

Review of the Consumer Challenge Panel

Australian Energy Regulator

Independent Report

6 April 2016



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Contents

Executive Summary	1
About the Review	1
Conclusions	2
Findings	5
Key recommendation.....	7
Recommendations.....	8
2 Background	9
2.1 The regulatory framework in which the AER operates.....	9
2.1.1 The context of the CCP	9
2.2 Background to the Consumer Challenge Panel.....	11
2.2.1 Rationale for the Consumer Challenge Panel.....	11
2.2.2 Objective and role of the CCP.....	11
2.2.3 Appointment of CCP members	12
3 Approach to the Review	13
3.1 The Review was focused by agreed lines of enquiry	13
3.1.1 The review canvassed a broad range of stakeholder views	14
3.2 Structure of the report.....	14
4 The objective and roles of the CCP program are supported	15
4.1 The objective of the CCP is agreed and supported	15
4.1.1 There is universal agreement that an independent consumer perspective is valuable	15
4.1.2 The objective of the CCP is appropriate for the current context	17
4.1.3 The current governance arrangements are not limiting the achievement of the CCP objectives.....	17
4.1.4 The impact of the CCP’s advice on the decision making process of the AER is not easily measured	18
4.2 The CCP needs to be a cooperative, collaborative, ‘critical friend’ to the AER	19
4.2.1 The CCP role is to be an independent and neutral critical friend – but not all CCP members agree.....	19
4.2.2 No definition of ‘critical friend’ is yet agreed, however common features have emerged.....	20
Recommendations.....	21
5 The way in which the CCP program currently operates can be more efficient	22

5.1	The CCP panel and sub-panel structure is appropriate to meet the objectives of the CCP .	22
5.2	The efficiency of the CCP can be improved with simple administrative changes.....	23
5.2.1	Better aligning the skills, expertise and personal attributes of the sub-panels will improve efficiency	23
5.2.2	Developing and sharing intellectual property across the whole CCP will improve efficiency.....	25
5.3	Increased collaboration will enhance the value of the advice provided by the CCP	26
5.3.1	The ‘Framework for Advice’ for the CCP needs to be more specific.....	26
5.3.2	The CCP and AER need to engage earlier in the reset process to confirm issues of interest and concern to consumers and how they will be addressed.....	27
5.3.3	There would be benefit in establishing ongoing informal communication and feedback between the AER and CCP sub-panels during the process	28
	Recommendations.....	30
6	Improving the CCP’s advice and engagement with business and consumers can add additional value.....	31
6.1	The CCP’s expert advice is valued but must be appropriately targeted	31
6.1.1	The CCP must focus on providing advice rather than duplicating the function of the AER.....	31
6.1.2	There is agreement that the CCP provides valuable expert advice on consumer engagement approaches.....	32
6.2	The CCP’s engagement with business and consumer stakeholders can be more effective .	33
6.2.1	The CCP’s approach to engagement with network businesses is not consistent....	33
6.2.2	Consumer groups would benefit from more frequent and focused engagement with CCP members	34
6.2.3	Perceptions of bias and conflicts of interest were of some concern to stakeholders	34
	Recommendations.....	36
	Appendix A – Interview Participants	37
	Appendix B – Workshop Participants	38

Executive Summary

Australia's energy markets operate under a set of rules and regulations that have a clear objective – to meet the long term interests of consumers¹. Better energy regulation, better investment decisions and better consumer engagement drive a more efficient energy sector.

The Australian Energy Regulator (AER) is Australia's national energy market regulator. As part of its Better Regulation Reform package the AER recognised the important underpinning to its regulatory approach of a strong consumer engagement framework².

As part of this framework the AER established a Consumer Challenge Panel (CCP) in 2013. In doing so it considered the model used by Ofgem in Great Britain for network price controls and the approach introduced by Ofwat for water price control setting processes in England and Wales³.

This report outlines the findings of an independent review of the Consumer Challenge Panel (CCP) program.

About the Review

Nous Group was commissioned by the AER to conduct an independent review of the Consumer Challenge Panel. The Review examined:

- to what extent the current Consumer Challenge Panel program has achieved its objectives
- the efficiency of the Consumer Challenge Panel program and its processes
- the effectiveness of the Consumer Challenge Panel's advice and engagement approach.

The Review identified the key strengths in the current approach and the opportunities to improve the Consumer Challenge Panel program.

The Review drew on a number of sources including 89 survey responses, 37 interview and workshop participants' views, as well as background research.

The Review was conducted on the assumption that there is a need for strong consumer engagement to continue as part of the regulatory decision making framework.

There was strong support for the Review being conducted. It was considered to be timely given:

- 8 sub-panels formed since the commencement of the CCP in 2013
- the AER has conducted 22 price determination reviews and commenced a further 6 since that date
- the business and regulatory landscape that the CCP program operates in has continued to evolve.

¹ COAG Energy Council, <http://www.scer.gov.au/council-priorities/empowering-consumers>

² *Overview of the Better Regulation reform package*, Australian Energy Regulator, April 2014.

³ *The potential role of Consumer Challenge in energy network regulation in Australia: a think piece for the Australian Energy Regulator*, Dr Gill Owen, 13 March 2013.

Conclusions

The objectives of the CCP are clear and still relevant

The CCP program was established to provide an independent consumer perspective to the AER in its regulatory decision making processes. Its specific objective is to assist the AER to make better regulatory determinations by advising on issues that are important to consumers. The Review found there is strong support for the CCP program, its objective and its roles. All stakeholders recognise the benefit of having independent and expert advice that focuses on the interests of consumers in the network determination process. Further, the objective and roles of the CCP continue to be relevant in the current context.

Several areas of concern need to be addressed:

- There is broad agreement that the CCP should function as a ‘critical friend’ to the AER and provide it with neutral advice that provides insights into issues that affect consumers. However the role of ‘critical friend’ is not clearly defined.
- There is a lack of clarity as to the scope and appropriate limitations on the role of the CCP. The different interpretations of their role adopted by individual CCP members leads to inconsistent approaches and outputs.
- Despite a key part of the CCP’s objective being to provide advice and input to the AER, the influence of the CCP’s advice in the AER’s decision making process cannot be easily assessed. Most stakeholders (including the AER) felt that the CCP’s advice had only some influence on the AER’s decision making.

The CCP program must be made more efficient. Substantial efficiency gains could be made through minor changes to how the program operates

The Review found that the approach to the structure of the work of the CCP, using sub-panels to provide advice on specific resets, was an efficient way to structure and organise the contribution of the CCP members. However, more consideration of the alignment of panel members’ skill, expertise and personal attributes would increase the efficiency of the sub-panels and the value they add to the AER’s decision making.

All stakeholders consulted in the Review identified opportunities for improvement that will strengthen the CCP program. Several themes emerged that need to be addressed:

- The range of skills and capabilities of CCP members should be maintained and in some cases enhanced. In particular, technical, industry and consumer engagement skills should be sought out in appointing new CCP members.
- Greater collaboration needs to be promoted both among CCP members and between the CCP and the AER.
- Standard templates for CCP advice and a precedent library should be developed as these would result in considerable efficiency gains. They would also help to ensure CCP members are aware of previous considerations of similar issues – allowing for greater consistency and avoiding duplicated effort.

The effectiveness of the CCP could be improved through increasing the relevance of its advice to the decision making processes of the AER

Stakeholders are unclear on the extent to which the CCP has achieved its overall objective of assisting the AER to make better regulatory determinations by advising on issues that are important to consumers.

The CCP provides both formal and informal advice to the AER as part of the AER's regulatory decision making processes. The Review found that the advice would be more valuable to the AER and more useful and informative for business and consumer stakeholders if it were more focused and addressed specific areas of concern to consumers. The CCP provides the most valuable input to the AER where it identifies specific areas of concern to consumers arising from the proposal under consideration and provides insights into these issues.

Another key improvement could be delivered by having the CCP and AER agree in advance, the focus of the advice the CCP could best provide in respect of each review. The nature and scope of the issues that could usefully be addressed by CCP members should be agreed between the CCP and the AER early in the process. These agreed areas should then be tested through ongoing feedback and engagement during the review process. This would help both parties to better understand each other as well as ensuring that the effort of the CCP was applied where it could add the most value and provide new insights and consumer perspectives.

The engagement and collaboration approach taken by the CCP is inconsistent and not always constructive

The timing and quality of engagement and of advice reports does not enable the best use of the advice by the AER, network businesses and consumer representatives. The Review found that increased collaboration and clarity of expectations will enhance the value of the advice provided and increase the efficiency of the CCP and the AER. Network businesses have benefited from early engagement with the CCP on their approach to consumer engagement. Similarly the AER has benefited from the advice generated from this early engagement. This area of reform can yield significant benefits for all stakeholders.

Further, some stakeholders perceive the CCP to be biased, or at least unduly focused on advocating particular consumer perspectives. No evidence exists that the CCP is in fact biased or that it only advances particular opinions in respect of certain issues. However, steps should be taken to manage perceptions and ensure that the impact of the CCP and its advice is not diminished by suggestions that it is biased.

Figure 1: Summary of Nous' Report

Conclusions	Findings	Recommendations
<p>To what extent does the current CCP program achieve the objectives it was intended to deliver?</p> <p>The objectives of the CCP program are clear and still relevant.</p>	<p>The objectives of the CCP program are well understood and supported</p> <p>The objectives of the CCP continue to be relevant in the current context</p> <p>The current governance arrangements for the CCP are not limiting the achievement of its objectives</p> <p>There are mixed views about the extent to which the CCP's advice influences the AER's decisions</p> <p>The approach adopted by individual CCP members to performing their role is not consistent</p> <p>The CCP role is to be an independent and neutral critical friend - but not all CCP members agree</p>	<ol style="list-style-type: none"> 1. Develop an evaluation framework to support the revised 'Framework for Advice' and CCP charter and then use this to monitor the performance of the CCP on an ongoing basis. 2. Establish a clear definition of 'critical friend' as it applies to the role of the CCP.
<p>To what extent is the CCP program efficient?</p> <p>The CCP program must be made more efficient. Substantial efficiency gains could be made through minor changes to how the program operates.</p>	<p>The CCP panel and sub-panel structure is appropriate and can be improved with simple administrative changes</p> <p>Aligning panel members' skills, expertise and personal attributes is important for each review</p> <p>CCP members agree there is benefit in developing and sharing intellectual property across the whole CCP</p> <p>Increased collaboration will enhance the value of the advice provided by the CCP</p> <p>The efficiency of the CCP can be improved with simple administrative changes</p>	<ol style="list-style-type: none"> 3. Revise and reissue the 'Framework for Advice' which governs the CCP to better manage and assist the CCP members in performing their role and delivering value to the AER. 4. Ensure the CCP can leverage an appropriate skill base. 5. Include in each sub-panel CCP members capable of conducting regulatory analysis and consumer engagement and who can work together collaboratively. 6. Resource the development and maintenance of a precedent library.
<p>To what extent is the CCP program effective?</p> <p>The effectiveness of the CCP could be improved through increasing the relevance of its advice to the decision making process of the AER.</p>	<p>The CCP and AER need to engage earlier in the reset process to confirm issues of interest and resolutions</p> <p>Ongoing informal communication and feedback between AER and CCP sub-panels should be established</p> <p>The CCP needs to focus on providing input into regulatory decisions rather than attempting to relitigate AER findings</p>	<ol style="list-style-type: none"> 7. Establish clear process maps to manage the engagement and collaboration between the AER and the CCP. 8. Ensure that the CCP focuses on the provision of input into regulatory decision making by the AER.
<p>To what extent is the CCP approach collaborative?</p> <p>The engagement and collaboration approach taken by the CCP is inconsistent and not always constructive.</p>	<p>The CCP's approach to engagement with network businesses is not consistent</p> <p>Perceptions of bias and conflict of interest were of some concern but were not considered a major issue</p>	<ol style="list-style-type: none"> 9. Ensure that the interactions of the CCP with network businesses and consumer groups provide insights to inform the decision making processes of the AER. 10. Actively manage consumer and business perceptions regarding conflicts or biases on the part of CCP members.

Findings

Table 1 summarises the findings that address the key lines of enquiry that guided the Review.

Table 1: Key Findings

Key line of inquiry	Key Findings
To what extent does the current CCP program achieve the objectives it was intended to deliver?	The objectives of the CCP program are well understood and supported
	The objectives of the CCP continue to be relevant in the current context
	The current governance arrangements for the CCP are not limiting the achievement of its objectives
	There are mixed views about the extent to which the CCP's advice influences the AER's decisions
	The approach adopted by individual CCP members to performing their role is not consistent
	The CCP role is to be an independent and neutral critical friend - but not all CCP members agree
To what extent is the CCP program efficient?	The CCP panel and sub-panel structure is appropriate and can be improved with simple administrative changes
	The efficiency of the CCP can be improved with simple administrative changes
	Aligning panel members' skills, expertise and personal attributes is important for each review
	CCP members agree there is benefit in developing and sharing intellectual property across the whole CCP
	Increased collaboration will enhance the value of the advice provided by the CCP
To what extent is the CCP program effective?	The CCP and AER need to engage earlier in the reset process to confirm issues of interest to consumers
	Ongoing informal communication and feedback between AER and CCP sub-panels should be established
	The CCP needs to focus on providing input into regulatory decisions rather than attempting to re-litigating AER findings

Key line of inquiry	Key Findings
To what extent is the CCP approach collaborative?	The CCP's approach to engagement with network businesses is not consistent Perceptions of bias and conflict of interest were of some concern but were not considered a major issue

Key recommendation

Nous' key recommendation in respect of the CCP is for the AER to revise and re-issue the "Framework for Advice" that was previously issued to govern the operations of the CCP. The reissued framework should establish the key objectives for the CCP to meet. It should also be promoted to the CCP and stakeholders and used as a tool by the AER in assessing the advice the CCP provides.

The 'Framework for Advice'⁴ should specify the following items:

- When in the reset process the CCP members will be engaged with the AER
- The nature of that engagement; for example, whether it is formal meetings, informal discussion, written advice and the issues to be addressed including issues of concern to consumers and discussion of emerging thinking
- The feedback that will be provided to the CCP about its advice and how it has been used
- When in the reset process the CCP members will be engaged with the network businesses
- The nature of that engagement including providing input on effective consumer engagement and informing network businesses on consumer issues and concerns
- When in the reset process the CCP members will be engaged with consumer representatives.

These points address each of the key concerns raised by stakeholders consulted over the course of this Review. By ensuring that these steps are addressed, a range of the most significant challenges limiting the effectiveness and efficiency of the CCP program will be removed. The specific recommendations set out below each address one or more of the findings, and provide a series of tasks and actions for the AER.

⁴ The 'Framework for Advice' is the current title of the guidance document issued by the AER. An alternative title for the proposed explanatory and guidance document could also be considered.

Recommendations

The Review has identified a number of areas for improvement in the alignment of CCP objectives and roles, the efficiency of the CCP process and the effectiveness of the CCP’s advice and engagement approach.

Table 2: Recommendations

Key line of inquiry	Recommendation
To what extent does the current CCP program achieve the objectives it was intended to deliver?	1. Develop an evaluation framework to support the revised ‘Framework for Advice’ and CCP charter and then use this to monitor the performance of the CCP on an ongoing basis.
	2. Establish a clear definition of ‘critical friend’ as it applies to the role of the CCP.
To what extent is the CCP program efficient?	3. Revise and reissue the ‘Framework for Advice’ which governs the CCP to better manage and assist the CCP members in performing their role and delivering value to the AER.
	4. Ensure the CCP can leverage an appropriate skill base.
	5. Include in each sub-panel CCP members capable of conducting regulatory analysis and consumer engagement and who can work together collaboratively.
To what extent is the CCP program effective?	6. Resource the development and maintenance of a precedent library.
	7. Establish clear process maps to manage the engagement and collaboration between the AER and the CCP.
To what extent is the CCP approach collaborative?	8. Ensure that the CCP focuses on the provision of input into regulatory decision making by the AER.
	9. Ensure that the interactions of the CCP with network businesses and consumer groups provide insights to inform the decision making processes of the AER.
	10. Actively manage consumer and business perceptions regarding conflicts or biases on the part of CCP members.

2 Background

2.1 The regulatory framework in which the AER operates

The AER is Australia's national energy market regulator. The AER's functions are set out in national energy market legislation and rules, and mostly relate to electricity and gas markets in eastern and southern Australia.

The AER's functions as set out in national energy legislation include:

- Setting the amount of revenue that network businesses can recover from customers for using networks (electricity poles and wires and gas pipelines) that transport energy
- Monitoring networks and wholesale and retail energy markets to ensure businesses comply with the legislation and rules, and taking enforcement action where necessary
- Publishing information on energy markets.

The AER works to promote efficient investment in, and efficient operation and use of, energy services in the long-term interests of consumers with respect to price, quality, safety, reliability and security of supply. It does this through setting revenues that the network businesses can recover from consumers based on its assessment of efficient costs, ensuring wholesale energy markets operate competitively, and by educating and protecting consumers.

The AER was established with an objective to implement the following goals:

- Goal 1: Delivering better network regulation
- Goal 2: Build consumer confidence in retail energy markets
- Goal 3: Supporting the efficient operation of energy markets.

2.1.1 The context of the CCP

The electricity and gas rules require network businesses to periodically submit regulatory proposals (electricity) and proposed access arrangements (gas) to the AER for approval. The AER assesses the proposals with regard to legislative criteria, taking account of issues raised in consultation. Network businesses can appeal the AER's decisions to the Australian Competition Tribunal.

To determine allowable revenue, the AER must account for the efficient costs of providing transmission or distribution services. Network businesses also need an adequate return on capital.

The AER consults extensively in making network decisions. The process includes developing a framework and approach for each electricity review then publishing an issues paper, draft decision and final decision. Gas reviews follow a similar process but there are no requirements for a framework and approach or issues paper to be undertaken. The AER also holds public forums and consults with the network businesses and other stakeholders, including consumer representatives, governments and investment groups. The Consumer Challenge Panel plays a significant role in the review process by advising on issues important to consumers.

In 2012 - 2013 the AER made the following network decisions:

- remade electricity distribution determinations for Citipower, Powercor, SP AusNet, Jemena Electricity and United Energy for 2013 – 2015
- a final decision on ElectraNet’s revenue proposal for the five year regulatory period between 2013 and 2018.

In 2013 - 14, the AER made the following network decisions:

- a final decision on SP AusNet’s revenue proposal for the three-year regulatory period beginning 1 April 2014
- a determination for AEMO in its role as a provider of transmission services in Victoria
- a transitional determination for New South Wales electricity transmission and distribution network businesses TransGrid, Ausgrid, Endeavour Energy and Essential Energy for the 2014 – 2015 regulatory period
- a transitional determination for ActewAGL for the 2014 – 2015 regulatory period
- a transitional determination for Transend for the 2014 – 2015 regulatory period.

In 2014 - 15 the AER made the following network decisions:

- final distribution determinations for the New South Wales electricity distribution networks (Ausgrid, Endeavour Energy and Essential Energy) for the four-year regulatory period beginning 1 July 2015
- a final transmission determination for TransGrid (the New South Wales electricity transmission network) for the three-year regulatory period beginning 1 July 2015
- a final transmission determination for TasNetworks (the Tasmania electricity transmission network) for the four-year regulatory period beginning 1 July 2015
- a final transmission determination for the Directlink interconnector (Queensland and New South Wales) for the five-year regulatory period beginning 1 July 2015
- a final distribution determination for ActewAGL (the Australian Capital Territory (ACT) electricity distribution network) for the four-year regulatory period beginning 1 July 2015
- a final access arrangement decision for Jemena (the New South Wales gas distribution network) for the five-year access arrangement period beginning 1 July 2015
- preliminary distribution determinations for the Queensland electricity distribution networks (Energex and Ergon Energy) for the five-year regulatory period beginning 1 July 2015
- a preliminary distribution determination for SA Power Networks (the South Australian electricity distribution network) for the five-year regulatory period beginning 1 July 2015.

The AER began the following decisions in 2014 - 15:

- for the five Victorian electricity distribution networks (AusNet Services, Jemena, CitiPower, Powercor and United Energy) for the five-year regulatory period beginning 1 January 2016
- for ActewAGL (the gas distribution network in the ACT) for the five-year access arrangement period beginning 1 July 2016.

2.2 Background to the Consumer Challenge Panel

2.2.1 Rationale for the Consumer Challenge Panel

As part of its Better Regulation Reform package the AER recognised the important underpinning to their regulatory approach of a strong consumer engagement framework⁵.

As part of this framework the AER established a Consumer Challenge Panel in 2013. In doing so it considered the model used by Ofgem in Great Britain for network price controls and the approach introduced by Ofwat for water price control setting processes in England and Wales⁶.

In establishing the Consumer Challenge Panel the AER recognised that consumer engagement in energy network regulatory processes in Australia had been limited. The highly technical and complex nature of the regulatory framework makes it difficult for consumers and their representatives to actively engage in, and contribute to, the process. Consumer representative organisations have limited resources to do so.

This led to an imbalance in the views reflected in regulatory determinations.

Several benefits were expected to result from the introduction of a Consumer Challenge Panel including:

- Enhancing regulatory decision making and building public confidence in the regulator's decisions
- Building the capability and responsiveness of network businesses in their consumer engagement activities which could ultimately reduce the need for intervention in the market or at least decrease the adversarial nature of regulatory processes
- Potentially bringing new and innovative ideas to the regulatory process, to consumer engagement approaches, and to the approach of network businesses to pricing and services.⁷

2.2.2 Objective and role of the CCP

The objective of the CCP is to assist the AER make better regulatory determinations by CCP members advising on issues that are important to consumers.⁸

Specifically the role of CCP members is to:

- Advise 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
- Advise 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.⁹

⁵ *Overview of the Better Regulation reform package*, Australian Energy Regulator, April 2014.

⁶ *The potential role of Consumer Challenge in energy network regulation in Australia: a think piece for the Australian Energy Regulator*, Dr Gill Owen, 13 March 2013.

⁷ *The potential role of Consumer Challenge in energy network regulation in Australia: a think piece for the Australian Energy Regulator*, Dr Gill Owen, 13 March 2013.

⁸ AER's Consumer Challenge Panel: description, Charter and evaluation criteria.

⁹ Consumer Challenge Panel, Framework for Advice, accessed at:
<https://www.aer.gov.au/system/files/Consumer%20Challenge%20Panel%20-%20Framework%20for%20advice%20-%2026%20June%202014.PDF>.

2.2.3 Appointment of CCP members

The AER called for expressions of interest for suitable CCP members. The suitability criteria included experience and expertise in one of the following areas:

- energy industry, particularly regarding network regulation and regulated network businesses
- regulatory experience and expertise
- economics, finance, accounting
- engineering
- consumer advocacy and representing the interests of consumers.

Other factors considered included skills in critical analysis, effective links to consumer representatives, whether there were likely to be conflicts of interest (and if so, whether they could be managed effectively).

The AER appointed 13 members to the Consumer Challenge Panel in 2013. There are currently 9 members of the Consumer Challenge Panel.

3 Approach to the Review

The AER committed to conducting a review of the CCP within its first three years of operating. The Review is aimed at answering the overarching question of whether the CCP has achieved the overall objective of assisting the AER to make better regulatory determinations.

3.1 The Review was focused by agreed lines of enquiry

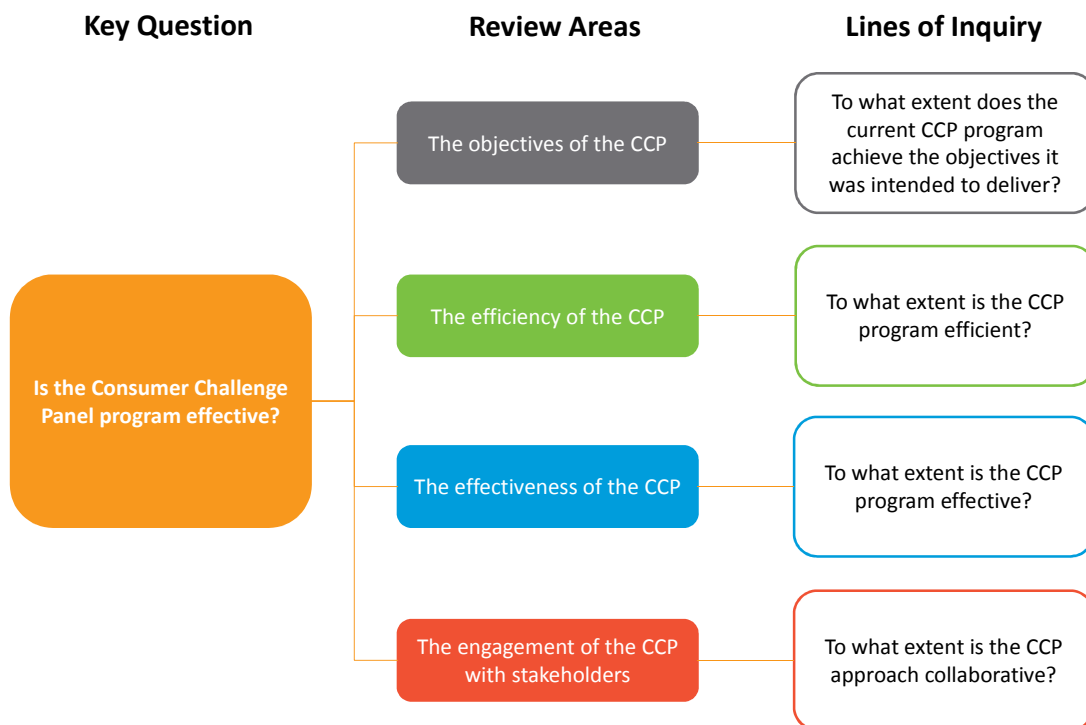
Nous developed agreed evaluation questions to guide the Review.

The lines of enquiry included assessment of:

- Achievement of the overarching objective of the CCP defined in its enabling documents
- The efficiency¹⁰ of the CCP program
- The effectiveness¹¹ of the CCP program
- The approach to collaboration and engagement

The lines of enquiry used to guide the Review, and the process used to develop them, are illustrated in Figure 2.

Figure 2: Key lines of inquiry



¹⁰ This review has considered the efficiency of the operations of the CCP program. This includes approach to providing advice and to engaging with internal and external stakeholders.

¹¹ This review has considered the effectiveness of the operations of the CCP program in terms of the influence that it has had on the decision making processes of the AER. This includes the production and provision of accurate, relevant, advice to the AER.

3.1.1 The review canvassed a broad range of stakeholder views

Nous conducted consultations with a broad range of stakeholders including the AER, CCP members, network businesses and consumer representatives.

There were three main channels for stakeholders to contribute to the Review:

- stakeholder consultation survey
- targeted interviews
- consultation workshops.

Each of these channels is described in turn below.

Stakeholder consultation survey

The Review commenced with the development of a separate comprehensive survey for specific stakeholder groups so that each of the AER, network businesses, consumer representatives, current and past CCP members received a survey specific to their engagement in the AER network determination process. The survey was sent to 489 individuals and 89 surveys were returned.

Targeted interviews

Nous conducted a series of individual interviews with stakeholders identified by the AER. The purpose of these interviews was to obtain an in depth stakeholder perspectives on the four key lines of enquiry. Nous conducted 19 individual interviews with current and past CCP members and with network businesses. Please see Appendix A for a full list of those consulted in targeted interviews.

Consultation workshops

Nous conducted four consultation workshops. The purpose of these workshops was to bring groups together for a shared discussion so that ideas could be developed and tested in the group. Nous conducted a workshop with the AER Board, the CCP members, AER staff and Consumer Representatives. A full list of the participants in the consultation workshops is provided at Appendix B.

3.2 Structure of the report

This Review report is structured as follows:

- Section 4 addresses the issue of the extent to which the CCP achieves its original objective. It explores the extent to which the objectives are understood and supported, whether they are still relevant in the changing context and the factors that enable or limit the achievement of the objectives. It also explores the role of the CCP and in particular its status as a 'critical friend' to the AER.
- Section 5 addresses the efficiency with which the CCP program currently operates. It includes commentary on the CCP's overall governance and administration, its approach to providing advice and the processes for collaboration between the CCP and the AER.
- Section 6 addresses the effectiveness of the CCP's engagement with business and consumers, and ways to improve the effectiveness of CCP reports and advice. It also explores the reputation of the CCP and how perceived conflicts of interest could be managed.

4 The objective and roles of the CCP program are supported

The CCP program was established to provide an independent consumer perspective to the AER in its regulatory decision making processes. Its specific objective is to assist the AER to make better regulatory determinations by advising on issues that are important to consumers.

This section of the Review report addresses the extent to which the CCP achieves its original objectives by exploring the extent to which the objectives are understood and supported, whether they are still relevant in the changing context and the factors that enable or limit the achievement of the objectives.

The Review has found there is strong support for the CCP Program. The benefit of independent and expert advice that focuses on the interests of consumers in the network determination decisions is acknowledged. There is no identified limitation with the current governance arrangements.

An area of concern that needs to be addressed is the inconsistent approach to the role adopted by individual CCP members and the scope and appropriate limitations and emphasis of the CCP member's contribution. All CCP members, and a majority of external stakeholders, agree that the role of the CCP is to act as a 'critical friend' to the AER. However, there is no consensus on the definition of the term or scope of the role that a CCP member acting as a 'critical friend' to the AER should play. This demands a greater level of specificity about expectations of CCP members.

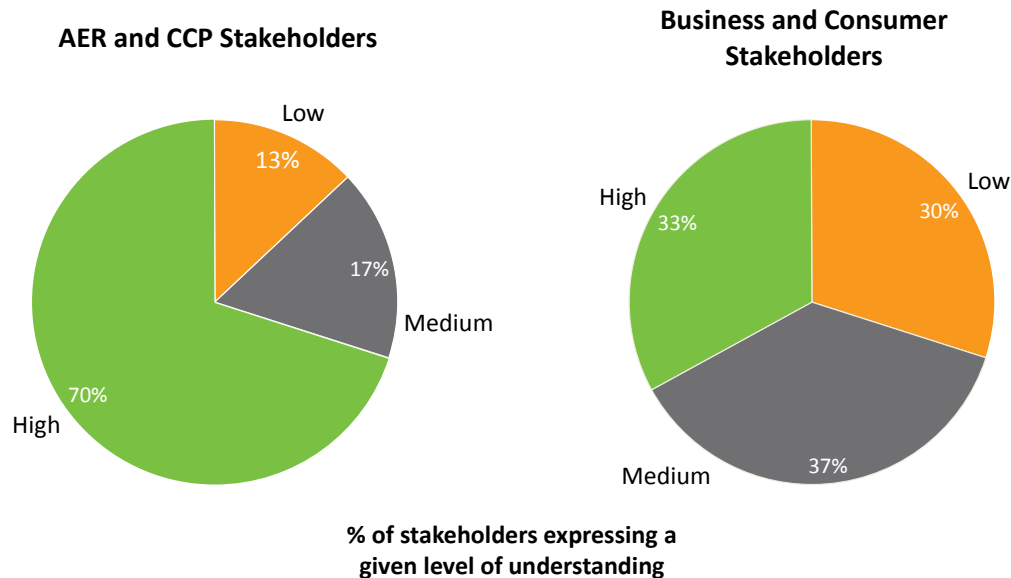
4.1 The objective of the CCP is agreed and supported

4.1.1 There is universal agreement that an independent consumer perspective is valuable

The Review found that the objectives of the CCP are well understood and supported. All stakeholder groups agree that a CCP or equivalent program for the AER to obtain specific advice on the long term interest of consumers is valuable for the regulatory decision making process. There was no suggestion that any alternative objective or additional roles should be added.

When surveyed, stakeholders demonstrated a clear understanding of the CCP's objective. Over 70% of stakeholders from the AER, the CCP, network businesses and consumer groups indicated that they had at least a substantial understanding of the CCP's objective.

Figure 3: Stakeholder understanding of the CCP's objective



Stakeholders from the AER, the CCP, network businesses and consumer groups all emphasised the importance of advice being available to the AER on consumer perspectives in their regulatory determinations. The CCP members expressed a view that the CCP program addresses a gap in the AER's existing knowledge base by providing it with a consumer perspective. The AER board and senior staff are supportive of the CCP's provision of consumer perspectives.

The Review explored whether the AER could itself provide a consumer perspective as part of balanced regulatory decision making. Only a few stakeholders suggested that the AER could replicate the functions of the CCP internally. Further, stakeholders did not agree that the functions performed by the CCP could be outsourced or provided by independent consultants who were not part of a CCP or other program as the specific appointment as a CCP member was an important signifier of expertise and provided a continuing source of advice that enabled the building of capability, skill and understanding of the AER's approach.



ECA's existence does nothing to delegitimise the CCP.

Consumer stakeholder



The review also explored Energy Consumers Australia (ECA) as a potential avenue for providing the AER with a consumer perspective. A minority of network businesses indicated that they thought the CCP should be disbanded (or incorporated into ECA) and its functions subsumed by ECA. Their arguments in support of this were based around the fact that a) ECA is a consumer focused organisation and b) it has a more significant resource and administrative base. Overall the CCP was considered to be the appropriate model for providing consumer perspectives for the following reasons:

- ECA itself indicated that it played a different role from the CCP. The ECA indicated that its focus was on understanding and promoting the interests of energy consumers on a national scale. It felt that the CCP was more suited to considering issues of concern to consumers on a determination by determination basis. It also felt that a source of input that had a close

relationship to the AER was valuable in terms of ensuring the AER received (and listened to) advice regarding the needs of consumers.

- Consumer groups and the AER itself felt that the CCP provided a more intimate form of consumer engagement than ECA and offered consumer perspectives that were more relevant to each individual regulatory determination. These stakeholders also felt that given ECA was a relatively new organisation it had not yet proven its capabilities or impact sufficiently for a decision to be made regarding whether it was a preferable alternative to the CCP.

In addition, the Review explored whether the objective and roles of the CCP should be more clearly circumscribed to provide focus for the advice provided to the AER by the CCP. There was no suggestion from stakeholders that the objective and roles should be more circumscribed and specified more narrowly on their face. However, as noted below, stakeholders indicated improvements to the process and a greater level of consistency in approach would address any identified shortcomings with the program.

4.1.2 The objective of the CCP is appropriate for the current context

The Review found that the objective and roles of the CCP continue to be relevant as the regulatory framework, network businesses' and consumers' understanding evolves.

Most stakeholders were of the view that the changing context of the market did not create any particular motivation for changing the scope of the CCP's objective and roles. Stakeholders cited the emergence of ECA and changing consumer engagement strategies among businesses as being key shifts that could influence the impact of the CCP. However, comments made by stakeholders in relation to these changes in the market focused on the need for changes in the skills and expertise of CCP members rather than on the objectives of the CCP program.

The AER and a majority of the CCP panel members considered that the objective of the CCP continues to be appropriate. Neither group indicated that the changing context of consumer engagement by network businesses reduced the utility of the CCP providing consumer perspectives. Further, the static funding of the CCP also militates against changes to the objective of the CCP. All stakeholders recognise that the funding of the CCP is unlikely to increase and that this should be reflected in maintaining its current objective.

4.1.3 The current governance arrangements are not limiting the achievement of the CCP objectives

The Review explored whether the current governance arrangements for the CCP provide it with sufficient and appropriate authority to effectively perform its role. All stakeholders agreed that the establishment of the CCP as individuals appointed to provide independent advice to the AER is adequate and appropriate and does not need to be formalised in legislation or otherwise. There were no concerns that a lack of specific formal authority limited the CCP.

CCP members do not think their role needs further legitimisation. Further, all but one CCP member agree that their role does not need to be protected or defined through legislation. Most CCP members think that the current 'status' of the CCP from an administrative and governance perspective is appropriate.

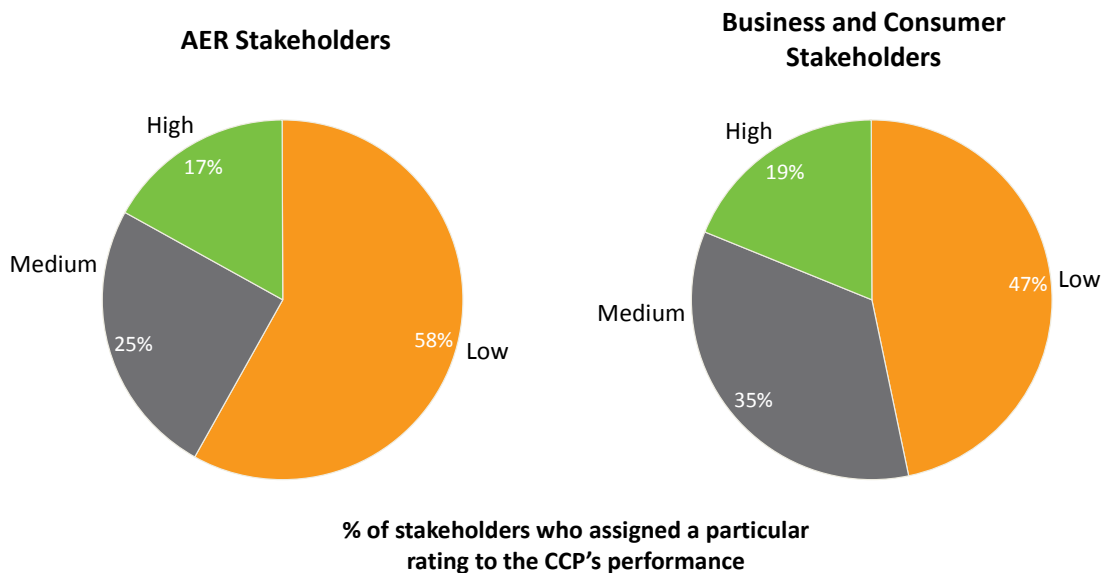
4.1.4 The impact of the CCP's advice on the decision making process of the AER is not easily measured

“ There is a feeling that the AER only refers to CCP advice when it supports their position
CCP member ”

The objective of the CCP is to assist the AER in making better regulatory determinations by providing advice on issues important to consumers. The perspective of each stakeholder group is that the CCP meets this objective when its advice on issues relevant to consumers is evidenced in the AER's decision.

The impact that the CCP has had on the decision making process of the AER is difficult to measure. Indeed, the actual impact of the CCP's advice on improving the decisions of the AER is unclear to a majority of stakeholders consulted. At the same time there is a belief that it has enhanced decision making to some extent. As set out at Figure 4 below a majority of AER stakeholders and close to a majority of business and consumer stakeholders felt that the CCP had a 'low' impact on influencing the decisions of the AER. This suggests that systems must be established to ensure that the advice provided by the CCP to the AER is relevant, that its impact is tracked, and that details on how to best influence the AER are fed back to the CCP after it produces its advice.

Figure 4: Stakeholder perceptions of the CCP's impact on influencing regulatory decisions



AER stakeholders indicated that they found it difficult to quantify the value of the advice provided by the CCP. The AER indicated that the advice of the CCP was sometimes useful in providing a new perspective or identifying an issue for further consideration. The AER expressed the opinion that the advice provided by the CCP did not substantially alter the matters or issues considered in their regulatory decision making.

Some business stakeholders expressed concern that the advice of the CCP did not appear to make an impact on AER decisions. The lack of evidence of a relationship between the engagement of the CCP and the responses of the AER to the business proposals made them question the value of the CCP input.

Many CCP members were also uncertain as to when their advice was being heeded. Some CCP members had the perception that the process driven and risk averse nature of the AER limited the impact and uptake of their advice. On the other hand the AER indicated some CCP members provide advice on matters that are outside the regulatory framework and beyond the control of the AER to directly affect. Other CCP members indicated that resource constraints on the AER limited its capacity to listen and respond to the CCP's advice.

4.2 The CCP needs to be a cooperative, collaborative, 'critical friend' to the AER

4.2.1 The CCP role is to be an independent and neutral critical friend – but not all CCP members agree

The role of the CCP is to advise on whether network businesses' proposals are in the long term interest of consumers and to assess the effectiveness of the network businesses' consumer engagement approaches. There is a clear need for the scope of the CCP's role as 'critical friend' to the AER be more clearly defined. There is also a clear desire that the neutrality of the CCP can be emphasised in contrast to some stakeholders' perceptions that it should act as a consumer advocate.

“ The role of the CCP as a 'critical friend' to us needs to be made very clear. ”

AER stakeholder

When surveyed, stakeholders indicated that they have a clear understanding of the CCP's roles. Their responses to further questions demonstrated that they were familiar with the text of the twin roles contained in the CCP's charter. There was no suggestion among stakeholders, based on surveys and extensive interviews, that any alternative 'stated' roles were considered to apply to the CCP.

However, all stakeholder groups, including the CCP members, expressed concern that the way in which the individual CCP members understand, perform or give meaning to their stated role varies widely. In part, this was seen as a consequence of the evolution of the CCP and its processes, limited guidance being provided by the AER and the expertise and interests of individual CCP members.

Stakeholders were asked whether the role of the CCP is to act as a neutral and independent "critical friend" to the AER. There was broad agreement that this was the role of the CCP. The AER, business and consumer stakeholders and some CCP members were clear that in performing a "challenge" function it was important to provide constructive expert insight as to the long term interests of consumers. This understanding of the role is distinguished from a minority perspective that the CCP is primarily representing the interests of consumers.

“ It has certainly taken a lot of our time to work out how we are supposed to be doing the job. ”

CCP member

However, there is widespread disagreement among stakeholders as to what the specific scope of the role of 'critical friend' entails. Confusion as to the scope and extent of the CCP's role is widely agreed to be detrimental to its overall effectiveness. In particular, stakeholders from network businesses

highlighted a perception that, “the CCP has responded in a very variable way” and that this has reduced the ability of the CCP to be a critical friend to the AER. Businesses also felt that the lack of agreement as to the scope of the role of the CCP among its members had enabled some CCP members to act in the role of ‘consumer advocates’. This was considered to have harmed the independence and credibility of the CCP.

CCP members acknowledge that there must be flexibility in how they perform their role. However, they are concerned that divergent approaches to the role are harming the effectiveness and value to the AER of their advice. These differences in the way in which the role is understood and undertaken were seen as significant.

CCP members and other stakeholders felt that agreeing on expectations and having a shared view of the specific deliverables with the AER is needed to address the divergence of views. CCP members expressed the view that a more consistent understanding of their role is required. Each CCP member interviewed expressed a desire that the expectations of them in their role as CCP members should be clarified and a consistent interpretation adopted. Other stakeholders considered the role and expectations should be more clearly set out for CCP members.

4.2.2 No definition of ‘critical friend’ is yet agreed, however common features have emerged

Stakeholders have not yet agreed on an appropriate definition of ‘critical friend’ to provide guidance to the CCP in performing its role. There is an acknowledgement that the views of a ‘critical friend’ to the AER can and should be presenting consumer perspectives. However, there is broad agreement that a ‘critical friend’ is not an advocate for any particular position. The neutrality of the role of a ‘critical friend’ is also emphasised, with independence being seen as a key component of any definition by most stakeholders.

Stakeholders agree that the CCP, acting as a ‘critical friend’ should seek out consumer perspectives and include these in its advice. However, it should use these perspectives as one of a range of inputs for its preparation of independent advice for the AER. This is considered important, particularly by business stakeholders, for maintaining the independence of the CCP and ensuring that its perspectives and opinions are valued.

Stakeholders have emphasised the difference, in their opinion, between a critical friend providing advice based on consumer perspectives and a consumer advocate. While the distinction may appear semantic, as the CCP is providing advice to the AER in the interest of consumers, the way in which each individual CCP member understands their role in this regard influences their approach and their focus. This distinction was clarified by members of the CCP as follows: a ‘critical friend’ reporting to the AER on the impact of their regulatory decisions on consumers would give advice that was in the ‘long term best interests’ of both consumers, as well as, of effective regulation and would focus on helping to identify “issues not currently under consideration” by the AER. A ‘consumer advocate’ acting in the same role would seek out shorter term benefits for consumers with far less consideration of their impact on the broader regulatory framework.

Recommendations

Recommendation 1: Develop an evaluation framework to support the revised ‘Framework for Advice’ and CCP charter and then use this to monitor the performance of the CCP on an ongoing basis.

The AER should develop a framework for evaluating the CCP’s input and providing it with feedback on how to improve. This framework would be based on the objectives and activities listed in the ‘Framework for Advice’ set out above.

Recommendation 2: Establish a clear definition of ‘critical friend’ as it applies to the role of the CCP.

As part of the preparation of a revised ‘Framework for Advice’, the AER should take steps to define the role of neutral ‘critical friend’ expected of the CCP. The term has been considered and defined in other sectors and in academic writing. The AER should adopt a preferred definition and then incorporate it into any descriptions of the role of the CCP.

5 The way in which the CCP program currently operates can be more efficient

This section addresses the efficiency with which the CCP program currently operates including in its overall governance and administration, its approach to providing advice and the processes for collaboration with the AER to achieve the best value from the CCP members' participation in the regulatory decision making process.

The Review found that the approach to the structure of the work of the CCP using sub-panels to provide advice on specific resets was an efficient way to structure and organise the contribution of the CCP members. However more consideration of the alignment of panel members' skill, expertise and personal attributes would also increase the efficiency of the sub-panels and the value they add to the AER's decision making.

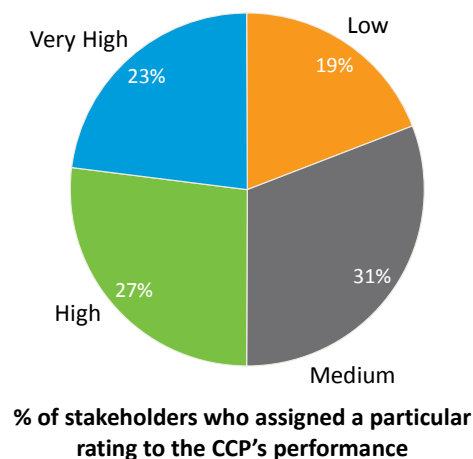
Considerable efficiency gains could be achieved by implementing some relatively simple administrative improvements including developing a standard template for CCP advice, establishing a library of intellectual property so that CCP members would be more aware of previous considerations of the same issue and there would be continuous improvement and building of knowledge for CCP members, the AER, network businesses and consumer representatives.

As noted in the previous section, the Review found that increased collaboration and clarity of expectations will enhance the value of the advice provided and increase the efficiency of the CCP and the AER.

5.1 The CCP panel and sub-panel structure is appropriate to meet the objectives of the CCP

The Review found that overall the CCP structure and its sub-panels is appropriate to achieve the objective of the CCP program and that the CCP sub-panels generally work well. The CCP, and the CCP sub-panel system, were regarded by a wide range of stakeholders as an effective approach for generating input and facilitating engagement. As evidenced by the chart in Figure 5 below, more than half of the CCP and AER stakeholders surveyed think that the CCP panel and sub-panel structure achieves a level of effectiveness they consider to be 'High' or 'Very High'.

Figure 5: Perceptions of the effectiveness of the CCP panel and sub-panel system



There was broad agreement among the CCP members that the sub-panel system worked well. The sense of 'team' fostered by working in small groups has contributed to this. CCP members feel that they are driven to deliver good work to ensure that their sub-panel teammates – in addition to other stakeholders – are not let down. The professional backgrounds and personal calibre of the individuals on the CCP is also considered by members to be an important driver of the success of the CCP. CCP members were experienced in delivering high quality work under tight time constraints in their professional lives and carried this over into their work for their sub-panel.

The AER indicated that the CCP was considered to be well equipped to collect relevant information, make stakeholders feel heard and provide insights into consumers and business.

There are currently 9 members appointed to the CCP. The Review explored the preferred size of the Panel, and options such as expanding the Panel to a wider range of experts who would work on fewer reviews and be selected to work on specific reviews where they had particular expertise. This was not a preferred model.

None of the stakeholders at the AER we consulted advocated for any substantial expansion to the size or functions of the Panel.

5.2 The efficiency of the CCP can be improved with simple administrative changes

5.2.1 Better aligning the skills, expertise and personal attributes of the sub-panels will improve efficiency

The Review found that more focus on the alignment of sub-panel members' skill, expertise and personal attributes would increase the efficiency of the sub-panels and the value they add to the AER's decision making. Three issues emerged:

- Ensuring members appointed to the Panel have the right mix of skills, expertise and personal attributes
- Assigning appropriate panel members to each review
- Alignment of views and the ability to come to an agreed position to enable a single report rather than individual reports to be produced.

The skills and experience of the CCP

The skills and experience of the CCP members is an important driver of its success. The Review found that there is general agreement that CCP members should have a mix of skills and experience.

A foundation skill that many stakeholders have indicated is essential for all CCP members is the ability to act as a neutral 'critical friend' to the AER. This is seen as important as it goes to the mindset the CCP members bring to their task. The credibility of the CCP, especially for business stakeholders, depends on the independence, expertise and harmony of the sub-panels they interact with.

The specific skills and experience noted as essential for the CCP over the course of the Review included:

- Expertise in the energy industry (and in particular experience in network businesses)
- Knowledge of legal and regulatory theory and practice (and in particular experience working for a regulator)

- Knowledge and experience in the theory and practice of contemporary consumer engagement
- Economic analysis (with a particular focus on utilities and regulatory economics)
- Financial and business analysis skills (with a focus on large utilities and the energy industry)
- Practical experience in stakeholder management across business, government and consumer sectors.

Consumer advocacy was not highlighted as an ‘essential’ skill for CCP members, even by those CCP members who were themselves consumer advocates. While they acknowledged the value of their experiences as consumer advocates in informing one or more of the skill areas outlined above, they did not consider the ‘advocacy’ component of their role to be necessary for them to contribute effectively to the CCP. Most CCP members did however highlight the value of having consumer representatives on the CCP due to their consumer focused perspectives and existing relationships with key stakeholders.

The CCP and other stakeholders raised concerns that the balance between consumer and stakeholder engagement skills and technical and analytical skills across the CCP was no longer reflective of requirements. Various stakeholders indicated that the recruitment of additional experts in the fields of stakeholder engagement, regulation and economics was needed for the CCP program to continue to be effective. The AER feels that it needs a greater balance of perspectives in the advice provided by the CCP and that careful consideration of the skills of new members added to the CCP is required.



The composition of the sub-panel for specific reviews

The Review determined an ideal composition for each sub panel. It should include at least two members who shared between them expertise across three skill categories. These categories were:

- Professional skills (that is legal, financial, economic or government skills with a focus on regulation and regulatory practice)
- Industry skills (that is, experience in a business or consulting with a focus on the energy sector or other heavily regulated utilities)
- Consumer skills (that is, experience in consumer engagement and in soliciting the views of consumers to inform regulatory decision making and business service delivery).

A sub-panel that includes each of these skills then needs to be appropriately resourced so their skills and expertise can be brought to bear. That is, the members of the sub-panel need sufficient time and resources budgeted to them to be able to apply their skills across each of the three listed categories to assessing the regulatory proposal.

This ‘ideal’ model was informed by two key points of discussion raised by stakeholders, their comments on the breadth of skills required by sub-panels, as well as the consideration of the resources required to support a sufficiently skilled sub-panel:

- **Panel composition**
A range of stakeholders viewed the structure and composition of CCP sub-panels as a key area of concern. Stakeholders identified a tension in the composition of CCP sub-panels. They felt that the sub-panels must reflect the range of expertise available in the CCP so that they can address issues to an appropriate level of detail. At the same time the sub-panels must be sufficiently aligned in thinking that they can provide a single, coherent, piece of advice for the AER. While it

may be more efficient for the sub-panel members to write separate reports it is considerably less efficient and of more limited value for the AER. All stakeholders have a preference for a single report.

- **Panel resourcing**

In addition, stakeholders felt that even an appropriately skilled sub-panel would be limited in effectiveness if it was not sufficiently resourced. The Review heard from all stakeholders that there is continuing pressure of resourcing with a number of CCP members indicating they undertook considerably more hours of work than the budget and resource plan indicated. CCP members and AER staff also indicated that the human and financial resources needed to be better allocated between the different sub-panels based on their skills, workload and the nature of the review they were conducting. There was also a feeling among some CCP members that the geography of the businesses being reviewed was not adequately considered in allocating CCP members to the sub-panel and budget for the review.

“

If I was project director for the CCP I would want to make sure that I was being proactive in determining who was doing what, or at least making sure that people take into account where time is being allocated.

”

CCP member

Effective co-operation and teamwork

Cooperation between sub-panel members was raised as a criticism of the CCP in general and certain sub-panels in particular. The style of certain CCP members, and their engagement approach, were considered to be overly dominant. This was cited by some CCP members and AER stakeholders as a factor that had substantially directed the focus and outcomes of particular sub-panels. Interpersonal conflicts were also acknowledged. Most CCP members were disappointed at this but also acknowledged conflict as part of working in a team and considered that they could be addressed by adding some new members to the Panel.

The size of the CCP and sub-panels

Most stakeholders felt that the size of the CCP was appropriate when originally constituted. However, the same stakeholders felt that a reduction in the size of the CCP over time was detrimental. A CCP with 13 members was considered to be an appropriate size to maintain the balance of skills and attributes needed. A reduction in its membership to fewer than 10 members was considered to have a significant impact on its ability to provide a sufficiently diverse mix of skills for the conduct of reviews.

Similarly, stakeholders were satisfied with the size of the sub-panels as originally constituted but were concerned when they reduced in size. A sub panel of between 3 and 5 members was considered to be adequate for the conduct of a review, however a sub-panel with fewer than three members was considered too small even for a small review.

5.2.2 Developing and sharing intellectual property across the whole CCP will improve efficiency

“

There is not enough opportunity for cross pollination or engagement between the CCP sub panels.

”

CCP member

The Review explored the issue of better IP management with stakeholders. They agreed this would be a useful improvement to the CCP program. This includes the development of precedent documents and supporting and funding opportunities for the CCP to meet as a whole and share knowledge.

A system of ‘precedent’ documents is considered to be an important gap in the CCP’s capabilities. Concerns were raised that “every report is structured differently” and that the CCP lacks a consistent style, voice and manner of expressing itself to the AER. Further, both CCP members and AER staff expressed concerns that insights which are not captured in the final reports of the sub-panels may be lost as no effective document or knowledge management systems have been established for the CCP. Finally the AER expressed concerns that the CCP will often write on the same topic multiple times. Although some instances of this can be addressed through other means (and will be discussed later in this section) other instances appear to be the result of members of one sub-panel being unaware of the positions on the same issue being considered by another sub-panel.

There is no agreement on a solution for IP and document management and tracking to be instituted by the CCP. However, there is broad agreement that something should be done to address this challenge. Most CCP members are willing to accept the imposition of controls and processes on their IP as a trade-off for enabling them to become more efficient. Some CCP members expressed concerns that if the CCP ‘precedent’ documents were made public this may bind the CCP to a position. However, all of these CCP members were willing to incorporate the use of ‘template’ documents and notes prepared by their colleagues as tools in preparing their advice.

Effective sharing of knowledge is considered to be a key challenge. CCP members and individual sub-panels become expert in conducting particular types of reviews and in resolving challenges they encounter on a regular basis. This knowledge is seen as valuable by other CCP members, particularly when they encounter similar issues in their own reviews. However, there are limited avenues where the knowledge and insights gained in previous reviews can be accessed. A number of CCP members indicated that the rare meetings of the whole CCP and a general lack of resources devoted to CCP engagement reduced effectiveness and the value they provide to the AER.

The solution preferred by CCP members for addressing lack of knowledge sharing is greater opportunities for face to face collaboration. The CCP members indicated that they have derived significant benefits, and created lasting public ‘precedent’ documents, as a result of their previous face to face engagements. Limited budgets have prevented these from occurring on a regular basis. AER board members and staff acknowledged this challenge and agreed with the CCP members that further opportunities for in-person collaboration between the whole of the CCP would make the CCP more efficient and effective.

5.3 Increased collaboration will enhance the value of the advice provided by the CCP

The Review found that increased collaboration and clarity of expectations will enhance the value of the advice provided and increase the efficiency of the CCP and the AER.

5.3.1 The ‘Framework for Advice’ for the CCP needs to be more specific

The ‘Framework for Advice’ developed for the Consumer Challenge Panel provides guidance to ensure that advice from CCP members to the AER is provided in an effective and timely manner, and is supported by both CCP members and the AER. The framework provides guidance on how:

- CCP members will work together

- CCP members' advice will be fed into AER reset processes, which includes how sub-panel members will engage with businesses and engage and provide advice to AER staff, the Board and AER consumer consultative groups
- CCP members will communicate with the public
- CCP members will provide advice to other bodies.

The 'Framework for Advice' sets out an example of a work schedule for the sub-panel during a reset. It describes the interaction envisaged with the network business, the AER and with the public.

It was not evident in the Review that CCP members and the AER were using this framework to help drive their approach to engagement between the CCP members and the AER. Indeed the 'Framework for Advice' was not mentioned by any participants at interview. This is unfortunate given it was developed to provide the type of guidance sought by the CCP members.

5.3.2 The CCP and AER need to engage earlier in the reset process to confirm issues of interest and concern to consumers and how they will be addressed

The AER and CCP members expressed the view that there could be considerable improvement in the way in which the AER and CCP collaborate in the reset process to maximise the benefit of the CCP's advice. This is both in terms of when and how the AER and CCP engage to identify and clarify issues, discuss concepts and ideas and share information. Both noted that different AER co-ordinators and different CCP sub-panels adopt different approaches and that the level and nature of collaboration is inconsistent. All considered a greater level of consistency would be a significant improvement.

“ It's rarely clear from the board what they think is useful and what they think isn't.
CCP member. ”

The CCP and the AER both recognise that deeper engagement represents an effective solution to this problem. The AER board and a majority of CCP members would prefer that the AER and the CCP collaborated in setting the agenda for the CCP's work. Further, AER stakeholders and all CCP members interviewed indicated that greater informal dialogue between the AER and CCP members would help to ensure CCP advice reports were more targeted and valuable.

CCP members indicated that they do not want to be given 'orders' by the AER, but do want to participate in active discussions to set the agenda and focus their activities. Where the CCP engages well with the AER, and in particular with the relevant coordination directors, they are able to give much better advice. The CCP members broadly agreed that an effective approach is for the CCP to have detailed discussions with the relevant coordination director and the AER and agree the issues that the CCP should focus on. This would provide the foundation for ongoing communication between the AER and sub-panel members. This would also contribute to improving the influence of the CCP's advice on AER decision making.

Because of the infrequent interaction between the CCP and the AER at present, the CCP lacks feedback from the AER on what the AER considers to be valuable advice. Further, infrequent communications reduce the CCP's visibility over how they influence the AER's decision making and how they can best assist the AER in the future. Finally, limited interactions between CCP members and the AER reduces the opportunity to develop respect and trust in the relationship which in turn reduces the impact and value

derived from the CCP advice to the AER. Various stakeholders have noted the value of the personal relationships that do exist between the AER and the CCP in improving the quality and relevance and the use to which the CCP's advice is put.

“ We shouldn't control them, but we should be able to guide them and assist them.

AER stakeholder ”

The AER recognises that it can take more active steps to manage its relationship with the CCP. The AER understands that the CCP views the AER's Board as its stakeholder and considers it is providing advice to the Board to assist its decision making. The AER acknowledges that it needs to take steps to ensure that the CCP appreciates the impact that its advice has on AER decision making.

Solutions which have been proposed, and which are considered to be viable, include:

- **Raise awareness of the AER's decision making process**
It is considered important that the CCP understands the decision making process of the AER. By demonstrating to the CCP that the formal and informal input that they provide to AER staff is communicated to the AER's board, the CCP would be better able to appreciate their impact and how to best assist the AER in the future.
- **Indicating where CCP advice has been relied on**
The AER has indicated that CCP advice is taken into account by the AER in forming its conclusions on a wide range of aspects of its regulatory decisions. The use to which the CCP's advice is put should be communicated to the CCP. This will assist the CCP to continue to focus only on the most valuable aspects of advice in performing subsequent reviews.

5.3.3 There would be benefit in establishing ongoing informal communication and feedback between the AER and CCP sub-panels during the process

“ I expected that there would be lots of engagement and debate, but this is not at all the case.

CCP member. ”

Ongoing communications will build stronger trust and respect

Ongoing, informal, communication between the AER and the CCP is considered by AER and CCP stakeholders to be a critical element in the AER obtaining valuable advice from the CCP. Stakeholders agree that informal engagement between the AER and the CCP has been inconsistent and that this has reduced the efficiency and effectiveness of the CCP. Ongoing informal engagement between the CCP and AER at all levels is regarded as an important solution to this challenge.

CCP members consider their process and the focus of their reports would benefit from working more closely with the AER. The CCP felt that the informal channels of influence and relationships that it has created and maintained had more impact than their formal advice. A common perception, held by many of the CCP members, was that a significant part of the value they added to the AER came as a result of their informal interactions with AER staff. The CCP members' process of engaging with the AER on an ongoing basis to obtain information and test conclusions was influential. It was also felt that these

informal relationships provided access to information and insights that strengthened the advice reports the CCP prepared.

More frequent and focused engagement and feedback will improve CCP advice

All CCP members interviewed are eager to engage with the AER more frequently. In particular they are keen to receive feedback through both formal and informal channels. Access to feedback on what the AER (and in particular the AER's Board) found valuable in their work would help them to direct their efforts in future.

The AER accepts that it needs to play more of a role in soliciting and facilitating the right input from the CCP. The AER acknowledges that more effort needs to be invested in helping the CCP to structure better, more effective, advice reports and to engage in a way that better assists the AER.

Recommendations

Recommendation 3: Revise and reissue the 'Framework for Advice' which governs the CCP to better manage and assist the CCP members in performing their role and delivering value to the AER

Nous' key recommendation in respect of the CCP is for the AER to revise and re-issue the 'Framework for Advice' that was previously issued to govern the operations of the CCP. The reissued Framework should establish clear expectations and processes for the CCP. It should also be promoted to the CCP and stakeholders by the AER and used as a tool by the AER in assessing the outputs the CCP delivers.

Recommendation 4: Ensure the CCP can leverage an appropriate skill base

The AER should ensure that the CCP can leverage a consistent set of skills in delivering its work. All CCP members must be able to act as a neutral 'critical friend' to the AER. The CCP requires a range of skills including expertise in the energy industry, a knowledge of legal and regulatory theory and practice, economic analysis, knowledge and experience in contemporary consumer engagement and practical experience in relevant sectors.

Recommendation 5: Include in each sub-panel CCP members capable of conducting regulatory analysis and consumer engagement and who can work together collaboratively

Each sub-panel needs to include the skills necessary to deliver on the objective and roles of the CCP. The sub-panel should include one member who is a technical expert (e.g. an economist) and one member who is a specialist in consumer engagement. Each sub-panel also needs to be able to work effectively in delivering the review to which it is assigned. The allocation of sub-panel members should take into account the personal attributes of the Panel members, the geography of the project and the types of issues anticipated.

Recommendation 6: Resource the development and maintenance of a precedent library

The AER should establish standards for the development of a precedent library by the CCP and resource it to deliver. Three forms of precedent are recommended: a) template documents which establish a consistent style and structure for CCP reports and presentations b) guidance materials containing 'best practice' work delivered on particular topics by the CCP; and c) opportunities to meet in person to discuss the prior experience of the CCP and establish 'positions' on the CCP's approach to particular issues or facts.

Recommendation 7: Establish clear process maps to manage the engagement and collaboration between the AER and the CCP

The barriers to the delivery of valuable advice from the CCP to the AER can best be addressed when: a) the AER and CCP collaborate to set the agenda for the issues to be explored in the review; b) agree the specific aspects of the review the CCP will advise on; c) have regular discussions during the review process; and d) debrief at the end of the review process to evaluate and identify improvement opportunities. A detailed process map is required.

6 Improving the CCP's advice and engagement with business and consumers can add additional value

The CCP provides written advice to the AER as part of the AER's regulatory decision making process. The advice is also used by network businesses to improve their consumer engagement approach and by consumer representative groups to inform their own submissions to any review process and to enhance their knowledge and understanding of the issues being considered by the AER. The Review identified that the CCP's advice is of greatest use to the AER when it identifies challenges or issues which the AER has not previously identified, brings them to the attention of the AER and proposes new or better approaches to resolving them. The Review also found that the written advice would be more valuable to the AER and more useful and informative for business and consumer stakeholders if it were simpler and more consistent.

This section addresses ways to improve the effectiveness of the CCP's advice as well as its engagement with business and consumers.

6.1 The CCP's expert advice is valued but must be appropriately targeted

The outcomes of the Review suggest that the CCP should focus on understanding issues that concern consumers and advising the AER on their impact in terms of the current review. This advice should be structured around identifying gaps in the issues and analyses being conducted by the AER and providing additional insights into new issues and approaches. However, the CCP should not duplicate any of the calculations or other technical functions of the AER. The resources of the CCP are limited and can be best applied in assisting the AER to identify gaps in its current approach or to suggest alternative approaches that the AER should take.

Stakeholders have made two key observations with regard to the CCP's written advice reports:

- The input that the CCP provides on the decision making processes of the AER, and on its conclusions, can be useful. However, the CCP should not attempt to replace or duplicate the functions of the AER.
- All stakeholders confirm the value of the CCP providing expert advice on consumer engagement practices.

6.1.1 The CCP must focus on providing advice rather than duplicating the function of the AER

“ Their advice needs to sit at a higher up and more relevant level. ”
AER stakeholder

Stakeholders, and in particular the AER, recognised the value represented in the CCP providing advice on issues where they considered that the processes and focus of the AER in making regulatory decisions

could be improved. This recognition turned on the basis that the CCP is designed to identify issues of importance to consumers and provide advice to the AER on how these should be addressed. Where the approach of the AER does not adequately consider these issues, or where an issue of relevance to consumers has a material impact on the AER's approach, it is important for them to receive that advice. Therefore, where the advice of the CCP brings these issues to the attention of the AER or helps it to develop a new approach to managing it is highly valuable.

However, business and AER stakeholders questioned some of the advice provided by the CCP on the basis that it represented 'wasted effort'. The feedback they provided did not suggest that the advice of the CCP was inaccurate from a technical perspective. Rather, it focused on the fact that the advice was not immediately relevant to the AER. Two categories of 'wasted effort' were highlighted by stakeholders from business, the AER and indeed even among the CCP.

- The first category was input from the CCP that 'repeated' calculations or analysis already performed by the AER (e.g. pricing calculations). AER staff and business stakeholders did not consider that this work was appropriate for the CCP as it was not required for the CCP to effectively perform its advice role.
- The second category was advice that recommended actions contrary to the regulatory framework. This was of particular concern to the AER as they felt these represented a 'missed opportunity' to apply the limited resources of the CCP to consider issues of concern to consumers that the AER might not have otherwise addressed.

There was broad agreement among stakeholders, outside of a minority of the CCP, that the CCP should avoid 're-litigating' issues already considered by the AER. It was felt that discontinuing these activities would free up capacity and resources among the CCP sub-panels to devote to more accurately and comprehensively identifying issues for the AER to consider and proposing effective solutions.

6.1.2 There is agreement that the CCP provides valuable expert advice on consumer engagement approaches

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The CCP provides accessible and useable information.

Consumer stakeholder

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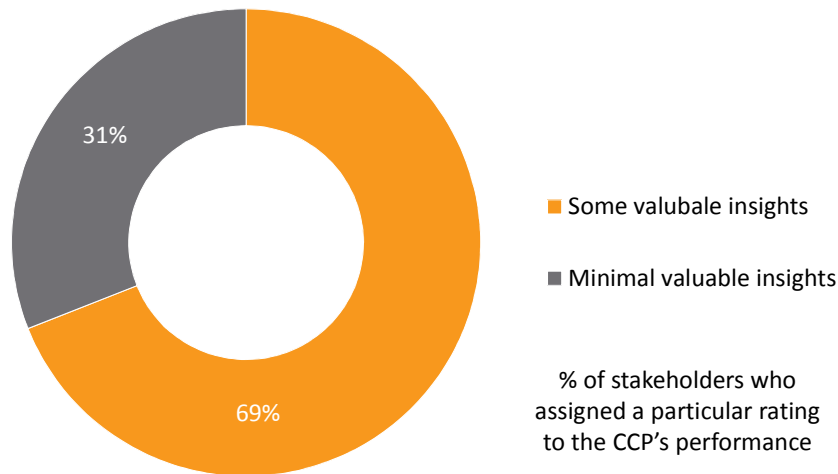
There must be an ongoing focus on consumer engagement.

CCP member, expressing widely held sentiments.

”

The AER and business stakeholders regard the advice that the CCP provides on consumer engagement approaches as highly valuable. Further, consumer stakeholders consider the CCP as an effective platform for advancing consumer perspectives. Nearly 40% of stakeholders rate the CCP as being very effective at providing consumers with a platform for expressing their opinions and having a voice in the decision making process. As demonstrated in Figure 6 overleaf, almost 70% of business and consumer stakeholders felt that the CCP's engagement with consumer stakeholders had provided the AER with at least some valuable insights regarding consumer engagement.

Figure 6: Insights from consumer engagement



Businesses feel that the CCP is trying to engage effectively and understand their perspective. Most network businesses felt that the engagement by CCP members with their business was positive, conducted in good faith and that it generated valuable information for the AER. However some of these network businesses raised concerns that the CCP had engaged with them infrequently and often at points where the work of businesses to develop their proposal either hadn't commenced or had been completed. The informal and unstructured nature of the CCP's engagement was considered by network businesses to be a significant challenge.

The AER indicated that, on balance, the CCP provided them with valuable insights into consumer preferences and appropriate approaches to consumer engagement.

6.2 The CCP's engagement with business and consumer stakeholders can be more effective

Business stakeholders considered the engagement by the CCP with businesses could be improved. In particular it would be more valuable if it were less adversarial and if it generated insights which could be included in the proposals of network businesses. Similar principles should be applied in the CCP's engagement with consumer stakeholders.

6.2.1 The CCP's approach to engagement with network businesses is not consistent

Business stakeholders expressed only a limited understanding of the function and effectiveness of the CCP and its sub-panels. They indicated that they had not known what to expect in engaging with the sub-panels of the CCP and that their experiences during those periods of engagement were inconsistent.

The perception of most CCP members was that the interactions between them and the network businesses had been mutually beneficial. There was a consensus among CCP members that their engagement had improved over time and would continue to do so into the future.

However, CCP members noted concerns about the quality of the CCP's own engagement with businesses. Most CCP members expressed concerns about the resources available to them to conduct ongoing engagement with businesses. They were concerned that their engagement had been more high level than they would have preferred. They felt that this resulted in information that was of limited impact in informing their advice and which was of limited value to the AER. In addition some CCP members have felt that their colleagues have been too aggressive in their approach to engagement. They felt this further impaired their ability to extract valuable insights from their engagement with businesses.

A majority of network businesses considered their engagement with the CCP to have been satisfactory. However, most businesses questioned the impact that their engagement with the CCP had on the final regulatory decisions made by the AER. This made the businesses question the overall value of their continued engagement with the CCP. Further, a significant minority of business raised concerns regarding the composition of the CCP sub-panels with which they engaged. In particular a lack of relevant industry experience was highlighted as a gap in the skill base of the sub-panels. In addition, the approach taken by a minority of CCP sub-panels was seen as being overly adversarial.

Some businesses also raised concerns about the degree and timeliness of engagement by the CCP. A significant number of business stakeholders raised concerns about the frequency of the CCP engagement with them over the course of the reset. In at least one case the network business indicated CCP members had only engaged with them on one occasion. Further, several network businesses noted that the CCP had engaged with them at a stage of the reset process where the value of their input was limited (e.g. just as a reset was starting before the business had any substantial insights into their consumers).

It should, however, be noted, that businesses who had engaged with the CCP on more recent resets expressed consistently more positive views on the engagement process of the CCP and its sub-panels.

6.2.2 Consumer groups would benefit from more frequent and focused engagement with CCP members

Consumer stakeholders felt that where the CCP had engaged with consumers and consumer groups it had performed very well, but that this engagement was not extensive enough and was limited to consumer interest groups and not the actual consumers affected by pricing decisions. The willingness of consumer groups to engage with the CCP was bolstered by perceptions of the skills and expertise of CCP members. The CCP's independent analysis was highly valued by consumer groups, as were the resources and papers they prepared.

However, consumer stakeholders questioned the impact that their engagement with the AER had on the AER's decisions. They felt that the information they had conveyed to the CCP did not adequately inform the decision making process of the AER and, similar to business stakeholders, questioned the relevance of continued engagement with the CCP. Consumer stakeholders also felt that there were limited opportunities to engage with the CCP.

6.2.3 Perceptions of bias and conflicts of interest were of some concern to stakeholders

Perception of bias in engagement with network businesses

Some business stakeholders are concerned that the CCP has been dominated by the particular consumer bias of individual CCP members. They consider that this has negatively affected the relationship between the CCP and network businesses. Depending on which sub-panel a network business dealt with, there

was a perception that they may encounter a very adversarial or aggressive attitude from certain CCP members, while others would be very cooperative and positive in supporting their efforts to improve consumer engagement. A number of network businesses raised concerns that some CCP members are too closely connected to consumer groups and that this distorts their advice, reducing its objectivity. Network businesses were of the view that an approach more akin to a 'consulting' report with greater objectivity is preferable. Only some sub-panels have delivered this style of engagement to network businesses.

There is some suggestion that individual CCP members maintain deeply entrenched viewpoints. Some CCP members perceive that their fellow panel members are bound to the viewpoints they represent and represent those views in every advice they provide to the AER. Further, the network businesses have expressed concerns that during certain resets the prior opinions of CCP members meant that they were unwilling to change their position regardless of the evidence presented to them.

Conflicts of interest

In considering the perspectives of all stakeholders it appears that the perception of conflicts of interest has been more significant than the presence of actual conflicts. AER, CCP and external stakeholders all agree that the vetting process conducted for CCP members was adequate to ensure that they disclosed any relevant conflicts. Perceptions are that the AER staff are well equipped to identify conflicts and that CCP members were vetted adequately as part of the appointment process and are required to make disclosures of potential conflicts. There was no suggestion from any stakeholders that the CCP had used confidential information inappropriately or that CCP members' other sources of income had influenced members' advice.

Recommendations

Recommendation 8: Ensure the CCP focuses on the provision of input into regulatory decision making by the AER

The AER should ensure that the CCP focuses on providing input to the AER on issues of concern to consumers. The CCP is not resourced or equipped to replicate the functions of the AER.

Recommendation 9: Ensure that the interactions of the CCP with network businesses and consumer groups provide insights to inform the decision making process of the AER

The CCP requires a more structured approach to engagement with the network businesses and consumer groups.

Recommendation 10: Perceptions regarding conflicts or biases on the part of CCP members must be actively managed

The AER should actively manage perceptions of bias or conflicts of interest to ensure they do not undermine the value of the CCP. This management should include incorporating process and procedures in the 'Framework for Advice'.

Appendix A – Interview Participants

CCP members

- Adrian Kemp
- Bev Hughson
- Bruce Mountain
- David Headbury
- David Prins
- Hugh Grant
- Jo De Silva
- Mark Henley
- Ruth Lavery
- Robyn Robinson

Consumer Stakeholders

- David Havyatt, Energy Consumers Australia
- Rosemary Sinclair, Energy Consumers Australia

Network Businesses

- Bess Clark, Tas Networks
- Brent Cleeve, Powercor
- Craig de Laine, Envestra
- Jon Hocking, Endeavour Energy
- Nicola Roscoe, Energex
- Nicola Tully, Transgrid
- Peter McIntyre, Transgrid
- Rachel Leaver, Energex
- Sean Kelly, SA Power Networks
- Wayne Lissner, SA Power Networks

Appendix B – Workshop Participants

AER board

The board of the AER participated in a consultation workshop on 11 February 2016.

CCP Members

Seven CCP members participated in a consultation workshop on 29 February 2016.

Consumer Representatives

Four representatives of consumer organisations participated in a consultation workshop on 7 March 2016.

AER staff

12 AER staff participated in a consultation workshop on 2 March 2016.

- Tanja Warre
- Leanne Keogh
- Moston Neck
- Chris Pattas
- Anthony Bell
- Adam Petersen
- Paul Dunn
- Lynne Sevier
- Blair Burkitt
- Ross Mitchell
- Kathryn Wood
- Craig Madden