

# Proposal to amend requirement for advisory group Chairs to be independent

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## Decision Paper

14 November 2019



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# 1 Decision

- 1.1 The Electricity Authority (Authority) has decided to retain the requirement that its advisory group<sup>1</sup> Chairs be independent.

# 2 Background to the proposal

- 2.1 On 22 January 2019 we published a consultation paper titled, *Proposal to amend requirement for advisory Group Chairs to be independent*.<sup>2</sup> The Authority proposed to amend the Charter for Advisory Groups (**Charter**) to relax the Authority-imposed requirement for Advisory Group Chairs to be independent. Provision 18.4 of the *Terms of Reference for the Security and Reliability Council and Other Advisory Groups (ToR)* describes the threshold of what is considered independent in this situation: “the nominee must, in the opinion of the Authority, be demonstrably free of conflicts of interest”.
- 2.2 The Authority proposed to relax the self-set<sup>3</sup> requirement of independence for advisory group Chairs to expand the pool of potential Chairs. At the time, this was proposed as a possible solution to manage the uncertainty and difficulty of finding appropriate independent Chairs, especially in situations where Chairs retire unexpectedly.

# 3 Submissions

- 3.1 In response to our 22 January consultation paper, we received submissions from the eight<sup>4</sup> parties listed in **Table 1**. The following questions were asked:
1. *Do you agree the issue identified by the Authority is worthy of attention?*
  2. *Do you have any comments on the drafting of the proposed changes to the Charter for advisory groups?*
  3. *Do you have any comments on the drafting of the proposed changes to the Terms of reference for the SRC and other advisory groups?*

**Table 1: List of submitters**

Submitter	Participant Category
Electric Kiwi Limited	Retailer
Flick Energy Limited	Retailer
Genesis Energy Limited	Generator and Retailer

<sup>1</sup> The Authority has three advisory groups: Market Development Advisory Group (MDAG), Innovation and Participation Advisory Group (IPAG) and the Security and Reliability Council (SRC).

<sup>2</sup> <https://www.ea.govt.nz/development/advisory-technical-groups/proposal-to-amend-requirement-for-advisory-group-chairs-to-be-independent/>

<sup>3</sup> The Crown Entities Act 2004 does not require [independent] Crown Entities to have independent Chairs for their advisory groups. The obligation to have independent advisory group Chairs is self-set by the Authority in clauses 3.1, 7.1 of the Charter.

<sup>4</sup> We received six submissions from eight parties due to Electric Kiwi, Haast and Vocus submitting jointly.

Submitter	Participant Category
Haast Energy Trading Limited	Derivatives trader
Major Electricity Users Group (MEUG)	Industry representative body
Meridian Energy Limited	Generator and Retailer
Vector Limited	Distributor
Vocus New Zealand Limited	Retailer

### Summary of Submissions

- 3.2 Electric Kiwi, Haast Energy Trading and Vocus made a joint submission that opposed the Authority's proposal. The submission raised concerns that relaxing the requirement of independence for advisory group Chairs could lead to the groups being unduly influenced by the vested interests of the individual group members.
- 3.3 Flick Electric opposed the proposal. Flick considered relaxing the independence requirement would run counter to trends of good governance. Although Flick agreed there may be a limited pool of suitable independent candidates and that changes mid-term were not ideal, it considered these reasons alone were not substantive enough to relax the requirement.
- 3.4 Genesis opposed the proposal in principle. They raised the potential that relaxing this requirement may compromise the perception of the Chair being a neutral facilitator of the advisory group's work programmes.
- 3.5 MEUG opposed the proposal. MEUG's preference was that the Authority maintain its self-imposed requirement for advisory group Chairs to be independent. MEUG noted the primary competency required by Chairs was skill and experience related to effectively running groups like the Authority's advisory groups.
- 3.6 Vector opposed the proposal. Like Flick, Vector saw relaxing the requirement of independence for advisory group Chairs as a departure from good governance. The submission raised a series of benefits an independent Chair brings to the group and that provisions outlined in clause 6.1 of the ToR suggest an independent Chair's main functions are those of leadership and facilitation rather than providing technical advice.
- 3.7 Only Meridian supported the proposal. Meridian agreed the issue is worthy of attention and had no comments on how changes to the Charter or ToR could be drafted.

## 4 The Authority has decided to maintain the requirement of independence for advisory group Chairs

- 4.1 The Authority has re-evaluated this issue taking into consideration stakeholder views. Following this re-evaluation, we have decided to retain the self-set requirement of independence for our advisory group Chairs.

### **Maintaining independence outweighs the potential value of a larger pool of candidates**

- 4.2 Our proposal suggested changing the balance between the independence for advisory group Chairs and expanding the pool of potential Chairs.
- 4.3 We acknowledge the clear stakeholder feedback against this change, ie, that the independence of Chairs strengthens the confidence stakeholders have in the advice produced by the Authority's advisory groups. Maintaining this confidence is a critical factor in our decision.
- 4.4 We also agree more generally that:
- (a) an advisory group Chair plays a critical role in supporting the balance and integrity of the group's decision making process
  - (b) having an independent Chair mitigates against any actual or perceived risk around how member conflicts of interest are managed
  - (c) maintaining the independence of the Chair is consistent with trends in good governance.

### **We can expand the pool of candidates without removing the requirement of independence**

- 4.5 We thank submitters for their suggestions on how we can increase the pool of viable candidates for advisory group Chairs and agree that a range of options are open to us. While our preference remains that Chairs have specific experience and skillsets that will contribute to the substantive advisory business of the group, we agree that appointing a Chair focussed on facilitation and group leadership is also a valid option.

### **The risk of unexpected Chair retirement can be managed**

- 4.6 We consider that an appropriate and proportionate mechanism to manage the risk of a Chair retiring unexpectedly is for Advisory Groups to self-select a deputy Chair. Deputy Chairs could also act in situations where the Chair:
- (a) is conflicted over certain matters
  - (b) is unavailable to attend a meeting.
- 4.7 We note that the MDAG has already selected a deputy Chair.