

# Consultation Charter

27 February 2024

# Consultation Charter

## 1. Purpose of this Charter

- 1.1. This consultation charter (Charter) sets out the guidelines relating to the processes for amending the Electricity Industry Participation Code 2010 (Code) and consulting on amendments.<sup>1</sup>
- 1.2. The Code is secondary legislation made and administered by the Electricity Authority Te Mana Hiko (Authority) under the Electricity Industry Act 2010 (Act).

## 2. Objectives of the Authority

- 2.1. The Authority is New Zealand's electricity industry regulator. The Authority's main objective is to promote competition in, reliable supply by, and the efficient operation of, the electricity industry for the long-term benefit of consumers.
- 2.2. The Authority also has an additional objective: to protect the interests of domestic consumers and small business consumers in relation to the supply of electricity to those consumers.<sup>2</sup>
- 2.3. It is a function of the Authority to make and administer the Code.<sup>3</sup>

## 3. What the Code can contain

- 3.1. The Code may contain any provisions that are consistent with the objectives of the Authority and are necessary or desirable to promote any or all of the following:
  - (a) competition in the electricity industry
  - (b) the reliable supply of electricity to consumers
  - (c) the efficient operation of the electricity industry
  - (d) the protection of the interests of domestic consumers and small business consumers in relation to the supply of electricity to those consumers
  - (e) the performance by the Authority of its functions
  - (f) any other matter specifically referred to in the Act as a matter for inclusion in the Code.<sup>4</sup>

## 4. Code amendment principles

- 4.1. Investment in the electricity industry is important and benefits the long-term interests of consumers. Unpredictable and ill-founded amendments to the Code could undermine investor confidence, and thus deter investment to the detriment of consumers.

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<sup>1</sup> This Charter is made in compliance with section 41 of the Act.

<sup>2</sup> This additional objective applies only to the Authority's activities in relation to the dealings of industry participants with domestic consumers and small business consumers.

<sup>3</sup> Section 16(1)(b) of the Act.

<sup>4</sup> Section 32(1) of the Act.

- 4.2. To provide greater predictability about decision-making on Code amendments the Authority applies the following principles:
- Principle 1 – Clear case for regulation: The Authority will only consider amending the Code when there is a clear case to do so.
  - Principle 2 – Costs and benefits are summarised: The Authority is required to include with any Code amendment proposal an evaluation of the costs and benefits of the proposed amendment.<sup>5</sup> The Authority will also include a summary of this evaluation.
- 4.3. The Authority will also apply the following additional principles where analysis demonstrates a clear benefit to a Code amendment proposal, but there is no clear best option in terms of a solution:
- Principle 3 – Preference for small-scale ‘trial and error’ options: The Authority will prefer options that are initially small-scale, and flexible, scalable and relatively easily reversible with relatively low value transfers associated with doing so. The Authority will monitor the implemented option and reject, refine or expand that solution in accordance with the results from the monitoring.
  - Principle 4 – Preference for greater competition: The Authority will prefer options that have larger pro-competition effects, because greater competition is likely to be positive for economic efficiency, reliability of supply and, ultimately, for the long-term benefit of consumers.
  - Principle 5 – Preference for market solutions: The Authority will prefer options that directly address market failure so as to facilitate efficient market arrangements. The Authority will discount options that subdue or displace efficient market structures.
  - Principle 6 – Preference for flexibility to allow innovation: The Authority will prefer options that provide industry participants with greater freedom and lower compliance costs, unless more restrictive options are justified such as where it may be more efficient to use a ‘one size fits all’ approach (for example, uniform standards).
  - Principle 7 – Preference for non-prescriptive options: The Authority will prefer options that specify outcomes required of industry participants rather than prescribe what they must do and how they must do it, unless the benefits of prescription outweigh an outcomes-based approach.

## **5. How amendments are identified**

- 5.1. The Authority will identify any changes that it considers need to be made to the Code through the performance of its functions, which is based on the Authority’s assessment of how to best meet its objectives, statement of intent, current statement of performance expectations, and any statements of government policy under section 17 of the Act. The Authority’s advisory groups may also identify potential Code amendments (and at times assist the Authority to consult on them).
- 5.2. People are welcome to notify the Authority to any perceived issues with the Code or suggest where it might be improved. Any such notifications will be considered by the Authority at its discretion, in accordance with its objectives, functions, statement of intent, and current statement of performance expectations.

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<sup>5</sup> Except in limited circumstances, see paragraphs 6.4 and 6.5.

- 5.3. Guidance on how to request a Code amendment, and how amendments are prioritised, is available on the Authority's website: [Amendments to the Code | Electricity Authority \(ea.govt.nz\)](https://www.ea.govt.nz).

## **6. The process for amending the Code and consulting on amendments**

- 6.1. The Act sets out requirements relating to how Code amendments are made.

### **Standard Code amendments**

- 6.2. To amend the Code the Authority ordinarily needs to publicise a draft of the proposed amendment, prepare and publicise a regulatory statement, and consult on the proposed amendment and the regulatory statement.<sup>6</sup>
- 6.3. The regulatory statement required for a proposed amendment to the Code must include a statement of the objectives of the proposed amendment, an evaluation of the costs and benefits of the proposed amendment, and an evaluation of alternative means of achieving the objectives of the proposed amendment.

### **Exceptions to the standard Code amendment process**

- 6.4. The Authority does not need to prepare and publicise a regulatory statement, or consult on a proposed amendment and regulatory statement, if it is satisfied on reasonable grounds that—
- (a) the nature of the amendment is technical and non-controversial; or
  - (b) there is widespread support for the amendment among the people likely to be affected by it; or
  - (c) there has been adequate prior consultation so that all relevant views have been considered.
- 6.5. Technical and non-controversial amendments could include, for example, Code maintenance proposals to improve clarity, correct typographical and editorial errors, and to keep the Code up to date (such as updating references to external standards).

### **Urgent amendments**

- 6.6. The Authority also has the power to amend the Code urgently, without complying with any consultation requirements, where it considers that this is necessary or desirable in the public interest.<sup>7</sup>
- 6.7. Urgent amendments of this kind expire nine months after they come into force, unless revoked earlier<sup>8</sup> or the Authority in the interim makes those amendments permanent by using the standard Code amendment process including meeting the consultation requirements.

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<sup>6</sup> Section 39 of the Act.

<sup>7</sup> Section 40 of the Act.

<sup>8</sup> Section 40A of the Act.

## Code consultation requirements

- 6.8. The Code may also contain consultation requirements that apply to making amendments relating to specific matters. Where this is the case, the Authority will ensure these requirements are met.

## Good practice consultation

- 6.9. Consultation has many benefits. It enables informed decision-making, improved communication and relationships with stakeholders, better quality regulatory outcomes, reduced implementation risk, and improved compliance.
- 6.10. As well as meeting the consultation requirements in the Act and the Code (if applicable), the Authority will ensure that any consultation adheres to good practice. This includes:
- (a) providing information about the Authority's work programme, including planned consultations, in advance where practicable
  - (b) providing all people interested in or affected by a proposed Code amendment have an opportunity to be heard — this means that, as well as publicly notifying any proposed amendment and the reasons for it on the Authority's website, the Authority may reach out to those that are particularly affected by an amendment or who may have relevant expertise
  - (c) considering the use of workshops, opportunities for oral submissions and other engagement methods (in addition to the usual written submission process) to encourage effective input of those particularly affected by a Code amendment proposal
  - (d) providing adequate information to allow people to understand the intended purpose of the proposed amendment so that they may make meaningful submissions — this may include the Authority presenting information orally through forums or similar in order to explain amendments
  - (e) giving people sufficient time to submit on any proposed amendment — consultation timeframes will be adapted to reflect the level of complexity of the proposed amendment and other relevant considerations
  - (f) receiving the views presented to the Authority with an open mind and giving those views, in making a decision, due consideration
  - (g) publishing questions and answers received during a consultation in a transparent and timely way
  - (h) consulting again on an amended proposal if, following consultation, the Authority decides to make substantial changes to a proposed amendment
  - (i) considering running multi-stage consultations that include opportunities for people to cross-submit on the submissions of others where amendments are particularly complex, there is potential for large financial implications for consumers or industry participants, or the issue is likely to be contentious.

## 7. People interested in or affected by Code amendments

- 7.1. People interested in or affected by Code amendments include:

- (a) domestic and small business consumers, and groups representing consumers including a Small Electricity Consumers Agency established under section 22A of the Act
- (b) industry participants (such as generators, distributors, and retailers)
- (c) Transpower (as grid owner and system operator) and other market operation service providers
- (d) the Authority's advisory groups (please refer to the Advisory Group Charter for more information)
- (e) the Commerce Commission.

## Consultation with the Commerce Commission

- 7.2. The Authority and the Commerce Commission are the primary economic regulators of the electricity system in New Zealand. The Commerce Commission's jurisdiction is set out in Part 4 of the Commerce Act 1986. Part 4 provides for the regulation of the price and quality, and information disclosure requirements, for goods or services regulated under the Commerce Act, including electricity lines services.<sup>9</sup>
- 7.3. Section 54V of the Commerce Act 1986 provides that the Authority must consult with the Commission before amending the Code in a manner that will, or is likely to, affect the Commission in the performance of its functions or exercise of its powers under Part 4.

## 8. Publishing submissions and confidential information

- 8.1. The Authority's standard practice is to publish all submissions it receives on its website as soon as practicable after the consultation period closes.
- 8.2. Where a person wants to submit confidential information, this may be arranged by agreement with the Authority. However, reliance the Authority places on any confidential information may be diminished if the confidentiality affects the Authority's ability to verify or test the information. Where the Authority agrees to treat certain information as confidential, the submitter may be asked to provide a non-confidential version for publication.
- 8.3. The Authority may decide not to publish some submissions or parts of submissions if it considers that is necessary to protect the privacy of individuals.
- 8.4. Note that the Authority is subject to the Official Information Act 1982 and other laws which may require the disclosure of submissions or parts of submissions that the Authority does not publish.

## 9. Publishing the final decision

- 9.1. When the Authority decides to amend the Code, the decision and the reasons for it will be published on the Authority's website along with a copy of the amendment. The Authority will also give notice of any Code amendments in the New Zealand Gazette.
- 9.2. The Authority maintains a consolidated version of the Code that includes all amendments. This is available on the [Authority's website](#).

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<sup>9</sup> Part 4, subpart 9 of the Commerce Act 1986.