

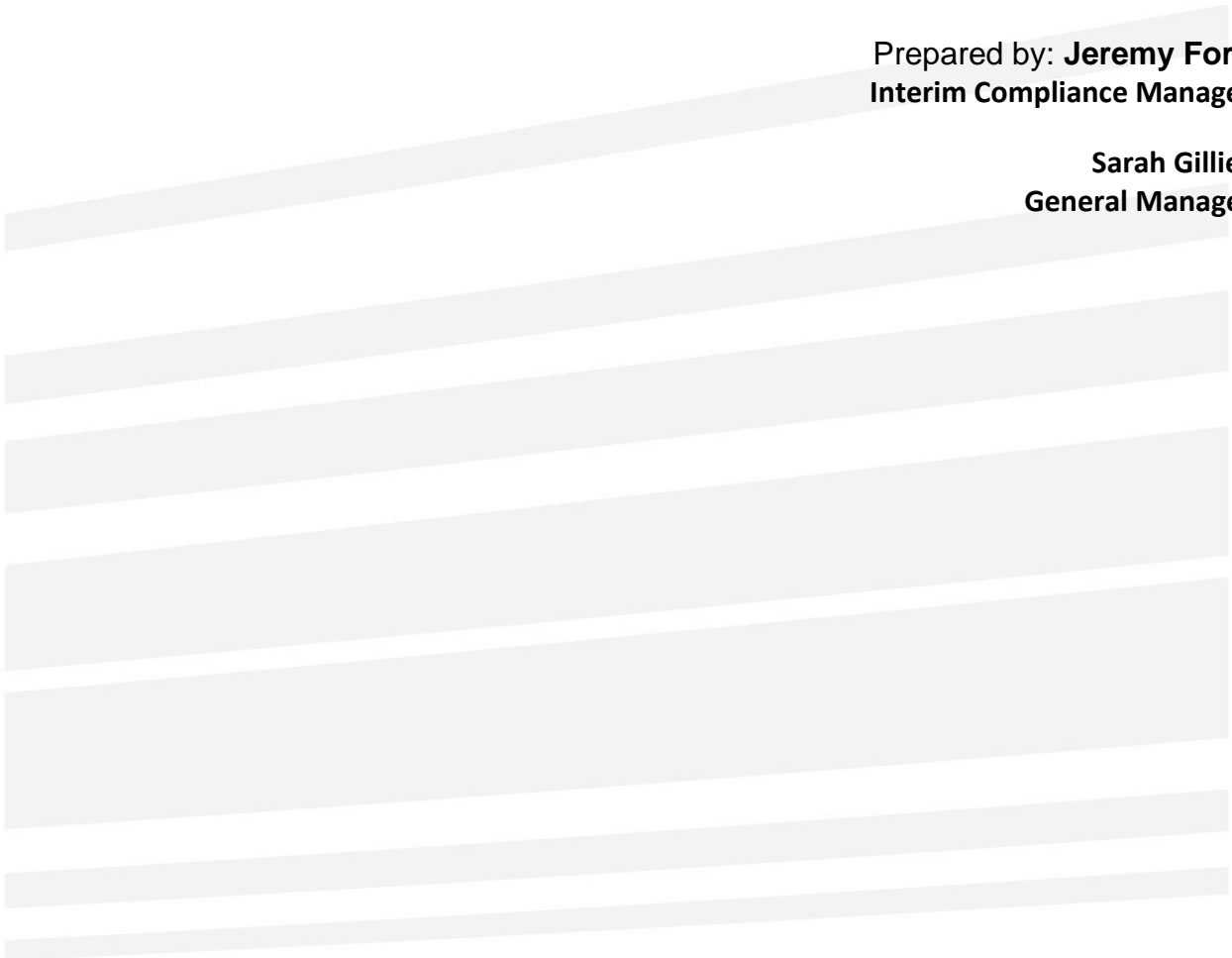
**Legally Privileged**

# Investigation reports on HSOTC breaches alleged of Meridian and Contact

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# Investigation reports on HSOTC breaches alleged of Meridian and Contact

## 1 Purpose

- 1.1 This paper provides the Board with advice regarding whether to discontinue the investigations into Meridian and Contact regarding their alleged breaches of the Code, or to lay a formal complaint with the Rulings Panel.

## 2 Recommendations

- 2.1 It is recommended the Board:
- (a) **Note** the investigator's assessment that Meridian and Contact did not breach the high standard of trading conduct under clause 13.5A(1) of the Code, based on findings that each generator complied with one or more of the 'safe harbour' provisions under clause 13.5B
  - (b) **Note** the legal opinion [REDACTED] S9(2)(h)  
[REDACTED]  
[REDACTED]
  - (c) **Note** the legal opinion [REDACTED] S9(2)(h)  
[REDACTED]  
[REDACTED]
  - (d) **Accept** the investigator's recommendation that the Board discontinues both investigations
  - (e) **Delegate** to the Chief Executive authority to approve the communications plan and release of publicity material.

## 3 Next steps

- 3.1 Subject to the Board agreeing to the recommendations, the Authority is legally required to take the following steps:
- (a) notify the parties to the investigation of the decision to discontinue,
  - (b) notify the parties to the investigation of the right of an industry participant to lay a complaint with the Rulings Panel directly,
  - (c) provide all parties with a copy of the investigator's report, and
  - (d) publicise the decision, together with the reasons for the decision.
- 3.2 Prior to taking the above steps, Management will prepare a communications plan and brief the Minister's office.

## 4 Introduction

- 4.1 This investigation concerns the alleged breaches by Meridian and Contact of the higher standard of trading conduct (HSOTC) provision in the Code during the period November 2019 to January 2020.
- 4.2 The circumstances of the alleged breaches concern the prices offered by Meridian and Contact when they were spilling water during flood conditions in the South Island.<sup>1</sup>
- 4.3 The Authority has completed an investigation and sought legal advice on the alleged breaches and the merits of laying a formal complaint with the Rulings Panel.

## 5 Findings of the investigation

- 5.1 The investigator concluded that Meridian and Contact did not breach clause 13.5A because the safe harbour provisions in clause 13.5B applied. Where a generator complies with the safe harbour provisions the generator is considered to comply with the HSOTC requirement in clause 13.5A.
- 5.2 The investigator considered the safe harbour provisions create a situation where “static” offer behaviour is deemed to meet the HSOTC. The “static” offer behaviour is what the investigator considered to be the underlying issue behind the alleged breaches where Meridian and Contact maintained their offers, despite the value of water having zero value when spilling water under flood conditions.
- 5.3 The investigator noted the HSOTC provisions are fraught with interpretation issues and there have been no precedent cases by the Rulings Panel. Despite these issues the investigator did not find any reason to believe that the safe harbour provisions do not apply to the circumstances in this case.

## 6 Legal advice

- 6.1 S9(2)(h)  
[Redacted text block containing multiple paragraphs of blacked-out content]

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<sup>1</sup> The UTS investigation focused on economically withheld water during the investigation period and the effect this had on confidence and integrity. The HSOTC provisions focus on trading conduct as defined by an absence in physical withholding; timely offer changes; and provide a safe harbour.



[REDACTED] S9(2)(h)  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

## 7 Communications

- 7.1 To help manage the publicity and reputational risks arising from this decision, the Authority will focus its communications around work already underway to support trust and confidence:
- (a) The Authority is currently consulting on the proposed repeal of the safe harbour provisions and a new trading conduct rule. This decision may help inform industry participants in their submissions.
  - (b) The Authority is working with MBIE to consider increased penalties under the Act that could apply to future breaches of the trading conduct rules.
  - (c) The Authority will be publishing the proposed actions to correct the finding of a UTS.
- 7.2 This paper recommends the Board delegate the Chief Executive authority to approve a communications plan and release of publicity material.

## 8 Attachments **Note: Attachments have been published on the Authority's website.**

- 8.1 The following items are attached to this paper:
- (a) Investigator's report on alleged breaches of clause 13.5A(1) by Contact Energy Limited between 11 November and 28 December 2019
  - (b) Investigator's report on alleged breaches of clause 13.5A(1) by Meridian Energy Limited between 10 November 2019 and 16 January 2020
  - (c) [REDACTED] S9(2)(h)