

## **DRAFT Terms of reference for the Electricity Authority Advisory Group (EAAG)**

### **1 Introduction**

- 1.1 This document specifies the operational and governance matters for the Electricity Authority Advisory Group (EAAG), an advisory group established under section 21 of the Electricity Industry Act 2010 (Act).
- 1.2 The EAAG is also subject to the Electricity Authority's (Authority) charter on advisory groups (charter), and the two documents should be read together. If there is any inconsistency between these terms of reference and the charter, the charter will prevail.

### **2 Responsibilities of members**

#### **General**

- 2.1 Members of the EAAG must:
- (a) comply with the requirements set out in the charter
  - (b) comply with the requirements set out in these terms of reference
  - (c) be available for all meetings unless granted leave by the chairperson
  - (d) read all papers circulated to the group, and actively contribute to the group's discussions
  - (e) inform the chairperson and the Authority's representative of any actual or potential conflicts of interest that may affect their ability to perform their functions as a member of the group in accordance with sections 62 to 72 of the Crown Entities Act 2004 and section 2 of these terms of reference
  - (f) carry out the tasks assigned to the group arising from meeting agendas

#### **Attendance**

- 2.2 Members are not entitled to send an alternate in their place if they cannot attend a meeting.
- 2.3 Any member who misses two consecutive meetings is deemed to have resigned from the group from the date of the second missed meeting unless:
- (a) they have been given leave from the chairperson, or in the case of the chairperson, from the Chief Executive; or
  - (b) extenuating circumstances exist, as decided by the chairperson or the Chief Executive, as the case may be.

- 2.4 Despite clause 2.3(b), if the chairperson considers the member's absence for more than two consecutive meetings is likely to disadvantage the group, a new member may be appointed to replace the member as if he or she had resigned. Any such appointment must be carried out in accordance with clauses 8.1 to 8.4.

## **Media relations**

- 2.5 Members have no media relations role and may not speak on behalf of the Authority or the group in regard to matters on which the group has advised, or is advising, the Authority. The Authority is solely responsible for all media relations.

## **3 Process for handling concerns about performance**

### **Member performance**

- 3.1 Any person concerned about the performance of a member should discuss those concerns with both the chairperson and the Authority's representative.
- 3.2 If the Authority representative, in consultation with the chairperson, considers action is warranted, he or she must:
- (a) discuss the matter with the member concerned and give the member an opportunity to state his or her view
  - (b) if the discussion does not resolve the matter to Authority representative's satisfaction, provide written notice to the member stating the concerns and the desired corrective action
  - (c) if the member is affiliated with an organisation, inform relevant people at the member's affiliated organisation of the matter, if appropriate, prior to sending the written notice
  - (d) if the member fails to address the concerns specified in the written notice, provide the member with an opportunity to discuss the matter further and, if appropriate, discuss the matter with the affiliated organisation
  - (e) if not satisfied after due consideration of the member's explanation, inform the member and the affiliated organisation, if appropriate, that they will recommend to the Chief Executive that the member's appointment be terminated.
- 3.3 Any discussions with a member's affiliated organisation under clause 3.2 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.
- 3.4 The Chief Executive, on receiving a recommendation under clause 3.2(e), must be confident the processes in clause 3.2 have been satisfactorily complied with. If appropriate, the Chief Executive may also, notwithstanding clause 6.3, discuss the matter with the Chief Executive of the member's affiliated organisation.
- 3.5 If the Chief Executive agrees with a recommendation made under clause 3.2(e), the Chief Executive may recommend to the Authority that the member's appointment to the group be terminated.

- 3.6 In clauses 3.1 to 3.5, if the Authority's representative is the Chief Executive, all references to the Chief Executive should be read as the Authority's chairperson.

## **Chairperson performance**

- 3.7 Any person concerned about the performance of the chairperson should discuss those concerns with the Chief Executive.
- 3.8 If the Chief Executive believes that further action is warranted, the Chief Executive must discuss the matter with the Authority's chairperson.
- 3.9 If the Authority's chairperson agrees that further action is warranted, the Chief Executive must follow the process set out in clauses 3.2 and 3.3, as if references to:
- (a) the Authority representative were references to the Chief Executive
  - (b) the member were references to the chairperson.

## **Authority (or other) staff performance**

- 3.10 Any person involved with the group who is concerned about the performance of an Authority staff member, in relation to the group, should discuss those concerns with the Chief Executive. The Chief Executive will determine the appropriate actions to be taken in response to such concerns.
- 3.11 Any person involved with the group who is concerned about the performance of a contractor or external consultant associated with an advisory group should discuss those concerns with the Authority's representative. The Authority's representative, in consultation with the Chief Executive, will determine the appropriate action in response to such concerns.

## **4 Confidentiality of reports**

- 4.1 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.
- 4.2 However, the Authority may withhold information contained in such reports or presentations if the Authority considers there are grounds for doing so under the OIA.
- 4.3 The chairperson must forward any requests for official information the group receives to the Authority immediately.

## **5 Conflicts of interest**

- 5.1 Section 22(1) of the Act provides that the conflict of interest disclosure rules in sections 62 to 72 of the Crown Entities Act 2004 apply in respect of each member of the group as if the group were a statutory entity.
- 5.2 If a member of the group is required to make a disclosure under those sections, the member must make the disclosure to the Authority as well as to the group.

## 6 Functions and responsibilities

### Functions of the advisory group chair

- 6.1 The key functions of the advisory group chair include:
- (a) managing the group's activities to facilitate delivery of the group's work
  - (b) facilitating discussions between group members in a manner that will stimulate robust debate on issues and encourage effective contribution from members
  - (c) guiding relevant and effective discussions while also ensuring 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 Authority
  - (f) attending Authority Board meetings, as required, to present the group's advice
  - (g) approving and signing on behalf of the group any other communications the group wishes to have with the Authority.
- 6.2 When making representations to the Authority 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.
- 6.3 If the chair has any significant concerns, including (for example) in relation to the operation of the group, these are to be raised with the Authority's representative to the group in the first instance. If the chairperson's concern is in regard to the Authority representative or deems the concern significant enough to warrant raising it with the Authority Chief Executive, the chairperson may raise such concerns with the Chief Executive.

### Responsibility of advisory group members

- 6.4 A key role of the EAAG is to use its collective knowledge and experience when considering the matters before it. The EAAG's advice to the Authority must be independent, considered, and supported by robust analysis. The quality of the advice must be sufficient to enable the Authority to make well-informed decisions.
- 6.5 In addition to the responsibilities under section 2, when carrying out their duties, members of the EAAG must keep in mind 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 (not as representatives of organisations) and the Act requires them to provide independent advice as a group, even though they need not be independent persons individually.
  - (c) The requirement in paragraph (b) means members are expected to act in the best interests of all stakeholders irrespective of whether this aligns with the interests of any organisation he or she may be associated with.

- (d) The group is expected to reconcile divergent views and interests, both in the group and among wider stakeholders, in ways consistent with the Authority's statutory objectives, the Authority's Code amendment principles contained within the Authority's consultation charter and in a manner that achieves wider stakeholder "buy in". This requires a serious commitment by all members to understand alternative views and find workable solutions.
- (e) Authority staff and external experts are free to form their own views on the matters considered by the group, and the Authority expects members to respect the different roles that Authority staff and external advisors play in assisting the group and advising the Authority.

## 7 Work plan

- 7.1 The EAAG will operate to a work plan. The EAAG is expected to use its knowledge and expertise to investigate, analyse, and make recommendations to the Authority on matters included in its work plan as appropriate to the work plan item.
- 7.2 The work plan will be:
  - (a) developed by the Authority in discussion with the group
  - (b) primarily developed for the group to provide advice on Authority project work and consultation papers before public release, and, as appropriate, to assist in considering and reconciling views presented in submissions
  - (c) developed with regard to the Authority's limited budget
  - (d) part of the Authority's overall work programme, priorities and timeframes
  - (e) updated to account for developments that occur in the course of the Authority's overall work programme.
- 7.3 Members may suggest items to be included in the work plan, but those items will be included at the Authority's discretion, and subject to clause 7.2.
- 7.4 If projects in the group's work plan overlap with projects being considered by other advisory or working groups, the Authority will:
  - (a) make reasonable efforts to coordinate the advice from the other groups
  - (b) interact with the relevant groups on those projects (for example, by conducting joint meetings and workshops)
  - (c) facilitate timely updates to each relevant group on the status of those projects.
- 7.5 The Authority will hold the group accountable to its work plan by:
  - (a) monitoring the performance of the group and its members
  - (b) receiving feedback from the secretariat on the group's analysis and recommendations and its decision-making processes
  - (c) may use knowledge and expertise from within each member's organisation, unless the Authority requires the work item to be kept confidential
  - (d) must ensure all papers and discussion a member shares within its organisation for feedback is kept confidential within the organisation and is only used by the organisation for the purpose of providing feedback.

## 8 Appointment

### Appointment of advisory group members

- 8.1 The Authority will appoint members after calling for nominations and considering nominees against the relevant criteria.
- 8.2 The Authority must appoint members by written notice. The notice must state the date the appointment takes effect and state the term of the appointment.

### Appointment of advisory group chairperson (including a temporary deputy chairperson)

- 8.3 The Authority may appoint a chairperson after calling for nominations and considering nominees against the relevant criteria.
- 8.4 The Authority may select a chairperson from among the existing members or may appoint someone from outside of the group. The Authority must appoint the chairperson by written notice to the relevant nominee, followed by written notice to the other members of the group.
- 8.5 The group may appoint a member to be a standing or 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.

## 9 Scope of role

- 9.1 The purpose of the EAAG is to provide independent advice to the Authority.
- 9.2 In particular, the Authority may seek the EAAG's advice on:
  - (a) draft issues papers, option papers or other Code amendment papers, assessing whether:
    - (i) the content of these papers is feasible and viable, and if not, what any issues are
    - (ii) the industry's ability to implement any changes being considered is documented and accounted for in the final versions of the paper being released
  - (b) other initiatives, including:
    - (i) improving consumer awareness, understanding, motivation and action by mass-market, commercial, or industrial consumers
    - (ii) monitoring of existing obligations and changes being implemented
  - (c) any other policy, operational or strategy matters that the Authority considers appropriate.

## 10 Membership

- 10.1 The Authority will target appointing 25 members to the EAAG, including an independent chairperson. However, the Authority may appoint more or less members.
- 10.2 The chairperson is a member. Accordingly, provisions in these terms of reference that apply to members also apply to the chairperson. However, provisions specific to the chairperson take precedence.

### Criteria for membership

- 10.3 The Authority may appoint members to the EAAG after considering nominees against the following criteria:
- (a) An ability to contribute to a balance of knowledge and experience relevant to the matters specified in clause 9
  - (b) an ability to represent alternative views in a balanced manner
  - (c) an ability to provide impartial, independent advice
  - (d) a high level of integrity and credibility
  - (e) an ability to contribute constructively to the group's tasks.
- 10.4 To qualify as an independent chairperson, a nominee must meet the membership criteria specified in clause 10.3 and the following additional criteria:
- (a) the nominee must, in the opinion of the Authority, be demonstrably free of conflicts of interest
  - (b) the nominee must have the skills and experience necessary to carry out the responsibilities of the chairperson and to perform the functions set out in clauses 6.1 to 6.3.

### Term of appointment

- 10.5 Appointment to the EAAG is ordinarily for a term of five years.
- 10.6 The maximum number of consecutive terms that a member may ordinarily be appointed is two.
- 10.7 Despite clause 10.5, the Authority may:
- (a) request that a member serve a term of more than five years
  - (b) decide to appoint a member for a term of less than five years.
- 10.8 Despite clause 10.6, the Authority may appoint a member for more than two consecutive terms.



# 11 Procedures

## General

11.1 The EAAG:

- (a) may determine its own procedures, subject to the requirements of the Act, the Charter, and these terms of reference
- (b) must conduct its business and activities in a manner that is as transparent as practicable.

## Approach to meetings

11.2 The EAAG will meet:

- (a) by any means that enables effective investigation of the matters included in the EAAG's work plan
- (b) as often as required, having regard to the Authority's planning cycle and the EAAG's work plan.

11.3 A meeting of the EAAG may be held by a quorum of its members. No business may be transacted at a meeting if there is no quorum.

11.4 A quorum for a meeting of the EAAG comprises the minimum number of members necessary to ensure effective investigation of the matters included in the EAAG's work plan, as determined by the Authority representative in consultation with the chairperson.

11.5 The chairperson of the EAAG may request any member or members of the EAAG to contribute on a project-specific basis.

11.6 The chairperson, with the agreement of the Authority's representative, may invite non-members (in addition to Authority staff) to attend the EAAG's meeting. In those circumstances, the invited party may participate in discussions at the discretion of the chairperson but is not a member of the EAAG and does not form part of the quorum.

## Administration

11.7 The Authority's representative is accountable to the Authority for the successful and effective functioning of the EAAG.

11.8 The Authority, in its capacity as the secretariat, will:

- (a) make appropriate arrangements for any meetings of the group, in consultation with the chairperson
- (b) give reasonable notice of meetings to each member, including details as to the time and venue of meetings
- (c) if possible, arrange for any materials that will be discussed at group meetings to be circulated to members at least five business days before the meeting, to enable members to properly consider them
- (d) ensure that non-confidential meeting materials are published on the Authority's website, however, ordinarily, draft Authority papers provided for the EAAGs



consideration prior to public release are considered confidential until publicly released

- (e) attend all meetings, ensure that minutes of meetings are published on the Authority's website as soon as practicable after their confirmation.
- 11.9 Any emails sent by a member of the EAAG about any substantive aspects of the group's business should be copied to:
- (a) all the EAAG's members
  - (b) the Authority representative
  - (c) the Authority secretariat.

## 12 Working groups

### Purpose of working groups

- 12.1 References to working groups should be read as references to working groups, forums, workshops, or other types of groups (excluding ad hoc advisory groups).
- 12.2 The primary role of working groups is to provide technical and specialist input to the work of the EAAG. Working groups may also assist with the EAAG's workload, if directed by the Authority.
- 12.3 Working groups can be standing or ad hoc, and may be functional or project-specific, depending on the EAAG's requirements.

### Establishment of working groups

- 12.4 The chairperson of the EAAG and the relevant Authority representative will jointly recommend to the Authority whether a working group is required, and if that working group will be a subgroup of the EAAG made up of members of the EAAG or be independent of the EAAG made up of new appointees (which may include EAAG members (if they meet the criteria)).
- 12.5 The Authority may establish a working group by:
- (a) calling for nominations by:
    - (i) determining the appropriate criteria against which to evaluate possible members of the working group, including candidates for the position of chairperson
    - (ii) calling for nominations for members including a chairperson
    - (iii) appointing members and a chairperson in accordance with the criteria established under paragraph (i)
    - (iv) determining appropriate terms of reference; or
  - (b) invitation to preferred potential members, including current EAAG members on the chairperson's recommendation; or
  - (c) another process (that is documented and followed) that is appropriate for the required purpose, work, and duration of the working group.

- 12.6 The Authority must have regard to the views of the EAAG when establishing a working group.
- 12.7 When establishing a working group under clause 9.5 the Authority must evaluate potential members against the following criteria, in addition to any criteria that may also apply under clause 12.5(a)(i):
- (a) relevant knowledge and experience
  - (b) relevant strategic, commercial, and regulatory expertise
  - (c) an ability to represent alternative views in a balanced manner
  - (d) an ability to provide impartial, independent advice
  - (e) an ability to contribute constructively to the relevant tasks
  - (f) the ability of members to collectively represent the relevant key perspectives.
- 12.8 The Authority will determine on a case-by-case basis whether an EAAG member can become a member of a working group assisting the EAAG.

### **Operation of working groups**

- 12.9 Each working group will report its analysis and recommendations as advised by the Authority (normally to either the Authority or to the EAAG). A working group may nominate a member, in addition to its chairperson, to represent it when the EAAG considers its reports.
- 12.10 The EAAG has the discretion to support any recommendation from a working group.
- 12.11 If a working group's task is a standalone one, the EAAG is expected to forward the analysis and recommendations it receives from the working group on to the Authority.
- 12.12 If a working group's task is a component of a broader scope of work being undertaken by the EAAG, the EAAG is expected to integrate the working group's analysis and recommendations into the EAAG's broader report to the Authority. If not integrated, the work and reason for not integrating it must be provided to the Authority representative.