

ADVISORY GROUPS

LEGAL AND GOVERNANCE ENVIRONMENT

November 2017

COMPETITION • RELIABILITY • EFFICIENCY

Electricity Authority

- Created by statute – Electricity Industry Act 2010 (EI Act)
- An independent crown entity under the Crown Entities Act 2004
- May only do what statute empowers it to do
- When exercising its statutory powers, the Authority is making decisions that are subject to
 - challenge by judicial review
 - appeal on a question of law (s.64 EI Act)
- Grounds for review:

“the substantive principles of judicial review are simply that the decision-maker must act in accordance with law, fairly and reasonably.”

Lord Cooke of Thorndon in *“The Struggle for Simplicity in Administrative Law”*

Authority's statutory objective and functions

- Statutory objective – s. 15 of the EI Act

To promote competition in, reliable supply by, and the efficient operation of, the electricity industry for the long-term benefit of consumers

- Functions – s. 16 of the EI Act

*to make and administer the Electricity Industry Participation Code
[s.16(1)(b)]*

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 [s. 16(1)(f)]

Foundation documents

- Three key strategic statements as to how the Authority will approach its decision making:
 - Interpretation of statutory objective
 - Consultation charter
 - Charter about advisory groups
- Published on Authority's website

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

Interpretation of statutory objective

- To assist the Authority to make consistent decisions
- To assist staff and advisory groups to develop Code amendments and market facilitation proposals for the Board's consideration

Overarching purpose

- The long-term benefit of consumers

Competition

- Workable or effective competition
- Focus is on competitive pressure

Reliable supply

- Includes security and reliability of supply

Efficient operation

- 'Catch all' requirement

Code amendment principles (CAPs)

1. Lawfulness

2. Clearly identified efficiency gain or market or regulatory failure

3. Quantitative assessment

Tie-breaker 1: if CBA is inconclusive about best option

4. Preference for small-scale 'trial and error' options

5. Preference for greater competition

6. Preference for market solutions

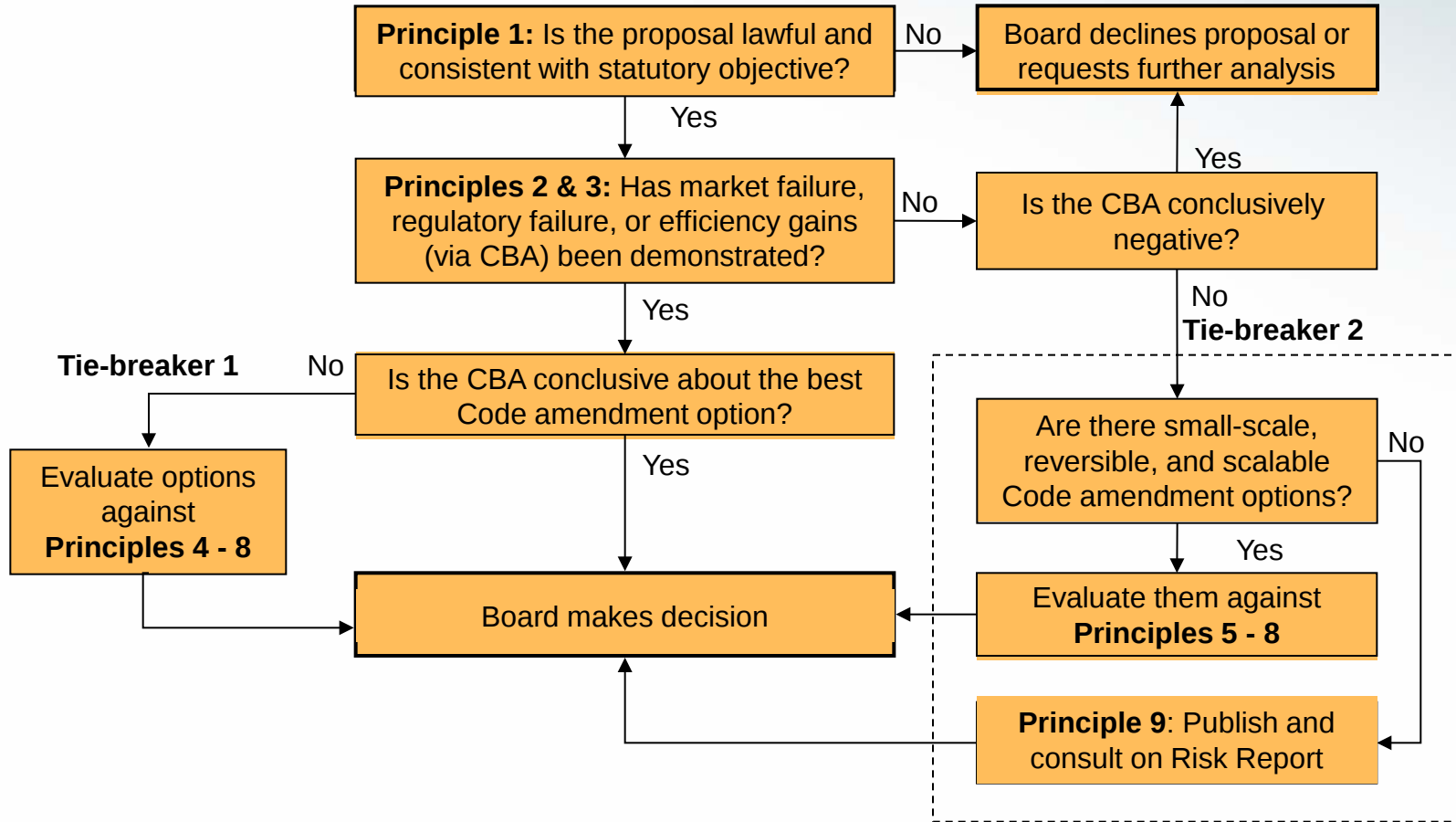
7. Preference for flexibility to allow innovation

8. Preference for non-prescriptive solutions

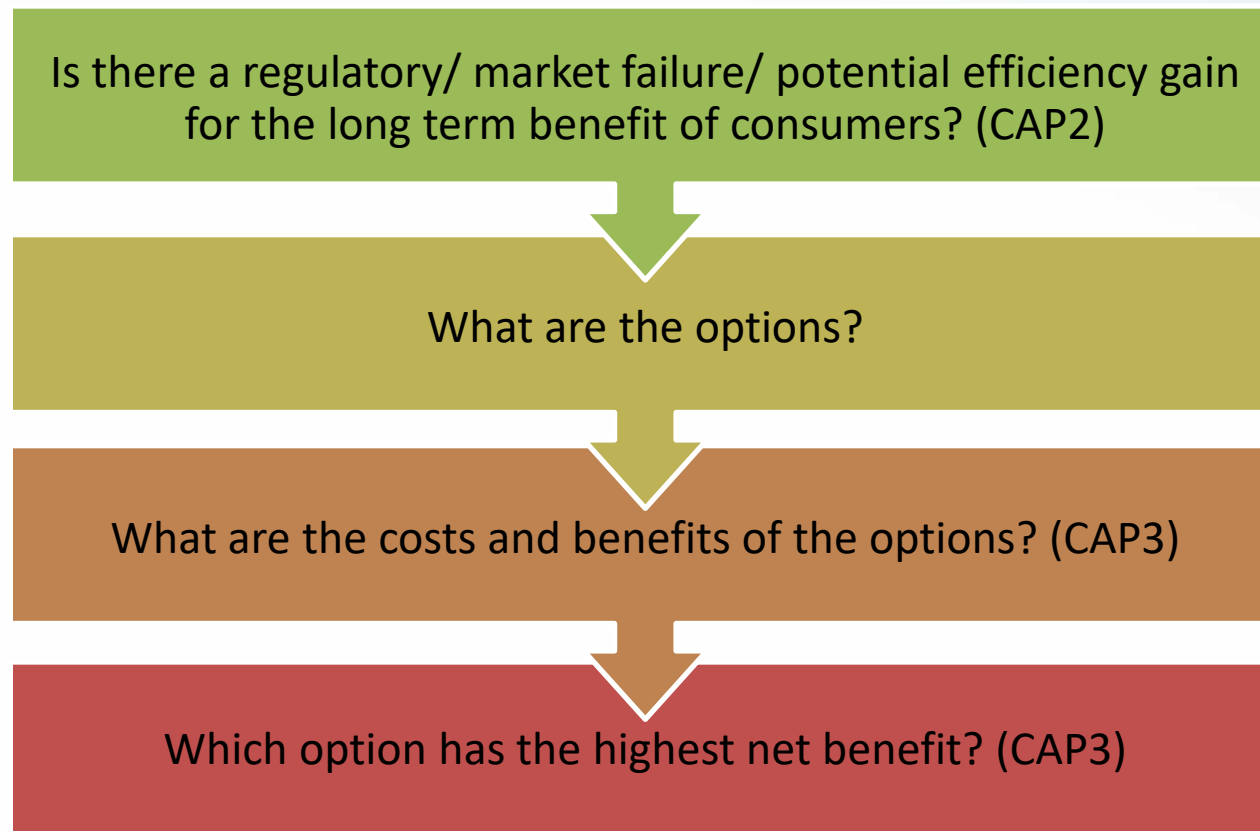
Tie-breaker 2: CBA is inconclusive about any option being positive

9. Risk-report if don't have small-scale, flexible, scalable and reversible options

CAPs



Analysis framework



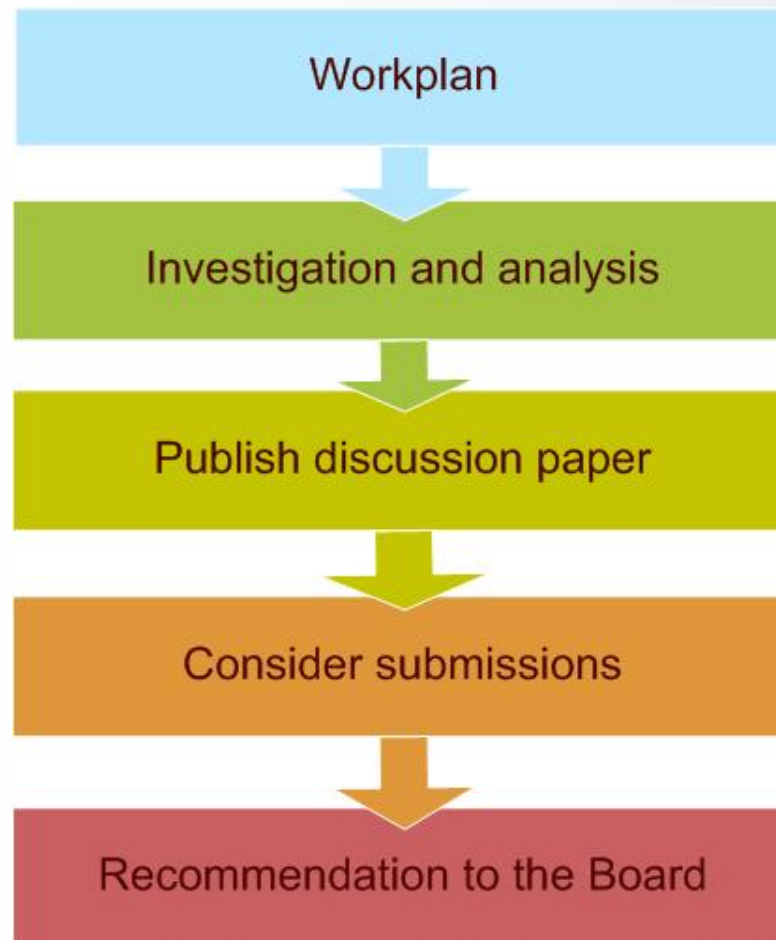
Terms of reference and Charter about advisory groups

- Terms of reference set out 'contract' between the Authority, the advisory group and advisory group members
- EI Act requires the Authority to have a Charter about advisory groups:
 - How the Authority is to establish/interact with advisory groups
 - How the Authority will consult advisory groups on Code amendments
 - How advisory groups must operate
- Part 1 of the Charter applies to Security and Reliability Council
- Part 2 of the Charter applies to other advisory groups

Advisory Groups

- Provide independent advice to the Authority on the development of the Code and on market facilitation – s.21(1) of the EI Act
- Make recommendations/report to the Board
- Members need not be independent persons but must be able to provide independent advice
- Decide and publish 'discussion' papers (the Authority publishes 'consultation' papers)
- May establish 'working' groups to provide technical/specialist input (the Authority may establish 'technical' groups)

Advisory group process



Advisory groups' role

- To work with the Authority's Board – to provide independent advice to the Board
- Not to provide media relations or speak on behalf of the Authority
- To use collective knowledge and experience when considering matters before the group
- To operate to a work plan, which the Authority will develop in discussion with the advisory group

Liability

- Protection from liability regime, set out in the Crown Entities Act, applies to advisory group members – s.22 of the EI Act
- S. 22 of the EI Act states that s. 120 of the Crown Entities Act applies, which states:

“A member, office holder, or employee of a statutory entity is not liable for any liability of the [advisory group] by reason only of being a member, office holder, or employee.”

Conflicts of interest

- Conflict of interest regime in the Crown Entities Act applies to advisory group members – s. 22 of the EI Act
- Each advisory group must maintain an interest register
- Chair can permit members to act despite being interested
- Standard agenda item for each meeting
- Disclosures/potential conflicts to be discussed with the Advisory Group Chair

Transparency

- Principle of availability applies (s. 5 of the Official Information Act)
- Authority has previously published advisory groups' business on its website, including:
 - Meeting agendas
 - Meeting minutes
 - Work plan
 - Reports considered
 - Draft discussion papers
- Note that under the ToR, any emails about substantive aspects of an advisory group's business should be copied to:
 - All AG members
 - Authority representative
 - Authority secretariat

Roles and relationships

