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Consumer participation in revenue determinations and associated regulatory processes

The Consumer Action Law Centre (**Consumer Action**) welcomes the opportunity to comment on the consultation paper on consumer resourcing.

We support the initiative to improve the resourcing available to consumer groups to enable them to more effectively engage in the Australian Energy Regulator's revenue determinations and access arrangement decisions.

Current demand for consumer advocacy outstrips the funds available, which are primarily provided as grants by Energy Consumers Australia (**ECA**). Effective engagement in the network processes will therefore require additional funding. We support the proposal that this is funded by a small contribution by regulated businesses.

Our comments are detailed more fully below.

About Consumer Action

Consumer Action is an independent, not-for profit consumer organisation with deep expertise in consumer law and policy and direct knowledge of people's experience of modern markets. We work for a just marketplace, where people have power and business plays fair. We make life easier for people experiencing vulnerability and disadvantage in Australia, through financial counselling, legal advice and representation, and policy work and campaigns. Based in Melbourne, our direct services assist Victorians and our advocacy supports a just market place for all Australians.

General comments

During the consultation for the establishment of what is now ECA, consumer advocates strongly recommended that part of the purpose of the new national body was to resource ongoing engagement in network pricing determinations. This is challenging for jurisdictional organisations, as it requires specialist knowledge but happens on a 5 year cycle. The expertise can be built, but then the process completes, and the expertise atrophies.

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In many instances, the technical capacity within or accessible to consumer organisations is limited. This has adverse consequences with regards to the ability of the consumer sector to engage with, and influence, the outcomes of network revenue determinations and other regulatory processes. Hence, there is a need to improve the consumer advocacy in some of these processes.

While there has been improvement following the establishment of ECA, funding for advocacy in network pricing should not come at the expense of current state and sectoral advocacy, as the current jurisdictional based advocacy is required due to the vast fragmentation of energy-related policies, regulations and incentives/concessions between the jurisdictions. Within Australia no two jurisdictions operate identically, and many issues which affect consumers are still determined at a State and Territory level, including retail competition, concessions, feed-in tariffs and energy efficiency schemes.

Since the establishment of ECA, we observe the consumer capacity gap on networks remains. Under the direction of its Board, ECA has rightly focused on a wide range of strategic issues. However, as we noted in our submissions to the 2013 consultations, additional resourcing is needed to support consumer advocacy in network decisions. It would make sense for networks to contribute to cost of this through a levy or similar charge, with the collected funds administered by ECA. Appropriate governance should be in place to guide allocation of funds.

Current funding sources for supporting consumer participation

Q: How effective is the current resourcing framework for funding consumer engagement in energy regulatory processes, particularly the AER's revenue determination and access arrangement processes? How can it be improved?

We understand that ECA received applications for funding far in excess of available funds, suggesting a need to increase funding levels

Q: How can the current framework better contribute to increasing the capacity of consumer representatives to engage effectively in the AER's revenue determination and access arrangement processes, noting the complex and technical nature of the subject matter?

ECA would benefit from dedicated expertise on network determination and access arrangements, with access to technical specialists and pricing economists. This is an efficient way to address the current gap, as ECA would engage with all network determinations, rather than jurisdictional organisations who participate in these processes on an irregular basis.

Q: What other resources, including non-monetary support programs or funding sources, are currently available to support consumer engagement in the AER's processes?

As a legal centre with strong connections to pro-bono legal support, we have from time-to-time received assistance from expert lawyers on technical areas of the energy law. While very welcome, there are significant limitations in relying on this source of resourcing, not least caused by conflicts of interest when firms are acting for energy suppliers. There also does not appear the same level of pro-bono commitment in other professions, such as consulting and economics.

Q: In previous consultation processes on the review of the LMR regime, some stakeholders suggested the option of introducing a ‘purpose built’ fund to which all regulated businesses would contribute funding to support consumer participation in the AER’s determination and access arrangement process. It has been suggested that contributions could be calculated as a percentage of the regulated businesses’ total annual revenue. Such a fund may provide a more cost-effective and sustainable approach to resourcing consumer engagement in the AER’s process.

- Given regulated revenue amount to billions of dollars, is a small contribution by regulated business to support consumer advocacy justifiable?*
- What do stakeholders consider are the advantages and disadvantages of the proposal?*

Consumer Action strongly endorses this proposal. Current funding is insufficient to support existing work, with the main gap the capacity to participate in network reviews.

As we noted in our submissions to the 2013 consultations that led to the establishment of ECA, additional resourcing is needed to support consumer advocacy in network decisions. It would make sense for networks to contribute to cost of this through a levy or similar charge, with the collected funds administered by ECA.

The Adequacy of current resourcing for facilitating effective consumer participation

Q: What are the barriers to effective consumer engagement in revenue determinations and access arrangement processes?

In addition to the lack of resources and dedicated technical expertise, there is a genuine concern for jurisdictional organisations on the potential for capture during these processes. While this is not unmanageable, there are real risks of capture when engaging early with network businesses. This risk can be exacerbated by the vast differences in resourcing and access to technical expertise to challenge industry proposals. Consumer advocates need to be frank and fearless in their advice to regulators and business. For this reason, strong support and separation, including financial independence for travel, is critical.

Q: What are the priority energy issues on which consumer engagement is required across the sector?

Network price determination processes can only work if there is consumer advocacy to balance the positions put by networks, but where resourcing is limited, advocates will allocate their effort where they feel they can have most impact for their stakeholders, constituents and clients.

Consumer advocates, including Consumer Action, will allocate their available capacity and resources according to their strengths, expertise and capacity. In the case of Consumer Action, with our direct services for people requiring assistance with credit, debt and consumer issues, we have chosen to focus on what we see as the critical areas in the energy market. For us, this is mostly, although not exclusively, on the demand side, covering affordability, financial difficulty, competition, retail markets and new energy products and services. We have been heartened by ECA’s recognition of this during our application for funding, their respect for our work and specific expertise, and support for the approach we have taken in shaping and focusing our advocacy to deliver real benefits for energy consumers.

Q: Is the key issue the amount of resources or the quality of resources for providing effective consumer engagement?

Effective consumer engagement requires both sufficient and high-quality resources. We emphasise the need for dedicated centralised expertise on network determination and access arrangements, with access to technical specialists and pricing economists.

However, we urge caution on assumptions that ‘effective consumer engagement’ can be a panacea to achieve effective network pricing. Like competition, consumer engagement is a means to an end—not the end itself. The desired outcome for energy consumers is lower prices and better services.

Q: What are appropriate methods of measuring the impact of consumer engagement?

Q: How can improvements to engagement be measured to ensure success?

Measuring the impact of consumer engagement is a challenging task given it can be difficult to determine attribution of the contributing organisation to outcomes and ultimately impact. This is a challenge facing many advocacy organisations, but advances are being made in this area, with calibrated measures such as monitoring changes in the business practices that advocates have engaged with.

This can be observed in various ways, such as concrete changes to the proposal based on advice from advocates, and different community consultation process. Bringing affected communities into the process will reveal what it is that people value and are prepared to pay for, and to what standard. This may avoid the imposition of new and upgraded infrastructure that people are then expected to pay for, with little understanding of the benefits. Communities can also assist in shaping infrastructure decisions by collectively agreeing to participate in demand management to reduce the need for every increasing capacity to deal with peaks that may last only a few hours in any given year.

Q: Is it feasible to build/maintain the complex technical knowledge required for effective participation in the revenue/access arrangement processes within consumer group staffing, or is it likely to be more cost-effective and more practical to outsource this expertise as required?

It is certainly possible to build the necessary expertise within the jurisdiction in which it is required, but it is more efficient if the expertise is centralised and can be deployed to the jurisdiction in which the arrangement processes are being reviewed. Jurisdictional organisations participate in these processes on an irregular basis, therefore the available capacity is built, and then lost, in an inefficient cycle.

In the event of judicial reviews of regulator decisions where the network business appeals, specific consumer standing is also critical and must also be supported financially.

The quality of consumer participation processes

Q: What support does the AER currently provide to assist consumer participation in regulatory processes?

Q: How can the AER facilitate improved consumer engagement in regulatory processes?

Q: How can the AER help build consumers' knowledge skills and capacity to better participate in regulatory processes?

Q: Is the key issue the amount of resources or the quality of resources for providing effective consumer engagement?

Q: How successful has the AER's CCP been in contributing to improved outcomes for consumers?

Q: What have been the advantages and disadvantages of the CCP process?

Consumer Action has been part of AER's CCG and found it a useful forum to share information and shape the regulatory agenda based on the experiences of the people we assist through our services. We are not currently members, having stood down for capacity reasons at the last changeover.

Consumer engagement by energy network businesses

Q: What support do network businesses currently provide to assist consumer participation in revenue determination and access arrangement processes?

Q: How can network businesses facilitate improved consumer engagement in revenue determinations and access arrangement decisions processes?

Q: How can network businesses help build consumers' knowledge skills and capacity to better participate in revenue determination and access arrangement processes?

Q: How can networks demonstrate that consumer engagement they undertake is incorporated into the regulatory determination and access arrangement decision processes?

Q: Under the existing framework, are there sufficient incentives for network businesses to invest in consumer engagement?

Consumer Action took the decision to opt out of these processes, on the basis that we did not have the necessary capacity to do this work to the standard we hold ourselves accountable to. This is a complex matter, and the trade-off is challenging. Consumer engagement is important and networks should invest in, and allow for, this to be done well. However, for smaller organisations with multiple policy and advocacy priorities it is simply not possible to do this under current arrangements. Networks and regulators need to make things simpler rather than more complex, to facilitate input from the community in a meaningful way, and enable the consumer representatives to retain the necessary distance and objectivity to be effective advocates.

Coordinated stakeholder engagement across the sector

Q: What support can other stakeholders provide to consumer groups to build capacity in energy market issues?

Q: How can other stakeholders help build consumers' knowledge, skills and capacity to participate more effectively in revenue determination and access arrangement processes?

Consumer Action is concerned to ensure consumer advocates have the opportunity to look across markets, and learn from initiatives in other sectors and jurisdictions. A useful model is the National Consumer Congress (**NCC**), where consumer advocates from across the country meet once a year to share ideas and learn about emerging issues. NCC is run by the ACCC, and the agenda is developed with input from a committee of consumer advocates and ACCC staff. Any stakeholder forums and processes in the energy sector needs to similarly have mechanisms to learn from other sectors and markets

Please contact Denise Boyd on 03 9670 5088 or at deniseb@consumeraction.org.au if you have any questions about this submission.

Yours sincerely

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