

New Reg: AusNet Services Trial

Monitoring report on establishment and early operation

10 October 2018

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1. Introduction

The Australian Energy Regulator (**AER**), Energy Networks Australia (**ENA**) and Energy Consumers Australia (**ECA**) are exploring ways to improve sector engagement and to identify opportunities for regulatory innovation. On 23 March 2018 a directions paper was published setting out an alternative regulatory approach, called the ‘New Reg Process’.¹ In parallel, AusNet Services has commenced a trial of the New Reg Process (**trial, AusNet Services trial**) to be applied to AusNet Services’ Electricity Distribution Pricing Review 2021-25 (**EDPR 2021-25**).

Monitoring of the trial is one of the workstreams being undertaken by the AER/ENA/ECA New Reg project team during 2018. This is the first of a series of monitoring reports to be prepared on the AusNet Services trial.

This report covers the establishment phase, the expected timeline for the engagement process, and the early operation of the trial in the period to mid-June 2018. The report:

- sets out relevant factual information about the trial establishment and early operation
- sets out feedback from trial participants on whether the trial is meeting its objectives
- identifies views and lessons identified by the trial participants relevant for the future development of the New Reg Process

This report will feed into an independent assessment of the trial to be undertaken at key milestones and following its completion.

1.1 APPROACH

The approach to preparing this report was as follows:

- In late June we developed a survey setting out questions and circulated this to all those who had key responsibilities and, as a result had a detailed knowledge of the trial (**trial participants**) being: AusNet Services (Tom Hallam, Charlotte Eddy); the chair of the Customer Forum (Tony Robinson); and the AER staff Team (Mark McLeish, Calum Gunn, Andrew Ley).
- We worked through the survey with the parties and took notes of our meetings and/or received responses and other material in writing.
- We drew on the following two documents which together substantially describe the trial arrangements:
 - the *Memorandum of Understanding* between AusNet Services, AER and the Customer Forum (**MOU**)²; and
 - AusNet Services’ *Early Engagement Plan EDPR 2021-25* (**Early Engagement Plan**)³.
- We also referenced two AER Staff Guidance notes that were released in July shortly after we undertook the survey.⁴⁵

¹ New Reg: Towards Customer Centric Energy Network Regulation, Directions Paper, AER, ECA, ENA, March 2018. https://www.aer.gov.au/system/files/NewReg%20Directions%20Paper_0.pdf

² Available on the AER Regulatory Innovation website page https://www.aer.gov.au/system/files/AusNet_Services%20Trial%20-%20Early%20Engagement%20Memorandum%20of%20Understanding.pdf

³ Available on the AER Regulatory Innovation website page https://www.aer.gov.au/system/files/D18-62572%203.6.2%20-%20AusNet_Services%20Services%20-%20Early%20Engagement%20Plan.DOCX

1.2 REPORT STRUCTURE

This report is structured as follows:

- Section 2 sets out a factual description of the trial arrangements including the Customer Forum and the MOU, with further details set out in appendices.
- Section 3 discusses trial establishment activities up until around mid-June.
- Section 4 discusses determination of the scope of negotiation – its status and early feedback.
- Section 5 sets out early feedback from trial participants on whether the trial is meeting its objectives.
- Section 6 provides feedback from trial participants about the establishment process and early operation of the trial and participants' comments on any differences to the 'New Reg Process'.
- Section 7 provides feedback on the AusNet Services – Customer Forum negotiations.

⁴ AusNet Services Trial - AER Staff Guidance Note 1: How the AER will support AusNet Service's Customer Forum (July 2018) [https://www.aer.gov.au/system/files/AER%20-%20AusNet Services%20Trial%20Staff%20Guidance%20Note%201%20-%20How%20the%20AER%20will%20support%20the%20Customer%20Forum%20-%20July%202018%20D18-101472.PDF](https://www.aer.gov.au/system/files/AER%20-%20AusNet%20Services%20Trial%20Staff%20Guidance%20Note%201%20-%20How%20the%20AER%20will%20support%20the%20Customer%20Forum%20-%20July%202018%20D18-101472.PDF)

⁵ AusNet Services Trial - AER Staff Guidance Note 2: Scope of Negotiation (July 2018) [https://www.aer.gov.au/system/files/AER%20-%20AusNet Services%20Trial%20Staff%20Guidance%20Note%202%20-%20Scope%20of%20negotiation%20-%20July%202018%20D18-101527.PDF](https://www.aer.gov.au/system/files/AER%20-%20AusNet%20Services%20Trial%20Staff%20Guidance%20Note%202%20-%20Scope%20of%20negotiation%20-%20July%202018%20D18-101527.PDF)

2. Description of the trial arrangements

AER staff, ECA and AusNet Services worked closely between February and May to develop and agree the MOU and the Early Engagement Plan. This section sets out a factual description of the following aspects of the trial arrangements which mostly follow the New Reg process:

- Trial Objectives
- The MOU
- The Customer Forum
 - Overview
 - Customer Forum - role, purpose and objectives
 - Customer Forum - structure, size and recruitment
 - Customer Forum - funding
 - Customer Forum - responsibilities of the Chair
 - Customer Forum - decision-making
- Reference Committee
- Customer Forum Negotiation with AusNet Services
- Scope of Negotiations
- Engagement Report
- Resources and support for the Customer Forum
 - AusNet Services support
 - AER support
 - Third party support.

Further details are set out in appendices, and the participants' views on these aspects of the trial are provided in later sections.

2.1 TRIAL OBJECTIVES

The objectives for the trial agreed in the MOU by AusNet Services and AER are set out in Box 1.

Box 1: AusNet Services and AER objectives for the trial⁶

AusNet Services and AER would like to:

- (i) improve the speed and reduce the cost of the regulatory review process
- (ii) enhance consumer confidence in the regulatory review process
- (iii) improve the overall outcomes of the regulatory review process with a view to promoting the long term interests of consumers of electricity.

⁶ Recital B, MOU

2.2 THE MOU

The matters covered by the MOU are summarised in Box 2 and explained in further detail below. As set out in the Directions Paper, the Engagement Agreement (MOU for the AusNet trial) formalises the AER's commitment to the New Reg process, and among other things sets out:

...the roles and expectations of each of the parties, including the scope, funding arrangements, 'off ramps' or termination conditions, and arrangements for a jointly conducted ex post review.⁷

Box 2: Key features of the MOU

- The **parties** to the MOU are AusNet Services, the AER and the chair of the Customer Forum.
- The MOU:
 - establishes the **Customer Forum** including its **purpose, objectives and constitution**
 - sets out how the Customer Forum is expected to undertake **negotiation** with AusNet Services within the Scope of Negotiation with a view to reaching agreement on the Regulatory Proposal or specific matters that form part of the Regulatory Proposal
 - sets out a requirement that the Customer Forum will prepare a draft and final **Engagement Report**
 - provides for how the Customer Forum will be **funded** and be provided with non-financial support by AusNet Services
 - provides for how the **AER assist and advises** the Customer Forum
 - empowers the Customer Forum to meet with **other representative committees**, including but not limited to the AusNet Services Customer Consultative Committee
 - establishes a **Reference Committee** comprising one representative from each of AusNet Services, the AER and the ECA (subject to giving its consent)⁸
 - provides for **confidentiality of information**.

2.3 THE CUSTOMER FORUM

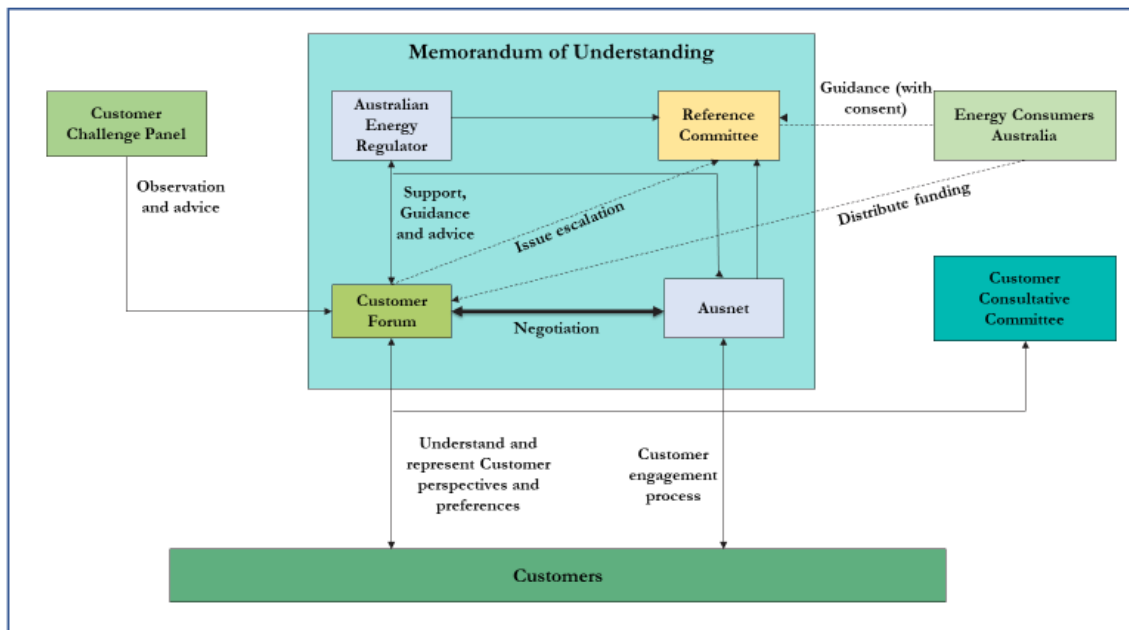
2.3.1 Overview

Figure 1 sets out an overview of the Customer Forum and the MOU. It shows how the Customer Forum interacts with AusNet Services, the AER, the Reference Committee (see section 2.6), the ECA, AusNet Services' customers, the Consumer Challenge Panel and AusNet Services' Customer Consultative Committee. These arrangements are described in detail below.

⁷ New Reg: Towards Customer Centric Energy Network Regulation, Directions Paper, AER, ECA, ENA, March 2018, p.5.

⁸ Shortly after the MOU was finalised the ECA agreed to be part of the reference committee and nominated members – this is set out in the following document, see: <https://www.aer.gov.au/system/files/AusNet%20trial%20-%20Reference%20Committee%20Terms%20of%20Reference.pdf>

Figure 1 Overview of Customer Forum and the Memorandum of Understanding



2.3.2 Customer Forum - role, purpose and objectives

The Customer Forum is:

- independent of AusNet Services, the AER and any other organisation⁹
- constituted solely for the purposes set out in the MOU– it is not expected to be involved in policy decisions or to be a voice of the community generally outside its remit.¹⁰

The purpose and objectives of the Customer Forum are set out in Box 3.

Box 3: Customer Forum purpose and objectives

The **purpose** of the Customer Forum is to represent the perspectives and preferences of AusNet Services' customers in negotiations with AusNet Services regarding certain matters in the Regulatory Proposal with a view to – as far as possible – reaching an agreed position on those matters that in the opinion of the Customer Forum will, or are likely to, contribute to the achievement of the National Electricity Objective.¹¹

The **objectives** of the Customer Forum are to, within the Scope of Negotiation:

- understand and represent to AusNet Services the perspectives and preferences of AusNet Services' Customers
- seek to understand AusNet Services' business including its revenue requirement
- identify the elements of the Regulatory Proposal which in the opinion of the Customer Forum will (or are likely to) contribute to the achievement of National Electricity Objective
- negotiate with AusNet Services with a view to preparing, as far as possible, a Regulatory Proposal that, in the opinion of the Customer Forum will (or is likely to) contribute to the achievement of the National Electricity Objective

⁹ Section 3(d) MOU

¹⁰ Section 3(d) MOU

¹¹ Clause 2.2 MOU

- (v) provide input to AusNet Services' customer research program for the EDPR 2021-25
- (vi) prepare the draft version of the Engagement Report and the final version of the Engagement Report
- (vii) understand and operate within the constraints of the regulatory framework established by the National Electricity Law, the National Electricity Rules and the regulatory instruments developed by the AER or other jurisdictional regulators as applicable.¹²

2.3.3 Customer Forum - structure, size and recruitment

The Customer Forum consists of five people: one chair and four additional members each appointed by AusNet Services.¹³

The Customer Forum members, and their backgrounds are set out in **Appendix A**.

The selection and appointment requirements for the Consumer Forum are set out in section 2.2 of Schedule 2 of the MOU. This includes a requirement that the Customer Forum members are to be appointed following an open and transparent selection approach.

AusNet Services states that the Customer Forum members were selected through a skills-based approach.

*'The primary requirement for the Customer Forum members is that they are fully independent of AusNet Services and are capable of credibly representing the perspective of the breadth of AusNet Services' customers including large and small customers and vulnerable customers of many kinds.'*¹⁴

Appendix B provides further details of the recruitment process (selection criteria, advertising process, and the selection process) adopted by AusNet Services.

AER staff, along with ECA staff, provided comments to AusNet Services on the structure of their selection process, candidate shortlist and indicative selection of Customer Forum members.¹⁵

2.3.4 Customer Forum - funding

An important establishment consideration was that funding arrangements for the Customer Forum members should maintain the independence of the Customer Forum from AusNet Services. Some participants considered that direct payment by AusNet Services may result in real, or perceived, conflicts of interest for Customer Forum members.

The Customer Forum is funded by AusNet Services. ECA acts as a clearinghouse and is responsible for distributing funds to the Customer Forum. If for any reason ECA is not willing to distribute funds, matters can be escalated to the Reference Committee.¹⁶

¹² Clause 2.3, MOU

¹³ Section 3(a) MOU

¹⁴ Early Engagement Plan

¹⁵ EDPR Customer Forum - Recruitment process, AusNet Services <https://www.AusNetServices.com.au/-/media/Files/AusNetServices/About-Us/Determining-Revenues/Distribution-Network/EDPR-Customer-Forum-Recruitment-Process.ashx?la=en>

¹⁶ See section 6.2 MOU.

2.3.5 Responsibilities of the chair

Besides the usual leadership role of a committee chair, the MOU sets other roles and functions for the chair (see Box 4).

Box 4: Responsibilities of the Customer Forum chair

- If practicable, the chair participates in the recruitment of the ordinary members.¹⁷
- Decisions of the Customer Forum require the approval of the chair and at least three ordinary members.¹⁸
- The chair is to lead interaction with AusNet Services in relation to any concerns the Customer Forum may have¹⁹ and then escalate these to the Reference Committee if they cannot be resolved.²⁰
- The chair approves payment of fees²¹ and expenses incurred by Customer Forum members in advance.^{22 23}

2.3.6 Customer Forum decision-making

The MOU sets out the following decision-making rules for the Customer Forum:

- Super majority voting | AusNet Services and the Customer Forum are taken to have reached agreement on a matter if AusNet Services, the Chair and three ordinary members of the Customer Forum agree²⁴
- Report by dissenting member | if the agreement of the Customer Forum is not unanimous, the Engagement Report must explain the basis for the dissenting member or members' disagreement.²⁵

2.4 REFERENCE COMMITTEE

The purpose and objectives of the Reference Committee are set out in Box 5. As at the time of this monitoring report, the Reference Committee has not met. The terms of reference for the Reference Committee is available on the AER website.²⁶

Box 5: Reference Committee purpose and objectives

The purpose and objective of the Reference Committee is to:

- assist the Chair to resolve concerns regarding any matter arising from the MOU including concerns regarding the ability of the Customer Forum to achieve its objectives
- perform such other functions as agreed by AusNet Services, the AER and the ECA.

¹⁷ Section 6(a) Schedule 2 MOU

¹⁸ Section 4 (a) MOU

¹⁹ Section 8.2 (b) MOU

²⁰ Section 8.2 (a) (i) MOU

²¹ Schedule 2, Section 6 (a) (iii)

²² Schedule 2, section 2(d) MOU

²³ Schedule section 6 (a) (v)

²⁴ Clause 5(f) MOU

²⁵ Clause 5(f) MOU

²⁶ <https://www.aer.gov.au/system/files/AusNet%20trial%20-%20Reference%20Committee%20Terms%20of%20Reference.pdf>

2.5 CUSTOMER FORUM NEGOTIATION WITH AUSNET SERVICES

The New Reg process described the Customer Forum as being the formal counterparty²⁷ in negotiation with AusNet Services and that it would ‘as far as possible, reach agreement with AusNet Services on its Regulatory Proposal prior to the submission of the Regulatory Proposal to the AER’.²⁸

As set out in Box 3 above, the Customer Forum is expected to (inter alia):

- understand and represent to AusNet Services the perspectives and preferences of AusNet Services’ Customers
- seek to understand AusNet Services’ business including its revenue requirement
- identify the elements of the Regulatory Proposal which in the opinion of the Customer Forum will (or are likely to) contribute to the achievement of the National Electricity Objective
- negotiate with AusNet Services with a view to preparing, as far as possible, a Regulatory Proposal that, in the opinion of the Customer Forum will or is likely to contribute to the achievement of the National Electricity Objective.

2.6 SCOPE OF NEGOTIATION

The MOU provides that the Customer Forum and AusNet Services shall agree the scope of negotiations having regard to considerations²⁹ set out in Box 7. The scope of negotiation can be varied at any time.³⁰ The scope of negotiation and any variations must be agreed with the AER.³¹

Box 7: Scope of negotiation considerations

Scope of negotiation considerations are³²:

- the requirements of the National Electricity Law and Rules
- the extent to which AusNet Services has discretion to propose a matter
- the extent to which the position taken in the Regulatory Proposal is or can be influenced by customer views
- the materiality of the proposed expenditure
- the extent to which an expenditure trade-off is available
- the technical complexity of the issue and the degree of specialist expertise that may be required to assess it.

The MOU also notes that any policy decisions are matters outside the purpose and objective of the MOU, and are thus outside the scope of negotiation.³³ The AER staff later noted (in its first staff guidance note³⁴) that policy or wider issues should not be in scope, particularly where those issues would be better

²⁷ Section 2, New Reg: Towards Consumer-centric Energy Network Regulation, Directions Paper, AER-ECA-ENA, March 2018 https://www.aer.gov.au/system/files/NewReg%20Directions%20Paper_0.pdf

²⁸ Section 4.3(a) MOU

²⁹ Section 4.3 (b) MOU

³⁰ Section 4.3 (c) MOU

³¹ Section 4.3 (d) MOU

³² Section 4.3 (b) MOU

³³ Section 3 (d) MOU

³⁴ AusNet Services Trial – AER Staff Guidance Note 1: How the AER will support AusNet Services’ Customer Forum (July 2018)

dealt with through a different and more expansive consultative process than the Customer Forum's negotiation with AusNet Services.

2.7 ENGAGEMENT REPORT

The MOU requires that the Customer Forum must prepare and publish a draft and final Engagement Report.³⁵ This requirement aims to ensure that the Customer Forum's positions are transparent and supported by evidence. In particular the MOU requires that:

- a draft Engagement Report is prepared after the first round of negotiations; and a final version of the Engagement Report is prepared after the second round of negotiation³⁶
- where there is agreement on a relevant matter between the Customer Forum and AusNet Services, that the Engagement Report explains how this is consistent the perspectives and preferences of AusNet Services' customers - including by reference to customer research or consultation³⁷
- where there is disagreement on a relevant matter, that the Engagement Report identifies the areas of agreement and disagreement, the processes followed by the Customer Forum and AusNet Services in seeking to reach agreement, and summarises the reasons for their respective positions. ³⁸

2.8 CUSTOMER FORUM - RESOURCES AND SUPPORT

The MOU provides that AusNet Services and the AER are to provide non-financial support for the operation of the Customer Forum.³⁹

2.8.1 AusNet Services support

The MOU provides that AusNet Services will provide to the Customer Forum administrative support, training and information sessions, office facilities and other support as required.⁴⁰

The specific support provided by AusNet Services included:

- a permanent staff member with exclusive responsibility for supporting the Customer Forum including arranging meetings, assisting to provide information and inputs from AusNet Services, minute taking, assisting the Customer Forum with report writing etc.
- provision of meeting space for the Customer Forum members to meet independently and with AusNet Services
- liaison with ECA and/or other relevant parties where required, on matters relating to Customer Forum funding and relevant payment administration matters, communicating and clarifying questions regarding approved reimbursement policies and procedures and/or changes to these and reviewing related documents on AusNet Services' behalf when required.⁴¹

The level of administrative support provided by AusNet Services during the establishment and early operation phase has been around one Full Time Equivalent (FTE). AusNet Services is considering

³⁵ Section 5 MOU

³⁶ Section 5(a) MOU

³⁷ Section 5(d)(ii) MOU

³⁸ Section 5(d) (iii) MOU

³⁹ Section 6.1(b) MOU

⁴⁰ Section 6.2 (iii) (2), (3), and (4)

⁴¹ Section 5.3 Early Engagement Plan

offering to engage and fund a consultant to assist the Customer Forum to draft their Engagement Report. AusNet Services considered that how this is done is a decision for the Customer Forum.

2.8.2 AER support

The MOU sets out how the AER may support the Customer Forum.

The AER support to the Customer Forum includes:

- assisting with specialist information and advice and providing information or resources to analyse information provided to the Customer Forum by AusNet Services⁴²
- assisting in understanding of the National Electricity Law and Rules as they:
 - pertain to preparation and assessment of the Regulatory Proposal
 - affect the matters for inclusion in the Scope of Negotiation
 - limit the AER's ability to accept, vary or reject aspects of the Regulatory Proposal⁴³
- providing facilities such as meeting rooms and IT facilities.⁴⁴

The Customer Forum may at any time request the AER to provide advice about how a particular matter in the Regulatory Proposal might be assessed by the AER and, subject to confidentiality considerations, such advice must be published on the AER website.⁴⁵

AER staff may attend meetings, workshops and similar arranged by AusNet Services; and may attend, by invitation, private meetings of the Customer Forum; and any negotiation meetings between AusNet Services and the Customer Forum as an observer.⁴⁶

It is important to note that any advice is provided by the AER staff and these views do not bind the AER board. The MOU states that any views expressed by AER staff do not reflect the views of the AER.⁴⁷

2.8.3 Third party support

Expenses reimbursed by AusNet Services related to any third-party support can only be incurred with the approval of the chair.⁴⁸

3. Initial trial activities

This section discusses the early establishment activities up to around mid-June.

3.1 TIMELINE FOR THE ENGAGEMENT AND NEGOTIATION PROCESS

The Customer Forum was appointed in early 2018 and held its first meeting on 20 March 2018. The timeline set out at the beginning of the engagement process is shown in Box 6.

⁴² Section 6.3 (a) (i)

⁴³ Section 6.3 (b)

⁴⁴ Section 6.3 (a) (iii)

⁴⁵ Section 6.3 (b)

⁴⁶ Section 6.3 (c)

⁴⁷ Section 6.3 (d)

⁴⁸ Section 6.4

Box 6 - Engagement and negotiation process timeline

A timeline for the Customer Forum operation was developed as follows:

- In the first half of 2018 the Customer Forum is to be provided with an understanding of the business, the regulatory framework and AusNet Services' customers' preferences.
- In August 2018 the Customer Forum will engage directly and independently with AusNet Services' customers. This is in addition to attending various parts of AusNet Services' customer and stakeholder engagement program.
- A series of negotiations is to be held between the Customer Forum and AusNet Services from mid to late 2018 with the aim of reaching agreement on material elements of the revenue proposal. After this process AusNet Services intends to publish a Draft Regulatory Proposal for public consultation, alongside a draft Engagement Agreement, in November 2018. The Customer Forum members may be actively involved in this consultation process.
- If required, the Customer Forum will be involved in a second negotiation round to assist AusNet Services to finalise its Regulatory Proposal based on the outcomes of the public consultation process.

3.2 CUSTOMER FORUM'S UNDERSTANDING OF THE AUSNET SERVICES DISTRIBUTION BUSINESS AND ITS REVENUE REQUIREMENTS

3.2.1 Initial briefings of the Customer Forum

The initial briefing process for the Customer Forum involved meetings and presentations that took place on 19 days spread over 13 weeks⁴⁹. This included introductions to key AusNet Services staff and the Customer Consultative Committee, and a wide range of presentations and introductory discussions led by AusNet Services, AER and AEMO on various topics. **Appendix C** sets out details of these briefings and presentations.

3.2.2 Research into consumer preferences

A key aspect of the engagement process is undertaking research into customer preferences with a view to understanding customer perspectives and preferences as well as evidencing such understanding.

AusNet Services advised that work on its customer research program had already commenced the exploratory stage at the time the Customer Forum was appointed. A key early focus of the Customer Forum once appointed was to engage with AusNet Services on the research program. **Appendix D** sets out details of the Customer Research programme, which reflects the Customer Forum's input.

4. Feedback on determining the scope of negotiation

AER staff as at late June were considering their response to the issues that AusNet Services has proposed to be in scope of the negotiation.

⁴⁹ Briefings commenced on March 20 and were completed on June 14.

4.1 STATUS OF DISCUSSIONS

By late June it was already agreed that WACC would be out of scope.

AusNet Services considered that⁵⁰:

- Expenditure associated with a regulatory obligation such as Rapid Earth Fault Current Limiters (REFCLs) which is directed by the Victorian Government would be out of scope because AusNet Services had little or no discretion.
- Major expenditure items should fall within the scope of the negotiation process.
- The Customer Forum should have strong input where there are genuine expenditure trade-offs (for example, alternative options for addressing network constraints including network and non-network options).
- There may be expenditure proposals that require either specific, expert knowledge or significant information/effort to credibly assess the proposed expenditure. In some cases, this may not be amenable to negotiation.

4.2 PRELIMINARY FEEDBACK ON DETERMINING THE SCOPE OF NEGOTIATION

It is premature to fully record or assess lessons for future trials about the determination of the scope of negotiation. However, it is clear to participants that some of the challenges in agreeing the scope of negotiation arose because this is the first time it has been attempted and any future engagement processes will have this experience to draw on.

Feedback from trial participants on the Scope of Negotiation is as follows:

- **Criterion** | AER staff suggested that an additional criterion for determining the scope of negotiation should be the extent to which the issue is a policy or wider issue better dealt with through a different and more expansive consultative process than the Customer Forum's negotiation with AusNet Services. As noted above this is not explicitly listed in the list of considerations for determining the scope of negotiation.⁵¹ However - as noted by the AER staff⁵² - section 3(d) of the MOU does state that the Consumer Forum is not expected to be involved in policy decisions.
- **Timing for agreeing scope of negotiation** | The Customer Forum Chair considered that for this first trial the scope of negotiation should have been pre-agreed between AusNet Services and the AER. However, he was comfortable with where the process had reached as at late June. Similarly (as noted) AER staff considered it would have been beneficial to have agreed the likely scope of the negotiations much earlier in the process. As noted the AER staff felt that this would result in a more efficient process. In contrast AusNet Services was comfortable for some aspects of scope to arise organically through the negotiation. It felt that early decisions on scope may limit innovation and prematurely close off beneficial outcomes.
- **Capturing issues beyond scope** | AusNet Services, the Customer Forum Chair and the AER staff agreed that matters the Customer Forum considers and has views on that go beyond scope should still

⁵⁰ Section 4 Early Engagement Plan

⁵¹ Section 4.3 (b) MOU

⁵² Footnote 3, AusNet Services Trial – AER Staff Guidance Note 2: Scope of Negotiation (July 2018)

be captured in the Engagement Report as a helpful record of these insights and findings. Subsequently the AER staff released its second guidance note which states⁵³:

Ultimately, however, the negotiation process is between AusNet Services and the Forum. The AER is not a party to the negotiations. AusNet Services and the Forum may decide to discuss, or negotiate and reach an agreement on, matters that we have not explicitly agreed to be in scope.... based on what it finds from customer research and engagement, the Forum might be in a good position to test AusNet Services' explanations of the value customers would get from AusNet Services' forecast expenditure more generally.

5. Feedback on whether the trial is meeting its objectives

An important question is whether there is evidence that the trial is promoting its objectives. This section sets out feedback from trial participants.

It is premature to determine whether the trial will successfully promote its objectives (and sub objectives) given that the scope of negotiation had not been determined and the negotiation itself had yet to take place. It is suggested that this will be a focus of future monitoring reports and the independent assessment to be undertaken at the completion of the trial.

Early feedback received is broadly positive and is set out in Box 8.

Box 8 Early feedback on evidence that the trial is promoting its objectives

- A key point made by both the AER staff and the Customer Forum Chair is that providing a clear link between each of the elements of the Regulatory Proposal and specific customer outcomes does not necessarily come naturally to a distribution network service provider (DNSP) or the AER.
- The **Customer Forum Chair** felt the early process had been positive and the objectives were understood. 'We all know why we're here'. 'The objective has been helpful as a reference point which we can then frame into a loaded question to help unpack the information presented to us'. However, it was not yet clear on the ease with which the objective can actually be delivered.
- The **AER staff** considered the objective and sub-objectives still seemed to be appropriate, and that progress is being made towards all of them:
 - Identify perspective of customers | The Customer Forum has been providing feedback to AusNet Services on its customer research program, meeting with customers and consumer groups, and acting as observers at some of the customer focus groups.
 - Transparency of the Regulatory Proposal | Information provided to the Customer Forum by AusNet Services about its customer research findings and on technical topics relevant to its revenue proposal are being posted on AusNet Services' website shortly after Customer Forum meetings are held.
 - Customer focus | AusNet Services appears to be receptive to the fresh perspectives the Customer Forum is providing on certain areas of customer focus - e.g.
 - the extent to which AusNet Services should seek to work more closely with other participants in the electricity supply chain to improve customer outcomes, even in areas where DNSPs do not have primary responsibility (such as customer hardship programs); and
 - the extent to which AusNet Services would be comfortable with its performance if it were to

⁵³ Page 2 AusNet Services Trial – AER Staff Guidance Note 2: Scope of Negotiation (July 2018)

rate first in efficiency benchmarking results, but still had dissatisfied customers.

- **AusNet Services** made the following points:
 - Identify perspective of customers | The Customer Forum has challenged and changed AusNet Services' thinking on how it understands its customers. AusNet Services noted that there are longer lead times to researching customer perspectives than they had thought. This may highlight the importance of having a lot of customer research running as 'BAU'. AusNet Services however did not think that the engagement process itself should have started that much earlier.
 - Transparency of the Regulatory Proposal | AusNet Services considered it had been very open and aired issues and questions where the business had not yet made decisions. This is different from the past approach, where the business would only go public when it had formed its views. The internal business processes were challenged by this approach but had matured to some extent to support it.
 - Customer Focus | AusNet Services considered that customer focus has been aided through the front-focussing of proposal development and the 'transparency bar' it was holding itself to. The business had been challenged heavily by the Customer Forum in this area. 'In the past we might have been a bit paternalistic – that we are here for customers and need to make all the complex decisions for them.' However, the business was on a journey and still had a way to go.

6. Feedback on the establishment and early operation of the trial

6.1 ENGAGEMENT PROCESS AGREEMENT

6.1.1 Legal form of early engagement process document

The New Reg Process envisaged that the relevant network business, the Customer Forum and the AER would enter into an Agreement which would formalise the governance arrangements of the Customer Forum, and the expectations and role of the Customer Forum, the AER and the network business.⁵⁴ An agreement implies that the Customer Forum would have the opportunity to review and provide feedback on a draft of the Engagement Agreement to ensure there is a mutual and clear understanding of the Customer Forum's role.

The discussions establishing the trial resulted instead in a decision to adopt a 'Memorandum of Understanding' (MOU) rather than an Agreement. Developing the MOU was a lengthier process than expected, involving significant legal input at both the AER and AusNet Services level. In AER staff's view, documenting the agreement as a MOU (where there are no binding obligations on any party) reduced the time required to finalise the agreement.

The advantages and disadvantages of establishing the trial as an MOU compared to an Agreement are beyond the scope of this monitoring report. So far, no drawbacks from finalising the legal form of the early engagement process as a MOU were identified by trial participants. It is suggested that a question for future consideration by the evaluator could be the advantages and disadvantages of an Agreement (as originally contemplated) vs a non-binding MOU.

⁵⁴ Para 4, Section 4, New Reg Towards Customer Centric Energy Network Regulation, Directions Paper, AER, ECA, ENA, March 2018

6.1.2 Timing and process for agreement of the engagement process

AER staff considered that ideally, the MOU would have been finalised much earlier in the process. The Customer Forum Chair also suggested that it would have been helpful to have developed an agreement template. AusNet Services however was less concerned about this, given, in its view, that the process was a trial.

The Customer Forum Chair noted the practical challenges for the Forum which needed to engage in the agreement process at the same time as starting to engage in the substance of its role.

AER staff considered that reaching agreement should be easier to achieve in future, because the AusNet Services trial's MOU should provide a sound starting point for future trials, or if the New Reg Process becomes more formalised. All parties observed that many of the fixed costs and time associated with the first trial are unlikely to be repeated in future.

6.2 APPOINTMENT OF THE CUSTOMER FORUM

As noted in section 2.3.5 above, the MOU states that if practicable, the chair should participate in the recruitment of the ordinary members of the Customer Forum. The chair of the Customer Forum advised that he was not involved in the selection process but that he felt that the selection process was well managed.

6.3 GOVERNANCE OF THE CUSTOMER FORUM

It is premature to observe concluded participant views on the effectiveness of the Customer Forum governance arrangements, noting that agreement on the scope of the negotiation and the negotiation itself have not taken place. However, currently there seems to be general comfort that they are operating effectively ('so far, so good').

The following comments were made about the governance arrangements:

- **ECA involvement in MOU** | AusNet Services thought that it would be desirable if the ECA was formally part of the MOU including: formally helping with the recruitment process; and being involved in discussions with the AER on scope of the negotiation.
- **Reference Committee** | The Reference Committee has been established, but the escalation process it provides for is as yet untested. The Customer Forum Chair considered that the use of the Reference Committee should be avoided if possible because it would reflect adversely on all parties (i.e. use of the Reference Committee indicated the process was failing). AusNet Services suggested that one issue that may need to be formally escalated to the Reference Committee was agreement on the scope of negotiation.
- **Customer Challenge Panel** | It has taken time to consider what the role of the Victorian sub-panel of the CCP (CCP17) would be in the trial. AER staff note that this was deliberate in the sense that it was considered important for the Customer Forum members to get used to working together and have some time to be clear about their role, before asking Customer Forum members' views on how they might interact with CCP17. The proposal for how the CCP17 would be involved is set out in **Appendix E**.

6.4 PERCEPTIONS OF INDEPENDENCE OF THE CUSTOMER FORUM

The Directions Paper⁵⁵ and the MOU⁵⁶ note that the Customer Forum is to be independent. Regarding whether perceptions of independence for the Customer Forum have been adequately addressed, AER staff commented that:

- There was sufficient visibility of the recruitment process to allow it to reasonably conclude that the Customer Forum members are sufficiently independent.
- The fact that the ECA acts as a clearinghouse for funding arrangements also provides comfort about independence.
- There is the ability to escalate matters to a Reference Committee (which includes the AER and AusNet Services) where contentious matters (for example differences between the Customer Forum and AusNet Services) can be heard and resolved/settled.

Feedback from AusNet Services and Customer Forum Chair however indicated their perception that a key ongoing concern for the AER was the potential for ‘capture’ of the Customer Forum by AusNet Services. It is suggested that this could be an ongoing focus for future monitoring reports.

The Customer Forum itself acknowledged early that its perceived legitimacy with AusNet Services’ customers would be important. This early recognition led it to conclude that it needed to publish an initial Engagement Report to accompany AusNet Services’ draft Regulatory Proposal. This will provide for open stakeholder feedback prior to settling the proposal and Engagement Report.

6.5 AER GUIDANCE AND ADVICE TO THE CUSTOMER FORUM

The importance of the role the AER plays in providing guidance and advice to the Customer Forum was viewed at the outset as critical to the success of the New Reg Process and the trial.

AER staff have participated in many of the meetings already held between the Customer Forum and AusNet Services and provided comments on some of the material provided by AusNet Services to the Customer Forum - material relating to matters that AusNet Services proposes to be in scope for negotiation.

Monitoring feedback

As noted above, a key underlying issue for how the AER was perceived to carry out its role (reported by both the Customer Forum Chair and AusNet Services) appears to be that it is (appropriately) focused on guarding against the risk of ‘capture’ of the Customer Forum by AusNet Services.

The Customer Forum Chair reported that AER staff guidance was now (as at mid-June) working well although initially it had been challenging.

The AER staff advised that the challenges they had in providing guidance and advice were:

- For AER resourcing purposes it has been challenging to participate in the trial before the Early Engagement Plan and MOU were finalised, and while also having a parallel live engagement process on the wider New Reg Process.

⁵⁵ Item 3b Section 2, New Reg Towards Customer Centric Energy Network Regulation, Directions Paper, AER, ECA, ENA, March 2018

⁵⁶ Section 36 MOU

- It has been challenging to mobilise appropriate AER staff to comment on relevant AusNet Services material, because only limited time has been provided to review that material in advance of Customer Forum meetings.

AusNet Services thought that the AER had invested significant effort in this aspect of the New Reg Process, though there was some variability in the effectiveness of communication by individual AER subject matter experts. Some presentations were effective whereas others could be overly technical. The AER's views on AusNet Services' approach to briefings are set out in section 6.7 below.

Suggestions for improvement by trial participants

Early settling of the scope of negotiation | AER staff consider that better use of both the Customer Forum's and the AER's time would be made in future if the likely scope of negotiation is settled before the Customer Forum first meets or at least at an earlier stage. That would enable information provided by the AER to be more targeted and would provide the AER with more time to provide relevant feedback.

Effective communication | As noted AusNet Services suggests the AER should consider how it goes about communicating the level of detail on technical questions.

Roles in settling the forum scope | AER staff consider the Customer Forum should be involved in the scoping discussion. Whereas the Customer Forum Chair says that it would be more efficient if this was just the AER and AusNet Services, and they feel like they are in a tennis match. They would be happy if this was settled prior to them being convened and became part of the Customer Forum's brief.

6.6 CUSTOMER FORUM DEVELOPING AN UNDERSTANDING OF THE AUSNET SERVICES DISTRIBUTION BUSINESS AND ITS REVENUE REQUIREMENTS

As noted above, providing a clear link between elements of the Regulatory Proposal (or the regulatory regime) and specific customer outcomes is seen by participants as challenging for DNSPs and the AER. The AER staff suggested it will likely be easier in future, as the AusNet Services trial will have provided an example. It is suggested that this should be a focus area for future monitoring reports.

AusNet Services' customer research program started its exploratory stage before the Customer Forum was established. It is apparent that the Customer Forum put significant focus on the customer research programme at the outset of its work and that this had a significant impact on the direction of the customer research programme. This is outlined in detail in **Appendix E**.

As above, AER staff consider that the Customer Forum would be able to have more scope to direct and influence the program if it were established earlier in the process. In contrast AusNet Services thought that customer research would need to become part of continuous BAU.

AER staff and the Customer Forum also considered that given the remaining time available to initiate new research, AusNet Services might better spend its time taking stock of what the research over the past 12-18 months was already saying about AusNet Services customers' preferences and concerns. The Customer Forum identified some concerns and questions with the methodologies used by AusNet Services for surveying customers—in particular, raising questions about how representative the survey samples have been.

Overall, the Customer Forum Chair thought the education provided was adequate for the Forum's required role. The Customer Forum now had confidence to ask questions of AusNet Services arising

from the presentations and materials presented. The Customer Forum also felt that could explore issues of customer experience and centrality in business decision making.

Examples of questions asked include:

- Innovation seems to be very engineering and technical, how can AusNet Services bring the same good thinking into its approach to managing customer experience?
- How is AusNet Services learning from complaints data? They could be mining customer complaints data (e.g. have data, but couldn't tell if it was electricity, gas or both), and it could also learn from field staff.
- On GSL payments, the Customer Forum asked AusNet Services to explain the rationale why it gets paid for these. In the Forum's view there is nothing in that mechanism that identifies and eliminates bad behaviour.
- On hardship, the Customer Forum asked that given people have a concern, what are you doing? While AusNet Services gravitated to the statutory view of DNSPs' responsibility in response, the Forum observed: 'you have a unique situation to help, are you willing to do so?' and 'We ask, what will you do, and do you have a will to do something?'
- What metrics will AusNet Services use on those worst served feeders? How will the company hold itself to account?

6.7 TIMELINESS OF PROVISION OF INFORMATION TO THE CUSTOMER FORUM

AusNet Services considers that the Customer Forum members have been provided with pre-reading materials on a timely basis. In contrast AER staff considered it might be more effective if the Customer Forum and the AER were provided with AusNet Services' briefing material well in advance of meetings, thus allowing the Customer Forum (and the AER) to have some queries resolved before the meetings.

AER staff advised that AusNet Services ultimately agreed to provide the AER the material it wanted to provide the Customer Forum a week in advance. AER staff considered that this was still a short time period, but enabled the AER to identify issues with the material that was being provided to the Customer Forum. This enabled the AER to act in accordance with the role it set out in the first guidance note.

After reviewing material, at the start of a sitting week the Customer Forum meets among themselves and then with AusNet Services to outline what they want to cover and focus on, with the benefit of having seen it. The Customer Forum Chair considered AusNet Services has been responsive to Forum feedback and changes in focus or addition of matters.

6.8 AUSNET SERVICES SUPPORT TO THE CUSTOMER FORUM

There were no concerns raised with the support provided by AusNet Services to the Customer Forum. It was noted that agreement from AusNet Services to fund extra Customer Forum member time for preparatory research and additional direct engagement with AusNet Services customers and representatives has been forthcoming.

The Customer Forum Chair was comfortable with the level of resourcing and expertise of the administrative support they have been receiving from AusNet Services. AER staff and AusNet Services were supportive of the Customer Forum engaging further support to assist it - such as in drafting parts of its Engagement Report - as in their view it would help to maximise the value of Customer Forum members' input.

6.9 WHEN SHOULD THE CUSTOMER FORUM BE ESTABLISHED

There were different views on the timing for establishing the Customer Forum.

AusNet Services' view was that undertaking the required work to establish the Customer Forum had been challenging but did not think it was warranted to start the process any earlier. AusNet Services recognises that they could have been better prepared, but this should be a lesser issue for other networks in future. AusNet Services thought that the Customer Forum would be well placed to publish a Draft Regulatory Proposal for public consultation, alongside a draft Engagement Report, by the target date of November 2018.

AER staff in contrast consider that the establishment process would have been more efficient if the Early Engagement Plan, MOU, and likely scope of negotiation were agreed much earlier in the process. The AER considers that the current process has resulted in a very challenging timeframe for finalising scope, setting the boundaries of negotiation, negotiating and agreeing key aspects of AusNet Services' draft revenue proposal, and preparing an initial/draft Engagement Report.

The Customer Forum Chair was comfortable with the timing of when the forum was established relative to the proposal. He noted that if customer research is not 'starting from a zero base' in future, this key early matter can be sufficiently influenced, and/or additional targeted research commissioned by the Customer Forum (independently or with the DNSP) within the timelines to submission.

7. Feedback on negotiations

We explored whether there were any observations on how the negotiation process was working in practice. It was too early in the process to reach clear views on this, with the Customer Forum at this stage working on its proposed process for this to share its views with AusNet Services. It is suggested that this should be a key focus area for the next monitoring report.

Appendix A. Customer Forum Members

Tony Robinson – Chair

Tony is a former Victorian MP who served in various roles including Minister for Consumer Affairs, Cabinet Secretary and Chair of the Parliamentary Economic Development Committee. As Minister he played a key role in the establishment of Australian Consumer Law, product safety regime reform and the transfer of credit responsibility to the Commonwealth. After leaving Parliament he worked as the Brotherhood of St Laurence's Senior Manager for Financial Inclusion and has been a member of the ACCC's Consumer Consultative Committee, Yarra Valley Water's Community Advisory Group, Insurance Australia Group's Consumer Advisory Board and the CBA Customer Advocate Community Council. Tony is also a current board member of Financial Counselling Australia.

Helen Bartley

Helen has more than 25 years quantitative and qualitative research experience designing and conducting market and social research and evaluations across a wide variety of industry sectors, with specific experience in customer engagement processes, including establishing and supporting Grampians Wimmera Mallee Water's (GWM Water) customer deliberative panel associated with its pricing submission to the Victoria's Essential Services Commission throughout 2017. This involved reviewing and synthesising GWM Water's technical documentation into a format that is meaningful and relevant for senior management and customers and preparing a detailed report on the processes and outcomes associated with the panel's deliberations.

John Mumford

John has over 25 years' experience representing consumers while working as a Financial Counsellor and Consumer Advocate in South Gippsland. He is currently an Affiliate Member of the Financial and Consumer Rights Council (FCRC) and has held Consumer Directorships with the Energy and Water Ombudsman (Victoria) (EWOV), the Consumer Utilities Advocacy Centre (CUAC) and the Consumer Law Centre Victoria (CLCV). John and his family run a small beef cattle and hazelnut farm in South Gippsland.

Greg Camm

Greg is a former financial services senior executive, with three CEO roles in banking, wealth management/life insurance and superannuation. He currently serves on a number of Boards and is a former Director of Yarra Valley Water, where he had significant involvement in the Citizens Jury process it undertook as part of the development of its most recent pricing submission development.

Dianne Rule

Dianne has worked in education, publishing, politics and community projects for 35 years. Her work experience has given her a sound working knowledge of government, governance, media, policy formation, strategic planning, financial management and marketing. Dianne is a former Chief of Staff and senior advisor to both State and Federal MPs, has served on a number of boards and is a member of the Cancer Australia Advisory Council and Chair of the JMB Foundation.

Source: AusNet Services website <https://www.AusNet Services.com.au/-/media/Files/AusNet Services/About-Us/Determining-Revenues/Distribution-Network/EDPR-Customer-Forum-member-biographies---25-June-18.ashx?la=en>

Appendix B. Customer Forum - Recruitment Process

The Customer Forum members were selected through a skills-based approach. The primary requirement of members was that they be fully independent of AusNet Services and capable of credibly representing the perspective of the breadth of AusNet Services' customers including large and small customers and vulnerable customers of many kinds.

A skills-based approach allowed AusNet Services to target required analytical capacity and provide a nimble and authoritative counterparty in negotiations with AusNet Services.

Members of the Customer Forum therefore must not:

- Be currently employed or engaged by AusNet Services or the AER;
- Have criminal convictions;
- Have been disqualified from acting as a director; or
- Have undertaken activities deemed to have had major adverse consequences for consumers.

Source: Section 3, AusNet Services, Early Engagement Plan, EDPR 2021-25 Customer Forum

Appendix C. Initial briefings of the Customer Forum

Details of the initial briefings to the Customer Forum, including a large number of presentations, are listed on AusNet Services' website.⁵⁷

The initial briefings included:

- introductions to key staff
- the Customer Consultative Committee and site visits
- meetings with external parties including the Ombudsmen and the ESV.

The timeline for briefings was:

- Week 1 - March 20-22, 26-27
- Week 2 - April 16-18, 26, 27
- Weeks 3 and 4 - May 15, 21, 22 and June 7, 8, 12-14.

Presentations and introductory discussions included the following topics:

- network characteristics and operating environment
- economic regulation intro
- customer characteristics – what we know today about our customers
- the revenue review process, including a 'post mortem' of the previous EDPR
- pricing
- metering
- the value of customer reliability (presented by AEMO).

The AER also presented on the following topics:

- expenditure assessments – capex and opex
- incentive schemes
- benchmarking.

There was a tour of key assets including to Woori Yallock Zone Substation to visit a rapid earth fault current limiter (REFCL), the Dandenong Ranges and the Mooroolbark mini-grid.

The Customer Forum met with front line call centre staff and listened in to customer calls, met with regional staff and attended focus groups with a broad range of customers to get a firsthand understanding of views and preferences.

Source: AusNet Services personal communication, and AusNet Services website

⁵⁷ <https://www.AusNet-Servicesservices.com.au/en/Misc-Pages/Links/About-Us/Charges-and-revenues/Electricity-distribution-network/Customer-Forum>

Appendix D. Research program into customer preferences

AusNet Services had commenced the exploratory stage of its customer research program when the Customer Forum joined. This encompassed initial discussions with business customers, local councils and consumer advocates, and commissioning of an ethnographic study for insights on the 'lived' experience of a range of customers.

In parallel, a large-scale survey on customers' attitudes and perceptions was underway and AusNet Services was developing a customer satisfaction index. AusNet Services had initially planned to run deliberative Customer Forums as part of the next stages of engaging on our reset, however, to be effective these require detailed information on key trade-offs and costed options.

The Customer Forum wanted AusNet Services to go 'back to basics' and spend more time hearing from customers what they value and what they expect from the business, including communication.

Instead of the 3 planned deliberative Customer Forums, AusNet Services ran 10 focus groups in regional areas, as these were considered a more suitable method to explore the topics that the Customer Forum wanted us to. In addition, they influenced the locations of these focus groups and a Customer Forum member attended 9 of the 10 groups.

AusNet Services co-developed the next stages of engagement with the Customer Forum. The Customer Forum will split into 2 groups and spend 3 days touring the north and east regions of the network in mid-August, meeting with key stakeholders that both AusNet Services and the Customer Forum have identified.

AusNet Services are planning 3 public sessions at locations where investment is planned in 2021-25, and are taking the Customer Forums advice on the timing, agenda, advertising and format of these sessions. It is also initially planning a workshop for customer advocates in August. The Customer Forum wants to meet with advocate groups individually first, and we will now run this workshop in October.

AusNet Services will involve the Customer Forum in planning its intensive engagement on the draft revenue proposal in early 2019.

Source: AusNet Services

Appendix E. Customer challenge panel

In May the AER advised that, although not implemented yet, the current proposal for CCP involvement is as follows:

- The Customer Forum might wish to access the expertise and wider perspective of CCP17 before the initial and/or final Engagement Reports are prepared. This could involve meetings between the Customer Forum and CCP17 to test the Customer Forum's thinking on issues that are in scope and access the broader perspective of the CCP.
- CCP17 would observe AusNet Services' consultation on its draft revenue proposal with consumer and other stakeholder groups but focus on issues that are out-of-scope of the Customer Forum's negotiation—e.g., CCP17 would be free to engage in issues that were not in scope per AusNet Services' request. This would mean that AusNet Services could choose to consult with all parties (CCP, Customer Forum and AER) in any 'deep dives'.
- CCP17 would provide feedback to the Customer Forum and AusNet Services on the Customer Forum's initial Engagement Report and the draft revenue proposal that will be out for broader comment in early 2019—this is an opportunity for any stakeholder (not just CCP17) to comment on draft proposals/reports. The Customer Forum would have the opportunity to take CCP17's views into account, along with the views of other consumer groups, in preparing the final Engagement Report.
- After AusNet Services' revenue proposal has been submitted, CCP17 would perform its usual role, which includes challenging and submitting on the AER's draft determination.

Source: AER