

# NEW REG – EVALUATION - TRIAL ASSESSMENT FACTORS

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## Introduction

CEPA has been engaged by the Australian Energy Regulator (AER) to develop an evaluation framework for the New Reg project and to undertake an evaluation of the AusNet Services trial of the New Reg process.

This note sets out our understanding of the objectives of the New Reg trial, and our initial proposed Trial Assessment Factors based on these objectives. The Trial Assessment Factors set out the key topics that will be covered in the Evaluation Framework, that will be developed in the next stage of this project. This note has been prepared for the Reference Group to review and provide comment on the Trial Assessment Factors, before the Project Board reviews these and the Evaluation Framework.

## Objectives of the New Reg Trial

New Reg is a joint initiative of the AER, ECA and ENA that is aimed at providing an option for improving consumer engagement on network revenue proposals and identifying opportunities for regulatory innovation. We understand that the New Reg 'Project Objective' is:

*To develop an alternative regulatory path whereby energy consumers' priorities and stated preferences would drive and, through a negotiation process, be seen to drive energy network businesses' proposals and regulatory outcomes.*

The project is to have a 'live engagement' process where consultation on the New Reg process will happen in parallel with the trial, to enable the approach to develop based on contributions from stakeholders.

We understand from the Project Team that underlying the Project Objective are the following secondary questions:

- Can consumers, networks, and the AER work together better?

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- Can the engagement process better reveal consumer preferences compared to the AER's current approach?
- To what extent can a negotiated regulatory settlement (that is acceptable to the AER under the current NEL/NER) be agreed between the network businesses and a Consumer Forum representing the perspectives of consumers?

## Trial Assessment Factors

The February 2018 meeting of the Reference Group noted the three following categories for the Trial Assessment Factors:

1. Assessment of the key features of the New Reg Process and how they performed in practice.
2. An overall assessment of the New Reg Process.
3. Going forward, suggested changes to the design of the New Reg Process.

We see our Evaluation Framework, and therefore Trial Assessment Factors, as needing to achieve the first two i.e., assess whether the New Reg Trial met the Project Objective. While the third point provides guidance for the monitoring requirements, it is not necessary a specific evaluation requirement. However, we would provide the discussion around the learnings from the project in the insights reports.

We have set out the Trial Assessment Factors in the broader context of the evaluation. However, the extent to which each will apply will vary as the evaluation is undertaken at different points of the trial. In our Evaluation Framework, which we are currently developing, we will set out more precisely which factors will be evaluated at the different stages of the project, e.g., pre-negotiation factors, during negotiation factors and post-negotiation factors. The five insight reports that cover the different stages of the project are to be delivered as follows:

- In October 2018, covering formation of the Consumer Forum and engagement to date.
- Initial negotiation stage.
- Engagement Report and Regulatory Proposal
- Following AER Draft Determination.
- Following AER Final Determination.

While we are still developing the Evaluation Framework, we expect that the Trial Assessment Factors will be assessed on a primarily qualitative basis, although we would look to draw on quantitative evidence where available and appropriate. In some cases, it may be necessary to draw on anecdotal evidence in the assessment, and we will qualify the extent to which any such evidence is likely to apply more generally to the New Reg process.

In the table overleaf, we set out our initial proposed Trial Assessment Factors. These have been written as if the evaluation were occurring after the New Reg trial is complete. However as noted above they would be considered when appropriate throughout the individual stages of the trial. For each question, we would be considering the wider 'why', 'how', and 'therefore' to provide the evaluation and insights throughout the process – i.e. the rationale and anticipated regulatory implications of the outcomes achieved by the New Reg trial and the approach that was followed.

Table 1: Draft Trial Assessment Factors (in no particular order)

Category	Factors	Underlying questions (illustrative)
<b>Process</b>		
Engagement and representation	Were the Consumer Forum's roles and responsibilities appropriate and clearly defined <u>and communicated</u> ?	Did the Consumer Forum's views on their roles/ responsibilities change throughout the process? Did the live engagement, and input from stakeholders, affect the Consumer Forum's roles and responsibilities?
	Did the different parties understand their roles and responsibilities?	<u>Did the Consumer Forum understand their roles and responsibilities?</u> Did AusNet understand their roles and responsibilities? Did the AER understand their roles and responsibilities?
	Was the Consumer Forum an effective representative of a wider consumer group?	How was the Consumer Forum selected? Did the Consumer Forum <u>undertake or have access to</u> sufficient research to understand and gain evidence on the priorities and preferences of consumers as a whole (including where applicable future consumers)? What type of research did it undertake/ commission/ rely upon? Was the process effective in determining a price/quality trade-off, <u>or a position on another element of a regulatory proposal</u> , that was supported by evidence of consumer preferences? Was it clear that the Customer Forum (and its members) consulted appropriately with the breadth of consumers and representatives throughout the process?
	Did the engagement process provide the Consumer Forum with sufficient time to undertake their roles and responsibilities?	Was the Consumer Forum confident it had sufficient time/ resources/ <u>information</u> to consider each topic up for negotiation? Was the Consumer Forum provided with adequate support <u>from the different parties</u> to fulfil its roles and responsibilities?
Scope and negotiations	Was the 'Scope of Negotiations' appropriate?	Did the negotiations on some topics affect those outside of scope? <u>Did the presence of substantial out of scope issues reduce the efficiency of consultation?</u> Did the scope change during the trial? <u>Would it have been desirable for the scope to be agreed at the outset of the process?</u> <u>Were the criteria used to determine the scope fit for purpose?</u>
	Did the Consumer Forum understand the topic/ issues?	Did the Consumer Forum consider that it was able to challenge AusNet's proposals? How did the Consumer Forum form an agreed negotiation standpoint? How did the Consumer Forum use information provided to it by AusNet and the AER (and any

Category	Factors	Underlying questions (illustrative)
		other entities)?
	How were the negotiations conducted?	How were the topics presented for negotiation? <u>Was sufficient time allocated to the negotiations phase?</u> <u>What other factors (e.g. senior staff involvement) were conducive to successful negotiations?</u> What was the extent of AER's involvement? Did the presence of the AER as a 'backstop' affect the negotiations?
<b>Outcomes</b>		
Impact on proposal	To what extent did early engagement influence the focus areas for the regulatory review?	Were areas that may have received less attention as a result of the early engagement revisited?
	To what extent did AusNet's proposal(s) reflect the engagement and negotiations with the Consumer Forum?	This could be either through affecting the proposal and/or from the proposal recognising the Consumer Forum's agreement. What level of agreement was reached between the Customer Forum and AusNet during and at the conclusions of the negotiation process? <u>How were matters dealt with that were outside the scope of a typical proposal?</u>
Impact on the determination(s)	To what extent did the AER's determination(s) reflect the engagement and negotiations between AusNet and the Forum?	Was the AER more willing to accept AusNet's proposals that had been accepted by the Forum than those that were not? Were the AER's determination and AusNet's proposal more aligned on topics that were in scope for the negotiation than those that were out of scope? <u>How did the AER assess areas of agreement between AusNet Services and the Customer Forum?</u>
<b>Learnings</b>		
Overall	Is the New Reg process likely to achieve its objective? (Drawing on the assessment of the 'Process' and 'Outcomes' factors).	Were there any factors that caused a detriment to the outcome of the trial? Were there any counterproductive factors arising from the design of the process?
	Are there amendments to the process that could be made to better achieve the Project Objective?	Should there be fixed principles, for example to guide decisions on long-term temporal issues (short vs long term interest of consumers)? Were the timelines appropriate? Did the NEL/NER impact on the achievement of the Project Objective?

Category	Factors	Underlying questions (illustrative)
	Are there findings that could improve the AER's process?	What was learnt about timelines for the regulatory process?
	What are the costs and challenges (including any constraints in the NEL/NER) of implementing the New Reg process?	What were the costs of the New Reg trial?