

Submission

Re Australian National Audit Office Draft 2020-21 Work Program

*Endorsing proposed audits of the Underwriting New
Generation Investment program and Snowy 2.0,
and recommending close audit of the National
COVID19 Coordination Commission.*

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Introduction

The Australia Institute welcomes the opportunity to make a submission to the Australian National Audit Office (ANAO) on the Draft 2020-21 Annual Audit Work Program ('The Draft Program').

The challenges of the Covid-19 crisis and resultant increase in government powers make the role of the ANAO particularly important in 2020-21. At this extraordinary time, ANAO's scrutiny and independent reporting will be essential to ensure public administration and expenditure is appropriate, transparent and accountable.

This submission strongly endorses the inclusion of the following proposed performance audits and argues they should be included in the in the Final Program:

- Underwriting New Generation Investment (UNGI) and
- Snowy2.0 Governance of Early Implementation

This submission also proposes a topic for audit:

- the National Covid-19 Coordination Commission (NCCC).

Underwriting New Generation Investment

ANAO's Draft Program proposes to examine the Department of Industry, Science, Energy and Resources' (DISER) design, establishment and administration of the UNGI program.

The Australia Institute has previously recommended the ANAO consider the UNGI program. Our briefing note on this matter, previously sent to the ANAO, is summarised briefly here, and is available in full on our website.¹

We note that Ms Zali Stegall MP has written to the ANAO requesting an audit of the UNGI program.²

Announced in 2018 the UNGI program proposes to provide public financial support to new dispatchable electricity generation, with the stated goal of increasing competition in the electricity market. This support might be offered through loans, grants, guarantees or other financial mechanisms.

On 15 February 2019 legal advice was provided to the Australia Institute by Fiona McLeod SC.³ This legal advice along with Australia Institute research reveals a number of concerns in the design, establishment and administration of the UNGI program. Specifically, the program:

- has no legislative basis,
- no formal guidelines or criteria for project selection,
- and is following no clear process.

The government claims the Clean Energy Finance Corporation (CEFC) will be enabled to administer UNGI, however this is apparently contradicted by the CEFC itself. The program's legislative basis remains unclear, particularly the legal basis for supporting coal projects.⁴

¹ Swann and Merzian (2020) *Problems with UNGI*, <https://www.tai.org.au/content/problems-ungi>

² ANAO (2020) *Request for audit- Underwriting New Generation investment (UNGI) program*, <https://www.anao.gov.au/work/request/underwriting-new-generation-investment-ungi-program>

³ Australia Institute (2019) *Legal Advice: Energy Generation Program Unconstitutional*, <https://www.tai.org.au/content/legal-advice-energy-generation-program-unconstitutional>

⁴ See the attached report, *Problems with UNGI*.

Despite this, the government has already shortlisted projects, made agreements and engaged in detailed negotiations, and entered a Memorandum of Understanding with the NSW government to support projects under UNGI.

The lack of transparency in the establishment and administration of the UNGI program is deeply concerning. It remains unclear how public funds could be used to support new coal and gas generators without publicly available guidelines or criteria, and no legislative basis or clear process.

As a flagship project of the Government's energy policy, the UNGI program is highly significant with many of the Morrison Government's planned energy projects predicated on its effective administration. It is also highlighted in the draft report of the National COVID19 Coordination Commission's Manufacturing Taskforce as a key mechanism for providing public fiscal support for large expansions of the gas industry.

Investigation of the UNGI program by the ANAO would benefit the national interest and promote greater efficiency and improved performance by the DISER.

Snowy 2.0

ANAO's Draft Program proposes to examine the effectiveness of Snowy Hydro Limited's governance arrangements for implementation of Snowy 2.0.

The Australia Institute supports the proposed audit of the Snowy 2.0 governance arrangements.

We recommend that the ANAO extend the terms of reference of its audit to examine the assessment of costs, public benefit and financial viability of the project by the government and Snowy Hydro. This would ideally include assessment of the total cost to consumers, governments and the energy market, the public benefits and the decisions made by the Prime Minister's office and the Federal Government to support the project.

Snowy2.0 was approved in February 2019 to expand the Snowy Mountain pumped hydro electric storage project. \$1.3 billion has been provided by the Australian Government as an equity investment, with the remainder of the project to be financed by Snowy Hydro Limited, a fully Commonwealth owned Government Business Enterprise.⁵ The project was conservatively priced at \$2 billion but has since ballooned, with estimates it could cost up to \$10 billion.⁶

The Snowy2.0 project was originally announced as a feasibility study by Snowy Hydro Limited on 15 March 2017, to be funded by the Australian Renewable Energy Agency (ARENA).⁷ By the next day Prime Minister Malcolm Turnbull was speaking about the project not as an announced feasibility study, but as a whole of government commitment to build the project.

Despite this, the public version of the Snowy2.0 feasibility study omits the crucial chapters on Commercial, Business Analysis and Modelling, and Cost Estimates. To date there is still no public cost-benefit analysis of the Snowy2.0 project.

⁵ ANAO (2020) *Draft 2020-21 Annual Audit Work Program*, <https://www.anao.gov.au/work-program/draft>

⁶ Seo (2019) *Former energy boss sounds \$10b warning on Snowy 2.0*, <https://www.afr.com/politics/federal/former-energy-boss-sounds-10b-warning-on-snowy-2-0-20191015-p530rx>

⁷ (2017) *Expanding Pumped Hydro Storage*, <https://www.snowyhydro.com.au/news/expanding-pumped-hydro-storage/>

Despite this, the Commonwealth's commitment to build the project has already resulted in significant expenditure. On 2 March 2018 the Prime Minister announced the Commonwealth had reached agreement with the governments of New South Wales and Victoria to purchase their shares of Snowy Hydro Limited for around \$6 billion, valuing the enterprise at \$7.8 billion.

The ANAO list 'financial risk' as a priority consideration informing development of the Final Audit Program.⁸ The public financial cost and risks of the Snowy2.0 project will be significant. The estimated cost of the project has already more than doubled. Then Prime Minister Malcolm Turnbull originally said the project would cost \$2 billion and be operational in 2024.⁹ On 5 April 2019 Snowy Hydro announced that the Engineer Procure Construct for the main works will cost \$5.1 billion,¹⁰ but significant costs are excluded from this contract. Some estimates see a total cost of around \$10 billion.¹¹

Snowy Hydro's market benefit estimate is doubtful as it does not fully explore flexible storage alternatives to Snowy2.0. Limited information is provided about alternative projects and how their costs might change over time.¹² Potential competitors to Snowy2.0 include Battery Energy Storage Systems (BESS) and alternative hydro projects. The Australian National University has compiled a list of more than 22,000 sites that could be suitable for pumped hydro storage¹³.

It is also worth noting considerable concerns about potential environmental impacts of the Snowy2.0 project.¹⁴ These environmental concerns highlight the significant non-financial risks associated with the project and the material significance of the project

⁸ ANAO (2020) *Auditor General Annual Audit Work Program*, <https://www.anao.gov.au/work/audit-insights/auditor-generals-annual-audit-work-program>

⁹ (2017) *Interview: Malcolm Turnbull - Lateline*, <https://www.abc.net.au/lateline/interview:-malcolm-turnbull/8361734>

¹⁰ (2019) *Salini Impregilo wins Snowy 2.0 hydropower megacontract worth AU\$5.1B (3.228B) in Australia*, <https://www.salini-impregilo.com/en/media/press-releases/salini-impregilo-wins-snowy-2-0-hydropower-megacontract-worth-au-5-1b-3-228b-in-australia>

¹¹ Seo (2019) *Former energy boss sounds \$10b warning on Snowy 2.0*, <https://www.afr.com/politics/federal/former-energy-boss-sounds-10b-warning-on-snowy-2-0-20191015-p530rx>

¹² Hyslop (2018) *Snowy2.0- Is the reward worth the risk?* <https://reneweconomy.com.au/snowy-2-0-is-the-reward-worth-the-risk-28883/>

¹³ Blakers et al. (2017) *Want energy storage? Here are 22,000 sites for pumped hydro across Australia*, <https://theconversation.com/want-energy-storage-here-are-22-000-sites-for-pumped-hydro-across-australia-84275>

¹⁴ Open Letter (2020) *Approving the Snowy 2.0 EIS would have unprecedented environmental ramifications*, <https://npansw.org.au/wp-content/uploads/2020/04/Snowy-2.0-Letter-to-Ministers-Stokes-and-Kean.pdf>

to the broader community. ANAO may consider whether appropriate assessment of such impacts has been conducted.

A public investment of this scale should be supported by appropriate evidence, reasoned justification for financial decisions

National COVID19 Coordination Commission (NCCC)

ANAO notes the Covid-19 pandemic and Australian Government response are creating an 'enhanced risk environment'. ANAO acknowledges that responding effectively to the increased government powers during the pandemic requires flexibility in developing the audit program.¹⁵

ANAO's Draft Program proposes an examination of the effectiveness of coordination arrangements established across the Australian Public Service (APS) to implement the Australian Government's response to the COVID-19 pandemic.

The Australia Institute recommends establishing a new audit of the National COVID19 Coordination Commission (NCCC). The NCCC is not currently listed in the Draft Program. Issues raised by the NCCC warrant a separate and dedicated audit.

Alternatively, the terms of reference regarding coordination arrangements across the APS could be expanded to make *explicit* that ANAO will consider the NCCC. This is needed at a minimum as it is unclear whether and in what respects the NCCC is part of the APS and how it interacts with different parts of government, itself a major concern.

STATUS AND GOVERNANCE UNCLEAR

The NCCC was established by Prime Minister Scott Morrison on 25 March 2020.¹⁶ In the press release the PM said the NCCC was needed to

coordinate advice to the Australian Government on actions to anticipate and mitigate the economic and social effects of the global coronavirus pandemic [to] ensure the Government receives the most comprehensive advice [and] working cooperatively across private-to-private and public-to-private networks to unlock resources, break bottlenecks and fix problems

Much of this rhetoric is replicated on the NCCC website.¹⁷

¹⁵ ANAO (2020) *Draft 2020-21 Annual Audit Work Program*, <https://www.anao.gov.au/work-program/draft>

¹⁶ PMO (2020) *National Covid-19 Coordination Commission*, Press release, <https://www.pm.gov.au/media/national-covid-19-coordination-commission>

¹⁷ NCCC (2020) *National COVID-19 Coordination Commission*, <https://www.pmc.gov.au/nccc>

While the NCCC website indicates it is subject to Freedom of Information obligations, there is no mention of or indication of compliance with other legislation, including the Public Governance, Performance and Accountability Act or the Public Service Act.

There is scarce explanation of how the NCCC interacts with the rest of government. There is no information of official meetings it holds and what documentation it is keeping. There is no mention of any policies or procedures.

On 13 May 2020, giving evidence the Senate COVID19 Committee hearing, the NCCC CEO Mr Peter Harris conceded NCCC operations and interactions with government are “opaque”, and again “what process we are following ... is opaque”.²⁰ He later reassured “I'm not trying to say I don't know much about what's going on; I know a bit, at least.”²¹

The CEO could only give his ‘expectation’ on when and how NCCC advice would go to government or cabinet for decision, and when cabinet confidentiality would or would not cover NCCC advice.

FUNCTIONS AND OPERATIONS UNCLEAR

The ‘terms of reference’ for the NCCC did not exist on the website prior to early May. This suggests that the NCCC may have operated for up to a month without it.²²

The terms of reference are highly general, set out as:

- [to] mobilise whole-of-economy effort to ensure the economic and social impacts from the global COVID-19 pandemic are anticipated and mitigated;
- assist the Government to ensure all resources are marshalled in a coordinated and effective manner; and
- drive the development and co-ordination of staged and proportionate plans on critical non-health factors including: ...²³

The active verbs suggest the NCCC plays an active role in making decisions and delivering real world outcomes, including with government resources. Similarly, the PM’s announcement of the NCCC and comments there is reference to actively “fixing

²⁰ Hansard (2020) *Covid-19 Select Committee*, 13 May p 22

https://parlinfo.aph.gov.au/parlInfo/download/committees/commsen/608011bb-99d9-4b10-9fa8-521eaa899fa5/toc_pdf/Senate%20Select%20Committee%20on%20COVID-19_2020_05_13_7706.pdf;fileType=application%2Fpdf#search=%22committees/commsen/608011bb-99d9-4b10-9fa8-521eaa899fa5/0000%22

²¹ Hansard (2020) *Covid-19 Select Committee*, 13 May p 22

²² PMC (2020) *NCCC* <https://web.archive.org/web/20200501181750/https://pmc.gov.au/nccc>

²³ NCCC (2020) *Terms of Reference* <https://pmc.gov.au/nccc/terms-reference>

problems” and the Chair of the NCCC has described it as “operating in a decentralised way, with each commissioner working autonomously”:

People go to them with issues and opportunities and those commissioners are dealing with them... We are not a centralised process and the reason for that is we want things to happen quickly and decisions to be made with the best people who are capable of making those decisions. We hook up regularly, but it’s not about being managed from the centre”²⁴

Here the Chair presents the NCCC as broad purpose, autonomous problem fixing group that sets its own agenda.

Similarly, in the Senate hearing the CEO stated the NCCC is not directed by government but takes direction from the Commissioners. The NCCC is directed by government only in so far as the terms of reference provide, a very broad remit. Indeed the CEO demurred from outlining the tasks

At the same time, the CEO emphasised that “we are not a decision-making body” but purely advisory, and that all decisions would have to be made by cabinet or through other government processes.²⁵

It is unclear how all of this is consistent.

How can the NCCC act autonomously to fix problems and mobilise whole-of-economy effort by acting without centralised process, and yet at the same time have a purely advisory role where all decisions must be made by government?

TASKFORCES ‘APPENDED’ TO NCCC

The NCCC on its own account has a number of ‘taskforces’. These include a taskforce on manufacturing and one on charities. It is unclear if there are others.

At the Senate hearing, the CEO described these as “appended” to the NCCC as a “blob” outside of but not part of the NCCC.²⁶

No taskforces are listed on the NCCC website. Their membership is obscure.

²⁴ Sprague (2020) *Nev Power's plan to reboot Australian manufacturing*

<https://www.afr.com/policy/economy/nev-power-s-plan-to-reboot-australian-manufacturing-20200402-p54gf2>

²⁵ Hansard (2020), *Covid-19 Select Committee*, 13 May, p 21

²⁶ Hansard (2020) *Covid-19 Select Committee*, 13 May, p 30

The NCCC CEO described the taskforces as having a “consultancy arrangement” with the NCCC. He cited this as reason why he such could not describe their operations or interactions with government.²⁷

The CEO was unsure whether any of the taskforce members were getting paid.²⁸ Austender does not record any contracts relating to these taskforces.²⁹

The head of the manufacturing taskforce is Mr Andrew Liveris. On the NCCC website Mr Liveris is listed as a ‘special advisor’ for the Commission. He is the only non-Commissioner listed. Yet he is not a Commissioner and the position is not listed on the DPMC organisation chart.

The CEO was unable to state whether Mr Liveris is being paid.³⁰

Publicly reported documents from the manufacturing taskforce indicate it has already done significant work.³¹ The draft report recommends large public subsidies to expand the gas industry. Notably the report highlights the UNGI program as a mechanism through which the taskforce’s proposals could be realised. This makes the ANAO audit of UNGI of further importance.

PERSONEL

Austender shows Commissioners are contracted under limited tender, exempted from procurement processes and outside of the APS.³² The rationale for this is unclear.

It is unclear how members of the NCCC were chosen. It is known the Chair was chosen and asked directly by the Prime Minister. But at the Senate hearing neither the NCCC CEO nor DPMC could explain to the Senate Committee how this decision was made, whether position criteria were established for the Chair or any other Commissioner, or whether consideration was given to other candidates.

It is unknown if security clearance was required, a process that often takes a long time.

²⁷ Hansard (2020) *Covid-19 Select Committee*, 13 May, p 20

²⁸ Ibid. p31

²⁹ Austender (2020) *Advanced Search: “COVID Commission”*

³⁰ Hansard (2020) *Covid-19 Select Committee*, 13 May, p 31

³¹ Long (2020) *Government’s COVID Commission manufacturing plan calls for huge public gas subsidies*
<https://www.abc.net.au/news/2020-05-21/leaked-national-covid-commission-gas-manufacturing-report/12269100>

³² Austender (2020) *Advanced Search: “COVID Commission”*

<https://www.tenders.gov.au/Search/CnAdvancedSearch?SearchFrom=CnSearch&Type=Cn&AgencyStatus=-1&Keyword=COVID%20Commission&KeywordTypeSearch=AllWord&DateType=Publish%20Date&DateStart=01-Mar-2020&DateEnd=29-May-2020>

The CEO of the NCCC is being paid \$137,550 for his services.³³ The Chair is being paid more than double this, ostensibly not as a salary but as recompense for travel, accommodation and food expenses.³⁴ This is for six months work.

Concerns have been raised about the lack of representation or expertise among the NCCC on important sectors of the economy that are especially impacted by the COVID19 crisis and policy response, such as universities, tourism and the arts, or potential growth sectors, like renewable energy. The CEO was not aware of any advice from the NCCC to government on these deficiencies and how to address them.³⁵

CONFLICTS OF INTEREST

The NCCC Chair has stated he was selected for and has operated on the basis of his 'contact book' while the NCCC website states it "working across business-to-business and business-to-government networks".³⁶

This focus on existing relationships and 'autonomous' operation raises concerns about an enhanced risk environment.

This is of particular concern with regards to the gas and other fossil fuel industries. NCCC's website shows many of the members have current or former roles in these industries.³⁷ Public commentary from NCCC representatives have frequently emphasised the need to increase the production of gas in Australia. This raises concerns about perceptions of potential conflicts.

At the Senate hearing the NCCC CEO and DPMC stated they had established a procedure for the Commissioners to declare conflicts of interest and manage them. This has been activated only once, perhaps surprising given the NCCC's portrayal of its work. Moreover, the CEO stated that the taskforces are not subject to disclosure of management of conflicts under the Commission's arrangements.³⁸

³³ Austender (2020) CN3679406, <https://www.tenders.gov.au/Search/CnAdvancedSearch?SearchFrom=CnSearch&Type=Cn&AgencyStatus=-1&Keyword=COVID%20Commission&KeywordTypeSearch=AllWord&DateType=Publish%20Date&DateStart=01-Mar-2020&DateEnd=29-May-2020>

³⁴ Foster (2020) *Letter of correction of evidence given at a public hearing in Canberra on 13 May 2020 by Ms Stephanie Foster PSM, Associate Secretary of the Department of the Prime Minister and Cabinet, received 14 May 2020.* <https://www.aph.gov.au/DocumentStore.ashx?id=08954f90-236c-440c-94dc-308122c69e98>

³⁵ Hansard (2020), *Covid-19 Select Committee*, 13 May, p 22

³⁶ NCCC (2020) NCCC, <https://pmc.gov.au/nccc>

³⁷ NCCC (2020) *Who We Are*, <https://pmc.gov.au/nccc/who-we-are>

³⁸ Hansard (2020) Hansard (2020) *Covid-19 Select Committee*, 13 May, p 31

Conclusion

During the Covid-19 crisis and recovery period it is essential to support accountability and transparency in Government. Now more than ever, government powers should be subject to scrutiny to promote transparent public administration and ensure the appropriate use of public funds.

The Australia Institute recommends inclusion of the UNGI program, Snowy2.0 and the NCCC in the ANAO's Final Program. The UNGI program has no legislative basis, no formal guidelines or criteria for project selection, and is following no clear process. The Snowy2.0 project is not supported by appropriate evidence, fails to properly consider alternative flexible storage programs, and it is unclear how much taxpayer funding it will cost. The NCCC lacks transparency in terms of how conflicts of interest are managed, its establishment, operation and reporting to Government.