



# Review of the Consumer Challenge Panel

Summary Report for the Australian Energy Regulator

January 2020  
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In preparing this report, we have had access to information provided by the AER, and publicly available information. We have relied upon the truth, accuracy and completeness of any information used by us in connection with the Services without independently verifying it. The publicly available information used in this report is current as of 11 December 2019. We do not take any responsibility for updating this information if it becomes out of date.

This report provides a summary of KPMG's findings during the course of the work undertaken for the AER under the terms of the engagement letter.

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# Summary Report

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The Consumer Challenge Panel (CCP) was established by the AER in 2013 to both provide input, and challenge the AER, on consumer perspectives during a network regulatory determination. The aim is to improve the AER's decisions through a more comprehensive evaluation of consumer views and impacts.

The AER has set out two main objectives for the CCP:

- Advise whether the network businesses' proposals are in the long term interests of consumers (LTIC); and
- Advise on the effectiveness of network businesses' engagement activities with their consumers and how this is reflected in the development of regulatory proposals.

The CCP facilitates the consideration of the consumer perspectives to achieve a balanced consideration of all views by the AER. CCP members are allocated to both "reset sub-panels" (to provide advice in relation to regulatory proposals) and "lateral sub-panels" (regulatory issues across multiple businesses).<sup>1</sup>

Given the passage of time since the initial decision to establish the CCP in 2012, the AER considers there is merit for the review to also consider the significant changes in the external and regulatory environment in which the AER and CCP operates and have engaged KPMG to make findings and recommendations to the AER on:

- the extent to which the existing CCP arrangements deliver on its objectives (Scope Item 1), and
- how the existing arrangements might be strengthened, where necessary (Scope Item 2).

<sup>1</sup> Explanation of the CCP structure and arrangements is provided in the supporting appendices report.

# Summary Report

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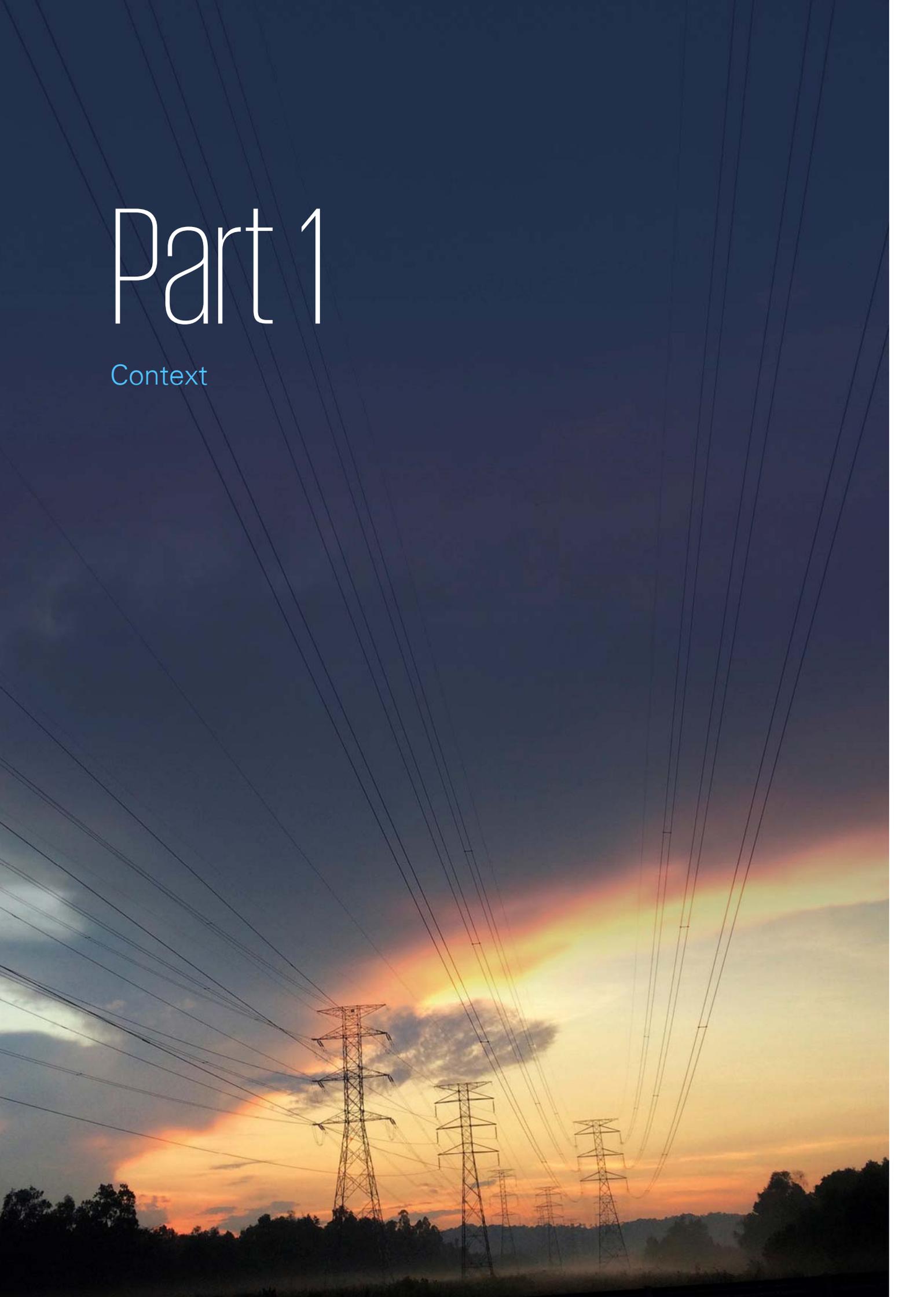
The following Summary Paper summarises:

1. the **context** that supports our review, including the role of the consumer, existing precedent for consumer challenge and the impact of the changing operating and regulatory environment on the role of the CCP;
2. **issues** with the current CCP, learned through our multi-layered stakeholder engagement program, assessment of CCP impacts and outputs and research on other Australian and international examples of customer challenge bodies;
3. whether the CCP has effectively delivered on its objectives (**Scope item 1**);
4. the **ongoing need for a CCP and what role they should play**; and
5. how the existing arrangements can be strengthened (**Scope Item 2**).

Detailed analysis, explanation on the CCP roles, evidence and stakeholder views is provided in the accompanying supporting appendices report.

# Part 1

Context



# Part 1

## Context

### The role of the consumer

Under any regulatory process or determination, the role of consumers through engagement, is integral to an outcome that best meets their needs and expectations. Given the essential nature of energy networks, consumers' ability to shape priorities and communicate their preferences through the exercise of choice is limited.

In summary:

- Consumers are best placed to inform network businesses what is in consumers' long term interests (i.e. through discussing experience, values, needs and priorities);
- Consumers should be afforded the opportunity to influence how the businesses propose to deliver the outcomes consumers are seeking and the prices being charged for those services;
- There are multiple dimensions to energy services provided, including price, reliability and quality of consumer services. The provision of these services can involve balancing a number of competing trade-offs between these dimensions, and consumers should be given the opportunity to input to the valuation of those trade-offs; and
- Consumer energy consumption patterns and interactions with network businesses and markets are becoming more diverse. Overall, consumers are increasingly aware of what constitutes good value, resulting in a higher level of expectation. The forecast shift towards renewable generation and the increase in distributed energy resources creates challenges for network operation and investment including more sophistication in risk and uncertainty management. These changes will require network businesses to adapt their services and tariff offerings. This transformation will have different impacts across the consumer base which increases the value of gathering consumer views to inform and test policy development and for consideration of equity and efficiency issues.

In general, providing consumers with an active voice in network determinations helps to ensure alignment between business strategies, regulatory outcomes and evolving consumer objectives. Some of the issues relating to the regulation of energy networks are highly complex and technical and therefore there may be a need for experts to support and complement customers' involvement.

For these reasons, the role of the consumer is becoming more central in regulatory frameworks, governance arrangements and service delivery. In some jurisdictions, regulators' legislative functions have been amended to place a requirement on them to ensure that consumers' views are taken into account. In the case of energy price regulation, there are obligations in the National Electricity Rules (NER) (and an equivalent obligation in the National Gas Rules – NGR) stating that:

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*The AER must have regard to the extent to which the expenditure forecast includes expenditure to address the concerns of electricity consumers as identified by the Network Service Provider in the course of its engagement with electricity consumers.*

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In light of this, regulators have sought to provide guidance and/or impose obligations on businesses regarding effective engagement. They have also sought to build up their expertise and capability with respect to consumer engagement. Further there have been reforms, (either through informal avenues

and/or formal statutory mechanisms) for consumer challenge and perspectives to be incorporated into regulatory decisions.

## Role of consumer challenge

To help address AER's scope, it is important to provide a framework on the role and importance of consumer challenge in regulatory decisions and how the CCP currently fits into that framework.

More effective engagement of consumers will help to deliver greater legitimacy of outcomes in energy networks. Given the increasing importance of engaging with customers and incorporating consumer perspectives, a consumer challenge body complements engagement through providing an additional level of assurance and assessment that consumer views have been adequately taken into account.

The purpose of consumer challenge is therefore to act as additional scrutiny and provide insights on how effectively consumer views have been captured. The nature and value of challenge obviously changes over the regulatory determination process and an issue explored in this review is the appropriate timing of when challenge should occur along the regulatory determination cycle. An aspect of this is whether the challenge body should be involved early in the process when the business is developing and conducting its engagement with consumers.

Challenge can apply both to:

- How the networks have gathered consumers' views and incorporated them into their expenditure and pricing proposal; and
- The regulator in terms on how it has taken into account, the views and interests of consumers when making decisions.

Hence consumer challenge involves checking and assessing the quality of network engagement and how the business has sought to gather the views of all customers plus evaluating how those views have reflected on and delivered through both the business's proposal and the regulator's response.

Effective consumer challenge will help to make network regulation and network businesses more responsive to consumer interests and ensure that the learnings from engagement activities have been fully identified and captured in decisions.

The value of consumer challenge does not automatically translate to the necessity for establishing a separate consumer challenge body. Other parties may provide sufficient challenge and insights. For example, consumer representative and advocacy bodies could do this, or the business could establish its own consumer advisory/challenge panel. Further the regulator itself has the capability to challenge the quality of engagement activities by businesses. A key issue for this review has been assessing the advantages and disadvantages of establishing a specific, focused body such as a CCP to perform consumer challenge compared to the regulator relying on other stakeholders (or itself) to have a similar effect on the determination process.

In this context, an important aspect to the framework for consumer challenge is appreciating the relationships and differences between the following:

- Consumer engagement and challenge; and
- Consumer advocacy and challenge.

There is overlap between the activities but being aware of the difference helps to place the role and value of consumer challenge in the regulatory determination process.

Regarding engagement and challenge, a question explored has been to what extent does a consumer challenge body need to talk directly with consumers in order to perform its role. Our opinion is that it is not essential for the body to conduct its own engagement. The role of consumer challenge is to

verify the adequacy of the business's own engagement activities. Obviously having a strong awareness of consumer views, how to conduct effective engagement plus how energy businesses decisions impact on consumers, will be needed, but it should not conduct its own consumer engagement to achieve its role. The business should always be accountable for conducting quality consumer engagement.

There is a slight distinction between consumer advocacy and consumer challenge. Challenge requires a more considered and neutral assessment of all the issues, ensuring the rigour of the process and raising concerns and/or analysis to better ensure that all consumer interests are being considered. Conversely, advocacy reflects an active desire to influence outcomes for particular interests, which in turn could focus on particular types of consumers. Further, consumer challenge bodies must also consider how the network business has assessed, responded to, and incorporated consumer views into their proposals, while advocates may solely be focused on putting forward consumer views.

As noted, it would be wrong to assume that customer representatives or advocacy groups cannot provide adequate challenge to network businesses and the AER. Hence a consumer challenge body does not have exclusivity on performing effective consumer challenge. The question is whether having a separate body with the sole function of challenge has additional benefits. An issue for this review is how to define the role of the CCP so as to complement and not duplicate consumer bodies such as Energy Consumers Australia (ECA) and other advocates.

A complicated consideration in understanding the relative roles of challenge, advocacy and engagement is the perception that the role of a consumer challenge body is to speak on behalf of consumers. One of the drivers for the establishment of consumer challenge bodies both in the UK and Australia was to address a gap in the extent of customer engagement and representation in network determinations.<sup>2</sup> However this gap is reducing as business engagement strategies have improved and there has been increased funding for consumer advocacy. It is now more common for extensive engagement with consumers and consumer advocates to be conducted through the business preparation of their proposal.

In this review, stakeholders did raise concerns that as the CCP does not commission their own research, they do not and should not speak on behalf of consumers. Further it was considered that the CCP may overreach in the extent to which they purport to know what consumers want. Some network stakeholders reported that it was unclear to them whether CCP members were representing consumer views or just their own opinions.

These are valid risks with establishing a consumer challenge body. In our opinion, the value of consumer challenge is now not as a substitute for inadequate consumer representation, but instead by assessing and ensuring that consumer views are fully reflected and carried through both the network proposal and the regulator's decision. A consumer challenge body should not be a primary source of consumer views during the process – it should be about listening to consumer views gained through the network engagement and from consumer representatives and advising on how best these views can be reflected in the outcomes of the network determination. We believe this would help to distinguish the role of challenge compared to engagement and advocacy and that the membership of consumer challenge bodies should be recruited with the expertise to do this.

This framework and discussion provides the basis for how we have interrogated the issues and to place the roles and value of the CCP within the drivers for consumer challenge. In summary, consumer challenge can provide substantial value and act as an effective safeguard to ensure consumer interests are captured in regulatory decisions. However there are risks involved plus costs associated with having a separate panel to perform this role (i.e. consumer challenge body members

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<sup>2</sup> See, Dr Gill Owen, *The potential role of Consumer Challenge in energy network regulation in Australia: a think piece for the Australian Energy Regulator*, March 2013.

may put forward their views rather than the true views of consumers, or there may be a potential loss of accountability on network businesses). These risks can be addressed through selection of the appropriate members plus appropriate governance arrangements.

## Delivering consumer engagement and challenge

Regulated markets all over the world differ in how they ensure the voice of the consumer is reflected and that consumers have an appropriate level of influence on the price setting process. Some focus on the appropriateness of expenditure to ensure the lowest cost to serve, and others on incentivising businesses to engage with its customers and to agree performance measures and targets that support delivery of their outcome needs.

In addition to evaluating the outcomes under the existing CCP arrangements, KPMG has considered existing precedent for consumer engagement and challenge mechanisms in other sectors and jurisdictions. This has included:

- **Ofgem – UK energy sector:** Under RIIO2<sup>3</sup>, Ofgem has established a central independent Challenge Group that is tasked with providing them a public report on companies' business plans from the perspective of consumers. For this body, Ofgem provide both secretariat and technical support. Ofgem also requires network businesses to establish customer/user groups, to provide independent views on the companies' business plans from the perspective of local stakeholders/users. These company-led groups are expected to supplement, rather than substitute, the stakeholder engagement that companies must undertake to develop their plans.
- Ofgem also has an annual stakeholder engagement and vulnerability incentive for network businesses, which isn't part of RIIO2, but has an impact on how network businesses engage consumers inside and outside price resets<sup>4</sup>.
- **Ofwat – UK water sector:** Under PR19<sup>5</sup>, Consumer Challenge Groups (CCG) provide independent challenge to companies and provide independent assurance to Ofwat on:
  - the quality of a company's customer engagement; and
  - the degree to which this is reflected in its business plan.

To inform its initial assessment of a company's business plan, Ofwat takes into account evidence that the company has (amongst other things) effectively addressed the principles of good customer engagement and taken forward the themes of customer participation including, but not limited to, evidence from the CCG.

- **Essential Services Commission of Victoria (ESCV) – Victorian water sector:** under the Essential Services Commission's water pricing framework (PREMO<sup>6</sup>), water businesses are incentivised, through both reputational and financial rewards, to directly engage with their customers early, on issues of importance, and through methods that best allow their customers to table their priorities and needs, in order to maximise customers' level of influence over the development of their submission.

In effect, water businesses are incentivised to have their customers directly challenge their submissions during engagement, as their PREMO rating (which is linked to the return on equity component of the rate of return, and the opportunity to be fast-tracked through the price review)

<sup>3</sup> Ofgem, *RIIO-2 Enhanced Stakeholder Engagement Guidance – Version 1*, 9 April 2018

<sup>4</sup> A key point of difference between the Ofgem CCG and the AER CCP is that Ofgem completes all resets per sector (i.e. electricity distribution) at the same time, so the CCG's focus is more about cross company issues, whereas the CCP is able to go into more detail about each one.

<sup>5</sup> Ofwat, *Delivering water 2020: Our final methodology for the 2019 price review*, December 2017

<sup>6</sup> Essential Services Commission, *Water Pricing Framework and Approach – Implementing PREMO from 2018*, October 2016

reflects how well the price submission reflects customer needs. In some circumstances, water businesses established their own independent customer challenge bodies (e.g. South East Water) to support these requirements.

- **Essential Services Commission of South Australia (ESCOSA) – South Australian water sector:** ESCOSA recently established a Customer Negotiation Committee (CNC) to challenge and negotiate SA Water’s proposed business plan pre-lodgement. It prepared an independent public report following the negotiation process which summarises the views of the CNC and those areas where further analysis and judgement is required by ESCOSA in making its regulatory determination. The negotiation process is non-binding and ESCOSA remains responsible for making the regulatory determination, to best serve consumers’ long term interests. The findings from the CNC helps inform the draft regulatory determination.
- **California Public Utilities Commission (CPUC) – US cross-sector:** CPUC established an independent Public Advocates Office (PAO), who is responsible for obtaining the lowest possible rate on behalf of investor owned utility ratepayers, and to ensure that consumers are appropriately represented in determining how much they pay and the quality of their service. The PAO is a statutory body and actively participates in public meetings, working with a variety of stakeholders, including customers of small business organisations, community and environmental groups and other consumer orientated organisations to advocate for customers before the CPUC and in other forums.

Further detail on these arrangements is detailed in Appendix H of the supporting report.

Under all of the jurisdictional arrangements we reviewed, direct consumer engagement and the presence of a challenge panel are considered not to be substitutes. In fact, they went hand in hand – engagement is about listening and capturing consumer views; and challenge is focussed on holding parties to account, acting as a critical friend and ensuring that consumer views have been adequately informed both in the submission and the subsequent regulatory determinations. When combined, consumer outcomes are enhanced.

Leveraging this precedent, the following characteristics of effective consumer involvement have emerged, which have informed our findings and recommendations on the performance and role of the CCP.

- Good practice regulatory frameworks are looking to ensure consumer views are not unduly influenced by interested parties, but are instead listened to and responded to, through a multi-faceted framework of direct consumer engagement and councils/challenge groups that hold the network business to account.
- There is not a reliance on one particular form of consumer engagement and multiple ways to gather consumer perspectives are employed. Under certain situations this is effectively complemented by consumer advocates.
- Combining direct consumer engagement and independent consumer challenge during the development of the regulatory pricing submission supports that consumer views are incorporated and responded to. This helps to ensure that there is an effective feedback loop to the original engagement.
- The economic regulator cannot and should not play the role of challenge as it could undermine the credibility and robustness of the decision making process. Regulators should remain at arm’s length during the development of the regulatory submission consistent with the “proposed-respond” approach. If not, it may unduly influence behaviour and there would be concerns regarding regulatory capture and the ability to evaluate the submission in an impartial manner (consistent with its legislative functions). It would be hard for the regulator to be extensively involved in the consumer engagement processes early, as it could lead to a perception of them driving the network businesses’ processes and/or endorsing elements of its proposals.

- Challenge groups do not substitute for the independent price setting role of the economic regulator, nor should the regulator be required to accept a challenge group's findings. The economic regulator has ultimate responsibility for setting prices based on all evidence provided, and must do so under the frameworks by which they review and determine prices.
- The standard of consumer engagement is constantly evolving and improving, and effective consumer challenge can help promote a culture of continued learning and adaptation.
- Challenge groups play an important 'assurance' role regarding the quality of engagement, and how well the network business has reflected engagement learnings within its regulatory submission.
- Conducting a regulatory determination process in the absence of consumer involvement would limit the ability to achieve the long term interests of consumers.

A distinction between these precedents is whether the role of consumer challenge is established through formal legislation in addition to the regulator's functions (e.g., USA) or created by the regulator as part of how it exercises its functions (e.g. UK, Australia). This distinction has implications for the governance arrangements, budget and the perception of independence from the regulator. A separate challenge body established under legislation may be considered to act independently from the regulator, but would likely add to costs through the administration associated with separate bodies.

Another emerging distinction is the potential difference in how publicly owned versus privately owned businesses respond to consumer engagement and challenge given difference in management incentives and corporate strategies.

## **How do ongoing changes in the regulatory and operating environment impact on the necessary role of consumer challenge?**

The regulatory arrangements and operating environment that the AER and CCP operate under has significantly changed since the establishment of the CCP. In developing our findings, we have considered how these changes have impacted on the role and operation of the CCP and what this means for the CCP in the future.

### **1. Continual improvement in network businesses' consumer engagement activities during their regulatory submission development.**

Network businesses, for the most part, have expanded their consumer and stakeholder engagement and introduced cultural changes into their organisations as a result. This is driven by a number of reasons, including regulatory obligations, improved focus on consumers in the business community and changing corporate objectives.

This has resulted in consumer engagement being embedded as 'business as usual' into a number of businesses, through a number of mechanisms including consumer advisory panels, frequent engagement forums and ongoing activities. Generally, network consumer engagement is happening for all issues and not just for the preparation of the regulatory submission.

#### ***What does this mean for the role and need for the CCP?***

This change means that the nature of the problem with which the CCP was originally established has diminished and the value of CCP has shifted away from providing information and insights on consumer perspectives to fill a gap toward more of an assurance and verification role on the extent and effectiveness of network's engagement activities (i.e. has the network businesses asked the right questions and have they understood and incorporated consumer views appropriately into their proposals).

One of the roles performed by the CCP is to provide assurance on whether the network proposals adequately reflect consumer perspectives. This role should remain, until the point at which the AER are satisfied that network business consumer engagement is consistent with good practice, is business as usual, and the network business has a demonstrated history of driving good customer value.

## 2. Establishment of Energy Consumers Australia and the evolution of consumer advocacy

The establishment of the ECA in 2015 as an independent national body has helped place consumer advocacy at the centre of energy policy reform. The role of the ECA is to provide a co-ordinated, evidence based consumer perspective to National Energy Market (NEM) matters of strategic importance or material consequence for energy consumers.

Since its establishment, the ECA along with other consumer groups, have increased their activities and involvement in network determinations. The ECA now seeks to provide the AER with technical submissions during each price review and in doing so, often engages technical consultants to do this. This trend is also a reflective of the increasing role of the consumer in energy policy decisions as described above.

In its 2013 Inquiry Report<sup>7</sup>, the Productivity Commission noted that the:

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*Consumer Challenge Panel could act as an effective voice for consumers in the short run, until the establishment of the national advocacy body. However, given their strongly overlapping roles, the risk of confused representation by the same consumer constituencies, and the desirability that the AER be seen as a neutral player, there are compelling grounds for the Panel to be absorbed into a single, independent statutory consumer body in the medium term.*

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Evidence gathered through this engagement has not identified a material overlap in responsibilities between the ECA and CCP. Instead, stakeholders raised the potential for better coordination to ensure the optimal outcome for consumers. This is discussed under feedback from stakeholder engagement.

### **What does this mean for the role and need for the CCP?**

The involvement of the ECA and other consumer groups in network price resets creates the possibility of duplication with the CCP activities. As an example, the ECA regularly provides submissions on most of the price resets and issues-specific investigations. There is also a risk of inconsistent and conflicting views on how consumer interests are best served and hence potential confusion in the sector and amongst consumers, which would be counter-productive and undermine the representation of consumers in the AER processes. Generally, stakeholders felt that both the ECA and CCP had played different but complementary roles, both of which provided value for consumers.

As noted earlier, there is a distinction between consumer advocacy and consumer challenge, and hence the different frameworks and objectives under which these activities are performed. This is not to say that the ECA or other consumer advocates could not provide an adequate challenge role. The question is whether there is additional benefits in having a separate panel with sole focus on how consumer interests are met.

Challenge requires a more considered and neutral assessment of all the issues, ensuring the rigour of the process and raising concerns and/or analysis to better ensure that consumer interests are being considered. Conversely advocacy reflects an active desire to influence outcomes for particular interests.

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<sup>7</sup> Productivity Commission, *Electricity Network Regulatory Frameworks*, Report No. 62, 2013. Canberra.

One of the benefits of the CCP raised by stakeholders is its perceived ability to act as a conduit between the AER and network businesses. We suspect that this aspect of the current CCP performance was not envisaged in the original design, but has occurred as a result of the behaviour of CCP members. This aspect may no longer be needed due to the AER's strategic intent of acting more collaboratively with the network businesses (without compromising their independent price setting role), however the existence of the CCP and its focused scope could be more effective in this capacity than relying on the ECA to act as in a similar facilitation manner.

Noting this, the role of the CCP should be flexible to reflect the availability, resourcing and intended role of the ECA, to avoid any future duplication of activities. Further, as the ECA's advocacy capability in energy network pricing matures, their ability to influence network businesses will be enhanced and as noted earlier, they could provide a level of challenge to both the network business and regulator during the process.

For example, were the ECA to identify their intention of actively challenging network businesses during a price review, the role of the CCP may be less active, focusing on their ability to provide assurance pre-lodgement. Post-lodgement, an active ECA may be better placed to challenge both the AER and network businesses. In these circumstances, the CCP may also provide support to the ECA (for example the provision of information, guidance on the regulatory framework etc.) to carry out this role. Likewise, involvement of the ECA in the network's engagement processes and the preparation of their regulatory proposal would lessen the need for the CCP to conduct an assurance assessment on the regulatory proposal.

There are also circumstances where the ECA may not have local resourcing or funding, or their objectives change, shifting their priorities to other issues. Access to confidential information provided by network businesses during the submission may also be a constraint. Under these circumstances, the CCP's role may be more active, to ensure end consumers are engaged appropriately and importantly, that the network business has adequately incorporated these views into its expenditure plans.

What this all means is that the role of the CCP should complement the role of the ECA. There is unlikely to be a one-size-fits-all dual role, but a coordinated approach would avoid duplication, and result in the optimal outcome for consumers. Further, the direction provided to the CCP on its involvement during any determination should have regard to the approach of the ECA. Generally stakeholders considered that the CCP currently complements the ECA and there is no inefficient duplication. It is also important the CCP stays focused on advising the AER on the legitimacy of engagement and whether the results are accurately reflected in the proposal.

### **3. Changes to the network regulatory arrangements including the removal of limited merits reviews**

Since the AER introduced the CCP as part of its Better Regulation Program, there has been further material reforms to how the AER regulates network businesses and conducts the cyclical regulatory price determination process. Such reforms in turn influence the scope and nature of issues that the CCP considers during a network determination process and the nature of the interactions between the businesses and the AER.

These changes are summarised in Appendix C of the supporting analysis report. Key changes include the establishment of the binding AER rate of return instrument plus the removal of the ability of the businesses to seek a merits review appeal of the AER's decisions. These changes have potentially helped to make the determination processes more collaborative.

The current AusNet Services NewReg Trial which is part of an AER, ENA and ECA initiative to explore ways to improve sector engagement, and identify opportunities for regulatory innovation, is an

example of potential new initiatives which will give consumers a greater role in resets.<sup>8</sup> The goal of this initiative is to ensure that customers' preferences drive energy network businesses proposals and regulatory outcomes.

#### ***What does this mean for the role and need for the CCP?***

These changes have potentially helped to better utilise the growing importance of the consumers' role in energy regulatory decisions as discussed above. By changing the dynamic and nature of determinations, they have provided more space, momentum and flexibility for both network businesses and the regulator to recognise and build on consumer views in price resets. Previously, a lot of time and energy was committed to the possibility of merits review by the network businesses and regulators. Now they can re-prioritise this energy and resources to focusing on consumer engagement.

This could contribute to a reduced need for CCP involvement in the price review process. The businesses and the AER could engage under a better framework to understand and deliver on consumer interests. The NewReg initiative could also change the dynamic of resets and the need for the CCP.

Overall, while changes to the regulatory framework have removed some of the complexity, and potentially some issues that consumer representatives and bodies like the CCP have historically gotten involved in (such as rate of return), the need for assurance on the effectiveness of engagement strategies and integration of feedback into the proposal has not diminished. As consumer engagement strategies become more sophisticated and provide consumers with greater influence over the proposals contained within the regulatory submission (e.g. negotiated settlement under NewReg), the role of the CCP pre-lodgement diminishes, leaving it to focus purely on post-lodgement challenge of the written proposal and AER decision. Further, the strength of this role will reflect the availability and capacity for the ECA to provide appropriate challenge to both the network business and the AER. A more active ECA may diminish the post-lodgement role of the CCP.

Until this point in time, the CCP's role remains valuable.

#### **4. Energy transformation is changing the role and operation of network businesses**

The electricity market continues to transform to a lower emissions power sector, with an increasing quantity of wind and solar generation capacity entering the market. The transition from large centralised synchronous generators to smaller decentralised non-synchronous generation resources creates a broad range of issues related to reliability, system security, participant bidding and contracting behaviour, and the economics of the electricity system.

There are also expected to be more consumer-connected distributed energy resources like rooftop solar and storage, a more active market for demand response, and the growth of electric vehicles as a potential source of increased demand and behind-the-meter storage.

#### ***What does this mean for the role and need for the CCP?***

This trend is resulting in different expenditure and operational needs for networks to consider and for the AER to evaluate and regulate. There is increased uncertainty on how energy networks will be utilised in the future and what services are needed to meet consumer requirements.

Understanding these changes and the implications they bring for network businesses and consumers requires much deeper engagement than we have seen previously. Due to the relatively immature nature of distributed energy resource (DER) solutions, it is critical for networks to engage consumers to understand penetration and likely consumption decisions. Similarly, it is important that the evolving nature of the market is adequately reflected in network businesses' regulatory outcomes, to provide appropriate flexibility for these changes.

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<sup>8</sup> The CCP is involved in the trial through acting as a sounding board for the Customer Forum and are engaging in the AER regulatory processes.

Further, consumers are less homogeneous in their needs and preferences which makes it more complex to ensure consumers' views are accurately represented given the need to balance increasingly diverse points of view.

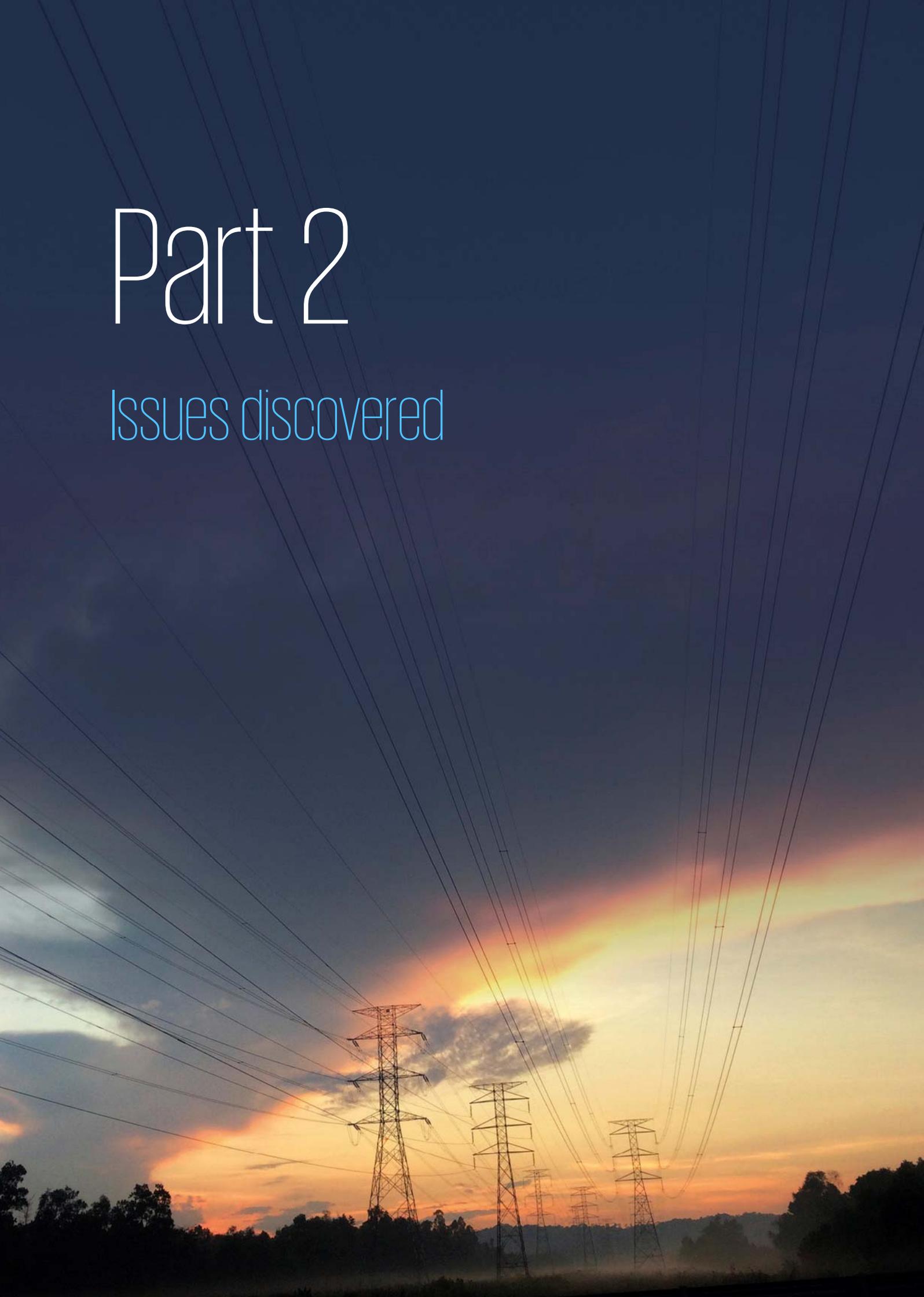
These businesses need better insight on the changes taking place around them, and greater challenge to their assumptions on how best to respond. This will mean an enhanced role for consumers through engagement going forward and therefore a potential increasing role for the CCP to continue to advise on how well the businesses are adapting to the changing environment and reflecting evolving consumer needs.

Overall these changes make it more important for a consumer challenge perspective on network proposals and the AER decisions. Having a consumer lens on the technical issues will help to ensure that outcomes align with consumer interests. However, under such market transformation, this is an extremely difficult task and the effectiveness of the CCP will depend on the skill-set and experience of its members.

These changes can be demonstrated in the increasing call by the AER for the CCP to become more involved in lateral reviews, where the AER considers an issue that has an impact across multiple regulated businesses.

# Part 2

Issues discovered



# Part 2

## Issues discovered

Through the completion of this engagement, we engaged all impacted stakeholders through a multi-stage engagement program, which included inter-jurisdictional workshops, a quantitative survey and one-on-one meetings.

Similarly, we reviewed a suite of publicly available reports and submissions both from the AER, the CCP and industry stakeholders. Based on the evidence provided to us, the following summarises the issues that we needed to consider in forming our advice, organised under four overarching key areas of focus (objectives and roles, governance, membership and outputs).



### Objectives & Roles

#### Observation

It was raised by a number of stakeholders that a main benefit of the CCP was its ability to “hold everyone to account”, the ability to ‘challenge’ and act as a ‘critical friend’ to the AER. By questioning approaches, methods and outcomes, the AER and network businesses are forced to get better. None of this language is currently reflected in the CCP’s objectives.

Further, the objectives do not currently differentiate between scenarios where the CCP plays a more passive/observatory assurance role (due to the strength of the network business’s engagement strategy) or a more active/participatory role to strengthen the engagement process (due to a lack of adequate consumer representative capacity/availability or the weaknesses of the network business’s engagement strategy).

The inclusion of the LTIC duplicates the overarching objective that the AER must give ultimate consideration to, in undertaking its economic regulation of prescribed electricity and gas services. Given the resourcing needs of the AER to support this function, there are doubts that a CCP with limited resourcing, technical capability and funding can appropriately opine on how well this objective is being met.

Over two iterations, the CCP also completed roles that were not within its direct remit, but it was able to do under the flexible arrangements under which it operates. These included:

- its role on lateral sub-panels;
- supporting an uplift in the capacity and capability of consumer representative bodies, to allow them to more effectively engage with network businesses;
- acting as the ‘consumer advocate of last resort’ where there was not appropriate and or available consumer representation, or these bodies sought for the CCP to play a more active role representing consumers;
- actively participating during engagement activities (i.e. focus groups) and advocating issues that it identifies as being important for the network business to consider and/or respond to;
- engaging with the network businesses on behalf of the AER; and
- facilitating the negotiation of parties to achieve a mutually agreed outcome in all parties’ interests (i.e. the New South Wales remittal process).

## Roles of the CCP

There are four main roles that the AER has identified that it is seeking the CCP to carry out:

- 1 *Pre-lodgement* - To monitor, assess and where appropriate, inform a network businesses consumer engagement activities ('observe and inform');
- 2 *Post lodgement Assurance* - To assess network proposals and provide assurance on the effectiveness of engagement and whether consumer views have been take into account ('assurance');
- 3 *Post lodgement Advice/Challenge*: To provide advice on consumer perspectives on issues related to the network determination and to challenge the AER to ensure that consumer views have been fully accounted for in decisions ('challenge'); and
- 4 *Laterals*: To help inform the AER's development of positions through lateral reviews ('laterals').

We have used these four role definitions to inform our assessment and to frame our recommendations set out in Part 5.

A majority of AER<sup>9</sup> respondents considered that the CCP roles/tasks will need to evolve given the changing nature of network determinations and network services. Some roles will likely increase in importance in the future, while other tasks will no longer be needed. AER noted two clear ongoing roles required – assurance that engagement was effective and integrated into the regulatory proposal, and challenge to both the network businesses and AER.

Industry stakeholders raised some concerns about how the CCP is organised, funded and the extent of their involvement during a determination process. There was a general observation that the forming of the CCP sub-panel occurs too late, its involvement is unpredictable, and there is a lack of transparency on how the CCP engages with the AER.

There were also a number of activities that the CCP completed to meet its objectives that were outside of its direct remit. That being said, those roles were at times encouraged by other stakeholders, including members of the AER. Some stakeholders did raise concerns that the CCP had, on occasions, sought to represent or advocate on behalf of consumers, when they were capable of representing themselves.

It was widely accepted across all stakeholders that consumer groups, including the ECA, are ill funded to participate fully across the duration of all determinations. Due to this funding asymmetry, some considered that any assumed future obsolescence of the CCP may not be feasible. Further, it was noted by some parties that the CCP complement rather than duplicate the role of consumer groups in resets, especially when CCP assist consumers to understand the changing regulatory landscape and continue to challenge the network businesses.

The network businesses noted that they embraced consumer and stakeholder engagement and introduced cultural changes into their organisations as a result and therefore the need of CCP may be diminished. However on balance the industry supported the CCP continuing to play a role as challenge agent.

Some stakeholders raised concern with the lack of transparency regarding the role of the CCP after the proposal is lodged. It was not clear how they challenged the network businesses' proposals, in their advice to the AER. They also stated that it was not clear how the CCP engages with and challenged the decisions of the AER. There was a perception by some that there was on-going dialogue between the AER and CCP in addition to the CCP public submissions.

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<sup>9</sup> For this report, KPMG engaged with both the members of the AER Board plus also the AER staff. For the purpose of presenting the views, we use the general term AER to capture all views from both the AER Board and AER staff. We don't make any distinction in this regard.

It was observed by most stakeholders that the CCP members bring a level of seniority and technical capacity that allows them to effectively engage with the networks on issues that impact consumer outcomes. Similarly, the constitution of the CCP comes with a level of authority and gravitas (due to their relationship with the AER), which ensures their views are listened to, respected and acted upon. This provides the CCP with the platform to effectively challenge and be listened to by network businesses.

### **What does this mean for the role and need for the CCP?**

Based on stakeholder feedback, the following potential improvements were considered:

- Refining the objectives to better reflect the differing roles of the CCP, the need to hold all parties to account through robust 'challenge' and removing the direct reference to the LTIC.
- More clarity on what role the CCP should play, vis-à-vis the roles and activities of the ECA and the AER including the Technical Advisory Group (TAG).
- Clarity on the role of the CCP pre-lodgement (i.e. how the CCP provides assurance to the AER regarding how effectively consumer views have been captured and reflected in the regulatory proposal) and post-lodgement (how the CCP challenges the network businesses' regulatory proposals and the AER's decisions). In particular, how passive or active their roles should be.
- The role of the CCP to be dependent on the quality of the network business's engagement strategy and the presence of appropriate consumer representation in the market. This will be different in each jurisdiction.
- The role of the CCP should also reflect the level of influence that consumers have in the engagement process. The less influence they have, the more active the role should be (and vice versa).



### **Observation**

The AER has a number of arrangements in place to support the oversight of the CCP. This includes the Governance Handbook, the Schedule of Work, a process map, its Request for Advice and internal quarterly reporting.

Some feedback provided by AER saw that there could be value in appointing a Chair of the CCP, to enable more effective oversight and engagement. This was countered by the CCP, who felt that their collegiate arrangement would not flourish with a dedicated leader.

On the basis of feedback provided during engagement, there have been some instances of inappropriate behaviour (i.e. over-reach) and/or a style that can be quite dominant and/or aggressive in nature. This same feedback noted this was not consistent across all CCP members. This identifies a lack of an appropriate and consistent style to effectively carry out the CCP's functions, but also a lack of accountability for performance. Individual performance is not monitored formally, nor are there any arrangements for individual performance reviews to take place.

CCP members raised a lack of involvement in budget setting and allocation, creating a disconnect between the expectations of their role and the budget allowance provided, driving variation requests. They also raised concerns with the lack of effective administrative processes from the AER.

Observations provided during engagement with CCP members, indicated different, and at times contradictory messaging and guidance provided by different AER representatives (i.e. Board, General Members, CCP team and staff). Industry stakeholders also felt that there was a lack of accountability for CCP members in making statements and/or providing advice to the AER, where they did not provide an appropriate evidentiary basis.

Some stakeholders observed that they found it beneficial to have a working relationship with the CCP, who have access to the AER and can test methods, early thinking and processes.

Regarding budget allocations and expenditure, Federal Treasury provides \$0.5 million per annum to support the CCP's activities. This budget has been overspent every year, and sometimes by quite a significant amount. This is driven by the depth of roles that the CCP has played, partly driven by the AER and other stakeholders, but also driven by the CCP's desire to play a more active role on reset and lateral sub-panels.

CCP members provided clear and unanimous feedback that current funding was insufficient to carry out the tasks they feel are required to meet their objectives. Consumer representatives also made this observation. They also noted that hourly rates agreed with the AER had not increased since the CCP's inception, and that this was not consistent with what they could get in the market for analogous services.

CCP members also raised concerns regarding the commercial impact sitting on the CCP has, noting that they cannot work with any of the network businesses on a price reset. This is a significant commercial opportunity lost.

### **What does this mean for the role and need for the CCP?**

Based on stakeholder feedback, the following potential improvements were considered:

- Establishment of a Steering Committee with responsibility for governing the operations and performance of the CCP, allowing for appropriate collaboration between the AER and CCP on scope of work, budget, reporting and performance management.
- Clearer performance management arrangements to set out clearer role descriptions and also avenues for addressing any non-performance.
- Appointing a leader of the CCP, with overall responsibility for CCP administration, operations and the internal culture. This leader could sit on the Steering Committee.
- Making it clear that the CCP cannot negotiate on behalf of the AER, nor should it be provided the authority to do so.
- Independence is important to ensure the credibility of the CCP's operation, and to allow for effective engagement with other stakeholders to deliver its objectives.
- Clarity on secretariat support, such that the CCP get access to stakeholders, information and advice in a timely fashion.
- Budget allocations involve both AER and CCP members, taking into account the fit-for-purpose role of the CCP, reflecting how passive or active that role needs to be.
- The AER consider rate cards reflective of the value of the tasks to be delivered, and account for annual movements in the value of money. Daily limits should be removed
- The AER should seek to minimise restrictions on CCP members other commercial interests (such as working for network businesses), where it can put appropriate ring-fencing arrangements in place to prevent the sharing of information to conflicted CCP members.



## Membership

### Observation

The AER appointed members to the CCP based on one or more of consumer insight and engagement, regulatory decision making and sectoral knowledge of energy and other utilities. The AER also purposefully selected members who brought a depth of career experience and a level of seniority and authority, to allow for them to more effectively engage with network businesses. This was positively reflected on by consumer stakeholders and the AER.

Whilst there is a general support for the capability on the CCP, there were notably mixed views on what skillsets the CCP should contain. Consumer advocates would like to see a diverse CCP which erred on the side of technical rather than engagement skills, whilst demonstrating an appreciation of certain consumer groups (i.e. large businesses, rural, financially vulnerable). On the other hand, network survey respondents tended to err on the side of preferring CCP members having backgrounds in consumer engagement.

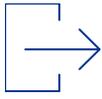
There was a considerable amount of feedback provided by stakeholders regarding the behaviour and style of CCP members. Observations provided by both industry stakeholders, consumer stakeholders and the AER noted styles that were not always conducive to effective challenge and stakeholder management. This manifested in some members behaviour not being respectful in style nor constructive in tone. Domination on certain issues plus over-reaching was flagged as issues in some situations. Some network stakeholders reported that it was unclear to them whether CCP members were representing consumer views or just their own opinions.

It is also not clear to some parties that the AER has explicitly sought to ensure an appropriate diversity in gender, age, ethnicity, experience, socio-economic status and other attributes. This was noted by a number of stakeholders through engagement (i.e. that the CCP is "full of the same type of person"). Further it was commented that the AER did not create any criteria or processes that sought to explicitly test any psychometric testing of social competencies and behavioural tendencies.

### **What does this mean for the role and need for the CCP?**

Based on stakeholder feedback, the following potential improvements were considered:

- Application of psychometric testing and consideration of diversity when appointing CCP members.
- Sub-panel appointments should consider skillsets that align with the tasks at hand, diversity (where there is more than one member) and an appropriate level of seniority.
- Better balance between members with appropriate consumer engagement expertise and other non-engagement expertise (e.g. regulatory economics, law, engineering etc.). The pre-lodgement assurance role requires capability that aligns with expertise in IAP2/good practice engagement.
- Introduce a tailored code of conduct specific to the operations of the CCP.



## Outputs

### **Observation**

Many network stakeholders went out of their way to praise the outputs of the CCP. Members were singled out by name as working very hard and providing great value and advice. A number of stakeholders suggested that CCP members be required to provide evidence analogous to that required of network businesses under regulatory scrutiny.

Many stakeholders reflected positively on the role of the CCP, including enhancing the credibility of:

- the AER's decisions;
- the network business's consumer engagement process;
- the negotiating power of consumer representatives; and
- consumer outcomes.

The AER staff generally reflected positively on the value for money it receives from the CCP. On lateral issues, it was noted that the CCP provide different views on approaches to issues, question the AER's and networks' positions and put forward reasonable and workable solutions to complex issues.

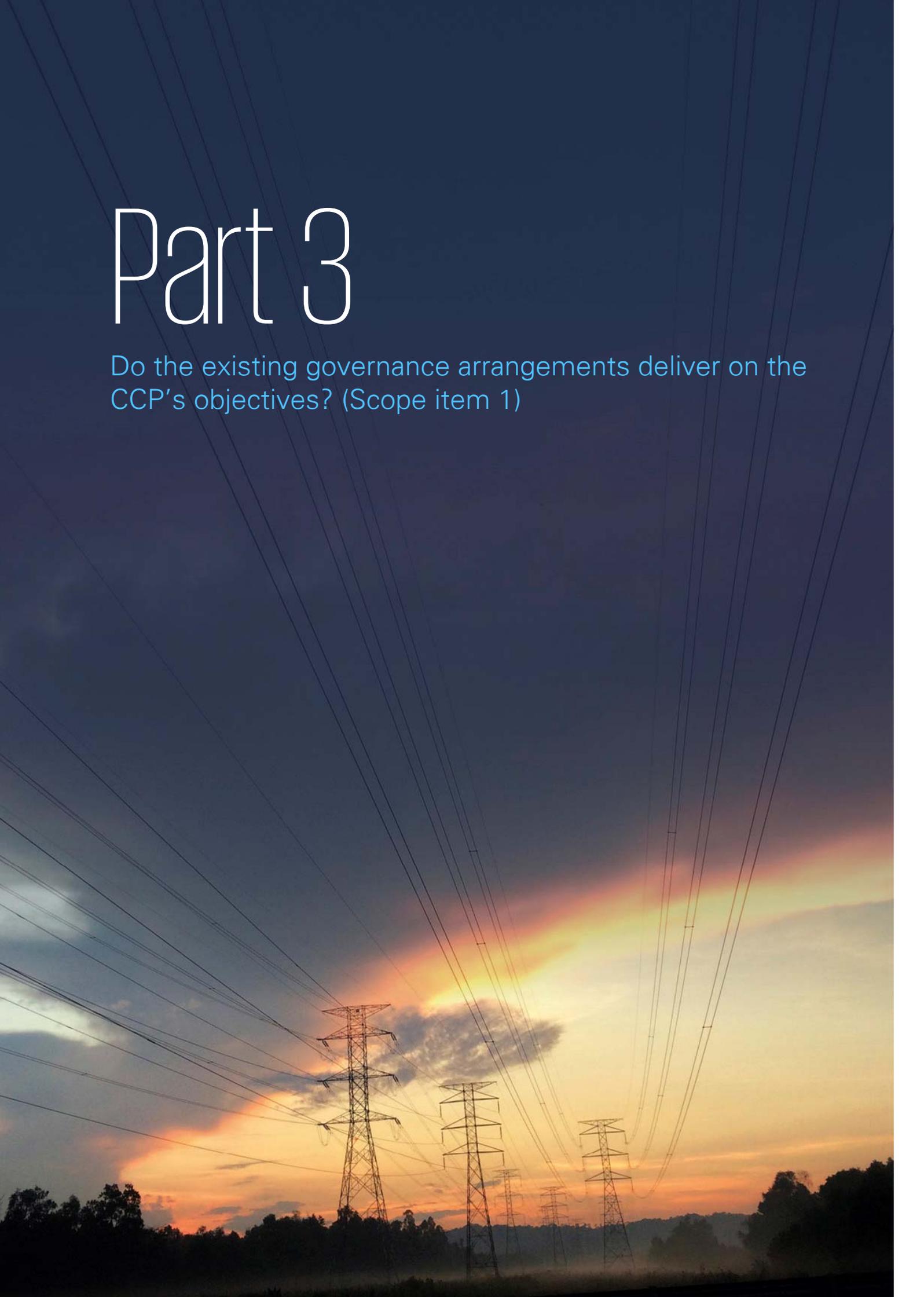
There were some AER staff who did not feel that the CCP had been able to influence their decisions. Some members felt that CCP members were not "technical enough" that would allow them to materially influence their thinking. Some thought that skills relating to understanding customer interests and awareness of the needs of customers would be of more value. This could provide a degree of randomness to the effectiveness of the CCP as it may depend on the particular AER staff working on the determination.

### **What does this mean for the role and need for the CCP?**

The only area of potential improvement identified by KPMG based on stakeholder views is that the Advice Template should be updated to require CCP members to provide supporting evidence for their advice to the AER (e.g. reference to consumer engagement outcomes, evidence of cost-service trade-offs, evidence of consumer bill impacts, evidence of cost efficiencies etc.).

# Part 3

Do the existing governance arrangements deliver on the CCP's objectives? (Scope item 1)



# Part 3

## Do the existing governance arrangements deliver on the CCP's objectives? (Scope item 1)

The CCP has been provided the flexibility to deliver on its objectives in the way it best sees fit. This has meant sub-panels taking on a multitude of roles and behaviours, which have included:

- supporting an uplift in the capacity of consumer bodies to better represent consumers interests;
- acting consumer representatives where they were not adequately funded or involved in the engagement processes;
- providing technical input on issues of importance to consumers;
- sharing information to reduce asymmetries; and
- co-ordinating the facilitation of negotiations between parties.

All of these roles have supported the LTIC through the network determination and regulatory review outcomes. Overall stakeholders agree that the CCP has made a positive contribution to regulatory decisions and in some situations made a substantial difference (e.g., NSW 2014-2019 remittals).

To enable this multitude of roles to be performed with diligence and skill, the AER has recruited experienced senior industry stakeholders and technicians. Their experience and seniority has allowed them to engage effectively with industry on matters important to the economic regulation of energy services, and afforded them a level of influence over those they engaged with.

These members have acted independently, and been willing to challenge the positions of both the AER and network businesses, holding everyone to account. We consider that the CCP has not duplicated the role of other relevant customer bodies, and instead there is evidence that it complements and enhances them.

The AER has noted that the CCP put forward reasonable and workable solutions to complex issues, and effectively act as a conduit between the AER and the network businesses, allowing for a more collaborative and consultative approach to price resets, reducing what was historically adversarial relationships.

This has supported more effective consumer engagement (in the round) and ensured consumers views are better considered in regulatory proposals.

There are however, some arrangements which have constrained the ability of the CCP to deliver on its objectives:

1. There has historically been a mismatch between initial budget allocations and actual expenditure. This has required the AER reallocating funds away from other necessary work. Going forward, budgets are likely to be lower, therefore there is an increasing need to optimise available funds, such that the CCP delivers the greatest value for consumers;
2. Budgets are set with limited involvement from CCP members to help inform likely resourcing needs and do not consider requirements beyond a 12 month outlook. While this is a reflection of the AER overall arrangements, it has commonly led to an exhaustion of funding prior to all planned activities being completed over the reset process. Effectively the CCP is more involved pre lodgement in assessing the business's consumer engagement than in its challenge role to the AER considerations post lodgement;

3. The remuneration of panel members is significantly lower than what they may achieve in the market for comparable services. CPP members have commented that this impacts on morale and incentives to seek sub-panel appointment/reappointment;
4. The CCP does not have an appropriate depth of consumer engagement expertise, and their activities would benefit from expertise in frameworks such as IAP2, with best practice engagement techniques and the ability to interrogate and apply the learnings from engagement within a regulatory context (i.e. impacts on levels of service, expenditure proposals, tariffs etc.);
5. The CCP are not involved early enough, limiting their ability to challenge the engagement activities planned by the network businesses, which could help support a more optimal outcome for consumers;
6. CCP members have displayed behaviours and a style of work that is not always conducive to effective stakeholder engagement and collaboration. This has led to confusion and over-influence by the CCP on certain issues. There is a lack of strong performance management and feedback to address this;
7. There is evidence that CCP members dominate and unduly influence the network engagement processes, impacting on network business accountability and initiative. There is a risk that responsibility and ownership of consumer engagement is devolved from network businesses to the CCP;
8. With significant flexibility comes a lack of certainty and transparency regarding the role of the CCP, how active or passive they will be during engagement, and how their activities/actions will impact on the ability for consumers to represent their own interests;
9. This flexibility also impacts on the transparency regarding how the AER and its Board engages with the CCP and has regard to their advice;
10. There have been examples where the CCP has overly focused on particular issues at the expense of other matters which are equally important to consumers;
11. The lack of local presence and knowledge on some network resets can undermine the credibility of the CCP sub-panel; and
12. Some industry stakeholders feel that the CCP are not held to the same level of accountability that they are, as their advice/views are accepted without comparable regulatory scrutiny. This perception has the risk of mitigating the credibility of the CCP's advice.

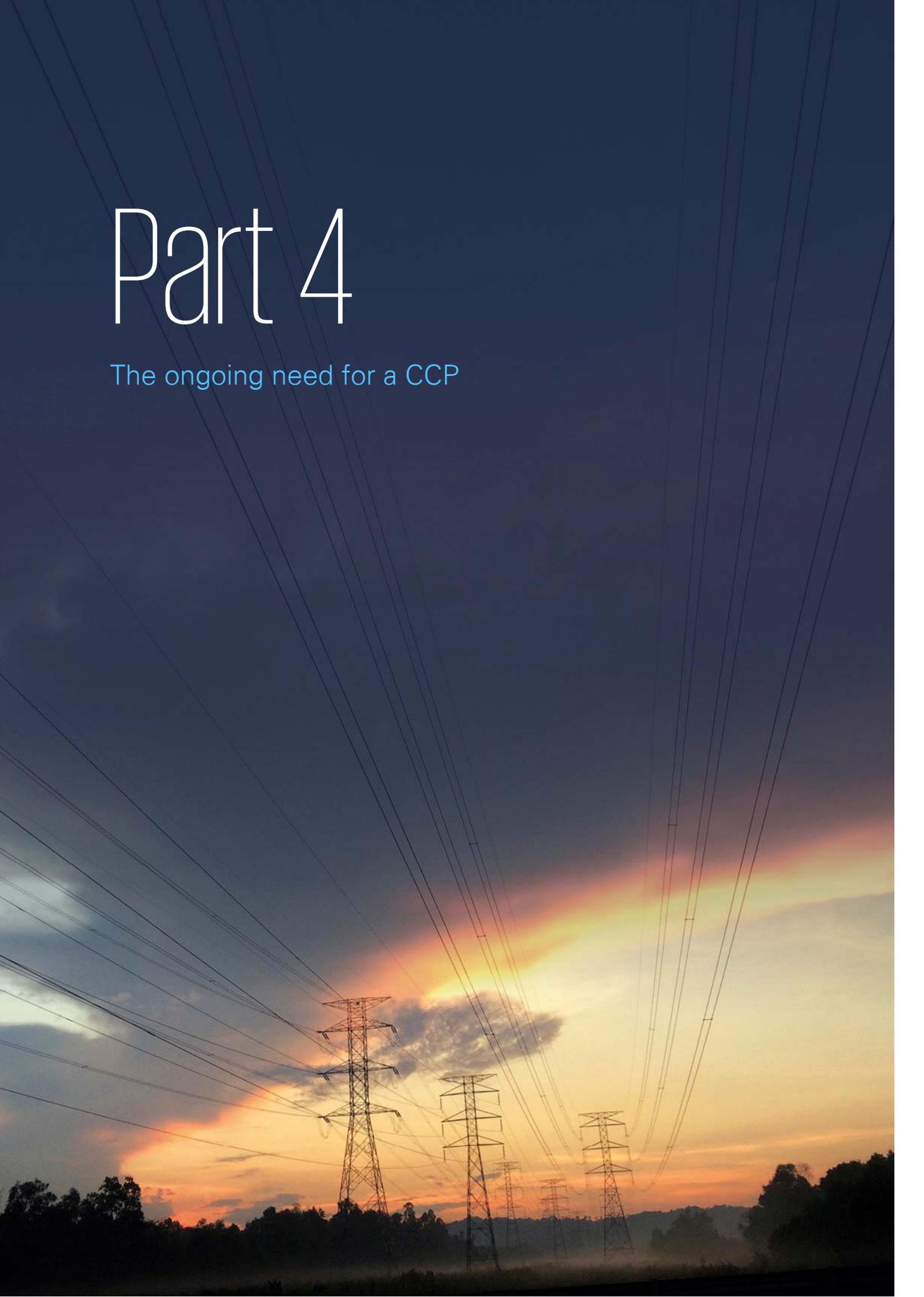
These concerns relate to a number of common factors, regarding the resourcing of the CCP, the performance management arrangements and the direction provided to the CCP. Overall this has contributed to a degree of variability in the CCP effectiveness across its tasks. While there are trade-offs to consider how to address these concerns, we consider that the governance and support services could be strengthened to provide for a better working relationship with the AER, better collaboration with consumer representatives and better leadership of the CCP. Addressing these concerns would materially improve the value of the CCP to consumers.

In summary, we consider that the main areas of concern about the current CCP arrangements relate to the following four areas:

- how to deploy CCP's limited resources to optimise its value;
- ability to adapt the CCP scope to an evolving environment.
- performance management; and
- membership.

# Part 4

The ongoing need for a CCP



# Part 4

## The ongoing need for a CCP

When establishing the CCP, there was a strong need for an independent party to challenge both the network businesses and to act as a critical friend to the AER to ensure consumer interests were being/will be met. This was necessary due to a number of reasons including:

- Gaps in effective consumer engagement activities by some network businesses,
- The lack of adequately resourced consumer representation that could input into network regulatory processes; and
- The skill-set and expertise to interpret and translate consumer views and needs into implications for network revenue and pricing arrangements, and to do so in a neutral and sustainable manner.

Conducting consumer challenge will no longer be required when four conditions are met in all situations:

- Engagement between network businesses and consumers is both consistent with good practice and mature, with a level of trust and openness between the business and consumers;
- Through engagement, consumers or consumer representatives are appropriately armed with information and activities that allow them to directly challenge the network business and their proposed activities;
- There is adequate representation of consumers views during the regulatory submission development and the AER determination considerations; and
- Sufficient expertise is employed during the process to evaluate and incorporate consumer views into considerations within revenue and pricing outcomes, especially on the more technical issues.<sup>10</sup>

Having a separate body which has a specific focus to conduct consumer challenge through observing, assuring and challenging, such as the CCP, provides value for consumers in the absence of these conditions. However as practices improve over time and these conditions move towards becoming fully satisfied, the value of having such a separate CCP will diminish and there could be reliance on other parties to provide the required level of challenge.

Based on evidence presented, these conditions are yet to be satisfied. The reasons why are set out below.

### **Significant divergence in the consumer engagement capability across businesses**

At the moment, there is a significant divergence in the consumer engagement capability and sophistication of the most advanced to least advanced network businesses. Overall, all businesses have improved their engagement processes and significant learnings have been shared, however there are still gaps.

All else being equal, a regulatory proposal is more likely to achieve the LTIC where consumers have been engaged, and their views considered and appropriately responded to. Further, consumer value will be increased where they are afforded a greater level of influence over the proposals contained within the regulatory submission. Under the NER, consumer engagement represents one of a number of factors that

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<sup>10</sup> As the AER could deviate from the network submission or new issues may emerge post lodgement, there may be a need for a consumer challenge body to be available up to the final decisions stage

support the prudence and efficiency of expenditure forecasts. Poor incorporation of consumer views will constrain the AER's ability to make a decision which aligns with the LTIC. There would be a lack of transparent evidence on what consumers want and value from network businesses over the forthcoming regulatory control period.

### **Limitations of reliance on consumer advocates**

There are still information asymmetries between consumers and their network service providers, and representative groups (such as the ECA) may not have the required funding, capacity or availability to act as a challenge agent across all of the jurisdictions where network businesses operate under the NER.

While we note that the ECA has become more active in network determinations and have set up a team specifically focused on resets, we believe that at this stage, there are a number of limitations with relying on the ECA and other consumer advocates to perform the roles the AER requires of the CCP to 'observe', 'assure' and 'challenge'. These include:

- The ECA (on behalf of consumers) are actively involved in discussions with network businesses. They seek to influence the agenda, which conflicts with the avoidance of advocacy and negotiation. The ECA could not act on behalf of the AER while carrying out these roles.
- The AER could not guarantee access to the ECA to carry out the functions it requires, where it has a different agenda.
- The ECA has limited funding and resourcing to input both pre and post lodgement.

It is important to recognise that the ECA does play an important role during price resets and the investigation of lateral issues. They regularly engage directly with network businesses, providing submissions on the network businesses' proposals and the AER's Decisions. These roles provide challenge through the process to ensure consumers are getting a better deal. Any ongoing use of the CCP should recognise these roles and seek to fill the gaps where the ECA cannot meet the expectations of the AER. This will require coordination with the ECA, which could be achieved through involvement at the CCP Steering Committee (as described in Part 5).

There is also the possibility that over time, consumers and their representatives all improve their capacity to effectively advocate on their own behalf, or grow their knowledge to allow them to challenge both the network businesses and the AER, therefore avoiding the need for a CCP. Simultaneously, there are significant changes occurring in the energy and regulatory sectors that require increased focus to protect the long term interests of consumers.

### **Availability of required expertise on consumer perspectives in network revenue and pricing**

It was also identified through this engagement the possibility of aspects of the CCP's roles being undertaken by the AER's Technical Advisory Group (TAG). Through our analysis, it was evidenced that the TAG:

- is not perceived as being as independent from the AER as the CCP, which impacts on the credibility of it performing a consumer challenge role;
- has been resourced to provide expert technical analysis and understanding, and not to deliver the CCP objectives; and
- as opposed to the CCP, does not benefit from a single focus/perspective for the network determination. The TAG may be considering a number of aspects and criteria.<sup>11</sup>

<sup>11</sup> Under the NER, the AER must have regard to a range of different factors when making network determinations and consumer engagement is only one of these factors.

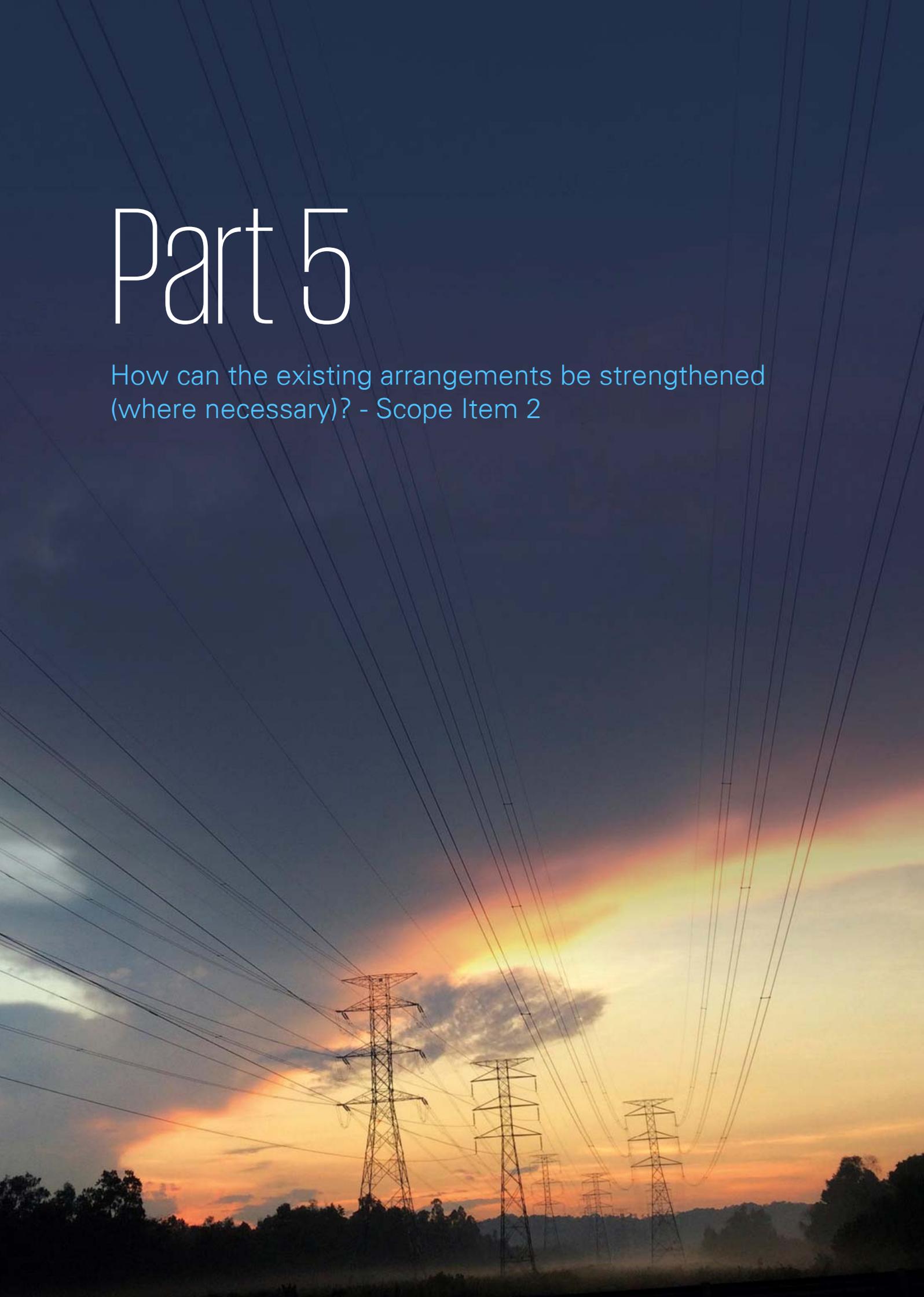
In summary, there is an ongoing role for the functions of the CCP, for two reasons:

- while there has been substantial improvement in recent years, the sector is not consistently at a mature state of engagement and customer influence; and
- as demonstrated in the UK approaches, customer challenge bodies can be designed in a way to supplement and not be substitute for network's engagements and the involvement of customer groups.

Whilst there are other stakeholders that play complementary roles, there are no organisations that can appropriately play the roles required of the CCP, all of the time. That being said, the activities of the CCP should be fit-for-purpose, and take into account how parties such as the ECA, participate in the AER determination processes, to avoid duplication of effort.

# Part 5

How can the existing arrangements be strengthened  
(where necessary)? - Scope Item 2



# Part 5

## How can the existing arrangements be strengthened (where necessary)? - Scope Item 2

This section of the summary presents our advice on Scope Item 2. Our advice has been formed with regard to regulatory precedent, the changing regulatory and operating environment, issues identified through stakeholder engagement and review of publicly available research.

In developing our recommendations we have recognised that the CCP will be subject to budget constraints, so we have considered options for improvement that are proportionate to funding capacity and demonstrate value for money.

A key finding from our analysis and stakeholder consultation is that the roles of the CCP will continue to evolve and there is a need for flexibility on how the CCP is utilised in the future. This will need to reflect the quality of engagement activities plus the sophistication of consumers being engaged.

There are a number of important themes to note across our advice:

1. The value from the CCP is very much situational and issue specific. A level of adaptability is required as the need for consumer challenge will differ with the nature of the technical issues, the situation of the particular network business and the strength of consumer engagement.
2. While the governance arrangements determine the role and outputs of the CCP, the effectiveness of the CCP will also depend greatly on its members' skill-set and behaviours. These characteristics may be more difficult to control without appropriate governance and performance management arrangements.
3. Whether there are synergies in having the:
  - a) CCP perform all identified activities during the network determination; and/or
  - b) Same CCP members through the entire duration of the sub-panel to perform all activities required within a network determination process, or whether to use different members for different tasks.

There are pros and cons to both these outcomes and on balance, while there is merit in having the same CCP sub panel involved throughout the process, we believe that the benefit is not substantially material compared to getting the group or person with the best expertise to do the specific task. Either approach can drive an appropriate outcome. Ideally there would be some level of collaboration across CCP members under either approach.

An extremely difficult challenge for the CCP arrangements is to determine the appropriate skillsets of panel members, and how these align with the tasks required to be completed (when the tasks may be situational and unable to be predicted). Further, that these roles may earn differing levels of remuneration in the market place.

There is also a risk that the activities performed by the CCP could become more complicated as consumer engagement evolves and energy transformation impacts on consumers. This may further change the nature of skillsets required, and may require more regular consideration of panel membership than every four years (as it is currently).

The AER could start to consider expanding and diversifying the skill set of the CCP members, especially in the areas of how to effectively integrate consumer views into network investment and operational decisions, plus the impacts of new technologies on customer behaviour and preferences. However the appropriate approach to take on this question depends fundamentally on the pool of applicants seeking appointment. The pool of applicants will naturally increase where the AER is more willing to remunerate those tasks at a rate broadly consistent with what could be achieved in the market.



## Recommendations

The following summarises our recommended changes to the objectives and roles, governance, membership and outputs of the CCP. They build on the issues identified in Parts 2 and 3 and leverage learnings from other precedents.

### Area 1: Objectives of the CCP

There are benefits in removing the current 'objectives' and replacing them with a single purpose, centred on the overall remit of the CCP to ensure that customers' views are being properly listened to and factored into network regulatory determinations.

We recommend that the overarching purpose of the CCP to be:

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**“** *To provide advice and assurance to the AER that the values, needs and priorities of all consumers, now and in the future, are being appropriately considered and reflected”* .

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This purpose is designed to help the AER make regulatory decisions that support the National Energy Objectives and hence are in the LTIC. It recognises that the two core roles of the CCP is to either provide assurance or advice, and also gives the AER the flexibility to adapt the activities of the CCP to specific circumstances. This proposed objective is worded in a broad way in order to capture the CCP role across both determinations and lateral reviews, building on the existing objectives while recognising the evolution of how CCP has delivered on its objectives between iterations of the CCP since 2012.

The current objectives are viewed by the CCP and stakeholders as two separate but related activities. Under the current objectives, the CCP considers that it needs to be involved throughout all network engagement activities pre lodgement to effectively provide assurance and meet its second objective. The disadvantages of this are:

- Under a fixed budget, the majority of the resources are incurred prior to lodgement which limits its ability to input into AER considerations post-lodgement;
- The CCP may be vocal in raising their opinions during the engagement processes, which in turn could dampen the voice of customers;
- Material involvement by the CCP in the network engagement processes could result in accountability being transferred away from network businesses; and
- Their involvement may not always be required, especially as networks continue to improve their engagement practices and those funds could be put to more valued use.

We considered that the proposed purpose better reflects how the AER could use the CCP to optimise its contribution across the regulatory decisions. To complement this purpose, there needs to be more specification from the AER on what the CCP should be doing and not doing across the various activities.



### Recommendation 1:

**Replace CCP objectives with a clearer purpose in order to provide clarity and optimise the value of the CCP budget.**

## Area 2: Roles of the CCP

Stakeholders stated that CCP roles should reflect other customer groups' activities, including the ECA and the network's own strategy. We agree that the CCP should not be driving customer engagement strategies and therefore the arrangements can be strengthened by providing more flexibility for the AER to adapt the extent of the CCP involvement. This needs to be supported by a clear and transparent framework on how the AER decides how and when to involve the CCP.

It also needs to be complemented by providing more direction to the CCP on the scope and purpose of its respective activities. This is a lesson from other precedents where there was greater effectiveness in challenge bodies when there was more guidance and direction on their roles and scope. It would be also be beneficial to communicate this direction and scope to other stakeholders.

The role of the CCP may flex between being 'active' or 'passive', depending on the particular situation and therefore, to support this purpose, we recommend a framework which determines the scope and intensity of CCP tasks. A common view amongst stakeholders is that the role and the extent of involvement of the CCP should be dependent on the particular situation including the quality of the network engagement activities and the extent of the involvement of other customer bodies.

In Part 2 we identified four roles that the CCP may be required to carry out. Leveraging these, we propose the AER clarifies what the scope and purpose of these four roles are:

- 1 To monitor, assess and where appropriate, inform how network businesses are conducting their consumer engagement activities ('observe and inform');
- 2 To assess network proposals and provide assurance on the effectiveness of engagement and whether consumer views have been appropriately reflected ('assurance');
- 3 To provide advice on consumer perspectives on issues related to the network determination and to challenge the AER to ensure that consumer views have been fully accounted for in decisions ('challenge').
- 4 To help inform the AER's development of positions through lateral reviews ('laterals').



### Recommendation 2:

**AER to provide more specification on the scope, activities and outcomes of the CCP across its four potential roles.**

Role 1 focuses on the activities of the CCP pre-lodgement, when its role may be passive or active, depending on the quality of the engagement planned or being implemented plus the involvement of other customer groups. Consistent with the regulatory frameworks under the electricity and gas rules, the network business must have the ability to decide how best to conduct their engagement strategies to inform their proposal and be accountable for the quality of that engagement.

Where a network business is delivering good practice engagement that is identifying and acting upon consumer needs, the role of the CCP should be limited to observing the engagement, capturing

consumer views learned from the network business's engagement outputs, and monitoring how the network business considers and responds to those views. The value of this role will be to inform the CCP's other roles post lodgement (roles 2 and 3) to support the 'assurance' and 'challenge roles'. The CCP will be in a more informed position to assess the regulatory submission when it comes in. We do not consider the CCP needs to be actively involved in the majority of the engagement sessions.

Instead, this role could ideally be conducted through being briefed by the network on its strategy prior to the commencement of engagement and at intervals through the process plus potentially a limited number of attendances at activities.

We have considered whether there are any circumstances which would warrant the CCP to having a more active role pre-lodgement. There are a number of risks with this. As noted in Part 2, there have been instances of poor behaviour by CCP members during network engagement sessions. Further, if the CCP has not engaged directly with consumers itself or been present during discussions between consumers and the network business, its views may be wrongly interpreted as representing consumers.

On balance, where there is an absence of appropriate consumer representation in the process, either through capacity constraints with advocacy groups, or inadequate direct consumer engagement being proposed by the network business, the process may benefit from a more active role by the CCP.

The reason for this, is that if the network submits a regulatory proposal which reflects poor or inadequate customer engagement, then the AER could be challenged in making the determination consistent with the LTIC. Simply put, the AER may not know what consumers actually want.

A potential counter-argument to the CCP having any role pre-lodgement, is that unless it conducts its own engagement with customers, it cannot effectively challenge and ensure that consumer views are adequately represented in the regulatory proposal. In such a situation, the CCP may end up putting their own views forward for consideration. While recognising this risk, we are of a different view, which is that with the right skill-set of CCP members, the CCP could still play a useful role in monitoring how the network is listening to its customers and providing guidance if required.

Therefore, this role is not to negotiate or advocate, or indeed to seek to advance consumer issues, but to support the business to implement a more effective engagement strategy. This could be achieved by providing information on good practice plus lessons from other determinations and responding to the businesses' requests. Further, our recommendations on performance management of the CCP would help to resolve any of the potential risks with this more active involvement.

We consider that the likelihood of more active involvement by the CCP under Role 1 is low given the increasing maturity of network business engagement and industry trends for increasing consumer focus. However, it would seem sensible for the AER to have the ability to adapt the CCP pre-lodgement role if the evidence suggests the need for more involvement.

Roles 2 and 3 focus on activities of the CCP post-lodgement, and are supported by the CCP's work completed pre-lodgement. The assurance of the regulatory submission (role 2) should be provided in all instances, while the extent of the CCP activities during the AER considerations (role 3) will likely depend on the particular circumstances.

Role 4 covers investigations into industry wide issues of importance that may inform enhancements to the regulatory framework. As noted above, these lateral reviews have increased in frequency, and there has been general recognition across stakeholders that the CCP has made a positive contribution to the outcomes.

To support pre and post-lodgement roles, the AER would need to clearly define what good practice looks like and provide guidance on how consumer interests could be interpreted and applied across the range of regulatory and technical issues facing networks (e.g., tariff design, distributed energy

resources integration, asset management). This could be achieved by building on existing consumer engagement guidelines for network service providers.



### Recommendation 3:

**AER to consider updating its existing consumer engagement guidelines to provide more direction on good practice. This will help complement the roles of the CCP.**

The proposed purpose and supporting roles implies a CCP role that is highly fit-for-purpose, will evolve over time and is dependent on the strength of the proposed engagement strategy from the network business.

The following section sets out our views on the activities of the CCP across each of these roles.

## Role 1: 'Observe and Inform' - Pre lodgement

This role has been the most difficult area to specify the appropriate involvement and nature of the CCP. There has been some debate on whether the CCP can perform the assurance/challenge role in the absence of not being directly involved in the network engagement process. The CCP members were of the opinion that this is essential for them to do their roles.

CCP involvement during the network engagement processes can however create risks, including:

- CCP members putting forward their own views and not consumers;
- Perception that CCP is overly influencing networks and there is a loss of accountability; and
- Potential confusion for consumers.

We also note that currently this activity can account for a large share of the CCP budget/time constraining their ability to conduct their other roles.

On balance, we consider that the CCP involvement in the pre-lodgement stage should typically be limited to observing the network business's approach and may involve attendance at a sample number of forms. However the steering committee should have the flexibility to ramp up the CCP involvement if there are concerns about the effectiveness of the networks' customer engagement strategies. To help understand this we have identified three plausible scenarios that will drive the level of participation from the CCP in this stage of the reset:

- Availability and commitment of the ECA and other customer groups;
- The quality of past and current engagement by the network; and
- The network's proposed engagement strategy for preparing the regulatory submission. To help tier the extent of the CCP activities pre-lodgement, we are proposing that the network submits its engagement strategy to the CCP Steering Committee to help inform the sub-panel's role<sup>12</sup>.

### 1. Best practice engagement

*Engagement strategy is equal to or better than existing industry best practice; and the network business has a history of good practice engagement and consumer outcomes. The network demonstrates a willingness to share decision making power on material issues with affected*

<sup>12</sup> The Steering Committee may engage members of the CCP to seek views on the authenticity and rigour of proposed engagement strategies.

consumers. The proposed engagement allows sufficient time for issues to be considered by consumers; consumers are able to access dissenting/alternate opinions; information will be openly shared with consumers and efforts have been made to communicate the complexity of issues to consumers without resorting to jargon.

Plans are evident for the engagement of a wide cross section of affected consumers including large consumers, those in financial hardship, from culturally/linguistically diverse backgrounds, disabled and indigenous consumers. A range of different techniques will be employed to maximise consumer involvement.

For this category of network business, the required CCP involvement ranges between very light touch and passive, to no role. The purpose of any CCP involvement is a) to input into whether the network strategy reflects best practices through the CCP Steering Committee (see Governance recommendations) and b) to observe whether the engagement strategy has been executed in accordance with the plan and consumer views are being responded to.

## **2. Good practice engagement and/or adequate customer representation**

*The network business' engagement plan is acceptable and the network has a history of good practice engagement and consideration of consumer views. The proposed strategy aligns with the AER's framework. There is reasonable representation of customer groups onto the networks engagement structures or likely that customer groups will be heavily involved.*

The purpose of CCP sub panel involvement on a reset of this type will be to inform its challenge role on the network submission when it conducts its assurance assessment. As per the above scenario, CCP involvement will be passive. In addition to reviewing reports/outputs from the engagement, CCP sub panel members will attend some of the engagement activities and observe and report findings to the Steering Committee on a more regular basis. There should not be a substantial difference in the extent of the CCP involvement in this scenario compared to the Best Practice engagement scenario.

## **3. Inadequate engagement and insufficient consumer representation**

*The engagement plan comes from a network business:*

- *that does not have a history of effective consumer engagement and/or*
- *that has not demonstrated in the past that it proposed plans adequately deliver consumer desired outcomes and/or*
- *where the plan is inconsistent with good practice and/or the AER's framework.*

*There may also be insufficient consumer representation or advocacy availability/capability in the affected jurisdiction to ensure appropriate outcomes.*

A larger CCP sub panel may be appointed, and its role could be more active. The purpose of the CCP sub-panel will be to check and challenge the network during the engagement phase in order to maximise the quality and value of the engagement plus to make sure that consumer voices are included into the regulatory proposal.

The sub panel could provide views to the network business on opportunities to improve its engagement with end consumers, and provide support to consumers/consumer representative bodies (for example, by providing precedent from other network determinations, suggesting what questions could be usefully asked of the network business, explaining the consumer impact of technical proposals and generally increasing capacity).

The CCP will not negotiate on any issues with the network business, nor will it advocate any positions. The CCP's role would not be to act on behalf of consumers, but to actively ensure appropriate engagement is taking place to support the AER's expectations.

In rare cases such as these, the CCP sub-panel could provide support on:

- good practice consumer engagement methods;
- help identify how to engage directly with consumers;
- what information needs to be shared, and how to structure the information to support effective engagement;
- how to structure engagement activities to allow for the consumer voice to be heard and listened to; and
- how to use engagement findings such that it influences the proposals contained within the regulatory submission.



## Guidance on CCP roles and extent of the involvement

In all three scenarios, the CCP's role is not to:

- negotiate outcomes;
- direct the network business on engagement activities to be completed;
- direct the network business on issues to be interrogated; or
- act on behalf of the AER.

The advantages of this tiered approach to CCP involvement pre-lodgement are:

- Adapts the CCP resources to the particular situation;
- All parties have a common and clear understanding of the extent of the CCP role during the engagement activities; and
- Rewards good behaviour by networks.

We suspect that in most of network determinations, scenario 1 or 2 will be most commonly identified. There is a strong incentive under the regulatory framework for network businesses to effectively engage and listen to their customers.

The CCP steering committee would make its judgement on the appropriate role of the CCP and extent of involvement during the pre-lodgement stage early in the process.<sup>13</sup> This would be based on past behaviour by the network, the particular circumstances of the determination, and any expectations on the involvement of customer groups in the engagement processes. Further the CCP could report back to the steering committee during this stage that it needs to be more involved if there are concerns.



### Recommendation 4:

**The CCP Steering Committee (or the AER in the absence of the CCP Steering Committee) provides more direction and specification on the involvement of the CCP during the pre-lodgement stage. This should be adaptive to the particular situation for each determination.**

<sup>13</sup> This could be done after the AER releases the Framework and Approach Paper.

## Role 2: 'Assurance' - Post lodgement

There was common agreement across all stakeholder groups that, if the CCP could only perform one task, it should be advising the AER on the effectiveness of the network's engagement activities and how this is reflected in the development of its proposal. This is a common core aspect of all consumer challenge arrangements reviewed (see Appendix A).

It is important to recognise that there are two separate but related aspects to this assurance assessment:

1. Effectiveness and quality of the network's engagement in preparing the proposal; and
2. Incorporation of consumer views into the expenditure and pricing proposal.

High quality consumer engagement does not automatically lead to appropriate incorporation into expenditure proposals. Deciding how to balance and consider consumer views into tariff design, network investment plans, asset management and customer services is challenging. For this reason, irrespective of the extent of any CCP role pre-lodgement, there should be some level of assurance provided on the regulatory proposal. In addition, the CCP could more clearly raise questions and concerns that it believes should be interrogated further in the determination processes.

Due to how we have structured the role of the CCP pre-lodgement, they will already be familiar with:

- how the network business has engaged consumers;
- issues of importance to consumers, raised during engagement;
- what options have been discussed and how bill impacts have been communicated; and
- the levels of support for proposals contained within the regulatory submission.

This will allow for a more effective and timely review of the submission/s and identification of any issues that have not been addressed.

Following receipt of the regulatory proposal, the CCP will be required to provide an assurance report 20 business days prior to the AER Issues Paper release. The report will:

- Set out assurance on the effectiveness of consumer engagement and identify any lessons for future determinations and other networks;
- Advise on how well consumer perspectives have been reflected in the proposal consistent with the LTIC;
- Evaluate how well the network has engaged against the AER Consumer Engagement Guideline; and
- Raise questions and concerns that the CCP believes should be interrogated further in the determination processes.

The AER would publish the CCP report along with its Issues Paper.

We propose that this role continues for all networks and that it is better specified to provide more clarification on the CCP involvement.



### Recommendation 5:

**The CCP to provide to AER an assurance assessment on the quality of the network consumer engagement activities and how consumer views have been incorporated into the determination. This report must be provided no later than 20 business days prior to the release of the AER Issues Paper.**

An alternative to the CCP performing this role, would be for the AER to require the networks to submit an independent assurance report on their customer engagement activities and how consumer views have been incorporated into their proposal. This is similar to the approach used in New Zealand and the AER has applied this requirement in other regulatory network requirements (e.g. ring fencing compliance). However, given that the CCP will undertake other activities during the network determination process, there is value in retaining this action for the CCP.

### Role 3: 'Challenge' - Post lodgement

We propose the CCP continues to do the same activities as it currently does during the post lodgement phase. This would be to:

- Respond to any request for advice or input by the AER during the determination considerations;
- Review and provide a submission on the AER's draft decision; and
- Review and provide a submission on the revised regulatory proposal.

We would suggest that all CCP submissions continue to be made public. We would recommend that the AER explicitly respond to each of these submissions when forming its advice, such that a direct response is provided within its written draft and final Decisions. Further the CCP sub panel would be available to attend any meetings with the AER Board or staff as required.

We considered whether it would be necessary for the CCP member to always provide submissions in all cases or allow some optionality where the AER can decide on the need for submissions. In some situations, especially under the best practice engagement scenario or active involvement of consumer groups and ECA, submission from the CCP may not be needed. At this stage, we do not think optionality is necessary as the CCP sub panel would adapt the extent and content of their submissions consistent with the CCP purpose.

Further the AER should continue to provide direction to the CCP on the extent of their involvement at the stage. Also consistent with stakeholder views, we recommend that the Advice Template should be updated to require CCP members to provide supporting evidence for their advice to the AER, including reference to consumer engagement outcomes, evidence of cost-service trade-offs, evidence of consumer bill impacts, evidence of cost efficiencies etc. This evidence is intended to reference work completed by the network business. This could be supported by providing guidance through the Handbook.



#### **Recommendation 5:** **That the Advice Template be updated to require CCP to transparently provide supporting evidence for its advice to the AER.**

One CCP member may be sufficient to do all the activities post lodgement, however if there are contentious and difficult issues, then it may be appropriate for the CCP Steering Committee to select multiple members to form a sub-panel.

#### **Interaction with other customer groups.**

For clarity, these three roles are expected to supplement, rather than substitute, the consumer engagement that networks must undertake to develop their regulatory proposals. For instance, the CCP should consider whether network businesses have properly reflected local consumer requirements. The CCP should not be the means of identifying those local requirements. Network businesses will still need to engage with local stakeholders and also consumer advocates and the ECA should still feel the need to be involved.

## Role 4 – Laterals

From time to time the AER may wish for members of the CCP to look into specific issues within a price review or issues which affect the entire industry (lateral sub-panels, such as rate of return, and regulatory tax arrangements). If the Steering Committee chooses to initiate this role, then the following describes the proposed conduct and limitations:

- The sub panel shall comprise members that exhibit the right skills to address the issues/topic of concern;
- CCP involvement is more active – presenting at forums on issues of interest, challenging the AER/network businesses' positions;
- Represent consumer interests – collaborate with the ECA and other relevant groups to promote a coordinated advancement of consumer interests; and
- Provide support to consumer bodies to allow for more effective engagement – in the form of capacity building through precedent information, sharing thoughts on issues etc.

There was strong support received during stakeholder engagement for the CCP to continue to advise the AER during lateral processes.



### Recommendation 6:

**The ability for the AER to use the CCP during laterals should be recognised in the CCP Handbook with direction and guidance provided on the CCP involvement in laterals.**

## Area 3: Governance and performance management arrangements for the CCP

Under our assessment of the current arrangements, we identified a number of gaps/concerns in relation to the effective administration and operation of the CCP. Key issues identified relate to the potential over-reach of CCP members and presenting their own views and not the views of consumers, plus how to effectively deploy CCP limited resources to optimise their value. Some industry stakeholders' commented that there is significant risk that CCP views are the views of individuals, and not robustly tested back to a constituency which in this type of activity they are purporting to actually represent.

Our recommendation to address these concerns is to establish two additional levels of governance:

- A CCP Chair; and
- A CCP Steering Committee.

### CCP Chair

Based on feedback provided through engagement and our observations, we consider that the optimal way to address some concerns would be the appointment of a CCP Chair. The Chair would oversee the operations and administration of the CCP. She/he would play an active role in recruitment of CCP members, and be responsible for setting and upholding the right tone and behaviours of all CCP members. The Chair would be appointed by the AER. One possible approach to the selection of the CCP Chair is for the post to be shared through the CCP members on a rolling annual basis

The Chair would ensure the Steering Committee is kept apprised of relevant matters including reporting on sub panel progress, risks and budgets. The CCP Chair would be subject to a performance evaluation/discussion with the AER member who chairs the Steering Committee and be on a contract which permits termination at the AER's discretion.

The CCP Chair's Key Performance Indicators shall be set collaboratively by the CCP Steering Committee with due regard to matters including CCP performance against budgets and stakeholder feedback.

She/he would be a member of the CCP Steering Committee, and have a direct say in the:

- role each sub-panel will play (and their requisite scope of work);
- allocation of budgets to each sub-panel;
- appointment of sub-panels members; and
- review of sub-panel member performance.

If the AER were to adopt the recommendation of a CCP chair and Steering Committee as proposed, we suggest that the Chair be appointed first under a separate process so it that be part of the process for selecting members.

We note that there could be subsequent disadvantages with creating the role of CCP Chair, including the potential to negatively impact the current culture and collaborative dynamic of the CCP. However it would provide focus and discipline to address some of the performance management concerns raised.

It is noted a CCP chair would not be available to form part of any sub-panels, and it may make more sense to have someone with strong 'administrative' experience, as opposed to technical skills that align with network issues.



### **Recommendation 7:**

**The AER considers to establish the role of a CCP Chairperson to help guide CCP performance.**

The other recommendations set out in this report are not dependent on the establishment of a Chair for the CCP and would still be effective under alternative approaches. On balance we consider that having a Chair will add to the performance effectiveness and direction of the CCP.

#### **CCP Steering Committee**

A CCP Steering Committee should be formed, containing relevant senior staff of the AER with authority to determine the scope of work and budget allocations of the CCP, the CCP Chair and a senior member of the ECA (to act as an observer). The purpose of the ECA is to support a more coordinated approach that supports consumer interests, and to avoid any duplication of activities.

The role of the CCP Steering Committee would be to:

- Recruit CCP members;
- Set/allocate sub-panel budgets;
- Determine level of involvement in reset/lateral sub-panel (in the light of the plan, previous performance, availability/capacity of consumer representation); and
- Review the effectiveness of sub panels and each CCP member.

The CCP Steering Committee will also be responsible for the development of a 'CCP Code of Conduct', that each panel member will be required to abide by. The CCP must demonstrate a style

that allows for it to effectively carry out its functions and engage productively with the network businesses and the AER. This can be done by monitoring compliance with this Code of Conduct.

Our recommendations would make the CCP role and activity more variable and dependent on the network situation and there could be a wide spectrum of CCP activities across network determinations. Having the Steering Committee will provide a transparent and principled way to achieve such variability. This complements our recommendations on adapting the intensity of the roles of the CCP to the specific circumstances of the network.

To support the effective operations of the CCP and the CCP Steering Committee, the AER should form a dedicated secretariat to provide access to stakeholders, information and advice in a timely fashion. This could build on the existing arrangements within the AER supporting the CCP.

Existing arrangements regarding invoice processing, expense reimbursement and payments, should remain as they are. All of the recommended changes should be reflected in an updated version of the Governance Handbook.



#### **Recommendation 8:**

**The AER establishes a CCP Steering Committee, to determine the scope of work and budget allocations of the CCP and oversee performance.**



#### **Recommendation 9:**

**The CCP Steering Committee has the flexibility to adapt the activities and roles of the CCP for each network determination.**



#### **Recommendation 10:**

**A Code of Conduct is developed to guide CCP member's standards and behaviour.**

### **Area 4: Remuneration arrangements for CCP members**

CCP members are paid for their services at a daily rate of \$1,200.00 (GST inclusive) or \$200.00/hour (GST inclusive). This rate has remained the same since the inception of the CCP.

Amending the remuneration could be the biggest challenge to address in any reforms to the CCP. While the recommendations proposed above will introduce more flexibility in how and when the CCP is used resulting in a tailored use of resources, the budget constraint applicable to the AER will limit the funds available for the CCP and place importance on optimising use of CCP resources. The related questions considered are:

- Should the remuneration rate be increased, and if so, to what?
- Should the rate vary by CCP activity?

We have considered whether the current rate is set at the appropriate rate to attract the required capability. It is hard to assess this issue given the quality and capability of CCP members appointed to date. However we note that current panel member rates are not consistent with that which they could achieve in the market (e.g. existing rates charged by professional services firms and individual contractors). Stakeholders agreed with this view.

There are two aspects to our recommendations in this space:

- The rates should be adjusted for CPI since the establishment of the CCP; and
- There could be merit in introducing a variable schedule of rates to better attract specialised capability to the CCP.

We believe that it is appropriate practice for hourly rates to be adjusted year-on-year to reflect changes in the consumer price index. There has been a 15% increase in CPI since 2013 and therefore we recommend that the hourly rate increases to \$230 (inclusive GST). We caution against having a maximum daily rate imposed<sup>14</sup>, but if the AER wants to keep this, we suggest that it should be set at \$1,725 to reflect 7.5 hours at the revised rate.

The skills and expertise required is not identical across the various tasks and roles performed by CCP members. The roles required may vary between observing activities and reporting back findings, to requiring expertise on technical energy issues (e.g. economic regulation, engineering, legal, consumer engagement etc.). In the current market, these activities would on average range between \$150 and \$350 per hour (excluding GST). What this means is there may be an opportunity for the AER to offer different levels of remuneration for different tasks.

This change could have a number of pros and cons. For example, a more tiered approach to activity payment would allow the AER to optimise its budget, and only spend what it should on each task. A single rate card for all tasks would not reflect the level of expertise associated with the task which in turn could limit recruitment to the CCP.

Conversely, it would be challenging to have CCP members being paid different amounts, which may result in a hierarchy of members, and a change in dynamics between what could be perceived as more 'senior' and 'junior' members. As a point of comparison, this does not prevent other businesses with similar business structures from effective collaboration (such as professional services firms).



### Recommendation 11:

**The AER should consider introducing a variable schedule of rates across different CCP activities. However if the AER decides to keep the standard rate, this should be increased to \$230 per hour (maximum \$1,725 per day).**

The Chair of the CCP would be analogous to an individual that chairs a Board of Non-Executive Directors. These roles tend to earn a fixed salary. Based on our experience, a fixed annual salary of \$60,000 would be appropriate. The AER should recognise the opportunity cost of travel time, reimbursing this time at half the hourly rate.

## Area 5: Implications of recommendations for total CCP budget

Treasury provides the AER \$0.5 million annual direct funding for CCP activities with additional money allocated as required from the AER.

The CCP Steering Committee needs to allocate the available budget prudently to create the most consumer value across the range of resets which are scheduled to occur. As the quality of consumer engagement continues to advance, the role for the CCP will adapt and become more focused. There are risks that changes to the operating and regulatory environment create further complexity, and a more active CCP, however it is unlikely that these will materially impact ongoing budget requirements.

<sup>14</sup> Evidence collected during our review demonstrated that CCP members would report their hours in way that they never exceeded the maximum limit of 6 hours. In effect, this meant extending hours over multiple days to ensure recovery of all time committed to the sub-panel.

By better targeting the CCP activities to the particular circumstances, these recommendations may reduce the likely CCP budget, as compared to recent expenditure.

Our rough estimate of the potential number of hours (by sub-panel) required by the four roles to the CCP:

- Role 1 – ‘observe and input’ (Pre-lodgement)
  - Tier 1: Best practice engagement – 40 to 80 hours
  - Tier 2: Good practice engagement – 60 to 100 hours
  - Tier 3: Inadequate engagement – 100 to 200 hours
- Role 2 – ‘assurance’ (Post-lodgement) – 80 to 120 hours
- Role 3 – ‘challenge’ (Post-lodgement) – 40 to 80 hours
- Role 4 – ‘laterals’ – 150 to 300 hours

In appendix H of the Support Analysis Report, we provided some simple modelling of the CCP budget under our recommendations across a range of scenarios on number of determinations and review, plus the intensity of CCP involvements across the four areas of activities.

Under a typical year of 5 determination processes and 2 laterals, we have estimated that the on average, the total cost of the CCP would be around \$400,000 to \$500,000. This is based on the indicative hours per role provided above at the amended \$230 rate and includes the \$60,000 for the CCP Chair. It is based on one determination having inadequate engagement pre lodgement requiring the CCP to be more involved.

The intended design of the CCP is to maximise the likelihood that the role of the CCP converges towards a role, either during a review, or into the future. What this means is that the cost the CCP should reduce over time. As an example, it is unlikely that a network business which has the CCP actively involved in the pre lodgement stage or is subject to criticism by the CCP in its assurance report would be in the same position at future price reviews. Learnings and adaption across the sector should be expected.

Similarly, it is unlikely that there will be many network businesses that fall under Tier 3, where they propose engagement that is inadequate. As noted previously, considerable work has been done across the sector to be more customer centric, and to establish good practice engagement as business as usual.

We note that the number of AER regulatory reviews and determinations can vary year on year, which would have implications for fixing an annual budget for the CCP. Further the AER should have the ability to turn off certain roles, for example role 1, if it considers that other groups or alternatives would provide similar outcomes for consumers or if there is insufficient funds available. Based on the stakeholder feedback, roles 2 and 4 were seen as the roles which deliver the best value. Clarifying the extent of the CCP role could be performed by the CCP Steering Committee.

Where the CCP Steering Committee determines an active CCP role due to inadequate engagement, in theory funding for the CCP’s role should be borne by the network business. However we note that there could be legal and administrative reasons why this may not be achievable.

The AER should also allow for a contingency of 20 per cent for each sub-panel. Where a sub-panel’s work overruns the 20 per cent allowance there should be arrangements in place that allows the sub-panel to formally request a budget variation.

Written variations should be lodged with the CCP Steering Committee for endorsement, prior to being lodged with the AER. This variation would then follow the same course of action as any contract variation request the AER might receive under other existing consulting contracts.

## Area 6: Proposed membership of the CCP

An extremely difficult challenge for the CCP arrangements is to determine the appropriate skillsets of panel members, and how these align with the tasks required to be completed.

As noted, the AER has purposefully selected members who brought a depth of career experience and a level of seniority and authority, to allow for them to more effectively engage with the networks. There were various views expressed by stakeholders on the appropriate membership with consumer groups seeking members to be more technical while the network business wanting members to have more direct customer engagement expertise.

We consider that the AER should re-consider its approach to selecting CCP members. There are a number of reasons for this. As discussed in Part 2, the energy market is becoming more complex and the role of networks changing – having more experience on how new technology impacts on customer needs onto the CCP will be important. Also engaging consumers is becoming a core component of network proposals, so having engagement design and application on the CCP would have merit.

Overall, we advise that there should be a better balance between specialists with a strong background in the following:

- consumer engagement;
- interpreting consumers' preferences and awareness about how consumers' needs and interests can be best served in the sector; and
- specialists with other relevant technical specialisations to the provision of energy services (e.g. engineering, economic regulation, law, policy, etc.).

Our view is that the AER should start to consider expanding and diversifying the skill set of the CCP members. However the appropriate approach to take on this question depends fundamentally on the pool of applicants seeking appointment. The pool of applicants will naturally increase where the AER is more willing to remunerate those tasks at a rate broadly consistent with what could be achieved in the market.

For Roles 1 (observe and input) and 2 (assurance), it is imperative that the CCP exhibit an understanding of good practice engagement and how consumer feedback can be used to influence the proposals contained within the regulatory submission.

Roles 3 (challenge) and 4 (laterals) will likely require a different technical specialisation, such as regulatory economics (e.g. to challenge what forms part of the regulatory proposal or the AER's Decision) or law (e.g. where a lateral panel is formed to look into merits review).

Specialists of this nature are appropriate due to:

- More complexity in network regulation under energy transformation and Distributed Energy Resources integration;
- Increasing evolution and sophistication in consumer engagement techniques employed by networks;
- More flexibility to optimise CCP resources to the specific issue; and
- Ability to include experts in consumer engagement, where this skillset is largely missing from the current CCP.

On this basis, the CCP Steering Committee should seek membership that includes individuals with demonstrated experience across a number of areas:

- Utilities consumer engagement;<sup>15</sup>
- Achieving consumer needs and interests;
- Energy consumer representation/advocacy;
- Economic regulation of network prices;
- Energy network design/operations;
- Distributed energy resources; and
- Corporate finance and infrastructure investment.



### Recommendation 12:

**Membership of CCP to include more specialist skills including consumer engagement specialists.**

Selection to the CCP should only be made if that person has the right capability and agreement to comply with the CCP Code of Conduct.

A related question is whether it is appropriate to have the same CCP members through the entire duration of the sub-panel to perform all activities required, or whether to use different members for different tasks. There are pros and cons to both these outcomes and on balance, while there is merit in having the same CCP sub panel involved throughout the process, we believe that the benefit is not material compared to getting the group or person with the best expertise to do the specific task.



### Recommendation 13:

**The CCP Steering Committee should have the ability to select different members for different roles associated with the same network determination process.**

As documented, we propose that the CCP Steering Committee appoint CCP members and sub-panel members. The AER should run a separate recruitment process for the role of CCP Chair.<sup>16</sup>

While the size and composition of the CCP sub panel should be a matter for the AER and the CCP Steering Committee, we would suggest the following size sub-panels:

- Role 1 Observe and input – pre-lodgement:
  - Best practice engagement – one CCP member;
  - Good practice engagement – one or two CCP members;
  - Inadequate engagement – two to three CCP members;
- Role 2 (assurance) and 3 (challenge) – post-lodgement – at least one CCP member; and
- Role 4 - Laterals – two CCP members.

There may be a number of situations where the CCP sub-panel only requires a single member. This would avoid a duplication of effort completing the same tasks. Conversely, a CCP sub-panel may

<sup>15</sup> Potentially including certification with IAP2 although this should be essential.

<sup>16</sup> The AER should also continue with its conflict of interest guideline for CCP members.

require multiple individuals where there are different technical skills required to support the role. Consistent with current practice, we advise that one sub-panel is formed for each jurisdiction.

Each CCP member should be appointed for a term of four years, with half of CCP members up for renewal every two years. Each panel member's performance should be assessed by the Steering Committee at end of years one and three. There is also a risk that the activities performed by the CCP could become more complicated as consumer engagement evolves and energy transformation impacts on consumers. This may further change the nature of skillsets required, and may require more regular consideration of panel membership than every four years.

One of the potential disadvantages under the recommendations is that the workload of CCP members could be quite varied and uncertain which could impact on recruitment. However we don't consider this to be a material issue for the near future given consumer engagement is not at a state of maturity where the CCP is not required.

Panel members should be appointed with appropriate consideration of age, gender, skillsets and behaviour/style. In the case of a sub-panel appointed where there is inadequate engagement, efforts should be made to ensure that one of the sub-panel members was involved in the previous reset from that business (where practicable). Sub-panels (where there are two or more members) should demonstrate appropriate diversity.

Where a CCP member is appointed to a sub-panel, there should be a commitment for the duration of that sub-panel (even where it may extend beyond their term on the CCP), unless there are performance issues that need to be addressed. The AER could also seek to minimise restraints of trade on CCP members, by putting in place appropriate 'ring-fencing' arrangements and non-disclosure agreements to prevent the sharing of information to conflicted CCP members.

CCP members have a role as critical friends. This requires a combination of personality traits and a high degree of emotional intelligence. The AER could consider that psychometric assessment be undertaken of CCP candidates.



## Evaluating the recommendations

There are a number of other inter-dependencies that will impact on the purpose and effectiveness of our recommendations. Therefore in evaluating the advice, the AER should also:



**01** Engage with the ECA to better understand their approach to resets to consider potential duplication with the CCP



**02** Evaluate outcomes from the NewReg AusNet trial and implications for the CCP role



**03** Further consider the potential pool of applicants to the CCP and whether specialists would be able to be recruited



**04** Consider the relative budget appropriation to the CCP compared to its other functions



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