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Submissions  
Electricity Authority  
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Dear John

## Reorienting Advisory groups

We welcome the opportunity to submit to the Authority's consultation *Reorienting Advisory groups*, published 9 August 2016.

This submission covers:

- The re-orientation for new advisory groups (MDAG and IPAG)
- Revisions to the advisory group charter and the SRC terms of reference
- Responses to consultation questions at Appendix A.

### The re-orientation for advisory groups

We support the Authority's consideration of whether a re-orientation of advisory groups may be needed. The Authority identifies that it is necessary because *evolving technologies and innovative business models are increasingly blurring the traditional demarcation between retail, wholesale, and transport*<sup>1</sup>. We agree that emerging technology and evolving market conditions are enabling different choices by consumers and participants in the electricity supply system, so that the Authority's consideration is timely.

### Intentions for advisory groups

Under the Electricity Industry Act the role of Advisory groups is for market facilitation and code development<sup>2</sup>. The first stated intent by the Authority for their use was

*"the Authority intends advisory groups to be a primary means for developing Code amendment options for significant and non-urgent matters"*<sup>3</sup> (refer Consultation Charter 2012).

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<sup>1</sup> Executive summary consultation paper

<sup>2</sup> Section 21 EIA 2010

This purpose has not been expressed in the revised Advisory Group charter so it is not clear whether the Authority still holds this view. In retrospect this intent does not appear to have been applied consistently in practice. For example, given the significance of the Authority's review of the DGPP, and Distribution Pricing work, it is not clear why Advisory groups were not used. Similarly, while an Advisory Group was initially used for transmission pricing it was disbanded before the Authority was able to benefit from the group's input and advice during its own review of the TPM.

We consider that advisory groups have an important role to play in informing and advising the Authority's exercise of its statutory functions. We acknowledge and commend the TPAG, RAG and WAG on their analysis, discussion and advice on the tasks assigned to them to date. We understand the demands on these groups and their members.

In particular, we think advisory groups can offer value by:

- helping identify and articulate whether there is a problem i.e. is there a market failure and, if so, can this be resolved through regulation?
- relatedly, helping establish whether new Code might be an output (and where it should not)
- assessing the nature and role of 'evidence' in a policy development when 'history' is not a guide to the future
- seeking and seeing opportunities for operational efficiencies.

### Memberships of the proposed new groups

We support the intent to broaden the membership for IPAG to include people with an interest and expertise in the electricity sector, evolving technologies and business models, and/or consumer choice and competition. We note that the criteria for membership of both advisory groups are the same except in one respect; that the MDAG has an additional criterion *strategic, commercial, and regulatory expertise*.

If the omission from the IPAG criteria is deliberate it suggests that its role may be viewed more as a think-tank than a body with specific tasks in a regulatory setting, more aligned with 'market facilitation' perspectives, rather than 'development of the Code' (EIA section 21 (2)). In that light it might make more sense that the projects for MDAG are those that may influence Code development.

The Authority has asked how it could motivate people to be involved in the groups. This is a good question as full participation in an Advisory Group is a significant commitment from individuals and their employers. In our view employers (especially in the industry) will generally be willing to permit and support participation by their employees as it is in their interest to ensure its Regulator is well informed.

Motivating participation by individuals is more nuanced. In addition to practical matters such as availability and complexity of material, we see two related considerations (i) the extent to which participation provides direct benefit from participation (this may be non-financial, i.e. reputation) and (ii) how enjoyable and satisfying participation is. The latter point will be significantly influenced by the Authority's approach to, use and treatment of Advisory groups.

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<sup>3</sup> <http://www.ea.govt.nz/about-us/strategic-planning-and-reporting/foundation-documents/>

We suggest (if not already undertaken) that the Authority survey current and previous Advisory Group members, and possibly potential members, to seek their views on what they found most (and least) rewarding from participating in Advisory groups.

## Revisions to the advisory group charter and the SRC terms of reference

We have looked at the key changes identified by the Authority at 3.4.6 in its drafting revisions, but like the Authority, we have not undertaken an exhaustive capture of all that has been changed. We agree with all the reasons presented for the set of changes identified, but the practice of not showing or indicating all changes may create risk for stakeholders.

After examining the revised charter we agree that the changes are not to the high-level purpose and function. However, it is not clear why there has been quite extensive re-drafting of the membership criteria for the SRC – which appears to mimic the criteria for the MDAG – and whether this overlap may run counter to the statutory distinction between the two groups and the Authority’s position that the SRC is a ‘special type’ of advisory group.

## Other matters

In the consultation paper the ‘strategic’ setting for the proposed advisory groups is not quite consistent with the Authority’s current Statement of Intent (SOI)<sup>4</sup> (the SOI strategies are slightly different from the set of ‘priorities’ proposed for the AG). We should expect these to be exactly aligned as slight changes in words can change the ‘sense’ and hence direction of development. For example between “providing efficient price signals” (SOI) v “improve prices signals” (for AGs), with the latter objective a more subjective measure (i.e. efficient price signals may or may not be an improvement from the view of a person on the wrong side of a wealth transfer).

Finally we note that the Statutory Objective that the advisory groups are indicated as working towards does not align with that of the Authority’s S15 purpose (it applies to the energy sector not just the electricity industry). We presume this is a drafting error and will be corrected.

If you have any questions about this submission please don’t hesitate to contact me.

Yours sincerely



Micky Cave

**Senior Regulatory Analyst**

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<sup>4</sup> Statement of Intent 2014 - 2018

## Appendix A – response to questions

<p>Q1. What feedback do you have on the proposed IPAG, including its purpose and scope?</p>	<p>As the IPAG membership does not require <i>strategic, commercial, and regulatory expertise</i> then it suggests that the role for the IPAG might be viewed more as a think-tank than a body with specific tasks in a regulatory setting. Its work may be more aligned with ‘market facilitation’ perspectives, rather than ‘development of the Code’ (EIA section 21 (2)). The group could be an avenue to bring ideas for investigation and possible development to the Authority.</p>
<p>Q2. What are your views on the membership of IPAG, and how to engage the sorts of parties that will ensure it can achieve its purpose?</p>	<p>See above re the (assumed) deliberate omission of the membership criteria <i>strategic, commercial, and regulatory expertise</i>.</p> <p>We see two related considerations (i) the extent to which participation provides direct benefit from participation (this may be non-financial, i.e. reputation) and (ii) how enjoyable and satisfying participation is. The latter point will be significantly influenced by the Authority’s approach to, use and treatment of Advisory groups.</p>
<p>Q3. What are your views as to how the IPAG might operate, so as to best achieve its purpose?</p>	<p>We agree that different operational processes may be needed for the two groups if their scope and outputs are expected to differ.</p>
<p>Q4. What feedback do you have on the proposed MDAG, including its purpose and scope?</p>	<p>Its membership criteria seem more closely aligned with policy development that may end in code change.</p>
<p>Q5. What are your views as to the membership of the MDAG, and how it should operate?</p>	<p>Drawing from practice in other jurisdictions such as PJM, it may benefit the groups’ consideration process if (non-confidential) papers are made publically available at the time they are provided to the MDAG. This would allow interested parties to offer any relevant information to the group’s assessment.</p>
<p>Q6. Do you agree with the Authority’s proposal to:</p> <p>a) introduce new terms of reference for the IPAG and MDAG, subject to the feedback provided under Q1 - Q5</p> <p>b) replace the current terms of reference for the SRC in its entirety, with an updated and streamlined version</p>	<p>We agree, subject to feedback from this consultation.</p>

<p>c) replace the current version of the charter in its entirety, with an updated and streamlined version?</p>	
<p>Q7. Do you agree with the Authority's assessment of its proposals? If not, what alternative assessment would you make and why?</p>	<p>We agree it is timely to reconsider the role for advisory groups but consider the assessment for their future use may have been better informed with some evaluation of the scope and outputs to date from current and previous groups.</p>
<p>Q8. Are there alternatives to either of the Authority's proposals that you consider would better meet their respective objectives? If so, please describe the alternative and why it would be preferable.</p>	<p>In the Advisory Group Charter June 2013<sup>5</sup> there is provision for ad-hoc advisory groups. This provision is not present in the revision to that charter. In the absence of any discussion in the consultation paper on changing this flexibility aspect we suggest it is retained.</p>
<p>Q9. Do you have any specific comments on the drafting of the proposed new versions of the Charter and terms of reference for the SRC, IPAG, and MDAG?</p>	<p>We have no objection to changes in drafting for communication clarity, but have found the changes difficult to follow and have relied only on the Authority's explanation of key changes at section 3.4.6. The practice of not showing or indicating all changes puts risk on to stakeholders.</p>

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<sup>5</sup> <http://www.ea.govt.nz/about-us/strategic-planning-and-reporting/foundation-documents/>