

# Consultation Paper

**Proposed change to advisory group terms of reference to provide for staggered membership**

**Prepared by the Electricity Authority**

25 October 2011



## **Glossary of abbreviations and terms**

<b>Act</b>	Electricity Industry Act 2010
<b>Authority</b>	Electricity Authority
<b>Code</b>	Electricity Industry Participation Code 2010
<b>RAG</b>	Retail Advisory Group
<b>SRC</b>	Security and Reliability Council
<b>WAG</b>	Wholesale Advisory Group



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# 1. Introduction and purpose of this paper

## 1.1 Introduction

- 1.1.1 Section 21 of the Electricity Industry Act 2010 (Act) requires the Electricity Authority (Authority) to establish one or more advisory groups to provide independent advice to the Authority on the development of the Electricity Industry Participation Code 2010 (Code) and on market facilitation measures.
- 1.1.2 The Authority decided in December 2010 that it would establish three advisory groups<sup>1</sup> to provide independent advice to the Board on issues relating to each of the main components of the electricity supply chain:
- a Retail Advisory Group (RAG) to advise on the development of the retail electricity market, including issues around the consumer/distributor/retailer interface;
  - a Wholesale Advisory Group (WAG) to advise on the development of the wholesale electricity market and reliability of supply; and
  - a Transmission Advisory Group (TAG) to advise on the development of the transmission services market.
- 1.1.3 The Authority's expectations of the administration and operation of its advisory groups are outlined in the Charter about advisory groups<sup>2</sup> and each group's terms of reference.<sup>3</sup>

## 1.2 Purpose of this paper

- 1.2.1 The purpose of this paper is to consult with participants and persons that the Authority thinks are representative of the interests of persons likely to be substantially affected by a revision to the terms of reference for the Authority's advisory groups.
- 1.2.2 This paper seeks feedback from interested parties on a proposal to revise the terms of reference for the Authority's advisory groups so that members' appointment terms can be staggered.

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<sup>1</sup> The Authority also established the Transmission Pricing Advisory Group as an ad hoc advisory group in early 2011 to provide independent advice to the Authority on the development of a preferred transmission pricing methodology.

<sup>2</sup> See <http://www.ea.govt.nz/document/12289/download/about-us/documents-publications/foundation-documents/>.

<sup>3</sup> A consolidated terms of reference for the Authority's standing advisory groups was released in December 2011 as an appendix to the Call for nominations for the chairpersons of the SRC, and the wholesale and retail advisory groups. The specific terms of reference for the retail advisory group and wholesale advisory group are on the Authority's website at <http://www.ea.govt.nz/our-work/advisory-working-groups/rag/> and <http://www.ea.govt.nz/our-work/advisory-working-groups/wag/>.

## 1.3 Submissions

The Authority's preference is to receive submissions in electronic format (Microsoft Word). It is not necessary to send hard copies of submissions to the Authority, unless it is not possible to do so electronically. Submissions in electronic form should be emailed to [submissions@ea.govt.nz](mailto:submissions@ea.govt.nz) with Consultation Paper—Proposed change to advisory group terms of reference to provide for staggered membership in the subject line.

If submitters do not wish to send their submission electronically, they should post one hard copy of their submission to the address below.

Submissions  
Electricity Authority  
PO Box 10041  
Wellington 6143

Submissions  
Electricity Authority  
Level 7, ASB Bank Tower  
2 Hunter Street  
Wellington

Tel: 0-4-460 8860

Fax: 0-4-460 8879

- 1.3.1 Submissions should be received by 5.00 pm on Tuesday 22 November 2011. Please note that late submissions are unlikely to be considered.
- 1.3.2 The Authority will acknowledge receipt of all submissions electronically. Please contact the Submissions' Administrator if you do not receive electronic acknowledgement of your submission within two business days.
- 1.3.3 Your submission is likely to be made available to the general public on the Authority's website. Submitters should indicate any documents attached, in support of the submission, in a covering letter and clearly indicate any information that is provided to the Authority on a confidential basis. However, all information provided to the Authority is subject to the Official Information Act 1982.



## **2. Background**

### **2.1 Establishment of advisory groups**

- 2.1.1 The arrangements for administration and operation of the Authority's advisory groups are set out in the Authority's Charter about advisory groups and the terms of reference for each group.
- 2.1.2 The Authority consulted on the charter and generic terms of reference for advisory groups in November 2010, and published a final charter and consolidated terms of reference for the Authority's standing advisory groups in December 2010.
- 2.1.3 The charter presents the Authority's approach to advisory groups appointed under section 21 of the Act, including how the Authority will establish a group, the matters to be considered by the groups and interaction between groups. The advisory group terms of reference specify the governance and operational requirements, including outlining the role of the group, membership and term of appointment and responsibilities of the chairperson, members and Authority staff.
- 2.1.4 RAG was established in May 2011, comprising an independent chair and eight additional members. WAG was established in May 2011, comprising an independent chair and seven additional members. The Authority intends establishing TAG in the near future.

### 3. Analysis

#### 3.1 The Authority’s proposal

3.1.1 The Authority proposes to revise the terms of reference for advisory groups to vary the appointment arrangements so that members’ appointment terms can be staggered. The revised terms of reference would apply to RAG, WAG, TAG and any future advisory groups that may be established by the Authority.

3.1.2 Specifically, the Authority proposes to revise the terms of reference as shown in Table 1. The proposed text is consistent with the approach adopted in the terms of reference for the Authority’s Security and Reliability Council (SRC).<sup>4</sup>

**Table 1: Proposed revision to paragraph 8.1 of the terms of reference for the Authority’s standing Advisory Groups**

	Current text	Proposed text
<b>8</b>	<b>Term of appointment</b>	<b>Term of appointment</b>
8.1	Members are appointed for a period of two years.	Members are appointed for a period of up to two years.

3.1.3 Marked-up versions of the proposed revised terms of reference for RAG and WAG are provided at Appendices A and B. The terms of reference for TAG would also incorporate the proposed text.

#### 3.2 Reasons for proposal

3.2.1 Good corporate governance practice involves staggering members’ appointment terms (including members of statutory bodies) to avoid a situation where all members conclude their term at the same time. A consequence of not staggering appointment terms is to risk losing institutional and corporate knowledge.

3.2.2 This principle is recognised in the State Service Commission Board Appointment and Induction Guideline which states:<sup>5</sup>

A key element is to achieve a balance between the ideas and approaches that new members can bring and the value that comes from retaining the experience of existing members. Staggering the terms of office of board members helps to ensure a core of experience is always available.

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<sup>4</sup> The Security and Reliability Council is established under section 20 of the Act to provide independent advice to the Authority about the performance of the electricity system and system operator and reliability of supply issues.

<sup>5</sup> State Services Commission, November 2009, Board Appointment and Induction Guidelines, page 8. The agencies and bodies the guidelines cover include advisory committees, professional regulatory bodies.

- 3.2.3 The Authority adopted the practice of staggering the appointment terms of members of the new SRC and advisory groups. The inaugural members of the SRC were appointed with staggered terms, with three members appointed for one year, three for two years and three for three years. However, the terms of reference for advisory groups do not specifically provide the option of staggering the appointment terms of group members.
- 3.2.4 In summary, the Authority considers the proposal will mean the advisory groups are administered in a manner that is consistent with good corporate governance practice, and assist with their effective operation by providing a continuity of institutional and corporate knowledge.

### **Authority's objectives**

- 3.2.5 The Authority considers that this proposal is consistent with the Authority's statutory objective to promote competition in, reliable supply by, and the efficient operation of, the electricity industry for the long-term benefit of consumers.
- 3.2.6 The Authority's objective with this proposal is to promote the efficient operation of the electricity industry by ensuring that its advisory groups have appropriate administration arrangements, thereby facilitating effective functioning of the advisory groups and the provision of high quality advice to the Authority.

**Q 1.**

**Please provide your view on the proposal to revise the terms of reference for the Authority's advisory groups to vary the appointment arrangements so that the terms of advisory group members may be staggered. Please provide reasons.**



## **Appendices**

<b>Appendix A</b>	<b>Terms of reference: Retail Advisory Group (marked-up)</b>	<b>8</b>
<b>Appendix B</b>	<b>Terms of reference: Wholesale Advisory Group (marked-up)</b>	<b>19</b>

# Appendix A Terms of reference: Retail Advisory Group (marked-up)

## 1 Introduction

- 1.1 The Retail Advisory Group (Group) is appointed, in accordance with the Electricity Industry Act 2010 (Act), to provide independent advice to the Electricity Authority (Authority) on the development of the Electricity Industry Participation Code 2010 (Code) and on market facilitation.
- 1.2 This document is the primary reference for the Group regarding its governance and operations. However, if a provision in this document is ambiguous or inconsistent with another provision in this document or any other Authority document, the Authority will resolve the matter with reference to the provisions of its charter about advisory groups.

## 2 Scope of role

- 2.1 The Group is expected to investigate, analyse, and make recommendations to the Authority Board (Board) on the matters assigned to it in the Group's work plan. The independent advice provided by the Group to the Board is to be well thought-out, with robust analysis, and of a sufficient quality to enable the Board to make well-informed decisions.
- 2.2 A key role of the Group is to bring its collective knowledge and experience to bear on the matters brought before it.
- 2.3 The Group is expected to reconcile divergent views and interests in ways consistent with the Authority's statutory objective and in a manner that achieves wider stakeholder "buy in".

## 3 Scope of advice

- 3.1 The Group has been established to provide advice to the Board on:
  - (a) The development of the retail electricity market, including matters relating to the retailer/consumer interface, the retailer/distributor interface, and the consumer/distributor interface, the distributed/embedded generation interface, and advanced metering infrastructure;
  - (b) Priorities for developing:
    - i. the Code, especially in regard to Parts 6, 10, 11 and 15; and
    - ii. market facilitation measures in regard to retail market services; and
  - (c) Any other relevant policy matters in regard to retail market services.
- 3.2 Certain matters considered by the Group may interrelate with matters considered by the Authority's other Advisory Groups. The Authority will coordinate advice from the other Advisory Group(s) on any such matters and interaction between the Group and other Advisory Groups in regard to these matters. This interaction may include joint

meetings or workshops or the like. The Authority will also facilitate the Group receiving timely updates of other Advisory Groups' activities, with an emphasis on matters that affect the Group's activities.

#### **4 Agreeing work plans**

- 4.1 The Authority will prepare, on an ongoing basis, work plans for the Group and discuss them with the Group's chairperson before presenting them to the Group for its consideration.
- 4.2 In considering the proposed work plan, the Group must be mindful that the Authority has a limited budget and must prioritise its work. The Group also needs to be mindful that its work plan must be consistent with the Authority's overall work plan.
- 4.3 If the Group and the Authority are unable to reach agreement on aspects of the Group's work plan, including the timing for progressing items of the work plan, the Authority may assign the items to other parties, including Authority staff and/or independent experts.
- 4.4 Despite clauses 4.1 and 4.3, the Board has the right to provide specific guidance to the Group on any matter at any stage of the Group's work.

#### **5 Undertaking the Group's work plan**

- 5.1 Subject to its work plan and any specific guidance from the Board, the Group will decide:
  - (a) the extent and type of analysis it undertakes and feedback it seeks, so as to enable it to make recommendations to the Board;
  - (b) the content of discussion papers on matters identified in either these terms of reference or the Group's work plan;
  - (c) how it will interact with interested parties to seek feedback on discussion papers, such as via workshops; and
  - (d) how to incorporate feedback into its analysis and recommendations.
- 5.2 Discussion papers prepared for the Group will be published in the name of that Group.
- 5.3 The Board has the right at any stage to request reports from the Group on its progress against the work plan.

#### **6 Provision of advice and recommendations to the Board**

- 6.1 The Board strongly encourages the Group to provide consensus recommendations on the issues assigned to it, within timelines agreed with the Board.
- 6.2 If the Group is unable to provide consensus recommendations, the Board expects the Group to provide a report that explains the alternative views held by members in a manner consistent with clauses 6.3 and 6.4.

- 6.3 Any Code amendment proposals or market facilitation measures recommended by the Group must be consistent with the Act and therefore the Authority's statutory objective, and have regard to any Government Policy Statement (GPS) or Statement of Government Expectations in force at the time. Section 32(1) of the Act requires that Code amendments must also be necessary or desirable to promote any or all of the following:
- (a) competition in the electricity industry;
  - (b) the reliable supply of electricity to consumers;
  - (c) the efficient operation of the electricity industry;
  - (d) the performance by the Authority of its functions; and
  - (e) any other matter specifically referred to in the Act as a matter for inclusion in the Code.
- 6.4 In making recommendations to the Board, the Group must explain how the recommendations promote the Authority's statutory objective and how the Group has applied the Authority's Code amendment principles (as published in Part 1 of the Authority's consultation charter) to arrive at its recommendations.
- 6.5 An Advisory Group will decide who will represent it, in addition to the chairperson, at Board meetings when its reports are considered by the Board.
- 6.6 Where the Authority decides further work is required on a Code amendment proposal or a market facilitation proposal, the Authority may request the Group to undertake further work on the matter, or it may refer the matter to other parties to undertake work on the matter and/or make recommendations to the Board.
- 6.7 The Board will decide whether or not to consult on, or adopt, the Group's recommendations on Code amendment proposals or market facilitation measures.

## **7 Membership**

- 7.1 The Group will comprise a maximum of 9 members appointed by the Board after considering nominations against published membership criteria.
- 7.2 The Group will comprise members selected for their strategic, commercial, and regulatory knowledge and experience in regard to the matters described in section 3, their knowledge and experience across the relevant component of the electricity supply chain, and for their balanced representation of alternative views.
- 7.3 The Board will appoint by written notice an independent chairperson as a member of the Group after considering nominations. To qualify as an independent chairperson a nominee must, in the opinion of the Authority, be demonstrably free of conflicts of interest such as could arise from current involvement at a senior level in a market participant organisation or with parties that act as advisors to such organisations.
- 7.4 All members of the Group must be able to ensure the Group provides independent advice to the Authority regardless of whether or not they are independent persons.
- 7.5 Representatives of the Authority are entitled to attend Group meetings and participate in discussions, but are not members of the Group.



## **8 Term of appointment**

- 8.1 Members are appointed for a period of up to two years.
- 8.2 The Authority may, at its discretion, reappoint any member for further two-year terms.
- 8.3 Members may resign by written notice to the Authority. The notice of resignation must state the date on which the resignation takes effect.
- 8.4 The Authority may, after consultation with the person concerned, end a person's membership of the Group by written notice to the person (with a copy to the Group), stating the date on which the membership ends.

## **9 Functions of the chairperson**

- 9.1 The key functions of the chairperson include:
  - (a) managing the Group's activities so as to facilitate delivery of the Group's work plan on time and on budget;
  - (b) facilitating discussions between Group members in a manner that will stimulate robust debate on issues and encourage effective contribution from members;
  - (c) guiding discussions so that they are relevant and effective while at the same time ensuring that genuine disagreements and conflicts are aired and, if possible, resolved;
  - (d) ensuring that the minutes of each Group meeting are correct;
  - (e) ensuring that the views of the Group are accurately represented in papers to the Board;
  - (f) attending Board meetings, as required, to present the Group's advice;
  - (g) approving half-yearly reports to the Board regarding the Group's progress against its work plan;
  - (h) regularly reporting to the Authority's Chief Executive on the Group's progress against its work plan, including highlighting any concerns about progress; and
  - (i) approving and signing on behalf of the Group any other communications the Group wishes to have with the Board or other parties.
- 9.2 The chairperson has no media relations role and may not speak on behalf of the Authority in regard to matters on which the Group has advised, or is advising, the Authority. These responsibilities lie with the Authority.
- 9.3 When making representations to the Board on any aspect of the Group's work and recommendations, the chairperson must take care to provide a balanced representation of the views held by the members of the Group.
- 9.4 If the chairperson has any significant concerns, including for example the operation of the Group, these are to be raised with the Authority's representative to the Group (refer clause 11.1) in the first instance, and if necessary, with the Authority's Chief Executive.

9.5 The Group may appoint a member of the Group to be a temporary deputy chairperson, who may exercise all the functions and powers of the chairperson in relation to a matter if:

- (a) the chairperson is unavailable; or
- (b) the chairperson has a conflict of interest relating to the matter.

## **10 Responsibility of members**

10.1 The members of the Group must:

- (a) comply with the requirements set out in the Authority's charter about advisory groups;
- (b) comply with the requirements set out in these terms of reference;
- (c) be available for all Group meetings unless granted leave by the chairperson, read all papers circulated to the Group, and actively contribute to the discussions of the Group;
- (d) inform the chairperson and the Authority Representative of any actual or potential conflicts of interest that may affect their ability to perform their functions as a member of the Group; and
- (e) carry out the tasks of the Group arising from the agenda for each meeting.

10.2 Members must remain mindful that:

- (a) they have been appointed for their knowledge and experience as well as their ability to participate constructively in Group meetings;
- (b) they have been appointed to act in their personal capacity and not as representatives of organisations and that the Act requires them to provide independent advice as a group, even though they may not be independent persons; and
- (c) an expected contribution of the Group is to reconcile divergent views and interests in the Group, and among wider stakeholders, in ways consistent with the Authority's statutory objective. This requires serious intent by all members to understand alternative views and find workable solutions.

10.3 The requirements in clause 10.2 mean that a member's role is to act in the best interests of all stakeholders irrespective of the organisation that he or she may be associated with.

10.4 Members must also be mindful that Authority staff and external advisors are free to form their own views on the matters discussed by the Group. The Board expects members to respect the different roles that Authority staff and external advisors play in regard to assisting the Group and advising the Board.

10.5 As non-confidential meeting papers will be published on the Authority's website as soon as practicable after being circulated to members, members may obtain input from within the organisation they are associated with or any other party, where they consider this appropriate and useful.

## **11 Functions of Authority staff**

- 11.1 The Authority will appoint a senior staff member to assist the Group and to act as the Authority's representative (Authority Representative) to the Group. The Authority Representative is not a member of the Group.
- 11.2 The Authority Representative will be responsible for:
- (a) developing an agreed work plan with the Group;
  - (b) in consultation with the chairperson, giving notice of Group meetings and setting the meeting agenda;
  - (c) arranging and overseeing the secretariat for the Group, including the provision of internal and external advisory resources. Note the availability of resources will depend on the Authority's overall budget and other work priorities, and procurement of external advice by the Authority Representative for the Group must be consistent with relevant Authority policies; and
  - (d) conveying relevant views, policies and decisions of the Authority to the Group.
- 11.3 The Authority Representative is responsible for ensuring the Group receives a high standard of secretariat support, whether provided by Authority staff or by external advisors. In the normal course of events, members are not expected to carry out original research and analysis themselves.
- 11.4 Where the Authority Representative's view differs significantly from the views of the Group then the Authority Representative should brief the Board on this difference of opinion and the reasons for this.

## **12 Process for handling members' non-performance**

- 12.1 The Authority expects members to be active participants and contribute constructively to Group meetings. The Authority also expects members to show respect for other members and for Authority staff and advisors.
- 12.2 Any person concerned about the performance of a member will, as appropriate, discuss his or her concerns with the chairperson and/or the Authority Representative, and preferably with both parties.
- 12.3 If the chairperson and Authority Representative believe further action is warranted, they must adopt the following escalation process:
- (a) discuss the matter with the alleged under-performing member and provide the person with an opportunity to state his or her view on the matter;
  - (b) if the discussion does not resolve the matter to the satisfaction of the chairperson and the Authority Representative, a written notice must be provided to the member stating their concerns and the desired corrective action. If the member is affiliated to an organisation, the chairperson and the Authority Representative must, where appropriate, discuss the matter with appropriate people at the affiliated organisation prior to sending the notice;

- (c) if the member continues to perform to the dissatisfaction of the chairperson and the Authority Representative, both parties must discuss the matter with the member and where appropriate with the affiliated organisation. The member must be given an opportunity to explain his or her view of the matter;
  - (d) if after due consideration the chairperson and the Authority Representative are not satisfied by the member's explanation, the chairperson and the Authority Representative must inform the member and where appropriate the affiliated organisation that they intend recommending to the Authority's Chief Executive that the member's appointment as a member of the Group be rescinded; and
  - (e) any discussions with a member's affiliated organisation in 12(b) – (d) must not compromise the ability of the member to act in his or her personal capacity in regard to the advice the member contributes to the Group. The sole purpose of these discussions is to inform the affiliated organisation of the situation and to gather information about extenuating circumstances the chairperson and Authority Representative may need to take into account in their handling of the situation.
- 12.4 Upon receiving a recommendation in accordance with clause 12.3(d), the Authority's Chief Executive will assure him or herself that the processes in clause 12.3 have been reasonably complied with and, if appropriate, discuss the matter with the Chief Executive of the member's affiliated organisation. The Authority's Chief Executive may recommend to the Board that the member's appointment as a member of the Group be rescinded.
- 12.5 Any person concerned about the performance of the chairperson will, as appropriate, discuss his or her concerns with the Authority's Chief Executive.
- 12.6 If the Authority's Chief Executive believes further action is warranted, the Chief Executive must discuss the matter with the Authority's chairperson. If the Authority's chairperson agrees further action is warranted, the Chief Executive must adopt the following escalation process:
- (a) discuss the matter with the chairperson and provide the chairperson with an opportunity to state his or her view on the matter;
  - (b) if the discussion does not resolve the matter to the satisfaction of the Chief Executive, a written notice must be provided to the chairperson stating the Chief Executive's concerns and the desired corrective action. If the chairperson is affiliated to an organisation, the Chief Executive must, where appropriate, discuss the matter with appropriate people at the affiliated organisation prior to sending the notice;
  - (c) if the chairperson continues to perform to the dissatisfaction of the Chief Executive, the Chief Executive must discuss the matter with the chairperson and where appropriate with the affiliated organisation. The chairperson must be given an opportunity to explain his or her view of the matter;
  - (d) if after due consideration the Chief Executive is not satisfied by the chairperson's explanation, the Chief Executive must inform the chairperson and where appropriate the affiliated organisation that the Chief Executive intends recommending to the Board that the chairperson's appointment be rescinded.

- 12.7 Any person concerned about the performance of an Authority staff member or contractor or external consultant must discuss his or her concerns with the Authority Representative or, in the case of staff, with the Authority's Chief Executive. The Authority will determine at its own discretion the appropriate actions in regard to these matters.

### **13 Establishing and interacting with Working Groups**

- 13.1 The primary role of Working Groups is to provide technical and specialist input to the Group's work. The Authority may also establish Working Groups to assist with the Group's workload.
- 13.2 The Group and the Authority Representative will decide jointly whether to form a Working Group, and if so, decide jointly its terms of reference and membership criteria.
- 13.3 The Authority requires a Working Group's terms of reference to be based on the terms of reference of the relevant Advisory Group.
- 13.4 The Authority's budget constraints and other work priorities may limit the number of Working Groups it can establish or the scope of work assigned to those groups.
- 13.5 The Group's chairperson and the Authority Representative will decide jointly the Working Group's chairperson and membership, having due regard to input received from Advisory Group members.
- 13.6 Any Working Group established under clause 13.2 will report its analysis and recommendations to the Group.
- 13.7 The Working Group will decide who, in addition to the Working Group chairperson, will represent it at Group meetings when its reports are considered by the Group.
- 13.8 The Group has sole discretion to support or not support any recommendation from a Working Group reporting to it:
- (a) if a Working Group's task is a standalone one, the Group is expected to forward the analysis and recommendations on to the Board if it agrees with them;
  - (b) if a Working Group's task is a component of a broader scope of work being undertaken by the Group, the Group is expected to integrate the Working Group's analysis and recommendations into the Group's broader report to the Board;
  - (c) in both the above instances, if the Group disagrees with the analysis and recommendations of a Working Group it can ask the Working Group to undertake further work or it can develop its own recommendations on the matter and present these to the Board alongside the Working Group's recommendations.

### **14 Advisory group administration and communication procedures**

- 14.1 Except as provided for in the Act, these terms of reference and any relevant charter about advisory groups in force under the Act, the Group may determine its own procedures.
- 14.2 The business and activities of the Group must be as transparent as practicable.

- 14.3 Day-to-day interaction between the Group and the Authority must be through the Authority Representative.
- 14.4 Email interaction between members regarding substantive or policy-related aspects of the Group's business should be copied to all members of the Group, the Authority Representative, and any other members of the Authority secretariat involved in the Group.
- 14.5 Reporting between the Group and the Board will be through the Group's chairperson unless otherwise agreed by the Group's chairperson and the Chief Executive of the Authority. Despite this requirement, the Group will decide who, in addition to the chairperson, will represent it at Board meetings when its reports are considered by the Board.

## **15 Frequency of meetings**

- 15.1 The Group will meet as required, having regard to the Authority's planning cycle and the Group's work plan.

## **16 Agenda for each meeting**

- 16.1 The Authority Representative will set the agenda for each meeting in consultation with the chairperson. Members may seek to add further items to a meeting agenda, but inclusion will be at the discretion of the chairperson.
- 16.2 Meeting agendas should include a standing item for updates on the work plans of other Advisory Groups. This is intended to ensure that cross-over issues are identified at an early stage. It is not expected that every other Advisory Group's work plan will be discussed at every meeting.

## **17 Notice of meetings and meeting papers**

- 17.1 The Authority Representative is responsible for calling meetings of the Group in consultation with the chairperson.
- 17.2 Reasonable notice of meetings must be given by the Authority Representative to each member, including details of the time and venue. The Authority Representative will endeavour to give notice of at least four weeks.
- 17.3 Meeting papers should be circulated at least five business days in advance of a meeting to enable their proper consideration by Group members, though it should be recognised that there will be instances where this is not possible. If possible, lengthy and complex papers should be circulated at least 10 business days prior to a meeting.
- 17.4 Non-confidential meeting papers must be published on the Authority's website as soon as practicable after they have been circulated to members.

## **18 Method of holding meetings**

- 18.1 A meeting of the Group may be held by a number of its members who constitute a quorum, being assembled together at the time and place appointed for the meeting.

18.2 As a general rule, meetings must be held in person. If for valid reason(s) this is not possible then meetings may be held by means of audio, audio and visual, or electronic communication provided that all of the members who wish to participate in the meeting have access to the technology needed to participate and a quorum of members can simultaneously communicate with each other throughout the meeting.

## **19 Quorum for meetings**

19.1 A quorum for a meeting of the Group is:

- (a) half of the Group's members if the Group has an even number of members; or
- (b) a majority of the members if the Group has an odd number of members.

19.2 No business (which includes approving minutes) may be transacted at a Group meeting if the quorum is not met.

## **20 Attendance**

20.1 Members are not entitled to send an alternate in their place if they cannot attend a Group meeting.

20.2 Any member of the Group who, without leave from the chairperson, or in the case of the chairperson, without leave from the Authority's Chief Executive, misses two consecutive meetings is deemed to have resigned from the Group except where there are identified extenuating circumstances such as illness.

20.3 Where a member is absent for more than two consecutive meetings due to extenuating circumstances, the Group chairperson and the Authority Representative may at their discretion replace the member as if they had resigned, as per the requirements of clause 8.3.

20.4 The chairperson may invite non-members (in addition to Authority staff) to attend a Group meeting. In those circumstances, invited parties may participate in discussions at the discretion of the chairperson, but they are not a member of the Group or part of the quorum.

## **21 Minutes**

21.1 The chairperson must ensure that proper minutes are kept of all proceedings at Group meetings.

21.2 Minutes of all meetings must be published on the Authority's website as soon as practicable after their confirmation.

## **22 Confidentiality of reports and papers**

- 22.1 All reports submitted to the Group (including reports or presentations submitted by members) are subject to the Official Information Act 1982 (OIA), and, in the normal course of events, will not be treated as confidential. However, the Authority may withhold information if the Authority considers that there are grounds for doing so under the OIA.
- 22.2 In the circumstance where documents considered by the Group contain confidential information, the chairperson and the Authority Representative will ensure that all confidential information is adequately protected before the document is published.

## **23 Conflicts of interest**

- 23.1 As provided in the Act, the conflict of interest disclosure rules in sections 62 to 72 of the Crown Entities Act 2004 apply to each member of the Group, as if the disclosure required by those sections must be made to both the Group and the Authority.



## Appendix B Terms of reference: Wholesale Advisory Group (marked-up)

### 1 Introduction

- 1.1 The Wholesale Advisory Group (Group) is appointed, in accordance with the Electricity Industry Act 2010 (Act), to provide independent advice to the Electricity Authority (Authority) on the development of the Electricity Industry Participation Code 2010 (Code) and on market facilitation.
- 1.2 This document is the primary reference for the Group regarding its governance and operations. However, if a provision in this document is ambiguous or inconsistent with another provision in this document or any other Authority document, the Authority will resolve the matter with reference to the provisions of its charter about advisory groups.

### 2 Scope of role

- 2.1 The Group is expected to investigate, analyse, and make recommendations to the Authority Board (Board) on the matters assigned to it in the Group's work plan. The independent advice provided by the Group to the Board is to be well thought-out, with robust analysis, and of a sufficient quality to enable the Board to make well-informed decisions.
- 2.2 A key role of the Group is to bring its collective knowledge and experience to bear on the matters brought before it.
- 2.3 The Group is expected to reconcile divergent views and interests in ways consistent with the Authority's statutory objective and in a manner that achieves wider stakeholder "buy in".

### 3 Scope of advice

- 3.1 The Group has been established to provide advice to the Board on:
  - (a) The development of the wholesale electricity market, including the inter-related markets for energy (spot), ancillary services, and risk management contracts such as financial derivatives for energy and location hedges;
  - (b) The development of provisions relating to reliable supply (which includes system security, reliability (security) of supply, and power quality), for the long-term benefit of consumers;
  - (c) Priorities for developing:
    - i. the Code especially in regard to Parts 4, 5, 7, 8, 9, 13, and 14; and
    - ii. market facilitation measures in regard to wholesale markets services; and
  - (d) Any other relevant policy matters in regard to wholesale markets services.
- 3.2 Certain matters considered by the Group may interrelate with matters considered by other of the Authority's Advisory Groups. The Authority will coordinate advice from the

other Advisory Group(s) on any such matters and interaction between the Group and other Advisory Groups in regard to these matters. This interaction may include joint meetings or workshops or the like. The Authority will also facilitate the Group receiving timely updates of other Advisory Groups' activities, with an emphasis on matters that affect the Group's activities.

#### **4 Agreeing work plans**

- 4.1 The Authority will prepare, on an ongoing basis, work plans for the Group and discuss them with the Group's chairperson before presenting them to the Group for its consideration.
- 4.2 In considering the proposed work plan, the Group must be mindful that the Authority has a limited budget and must prioritise its work. The Group also needs to be mindful that its work plan must be consistent with the Authority's overall work plan.
- 4.3 If the Group and the Authority are unable to reach agreement on aspects of the Group's work plan, including the timing for progressing items of the work plan, the Authority may assign the items to other parties, including Authority staff and/or independent experts.
- 4.4 Despite clauses 4.1 and 4.3, the Board has the right to provide specific guidance to the Group on any matter at any stage of the Group's work.

#### **5 Undertaking the Group's work plan**

- 5.1 Subject to its work plan and any specific guidance from the Board, the Group will decide:
  - (e) the extent and type of analysis it undertakes and feedback it seeks, so as to enable it to make recommendations to the Board;
  - (f) the content of discussion papers on matters identified in either these terms of reference or the Group's work plan;
  - (g) how it will interact with interested parties to seek feedback on discussion papers, such as via workshops; and
  - (h) how to incorporate feedback into its analysis and recommendations.
- 5.2 Discussion papers prepared for the Group will be published in the name of that Group.
- 5.3 The Board has the right at any stage to request reports from the Group on its progress against the work plan.

#### **6 Provision of advice and recommendations to the Board**

- 6.1 The Board strongly encourages the Group to provide consensus recommendations on the issues assigned to it, within timelines agreed with the Board.

- 6.2 If the Group is unable to provide consensus recommendations, the Board expects the Group to provide a report that explains the alternative views held by members in a manner consistent with clauses 6.3 and 6.4.
- 6.3 Any Code amendment proposals or market facilitation measures recommended by the Group must be consistent with the Act and therefore the Authority's statutory objective, and have regard to any Government Policy Statement (GPS) or Statement of Government Expectations in force at the time. Section 32(1) of the Act requires that Code amendments must also be necessary or desirable to promote any or all of the following:
- (a) competition in the electricity industry;
  - (b) the reliable supply of electricity to consumers;
  - (c) the efficient operation of the electricity industry;
  - (d) the performance by the Authority of its functions; and
  - (e) any other matter specifically referred to in the Act as a matter for inclusion in the Code.
- 6.4 In making recommendations to the Board, the Group must explain how the recommendations promote the Authority's statutory objective and how the Group has applied the Authority's Code amendment principles (as published in Part 1 of the Authority's consultation charter) to arrive at its recommendations.
- 6.5 An Advisory Group will decide who will represent it, in addition to the chairperson, at Board meetings when its reports are considered by the Board.
- 6.6 Where the Authority decides further work is required on a Code amendment proposal or a market facilitation proposal, the Authority may request the Group to undertake further work on the matter, or it may refer the matter to other parties to undertake work on the matter and/or make recommendations to the Board.
- 6.7 The Board will decide whether or not to consult on, or adopt, the Group's recommendations on Code amendment proposals or market facilitation measures.

## **7 Membership**

- 7.1 The Group will comprise a maximum of 8 members appointed by the Board after considering nominations against published membership criteria.
- 7.2 The Group will comprise members selected for their strategic, commercial, and regulatory knowledge and experience in regard to the matters described in section 3, their knowledge and experience across the relevant component of the electricity supply chain, and for their balanced representation of alternative views.
- 7.3 The Board will appoint by written notice an independent chairperson as a member of the Group after considering nominations. To qualify as an independent chairperson a nominee must, in the opinion of the Authority, be demonstrably free of conflicts of interest such as could arise from current involvement at a senior level in a market participant organisation or with parties that act as advisors to such organisations.

- 7.4 All members of the Group must be able to ensure the Group provides independent advice to the Authority regardless of whether or not they are independent persons.
- 7.5 Representatives of the Authority are entitled to attend Group meetings and participate in discussions, but are not members of the Group.

## **8 Term of appointment**

- 8.1 Members are appointed for a period of up to two years.
- 8.2 The Authority may, at its discretion, reappoint any member for further two-year terms.
- 8.3 Members may resign by written notice to the Authority. The notice of resignation must state the date on which the resignation takes effect.
- 8.4 The Authority may, after consultation with the person concerned, end a person's membership of the Group by written notice to the person (with a copy to the Group), stating the date on which the membership ends.

## **9 Functions of the chairperson**

- 9.1 The key functions of the chairperson include:
- (a) managing the Group's activities so as to facilitate delivery of the Group's work plan on time and on budget;
  - (b) facilitating discussions between Group members in a manner that will stimulate robust debate on issues and encourage effective contribution from members;
  - (c) guiding discussions so that they are relevant and effective while at the same time ensuring that genuine disagreements and conflicts are aired and, if possible, resolved;
  - (d) ensuring that the minutes of each Group meeting are correct;
  - (e) ensuring that the views of the Group are accurately represented in papers to the Board;
  - (f) attending Board meetings, as required, to present the Group's advice;
  - (g) approving half-yearly reports to the Board regarding the Group's progress against its work plan;
  - (h) regularly reporting to the Authority's Chief Executive on the Group's progress against its work plan, including highlighting any concerns about progress; and
  - (i) approving and signing on behalf of the Group any other communications the Group wishes to have with the Board or other parties.
- 9.2 The chairperson has no media relations role and may not speak on behalf of the Authority in regard to matters on which the Group has advised, or is advising, the Authority. These responsibilities lie with the Authority.

- 9.3 When making representations to the Board on any aspect of the Group's work and recommendations, the chairperson must take care to provide a balanced representation of the views held by the members of the Group.
- 9.4 If the chairperson has any significant concerns, including for example the operation of the Group, these are to be raised with the Authority's representative to the Group (refer clause 11.1) in the first instance, and if necessary, with the Authority's Chief Executive.
- 9.5 The Group may appoint a member of the Group to be a temporary deputy chairperson, who may exercise all the functions and powers of the chairperson in relation to a matter if:
  - (a) the chairperson is unavailable; or
  - (b) the chairperson has a conflict of interest relating to the matter.

## **10 Responsibility of members**

- 10.1 The members of the Group must:
  - (a) comply with the requirements set out in the Authority's charter about advisory groups;
  - (b) comply with the requirements set out in these terms of reference;
  - (c) be available for all Group meetings unless granted leave by the chairperson, read all papers circulated to the Group, and actively contribute to the discussions of the Group;
  - (d) inform the chairperson and the Authority Representative of any actual or potential conflicts of interest that may affect their ability to perform their functions as a member of the Group; and
  - (e) carry out the tasks of the Group arising from the agenda for each meeting.
- 10.2 Members must remain mindful that:
  - (a) they have been appointed for their knowledge and experience as well as their ability to participate constructively in Group meetings;
  - (b) they have been appointed to act in their personal capacity and not as representatives of organisations and that the Act requires them to provide independent advice as a group, even though they may not be independent persons; and
  - (c) an expected contribution of the Group is to reconcile divergent views and interests in the Group, and among wider stakeholders, in ways consistent with the Authority's statutory objective. This requires serious intent by all members to understand alternative views and find workable solutions.
- 10.3 The requirements in clause 10.2 mean that a member's role is to act in the best interests of all stakeholders irrespective of the organisation that he or she may be associated with.

- 10.4 Members must also be mindful that Authority staff and external advisors are free to form their own views on the matters discussed by the Group. The Board expects members to respect the different roles that Authority staff and external advisors play in regard to assisting the Group and advising the Board.
- 10.5 As non-confidential meeting papers will be published on the Authority's website as soon as practicable after being circulated to members, members may obtain input from within the organisation they are associated with or any other party, where they consider this appropriate and useful.

## **11 Functions of Authority staff**

- 11.1 The Authority will appoint a senior staff member to assist the Group and to act as the Authority's representative (Authority Representative) to the Group. The Authority Representative is not a member of the Group.
- 11.2 The Authority Representative will be responsible for:
- (a) developing an agreed work plan with the Group;
  - (b) in consultation with the chairperson, giving notice of Group meetings and setting the meeting agenda;
  - (c) arranging and overseeing the secretariat for the Group, including the provision of internal and external advisory resources. Note the availability of resources will depend on the Authority's overall budget and other work priorities, and procurement of external advice by the Authority Representative for the Group must be consistent with relevant Authority policies; and
  - (d) conveying relevant views, policies and decisions of the Authority to the Group.
- 11.3 The Authority Representative is responsible for ensuring the Group receives a high standard of secretariat support, whether provided by Authority staff or by external advisors. In the normal course of events, members are not expected to carry out original research and analysis themselves.
- 11.4 Where the Authority Representative's view differs significantly from the views of the Group then the Authority Representative should brief the Board on this difference of opinion and the reasons for this.

## **12 Process for handling members' non-performance**

- 12.1 The Authority expects members to be active participants and contribute constructively to Group meetings. The Authority also expects members to show respect for other members and for Authority staff and advisors.
- 12.2 Any person concerned about the performance of a member will, as appropriate, discuss his or her concerns with the chairperson and/or the Authority Representative, and preferably with both parties.
- 12.3 If the chairperson and Authority Representative believe further action is warranted, they must adopt the following escalation process:

- (a) discuss the matter with the alleged under-performing member and provide the person with an opportunity to state his or her view on the matter;
  - (b) if the discussion does not resolve the matter to the satisfaction of the chairperson and the Authority Representative, a written notice must be provided to the member stating their concerns and the desired corrective action. If the member is affiliated to an organisation, the chairperson and the Authority Representative must, where appropriate, discuss the matter with appropriate people at the affiliated organisation prior to sending the notice;
  - (c) if the member continues to perform to the dissatisfaction of the chairperson and the Authority Representative, both parties must discuss the matter with the member and where appropriate with the affiliated organisation. The member must be given an opportunity to explain his or her view of the matter;
  - (d) if after due consideration the chairperson and the Authority Representative are not satisfied by the member's explanation, the chairperson and the Authority Representative must inform the member and where appropriate the affiliated organisation that they intend recommending to the Authority's Chief Executive that the member's appointment as a member of the Group be rescinded; and
  - (e) any discussions with a member's affiliated organisation in 12(b) – (d) must not compromise the ability of the member to act in his or her personal capacity in regard to the advice the member contributes to the Group. The sole purpose of these discussions is to inform the affiliated organisation of the situation and to gather information about extenuating circumstances the chairperson and Authority Representative may need to take into account in their handling of the situation.
- 12.4 Upon receiving a recommendation in accordance with clause 12.3(d), the Authority's Chief Executive will assure him or herself that the processes in clause 12.3 have been reasonably complied with and, if appropriate, discuss the matter with the Chief Executive of the member's affiliated organisation. The Authority's Chief Executive may recommend to the Board that the member's appointment as a member of the Group be rescinded.
- 12.5 Any person concerned about the performance of the chairperson will, as appropriate, discuss his or her concerns with the Authority's Chief Executive.
- 12.6 If the Authority's Chief Executive believes further action is warranted, the Chief Executive must discuss the matter with the Authority's chairperson. If the Authority's chairperson agrees further action is warranted, the Chief Executive must adopt the following escalation process:
- (a) discuss the matter with the chairperson and provide the chairperson with an opportunity to state his or her view on the matter;
  - (b) if the discussion does not resolve the matter to the satisfaction of the Chief Executive, a written notice must be provided to the chairperson stating the Chief Executive's concerns and the desired corrective action. If the chairperson is affiliated to an organisation, the Chief Executive must, where appropriate, discuss the matter with appropriate people at the affiliated organisation prior to sending the notice;

- (c) if the chairperson continues to perform to the dissatisfaction of the Chief Executive, the Chief Executive must discuss the matter with the chairperson and where appropriate with the affiliated organisation. The chairperson must be given an opportunity to explain his or her view of the matter;
- (d) if after due consideration the Chief Executive is not satisfied by the chairperson's explanation, the Chief Executive must inform the chairperson and where appropriate the affiliated organisation that the Chief Executive intends recommending to the Board that the chairperson's appointment be rescinded.

12.7 Any person concerned about the performance of an Authority staff member or contractor or external consultant must discuss his or her concerns with the Authority Representative or, in the case of staff, with the Authority's Chief Executive. The Authority will determine at its own discretion the appropriate actions in regard to these matters.

### **13 Establishing and interacting with Working Groups**

- 13.1 The primary role of Working Groups is to provide technical and specialist input to the Group's work. The Authority may also establish Working Groups to assist with the Group's workload.
- 13.2 The Group and the Authority Representative will decide jointly whether to form a Working Group, and if so, decide jointly its terms of reference and membership criteria.
- 13.3 The Authority requires a Working Group's terms of reference to be based on the terms of reference of the relevant Advisory Group.
- 13.4 The Authority's budget constraints and other work priorities may limit the number of Working Groups it can establish or the scope of work assigned to those groups.
- 13.5 The Group's chairperson and the Authority Representative will decide jointly the Working Group's chairperson and membership, having due regard to input received from Advisory Group members.
- 13.6 Any Working Group established under clause 13.2 will report its analysis and recommendations to the Group.
- 13.7 The Working Group will decide who, in addition to the Working Group chairperson, will represent it at Group meetings when its reports are considered by the Group.
- 13.8 The Group has sole discretion to support or not support any recommendation from a Working Group reporting to it:
  - (a) if a Working Group's task is a standalone one, the Group is expected to forward the analysis and recommendations on to the Board if it agrees with them;
  - (b) if a Working Group's task is a component of a broader scope of work being undertaken by the Group, the Group is expected to integrate the Working Group's analysis and recommendations into the Group's broader report to the Board;
  - (c) in both the above instances, if the Group disagrees with the analysis and recommendations of a Working Group it can ask the Working Group to undertake



further work or it can develop its own recommendations on the matter and present these to the Board alongside the Working Group's recommendations.

#### **14 Advisory group administration and communication procedures**

- 14.1 Except as provided for in the Act, these terms of reference and any relevant charter about advisory groups in force under the Act, the Group may determine its own procedures.
- 14.2 The business and activities of the Group must be as transparent as practicable.
- 14.3 Day-to-day interaction between the Group and the Authority must be through the Authority Representative.
- 14.4 Email interaction between members regarding substantive or policy-related aspects of the Group's business should be copied to all members of the Group, the Authority Representative, and any other members of the Authority secretariat involved in the Group.
- 14.5 Reporting between the Group and the Board will be through the Group's chairperson unless otherwise agreed by the Group's chairperson and the Chief Executive of the Authority. Despite this requirement, the Group will decide who, in addition to the chairperson, will represent it at Board meetings when its reports are considered by the Board.

#### **15 Frequency of meetings**

- 15.1 The Group will meet as required, having regard to the Authority's planning cycle and the Group's work plan.

#### **16 Agenda for each meeting**

- 16.1 The Authority Representative will set the agenda for each meeting in consultation with the chairperson. Members may seek to add further items to a meeting agenda, but inclusion will be at the discretion of the chairperson.
- 16.2 Meeting agendas should include a standing item for updates on the work plans of other Advisory Groups. This is intended to ensure that cross-over issues are identified at an early stage. It is not expected that every other Advisory Group's work plan will be discussed at every meeting.

#### **17 Notice of meetings and meeting papers**

- 17.1 The Authority Representative is responsible for calling meetings of the Group in consultation with the chairperson.
- 17.2 Reasonable notice of meetings must be given by the Authority Representative to each member, including details of the time and venue. The Authority Representative will endeavour to give notice of at least four weeks.

- 17.3 Meeting papers should be circulated at least five business days in advance of a meeting to enable their proper consideration by Group members, though it should be recognised that there will be instances where this is not possible. If possible, lengthy and complex papers should be circulated at least 10 business days prior to a meeting.
- 17.4 Non-confidential meeting papers must be published on the Authority's website as soon as practicable after they have been circulated to members.

## **18 Method of holding meetings**

- 18.1 A meeting of the Group may be held by a number of its members who constitute a quorum, being assembled together at the time and place appointed for the meeting.
- 18.2 As a general rule, meetings must be held in person. If for valid reason(s) this is not possible then meetings may be held by means of audio, audio and visual, or electronic communication provided that all of the members who wish to participate in the meeting have access to the technology needed to participate and a quorum of members can simultaneously communicate with each other throughout the meeting.

## **19 Quorum for meetings**

- 19.1 A quorum for a meeting of the Group is:
- (a) half of the Group's members if the Group has an even number of members; or
  - (b) a majority of the members if the Group has an odd number of members.
- 19.2 No business (which includes approving minutes) may be transacted at a Group meeting if the quorum is not met.

## **20 Attendance**

- 20.1 Members are not entitled to send an alternate in their place if they cannot attend a Group meeting.
- 20.2 Any member of the Group who, without leave from the chairperson, or in the case of the chairperson, without leave from the Authority's Chief Executive, misses two consecutive meetings is deemed to have resigned from the Group except where there are identified extenuating circumstances such as illness.
- 20.3 Where a member is absent for more than two consecutive meetings due to extenuating circumstances, the Group chairperson and the Authority Representative may at their discretion replace the member as if they had resigned, as per the requirements of clause 8.3.
- 20.4 The chairperson may invite non-members (in addition to Authority staff) to attend a Group meeting. In those circumstances, invited parties may participate in discussions at the discretion of the chairperson, but they are not a member of the Group or part of the quorum.

## **21 Minutes**

- 21.1 The chairperson must ensure that proper minutes are kept of all proceedings at Group meetings.
- 21.2 Minutes of all meetings must be published on the Authority's website as soon as practicable after their confirmation.

## **22 Confidentiality of reports and papers**

- 22.1 All reports submitted to the Group (including reports or presentations submitted by members) are subject to the Official Information Act 1982 (OIA), and, in the normal course of events, will not be treated as confidential. However, the Authority may withhold information if the Authority considers that there are grounds for doing so under the OIA.
- 22.2 In the circumstance where documents considered by the Group contain confidential information, the chairperson and the Authority Representative will ensure that all confidential information is adequately protected before the document is published.

## **23 Conflicts of interest**

- 23.1 As provided in the Act, the conflict of interest disclosure rules in sections 62 to 72 of the Crown Entities Act 2004 apply to each member of the Group, as if the disclosure required by those sections must be made to both the Group and the Authority.