



New Reg Trial Evaluation Framework

29 November 2018

Australian Energy Regulator

FINAL REPORT



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I. INTRODUCTION

I.1. DOCUMENT PURPOSE

In June 2017, the Australian Energy Regulator (AER), Energy Networks Australia and Energy Consumers Australia (ECA) launched a joint initiative to explore ways to improve sector engagement and identify opportunities for regulatory innovation. On 23 March 2018, the agencies jointly released a draft process to enable consumer perspectives to be reflected in regulatory proposals in advance of lodging those proposals for the AER's assessment under the legislative framework. This draft process is called New Reg: Towards Consumer-Centric Energy Network Regulation.¹

On 23 March 2018 it was announced that AusNet Services Limited (AusNet) would trial the New Reg Process (New Reg trial, trial, AusNet trial) for its Electricity Distribution Pricing Review 2021-25 (EDPR 2021-25).

CEPA has been engaged by the AER to undertake an evaluation of the AusNet trial of the New Reg process and, collaborating with the AER project team and the Reference Group for the New Reg project, develop an evaluation framework for the trial.

This paper sets out our proposed evaluation framework. The evaluation framework is built around Trial Assessment Factors that are based on the objectives of the New Reg Process. These evaluation criteria are intended to ensure that the evaluation meets the requirements and desired evidence standards of the New Reg Process (e.g. having regard to principles of best practice regulation, and the issues the Australian Energy Market Commission (AEMC) would be required to consider when looking at any future rule change associated with the New Reg Process).

The views presented in this paper are those of CEPA alone. However, the evaluation framework has benefitted from stakeholder (including members of the Reference Group) feedback on a draft set of Trial Assessment Factors, as well as input and review by the internationally-recognised regulatory and energy market expert Professor Stephen Littlechild and by regulation and consumer engagement expert Maxine Frerk. The feedback has been incorporated into this document.

This paper assumes a good understanding of current regulatory practice.

I.2. DOCUMENT STRUCTURE

The rest of this paper is structured as follows:

- Section 2 sets out the overall framework of the AusNet trial evaluation and expectations of the evaluation.
- Section 3 outlines the proposed Trial Assessment Factors.
- Section 4 sets out the data collection processes proposed to inform the trial evaluation.
- Section 5 sets out the proposed scope of each of the deliverables.

Appendix A sets out the comments, by theme, we received from members of the Reference Group on a draft of the Trial Assessment Factors, and our response to these comments.

¹ <https://www.aer.gov.au/networks-pipelines/guidelines-schemes-models-reviews/regulatory-innovation>



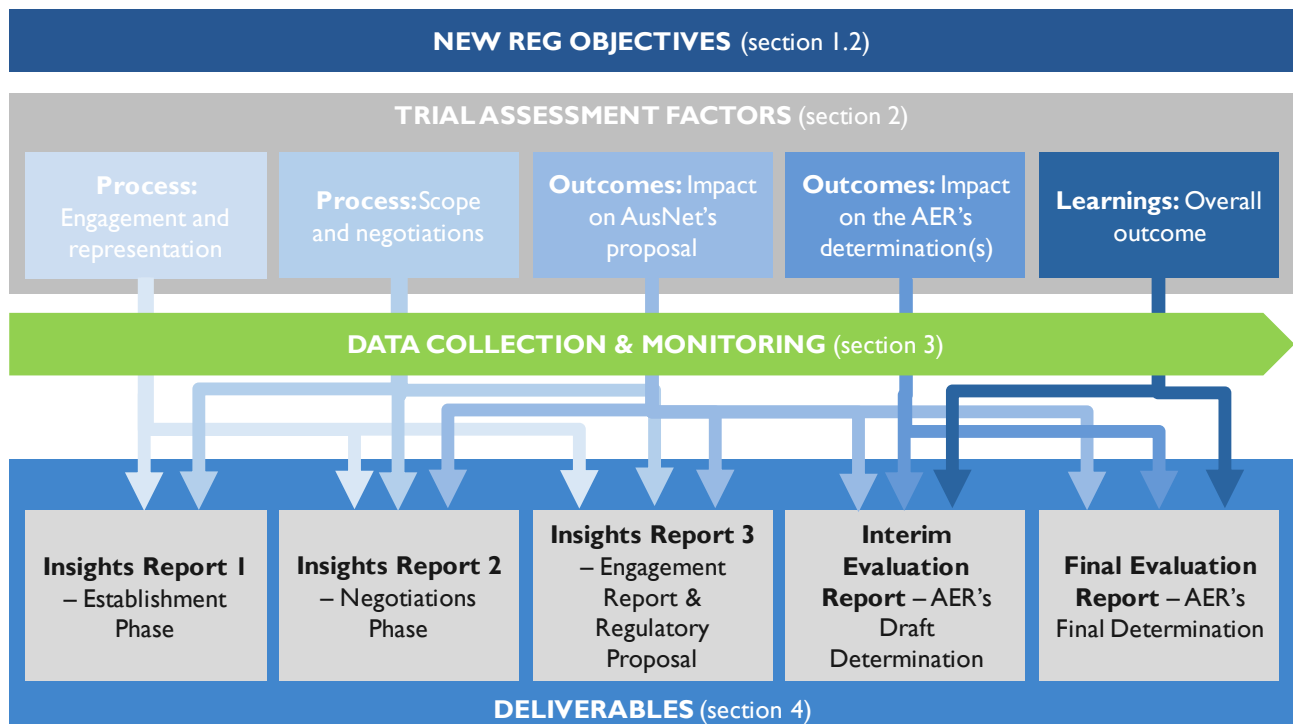
2. EVALUATION FRAMEWORK

In this section we describe the scope of the AusNet trial evaluation, its anticipated process and outputs, and the expectations of the evaluation framework.

2.1. THE EVALUATION FRAMEWORK, PROCESS AND OUTPUTS

Our proposed evaluation framework for the AusNet trial is set out in the figure below. We have used the objective of the New Reg process to inform the Trial Assessment Factors. We will rely on multiple forms of data collection/ reporting to evaluate the AusNet trial.

Figure 2.1: Evaluation framework



As indicated in Figure 2.1, CEPA has been engaged to deliver five reports over the course of the AusNet trial. Figure 2.2 overleaf illustrates in more detail the coverage of each of our reports.



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Figure 2.2: Process and outputs covered by each report

	Process/ resourcing			Outputs		
First Insights Report	AER Staff input	Customer research	Training Received	Project initiation		March 2018
				Forum members selected		April - July
		Early Engagement Plan				
		Engagement Agreement / MoU				
		Scope of Negotiations agreed				
Second Insights Report		Customer research	Negotiations – Round 1	Draft Engagement Report	Draft Regulatory Proposal	August - November
Third Insights Report	AER Staff advice	research	Consultation On Drafts			December – March 2019
			Negotiations – Round 2	Final Engagement Report	Final Regulatory Proposal	April - July
Interim Evaluation Report	AER Assessment			AER Draft Determination		August – March 2020
Final Evaluation Report			Consultation On Draft Determination	AER Final Determination		April – October

Source: CEPA

Note: We have used different colours to represent parties' involvement: The Forum = Green; AER = Gold; AusNet = Blue.



The three **Insights Reports** will cover the period from the formation of the Customer Forum up to the submission of AusNet's regulatory proposal to the AER. As a result, the Insight Reports will not be able to comment on the final outcomes of the trial, as the AER will be yet to complete its determination.

Therefore, the focus of the Insights Reports (particularly the first two reports), will be on the insights into the Forum's role and impact, and the negotiation *process*, rather than the *outcomes* of the negotiations. The Interim and Final **Evaluation Reports** will focus on the outcomes of the trial, as by this stage the AER's Draft and Final Determinations, respectively, will have been completed.

Undertaking a comprehensive analysis of the process followed during the trial will assist us to:

- Provide context to the eventual outcomes of the trial and enable us to form a view on why the trial unfolded in a particular way.
- Offer insights into learnings from the trial – for example, the scope for a different process to achieve improved outcomes.
- Highlight emerging issues for the different stakeholders to consider. As the trial is intended to follow a 'live engagement' process, the commentary that we provide in the Insights Reports may influence decisions on process for subsequent stages of the trial.

The different purposes of the Insights and Evaluation Reports means that the evaluation framework that we set out in this paper contains Trial Assessment Factors that consider both process *and* outcomes, as appropriate to the stage of the trial that will be covered in each report. Nonetheless, our judgement on the success of the trial will ultimately depend on the final outcomes and our evaluation of the process will keep this in mind. To this end, for each Trial Assessment Factor (including those related more to process) we have identified an 'outcome question', to clearly link the evaluation to the overall outcomes of the trial. This is set out in more detail in Section 2.4.

2.2. NEW REG TRIAL OBJECTIVES

As stated in the introduction, New Reg is a joint initiative of the AER, ECA and Energy Networks Australia. The overall vision for project is "*that energy consumers' priorities and stated preferences should drive, and be seen to drive, energy network businesses proposals and regulatory outcomes*".²

We have interpreted the vision as the New Reg 'Project Objective':

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 outcomes of the New Reg Process must contribute to the achievement of the National Energy Objective (NEO).³

² ECA, AER and Energy Networks Australia (2018), *New Reg: Towards Consumer-Centric Energy Network Regulation: Approach Paper*, March, page 3.

³ As stated in the National Electricity Law (NEL), Section 7.



For the AusNet trial, underlying the overall Project Objective, and formalising the Early Engagement Plan (which draws on the process set out in the Directions Paper), is a Memorandum of Understanding (MOU),⁴ which was agreed between AusNet, the AER and the Forum. We take this MOU as the definitive source of the AusNet's and the AER's objectives for the trial. These objectives are to:

- improve the speed and reduce the cost of the regulatory review process;
- enhance consumer confidence in the regulatory review process; and
- improve the overall outcomes of the regulatory review process with a view to promoting the long-term interests of consumers of electricity.⁵

The MOU also sets out specific objectives for the Customer Forum, within the Scope of Negotiations⁶:

- understand and represent to AusNet the perspectives and preferences of AusNet's customers;
- seek to understand AusNet's 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 NEO;
- negotiate with AusNet's 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 NEO;
- provide input into AusNet's customer research program for the EDPCR 2021-25;
- prepare the draft version of the Engagement Report and the final version of the Engagement Report; and
- understand and operate within the constraints of the regulatory framework established by the National Electricity Law (NEL), the National Electricity Rules (NER) and the regulatory instruments developed by the AER or other jurisdictional regulators, as applicable.⁷

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.

2.3. EXPECTATIONS FOR THE EVALUATION FRAMEWORK

The purpose of the proposed evaluation framework, using the Trial Assessment Factors proposed in Section 3, is to evaluate whether the outcomes of the AusNet trial met, or partially met, the various objectives set out above for the trial and the New Reg process more generally.

⁴ Available here: <https://www.aer.gov.au/system/files/AusNet%20Trial%20-%20Early%20Engagement%20Memorandum%20of%20Understanding.pdf>, as 'AusNet trial – Early Engagement Memorandum of Understanding, June 2018.

⁵ MOU, *Recitals*, page 1.

⁶ Scope of Negotiations means the matters which the Customer Forum and AusNet Services agree will be the subject of negotiation between them in accordance with clause 4.3 of the MOU. The Scope of Negotiations and any variations must be agreed with the AER.

⁷ MOU, Clause 2.3, page 3.



However, there are a number of factors and limitations that impact on the evaluation framework, and how we propose to undertake our evaluation role over the course of the trial, that stakeholders should be aware of from the outset. These include:

- The monitoring and evaluation are split between a monitor (Farrier Swier) and the evaluator (CEPA). Our evaluation will rely significantly on findings and information in the monitor report
- The evaluation is staged over the life of the trial. The evaluation requires three 'insight' reports phased over project, and a draft and final evaluation report. It has a live engagement process. Therefore, insights from the evaluation may impact on the project.
- The assessment will be largely qualitative. It will rely on our judgement, and the stakeholders' views on the process and outcomes, and the AER's decisions.
- We do not think that the outcome of the AusNet trial could be meaningfully compared to other determinations the AER is making at a similar time. This is because different network companies face different circumstances, and their customers may have different expectations. As such, differences in outcome may not necessarily reflect differences in process.
- We also do not think that the outcome of the New Reg trial can be meaningfully compared to the outcome of AusNet's determination for 2016-20. This is because the two determinations would have taken place amid different circumstances for the network (e.g. in terms of utilisation), for customers and for the AER (e.g. the removal of the tribunal appeals process).
- We instead propose, in part, to assess the outcomes of the trial based on the views of AusNet and the Forum as to what the counterfactual might have been if the Forum did not exist. We will also give regard to best practice regulatory principles⁸ and other international precedent of economic regulation of network utilities⁹ as a further basis of comparison for the outcomes from the AusNet trial and the draft New Reg process more generally.¹⁰
- Since the AER is responsible for ensuring that the NEO is met and the NEL is followed, we are not evaluating the AER's draft and final determinations, we are instead evaluating the New Reg Process' impact on the AER's determinations.
- We define any activity associated with the aim of gaining a better understanding customers' perspective as consumer engagement. This could take the form of repeat small customer forums or larger one-off customer surveys. Therefore, by our definition 'customer research' is a form of customer engagement.

⁸ For example, transparency, proportionality, consistency, the need to balance cost efficiency and quality of service in the provision of network services in regulatory outcomes etc.

⁹ For example, precedent of approaches used in other sectors and countries to develop alternative regulatory pathways for the negotiation of network providers' price control settlements, and for customers' priorities and preferences to be reflected in regulatory proposals and settlements.

¹⁰ In this regard, CEPA's evaluation will benefit from the inputs of the internationally recognised regulatory and customer engagement experts (Professor Stephen Littlechild and Maxine Frerk) referred to in the introduction to this paper.



2.4. KEY DEFINING FEATURES OF THE NEW REG PROCESS

There are numerous ways network service providers (NSPs) can involve consumers in developing their regulatory proposals to help ensure that consumer perspectives and preferences are taken account of, and for the AER to consider consumers' views in assessing proposals. There are specific differences between other NSPs' consumer engagement approaches and New Reg.

These defining features of the New Reg process, along with the process objectives (see section 2.2 above) are important to the development of the Trial Assessment Factors, as these help us to identify what aspects are 'alternative' to the NSPs and the AER's typical approach.

Below we summarise our view on what differentiates the New Reg process from other consumer engagement processes deployed by NSPs in Australia; this is based on the Directions and Approach reports, which set out the elements of the New Reg process in more detail. We consider that the differentiating features of New Reg are:

- New Reg provides for the creation of an officially recognised platform – the 'Customer Forum' – for consumers to negotiate elements of AusNet's revenue proposal in advance of its submission to the AER so that it reflects consumers perspectives and preferences.¹¹ The Forum is "*to represent the long-term perspective of consumers and not to represent consumers directly*".¹²
- The Forum composition, roles, and responsibilities (and therefore appropriate resourcing levels) are defined at a high-level with input from the AER, ECA, AusNet, and the Forum.
- New Reg requires the publication of an Engagement Report setting out the Forum's positions on the matters it considered, and how these *represent the long-term perspective of consumers*. The Engagement Report will set out the Forum's process and evidence that it used to justify matters of agreement (and disagreement) with AusNet.
- New Reg encourages AusNet to demonstrate links between its proposal and the negotiations between it and the Forum.
- The AER provides support to the Forum throughout the process, including, upon request, boundary notes on what is may be permissible under the NEL/NER, providing advice and other information or resources necessary to analyse information provided by AusNet, and providing advice about how it might assess a particular matter.¹³
- The AER's involvement will help ensure that "*the process is sufficiently robust that the AER can have regard to the agreed outcomes in making formal revenue determination*."¹⁴

The AER has agreed to have regard to the negotiated position, and the supporting documentation. This will be in the context of the combination of factors outlined above.

¹¹ ECA, AER and Energy Networks Australia (2018), *New Reg: Towards Consumer-Centric Energy Network Regulation: Directions Paper*, March, page 1.

¹² Directions Paper. Page 10.

¹³ MOU, Clause 6.3.

¹⁴ Directions Paper, page 4.



3. 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 relating primarily to the first two points; that is, our main task will be to assess whether the New Reg trial met the Project Objective. While the third point provides guidance for the monitoring requirements, it is not necessarily a specific evaluation requirement. However, we would provide discussion around the learnings from the trial in the Insights Reports. We received comments from members of the Reference Group on a draft version of the Trial Assessment Factors. We set out the broad theme of these comments and our response in Appendix A.

We have set out the Trial Assessment Factors in the broader context of the evaluation. As noted above, our evaluation will take place throughout the duration of the trial. Therefore, the extent to which each Trial Assessment Factor is relevant will vary across each of our five reports, in line with the progress of the trial. The Insights Reports will focus primarily on the negotiation process, while the Evaluation Reports will provide an assessment of the outcomes from the trial. The Trial Assessment Factors listed in Table 1 and throughout Section 4 reflect feedback from the Reference Group on a draft set of Trial Assessment Factors that we shared with the group in August 2018.

The Trial Assessment Factors and sub-factors should be read from the view point of measurable factors that can be used to build the picture of what the outputs of the trial are. We can use these observations to evaluate the outcomes and learnings from different stages of the process. In regard to the factors we are seeking to answer the following ‘outcome questions’:

- **Engagement and representation.** Did the Forum provide improved information (compared to AusNet’s prior proposals for customer engagement) to AusNet on its customers’ perspectives and preferences?
- **Scope and negotiations.** Did the Forum adequately and appropriately represent customers’ perspectives and preferences during the negotiations?
- **Impact on the content of regulatory proceedings.** What customer priorities and preferences did the New Reg process identify?
- **Impact on proposal.** Did the Forum’s negotiations impact, and be seen to impact, on AusNet’s proposals in a way that reflected customers’ perspectives and preferences?
- **Impact on Determination.** Did the AER’s determinations benefit from the Forum’s negotiations (including from the availability of the Engagement Reports), i.e., did it consider that AusNet’s regulatory proposal ‘better’ reflected customer perspectives and preferences? Has the Forum been able to demonstrate, against the requirements of the NEL, how it reached its positions and how they reflect consumers’ preferences and perspectives?



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- **Overall.** Did the New Reg process lead to the achievement of the NEO? If so, was this achieved in an efficient way? Do the current NER allow the AER to consider properly the outcomes of the New Reg process?



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Table 3.1: Trial Assessment Factors (sub-factors in no particular order)

Factor	Sub-factors
Process	
Engagement and representation - Did the Forum provide improved information to AusNet on its customers' perspectives and preferences?	Did the different parties understand their roles and responsibilities?
	Was the Forum an effective representative of a wider consumer group?
	Did the engagement process provide the parties with sufficient time to undertake their roles and responsibilities?
Scope and negotiations - Did the Forum adequately and appropriately represent customers' perspectives and preferences during the negotiations?	Was the 'Scope of Negotiations' appropriate?
	Did the Forum understand, and did they have the ability to negotiate, the topic/ issues?
	Were the negotiations conducted in an appropriate manner?
Outcomes	
Impact on the content of regulatory proceedings – What customer priorities and preferences did the New Reg process identify?	What customer priorities and preferences were identified and negotiated during the trial process? Did these priorities and preferences reflect all or a subset of AusNet's customers? Did these represent the long-term interests of consumers?
	Did early engagement influence the focus areas for the regulatory review? To what extent did customer engagement, and therefore customers' priorities and preferences, drive the focus of the Forum and AusNet's negotiations?
	Did the negotiation between the Forum and AusNet lead to any new and/or innovative issues, driven by stated preferences of customers, forming part of the regulatory outcomes of the proceedings?
Impact on the AusNet proposal – How did the Forum's negotiations impact AusNet's final regulatory proposals?	Did AusNet adopt all or only parts of the negotiated positions set out in the Forum's Engagement Report(s)? Where AusNet did not adopt the same position as the Forum, what was the rationale for this?
	How did AusNet reflect the negotiated positions of the Forum and customers' priorities and stated preferences in the presentation and content of its final regulatory proposal?
Impact on the determination(s) - Did the AER's determinations benefit from the Forum's negotiations (the Engagement Reports)?	To what extent did AER's draft and final determination(s) reflect the engagement and negotiations between AusNet and the Forum?
	Where the AER adopted a different position to the negotiated positions and outcomes of the early engagement process, what was the reason for this?
	To what extent did the AER consider the negotiated positions in the Forum's Engagement Report provided an effective evidence base for its determinations and were in the best interests of AusNet's customers?
	Did the AER consider that AusNet's final regulatory proposal 'better' reflected and presented the customer perspectives and preferences?



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Factor	Sub-factors
Learnings	
Overall - Did the New Reg process lead to the achievement of the NEO? If so was this achieved in an efficient way? Does the current NER allow AER to consider properly the outcomes of the New Reg process?	Is the New Reg process likely to achieve its objective? (Drawing on the assessment of the 'Process' and 'Outcomes' factors).
	Were there any secondary benefits?
	Were the overall regulatory outcomes from the process considered to be in the interest of AusNet's customers?
	Are there amendments to the process, such as the removal of barriers, that could be made to better achieve the Project Objective?
	Were there improvements in the engagement between the AER and AusNet? Did this lead to a 'better' and/or more efficient process, and therefore outcome?
	Are there findings that could improve the AER's process and/ or Rules changes?
	What are the costs and challenges (including any constraints in the NEL/NER) of implementing the New Reg process, therefore the overall net benefit/cost?



4. DATA COLLECTION

We consider that there are a range of sources which will provide the data required for our evaluation:

- **Monitoring reports.** As noted in the introduction, there is a separate monitoring function which is being carried out by Farrier Swier. Farrier Swier will produce 'Monitoring reports' throughout the project and these are intended to be timed with our insight and evaluation reports. We expect to work with Farrier Swier in setting out information that we would like collected.
- **Material prepared and commissioned by the Forum, AusNet, the AER, and other stakeholders.** We expect that the majority of information shared, deliberations between the various parties, and parties' positions to be recorded in writing. For example, this would include the guidance notes produced by the AER, AusNet's negotiating positions, the materials presented at Customer Forum meetings etc
- **Publicly available information.** This includes documents setting out processes that were undertaken, list of engagement activities, etc.
- **Experience from other jurisdictions.** We will draw on our experience from other jurisdictions to inform our evaluation and identify best practice where applicable.



5. DELIVERABLES

We are to provide the AER with the following deliverables.

Table 5.1: Evaluation deliverables

Report	Coverage	Due date
Insights Report 1	Everything to date (Early Engagement).	October 2018
Insights Report 2	Initial negotiation stage (still part of Early Engagement)	January/ February 2019
Insights Report 3	Engagement Report and Regulatory proposal	July 2019
Interim Evaluation Report	AER Draft Determination.	March 2020
Final Evaluation Report	AER Final Determination	October 2020

As the evaluation process is a ‘live’ evaluation, our insight reports will be structured to focus on areas that can be practically improved during the process.

In the each of the subsections below, we set out:

- The expected insights/ evaluations of each deliverable.
- Data we expect to inform the evaluation.
- Initial set of questions that we envisage will help us evaluate the Trial Assessment Factors, at each deliverable milestone.

5.1. INSIGHTS REPORT 1 – ESTABLISHMENT PHASE

The first Insights Report is due October 2018. The report is to cover the early establishment phase, which includes the:

- Formation of the Forum.
- Establishment of roles and responsibilities.
- The timeline for the expected engagement.
- The early operation of the trial.
- The Forum’s customer engagement/ influence on AusNet’s customer engagement and research.

Expected insights/ evaluations

As the first Insights Report covers only the early stages of the New Reg process, it will not provide an evaluation against the Trial Assessment Factors. Instead, this report will focus on providing observations on specific aspects of the process to date and gathering information that will help with the evaluation towards the end of the project. The first Insights Report will therefore provide our view on:

- Forum governance and objectives.



- Process.
- Forum's impact on AusNet's consumer engagement approach.
- The Scope of the Negotiations.

Data

The First Monitoring Report covers the period to mid-June 2018. Due to delays in the engagement of the evaluation team, the First Monitoring Report was completed without input from the evaluation team.

Since the First Monitoring Report, AusNet and the AER have published a range of material:

- The AER has published a number of guidance notes setting out the boundaries of the NEL and the AER's guidelines for the topics in scope for the negotiations.
- AusNet has published online a list of its wider customer engagement activities.¹⁵
- AusNet has published its initial negotiating positions for the issues it considers to be in scope.
- The Forum have published agendas and papers for the initial negotiation meetings.

The initial negotiations are not covered as part of the first Insights Report but will be central to our second Insights Report.

¹⁵ <https://www.ausnetservices.com.au/Misc-Pages/Links/About-Us/Charges-and-revenues/Electricity-distribution-network/Customer-Forum/Stakeholder-engagement>



Questions

We set out a range of questions below that will help us evaluate the Trial Assessment Factors. The questions below are indicative and may change to reflect changes in the process and/or previous analysis.

Table 5.2: Insight Report 1 – Indicative questions

Question	Question 'addressed' to:	Reasons/ Assessment
Engagement and representation		
What is the Forum's role and responsibilities in the process?	Forum; AusNet; AER	Indication of understanding of the process across the parties.
What is the AusNet's role and responsibilities in the process?	Forum; AusNet; AER	
What is the AER's role and responsibilities in the process?	Forum; AusNet; AER	
What is the CCP's role?		
Can the Forum identify how they expect to undertake the negotiations and what is in scope?	Forum	Indication of the Forum understanding its role.
What customer groups/ representatives were covered by the Forum's early engagement?	Forum; AusNet	Indication of the Forum's effectiveness in representing customers.
What customer engagement/ research activities were undertaken? Were these in addition to/ substitute for AusNet's planned engagement? Were changes made to AusNet's engagement / research approach based on Forum feedback? Were all sides happy with the changes?	Forum; AusNet; Other Stakeholders	
Are the Forum comfortable with the timeframe they are working within?	Forum	Indication of whether the timeframes are appropriate.
What skills / background does the Forum have? Does the Forum consider that it has sufficient expertise/ training on the issues covered? Are there specific areas it feels deficient in?	Forum	Indication of the Forum ability to perform its role and responsibilities.
Scope and negotiations		
How was the Scope of Negotiations agreed?	Forum; AusNet; AER	This will assist us in evaluating how the process of agreeing the scope worked.



5.2. INSIGHTS REPORT 2 – NEGOTIATION PHASE

The second Insights Report is due January/February 2019. The report is to cover the first round of negotiations, which includes the:

- Forum's negotiating position (reflected in the draft Engagement Report).
- AusNet's negotiating position.
- Progress in agreeing/ disagreeing on a joint position.
- AusNet's draft revenue proposal.

However, actual coverage will reflect the progress following the first Insights Report.

Expected insights/ evaluations

We consider that the second Insights Report will predominantly cover the Process factor – 'scope and negotiations'. For this Insights Report we will seek to provide the following evaluation/ feedback:

- The Forum's process for developing its negotiating position (including input from the AER).
- AusNet's process for developing its negotiating position.
- The Forum's effect on AusNet's initial negotiating position.
- Any other concerns/ issues raised by any parties.

Data

We expect to use the following data:

- The second monitoring report.
- The Forum – Draft Engagement Report, and material on its negotiating positions.
- AusNet – Material on its negotiating positions.
- AusNet – Draft revenue proposal.
- The AER – Material produced by the AER to support the negotiations.



Questions

We set out a range of questions below that will help us evaluate the Trial Assessment Factors. The questions below are indicative and may change to reflect changes in the process and/or previous analysis.

Table 5.3: Insight Report 2 – Indicative questions

Question	Question 'addressed' to:	Reasons/ Assessment
Engagement and representation		
Has there been any changes to the parties' roles and responsibilities post the first Insights reports? If so, why?	Forum; AusNet; AER	Indication of understand of the process across the parties.
Was further customer engagement undertaken post the first Insights Report? What were the reasons for the engagement? Were these in addition to/ substitute for AusNet's planned engagement?	Forum; AusNet	Indication of the Forum's representativeness.
Scope and negotiations		
Are there links between the consumer engagement and the Forum's and AusNet's positions?	AusNet; CEPA	Provides an indication as to the impact of the Forum's presence on AusNet's initial proposals.
Did the Forum's proposed customer engagement replace and/or supplement AusNet's existing engagement plans?	AusNet	
Are the parties comfortable with the timeframe they are working within? Have/ do they had sufficient time to form their views?	Forum; AusNet	Indication of whether the timeframes are appropriate.
Has the Forum commissioned analysis to assist with its view on AusNet's position?	Forum; AusNet	This will assist us in evaluating how the Forum has formed its negotiating position and whether it had sufficient information to forms its views.
Did the Forum consider it had adequate support to fulfil its role and responsibilities?	Forum	
Has the Forum identified tensions between the interests of different groups of customers (business versus domestic, current versus future)? If so how did it resolve these in reaching its negotiating position?	Forum; AusNet	



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Question	Question 'addressed' to:	Reasons/ Assessment
Has the Forum been provided information from AusNet on savings/ costs that may occur in components outside the scope that are related to issues within scope?	Forum; AusNet	
Does the Forum consider that the AusNet's negotiating positions reflect its understanding of the scope for negotiation?	Forum	Understanding of any scope changes, and whether the Forum is clear on what is in and out of scope?
Did the Forum input on the scope of coverage of AusNet's negotiation positions?	Forum; AusNet	
Were there areas where the negotiating positions were close? Did this impact on the extent of the negotiations for these areas?	Forum; AusNet	Understanding the AER's role in the negotiating process as assessed by all parties.
To what extent has the AER been involved?	AER; Forum; AusNet	Was the scope appropriate.
Has the monitoring/ evaluation had an impact on process – i.e., impact on customer engagement, negotiating positions, proposals?	Forum; AusNet; AER	Provides an indication as to the impact of the 'live' evaluation process
Impact on proposal		
Are there links between the research/ engagement and the Forum's and AusNet's positions?	AusNet; CEPA	Provides an indication as to the impact of the Forum's presence on AusNet's draft proposal.
What was the draft proposal compared to the negotiating positions?	Forum; AusNet; CEPA	



5.3. INSIGHTS REPORT 3 – ENGAGEMENT REPORT AND REGULATORY PROPOSAL

The third Insights Report is due July 2019. The report is to cover the agreement reached by the Forum and AusNet, and how it is captured in AusNet's proposal.

Expected insights/ evaluations

We consider that the third Insights Report will predominantly cover the Process and Outcomes factors. For this Insights Report we will seek to provide the following evaluation/ feedback:

- The Forum's process for reaching its final negotiating position, including from submissions received of the draft positions.
- AusNet's process for reaching its final negotiating position, including from submissions received of the draft positions.
- The Forum's effect on AusNet's proposal.

Data

We expect to use the following data:

- The third monitoring report.
- The Forum – Engagement Report. Material on its negotiating positions.
- AusNet – Material on its negotiating positions. AusNet's regulatory proposal and supporting material.
- The AER – Material produced by the AER to support the negotiations. AER issues paper. Any CCP reports.
- Any submissions on the proposal.



Questions

We set out a range of questions below that will help us evaluate the Trial Assessment Factors. The questions below are indicative and may change to reflect changes in the process and/or previous analysis.

Table 5.4: Insight Report 3 – Indicative questions

Question	Question 'addressed' to:	Reasons/ Assessment
Engagement and representation		
Has there been any changes to the parties' roles and responsibilities?	Forum; AusNet; AER	Indication of understand of the process across the parties.
Was further customer engagement undertaken post the second Insights Report? What were the reasons for the engagement? Were these in addition to/ substitute for AusNet's planned engagement?	Forum; AusNet	Indication of the Forum's representativeness.
What were customer groups/ advocates views of the representation of the Forum, including views on its composition and independence?	Other stakeholders	
How has the Forum's role and responsibility affected customer advocacy groups' (and other consumer stakeholders') input, and costs, into AusNet's reset process?	Other stakeholders	Indication of the impact of the Forum existence on customer representatives.
Scope and negotiations		
Since the second Insights Report, has the Forum commissioned analysis to assist with its view on AusNet's position?	Forum; AusNet	This will assist us in evaluating how the Forum has formed its negotiating position.
Has the Forum been provided information from AusNet on savings/ costs that may occur in components outside the scope that are related to issues within scope?	Forum; AusNet	
Were there matters outside of the scope that were considered as part of the negotiations on in scope matters?	Forum; AusNet	
Did the Forum consider it had adequate support to fulfil its role and responsibilities?	Forum	
What process did the Forum follow on deciding its position? Did it consult with stakeholders?	Forum; Other stakeholders	



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Question	Question ‘addressed’ to:	Reasons/ Assessment
Did customer groups/ representatives consider that the Forum’s negotiating position reflect their views?	Stakeholders	Indication of the Forum’s representativeness.
To what extent has the AER been involved?	AER; Forum; AusNet	Understanding the AER’s role in the negotiating process as assess by all parties.
Were the Forum’s views on the issues of import different from AER’s/AusNet’s?	AER; Forum; AusNet	Was the scope appropriate?
Was the scope for the negotiations appropriate?	AER; Forum; AusNet	
Were there areas where the negotiating positions were close? Did this impact on the extent of the negotiations for these areas?	Forum; AusNet	
Impact on proposal		
Are there links between the research/ engagement and the Forum’s and AusNet’s positions?	AusNet; CEPA	Provides an indication as to the impact of the Forum’s presence on AusNet’s initial proposals.
What was the proposal compared to the negotiating positions?	Forum; AusNet; CEPA	
Has the monitoring/ evaluation impact on process – i.e., impact on customer engagement, negotiating positions, proposals?	Forum; AusNet; AER	Provides an indication as to the impact of the ‘live’ evaluation process
Outcomes		
To what extent did AusNet’s proposal reflect the negotiated positions?	Forum; AusNet	Impact on proposal
To what extend does AusNet believe its focus on certain areas of its proposal were affected by the Forum?	AusNet	
Did the Forum/AusNet consider the negotiation process itself to be successful?	Forum; AusNet	
Did the Forum/ AusNet consider that the negotiation process led to AusNet’s revenue proposal better reflecting customers’ perceptive? Views of other stakeholders / consumer advocates on outcomes (and what they saw as challenges)?	Forum; AusNet; Other stakeholders	



5.4. INTERIM AND FINAL EVALUATION REPORTS – THE AER’S DRAFT AND FINAL DETERMINATIONS

The Interim Evaluation Report is due March 2020. The report will cover the AER’s draft determination, and the impact of the New Reg trial on its decision. The Final Evaluation Report is due October 2020 and will provide a full evaluation of the New Reg trial, covering any changes in AusNet’s, the Forum’s or the AER’s positions.

Expected insights/ evaluations

The evaluation reports will cover all the Trial Assessment Factors. The reports will draw heavily from the Insights reports preceding them, but with updates to reflect the latest information. We expect the reports to provide the following evaluation:

- The affect the negotiated position(s) had on the AER’s determination(s).
- The success of the New Reg trial.

Data

We expect to use the following data:

- The monitoring reports.
- The Forum – Any follow up material post its Engagement Report.
- AusNet – AusNet’s regulatory proposal and revised regulatory proposal.
- The AER – Draft and final determinations.
- Submissions on the determination and revised proposal.



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Questions

We set out a range of questions below that will help us evaluate the Trial Assessment Factors. The questions below are indicative and may change to reflect changes in the process and/or previous analysis.

Table 5.5: Evaluation Reports – Indicative questions

Question	Question ‘addressed’ to:	Reasons/ Assessment
Impact on proposal		
Are there links between the research/ engagement and the Forum’s and AusNet’s positions?	AusNet; CEPA	Provides an indication as to the impact of the Forum’s presence on AusNet’s initial proposals.
Outcomes		
To what extent did AusNet’s proposal reflect the negotiated positions?	Forum; AusNet	Impact on proposal
To what extend does AusNet believe the Forum affected its focus on certain areas of its proposal?	AusNet	
Did the Forum/AusNet consider the negotiation process itself to be successful?	Forum; AusNet	
Did the Forum/ AusNet consider that the negotiation process led to AusNet’s revenue proposal better reflecting customers’ perceptive?	Forum; AusNet; the AER; other Stakeholders	
To what extent did the AER’s determination accept the negotiated positions?	AER; CEPA	Impact on determination(s)
Were the reasons why (or why not) the AER was accepting of the negotiated positions?	AER; CEPA	
Were there differences between the acceptance of topics that were in scope compared to those out of scope?	AER; CEPA	
Learnings		
What were the additional costs to AusNet/AER/other stakeholders of the New Reg process (separating the trial costs from the process costs)?	AusNet; AER; Stakeholders	Evaluation of the success, possible improvements, and costs of New Reg.
What were the impacts on customer advocates and other customer representatives? This includes the impact on inputs, costs, and involvement in the overall reset process.	Stakeholders	



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Question	Question 'addressed' to:	Reasons/ Assessment
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?	Forum; AusNet; AER; Stakeholders	
Were the timelines appropriate?	Forum; AusNet; AER; Stakeholders	
Did the NEL/NER impact on the achievement of the Project Objective?	Forum; AusNet; AER; Stakeholders	
Are there amendments to the process that could be made to achieve/better achieve the Project Objective?	Forum; AusNet; AER; Stakeholders	
How did customer groups/ customer advocates view the Forum's positions?	Other stakeholders	
Did the monitoring/ evaluation impact on process – i.e., impact on customer engagement, negotiating positions, proposals?	Forum; AusNet; AER	Provides an indication as to the impact of the 'live' evaluation process
Did the parties consider their roles and responsibilities changed through the process? To what extent?	Forum; AusNet; AER; Stakeholders	



APPENDIX A **FEEDBACK ON THE DRAFT TRIAL ASSESSMENT FACTORS**

The AER circulated a draft version of the Trial Assessment Factors (not the full evaluation framework) to the Reference Group for comment. We received feedback (via the AER) from the following organisations (in alphabetical order):

- AusNet.
- Energy Users' Association of Australia (EUAA) – via its representative Mark Greening.
- Jemena.
- Major Energy Users (MEU) – via its representative David Headberry.
- Public Interest Advocacy Centre (PIAC) – via its representative Tim Harrison.
- South Australian Council of Social Services (SACOSS).
- St Vincent De Paul (SVDP) – via its representative Gavin Dufty.
- Uniting Communities – via its representative Mark Henley.

We also received feedback from the Project Team, which was provided after they had reviewed the Reference Group members' feedback.

Below, we respond to and/ or explain how we addressed the comments received. We have categorised the comments into broad themes rather than responding point-by-point.

Processes versus outcomes

A number of submitters commented that the Trial Assessment Factors focused too much on process and not enough on the outcomes. We understand that this view may have arisen due to the indicative questions set out in the draft Trial Assessment Factors. We have worked to clarify our approach by clearly stating the outcome we expect to assess for each of the factors (see Section 3).

We note that in this document, we have taken the main objective from the vision for New Reg set out in the Directions and Approach paper, and the sub-objectives from the MOU for the New Reg trial. We consider that these objectives are outcomes-focused rather than process-focused. The latter sub-objectives differ from those presented in the draft Trial Assessment Factors document.

The reason why we have focused on process questions during the early stages of the trial is that we will not know the outcomes of the New Reg trial until the Engagement Reports, the Regulatory Proposals, the AER's decisions, and other stakeholders' views of the matters set out in these documents are available to us. Seeking answers in regard to process questions assist us in building up a picture of how AusNet and the Forum have set about achieving the objectives of the New Reg trial.

The need for a counterfactual

In our draft Trial Assessment Factors document, we did not set out a specific counterfactual to assess the New Reg outcomes against. Rather we set out the factors that we considered were important to assist us in evaluating New Reg trial outcomes against the objectives.



Three submitters – EUAA, Jemena, SACOSS – stated that there should be a counterfactual to assess New Reg against. All three submitters indicated that the counterfactual could be another DNSP's consumer engagement process.

We considered this proposal but, for the following reasons, considered that this was not an appropriate counterfactual:

- The New Reg trial is not simply a consumer engagement process (or, in and of itself, a substitute for consumer engagement). Rather, it is proposed as a settlement process. As set out in the evaluation framework, there are some defining features of the New Reg trial, for example the extensive involvement of AER staff throughout the process. These defining features do not all exist in the AER's typical process.
- We do not think that the outcome of the AusNet trial could be meaningfully compared to other determinations the AER is making at a similar time. This is because different network companies face different circumstances, and their customers may have different expectations. As such, differences in outcomes may not necessarily reflect differences in the consumer engagement processes.
- We have been asked to assess the outcomes of the New Reg trial rather than comparing the consumer engagement process to other DNPS' processes.
- The EUAA representative noted that consumer engagement processes are rapidly evolving and what was considered cutting edge a few years ago is not now. The EUAA representative indicated that the CCP might be aligned on what is good practice currently, however he notes that there is a broad range of processes being undertaken. While the CCP might be able to give a view on current good practice consumer engagement, this may not answer the question around which DNSP's consumer engagement process to choose as a counterfactual or, as noted above, how we could compare outcomes given different DNSPs' customers may have different preferences and expectations.

The Project Team proposed to us the counterfactual of “what AusNet would have done without input from the Customer Forum.” This is a subjective outcome-based counterfactual. We incorporated this counterfactual into our evaluation framework (see Section 2.3). But, in doing so, we will be focusing on key participants' views as to what would have happened in the absence of the Forum. This removes the need for us to speculate on what the counterfactual outcome might have been.

There was also a general point raised by a number of submitters that the evaluation should address the question of whether the New Reg trial delivered an overall better outcome than the typical process. We believe that this is addressed by the Trial Assessment Factors as set out in this evaluation framework.

One submitter – EUAA – stated that evaluating the New Reg trial is not just about comparing what happened in the trial with what happened in a “conventional approach”, it is also about “what is the potential development of both models in the future?”. We agree with thrust of this point, which is why we have extensive ‘lessons learned’ questions that aim to draw out the practical implications of the New Reg trial for the current regulatory framework.



Role for consumer advocates in the evaluation

Most of the submitters commented that the draft Trial Assessment Factors did not make clear how we would take on board the views of consumer advocates and other stakeholders ('other' being not AusNet, the AER, or the Forum) on the New Reg trial.

Our draft Trial Assessment Factors made no reference as to whom we would be asking questions of in regard to the New Reg trial (i.e., our proposed approach was not confined to seeking the views of AusNet, the AER and the Forum). Rather we set out broad questions that would be posed to a range of stakeholders, including consumer advocates. We have always expected to seek the views of other parties that represent Victorian consumers' perspectives, as a necessary input to assess the efficacy of the Forum. For example, for the factor *'Was the Consumer Forum an effective representative of a wider consumer group?'* we are aware that we will need to gather views from a wide group of stakeholders.

Taking account of the comments received, our updated Trial Assessment Factors are set out in Table 3.1. These factors, we believe, clearly indicate that views from a broad range of stakeholders are required for us to assess the New Reg trial.

In the deliverables section of the evaluation framework, we have provided indicative questions that we would ask a range of stakeholders. Some of these are targeted at specific participants in the process (i.e., AusNet, the Forum, and the AER), while others are much broader covering all stakeholders. These are indicative questions. As the project evolves and we gain a better undertaking of the negotiation process, these questions may change or be added to.

As noted in the evaluation framework, in addition to the questions that the monitoring team may ask, we will also be reviewing submissions to AusNet, the Forum, and the AER on their respective regulatory proposals, engagement reports, and determinations. We have full confidence that consumer advocates will provide their detailed thoughts, in particular via their submissions, on how the New Reg trial has worked and whether the Forum has adequately represented current and future customers' perspectives in its positions.

A question also raised by several submitters – MEU, Jemena, SACOSS, SVDP, and Uniting Communities – was whether the Forum's impact on consumer advocates resulted in a change in inputs and, therefore, costs for customer advocates. We have added additional indicative questions for the Third Insights Report (see Table 5.4) and the Evaluation Framework (see Table 5.5) to capture this point.

Scope of the evaluation

One submitter – EUAA – commented that the whole process "from the start of consumer engagement to the final AER decision" should be assessed and not just "the Consumer Forum (CF) bit which ends at AusNet's submission of its proposal."

We have been engaged to assess the New Reg trial. We are not specifically assessing the consumer engagement process prior to the engagement of the Forum, but we will assess the Forum's and AusNet's ability to reflect consumer preferences in their Engagement Report(s) and Regulatory Proposal(s), respectively.

We also note that we have been engaged to assess whether the New Reg trial achieves its objectives. While we are providing lessons learned on how the New Reg model may be improved in future, we are not assessing whether another alternative approach may better achieve the objectives.



Another submitter, the SVDP representative, questioned whether the evaluation should consider how New Reg would fit into future regulatory frameworks. We consider that this is outside of the scope of our evaluation.

Cost-benefit assessment

Three submitters stated that we should be considering a breakdown of costs, identifying which costs were 'one-offs', and which parties bore the costs.

We agree with the submissions and this is reflected in our Trial Assessment Factors (see Table 5.5). However, while we will request cost breakdowns from participants, there is likely to be a qualitative element to this assessment.

Other points

One submitter – Jemena – considered that it would be useful for other stakeholders to know an actual measure of how far apart the Forum and AusNet started and finished on the matters they negotiated on. We are not sure of the value this metric would provide other stakeholders, given how many factors affect the starting and final negotiating positions and the differences in matters for negotiation. Therefore, we do not propose to include this as an explicit question.

One submitter – MEU – indicated that the Trial Assessment Factors need to test that the interests of all consumers were addressed. We consider that this point is addressed by the question *'What were customer groups/ advocates views of the representation of the Forum, including views on its composition and independence?'* (see Table 5.4).

One submitter – EUAA – questioned why there was no engagement with customers, customer advocates, and the CCP for the First Insights Report. As set out in the Framework (see Section 5.1), the First Insights Report covered the early establishment phase of the project. Therefore, given the tasks covered, the most relevant parties to gather information from were AusNet, the AER and the Forum.

Two submitters – PIAC and Jemena – questioned our use of the term 'customer research', as they defined this term differently to 'customer engagement'. We have clarified our use of the term in Section 2.3.

One submitter – PIAC – noted that under the broad question of *'How was the Scope of Negotiations agreed?'* we should also cover the sub-questions: *'Was the starting/final scope appropriate'* and *'Was the AER's role in defining the scope appropriate/effective?'* We consider that these questions will be broadly answered in the Second Insights Report (see the indicative questions in Table 5.3).

One submitter – PIAC – requested an assessment of whether the AER's, AusNet's, and the Forum's roles were effective and appropriate, independent of whether their understanding of the roles or the roles themselves changed over time. We have added a question on the parties' roles throughout the process to each of the Insights Reports.

One submitter – Jemena – queried our question *'Should there be fixed principles, for example to guide decisions on long-term temporal issues (short vs long term interest of consumers)?'* The submitter queried whether this point should be considered in the broader regulatory context, rather than just for New Reg. The intention of this question was to ensure that the Trial Assessment Factors considered whether the Forum had adequately considered current and future consumers. We have reworded our questions to make this clearer (see Table 5.3).



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