

AER's Consumer Challenge Panel: description, Charter and evaluation criteria

Introduction

The Australian Energy Regulator (AER) is establishing a Consumer Challenge Panel (CCP) as part of our Better Regulation reform program to ensure our decisions properly incorporate consumers' interests. The establishment of the CCP is a key component of the Council of Australian Governments' energy reform agenda agreed on 7 December 2012.

The CCP is a panel of experts—each appointed in their individual capacity—to advise us, and inform and improve our regulatory determination decisions. We will appoint a pool of members to the CCP by 1 July 2013 for an initial period of three years, to 30 June 2016. The AER and CCP members will agree which CCP members are to provide advice in each regulatory determination process. This will take into account CCP members' expertise, availability, and any potential conflicts of interest.

Background

Consumer engagement in energy network regulatory processes in Australia has been considered limited to date for a number of key reasons. The highly technical and complex nature of the regulatory framework makes it very difficult for consumers and their representatives to actively engage in, and contribute to, the process. In particular, consumer representative organisations—typically relied upon to input into regulatory processes—have limited resources to do so.

These limitations may have lead to an imbalance in the range of views reflected in regulatory determinations. Similar conclusions have been drawn in several reports, including the Productivity Commission's Electricity Network Regulatory Frameworks report.

We are implementing a range of mechanisms to enhance consumer engagement in our decision-making processes, so consumers' interests are more explicitly considered. We expect greater confidence in the outcomes of energy network regulatory determinations as a result of more effective consumer engagement.

These mechanisms are being implemented as part of our Better Regulation reform program that commenced in December 2012. The key objective of the Program is to deliver an improved regulatory framework focused on the long term interests of consumers. We are seeking to enhance consumer engagement in our processes and improve our decision making under the new rules for network regulation finalised by the AEMC in November 2012.

The CCP is one of the key mechanisms we are implementing. Members of the CCP will have the distinct role of engaging with the network businesses' proposals and advising us through the regulatory determination process, ensuring our decisions reflect the long term interests of consumers. This mechanism will assist the AER to understand consumer views (particularly those of residential and small business consumers) so they are reflected in, and properly considered, as part of network businesses' regulatory proposals and the regulatory determination process.

The CCP complements wider initiatives aimed at empowering consumers, such as the proposal under consideration to establish a national consumer energy advocacy body. We expect members of the CCP will meet with other consumer representatives and stakeholder groups (including our Customer Consultative Group (CCG) and any national energy consumer advocacy body established) to understand jurisdictional issues and to provide an effective consumer focus.

We will also undertake a range of engagement activities with these other consumer representatives to clearly explain regulatory processes and to facilitate discussion about jurisdictional specific issues. These other representatives will be able to input individually or collectively into our regulatory determination processes and will be an important part of external communication with consumers in that jurisdiction.

Consumer challenge groups have been developed and used successfully by regulators in Great Britain, including Ofgem, the energy regulator, and Ofwat, the water regulator for England and Wales. These challenge groups were also developed to enable the regulators to get consumer input into some of these more complex and technical issues.

Our approach to the CCP has been informed by the experience of regulators in Great Britain and adapted to reflect the Australian context and regulatory framework. A paper summarising the experience of consumer challenge in Great Britain and its potential role for energy network regulation in Australia is available on our website: <http://www.aer.gov.au/about-us/consumer-challenge-panel>.

AER's Consumer Challenge Panel Charter

Objective of the Consumer Challenge Panel

The objective of the CCP is to assist the AER make better regulatory determinations by CCP members advising us on issues that are important to consumers.

Roles of Consumer Challenge Panel members

The roles of CCP members include:

- advising the AER on whether the network businesses' proposals are justified in terms of the services to be delivered to customers; whether those services

are acceptable to, and valued by, customers; and whether the network businesses' proposals are in the long term interests of consumers; and

- advising the AER on the effectiveness of network businesses' engagement activities with their customers and how this engagement has informed, and been reflected in, the development of their proposals.

In performing these roles, some examples of the services CCP members may provide include:

- considering materials provided to the AER throughout regulatory determination processes, including network businesses' proposals, stakeholder submissions as well as materials prepared by the AER (including confidential information);
- meeting with network service providers to discuss their proposals (including services to be delivered, potential changes in price, customer engagement activities) and issues raised by consumer representatives and relevant stakeholder groups;
- meeting with consumer representatives, including the AER's CCG, any national energy consumer advocacy body established and other relevant stakeholder groups, to ensure that CCP members can provide an effective consumer perspective to the AER's decision making. Members of the CCP could seek views on:
 - key consumer issues that should be considered as part of the regulatory determination and the network businesses' customer engagement activities; and
 - whether the price and services the network business proposes to deliver for its customers are acceptable and valued, and whether the network businesses' proposals are in the long term interests of consumers;
- meeting with AER staff and Board members as they consider network businesses' proposals to provide consumer views and feedback on the AER's emerging thinking which may include written advice and reports when requested;
- providing views to the AER on issues identified that could apply to, and inform, other regulatory determinations, including feedback to improve AER and CCP processes during regulatory determinations.

Whilst not obliged to act on the views expressed by CCP members, we will give due weight and consideration to the advice provided. We will provide a clear rationale for our decisions and will provide feedback to CCP members as to how their views have been considered and addressed.

Members of the CCP will use their expertise and consumer perspectives to challenge how we approach issues; to identify any gaps in our consideration and analysis; and ensure that we have a focus on matters that are important to consumers in each of the regulatory determinations we make. We do not expect CCP members to engage on all aspects of a regulatory determination. CCP members will be able to prioritise and select the matters and issues in each determination that they consider important. We will also identify issues for CCP members' consideration, particularly where we are seeking consumer perspectives.

As well as providing advice to the AER on regulatory determinations, CCP members may be requested to provide advice on consumer perspectives to other bodies (such as the Australian Energy Market Commission, Standing Council on Energy and Resources or advocacy bodies) to inform other processes.

Expertise of Consumer Challenge Panel members

CCP members will be appointed in their capacity as individual experts and not as representatives of an organisation. As such, CCP members will not be permitted to nominate alternative representatives or nominees to attend meetings on their behalf. As CCP members are appointed in an individual capacity, we expect CCP members to provide their individual views and advice, rather than an organisational line.

CCP members will provide enhanced consumer input into some of the more complex, technical issues that are considered during network regulatory determinations. A key part of their role in each regulatory determination they are advising on is to challenge our thinking, consideration and assessment of issues, as well as assisting us to challenge network businesses' proposals.

The views of CCP members will also be helpful in assessing how well network businesses have engaged with their customers in developing their proposals. In each determination process they advise on, we expect CCP members to provide their views on whether the proposed network expenditure is justified in terms of outcomes for customers and on whether our overall decision is in the long term interests of consumers.

To perform their roles, CCP members must have some energy or regulatory experience or expertise (or experience/expertise from a similar regulated utility sector), and an ability to bring a strong consumer perspective.

We will look to appoint members to the CCP that represent a breadth and balance of expertise and experience (including across a range of jurisdictions, consumer groups and fields).

Payment for Consumer Challenge Panel members' services

CCP members will be paid for their services at a daily rate of \$1200.00 (GST inclusive).

CCP members will be paid at the same daily rate for their time spent preparing for CCP meetings. This will include time spent reading and analysing any materials provided including network businesses' proposals; writing advice, presentations and reports for the AER; and other preparatory activities. We will decide the amount of preparation time required in advance of the meeting and this will usually depend on the amount of reading or work CCP members were expected to have completed before the meeting.

AER staff will provide secretariat support for CCP members.

Consumer Challenge Panel member meetings

CCP meetings will typically run for a full day (from 10.00am to 4.00pm) however this may depend on the nature of the meeting. We expect these meetings will be held in person or via video-conferencing facilities from ACCC offices in Australian capital cities. CCP members may be required to travel to meetings. AER staff will approve and arrange any travel required.

We will ensure there is sufficient flexibility in these meetings to allow scope for CCP members themselves to shape their input into our processes once appointed to the CCP. When appointed to the CCP, members and the AER will agree a work program for the term of their three year appointment. This will consider forthcoming regulatory determinations and agreement as to those CCP members who will advise on each determination, given their expertise, availability and potential conflicts of interest.

At the commencement of each regulatory determination, we will agree a meeting schedule with the CCP members providing advice to ensure that their input is effectively planned and CCP members are aware of the required time commitment, having considered their availability. This will also ensure that we are able to effectively manage CCP members' input (including meeting and preparation days) for each regulatory determination.

Initial CCP member establishment meetings

Once appointed in July, CCP members will have initial meetings with the AER to agree on:

- their work program over the three year term and how they will work together;

- how CCP members want to structure and schedule their meetings, including how those CCP members advising on determination processes will feedback to other CCP members;
- how CCP members will provide input into our processes, including outside of a regulatory determination process with the wider pool of CCP members.

These initial meeting will also allow us to provide training and information to CCP members to ensure they understand issues and requirements regarding confidentiality, identifying and managing conflicts of interest, and the regulatory determination process.

During these initial establishment meetings, the AER and CCP members will agree on more detailed 'principles of engagement' that would set out how CCP members and the AER will interact; CCP members' outputs and how CCP members' contributions will be assessed. This will provide CCP members with opportunity to shape their input into our processes once appointed to the CCP.

Outline of typical CCP member meetings during a regulatory determination

We have provided an indicative process below to inform CCP members of the likely input and time commitment required, if requested to advise on a regulatory determination.

During a regulatory determination process, the estimated workload and likely schedule of meetings for the relevant CCP members providing advice may include:

- An introductory session—to ensure CCP members have an adequate understanding of the regulatory determination process; the relevant network service providers; any particular jurisdictional circumstances (where applicable) and potential key issues;
- At least two meetings with each network service provider—one prior to submitting their regulatory proposal and another prior to submitting their revised regulatory proposal. We consider there are benefits to CCP members meeting with network service providers early in the process, whilst they are still developing their proposals. This allows more time for network businesses to respond to any issues raised by the CCP;
- 2-3 meetings with the AER Board—in particular prior to the publication of key documents, such as Framework and Approach Papers; Draft Decisions and Final Determinations. This allows CCP members opportunities to present their views and advice to the AER. It also provides the AER with opportunities to consider the views and consumer perspectives of CCP members as part of its decision making processes. The AER Board can consider CCP members' views on whether network businesses' proposals are justified in terms of outcomes for customers and whether our overall decision is in the long term interests of consumers;

- 6-8 meetings with AER staff—these would be scheduled at key points in the process so that staff can use CCP members as a ‘critical friend’, providing challenge to staff’s emerging thinking as part of formulating positions before these are considered by the AER Board. This will help identify key issues so they are not missed and allow consumers’ perspectives to be considered throughout the process;
- Around two meetings with consumer representatives and relevant stakeholder groups, including our CCG and any national energy consumer advocacy body established. This could take place around the same time CCP members meet with network service providers. This will allow the CCP to hear what issues are of concern to consumers in the regulatory determination and to consider these when meeting with network businesses, AER staff and Board. CCP members may also use these meetings to highlight key issues to consumer representatives.

It is likely that the involvement of CCP members, and their meetings, will change both over time (as we learn from CCP members’ involvement in early determinations) and depending on the determination itself (for example CCP members may be less involved in transmission determinations when compared to distribution determinations).

Review, assessment and evaluation of the Consumer Challenge Panel’s operation

We will develop an evaluation process to seek to measure the performance and impact of CCP members in improving our decision making on regulatory determinations. This will be developed in conjunction with CCP members.

An independent review of the CCP will also be undertaken, after it has been in operation for two years (prior to the expiry of CCP members initial three year term), to assess the contributions made by CCP members and how effectively they are performing their roles.

Consumer Challenge Panel members’ role in providing advice to other bodies

As well as providing advice to the AER on regulatory determinations, members of the CCP may be requested to provide advice on consumer perspectives to other bodies (such as the Australian Energy Market Commission, Standing Council on Energy and Resources or advocacy bodies) to inform other processes.

We will have resources to fund some CCP member advice to these other bodies. Additional time in excess of this could be separately contracted and funded by the relevant agency.

The AER will administer this process in consultation with CCP members and the organisation seeking the advice.

Consumer Challenge Panel member correspondence

All correspondence and other documentation relating to or arising from the CCP and its members should be directed to the CCP Secretariat. In particular, the CCP Secretariat will issue and receive all correspondence regarding CCP meetings, travel, or other allowances, invoices, or CCP projects.

CCP members will liaise with the CCP Secretariat and provide such information as we may reasonably require.

CCP members will keep records of their meetings to assist in advising the AER. CCP members, in consultation with the AER, could provide statements about their work to external parties.

Consumer Challenge Panel member appointment process

The AER is calling for expressions of interest for suitable CCP members. Prospective candidates are asked to consider the description of the CCP, its Charter and to submit an application outlining their suitability, expertise and claims against the selection criteria in respect of the role of being a CCP member. Applications will be assessed by an Evaluation Committee and candidates may be short-listed for an interview. A selection process will be used to assess applications against the evaluation criteria (outlined below). Appointments to the CCP will be decided by the AER Board.

We are managing the Expressions of Interest (EOI) process for appointing CCP members via the Australian Government Tender System, AusTender (www.tenders.gov.au). The EOI will be listed for 25 days and is considered an open approach to market. We will use an external probity advisor for this appointment process. This approach ensures the process is open, transparent, accountable and rigorous.

Evaluation criteria for assessing Consumer Challenge Panel member applications

The overall evaluation criteria will be to select those Applicants who represent best 'value for money' for the Commonwealth. 'Value for money' will be assessed using the following evaluation criteria:

- The extent to which the Applicant is assessed as being able to perform the role of CCP member. This will include an assessment of their background,

experience, expertise, and statements against the following evaluation criteria in respect of the role of a CCP member:

- Knowledge and understanding of the role, functions and operation of the AER particularly regarding network regulatory determinations and the issues affecting consumers relevant to these decisions
- Experience and expertise in one of the following (or related) areas:
 - Energy industry, particularly regarding network regulation and regulated network businesses (or experience/expertise from a similar regulated utility sector)
 - Regulatory experience and expertise, including academics or from other regulated sectors
 - Economics, Finance, Accounting
 - Engineering
 - Consumer advocacy and representing the interests of consumers
- Ability to critically analyse and assess material provided by the AER and bring a strong consumer perspective to provide robust challenge to the AER and energy network businesses.
- Effective links (or capacity to build links) to consumer representatives which would allow the member to consult with relevant consumer organisations and provide feedback to the AER on issues of concern regarding regulatory determinations and AER Guidelines; and to assist with capacity building within those consumer organisations.
- The extent to which the Applicant is assessed as having the resource capacity and availability to fulfil the proposed contract obligations and the likelihood of any conflict of interest being managed appropriately and effectively (including statements against the following evaluation criteria):
 - Freedom from conflicts of interest, or the ability to identify, report and appropriately manage any perceived or actual conflicts of interest.
- The Applicant's overall degree of compliance with the EOI and draft deed of standing offer and draft contract, including the assessed risk to negotiation of contracts. (Applicants are required to declare any non-compliance as part of their application, see Part Three, Attachment B: Response form – Declarations).