as including failure to pay the Clearing Manager or meet security requirements of the Clearing Manager under Part 14 of the Code, plus events external to the Code such as the termination of a use-of-system agreement (UoSA) by a distributor. Vector supports the view that the definition of event of default needs to include defaults relating to industry participants other than the Clearing Manager. However, the termination of a UoSA is not the correct trigger for an event of default as this will occur too late in the defaulting process. Further, there will be situations where although a retailer has shown likely signs of default (e.g. serious financial breach or failure to pay/meet prudential requirements), a distributor may not wish to terminate the contract as some contracts will contain powers and remedies for distributors, such as the power to appoint a receiver/liquidator. The trigger for the event of default should instead include a breach of prudential requirements under both Part 14 and Part 12A of the Code – to include prudential requirements for Distributors as well as the Clearing Manager. Payments under Part 12A should be given as much weight as Part 14. The status quo currently incentivises retailers short on cash to prioritise payments to the Clearing Manager. The trigger for the event of default should also include serious financial breaches and undisputed payments or failure to meet prudential requirements required under the Code (however, minor non-payments should be excluded). The final Model Use-of-System Agreements include clauses allowing distributors to notify the Authority of any serious financial breaches.[6] *Notification of default* Distributors should be able to notify the Authority of an event of default before/without the termination of contract. Where defaults occur events can move very quickly and it is important that the Authority and other participants are ready to act to manage the situation. To ensure quick reactions, the systems and processes put in place through any Code changes should be regularly tested. *Timing of events* The RAG proposes that the Authority would intervene at the point that a default occurs and, after perhaps eight working days, contact the

[6] Clause 20.4 of Interposed MUoSA and clause 12.3 of Conveyance MUoSA.

	customers of the retailer. Then, after a further ten working days, assign the remaining customers to other retailers within the same network areas. Vector supports this proposal in principle but we do not believe the proposed triggers are quite right. Vector submits that the Authority should have powers to intervene at two stages within the process: a) When an event of default occurs and is not remedied but the industry participant does not have powers to appoint a receiver/liquidator; and b) When the receiver/liquidator decides that the default situation cannot be rectified and that they will be ceasing to trade. These points are discussed in more detail below. Some industry participants have the power to appoint a receiver/liquidator. However, where a retailer has defaulted and the existing contractual arrangements do not allow the affected participant(s) to appoint a receiver/liquidator, the Authority should be mandated under the Code to appoint such. When a receiver/liquidator has been appointed, it is important that they can continue trading (when they have the support of the distributors and the Clearing Manager) without third party interference. At this stage they would be assessing the viability of the business and it would be counterproductive for the Authority to intervene, until such time as the receiver/liquidator *cannot* rectify the situation. Therefore, where a receiver/liquidator has been appointed, the Authority ought not to put a time limit on the receiver/liquidator to rectify the situation. This could put undue pressure on trading by the receiver/liquidator and inhibit, rather than ease, the process. However, the Authority should work closely with the receiver/liquidator to provide information and ensure that the impact on the industry is minimised. The Authority should only contact customers to provide a notice of transfer after it has been established that the attempts of a receiver/liquidator to rectify the situation have failed and that the receiver/liquidator is not continuing to trade. This contact should occur within three working days of the receiver/liquidator stopping trading. Vector acknowledges the need for a balance to be struck to ensure a reasonable time for the voluntary transfer of customers while maintaining minimal loss of revenue for industry participants. However, the proposed 10 working days seems slightly excessive and could be reasonably cut down to one week – 5 working days – from the date the Authority notifies the customers that they are required to switch retailers. One week is enough time to allow customers to receive and digest the information and choose whether to voluntarily transfer to a new retailer. Thus, in summary, under Vector's proposal the Authority

	would have three working days to contact customers to advise them to switch retailers and would then transfer any remaining customers five working days after that. **Appendix** Yes. However, this raises concerns around: 1. unnecessary interference with an appointed receiver/liquidator (see above, paragraphs 16-22); and **2.** notification of default without termination of contract (see above, paragraphs 9-11, and 14).
Q4. Are there any other events not currently captured by clause 14.55 that should be defined as an event of default and if so on what rationale?	
Contact	No.
Genesis	As discussed in our cover letter, we recommend that regulatory intervention should be limited to events of default within the Code and any normal insolvency process.
MRP	No.
Meridian	With the exception of the termination of an agreement arising from a serious financial breach of a use-of-system agreement (UoSA), Meridian considers clause 14.55 currently captures the main events that should constitute a default under the Code, and does not need to be revised to incorporate any other additional events.
Orion	No.
Powerco	Yes. If clause 14.55 is amended to include failure to pay a distributor the full amount invoiced in accordance with a UoSA and the termination of a UoSA following an unresolved serious financial breach, we consider that failure to provide payments under Part 12A of the Code should be included.
Pulse Utilities	No.
Simply Energy	No Comment
Vector	**Cover letter** *Definition of event of default* The RAG proposes to define events of default as including failure to pay the Clearing Manager or meet security requirements of the Clearing Manager under Part 14 of the Code, plus events external to the Code such as the termination of a use-of-system agreement (UoSA) by a distributor. Vector supports the view that the definition of event of default needs to include defaults relating to industry participants other than the Clearing Manager. However, the termination of a UoSA is not the correct trigger for an event of default as this will occur too late in the defaulting process. Further, there will be situations where although a retailer has

	shown likely signs of default (e.g. serious financial breach or failure to pay/meet prudential requirements), a distributor may not wish to terminate the contract as some contracts will contain powers and remedies for distributors, such as the power to appoint a receiver/liquidator. The trigger for the event of default should instead include a breach of prudential requirements under both Part 14 and Part 12A of the Code – to include prudential requirements for Distributors as well as the Clearing Manager. Payments under Part 12A should be given as much weight as Part 14. The status quo currently incentivises retailers short on cash to prioritise payments to the Clearing Manager. The trigger for the event of default should also include serious financial breaches and undisputed payments or failure to meet prudential requirements required under the Code (however, minor non-payments should be excluded). The final Model Use-of-System Agreements include clauses allowing distributors to notify the Authority of any serious financial breaches.[7] **Appendix** Yes. The definition should not be limited to situations where a termination of contract has occurred. Similarly, events of default should include serious financial breaches and failure to provide payments required under Part 14 *and* Part 12A of the Code (see above paragraphs 8-11). It is not an equitable outcome for retailers facing payment issues to not face consequences when they continue to pay the Clearing Manager but not their distributor.
Q5. Should the Code provisions governing the notification of a default be broadened to require all participants and service providers to notify the Authority as soon as that entity has reasonable grounds to believe that an event of default is likely to occur, or has occurred?	
Contact	While we think in principle this is a good idea, we would want to view any proposed wording before we commented further.
Eastland Network	Yes. Requiring this would enable the Authority to be aware of any impending issues, especially if there were several participants that notified the Authority of an event or likely event regarding a single retailer over a short space of time. Individually these amounts may not be large but in total it could be significant. Notifying the Authority in advance would also allow more time for the Authority to prepare for managing an event.

[7] Clause 20.4 of Interposed MUoSA and clause 12.3 of Conveyance MUoSA.

Genesis	We do not support this obligation being imposed on participants, Participants are not best placed or equipped to make this assessment. Further, whether the facts amount to "reasonable grounds" may often be unclear, and a participant seeking to comply with the Code provision may be in effect speculating on the credit worthiness or otherwise of other participants. This may create legal risk for participants and the Authority. There is also a risk that this requirement may not be used in good faith, and may result in the Authority having to enquire into contractual disputes between the parties involved. The terms of that individual contract would need to be worked through to make a determination about whether an event of default is likely to occur. The Authority may not be the correct body to make this determination. We recommend a more suitable approach would: • require participants to notify the Authority of any insolvency process being formally initiated (e.g., the commencement of legal proceedings); and • require the Clearing Manager to inform the Authority of any default on invoices or prudentials. This process would create clearer parameters for notification and remove the risk of speculation.
MRP	Yes, it promotes good industry practice.
Meridian	No. While Meridian supports broadening notification obligations to require all participants to notify the Authority as soon as an actual event of default has occurred, presumably in so far events that are captured by clause 14.55 of the Code, we are concerned that an obligation on participant's to advise the Authority that an event may be possible will give rise to significant risks of "false positives".
Orion	Yes. We expect that this could allow earlier intervention by the Authority that may alleviate a default occurring. In the case that a default has occurred then the Authority should be made aware of this at the earliest opportunity.
Powerco	Yes. This will provide greater transparency and reduce the chance of events occurring that industry participants were not prepared for. The Authority dos not have to act on each notification (particularly if a receiver is appointed) but needs to be prepared to act swiftly if an event of default triggers the proposed process requiring transfer of customers. We do have a further question around how an event of default that is likely to or has occurred will be conveyed to all industry participants.
Pulse Utilities	No. Retailer default provisions should focus around the notion of a blind and compulsory wholesale pool to protect the integrity of the wholesale market and the generators which are bound only by the Code without any direct contract capability.

	This is interfering with commercial contracts and remedies including operating of a free and open market. It is ridiculous to consider that a company can be reported to the Electricity Authority for the late payment of a small invoice to a service provide such as for a meter installation.
Simply Energy	Disagree as this creates a risk that a genuine commercial dispute could trigger an event of default.
TrustPower	Yes
Vector	Yes, Vector holds the firm view that all participants of the industry should be able to notify the Authority. While the Authority may not need to act (if a receiver/liquidator has been appointed) the Authority will need to monitor the situation, work closely with the receiver/ liquidator, and prepare to act quickly if it is required to contact and transfer customers.
Q6. Should the clearing manager have an obligation to advise an entity if it has not complied with a requirement of Part 14 of the Code and that this non-compliance is an event of default?	
Contact	Yes.
Genesis	We agree that the Clearing Manager should have an obligation to advise non-compliance with Part 14. However, our understanding of the process put forward by the RAG is that the Authority would be responsible for deciding and notifying entities whether that non-compliance "is an event of default".
MRP	Yes, as Rule 14.57 stipulates, the Clearing Manager needs to notify the entity and has to refer the issue concerning an event of default to the Authority.
Meridian	Yes, as we consider this will serve to codify best practice.
Orion	Yes, it may be an error that can be easily resolved if dealt with promptly.
Powerco	Yes. In some cases non-compliance may be due to an error or oversight. In these circumstances the entity should be given the opportunity to rectify the problem.
Pulse Utilities	No. The issues are serious enough for the Electricity Authority to have to be involved prior to any notice of default being provided.
Simply Energy	Agree.
TrustPower	Yes
Vector	Yes. This also gives the entity the opportunity to correct any non-compliance in the event of possible oversight.
Q7. Should the Code be clarified and simplified by bringing the actions that may be taken by the clearing manager in the event of a default into one sub-part and re-drafted to stipulate, to the extent practical, the actions the clearing manager would take in relation to a shortfall in payment or a failure to meet a call?	

Contact	Yes. Contact is supportive of this proposal.
Genesis	Yes.
MRP	Yes
Meridian	Meridian agrees that these amendments will improve the clarity of the Code.
NZX	Yes, the Code should be clarified to specify actions that may be taken by the clearing manager upon default as well as any requirements of the clearing manager.
Orion	Yes. Clarification and simplification that assist participants in understanding the Code requirements and the actions that will occur should a default occur would be beneficial.
Powerco	Yes. Clarification and simplification of this sort aids the understanding of the Code requirements.
Pulse Utilities	Potentially but it does not appear to be strategically significant.
Simply Energy	Agree.
TrustPower	Yes
Vector	Yes if it means that it would provide greater clarity and certainty. Care would be required to ensure that re-drafting would not change the meaning and scope of such actions.
Q8. Should the Code stipulate that on being notified of an event of default, the Authority would immediately investigate and determine: whether an event of default exists; and if an event does exist whether that event is a minimal risk event arising from a technical or administrative failure that has or will be corrected within one business day or a commercial disagreement that doesn't affect the retailer's long-term ability to trade?	
Contact	In our view the threshold here, whereby the Authority investigates **any** notification, is too low. A threshold should be reached before an investigation is conducted; that is, the party reporting the default should 'have a genuine reason for believing the non-payment is a default event'. There may be simple reasons why a payment has not occurred on time (for example, a clerical error), in which case an investigation is not warranted.
Genesis	There may be a need to distinguish between defaults notified by the Clearing Manager and defaults notified by other parties. We consider that in the case of commercial disputes between other parties, the Authority may not have the information available to immediately determine whether an "event of default" exists. In this scenario, the terms of the individual contract may need to be worked through first.
MRP	Yes, with respect to (a), we believe that it is a necessity to investigate whether an event of default exists. With respect to (b) we do not see any value in unnecessarily causing distress within the Industry. We fail to understand the importance of

	minimal risk event that does not affect the retailer's long-term ability to trade. Questions arise as examples, • Will this data be recorded on a database to monitor retailer trends, • how will the reporting of this data be structured, • and who the audience will be. Overall the codification of event defaults levels would provide greater clarity as to the process that will follow an event of default.
Meridian	In the interests of managing the financial exposure of other market participants, Meridian considers it is critical the Authority makes a decision quickly on whether the event involves more than minimal risks and agrees with the proposal to immediately investigate likely risks. We consider that these investigations should be undertaken in collaboration with the Clearing Manager. Meridian submits that further testing of the suggested 1 working day timeframe for undertaking these assessments, as well as consideration of options for ensuring the Authority can gain quick access to the information it will need to achieve this timeframe in the majority of instances, will be important. As per the comments set out in our cover letter, we consider detailed flows charts will play an important role in this further testing.
NZX	Defaults related to commercial disagreements that don't affect the retailer's long-term ability to trade should not be considered a minimal risk event where the default was a short payment to the clearing manager. We consider allowing for short payments due to commercial disputes will undermine the market and increase costs. ***Another option:*** One possible (and very un-tested) means of limiting the exposure of the market to defaulting retailers without restricting the ability of the retailer or a receiver to sell the customer base could be to novate customer receipts to the regulator or clearing manager in case of extended default. These customer receipts will support wholesale electricity purchases during the default period and provide time to secure a suitable purchaser.
Orion	a) Yes. Immediate investigation and assessment should minimise participants exposure and consequential actions could limit financial loss. b) Yes. Even if the default is a technical or administrative failure, these events need to be documented • to ensure there are not delays while the Authority determines "root cause"; • to provide transparenty and check for any similar instances that might indicate more significant issues on the credit front; • to use as educational informationto assist other participants to reduce the risk of similar events.

Powerco	a) Yes. Immediate investigation and assessment are required to minimise parties' exposure to financial loss and provide a decision on what steps are to be taken next. b) Yes. Investigations of this sort assist with the assessment of risks and need to be documented for future reference. Processes resulting in technical or administrative events occurring should be reviewed with the aim of eliminating recurrences.
Pulse Utilities	No, the wording is too prescriptive and too limiting. The Electricity Authority as the governing body should have more lee-way to consider its action.
Simply Energy	Agree
TrustPower	Yes
Vector	Yes, subject to our comments on Q8 below, the Code should include provision for the Authority to investigate upon notice of default regarding whether one exists – (links to Q3 and 5). Clause (b) looks like it is trying to flesh out the cause and impact of the default; however, this should be set out more clearly. We suggest something along the lines of: i. What level of risk does the event of default have? ii. Did the event of default arise out from a technical, administrative, commercial or other type of failure/issue? If so: A. will the failure or event be corrected in one business day? If not, when will it be corrected? B. does the failure or event affect the retailer's long-term ability to trade?
Q9. Should any assessment by the Authority of whether the event is a minimal risk include a materiality threshold, equivalent to the serious financial breach threshold under the draft model use-of-system agreement?	
Contact	No.
Genesis	We agree with setting a financial threshold for materiality. However, this financial threshold should only be relevant for an assessment of whether the event is a "minimal risk event". We consider that any shortfall in payment to the Clearing Manager should continue to be recognised as an event of default. This is necessary to preserve the on-going integrity of payments into the wholesale spot market. <u>Setting the threshold</u> It is not clear why the materiality threshold should be set on the basis of what is provided for in the Authority's draft model UoSA. We consider that the Authority's model UoSA is not necessarily reflective of existing industry standards, as we are aware of a number of different versions of this agreement that are currently being used by retailers and distributor.

	We recommend that the threshold should be based on what the industry agrees is an appropriate amount to trigger the proposed regulatory response. Further consultation is required to determine this threshold.
MRP	Yes, but we are not convinced that a financial breach threshold should be the sole determinant, there may be other factors that should be taken into account. As stated in response to Q8 we propose that minimal risk events that do not have an effect on the retailer's long-term ability to trade, not be reported on, and be used for the Authority's confidential use only.
Meridian	Meridian agrees a materiality threshold set at a similar level applicable to financial breaches under the model UoSA (i.e. the greater of $100k or 20% of average monthly purchases) could be useful for the purposes of *informing* risk assessments. Meridian does not, however, consider it would be appropriate for the Authority to seek to determine the scale of the risk resulting from a particular event solely on the basis of a pre-determined monetary value as this could lead to inadequate consideration of smaller events and prevent early consideration of events that transpire as having serious market implications. It also may not allow for consideration of the scale of the event relative to the size of the retailer and its available resources.
Orion	Minimal risk should be covered by prudential requirements. Therefore anything exceeding the level of prudential requirements must be considered material.
Powerco	Yes. However, while the subject of serious financial breaches has been discussed as part of the MUoSA work and the thresholds have remained at amounts of greater than $100,000 or 20% of the monthly lines charges, we consider there is scope for further analysis of this issue. With lower prudentials being introduced to encourage new entrants into the retail space there is likely to be an increase in smaller retailers in the industry that may take several months to exceed the $100,000 threshold. As retailers may have UoSA's with multiple distributors there is a risk that the retailer could build up significant debt without exceeding the threshold and once they exceed with one distributor the full extent of the size of their debt level would only then be revealed. For this reason we consider that the threshold should be set at 'amounts of greater than $100,000 or 20% of the monthly lines charges'.
Pulse Utilities	Pulse would prefer to define the instances which would equate to serious event of default that would trigger the serious consequences of potential loss of all customers. Defining it by what it is not i.e. minimal risk is insufficient and does not allow the Electricity Authority required discretion regarding all of the potential possibilities.
Simply Energy	The Authority's assessment of a breach should include a materiality threshold because this will minimise transaction costs and 'noise' that can undermine market confidence for non-material breaches with risk safely contained within prudential security held by the Clearing Manager.

	However we would like to see materiality defined in such a way that it would not in any way increase the amount of prudential security required. Time is of the essence in assessing breaches because each additional day required to exit a payer from the market adds to prudential security requirements. We would like an obligation on the Authority to assess a breach in **1 Calendar Day**
TrustPower	Yes, but any threshold clause must be drafted in a manner that it is not left open to exploitation by a defaulting retailer.
Vector	Yes. However, the definition of 'serious financial breach' needs to be clarified. In footnote 8 of the consultation paper it is stated to be "the **lesser** of $100,000 or 20% of the monthly lines charges", while in paragraph 4.2.4 it is "the **greater** of $100,000 or 20% of the monthly lines charges" (emphasis added). Vector recommends the definition of serious financial breach is "the **lesser** of $100,000 or 20% of the monthly lines charges". For some small retailers, it can take several months to build up $100,000 of unpaid bills.
Q10. If distributors are provided with an option of notifying the Authority that they had terminated a retailer's use-of-system agreement as a result of an unresolved serious financial breach, should the Authority be tasked with assessing whether the distributor had complied with the notice terms of the use-of-system agreement and, in the absence of action by the Authority, would be entitled to notify consumers that they would be disconnected unless they switched to an alternative retailer?	
Contact	No. In our view, distributors have every reason to comply with the use-of-system agreement.
Eastland Network	In the first instance, ENL believes there is no benefit from assessing whether the distributor had complied with the notice terms of the use-of-system agreement. It is highly unlikely any distributor would not at least contact the retailer to seek payment. Distributors however, should be entitled to notify customers that they will be disconnected if they do not shift to an alternative retailer in the absence of action by the Authority. As costs incurred could be significant while waiting for action by the Authority, we believe it is important for Distributors to retain this ability to minimise financial risks.
Genesis	No. As discussed in our cover letter, we do not support the Authority having the ability to initiate a regulated transfer of customers, on the basis of a contractual dispute between a distributer and a retailer. If the Authority is to be tasked with this role, consideration should be given to the process by which the Authority is to determine whether the distributor's purported termination is valid. Particular issues for consideration include: (a) whether the Authority's jurisdiction to determine these issues (is intended to or) will preclude the retailer from bringing legal proceedings alleging an invalid termination, or resolving the dispute by way of any alternative dispute resolution mechanism contained in the contract

	between the parties; (b) what, if any, appeal rights will be available to the parties following the Authority's decision; (c) the consequences to the process of the retailer seeking injunctive relief from the courts; (d) whether the procedure adopted by the Authority to determine this issue will satisfy the requirements of natural justice; and (e) the broader legal status of any such determination, for instance in relation to a claim between the distributor and retailer for damages We consider that if the distributor has terminated the UoSA without complying with the relevant provisions in the UoSA, then some form of arbitration or legal proceedings is the appropriate mechanism to address this issue.
Marlborough Lines	**Termination of Use of System Agreement.** 2. We remain concerned with respect to the impact on the rights and obligations of Distributors following the termination of a Use of System agreement with a retailer. Until these issues are resolved we submit that it is vital that a distributor can notify the EA of an 'Event of Default' without actually terminating the Use of System agreement with the retailer, with the balance of the process outlined still occurring.
MRP	Yes
Meridian	Yes, provided the arrangements can be implemented at minimal administrative cost, with the onus at all times on distributors to provide the Authority with the information needed to confirm whether or not contractual notice terms have been complied with. Meridian considers these checks would be a necessary part of the Authority's "due diligence".
Orion	No. The authority should not be tasked with assessing whether the distributor had complied with the notice terms of the use-of-system agreement. That is a decision and process to be followed by the distributor and part of commercial arrangements. Yes, if the Authority did not act then distributor should be able to notify consumers that they would be disconnected.
Powerco	No. The proposed Code amendments are to provide a process to better manage retailer default rather than assess whether a distributor was in their rights to terminate a UoSA. By conducting an assessment of a UoSA termination, and potentially deciding that it is not justified, the Authority is involving themselves in commercial arrangements and management. Regardless of whether or not the Authority agreed that a distributor had the right, in accordance with any commercial arrangements, to terminate a UoSA, if they are being notified after the event and decide

	not to act, the distributor remains entitled to notify and disconnect customers unless they have switched retailers. Therefore the industry would still face the same concerns around event default as at present.
Pulse Utilities	Pulse does not agree with the inclusion of distributors into this body of work.
Simply Energy	We do not support distributors' ability to notify a breach under a use-of-system agreement as an event of default in the wholesale market. Management of use-of-system breaches should be managed within the bi-lateral contract between the network company and retailer.
TrustPower	The Authority should be required to confirm that the distributor has complied with all notice requirements.
Vector	Cover letter *Termination of a UoSA* Vector does not agree that, where termination of a use of system is the event of default, the Authority should be automatically authorised to investigate whether a default in fact exists. This is because the termination of the use of system would have been a contractual issue addressed by the parties' respective legal counsels. However, Vector does recognise the need to provide the Authority with sufficient information to establish that there was a 'real' default. The Authority may need to request additional information to confirm that a default has occurred. In the event of a receivership/liquidation, we would expect the Authority to maintain and work closely with the receiver/liquidator to ensure that the impact across the industry is minimised. Appendix Termination of a UoSA is a contractual legal matter which would be likely to involve lawyers from both sides. There would not be much value in involving the Authority; however the Authority would need to be provided with sufficient evidence to demonstrate an event of default has occurred. If the Authority finds the information insufficient, they could request further information (see above paragraph 15).
Q11. Should the Code stipulate that on determining that an event of default of more than minimal risk exists the Authority would advise the retailer and its agent(s) that unless the default is rectified within a specified number of days, the Authority would: **a. communicate with all of the retailer's customers advising them that their retailer had defaulted and that the customer should switch to another retailer and that if they did not switch by a specified date the Authority would assign them to another retailer; and** **b. proceed to terminate the retailer's rights to trade electricity under the Code?**	
Contact	Contact is supportive of this proposal.
Genesis	As outlined in our cover letter, we consider that the ability for the Authority to communicate with a retailer's customer should be appropriately timed so that it does not pre-empt opportunities to secure a transfer of that customer base, or to rectify the default.

	We consider that the proposed timeframe of eight working days may not be sufficient in all instances of retailer default.
Marlborough Lines	Regulatory Mechanism Required In particular we consider it is necessary to have a regulatory mechanism to ensure that customers are transferred to alternative retailers in an orderly and equitable manner, without undue delay. Our view it is reasonably likely that a retailer default would coincide with high spot prices and therefore other non defaulting retailers may be unwilling to voluntarily pick up the customers of the defaulting retailer. We therefore support both the proposals; that all retailers are required to add a condition in their consumers' contracts so that the EA can terminate the contract at any time, or an alternative mechanism that achieves the same result, that non-defaulting retailers will be obligated to accept the consumers of defaulting retailers.
MRP	Yes, subject to what the proposed timeframes are- (see covering letter).
Meridian	Yes.
Orion	Yes. However in practice we consider it will be very difficult for the Authority to communicate with all of the retailer's customers advising them that their retailer had defaulted and that the customer should switch to another retailer and that if they did not switch by a specified date the Authority would assign them to another retailer. We are interested in understanding how the Authority will do this in practice and in a reasonable time frame. We agree that the Authority should proceed to terminate the retailer's rights to trade electricity under the Code.
Powerco	a) Yes. A fast response is required to provide the best outcomes for all industry participants and customers. Any delay increases financial loss to distributors that could already be 36 billing days plus. b) Yes. This provides a clear outcome for failure to rectify the default and protects industry parties that lack the ability to protect themselves due to their position in the supply chain.
Pulse Utilities	Pulse favours short time frames as recommended by the Wholesale Advisory Group. We believe a calendar day is long enough for the EA to decide on whether a notice of default should be given and an additional 6 calendar days sufficient to rectify the situation. We recommend that, should the retailer not be able to rectify the defaults, that this time also be defined as the period the retailer has available to seek commercial terms for the transfer of the customer base effective from the

	termination of this notice period.
Simply Energy	Agree. There are practical difficulties with contacting customers; there is no central list of contacts for each ICP. However as a retailer we would be prepared to provide such a list to the Authority (and keep it regularly updated) to the extent that the efficiency in contacting customers in the event of default was recognised in our prudential requirements. We recognise that other parties may not be prepared to do the same and that the difficulty and time taken to contact customers would need to be reflected in the calculation of prudential security.
TrustPower	Yes
Vector	**Cover letter** *Timing of events* 16. The RAG proposes that the Authority would intervene at the point that a default occurs and, after perhaps eight working days, contact the customers of the retailer. Then, after a further ten working days, assign the remaining customers to other retailers within the same network areas. Vector supports this proposal in principle but we do not believe the proposed triggers are quite right. 17. Vector submits that the Authority should have powers to intervene at two stages within the process: a) When an event of default occurs and is not remedied but the industry participant does not have powers to appoint a receiver/liquidator; and b) When the receiver/liquidator decides that the default situation cannot be rectified and that they will be ceasing to trade. 18. These points are discussed in more detail below. 19. Some industry participants have the power to appoint a receiver/liquidator. However, where a retailer has defaulted and the existing contractual arrangements do not allow the affected participant(s) to appoint a receiver/liquidator, the Authority should be mandated under the Code to appoint such. 20. When a receiver/liquidator has been appointed, it is important that they can continue trading (when they have the support of the distributors and the Clearing Manager) without third party interference. At this stage they would be assessing the viability of the business and it would be counterproductive for the Authority to intervene, until such time as the receiver/liquidator *cannot* rectify the situation. Therefore, where a receiver/liquidator has been appointed, the Authority ought not to put a time limit on the receiver/liquidator to rectify the situation. This could put undue pressure on trading by the receiver/liquidator and inhibit, rather

	than ease, the process. However, the Authority should work closely with the receiver/liquidator to provide information and ensure that the impact on the industry is minimised. 21. The Authority should only contact customers to provide a notice of transfer after it has been established that the attempts of a receiver/liquidator to rectify the situation have failed and that the receiver/liquidator is not continuing to trade. This contact should occur within three working days of the receiver/liquidator stopping trading. 22. Vector acknowledges the need for a balance to be struck to ensure a reasonable time for the voluntary transfer of customers while maintaining minimal loss of revenue for industry participants. However, the proposed 10 working days seems slightly excessive and could be reasonably cut down to one week – 5 working days – from the date the Authority notifies the customers that they are required to switch retailers. One week is enough time to allow customers to receive and digest the information and choose whether to voluntarily transfer to a new retailer. Thus, in summary, under Vector's proposal the Authority would have three working days to contact customers to advise them to switch retailers and would then transfer any remaining customers five working days after that. **Appendix** Yes; however, the Authority should only intervene if an appointed receiver/liquidator has failed to successfully rectify the situation or where a default has occurred and not been rectified and no retailer or liquidator has been appointed (see above paragraph 16-22).
Q12. Should the Code require that retailers include an assignment clause in their customer contracts?	
Contact	Yes. We would note that our mass market contracts already include this.
Genesis	Yes. However, as outlined in our cover letter, we recommend that further legal advice be sought to establish whether these types of assignment clauses could legally bind a customer to a different set of terms and conditions than that offered by their existing retailer. We have a concern that whilst the contract may make provision for the transfer of the customer to a new retailer, it is doubtful whether the contract could provide for the consumer to be bound by a different set of contractual terms, without specifying what those terms would be. We also suggest there may need to be a clause that states that reassignment will only occur if the customer has not voluntarily chosen another retailer within ten working days.
MRP	Yes

Meridian	Meridian considers re-assignment clauses to be a necessary pre-condition for the proposal to be effective and supports the proposed amendment. We also consider the amendments to be consistent with principles set out in the Authority's minimum terms and conditions for domestic contracts for delivered electricity.
Orion	Yes. We agree in principle, however we foresee practical difficulties if the retailers receiving the customers are able to determine the prices and other terms on which they would supply the customers transferred to them.
Powerco	Yes. This is currently supported by the majority of retailers as it reduces barriers and speeds up the transfer process, which benefits all parties.
Pulse Utilities	Yes, this is a commercially sensible requirement for all consumer contracts anyway.
Simply Energy	We support the Code requiring assignment clauses in retailer contracts. This appears to be a fundamental requirement in maintaining a clear and rapid path to exit a purchaser from the market and therefore the amount of prudential security required by purchasers.
TrustPower	Yes – however any changes considered should be tested against the requirements placed on retailers by the Principles and Minimum Terms and Conditions for Domestic Contracts.
Vector	Yes – relates to Q21.
Q13. What period of time, measured in days, is necessary to allow sufficient time for a retailer to transfer responsibility for its customers to another retailer or to rectify the default?	
Contact	In our view, 8 working days is sufficient for a retailer to rectify the default before the appointment of a receiver who can transfer customers, with a further 3-5 days required to communicate with affected customers following appointment of a receiver. It could be 4-6 weeks from the event of default before a sale and transfer of customers or voluntary switches (following a letter to affected customers or an assignment of customers) is complete. We would encourage the Authority to test any potential timeframes with insolvency practitioners to ensure that what is proposed in realistic.
Eastland Network	ENL submits that eight working days from the date of notice that payment is overdue is sufficient time for consumers to be transferred to another retailer. After eight days, the Authority should communicate with the retailer's customers and proceed to terminate the retailer's rights to trade under the Code. While delaying this action further to allow time for the sale of customers to another retailer, may provide best value for the receivers, this will be at the expense of generators and distributors if they do not have enough prudential to cover this extended timeframe. If retailers are permitted to trade for a period beyond the eight working

	days following a default, they will continue to increase their debt to distributors and generators for potentially another six weeks. Given that the debt up to and including the date of default is already 51 days of supply, a further six weeks will take the debt up to 92 days of supply before the transfer of customers takes effect. This is far greater than the two months of prudential permitted under the Model Use of Systems Agreement and exposes distributors to risks greater than they are permitted to obtain security for. Further, maintaining prudential cover at a rate equal to the sum of the bank bill yield rate plus 15% is extremely expensive and results in costs falling on distributors if they need to maintain sufficient security to mitigate their risk of supplying fiscally weak retailers. These additional costs should not fall to distributors who are required to provide services regardless of risk, but to those who are in a position to better manage that risk in the first place, ie the owners of the defaulting retailer.
Genesis	We suggest that the RAG consult with a wide variety of insolvency practitioners to "stress-test" any recommended timeframe. We also support providing some degree of flexibility for the Authority to extend the timeframes in specified circumstances.
Marlborough Lines	**Timeframes in Current Proposal** 3. We recognise that a decision to transfer customers to other retailers should not be taken lightly on the basis that a Retailer's customers are their major assets. However we submit that the current timeframes proposed for dealing with default together with the limits on prudential requirements imposed on distributors mean that distributors will be unlikely to be able to avoid financial loss in the event of a retailer default. 4. The submission by PWC on behalf of 22 EDBs outlines the timeframes carefully, and highlights that a loss of three to four weeks is the minimum loss that would be incurred. Our view is that this is a significant loss to be incurred by a distributor especially given that it will have far greater impact than a loss of four weeks of net revenue as the distributors' charges include those payable to Transpower for transmission services. 5. We suggest that the proposal is examined carefully to see if the timeframes can be effectively reduced. In particular we submit that the eight business day notification period provided by the EA to retailer to rectify a default is lengthy. In our view this extended period undermines the impact/consequence of the notification of an 'Event of Default' to the EA by the Distributor. 6. A further area where we consider the timeframes in the proposal could be re-examined is the ten business day notification period provided

	by the EA to consumers to switch or be transferred. It is our view that a number of good tools are now available to support customers to make an informed decision and therefore those who will switch voluntarily could do so in a lesser time window. In addition the option that consumers switch themselves to a retailer of their choice at some point after they have been reallocated to a non defaulting retailer will remain open to them.
MRP	A suitable timeframe needs to be established even if it is an estimate at this stage.
Meridian	Meridian considers the 8 working days suggested in the paper is at the upper end of a timeframe that strikes a reasonable balance between providing sufficient time for retailers to attempt to resolve the situation and managing the financial exposure of generators. Under the Code, retailers have a number of responsibilities e.g. payment for wholesale purchases, submission of reconciliation data, switching customers and so forth. Clarification is required here as to which of these obligations would be expected to have been transferred in the 8 working day period.
Orion	Without knowledge of the process we would suggest as quickly as possible and no more than 8 working days.
Powerco	For there to be benefits to distributors over the current MUoSA arrangements, the period needs to be equal to or be less than the current eight days. While tight, any delay has negative impacts for the sale or transfer of customers and the costs being occurred by other industry parties. Account should be taken of whether or not a receiver has been appointed and the chances of trading out of difficulty. The Authority needs to balance providing sufficient flexibility to allow the receiver to rectify the situation against ensuring that distributors are not exposed to an unacceptable level of risk.
PowerNet	Every day that the defaulting Retailer's customers continue to draw electricity will compound any potential loss for other participants. PowerNet understand that a shorter than 8 day period for the defaulting Retailer to transfer responsibility for their customer may not be feasible but a shorter timeframe would minimise financial losses to other participants.
Pulse Utilities	Ultimately this should be undertaken proactively. A short period of time encourages retailers to enter into pre-existing arrangements. This is why Pulse recommends a total of 7 calendar days with a fixed switch date immediately following.
Simply Energy	Eight **calendar** days are sufficient to transfer responsibility for customers or rectify a default. We note (1) that customers do not have to be actually switched, just that there has to be an agreement with a purchaser to take those customers. (2) any reasonable purchaser will

	know in advance of a default that it is likely to occur so will have had at least several weeks to try and put in place arrangements to avoid default. (3) Prudential arrangements proposed by WAG will reduce short term prudential volatility making it easier to forecast cash flow requirements, reducing the chance of un-anticipated default e.g. during periods of rapidly rising wholesale prices, giving purchasers more time to react to a potential default situation.
TrustPower	It should be remembered it is likely a retailer under stress may have already started discussions regarding a possible sale prior to actual default. On its own, a period of eight working days, while tight, does not seem unreasonable. As identified in the paper, and by the Wholesale Advisory Group, the total time from default to resolution is crucial. Any allocation of time to a specific step must be viewed in that context, and as part of the process as a whole.
Unison	*Time period to rectify default* In respect to the question of what constitutes a sufficient timeframe for a retailer to rectify a default, Unison supports a timeframe that is reasonable, and what an experienced receiver would deem appropriate. Unison does not express a view on the precise amount of time that should be provided for a trade sale, but agrees that there should be reasonable opportunity for a receiver, acting expeditiously, to effect a sale to minimise disruption to the market and to maximise the value realised in the sale. However, this cannot continue indefinitely, given other market participants may continue to incur losses up to the point the consumers shift to an alternate supplier. From a distributor's perspective, we note that the amount of line charges owing at a point of default could easily exceed the potential two months of security payable under the prudential requirements (this could be due to the non-transparency of the financial health of a retailer, due to delayed or hidden components of debt – retailers facing a difficult cash-flow position face incentives to under-estimate consumption for the purposes of paying line charges, which cannot readily be detected). It is therefore important that any timeframe to rectify a default is reasonable to minimise impacts on market participants.
Vector	**Cover letter** *Timing of events* 16. The RAG proposes that the Authority would intervene at the point that a default occurs and, after perhaps eight working days, contact the customers of the retailer. Then, after a further ten working days, assign the remaining customers to other retailers within the same network areas. Vector supports this proposal in principle but we do not believe the proposed triggers are quite right.

17. Vector submits that the Authority should have powers to intervene at two stages within the process:

    a) When an event of default occurs and is not remedied but the industry participant does not have powers to appoint a receiver/liquidator; and

    b) When the receiver/liquidator decides that the default situation cannot be rectified and that they will be ceasing to trade.

18. These points are discussed in more detail below.

19. Some industry participants have the power to appoint a receiver/liquidator. However, where a retailer has defaulted and the existing contractual arrangements do not allow the affected participant(s) to appoint a receiver/liquidator, the Authority should be mandated under the Code to appoint such.

20. When a receiver/liquidator has been appointed, it is important that they can continue trading (when they have the support of the distributors and the Clearing Manager) without third party interference. At this stage they would be assessing the viability of the business and it would be counterproductive for the Authority to intervene, until such time as the receiver/liquidator *cannot* rectify the situation. Therefore, where a receiver/liquidator has been appointed, the Authority ought not to put a time limit on the receiver/liquidator to rectify the situation. This could put undue pressure on trading by the receiver/liquidator and inhibit, rather than ease, the process. However, the Authority should work closely with the receiver/liquidator to provide information and ensure that the impact on the industry is minimised.

21. The Authority should only contact customers to provide a notice of transfer after it has been established that the attempts of a receiver/liquidator to rectify the situation have failed and that the receiver/liquidator is not continuing to trade. This contact should occur within three working days of the receiver/liquidator stopping trading.

22. Vector acknowledges the need for a balance to be struck to ensure a reasonable time for the voluntary transfer of customers while maintaining minimal loss of revenue for industry participants. However, the proposed 10 working days seems slightly excessive and could be reasonably cut down to one week – 5 working days – from the date the Authority notifies the customers that they are required to switch retailers. One week is enough time to allow customers to receive and digest the information and choose whether to voluntarily transfer to a new retailer. Thus, in summary, under Vector's proposal the Authority would have three working days to contact customers to advise them to switch

	retailers and would then transfer any remaining customers five working days after that. **Appendix** Where a receiver/liquidator has been appointed, it is important that they can continue rectifying the default situation without third party interference. Therefore, the Authority ought not to put a time limit on the retailer to rectify the situation. This could put undue pressure on trading by the receiver/liquidator and inhibit, rather than ease, the process. However, if there has not been a receiver/liquidator appointed the Authority should have the powers to step in and appoint one, rather than step in to transfer customers as a first step. Customer transfer will be required only where the receiver/liquidator decides to cease trading. (See above, paragraphs 16-22.)
Q14. Should the relevant period of time be specified in working days or in calendar days?	
Contact	Working days.
Genesis	Working days.
MRP	Working days, as this is standard industry practice.
Meridian	Meridian is indifferent, provided the timeframe allowed for does not exceed 8 working days.
Orion	Working days
Powerco	Working days. Weekends that coincide with public holidays would make calendar days unmanageable if eight days were applied.
PowerNet	The Use of System agreements refer to business days so it would be consistent to have periods of time specified in working days rather than calendar days.
Pulse Utilities	Calendar days.
Simply Energy	Calendar days as per the reasons cited in Q13
TrustPower	The relevant period of time should be specified in working days.
Vector	Working days – calendar days are not reasonable.
Q15. Should a mechanism exist to extend the number of days provided to the retailer in default to rectify the event of default, including any interest payable, if that extension of time is approved by the parties who would bear the financial risk of an extended time period?	
Contact	Yes.
Genesis	Yes.

MRP	Yes - provided affected parties (those that will bear the financial risk) are consulted.
Meridian	Meridian would support allowing for the timeframe provided to the defaulting retailer for addressing the situation to be extended where there is wide-spread support amongst those that will bear associated financial risks. We consider this might, in some circumstances, lead to a quicker and better resolution than might otherwise result.
Orion	Yes, provided that at least the thresholds described in question 16 below are also put in place.
Powerco	Yes, if a receiver has been appointed, as this will be addressed by them when they work with creditors.
Pulse Utilities	Yes but this is potentially unworkable as in effect this would require the approval of all generators in the market. Needs to be considered alongside the prudential and clearing review being undertaken.
Simply Energy	Agree that parties with financial risk should be able to extend the period of eight days
TrustPower	Yes, the approach suggested is reasonable and appeared to be effective in the case of E-Gas. However, TrustPower notes that generators with competing interests in a defaulting retailer's customer base are unlikely in all circumstances to agree to an acquiring retailer's request.
Vector	This will be addressed by the receiver/liquidator working with the creditors and assessing the business. There should not be any need for the Authority to intervene. However, the Authority should be working closely with the receiver/liquidator.
Q16. Should any extension of time for rectifying the default require approval of a majority in number representing 75% in value of the money owed or some other threshold?	
Contact	No comment.
Genesis	Yes.
MRP	Yes, The represented percentile (75%) seems to be in accordance with section 228 of the Companies Act. Our view is that no change needs to be effected as it may create complexity and confusion.
Meridian	Meridian considers the approval threshold should be set at 75% of gross NZEM generation revenue calculated over the 3 weeks prior.
Orion	Yes, this seems a reasonable compromise that has precedence in section 288 of the Companies Act
Powerco	Yes. Agreed as this aligns with section 288 of the Companies Act.
Pulse Utilities	Yes, this would help the challenges arising.

Simply Energy	Agree that approval to extend the period should be subject to majority approval
TrustPower	Thresholds should, where possible, align with accepted non-industry practice. 75% of value appears reasonable.
Vector	Yes, 100% is likely to be impossible but a clear majority is acceptable. There are also provisions under other Acts, e.g. the Companies Act 1993, which cover what the receiver/liquidator can do. Vector recommends these are considered by the Authority to ensure the Code does not conflict with existing legislation.
Q17. Should the Code provisions that provide for generators to be assigned or subrogated to the rights of the clearing manager be removed from Part 14?	
Contact	In our view, the Clearing Manager should not be a risk-bearing agent.
Genesis	No, we consider that generators should continue to have the legal means to enforce repayment, in the event that the clearing manager fails to do so. While the Authority could also enforce these rights on behalf of generators, there is no guarantee that it will. We note that the powers for the Authority to act under section 16(2) of the Electricity Industry Act 2010 are discretionary only. We consider that these types of subrogation rights are important for maintaining generators confidence in the wholesale spot market.
MRP	Yes, Part 14 rules need to be reviewed and altered to reflect the functions of the Clearing Manager.
Meridian	Agree as we consider the RAG's concerns regarding the clauses giving rise to risks of potential confusion and complexities are valid. Meridian would welcome further information on whether these rules may be better suited to early NZEM arrangements rather than the current "gross pool" system.
Orion	No Comment
Powerco	Yes. Having generators undertaking the functions of the clearing manager would probably be unworkable and could create a conflict of interest.
Pulse Utilities	Yes.
Simply Energy	Agree that the right of Generators to subrogate rights should be removed from the Code
TrustPower	Yes
Vector	Yes.
Q18. If, at the end of the eight-day period, the defaulting retailer has not satisfied the Authority that it (the retailer) is no longer in default, or has not transferred all of its customers to another retailer, should the Authority have the ability to communicate with the retailer's customers advising those customers that their retailer had defaulted, that they should switch to another	

retailer and, that if they did not switch by a specified date, the Authority would arrange for them to be transferred to another retailer?	
Contact	We agree with what is proposed, but do not believe that the 8-working-days period is practical.
Eastland Network	ENL agrees that this is the correct course of action to take by the Authority.
Genesis	Refer to cover letter. Recommendation two: Further consultation on timeframes for regulated transfer We recommend that further industry consultation is undertaken on the timeframes required for communicating with customers and imposing a regulated transfer. It is important that these timeframes provide reasonable opportunities for normal insolvency processes and commercial arrangements to work. We consider that the RAG's proposal of allowing a defaulting retailer only eight working days to rectify the default, or to sell its entire customer base, is unlikely to be an achievable timeframe in all cases of insolvency. We consider that communications between the Authority and a retailer's customers at this early stage would diminish any on-going efforts by the retailer, or its agent, to negotiate a sale of the entire customer base. As commercially desirable customers start to switch away from a retailer, this will devalue the remaining customer base. In this way, the actions of the Authority could in fact increase the risk of stranded customers and the need to resort to a mandated transfer. There is also a risk that pre-emptive action by the Authority at this early stage could be perceived as defeating the interests of secured creditors and shareholders, particularly if these parties consider that there is still a chance of the retailer trading itself out of difficulty. This early intervention could expose the Authority to future legal challenges and may also raise the cost of finance for independent retailers in the future. Genesis Energy considers that anything less than 21 working days is likely to be inappropriate. We suggest that the RAG consult with a wide variety of insolvency practitioners to "stress-test" a suitable timeframe for inclusion within regulation. To accommodate default situations that fall outside of the regulated timeframe, we endorse the proposal to provide some flexibility for the Authority to extend the timeframes in specified circumstances. Recommendation three: Customers should be transferred in a way that minimises financial loss to retailers Genesis Energy considers that a regulated customer transfer scheme should seek to minimise the financial losses for those retailers who may be required to take on the customers of a defaulting retailer.2 To enable this to occur, we recommend that the RAG further consider the provisions addressing the price and terms and conditions of supply, and the methodology for transferring customers. 2 As the RAG acknowledges, requiring retailers to absorb customers in a

	way that financially disadvantages their business would not be in the long-term interests of consumers. *Assignment clauses may not be legally effective* We recommend that further legal advice be sought to establish if it would be legally possible for retailers to determine the prices and other terms and conditions which are to be applied to customers accepted under a regulated transfer scheme. We have concerns that whilst the contract may provide for the transfer of the customer to a new retailer under the regulated transfer scheme, it is doubtful whether the contract could provide for the consumer to be bound by a different set of contractual terms, without specifying what those terms would be. We note that retailers could face significant financial loss if they are forced to take customers at the existing defaulting retailer prices, or even on their own existing prices. For example, in hydrological dry years where wholesale spot prices are high, retailers may not be sufficiently hedged to supply new customers on the basis of their existing prices. *Methodology for transferring customers* We recommend that under the regulated transfer scheme, retailers be assigned customers based on their existing market share and the types of customers they already supply in that distribution network area. We note that information about market share and customer classification for each trading retailer at a given Grid Exit Point (GXP) is already available from the Registry. We recommend that retailers should also retain the right to decline customers that do not meet their standard customer acceptance criteria – including credit criteria.
MRP	Yes, the remaining retailers need to be informed. Additionally with the Authority facilitating this process it should be able to justify to external parties and clarify to these parties the process from origin (defaulting retailer not satisfying the Authority after the eight-day period) until conclusion.
Meridian	Yes. Meridian notes, however, the suggested 1 working day timeframe for the Authority to complete the process of contacting customers assumes the Authority has access to accurate customer contact information. Please refer to the comments in our cover letter regarding suggested further analysis. Meridian submits that there should be an obligation on the Authority to advise industry participants immediately of the defaulting participant's failure to remedy the situation.
Orion	Yes.
Powerco	Yes. This backstop of having arrangements to transfer remaining customers communicated by the industry body is a major benefit of the proposal over the current arrangements (eight days before the distributor can

	terminate a UoSA and communicate with customers). While we recognise that communicating with consumers and providing time to switch is necessary, Powerco advocates retaining a tight timeframe to reduce the financial loss being experienced by industry parties.
Pulse Utilities	Yes.
Simply Energy	Agree. We believe that the time to notify customers that they need to switch can be reduced to 6 business days. Letters/ emails can be ready to go for delivery within one business day giving customers 5 business days to make alternative arrangements.
TrustPower	Yes
Vector	Refer to answers for Q13 and 15.
Q19. Should the Authority be able to facilitate this voluntary transfer by providing the customer list of the retailer in default to competing retailers so that they may make their own approaches to the customers of the retailer in default?	
Contact	Yes. However, this should follow a letter from the Authority to all affected customers, which advises they are required to switch to another retailer by a certain date or will be allocated to a retailer at random. The letter should also provide the customer with a list of retailers in their area. In our view, it would be very confusing for customers to receive a letter from the Authority as well as competing retailers (and potentially distributors) at the same time.
Eastland Network	ENL agrees with this process if it facilitates the quick transfer of customers to another retailer.
Genesis	No. We consider that this proposal replicates the receiver's role and could conceivably delay a solution, rather than assist the process.
MRP	Yes, the Authority is best placed to facilitate this voluntary transfer. This process would need to be defined and agreed upon by all parties, but we fail to see how this is any different across for the ability of the receiver to make the necessary arrangements.
Meridian	Assuming this will not be prevented by privacy obligations, Meridian supports the concept of making customer lists widely available to retailers. We note that further consideration will be needed as to whether this will require consequential revisions to minimum terms and conditions for domestic energy contracts.
Orion	We agree in principle, providing that competition issues are addressed.
Powerco	Yes. As long as privacy laws were not breached, this would be a practical approach and would help maintain a competitive retail market.

Pulse Utilities	Yes. The switch date should be fixed and be a total of 7 calendar days from the first notice of default provided by the Electricity Authority. This effectively ends the risk period for distributors and generators as well as creates certainty for other generators in planning alternate hedge and generation strategies. The customers should be advised of this switch date, that their supply is not at a risk and that they have a 21 calendar day period to choose another retailer before being automatically switched.
Simply Energy	We think retailers should only be provided the list of customers as part of the process where the Authority assigning un-switched customers. This process would continue to preserve some value in the defaulting retailer's book and prevent cherry picking such that the quality of the remaining customers assigned would be of a higher average quality and remain more attractive than otherwise.
TrustPower	No – retailers should be left to make their own approaches, and would most likely start to do so before any list provided by the Authority. With customer switches likely to be in progress (to and from), and the Authority being reliant on a defaulting retailer to provide actual (and accurate) contact details rather than physical details, the value of any list will be questionable and likely only add to a confused situation for customers.
Vector	No. If this is coupled with the proposal for tenders, it will most likely lead to customers being bombarded by competing retailers. This is arguably a bad thing as people usually do not like to be contacted by sales-people. Furthermore, there are probably restrictions on the use of customer's personal data and privacy implications, in relation to its use by numerous retailers. In addition, those retailers will have had the opportunity to purchase the defaulting retailer's customer base from the receiver/liquidator.
Q20. What period of time, measured in days, should be provided by the Authority to the customer of the retailer in default to voluntarily switch to an alternative retailer?	
Contact	In our view 10 working days is appropriate.
Eastland Network	We submit that no more than eight days from the date of the notice should be provided to customers to switch to an alternative retailer.
Genesis	Ten working days.
MRP	10 business days to complete all switching will likely be unachievable. Some days are required for the consumer to act, plus mail time and switch processing times, However, if the intent is to drive rapid action by the customer and the Authority is likely to extend the timeline (not publicly) in practice, then 10 days would seem appropriate.
Meridian	Meridian considers the 10 day working day period suggested by the RAG is reasonable from the perspective of managing the credit exposure of participants. We do, however, consider it will increase the likelihood of a

	regulated solution being required.
Orion	It should be as quickly as practical and no longer than the 10 days provided for in the MUoSA.
Powerco	We support the alignment with the MUoSA of 10 days.
Pulse Utilities	21 days. The important point is to fix the switch date. Consumers and retailers then have sufficient time to make approaches and for switches to occur based on consumer choice. Pulse believes that consumer choice is important and can only be given sufficient time if the switch date is fixed so risk already mitigated. The switch date should be the end of the first 7 day period.
Simply Energy	Five business days or as few as the customer will contract for. This period of time should be reflected in prudential requirements.
TrustPower	This situation arises if the defaulting retailer has been unable to affect a sale of the customers. Ten working days' notice to customers does not seem unreasonable, however TrustPower notes that each day that passes increases the risk faced by suppliers, and the Authority should not underestimate the need for the subsequent step (allocation). The Authority will be unlikely to reach and inform all customers. A significant number of customers, when advised that if they do nothing the Authority will assign them a new retailer, will take the "do nothing" option and rely on the Authority's processes. TrustPower continues to urge caution with regard to the analysis of past customer transfers. Market conditions were quite different at those times; long generators were actively seeking large numbers of customers, and the customer bases in question were very tight geographically.
Vector	On balance, we are of the view that 5 working days is reasonable.
Q21. Should the Code impose on retailers an obligation to have the following provisions in their contracts: **a. in a default situation, the Authority may terminate the contract between the retailer and its customer; and** **b. if the Authority terminates the contract under (a), the customer would become bound by a contract with another retailer stipulated by the Authority?**	
Contact	Yes.
Genesis	We agree that this obligation would be necessary to allow a mandatory transfer of customers to take place. However, in relation to 21 (b) please see our comments in relation to Q12.
MRP	We believe that this will not be necessary on top of the assignment clause, and careful consideration should be given to the cost versus benefits of such an option.

Meridian	Meridian submits provision (b) should be re-drafted to specify that the contract is to be of open-ended rather than fixed duration and clarified to only apply to customers who have not made arrangements to transfer to another retailer. Meridian otherwise agrees with the proposal.
Orion	Yes. Clarity for all parties as to the contractual arrangements in place is important.
Powerco	Yes. This provides clarity for all parties. A customer can always subsequently transfer to another retailer if they were dissatisfied with the outcome of the process or their assigned retailer.
Pulse Utilities	Yes this is the right approach but needs to be expanded to explain to the customer that they have 21 days to voluntarily switch before compulsory switching occurs.
Simply Energy	We support the Code provisions proposed
TrustPower	Yes
Vector	Yes but subject to the contractual conditions/operation between the retailer and the distributor – e.g. this step should not be taken while a receiver/liquidator is still trading (relates to Q12).
Q22. Should retailers in the same network area be required by the Code to enter into contracts with customers of the defaulting retailer whose contracts have been terminated by the Authority?	
Contact	Our preference would be to enable retailers to 'opt in'; however, we appreciate for the reasons noted earlier in this submission that this may not always be possible. Accordingly, it seems appropriate that the Code require all retailers trading on the network to accept the transfer of residual customers. Most importantly, any transfer must provide for retailers to take on customers **on their own terms** and not on the terms of the defaulting retailer.
Genesis	Our preference is for customers to be assigned to all trading retailers on a GXP based on market share and customer classification. In a situation where there is no current UoSA between a distributor and a retailer on a distribution network, provisions should be made to enable the retailer to notify the Authority of their availability (or lack of) to be assigned customers on that network.
MRP	We do not believe that this is necessary or appropriate and it subverts the retailer's normal business practice and decision making. All retailers should be considered and included as some might be looking to progress into particular areas. With this neutral approach the Authority cannot be accused of preferential treatment and customers will have an opportunity to switch within the allocated timeframe.

Meridian	Yes, but only for those retailers who trade on GXPs on the same network.
Orion	It may be a step too far to oblige retailers in the same network area by the Code to enter into contracts with customers of the defaulting retailer whose contracts have been terminated by the Authority. This may escalate the problem and drive other retailers to default. There needs to be a mechanism to address the issue that a retailer taking on additional customers may not be in a financial position to take on additional customers without themselves risking default.
Powerco	Yes.
Pulse Utilities	Yes, but only for those customers not picked up under tender process.
Simply Energy	We support retailers in the same network being required to take on contracts with the customers of the defaulting retailer subject to the standard contract terms of the receiving retailer.
TrustPower	No, the Authority should look to other solutions.
Vector	Yes, as customers will continue to use electricity unless transferred (or disconnected, which is not practicable) – for example, in the E-Gas default some customers classed as "inactive" on the Registry, were still using gas despite being classed as "inactive".
Q23. Should the Code provide for the Authority to invite other retailers to tender to provide contracts to the customers of the failed retailer whose contracts the Authority has terminated?	
Contact	No. In our view, the Code should not bind the receiver. Additionally we would note that this is likely to add substantial time to the process.
Genesis	No. We consider that this proposal replicates the receiver's role and could conceivably delay a solution, rather than assist the process.
MRP	No, as this is the responsibility of the receiver.
Meridian	No. Given that a competitive process would mostly likely already have been attempted at this stage (whether by a retailer, receiver, or liquidator), Meridian is concerned that seeking to run a competitive process at this stage in the process will lead to delays in resolving the situation, and greater financial exposure for participants, for no clear gain.
Orion	Yes
Powerco	Yes. This approach would be consistent with maintaining a competitive retail market. However, our response is dependant on the process being efficient and not creating additional delay in customer switching.
Pulse Utilities	Yes. Pulse prefers a market approach with the 21 day period that the consumer has to voluntarily switch also providing the EA sufficient time to undertake a short tender process for the remaining customers on a

	network by network basis. The switch date should be the end of the first 7 day period.
Simply Energy	We don't support a tender on the remaining customers because it is likely to be a small group of small value and will add complication to the exit process.
TrustPower	TrustPower believes that, should the defaulting retailer not remedy default or complete a full sale of its customer base in the time available, the first step for the Authority should be to invite tenders for any remaining customers.
Vector	No. Inviting tenders is time consuming (involves more steps in the process) and may lead to consumers being bombarded by competing retailers. Customers of the defaulting retailer need to be moved as quickly and seamlessly as possible – inviting tenders is not conducive with achieving this goal. In addition, as discussed above, those retailers will have had the opportunity to purchase the defaulting retailer's customer base from the receiver/liquidator.
Q24. Should the Code enable the Authority to allocate, as a last resort, any remaining customers of the retailer in default amongst retailers on the affected network on a pro rata basis based on a historic retail volume measure?	
Contact	For mass market (NHH) customers, the only allocation basis that would be practicable in the time available would be ICP market share. For HHR customers, fair allocation may be more difficult; however, random allocation of ICPs based on HHR volume market share would seem appropriate and workable. We would also note that any Code provisions must be drafted in such a way that they contemplate default by retailers of both small and large scale. A large-scale default has the potential to create systemic risk and therefore needs to be dealt with appropriately.
Genesis	Refer to response for question 22.
MRP	Yes, while this is not an ideal approach we consider this to be the best available approach under the circumstances. However, the Authority should take into account the types of customers retailers have, residential, commercial, electricity, gas, time of use, etc. and the scale (and ability to cope) of the receiving retailers activity in the network (See covering letter) Not all retailers offer all these services.
Meridian	Yes, provided the allocation only occurs across retailers retailing on the GXPs on the given network and, as per the comments set out in our cover letter, the Authority is first able to satisfy itself the allocation will not lead to further failures across the system.
Orion	In principle we agree, and all customers must be reassigned however as we noted in our response to question 22 this may escalate the problem

	and drive other retailers to default. It is not clear from the proposal how this issue will be addressed.
Powerco	Yes. A backstop needs to be in place and a pro rata basis provides a clear and proven mechanism.
Pulse Utilities	Yes.
Simply Energy	We support the pro-rata allocation of remaining customers to retailers on the receiving retailer's contract terms subject to the pro-rata allocation exceeding 100 customers. Without a minimum number of customers the cost of transition becomes onerous.
TrustPower	Allocation should be a last resort. The Authority needs to be mindful of the consequences of allocation on other retailers. At worst, it is possible allocation could cause a cascade effect. The logic surrounding allocation seems sound in perhaps the most likely event in which the defaulting retailer is smaller, has a distributed customer base and has low market share in all regions. The logic does not seem as robust in the less-likely (but still possible) scenario in which the defaulting retailer is larger and has a concentrated customer base (e.g. the retailer has a particular regional market share of around 70%). If customers are allocated to remaining retailers in the region, a smaller retailer which happened to have had a 15% market share prior to the default would then have a 50% share after the default. Any allocation at that stage may push that retailer over too, either because of high spot prices or an inability to meet subsequent prudential calls. Little consideration has been given to commercial customer contracts and the likely outcome for these customers. Should allocation take place on scale, the Authority should perhaps also seek to cap the wholesale price at something like $300/MWh, or at some rate that creates certainty for retailers, or could reasonably be passed on to consumers.
Vector	Yes, but this should include any customers classed as "inactive" (refer Q22).
Q25. If you do not agree with a pro rata basis, what method should the Authority use to allocate any remaining customers of the retailer in default amongst retailers on the affected network?	
Contact	N/A
Genesis	Refer to response for question 22.
MRP	We support the pro-rata basis, subject to the scale caveat in our cover letter.
Meridian	N/A.
Orion	No comment
Powerco	The main concern it that the transfer should be a smooth and quick

	process for customers and industry participants alike.
Pulse Utilities	The best alternative would be to transfer customers to all gentailers with a net generation position prorated based on the amount of net generation. These are the companies most likely to be profiting from current wholesale events and the most capable of absorbing an increase in their customer base.
Simply Energy	NA
TrustPower	Refer to Q24.
Vector	NA
Q26. Should responsibility for the customer, caused to be transferred by Authority, change to the new retailer on the date of the switch?	
Contact	Yes.
Genesis	We recommend that process for assigning responsibility for a customer should be consistent with the current switching provisions in the Code, where responsibility for a customer's Installation Control Point (ICP) is transferred on the effective date of the switch. However, it must be clear that retailers are not held responsible for any unpaid bills prior to the date of re-assignment.
MRP	Yes, legally the retailer is responsible for the property on the date of the switch.
Meridian	Yes. Meridian agrees alignment with existing practices is important and agrees with the RAG's position that the transactions costs of establishing a non-standard switching regime is unlikely to outweigh the benefits. Meridian questions, however, whether additional mechanisms will be needed to address risks of weak incentives on customers of the defaulting retailer to meet their financial obligations in the interim. For the transfer to occur within 1 working day as the paper suggests, Meridian submits it will be critical for acquiring retailers, at a minimum, to be provided with accurate customer contact details along with all registry information on the customer. Even with these details, it is likely that retailers will on occasion face practical difficulties, such as difficulties establishing correct ICP details, which may prevent this timeframe from being achieved. Meridian also like to understand how the proposed allocation process will align with Code required switching processes, including the 5 working day time limit for completing 50% of customer switches, and more about intended arrangements for dealing with customers being switched outside of the normal meter read process. Please refer to the comments in our cover letter regarding suggested further analysis.
Orion	Yes, this would align with normal practice.
Powerco	Yes.

	While this solution is not ideal, as distributors may face a financial loss through no fault of their own, this approach would be consistent with standard practice and should therefore help to minimise transaction costs. This issue would be substantially less important if the reduction of prudentials were revoked.
Pulse Utilities	No. Back dated switching is common industry practice now. The switching date should be back dated and fixed. This removes a large amount of risk as well as stops retailers being able to attempt to manipulate switch dates to create profit. The industry will be advised as soon as a retailer effectively fails to rectify the default (after the suggest first 7 calendar days). From this point the industry is able to adjust hedge and generation strategies accordingly.
Simply Energy	Customers should be transferred on the date notified to customers by the Authority that they will be transferred if they haven't made alternative arrangements. This is supported with the existing standard switching methodology for the transfer of customers. We note that no new systems need to be developed. The losing retailer sets the switch date which can be a date in the past. This means the total time to complete switches can be limited to 8 calendar days after the Authority has given notice.
TrustPower	Yes
Vector	Vector considers the responsibility of the new retailer should include payments for the default amount relating to the acquired customers – e.g. the new retailer should be responsible from the date of default, adjusted for any prudentials held by the industry participant. The new retailer's responsibility should be backdated so that the customer is paying a retailer for electricity on each day and the retailer in turn is paying the other industry participants. If this is not done, affected participants will not be kept whole through the process. While this requirement may appear onerous for the acquiring retailers, it is directly linked to the prudential requirements. If sufficient prudentials were in place to manage the default risk, then responsibility for the customer as at the date of the switch would be reasonable. As long as the current distribution prudentials remain in force, the responsibility should be backdated to the date of default.
Q27. Should the Code be amended to require a retailer in default to provide the Authority with the information it would need to write to all of the retailer's customers advising them that the retailer is in default, and if necessary, to cause any remaining customers to transfer to another retailer?	
Contact	Yes.
Genesis	Yes.
MRP	Yes we believe it should be amended to require a retailer in default to provide the Authority with access to a fully detailed customer list. Furthermore we would suggest that a medically dependant list be

	provided first to ensure that medically dependant customers are primarily supported without any disturbance.
Meridian	Yes, although Meridian considers non-compliance is likely to arise, given that a defaulting retailer will be dealing with multiple competing priorities and may have limited incentives to comply with the obligation.
Orion	Yes however it is important that customers are informed that information supplied by them may be used for this purpose.
Powerco	Yes. This information is essential if customers are to be switched quickly and efficiently. The Authority should proactively seek this information so it is ready to act without delay when required.
Pulse Utilities	Yes.
Simply Energy	We don't believe the Code needs to be amended to make purchasers provide customer lists to the Authority. We believe this can be optional but that if a customer list is provided (and maintained) in an acceptable format then the time efficiency in notifying customers should be reflected in prudential calculations
TrustPower	Yes, but TrustPower is unsure how effective this might be in all cases. What are the consequences of not providing the information, or providing inaccurate information in certain circumstances?
Vector	Yes – this will ensure the swift and efficient transition on the part of the Authority. Ideally, this information sharing will occur concurrently with other actions during a default, to ensure the Authority's "readiness". However, this could be limited to "orphaned" customers only (both active and inactive ICPs on the Registry) – as the need to transfer will only arise for the Authority in situations where customers have not voluntarily switched, and/or have been transferred/sold by a receiver/liquidator.
Contact	Yes. However, we would suggest these are included in customer contracts.
Genesis	a) No. b) Yes. We consider that access to information held by distributors would be critical for constructing a customer database, as information from solely the Registry would be insufficient. c) Yes.
MRP	a. Yes b. Yes. c. If required, yes
Meridian	Yes as Meridian considers the concerns raised by the RAG regarding limited incentives on defaulting participants to co-operate with the Authority are valid.

Orion	Yes.
Powerco	Yes. Access to customer information will be key to the smooth and quick transfer of customers and hence should be provided for in the Code.
Pulse Utilities	Yes, the Electricity Authority should be given all the power necessary to undertake the required actions.
Simply Energy	We support the EA ability to take action to transfer remaining customers.
TrustPower	Yes
Vector	**Cover letter** *Access to customer information* 26. The RAG proposes the Code be amended to allow the Authority to access information held by distributors to reconstruct a customer database (if necessary). This presupposes that those entities have complete, up to date and accurate information. In reality, customer information is not always provided or complete – e.g. customer information is more likely to be collected under a conveyance UoSA than an interposed UoSA. Nonetheless, it is likely that participants will have access to customer information that is useful to the Authority and should in any case work closely together to build an accurate customer database, as much as possible. The Code should be amended to allow the Authority access to the defaulting retailer's customer base, even in the event of receivership/liquidation. This would facilitate the receiver/liquidator being able to provide customer information without fear of contravening any Privacy Act 1993 obligations, and ensuring readiness to transfer any customers when required. **Appendix** Yes. Distributors' customer information is likely to be incomplete and subject to restraints regarding its use. The Code should be amended to override any such restraints so that parties can work together to build a customer database and ensure readiness of transfer (see above paragraph 26).