

20 September 2016

Submissions

Electricity Authority
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Submission on Re-orienting advisory groups

1. Orion New Zealand Limited (**Orion**) welcomes the opportunity to comment on the Electricity Authority's (the **Authority**) consultation paper (the **paper**) on re-orienting advisory groups.
2. This submission responds to the paper's request for views on two proposals:

Firstly:

To establish two new advisory groups:

- (a) Innovation and Participation Advisory Group (IPAG), focussing on issues specifically related to new technologies and business models, and consumer participation
- (b) Market Development Advisory Group (MDAG), focussing on further evolving the 'machinery' of the electricity markets.

Both groups would cover the entire electricity supply chain and future innovations across it.

The existing Wholesale advisory group (WAG) and the Retail working group (RAG) advisory groups would be disestablished.

Secondly:

To replace the Charter for Advisory Groups (charter) and the Security and Reliability Council's (SRC) terms of reference with new versions, and create new terms of reference for the IPAG and MDAG.

3. Our submission is in three parts:
 - 3.1. Our response to general issues;
 - 3.2. Our response to specific questions; and
 - 3.3. A marked up version of the Charter for Advisory groups showing suggested changes.

General Issues

4. Advisory groups play a key role by providing independent advice to the Authority on the development of the Code and on market facilitation. This is evidenced by the statutory

requirement on the Authority to establish the Security and Reliability Council (SRC) and at least one other advisory group.

5. In the Authority's consultation on this issue in 2010¹ it noted that:

"In reporting to Cabinet on the 2009 Ministerial Review, the Minister of Energy and Resources noted that "insufficient stakeholder involvement in rule development" was one of five key concerns with current governance arrangements.

This concern reflected analysis in the Electricity Technical Advisory Group (ETAG) discussion paper in August 2009, which stated there was anecdotal evidence that industry participants had increasingly disengaged from the rule development process, claiming too little progress was being made through the advisory groups.

The ETAG paper noted that the Electricity Commission had recently adopted a new advisory group structure and had amended arrangements to enhance the flow of information and advice between advisory groups and the Electricity Commission's Board. Nevertheless, the ETAG paper recommended that the Authority be required by legislation to involve working groups of sector representatives (including consumers) in rule development. This requirement is set out in section 21(1) of the Act."

6. As a result of this earlier consultation the Authority established the charter for advisory groups as part of its foundation documents and in addition to the SRC proposed to establish three other advisory group covering the Wholesale, Transport and Retail sections of the electricity supply chain.²
7. The Authority, at that time developed and evaluated the number and scope of advisory groups against the following criteria:
- 7.1. Having closely inter-connected issues overseen by a single advisory group minimises duplication and overlap across advisory groups, making it easier for the Authority to allocate issues and hold each advisory group accountable for achieving its work programme;
- 7.2. The workload for each advisory group needs to be commensurate with the time members can be expected to allocate to advisory group business; and
- 7.3. The size of each advisory group needs to be manageable whilst bringing the full spectrum of views and Code-making skills to the table.
8. The current paper does not indicate whether the Authority has based its proposed advisory groups against the same criteria, however it does indicate that the existing advisory groups have highlighted that their respective tasks were overlapping.
9. The Authority's criteria would suggest that, due to the ever increasing inter-connected nature of the industry that a smaller number of advisory groups is desirable, however this could conflict with the workload and size criteria.
10. We recommend that the Authority considers the number and scope of any new advisory group against its own existing evaluation criteria and that any review of advisory groups

¹ Consultation Paper: "Charter about advisory groups 8 Nov 2010" Electricity Authority

² The Authority has since disestablished the Transmission Pricing advisory group

specifically addresses the issues of how it will prevent creating silos³ between advisory groups (if more than one) when allocating projects from its workplan.

Objective of the proposal

11. The paper indicates that the objective of the proposal is to better account for evolving technologies. The Authority considers that evolving technologies and innovative business models are increasingly blurring the traditional demarcation between retail, wholesale and transport, making them less relevant or useful to organise its activities around.
12. We agree that there is a blurring of the traditional demarcation between retail, wholesale and transport that has the potential to increase uncertainty in the industry. However the extent of this impact is still open to debate. Some stakeholders consider emerging technology could have a significant impact on the electricity industry. Other stakeholders consider that the impacts of emerging technology will be less material and that distribution networks (in an evolving form) will continue to provide benefits to consumers in the future.
13. It is therefore timely for the Authority to consider changes to its advisory group structure to ensure that, in the face of emerging technology developments, it is well placed to ensure that Code and market facilitation initiatives give business's confidence to invest in infrastructure that supports the existing and future needs of our customers.
14. While the Authority's proposal is a positive step to addressing the issue of emerging technology and addresses, to some extent the potential for advisory groups to be silos along the value chain, there is still the potential to create silos across the work programmes. We consider this issue in more detail later in the submission when we discuss the scope of the advisory groups.
15. We also submit that the objective of the proposal cannot be achieved by the Electricity Authority acting alone. Emerging technologies, new business models, and consumer behaviours are interrelated with policy and regulations that affect market structure (eg, separation between electricity generation/retailing, distribution/transmission and other energy-related services), conduct (eg, pricing and investing), and performance (eg, profitability). That is they cross the boundaries of regulators and policy makers. The Authority should consider how its Advisory groups will provide advice to the Authority to allow it to interact constructively with other regulators and policy makers.

What is the correct number of advisory groups?

16. The Authority noted in its 2016/17 statement of performance expectations that:

In regard to new technology, the electricity industry faces potentially far-reaching changes in the near future from evolving technology. These technologies could create a wide range of options for how electricity is generated and used, giving consumer's far greater choice and

³ SILOS DEFINED

The term "silos" is quite commonly used in literature on organisational performance to describe inwardly focused organisational units where external relationships are given insufficient attention. Breakdowns in communication, co-operation and co-ordination between unit participants and other stakeholders, and the development of fragmented behaviour, are common features. The result is that the organisation falls short of making its best contribution to the needs of immediate and wider groups with an interest in the unit's continued good performance. – "REDUCING THE IMPACT OF ORGANISATIONAL SILOS ON RESILIENCE A Report on the impact of silos on resilience and how the impacts might be reduced" by Tony Fenwick, Erica Seville and Dave Brunsdon March 2009

individual control than ever before. It could also have significant implications for market participants, with the potential for new and disruptive players to enter and grow market share.

The uptake of these technologies is expected to result in significant change for the electricity industry and require changes to the Electricity Industry Participation Code 2010 (Code) and our market systems. The Authority aims to:

- *ensure there are no inefficient barriers to the adoption of new technologies, whether by existing market participants, new entrants or consumers*
- *ensure, as far as practicable, that decision makers face efficient prices for inputs and outputs regarding new technologies.*

17. This suggests that the work load on advisory groups in recommending Code changes and preparing market-facilitation measures (such as providing education, guidelines, information, and model arrangements)⁴ in the face of emerging technology developments may increase significantly. The Authority's second criteria for evaluating the number and scope of Advisory groups⁵ would suggest that it is possible that due to the increased workload that more than two Advisory groups (besides the SRC) may need to be appointed.
18. We recommend that the Authority should as part of this review specifically address whether the proposal to have two advisory groups (IPAG and MDAG) has adequately taken into account the potential for an increasing workload as implied by its 2016/17 statement of performance expectations.
19. The Authority's 2016/17 statement of performance expectations went on to say:

Security of supply issues arose in the second half of 2015 when Contact Energy and Mighty River Power announced the closure of the Otahuhu B and Southdown thermal generation plants. At the same time, Genesis Energy was considering the future of its remaining coal-fired plants at Huntly. It has now announced these units will be retained until at least December 2022.

The electricity market is facing unprecedented uncertainty about future levels of demand for electricity due to the world prices received by some of New Zealand's largest industrial consumers but also due to potential uptake of new generation, such as solar panels and battery storage technology. The Authority has been pursuing the introduction of standardised cap products in the electricity futures market to further promote the efficient provision of backup generation plant (and demand response capability) suitable for covering dry-year risks. To that end, the Australian Securities Exchange (ASX) announced recently that it intends to list such a product on its New Zealand trading platform by the end of 2016.

In light of the uncertainties about future demand and supply the Authority has decided it would be prudent to review the customer compensation and stress testing regimes to ensure they are consistent with delivering ongoing security of supply. We will also continue our active

⁴ Section 16(1)(f) of the Act requires the Authority's – to undertake market-facilitation measures (such as providing education, guidelines, information, and model arrangements) and to monitor the operation and effect of market facilitation measures

⁵ The workload for each advisory group needs to be commensurate with the time members can be expected to allocate to Advisory group business

monitoring of all market developments and we are advancing several other projects that will promote an efficient level of security of supply.

20. This suggests that the work load on the SRC may also increase significantly and that additional monitoring of the system operator (SO) functions may be required. We recommend that as part of this review the Authority also consider the potential workload of the SRC and whether additional advisory groups may be required to assist the SRC.

Scope of Advisory Groups

21. While the Electricity Authority has an important role in the regulation of the electricity industry, the Commerce Commission is the primary economic regulator of the Transmission and Distribution sectors. In the same way that emerging technology can blur the boundaries between the wholesale, transport and retail sectors of the industry it can also blur the regulatory regimes and the policy drivers that led to the existing regulation.
22. The issue of Emerging Technology has also been well articulated by the Commerce Commission in its Input Methodologies Review draft decisions - Topic paper 3: The future impact of emerging technologies in the energy sector: 16 June 2016. The Commission noted:

We find it useful to emphasise the following two key points from the process to date.

1. *What we regulate: we regulate services, not assets or technologies. In the case of electricity, we regulate electricity lines services as defined by Parliament. We only regulate companies in as much as they are involved in delivering the regulated service. As a result, we are technology agnostic in the way we regulate electricity lines services, but recognise that new technologies may change the way in which suppliers deliver electricity lines services. Our rules seek to ensure consumers of electricity lines services benefit from these changes.*
2. *Areas out of scope: some emerging technology-driven changes are in areas outside the scope of the IMs. Some span across existing industry segments, others do it across regulators.*

The key ones include:

- *Distribution pricing: EDB changes to their prices as they respond and adapt to increasing deployment of emerging technologies. Distribution pricing falls mainly within the remit of the Electricity Authority, although the form of control we impose on EDBs plays a role in influencing EDB pricing decisions;*
- *Market structure: new technologies have the potential to be simultaneously valuable for the delivery of regulated and unregulated services. For example, electricity storage technology can help EDBs deliver electricity lines services, and at the same time be used to provide unregulated services. This situation raises important questions on the existence and functioning of markets associated with the regulated service and the unregulated ones. For example, should demand response that helps deliver electricity lines services at the distribution level be delivered via a market, and should EDBs be allowed to participate in it, and on what terms? The Electricity Authority, via the Electricity Industry Act 2010, has*

some ability to decide over these matters.⁴² Parliament has ultimate decision-making power should more fundamental changes to industry structure be deemed appropriate;

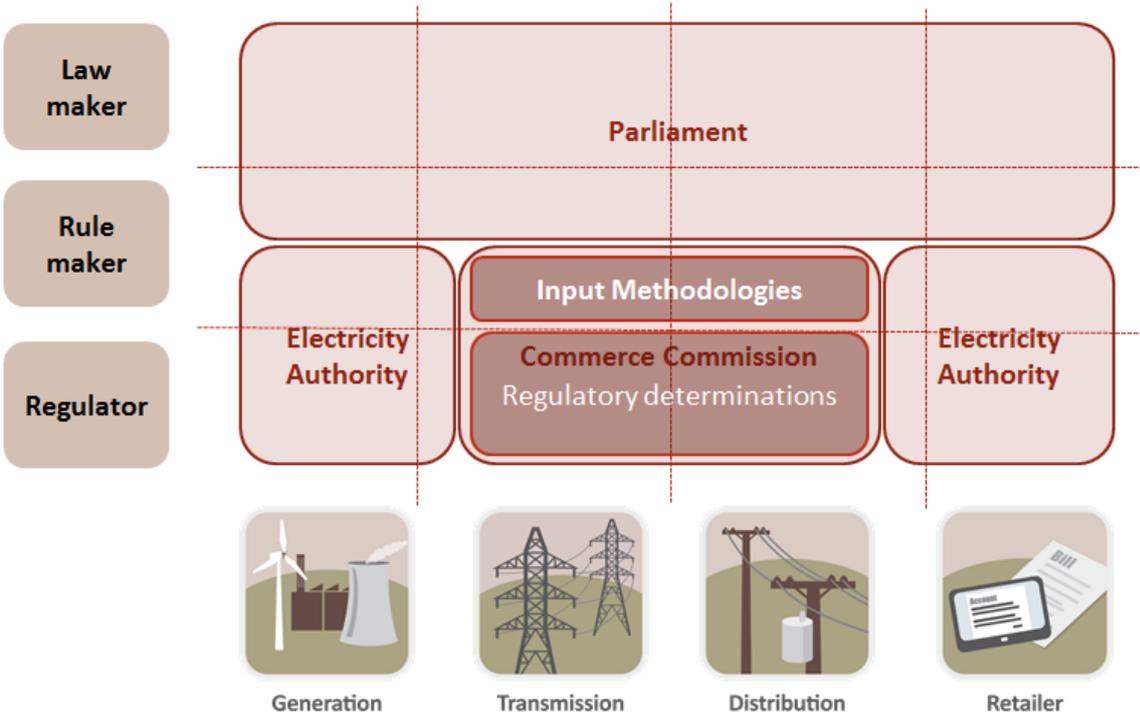
42 Letter from Carl Hansen (Chief Executive, Electricity Authority) to Sue Begg (Deputy Chair, Commerce Commission) on implications of regulatory treatment of cash flows for emerging technology (1 June 2016).

- *Boundaries of regulation and competition: more fundamentally, if new technologies erode the natural monopolistic characteristics of electricity lines services (or gas pipeline services),⁴³ then policy makers (Parliament) will have to revisit what aspects, if any, require continued economic regulation, and potentially amend legislation. For the avoidance of doubt, while our IM review was not aimed at answering this question, we have not found evidence to suggest that electricity lines services no longer have natural monopoly characteristics, now or probably in the medium term.*

The Electricity Authority promotes competition in, reliable supply by, and the efficient operation of, the New Zealand electricity industry for the long-term benefit of consumers.⁴⁴ It does this through market design, overseeing market operations, and monitoring and enforcing compliance with market rules.⁴⁵

The above highlights the renewed importance of collaboration between regulators and policy makers to ensure the long-term benefit of consumers is promoted in these times of change.

Figure 2 provides an overview of the roles and areas of responsibilities of the regulators and policy makers in the electricity industry and sets the regulatory context for emerging technologies and the IM review.



23. Clearly Parliament decided the role of the Authority is limited across the electricity industry and as the Commission notes:

The above highlights the renewed importance of collaboration between regulators and policy makers to ensure the long-term benefit of consumers is promoted in these times of change.

24. We therefore recommend, that in relation to the scope of advisory groups, it is important that **all** Advisory groups established by the Authority (as opposed to just the proposed IPAG) specifically consider the impact of emerging technologies together with the boundaries of the Authority's functions when providing advice on any area of the distribution chain.

25. The Authority's 2016/17 work programme is intended to draw a more direct link between the Authority's strategic focus and how that is implemented. The Authority's projects are now oriented around five market development programmes as follows:

a) **Evolving technologies and business models:** This programme covers initiatives to reduce barriers to development and use of evolving technologies and business models across the supply chain. This includes barriers that secondary networks and distributed generation experience when dealing with distributors.

b) **Consumer choice and competition:** This programme covers initiatives to promote competition and empower consumer choice through the retail market.

c) **Pricing and cost-allocation:** This programme covers initiatives to promote efficient pricing in markets, and for monopoly services.

d) **Risk and risk management:** This programme covers initiatives to promote efficient management of capacity and energy risks through the spot market for electricity, markets for ancillary services, and the hedge market for electricity - including the market for financial transmission rights.

e) **Operational efficiencies:** This programme covers initiatives to improve the operation of the electricity markets that are not covered in the above programmes.

26. Clearly the first of these, "Evolving technologies and business models" impacts on the other four programme areas, a point that the Authority has clearly recognised in the paper, noting at paragraph 2.2.5 that *"Some of the issues under its [MDAG's] consideration would inevitably have some relationship to innovation and participation in the electricity sector. When considering such issues, MDAG would be expected to maintain a view of the potential effects of, and for, innovation, participation and consumer choice"*.

27. Unfortunately, this overlap and blurring across the Authority's work programmes resulting from emerging technology is precisely the problem the Authority is trying to resolve by disestablishing the Wholesale advisory group (WAG) and the Retail advisory group (RAG) and establishing two new advisory groups, the IPAG and the MDAP. In fact the MDAG is specifically expected to overlap the work of the IPAG.

28. While the Authority's proposal is a positive step to addressing the issue of emerging technology it does not remove the potential for silos to be created and the overview by MDAG over the entire work programme appears to be a secondary consideration only.

29. An alternative solution that we recommend the Authority consider is establishing a number of standing Advisory groups (probably two initially), each with a broad spectrum of participants

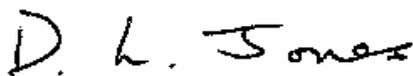
including consumer representatives, that provide independent advice to the Authority on the development of the Code and on market facilitation (such as providing education, guidelines, information, and model arrangements) in relation to any programme of work assigned to them across the entire spectrum of the Authority's functions.

30. Where necessary these standing advisory groups could, with the Authority's agreement, establish ad-hoc specialist advisory groups or working groups to report to them and provide advice on specific issues where more detailed expertise would be needed. These ad-hoc specialist advisory groups or working groups could be specific customer groups or industry specialists or a mix.
31. The Authority would not assign the working groups to a particular silo of its work programme, but assign the next priority project to the available advisory group.
32. If the workload becomes too great for the number of standing advisory groups then more could be established. Noting that a limiting factor would be the industry ability to resource the working groups and also to respond to consultations.
33. **All** of the standing advisory groups should be required, as part of the charter, to specifically consider the impact of emerging technologies on the work programme that they are advising on together with the various interrelationships between the different regulatory agencies and the wider environment. Advising, where necessary, that the issue be co-ordinated with the Commerce Commission and the Ministry of Business, Innovation and Employment or some other party.

Concluding remarks

34. Thank you for the opportunity to make this submission. We do not consider that any part of this submission is confidential. If you have any questions please contact Dennis Jones (Industry Developments Manager), DDI 03 363 9526, email dennis.jones@oriongroup.co.nz.

Yours sincerely



Dennis Jones
Industry Developments Manager

Answers to specific questions

	Question	Comment
Q1	<p>What feedback do you have on the proposed IPAG, including its purpose and scope?</p>	<p>Purpose of the IPAG</p> <p>The purpose of IPAG (should it be created) and any advisory group other than the Security and Reliability Council is set out in s 21 of the Act:</p> <p><i>“to provide independent advice to the Authority on the development of the Code and on market facilitation.”</i></p> <p>This is the purpose set out by the Authority in the proposed charter for advisory groups Part 2 clause.</p> <p>However, s16 (f) the Act also states that one of the functions of the Authority is:</p> <p><i>“to undertake market-facilitation measures (such as providing education, guidelines, information, and model arrangements), and to monitor the operation and effectiveness of market facilitation measures”</i></p> <p>Combining the statutory function of an Advisory group (other than the Security and Reliability Council) together with the statutory function of the Authority on market facilitation suggests that the purpose of any Advisory groups (other than the SRC) be limited to:</p> <p><i>providing independent advice to the Authority on the development of the Code and on market facilitation (such as providing education, guidelines, information, and model arrangements)</i></p> <p>Scope of the IPAG</p> <p>The scope of the IPAG is set out in the terms of reference for the IPAG and limits the IPAG to providing advice on a limited subset of the Authority’s work programme.</p> <p>This limitation means that the intent of the proposal that the IPAG would look at the entire electricity supply chain and future innovations will not be achieved. As noted in the body of our submission, the market development programme</p>

		<p>“Evolving technologies and business models” impacts on the other four programme areas. A point that the Authority has clearly recognised in the paper, noting at paragraph 2.2.5 that: <i>“Some of the issues under its [MDAG’s] consideration would inevitably have some relationship to innovation and participation in the electricity sector. When considering such issues, MDAG would be expected to maintain a view of the potential effects of, and for, innovation, participation and consumer choice”.</i></p> <p>Unfortunately, this overlap and blurring across the Authority’s work programmes resulting from emerging technology is precisely the problem the Authority is trying to resolve by disestablishing the WAG and the RAG and establishing two new advisory groups, the IPAG and the MDAP. In fact the MDAG is specifically expected to overlap the work of the IPAG.</p> <p>We recommend that the scope of the advisory groups be reconsidered, with advisory groups looking at the entire Authority work programme.</p>
Q2	<p>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>Again the membership of an advisory group is set out in s 21 of the Act: <i>“Every advisory group must include people whom the Authority considers have appropriate knowledge of, and experience in, the electricity industry and consumer issues, but members need not be independent persons.</i></p> <p>At a minimum the advisory group needs to include industry representatives from across the value chain that have a sound engineering and economic background together with customer representatives. The Authority will need to carefully consider how it encompasses representatives of the mass market.</p>
Q3	<p>What are your views as to how the IPAG might operate, so as to best achieve its purpose?</p>	<p>As indicated above we consider that limiting the IPAG to a subset of the Authority’s work programmes risks creating silos. While having the MDAP overlook IPAG’s work may reduce this problem it maintains an overlap that the Authority is trying to remove.</p>

		<p>The size of the standing Advisory groups will also need to be carefully managed to avoid them becoming unmanageable. Additional consumer input could be obtained from ad-hoc Advisory groups or working groups reporting to the main standing working group. It is also unlikely that consensus outcomes will result therefore advice to the Authority should include the majority and minority views together with the reasoning behind them. This in itself is not a problem as it is the Authority that has to make the final decision after weighting the advice given by its advisory groups. Clearly appropriate funding for consumer representatives would need to be provided.</p>
Q4	<p>What feedback do you have on the proposed MDAG, including its purpose and scope?</p>	<p>As indicated in our response to Q1 above</p>
Q5	<p>What are your views as to the membership of the MDAG, and how it should operate?</p>	<p>As indicated in our response to Q2 and Q3 above. However, if the Authority goes ahead with establishing working groups based on its proposal then we would recommend that the MDAP oversees all IPAG output to ensure that it is consistent with the other areas of the work programme.</p>
Q6	<p>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>c) replace the current version of the charter in its entirety, with an updated and streamlined version?</p>	<p>We agree that:</p> <p>a) if the Authority creates new advisory groups it should introduce new terms of reference suitable for the work that the Advisory groups will undertake;</p> <p>b) that updating the current terms of reference for the SRC in its entirety, with an updated and streamlined version, would be appropriate;</p> <p>c) we consider that the Authority need to exercise caution in amending the charter as outlined in our response to Q9 below and our marked up version of recommended changes to the Authority's proposal, which we have provided as an appendix.</p>

<p>Q7</p>	<p>Do you agree with the Authority’s assessment of its proposals? If not, what alternative assessment would you make and why?</p>	<p>No. We consider that the Authority’s proposals, rather than resolving the issue of advisory groups work overlapping as emerging technology blurs the demarcation between wholesale, transport and retail sections of the electricity supply chain, has simply created overlaps for working groups across the Authority’s work programme. This is explicitly acknowledged with the requirement for MDAP to look across the entire work programme of the Authority.</p>
<p>Q8</p>	<p>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>An alternative solution is establishing a number of standing Advisory groups (probably two initially), each with a broad spectrum of participants including consumer representatives that provide independent advice to the Authority on the development of the Code and on market facilitation (such as providing education, guidelines, information, and model arrangements) in relation to any programme of work assigned to them across the entire spectrum of the Authority’s functions.</p> <p>Where necessary these standing advisory groups could with the Authority’s agreement establish ad-hoc specialist advisory groups or working groups to report to them and provide advice on specific issues where more detailed expertise would be needed. These ad-hoc specialist advisory groups or working groups could be specific customer groups or industry specialists or a mix.</p> <p>The Authority would not assign the working groups to a particular silo of its work programme, but assign the next priority project to the available advisory group.</p> <p>If the workload becomes too great for the number of standing Advisory groups then more could be established. Noting that a limiting factor would be the industry’s ability to supply resource the working groups and also to respond to consultations.</p> <p>All of the standing advisory groups should be required, as part of the charter, to specifically consider the impact of emerging technologies on the work programme that they are advising on</p>

		<p>together with the various interrelationships between the different regulatory agencies and the wider environment. Advising, where necessary, that the issues be co-ordinated with the Commerce Commission and the Ministry of Business, Innovation and Employment or some other party.</p> <p>Our proposal manages the workload of advisory groups, meets the Authority’s existing criteria for advisory groups, and resolves the potential silo and overlap issues.</p>
<p>Q9</p>	<p>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>Yes. Please see our marked up version of suggested changes appended.</p> <p>Orion’s comments on the drafting of the proposed new version of the Charter</p> <p>While we agree in principle with the replacement of clause 1.2 and 1.3 of Part 1 and 1.2 of Part 2 with clause 1.3 of the proposed charter we suggest that, consistent with the current charter and the reference to “any inconsistency between the terms of reference and the charter”, that the reference to the TORs being “intended” to specify the operational and governance matters should be retained.</p> <p>Clause 1.3 would then read:</p> <p>In addition to the requirements of this charter, the SRC and each advisory group is subject to its own terms of reference, as established by the Authority. Each terms of reference is intended to specifies specify the operational and governance matters for the SRC and each advisory group, and should be read in conjunction with this charter. If there is any inconsistency between the terms of reference and this charter, the charter will prevail.</p> <p>Part 1: Security and Reliability Council</p> <p>Comments on Clause 2</p>

		<p>s20(1) of the Act requires the Authority to appoint a SRC and s20(2) of the act sets out the function of the SCR. We therefor suggest the following changes to clause 2 (noting that this is consistent with the proposed TORs</p> <p>2 Purpose Function of the SRC</p> <p>2.1 Section 20 of the Act requires the Authority to appoint an SRC</p> <p>2.2 The function of the SRC is to provide independent advice to the Authority on:</p> <p>(a) the performance of the electricity system and the system operator</p> <p>(b) reliability of supply issues.</p> <p>2.2 The SRC's purpose is to provide the Authority with advice from parties directly affected by the system operator's decisions and actions. The SRC enables the Authority to draw on the wisdom and expertise of senior industry personnel.</p> <p>Comments on Clause 3 Establishment of the SRC</p> <p>Section 20(7) of the Act requires that the terms of appointment as a member of the Council are as determined by the Authority on an individual basis.(emphasis added) Therefore we consider that it would be appropriate to include in section 3 (Establishment of the SRC) of the charter a set of guidelines for the Authority on the establishment of the SCR and its membership noting that the terms of appointment of a member of the Council are to be determined by the Authority on an individual basis. This would also be more consistent with the hierarchy of documents that govern the Authorities advisory group as set out in paragraph 3.1.1 of the paper</p>
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		<p>Comments on Part 2: Advisory Groups</p> <p>For the reasons outlined in our response to Q1 we recommend that the wording of the proposed charter Part 2 clause 6.1 be amended to say:</p> <p>6.1 Section 21 of the Act requires the Authority to establish (in addition to the SCR) one or more advisory groups to provide independent advice to the Authority on the development of the Code and on market facilitation (such as providing education, guidelines, information, and model arrangements)</p> <p>Comments on Part 2 clause 6.3 The proposal changes the requirement under the existing charter clause 2.7 from explicitly requiring that the provisions of the charter apply equally to ad-hoc and standing advisory groups to explicitly stating that the charter does not apply to such ad-hoc groups. We disagree with this proposal which is a material change to a foundation document and potentially is contrary to section 19(3) of the Act which requires that the Authority and all advisory groups must comply with the charter made under this section. (emphasis added).</p> <p>In addition Part 2 clause 6.3 does not deal with the purpose of the advisory group and would be better situated in section 7 Establishment (and disestablishment) of advisory groups</p> <p>We recommend that clause Part 2 6.2 and 6.3 be deleted and replaced with new clauses and clarifies that the charter does apply to ad-hoc groups.</p> <p>7.1 The Authority expects some advisory groups will be 'standing' advisory groups that advise the Authority on an ongoing basis.</p> <p>7.2 The Authority may also establish ad-hoc groups to provide specialist advice and recommendations for significant issues that go beyond the knowledge and experience of any advisory groups. The provisions in this charter do not apply equally to such ad-hoc groups.</p> <p>Renumber other clauses as required.</p>
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		<p>Proposed clause 7.1 we consider that the charter not the terms of reference should set out the criteria and procedure by which the Authority establishes advisory groups. Renumber clause 7.1 as 7.3</p> <p>7.3 The Authority will establish advisory groups by appointing members, including an independent chairperson, in accordance with the criteria and procedure set out in this charter. the terms of reference for each advisory group.</p> <p>As a result we consider that new clause 7.4 be added</p> <p>7.4 When establishing an advisory group under clause 7.1 or 7.2 the Authority must evaluate potential members against the following criteria:</p> <ul style="list-style-type: none">(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.
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Appendix

Suggested changes to the Authority's proposed charter

Charter

1 Introduction

1.1 Section 19 of the Electricity Industry Act 2010 (Act) requires this charter for advisory groups (charter) to set out: (a) how the Electricity Authority (Authority) will establish and interact with advisory groups appointed under sections 20 and 21 of the Act

(b) when and how the Authority will consult advisory groups on material changes to the Electricity Industry Participation Code 2010 (Code)

(c) how advisory groups must operate, including provisions concerning procedure.

1.2 The Security and Reliability Council (SRC) is a special type of advisory group appointed in accordance with section 20 of the Act. Accordingly, this charter has been divided into two parts:

(a) part one applies to the SRC

(b) part two applies to advisory groups appointed under section 21 of the Act, that is all advisory groups other than the SRC (advisory groups).

1.3 In addition to the requirements of this charter, the SRC and each advisory group is subject to its own terms of reference, as established by the Authority. Each terms of reference **is intended to specifies specify** the operational and governance matters for the SRC and each advisory group, and should be read in conjunction with this charter. If there is any inconsistency between the terms of reference and this charter, the charter will prevail.

Part 1: Security and Reliability Council

2 Purpose Function of the SRC

2.1 Section 20 of the Act requires the Authority to appoint an SRC to provide independent advice to the Authority on:

- (a) the performance of the electricity system and the system operator
- (b) reliability of supply issues.

~~2.2 The SRC's purpose is to provide the Authority with advice from parties directly affected by the system operator's decisions and actions. The SRC enables the Authority to draw on the wisdom and expertise of senior industry personnel.~~

3 Establishment of the SRC

~~3.1 Under section 20 of the Act, the Authority—~~

- ~~(a) must ensure that the members of the SRC have between them appropriate knowledge and experience of the electricity industry to provide advice to the Authority, but members need not be independent persons~~
- ~~(b) may not appoint a person as a member of the SRC unless the Authority has first publicised an invitation for nominations for membership and considered any nominations received.~~

~~3.24 The Authority will establish the SRC by appointing up to nine members, including an independent chairperson, as required by section 20 of the Act, the terms of appointment as a member of the SRC are as determined by the Authority on an individual basis. The Authority will consider the following criteria when selecting members for the SRC. in accordance with the criteria and procedure set out in its terms of reference.~~

~~3.2 Under section 20 of the Act, the Authority—~~

- ~~(a) must ensure that the members of the SRC have between them appropriate knowledge and experience of the electricity industry to provide advice to the Authority, but members need not be independent persons~~
- ~~(b) may not appoint a person as a member of the SRC unless the Authority has first publicised an invitation for nominations for membership and considered any nominations received.~~

Criteria for membership

~~3.3 The Authority may appoint members to the SRC after considering nominees against the following criteria:~~

- (a) knowledge and experience of the electricity industry and the functions of the system operator
- (b) 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) a high level of integrity and credibility within a sector of the electricity industry or a related consumer sector
- (f) an ability to contribute constructively to the SRC's tasks
- (g) an ability to contribute to a balance of knowledge in the SRC regarding the long-term interests of consumers, power systems engineering and analysis, and generation and demand-side management technologies.

3.4 To qualify as an independent chairperson, a nominee must meet the membership criteria specified in clause 3.3 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 the Terms of reference.

Term of appointment

3.5 Appointment to the SRC is ordinarily for a term of three years.

3.6 The maximum number of consecutive terms that a member may ordinarily be appointed is two.

3.7 Despite clause 3.5, the Authority may:

- (a) request that a member serve a term of more than three years
- (b) decide to appoint a member for a term of less than three years.

3.8 Despite clause 3.6, the Authority may appoint a member for more than two consecutive terms.

3.93 Subject to section 47 (1) of the Crown Entities Act 2004, the practice followed by the Authority and accepted by the industry is that members who are public servants or salaried employees of larger electricity industry companies are not paid by the Authority or reimbursed for their expenses. The Authority typically pays a fee and any expenses only for members who are financially disadvantaged by their participation in the SRC.

3.104 The Authority may terminate any member's appointment to the SRC if the Authority considers that the member, by his or her conduct, is not contributing effectively to the SRC. The termination must be by written notice to the person concerned (with a copy to the SRC), stating the date on which the appointment ends.

3.115 SRC members may resign by giving written notice to the Authority. The notice must state the date on which the resignation takes effect.

4 Interactions between the SRC and the Authority

4.1 The Authority will:

- (a) provide administrative and secretariat support to the SRC
- (b) appoint **the Authority's Chief Executive Officer** ~~a senior staff member~~ as the Authority's representative to assist the SRC. The Authority's representative is not a member of the SRC.

4.2 Formal reporting to the Authority must be conducted by the SRC chairperson, unless otherwise agreed with the Authority's Chief Executive.

4.3 It is expected that the SRC will meet at least annually with the Authority.

4.4 Authority staff will, where possible, undertake any required analysis. The Authority's representative has the discretion to engage any external expertise that may be needed to assist the SRC. However, the SRC may recommend external expertise to the Authority's representative that it considers necessary to perform its function.

4.5 **As implied by the deliberate use of 'Council' in its name, the SRC is not the same as the Advisory Groups the Authority intends establishing under section 21 of the Act.**

4.6. **The Act intends for Advisory Groups to provide recommendations on developing the Code and market-facilitation measures, including in regard to matters affecting the system operator and reliability of supply.**

4.7. **Despite clause 4.6 the Authority may from time-to-time seek the SRC's advice on Code amendment proposals. Alternatively, the SRC's advice may indicate the need for Code amendments.**

5 Operation of the SRC

General

5.1 The Authority SRC will provide advice on any matters it considers relevant and necessary in order to fulfil its function under clause 2.1.

5.2 The Authority may, in its discretion:

- (a) **request require** the SRC to advise and/or assist the Authority on specific performance and reliability issues
- (b) consult the SRC on Code amendment proposals.

5.3 When providing advice, the Authority expects the SRC to take an **impartial and strategic** view, utilising the knowledge and experience of its members.

5.4 **When advising on the performance of the electricity system and the system operator, the SRC's focus will be both forward and backward-looking. As part of its function the SRC will be requested to review the system security assessments prepared by the system operator, and review the system operator's performance against its security of supply functions.**

5.5 When advising on reliability of supply issues, the SRC will be expected to place a greater emphasis on looking forward, usually with a focus on the medium (1-5 years) to longer term (5-10 years). This would be the case, for example, when reviewing the system operator's annual security of supply assessments.

5.64 The SRC must avoid duplicating the Authority's role in assessing the day-to-day performance of the electricity system and the system operator.

Advice and recommendations to the Authority

5.5 The SRC is encouraged to provide a consensus position when providing advice to the Authority.

5.6 The SRC's function under the Act is to provide independent advice to the Authority. The SRC does not have the ability to amend the Code or make binding decisions. Similarly, the SRC does not have the ability to direct the system operator or other industry participants, or to take on responsibilities beyond that of advisor to the Authority.

5.7 The Authority recognises that any advice the SRC provides the Authority about the system operator is likely to also be of value to the system operator. Therefore, the Authority will pass on any relevant advice from the SRC to the system operator and/or any other parties involved, unless confidentiality considerations prevent this.

Part 2: Advisory groups

6 Purpose of advisory groups

6.1 Section 21 of the Act requires the Authority to establish (in addition to the SRC) one or more advisory groups to provide independent advice to the Authority on the development of the Code and on market facilitation measures.

~~6.2 The Authority expects some advisory groups will be 'standing' advisory groups that advise the Authority on an ongoing basis.~~

~~6.3 The Authority may also establish ad-hoc groups to provide specialist advice and recommendations for significant issues that go beyond the knowledge and experience of any advisory groups. The provisions in this charter do not apply to such ad-hoc groups.~~

7 Establishment (and disestablishment) of advisory groups

~~7.1 The Authority expects some advisory groups will be 'standing' advisory groups that advise the Authority on an ongoing basis.~~

~~7.2 The Authority may also establish ad-hoc groups to provide specialist advice and recommendations for significant issues that go beyond the knowledge and experience of any advisory groups. The provisions in this charter do not apply equally to such ad-hoc groups.~~

7.34 The Authority will establish advisory groups by appointing members, including an independent chairperson, in accordance with the criteria and procedure set out in ~~this charter. the terms of reference for each advisory group.~~

7.4 When establishing an advisory group under clause 7.1 or 7.2 the Authority must evaluate potential members against the following criteria:

- (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.

7.52 Section 21 of the Act requires every advisory group to include members whom the Authority considers have appropriate knowledge of, and experience in, the electricity industry and consumer issues. Members do not need to be independent persons.

7.63 Subject to section 47 (1) of the Crown Entities Act 2004, the practice followed by the Authority and accepted by the industry is that members who are public servants or salaried employees of larger electricity industry companies are not paid by the Authority or reimbursed for their expenses. The Authority typically pays a fee and any expenses only for members who are financially disadvantaged by their participation in an advisory group.

7.74 The Authority may:

- (a) Dis-establish, or temporarily suspend the operations of, an advisory group by formal resolution of the Board. However, in accordance with section 21(1) of the Act, there must always be at least one advisory group.
- (b) Terminate any member's appointment to an advisory group if the Authority considers that the member, by his or her conduct, is not contributing effectively to the advisory group. The termination must be by written notice to the person concerned (with a copy to the advisory group), stating the date on which the appointment ends.

7.85 Advisory group members may resign by giving written notice to the Authority. The notice must state the date on which the resignation takes effect, which must not be less than one month after the date of the written notice.

8 Interactions between advisory groups and the Authority

8.1 The Authority will:

- (a) provide administrative and secretariat support to each advisory group

- (b) appoint a senior staff member as the Authority's representative to assist each advisory group. The Authority's representative is not a member of the advisory group.

8.2 The Authority's representative will be responsible for:

- (a) developing a work plan with the relevant advisory group on behalf of the Authority
- (b) ensuring that meetings are held in accordance with the terms of reference for the advisory group
- (c) having regard to the resources available, ensuring that the advisory group receives a high standard of secretariat support, whether provided by Authority staff or by external advisors
- (d) conveying the relevant views, policies and decisions of the Authority to the advisory group.

8.3 Formal reporting to the Authority by an advisory group must be conducted by its chairperson, unless otherwise agreed with the Authority's Chief Executive. However, an advisory group may nominate a member, in addition to the chairperson, to represent it when the Board considers its reports.

8.4 If the Authority's representative's view differs significantly from views presented by the Advisory Group, the Authority's representative should brief the Authority on this difference of opinion and the reasons for it.

8.5 Authority staff will, where possible, undertake any required analysis. The Authority's representative has the discretion to engage any external expertise that may be needed to assist the advisory group. However, an advisory group may recommend external expertise to Authority staff that it considers necessary to perform its function.

9 Operation of advisory groups

General

9.1 Each advisory group will provide advice to the Authority on **development of the Code and on market facilitation matters (such as providing education, guidelines, information, and model arrangements)** that:

- (a) are relevant to the scope of its role, as set out in its terms of reference
- (b) have been included in a work plan approved by the Authority's representative.

9.2 The Authority may, in its discretion, consult an advisory group on Code amendment proposals.

9.3 Advisory groups are expected to undertake appropriate investigation of issues in its work plan. They must make recommendations to the Authority on those matters in a manner that assists the Authority to meet its statutory objective under section 15 of the Act.

9.4 Advisory groups are strongly encouraged to provide consensus recommendations to the Authority on the issues assigned to them, within agreed timelines.

9.5 If an advisory group is unable to reach consensus on a matter under consideration within an agreed timeframe, the advisory group may conclude its deliberations and report the differing views to the Authority for consideration. The report must address the views of the minority as well as those of the majority. The report must also explain how each view is consistent with clause 9.9 of this charter.

9.6 At any stage, the Authority may:

- (a) request progress updates from an advisory group
- (b) provide guidance to an advisory group (provided that the guidance does not address the content of the advisory group's recommendations)
- (c) request or procure additional analysis from an advisory group
- (d) shift consideration of issues to other parties, including other advisory groups, Authority staff, or external experts.

Code amendment proposals and recommended market facilitation measures

9.7 An advisory group may provide recommendations to the Authority about developing the Code and market facilitation measures.

9.8 Under section 16 of the Act, the Authority has statutory responsibility to make and administer the Code, and to undertake market facilitation measures (and to monitor the operation and effectiveness of those measures). Accordingly, the Authority will make the final decision on any proposals to amend the Code and on any recommendations on market facilitation measures. The Authority will ~~also decide whether to normally~~ consult on these matters as provided for in section 39 of the Act. The Authority's final decision on any matter will reflect the conclusions it reaches and may differ from the outcome preferred by a particular advisory group.

9.9 If an advisory group proposes Code amendments or recommends market facilitation measures, the advisory group must:

- (a) ensure that the proposal or recommendation is consistent with the Authority's statutory objective
- (b) have regard to any government policy statement or statement of government expectations in force at the time of the proposal or recommendation
- (c) in respect of Code amendment proposals, adhere to the Authority's Code amendment principles (contained in the Authority's consultation charter)
- (d) in respect of Code amendment proposals, demonstrate how the proposed amendments are consistent with the requirements of section 32(1) ~~and 32(2)~~ of the Act.

9.10 Section 39 of the Act requires the Authority to consult on proposed Code amendments – it does this through consultation papers. All advisory group papers

must be called 'discussion papers' rather than 'consultation papers' to avoid confusion with the consultation process as required by the Act.

9.11 The Authority may—

- (a) seek feedback from the advisory group on any submissions received for a proposed Code amendment
- (b) request the advisory group to complete further work on a proposal or recommendation
- (c) establish a new advisory group to consider a proposal or recommendation
- (d) seek advice from any other party, including Authority staff and external experts.

9.12 The Authority will keep the relevant advisory group informed about its progress when considering the advisory group's recommendations on Code amendment proposals or market facilitation measures.

10 Working groups

Purpose of Working Groups

10.1 References to working groups should be read as references to working groups, forums, workshops, or other types of groups.

10.2 The primary role of working groups is to provide technical and specialist input to the work of advisory groups. Working groups may also assist with an advisory group's workload, if directed by the Authority.

10.3 Working groups can be standing or ad hoc, and may be functional or project-specific, depending on the advisory group's requirements.

Establishment of working groups

10.4 The chairperson for an advisory group and the relevant Authority representative will jointly recommend to the Authority whether a working group is required.

10.5 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; or

(c) another process (that is documented and followed) that is appropriate for the required purpose, work, and duration of the working group.

10.6 The Authority must have regard to the views of the relevant advisory group when establishing a working group.

10.7 When establishing a working group under clause 10.5 the Authority must evaluate potential members against the following criteria, in addition to any criteria that may also apply under clause 10.5(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.

Operation of Working Groups

10.8 Each working group will report its analysis and recommendations to the advisory group it was established to assist. A working group may nominate a member, in addition to its chairperson, to represent it when the advisory group considers its reports.

10.9 Each advisory group has the discretion to support any recommendation from a working group.

10.10 If a working group's task is a standalone one, the relevant advisory group is expected to forward the analysis and recommendations it receives from the working group on to the Authority.

10.11 If a working group's task is a component of a broader scope of work being undertaken by the relevant advisory group, the advisory group is expected to integrate the working group's analysis and recommendations into the advisory group's broader report to the Authority.

10.12 Whether the working group's task is standalone or a component of a broader scope of work, the relevant advisory group may, if it disagrees with the analysis and recommendations of a working group, ask the working group to undertake further work. An advisory group may also develop its own recommendations on the matter and present these to the Authority alongside the working group's recommendations.