



Independent Panel

Call for Stakeholder Nominations

August 2021

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Amendment Record

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1 Introduction

As part of our stakeholder engagement on the 2022 Rate of Return Instrument (RORI) we are requesting confidential nominations from stakeholders for members of the Independent Panel.

1.1 What is the Independent Panel?

The objective of the Independent Panel will remain the same as it was in 2018. It is intended to support the AER make the best possible instrument by reviewing the draft instrument and the information available to us in drafting the instrument.

The role of the Independent Panel should not include duplication of our regulatory judgement or to put forward an alternative or amended Instrument. The Independent Panel is in place to ensure a role of reviewing that we have:

- undertaken an effective review process
- engaged with the material before us with an open mind
- reached a decision that is supported by our stated reasons and the information available to us.

Following consultation with stakeholders, we revised the question to be considered by the Independent Panel, splitting the previous question into two distinct parts and sharpening its focus on promoting the achievement of the energy objectives.¹

The questions we are intending to put to the Panel are:

“In the panel’s view, is the draft instrument supported by evidence and reasons, taking into account competing factors such as accuracy, consistency, accessibility and transparency?”

In the panel’s view, is the draft instrument likely to contribute to the achievement of the National Electricity Objective and National Gas Objective?”

The panel will run from the publication of the draft instrument until their report is published roughly six weeks later. This work will be over July and August 2022. This will require 10 eight hour days of work for members, and 15 days for the chair, and involve co-ordination with other panel members who will be based both internationally and domestically.

1.2 What skills should a panel member possess?

We consider it important that the Independent Panel is comprised of members who collectively possess a range of relevant skillsets.

The skills and background we are seeking for the panel include the following:

- A finance and/or economic background will assist the panel in comprehension of the more technical aspects of the guideline development process. However, it is not the role

¹ AER, Pathway to 2022 rate of return instrument, Position Paper, May 2020, pp. 16-17.

of the panel to substitute for or duplicate the input of the experts already participating in the review. Rather, the panel will consider whether our decisions in the draft guideline are based on sound reasoning, including by reference to that previous expert input. Also, our view is that the decisions making up the guideline and the evidence on which they are based should ultimately be understandable to stakeholders without having this expertise. As a result, we do not think that all panel members will need to have a finance or economic background.

- Regulators typically have experience in considering competing evidence to make decisions which will directly impact on stakeholders. Such regulatory experience should assist the panel in forming views on whether the decisions in the guideline are based on sound reasoning and a chain of logic that can be followed from evidence to decision.
- Experience in consumer perspectives is important to have on the panel because the ultimate objective of the regulatory framework is focussed on promoting the long-term interests of consumers. In our view, it is important that the panel review the draft guideline from a perspective where decisions are clearly linked to how they promote those long term interests. In our view, panel members with consumer-focussed experience are best placed to provide this perspective.
- Institutional investment experience overlaps to some extent with the benefits of finance and/or economic background. However, in our view it is desirable if possible to also have the perspective of panel members with investment experience as distinct from simply having technical familiarity with rate of return issues. This should assist the panel in evaluating whether the replicability and transparency of the methodology is sufficient to promote investor confidence and thus efficient investment.

This list is not exhaustive or exclusive, and we welcome nominations from stakeholders that consider other areas that would contribute to an effective panel membership.

1.3 Other considerations

Whilst there are no set minimum qualifications or experience requirements for panel involvement, we will give preference to those with significant standing or experience in the relevant field. This is in line with our efforts to ensure that stakeholder confidence in the process is as high as possible.

On top of skills and qualifications we also view it as important to have a balance of domestic and international perspectives, to ensure that we are considering as many relevant views as possible.

The Independent Panel members also should not have material perceived or actual conflicts of interest. None of the nominees should have been engaged by the AER or stakeholders in the process of forming this 2022 instrument. It is very important that stakeholders have confidence that the Independent Panel is separate from the AER and its stakeholders so it can do its job appropriately.

We will be guided by similar principles that we set out in the CCP Conflict of Interest Guidelines, which can be found on our website.² Nominations should in particular account

² AER, *Consumer Challenge Panel - Conflict of Interest Guideline*, 2017, p.3.

for principles 1, 3 and 4 (Actual conflicts, Transparency of conflicts and Perceived conflicts), noting that where possible we would prefer not to have to manage conflicts (principle 2). If nominations could highlight any conflicts or perceived conflicts of interest as a matter of priority that would help the process proceed smoothly. We ask that stakeholders take this into account when making nominations.

It is also important that stakeholders confirm with their nominees that they are available for the relevant time period, and that they have been made aware of their nomination. Making the nominees aware of the timing, requirements and functions of the Independent Panel early on would help us put the Panel together in a more effective and efficient fashion.

As in 2018, we will establish a non-statutory advisory board which will allow us to directly appoint chosen nominees.

1.4 Making a nomination

Interested parties are invited to make nominations by 17 September 2021.

We have set out desirable characteristics for panel nominees and the criteria that will inform our final selection. This may guide your nomination, however we encourage you to consider any other matters of relevance.

We are asking stakeholders for confidential nominations for the Independent Panel members. We will not publish a full list of nominations to protect privacy and confidentiality.

We prefer that all nominations are in Microsoft Word or another text readable document format. Nominations should be sent to: rateofreturn@ aer.gov.au.

Alternatively, nominations can be sent to:

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