

Australian Energy Regulator

By e-mail: RateOfReturn@aer.gov.au

APA submission on pathway to 2022 instrument

APA Group (APA) appreciates the opportunity to comment on those aspects of the review of the Rate of Return Instrument discussed in Australian Energy Regulator's June 2021 consultation paper, *Pathway to the 2022 Rate of Return Instrument*. Our comments are set out in this submission.

Concurrent evidence sessions

In 2018, we found that being able to attend one of the two concurrent evidence sessions was useful. We were exposed to a wide range of issues of concern to stakeholders, and gained an understanding of the ways in which those issues were perceived and assessed by different experts.

We understand the need to limit in-person attendance, and strongly support the AER's proposal to make the 2022 sessions more accessible by having them streamed and available to all interested stakeholders.

Structuring the sessions as four discrete and thematically based two-and-one-half-hour meetings, rather than as two one-day sessions, should further assist stakeholders with scheduling their attendance.

The proposed preliminary "expert conclave" should, as the consultation paper indicates, narrow the topics for consideration, and allow a sharper focus on key issues during the main evidence sessions,

We see having transcripts once again available, shortly after the sessions have concluded, as being useful. However, in 2018, the transcripts were no substitute for the report on the expert deliberations.

The expert report brought together key issues and the views of experts in an ordered and coherent way, allowing reference back to those issues and views in a way difficult to achieve with the transcripts alone.

APA asks that the AER reconsider its decision not to produce an expert report for the 2022 review.

How should the experts be funded?

We understand the AER's concern that, in 2018, stakeholders who nominated experts had different levels of resourcing available and, in consequence, the level of expert engagement in the process may not have fully represented the available evidence.

As the AER proposes, the solution to this problem may be for the regulator to engage the experts directly and to meet the reasonable costs of expert engagement. We agree that this approach would further reinforce the obligation on experts to contribute their expertise to support the AER's decision-making rather than represent stakeholder perspectives.

However, unless the expert engagement process is carefully managed, there will, in our view, be a significant risk of bias in the support provided to the AER. The expert engagement process should, we believe, be managed to avoid a preponderance of experts with a common outlook. We do not see, for example, that a conclave of corporate finance experts would have a sufficient diversity of views to properly address the question of the relationship between the risk free rate of return and the market risk premium, which is essentially a matter for macro-finance experts.

Providing stakeholders with the prior opportunity to provide views on relevant experts, in the same way that the AER sought, in 2018, stakeholder views on the composition of the Independent Panel, might be considered as a way of avoiding the risk of bias.

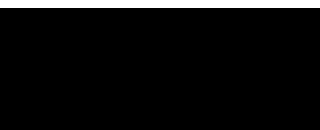
Independent Panel

A five-member Independent Panel was convened, by the AER, in 2018, with panel members contributing expertise in financial economics, regulation, consumer representation, and institutional investment. In 2018, submissions were sought from stakeholders on the expertise which should be accessible via panel membership, and on possible individual members, but the final decision on panel composition was made by the AER.

We appreciated the opportunity, in 2018, to provide our views on panel size and composition, but recognised that the purpose of the Independent Panel was provision of the AER Board with an independent assessment of the draft rate of return instrument. The final decision on a revised rate of return instrument is a decision to be made by the AER Board, and we saw size and composition as matters for the Board.

APA supports a similar approach in 2022.

APA would be pleased to elaborate on any of the views in this submission. Our work on rate of return is being undertaken by [REDACTED], who is in our Perth office and can be contacted directly on [REDACTED] or at [REDACTED].



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