
Submission to: COAG Energy Council Secretariat

Topic: Consumer participation in revenue determinations and associated regulatory processes

- Consultation paper on consumer resourcing

A CCP (AER Consumer Challenge Panel) Perspective

November 2017

To: COAG Energy Council Secretariat at energycouncil@environment.gov.au.

Submission Overview

This submission comes at a particularly important time in the development of consumer engagement for energy regulation. We observe that energy markets both in Australia and globally are going through a period of dramatic transition and it is unclear where this transition will lead. We reflect on the views expressed by Dr Philip Lewis of global consulting firm VaasaETT who described future energy markets to the European Commission's Citizens Energy Forum in London in May 2017 saying that the future energy market will be 'amazing', but he also said that it will be five years or more before there is any 'settling down' of energy market structures and dynamics.

This ongoing dynamic for energy markets means that consumer engagement it is crucial both in developing future energy markets that are consumer centric as well ensuring, as best we can, that consumer protections are in place during the uncertain and changeable near future. This will be a time when there is greater risk of exploitation, particular of vulnerable consumers by short-term opportunistic entities.

Introduction

This submission provides a Consumer Challenge Panel (CCP) perspective but has not been prepared with input from all CCP members, for purely logistical reasons. This perspective comes primarily from CCP participants who have been a part of both panels, the original panel, appointed in 2013 for a three year term and the current panel, appointed in 2016. We note that individual CCP members have had different experiences of the CCP because the main work is undertaken in subpanels, some members have worked primarily on gas Access Arrangement proposals, others have primarily

considered businesses from one jurisdiction, so there will be some variation in perspective from each CCP member.

Our first observation is that there has been considerable change in the network regulation landscape in Australia since CCP was established. We observe a much greater awareness of the role of consumers and importance of consumer engagement by some network businesses. The public and political ‘heat’ following high electricity price increases has moved somewhat from network businesses to retailers and now generation. The recent abolition of the Limited Merits review process for appeals against the Regulator’s decisions, by network businesses is also an important development, given that when CCP was established, appeals against Regulator decisions were common place, indeed were no doubt considered to be part of the regulatory process by some network businesses.

We also note that the CCP was not established to represent consumers in energy regulatory processes, it was established to challenge the AER with consumer perspective – this distinction is important. The CCP can never replace consumer input, it can enhance key aspects of consumer experience and input.

This submission will focus on the issues paper questions dealing with the AER and the CCP in particular and the networks-related group of questions, since network regulation is the focus of CCP activity.

First, we think some context is important.

Background

There are many parts of the background to current considerations that we could list. Rather than being comprehensive, we have chosen a couple of key stages from recent history.

Network regulation Rule Changes - AEMC

“We will regard the energy network regulation rule changes approved by the AEMC¹ in late 2012 as a starting point for moving to ever better consumer engagement.”

Productivity Commission

Soon after the rule change the Productivity Commission² released a report dealing with Energy Network Regulation on 26th June 2013. This report stated:

“This report includes extensive analysis of issues directly related to benchmarking and interconnectors. However, the Commission has found that it is not possible or desirable to look at those issues separately from the complex and interrelated regulatory system in which they sit. There is, in effect, no point in simply fixing a punctured tyre if the car has no engine.”

The Productivity Commission gave considerable emphasis to the role of consumers and consumer groups in energy network regulation stating:

“Consumers need a clear voice in the regulatory regime

¹ <http://www.aemc.gov.au/Rule-Changes/Economic-Regulation-of-Network-Service-Providers>

² <http://www.pc.gov.au/inquiries/completed/electricity/report>

While the objective of the National Electricity Law is to meet the long-term interests of consumers, the involvement of consumers in the processes of the NEM has been partial and intermittent.

....In general, network businesses have not sufficiently engaged with consumers, even in matters where they have aligned interests (such as addressing reliability problems or introducing smart meters and the smart grid). The AER has also not engaged well with consumer groups — an observation emphasised by the inquiry into the limited merits review regime.”

So we are interpreting consumer engagement as the necessary ‘engine’ for the ‘car’ of effective energy network regulation.

While the Productivity Commission was completing their report, the AER had commenced in February 2013 their “better regulation” program which developed seven guidelines to help put the 2012 network regulation rule changes into practice. One of those guidelines was the consumer engagement guideline.

AER, Consumer Engagement Guideline.

In November 2013, following nearly a year of consultation in response to the network regulation rule changes of 2012, the AER issued a Consumer Engagement Guideline for Network Service Providers,³ it stated:

“The guideline is structured around four components. The components set out a process for service providers to develop and implement new or improved consumer engagement activities to meet the best practice principles:

- 1. Priorities—we expect service providers to identify consumer cohorts, and the current views of those cohorts and their service provider; outline their engagement objectives; and discuss the processes to best achieve those objectives.*
- 2. Delivery—we expect service providers to address the identified priorities via robust and thorough consumer engagement.*
- 3. Results—we expect service providers to articulate the outcomes of their consumer engagement processes and how they measure the success of those processes reporting back to us, their business and consumers*
- 4. Evaluation and review—we expect service providers to periodically evaluate and review the effectiveness of their consumer engagement processes.”*

The AER signal at the time, through the guideline, was to make statements that set expectations about at least some of the behaviours of network businesses, for example:

“We expect all network service providers—gas and electricity, transmission and distribution—to use the guideline to enhance their consumer engagement activities. While the guideline is not prescriptive, we anticipate all service providers will make an effort to adopt the guideline. This effort would form part of a genuine and fundamental reconsideration of how service providers could better engage with consumers.”

³ <https://www.aer.gov.au/networks-pipelines/guidelines-schemes-models-reviews/consumer-engagement-guideline-for-network-service-providers>

To keep the story moving, and to recognise the current state of play, we fast forward to 2016 with AER Board member Cristina Cifuentes presenting to the Energy Networks Association regulation seminar in Brisbane. She discussed ways in which engagement practices had improved over recent years, both by the AER and network businesses and also presented opportunities for further change.

“... we have begun to see a genuine commitment from both network businesses and the AER to engage more constructively to achieve better outcomes—a real willingness to do things differently from the past.”

Some attention was given to processes being undertaken by ElectraNet and AGN (Victoria / Albury AA)

“These processes should be encouraged and have the potential to deliver:

- *More preferable outcomes that reflect input from consumers from the earliest stage*
- *Smoother regulatory processes*
- *More open, constructive dialogue, and*
- *Opportunities to build shared knowledge: of business challenges, consumer concerns, the Regulator’s role and the framework under which we operate.*

My challenge for each of you is:

- *What else can you do to meaningfully involve your consumers in the development of your Regulatory proposals? To better explain the challenges in your network, to better understand your consumers’ needs and concerns and to reflect those in your proposals and the services you deliver?*
- *What practical steps can you and your organizations take to work with us to improve how we engage with each other?*
- *To ensure that the Regulatory process delivers on, and promotes, the long-term interests of consumers.”*

This challenge summarises the next steps that need to be taken. Significant change in consumer engagement has occurred over the last couple of years, while consumer engagement has been a major focus of policy and Regulatory attention over the last 5 years. A number of network businesses being proactive in developing and then implementing consumer engagement strategies. The most important development has been the ‘culture change’ in some, though not all, network businesses endorsing a stronger consumer focussed outlook.

The challenge now is to recognise where progress has been made and to encourage all network businesses to be learning from the practices of those businesses regarded as undertaking the most constructive consumer engagement and to be the best at embedding consumer feedback and advice into Regulatory plans as well as day-to-day operations. This requires appropriately resourced consumers and consumer groups who are able to engage with businesses and to add value to the negotiations for a broader consumer constituency

COAG Consultation Questions re AER

Q1. What support does the AER currently provide to assist consumer participation in Regulatory processes?

Taking a broader than CCP only view, we observe that the AER has made significant efforts to assist consumer participation, however we note that it has not primarily been the AER's role to resource consumer participation.

Coming out of the 2012 reports and debates, the AER responded by establishing a number of processes to assist consumer participation in network regulation including:

1. Establishing a Customer Consultative Group (CCG) to bring together people from a range of consumer perspectives to discuss consumer issues with the AER, across the gamut of AER responsibility
2. Developing a Consumer Engagement Guideline as part of the 2013 "better regulation" process, this guideline developed with significant consumer group input
3. Establishing an AER stakeholder engagement guideline and approach.
4. Conducting public forums for the majority of Regulatory decisions at post lodgement and draft decision stages of the process. These forums give consumer interests the opportunity to hear from businesses, the Regulator and CCP regarding key issues for a determination and enable discussion about and improved understanding of the issues under consideration.
5. The AER has made considerable efforts to produce reports and decisions that are written in 'plain English' to help make their papers more accessible to broader consumer interests.
6. Developed benchmarking which has many functions, one of which is to provide some basis for comparability across network businesses for consumers.
7. Production of a range of regular reports and news updates that assist consumer interests to have access to current data and information. This is crucial in helping to redress some of the information asymmetry between network businesses and consumer interests. The annual State of the Market Report is an excellent example of high quality, reliable and up to date information.
8. Establishing stakeholder reference groups that provide direct access to technical information and key debates, for consumer interests, regarding a topic of specific focus. For example, we understand that a reference group has been established as part of the Rate of Return review that is currently getting underway.

The AER's approach in 2013 through the Better Regulation⁴ processes was particularly constructive. A Consumer Reference Group was established that had two main roles, the first being to help develop the Consumer Engagement Guideline. The second role being to support consumer focused input into other guidelines that were being developed in parallel, including rate of return and expenditure incentive guidelines. A very helpful background paper was produced dealing with rate of return that enhanced understanding of the key elements and debates of the rate of return discussions that lead to the guideline

We observe that the AER has increasingly made efforts to identify people with consumer perspectives who may be interested and able to contribute to current debates. Note that for the AER, current debates, policy or monitoring considerations stretch across wholesale, network and retail components of energy markets, including hardship and other disadvantaged customers. The breadth of activity is considerable with resourcing minimal across many issues where solid consumer perspective is needed. It should be noted however, that on a number of occasions, the AER's invitations to participate have been declined by consumer organisations due to the organisation's limited funding or other resourcing constraints.

⁴ <https://www.aer.gov.au/site-search/better%20regulation%20guidelines>

For CCP, the AER has made technical staff available to CCP and consumer interest groups, so that more technical aspects of network regulation processes are understood.

Q2. How can the AER facilitate improved consumer engagement in Regulatory processes?

The AER has made considerable efforts to improve consumer engagement, so considerations dealing with this question start with a significant base of practice and experience, however improvement is always necessary.

Useful ways that the AER can facilitate improved consumer engagement include:

- Demonstrating that consumer input is heard, valued and applied. Nothing is as demoralising for consumer representatives for whom input often includes considerable voluntary effort as believing that input has not been heard or has been completely ignored, with preference for the views of the louder and much better resourced industry participants. Making major effort to prepare and lodge a submission with proposals or suggestions not being considered will most likely mean that a person or organisation will not participate in future processes. We are not that we are saying this happens, but ensuring that consumer input is acknowledged and taken seriously continues to be essential in the written reports / decisions that follow on from consultation.
- Funding travel and associated expenses for consumers and consumer representatives to attend relevant forums is also crucial. Often the timelines for developing a response (by the AER or other market body) on a current issue are short, due to Government or other externally imposed time lines. Forums and workshops dealing with the issue are time efficient, but it cannot be assumed that consumers or consumer representatives have travel budgets to cover a flight to Melbourne or Sydney, where such forums are invariably held. Covering travel costs will still often mean that consumer interest representatives are providing their time voluntarily, a situation that does not apply to other participants.
- Issues that cross individual business determinations. The current AER initiated process to consider major issues that are common across individual business regulation is significant. The first 'issue' focused process considered was Inflation and the Post Tax Revenue Model while a new process to consider Rate of Return has just commenced. Developing binding guidelines for these larger, and often more complex and contentious aspects of network regulation can increase the efficiency of network determinations and should mean that processes can be developed that give much greater opportunity for broader consumer engagement by being able to understand the issues in some depth. By removing such complex matters from within the scope of individual revenue determinations consumers are encouraged to participate more constructively in the remaining facets of the Regulatory proposals, while consumers and consumer representatives who are able and willing to engage in the more technical issues are able to do so efficiently, without having to re-run the same arguments for every single Regulatory process.
- Forums for consumer reps on pertinent issues. The AER is well placed to conduct forums for people representing consumer interests, either by video link, webinar or face to face, that provide current information on relevant topics; for example how the Regulatory process works, gas markets, Rate of return, benchmarking etc. CCP members can play a role in presenting at such forums. Note that the number of resourced consumer advocates in Australia is small and has high turnover, due in part to the lack of funding continuity.
- Establishing and supporting consumer reference groups.

A brief summary of the AER role in establishing a consumer reference group follows

The following is an example of the AER lead process to establish a consumer reference group in Queensland for the Ergon and Energex 2015-20 regulatory control period. The AER sent an invitation to people representing various consumer issues, the invitation started:

“The AER wishes to advise interested parties about our forthcoming review of electricity distribution prices in Queensland for 2015 to 2020. **We are holding a meeting on 7 November 2013 at 10.00am-12.00pm EST at our Brisbane office.** This is the first of a series of meetings we will hold that will provide consumers and stakeholders an opportunity to engage with AER staff before and during the review process.”

The preliminary F&A was published in December 2013

There were about 100 people on the invitation list from representatives of residential consumers, industry groups, councils, Department of Energy & Water Supply, other government departments, Queensland Competition Authority, Canegrowers, Irrigators, farmers, local Government authorities, consultants, retailers, EUAA, etc

The AER said that:

“The purpose of consumer meetings is threefold. First, we will identify where and how you can be involved in the review of the regulatory arrangements for Energex and Ergon Energy in the 2015 to 2020 regulatory control period. Second, participants may develop a greater understanding of the energy sector and regulatory environment. Third, participants will be able to engage with us to make meaningful and informed contributions to the regulatory process the AER is responsible for.”

About 20 people attended meetings on a regular basis, some by video link and a couple from interstate. Nine meetings were held in all at different stages of the process, commencing with a meeting to consult on the Framework and Approach draft.

The CCP presented at one of the meetings prior to lodgement of a submission responding the regulatory proposals. Feedback from participants was that this was a very helpful presentation, providing both fact with relevant data and open discussion about priorities for response and likely consumer impacts of key aspects of the proposals from the two network businesses. Being AER supported, the consultative group also received presentations from AER expert staff on key aspects of the network proposals.

Establishing and supporting consumer reference groups in this manner is a very helpful way that the AER can facilitate consumer engagement in network determinations, particularly in jurisdictions where there is not a dedicated consumer body to deal with network regulation as there is in NSW with PIAC, which receives regular State funding.

Note that the consumer reference group model still does not deal with funding for time put in by consumer representatives, it remains a very useful role that AER can and should play.

This process resulted in what we think was a record number of submissions from consumer interests – more than 30 individual submissions.

- Forums / telco meeting minutes to have same weight as written submissions

The standard method of input to Regulatory processes is through written submissions. These take time to prepare and invariably internal 'sign off' processes that also add time. Processes can be improved that accept verbal submissions and outcomes of meetings involving consumer interests as part of the 'submission process.'

Q3. How can the AER help build consumers' knowledge skills and capacity to better participate in Regulatory processes?

Approaches to better build consumer knowledge have been discussed in the previous question and Include:

- Consumer Reference Groups
- Briefings on specific 'resets' for consumers
- Video conferences, webinars and telephone based meetings to enhance access for people outside of Sydney and Melbourne.
- Fact sheets (something that the AER is doing well) and info-graphics
- Maybe there is capacity to produce short video clips on key topics that can be posted to the website.
- Contribute expertise and resources to the development of a single co-ordinated repository of consumer education/training material to assist consumer representatives to build capacity to participate in Regulatory processes.

Q4. Is the key issue the amount of resources or the quality of resources for providing effective consumer engagement?

We observe that continuity of resourcing is of critical importance. One of the great advantages of the Consumer Challenge Panel appointed by the AER is that appointments are for a three-year term and that subpanel members are appointed for the duration of a Regulatory process, which can now be of the order of three years duration. To the best of our understanding, there is no resourcing for consumer groups, or other stakeholders, at national level that provides this level of continuity. Yet a reasonable degree of continuity is essential for any effective consumer engagement in energy Regulatory matters.

Some continuity of resourcing also enables a degree of planning to be undertaken by consumer groups so they can determine which aspects of a Regulatory process they wish to research and where to develop associated skills.

The amount of resourcing is also important for consumers to be able to effectively engage. With adequate resourcing and continuity, consumer representatives are able to actively participate in the range of issues considered over a Regulatory period and to provide meaningful input. Alongside adequate resourcing for consumers, networks need to take more responsibility to present unbiased information in a more digestible form to enable shared responsibility being taken by network and consumers. The notion that 'it's all the consumers' fault for not engaging' continues to prevail in some settings

Q5. How successful has the AER's CCP been in contributing to improved outcomes for consumers?

The following summarises the objective of the CCP and role of members, as described by the AER

The AER established the inaugural Consumer Challenge Panel (CCP) in July 2013 as part of our Better Regulation reforms. These reforms aimed to deliver an improved Regulatory framework focused on promoting the long-term interests of consumers.

The CCP was established with clear reference to the Ofgem Consumer Challenge Group⁵ which the UK energy markets Regulator established in 2008 to;

- “provide consumer input into some of the more complex issues
- to provide a critical friend from the consumer perspective ensuring that Ofgem have not missed any critical issues from a consumer perspective and that the final package (for any electricity distribution price review) is a fair one for consumers.”

The invaluable advice provided in establishing the CCP in Australia, from Dr Gill Owen is recognised, with Gill being an inaugural member of the UK Consumer Challenge Group and also a member of the first Australian CCP panel. Gill was able to bring in considering learning and advice to her Australian CCP colleagues in its establishment.

The following summary of aspects of the CCP is taken from the AER’s website.⁶

“The members of the inaugural CCP were appointed from 2013-2016. Members of second iteration of the CCP were appointed in September 2016, for a term of three years.

The CCP assists the AER to make better Regulatory determinations by providing input on issues of importance to consumers. Regulatory determinations are technical and complex processes which can make it difficult for ordinary consumers to participate. The expert members of the CCP bring consumer perspectives to the AER to better balance the range of views considered as part of our decisions.

Objective of the CCP

“The objective of the CCP is to:

- *advise the AER on whether the network businesses’ proposals are in the long term interests of consumers; and*
- *advise the AER on the effectiveness of network businesses’ engagement activities with their customers and how this is reflected in the development of their proposals.*

Role of CCP members

The role of the CCP is to provide input and challenge the AER on key consumer issues during a network determination, to improve the AER’s decisions. The CCP will facilitate the consideration of the consumer perspective to achieve a balanced consideration of all views by the AER.

- *the CCP is not a decision-making forum, nor is its role to negotiate or advocate on behalf of consumers or industry. Its role is to act in an advisory capacity to help inform the AER’s decisions with regards to consumer interests. The CCP provides inputs and challenge which might not come through other means*
- *the CCP is required to develop an understanding of business, market and industry trends, and the consumer engagement that has been undertaken in relation to proposals*
- *the CCP is required to understand the AER’s approach to assessing businesses’ proposal and to provide “wise counsel”, insights and ideas which can only come from a consumer perspective*

⁵ <https://www.ofgem.gov.uk/network-regulation-riio-model/riio-forums-seminars-and-working-groups/consumer-challenge-group>

⁶ <https://www.aer.gov.au/site-search/Consumer%20Challenge%20Panel%20-%20Background>

- *the CCP is to critically assess whether the issues identified by the AER are important when considering the long-term interests of consumers and whether the approach by the AER to these key issues is in the long-term interests of consumers*
- *to assist the CCP in understanding the AER's approach CCP members will have access to AER staff*
- *the CCP will provide its advice through:*
 - *presentations to the AER Board*
 - *written statements of advice.*
- *The AER is not obliged to act on the views expressed by CCP members, but will give due weight and consideration to the advice provided. The AER will provide a clear rationale for their decision and will provide feedback to CCP members as to how their views have been considered and addressed.”⁷*

The CCP is not a substitute for consumer engagement nor is it an advocacy process. In Australia the CCP is an internal group established by the AER to assist the AER in its Regulatory decision-making from a consumer perspective and in particular to challenge AER thinking, through to the Board level, from a clear consumer perspective. In practice the CCP has worked well with consumer interest organisations and been able to share information and perspective and to encourage broader consumer participation in Regulatory processes. Since it was established, the CCP has provided analysis at all public forums conducted relating to specific network ‘resets.’ CCP members have been advised informally on a number of occasions that this input at public forums has helped consumer interest groups to understand the key issues and to feel that they are in a position to contribute to subsequent submission processes.

The CCP has played an enabling role in enhancing consumer engagement

How CCP works

The mechanics of the CCP approach is also worth summarising.

The AER commences the CCP process by calling for applications to the CCP panel. The applicants are shortlisted and interviewed and successful applicants are appointed to the main panel. For each Regulatory process, a subpanel is appointed of between three and four members (though some earlier panels of 2 and 5 members occurred), with each member contributing a different skill set, so that each subpanel is able to challenge the AER through the Regulatory process, from a range of consumer centred perspectives.

Each subpanel will commence their role by developing an understanding of the business(es) that they are considering and seeking consumer group perspectives as well. As the process for a Regulatory determination is established by the rules, it is clear that each CCP subpanel will respond with written submissions to the Framework and Approach paper (for electricity resets), the initial proposal from the business and associated AER produced issues paper, the AER's draft determination and where applicable the revised Regulatory proposal / access arrangement from the network business. In addition the CCP subpanel present at public forums organised by the AER and will meet with the Board of the AER to consider priority questions arising in a reset, from a consumer perspective. The CCP's role finishes with the release by the Regulator of the final determination.

All CCP papers and submissions and CCP processes are publicly available on the AER's website. The AER and all CCP members make considerable effort to be open, transparent and accountable.

⁷ <https://www.aer.gov.au/about-us/consumer-challenge-panel>

What CCP has done

There were 8 sub-panels formed in the first three years following the commencement of the CCP in 2013, an additional 8 sub-panels have been formed up to October 2017. Most of these subpanels have considered a group of network businesses together, with each business having the same initial timeline for lodging their Regulatory proposals.

As of September 2017, just over 4 years from the establishment of CCP, by our reckoning, CCP through various subpanels has provided:

- Over 40 submissions to the AER dealing with specific Regulatory proposals / Access Arrangements (the term used for gas network businesses.).
- About 30 presentations by CCP to public forums, most dealing with responses to network business proposals or AER Draft decisions, though two recent presentations have dealt with Inflation and the Post Tax Revenue Model.
- About 30 statements of advice dealing with business specific proposals
- Over 5 statements of advice to the AER Board considering broader topics. In addition,
- Towards 10 letters have been sent to the AER dealing with a range of matters.

Where CCP has given advice, that one 'advice' has often included two or more networks - For instance, there were 3 advice statement for Vic GAAR, (Victorian gas Access Arrangement proposals) the initial and revised proposal submissions each covered 4 network businesses and each of these businesses had different content/presentation formats in their applications and in their response to the AER's decisions.

In aggregate, this constitutes a considerable body of work that has come from a very strong consumer perspective and which AER Board members and staff have stated as being constructive, in most instances "very helpful."

While a simple count of the number of written documents prepared is a simple measure that does not necessarily reflect the influence of CCP, it reflects a considerable amount of input provided. It is also worth noting that CCP subpanels have provided major input to every network Regulatory determination that has been undertaken since the CCP was established, guaranteeing that the AER has a consumer perspective to consider in all network determinations that have been commenced since 2013. The CCP guarantees a consumer voice, but also makes effort to encourage additional consumer input to each Regulatory process.

We are certainly not claiming that CCP input alone is adequate consumer input to Regulatory processes, far from it, we are stating that CCP has lifted the baseline level of consumer focused input to energy network Regulatory processes, and this alone has provided a valuable contribution to improved outcomes for consumers.

Beyond the tangible outputs, CCP subpanels have played important roles in linking stakeholder interests.

Most CCP subpanels have had numerous meetings with consumers and consumer representatives by attending network hosted consumer consultations, meeting with consumer reference groups, holding one-on-one discussions with key stakeholders and presenting at AER hosted forums. There is considerable interaction between consumers and consumer representatives at both formal and informal levels.

Most CCP subpanels have also been active in informing consumer groups about the core Regulatory process/building blocks approach, building consumer confidence and encouraging consumers to participate through submissions and other inputs on points of interests to those consumers. As outlined in the case study box on page 6, the AER's consumer consultative groups in various states have been particularly useful although the AER does not always establish these groups across all jurisdictions/decisions. The Queensland consumer reference group process resulted in a record number of submissions from consumer interests – more than 30 individual submissions.

CCP evaluation

The CCP approach was evaluated by independent consultants, Nous, over the first half of the 2016 calendar year with the CCP considered to be effective. Some proposals were made to improve the operation of the CCP, including:

- Appointing Chairs for each subpanel to take some of the administration responsibility from AER staff
- Specifying that subpanels presented a single submission for each part of the Regulatory process.
- Improving lines of accountability, including standardising mechanisms for communication between subpanels, the AER and network businesses.

In terms of contributing to improved outcomes for consumers, the CCP has also prepared papers for the AER Board on broader issues than specific resets that add to a consumer voice being heard by the AER. CCP papers have proposed action to the AER to further improve processes that impact on consumer outcomes.

We also note the UK experience with Ofgem hosting the CCG, a very similar group to the CCP, for a longer period of time than in Australia. The UK experience has found the CCG model to be very effective in providing an internal challenge to constantly consider consumer impacts of decisions. In the UK, consumer groups have also found the CCG process constructive and over time have developed ways of utilising the CCG expertise and working with it. The UK CCG has evolved over the nearly 10 years that it has been in operation and the approach is now applied to a broader set of polity and Regulatory policy questions than purely focussing on specific network regulation episodes. We also note that some UK network businesses are now establishing their own internal consumer focussed Challenge Panels / Groups. We suggest that this UK experience further supports the usefulness of the CCP model.

Q6. Advantages and disadvantages of CCP process?

A major contribution that CCP makes to giving consumer voice to Regulatory processes is that it is internal to the Regulator, it is a strong voice 'inside the tent' of the Regulator. This means that CCP can add to other consumer input and can reinforce external consumer input.

As an internal to the AER process, CCP members are able to see some of the material that is regarded as confidential and so able to give a consumer perspective on material that might not otherwise be subjected to any form of consumer perspective, due to confidentiality.

The AER is currently 're-making' decisions that were appealed by NSW and ACT network businesses pertaining to Regulatory determinations for the 2014-19 Regulatory period. The CCP subpanel considering the NSW and ACT electricity distribution business proposals for 2019-24 will also consider the main aspects of the decisions that the AER is re-making. The CCP is able to bring technical expertise and a consumer focus to this process that is not a standard process and that

requires interaction between Regulatory periods and consequently a range of potential consumer impacts. We understand that the AER as well as the network businesses, to varying extent, have found the CCP involvement to be very useful as these remittal processes unfold.

In summary, other advantages of the CCP process include:

- Breadth of experience and range of expertise brought together in 1 place to challenge a regulatory proposal, idea or Regulatory issue; no other process looks to bring together such a range of perspectives. CCP gives the Regulator an opportunity to have an independent group of people with a diversity of skill and experience considering issues with any proposal, without needing to guess what a consumer perspective might be.
- The CCP offers considerable expertise and experience, guaranteeing a fresh and informed look at any issue
- Independent. As a group of individuals, CCP members are independent in their advice, not representing network, government or other interests. At the same time, CCP members bring with this experience gleaned working with a range of organisations and businesses.
- CCP members provide strong technical expertise and perspective, from a diversity of experience, including skills in: engineering, accounting, regulation, consumer engagement, retail, economics, law, consulting and strategic planning.
- CCP is able to provide input for regulatory proposals from smaller jurisdictions (eg Northern Territory, ACT, Tasmania) which generally have limited consumer organisation capacity. CCP has also been actively engaged in regulatory processes for businesses that have not always attracted strong consumer input, eg Transmission and gas pipelines.
- CCP enhances participation from other community / consumer groups including providing information and in some instances briefings to people representing particular consumer interest.
- The CCP is able to be agile, able to consider and respond to a 'new issue' at short notice.
- CCP is able to focus on network regulation only, without having to cover the range of issues that many community organisations are obliged to remain informed about. CCP adds 'depth' to network regulation considerations.
- CCP members are appointed for 3 years, a longer duration than is the experience of many consumer advocates. So CCP is able to add some continuity to regulatory considerations. CCP is enjoying high trust relationships with AER and consumers. The level of trust in CCP – AER relationships is high, with CCP members commenting on the openness that senior AER staff displayed in recent CCP / AER meetings. CCP members can informally prompt, suggest and encourage new ideas or better practice to be considered by networks, the Regulator and even consumer representative groups, informally. We suggest that while CCP has not been wholly responsible for the considerable improvement in consumer engagement practice, particularly over the last 1-2 years, it has played an enabling encouraging role.
- The CCP process is evolving, another considerable advantage, particularly in changing times.

Disadvantages

- The main disadvantage for the CCP, particularly in its establishment phase has been "mixed expectations," particularly from external stakeholders, including network businesses.
- There is also a risk that some smaller consumer groups reduce their engage in energy regulatory processes, preferring to "leave it to the CCP," while they work on other issues. However, we observe that the level of consumer input into network regulation processes has increased significantly since the 2012/13 reforms, of which CCP was but one.
- The Nous review identified some role clarity and administrative processes that could be improved, their recommendations have been enacted.

CCP future roles

We noted in the opening paragraphs of this submission that energy markets are experiencing periods of significant change, we expect that this change will continue and that businesses and the Regulator will change aspects of the way they work meaning that the CCP role will also change over coming months and years.

For example over recent months it has become apparent that the better practice in consumer engagement from network businesses is for considerable engagement well before a regulatory proposal as lodged, with a number of businesses now producing a preliminary/draft revenue proposals for consideration and negotiation between consumers, other stakeholders and the network business. This means that CCP subpanels now need to be appointed much earlier in a regulatory process than was previously the case, with much of the work likely to be completed before the AER's draft decision is released. This is a very positive development and movement that we suggest has been enhanced by CCP participation over recent regulatory processes.

During 2017 the AER has also established CCP subpanels to consider specific issues relevant to network regulation, specifically inflation and the post-tax revenue model and more recently review of the rate of return guideline. This approach is an extension of the first three years where subpanels dealt specifically with a particular business, or group of businesses regulatory proposals. This has been constructive with the CCP subpanel dealing with inflation and the PTRM providing substantial, consumer focused input.

It is noted that the Consumer Challenge Group in the United Kingdom also played a very constructive role with Ofgem in considering the significant regulatory process change that became the RIIO model. The Consumer Challenge Group was able to be both a sounding board and ideas generator for the Regulator in the early days of the process as well as a group able to challenge thinking from a consumer point of view as ideas started to become more established, the CCP mirrors these roles in Australia.

Further changes in the roles played by the CCP are anticipated in the future. For example there is a Regulatory Innovation Project currently being developed as a partnership between ENA, AER and ECA. This exciting project is intended to trial an innovative approach to consumer and network business collaboration in a specific regulatory proposal. The innovative approaches are unknown, however we suggest that the adaptiveness that the CCP provides is likely to be of value to the Regulator as it deals with new approaches to network regulation.

The CCP is well placed to continue to play a significant role in presenting consumer interests by both supporting and challenging the Regulator over the coming few years of continued change and uncertainty in energy markets.

Network Businesses

This section provides some brief observations about network businesses and consumer engagement, considering the questions from the issues paper. CCP considers it appropriate to respond to these questions since consumer engagement by network businesses is a primary focus for the CCP.

Q7. What support do network businesses currently provide to assist consumer participation in revenue determination and access arrangement processes?

We observe that the support that network businesses provide to assist consumer participation is highly variable across the network businesses. Some make considerable effort to engage and support consumers while others, albeit a minority of network businesses, still do not regard consumer engagement as something that they need to be undertaking.

The support that we have seen provided to consumers and consumer groups includes:

- Information / education briefings. Some are very specific to the business providing the briefing, others are more generic.
- Site visits to assist with better understanding of some of the key aspects of network businesses.
- Appointing and supporting Customer Councils, including with the provision of sitting fees in some instances.
- Induction sessions for new members, which can include safety briefings.
- Participation in rural Field days / public events.

We also well aware that a number of network businesses offer sponsorships to a range of community events and community organisations. We recognise that sponsorships are a very worthwhile societal contribution, however in this context we do not regard them as a component of directly supporting consumer engagement in Regulatory processes.

Q8 How can network businesses facilitate improved consumer engagement in revenue determinations and access arrangement decisions processes?

The crucial first step for network business to improve consumer engagement is to develop and nurture an internal culture that is genuinely consumer centric. This is evidenced by strong interest from the CEO, Board and Senior Managers, including CEO participation in consumer engagement activities and attending consumer reference group meetings.

The second critical element of improved consumer engagement is for network businesses to actively build relationships with stakeholders including consumers and representatives of consumer interest groups.

Leading shared processes with consumer interests that tackle important questions is extremely helpful. The Energy Networks Australia (ENA) hosted process with the CSIRO to develop an future networks “Roadmap” is an excellent example of a shared project that involved thought leaders, network businesses, consumer interests and other stakeholders grappling with an important topic together; first developing a shared understanding of the current situation, emerging dilemmas and then an openness to consider potential solutions. Having a respected, expert, neutral project leader – the CSIRO - was also very helpful in enabling all parties to look for common solutions rather than staying entrenched in old dispensations.

In considering how network businesses can facilitate improved consumer engagement, it is important to acknowledge that some businesses have made major progress over the last couple of years and that there is some exceptional practice happening already.

AER Chair Paula Conboy on 26th July this year in her speech⁸ to an ENA conference said:

⁸ <https://www.aer.gov.au/news/2017-ena-regulation-seminar-speech-working-together-to-restore-confidence-in-energy-regulation>

“Australian Gas Networks has continued the genuine stakeholder engagement it began with its South Australian access arrangement in the context of its Victorian access arrangement. This is an approach we have encouraged more businesses to adopt.

ElectraNet has also undertaken significant consumer engagement in the development of its Regulatory proposal. This included the publication of a Preliminary Revenue Proposal and a series of meetings considering aspects of its proposal and hosted by an independent facilitator. ElectraNet’s engagement has been supported by consumer representatives, the government and business.

Similarly, TasNetworks is undertaking significant consumer engagement in the development of its Regulatory proposal and has been consulting since May 2016, about one and a half years before the proposal is due (January 2018). Its consultation has included surveys, workshops on aspects of the proposal and will conclude with the development of a preliminary proposal for consultation in August.”

This is a clear recognition of very good existing practice by the three businesses that were specifically named. These businesses have been at the forefront of developing an approach to regulation which includes the release of a preliminary revenue proposal / access arrangement about six months prior to lodgement to encourage and enable scrutiny and feedback from consumer interests and other stakeholders. This provides a sound basis for building trust, in particular for a Regulatory processes in which there are “no surprises” for consumer interests, the Regulator, other stakeholders and consequently the business.

It is evident that there has been significant peer learning from experience of these three businesses. Other businesses too have trialled very constructive approaches to consumer engagement including SA Power Networks conducting citizen’s juries, Essential Energy and Endeavour Energy conducting deliberative forums over recent months while the active engagement of customer reference groups is becoming increasingly prevalent. This is not a comprehensive listing of high quality consumer engagement by Australian network businesses, simply some current examples, other businesses too are trialling innovative approaches to consumer engagement and learning from their peers.

Network businesses can also improve consumer engagement by:

- building on existing good practice from within a business and from peers
- trialling new methods of consumer engagement, particularly to reach more disadvantaged and isolated customers. This means a preparedness to make mistakes and to learn from the trials that don’t work as intended
- utilising video-conferencing and web-based strategies to better engage customers from regional and remote locations.
- Contributing to the resourcing of consumer engagement by paying sitting fees and meeting travel and other out-of-pocket expenses

Q9 How can network businesses help build consumers’ knowledge skills and capacity to better participate in revenue determination and access arrangement processes?

The first thing that network businesses can do to help build knowledge skills and capacity, is to learn from consumers and consumer representatives utilising the skills and expertise of these people so that learning and skill development is a mutual process. This will help to keep processes and engagement activities ‘real.’ The starting point of ‘consumer deficit’ is unhelpful.

A second important approach to consumer engagement is to ensure that a significant proportion of consumer engagement activity is undertaken by staff from network businesses, rather than consumers being held at arm's length from the network business through consultants as intermediaries. The more that consumers and consumer representatives can meet with site managers, linesmen and other 'on the ground' network staff, as well as engagement and regulatory managers, the more effective shared learning will be.

Two-way engagement means that network business staff will hear what it is that consumer representatives want to know about. This then means that most effective, network business specific informing and learning can occur.

Some of the approaches have been helpful for consumers and consumer representatives have included:

- Briefings
- short videos filmed by network business staff doing their job.
- site visits
- BBQ's with a local works team. It seems this is more likely to occur in a regional location at a local depot.
- forums on emerging topics: as an example in June this year, AGN held a forum about options for increasing the use of hydrogen in the gas mix, with Dan Sadler who has led the H21 Citygate project in Leeds, UK.

Q10 How can networks demonstrate that consumer engagement they undertake is incorporated into the regulatory determination and access arrangement decision processes?

The most important way that network businesses can demonstrate that they have heard what consumers have said is to firstly provide feedback to whatever customer engagement process has been undertaken about what they have heard.

Then it is critical that network businesses document in their regulatory proposals what they have heard from their consumer engagement and most importantly, what they are doing about it. The "rubber hits the road" with a regulatory proposal / access arrangement. Consumers must be able to see their input and the responses that it has elicited in these proposals.

The CCP and consumer groups have important roles in providing feedback to the AER that the consumer advice that they have received and documented in their regulatory proposals corresponds with the input and advice that was given by consumers and consumer groups. This will overcome the risk of consumer engagement potentially becoming a process for convincing a cohort of consumers to support what the network business wants.

A somewhat more creative suggestion is to suggest that network businesses can start peer reviewing consumer engagement and implementation of consumer advice. Including reporting of consumer engagement and particularly advice gleaned from consumer interests in network business annual reports would be a means by which an ongoing record of both engagement and continuous improvement in consumer engagement could be identified.

We note that ENA has established consumer engagement awards for its members this year. This is a positive initiative to encourage peer learning and to promote effective consumer engagement.

Q11 Under the existing framework, are there sufficient incentives for network businesses to invest in consumer engagement?

There is a range of 'rewards' that companies can potentially seek, which can all be enhanced by effective consumer engagement, we summarise these under the following 4 headings

1. Reputation, including being seen to be 'decent' members of society
2. Saved money and time
3. Efficiency in regulatory process
4. Increased financial return.

These are not necessarily sequential, but a reward with more monetary value may be considered to have 'higher strength.' Two points to bear in mind are that:

1. The nature and importance of the financial rewards may vary depending on ownership and management/investor objectives. Maybe government owned businesses are more sensitive to adverse public comment, maybe!
2. Financial rewards for investors are not limited to the penalties/rewards incentives through annual revenues.

For example, reputational incentives may translate into financial incentives, depending on ownership and corporate objectives. Many listed firms pursue 'triple bottom line objectives' because they believe it is both the right thing to do and that it is good for shareholder value as well as long term returns. But this does not apply to all firms. However we observe that energy businesses in Australia strongly want to be seen to be doing the right thing - that is to be good corporate citizens. Additional incentives are probably not needed to improve commitment to doing the right thing. However, increased recognition of businesses that undertake high quality consumer engagement is likely to be a strong incentive for continual improvement. The AER has made recent public statements identifying excellent engagement, this should continue. There is no doubt a role for governments also to acknowledge network businesses who demonstrate solid corporate citizenship and run efficient businesses.

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