

# Executive Summary

Australia's energy markets operate under a set of rules and regulations that have a clear objective – to meet the long term interests of consumers<sup>1</sup>. Better energy regulation, better investment decisions and better consumer engagement drive a more efficient energy sector.

The Australian Energy Regulator (AER) is Australia's national energy market regulator. As part of its Better Regulation Reform package the AER recognised the important underpinning to its regulatory approach of a strong consumer engagement framework<sup>2</sup>.

As part of this framework the AER established a Consumer Challenge Panel (CCP) in 2013. In doing so it considered the model used by Ofgem in Great Britain for network price controls and the approach introduced by Ofwat for water price control setting processes in England and Wales<sup>3</sup>.

This report outlines the findings of an independent review of the Consumer Challenge Panel (CCP) program.

## About the Review

Nous Group was commissioned by the AER to conduct an independent review of the Consumer Challenge Panel. The Review examined:

- to what extent the current Consumer Challenge Panel program has achieved its objectives
- the efficiency of the Consumer Challenge Panel program and its processes
- the effectiveness of the Consumer Challenge Panel's advice and engagement approach.

The Review identified the key strengths in the current approach and the opportunities to improve the Consumer Challenge Panel program.

The Review drew on a number of sources including 89 survey responses, 37 interview and workshop participants' views, as well as background research.

The Review was conducted on the assumption that there is a need for strong consumer engagement to continue as part of the regulatory decision making framework.

There was strong support for the Review being conducted. It was considered to be timely given:

- 8 sub-panels formed since the commencement of the CCP in 2013
- the AER has conducted 22 price determination reviews and commenced a further 6 since that date
- the business and regulatory landscape that the CCP program operates in has continued to evolve.

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<sup>1</sup> COAG Energy Council, <http://www.scer.gov.au/council-priorities/empowering-consumers>

<sup>2</sup> *Overview of the Better Regulation reform package*, Australian Energy Regulator, April 2014.

<sup>3</sup> *The potential role of Consumer Challenge in energy network regulation in Australia: a think piece for the Australian Energy Regulator*, Dr Gill Owen, 13 March 2013.

## Conclusions

### **The objectives of the CCP are clear and still relevant**

The CCP program was established to provide an independent consumer perspective to the AER in its regulatory decision making processes. Its specific objective is to assist the AER to make better regulatory determinations by advising on issues that are important to consumers. The Review found there is strong support for the CCP program, its objective and its roles. All stakeholders recognise the benefit of having independent and expert advice that focuses on the interests of consumers in the network determination process. Further, the objective and roles of the CCP continue to be relevant in the current context.

Several areas of concern need to be addressed:

- There is broad agreement that the CCP should function as a 'critical friend' to the AER and provide it with neutral advice that provides insights into issues that affect consumers. However the role of 'critical friend' is not clearly defined.
- There is a lack of clarity as to the scope and appropriate limitations on the role of the CCP. The different interpretations of their role adopted by individual CCP members leads to inconsistent approaches and outputs.
- Despite a key part of the CCP's objective being to provide advice and input to the AER, the influence of the CCP's advice in the AER's decision making process cannot be easily assessed. Most stakeholders (including the AER) felt that the CCP's advice had only some influence on the AER's decision making.

### **The CCP program must be made more efficient. Substantial efficiency gains could be made through minor changes to how the program operates**

The Review found that the approach to the structure of the work of the CCP, using sub-panels to provide advice on specific resets, was an efficient way to structure and organise the contribution of the CCP members. However, more consideration of the alignment of panel members' skill, expertise and personal attributes would increase the efficiency of the sub-panels and the value they add to the AER's decision making.

All stakeholders consulted in the Review identified opportunities for improvement that will strengthen the CCP program. Several themes emerged that need to be addressed:

- The range of skills and capabilities of CCP members should be maintained and in some cases enhanced. In particular, technical, industry and consumer engagement skills should be sought out in appointing new CCP members.
- Greater collaboration needs to be promoted both among CCP members and between the CCP and the AER.
- Standard templates for CCP advice and a precedent library should be developed as these would result in considerable efficiency gains. They would also help to ensure CCP members are aware of previous considerations of similar issues – allowing for greater consistency and avoiding duplicated effort.

### **The effectiveness of the CCP could be improved through increasing the relevance of its advice to the decision making processes of the AER**

Stakeholders are unclear on the extent to which the CCP has achieved its overall objective of assisting the AER to make better regulatory determinations by advising on issues that are important to consumers.

The CCP provides both formal and informal advice to the AER as part of the AER's regulatory decision making processes. The Review found that the advice would be more valuable to the

AER and more useful and informative for business and consumer stakeholders if it were more focused and addressed specific areas of concern to consumers. The CCP provides the most valuable input to the AER where it identifies specific areas of concern to consumers arising from the proposal under consideration and provides insights into these issues.

Another key improvement could be delivered by having the CCP and AER agree in advance, the focus of the advice the CCP could best provide in respect of each review. The nature and scope of the issues that could usefully be addressed by CCP members should be agreed between the CCP and the AER early in the process. These agreed areas should then be tested through ongoing feedback and engagement during the review process. This would help both parties to better understand each other as well as ensuring that the effort of the CCP was applied where it could add the most value and provide new insights and consumer perspectives.

### **The engagement and collaboration approach taken by the CCP is inconsistent and not always constructive**

The timing and quality of engagement and of advice reports does not enable the best use of the advice by the AER, network businesses and consumer representatives. The Review found that increased collaboration and clarity of expectations will enhance the value of the advice provided and increase the efficiency of the CCP and the AER. Network businesses have benefited from early engagement with the CCP on their approach to consumer engagement. Similarly the AER has benefited from the advice generated from this early engagement. This area of reform can yield significant benefits for all stakeholders.

Further, some stakeholders perceive the CCP to be biased, or at least unduly focused on advocating particular consumer perspectives. No evidence exists that the CCP is in fact biased or that it only advances particular opinions in respect of certain issues. However, steps should be taken to manage perceptions and ensure that the impact of the CCP and its advice is not diminished by suggestions that it is biased.

## Findings

Table 1 summarises the findings that address the key lines of enquiry that guided the Review.

**Table 1: Key Findings**

Key line of inquiry	Key Findings
To what extent does the current CCP program achieve the objectives it was intended to deliver?	The objectives of the CCP program are well understood and supported
	The objectives of the CCP continue to be relevant in the current context
	The current governance arrangements for the CCP are not limiting the achievement of its objectives
	There are mixed views about the extent to which the CCP's advice influences the AER's decisions
	The approach adopted by individual CCP members to performing their role is not consistent
	The CCP role is to be an independent and neutral critical friend - but not all CCP members agree
To what extent is the CCP program efficient?	The CCP panel and sub-panel structure is appropriate and can be improved with simple administrative changes
	The efficiency of the CCP can be improved with simple administrative changes
	Aligning panel members' skills, expertise and personal attributes is important for each review
	CCP members agree there is benefit in developing and sharing intellectual property across the whole CCP
	Increased collaboration will enhance the value of the advice provided by the CCP
To what extent is the CCP program effective?	The CCP and AER need to engage earlier in the reset process to confirm issues of interest to consumers
	Ongoing informal communication and feedback between AER and CCP sub-panels should be established
	The CCP needs to focus on providing input into regulatory decisions rather than attempting to re-litigating AER findings
To what extent is the CCP approach collaborative?	The CCP's approach to engagement with network businesses is not consistent
	Perceptions of bias and conflict of interest were of some concern but were not considered a major issue

## Key recommendation

Nous' key recommendation in respect of the CCP is for the AER to revise and re-issue the "Framework for Advice" that was previously issued to govern the operations of the CCP. The reissued framework should establish the key objectives for the CCP to meet. It should also be promoted to the CCP and stakeholders and used as a tool by the AER in assessing the advice the CCP provides.

The 'Framework for Advice'<sup>4</sup> should specify the following items:

- When in the reset process the CCP members will be engaged with the AER
- The nature of that engagement; for example, whether it is formal meetings, informal discussion, written advice and the issues to be addressed including issues of concern to consumers and discussion of emerging thinking
- The feedback that will be provided to the CCP about its advice and how it has been used
- When in the reset process the CCP members will be engaged with the network businesses
- The nature of that engagement including providing input on effective consumer engagement and informing network businesses on consumer issues and concerns
- When in the reset process the CCP members will be engaged with consumer representatives.

These points address each of the key concerns raised by stakeholders consulted over the course of this Review. By ensuring that these steps are addressed, a range of the most significant challenges limiting the effectiveness and efficiency of the CCP program will be removed. The specific recommendations set out below each address one or more of the findings, and provide a series of tasks and actions for the AER.

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<sup>4</sup> The 'Framework for Advice' is the current title of the guidance document issued by the AER. An alternative title for the proposed explanatory and guidance document could also be considered.

## Recommendations

The Review has identified a number of areas for improvement in the alignment of CCP objectives and roles, the efficiency of the CCP process and the effectiveness of the CCP's advice and engagement approach.

**Table 2: Recommendations**

Key line of inquiry	Recommendation
To what extent does the current CCP program achieve the objectives it was intended to deliver?	<ol style="list-style-type: none"> <li>1. Develop an evaluation framework to support the revised 'Framework for Advice' and CCP charter and then use this to monitor the performance of the CCP on an ongoing basis.</li> <li>2. Establish a clear definition of 'critical friend' as it applies to the role of the CCP.</li> </ol>
To what extent is the CCP program efficient?	<ol style="list-style-type: none"> <li>3. Revise and reissue the 'Framework for Advice' which governs the CCP to better manage and assist the CCP members in performing their role and delivering value to the AER.</li> <li>4. Ensure the CCP can leverage an appropriate skill base.</li> <li>5. Include in each sub-panel CCP members capable of conducting regulatory analysis and consumer engagement and who can work together collaboratively.</li> <li>6. Resource the development and maintenance of a precedent library.</li> </ol>
To what extent is the CCP program effective?	<ol style="list-style-type: none"> <li>7. Establish clear process maps to manage the engagement and collaboration between the AER and the CCP.</li> <li>8. Ensure that the CCP focuses on the provision of input into regulatory decision making by the AER.</li> </ol>
To what extent is the CCP approach collaborative?	<ol style="list-style-type: none"> <li>9. Ensure that the interactions of the CCP with network businesses and consumer groups provide insights to inform the decision making processes of the AER.</li> <li>10. Actively manage consumer and business perceptions regarding conflicts or biases on the part of CCP members.</li> </ol>