

23 August 2021

Submissions  
Electricity Authority  
PO Box 10041  
Wellington 6143

by email: [infoframework@ea.govt.nz](mailto:infoframework@ea.govt.nz)

## **Response to consultation paper- Improving the framework for the Authority's information gathering**

1. Orion New Zealand Limited (Orion) welcomes the opportunity to provide a submission on the consultation on improving the framework for the Authority's information gathering to the Electricity Authority (the Authority).
  - a. Our information covers our response to your specific questions.

### **Concluding remarks**

2. Thank you for the opportunity to provide this submission. We do not consider that any part of this information is confidential. If you have any questions please contact Dayle Parris (Interim GM Commercial), DDI 03 363 9874, email [dayle.parris@oriongroup.co.nz](mailto:dayle.parris@oriongroup.co.nz).

Yours sincerely



Dayle Parris  
**Interim GM Commercial**



# Submission by Orion on improving the framework for the Authority's information gathering

## Appendix A

Question	Response
Q1 Do you agree the issue identified by the Authority is worthy of attention?	Yes, we agree
Q2. Do you agree with the objective of the proposed amendment? If not, why not?	Yes
Q3. Do you agree the benefits of the proposed amendment outweigh its costs?	This may depend on the extent and nature of information requests over time however the objective seems sound.
Q4. Do you agree the proposed amendment is preferable to the other options? If you disagree, please explain your preferred option in terms consistent with the Authority's statutory objective in section 15 of the Electricity Industry Act 2010.	Yes
Q5. Do you agree the Authority's proposed amendment complies with section 32(1) of the Act?	Yes
Q6. Do you have any comments on the drafting of the proposed amendment?	
<p><b><i>Matters where intent may not translate fully to drafting</i></b></p> <ol style="list-style-type: none"> <li>1. Section 2.16- in the contents does not align with the section wording. The heading in the contents listing says "...collate and/or provide regularly or in response to events." The heading in the full section commentary says "...collate and provide regularly or in response to events.". We believe both should say only "and".</li> <li>2. Section 2.19- in the contents does not align with the section wording. The heading in the contents listing says "...Factors the Authority must take into account before publishing notice." The heading in the full section commentary says, "Factors the Authority must consider before publishing notice." We believe both should say "...must consider..." rather than "take into account".</li> <li>3. In the contents the heading 2.22 is missing from the listing- "2.22 Privilege against self-incrimination"</li> </ol>	

**Matters regarding confidentiality**

Clause 2.21

We are concerned that the Authority seems to have unilateral authority to decide if something should be confidential or not. There is no right of appeal or requirement to come back to the participant to explain any reasoning behind the Authority taking the view that information should not be kept confidential.

We submit on five matters relating to Clause 2.21;

- a) *Clauses 2.21 cuts across the Official Information Act 1982*
- b) *Limiting the circumstances in which information should be kept confidential is unreasonable and unnecessary*
- c) *The proposed clause 2.21 is likely to negatively impact on the consultation process, strongly biasing participants against disclosure*
- d) *Information that is compulsorily acquired should only be used for the purpose it is collected*
- e) *The Authority should provide the reason for disclosure and consult with participants prior to sharing information.*

***We oppose the proposed introduction of new clause 2.21 on its current wording.***

We set out our reasons below.

**1. *Clauses 2.21 cuts across the Official Information Act 1982***

Information supplied to the Authority is “official information” for the purposes of the Official Information Act (OIA).

The OIA recognises the importance of protecting official information to the extent that this is consistent with the public interest and the preservation of personal privacy.

The OIA turns on the principle that official information should be disclosed unless there is “good reason” for withholding it. Section 9 lists several circumstances in which there will be “good reason” for withholding official information unless this reason is outweighed by public interest considerations.

Significantly, the circumstances listed in section 9 of the OIA are substantially wider than those listed in clause 2.21(1).

We submit that it is not appropriate to limit the grounds on which a participant can identify information as being confidential to those listed in clause 2.21(1), when the OIA recognises that it can be consistent with the public interest to withhold information on other grounds.

**2. *Limiting the circumstances in which information should be kept confidential is unreasonable and unnecessary***

The Consultation Paper seeks to provide the Authority with an effective method to efficiently gather regular or event-driven information from participants on an ongoing basis.

The proposed solution is for the Authority to have the power to compel the compulsory provision of information outside of the current section 46 framework.

In view of the breadth of this proposed power, we submit that it is appropriate for participants to have the ability to point to the full range of grounds under the OIA as to why it does not consider it appropriate for the Authority to make all or part of the information publicly available.

We also submit that limiting the reasons for which a participant may seek confidentiality under section 2.21(1) is not necessary to achieve the stated objective of the Consultation Paper. The Authority is seeking an effective method for the regular and ongoing collection of information from industry participants. This objective will be achieved irrespective of the number of grounds on which participants might ask the Authority to maintain confidentiality in respect of the information so supplied.

**3. *The proposed clause 2.21 is likely to negatively impact on the consultation process, strongly biasing participants against disclosure***

The Consultation Paper proposes that before the Authority publishes a notice specifying the information that a participant must provide to the Authority, the Authority must consult on the draft notice with the participants.

We submit that on its current wording, clause 2.21 would have a negative impact on this consultation process, as it would create a strong incentive on the part of participants to see the Authority's information gathering powers framed as narrowly as possible (to reduce the risk of sensitive information being disclosed to third parties by the Authority).

**4. *Information that is compulsorily acquired should only be used for the purpose it is collected***

The proposed amendments to clause 2.21 do not recognise the implications of the Authority's power to compulsorily gather information, under the proposed notice regime.

We refer the Authority to the submissions made by Donal Curtin, Managing Director of Economics New Zealand, to the Economic Development Science and Innovation Committee on the proposed information sharing provisions in the Commerce Amendment Bill 2021. In his submissions, Mr Curtin noted that normally the high degree of interference granted to authorities with power to compulsorily acquire information would be balanced by controls over what the authority can do with that information.

We submit that compulsorily acquired information should be accorded due protection reflective of its compulsory provenance.

Orion further submits that the proposed amendment to the Code needs to recognise the established principle that information gathered by a government entity should be used for the purposes for which it was gathered, and not more widely. In our view, the purpose for which the information is to be used should be established during the notice consultation process under the proposed clause 2.18.

**5. *The Authority should provide the reason for disclosure and consult with participants prior to sharing information.***

The Consultation Paper does not provide any justification or public policy reason for why the Authority should be able to disclose confidential or commercially sensitive information.

We submit that the Authority should be required to provide participants with a clear reason for disclosing information prior to disclosure, and the reason should be linked to the purpose for which the information was agreed to be used.

We also submit that it would be in line with the approach of other government authorities to consult with a participant prior to disclosure of information, where that participant has requested confidentiality in respect of that information.