



28 March 2023

Electricity Authority

Wellington

New Zealand

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## **Submission - Review of the Consultation and feedback processes**

### **Introduction**

1. Orion appreciates the opportunity to submit on the Consultation Issues paper<sup>1</sup> seeking feedback on the Electricity Authority's (the Authority) review of the consultation and feedback processes from industry stakeholders.
2. This consultation paper has several discrete but related sections which is being consulted on. The sections are:
  - Section 4: Changes to the consultation charter to incorporate the Amendment Act and EPR recommendations
  - Section 5: Establishing a new advisory group and related changes to the advisory group charter and terms of reference
  - Section 6: Changes to the CAR process
  - Section 7: Proposed Code amendments relating to the system operation documents incorporated by reference.
3. Note that the original submission date for this was set at 21 March 2023 with an extension of 14 days due to Cyclone Gabrielle, making it due on 4 April 2023.

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<sup>1</sup> <https://www.ea.govt.nz/assets/dms-assets/31/Consultation-paper-review-of-consultation-and-feedback-processes.pdf>

## Summary

4. We have reviewed the consultation paper and welcome the fact that the Authority wants to update its processes to more appropriately serve the sector and community need and have flexibility, prioritising the best benefit for consumers.
5. Orion's responses are included in Annexure A to the 6 questions posed by the Authority as well as other feedback we consider appropriate to the consultation.

## Other Feedback

6. In principle, Orion supports the Electricity Network's Association's submission.

## Feedback the consultation and feedback processes

7. Orion's responses are included in Annexure A of this document.
8. However, we note that Appendix A of the Submission Format did not include a particular question in relation to Appendix B and the proposed amendment to the Consultation Charter. We have included comments on Appendix B in Orion's Annexure A below.
9. We are concerned that overall, the proposed changes to the feedback process are too restrictive and at the discretion of the Authority e.g. the revised Code Amendment Request (CAR) process which we do not believe is more efficient, but rather more restrictive for submitters.
10. It appears that the Authority publishes submissions from stakeholders on its website and we can see that the Authority refers to submissions in their stakeholder assessment and final decisions. However, it is difficult to find these submissions or navigate to them on the Authority's website. We submit that the Authority should review the consultations section of their website and routinely send an email update to stakeholders advising that submissions have been published containing a link to a consultations section on the website.
11. We submit that the Authority should review its procedures with respect to retaining consultation history and submission information on its website. This would be helpful as often time lapses between stages of consultation and being able to review what went before is useful for subsequent stages of submission.

## Concluding Remarks

Thank you for the opportunity to provide feedback. We do not consider any part of this feedback as confidential.

If you have any questions or queries or aspects of the submission which you would like to discuss, please contact me on 03 363 9898.

Yours sincerely

Rob Tweedie

**Regulatory Manager**

## Annexure A:

Submitter: Orion Group

### Questions posed by the Authority with Orion Responses

We note that the Authority is seeking feedback regarding the new advisory group on two proposals:

1. Preference for the membership structure of the new advisory group.
2. Proposed changes to the documents to provide for the new advisory group:
  - Consultation Charter
  - Advisory Groups Terms of Reference
  - Terms of Reference for the Security and Reliability Council and other advisory groups.

Orion's preferences and recommendations to the six questions posed by the Authority are as follows:

#### **Q1. For your preferred option, do you prefer option 1, 2, or 3?**

Option 1: The option of having a small core group that co-opts other expertise as needed would be too restrictive.

**Option 2: We support this option** - a full-size group that can set up smaller working groups of interested members as needed: to ensure there is sufficient representation from all sectors, specifically in respect of at least 2 members from larger retailers, generators, and distributors

Option 3: This option is too broad - having a large member pool with a stronger focus on breakout groups of members interested in individual subjects as needed may not be focussed enough on specific issues.

#### **Q2. Are there any key stakeholders that have been left out of these proposed options?**

No, although there is no mention of a Transpower (System operator) representative. This may be due to Transpower's unique and bespoke process for proposing changes to the Code etc as described in point 6.16 – 6.18 of the Consultation document and may operate somewhat independently, covered under the proposed changes in Appendix E of the consultation.

**Q3. Do you have any comments on the proposed membership?**

No, it appears to cover all stakeholders.

However, we note that from the small and large, retailer/distributor/generator membership that it only includes 2 representatives for each group. We recommend that there be at least one representative from each, otherwise there will not be adequate representation.

The Authority could, specifically for the larger retailer/distributor/generator membership being proposed include 3 (one member from each group) or 2 if there is a gentailer represented and a distributor.

**Q4. Do you have an alternative suggestion? If so, please provide details.**

No, we do not have an alternative suggestion

However, it is important to understand where MDAG and IPAG will fit into the new structure of the EAAG (Electricity Authority Advisory Group) and whether they will, by default become sub-groups of the EAAG. We have expanded on the reasons under Question 5, Appendix D's first bullet point.

**Q5. Do you have any comments on the proposed changes to the draft documents in Appendices, C and D?**

As noted in our covering letter, here we have included our comments on Appendix B which is the proposed amendment to the consultation charter.

***Appendix B Proposed Amendment to the Consultation Charter<sup>2</sup>***

- Clause 4.1 sets out principles which the Authority is to have regard to when considering whether to amend the Code.

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<sup>2</sup> Clause references are to clauses in Appendix B.

- Some of the principles go beyond “consideration” statements and explain what action the Authority might take when considering the amendment proposal or having decided to accept the amendment proposal<sup>3</sup>. For example, Principle 2 is that “benefits are quantified”, but this is not further explained so we are not sure of the purpose of this statement or to whom the benefits are supposed to accrue. The amendment proposes that the principle will state that “*Although not required under the Act, the Authority will provide quantitative analysis to support proposed amendments where it deems this to be possible, practical and useful.*” We submit that it would be helpful for the purpose of this principle to be explained, and the fact that the Authority may carry out quantitative analysis to be included in another clause dealing with the assessment of the amendment proposals rather than a principles clause.
- Clause 5 deals with how amendments to the Code will be identified. Further commentary about this proposal is included at the end of this submission. Our comments immediately below are related to the details of this proposal:
  - Clause 5.2 should refer to statements of government policy, in addition to objectives, functions, and statement of intent etc.
  - Clause 5.3 sets out how code change suggestions will be treated but for the most part it actually deals with how code change suggestions are **made to the Authority** rather than how they will be treated.
  - Clause 5.3.2 deals with minor or technical changes. If this includes errors in the Code, then potentially these errors could remain there for a period of up to two years before these are corrected with a biennial amendment. Where errors in the Code are identified, we think the Code should be amended relatively quickly to correct these errors.

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<sup>3</sup> Also see principle 3 which talks about the Authority monitoring the implemented option.

- Clause 6 sets out the process for amending the Code and consulting on amendments:
  - Clause 6.8 sets out what the Authority believes to be good practice. Paragraph (a) refers to the right people having an opportunity to be heard. There is no definition of who are “right people” although presumably it is a reference to key stakeholders being consulted. The wording “the right people” is too subjective and suggests that some stakeholders may not be the right persons and their submissions are somehow less valuable. All submissions made should be given due consideration. Our view is that this sentence should be deleted, and this paragraph reworded.

This paragraph also states, *“an opportunity to provide oral submissions may be provided in some cases, on top of the usual opportunity to provide written submissions.”* Our submission is that this statement should be in a separate paragraph as it deals with the manner and format of submissions rather than who may make submissions.

- Clause 6.8(d) states that any submissions on a proposed amendment will be properly and impartially assessed and any appropriate changes to a proposed amendment will be made. In our view this statement goes too far. The Authority should not commit itself to making changes as there may be other considerations that mitigate against making changes despite the tenor of the submissions made. We think an appropriate statement would be that the views presented to the Authority will be received by the Authority with an open mind and the Authority will give those views, in making a decision, due consideration.

#### ***Appendix C Proposed amendment to the Advisory Groups Terms of Reference<sup>4</sup>***

- It is promising to see that the Authority is looking to support members who would otherwise not be able to attend by offering financial assistance through reimbursing fees and expenses in line with the Authority’s statutory obligations.

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<sup>4</sup> References to clauses are references to clauses in Appendix C.

However, we would like to see clause 7.3 rewritten so that it correctly reflects the legal obligations of the Authority at the same as acknowledging prior practice. The current proposal states that members are entitled to receive remuneration and reimbursement of actual and reasonable expenses because this is a statutory requirement. However, the paragraph then goes on to state that the common practice is not to pay such remuneration or expenses. It then says the Authority will pay a fee and expenses only for members who are financially disadvantaged by participating in an advisory group and will offer to pay fees and expenses to all members in accordance with the Crown Entities Act.

We suggest that the paragraph would be better worded as follows:

*7.3 Under section 47(1) of the Crown Entities Act 2004 (as applied by section 22 of the Act), a member is entitled to receive remuneration in accordance with section 47 for their work as a member of an advisory group. However, members are able to decline accepting such remuneration. Where members are public servants or salaried employees of larger electricity industry participants, the accepted practice has generally been for these members to decline accepting remuneration for their work on an advisory group.*

- Clause 8.1 (b) is changed from “appoint a senior staff member” to “appoint an appropriate staff member”. This makes sense in streamlining processes. However, it is important that the staff member has the ability to represent the views of the senior leadership team of the Authority.

***Appendix D Proposed amendments to the Terms of Reference for the Security and Reliability Council and other advisory groups<sup>5</sup>***

- We note clauses 1.3 (d) IPAG and(e) MDAG. We agree with the process of changing these to “Advisory Groups”. We would like to see IPAG and MDAG created as sub-groups to the EAAG as the recommendations from these groups have not been actioned and it would be unfortunate if the innovation and market development groups no longer had a voice or developments in these areas are stifled. We also consider that the work which has been done by these advisory groups should be acknowledged and continues.

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<sup>5</sup> References to clauses are references to clauses in Appendix D.



- Other deletions regarding IPAG and MDAG makes sense, in line with the suggested establishment of the EAAG.
- We think that clause 7.2 needs amendment. Paragraph (a) says that the work plan will be developed by the Authority in discussion with the group. Paragraph (b) says that the work plan will be primarily developed for the group to provide advice on Authority project work etc. We are not sure what the difference is between “developed” and “primarily developed” but it creates confusion. In any event, paragraph (b) seems to us to be straying into the actual purpose of the Advisory Groups which is appropriately set out in clause 14 under the heading “scope of role”. On this basis, we recommend that you delete clause 7.2(b).

**Q6. Do you agree with the overall assessment of the Code amendment proposal? If not, what alternative assessment would you make and why**

We recommend the following on the proposed changes to the CAR process:

- Point 6.9 of the Consultation Paper says that *“the scope of CARs will be limited to basic Code maintenance for existing Code clauses and associated operational policy. The purpose of these CARs must be to improve clarity, reduce ambiguity, or correct errors.”*
- Point 6.10 then provides that there is still a route for more complex or major policy proposals. If the proposal relates to a current work project, proposals can be made in the relevant consultations on that project. If the proposal is about new or future projects or broader regulatory change, the proposal can be captured in the usual Authority appropriations consultation that consults on the funding and work that will be funded in the coming financial years. Proposals made during this process will be assessed and prioritised along with other future work the Authority is considering. New clause 5 in Appendix B of the Consultation Charter deals with the details of this proposal.

We are concerned this approach puts the Authority at risk of breaching administrative law principles. Decision-makers are not permitted to ignore an application or decline to hear an argument urging a changing of policy. Abdication of discretion is a common ground of administrative law challenge.<sup>6</sup>

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<sup>6</sup> See A to Z of New Zealand Law, Administrative Law, para 2.23.3 Abdication of discretionary power.

The current proposal essentially provides that the Authority will not consider proposals for Code amendments other than basic or technical amendments, and even then this may take two years for the process to be completed. Proposals advocating for more complex Code amendments will not likely be considered at all unless they fit into another process.

We would prefer to see the current approach retained whereby proposals are assessed by Authority staff within 3 months of submission and then considered by the Authority.