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Submission on the Review of the Authority's Consultation and Feedback Processes

Introduction

1. This is Vector Limited's (Vector) submission on the Electricity Authority's (the Authority) consultation paper, *Review of the consultation and feedback processes* (the Consultation Paper), released on 31 January 2023.

2. The Authority is consulting on changes to its Consultation Charter (the Charter), the process for receiving and processing proposed changes to the *Electricity Industry Participation Code 2010* (the Code), and the structure and role of advisory groups (AGs).

3. In combination, these proposals are a significant change to the way in which industry participants are able to engage with the Authority, and influence the development of the sector's rules.

4. Our overall position is that:

    a. This consultation would have benefited significantly from some early dialogue, input and shaping with stakeholders, and, at the least, a Q&A session regarding the proposal. In our view, the scale of the changes proposed by the Authority has been understated, and the engagement on the proposals underdone. Despite the significant improvements in engagement the Authority has made in recent years, there is a certain irony to launching a fully-formed proposal to refine stakeholder engagement without warning, or any prior engagement, and in a paper-based, propose-respond form.

    b. While the Authority has suggested that the changes to the Charter are meant to be straightforward and streamline engagement, they have the general effect of disempowering multiple perspectives. As signalled by the Authority's Chief Executive recently at Downstream, collaboration with the sector will be essential to solving the increasing number of "*Gordian Knot*" problems we will face collectively. A growing number of perspectives will usefully inform the electricity sector's transformation to an increasingly renewable and digital future.

    c. The Authority's proposed amendments to the terms of reference for AGs are a significant step backwards from the way the groups currently operate, and the long legacy of successful industry collaboration and co-development. This includes the co-development of the first sets of market rules, prior to the establishment of the Electricity Commission, and going back even further to the Government's Wholesale Electricity Market Development Group, formed in 1993. The proposed amendments represent a step towards more centralised, regulator-led Code development at a time when multiple perspectives in the electricity sector, and relevant perspectives from adjacent sectors,

need to be considered. As complexity in the industry increases, the need to listen to and consider as many different and experienced perspectives as possible, and collaborate in developing options and solutions, is critical – points noted by the Chief Executive in her Downstream speech.

5. We believe simplification of the Charter and Code amendment processes, and refinement of the use of AGs, can be implemented without undermining the participatory approach to decision-making. The ongoing transformation of the energy sector requires multiple perspectives to be heard, which is a necessary discovery process. Using new technology to capture and digest a diversity of views and practical experiences would shorten that process.

6. As the electricity sector transitions into a renewables-based and digital future, taking industry participants, consumers, and other relevant stakeholders along the journey becomes more critical to ensure an orderly, rather than a disruptive, transition. There are some recent examples of excellent practice – such as the Authority's strategy development (prior to the COVID-19 lockdowns), the trading conduct reform process run by the Market Development Advisory Group (MDAG), some of the more recent Transmission Pricing Methodology (TPM) development, and the collaborative co-development with stakeholders of the *Consumer Care Guidelines*. The success of these processes should continue to be built on.

7. Our views are expanded on below. We also suggest some improvements to the existing consultation processes to enhance their robustness and make them more meaningful for stakeholders. We then respond to the specific questions in the Consultation Paper.

Vector's overall views on engagement

8. The Consultation Paper suggests the changes proposed to the Charter are largely intended to simplify the process. The Authority has given several references to what it considers to be "good practice consultation which it intends to adhere to".[1] The Consultation Paper also points out that the changes "*aim to introduce the latest best practice in consultation and to make it easier to engage with the Authority*".[2]

9. A key proposed change is the introduction of a new AG – the Electricity Authority Advisory Group (EAAG) – that "*will support the Authority's strategic work programme by providing technical expertise and represent the interests of consumers more easily*".[3]

10. However, on detailed examination, the Authority's proposed changes represent a fundamental shift in the conceptual framework for Code amendments and the extent to which industry participants are able to participate.

11. The Authority describes the effect of its proposals as:

    a. simplifying consultation to make it more accessible and reflective of best practice in consultation;[4] and
    b. ensuring the AG structure supports the Authority to meet the industry's needs in responding to a changing technology and operating environment.[5]

12. On closer examination, however, the proposed changes will have the effect of:

    a. limiting the opportunities for industry participants to engage with the Authority, particularly in relation to Code changes;

[1] Consultation paper, paragraph 4.8
[2] *Ibid.*, Executive Summary
[3] *Ibid.*
[4] *Ibid.*, paragraph 4.2
[5] *Ibid.*, Executive Summary

b. dramatically reshaping the conceptual framework for regulatory intervention via the Code;
c. affording the Authority greater flexibility in the manner in which it consults and makes decisions, including on Code changes, by removing some of the accountability mechanisms in the current Charter; and
d. disempowering the role of AGs.

13. This represents a substantial shift away from what has historically been a highly participatory regulatory framework, towards a centralised approach. The participatory nature of the regulatory framework is important because it both:
a. recognises the critical interest that industry participants have in the rules that govern the electricity system and sector; and
b. leverages the experience, capability, and knowledge of industry participants.

14. As a case in point, the proposed EAAG's role is anticipated as follows[6] (our emphasis added):

> The EAAG's purpose will be to provide advice on draft issues papers, option papers or other Code amendment papers. It will primarily be for the group to **provide advice on Authority project work and consultation papers prior to public release** and, as appropriate, to assist in considering and reconciling views presented in submissions.
>
> The EAAG will also **provide advice on the industry's ability to implement any changes being considered**, to ensure this is **accounted for in the final versions of papers being released**. The EAAG may also be **asked to develop implementable solutions to issues, including considering Code drafting (as provided by the Authority's legal drafters)** and to specify market system changes, to the point of completeness that allows the Authority to consult. …
>
> The EAAG will primarily be set up to directly support the Authority's prioritised initiatives, and to **provide advice to ensure the Authority's work has accounted for industry and consumer views before being released for public consultation**. The EAAGs input is **intended to refine the consultation papers** and is not a replacement for public consultation. EAAG members are free to make their own submissions on the consultation papers when they are released.

15. This shift in the role of AGs towards a form of "pre-consultation consultation" does not appear to appreciate the role and value industry expertise has played in the development of rules to date, and the increasingly important role for industry co-development in future.

16. Digitisation and decentralisation will certainly see an exponential increase in the number of dispatchable devices on New Zealand's electricity networks, and a likely vast increase in the number of participants contributing to the value chain. The competition and cross-fertilisation of ideas and advice will increase, and it becomes even less likely that any single party, or agency, will have a monopoly on good ideas, especially those relating to the future direction of the sector. Collaboration will be essential.

17. At such a time of transition, the Authority will need *more* industry input into its regulatory direction and the development of its interventions, rather than less. This will not just be at the point of reviewing draft consultation papers, and testing proposed Code changes for unintended consequences, as envisaged in the excerpts above. Input from AGs will also be important in the identification of priority workstreams, the proposition and filtering of potential interventions, and their subsequent development.

[6] Consultation paper, paragraphs 5.6 – 5.7, then 5.14

18. MDAG's ongoing programme of work on wholesale market operation under 100% renewables is an excellent case in point of the value an AG can add in that capacity. It was MDAG itself that proposed to the Authority that the work be undertaken[7] – and MDAG has so far led and resourced both the work itself and engagement on the work – relatively autonomously, as envisaged in the current AG Charter. At a time when the Authority has been rebuilding its industry knowledge and expertise, this appears to have been invaluable.

19. Prior to this, MDAG's end-to-end development of a full solution for trading conduct reform, right from the early stages of problem identification, also demonstrated the value a well-organised, well-resourced, and well-chaired AG can provide to the sector. MDAG's work on this project included in-depth engagement with the sector, and the innovative use of expert panels to review the practicality of their proposed solutions.

20. In recent years, the Authority may have found it difficult to sufficiently resource proposals and recommendations made to them both by the existing AGs, and industry participants via the Code Amendment Proposal Register. In particular, the inability to resource and respond to the Innovation and Participation Advisory Group's (IPAG) recommendations, could be explainable by the sudden increase in workload from the Electricity Price Review in late 2019, which necessarily took priority.

21. Para 6.6 risks giving the impression that the Authority may have the best ideas of what it should be working on, and is not open to other suggestions that may be better. The use of the Code Amendment Register (CAR) process is an important signal that the Authority welcomes input from its stakeholders, and is open to new ideas. Again, the solution to a lack of resourcing is not to remove the process. The answer to the question of how best to serve AGs and respond to industry suggestions for rule changes is not to limit either activity, it is to sufficiently resource them.

22. The need for consumer participation (active or passive) in electricity markets is becoming more important in the energy transition. We certainly agree with the Authority that there is a need to take consumers along the journey, and this has not been done well to date. The risk of 'consumer backlash', as some jurisdictions have seen in recent years, could be more costly in the long run. As Consumer Advocacy Council Chair Deborah Hart said recently, consumers are the ones funding the industry and needed to be at the front and centre when policymakers and industry players are making decisions on the future of the electricity system.[8] After all, the industry only exists to serve consumers.

23. In his speech at the Infrastructure Partnerships Australia Energy Symposium in Sydney on 28 February 2023, the Chief Executive of the Australian Energy Market Commission, Ben Barr, emphasised that:[9]

> As a rule maker – we need to listen – we need to work with industry, investors, and governments to get it done. Sometimes that means disagreeing and saying things that are difficult. But it does mean truly listening.
>
> The time for magical thinking is over. Whether you are a rule maker, investor, industry representative of government, the time for working together on hard issues is here and the time for simple slogans that dumb-down key reforms is long, long gone.
>
> This is the challenge ahead if we are to build a new system that is going to transform, be resilient and innovate over the next 10 years.

[7] This was confirmed in the Authority's response to MDAG's proposal, available online at: https://www.ea.govt.nz/assets/dms-assets/28/Letter-from-CE-to-MDAG-project-proposal-response.pdf
[8] https://www.rnz.co.nz/news/national/486453/consumers-worried-over-affordability-reliability-of-electricity-supply
[9] https://www.aemc.gov.au/news-centre/speeches/smarter-faster-better-consumers

Code amendment principles and processes

Code amendment principles

24. The Authority states that the existing Code amendment principles are "largely fit for purpose" but are complicated and prescriptive.[10] The Authority therefore proposes to simply state the principles, in simplified language. That suggests that the substance of the principles should be unchanged.

25. In fact, the Authority is proposing a significant change in the conceptual framework for regulatory intervention, essentially eliminating the obligation to demonstrate a case for intervening in market activity with reference to a quantified net benefit. The Consultation Paper does not explain this change or offer a rationale. We think it may also be inconsistent with the consultation requirements in the *Electricity Industry Act 2010* (EIA).

Proposing changes to the Code

26. Currently, any market participant can propose changes to the Code. The ability to propose Code changes is important to industry participants, given the central role of the Code in their day-to-day business operations. Industry participants are key stakeholders in the Code. The Authority is proposing to limit their ability to propose Code amendments to "*basic Code maintenance"*. More substantive changes will only be considered as part of Authority consultations on specific projects, or through appropriations consultations. The effect is to relegate industry participants to a limited and reactive role in relation to Code amendments. This is a very substantial change in approach.

27. In addition, the Authority proposes to eliminate the role of AGs as a source of Code development on significant, non-urgent matters. Their inability to identify and propose workstreams to the Authority, or be used as "***a*** *primary means for developing Code amendment options for significant and non-urgent matters*"[11] (note – not "**the**" primary means, as represented in the Consultation Paper), is a significant demotion in role. In our opinion, this move would not promote the long-term interests of consumers. The distinction between being *the* primary mechanism, or *one of the* primary mechanisms, is important.

28. The only rationale offered is to "*streamline the Authority's engagement process*" and "*strengthen its efficacy*".[12] The Authority does not appear to have considered middle-ground approaches that would preserve the ability of industry participants to engage with the Code while reducing the burden on the Authority. For example, a more streamlined triage process to receive and consider Code amendment requests or preserve the role of AGs as a source of Code development, could be adopted.

Process for evaluating Code changes

29. The proposed amendments to the process for evaluating Code change proposals effectively retrenches to the minimum requirements of the EIA and administrative law. In contrast to the current Charter, the Authority will not be *required* to consider proposals against specified criteria to determine whether or not they will proceed. The current Charter reflects a system in which dialogue with industry participants is central to the Code development process. The proposed Charter amendments relegate the role of industry participants and makes Code development almost entirely an Authority-led process with reduced accountability to industry participants.

[10] Consultation paper, paragraph 4.3
[11] As mentioned in the existing Consultation Charter
[12] *Ibid.*, paragraph 6.15

Ensuring robust and meaningful consultations to gather a range of perspectives

30. The wealth of research indicates that a more diverse group of decision makers makes better decisions. In our view, the Authority's proposal will have the overall unintended consequence of diminishing effective decision-making, which necessarily requires robust information and practical knowledge and experiences from a diversity of stakeholders.

31. Importantly, consensus does not necessarily equate to success in engagement – the true value of consultation is in highlighting both the points of consensus and the points of and reasons for disagreement. There are several models on how AGs can operate to support effective regulatory decision-making. A lack of consensus can still be valuable if it provides clarity on exactly the issue or issues that parties cannot agree on, and the reasons why.

32. The Authority has made good strides in engaging with stakeholders and regulators of other jurisdictions, taking steps to becoming a best-practice regulator in many respects. As mentioned above, it is therefore a touch ironic that in a workstream to refine how the Authority engages, it has chosen to regress to a propose-respond, paper-based approach, including releasing a consultation paper without any signalling or prior engagement with stakeholders.

33. We suggest the following improvements to help improve the Authority's practice and shift their approach away from a propose-respond approach:

    a. Hold workshops pre-consultation and/or post-consultation where stakeholders can share their views, including how the proposal can be refined further. Currently there is no mechanism for dialogue and discourse on the content of submissions and the learnings submitters have made through the process of forming and formalising their views – including from any expert reports commissioned. There is no ability for the industry and regulator to work together to share and leverage the increase in that knowledge, and for the views to be put down on paper to be tested through enquiry.

    b. Retain the approach using multiple AGs, with strong independent chairs intervening if parties are failing to act independently or in the long-term interests of consumers. The positive things that led to the success of MDAG could be retained and built on. These included broad expert and stakeholder engagement, open challenge and a broad spectrum of perspectives, adherence to a clear AG Charter (including rigorous enforcement of members taking perspectives independent[13] of their employers'), and sufficient resources and secretariat support provided by the Authority. The Authority should sound out the views of existing and current AG members and chairs, which we understand has not occurred in this case.

    c. Establish a permanent consumer panel and a permanent iwi reference panel (not under the proposed single EEAG). It is clear that these groups will be required on a permanent basis, and we support their introduction. These could be either working groups (as per the new 9.4 in the AG charter), or AGs in their own right, or another type of group. Their terms or reference will be critical.

    d. Publish a consultation calendar to avoid peaks in consultation timings (e.g. no submission deadlines in the same week or fortnight), ensuring that all stakeholders have reasonably sufficient time to provide feedback, and coordinate timing with partner regulators where possible. This currently feels less coordinated than it has in the past.

[13] We note the move to the proposal to have 'representatives' from specific types and sizes of entities is a deliberate but inferior step away from the status quo, where parties were required to act independently in the interests of consumers. While this required strong chairing and an environment cohesive to challenge to be successful, it has possibly been achieved.

e. Allow cross-submissions by default, with possible exemptions for non-controversial consultations.

f. Maintain the Code amendment register, but adequately resource its operation and the triaging of the proposals, and communicate more widely how stakeholders can propose amendments. The Authority could look across the Tasman to the AEMC's model, in this regard, where Code amendment proposals are widely circulated, on receipt.

g. Streamline the process with Transpower using a technical reference group. Stakeholder engagement on the more technical consultations on system operation has perennially been limited, and an industry reference panel for these areas, and/or the use of an independent expert reviewer, could be a way of removing an unnecessary step in the consultation process.

h. Document the nature and outcomes of consultations with the Commerce Commission, given the concerns stakeholders have about overlaps and gaps in regulators' roles. This could also extend to consultation with EECA and the GIC.

Regulatory burden

34. Considering new and multiple perspectives need not impose significant regulatory burden on regulators and stakeholders. The effective use of new technology could help 'cut through' the complexity of capturing and analysing multiple views, and make consultation processes more meaningful for stakeholders.

35. In our recent submission on the Authority's FY2023-24 levy-funded appropriations,[14] we acknowledge that:

> [While] the transition to new technologies is not costless, efficiencies and greater market sophistication – enabled by digitalisation and new technology – will cut costs and increase transparency. For example, the application of analytics, machine learning, and artificial intelligence to the increasing volumes of data being collected by regulators would make detection of existing and potential harm to consumers, systemic risks, emergencies, and non-compliance timelier and more accurate, i.e. oversight and auditing shifts to being ongoing, in near real-time.

36. We further indicated in the above submission[15] that:

> Digitally transformed regulators can rethink their approach to the creation and enforcement of regulatory frameworks nimbly, where necessary or warranted. Technology could simplify regulatory processes, capture feedback more quickly, and help ensure that the appropriate privacy and security settings are in place to protect consumers and uphold market integrity.
>
> …The use of digital tools and platforms enables regulators to conduct consultations more nimbly, by allowing ongoing conversations between multiple parties, e.g. through online feedback platforms and virtual roundtables. This reduces the regulatory burden on both regulators and stakeholders. Through these interactive tools, regulators can also collaborate with interested industry participants and consumers in developing regulatory options or solutions, i.e.

[14] https://blob-static.vector.co.nz/blob/vector/media/vector-2022/vector-submission-ea-2023-24-levy-funded-appropriations.pdf, page 3
[15] *Ibid.*, pages 3 and 4

'crowdsourcing' of solutions, or co-designing some of the early stages of new or innovative solutions.

Collaboration between industry participants and others beyond the energy sector is expected to ramp up in the coming years. In Vector's case, we are developing new solutions that enable the delivery of more affordable, reliable and cleaner energy to end consumers through our strategic alliance with Amazon Web Services (AWS).

37. We broadly agree with the statement of former Tyro Payments CEO, Jost Stollman, that "*it has to become the DNA in the regulator's mind that new technology and new ways of thinking actually de-risk the system*".

Responses to the consultation questions

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

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

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

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

38. With respect to **Q1**, we do not prefer any of the options (Options 1, 2, or 3) set out in the Consultation Paper in relation to membership make-up of the proposed EEAG.

39. For the reasons indicated above and in the rest of this submission, we do not support the creation of a single AG that would represent the entire sector. While we recognise that the Authority's options reflect a more traditional approach to regulatory engagement, we think the evolving context of electricity regulation means it is important to retain a participatory approach to policy development and rulemaking. We do not consider the EEAG replacing multiple existing and future AGs to be consistent with a participatory approach, and therefore do not support this approach.

40. While current selection of existing AG members does appear to attempt to be broadly representative, the intention for the EEAG is to explicitly have "reps" for various parts of the sector – which is a shift from the status quo. Having only one AG with designated reps (with the risk of it turning into a 'super group') negates the purpose of having an AG at all; the Authority might as well consult with all stakeholders directly.

41. Further, the shift from independent participants selected on the basis of their background, expertise and the ability to act impartially, to designated 'reps', who will be "*representing the interests*" of the segment of the industry in which they operate, is a retrograde step. This adds little benefit compared to the status quo where consultation and engagement is open to all. Members should be selected based on their skills and experience, the contributions they will make, and their ability to offer impartial advice, not which party they work for. We understand this has always been a key component of membership selection, and should remain.

42. To date, the groups that have been successful benefited from strong, independent chairing by someone with a deep background in regulatory and policy development, and a breadth of expertise and backgrounds. The members are able (and required) to take an independent, helicopter view of issues and solutions, with a reasonable degree of cohesion and tenure.

43. With regard to **Q4**, the Authority should retain the IPAG and MDAG and set up a new consumer reference panel and iwi reference panel which have terms of reference similar to how the Authority anticipates the EAAG operating. These groups will no doubt be required

on a permanent basis, and will perform that much better if they have some longevity of tenure (allowing members to build up useful knowledge of the sector).

44. The Authority should engage with the current members of both IPAG and MDAG, and their chairs, to help inform whether refinements to the existing group structure and operation could enhance their operation. We understand this has not been done. This is evident from the Authority's paper which does not mention any benefits or shortcomings of the existing groups. Such engagement would allow the Authority to build on the success of what is working well, and make adjustments to address what is not.

45. The existing IPAG and MDAG could readily review some of the Authority's consultation papers pre-release, as and when required.

46. While we can only surmise that the Authority's proposed creation of the EEAG would supplant existing AGs such as the IPAG and MDAG, this is not explicit in the Consultation Paper (para 5.27 does suggest a review will be commissioned). We would not support a 'mass disestablishment' of existing groups in lieu of a new, single AG – the EEAG – that would provide advice on the Authority's priority programmes.

47. As we recently submitted to MDAG[16]:

> Rather than limit its scope of operation, the Authority should therefore look to build on MDAG's success in this project (and their earlier success with trading conduct reform) and continue to engage MDAG in the implementation of specific recommendations over the coming years – especially the most complex. Their expertise and experience in the design of the recommendations to date will be particularly useful as the finer points of implementation are discussed and debated.

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

Proposed changes to the role of AGs

48. The proposed amendments to the Charter remove references to AGs being "*a primary means*" of developing Code amendment options, and more generally removes references to the role of AGs in the consultation process. This would have the effect of disempowering AGs, which are currently an important part of the Authority's policy and Code development. We do not support the disempowerment of these groups.

49. AGs allow the Authority to leverage the expertise, capability, and knowledge of industry participants, providing them with an important voice. For example, this niche expertise was well utilised in the excellent work done by MDAG on trading conduct reforms and the development of options for wholesale market arrangements in a renewables-based electricity system. The Authority's proposals include the following significant changes that deprive AGs of much of their utility:

    a. Paragraph 9.7 of the Charter removes the ability of AGs to proactively propose Code changes. The Authority has not adequately explained why AGs should be stripped of this role. The Authority has explained in general terms that dealing with requests from a wide range of submitters and providing information of variable quality is unwieldy. But that concern should not extend to proposals from AGs. MDAG's work on trading conduct

[16] Vector. *Submission on the MDAG Options Paper – Price discovery in a renewables-based electricity system*, 20 March 2023, paragraph 46

reform, in which the Authority was handed highly-considered, complete Code solutions which had been fully consulted on, was an excellent example of this. The answer is to resource these channels appropriately, and recognise the benefits they bring to the Authority.

b. Paragraph 7.2 of the terms of reference (ToR) for AGs relegates these groups to a reactive role, providing advice on the Authority's work programme and draft consultation papers, and removes the current scope to proactively develop their work programme.

c. Further, we do not support the amendments to 14.2 in the ToR and the full deletion of 17. The removal of references to IPAG and MDAG in the AG Charter effectively removes their terms of reference. Each AG would therefore be given its own clear terms of reference, covering their scope of work, which will make it clear where boundaries lie.

50. The quality of the Authority's decisions in the past benefited from the advice and work of its various AGs. For instance, as stated in our submission (dated 21 March 2023) on the *MDAG Options Paper*,[17] we found MDAG's work to be:

> . . .of extremely high quality, deeply considered, and shows the benefit of engagement with the sector and overseas experts. MDAG's final set of recommendations is highly likely to be a coherent and cohesive package of reforms. We urge the Authority to adopt these recommendations in their entirety as the Authority's wholesale market work programme for the next five years. The Authority should also look to build on MDAG's success in this project (and their earlier success with trading conduct reform) and continue to engage them in the implementation of the more complex recommendations.

51. Good governance requires a continuous system of checks and balances (a concept that dates back to the Roman empire), to avoid a single individual/group/entity wielding too much influence, or the risk of encroachment into the role of the ultimate decision maker (the Authority's Board in this instance). A participatory decision-making approach, where checks and balances are inherently/informally embedded, is an antidote against the erosion of transparency and the potential disempowerment of some or many stakeholders.

52. Diversity enhances creativity and innovative decision-making. New technologies and innovative consultation approaches (e.g. regulator co-designing with stakeholders) can help capture and 'cut through' the complexity of capturing diverse voices and views, shortening the discovery process without undermining meaningful stakeholder participation.

53. AGs should endeavour to publish their meeting papers (excluding working draft documents) in the week immediately following their meetings, to enable non-members to keep abreast of their work. While this is already in the "Procedures" section of the AG terms of reference, it has not always happened in recent years.

54. Notwithstanding our comments above, specifically we think that:
    a. Point 6.1(h) in the AG ToR needs to remain
    b. 7.1 is ambiguous as to whether it is referring to the AG's work plan or the Authority's.
    c. 7.1(b) depowers the group and should be removed.
    d. 7.4 and 7.5 should remain.
    e. The changes to 7.6 are useful additions.

Term of appointment of AG members

55. We do not agree with the proposal to amend clauses 15.5 – 15.8 of the ToR for AGs to change the term of appointment of AG members from three years to five. The current turnover of AG members caused by reasons other than the expiry of their terms of appointment indicates that a five-year appointment is unlikely to be reasonable or sustainable in practice and would limit inputs/contributions from other potential members. Even Members of Parliament are subject to election every three years.

56. We consider a three-year term for AG members, with the option of the Board approving subsequent term(s), to be appropriate in the context of the rapidly evolving electricity sector. This would allow existing members to get traction in their ongoing work in the AG while not closing the door to others who may equally or have more to contribute to the group. It would also shorten the time it would take for under-performing members to be replaced.

57. Again, this proposal would have benefited from discussion with current and previous group members and chairs.

Status of Code amendment principles

58. New clause 4.1 of the Charter provides that the Authority "*also has regard*" to the Code amendment principles in substitution for current clauses 2.2 and 2.5, which provide that the Authority "*must adhere*" and "*will have regard*" to the Code amendment principles.

59. This suggests the Authority intends to subordinate the Code amendment principles to optional relevant considerations rather than, as currently, mandatory relevant considerations. Given the statutory requirements in section 32 of the Act (Content of Code) are framed in very broad terms, the Code amendment principles serve an important role in ensuring rigour and accountability in the Authority's decision-making. These should continue to be mandatory considerations for all Code amendments.

60. Our other comments on the details of these documents (e.g. retention of AGs as a primary means of developing Code) are set our in our cover letter.

Threshold for regulatory intervention

61. New principle 1 of the Charter, which replaces current principle 2, provides that there must be a "*clear case*" to amend the Code. We support that principle but note that current principle 2 also expresses a preference for market solutions and expresses the Authority's intent only to intervene in the interests of efficiency or in cases of market failure. That concept is missing from new principle 1.

62. The current Code amendment principles are based on the premise that market solutions are preferable to regulatory intervention, and that regulatory intervention via the Code is only warranted for efficiency reasons or in the case of identified market failure. That remains an important principle and it is not clear to us why the Authority is proposing to remove it from the Charter.

63. New principle 1 requires only a highly subjective judgement of whether there is a "*clear case*" to amend the Code. While that is an appropriate standard when it comes to amending an existing rule, it is an insufficient statement of principle when it comes to new or incremental interventions in market activity.

Cost-benefit analysis

64. Current principle 3 of the Charter requires that the Authority quantify the net benefits of proposed Code amendments. New principle 2 provides that quantitative analysis is not required and will only be undertaken when "*possible, practical, and useful*".

65. The obligation to quantify costs and benefits and demonstrate a net benefit is an important accountability tool to ensure rigour in decision-making. Moreover, most Code amendments will involve costs and benefits that are capable of being quantified, and where they can be quantified, they should be.

66. New principle 2 leaves it to the Authority's discretion to determine, subjectively, when cost-benefit analysis is "useful", and does not explicitly require that Code amendments result in a net benefit.

67. We support a continued requirement to undertake cost-benefit analysis in order to demonstrate a net benefit. We also believe this more directly complies with the requirements for '*an evaluation of the costs and benefits of the proposed amendment'* in section 39 (2) (b) of the Act, and that the Authority is incorrect in saying in the new section 4 of the proposed Consultation Charter that quantitative analysis is "*not required under the Act*". This seems at odds with the proposed new paragraph 6.2, which clearly *does* recognise the requirements under the Act.

Role of tie-breaker principles

68. The role of the tie-breaker principles is to determine which of several options for intervention is optimal once the case for change to the status quo has been determined through cost-benefit analysis, applying primary principles 1-3. The proposed amendment simply provides that the tie-breaker principles are available where there is "*no clear best option*".

69. The proposed amendment suggests that the tie-breaker principles may be used to choose between intervention and the status quo, which is a material change from how they work today. Under the current Charter, the case for change must be made with reference to the primary principles, and then the tie-breaker principles are available to choose between the options for change. This reflects the Authority's commitment to the proposition that regulatory intervention is only warranted for efficiency reasons or to respond to market failure, and where the benefits of intervention demonstrably outweigh the costs. This is a material change to the conceptual framework for Code amendments and is not discussed in the Consultation Paper.

Role of risk reporting

70. The Authority proposes to remove the risk-reporting requirement on the basis that it is a process step and not a principle and adds nothing to the Authority's general obligation to explain its reasoning.

71. We agree the risk-reporting step is a *process* and not a *principle*, but that does not mean it is without utility. The purpose of the risk-reporting step is to require additional analysis and rigour when the choice to intervene is finely balanced. This is consistent with the general thrust of the Code amendment process, which is that regulatory intervention should occur only where justified. We therefore do not support the removal of risk reporting.

Requirement to consult with the Commerce Commission

72. Vector strongly supports the proposal to explicitly reference the requirement to consult the Commerce Commission (the Commission) on certain Code amendment proposals.

73. In our submission on the Authority's FY2023-24 levy-funded appropriations,[18] we emphasised the importance of the Authority coordinating with the Commission, particularly on the Commission's Input Methodologies Review (IM Review) and Default Price-Path (DPP) Reset:

> Vector encourages the Authority to coordinate closely with the Commerce Commission…during its ongoing…IM Review. This would ensure that regulatory settings developed by both regulators for the future are appropriate and aligned. In practical terms, this would ensure that whole-of-system costs are minimised, and regulatory gaps and duplication – which impose unnecessary costs on industry participants – are avoided.
>
> In coordinating with the Commission on the IM Review and in the Authority's development of electricity regulation for the future, we encourage the Authority to have regard to the need to remove barriers to decarbonisation as soon as possible. Both the Authority and the Commission need to explicitly include the importance of decarbonisation in promoting the long-term interests of consumers.
>
> Actions that directly relate to the Commission's work which we believe would help remove, or mute the adverse impacts of, such barriers include:
>
> a. improving the performance of EV chargers;
> b. overcoming any remaining barriers to acquiring smart meter data so the value of this data can be unlocked for retailers, flexibility traders, networks, and the long-term interest of consumers;
> c. incentivising procurement that supports decarbonisation, e.g. switching to SF6-free switchgear;
> d. incentivising investment in energy efficiency measures, campaigns, and initiatives with end consumers; e. expanding the purpose of 'innovation' to include decarbonisation; and
> e. clarifying the scope of the ownership and use of generation assets by distributors.
>
> While the IM Review is the Commission's focus at present, its focus will soon shift towards the resetting of the next…DPP. We foresee a key role for the Authority to ensure electricity distribution businesses' allowances reflect the investment required to unlock the potential from electrification, a key enabler of an orderly energy transition.

74. As mentioned in our introduction, we would propose that the outcome of the Authority's consultations with the Commission be reported on transparently, to the extent possible, and included in consultation papers.

75. These requirements could be extended to other members of the Council of Energy Regulators, including MBIE, the GIC and EECA.

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

76. We broadly agree with the Authority's overall assessment of the Code amendment proposal relating to the system operation policy documents incorporated by reference into the Code.

[18] https://blob-static.vector.co.nz/blob/vector/media/vector-2022/vector-submission-ea-2023-24-levy-funded-appropriations.pdf, page 7

77. As suggested in paragraph 33 (g) above, one way that Code amendment and consultation processes that involve the System Operator could be streamlined is using a specific, technical reference group. This would bring both the Authority and System Operator together with other experts as a matter of course, when and where there are any Code amendment or process change proposals – avoiding surprises, confusion, and duplication. Based on the number of submissions these consultations usually receive, engagement on these Code amendments need not be extensive (but remains critical).

Concluding comments

78. While we see the benefits of streamlining the Authority's consultation and Code amendment processes, we urge the Authority to undertake these changes without undermining the participatory approach that has underpinned decision-making in the electricity sector.

79. We strongly recommend that the Authority leverages some of its recent experience with, successful multiple engagement techniques, and co-develops and further refines these documents with stakeholders. In the area of stakeholder engagement, this is critical.

80. We are happy to discuss any aspects of this submission with the Authority. Please contact me at james.tipping@vector.co.nz.

81. No part of this submission is confidential, and we are happy for the Authority to publish it in its entirety.

Yours sincerely

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