

New Reg: AusNet Services Trial *Final Evaluation Report*

Australian Energy Regulator

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FINAL REPORT

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EXECUTIVE SUMMARY

In June 2017, the Australian Energy Regulator (AER), Energy Networks Australia and Energy Consumers Australia (ECA) launched a joint initiative to explore ways to improve sector engagement and identify opportunities for regulatory innovation.

On 23 March 2018, the agencies jointly released a Directions Paper and Approach Paper which set out a new process that would enable consumer perspectives to be reflected in regulatory proposals in advance of those proposals being lodged with the AER for assessment. This process is called *New Reg: Towards Consumer-Centric Energy Network Regulation*.¹

The intent of the agencies was to ‘learn by doing’, through an exploratory process of trialling New Reg during a revenue determination.² One electricity distribution network, AusNet Services, elected to trial the process during the 2022-26 Electricity Distribution Price Review (EDPR 2022-26). CEPA has been engaged to evaluate the extent to which the trial achieved its objectives. This report presents our final evaluation findings.

What is New Reg?

The New Reg initiative emerged from the agencies’ shared desire to improve the existing regulatory review process. This reflected concerns that the process was becoming increasingly adversarial and technical, leading to a focus on interactions between networks and the regulator, rather than facilitating meaningful engagement between networks and their customers.³ The New Reg Approach Paper set out an overall vision that:

“energy consumers’ priorities and stated preferences should drive, and be seen to drive, energy network businesses proposals and regulatory outcomes”.⁴

To achieve these improvements, the New Reg Directions Paper proposed an alternative regulatory review process. The central idea of the New Reg process is that before a regulatory proposal is submitted to the AER, a Customer Forum and the network business will negotiate with a view to reaching agreement that the proposal, or elements of the proposal, reflects consumer perspectives and preferences.⁵

The design of the New Reg process reflects elements of other **negotiated settlement** models that have been applied, in various ways, in different contexts. The term ‘negotiated settlement’ can encompass a range of commercial or regulatory processes, depending on the context. It is therefore helpful to explain how we are applying it to describe New Reg.

In several sectors, direct commercial negotiations occur between infrastructure providers and large, well-resourced consumers – such as airports and airlines, or gas pipelines and pipeline users. In these contexts, a regulatory authority may act as a ‘backstop’ in the event that negotiations fail. New Reg shares with these models an emphasis on the regulated company and their customers seeking to reach agreement on prices and service levels. However, the context of Australian distribution networks is different, as they serve a broad range of consumer groups, including small users. In this context, the form of negotiated settlement envisaged by New Reg differs from a commercial negotiation in two key ways:

¹ New Reg Approach Paper (2018) and New Reg Directions Paper (2018).

² New Reg Approach Paper (2018), page 4.

³ New Reg Approach Paper (2018), page 5.

⁴ New Reg Approach Paper (2018), page 3.

⁵ New Reg Directions Paper (2018), page 3.

- In lieu of direct negotiations between the network and its customers, a **Consumer Forum** is tasked with forming a ‘composite’ view of customer preferences and representing this to the network during negotiations on all or part of the regulatory proposal.
- Rather than providing a ‘backstop’ to the negotiations, New Reg involves a more **active role for the regulator**. In the New Reg process, the AER’s role includes supporting the Customer Forum during the negotiations. Further, while the AER will have regard to agreed positions, it ultimately makes its own assessment of whether agreements are capable of acceptance as part of a revenue determination under the National Electricity Rules (NER) and National Electricity Law (NEL).

This ‘version’ of negotiated settlement shares some similarities with processes that have been established in other sectors with similarly diverse customer bases. A prominent example is the Customer Forum established by the Water Industry Commission for Scotland (WICS) to negotiate with Scottish Water on its business plan.

The New Reg process

The New Reg process has two main stages:

- The **Early Engagement Process**, where the Customer Forum and the network business will seek to agree all or part of the regulatory proposal, with support from AER staff.
- The **regulatory review process**, where the AER will assess the network’s regulatory proposal in line with the requirements of the prevailing legislative and regulatory framework, having regard to the outcomes of the Early Engagement Process.

During the most recent round of regulatory resets, Australian energy network businesses adopted multiple innovative models for engaging with their customers.⁶ Throughout this report we refer to these as ‘enhanced engagement’ approaches, recognising the significant step-up in engagement activities from earlier regulatory processes.

The New Reg process is a **distinct concept** from enhanced engagement. Rather than being an alternative consumer engagement model, it is an alternative regulatory review process with formal roles for the AER, the network business and the Customer Forum. The distinctive features of the New Reg process are illustrated in Figure E.1 below, which summarises the ‘process steps’ defined in the New Reg Directions Paper.⁷

Process Step 3 below highlights that the Customer Forum is not intended to act as a representative body, in the sense that its membership directly reflects the range of customer groups served by the network company.⁸ Rather, as the formal counterparty to the network, the Customer Forum is tasked with ensuring that customer interests are identified and reflected in the regulatory proposal. Evidence from consumer engagement is therefore essential for the Customer Forum to form its negotiating positions (Process Step 7) and demonstrate to the AER that these are aligned with consumers’ priorities and preferences (Process Step 8). Accordingly, the Customer Forum relies on, rather than replaces, engagement with the network’s customers.

⁶ AER (2021a), page 33.

⁷ A full description of each of the process steps are included in Appendix A.

⁸ New Reg Approach Paper (2018), page 10.

Figure E.1: New Reg process steps



Source: CEPA analysis, New Reg Directions Paper (2018), pages 4-7.

Trial objectives

By trialling New Reg during a regulatory determination, the AER, ECA and Energy Networks Australia hoped to ‘learn by doing’.⁹ To this end, the New Reg process was seen as starting point for exploring a potential role for a form of negotiated settlement within the regulatory review process, rather than a definitive model. Accordingly, the New Reg process was developed, and intended to be trialled, under the existing regulatory framework.

Within this context, the Memorandum of Understanding (MOU) agreed between the AER, AusNet Services and the Customer Forum described three overall objectives for the trial, being to:¹⁰

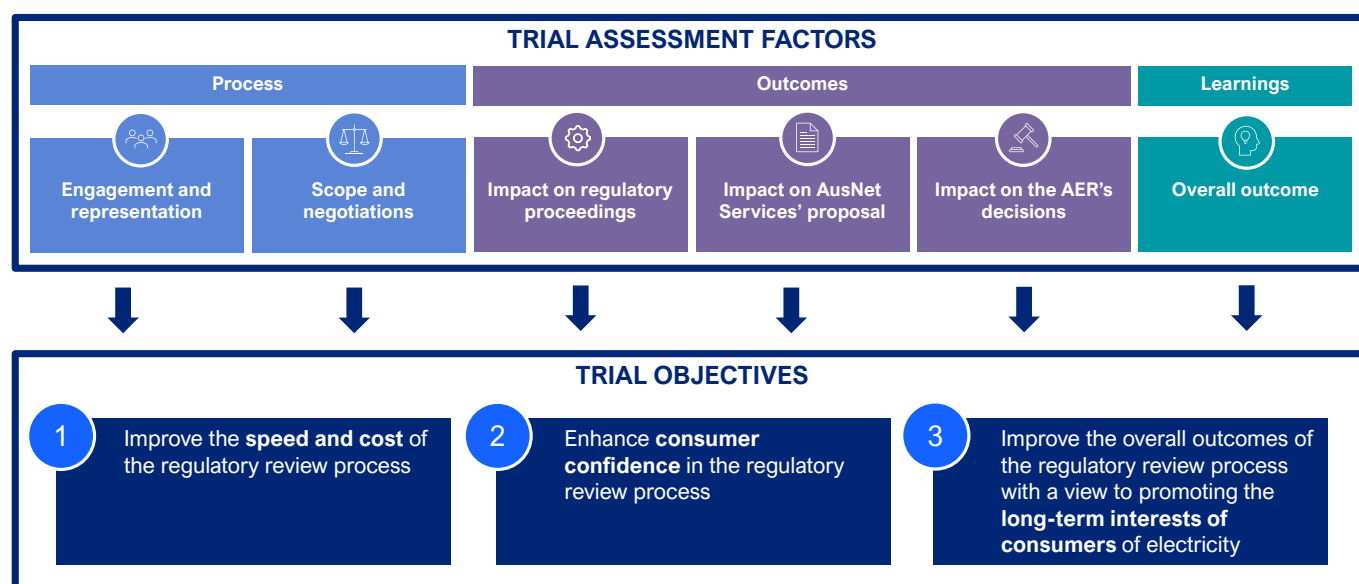
- improve the speed and reduce the cost of the regulatory review process;
- enhance consumer confidence in the regulatory review process; and
- improve the overall outcomes of the regulatory review process with a view to promoting the long-term interests of consumers of electricity.

It was accepted that the existing regulatory framework might place some constraints on the extent to which these objectives could be realised during the trial.¹¹

Trial evaluation framework

While recognising these constraints, we have ultimately sought to evaluate the trial outcomes against the original objectives described in the MOU. This evaluation has been informed by a set of Trial Assessment Factors (TAFs), as detailed in our November 2018 Evaluation Framework report.¹² The five TAFs cover the negotiation **process**, interim and final **outcomes**, and overall **learnings** from the trial (Figure E.2).

Figure E.2: Trial evaluation framework



Source: CEPA

Reflecting the aspiration for the regulatory review process to deliver better outcomes, the trial objectives refer to ‘improvements’ and ‘enhancements’ to the existing arrangements. However, the regulatory process is not static.

⁹ New Reg Approach Paper (2018), page 4.

¹⁰ MOU (2018), *Recitals*, page 1.

¹¹ New Reg Directions Paper (2018).

¹² CEPA (2018), available here: <https://www.aer.gov.au/system/files/D18-177714%20New%20Reg%20AusNet%20Trial%20-%20Trial%20Assessment%20Factors.PDF>

Since the New Reg process was first articulated, energy networks have continued to develop their approaches to engaging with consumers. The AER also continues to refine its review processes, within the boundaries of the prevailing NER. Accordingly, there is not a clear counterfactual to which the New Reg trial can be compared.

For this reason, our evaluation framework does not – primarily – seek to compare the outcomes of this trial against a hypothetical alternative process. Doing so would introduce a high degree of subjectivity into the evaluation. Rather, guided by the TAFs, we have attempted to explain in detail how the distinctive characteristics of New Reg have contributed to the outcomes that we observe. The intent of this evaluation approach is to provide interested parties with a basis for making their own comparisons and judgements in relation to alternatives.

We have relied on a broad range of evidence to inform this analysis. As described in Section 1.5, this includes primary documents, three trial Monitoring Reports produced by an independent monitor (farrierswier), and our own interviews with the trial participants. We note that some of this evidence base involves a degree of subjectivity – for example, the comparisons that the trial participants and other parties have made between the New Reg trial and other regulatory reviews, or the extent to which particular outcomes are attributed to the New Reg process. We have taken the inherent limitations of such evidence into account in preparing our evaluation findings.

The AusNet Services New Reg trial

Following its decision to trial the New Reg process for the 2022-26 Electricity Distribution Price Review (EDPR 2022-26), AusNet Services developed an Early Engagement Plan, which explained how the business proposed to implement the New Reg process.¹³ The Early Engagement Plan was accepted by the AER in March 2018. The trial process was formalised through an MOU between AusNet Services, the AER and the Customer Forum.

The MOU required AusNet Services and the Consumer Forum to agree the topics that would be included in the formal Scope of Negotiations and supported by AER staff during the Early Engagement Process. The Customer Forum and AusNet Services also agreed to discuss a range of issues beyond the formal ‘AER assisted’ scope. The agreed topics of negotiation are reflected in Figure E.3. While the Customer Forum and AusNet Services agreed not to negotiate on all elements of the regulatory proposal, the Customer Forum received updates on the status of the overall proposal throughout the process.¹⁴

Figure E.3: Topics of negotiation

In scope		Out of scope
(AER assisted)	(AusNet Services and Customer Forum agreed)	
<ul style="list-style-type: none"> Operating expenditure (opex) Major growth projects (augex) Customer experience and hardship arrangements Price path 	<ul style="list-style-type: none"> Major asset replacement projects (repex) Distributed energy resources (DER) integration Innovation expenditure Smart metering Overall ‘reasonableness’ of proposal 	<ul style="list-style-type: none"> All other capital expenditure (capex) Rate of return Tax allowance Opening Regulatory Asset Base Pricing structures

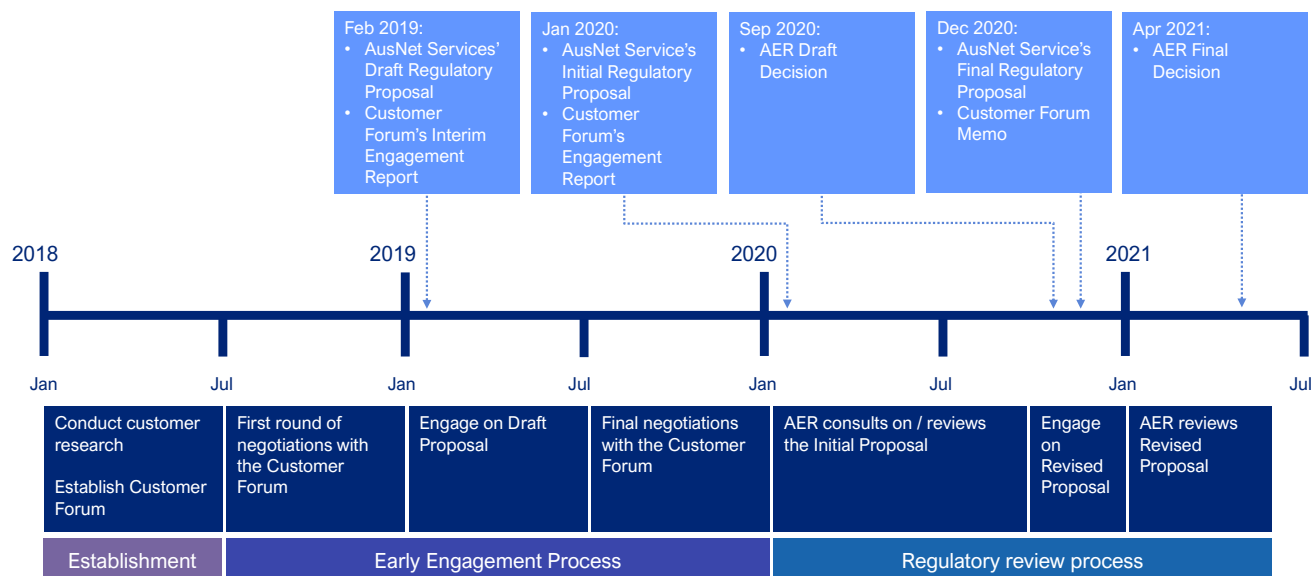
Source: CEPA adapted from AusNet Services (2020), *Electricity Distribution Price Review 2022–26, Part I & II, January*, page 28.

As illustrated in Figure E.4, the formal negotiations between the Customer Forum and AusNet Services were conducted in several stages over approximately 18 months.

¹³ AusNet Services (2018).

¹⁴ Farrierswier (2020), page 14.

Figure E.4: Phases of the AusNet Services trial



Source: CEPA, adapted from Customer Forum (2020a) and AER (2021a).

In August 2018, AusNet Services provided the Customer Forum with its initial negotiating positions on in-scope topics. To inform its response, the Customer Forum drew on evidence from AusNet Services' broader customer engagement program¹⁵ and played an active role in directing the content of this engagement.¹⁶ The Customer Forum's positions were also informed by numerous individual contacts with a broad range of customers and other stakeholders.¹⁷

The first round of negotiations culminated in the publication of AusNet Services' Draft Proposal and the Customer Forum's Interim Engagement Report in February 2019. In September 2019, AusNet Services released a revised set of negotiating positions. The subsequent negotiations concluded with the January 2020 submission of AusNet Services' Initial Proposal to the AER, and the publication of the Customer Forum's Final Engagement Report.

Submissions on the Initial Proposal closed in June 2020, and the AER published its Draft Decision in September 2020. AusNet Services re-engaged with the Customer Forum, and other stakeholders, to prepare its Revised Proposal. This was submitted to the AER in December 2020. The AER's Final Decision was published in April 2021.

Outcomes of the Early Engagement Process

At the conclusion of the negotiations, AusNet Services and the Customer Forum were able to reach agreement on most of the topics they agreed to discuss. The impact of the Early Engagement Process covered three areas: the building block **expenditure allowances** that were reflected in AusNet Services' regulatory proposal; the **service levels** that the network committed to deliver under its proposed allowances; and a range of **broader issues** that were unrelated to the regulatory proposal itself.

Building block expenditure allowances

The Customer Forum and AusNet Services reached agreed positions on the majority of building block expenditures they agreed to discuss (see Section 2.2 and Appendix B.4 for a detailed discussion). The extent of the agreement varied. In some cases, the Customer Forum was able to draw on its understanding of consumers' preferences and its own analysis to reach agreement that proposed activities were necessary *and* that the associated expenditure

¹⁵ Customer Forum (2020a), pages 8-9.

¹⁶ For example, in relation to smaller communities and business customers. Customer Forum (2019), page 11.

¹⁷ Refer to Appendix B.3 for further details of the Customer Forum's contact with customers and customer representatives.

was reasonable. In other instances, the Customer Forum expressed ‘in principle’ support for the activity proposed by AusNet Services, subject to the AER’s assessment that the proposed costs were efficient. In a couple of cases, the Customer Forum was not able to form a view on AusNet Services’ proposals and referred the matter to the AER.

Compared to AusNet Services’ initial negotiating position, the Initial Proposal reflected a \$53.6m (\$2021) reduction in proposed expenditure for in-scope negotiation topics. This reflected opex step changes that the business agreed to remove or absorb, changes to the portfolio of repex major projects and the magnitude of the proposed innovation allowance.¹⁸

In addition to the observed outcomes for in-scope expenditure, there is some evidence that the Customer Forum had a broader impact on the regulatory proposal by encouraging an overall focus on affordability. For example:

- At the Initial Proposal stage, AusNet Services noted that at the portfolio level, its capex proposal reflected a \$151.8m reduction to the aggregate cost of individual projects and a further top-down efficiency adjustment of 0.8%.¹⁹ AusNet Services cited a desire to keep prices low for customers as a motivating factor for these adjustments, in addition to its understanding of the AER’s expectations.²⁰ While the extent of the Customer Forum’s direct impact on this decision is not known, the AER considered that the negotiations *“considerably strengthened the focus on aggregate spending and revenue requirements, which lead to AusNet Services’ top-down capex adjustment.”*²¹
- In the Revised Proposal, the business noted its decision not to include all additional expenditure requirements that it identified after the AER’s Draft Decision. This included the \$10m Doreen zone substation augex project, which AusNet Services decided not to propose *“after careful consideration, and following advice from the Customer Forum”*.²²

Service levels

The parties reached agreement on customer service levels that AusNet Service would deliver within its regulatory allowance. These outcomes were reflected in:²³

- The design of a new **Customer Service Incentive Scheme (CSIS)**. A version of the CSIS was subsequently adopted by CitiPower, Powercor and United Energy.
- A range of **customer experience improvement initiatives**, some of which AusNet Services agreed to implement immediately.
- The introduction of an annual **Customer Interaction and Monitoring Report (CMIR)** to track the progress of customer experience commitments.

Broader impacts

Through its engagement with AusNet Services, the Customer Forum brought attention to two issues that were unrelated to the regulatory determination. These were:

¹⁸ Refer to Appendix B.4 for a detailed breakdown.

¹⁹ AusNet Services (2020a), page 67.

²⁰ Ibid.

²¹ AER (2020a), page 14.

²² AusNet Services (2020b), page 58.

²³ AER (2020b), page 51.

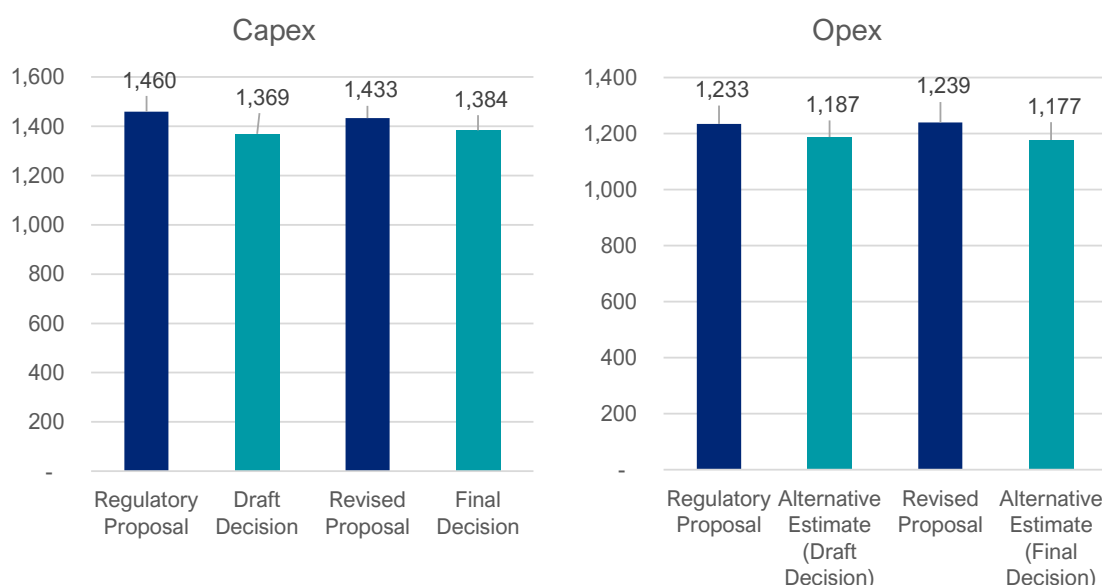
- The identification of wider issues related to the connection process.²⁴
- Limitations in the established approach to estimating the value of customer reliability (VCR).²⁵

In an interview with CEPA following the Final Decision, AusNet Services reported that the New Reg process was, and continues to be, a massive driver of change for the culture and capability within the company. The network also observed a substantial increase in customer focus across all three of its businesses, not only electricity distribution.²⁶

Outcomes of the regulatory review process

The AER followed its standard assessment process to review AusNet Services' regulatory proposal, at the Draft and Final Decision stage (see Section 2.3). The evolution of AusNet Services' overall capex and opex proposals, and the AER's draft and final assessment of these, are summarised in Figure E.5 below.

Figure E.5: Regulatory proposals and decisions (\$m, 2020-21)



Source: AER (2021b), AER (2021c), AER (2020a), AER (2020c).

The network business and AER views of efficient capex and opex allowances were, at the overall expenditure level, quite closely aligned throughout the regulatory review process. In its Final Decision, the AER accepted AusNet Services' revised opex proposal (\$1,239m), noting that the 1% difference to the AER's alternative opex forecast (\$1,177m) was not material.²⁷ The AER found that AusNet Services' revised capex proposal (\$1,433m) was mostly acceptable, except the approach to connections capex.²⁸ The Final Decision reflected the regulator's view of efficient capex (\$1,384m), which was 3.4% below the network's revised proposal.

In its Final Decision, the AER was ultimately able to accept most of the positions that were fully agreed between the Customer Forum and AusNet Services, with the exception of:

²⁴ Customer Forum (2020a), page ii.

²⁵ Customer Forum (2020a), page 9.

²⁶ AusNet Services (2021a).

²⁷ AER (2021a), page 6.

²⁸ Ibid.

- The revenue path profile, which reflected the AER's interpretation of the NER requirements.²⁹
- Metering cost reallocation, reflecting a different view on the appropriate allocation methodology.³⁰

Trial evaluation findings

Below, we summarise our findings against each of the three trial objectives. Further explanation of our findings, including detailed references to source evidence, is set out in Section 3.

Finding	Objective 1: Improve the speed and reduce the cost of the regulatory review process
1.1	The AER was able to place weight on some outcomes of the Early Engagement Process, contributing to the efficiency of the post-lodgement review process.
As described in Section 2.3, the AER's Draft and Final Decisions indicate that it was able to place most weight on positions that were fully agreed between the parties, on the basis of evidence from consumer engagement. Less weight was placed on positions that were partially agreed.	
1.2	AER staff report that less resources were dedicated to the post-lodgement assessment of AusNet Services capex and opex proposals, relative to a 'standard' review process.
Throughout the trial, AusNet Services' overall opex and capex proposals were quite close to the AER's own view of efficient expenditure. AER staff have indicated to CEPA that, for this reason, the regulator did not engage the same degree of independent cost assessment advice that it would have commissioned for a higher level of proposed expenditure. ³¹ While there is evidence that the negotiations influenced the overall level of proposed expenditure, it is not possible to determine precisely what AusNet Services would have been proposed without the New Reg trial.	
Because the trial took place under the existing rules framework, there were limited opportunities to reduce the overall speed of the review process. Nonetheless, both AusNet Services and the AER consider that the post-lodgement review process was less onerous than in previous reviews. ³² This suggests that the review process could potentially be shorter in circumstances where the AER considers that a regulatory proposal is well-justified (regardless of whether it is developed through a negotiated settlement process). However, the rules framework itself would need to change to enable an expedited review process (see Learning A.2 below).	
1.3	Across the pre- and post-lodgement periods, it is unclear whether the AER's net costs of making its decision for AusNet Services were higher than they would have been without the trial.
The AER has estimated its total costs for the trial at approximately \$373,000. ³³	
This estimate is not net of any cost savings achieved during the post-lodgement review phase – for example, because an independent external review of AusNet Services' capex proposal was not required. While AER staff note that consultancy review costs can be a significant expense, the magnitude of the cost saving in this trial is uncertain. ³⁴ This is because it is not possible to determine what expenditure AusNet Services would have proposed, and how the AER would have assessed this, in the absence of the New Reg process.	
1.4	Across the pre- and post-lodgement periods, AusNet Services reports that it incurred higher net costs relative to previous review processes.

²⁹ AER (2021a), page 18.

³⁰ Ibid., page 29.

³¹ AER (2021d).

³² AER (2021d) and AusNet Services (2021a).

³³ AER (2021e).

³⁴ AER (2021d).

Finding	Objective 1: Improve the speed and reduce the cost of the regulatory review process
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AusNet Services has estimated its net costs of the trial at \$1.56 million, over the period 2018-2021.³⁵ This reflects estimated costs incurred above 'business as usual' preparation of a regulatory proposal, as compared to previous review processes.

Earlier review processes involved much less intensive customer engagement, reflecting broader industry practice at the time. Accordingly, AusNet Services note that this estimate should not be interpreted as the 'additional' cost of the New Reg process, relative to alternatives. Without participating in the New Reg trial, AusNet Services would still have expected to incur higher costs than in earlier regulatory proposal processes, because it would have followed the broader industry trend towards enhanced customer engagement processes. AusNet Services has not estimated what its costs of undertaking an alternative process would have been.

Finding	Objective 2: Enhance consumer confidence in the regulatory review process
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2.1, 2.2 and 2.3	The AER, AusNet Services, the Customer Forum, and many stakeholders expressed confidence in the outcomes of the trial.
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Consumer advocates and other stakeholders expressed confidence in the outcomes of the Early Engagement Process. For example, several stakeholders commented favourably on the transparency and scrutiny around AusNet Services' proposal, including the independence of the Customer Forum in fulfilling its role. Stakeholders also expressed support for the customer service focus that the Customer Forum brought to the negotiations. This supports the overall consumer legitimacy of the determination process.

2.4	Some stakeholders expressed concerns around aspects of the engagement process.
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As noted above, the Customer Forum's negotiating positions were informed by AusNet Services' broader program of customer engagement and its own direct contact with customers and their representatives. However, during the trial some stakeholders expressed concerns around the breadth of the customer engagement program and the extent of direct engagement between some customer groups and the Customer Forum. Other parties requested greater upfront clarity around what the customer engagement program would consist of, including the process for engaging on proposals outside the scope of negotiations with the Customer Forum.

2.5	Stakeholder submissions expressed differing views on whether the weight the AER placed on the negotiated outcomes was appropriate.
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Reflecting the concerns outlined under Finding 2.4, stakeholder submissions to the Draft Decision expressed a range of views on how much weight the AER should place on the outcomes of the negotiations. This suggests that if negotiated settlement models are used in future, further work is needed to make sure that customers and broader stakeholders are comfortable with how the AER uses evidence from the negotiations (see Learning B.3).

2.6	Stakeholder submissions suggested a lack of clarity around how the Early Engagement Process impacted the AER's decisions.
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Submissions to the Draft Decision indicated that stakeholders did not have a shared understanding of how the AER had used evidence from the negotiations in reaching its Draft Decision. In our view, clarity on this point is essential to support confidence in the outcomes of a negotiated settlement process.

Finding	Objective 3: Improve the overall outcomes of the regulatory review process with a view to promoting the long-term interests of consumers of electricity
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3.1, 3.2 and 3.3	Commentary by the AER, the trial participants, and other stakeholders, demonstrates confidence that many of the positions agreed by AusNet Services and the Customer Forum were in the long-term interest of consumers.
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³⁵ AusNet Services (2021b).

Finding	Objective 3: Improve the overall outcomes of the regulatory review process with a view to promoting the long-term interests of consumers of electricity
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As noted above, the AER was able to accept many of the positions agreed between the Customer Forum and AusNet Services, suggesting that it considered these to be in the long-term interests of consumers. Stakeholder submissions during the process also indicated support for agreed positions, such as those relating to customer service and innovation.

The trial participants considered that the proposal better reflected consumer preferences than would have been the case without the New Reg process. For example, the Customer Forum noted that it was able to identify and prompt action on previously unrecognised customer service issues.³⁶ The trial participants also consider that the impact of the process on AusNet Services' internal culture and capabilities promotes the interests of the network company's customers.³⁷

3.4, 3.5, and 3.6	The trial evidence suggests that the New Reg process promoted the long-term interest of consumers in multiple ways.
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As noted above, these included:

- The Customer Forum's influence on some building blocks of the regulatory determination.
- Agreement on customer service measures that reflect customers' preferences and priorities (for example, through the CSIS).
- Identification of issues outside the regulatory determination process, but that nonetheless impact consumers' long-term interests.

3.7	While the existing regulatory review process, combined with robust customer engagement, can achieve outcomes in line with customers' long-term interests, the 'additional' features of New Reg have particular advantages.
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Evidence from this trial suggests that important characteristics include:

- The AER's role in the Early Engagement process. This supported the Customer Forum to acting as a credible and independent counterparty to the network and assisted the parties to reach agreed positions that were, in the main, capable of acceptance under the NER.
- The ability of a Customer Forum to independently shape the content of the negotiation process, which was an important factor in allowing the Customer Forum to highlight issues related to customer service.
- The preparation of an independent Engagement Report by the Customer Forum, which appears to have assisted the AER in understanding how agreed negotiation positions were supported by evidence from customer engagement.

Trial learnings

The New Reg project vision sought to move away from increasingly adversarial and technical regulatory reviews, through a form of negotiated settlement designed to focus the regulatory process on customers' priorities and preferences. The AusNet Services trial was a first step in exploring how a negotiated settlement process could potentially function under the existing regulatory framework and whether there is merit in taking the concept further.

At the conclusion of the trial, we find that the New Reg process has achieved some important successes, while also demonstrating the challenges of implementing negotiated settlements in the context of a network customer base. Our findings for each of the trial objectives suggest learnings for the regulatory framework in general, and more specifically for future negotiated settlement processes, if these are pursued. In particular:

- **Objective 1.** Drawing definitive conclusions on the speed and cost impacts of the process is challenging, because of the difficulty in establishing a robust counterfactual. On balance, the available information does not clearly demonstrate that in this trial, resourcing requirements to support the pre-lodgement negotiations were offset by efficiencies in the post-lodgement review process. This outcome is perhaps unsurprising,

³⁶ Customer Forum (2021).

³⁷ Customer Forum (2021) and AusNet Services (2021a).

when the “scale shift” in the level of pre-lodgement customer engagement is combined with the relatively limited scope for post-lodgement process efficiencies under the existing regulatory framework. While changes to the regulatory framework and the negotiation process could better support this objective (see Learning A.2 and Learning B.4 below), realising substantial speed and cost efficiencies may be challenging (see Learning B.1).

- **Objective 2.** For this trial, the AER, AusNet Services, the Customer Forum, and many stakeholders expressed confidence in the overall negotiation process and outcomes. At the same time, this observation is tempered by concerns raised by some stakeholders around certain aspects of the trial. In particular, these concerns related to the breadth of the broader stakeholder engagement process and the reliance that the AER should place on the negotiated outcomes. Learnings B.2 and B.3 consider how changes to the process may better support a negotiated settlement process to increase confidence in the regulatory review process.
- **Objective 3.** Overall, the AER’s decisions, and the views of trial participants and broader stakeholders, indicate that many negotiated positions were seen as consistent with the long-term interest of consumers. Changes to the NER may assist in more effectively embedding these outcomes in future regulatory review processes (Learning A.1 and Learning A.3).

The tables below set out further details on the specific learnings that we have drawn from the evaluation. These are expanded on in more detail in Section 4 of this report. The learnings are split into two categories:

- **Learnings for the regulatory framework**, being ways that the existing regulatory framework could potentially be amended to better facilitate regulatory proposals and decisions in the long-term interest of consumers.
- **Learnings for the New Reg process**, being ways that the process could potentially be amended to better meet the objectives defined for this trial.

These learnings may assist the AER and stakeholders in considering the future role for negotiated settlements within the regulatory process. More broadly, these learnings may also be relevant for exploring the role of other types of ‘early engagement’, with a view to better reflecting consumers’ preferences in regulatory proposals and determinations.

Learnings for the regulatory framework

A.1 – ‘Outcomes’ focus

- The trial identified a ‘blind spot’ of the regulatory framework in relation to service standards and other ‘outcomes’ that customers would like their NSP to deliver.
- In particular, the trial highlighted that beyond a requirement for NSPs to meet minimum standards prescribed in some areas (such as reliability), the current regulatory review process does not explicitly consider the outcomes that network companies deliver and how these are valued by customers.
- It may be appropriate to consider lessons from other jurisdictions that have introduced an explicit focus on outcomes in their regulatory review process.

A.2 – Flexibility of the review process

- The existing rules framework appears to have limited the extent to which this particular trial could deliver a more efficient regulatory review process.
- It may be appropriate to consider whether the rules should provide greater flexibility for the AER to adopt an expedited review process, if it considers that this is justified.
- Experience from this trial suggests that transparency is crucial for stakeholders to have confidence in the outcome of an expedited regulatory review process.

A.3 – Accommodating customers’ preferences

- This trial did not identify many examples of the regulatory framework constraining the AER's ability to accept negotiated positions, where it considered these to be consistent with the long-term interests of consumers.
- Nonetheless, there is scope to review whether the NER provide sufficient flexibility for the AER to accept innovative outcomes from engagement processes.

Learnings for the New Reg process

B.1 – Time and cost

- The specific context of this trial limited the scope to achieve a faster and less costly regulatory review process.
- While changes to the regulatory framework and/or the New Reg process may better support this objective, this may be challenging.
- Questions around the scope of resourcing requirements will need to be considered in deciding what role negotiated settlement models should play in future regulatory reviews.

B.2 – The Customer Forum's role and objectives

- The value added by the Customer Forum extended beyond its negotiation with AusNet Services on individual building block expenditure proposals.
- This could be reflected in the objectives of future negotiated settlement processes.
- This learning may also be relevant for customer engagement processes more broadly, in terms of the focus areas for such engagement.

B.3 – Representation and accountability

- By design, the Customer Forum was not intended to be a representative body. It appears that this may have contributed to concerns among some stakeholders around the negotiation process.
- Changes to improve communication and accountability arrangements may assist in addressing this for future negotiated settlement processes.

B.4 – Scope and staging

- The ability of the New Reg process to facilitate discussions between the network business, its customers and the regulator in the early stages of developing a regulatory proposal is valuable.
 - This is because strategic or contentious issues can be aired well in advance of the Draft Decision. This provides an opportunity to comprehensively explore challenging questions outside the time constraints of the regulatory review process.
 - This beneficial aspect of New Reg could be retained in future negotiated settlement processes, or indeed in any form of early engagement between the regulator, a network and its customers in the pre-lodgement period.
-

1. INTRODUCTION

1.1. BACKGROUND

In June 2017, the Australian Energy Regulator (AER), Energy Networks Australia and Energy Consumers Australia (ECA) launched a joint initiative to explore ways to improve sector engagement and identify opportunities for regulatory innovation. On 23 March 2018, the agencies jointly released a Directions Paper and Approach Paper which set out a draft process that would enable consumer perspectives to be reflected in regulatory proposals in advance of those proposals being lodged with the AER for assessment. This draft process is called *New Reg: Towards Consumer-Centric Energy Network Regulation*.³⁸

The intent of the agencies was to 'learn by doing', through an exploratory process of trialling New Reg during a revenue determination.³⁹ On 23 March 2018 it was announced that AusNet Services would trial the New Reg process for its Electricity Distribution Price Review 2021-25 (EDPR 2021-25).⁴⁰

CEPA has been engaged by the AER to undertake an evaluation of the AusNet Services trial. This report sets out our Final Evaluation findings, drawing on a series of earlier interim insight and evaluation reports.

1.2. WHAT IS NEW REG?

The New Reg initiative emerged from the agencies' shared desire to improve the existing regulatory review process. This reflected concerns that the process was becoming increasingly adversarial and technical, leading to a focus on interactions between networks and the regulator, rather than facilitating meaningful engagement between networks and their customers.⁴¹ The New Reg Approach Paper noted the scope to improve outcomes for consumers, networks and the regulator (Figure 1.1 overleaf), to achieve the overall vision that:

"energy consumers' priorities and stated preferences should drive, and be seen to drive, energy network businesses proposals and regulatory outcomes".⁴²

To achieve these improvements, the New Reg Directions Paper proposed an alternative regulatory review process. The central idea of the New Reg process is that before a regulatory proposal is submitted to the AER, a **Customer Forum** and the network business will negotiate with a view to reaching agreement that the proposal, or elements of the proposal, reflects consumer perspectives and preferences.⁴³ The process has two main stages:

- The **Early Engagement Process**, where the Customer Forum and the network business will seek to agree all or part of the regulatory proposal, with support from AER staff.
- The **regulatory review process**, where the AER will assess the network's regulatory proposal in line with the requirements of the legislative and regulatory framework, having regard to the outcomes of the Early Engagement Process.

³⁸ New Reg Approach Paper (2018).

³⁹ New Reg Approach Paper (2018), page 4.

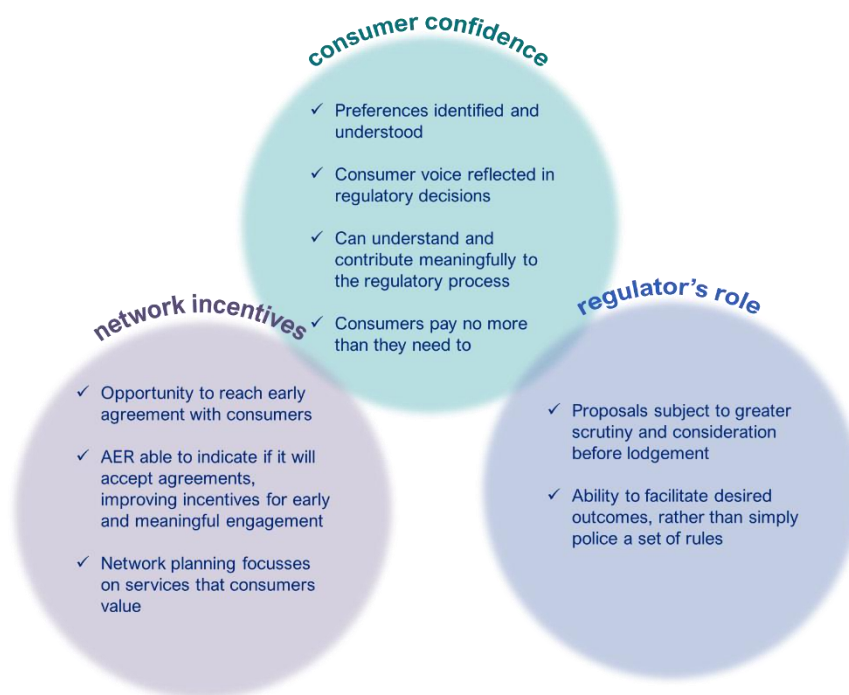
⁴⁰ We refer to the trial throughout this document as the 'New Reg trial', 'trial' and 'AusNet Services trial'.

⁴¹ New Reg Approach Paper (2018), page 5.

⁴² New Reg Approach Paper (2018), page 3.

⁴³ New Reg Directions Paper (2018), page 3.

Figure 1.1: New Reg vision - Opportunities to improve the regulatory review process



Source: *New Reg Approach Paper (2018)*, pages 8-9.

1.3. DEFINING FEATURES OF NEW REG

There are numerous ways for regulated companies to involve consumers in discussions on prices and services, and for regulators consider consumers' views in assessing regulatory proposals. The New Reg process has specific characteristics that distinguish it from other processes.

These defining features of New Reg, along with the trial objectives (see Section 1.4) are important for the New Reg Trial evaluation, as these help us to identify what aspects of New Reg are 'alternative' to the typical approach taken by NSPs and the AER. In this section, we explore what differentiates the New Reg process from other consumer engagement processes deployed by NSPs in Australia. We also note similarities, and differences, to negotiated settlement models that have been adopted in other contexts.

To place this discussion in context, the key features of the New Reg process are illustrated in Figure 1.2, which summarises the 'process steps' defined in the Directions Paper. The full process steps are included in Appendix A.

Figure 1.2: New Reg process steps



Source: CEPA analysis, New Reg Directions Paper (2018), pages 4-7.

New Reg and ‘enhanced engagement’

During the most recent round of regulatory resets, network businesses have adopted multiple innovative models for engaging with their customers.⁴⁴ Throughout this report we refer to these as ‘enhanced engagement’ approaches, recognising the significant step-up in engagement activities from earlier regulatory processes.

The New Reg process is a **distinct concept** from enhanced engagement. Rather than being an alternative consumer engagement model, it is an alternative regulatory review process with formal roles for the AER, the network business and the Customer Forum.

Process Step 3 highlights that the Customer Forum is not intended to act as a representative body, in the sense that its membership directly reflects the range of customer groups served by the network company.⁴⁵ Rather, as the formal counterparty to the network, the Customer Forum is tasked with ensuring that customer interests are identified and reflected in the regulatory proposal. Evidence from consumer engagement is therefore essential for the Customer Forum to form its negotiating positions (Process Step 7) and demonstrate to the AER that these are aligned with consumers’ priorities and preferences (Process Step 8). Accordingly, the Customer Forum relies on, rather than replaces, engagement with the network’s customers.

New Reg and other negotiated settlements

The design of the New Reg process reflects elements of other ‘negotiated settlement’ models that have been applied, in various ways, in different contexts. The term ‘negotiated settlement’ can encompass a range of commercial or regulatory processes, depending on the context. It is therefore helpful to explain how we are applying it to describe the New Reg process.

In several sectors, negotiations on services and prices occur between infrastructure providers and large, well-resourced consumers – such as airlines and airports, and gas pipelines and pipeline users. In these contexts, customers have been able to put forward positions on required outputs, approaches to risk sharing and appropriate price levels during direct commercial negotiations with the service provider. In such processes, regulatory intervention or arbitration may act as a ‘backstop’ in the event that negotiations fail.

New Reg shares with these models an emphasis on a regulated company and their customers seeking to reach agreement on prices and service levels. However, the context of the Australian distribution networks is different, as they serve a broad range of consumer groups, including small users. These groups will likely have a range of preferences in relation to services, service levels and prices. For this reason, the form of negotiated settlement envisaged by New Reg differs from a commercial negotiation in two key ways:

- In lieu of direct negotiations between the network and its customers, a **Consumer Forum** is tasked with forming a ‘composite’ view of customer preferences and representing this to the network during negotiations on all or part of the regulatory proposal.
- Rather than providing a ‘backstop’ to the negotiations, New Reg involves a more **active role for the regulator**. In the New Reg process, the AER’s role includes supporting the Customer Forum during the negotiations (Process Step 7). Further, while the AER will have regard to agreed positions (Process Step 9), it ultimately makes its own assessment of whether agreements are capable of acceptance as part of a regulatory determination under the National Electricity Rules (NER) and National Electricity Law (NEL) (Process Step 10).

In these respects, the New Reg process shares some similarities with the Customer Forum established by the Water Industry Commission for Scotland (WICS) to challenge and negotiate Scottish Water’s business plan:

⁴⁴ AER (2021a), page 33.

⁴⁵ New Reg Approach Paper (2018), page 10.

- Similar to the New Reg Customer Forum, the WICS Customer Forum was not intended to act as a representative body but was rather expected to establish a view on the priorities of all customers and reflect this in its negotiations with Scottish Water.⁴⁶
- WICS has played an active role in both defining the content of negotiations between Scottish Water and the Customer Forum and setting the boundaries that negotiated outcomes needed to fall within. While WICS had stated that it was “minded to” accept agreements reached between the Customer Forum and Scottish Water, the regulator was not obliged to do so, as is the case with the AER under New Reg.⁴⁷

There are also differences between the WICS and New Reg processes. This includes the scope of issues on which Scottish Water and the Customer Forum sought to reach agreement on expenditure levels. For example, in the 2021-27 price review, WICS asked the Customer Forum and Scottish Water to agree a landing point within three ranges for specific areas of expenditure.⁴⁸ This differs from the New Reg process, in which the Customer Forum has greater freedom to determine the scope of its negotiations with the network business.

1.4. OBJECTIVES OF THE AUSNET SERVICES NEW REG TRIAL

The overall vision for the New Reg initiative is *“that energy consumers’ priorities and stated preferences should drive, and be seen to drive, energy network businesses proposals and regulatory outcomes”*.⁴⁹

For the trial, AusNet Services developed an Early Engagement Plan, which explained how the business proposed to implement the New Reg process.⁵⁰ The Early Engagement Plan was formalised through a Memorandum of Understanding (MOU), which was agreed between AusNet Services, the AER and the Customer Forum.⁵¹

We take this MOU as the definitive source of AusNet Services’ and the AER’s objectives for the trial. These objectives are to:⁵²

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

It was accepted that the requirements of the existing regulatory framework and other practical limitations might place some constraints on the extent to which these objectives could be realised during a trial. This context is reflected in our evaluation of the trial outcomes in Section 3.

⁴⁶ WICS Customer Forum (2015), page 11.

⁴⁷ WICS (2020a).

⁴⁸ WICS (2020b), page 2. The three areas for discussion were: targeted annual investment of between £1.0 and £1.1 billion (in 2017 prices) by 2040; an annual efficiency challenge of between 0.75% and 1.5% for Scottish Water’s expenditure on operations (including repairs and routine maintenance), financing and PPP management; and an allowance for the potential additional cash outlays (from £0 million to £150 million annually) that could result from including emissions in appraisals.

⁴⁹ New Reg Approach Paper (2018), page 3.

⁵⁰ AusNet Services (2018).

⁵¹ MOU (2018).

⁵² MOU (2018), *Recitals*, page 1.

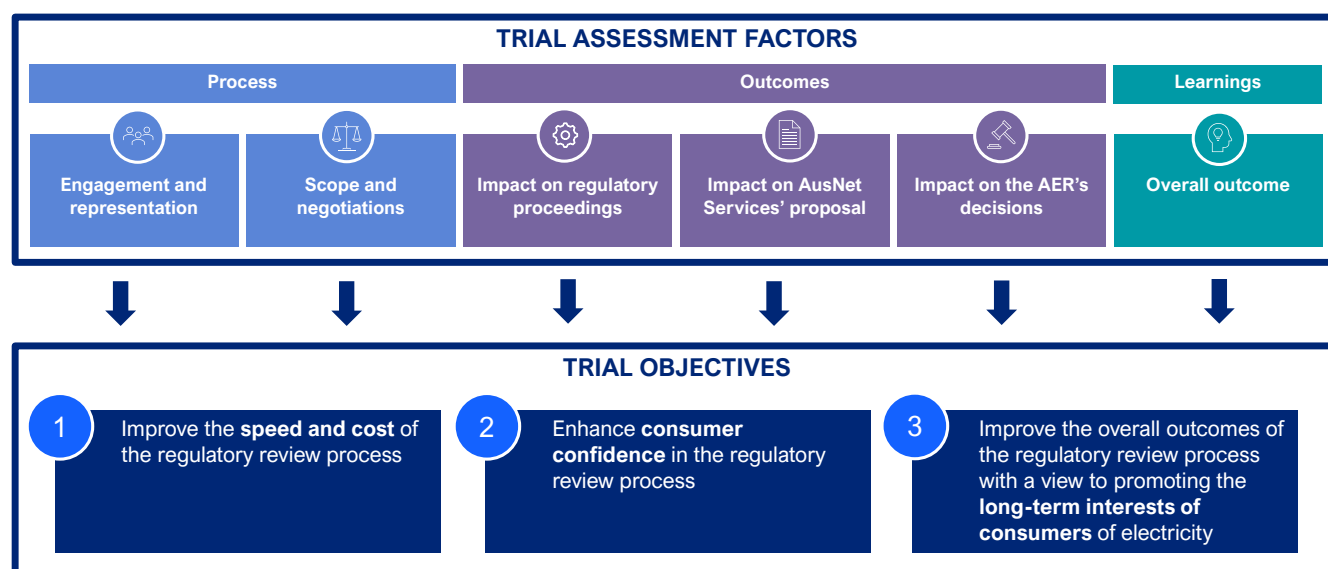
1.5. EVALUATION FRAMEWORK

1.5.1. Overview

In November 2018 we developed an evaluation framework that set out our overall approach to assessing the AusNet Services trial.⁵³ The evaluation process for this trial was ‘live’, meaning that we published several reports while the trial was still ongoing. These included three **Insights Reports** and an **Interim Evaluation Report**. The Insights Reports covered the period from the Customer Forum’s establishment up to the submission of AusNet Services’ regulatory proposal. The Interim Evaluation Report considered events up to the AER’s Draft Decision. These reports are available on the AER’s website.⁵⁴

The evaluation framework is summarised in Figure 1.3. While recognising the constraints that this trial faced, we have ultimately sought to evaluate the AusNet Services trial against the AER and AusNet Services’ original objectives as set out in the MOU. This evaluation has also been informed by a set of Trial Assessment Factors (TAFs) as outlined below.

Figure 1.3: Trial evaluation framework



Source: CEPA

The five TAFs were designed to inform our evaluation of the extent to which the trial achieved the three **objectives**. The TAFs cover the negotiation **process**, interim and final **outcomes**, and overall **learnings** from the trial.

⁵³ CEPA (2018), available here: <https://www.aer.gov.au/system/files/D18-177714%20New%20Reg%20AusNet%20Trial%20-%20Trial%20Assessment%20Factors.PDF>

⁵⁴ See here: <https://www.aer.gov.au/networks-pipelines/guidelines-schemes-models-reviews/consultation-on-the-new-reg-process/update>

Figure 1.4: Trial assessment factors

Trial Assessment Factors*	
Process	Engagement and representation - Did the Forum provide improved information to AusNet on its customers' perspectives and preferences?
	Scope and negotiations - Did the Forum adequately and appropriately represent customers' perspectives and preferences during the negotiations?
Outcomes	Impact on the content of regulatory proceedings – What customer priorities and preferences did the New Reg process identify?
	Impact on the AusNet proposal – How did the Forum's negotiations impact AusNet's final regulatory proposals?
	Impact on the determination(s) - Did the AER's determinations benefit from the Forum's negotiations (the Engagement Reports)?
Learnings	Overall - Did the New Reg process lead to the achievement of the NEO?
	If so was this achieved in an efficient way? Does the current NER allow AER to consider properly the outcomes of the New Reg process?

Source: CEPA. * Each Trial Assessment Factor has a series of sub-factors (see Appendix B).

While the evaluation findings ultimately focus on the trial objectives, the TAFs provide detailed contextual information to help us understand what aspects of this particular trial may have contributed to the outcomes that we observe. This supports our analysis of learnings from the trial for future applications of the New Reg process, or alternative processes.

Key observations drawn from the TAFs (and associated sub-factors) are reflected throughout our evaluation findings (Section 3) and trial learnings (Section 4). A more detailed summary of the evidence that we have assembled for each TAF is set out in Appendix B.

Reflecting the aspiration for the regulatory review process to deliver better outcomes, the trial objectives refer to 'improvements' and 'enhancements' to the existing arrangements. However, the regulatory process is not static. Since the New Reg process was first articulated, energy networks have continued to develop their approaches to engaging with consumers. The AER also continues to refine its review processes, within the boundaries of the prevailing NER. Accordingly, there is not a clear counterfactual to which the New Reg trial can be compared.

For this reason, our evaluation framework does not – primarily – seek to compare the outcomes of this trial against a hypothetical alternative process. This is because doing so would introduce a high degree of subjectivity into the evaluation. Rather, guided by the TAFs, we have attempted to explain in detail how the distinctive elements of New Reg have contributed to the outcomes that we observe. The intent of this evaluation approach is to provide interested parties with a basis for making their own comparisons and judgements in relation to alternatives.

We have relied on a broad range of evidence to inform this analysis, including:

- Three Monitoring Reports that were prepared by farrieswier in the period leading up to the submission of AusNet Services' regulatory proposal. The Monitoring Reports were informed by structured interviews with the AER, AusNet Services and the Customer Forum, and by a survey of customers and customer advocates. The Monitoring Reports are available on the AER's website.⁵⁵

⁵⁵ See here: <https://www.aer.gov.au/networks-pipelines/guidelines-schemes-models-reviews/consultation-on-the-new-reg-process/update>

- Our own engagement with the direct participants in the trial, namely AusNet Services, members of the Customer Forum and AER staff. This included structured discussions and written correspondence to seek the parties' views on events between the submission of AusNet Services' Initial Proposal and the AER's Final Decision, as this period was not covered by the Monitoring Reports. This engagement took place over May – June 2021.
- Primary documents relating to the establishment and outcomes of the trial. In addition to AusNet Services' regulatory proposals, the Customer Forum's engagement reports and the AER's decisions, we have also considered stakeholder submissions commenting on these documents.
- Estimates prepared by the AER and AusNet Services of their costs of participating in this trial. These estimates reflect the participants' views and have not been independently verified by CEPA.

We note that some of this evidence base involves a degree of subjectivity. We have taken the inherent limitations of such evidence into account in preparing our evaluation.

1.6. REPORT STRUCTURE

The rest of this report is structured as follows:

- Section 2 provides an overview of how the AusNet Services trial progressed from its establishment in March 2018 to the AER's Final Decision in April 2021.
- Section 3 sets out our overall evaluation findings against the trial objectives.
- Section 4 sets out our views on the key learnings from the trial.
- Appendix A sets out the New Reg process steps.
- Appendix B provides more detailed commentary against each of the TAFs.
- Appendix C provides our source references.

2. EVOLUTION OF THE TRIAL

As a point for reference for the evaluation findings in Sections 3 and 4, this section provides an overview of how the trial progressed from its establishment in March 2018 to the AER's Final Decision in April 2021. A more detailed account of the trial outcomes can be found in our reporting against the TAFs in Appendix B.

2.1. OVERVIEW OF THE TRIAL

Following its decision to participate in a New Reg trial, AusNet Services developed an Early Engagement Plan, which explained how the business proposed to implement the New Reg process.⁵⁶ The Early Engagement Plan closely followed the requirements set out in the New Reg Directions Paper. Among other arrangements, the Early Engagement Plan described how the Customer Forum would be recruited and the skills that members of the Customer Forum would need. The Early Engagement Plan was accepted by the AER in March 2018.

In June 2018, the Early Engagement was formalised through a MOU,⁵⁷ which was agreed between AusNet Services, the AER and the Customer Forum. The MOU set out, among other elements, the objectives of the trial, governance arrangements, and the roles and responsibilities of the parties.

The MOU required AusNet Services and the Consumer Forum to agree a Scope of Negotiations, which must be accepted by the AER. Negotiations on this scope would be supported by guidance AER staff, for example, on the types of outcomes that could be accepted under the NER. The New Reg process also allowed the Customer Forum and AusNet Services to agree to negotiate topics outside the 'AER assisted' Scope of Negotiations. The Customer Forum and AusNet Services took advantage of this flexibility, agreeing to discuss a range of other issues. While the Customer Forum and AusNet Services agreed not to negotiate on all elements of the regulatory proposal, the Customer Forum received updates on the status of the overall proposal.⁵⁸

The issues that the Customer Forum and AusNet Services agreed to discuss, and the topics that were not part of the negotiation, are summarised in Figure 2.1. Further discussion on the scope is provided in Appendix B.2.

Figure 2.1: Topics of negotiation

In scope		Out of scope
(AER assisted)	(AusNet Services and Customer Forum agreed)	
<ul style="list-style-type: none"> Operating expenditure Major growth projects (augex) Customer experience and hardship arrangements Price path 	<ul style="list-style-type: none"> Major asset replacement projects (repex) Distributed energy resources (DER) integration Innovation expenditure Smart metering Overall 'reasonableness' of proposal 	<ul style="list-style-type: none"> All other capital expenditure Rate of return Tax allowance Opening Regulatory Asset Base Pricing structures

Source: CEPA adapted from AusNet Services (2020c), page 28.

The Customer Forum consisted of a Chairperson and four members. The Customer Forum members were chosen following an appointment process, including consultation with ECA and the AER. The members were selected

⁵⁶ AusNet Services (2018).

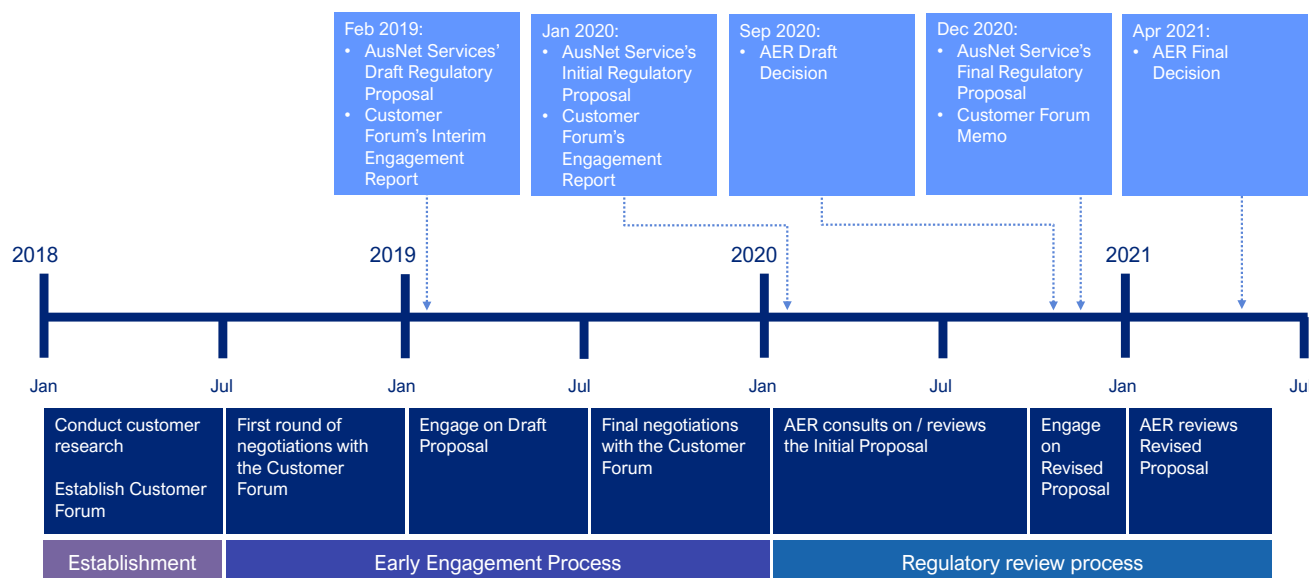
⁵⁷ MOU (2018).

⁵⁸ Farrierswier (2020), page 14.

based on their skills and experience, understanding of consumer issues and their expected ability to credibly represent the perspectives of customers as part of the negotiations with AusNet Services.

In the lead up to the negotiations, the Customer Forum received presentations from AusNet Services, the AER and other parties, providing background information on the current regulatory framework, among other issues. As illustrated in Figure 2.2, the formal negotiations between the Customer Forum and AusNet Services were conducted in several stages over approximately 18 months. Further discussion on the negotiation process is provided in Appendix B.2.

Figure 2.2: Phases of the AusNet Services trial



Source: CEPA, adapted from Customer Forum (2020a) and AER (2021a).

In August 2018, AusNet Services provided the Customer Forum with its initial negotiating positions on in-scope topics. To inform its response, the Customer Forum drew on evidence from AusNet Services' broader customer engagement program⁵⁹ and played an active role in directing the content of this engagement.⁶⁰ The Customer Forum's positions were also informed by numerous individual contacts with a broad range of customers and other stakeholders.⁶¹ Further information on how the Customer Forum identified customer priorities and preferences is provided in Appendix B.1 and Appendix B.3.

The first round of negotiations culminated in the publication of AusNet Services' Draft Proposal and the Customer Forum's Interim Engagement Report in February 2019. In September 2019, AusNet Services released a revised set of negotiating positions. The subsequent discussions between the parties concluded with the January 2020 submission of AusNet Services' Initial Proposal to the AER, and the publication of the Customer Forum's final Engagement Report.

Submissions on the Initial Proposal closed in June 2020, and the AER subsequently published its Draft Decision in September 2020. AusNet Services re-engaged with the Customer Forum, and other stakeholders, to prepare its Revised Proposal. This was submitted to the AER in December 2020. The AER's Final Decision was published in April 2021.

The key outcomes from each stage of the process are summarised in the remainder of this section.

⁵⁹ Customer Forum (2020a), pages 8-9.

⁶⁰ For example, in relation to smaller communities and business customers. Customer Forum (2019), page 11.

⁶¹ Refer to Appendix B.3 for further details of the Customer Forum's contact with customers and customer representatives.

2.2. OUTCOMES OF THE EARLY ENGAGEMENT PROCESS

In this section, we provide an overview of how AusNet Services' business plan evolved through the trial, from the initial negotiating position presented to the Customer Forum in 2018 to the Initial Proposal submitted to the AER in January 2020. We also consider the Customer Forum's role in the development of AusNet Services' Revised Proposal that was submitted to the AER in December 2020. Further information on how the negotiations impacted the content of the negotiations is available in Appendix B.4.

2.2.1. The initial regulatory proposal

At the Initial Proposal stage, AusNet Services and the Customer Forum has been able to reach agreement on most of the topics they agreed to discuss. The impact of the Early Engagement Process covered three areas:

- The building block **expenditure allowances** that were reflected in AusNet Services' regulatory proposal.
- The **service levels** that the network committed to deliver under these proposed allowances.
- A range of **broader issues** that were unrelated to the regulatory proposal itself.

Building block expenditure allowances

In relation to expenditure allowances, the negotiation outcomes for in-scope items can be summarised under three categories:

- **Full agreement.** In some cases, the Customer Forum was able to draw on its understanding of consumers' preferences and its own analysis to reach agreement that proposed activities were necessary *and* that the proposed expenditure was reasonable.
- **In principle agreement.** In other instances, the Customer Forum expressed in principle support for the activity proposed by AusNet Services, subject to the AER's assessment that the proposed costs were efficient.
- **Referred to the AER.** In a couple of cases, the Customer Forum was not able to form a view on AusNet Services' proposals.

The direct outcomes of the negotiation process on the in-scope topics are summarised in Figure 2.3, with a detailed summary provided in Table B.2 of Appendix B.4.

Figure 2.3: Negotiation outcomes - Expenditure for in-scope matters

Full agreement	<p>The Customer Forum and AusNet Services agreed that the following activities <i>and</i> proposed expenditure levels reflected customers' preferences:</p> <ul style="list-style-type: none"> • Clyde North zone substation auxex. • Major repex projects. • Innovation expenditure allowance. • Metering charges. • Reallocation of metering system IT costs. • Accounting treatment of leases. • Growth and inflation opex trend parameters • Customer Relationship Management (CRM) IT System opex step change.
In principle agreement	<p>The Customer Forum expressed in-principle support for the following activities proposed by AusNet Services, subject to the AER's assessment that the proposed costs were efficient:</p> <ul style="list-style-type: none"> • Bushfire mitigation (REFCL testing) opex step change. • Five-minute metering opex step change. • DER integration expenditure.
Referred to AER	<p>The Customer Forum was not able to form a view on AusNet Services' proposals for the following activities, and referred these matters to the AER:</p> <ul style="list-style-type: none"> • Opex base year. • Cyber security opex step change.

Source: CEPA analysis of Customer Forum (2020a).

Compared to AusNet Services' initial negotiating position, the Initial Proposal reflected a \$53.6m⁶² reduction in proposed expenditure across the regulatory determination period for in-scope negotiation topics. This included opex step changes that the business agreed to remove or absorb (\$26.3m), changes to the portfolio of repex major projects (\$24m) and a reduction in the magnitude of the proposed innovation allowance (\$3.3m).

In addition to the observed outcomes for in-scope topics, there is some evidence that the Customer Forum had a broader impact on AusNet Services' regulatory proposal, through encouraging an overall focus on affordability.

In particular, AusNet Services noted that its overall capex proposal reflected a top-down review of its forecast capex projects, to account for potential synergies across projects. This review resulted in the following adjustments that were reflected in the overall capex proposal:⁶³

- A portfolio-level adjustment of \$151.8m to the aggregated forecast cost of the proposed projects.
- A further top-down efficiency adjustment of 0.8%.

AusNet Services cited its desire to keep prices low for customers as a motivating factor for these adjustments, in addition to its understanding of the AER's expectations.⁶⁴ While the extent of the Customer Forum's direct impact on this decision is not known, the AER considered that the negotiations "*considerably strengthened the focus on aggregate spending and revenue requirements, which lead to AusNet Services' top-down capex adjustment.*"⁶⁵

⁶² All expenditure amounts are quoted in \$2021, unless otherwise stated.

⁶³ AusNet Services (2020a), page 67

⁶⁴ AusNet Services (2020a), page 67

⁶⁵ AER (2020a), page 14.

Service levels

The parties reached agreement on customer service levels that AusNet Service would deliver within its regulatory allowance. These outcomes were reflected in:⁶⁶

- The introduction of a **Customer Satisfaction Incentive Scheme** (CSIS), where customer satisfaction levels above or below an agreed target will result in financial rewards or penalties. Under the financial incentive provided by the CSIS, 0.5% of revenue will be at risk. This matches the revenue at risk under the existing telephone answering parameter of the Service Target Performance Incentive Scheme (STPIS), meaning that the overall exposure of consumers to service improvement incentives remains the same. A version of the CSIS was subsequently adopted by CitiPower, Powercor and United Energy.
- The introduction of **customer experience improvement initiatives**, some of which AusNet Services agreed to implement immediately. Other customer experience improvements to be implemented in the upcoming regulatory period.
- The introduction of an annual **Customer Interaction and Monitoring Report** (CIMR) that will report on whether the agreed customer experience improvements have been delivered. AusNet Services has since published the inaugural CIMR.⁶⁷

AusNet Services reported that, aside from a proposed \$2.6m opex step change to implement a Customer Relationship Management (CRM) system, it was not seeking funding for these measures.

Broader impacts

Through its engagement with AusNet Services, the Customer Forum brought attention to two issues that were unrelated to the regulatory determination itself. These were:

- The identification of wider issues related to the connection process.⁶⁸
- Limitations in the established approach to estimating the value of customer reliability (VCR).⁶⁹

AusNet Services has also reported that the New Reg process was, and continues to be, a massive driver of change for the culture and capability within the company. The network has observed a substantial increase in customer focus across all three of its businesses, not only electricity distribution.⁷⁰

2.2.2. The revised regulatory proposal

Following the AER's Draft Decision, AusNet Services submitted a revised regulatory proposal in December 2020. In developing its revised proposal, AusNet Services re-engaged with the Customer Forum in addition to other stakeholders. The Customer Forum prepared a short memo, outlining its views on in-scope topics affected by the revised proposal. However, the most material changes in the revised proposal, relative to the initial proposal, did not relate to in-scope topics of negotiation.

We note the following key outcomes:

- In its Revised Proposal, AusNet Services noted a decision not to include all additional expenditure requirements that were identified after the AER's Draft Decision. This included the \$10m Doreen zone

⁶⁶ AER (2020b), page 51.

⁶⁷ Available here: <https://www.ausnetservices.com.au/en/Community/Customer-Interactions-and-Monitoring-Report>

⁶⁸ Customer Forum (2020a), page ii.

⁶⁹ Customer Forum (2020a), page 9.

⁷⁰ AusNet Services (2021a).

substation augex project, which AusNet Services decided not to propose “after careful consideration, and following advice from the Customer Forum”.⁷¹

- The Customer Forum reiterated its earlier support for the proposed opex step change to introduce a CRM, focussing on the expected customer service benefits.⁷²
- In the original regulatory proposal, bushfire insurance premiums formed part of the \$21m of identified opex step changes that AusNet Services agreed to absorb. In its Revised Proposal, AusNet Services put forward a combined step change and cost-pass through arrangement for this item, noting significant changes in the insurance market.⁷³ The business considered that its proposed approach reflected a risk trade-off that was acceptable to its customers, as it limited the immediate cost increase to known expenditure requirements.⁷⁴

The Customer Forum commented on bushfire insurance in its memo, noting that while “it cannot draw on any specific research into customer preferences about the structure of insurance coverage”, it “believe[d] that customers would prefer to fund a deductible amount in the event that insurance is payable, rather than be forced to carry a higher insurance cost that may not be activated”.⁷⁵ We understand that this commentary relates to the size of the step change, as opposed to the proposed pass-through arrangement.

2.3. OUTCOMES OF THE REGULATORY REVIEW PROCESS

In making its Draft and Final Decisions, the AER followed its standard assessment process. As described in Box 1, this was the approach envisaged at the outset of the AusNet Services trial.

Box 1: The AER’s assessment process

The New Reg Directions Paper envisaged that, for the purpose of trialling the New Reg process, the AER would follow its standard assessment approach in reaching its Draft Decision:

“... for the purposes of a trial, the AER may expedite its regulatory process only after the draft decision stage to allow for consultation on the outcomes of the Early Engagement Process. This is for two principal reasons:

- *it is important for all stakeholders to have an opportunity to fully understand the trial of the New Reg process and to be heard if there are further concerns*
- *changing the timeline of a revenue determination for one business could create practical problems in managing the process. The AER is required to assess a high number of regulatory proposals every year. The process of publishing proposal and decision documents—whilst managing confidentiality claims—creates significant logistical challenges.”⁷⁶*

AusNet Services’ Early Engagement Plan was consistent with this position.⁷⁷

The Directions Paper noted that for future processes, “the AER may, where it considers appropriate, shorten its determination process—although some limitations exist under the Rules.”⁷⁸

⁷¹ AusNet Services (2020b), page 58.

⁷² AusNet Services (2020b), page 2.

⁷³ AusNet Services (2020b), page 87.

⁷⁴ AusNet Services (2020b), page 89.

⁷⁵ Customer Forum (2020b), page 2.

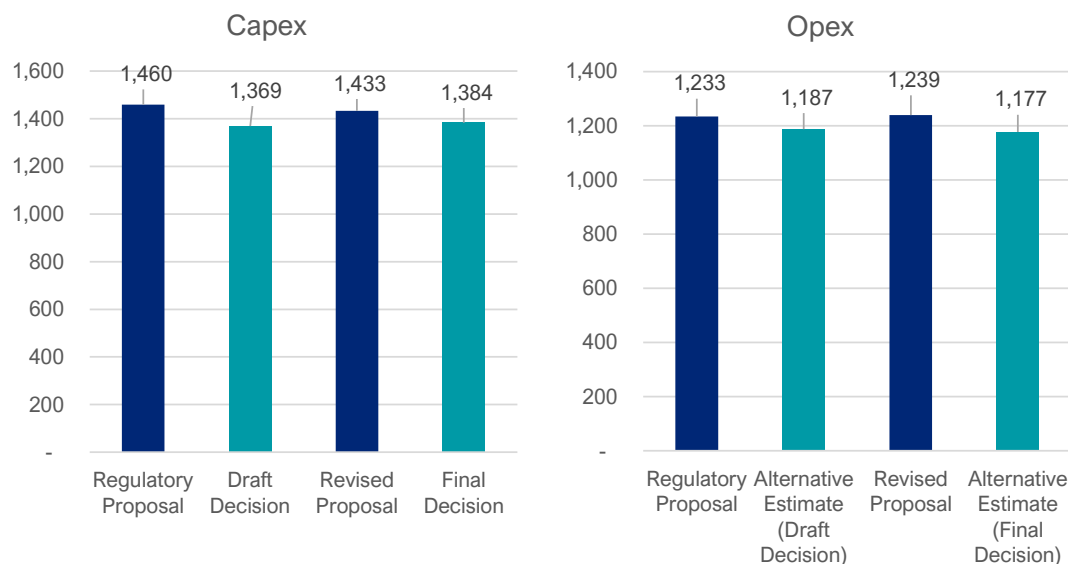
⁷⁶ New Reg Directions Paper (2018), page 12.

⁷⁷ AusNet Services (2018), page 15.

⁷⁸ New Reg Directions Paper (2018), page 12.

The evolution of AusNet Services' overall capex and opex proposals, and the AER's draft and final assessment of these, are summarised in Figure 2.4 below.

Figure 2.4: Regulatory proposals and decisions (\$m, 2020-21)



Source: AER (2021b), AER (2021c), AER (2020a), AER (2020c).

The network business and AER views of efficient capex and opex allowances were, at the overall expenditure level, quite closely aligned throughout the regulatory review process. We note below the key outcomes at the Draft and Final Decision stages. A more detailed summary of the AER's conclusions is provided in Appendix B.5.

2.3.1. The AER's Draft Decision

At the Draft Decision stage, the AER found that, were it not for the changes in economic conditions as a result of COVID-19, it would likely have accepted AusNet Services' overall opex proposal.⁷⁹ Overall, the AER's Draft Decision in relation to opex (\$1,187m) was 3.7 per cent lower than AusNet Services' proposal (\$1,233m). Of this, the majority – 3.1 per cent – related to the impact of economic conditions on real price effects and output growth. At the level of individual expenditure items, the AER did disagree with some of AusNet Services' proposals. For example, AusNet Services had proposed an opex step change of \$2.6m to establish a customer relationship management system and outage management system. At the Draft Decision stage, the AER considered that *"AusNet Services has not demonstrated there is a capex/opex trade-off for its cloud transition costs to justify a step change"*.⁸⁰

Similarly, in relation to capex the Draft Decision found that *"... with the exception of modelling errors, reclassification of some expenditures and changes to economic conditions, AusNet Services' forecast of total capex was reasonable and represented value for money for its customers."*⁸¹ Due to these factors, the AER's Draft Decision for capex (\$1,369m) was 4.4 per cent lower than AusNet Services' proposal (\$1,460m). While the regulator expressed some reservations around particular capex projects (such as DER-related expenditure⁸²), the AER was:

⁷⁹ AER (2020b), page 38.

⁸⁰ AER (2020c), page 58.

⁸¹ AER (2020b), page 35.

⁸² AER (2020a), page 22.

“satisfied that, having regard to AusNet Services’ top-down challenge, these concerns are not material. That is, the top-down adjustment made by AusNet Services was as large, or larger, than the total sum of the adjustments that we would otherwise make at the individual category level.”⁸³

2.3.2. The AER’s Final Decision

In its Final Decision, the AER accepted AusNet Services’ revised opex proposal (\$1,239m), noting that the 1% difference to the AER’s alternative opex (\$1,177m) forecast was not material.⁸⁴ In developing its alternative forecast, the AER accepted the proposed IT cloud expenditure to implement the customer relationship management system, on the basis of the revised information provided by AusNet Services on the opex-capex trade-off.⁸⁵ The AER noted the Customer Forum’s support for this opex step change, but does not appear to have considered the customer service aspect of this proposal that was emphasised in the Customer Forum’s memo.⁸⁶

The AER found AusNet Services’ revised capex proposal (\$1,433m) was mostly acceptable, with the exception of the approach to connections capex.⁸⁷ The Final Decision reflected the regulator’s view of efficient capex (\$1,384m), which was 3.4% below the network’s revised proposal.

In its Final Decision, the AER was ultimately able to accept most of the positions that were fully agreed between the Customer Forum and AusNet Services, with the exception of:⁸⁸

- The revenue path profile, which appeared to reflect the AER’s interpretation of the NER requirements, rather than a fundamental view that the negotiated revenue path profile was not in consumers’ long-term interests.⁸⁹
- Metering cost reallocation, reflecting a different view on the appropriate allocation methodology.⁹⁰

⁸³ AER (2020a), page 8.

⁸⁴ AER (2021a), page 29.

⁸⁵ AER (2021c), page 49.

⁸⁶ Ibid., page 50.

⁸⁷ AER (2021a), page 6.

⁸⁸ As noted above, in its memo the Customer Forum commented on the trade-offs in relation to the level of upfront premiums and deductibles for bushfire insurance. However, the memo did not comment specifically on the pass-through proposal. On this basis, and because this item was not explored in depth in the negotiations, we have not characterised this as an ‘agreed position’.

⁸⁹ AER (2021a), page 18.

⁹⁰ Ibid., page 29.

3. TRIAL EVALUATION FINDINGS

In this section, we set out our overall conclusions on whether the trial outcomes met the stated objectives. Where relevant, we note where more detailed supporting evidence can be found in the analysis of the TAFs in Appendix B.

3.1. OBJECTIVE 1: SPEED AND COST

The first objective defined in the MOU for this trial was to “*improve the speed and reduce the cost of the regulatory review process*”. The vision for New Reg envisaged that the Early Engagement Process would result in a regulatory proposal that demonstrably supported the long-term interest of consumers, such that the AER could accept the proposal through a less intrusive or onerous review process.

Two contextual factors limited, from the outset, the extent to which this desired outcome could be achieved for this particular trial. These factors are that:

- **The trial took place under the existing rules framework.** While the NER provide some scope for the AER to undertake a less intensive review process, there were limits to what could be achieved in practice. For example, the NER contain specific requirements in relation to the type of consultation the AER must undertake as part of its determination process, and the timing of this consultation. These requirements limit flexibility around the timeframes for the AER to make its decisions.
- **The scope of the Customer Forum was limited.** That is, the Customer Forum did not consider all aspects of the regulatory proposal in detail. This meant that, even under a different rules framework, the AER would have still needed to consider the out-of-scope topics in detail.

We discuss these factors further in relation to Learning A.2 and Learning B.1 (see Section 4).

3.1.1. Overall findings

In Table 3.1 below, we summarise our main findings in relation to this objective. Supporting evidence for each finding is detailed in Section 3.1.2 below.

Table 3.1: Summary of findings – Objective 1

#	Finding
1.1	The AER was able to place weight on some outcomes of the Early Engagement Process, contributing to the efficiency of the post-lodgement review process.
1.2	AER staff report that less resources were dedicated to the post-lodgement assessment of AusNet Services capex and opex proposals, relative to a ‘standard’ review process.
1.3	Across the pre- and post-lodgement periods, it is unclear whether the AER’s net costs of making its decision for AusNet Services were higher than they would have been without the trial.
1.4	Across the pre- and post-lodgement periods, AusNet Services reports that it incurred higher net costs relative to previous review processes.

We note that drawing clear conclusions on the cost impact of the trial is challenging, because of the difficulty in establishing a robust counterfactual. For example, while the AER incurred costs to support the pre-lodgement negotiations, AER staff have indicated that the Early Engagement Process reduced the resources required to review AusNet Services’ regulatory proposal post lodgement.⁹¹ However, the AER has not been able to estimate the extent of post-lodgement cost savings, because it is not possible to determine precisely how AusNet Services’ proposal (and therefore the AER’s assessment) would have been different absent the trial. Similarly, while AusNet Services incurred higher net costs relative to previous review processes, these involved less intensive customer engagement, reflecting industry practice at the time. However, the business has not estimated how its costs of

⁹¹ AER (2021d).

undertaking the trial would have compared to an alternative process that it might have followed without the New Reg trial, such as the ‘enhanced engagement’ approaches followed by other Victorian distribution networks.

For these reasons, the net cost impact of the New Reg process is uncertain and ultimately very challenging to assess and interpret. On balance, the available information does not clearly demonstrate that the New Reg process reduced the overall cost of the regulatory review process in this trial. This outcome is perhaps unsurprising, when the “*scale shift*” in the level of customer engagement envisaged by the New Reg process is combined with the relatively limited scope for post-lodgement cost savings under the existing regulatory framework. It is possible that over time, future negotiated settlements could better support a more efficient regulatory review process, as learnings are progressively adopted. In particular, as the AER and stakeholders reflect on the future role of negotiated settlements, it will be relevant to consider the extent of time and cost savings that could potentially be achieved under a different rules framework and/or an amended negotiation process. We consider this question further in Learning A.2, Learning B.1 and Learning B.4 (see Section 4).

3.1.2. Detailed findings

This section sets out the evidence that we have relied upon in reaching each finding.

Finding 1.1

The AER was able to place weight on some outcomes of the Early Engagement Process, contributing to the efficiency of the post-lodgement review process.

In Section 2.3, we observed that there were limited cases where the AER did not accept positions agreed between the Customer Forum and AusNet Services. In the Final Decision, the key areas where the AER did not accept the negotiated positions were the reallocation of opex related to metering IT systems and the revenue path profile.

The Early Engagement Process appears to have supported the AER’s acceptance of most agreed positions in two separate ways:

- **Through the Customer Forum’s evidence that particular expenditure proposals were reasonable, in light of consumers’ priorities and perspectives.** The Customer Forum reached this view in relation to a range of specific expenditure items, detailed in Section 2.2. The weight that the AER placed on this type of evidence varied. The AER placed more weight on negotiated positions when the Customer Forum used evidence on customers’ perspectives to reach a definitive view on proposed expenditure. One example of this was in relation to innovation expenditure, which the AER included in its alternative estimate of efficient opex.

However, the AER placed less weight on negotiated positions when the Customer Forum agreed to expenditure ‘in principle’, but subject to AER assessment. For example, this was the case for bushfire mitigation (RECFL) expenditure, where the qualified support presented by the Customer Forum does not appear to have influenced the AER’s decision.⁹² In these cases, it does not appear that the Engagement Report provided sufficient evidence that the AER could easily reference, reducing the extent to which the negotiations on these topics contributed to a more efficient assessment process. Further details on how the negotiations impacted the Draft and Final Decisions are provided in Appendix B.5.

- **Through the influence of the negotiations on the overall level of proposed opex and capex.** As noted in Section 2.2.1, there is evidence that although not all capex was in the scope of negotiations, the Customer Forum encouraged AusNet Services to consider affordability more broadly, which appears to have been a factor in its decision to undertake a top-down review of its overall capital program. Section 2.2.1 also noted that through the negotiations, AusNet Services agreed to absorb several opex step changes that were under consideration.

⁹² AER (2020c), pages 59-60.

Finding 1.2

AER staff report that less resources were dedicated to the post-lodgement assessment of AusNet Services capex and opex proposals, relative to a 'standard' review process.

A key reason for this was that at the overall expenditure level, the proposed allowances were quite close to the AER's own estimate of efficient costs.

An example of this outcome can be seen in the AER's capex assessment. As described in Section 2.3, at the Draft Decision stage the AER undertook its standard top-down and category specific reviews of capex in line with the existing rules framework. The category specific review identified several capex proposals that the AER did not consider to be justified (for example, in relation to DER integration). However, taking a number of factors into consideration, including the top-down capex challenge applied by AusNet Services, the AER decided that category specific adjustments were not required. AER staff have indicated that as a result, the AER did not need to engage technical advice that might have otherwise been required to review AusNet Services' capex proposal.⁹³ AusNet Services' decision to apply a top-down adjustment cannot be fully attributed to its negotiations with the Customer Forum. However, as noted in Section 2.2.1, the AER consider that the strong focus on affordability during the negotiations was a contributing factor.

Because the trial took place under the existing rules framework, there were limited opportunities to reduce the overall speed of the review process. Nonetheless, AER staff noted that they needed to engage less with AusNet Services during the review of the regulatory proposal, relative to a 'standard' assessment process.⁹⁴ For example, this was because the regulator needed to pose fewer clarification questions and information requests, resulting in a less onerous process for both AusNet Services and the AER. AusNet Services agreed that the post-lodgement review process was more efficient.⁹⁵ This suggests that the review process could potentially be shorter in circumstances where the AER considers that a regulatory proposal is well-justified (regardless of whether it was developed through an Early Engagement Process). However, the rules framework itself would need to change to enable that, as we discuss under Learning A.2 below (Section 4.1).

Finding 1.3

Across the pre- and post-lodgement periods, it is unclear whether the AER's net costs of making its decision for AusNet Services were higher than they would have been without the trial.

The AER has estimated its total costs for the trial at approximately \$373,000.⁹⁶ These costs relate to the support provided by the AER in pre-lodgement period and reflect both staff costs (on-costs and overheads) and consultancy costs. The estimate comprises:

- Approximately \$250,000 in 2018. The AER notes that this figure was substantially higher than estimated costs in 2019, as it includes the establishment of the trial and the first round of negotiations, which required a higher level of AER staff resourcing.
- Approximately \$123,000 in 2019. This period covered the second and final phase of the negotiations. As the trial had already been established, in this period AER staff played a less active role, requiring less resources.

The AER notes that this estimate translates to an average full-time equivalent (FTE) of 0.91 for the duration of the trial (1 January 2018 to 31 December 2019).

This estimate is not net of any cost savings achieved during the post-lodgement review phase, as described in Finding 1.2. AER staff have indicated that consultant cost reviews can be a significant expense, and the reduced

⁹³ AER (2021d).

⁹⁴ AER (2021d).

⁹⁵ AusNet Services (2021a).

⁹⁶ AER (2021e).

need to engage this expertise to assess AusNet Services' capex proposal allowed the AER to direct its resources to other matters.⁹⁷ However, AER staff also note that it is unclear whether this saving would have fully offset its costs of supporting the negotiations.⁹⁸ This is because it is not possible to determine what expenditure AusNet Services would have proposed and how the AER would have assessed this, in the absence of the New Reg process.

Finding 1.4

Across the pre- and post-lodgement periods, AusNet Services reports that it incurred higher net costs relative to previous review processes.

AusNet Services has estimated its net costs of the trial at \$1.56 million, over the period 2018-2021.⁹⁹ This reflects estimated costs incurred above 'business as usual' preparation of a regulatory proposal, as compared to previous review processes. These additional costs reflect the pre-lodgement negotiations with the Customer Forum and AusNet Services' interactions with AER staff during the negotiations. It also reflects the post-lodgement review process, which AusNet Services found considerably more efficient than in previous reviews. AusNet Services considers that the support provided by AER staff during the negotiation process was critical to the efficiency of the review process.¹⁰⁰

AusNet Services note that its cost estimate should not be taken as the 'additional' cost of the New Reg process relative to enhanced customer engagement approaches that have been undertaken by other networks.¹⁰¹ That is, had it not undertaken the New Reg trial, AusNet Services would still have expected to incur costs above the level in its previous regulatory proposal processes. This is because earlier review processes involved much less intensive customer engagement, which reflected broader industry practice at the time. AusNet Services has not estimated what its costs of undertaking an alternative enhanced customer engagement process would have been.

Overall, the business considers that the benefits of the process substantially outweighed the costs.¹⁰² As discussed further in Finding 3.1 below (Section 3.3.2), a key factor is the transformative impact that AusNet Services has observed in relation to the customer focus of its business culture and capabilities.

3.2. OBJECTIVE 2: CONSUMER CONFIDENCE

The second objective defined in the MOU for this trial was to "*enhance consumer confidence in the regulatory review process*".

The New Reg vision noted that, within the current regulatory framework, there were opportunities to improve consumers' confidence that:¹⁰³

- *"all the issues that are important to customers in each regulatory proposal have been identified and understood.*
- *the consumer voice is being adequately heard in the regulatory process, considered and reflected in the final regulatory decisions, including that consumers understand the regulatory process itself, and thereby know how best to make a productive contribution to a particular network's determination process; and*
- *consumers are paying no more than they need to for network services".*

⁹⁷ AER (2021d).

⁹⁸ AER (2021d).

⁹⁹ AusNet Services (2021b).

¹⁰⁰ AusNet Services (2021a).

¹⁰¹ AusNet Services (2021b).

¹⁰² AusNet Services (2021a).

¹⁰³ New Reg Approach Paper (2018), page 8.

3.2.1. Overall findings

In Table 3.2, we summarise our main findings in relation to this objective. We also note where a finding is relevant to the learnings discussed in Section 4. Supporting evidence for each finding is detailed in Section 3.2.2 below.

Table 3.2: Summary of findings – Objective 2

#	Finding
2.1	The AER assessed the New Reg trial outcomes positively against its customer engagement framework.
2.2	AusNet Services considers that the overall confidence of its customers in the review process has increased.
2.3	Stakeholder submissions generally expressed confidence in the outcomes of the trial.
2.4	Some stakeholders expressed concerns around aspects of the engagement process.
2.5	Stakeholder submissions expressed differing views on whether the weight the AER placed on the negotiated outcomes was appropriate.
2.6	Stakeholder submissions suggested a lack of clarity around how the Early Engagement Process impacted the AER's decisions.

Overall, the evidence from this trial suggests that the AER, AusNet Services, the Customer Forum, and many stakeholders expressed confidence in the negotiation process and outcomes. As detailed below, in submissions to the regulatory review process, a number of stakeholders commented favourably on the transparency and scrutiny around AusNet Services' proposal, including the independence of the Customer Forum in fulfilling its role. Stakeholders also expressed support for the customer service focus that the Customer Forum brought to the negotiations.

At the same time, this observation is tempered by concerns raised in some stakeholder submissions around certain aspects of the trial. In particular, some stakeholders expressed concerns around the breadth of the overall customer engagement program and the extent of direct engagement between some customer groups and the Customer Forum. Other parties were concerned by a lack of clarity around what AusNet Services' broader customer engagement program would look like, including the process for engagement on proposals that were not within the scope of negotiations with the Customer Forum. Reflecting these concerns, stakeholders expressed a range of views on how much weight the AER should place on the negotiations.

These observations suggest that while the New Reg process has contributed to consumer confidence in some respects, changes to the process may better support this objective. We consider this issue further in Learning B.3 (see Section 4.2).

3.2.2. Detailed findings

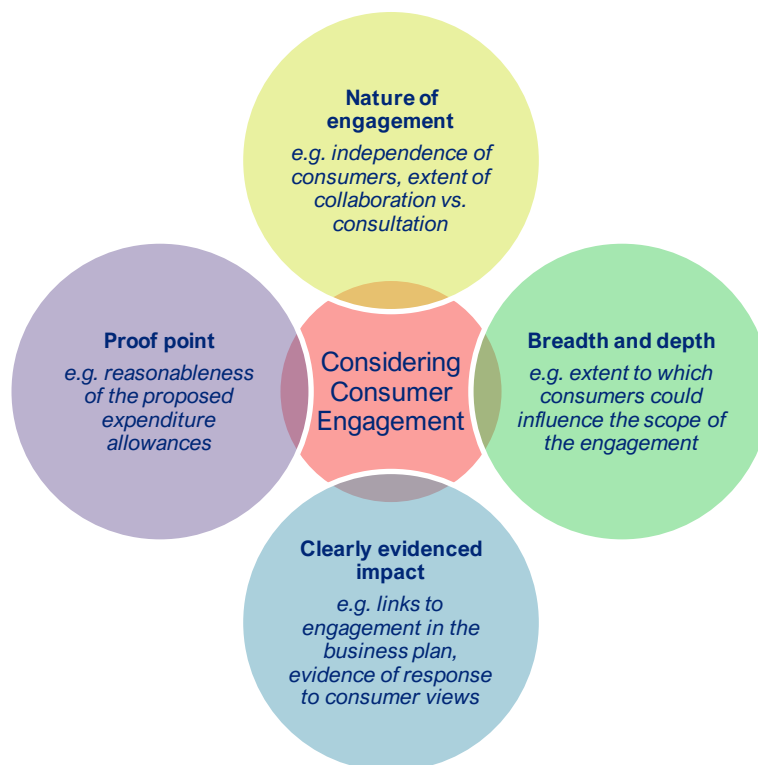
This section sets out the evidence that we have relied upon in reaching each finding.

Finding 2.1

The AER assessed the New Reg trial outcomes positively against its customer engagement framework.

As detailed in Appendix B.5.1, in its Draft and Final Decisions, the AER set out an explanation of the factors (summarised in Figure 3.1) that it considered in assessing the evidence from customer engagement. These arose from the very different processes adopted by the Victorian distribution networks.

Figure 3.1: Summary - AER framework for considering consumer engagement



Source: AER (2020b), page 45.

The AER has referenced key aspects of the New Reg trial that allowed it to have confidence that the negotiation outcomes were informed by a robust consumer engagement process, based on these criteria. We note that many of these qualities were supported by specific features of New Reg that were established in the original design of the process. For example:¹⁰⁴

- The **nature of engagement**, including the structured support provided by the AER to Customer Forum and the skills and experience that allowed the Customer Forum to fully engage in the process.
- The combination of **breadth and depth** in the engagement process. For example, the AER noted that the Customer Forum had been able to undertake its own consumer engagement and had also improved the breadth and depth of the engagement undertaken by AusNet Services.
- **Clearly evidenced impact** was supported by the AER's access to an independent Engagement Report prepared by the Customer Forum, which allowed the AER to verify AusNet Services' claims in relation to areas of agreement and disagreement. The AER considered that the impact of the Customer Forum was clearly evidenced in both the Engagement Report, and AusNet Services' regulatory proposal.
- **Proof of point.** As outlined in relation to Objective 1, the AER was broadly satisfied with the overall reasonableness of AusNet Services' proposed capex and opex allowances at the Draft Decision stage. While the AER did not approve the capex proposal at the Final Decision stage, this appears to have been unrelated to the specific areas of agreement reached through the Early Engagement Process.

Further details can be found in Appendix B.5.

Finding 2.2

AusNet Services considers that the overall confidence of its customers in the review process has increased.

¹⁰⁴ Refer to Appendix B.5 for detailed references.

At the conclusion of the regulatory review process, AusNet Services has reported to us that, in its view, the confidence of its customers in the review process has generally increased.¹⁰⁵

In making this observation, AusNet Services acknowledged that some stakeholders who represent particular customer groups do not share this view. For example, as noted in Finding 2.4 below, concerns were raised in relation to the level of engagement with vulnerable customers, culturally and linguistically diverse customers and large C&I customers.

While AusNet Services considered that not all opportunities for customer representatives to engage with the process were taken up, it nonetheless agreed that there is room for improvement around how the engagement process was explained to customers and customer representatives. For example, AusNet Services observed that the level of support and involvement from AER staff during the negotiation may not have been fully transparent to stakeholders who were not ‘in the room’ and that without this transparency, it may have been more difficult for stakeholders to have confidence in the outcome of the process.

AusNet Services also noted trade-offs between the depth and breadth of engagement with customers, which may not have been fully appreciated by all stakeholders. It considered that the Customer Forum model involved far greater intensity and depth of discussion on the in-scope topics of negotiation, compared to the approaches undertaken by other networks. In AusNet Services’ view, this enabled a meaningful negotiation (i.e. closer to ‘collaborate’ on the IAP2 spectrum), which it considered would not have been possible with engagement on a broader set of issues.

We consider these issues further in Learning B.3 (see Section 4.2).

Finding 2.3

Stakeholder submissions generally expressed confidence in the outcomes of the trial.

Submissions received on AusNet Services’ regulatory proposal and the AER’s Draft Decision indicate that the Early Engagement process has generally helped to enhance confidence of consumers, consumer advocates and other stakeholders in AusNet Services’ consumer engagement strategy and more generally the regulatory review process. This should help to enhance the overall consumer legitimacy of the determination process.

The AER’s CCP17 commented that:

“We recognise that this trial has exposed AusNet Services to a degree of transparency and scrutiny of its operations beyond that which has been observed in any other regulatory process to date ... It is our view that the AusNet Services’ Regulatory Proposal strongly reflects customer perspectives for those aspects within scope for the Customer Forum. It is also clear that the Customer Forum, with its laser- like focus on customer service, has influenced and accelerated a major change in culture and approach within the AusNet Services business. We have observed a genuine commitment by AusNet Services to drive the necessary changes through the business which will deliver better service outcomes for customers.”¹⁰⁶

As detailed in Appendix B.2, the majority of respondents to a commissioned customer and customer advocate survey considered that the Customer Forum was independent from AusNet Services in its engagement and representation and was considered to have operated in an open and engaging way.¹⁰⁷

Consumer bodies, including ECA and the Energy Users Association of Australia (EUAA) commented that “[t]he Customer Forum undertook extensive engagement itself which brought the ‘voice of the customer’ to the table and challenged AusNet’s assumptions. The Customer Forum has shown how people from different walks of life, who are not energy experts, can effectively scrutinise elements of a regulatory proposal”¹⁰⁸ and “AusNet is to be

¹⁰⁵ AusNet Services (2021a). This reference applies to all AusNet Services’ statements in this section.

¹⁰⁶ CCP17 (2020), pages 18 -19.

¹⁰⁷ CEPA (2020), page 10

¹⁰⁸ ECA (2020), page 14.

*congratulated for taking on the New Reg trial. It was prepared to take on the risks associated with a major change from conventional consumer engagement and lay itself open to the extensive scrutiny that came with the trial. AusNet recognised that it needed significant change in its approach to customer engagement and the Forum has provided the mechanism for that paradigm change.”*¹⁰⁹

Finding 2.4

Some stakeholders expressed concerns around aspects of the engagement process.

While many comments from stakeholders appear to have considered that the Early Engagement Process helped to enhance the consumer engagement strategy, there have been some differing views:

- on the justification for the positions that the Customer Forum took on certain issues; and
- the Customer Forum’s level of engagement with certain stakeholder groups during the negotiation process.

For example, both the CCP and the EUAA queried whether the Customer Forum was in a position to assess the overall reasonableness of AusNet Services’ revenue proposal given the Customer Forum’s limited scope for negotiation (e.g. without being able to consider factors such as accelerated depreciation).¹¹⁰

Some stakeholders also indicated that they would have appreciated more interaction with the Customer Forum as part of the engagement and a greater focus in the negotiation proceedings on the needs of certain customer groups.¹¹¹ For example, the EUAA considered that from its perspective:

- *“We had no input to the selection of the Consumer Forum members who seemed to, on the basis of their CV’s, have little or no experience with C&I customer issues and needs*
- *Our experience was not one of ‘broad’ engagement, nor one of ‘collaborate’ or ‘empower’; it was one of brief engagement then silence so we had no input into the development of the Forum’s negotiation strategy, nor any feedback and opportunity for input as the negotiation was proceeding”*

The EUAA also noted that the Final Engagement Report reports “... just two visits to what appears to be a C&I customer and no visits to EUAA/MEU members which have extensive operations across the network region.”¹¹²

While the AER recognised the importance of carefully considering this feedback, the Final Decision also observed that the “[t]he Customer Forum did engage with EUAA at a number of points in the process” and also “engaged with the views of C&I customers.”¹¹³ For example the AER noted that the Customer Forum met with 36 business customers, including direct meetings and interactions during deep dive sessions on AusNet Services’ regulatory proposal.¹¹⁴

Other stakeholders noted concerns in relation to the level of engagement with vulnerable customers and culturally and linguistically diverse customers.¹¹⁵ The Customer Forum also noted that it was “conscious of the lack of information in relation to Indigenous, CALD and worst served customers”.¹¹⁶

These comments highlight a range of learnings in relation to the trial process. These include:

¹⁰⁹ EUAA (2020), page 1.

¹¹⁰ CCP (2020), page 19.

¹¹¹ EUAA (2020), page 15.

¹¹² Ibid.

¹¹³ AER (2021a), page 35.

¹¹⁴ Ibid.

¹¹⁵ For example, see CCP17 (2021), page 2 and Victorian Community Organisations (2020), page 14.

¹¹⁶ Customer Forum (2020a), page 56.

- Tensions around the structure of the Customer Forum as a non-representative body and whether more formal accountability mechanisms could address this.
- Transparency and communication around the broader engagement process.

We consider this further in Learning B.3 (see Section 4.2).

Finding 2.5

Stakeholder submissions expressed differing views on whether the weight the AER placed on the negotiated outcomes was appropriate.

In its Issues Paper, the AER requested stakeholder feedback on *“the extent to which AusNet’s proposal opex and capex are amenable to assessment at the total level with less detailed assessment at the level of capex and opex components, compared to other Victorian DNSPs’ proposals”*.¹¹⁷ It is interesting to note that stakeholders had varying views on the extent to which AusNet Services’ participation in the New Reg trial meant that the AER should focus on a more top-down assessment. For example, the EUAA noted while that there *“may be a case for a lighter AER touch”* for topics of negotiation that were supported by AER staff, this should not apply to other topics that were discussed by AusNet Services and the Customer Forum. However, the EUAA also noted that this view depended on what a lighter touch assessment would consist of.¹¹⁸ In contrast, the Victorian Community Organisations considered that in light of the *“limitations to which a distributor-led customer engagement process can be taken as a direct reflection of the customer base’s priorities”* meant that *“applying a standard approach to the valuation of revenue proposals by the regulator will remain an important aspect of the determination process”*.¹¹⁹

These views were largely re-iterated in responses to the Draft Decision, which emphasised the importance of the AER undertaking its own detailed review of proposals. For example, the CCP17 noted that:¹²⁰

“... there still is an important role of detailed ground-up external analysis. There are areas of investment and expenditure that remain very dynamic - such as the safety risks associated with ageing assets, the wide-ranging impacts of the growth in distributed energy resources and the service expectation of consumers in what remains a complex and changing energy landscape. In these complex areas, detailed assessment by experts remains necessary.

Such action is also a precursor to consumer confidence in the regulatory reset process, where expert analysis and consideration must not only be done, but it must also be seen to be done.”

Some stakeholders were of the view that the AER had not placed sufficient weight on the concerns noted by stakeholders in relying on the outcomes of the Early Engagement process. For example, the CCP17 considered that:¹²¹

“While we agree largely with the AER’s analysis in respect of the influence of the Customer Forum on AusNet Services’ regulatory proposal, we are not convinced that important feedback provided by stakeholders has been fully considered. Recognising the limitations of its negotiation scope, some stakeholders challenged the Customer Forum’s ability to assess the overall reasonableness of the proposal. Stakeholders also requested that the AER should use the outcomes from the Customer Forum’s negotiation process to inform rather than determine their decision.”

¹¹⁷ AER (2020d), page 5.

¹¹⁸ EUAA (2020), page 2.

¹¹⁹ Victorian Community Organisations (2020), page 15.

¹²⁰ CCP17 (2021), page 4.

¹²¹ Ibid., page 34.

The ECA's consultant, Spencer & Co's, considered that "[i]t is inappropriate for the AER or AusNet to rely on the Customer Forum's statement that it considered the whole proposal capable of acceptance given the narrow remit given to the Customer Forum."¹²² The EUAA noted that "[g]iven this scope and the absence of discussions with the EUAA and the MEU, we do not understand how the Customer Forum could make any conclusion about the 'overall reasonableness' and 'value for money' of the total proposal and how the AER could agree with the Consumer Forum."¹²³

Finding 2.6

Stakeholder submissions suggested a lack of clarity around how the Early Engagement Process impacted the AER's decisions.

As noted in Finding 2.5 above, some stakeholders considered that the AER had placed too much weight on the outcomes of the Early Engagement Process in deciding what level of scrutiny to place on AusNet Services proposal. We observe that there appeared to be a lack of clarity among some stakeholders in relation to how much the AER actually departed from its standard approach as a result of AusNet Services having followed the New Reg process.

For example, the EUAA was concerned that the AER had overemphasised the extent to which the Early Engagement process had influenced the regulatory proposal, noting that "[t]he discussion around the 40% of AusNet revenues being 'subject to negotiations' is very misleading. ... e.g. while the Customer Forum had input into the selection of the opex base year, it is misleading to suggest they negotiated base year opex".¹²⁴ As noted in Section 2.1, we agree that the Customer Forum did not reach a final position on base year opex and referred this matter to the AER for a decision. However, our review of the material documenting the negotiations indicates that the topic was nonetheless the subject of extensive discussion between the parties, including the customer service activities that would be delivered through AusNet Services' base opex (see Section 2.1). Nonetheless, we recognise that the term 'negotiate' may imply different meanings to different parties and that greater clarity on how the scope of negotiations impacted the AER's Draft and Final decisions may have been helpful.

We also note that:

- While the Customer Forum's position on the 'overall reasonableness' of the regulatory proposal was an area of concern for some stakeholders, our understanding is that this evidence did not particularly influence the substance of the AER's Draft or Final Decisions.
- Some stakeholders considered that the AER should have taken a more detailed bottom-up approach in relation to AusNet Services' capex proposal. However, our understanding is that the AER used its standard approach, combining a top-down review and category specific assessments. For example, the Final Decision noted that:

*"Given our top-down assessment, an examination of the proposed expenditures at the program level was given relatively less weight than if AusNet Services' forecast was materially higher than its historical capex. We also undertook a bottom-up review at the category level consistent with our standard approach. While we identified some areas where individual capex categories were not fully justified we are satisfied that, having regard to AusNet Services' top-down challenge, these concerns are not material. That is, the top-down adjustment made by AusNet Services was as large, or larger, than the total sum of the adjustments that we would otherwise make at the individual category level."*¹²⁵

¹²² Spencer & Co (2021, page 8, in ECA (2021).

¹²³ EUAA (2021), page 7.

¹²⁴ Ibid.

¹²⁵ AER (2020a), page 9.

These observations suggest that there may have been a lack of clarity for some stakeholders around the extent to which the AER had (i) placed weight on outcomes from the Early Engagement Process and (ii) deviated from its standard assessment process on the basis of this evidence.

As we note in Learning A.3 (see Section 4.1), debates in other regulatory frameworks suggest that to support confidence in the outcomes of customer engagement processes generally, clarity around the impact of the process is essential. This will be particularly important if future changes to the NER provide greater scope for the AER to undertake an expedited review process or introduce other rewards for high-quality business plans (whether developed through a negotiated settlement or alternative process).

3.3. OBJECTIVE 3: PROMOTING CONSUMERS' LONG-TERM INTEREST

The third objective defined in the MOU for this trial was to *“improve the overall outcomes of the regulatory review process with a view to promoting the long-term interests of consumers of electricity”*.

3.3.1. Overall findings

In Table 3.3 below, we summarise our main findings in relation to this objective. We also note where a finding is relevant to the learnings discussed in Section 4. Supporting evidence for each finding is detailed in Section 3.3.2 below.

Table 3.3: Summary of findings - Objective 3

#	Findings
3.1	AusNet Services report that the New Reg process prompted significant changes in its culture and capability.
3.2	The Customer Forum and AusNet Services are satisfied that the regulatory proposal better reflected consumers' interests than would have been the case without the New Reg trial.
3.3	Stakeholder submissions and the AER's decisions also demonstrated confidence that many of the positions agreed by AusNet Services and the Customer Forum were in the long-term interest of consumers.
3.4	The Customer Forum was able to prompt action on some issues that support the long-term interest of consumers, but that had not previously been considered in regulatory reviews of Australian electricity networks.
3.5	The Customer Forum had a broader impact on issues unrelated to the regulatory review, such as the connections process.
3.6	While the Customer Forum was able to provide a definitive view on acceptable costs for some in-scope building blocks, this was not always the case.
3.7	While the existing regulatory review process, combined with robust customer engagement, can achieve outcomes in line with customers' long-term interests, the 'additional' features of New Reg have particular advantages.

Overall, the AER's decisions, and the views of trial participants and broader stakeholders, indicate that many of the negotiated positions were considered to be in the long-term interest of consumers. The trial evidence suggests that the New Reg process promoted the long-term interest of consumers in multiple ways. These include the Customer Forum's role in: influencing the building blocks of the regulatory proposal; reaching agreement on measures to better reflect customers' preferences and priorities in relation to service levels; and identifying issues outside the regulatory determination process, that nonetheless impact consumers' long-term interests.

The existing regulatory review process, combined with robust customer engagement, can also achieve outcomes in line with customers' long-term interests. However, this trial suggests that some characteristics of the New Reg process have particular advantages. Evidence from this trial suggests that important characteristics include (i) the early engagement with the regulator (ii) the ability of a Customer Forum to independently shape the content of the negotiation process, and (iii) the preparation of an independent report setting out the Customer Forum's findings on consumer preferences and linking this to the negotiated outcomes. The AER and stakeholders may wish to consider how these characteristics can be used to enhance the existing regulatory review process.

3.3.2. Detailed findings

This section sets out the evidence that we have relied upon in reaching each finding.

Finding 3.1

AusNet Services report that the New Reg process prompted significant changes in its culture and capability.

The New Reg trial was strategically important to AusNet Services, as the business recognised a need to substantially improve its performance in areas that are important to customers.

AusNet Services told us that from the business' perspective, the outcomes are almost entirely positive.¹²⁶ In particular, the process was, and continues to be, a massive driver of change for the culture and capability within the company.

While initially the engagement process was considered challenging and intensive, this has moderated as internal capabilities have been developed. AusNet Services told us that deep consideration of customers' preferences and priorities is now standard and 'second nature'. This is the case across all three of AusNet Services' networks, not only the electricity distribution business. Concrete examples of changes in the business include:

- AusNet Services now conducts its customer research largely in-house, with only targeted advice from external consultants.
- Engagement is undertaken at monthly, quarterly and yearly timescales, across a range of customer groups and issues.
- Relationships with key customer groups and their representatives has in the company's view improved enormously. While there have been some critiques of the breadth of engagement undertaken for this review, stakeholder concerns have been more transparent to AusNet Services and therefore more resolvable.
- During its engagement processes for its other networks (transmission, gas), AusNet Services has received feedback from independent observers on the quality, robustness and freedom of conversations with customers. AusNet Services consider that this indicates a high level of trust and transparency, which has been gained through learnings from the New Reg process.

We have been told that over the course of the trial process that there have also been major changes in the importance placed on customer engagement at the AusNet Services Board level. For example, in presenting their plans for engagement with transmission customers, AusNet Services staff received detailed questions and challenge on the proposed approach.

Finding 3.2

The Customer Forum and AusNet Services are satisfied that the regulatory proposal better reflected consumers' interests than would have been the case without the New Reg trial.

A key factor cited in support of this conclusion is that the Engagement Reports and Regulatory Proposal reflected an improved understanding of the variety of customers served by AusNet Services' and the way that they are impacted by the service they receive. The Customer Forum considers that these insights allowed it to both identify previously underappreciated customer service issues and use specific examples of customers' experiences to prompt action from the business.¹²⁷ In concrete terms, this impacted the regulatory proposal through the CSIS. In its Final Engagement Report, the Customer Forum noted its view that the overall regulatory proposal recognised the needs and expectations of customers, that were agreed through the negotiation process.¹²⁸

¹²⁶ AusNet Services (2021a). This reference applies to all AusNet Services' statements cited in this Finding.

¹²⁷ Customer Forum (2021).

¹²⁸ Customer Forum (2020a), page 43.

The trial participants also consider that beyond the regulatory proposal itself, the impacts of the process on AusNet Services' internal culture and capabilities also promotes the interests of the networks' customers.¹²⁹

We understand that in making these observations, the trial participants are primarily comparing the situation before and after the trial, rather than making a hypothetical assessment of the regulatory proposal that could have been developed through an alternative customer engagement process.

Finding 3.3

Stakeholder submissions and the AER's decisions also demonstrated confidence that many of the positions agreed by AusNet Services and the Customer Forum were in the long-term interest of consumers.

As noted in relation to Objective 1, the AER was able to accept many of the positions agreed between the Customer Forum and AusNet Services, suggesting that it considered these to be in the long-term interests of consumers.

Further, as noted in relation to Objective 2, the AER's confidence in the outcomes of the trial was underpinned by particular features of the New Reg process. The support provided by AER staff and the Consumer Challenge Panel (CCP) to the Customer Forum during the negotiations appears to have been an important factor in the Early Engagement Process producing evidence that the AER was able to have regard to.

For example, during the course of the negotiations, AER staff provided a series of Guidance Notes to inform discussions between the parties. Innovation expenditure was one area where AER staff had provided guidance during the negotiation process. In particular, in Guidance Note 9, AER staff noted that:

*"It would be helpful if the Customer Forum and AusNet undertook further work clarifying their positions on innovation. The Customer Forum advised AusNet the proposed innovation expenditure should only proceed where AusNet could link the potential customer benefits to customer and stakeholder expectations. AusNet is yet to do this. The Customer Forum would prefer AusNet Services to construct an innovation budget of \$7.5 million (\$2020) but does not link this level of funding to customer preferences. The Customer Forum and AusNet do not appear to have agreed on any specific innovation projects. AusNet does not clearly state its proposed innovation expenditure in its draft proposal."*¹³⁰

The Guidance Note went on to suggest a range of matters that the Customer Forum and AusNet Services could address, in order to reach a robust negotiated position. Given the outcome of the Draft and Final Decisions, it appears that the AER staff's involvement in the negotiation process has been an important element in the parties reaching a position that was capable of acceptance, and providing sufficient evidence to support their reasoning that the position was in the interest of consumers.

The quality of the evidence was a key factor of the New Reg Trial that allowed the AER to place weight on the negotiated positions (see Finding 2.1). This appears to have been supported by the requirement for the Customer Forum to clearly describe in its Engagement Report, for each topic of negotiation, how the position it reached was in the interests of consumers. In particular, the MOU required the Customer Forum to structure the Engagement Report around three key points:¹³¹

- *"Matters in scope and considered by the Forum"*
- *Areas of agreement and disagreement with AusNet Services*
- *How these positions are in the interests of consumers"*

¹²⁹ AusNet Services (2021a) and Customer Forum (2021).

¹³⁰ AER (2019), page 19.

¹³¹ MOU (2018).

During the trial, the AER provided feedback that the Interim Engagement Report had not clearly responded to these issues.¹³² This appears to have assisted the Customer Forum to develop a final Engagement Report that was more aligned to the AER's evidentiary requirements.

Stakeholder submissions during the process also indicated support for many of the agreed positions, in particular those relating to customer service and innovation. For example, the CCP expressed its support for the CSIS, and noted its introduction for not only AusNet Services, but also CitiPower, Powercor and United Energy.¹³³

As noted above, some stakeholders were critical of certain conclusions reached by the Customer Forum around the effect of the regulatory proposal on consumers' interests, most notably in relation to the 'overall reasonableness' of the proposal.

Finding 3.4

The Customer Forum was able to prompt action on issues that support the long-term interest of consumers, but that had not previously been considered in regulatory reviews of Australian electricity networks.

Reflecting on the outcomes at the Final Decision stage, the Customer Forum Chair reflected to us that the Customer Forum was surprised by the detail and depth of the engagement they were able to undertake and what this revealed about the limits of the regulatory framework.¹³⁴ The Chair considered that a key finding was that customer service and other outputs are of great importance to consumers, but these are not a central focus of the current regulatory determination process.¹³⁵

The New Reg process appears to have given the Customer Forum the freedom to investigate, and act on, issues of its choosing. For example, the Chair noted that, in addition to engaging with established customer representatives and advocates, the Customer Forum was able to 'go off the beaten track' to find customer groups who had not previously been engaged in a regulatory review process.¹³⁶ The Customer Forum considers that this approach yielded deep and novel insights into customer preferences and priorities. Key observations included customers' expectations in relation to service quality, and the diverse ways that outages affect particular customer groups.¹³⁷ The Customer Forum considered that examples from individual customers came through strongly in its customer service-oriented approach to the negotiations.

This suggests that the Customer Forum's unconstrained scope of inquiry was, for this trial, an important factor in highlighting an apparent gap in the regulatory framework with regard to customer service standards and, more broadly, the outputs that network businesses deliver. We consider this in Learning B.2 (see Section 4.2).

At the same time, it is important to recognise that in some respects the relatively 'unstructured' nature of the Customer Forum's role may have been a factor contributing to stakeholder concerns in relation to their overall visibility of the negotiation and engagement process (see Finding 2.4). In Learning B.3 (see Section 4.2), we note that it may be possible to build in a more structured approach to communication and accountability, without restricting the scope of a future Customer Forum's activity.

Finding 3.5

The Customer Forum had a broader impact on issues unrelated to the regulatory review process.

Related to the above observation on the Customer Forum's ability to 'free range', we note that the Customer Forum also identified, and drew attention to, issues outside the regulatory review process. Examples of this were:

¹³² AER (2019).

¹³³ CCP17 (2021), page 67.

¹³⁴ Customer Forum (2021).

¹³⁵ Ibid.

¹³⁶ Ibid.

¹³⁷ Ibid.

- The Customer Forum’s identification of issues related to the connections process, and subsequent engagement with AusNet Services to prepare a separate report on this topic.¹³⁸
- The Customer Forum’s observations in relation to the reliance of small communities on their power supply, which suggested that the notion of distinct residential and non-residential VCR values breaks down in circumstances where a community’s welfare depends substantially on their local industry. The Customer Forum considered that this point was under appreciated by both AusNet Services and the AER. These insights fed into the AER’s VCR review.¹³⁹

These outcomes are, in a sense, tangential to the objectives of the trial itself, which focussed on the regulatory review process. Nonetheless, they are example of the type of insights that the ‘independent inquiry’ role accorded to a Customer Forum under the New Reg model can identify. We consider this in Learning B.2 (see Section 4.2).

Finding 3.6

The Customer Forum did not provide a definitive view on acceptable costs for some in-scope building blocks.

As noted in Section 2.2, there were several topics of negotiation for which the Customer Forum did not reach a definitive conclusion on whether AusNet Services’ proposed expenditure was reasonable, in light of consumers’ preferences and priorities. Accordingly, the AER placed less weight on evidence from the Early Engagement process in reaching its decision on these building block elements. We consider the implications of this finding in Learning B.2 and Learning B.5 (see Section 4.2).

Finding 3.7

While the existing regulatory review process, combined with robust customer engagement, can achieve outcomes in line with customers’ long-term interests, the ‘additional’ features of New Reg have particular advantages.

The outcomes of the enhanced engagement processes undertaken by other networks were also received favourably by the AER and other stakeholders.¹⁴⁰ A careful comparison of the strengths and weaknesses of these customer engagement approaches, as compared to the customer engagement undertaken in this trial, will be a valuable exercise in planning for future reviews.

Recognising that New Reg is not *only* a customer engagement framework, it is also important to separately consider how its distinctive characteristics can support consumers’ long-term interest. As noted in Finding 2.1, evidence from this trial suggests that important characteristics include:

- The AER’s role in the Early Engagement process. This supported the Customer Forum to acting as a credible and independent counterparty to the network and assisted the parties to reach agreed positions that were, in the main, capable of acceptance under the NER.
- The ability of a Customer Forum to independently shape the content of the negotiation process, which was an important factor in allowing the Customer Forum to highlight issues related to customer service.
- The preparation of an independent Engagement Report by the Customer Forum, which assisted the AER in understanding how agreed negotiation positions were supported by evidence from customer engagement of customer priorities and objectives.

¹³⁸ Customer Forum (2020a), page ii.

¹³⁹ Customer Forum (2020a), page 9.

¹⁴⁰ AER (2020b).

4. TRIAL LEARNINGS

This section details the learnings that we have identified from the trial. These are divided into:

- **Learnings for the regulatory framework**, being ways that the existing regulatory framework could potentially be amended to better facilitate proposals and decisions in the long-term interest of consumers.
- **Learnings for the New Reg process**, being ways that the process could potentially be amended to better meet the objectives defined for this trial.

As noted in Section 1, the New Reg process, as described in the Directions Paper, was considered to be a starting point for exploring a potential role for negotiated settlements within the regulatory review process. Accordingly, while these learnings could inform future applications of the New Reg process, they are also applicable to alternative negotiated settlement approaches. More broadly, the learnings may also assist the AER, networks and their customers as they continue to explore other types of ‘early engagement’, with a view to better reflecting consumers’ preferences in regulatory proposals and determinations.

4.1. LEARNINGS FOR THE REGULATORY FRAMEWORK

4.1.1. Overall learnings

The key learnings that we have identified are summarised in Table 4.1, and discussed further below.

Table 4.1: Summary of learnings - Regulatory framework

#	Learning
A.1 – Outcomes focus	The trial identified a ‘blind spot’ of the regulatory framework in relation to service standards and outcomes more broadly.
A.2 – Flexibility of the review process	The existing rules framework limited the extent to which this particular trial could deliver a faster regulatory review process. It may be appropriate to consider whether the rules should provide greater flexibility for the AER to adopt an expedited review process, if it considers that this is justified.
A.3 – Accommodating customers’ preferences	This trial did not identify many areas where the AER was constrained in accepting positions negotiated between the Customer Forum and AusNet Services, where it considered these to be consistent with the long-term interests of consumers. Nonetheless, there is scope to review whether the NER provide sufficient flexibility for the AER to accept innovative outcomes from engagement processes more generally.

4.1.2. Detailed learnings

Learning A.1: Outcomes focus
The trial identified a potential ‘blind spot’ of the regulatory framework in relation to service standards and outcomes more broadly.

Outcomes from the trial

As noted in Finding 3.4, this trial highlighted that, beyond a requirement for NSPs to meet minimum standards prescribed in some areas, the current regulatory determination process does not directly consider the outcomes that network companies deliver and how these are valued by customers. For example, while the NER require building block proposals to meet the certain objectives in relation to quality, reliability and security of supply¹⁴¹, there is no explicit link between these and the preferences of the NSP’s customers. Similarly, the NER require the

¹⁴¹ For example, one operating expenditure objective requires the NSP to “maintain the quality, reliability and security of supply of standard control services”, “to the extent that there is no applicable regulatory obligation or requirement” in relation to these outcomes. NER 6.5.6 (a) (3).

AER to have regard to whether proposed expenditure “*address[es] the concerns of electricity consumers as identified [...] in the course of [the NSP’s] engagement with electricity consumers*” - alongside other criteria.¹⁴² Again, there is no explicit requirement for how consumers’ concerns should be reflected in expenditure proposals, which may contribute to a lack of clarity around how they will be addressed in the regulatory process.

The trial found that the current framework does provide some flexibility to incorporate consumer preferences in relation to service levels, beyond those defined in prescribed service standards. For example, in seeking to implement the CSIS agreed between the parties, the AER identified that the NER could potentially accommodate this position under the small-scale incentive scheme provisions.¹⁴³

However, the AER consider that to apply these provisions, the NER require it to undertake a national consultation (as opposed to, for example, consulting only within AusNet Services’ region).¹⁴⁴ Ultimately, we note the AER was able to implement a flexible CSIS that provided a framework for other networks to adapt to their context. Nonetheless, the requirements of the NER, as interpreted by the AER, may have resulted in a relatively onerous process that could have hindered the AER from giving effect, in a timely manner, to an agreed position that the AER considered to be in the interests of consumers.

Observations

We can observe that other jurisdictions have introduced an explicit focus on ‘outputs’ and/or ‘outcomes’ (Box 2). While the terminology is not universal, ‘outcomes’ refer broadly to what customers receive from their NSP (e.g. a reliable supply of electricity). ‘Outputs’ typically refer to more specific deliverables that support the broader outcomes (e.g. the number and frequency of service interruptions).

Box 2: Outcomes-focussed approaches

Alongside increasing levels of customer engagement, regulators in other jurisdictions have given more flexibility to companies to propose ‘outcomes’ – such as services and service performance levels – that customers value. This has led to a broad range of outcomes and supporting ‘output’ targets being adopted across the industries.

Regulators have required that companies provide evidence to support these targets. This includes information on: (i) customers’ willingness-to-pay; (ii) customer impact assessments; and (iii) cost-benefit analysis. While there are specific guidelines on what is required, the quality of evidence presented by companies can vary.

For this reason, ‘common’ outcome and output targets are often set and monitored by regulators. Regulators also still undertake an assessment of whether the proposed targets are both prudent *and* efficient.

The following approaches may provide useful learnings for the AER and other stakeholders if consideration is given to a more prominent role for outcomes in the Australian regulatory framework:

- The **Essential Services Commission (ESC)** of Victoria’s PREMIO framework looks to ensure that price submissions focus on customer outcomes that the company proposes to deliver. Outcomes are derived from customer engagements and tested with customers.
- **ESCOSA** has a set of service standards that SA Water is required to meet.
- **Ofwat** introduced an ‘outcomes approach’ in PR14. Under this framework, companies engage with customers and then propose outcomes to Ofwat. Ofwat provides guidance on potential outcomes and has established 14 common and compulsory performance commitments for companies.
- The service levels delivered by **Scottish Water** must comply with the high-level quality objectives set out by the Scottish Ministers. More detailed performance targets are agreed by the company with a Customer Forum.
- **Ofgem** has several categories of outputs which it seeks to incentivise. While license obligations set out minimum standards of service, Ofgem also uses its customer engagement framework to determine what the regulated companies’ output targets should be. Some outputs, such as service quality improvements beyond the minimum standard, may be proposed by the companies.

¹⁴² NER 6.5.6 (e) (5A) and NER 6.5.7 (e) (5A).

¹⁴³ AER (2018).

¹⁴⁴ AER (2020).

- In Canada, the **Ontario Energy Board (OEB)** has selected a series of key performance metrics that it uses to monitor the utilities' performance.

Lessons from these approaches could be explored in considering whether outcomes/outputs should be more explicitly considered within the regulatory review process defined under the NER. In addition to being generally beneficial, this might also better support a negotiated settlement process, should the AER and broader stakeholders wish to pursue this in future. For example, a clearer role for outcomes might allow more flexibility for negotiated positions to be accommodated within the AER's decisions. It might also increase the effectiveness of a negotiated settlement process, by increasing the focus of the negotiations on topics where a network and Customer Forum are likely to reaching meaningful agreement.

We note the specific context of Australian NSPs would need to be considered when reviewing lessons from other regulatory processes. For example, jurisdictional regulators – such as the ESC in Victoria – play a role in setting service standards that form part of an NSP's licence conditions. Potential interactions with these regulators' duties and processes would therefore need to be taken into account.

Learning A.2: Flexibility of the review process

The existing rules framework limited the extent to which this particular trial could deliver a faster regulatory review process. It may be appropriate to consider whether the rules should provide greater flexibility for the AER to adopt an expedited review process, if it considers that this is justified.

Outcomes from the trial

The ability of the AER to reject agreed positions is an important feature of the New Reg process, as it maintains appropriate discipline and focus of both parties on reaching an agreement on a proposal that is in the long-term interest of consumers, rather than simply agreement. This point notwithstanding, an objective of New Reg is to reduce the time and cost associated with the regulatory assessment process. With this objective in mind, it may be appropriate to consider whether there is scope within the regulatory framework to appropriately 'reward' a network that has worked with its customers to produce a high-quality business plan – for example, through a form of expedited review process. We note that this question is not solely related to New Reg, as well-justified regulatory proposals could be developed through alternative processes.

The New Reg process (broadly, rather than for this particular trial) envisaged that the AER could adopt an expedited process to reach its Final Decision, if it considered that this was justified.¹⁴⁵ Further, the Directions Paper noted that:

*“Going forward, as confidence grows in the robustness of the Early Engagement Process, the AER may, where it considers appropriate, shorten its determination process—although some limitations exist under the Rules. It is acknowledged that the prospect of a shortened and less costly revenue determination process is one important incentive for a business to undertake a trial of the Early Engagement Process”.*¹⁴⁶

However, as noted in relation to Objective 1 (Section 3.1), the existing regulatory framework and scope of the Customer Forum placed some constraints on the extent to which the AER was able to adopt an expedited process in the context of this trial.

Observations

In considering what type, or degree of flexibility in the regulatory review process is appropriate, it is interesting to contrast New Reg with the approaches that regulators in other jurisdictions have adopted to incentivise companies to 'put their best foot forward' in developing proposals that incorporate consumers priorities and perspectives. For example, the experiences of 'fast track' assessments used by Ofgem and Ofwat in the UK, and Ofgem's subsequent shift to a financial incentive-based mechanism (the high-quality business plan incentive (BPI)), provide learnings

¹⁴⁵ New Reg Directions Paper (2018).

¹⁴⁶ New Reg Directions Paper (2018), page 12.

that would need to be considered, should a similar approach be considered in Australia. For example, if a fast-tracking approach were taken, a key question is how to deal with material changes in circumstances following a fast-tracked determination. The COVID pandemic provided one such example in this trial.

The views expressed by stakeholders during this trial also suggest a range of important considerations, with an overarching theme of transparency:

- It is important for stakeholders to have a clear understanding, before the review commences, of both the early engagement process and expedited review process, and how these will interact. For example, in the context of this trial AusNet Services has highlighted that the commitment of AER staff to support the negotiation process would be an important factor in its decision to undertake similar process for future reviews.¹⁴⁷ Other stakeholders will also require this visibility, so that they can understand and engage effectively with the process.
- Stakeholders want to see, in detail, why the regulator considers that an expedited review is justified and how the outcomes from customer engagement has informed its approach to the review (see Findings 2.5 and 2.6). The outcomes of this trial suggested that this visibility may need to include not only the content of the AER's post-lodgement assessment, but also insight into the regulator's supporting role in the Early Engagement Process.
- Stakeholder submissions in relation to this trial strongly supported a continuing role for detailed bottom-up assessments by the AER, particularly in areas that have been subject to less engagement with customers or where customers' preferences do not provide clear indications on acceptable costs (see Finding 2.5). Stakeholders also highlighted that the review undertaken by the AER is an important factor that enables them to engage with and form views on the content of a regulatory proposal.¹⁴⁸

The AER may wish to consider these learnings as it develops its thinking around its assessment framework for customer engagement and its role in the review process, in consultation with stakeholders.

We note transparency around the impact of consumer engagement on regulatory proposals and determinations is being actively considered in other jurisdictions. One example from Ofwat's current preparations for the PR24 – the forthcoming price review process in the England and Wales water sector – is noted discussed in Box 3 below. There are other examples that can be drawn on to support further consideration of this learning.

Box 3: Ofwat

Ofwat has been considering its approach to the PR24 price review. A key area that the regulator is exploring is how to best identify customer preferences and reflect these in its decisions for future price reviews.¹⁴⁹

A key theme emerging from this review is the need to promote transparency to improve confidence in the price review process. In particular, stakeholders require clarity on how evidence from customer engagement is being used in the regulator's decision making, alongside other evidence. Ofwat has noted that this can be challenging given the volume of customer engagement undertaken by the regulated companies, as well as the detailed nature of the analysis that underpins its decisions.

In its recent response to consultation on this issue, Ofgem has proposed a 'collaborative approach' to customer research. This would seek to establish a shared research program across all companies to identify common customer views. Ofwat considers that this will allow it to look at differences and similarities in customer views between regions and companies, on the basis of comparable evidence. The regulator hopes that this will *"provide greater transparency of findings and greater efficiency of expenditure, particularly for smaller companies"*.

Companies would still be required to provide evidence of customer preferences in relation to localised issues.

¹⁴⁸ EUAA (2021), page 4.

Learning A.3: Accommodating customers' preferences

This trial did not identify many areas in which the AER was unable to accept positions negotiated between the Customer Forum and AusNet Services. Nonetheless, there is scope to review whether the NER provides sufficient flexibility for the AER to accept innovative outcomes from engagement processes.

Outcomes from the trial

In the third Monitoring Report, AusNet Services and the Customer Forum noted instances where, during the negotiations, AER staff provided guidance indicating that the direction of negotiations might not produce an outcome that could be accepted within the boundaries of the NEL and the NER.

For example, in relation to innovation funding AusNet Services observed that:

"The AER indicated that under the NER, they were unable to approve a funding bucket for innovation, but needed to assess and approve individual projects. This impacted the negotiation with the forum as we focussed on the detail of specific innovation projects, whereas the Forum had previously been comfortable with an innovation allowance, with projects to be determined via a customer-centric governance mechanism.

...

*Regardless of the interpretation of the existing Rules, the idea of the innovation allowance was supported by customers and the Customer Forum (with appropriate governance and sharing of learnings across the industry). If an agreement such as this can be shown to be supported by customers and is in customers' long-term interests, then there should be scope for the Rules to allow for the agreement to be upheld."*¹⁵⁰

Similarly, in relation to the revenue path, AusNet Services considered that:

*"A similar constraint [to innovation] applied when agreeing the preferred price path with the Customer Forum. The Customer Forum based on their understanding of customer concerns about affordability are adamant that they want to deliver the greatest possible price cut at the start of the regulatory period. The AER staff are concerned about a potential breach of the [...] NER. [...] Again, there should be scope for the AER to accept agreements supported by customers and that are aligned with the long-term interests of customers."*¹⁵¹

The Customer Forum's perspective on this issue was that:

*"We felt that for some time at least there was questionable value in the inclusion of Price Path [in our scope] because the AER staff's position seemed for some months to be that rules prevented it from allowing too big a price decrease in the first year. While we appreciate that the process for setting prices has rules it struck us as unproductive to be encouraging us, on behalf of customers, to be looking at an outcome that would, at least in the period under review, fall short of their expectations (i.e. the bigger the price decrease in first year the better)."*¹⁵²

Observations

The New Reg Directions Paper envisaged that the Early Engagement Process would inform and complement, but not replace, the regulatory assessment of the networks' business plans. Accordingly, while the AER was expected

¹⁵⁰ Farrierswier (2020), page 42.

¹⁵¹ Ibid., page 43.

¹⁵² Ibid., page 43.

to have regard to the positions reached, agreements between the parties were not binding on the AER. We note that this is an important element of the process, that is intended to maintain appropriate discipline on the parties to not only reach agreement, but to do so in a way that is well-evidenced and demonstrably in the best interests of consumers.

Consequently, while it is possible that the AER, the Customer Forum, the network business and indeed other stakeholders may have different perspectives on what outcomes are in the long-term interest of consumers, and what is possible under the current framework, under the framework envisaged by New Reg the decision ultimately rests with the AER.

Accordingly, we consider that the appropriate question in evaluating the success of the trial is not whether the AER did or did not accept particular positions, but rather whether there is appropriate flexibility within the existing regulatory framework for the AER to implement proposals that it considers to be consistent with the National Electricity Objective (NEO).

Our reading of the evidence suggests that in making its Draft and Final Decisions in this trial, the AER faced few constraints in accepting agreed positions, where it agreed that these were in consumers' long-term interest. We identified two examples where the AER's decision making may have been constrained by the current rules (or its interpretation of these):

- Based on its interpretation of the NER, the AER was not able to adopt the revenue path agreed between the Customer Forum and AusNet Services, which maximised the reduction in allowed revenue in the first year of the price control (see Section 2.3.2). Based on our reading of the Draft and Final Decisions, this is an area where the AER may have formed a different view on whether the negotiated revenue path was in the long-term interest of consumers, had it considered that the NER provided it with the freedom to do so. This is a specific area that could potentially be explored through a rule change process.
- As noted in Section 2.3.2, the AER's Final Decision accepted a proposed IT cloud opex step change to implement a customer relationship management system. However, the decision appeared to focus primarily on whether the proposed opex-capex trade off was justified and did not appear to specifically consider evidence provided by the Customer Forum on the associated customer service benefits. This may illustrate that consumers' preferences for service improvements are not currently a feature of the cost assessment process.

While the evidence of constraints was limited in this trial, there may nonetheless be scope to consider how the regulatory framework could better facilitate the implementation of proposals that are tailored to a particular network and its customers. For example, evidence that a particular proposal was in consumers' long-term interests could potentially be given overarching priority, above the range of specific considerations that the AER must have regard to in making its constituent decisions under the NER. This is just one example, and we note that a variety of options would likely be identified through a more detailed review of this question.

There are also several issues that would require careful consideration in increasing the flexibility of the NER on this point. One example is the quality of evidence that the AER would require in order to make an overall judgement on the basis of customer support for a proposal. As highlighted in Finding 1.2, the AER placed less weight on negotiated positions when the Customer Forum agreed to expenditure 'in principle', but subject to the AER's detailed assessment. If the AER's cost assessment process were to give greater weight to customer support for expenditure proposals, the regulator would need to carefully consider:

- How it would address circumstances where qualified support is provided, or where it considers the support to be based on insufficient evidence.
- How it would balance customer support for a proposal against its own interpretation of the NEO requirements.

4.2. LEARNINGS FOR THE NEW REG PROCESS

4.2.1. Overall learnings

The key learnings that we have identified are summarised in Table 4.2, and discussed further below.

Table 4.2: Summary of learnings - the New Reg process

#	Learning
B.1 – Time and cost	The specific context of this trial limited the scope to achieve a faster and less costly regulatory review process. While changes to the regulatory framework and/or the New Reg process may better support this objective, this may be challenging.
B.2 – The Customer Forum’s role and objectives	The value added by the Customer Forum extended beyond its negotiation with AusNet Services on individual building blocks. This could be reflected in the objectives of future Customer Forums, or alternative negotiated settlement models.
B.3 – Representation and accountability	The non-representative nature of the Customer Forum may have contributed to the concerns of some stakeholders. Changes to improve communication and accountability in the process steps may assist in addressing this.
B.4 – Scope and staging	The ability of the New Reg process to facilitate discussions between the network business, its customers and the regulator in the early stages of developing a regulatory proposal is valuable, because this allows challenging issues to be aired well in advance of the Draft Decision.

4.2.2. Detailed learnings

Learning B.1: Time and cost

The specific context of this trial limited the scope to achieve a faster and less costly regulatory review process. While changes to the regulatory framework and/or the New Reg process may better support this objective, this may be challenging.

Outcomes from the trial

As noted in Section 3.1, the extent to which speed and cost efficiencies could be realised in this trial of the New Reg process were in practice limited by two factors. In particular, the trial took place under the existing rules framework and the scope of the Customer Forum was limited.

Further, as the first trial of the process, the parties incurred a range of costs that might not be repeated in future applications. At the conclusion of the review process:

- AER staff have observed that during this trial the regulator established processes and arrangements that could be used in future applications of the New Reg process.¹⁵³ These include the New Reg process itself, the Early Engagement Plan and the MOU. In addition, AER staff developed guidance notes on a range of major building blocks that could also be applicable to other Early Engagement Processes.
- AusNet Services has observed that while initially the engagement process with the Customer Forum was challenging and intensive, this moderated as internal capabilities developed.¹⁵⁴ Accordingly, if AusNet Services were to adopt a similar approach in future, the business would benefit from the learnings during the trial.

Observations

Given these outcomes, it is relevant to ask what speed and cost efficiencies could be achieved if a negotiated settlement model is used again. Of course, administrative implementation costs are not the only relevant factor in determining the future role of negotiated settlements. As highlighted by our other findings, this needs to be

¹⁵³ AER (2021d).

¹⁵⁴ AusNet Service (2021a).

considered alongside the effect of the negotiations on the network's proposal and the AER's regulatory decision. Nonetheless, the AER and stakeholders may wish to take account of the following observations in considering the future role of negotiated settlements.

Firstly, as noted under Learning A.2 above, changes to the regulatory framework could be considered to allow for a faster or less onerous review process, if the AER considers that this is justified by the quality of the regulatory proposal. However, even if the NER were changed to facilitate this, the regulatory framework will likely still impose *some* constraints on the overall speed and cost of the review process – for example, to allow for appropriate consultation. We also note the desire expressed by some stakeholders for the AER to continue to play a leading role in assessing the prudence and efficiency of proposed expenditure (see Section 3.2.2). Therefore, it will be important to consider how much faster or more efficient the review process could be in practice. Evidence from this trial suggests that, in principle, a more rapid review process could result if the quality of a regulatory proposal meant that the AER did not need to engage independent technical support to assess it (see Finding 1.2 in Section 3.1.2). However, it is difficult to quantify the extent of this effect, because the outcomes of this trial were constrained by the current NER requirements.

Secondly, as noted in Finding 2.1, this trial indicates that the role of AER staff in supporting a negotiated settlement process is a key part of its success. For example, in this trial the support provided by AER staff contributed to the independence of the Customer Forum and the transparency of the negotiation process. Staff guidance notes also assisted the trial participants to reach negotiated positions that would be capable of acceptance under the NER, an important element of the NSP's incentives for participating in the Early Engagement Process. At the same time, as noted in Findings 1.2 and 1.3, providing this support is also relatively costly and resource intensive.

In our view, it may be challenging for the AER to substantially reduce the level of resourcing required to provide this support. For example, the diversity of issues that might arise in future regulatory determinations means that the development of guidance notes in this trial might not contribute to substantial cost savings in future applications of the negotiation process (although notes related to the overall regulatory process may remain relevant, to the extent this does not change materially). Similarly, the learnings from this trial may prompt some adjustments to the governance arrangements established for this trial (see Learning B.2 and Learning B.4 below). There could be some scope for costs to be shared if the AER were to support more than one negotiated settlement concurrently (e.g. jointly reviewing multiple Early Engagement Plans). At the same time, supporting multiple settlements may be complex, given the different issues facing each energy network and its customers. This view mirrors Ofwat's emerging conclusion that a negotiated settlement model is not appropriate for the PR24 review, given the number of companies that it regulates.¹⁵⁵

Finally, in principle a negotiated settlement might better support a faster and less costly review process if the negotiations covered a larger portion of the regulatory proposal. However, there are likely to be some practical limitations on the scope of the negotiations. For example, if a future Customer Forum considered a wider range of issues than in this trial, it might not be able to consider these in the same depth. This could have implications for the quality of the evidence the Customer Forum assembled in support of its conclusions, which in turn affects the weight that the AER could place on this evidence. Further, this particular trial has not provided evidence of a Customer Forum's ability to consider all aspects of a regulatory proposal, including technical elements such as the cost of capital. Another potential effect of a wider scope relates to AER staff's resourcing requirements to support the negotiations. To the extent that pre-lodgement costs increased to support a wider scope, this would offset – at least to some extent – any additional efficiencies in the post-lodgement phase.

Overall, these observations suggest that securing time and cost savings through a form of negotiated settlement is fundamentally challenging. This is particularly the case if, as in the New Reg process, the regulator retains a central

¹⁵⁵ Ofwat has noted that “[a]dopting [a negotiated settlement] approach across 17 different companies could also prove complicated and resource intensive, since we would need to facilitate 17 different negotiations while also developing 17 different backstop determinations. [...] The regulatory burden may not be diminished by the process, given the likely need for Ofwat to provide views on cost thresholds in advance of the negotiation process and to allow sufficient time to consider the outcomes of the process before final determinations.” Ofwat (2021), page 60.

role in assuring that the overall result is consistent with consumers' long-term interest: the main difference being that its efforts are concentrated in the pre-lodgement phase, rather than post-lodgement.

As we discuss below under Learning B.4 – Scope and staging, this observation does not preclude future negotiated settlements from achieving lower costs than under this trial, as learning are progressively incorporated.

Nonetheless, questions around the scope of resourcing requirements will need to be considered in deciding what role negotiated models should play in future regulatory reviews.

Learning B.2: The Customer Forum's role and objectives¹⁵⁶

The value added by the Customer Forum extended beyond its negotiation with AusNet Services on individual building blocks. This could be reflected in the objectives of future Customer Forums, or alternative negotiated settlement models.

Outcomes from the trial

The New Reg Directions Paper envisaged that:

*"Maximising flexibility for the Consumer Forum and the business to think across different elements of a building block proposal could allow more space for creative trade-offs and 'win-win' outcomes. It is acknowledged that there may be, as a result of external policy decisions, matters that automatically fall outside the scope, such as Rate of Return under a future binding guideline, or reliability standards where these are state-based. There may also be matters that the network otherwise feels it will not be able to 'negotiate' or 'trade-off' (such as mandated safety and universal service obligations)."*¹⁵⁷

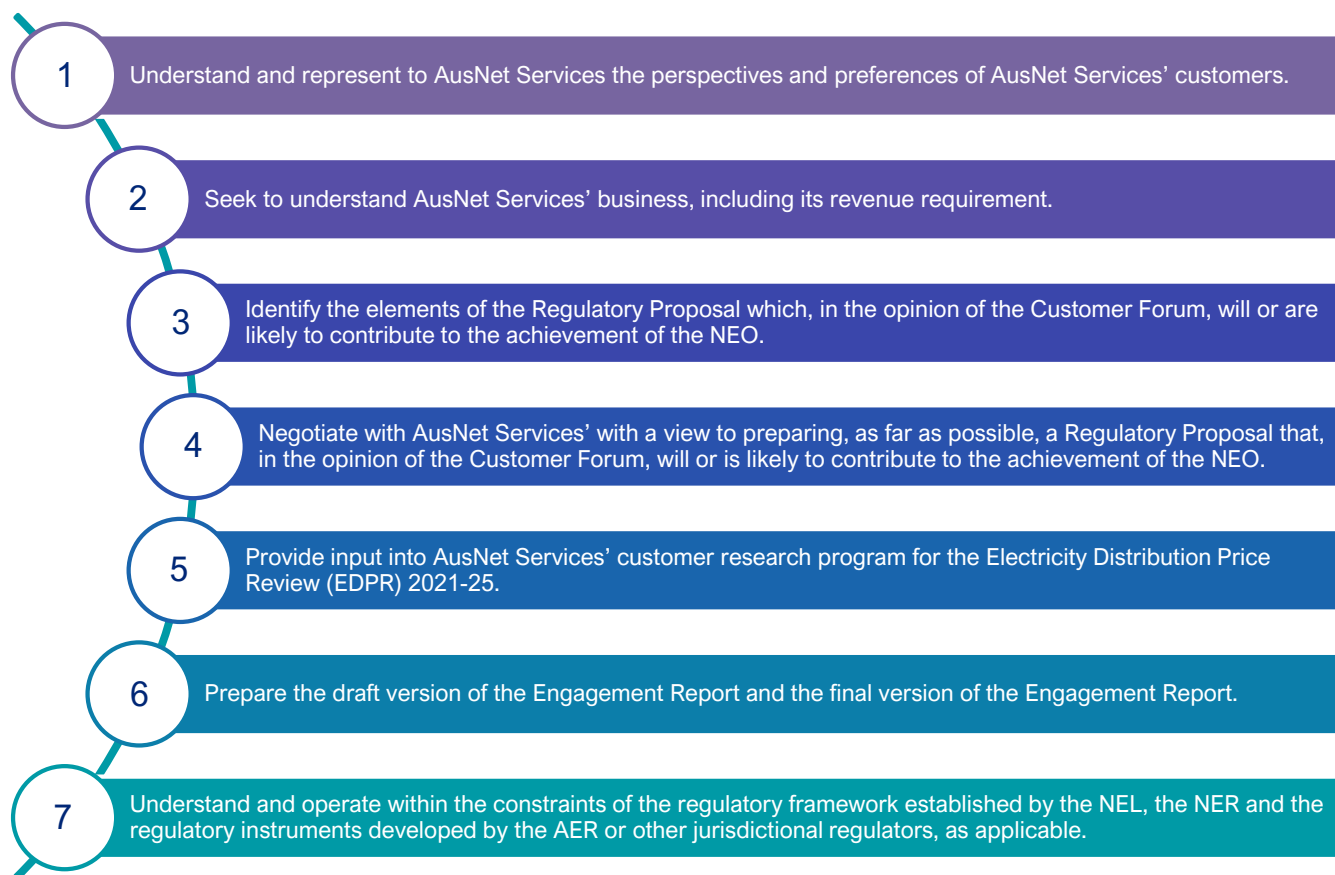
The MOU for this trial set out specific objectives for the Customer Forum within the Scope of Negotiations, outlined in Figure 4.1 below:¹⁵⁸

¹⁵⁶ New Reg Approach Paper (2018), page 3.

¹⁵⁷ New Reg Directions Paper (2018), page 11.

¹⁵⁸ 'Scope of Negotiations' means the matters which the Customer Forum and AusNet Services agree will be the subject of negotiation between them, in accordance with clause 4.3 of the MOU. The Scope of Negotiations and any variations must be agreed with the AER.

Figure 4.1: MOU objectives for the Customer Forum



Source: MOU (2018)

While some objectives are quite broad, others are focussed on the content of the NSP's revenue requirement and regulatory proposal. This may have contributed to the outcome that, for this trial, the structure of the negotiations and the Interim/Final Engagement Reports largely followed a 'building block' structure, i.e. assessing items under the operating expenditure (opex) block, the augmentation expenditure (augex) block, the major replacement expenditure (replex) block, etc. Effectively, this led to a more 'bottom up' discussion on AusNet Services' regulatory proposal.

Observations

These observations suggest learnings around whether the role and objectives for the Customer Forum should be adjusted if a negotiated settlement process is used in future. There appear to have been both advantages and disadvantages to the approach taken in this trial:

- The Customer Forum noted that it was challenging to agree proposals on all building blocks items at the time of the Interim Engagement Report, given uncertainties around cost proposals for some items.¹⁵⁹
- As discussed in Appendix B.3, the Customer Forum did not generally identify detailed priorities and preferences in relation to specific building block items. In many cases, the Customer Forum combined broad findings from customer research with its own analysis to challenge the details of specific expenditure proposals. As noted in Section 2.2, on some building blocks components, the Customer Forum was not able to identify specific evidence of customer' preferences. In these cases, the agreed positions were quite

¹⁵⁹ Farrierswier (2019), page 17.

general, with the Customer Forum providing ‘in principle’ agreement subject to the AER’s efficiency assessment.

- There is evidence that the Customer Forum was able to meaningfully challenge AusNet Services and influence the proposal without negotiating on specific building block items (see Section 2.2.1).
- At the same time, the structure of the Engagement Report appears to have helped the AER to use the evidence provided by the Customer Forum in making its decision. For example, the AER’s Draft Decision noted that the report assisted it to readily identify areas of agreement (see Finding 2.1).

Overall, it is worth considering whether the requirement for the Customer Forum to structure its findings around a building blocks framework, particularly in early stages of the negotiations, added value to the process. Further, the MOU objectives may not reflect that the value added by the Customer Forum extended beyond its negotiation on with AusNet Services on individual building blocks. That is, while the Customer Forum was able to consider service price-quality trade-offs in some cases, its impact was in practice broader than this. It is also important to consider how the role of a Customer Forum can best complement the activities of other actors within the regulatory framework. For example, stakeholder feedback received during the trial indicates an expectation that the AER will continue to play a key role in the technical assessment of efficient costs (see Finding 2.5).

We suggest that clarity on the objectives of the Customer Forum is important, as these have practical implications for other aspects of the negotiated settlement process, including the staging of the negotiations, the skill set of the Customer Forum, and the training that they receive. For example:

- **Staging:** If the objectives of future Customer Forums reflected a focus on service quality, this might imply exploration of this in the early stages of the process, potentially before discussions on costs occur.
- **Skills and training:** An emphasis on different skills – for example, economic, engineering and/or regulatory expertise – or a greater level of technical support could potentially have assisted this Customer Forum to reach firm positions on acceptable costs in more cases. However, different skills and training requirements might be suggested by an emphasis on identifying desired customer service outcomes, or providing a more general challenge to a network’s justification of its proposal.

We note that these observations may have relevance to customer engagement processes more broadly, for example, in terms of the focus areas and outputs for such engagement.

Learning B.3: Representation and accountability

The non-representative nature of the Customer Forum may have contributed to the concerns of some stakeholders. Changes to improve communication and accountability in the process steps may assist in addressing this.

Outcomes from the trial

As noted in Finding 3.4, some stakeholders expressed concerns related to the breadth of customer engagement. We noted that relevant factors appear to have been:

- Concerns around the extent to which the Customer Forum was representative of AusNet Services’ customers.
- A lack of visibility around how the Customer Forum and/or AusNet Services would more broadly interact with customers and customer representatives during the negotiation process.

To consider this issue further, it is helpful to consider how the Customer Forum was intended to ‘represent’ the views of AusNet Services’ customers and how this played out in practice.

The intended role of the Customer Forum

At the initial stages of the New Reg trial, it was clearly envisaged that the Customer Forum would “*materially augment and complement networks’ existing reset and business-as-usual engagement activities, not replace*

these”.¹⁶⁰ The Consumer Forum was *not* intended to act as the primary channel for the identification of consumer preferences – but rather as a formal counterparty in negotiation with the network business, to ensure that an effective process of discovery of customer interests was conducted and reflected in the regulatory proposal.

It is important to note that the Customer Forum was not intended to act as a representative body, in the sense that its membership would directly reflect AusNet Services’ customers.¹⁶¹

“The Consumer Forum is not ‘representing consumers’, it is representing the consumer perspective. It is not composed of people selected from consumer constituencies. Its function is to take information from a wide variety of sources to develop a composite view of consumer preferences.”

Rather, the Customer Forum was required to “act on behalf of all consumer voices (large and small)”.¹⁶²

To fulfil its functions, the Consumer Forum would be required to understand customer preferences, which would involve **collecting information from consumers either independently or by influencing the network’s research**. At a minimum, the Consumer Forum was expected to have the ability to provide input into the business’ customer research program. Alternatively, the Consumer Forum would be resourced by the network to allow it to **undertake its own customer research, communicate directly with end customers, customer representatives, and other engagement channels** the network uses for its business-as-usual engagement.¹⁶³ AusNet Services’ Early Engagement Plan set out the Customer Forum’s role largely in keeping with these provisions.

When New Reg was established, it was also envisaged that “nothing in the trial will reduce the ability of any consumer or advocacy body, or the AER’s Customer Challenge Panel to have their view on the network regulatory proposal heard”.¹⁶⁴ It is worth noting that the role of the CCP is clearly distinct from that of the Customer Forum, as the CCP, rather than negotiating with the network, advises the AER on whether the networks’ proposals are in the long term interest of consumers and on the effectiveness of the network businesses’ engagement activities.

The Early Engagement Plan also indicated that the Customer Forum would periodically meet with AusNet Services’ Customer Consultative Committee (CCC) – a pre-existing body comprising AusNet Services representatives and eleven external members from customer and community groups representing a cross-section of its customer base, which serves as a channel to bring external customer perspectives into the business’ decision-making – to present on their activities and to seek advice, as well as conduct direct engagement with CCC members.¹⁶⁵

The role of the Customer Forum in practice

The Customer Forum appears to have operated largely as intended in the context of AusNet Services’ broader customer engagement. For example, the CCP notes that AusNet Services’ own stakeholder engagement program focused on eliciting insights that would assist in building the Customer Forum’s understanding of AusNet Services’ customers – as evidenced by the multiple references to AusNet Services’ engagement activities in support of the Customer Forum’s negotiating positions in the Final Engagement Report.

The Customer Forum also directed key aspects of AusNet Services customer engagement and its position was also informed by numerous individual contacts with a broad range of customers and other stakeholders.¹⁶⁶ For example, to address gaps that it had identified in AusNet Services’ proposed customer engagement program, the Customer Forum encouraged and worked with AusNet Services to carry out engagement that targeted smaller communities

¹⁶⁰ New Reg Approach Paper (2018), page 9.

¹⁶¹ New Reg Approach Paper (2018), page 10.

¹⁶² New Reg Directions Paper (2018), page 4.

¹⁶³ New Reg Approach Paper (2018), page 6 and 10.

¹⁶⁴ New Reg Approach Paper (2018), page. 4.

¹⁶⁵ AusNet Services (2018), page 14 and footnote 5.

¹⁶⁶ Refer to Appendix B.1 and B.3 for further details of the customer engagement that the Customer Forum considered.

and business customers.¹⁶⁷ This research brought AusNet Services' attention to service issues for locations and customers groups in its service area that had not previously been identified. In addition, the Customer Forum initiated, designed and managed five customer surveys.¹⁶⁸ Further information on the customer preferences that were identified is presented in Appendix B.3.

This view is supported by the Customer Forum's own account of engagement activities it influenced or undertook of its own initiative.¹⁶⁹ The Customer Forum noted that it was given ample opportunity to comment on customer research that AusNet Services initiated. However, it also noted that no protocol existed for it to initiate independent customer research and that this process would be simplified if it had access to an independent research budget.

The role of the CCP appears to have been adapted to the specific characteristics of the New Reg trial once the process had started. The CCP took a more distanced role in relation to the engagement for AusNet Services than other Victorian DNSPs in the most recent regulatory review process. For example, the AER determined that the CCP would not be required to advise on the consumer engagement activities overseen by the Customer Forum, but would observe AusNet Services' consultation on issues that are out-of-scope of the Customer Forum's negotiation. The CCP would also assist the Customer Forum, where requested, in preparing its Engagement Reports and provide written feedback to the AER on the Interim Engagement Report.¹⁷⁰ The CCP participated in four meetings with the Customer Forum to assist it in forming views on issues within its scope and to share perspectives on issues common across all network businesses.¹⁷¹

The Customer Forum met a number of times with the CCC to gather information to assist in its negotiations, but noted that the insights it obtained from the CCC were "*limited*" as meetings were not always well attended and some customer segments were not well represented.¹⁷² The Customer Forum also noted that it would have benefited from greater feedback from customer advocates and that there was little response to its Interim Engagement Report.¹⁷³ At the same time, some stakeholders noted that they had limited opportunities to interact with the Customer Forum and would have appreciated a greater focus on the needs of certain customer groups and the opportunity to provide input into the selection of the Customer Forum's members, the Customer Forum's negotiations, and the evaluation of the trial.¹⁷⁴

Observations

These comments appear to reflect to some extent an expectation of an engagement process that is both clearer and more representative.

In relation to the question of representation, it is important to note that, while the Customer Forum is meant to bring into the negotiations the perspective of all customers, it was not designed to be in itself a representative body. Including representatives of particular customer groups within the membership of the Customer Forum may have certain benefits. For example, it would likely allow the Customer Forum to gain a more detailed understanding of the issues faced by these customers.

However, the non-representative approach applied in this trial also some important advantages. For example, a more directly representative Customer Forum could face challenges in relation to:

¹⁶⁷ Customer Forum (2019), page 11.

¹⁶⁸ CCP (2019), page 5 and CCP (2020) pages 12, 15, 18.

¹⁶⁹ Customer Forum (2019), pages 10 and 13.

¹⁷⁰ CCP (2019), pages 7-8.

¹⁷¹ CCP (2021), page 33.

¹⁷² Customer Forum (2020), page 56.

¹⁷³ Customer Forum (2020) page 54-56.

¹⁷⁴ EUAA (2020), page 4 and EUAA (2021) page 6.

- Demonstrating its ability to consider the perspectives of *all* customers in a balanced way, rather than emphasising the needs of particular groups over others, to mitigate perceived conflicts of interest.
- Ensuring that the Customer Forum's composition was, in fact, representative. For example, a decision would be required around the customer segments that would need to be represented.

Noting these advantages, there may be ways in the future to retain the approach to the Customer Forum's composition that was taken for this trial, while also addressing the concerns raised. For example, this could involve:

- Introducing clearer statements in the MOU or Early Engagement Plan on how customer advocates and the networks' CCC are expected to be involved in the process. While consideration was certainly given to these issues (e.g. as part of the preparation of the trial's Early Engagement Plan) there may be opportunities to improve clarity as part of future Early Engagement processes. Given the apparent importance of an effective start to the Early Engagement process, it may be worth considering retaining the key role that the AER played in AusNet Services' trial in helping to establish the engagement plan and the expected scope of negotiations.
- Improving the clarity of how the Customer Forum demonstrates accountability to consumer groups, for example, by formalising requirements for regular reporting and updates through the MOU. Retaining the Interim Engagement Report may also be important as a milestone for future Customer Forum's to report to broader stakeholders on their activities and receive feedback. The MOU could potentially include a requirement for a future Customer Forum to note how it had reflected the feedback received.
- Improving the clarity of the customer engagement program that will support the negotiations, for example, by requiring the development of an overarching engagement plan.

Earlier engagement of the Customer Forum and establishment of the scope. For this trial we note that planning of AusNet Services' customer engagement started before the Customer Forum was engaged. Further, fluidity around the scope of negotiations may have complicated planning for engagement on out-of-scope issues.

Learning B.4: Scope and staging

The ability of the New Reg process to facilitate discussions between the network business, its customers and the regulator in the early stages of developing a regulatory proposal is valuable, because this allows challenging issues to be aired well in advance of the Draft Decision.

Outcomes from the trial

A desired outcome of the New Reg process is to *"create a basis on which the regulator can be involved early and assist the network and consumers to reach an agreement to which the AER can have regard to when considering the network's revenue proposal."* A key advantage of an early engagement process may be that strategic, or contentious, issues can be 'brought to the table' quickly, increasing the likelihood that they can be resolved. For example, the experience from this trial can be contrasted to the Challenge Group established under Ofgem's RIIO-2 process. In this case, the Challenge Group evaluated developed business plans of the network companies relatively late on in the process of their development. The Challenge Group had the skills and experience to raise fundamental questions of the plans, which they did – for example, in relation to the need for the ongoing programme to replace iron gas mains in the gas distribution sector. However, the phasing of the Challenge Group's involvement in the process meant any fundamental issues it raised came relatively late in the process and within a limited time period that the Challenge Group had available to review and discuss the plans with the network companies.¹⁷⁵ An Early Engagement Process, underpinned by an experienced Customer Forum with the necessary skill set, can in principle help to address this by bringing issues to the table earlier.

¹⁷⁵ Complete Strategy (2020).

The outcomes of this trial suggest that the process has been relatively successful in identifying material issues, and for the most part resolving these, at an early stage.

There are, however, also trade-offs associated with early engagement. In particular:

- The Customer Forum has noted that agreeing expenditure levels was difficult given the moving nature of AusNet Services' forecasts. AusNet Services noted that estimates will move around as the network is trying to establish expenditure estimates eighteen months or more before they are due to be incurred, and some estimates will not be finalised until close to the submission of its Regulatory Proposal. This appears to have presented challenges in meeting certain requirements of the process. For example, the MOU stated that the Interim Engagement Report would set out the Customer Forum's initial positions (i.e., the extent of agreement or disagreement between the parties). However, due to the timing issues noted above, at the time of the Interim Engagement Report the Customer Forum had not been able to reach an initial position on some matters. The Customer Forum considered that in hindsight it would have excluded numbers from the Interim Engagement Report.¹⁷⁶
- As noted in relation to Finding 1.2 and 1.3, the resourcing requirements for the regulator in supporting this Early Engagement Process have been quite substantial.

Observations

These trade-offs raise questions to explore on whether an alternative phasing of the New Reg process could retain the identified advantages, while reducing some of the less desirable outcomes.

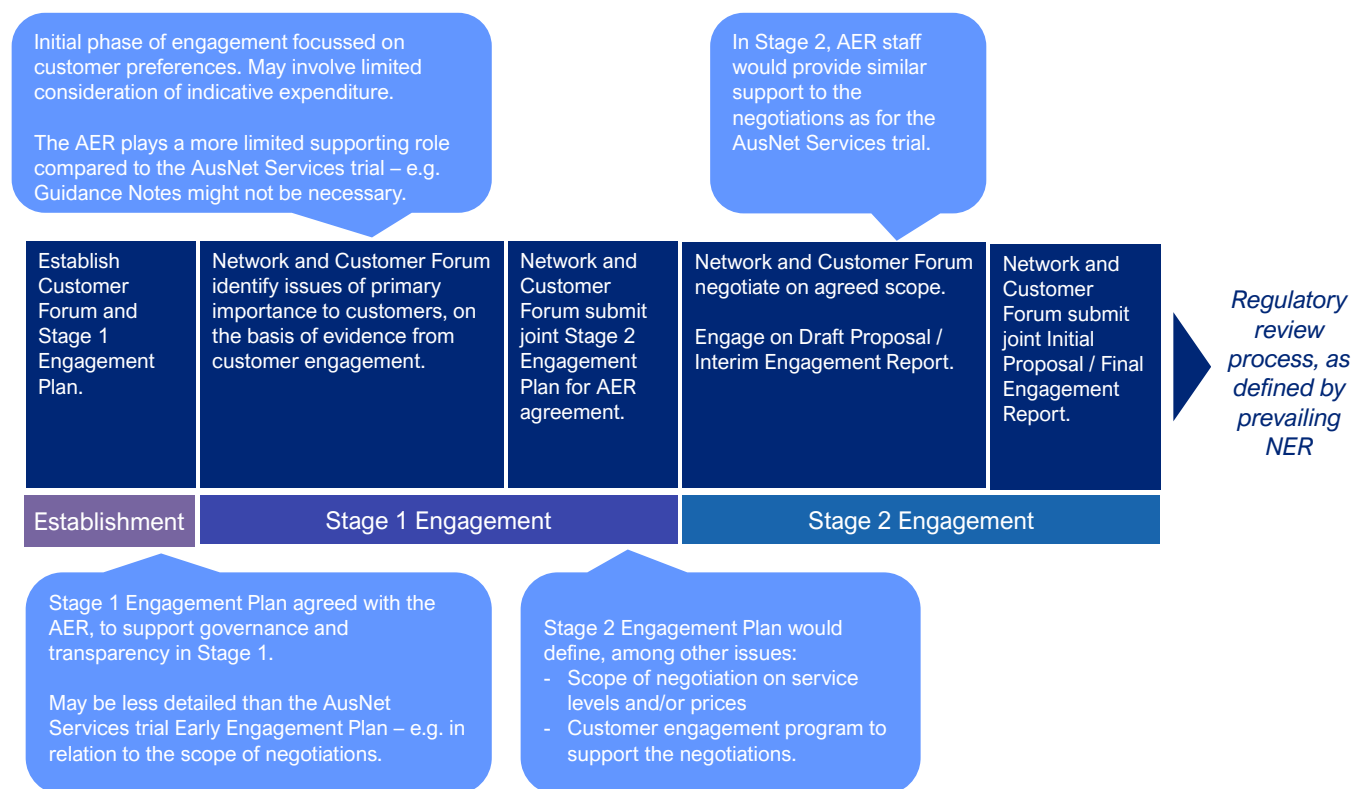
In its interview for the third Monitoring Report, the Customer Forum stated that a two-stage engagement with customers may have been better, where it assessed customers' requirements before presenting options to meet these that were costed out in more detail.¹⁷⁷ Considering the outcomes at the Final Decision stage, we have maintained the Interim Evaluation finding that such a two-stage process is worth considering in future applications of New Reg (or indeed any early engagement process).

To prompt further thinking, the figure below illustrates how two-stage process might differ from the process followed in the AusNet Services trial. This 'straw person' process envisages a 'looser' initial phase of engagement between the network and the Customer Forum in Stage 1, that is focussed on identifying what issues are of primary importance to the network's customers. For example, the Customer Forum could focus on identifying evidence of customer preferences in relation to outputs. In Stage 2, the network and Customer Forum would focus in more detail on the acceptability of the spend associated with the regulatory proposal, with a focus on areas where the parties agree that they are likely to reach meaningful agreement on this question.

¹⁷⁶ Farrierswier (2019), page 17.

¹⁷⁷ Ibid.

Figure 4.2: Alternative two-stage 'straw person' process



Source: CEPA

The potential benefits of a two-stage approach are that:

- It could allow for customer engagement to provide evidence on the services and/or service levels that customers require, in a way that is not unduly shaped by the building blocks framework.
- It may provide opportunities for the parties to agree the Scope of Negotiations on a more informed basis. That is, to more easily rule out areas where a negotiation on the cost of specific expenditure items may not produce meaningful agreement or useful information. This would – potentially – allow the AER to support negotiations on a more targeted array of issues.

This needs to be balanced against the potential additional complexity of a two-stage process and a number of possible drawbacks. In particular, we note:

- There are disadvantages around delineating discussions on customer preferences on outputs, the need case for programmes of expenditure, and the negotiations on the level of expenditure itself. The MOU would need to clearly set out the expected Stage 1 and 2 delineation which could, in certain circumstances, lead to a less clear and satisfactory process for all parties. An advantage of the approach followed in the New Reg Trial is the focus of the negotiations provided a degree of discipline to focus on the end goal of reaching well evidenced negotiation positions that can impact the revenue proposals, rather than only general customer engagement of required outputs.
- Maintaining the transparency of the Stage 1 process and the independence of the Customer Forum, without the same degree of AER involvement. This could be partly mitigated through the regulator's involvement in Stage 2, and or other transparency requirements such as the publication of minutes.
- Splitting the process in this way is not guaranteed to improve the overall efficiency of the pre-lodgement process, because the scope of the issues that the Customer Forum and NSP agree to discuss could ultimately still be quite broad.

Appendix A NEW REG PROCESS STEPS

The table below sets out the full steps of the New Reg process, as described in the Directions Paper.

Table A.1: New Reg Process Steps

New Reg Process Step
1. A network business may propose to the AER to undertake an Early Engagement Process to develop its regulatory proposal.
2. If a network business decides to pursue the Early Engagement Process, it would submit an Early Engagement Plan to the AER. This would draw on informal discussions and consultation with the AER, the network business' existing consumer relationships and ECA. The Plan outlines the process the business intends to undertake to develop its regulatory proposal, including:
a. establishment of a consumer representative group (Customer Forum) which the network would resource and fund
b. high-level scope of matters proposed to be considered within the Early Engagement Process
c. process of dialogue and engagement that will be followed by the network business and Customer Forum
d. role and expectations of the AER to support the Early Engagement Process.
3. The Customer Forum should:
a. represent, 'bring' the perspectives of, and act on behalf of all consumer voices (large and small), having regard to the long-term interests of current and future consumers
b. be fully independent of the network business
c. have the skills and expertise to serve the role of being a credible counterparty to the network business
d. operate in an open and engaging way to establish and maintain its legitimacy with consumers and the wider community.
4. The AER will decide whether or not it accepts the proposed Early Engagement Plan. The AER may propose amendments to the Plan. If the AER accepts the Plan, it commits itself to be deeply involved in the Early Engagement Process.
a. This commitment is formalised through an 'Engagement Agreement' entered into by the business, the AER and the Customer Forum.
b. The Engagement Agreement sets out the roles and expectations of each of the parties, including the scope, funding arrangements, anticipated timelines, 'off-ramps' or termination conditions, and arrangements for a jointly conducted ex post review.
5. It is anticipated that the early phases of engagement between the network business and Customer Forum will involve induction, training, and information sharing. The AER will be closely involved in providing background information including on network performance comparisons and previous related decisions, and guidance on AER assessment approaches and its statutory roles and responsibilities in revenue determination processes. Both the business and the Forum will do this in a way that does not require Forum members to have energy industry or regulatory expertise.
6. The next step involves the business and Customer Forum scoping in detail the matters to be considered in the Early Engagement Process. This should also set out how the parties intend to collect information on the perspectives of customers (for example, through customer research or direct engagement) to inform their consideration of these matters. The scope of matters to be considered must be agreed between the business and Customer Forum, and accepted by the AER—although the AER may be more closely involved in the scoping phase for the purpose of a trial.
a. Ideally the business and Customer Forum can agree to the proposal as a whole—and that it fully reflects consumer perspectives and preferences wherever relevant. It is envisaged that the Early Engagement Process will, in principle, deal with any matter that may arise in a network business' regulatory proposal. However, for reasons of practicality or due to regulatory constraints, certain matters may be taken 'off

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the table'. For example, at least for a trial, some aspects of the proposal may be out of the business' control due to government regulations or reliability standards, or are subject to a binding AER guideline.

7. The Early Engagement Plan will specify how the Early Engagement Process will be carried out. Central to the Early Engagement Process is the idea of creating a 'dynamic conversation' between the network business and Customer Forum, supported by the AER, to achieve outcomes in the long term interests of consumers. These discussions should be structured with the aim of reaching agreements in a timely way. The AER needs to be assured that it has sufficient visibility during the Early Engagement Process that it can indicate that something will not be acceptable before it is submitted.
 - a. Throughout the engagement process, the AER will contribute to the process of reaching agreement by providing information and explaining issues through 'advice notes' and/or presentations that communicate the 'boundaries' of the rules, and what it may consider as an acceptable regulatory outcome—consistent with AER guideline approaches. The AER may also identify aspects of a proposal that in its view would most benefit from consumer perspectives, including through customer research and wider stakeholder consultation.
 - b. The Customer Forum should be resourced to communicate directly with end-customers, customer representatives, and other engagement channels and forums the network uses for its business-as-usual engagement, to elicit and understand their preferences, to carry out customer research (or help shape the business' research program), and to communicate issues and trade-offs back to customers.
8. At the conclusion of the Early Engagement Process the parties submit an Engagement Report setting out the process followed and outcomes from the engagement. The Engagement Report is a critical input to the AER's subsequent assessment of the regulatory proposal submitted by the network business, contributes to learning and improvement for future applications of the New Reg process, and supports accountability of the Customer Forum to the end-use consumers.
 - a. The Engagement Report includes the scope of matters considered and, for each matter, the agreement that has been reached or, in the event of disagreement, the positions of the relevant parties.
 - b. For the matters which have been agreed between the parties, the Engagement Report should explain why these agreements reached are consistent with, or best reflect, consumer perspectives and preferences—referencing any customer research or consultation undertaken during the process.
 - c. For aspects of a proposal for which the business and Customer Forum could not reach agreement, the Engagement Report should identify and explain the reasons these issues were left unresolved. This provides transparency and a useful starting point for the AER's subsequent assessment of the regulatory proposal.
9. If the network business and its Customer Forum can reach agreement on some or all aspects of the regulatory proposal, there is an expectation that the Engagement Report would evidence how the agreement reflected consumers' preferences, citing relevant customer research and results of consumer engagement. Provided the Engagement Report accompanies or is included in the network business' revenue proposal the AER must have regard to it.¹⁷⁸

¹⁷⁸ Clauses 6.10.1(b)(1), 6.11.1(b)(1), 6A.12.1(a1)(1) & 6A.13.1(a1)(1) of the National Electricity Rules.

Appendix B TRIAL ASSESSMENT FACTORS

B.1. ENGAGEMENT AND REPRESENTATION

B.1.1. Observations on the sub-factors

Did the different parties understand their roles and responsibilities?

The direct participants in the trial – AusNet Services, the Customer Forum, and the AER – have not noted major concerns in relation to the clarity of their role in the process. As noted in our First Insights Report, the establishment of an Early Engagement Plan and MOU in the first phase of the process appears to have provided structure and clarity to the expected objectives, scope and process of the trial.¹⁷⁹

Nonetheless, the trial evidence suggests that aspects of the Customer Forum and AER staff's roles could benefit from greater clarity. In particular, our Third Insights Report noted that:¹⁸⁰

- The MOU allowed the Customer Forum, AusNet Services and the AER to agree changes to the Scope of Negotiations. The Customer Forum and AusNet Services were also able to negotiate on topics outside of this scope. This provided flexibility for the negotiations to evolve as the Customer Forum gained familiarity with the material. To support this flexibility, the MOU could clarify how scope changes can be agreed and how scope changes affect the roles of different parties. For example, the MOU envisaged that AER staff would only provide in-depth guidance on topics within the agreed Scope of Negotiations. For this trial AER staff ultimately did provide some feedback on topics outside this scope, in order to increase the likelihood of the Customer Forum and AusNet Services agreeing positions that could be accepted under the NER.¹⁸¹ For greater clarity on resourcing requirements and the level of support that will be available, the New Reg process could more precisely define the role of AER staff in relation to 'out of scope' topics.
- The Customer Forum requested additional clarity on its expected contribution to the New Reg process following the submission of its Final Engagement Report. For example, the Customer Forum queried whether the members are required to be available to answer follow-up questions from the AER to inform its determination.¹⁸² Ultimately, AusNet Services re-engaged with the Customer Forum in developing its revised regulatory proposal, noting that this should have been reflected in the process at the outset of the trial.¹⁸³ This could be considered in future Early Engagement processes.

This trial also indicated that there may be a need to clarify the role of the Customer Forum in relation to the broader customer engagement that the NSP might undertake and, potentially, the governance arrangements around this engagement. We elaborate on this point in relation to the next sub-factor.

Was the Customer Forum an effective representative of a wider consumer group?

As noted in **Finding 3.4** (see Section 3.2.2), some stakeholders expressed concerns related to the breadth of customer engagement that was conducted to support the negotiations. We note that relevant factors appear to have been:

- Concerns around the extent to which the Customer Forum was representative of AusNet Services' customers.

¹⁷⁹ CEPA (2019), Insights 1.2 and 1.7.

¹⁸⁰ CEPA (2020), Insights 3.5 and 3.3.

¹⁸¹ AER (2019).

¹⁸² Customer Forum Interview, 18 March 2020.

¹⁸³ AusNet Services (2021a)

- A lack of visibility around how the Customer Forum and/or AusNet Services would more broadly interact with customers and customer representatives during the negotiation process.

The discussion on Learning B.3 (see Section 4.2) considers these issues in more detail, describing how the Customer Forum was intended to ‘represent’ the views of AusNet Services’ customers and how this played out in practice. While we find that including representatives of particular customer groups in a Customer Forum may be beneficial in some respects, the non-representative approach applied in this trial may better enable the perspectives of *all* consumers to be reflected in a balanced way. Nonetheless, this trial suggests that to more effectively represent consumers’ perspectives, there may need for greater clarity around what engagement will take place to support the negotiations.

Did the engagement process provide the parties with sufficient time to undertake their roles and responsibilities?

In April 2019, the Victorian Government announced its intention to shift the timing of annual Victorian electricity and gas network price changes to a financial, rather than calendar, year basis. Due to the associated change in the commencement date of AusNet Services’ next regulatory period, the negotiation process was six months longer than originally intended.

Monitoring during the trial process noted the following observations around the timeframes of this trial:

- AER staff considered that the process may have been more efficient if the Early Engagement Plan, MOU and expected Scope of Negotiation had been agreed an earlier stage.¹⁸⁴ For example, in this trial AER staff found that the timeframes for it to review Customer Forum briefing material prepared by AusNet Services – as envisaged by the support role described in the first AER staff guidance note¹⁸⁵ – were compressed.
- The MOU stated that the Interim Engagement Report would set out the Customer Forum’s initial positions (i.e., the extent of agreement or disagreement between the parties).¹⁸⁶ However, at that time the Customer Forum noted that AusNet Services was still to finalise its costs and the Customer Forum was also awaiting further advice from AusNet Services on a number of issues.^{187, 188} Therefore, the Customer Forum was not able to reach an initial position on some matters when its Interim Engagement Report was published.
- The Customer Forum and AusNet Services noted that the phasing of the negotiations was challenging, because expenditure forecasts were only able to be firmed up towards the end of the negotiating period. As noted in our Second and Third Insights Reports, this raises questions to explore on whether the phasing of the New Reg process as laid out in the MOU is appropriate.¹⁸⁹

A key issue in considering the staging of the New Reg process is the timing of the negotiation in relation to the NSP’s business plan development process and the regulatory cycle. For example, if the negotiation on expenditure commences at an early stage, it is natural to expect variation in expenditure requirements. We also note that the structure of the negotiation phase relates to other process steps, such as when the scope of negotiations is defined. These observations are reflected in the discussion on Learning B.4 (see Section 4.2).

¹⁸⁴ Farrierswier (2018), pages 18-19.

¹⁸⁵ AER (2018b).

¹⁸⁶ MOU (2018), Clause 5(d).

¹⁸⁷ The Victorian Government’s Solar House program, announced in August 2018, heavily impacted AusNet Services’ expenditure forecasts, particularly its DER estimates.

¹⁸⁸ Customer Forum (2019), page iii.

¹⁸⁹ CEPA (2020), Insight 3.7.

B.1.2. Overall observations

Did the Customer Forum provide improved information to AusNet Services on its customers' perspectives and preferences?

In forming our overall conclusions on **TAF 1 – Engagement and representation**, we have considered the observations above and the discussion on **TAF 3 – Content of the regulatory proceedings** (see Section B.3 below). Overall, we note that:

- The information provided by the Customer Forum appears to have improved AusNet Services' understanding of its customers at the start of the process.
- Evidence from the trial indicates that the Customer Forum brought together a broad range of evidence to fulfil its functions, including evidence from individual customers and customer groups that had not been actively engaged in previous regulatory review processes.
- As noted above, there were concerns from some stakeholders around the extent to which the Customer Forum engaged with particular groups. In part, these concerns appear to reflect the design of the Customer Forum as a non-representative body, that was nonetheless required to 'represent' the views of all customers to the network.

B.2. SCOPE AND NEGOTIATIONS

B.2.1. Observations on the sub-factors

Was the 'Scope of Negotiations' appropriate?

Content of the scope

As discussed in detail in Section 2.2, the Customer Forum and AusNet Services were able to reach agreed positions on most of the topics that they discussed.

However, we also note that:

- The 'strength' of the agreements reached varied. Accordingly, the weight that the AER was able to place on agreed positions also varied. For example, the AER placed less weight on cases where the Customer Forum agreed with rationale for proposed expenditure, but referred the decision on efficiency to the AER.
- As discussed in **Finding 2.4** (Section 3.2.2), some stakeholders considered that the exclusion of certain topics from the scope – such as accelerated depreciation – limited the Customer Forum's ability to opine on the overall acceptability of the regulatory proposal.

Comparing the initial discussions on scope with the evidence produced through the trial indicates that it can be challenging to determine at a very early stage what issues a Customer Forum can and cannot deliver meaningful views on. For example, although innovation was not in the Scope of Negotiations agreed with the AER, the Customer Forum and AusNet Services were ultimately able to reach agreement on this issue that was accepted in the Draft and Final Decisions. On the other hand, opex, broadly, was included in the agreed scope on the basis that it would likely involve substantial price – service level trade-offs. However, this issue was not a particular feature of the negotiations for this trial, perhaps due to the nature of the opex forecast components that were proposed in this determination.

This is not to say particular issues should be ruled out of scope based on the evidence from this trial alone. However, it could suggest that a change in process may help the parties in defining a scope of negotiations that will provide the most value to the regulatory determination.

Process for defining the scope

As discussed in Section 2.1, the New Reg process involves the AER, the NSP and the Customer Forum agreeing a Scope of Negotiation. The Scope of Negotiation is intended to help ensure that negotiations are kept to those matters within the boundaries of the NER and NEL, to help with the efficiency of the process, and to ensure sufficient resourcing. The New Reg process also provides the Customer Forum and AusNet Services with the ability to negotiate on topics outside of the Scope of Negotiation, although these discussions are not supported by in-depth guidance from AER staff.

In this trial, the Customer Forum and AusNet Services did agree to discuss matters beyond the ‘AER assisted’ scope. The two parties indicated that they valued this flexibility. For example, the Customer Forum noted that once recruited it made sense for them to be able to consider the best scope to utilise their skill sets.¹⁹⁰ At the same time, experience from the early stages of the trial indicates that a flexible scope of negotiations can pose some resourcing challenges.

Mindful that one objective of the trial was to reduce the time and cost of the determination process, we have considered whether changes to other aspects of the New Reg process could balance the advantages and disadvantages of a flexible scope definition process. We have identified the following considerations that could be explored in future Early Engagement Processes:

- **A defined period of scope refinement.** The New Reg Directions Paper states that the Early Engagement Plan should provide a high-level indication of the matters proposed to be considered in scope, including whether the network business intended to engage with the Customer Forum on the whole proposal or on a subset of topics. If an alternative staging process were adopted, this could potentially permit a longer period of exploration and discussion on the scope, before a final, fixed Scope of Negotiations is agreed and formal negotiations on the regulatory proposal commence.
- **Refined criteria for including a matter within the Scope of Negotiations.** In its Early Engagement Plan for this trial, AusNet Services proposed a set of criteria for determining the Scope of Negotiation, which provided a flexible route to reaching agreement. However, as noted above, the evidence provided by the negotiations appears to have assisted the AER’s determination in some cases, and less so in others. It may therefore be appropriate to revisit the criteria for determining the scope of negotiations that were developed by AusNet Services at the outset of the trial to reflect these outcomes.

It is also relevant to note that a Customer Forum may not necessarily need to negotiate directly on a particular cost item, or comment on its efficiency, for customer preferences to be adequately and clearly reflected in the regulatory proposal. For example, AusNet Services has noted that a focus on affordability informed its overall capex proposal, although much of this was not expressly considered in the negotiations with the Customer Forum. This suggests that the range of detailed expenditure items for which the Customer Forum and NSP explicitly seek to reach agreement could potentially be reduced, without limiting the Customer Forum’s ability to influence the overall proposal.

- **Active review of the scope as the negotiations progress.** For example, the process may need to clarify when / how topics for negotiation should be dropped if the parties consider that they are not likely to reach a meaningful negotiated position. For example, the MOU (or equivalent) could set out how the scope is to be agreed, how changes can be formally agreed during the negotiations and how scope changes affect the roles of different parties.

These observations are reflected in the discussion on Learning B.4 (see Section 4.2).

¹⁹⁰ Farrierswier (2019), page 12.

Did the Customer Forum understand, and did they have the ability to negotiate, the topic/ issues?

Criteria for selecting the Customer Forum were set out in the Early Engagement Plan, which was agreed by the AER and ECA. The AER and ECA also received and commented on a shortlist of candidates. The trial monitoring reports indicated that the Customer Forum, AusNet Services and AER staff considered that the Customer Forum had a good mix of skills.¹⁹¹

Following its establishment, the Customer Forum received training from AusNet Services, with the AER being provided the opportunity to comment on the training material. The Customer Forum was informed by AER staff guidance notes and support from AER staff on some matters. The Customer Forum also requested that AusNet Services engage technical support to provide an independent technical view on aspects of its proposal (e.g. in relation to options analysis for the Clyde and Doreen substation auxes).

At the conclusion of the negotiation, the Customer Forum indicated that it received adequate support from both AusNet Services and AER staff to allow it to fulfil its role and responsibilities. However, the Customer Forum also considered that areas of the training process and the ongoing level of administrative support could be improved.¹⁹² For example, in relation to the induction and training, the Customer Forum considered that the induction process would have benefitted from *“early and direct briefings from the AER and DELWP on their regulatory regimes and perspectives, rather than the Customer Forum second-guessing the roles of these and other agencies.”*¹⁹³ AusNet Services explained that it had found it useful to recap the induction materials throughout the process, given the time elapsed between the induction and the final negotiations, and that *“some of the later AER guidance would have benefitted from doing this too.”*¹⁹⁴ In relation to resourcing, the Customer Forum’s suggestions include the provision of secretarial services (for example, document management, meeting coordination) and dedicated meeting space.¹⁹⁵

We can observe that the Customer Forum’s skill set and training allowed it to challenge AusNet Services on a range of issues, including:

- Customer engagement – for example, the Customer Forum’s input reshaped AusNet Services’ engagement programme.
- Customer experience – for example, the Customer Forum negotiated outcomes such as the CSIS, and the establishment of a Community Liaison Officer and a Commercial and Industrial Liaison Manager. In this way, the Customer Forum was able to influence the outputs delivered within AusNet Services’ opex allowance.¹⁹⁶
- The cost of some expenditure proposals – as detailed under **TAF 4 – Impact on AusNet Services’ proposal** in Section B.4 below.
- Business practices – for example, the Customer Forum challenged how AusNet Services assesses and pays Guaranteed Service Levels (GSLs).¹⁹⁷

¹⁹¹ Farrierswier (2019).

¹⁹² Farrierswier (2020), page 16.

¹⁹³ Customer Forum (2020), page 52.

¹⁹⁴ Farrierswier (2020), page 28.

¹⁹⁵ Customer Forum (2020), page 53.

¹⁹⁶ Customer Forum (2020), page 16.

¹⁹⁷ Customer Forum (2020).

- Options analysis – for example, the Customer Forum encouraged AusNet Services to improve how it presents cost-benefit information on its repex options assessment

As discussed in Section 2.2, in this trial the Customer Forum was not always able to reach a definitive view on acceptable costs for some building block items covered by the negotiations. An emphasis on different skills – for example, economic, engineering and/or regulatory expertise – or a greater level of technical support could potentially have assisted the Customer Forum to reach a position on these issues.

Were the negotiations conducted in an appropriate manner?

The New Reg process emphasised the need for the Customer Forum to make its decisions independently and transparently, in order for stakeholders to have confidence in the process and to allow the AER to place weight on the outcomes of the negotiation.

Evidence from the monitoring reports suggests that the AER staff, the Customer Forum, and AusNet Services assessed that the Customer Forum had been acting independently.¹⁹⁸ This view appears to be largely shared by other stakeholders who provided feedback during the process. For example, the majority of respondents (10/11) to the customer and customer advocate survey considered that the Customer Forum was independent from AusNet Services in its engagement and representation.¹⁹⁹

Among the respondents to the Customer Survey²⁰⁰ who expressed a favourable view of the Customer Forum's independence, two provided further explanation of their response. These respondents indicated that the main factors contributing to their views were:²⁰¹

- The observed conduct of the Customer Forum during deep dive sessions.
- The content of the Engagement Report and the breadth of topics that the Customer Forum was able to challenge AusNet Services' position on.
- The number of positions put forward by the Customer Forum that AusNet Services agreed to (for example, in relation to opex productivity).

In one respondent's view, this indicated a more balanced negotiating position than that observed through the participation of consumer advocates.²⁰² One respondent did consider that the Customer Forum was not fully independent of AusNet Services. The reasons cited were that:

- the composition of the Customer Forum was influenced by AusNet Services; and
- the knowledge base the Customer Forum relied upon was largely provided by AusNet Services.²⁰³

Overall, this indicates that the Customer Forum was able to maintain its independence throughout the process. Based on the customer and customer advocate feedback, key factors appear to have been the visibility and transparency of the Customer Forum's activity in representing customer views, in addition to the ability of Customer Forum members to demonstrate their grasp of the detail. The Customer Forum has also noted that the Interim

¹⁹⁸ Farrierswier (2019), page 17.

¹⁹⁹ Farrierswier (2020), page 26.

²⁰⁰ Conducted as part of Monitoring Report 3.

²⁰¹ Farrierswier (2020), page 46 and 48.

²⁰² Farrierswier (2020), page 46.

²⁰³ Farrierswier (2020), page 47.

Engagement report was a useful tool for engaging with and building their credibility with customers and customer advocates at an early stage in the process.²⁰⁴

A majority of respondents to the customer and customer advocate survey (9/11) also considered that the Customer Forum operated in an open and engaging way.²⁰⁵ However, the Customer Forum has noted that the limited resources of community and welfare advocates may have inhibited the extent of their engagement.²⁰⁶

We note several aspects of the New Reg process, as applied in this trial, that impacted independence and transparency:

- In our view the **composition, seniority, and experience** of the Customer Forum members resulted in a body that was confident in conducting its role without being influenced by its employment arrangements. For example, this view is evidenced by the Customer Forum's ability to influence AusNet Services' customer research programme. The Monitoring Reports also indicated a consistent view from the Customer Forum that it was comfortable challenging the approaches and positions of both AusNet Services and the AER.
- **Governance mechanisms** – which included publishing minutes of the meetings between the Customer Forum and AusNet Services and the publication of both a draft and final engagement report – likely contributed to the view that the Customer Forum acted independently. However, we note that more material could have been made publicly available at earlier stages of the trial, such as minutes from the initial meetings and clearer explanations of why AusNet Services' consumer engagement changed in the way it did. As noted in TAF 1, there may be opportunities to strengthen communication and accountability arrangements in relation to the visibility of AusNet Services' broader customer engagement program and the way in which the Customer Forum interacts with other stakeholders during the process.
- In a process of this type, there is also a risk of 'capture' of the Customer Forum by the NSP. This risk is greater if the NSP is the main source of information. Therefore, the **AER's involvement** throughout the process helps to alleviate this issue, in addition to the other transparency arrangements noted above. The publication of Guidance Notes by AER staff provided opportunities for other stakeholders to observe the regulator's views on the evolving trial outcomes.

B.2.2. Overall observations

Did the Forum adequately and appropriately represent customers' perspectives and preferences during the negotiations?

Overall, we observe that:

- The New Reg process appears to have been largely successful in allowing the Customer Forum to maintain independence and transparency throughout the process.
- The Customer Forum was able to use its skill set to challenge AusNet Services on how its regulatory proposal and broader business practices adequately reflected customer preferences.
- The Engagement Reports provided a clear link between the findings from customer engagement and the Customer Forum's positions. In many cases, as noted under **TAF 3 – Content of the regulatory proceedings** (see Section B.3 below), this was through general 'themes' that cut across multiple topics of negotiations. The identified perspectives and priorities were not generally aligned to specific expenditure

²⁰⁴ Customer Forum Interview, 18 March 2020. As noted in Farrierswier (2020) (page 35), trial participants generally considered that the Interim Engagement Report was a valuable process step, for a variety of reasons.

²⁰⁵ Farrierswier (2020), page 26.

²⁰⁶ Customer Forum (2020), page 56.

proposals, which meant that the Customer Forum also relied on input from the AER and its own analysis to reach conclusions.

- The Customer Forum was not always able to use its understanding of customer preferences to reach a definitive view on acceptable costs for some building block items. This suggests that when considering the skill set of and support provided to future Customer Forums, attention is given to the expectations for the Customer Forum's role.
- The range of evidence considered by the Customer Forum indicates that they considered the breadth of AusNet Services' customer base. Some groups did not consider that the engagement had been frequent or deep enough. This relates to our observations under TAF 1 (engagement and representation) around clarity on the broader engagement process and governance arrangements for future Customer Forums to demonstrate accountability to the NSP's customers.

B.3. IMPACT ON THE CONTENT OF THE REGULATORY PROCEEDINGS

B.3.1. Observations on the sub-factors

What customer priorities and preferences were identified and negotiated during the trial process?

Table B.1 below summarises the priorities and preferences that the Customer Forum identified during the trial, and how this shaped its negotiation positions. We have grouped this into the discrete topics of negotiation, drawing on the evidence cited by the Customer Forum on each topic.

Table B.1: Customer priorities and preferences

Negotiation topic	Identified priorities and preferences	Influence on the Customer Forum's negotiating position
Operating expenditure	Customers are concerned about the cost of energy.	The Customer Forum did not generally rely on direct evidence of customer priorities and preferences to inform its positions on specific opex items. However, customers' broad expectations on price relief and prudent expenditure informed the Customer Forum's 'general' position in the negotiations on opex. This was to push AusNet Services to demonstrate that its proposals were prudent and offered demonstrable benefits for customers.
	Significant impact on low-income households of rising electricity costs.	
	Customers expected price relief. ²⁰⁷	
	Customer were indifferent to the choice of 2018 or 2019 as the opex base year. ²⁰⁸	
Augmentation expenditure	Reliability is important for customers and they believe that AusNet Services should work to maintain current levels. ²⁰⁹	The Customer Forum drew on two main sources of evidence to inform its position on augex. These were a survey of customers

²⁰⁷ Customer Forum (2020).

²⁰⁸ Customer Forum (2020), page 14.

²⁰⁹ Customer Forum (2019), page 24. Customer Forum (2020), page 20.

Negotiation topic	Identified priorities and preferences	Influence on the Customer Forum's negotiating position
	<p>Customers supported efforts to reduce peak demand in the short to medium term.²¹¹</p> <hr/> <p>When augmentation expenditure is required, the cost should be borne by all customers.²¹²</p>	<p>directly affected by the proposed Clyde and Doreen zone substation projects, and a broader survey of customer attitudes on how the cost burden of network upgrades should be shared. The Customer Forum noted some limitations to this evidence. For example, due to the high non-response rate and low sample size for the survey, the Customer Forum treated the results with caution.²¹⁰</p> <p>In addition to the findings from this research, the Customer Forum conducted its own analysis to verify the extent of anticipated demand growth and test AusNet Services' augex proposal.</p>
Customer experience and hardship arrangements	<p>Customer service and information provision is particularly important during planned and unplanned outages, and when customers are seeking to resolve service issues.²¹³</p> <hr/> <p>Customers expressed a lack of effective communication around planned outages.²¹⁵</p> <hr/> <p>Customers are not homogenous, and have varying needs and expectations in relation to customer service and the reliability of their electricity supply.²¹⁶ For example, the evidence cited differing requirements of diverse groups, including dairy farmers, large energy consumers and vulnerable customers.</p>	<p>The Customer Forum gathered evidence from a wide range of customers to build up a picture around the adequacy of AusNet Services' customer service.</p> <p>The identified issues made this a key focus area in the negotiations.</p> <p>Negotiations around customer experience revolved around additional services as the Customer Forum believed customer preferences could not be adequately captured in revenue determination by building block.²¹⁴</p>
Replacement expenditure	<p>Customers are generally happy with the level of outages and are more tolerant of outages if they are provided with accurate up to date information.²¹⁷</p> <hr/> <p>Important that current levels of reliability are maintained.²¹⁸</p> <hr/> <p>Views on reliability differed across different groups. For example, the current</p>	<p>As with augex, the Customer Forum drew on research from customers who would be directly affected by the proposed repex projects. This included evidence around the willingness of residential and business customers to pay for reliability improvements, although we note that due to the current charging arrangements, the actual cost incidence of these projects will not fall only on these customers.</p>

²¹¹ Customer Forum (2019), page 24. Customer Forum (2020), page 20.

²¹⁰ Customer Forum (2019), page 24. Customer Forum (2020), page 21.

²¹² Customer Forum (2020), page 21.

²¹³ Customer Forum (2020), page 24.

²¹⁴ Customer Forum (2019), page 27

²¹⁵ Customer Forum (2020), page 25.

²¹⁶ Customer Forum (2020), page 26.

²¹⁷ Ibid, page 30.

²¹⁸ Ibid, page 31.

Negotiation topic	Identified priorities and preferences	Influence on the Customer Forum's negotiating position
	frequency and duration of outages in some areas and for some business customers was considered unacceptable. ²¹⁹ Life support customers were highlighted as group with unique requirements. ²²⁰	The Customer Forum also considered broader evidence of general customer attitudes on how the cost burden of reliability improvements should be shared, although noted that the research it relied upon was not precisely targeted at this issue.
Innovation expenditure and distributed energy resources	Although some customers supported innovation expenditure it was seen as a low priority, particularly in relation to electric vehicles. ²²¹	The Customer Forum used its findings to inform its position on the focus of AusNet Services' innovation proposals (e.g. a primary focus on DER integration, as opposed to electric vehicles). The cited desire for evidence of the benefits to consumers appeared to influence the governance arrangements that the Customer Forum negotiated (e.g. the principles that proposed projects should meet, reporting arrangements and the interaction with the EBSS). We did not identify the use of specific customer research that informed the Customer Forum's position in relation to the value of the innovation allowance.
	Customers expressed strong interest in installing rooftop solar and expected solar exports would be unrestricted. ²²²	
	Where innovation expenditure was supported, customers wanted to see evidence of the expected consumers benefits and accountability for the spend. ²²³	
Metering	In general, customers do not identify value in having a smart meter. ²²⁴	This was reflected in the Customer Forum's recommendation for improved communication on the benefits of smart meters.
Price path	Customer expected price relief and affordability of electricity is a significant concern. ²²⁵	This fed into the agreed position on the revenue path profile.

Did these priorities and preferences reflect all or a subset of AusNet Services' customers?

The Customer Forum engaged with a wide range of different customers and broader stakeholders to inform its negotiation positions. The range of customer groups and broader stakeholders that the Customer Forum engaged with is summarised in Figure B.1 below, suggesting that the Customer Forum's engagement broadly covered the full spectrum of AusNet Services' customer base. This view is also supported by the customer research cited in the Interim and Final Engagement Reports, which emphasises the diverse requirements on AusNet Services' customers. The Customer Forum has indicated to us that it deliberately sought to include in this engagement customers that had not previously been engaged with in the context of a regulatory review process.²²⁶

²¹⁹ Customer Forum (2020), page 32.

²²⁰ Ibid.

²²¹ Ibid, page 36.

²²² Ibid, page 37.

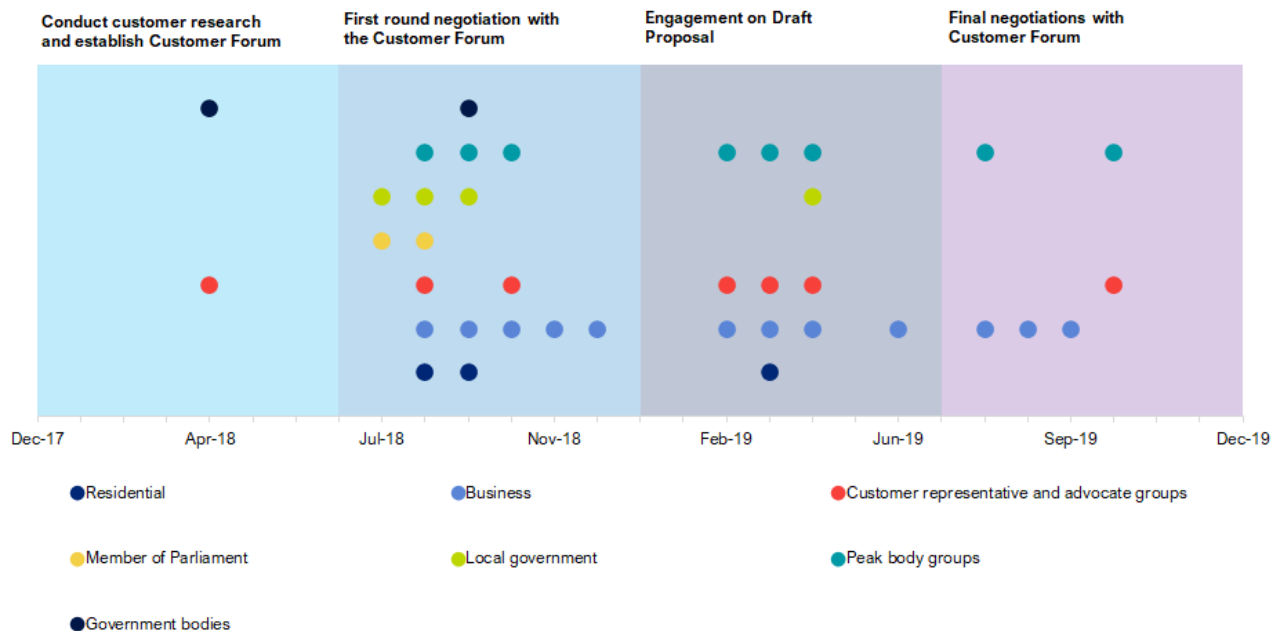
²²³ Ibid, page 41.

²²⁴ Ibid.

²²⁵ Customer Forum (2019), page 41.

²²⁶ Customer Forum (2021).

Figure B.1: Customer Forum meetings with customers and stakeholders



Source: Customer Forum (2020), CEPA analysis. A detailed summary of the parties that the Customer Forum met with can be found in the Final Engagement Report.

We note that some customer representatives would have liked deeper and more frequent engagement with the Customer Forum throughout the process. This is discussed in detail in Section 3.2.2.

Did these represent the long-term interests of consumers?

The Customer Forum reported some challenges in relation to this aspect of its role. For example, the Customer Forum found that while long-term impacts are considered important, the concerns and issues raised by customers typically relate to the near term. While noting that the National Electricity Objective (NEO) specifically requires the AER to promote the long-term interests of consumers (both current and future), the Customer Forum considers it is important that short-term customer perspectives are also recognised and responded to as part of the determination process.²²⁷ At the same time, the Customer Forum ultimately “*did not form the view that short-term and long-term interests are incompatible*”.²²⁸

We note that the trade-offs between long- and short-term interests, or the interests of current and future customers, were not always explicitly identified in the Customer Forum’s engagement reports. In our Third Insights Report, we noted that innovation funding is an area where a Customer Forum may in future need to consider additional sources of evidence on whether the concerns and preferences of future customers are different from those expressed by current customers.²²⁹ For example, in relation to innovation funding, the Customer Forum cited research indicating that AusNet Services’ current “*customers did not believe [expenditure to support electric vehicles] was important, nor did they believe innovation in this area was AusNet Services responsibility*”.²³⁰

²²⁷ Customer Forum (2020), page 57.

²²⁸ Customer Forum (2020), page 57.

²²⁹ We note that in practice, the difference might not be significant.

²³⁰ Customer Forum (2020), page 37.

However, although forecasts for DNSPs' services are important to determining the services that future customers may demand, the Customer Forum only mentions electric vehicle uptake forecasts in passing: "*possible (but unknown) growth in electric vehicles*".²³¹ In our view, a discussion of the evidence on the future use of electric vehicles would have helped support readers of the Final Engagement Report to understand how the interests of current and future customers were considered in this particular case.

On the other hand, these issues do not appear to have been a concern for the AER in accepting positions agreed between the parties. This is evidenced by the AER's ability to accept most positions that the parties agreed to, including in relation to innovation funding. Indeed, on some issues where a perceived conflict between 'long-term' and 'short-term' interests existed, the Customer Forum was in fact able to present evidence of customer views on both aspects (for example, in relation to the price path).

Overall, the evidence suggests that while this was not a particular issue for this trial, future Customer Forums might benefit from further guidance on what this aspect of their role requires.

Did early engagement influence the focus areas for the regulatory review? To what extent did customer engagement, and therefore customers' priorities and preferences, drive the focus of the Customer Forum and AusNet Services' negotiations?

For this trial, the Customer Forum was not engaged until after:

- An initial Scope of Negotiations had been agreed between the AER and AusNet Services;
- AusNet Services' planning of its customer engagement had begun; and
- AusNet Services had developed an initial negotiating position, although the business noted that this position covered issues and questions where it did not yet have a firm view.²³²

This means that the direction and focus of the negotiations was, in part, determined before the Early Engagement Process commenced. Further, the structure of the negotiations largely followed the building blocks approach (i.e. Scope of Negotiations reflected the operating expenditure (opex) block, the augmentation expenditure (augex) block, the major replacement expenditure (repx) block, etc.).

Nonetheless, the Customer Forum was able to influence the focus areas of the negotiations, informed by its understanding of customers' priorities and preferences. We note two examples:

- The Customer Forum and AusNet Services agreed to discuss topics that were not in the Scope of Negotiations initially agreed between AusNet Services and the AER.
- Based on the information it gathered, the Customer Forum was able to bring a strong focus on service standards to the Early Engagement Process, which cut across multiple aspects of the negotiations.

Did the negotiation between the Customer Forum and AusNet Services lead to any new and/or innovative issues, driven by stated preferences of customers, forming part of the regulatory outcomes of the proceedings?

The main innovation arising from the negotiations related to the stronger focus on customer service standards in the development of the regulatory proposal. A key issue highlighted in this trial is the existing building blocks assessment framework does not explicitly consider the service levels that customers require.²³³

²³¹ Customer Forum (2020), page 37. The Customer Forum also notes research that 35% of customers showed an interest in buying electric vehicles in the future.

²³² Farrierswier (2018) page 14.

²³³ Customer Forum (2019), page 27.

As discussed in Section 2.2, the theme of customer service influenced the discussions between the Customer Forum and AusNet Services on particular expenditure proposals and on a broader suite of initiatives to deliver the service levels that customers require.

B.3.2. Overall observations

What customer priorities and preferences did the New Reg process identify?

Our overall observations for this TAF are that:

- There were clear themes that shaped the Customer Forum's overall approach to all the negotiation topics. These were consumers' views and concerns around (i) affordability, (ii) the quality of customer service and (iii) the impact of reliability and the varying impact of outages for different types of customers.
- The Customer Forum identified detailed information around customer service-related concerns in particular, building up an evidence base from the views of many different customers.
- With a few exceptions, the Customer Forum did not generally identify detailed priorities and preferences in relation to specific building block items that it discussed with AusNet Services. In many cases, the Customer Forum used the overarching findings of its research to encourage AusNet Services to consider affordability and customer service in relation to all its expenditure proposals and its broader business processes. The Customer Forum also combined these broad findings with its own analysis to challenge the details of specific expenditure proposals.
- As noted above, the building blocks for which the Customer Forum did identify specific priorities and preferences included:
 - Augex and repex, where the Customer Forum drew on evidence of the service reliability expectations of customers that were specifically impacted by the proposed works.
 - General attitudes around the importance of DER integration informed the Customer Forum's positions on the proposed innovation allowance. Customers' desire for accountability on innovation spending influenced the governance mechanisms that were agreed in relation to this expenditure.

B.4. IMPACT ON AUSNET SERVICES' PROPOSAL

B.4.1. Observations on the sub-factors

Did AusNet Services adopt all or only parts of the negotiated positions set out in the Customer Forum's Engagement Report(s)? Where AusNet Services did not adopt the same position as the Customer Forum, what was the rationale for this?

While the positions of the parties evolved over the course of the negotiations, ultimately the final positions reached by the Customer Forum and AusNet Services were largely aligned. In the Final Engagement report, there were no instances where the Customer Forum expressly disagreed with the position put forward by AusNet Services in the regulatory proposal. As discussed below, there were varying degrees of support for different aspects of the regulatory proposal.

Outcomes of the Early Engagement Process

The outcomes at the conclusion of the Early Engagement Process can be summarised under three categories:

- **Full agreement.** In some cases, the Customer Forum was able to draw on its understanding of consumers' preferences and its own analysis to reach agreement that proposed activities were necessary *and* that the proposed expenditure was reasonable. For example, this was the case in relation to an innovation allowance to support the integration of DER, and in relation to an IT Cloud opex step change to implement CRM and Outage Management systems.

- **In principle agreement.** In other instances, the Customer Forum expressed in principle support for the activity proposed by AusNet Services, subject to the AER's assessment that the proposed costs were efficient. For example, this was the case for opex changes related to bushfire mitigation.
- **Referred to the AER.** In a couple of cases, the Customer Forum was not able to form a view on AusNet Services' proposals. For example, this was the outcome in relation to proposed expenditure to satisfy cyber security requirements set by AEMO²³⁴, and in relation to the selection of the opex base year.

The direct outcomes of the negotiation process on the in-scope topics are summarised in Table B.2.

Table B.2: Summary of negotiated outcomes for in-scope topics (costs reported in 2021 prices unless otherwise noted)

Topic	Regulatory Proposal	Outcome of the negotiations
Opex – Base year	2018 was proposed as the base year.	Referred to AER The Customer Forum <i>“was unable to agree that 2018 was an efficient base year as determined by the AER [and] notes the AER will determine the base year efficiency”</i> . ²³⁵
Opex - Adjustments	AusNet Services proposed to: <ul style="list-style-type: none"> • Remove \$4.5m per annum from its base opex, to reflect the revised treatment of lease capitalisation under Australian Accounting standard AASB 16. • Remove \$2.4m per annum relating to the Energy Safe Victoria (ESV) levy from base opex and instead recovery is through an annual ‘L factor’ adjustment in the price control formula. 	Partial agreement The Customer Forum <i>“accepted”</i> the proposed step change related to the accounting treatment of leases. ²³⁶ We did not identify negotiation around the treatment of the ESV levy.
Opex – Trend – Inflation	The proposal reflected a placeholder inflation forecast of 2.45%. ²³⁷	Full agreement The Customer Forum considered that <i>“for the trend parameter, AusNet Services’ population and labour cost escalation estimates ... were reasonable.”</i> ²³⁸
Opex – Trend – Growth	AusNet Services proposed output growth rates of 1.4% on average over the regulatory period. ²³⁹	Full agreement Agreed saving of \$21m compared to the initial negotiating position. The Customer Forum noted that it had <i>“initially sought [productivity savings of] at least 1.5% but agreed to a compromise final figure of around 1%”</i> .
Opex – Trend – Productivity	The final proposal reflected the AER's mandatory 0.5% adjustment, plus agreement from AusNet Services to absorb several proposed step changes totalling \$21m (in total over regulatory	

²³⁴ We note that the regulatory requirements driving this step change had not been finalised prior to the conclusion of the negotiations.

²³⁵ Customer Forum (2020), page 12.

²³⁶ Ibid., page 13.

²³⁷ Ibid., page 211.

²³⁸ Ibid., page 12.

²³⁹ Ibid., page 150.

Topic	Regulatory Proposal	Outcome of the negotiations
	period). ²⁴⁰ AusNet Services considered that overall this was equivalent to a 1% productivity figure.	
Opex – Step Change – Bushfire mitigation	\$5.9 million was proposed to deploy REFCL technology to support bushfire mitigation, over and above amounts rolled forward in AusNet Services’ opex base year.	<p>In principle agreement</p> <p>In its final negotiation position notes, AusNet Services reported that <i>“the REFCL step change has been reduced as the AER identified an error in our quantification approach and is now only \$5.9m.”</i>²⁴¹</p> <p>The Customer Forum noted that it <i>“was unable to comprehensively determine the REFCL testing step change of \$6.0 million (\$2021) due to its highly technical nature but agreed to it subject to the AER being satisfied it was warranted.”</i>²⁴²</p>
Opex – Step Change – Electricity market settlement	\$3.6m was proposed in relation to the implementation and support costs for upgraded systems to support 5-minute settlement.	<p>In principle agreement</p> <p><i>“The Customer Forum accepted AusNet Services’ five-minute metering step change proposal, subject to the AER being satisfied the revenue sought fairly covered the cost involved of this mandatory change.”</i>²⁴³</p>
Opex – Step Change – Cloud-based IT	\$2.6m was proposed to deploy a CRM IT system and an Outage Management system. ²⁴⁴	<p>Full agreement</p> <p>The Customer Forum agreed to the step change for proposed CRM and outage management systems, but did not agree to additional step changes for cloud-based IT systems. AusNet Services agreed to absorb the latter costs (\$5.3m) within its overall opex allowance.²⁴⁵</p> <p>The Customer Forum noted that it <i>“had earlier supported step changes for IT cloud expenditure proposed for CRM and Outage Management ... conditional on evidence being provided that other IT capex is reduced in a compensating amount... This evidence has since been provided, and the Customer Forum now supports this step change.”</i>²⁴⁶</p>

²⁴⁰ Ibid., page 17. These step changes included costs associated with the superannuation guarantee, increases in bushfire insurance, a demand management solution at Cranbourne Terminal Station, compliance with the amended *Environment Protection Act*, and proposed IT cloud costs (outside those IT cloud costs that the Customer Forum had agreed to support). The Customer Forum noted that *“AusNet Services claimed these changes were equivalent to a further 0.5% productivity adjustment.”*

²⁴¹ <https://www.ausnetservices.com.au/-/media/Files/AusNet/About-Us/Electricity-distribution-network/Master-document-Final-0209201902.ashx?la=en>

²⁴² Customer Forum (2020), page 12.

²⁴³ Customer Forum (2020), page 13.

²⁴⁴ AusNet Services (2020b), page 17.

²⁴⁵ AusNet Services (2020b), page 132-133.

²⁴⁶ Customer Forum (2020), page 17.

Topic	Regulatory Proposal	Outcome of the negotiations
Opex – Step change – Cyber security	\$7.4m to meet obligations determined by AEMO. ²⁴⁷	Referred to AER <i>“In relation to the cyber security step change, the Customer Forum was unable to comprehensively consider the cyber security opex step change request... due to time restrictions, given the Commonwealth Government is yet to publish a mandatory standard. While agreeing with AusNet Services that the changing global cyber threat environment could justify customer sourced expenditure, the Customer Forum referred the matter to the AER for decision.”²⁴⁸</i>
Opex – Category specific forecast – Metering reallocation	AusNet Services proposed to reallocate \$29.4m (in total) of forecast metering system IT opex from alternative control services (ACS) to standard control services (SCS) (i.e. in effect from metering charges to distribution use of system charges).	Full agreement <i>“The Customer Forum accepted this step change.”²⁴⁹</i>
Total opex	\$1,222m, across the full regulatory period. ²⁵⁰	Full agreement The Customer Forum considered that AusNet Services’ final position on opex was “ <i>acceptable from a customer perspective, within the context of an average price reduction of at least \$110 (\$2021) per customer per annum.</i> ” However, we note that this support was qualified, as the Customer Forum also concluded that the opex proposal “ <i>may be insufficient to satisfy some customers’ expectations.</i> ” ²⁵¹
Major growth projects (augex)	The final proposal reflected \$8m of capex for the Clyde North zone substation, to address growing demand.	Full agreement The negotiations focussed on two augex projects, the Clyde North and Doreen zone substations. AusNet Services withdrew the proposed Doreen zone substation project (\$5m), after revised demand forecasts indicated that the economic timing for the project had shifted beyond the regulatory period. AusNet Services noted that the Customer Forum was satisfied with the basis for the Clyde North zone substation, having considered the evidence of the independent report. ²⁵² The Customer Forum noted that “[c]ustomers served by the Clyde North Zone Substation can expect continued

²⁴⁷ <https://www.ausnetservices.com.au/-/media/Files/AusNet/About-Us/Electricity-distribution-network/Master-document-Final-0209201902.ashx?la=en>

²⁴⁸ Customer Forum (2020), page 12.

²⁴⁹ Ibid., page 13.

²⁵⁰ Customer Forum (2020), page 12.

²⁵¹ Customer Forum (2020), page 18.

²⁵² AusNet Services (2020b), page 72.

Topic	Regulatory Proposal	Outcome of the negotiations
Customer experience and hardship arrangements	<p>The proposal reflected three key elements on this topic:</p> <ul style="list-style-type: none"> • The introduction of a CSIS, where customer satisfaction levels above or below an agreed target will result in financial rewards or penalties. Under the financial incentive provided by the CSIS, 0.5% of revenue will be at risk. This matches the revenue at risk under the existing telephone answering parameter of the Service Target Performance Incentive Scheme (STPIS), meaning that the overall exposure of consumers to service improvement incentives remains the same. • The introduction of customer experience improvement initiatives, some of which AusNet Services agreed to implement immediately. Other customer experience improvements to be implemented in the upcoming regulatory period. • The introduction of an annual Customer Interaction and Monitoring Report (CIMR) that will report on whether the agreed customer experience improvements have been delivered. <p>AusNet Services reported that it was not seeking funding for these initiatives, other than funding for the CRM system (see above).</p>	<p><i>reliability and an acceptable level of outages. Customers' desire for reliability to be maintained is well supported by customer research.</i>"²⁵³</p> <hr/> <p>Full agreement</p> <p>The Customer Forum was satisfied with the agreed measures and associated accountability arrangements, noting that:</p> <p><i>"the range of measures agreed to by AusNet Services adequately recognises customer needs and expectations. Further, customers expect AusNet Services will continue to meet these improvements. Consequently, at the Customer Forum's request, AusNet Services has agreed to produce an annual Customer Interaction and Monitoring Report (CIMR) to hold itself to account."</i>²⁵⁴</p>
Revenue path profile. ²⁵⁵	<p>The revenue path profile maximised the real reduction that could be achieved in the first year of the regulatory period, when followed by steady prices in real terms over the remainder of the period.</p>	<p>Full agreement</p> <p>This position reflected the negotiations between the parties, with the Customer Forum agreeing that <i>"customers strongly preferred to receive the maximum cost reduction early in the EDPR and</i></p>

²⁵³ Customer Forum (2020), page 21.

²⁵⁴ Customer Forum (2020), page 27.

²⁵⁵ Note, this was generally referred to as 'price path' within the negotiation documents.

Topic	Regulatory Proposal	Outcome of the negotiations
		<i>avoid any subsequent real increases.”²⁵⁶ The Customer Forum considered that the proposed profile “responds to the primary need of customers for early and significant price relief, whilst also being easy to communicate and understand”.²⁵⁷</i>
Major asset replacement (replex)*	The proposal reflected \$78 million for major repex projects, reflecting upgrades of seven zone substations.	<p>Full agreement</p> <p>Following the Customer Forum’s input, which included additional customer research, AusNet Services’ Final Proposal reflected the deferral of one repex project, bringing forward another to the current regulatory period, and reductions in the scope of several other projects. This resulted in the proposed cost of major repex projects decreasing from \$102 million (\$2020) in the initial negotiating position to \$78 million (\$2020), a reduction of \$24 million²⁵⁸</p> <p>The Customer Forum noted that “<i>after extensive negotiation, [they] agreed with AusNet Services, that AusNet Services would refurbish seven zone substations across its network.</i>” The refinements to AusNet Services’ proposals “<i>included project deferrals proposed by the Customer Forum, where they did not materially impact on likely reliability outcomes for customers.</i>”²⁵⁹ In reaching its position, the Customer Forum “<i>noted the AER advice that the view of all customers, not just those served by the zone substations to be upgraded, should be considered</i>”.²⁶⁰</p> <p>AusNet Services noted that “<i>through [their] engagement with the Customer Forum and by updating our modelling we were also able to respond to the feedback received from customers and ensure that each individual project was economically justified, and that expenditure/risk trade-offs were made where possible. Importantly, because of the overall reduction in our repex proposal, our proposal makes significant steps in addressing our customers’ affordability concerns.</i>”²⁶¹</p>
DER integration*	<p>The proposed DER integration program included \$52.9 million of capex, which included:</p> <ul style="list-style-type: none"> \$20.6m voltage compliance program. 	<p>In principle agreement</p> <p>AusNet Services noted that “<i>[t]he Customer Forum has supported our DER program on the</i></p>

²⁵⁶ Customer Forum (2020), page 48.

²⁵⁷ Ibid., page 49.

²⁵⁸ AusNet Services (2020b), page 73-75.

²⁵⁹ Customer Forum (2020), page 29.

²⁶⁰ Customer Forum (2020), page 33.

²⁶¹ AusNet Services (2020b), page 74-75.

Topic	Regulatory Proposal	Outcome of the negotiations
	<ul style="list-style-type: none"> • \$20.96m DER hosting capacity program. • \$8.98m ICT expenditure to support better network management. 	<p><i>basis that the AER will assess the cost forecasts.</i>²⁶²</p> <p>The Customer Forum noted that <i>“the evidence has established a strong customer preference for unconstrained solar energy export, [which] AusNet Services’ proposed DER expenditure addresses”</i>.²⁶³ Further, <i>“[c]ustomer research indicates customers believe it is reasonable that augmentation costs to support solar connections should be shared among customers. With this in mind, and the agreements above, the Customer Forum supports AusNet Services’ proposed investment as value for money for customers.”</i>²⁶⁴</p> <p>The Customer Forum also considered that transparency measures were needed to enhance consumer confidence that this expenditure would deliver the purported benefits. To this end, the parties agreed that AusNet Services would:²⁶⁵</p> <ul style="list-style-type: none"> • Publish an annual statement, showing where DER related spend has occurred. • Recover the full negotiated amount only to the extent that it is spent on delivering DER-related benefits (i.e. funds not used for this purpose would not be added to the RAB). • To the extent that it is economic for AusNet Services to further augment the network to enable additional exports (beyond the level envisaged in its DER proposal), the business would partially fund this.
Innovation expenditure*	<p>An allowance of \$7.5m (\$1.2m as a category specific opex forecast and the remainder as capex) was proposed. The focus was on projects related to the integration of DER (the proposed projects were additional to the DER allowance discussed above). The proposal reflected governance and knowledge sharing arrangements agreed with the Customer Forum.</p>	<p>Full agreement</p> <p>The Customer Forum negotiated a reduction to the \$10.8m innovation allowance initially put forward by AusNet Services.</p> <p>The negotiations shaped the composition of the proposal, reflecting criteria put forward by the Customer Forum.</p> <p>AusNet Services noted that <i>“[t]he Customer Forum has agreed that we can propose up to \$7.5 million on the basis that it is only spent on innovation and any unspent allowance is returned to customers if not spent. ... In agreement with the Customer Forum, we have focused our innovation projects on addressing DER uptake and the energy sector transition, which are the areas of greatest concern to customers. Where</i></p>

²⁶² AusNet Services (2020b), page 75.

²⁶³ Customer Forum (2020), page 42.

²⁶⁴ Customer Forum (2020), page 31-32.

²⁶⁵ Customer Forum (2020), page 43.

Topic	Regulatory Proposal	Outcome of the negotiations
		<p><i>there was weaker customer support (e.g. for electric vehicles preparation), this is not in our proposed innovation program.</i>²⁶⁶</p>
Smart metering*	<p>Proposed a revenue requirement of \$292.9m (nominal) for type 5 and 6 metering services (including smart meters).</p> <p>AusNet Services reported that its proposal resulted in an average annual metering charge of \$66 per customer (type 5 and 6 meters) over the regulatory period. AusNet Services noted that this figure represented a \$30 (31%) reduction from average charges in the 2016-20 period. Of this, \$7 (7%) related to a revised allocation of metering system IT opex and capex from ACS to SCS (i.e. from metering charges to distribution use of system charges).²⁶⁷</p>	<p>Full agreement</p> <p>The Customer Forum had previously challenged AusNet Services on proposed costs to transition from 3G to 4G. Ultimately, the Customer Forum agreed that these costs (\$8.4m, included within AusNet Services' overall revenue proposal) were justified.²⁶⁸</p> <p>The parties agreed that, no later than the end of 2021, AusNet Services would remove charges for remote connection and de-energisation undertaken during business hours. This was estimated to provide a saving to customers of \$750,000 per annum.²⁶⁹</p> <p>Noting this, and the reduction in average metering charges relative to the previous regulatory period, the Customer Forum considered that AusNet Services' proposal "<i>adequately recognises the needs and expectations of customers</i>". In light of the benefits provided by smart meters, the Customer Forum was of the view that the proposal represented "<i>value for money</i>", although highlighted the importance of clearly communicating these benefits to consumers.²⁷⁰</p>
Overall 'reasonableness' of proposal*	<p>AusNet Services considered that its overall revenue proposal delivered an average cost reduction of \$110 per customer in the first year of the price control (relative to the previous year), with no real cost increases for the remainder of the period.</p>	<p>Full agreement</p> <p>Noting evidence that "<i>customer base affordability was a key concern to customers</i>", the Customer Forum considered that affordability "<i>should be a primary indicator of the overall reasonableness of AusNet Services proposals.</i>"²⁷¹</p> <p>With this criterion in mind, the Customer Forum considered that "<i>the revenue proposal represents overall value for money for customers</i>", in light of:²⁷²</p> <ul style="list-style-type: none"> • The overall average price reduction proposed by AusNet Services. • The benefits the Customer Forum had identified in the regulatory proposal. These included the maintenance of high reliability and safety levels, the removal of

²⁶⁶ AusNet Services (2020b), page 156.

²⁶⁷ AusNet Services, Regulatory Proposal Part IV, page 19.

²⁶⁸ Customer Forum (2020), page 44.

²⁶⁹ Customer Forum (2020), page 44.

²⁷⁰ Customer Forum (2020), page 47.

²⁷¹ Customer Forum (2020), page 51.

²⁷² Ibid.

Topic	Regulatory Proposal	Outcome of the negotiations
		remote connection and disconnection fees, the agreed customer service improvements, and the agreed accountability measures (e.g. the CIMR, DER reporting).
		We note that the Customer Forum did express some reservations around its ability to comment on this aspect of the proposal, given its limited visibility in relation to out of scope items. For example, the Customer Forum observed that <i>"[t]he scope assigned to the Customer Forum was narrow, yet it was asked to consider the overall reasonableness of the proposal. ... Future Customer Forums should be given greater visibility across the proposal."</i> ²⁷³

Source: CEPA analysis. * indicates topics outside the AER-assisted scope.

AusNet Services' revised proposal

Following the AER's Draft Decision, AusNet Services submitted a revised regulatory proposal in December 2020.²⁷⁴ In developing its revised proposal, AusNet Services re-engaged with the Customer Forum in addition to other stakeholders. The Customer Forum prepared a short memo, outlining its views on in-scope topics affected by the revised proposal.²⁷⁵ In the table below, we summarise the key outcomes from this stage of the process, for topics that were fully or partially agreed between the Customer Forum and AusNet Services in the Initial Regulatory proposal (that is, we do not reflect changes to topics that the Customer Forum referred to the AER).

Table B.3: Summary of AusNet Services' revised proposal (agreed, in scope topics)

Topic	Revised proposal
Opex – Category specific forecast – Metering reallocation	AusNet Services did not accept the AER's Draft Decision reallocation methodology and proposed a new methodology in its revised proposal. This resulted in a proposed revenue requirement of \$271.1 million (\$2021). ²⁷⁶ The Customer Forum did not opine on the allocation question, noting that <i>"it is not able to offer a view on the amount of meter sourced power quality data required to provide adequate insights to network operation"</i> , which formed the basis of AusNet Services' allocation methodology. ²⁷⁷
Augex (major projects)	AusNet Services noted that while the Doreen zone substation augmentation project was removed from its regulatory proposal because demand forecasts had changed, updated demand forecasts indicated that the project would now be economic, justifying its inclusion in their capex proposal. ²⁷⁸ However, AusNet Services decided not to add the project cost to its proposal, following discussions with the Customer Forum.
Opex – Step change – Bushfire mitigation	While this step change was accepted by the AER (with a minor amendment of \$0.1m to reflect forecast inflation), further information was sought in the Draft Decision, which AusNet Services provided, including an updated cost estimate. This reflected updates to inflation and expected Energy Safe Victoria amendments to testing obligations. Overall,

²⁷³ Farrierswier (2020), page 14.

²⁷⁴ AusNet Services (2020b).

²⁷⁵ Customer Forum (2020b).

²⁷⁶ AusNet Services (2020b), page 180.

²⁷⁷ Customer Forum (2020b), pages 2-3,

²⁷⁸ AusNet Services (2020b), page 57-58.

Topic	Revised proposal
	this accounted for a \$1.3m reduction in the original value of the proposed step change. ²⁷⁹ The Customer Forum did not comment on this proposal.
Opex – Step Change – Cloud-based IT	AusNet Services maintained that this \$2.6m proposal was reasonable and provided additional information to support its opex-capex trade-off justification. ²⁸⁰ The Customer Forum re-iterated its in principle support for the proposal, focussing on the expected customer service benefits. ²⁸¹
Opex – Trend – Growth	AusNet Services did not agree with the AER’s proposed rate of change and submitted a revised proposal. ²⁸² The Customer Forum did not comment on this issue.
Revenue path profile	AusNet Services noted that the AER’s Draft Decision did not reflect the profile agreed with the Customer Forum. ²⁸³ The Customer Forum did not comment on this issue.
Repex (major projects)	AusNet Services accepted the AER’s Draft Decision in relation to overall repex (as part of its overall Draft Decision on the capex allowance). However, it updated its forecast to reflect a number of changes, which did not relate directly to the project portfolio agreed with the Customer Forum. ²⁸⁴
Opex – Step change – Bushfire insurance premiums	<p>In the original regulatory proposal, bushfire insurance premiums formed part of the \$21m in identified step changes that AusNet Services agreed to absorb.</p> <p>In its revised proposal, AusNet Services combined step change and cost-pass through arrangement for this expenditure, noting significant changes in the insurance market.²⁸⁵ This included a \$10.5m step change from its base opex, reflecting insurance premium increases that had been identified in its most recent insurance renewals. In addition, AusNet Services proposed a pass-through for future premium increases over the regulatory period. The business considered that this reflected a risk trade off that was acceptable to its customers, as it limited the immediate cost increase to known expenditure requirements.²⁸⁶</p> <p>The Customer Forum noted that while <i>“it cannot draw on any specific research into customer preferences about the structure of insurance coverage”</i>, it <i>“believe[d] that customers would prefer to fund a deductible amount in the event that insurance is payable, rather than be forced to carry a higher insurance cost that may not be activated”</i>.²⁸⁷</p>

Source: CEPA analysis, AusNet Services’ revised proposal

How did AusNet Services reflect the negotiated positions of the Customer Forum and customers’ priorities and stated preferences in the presentation and content of its final regulatory proposal?

The positions agreed with the Customer Forum were listed in AusNet Services regulatory proposal, along with the findings of the customer engagement undertaken through the course of the trial.

²⁷⁹ AusNet Services (2020b), page 84-85.

²⁸⁰ Ibid., page 85-87.

²⁸¹ Customer Forum (2020b), page 2.

²⁸² AusNet Services (2020b), 81-82.

²⁸³ AusNet Services (2020b), page 42.

²⁸⁴ AusNet Services (2020b), page 50.

²⁸⁵ AusNet Services (2020b), page 87.

²⁸⁶ AusNet Services (2020b), page 89.

²⁸⁷ Customer Forum (2020b), page 2.

In our Second Insights Report, we noted that when read independently, the Draft Regulatory Proposal and the Interim Engagement Report did not always give the same impression of the positions reached by each party.²⁸⁸ However, our Third Insights Report noted that this issue had been largely resolved in the Final Regulatory Proposal and Final Engagement Report.²⁸⁹ Guidance from AER staff on the layout and content of the Final Engagement Report appears to have been helpful in this regard.

B.4.2. Overall observations

How did the Customer Forum's negotiations impact AusNet Services' final regulatory proposals?

Our overall observations are that:

- The Customer Forum and AusNet Services were able to reach agreed positions on most of the topics that they agreed to discuss, noting that there were varying degrees of agreement.
- The impact of the Early Engagement Process on the regulatory proposal covered:
 - The building block expenditure allowances that were reflected in AusNet Services' regulatory proposal. As noted above, compared to AusNet Services' initial negotiating position, the Initial Proposal reflected a \$53.6m reduction in proposed expenditure for in-scope negotiation topics. This reflected opex step changes that the business agreed to remove or absorb, changes to the portfolio of repex major projects and the magnitude of the proposed innovation allowance.
 - The service levels that the network committed to deliver under these proposed allowances.
- These positions were reflected in the Engagement Reports and AusNet Services' regulatory proposal. This largely was largely organised around the individual building blocks of the regulatory proposal.

B.5. IMPACT ON THE DETERMINATIONS

B.5.1. Observations on the sub-factors

To what extent did AER's draft and final determination(s) reflect the engagement and negotiations between AusNet Services and the Customer Forum?

Where the AER adopted a different position to the negotiated positions and outcomes of the early engagement process, what was the reason for this?

Below, we summarise the outcomes at the Draft and Final Decision stages.

Outcomes of the Draft Decision

In making its Draft Decision, the AER followed its standard assessment process. As described in Box B.1 this was the approach envisaged at the outset of the AusNet Services trial.

Box B.1: The AER's assessment process

The New Reg Directions Paper envisaged that, for the purpose of trialling the New Reg process, the AER would follow its standard assessment approach in reaching its Draft Decision:

"... for the purposes of a trial, the AER may expedite its regulatory process only after the draft decision stage to allow for consultation on the outcomes of the Early Engagement Process. This is for two principal reasons:

²⁸⁸ CEPA (2019).

²⁸⁹ CEPA (2020).

- it is important for all stakeholders to have an opportunity to fully understand the trial of the New Reg process and to be heard if there are further concerns
- changing the timeline of a revenue determination for one business could create practical problems in managing the process. The AER is required to assess a high number of regulatory proposals every year. The process of publishing proposal and decision documents—whilst managing confidentiality claims—creates significant logistical challenges.”²⁹⁰

AusNet Services’ Early Engagement Plan was consistent with this position.²⁹¹

The Directions Paper noted that for future processes, “the AER may, where it considers appropriate, shorten its determination process—although some limitations exist under the Rules.”²⁹²

Overall, the AER’s Draft Decision in relation to **opex** was 3.7 per cent lower than AusNet Services’ proposal. Of this, the majority – 3.1 percent – related to the impact of economic conditions on real price effects and output growth. In its Draft Decision, the AER noted that:

“We have reviewed AusNet Services’ total opex proposal and find it is largely reasonable, with the main difference to our alternative estimate being the impact of unforeseen changes in economic conditions on the rate of change as a result of COVID-19. Without these changes in economic conditions impacting the rate of change we would have been likely to accept AusNet Services’ proposal.”²⁹³

Similarly, in relation to **capex**, the AER found that:

“... with the exception of modelling errors, reclassification of some expenditures and changes to economic conditions, AusNet Services’ forecast of total capex was reasonable and represented value for money for its customers.”²⁹⁴

Due to these factors, the AER’s Draft Decision for capex was 4.4 per cent lower than AusNet Services’ proposal.

Based on its assessment, there were limited instances where the AER’s Draft Decisions did not accept positions that had been agreed between the Customer Forum and AusNet Services. Interestingly, the substantive points of difference²⁹⁵ between the Draft Decision and the agreed negotiation positions related to topics that were highlighted in guidance provided by AER staff during the negotiation process, as areas where the direction of the negotiations might not result in a position capable of acceptance under the existing rules. The key points are summarised in Table B.4 below.

Table B.4: Summary of the AER’s Draft Decision (in-scope topics)

Topic	Regulatory proposal	AER Draft Decision
Opex – Step Change – Cloud-based IT	AusNet Services had proposed an opex step change of \$2.6m (\$2021) to establish a CRM system and outage management system.	In Guidance Note 10, consistent with earlier comments on the draft regulatory proposal in Guidance Note 9, AER staff observed that to “justify the step change AusNet could outline the additional customer benefits and how a reduction in ongoing capex would offset the step change.” ²⁹⁶ In the final regulatory proposal, the Customer Forum had agreed to

²⁹⁰ New Reg Directions Paper (2018), page 12.

²⁹¹ AusNet Services (2018), page 15.

²⁹² New Reg Directions Paper (2018), page 12.

²⁹³ AER (2020b), page 38.

²⁹⁴ Ibid., page 35.

²⁹⁵ That is, differences unrelated to the impact of COVID-19 or the correction of modelling errors.

²⁹⁶ AER, Staff Guidance Note 10, page 6.

Topic	Regulatory proposal	AER Draft Decision
		the logic of the proposed step change, noting that evidence had been provided to demonstrate that IT capex would reduce by a corresponding amount. ²⁹⁷ However, at the Draft Decision stage, the AER considered that <i>“AusNet Services has not demonstrated there is a capex/opex trade-off for its cloud transition costs to justify a step change”</i> . ²⁹⁸
Opex – Category specific forecast – Metering reallocation	AusNet Services had proposed to reallocate \$29.4 million (\$2021) of metering system IT costs from alternative control services to standard control services. AusNet Services justified this proposal on the basis of its increasing reliance on advance metering infrastructure to operate the distribution, and this rationale was accepted by the Customer Forum. ²⁹⁹	The AER’s Draft Decision concluded that a lower reallocation of \$7.8 million (\$2021) was appropriate, based on its assessment of the extent to which metering data contributes to the provision of standard control services. ³⁰⁰
Revenue path profile	The Customer Forum and AusNet Services agreed a revenue profile which maximised the price reduction in the first year of the regulatory period, and maintained a flat price path in real terms over the remaining years.	During the negotiations, AER staff noted that while negotiations on this topic provided useful information in relation to customers’ preferences, carriage of the agreed position into the Draft Decision would be challenging for a number of reasons. In particular, AER staff highlighted that the revenue profile it would be able to accept would be impacted by late changes to components of allowed revenue (i.e. on out of scope items, after the Early Engagement Process had concluded) and also NER requirements that are intended to minimise the likelihood of significant price changes in the first year of the subsequent regulatory period. ³⁰¹ In its Draft Decision, the AER noted that while it has not been able to precisely match the position agreed between the parties, it has <i>“been able to achieve a significant reduction to the revenue for 2021–22 as sought by the Customer Forum.”</i> ³⁰²
Bottom-up capex assessment	See Table B.2 above for the capex elements negotiated between the parties.	In the Draft Decision the AER noted that, in line with its standard process, it conducted both a top-down and bottom-up review of AusNet Services’ capex proposal. However, as the AER’s top-down assessment indicated that the proposal reasonably reflected the capex criteria set out in the NER, the AER noted that its <i>“examination of the</i>

²⁹⁷ Customer Forum (2020), page 17.

²⁹⁸ AER (2020c), page 58.

²⁹⁹ Ibid., page 43.

³⁰⁰ Ibid., page 43.

³⁰¹ AER (2019).

³⁰² AER (2020f), page 9.

Topic	Regulatory proposal	AER Draft Decision
		<p><i>proposed expenditures at the program level was given relatively less weight” than would otherwise have been the case. Overall, the AER concluded that “[w]hile we identified some areas where individual capex categories were not fully justified we are satisfied that, having regard to AusNet Services’ top-down challenge, these concerns are not material. That is, the top-down adjustment made by AusNet Services was as large, or larger, than the total sum of the adjustments that we would otherwise make at the individual category level.”³⁰³</i></p> <p>The issues identified through the bottom-up assessment related primarily to DER-related expenditure (the AER identified DER-related capex of \$58.9 (\$2021) in AusNet Services’ proposal).³⁰⁴ In Guidance Note 9, AER staff had highlighted some potential concerns in relation to the cost-benefit analysis presented in support of this expenditure.</p>

The AER gave effect to the **CSIS** agreed between the two parties through a separate consultation process.³⁰⁵

Outcomes of the Final Decision

As at the Draft Decision stage, the AER followed its standard assessment process in reaching its Final Decision. The Final Decision found that while AusNet Services’ opex proposal was acceptable, the revised capex proposal was not.³⁰⁶

In relation to its overall approach at the Final Decision stage, the AER noted that, in relation to opex:

“We accepted the majority of proposed operating expenditure (opex) in our draft decision and AusNet Services revised proposal raised bushfire liability insurance premium forecast cost increases, an important issue. We worked collaboratively to determine an efficient forecast insurance premium amount and have included it in the total opex we approved.”³⁰⁷

In summarising its Final Decision on capex, the AER noted that:

“AusNet Services’ initial capex proposal was 19 per cent below its current regulatory period capex and we accepted it subject to adjustments to address changes in economic conditions, reclassification of some expenditures and corrections. Our top down and bottom up assessments found the initially proposed capex largely acceptable with the exception of adjustments for real cost escalation and connections to better account for COVID-19 effects.

³⁰³ AER (2020a), page 8.

³⁰⁴ Ibid., page 22.

³⁰⁵ AER (2020e).

³⁰⁶ AER (2021a).

³⁰⁷ Ibid., page 2.

AusNet Services acknowledged us accepting its initial capex proposal but redeveloped a few capex category level forecasts leading to a total capex amount that was 5 per cent higher than our draft decision.

We carefully assessed the proposed capex changes and found that they are mostly acceptable except for how AusNet Services developed its net connections capex amount.”³⁰⁸

The AER’s acceptance of the positions negotiated by the Customer Forum and AusNet Services was overall quite similar at the Draft Decision stage (not withstanding adjustments for changes in external conditions). That is:

- The AER accepted most of the agreed positions. At the Final Decision stage, the AER further accepted AusNet Services’ proposed IT cloud expenditure to implement a CRM, on the basis of the revised information on the opex-capex trade-off. The AER noted the Customer Forum’s support for this opex step change, but does not appear to have considered the customer service aspect of this proposal that was emphasised in the Customer Forum’s memo.
- The agreed positions that the AER did not accept related to metering cost allocation, the revenue path profile and the approach to bushfire insurance expenditure.
 - The AER’s reasoning for not accepting the first two positions was similar to the Draft Decision stage. The metering cost allocation decision reflected a different view on the appropriate allocation methodology, based on the AER’s analysis. The revenue path profile reflected the AER’s interpretation of the NER requirements, rather than a fundamental view that the negotiated revenue path profile was not in consumers’ long-term interests.

To what extent did the AER consider the negotiated positions in the Forum’s Engagement Report provided an effective evidence base for its determinations and were in the best interests of AusNet’s customers?

This sub-factor considers the extent to which the AER considered that the negotiated positions in the Customer Forum’s Engagement Report provided an effective evidence base for its Draft and Final Decisions and were in the best interests of AusNet Services’ customers. As the bulk of the evidence provided by the Customer Forum related to the initial regulatory proposal, most of our observations relate to the use of this evidence by the AER in its Draft Decision.

The AER placed most weight on areas where the Customer Forum and AusNet Services reached ‘full agreement’

In its Draft Decision, the AER placed weight on the Customer Forum’s support for innovation expenditure in accepting this element of AusNet Services’ proposal:

“We have included the proposed innovation expenditure in our alternative estimate of total opex on the basis that:

- *it is supported by the Customer Forum and is consistent with the conditions negotiated with the Customer Forum regarding financial arrangements, number of projects and total expenditure sought to undertake these projects. There was also support through AusNet Services’ qualitative customer research and from the CCP17 in response to AusNet Services initial proposal. ...”³⁰⁹*

The AER’s Draft Decision refers extensively to the position reached by the Customer Forum, and the evidence of customer preferences that it used to justify its support for AusNet Services’ proposal:

³⁰⁸ Ibid., page 6.

³⁰⁹ AER (2020c), page 62-63.

“AusNet Services’ qualitative customer research tested customers’ willingness to pay for an increase in expenditure capped at \$7.5 million (\$2020–21) for projects broadly related to innovation. ... While AusNet Services’ testing did not look for a firm willingness to pay outcome for each project we note the results were supportive of the proposed innovation expenditure.”³¹⁰

We also note that the innovation allowance was one area where the Customer Forum had expressed a detailed opinion on the expenditure proposal, reaching agreement with AusNet Services on both the need for expenditure, the level of expenditure, and the governance arrangements for utilisation of the innovation allowance. This is in contrast to the more general ‘in principle’ support that it expressed for some of the other elements of AusNet Services’ proposal (see Section 2.2.1).

As noted in our earlier Insights Reports, the Customer Forum was also able to influence AusNet Services’ customer engagement strategy during the Early Engagement Process, including the focus, breadth and depth of consumer engagement undertaken. This has informed and helped to strengthen the quality of the evidence base that the AER has had regard to in making this aspect of its Draft Decision.

The AER placed less weight on evidence from the Early Engagement Process when the Customer Forum expressed in principle agreement for AusNet Services’ proposals. For example, this was the case in relation to bushfire mitigation expenditure (rapid earth fault current limiters – REFCLs) and electricity market settlement. The Customer Forum expressed in-principle support for this proposal, but with the caveat that the AER would undertake an assessment of efficiency:

“The Customer Forum was unable to comprehensively determine the REFCL testing step change of \$6.0 million (\$2021) due to its highly technical nature but agreed to it subject to the AER being satisfied it was warranted.”³¹¹

“The Customer Forum accepted AusNet Services’ five-minute metering step change proposal, subject to the AER being satisfied the revenue sought fairly covered the cost involved of this mandatory change.”³¹²

In its Draft Decision in relation to these expenditure items, the AER did not refer to the ‘in principle’ agreement reached between AusNet Services and the Customer Forum.

The support provided by AER staff during the negotiations was an important factor in the quality of the evidence

During the course of the negotiations, AER staff provided a series of Guidance Notes to inform discussions between the parties. Returning to innovation expenditure, we note that this was an area where AER staff had provided guidance during the negotiation process. In particular, in Guidance Note 9, AER staff noted that:

“It would be helpful if the Customer Forum and AusNet undertook further work clarifying their positions on innovation. The Customer Forum advised AusNet the proposed innovation expenditure should only proceed where AusNet could link the potential customer benefits to customer and stakeholder expectations. AusNet is yet to do this. The Customer Forum would prefer AusNet Services to construct an innovation budget of \$7.5 million (\$2020) but does not link this level of funding to customer preferences. The Customer Forum and AusNet do not appear to have agreed on any specific

³¹⁰ Ibid., page 62-63.

³¹¹ Customer Forum (2020), page 12.

³¹² Ibid., Final Engagement Report, page 13.

innovation projects. AusNet does not clearly state its proposed innovation expenditure in its draft proposal.”³¹³

The Guidance Note went on to suggest a range of matters that the Customer Forum and AusNet Services could address, in order to reach a robust negotiated position. Given the outcome of the Draft Decision, it appears that the AER staff’s involvement in the negotiation process has been an important element in the parties reaching a position that was capable of acceptance, and providing sufficient evidence to support their reasoning.

For example, during the process, AER staff have indicated to us that the negotiated positions were likely to be more persuasive if, in addition to being evidence-based, stakeholders consider that the Customer Forum had formed its views independently of AusNet Services. The importance of independence was subsequently highlighted in the AER’s Draft Decision. Several aspects of the process assisted in supporting the Customer Forum’s independence, including: the AER’s role in providing guidance and technical support; the publication of minutes and negotiation materials, which show how the Customer Forum challenged AusNet Services; and the publication of an independent report by the Customer Forum.

Another aspect of the New Reg Trial, that has allowed the AER to place weight on the negotiated positions, is the MOU requirement for the Customer Forum to clearly describe in its Engagement Report, for each topic of negotiation, how the position it reached was in the interests of consumers. During the course of the trial, the AER provided feedback that the Interim Engagement Report had not clearly responded to these issues. This appears to have assisted the Customer Forum to develop a final Engagement Report that was more aligned to the AER’s evidentiary requirements.

Did the AER consider that AusNet’s final regulatory proposal ‘better’ reflected and presented the customer perspectives and preferences?

This sub-factor explores whether the AER considered that AusNet Services’ final regulatory proposal ‘better’ reflected and presented customers perspectives and preferences.

In its Draft and Final Decisions, the AER set out an explanation of the factors that it considered in assessing the evidence from customer engagement, that arose from the very different processes adopted by the Victorian distribution networks. This built on the Customer Engagement Guidance issued by the AER in 2013.

In its Draft and Final Decisions, the AER referenced key aspects of the New Reg trial that allowed it to have confidence that the negotiation outcomes were informed by a robust consumer engagement process, based on these criteria. We note that many of these qualities were supported by specific features of New Reg that were established in the original design of the process. For example:

- **Nature of engagement.** The AER referred to the **structured support** provided to the Customer Forum throughout the process, including from AER staff: *“Under the Early Engagement Plan and Memorandum of Understanding, we had a formal role in providing support to the Customer Forum. ... This provided the Customer Forum the opportunity to drill down into the detail to better understand the technical aspects of the proposed positions.”³¹⁴* Further, the Customer Forum members were selected to on the basis of **skills and experience** that would allow them to fully engage in the process: *“The Customer Forum was selected to have the skills and expertise to serve the role of being a credible counterparty to AusNet Services in order to represent its customer base and negotiate on their behalf. AusNet Services sought input on the selection criteria for the Customer Forum and tested a shortlist of candidates with AER and ECA, as well as included a member of their consumer consultative committee reference group on the selection committee.”³¹⁵*

³¹³ AER (2019), page 19.

³¹⁴ AER (2020b), page 50.

³¹⁵ Ibid., page 46.

- **Breadth and depth.** The AER noted that the Customer Forum has been able to undertake its own **consumer engagement** and has also improved the breadth and depth of the engagement undertaken by AusNet Services: *“Importantly this consultation and research involved multiple channels and covered many different customer cohorts. This included face-to-face meetings with residential, rural and business customers, telephone surveys, observing customer focus groups, and meetings with customer representative groups, Members of Parliament, local Government, and peak body organisations.”*³¹⁶
- **Clearly evidenced impact.** The AER has had access to an **independent Engagement Report** prepared by the Customer Forum, which allowed the AER to verify AusNet Services’ claims in relation to areas of agreement and disagreement: *“As agreed under the Memorandum of Understanding, the Customer Forum delivered a detailed report, supported by its independent research, on its negotiations with AusNet Services.”*³¹⁷ The AER considered that the impact of the Customer Forum was **clearly evidenced** in both the Engagement Report, and AusNet Services’ regulatory proposal: *“we believe that overall the Customer Forum has assisted in focussing AusNet Services’ attention on the priorities of consumers, which has had a positive impact on the development of its regulatory proposal. This has resulted in a demonstrated cultural shift in AusNet Services’ approach to developing its regulatory proposals and putting customers at the heart of its decision making.”*³¹⁸
- **Proof of point.** As outlined in Section 2.3, the AER was broadly satisfied with the overall reasonableness of AusNet Services’ proposed capex and opex allowances: *“[...] once we made the adjustments to address changes in economic conditions, reclassification of some expenditures and corrections proposed by AusNet Services, the proposed capex forecast was in line with our top down analysis. [...] our assessment found that but for the unforeseen changes in economic conditions as a result of COVID-19 we would have been likely to accept the opex proposal.”*³¹⁹

The AER’s decisions for other distribution networks suggest that its standard regulatory review process, combined with the ‘enhanced engagement’ processes adopted by other energy networks, also have the potential to perform well against these criteria. For example, in its Draft Decision for Jemena, the AER also noted that the Peoples Panel established by the network also performed well on many of the AER’s criteria, although Jemena did not follow the New Reg process.³²⁰ Nonetheless, the AER’s decisions indicate that it considers that the Early Engagement process trialled by AusNet Services has, overall, performed most strongly against its assessment framework.

B.5.2. Overall observations

Our overall observations are that:

- Aside from changes to correct errors in the regulatory proposal and account for the impact of COVID-19, there were limited cases where the AER did not accept positions that were agreed between AusNet Services and the Customer Forum.
- This suggests that, overall, the New Reg process appears to have supported the parties in agreeing many positions that were capable of acceptance under the NER, on the basis that they were consistent with the long-term interest of consumers.

³¹⁶ Ibid., page 46.

³¹⁷ Ibid., page 48.

³¹⁸ Ibid., page 51.

³¹⁹ Ibid., page 52.

³²⁰ Ibid.

- The AER's view that AusNet Services' proposal successfully reflected customer perspectives was linked to particular characteristics of the New Reg process. This included the transparency of the negotiations and the independence of the Customer Forum.
- The AER also found that the enhanced engagement approaches of other NSPs were successful in reflecting customers' views.

B.6. OVERALL LEARNINGS

B.6.1. Observations on the sub-factors

Is the New Reg process likely to achieve its objective? (Drawing on the assessment of the 'Process' and 'Outcomes' factors).

A detailed discussion on our evaluation findings for each objective is set out in Section 3.

Were there any secondary benefits?

Through its engagement with AusNet Services, the Customer Forum brought attention to two issues that were unrelated to the regulatory determination. These were:

- The identification of wider issues related to the connection process.
- Limitations in the established approach to estimating the VCR.

As noted above, AusNet Services has also reported that the New Reg process was, and continues to be, a massive driver of change for the culture and capability within the company.³²¹ The network has observed a substantial increase in customer focus across all three of its businesses, not only electricity distribution.

Were the overall regulatory outcomes from the process considered to be in the interest of AusNet's customers?

Please refer to the detailed evaluation findings for Objective 3 in Section 3.3.

Are there amendments to the process, such as the removal of barriers, that could be made to better achieve the Project Objective?

Please refer to the detailed discussion in Sections 4.1 (Learnings for the regulatory framework) and 4.2 (Learnings for the New Reg process).

Were there improvements in the engagement between the AER and AusNet? Did this lead to a 'better' and/or more efficient process, and therefore outcome?

Please refer to the detailed evaluation findings for Objective 1 in Section 3.1.

Are there findings that could improve the AER's process and/ or Rules changes?

Please refer to the detailed discussion in section 4.1 (Learnings for the regulatory framework).

What are the costs and challenges (including any constraints in the NEL/NER) of implementing the New Reg process, therefore the overall net benefit/cost?

Please refer to:

- The detailed evaluation findings for Objective 1 in Section 3.1, relation to costs and challenges observed during the trial.

³²¹ AusNet Services (2021a).

- The detailed evaluation findings for Objectives 2 and 3 in Sections 3.2 and 3.3, relation the benefits realised in this trial.

B.6.2. Overall observations

Did the New Reg process lead to the achievement of the NEO? If so was this achieved in an efficient way? Does the current NER allow AER to consider properly the outcomes of the New Reg process?

Please refer to the detailed evaluation findings in Section 3 and the trial learnings in Section 4.

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