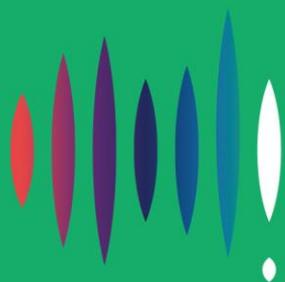
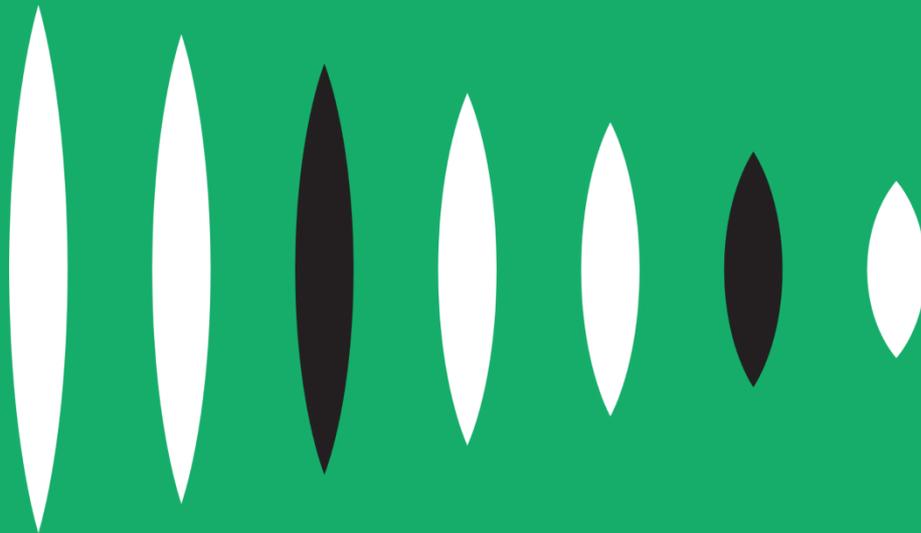


A Mechanism for Better Outcomes

Submission to the COAG Energy Council's
Consultation Paper, *Consumer participation in
revenue determinations and associated
regulatory processes*

October 2017



**ENERGY
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Energy Consumers Australia supports the creation of a new mechanism to support high-quality consumer contributions to network revenue determinations and associated processes.

The context of this process



Increasing resourcing for consumer advocates to participate in network revenue determination processes has been under consideration by officials and stakeholders in the context of the Energy Council's reforms to the former Limited Merits Review (LMR) regime since December 2016. The energy network revenue determination process has changed over that period in two fundamental and important ways. Firstly, the Australian Energy Regulator (AER) network revenue determinations will no longer be subject to Limited Merits Review (LMR), following the abolition of the regime in October 2017. Secondly, Energy Consumers Australia with a number of consumer advocates, networks and the AER are exploring new ways to put consumers and affordability outcomes at the centre of the revenue determination process.

Energy Consumers Australia is an enthusiastic participant in the three-way collaborative efforts between networks, a number of consumer advocates and the AER to move away from the adversarial approach that characterises many of the recent network revenue determination processes. Energy Consumers Australia supports even greater and more ongoing engagement between consumer advocates, consumers and networks throughout the regulatory cycle for mutual benefit and 'no surprises' revenue proposals. New network initiatives such as the opportunity to workshop and comment on extensive pre-proposal documents, which are not required under the rules, are welcome developments. However, it is unrealistic to assume that consumers will be able to make a greater contribution with the same level of funding.

These developments place increased demands on the resources of consumer advocates. The absence of limited merits review of the regulator's decision means it is even more critical that consumers are able to put forward high-quality, well-reasoned arguments in the development of network businesses revenue proposals and at the AER revenue determination stage. Further, this focus on earlier consumer participation in the decision process rather than participation in appeals processes is warranted given that the opportunities for consumer advocate participation in judicial review processes are likely to be limited, because of the potential legal costs, the risk of adverse cost orders and uncertainty about whether leave would be granted.



Would more resources improve outcomes?

Following changes in the regulatory framework, from 2012 a number of consumer advocates sought to direct increasing effort towards the network revenue determination processes.

Some of this effort was funded through the Consumer Advocacy Panel and some through Energy Consumers Australia, after its establishment in January 2015, both through its Grants Program and other funding. Around \$1 million in funding was made available through ECA's grants program for the Public Interest Advocacy Centre (PIAC), South Australian Council of Social Services (SACOSS) and Consumer Utilities Advocacy Centre (CUAC) to support both participation in AER processes, as well as participation in LMR and judicial review) of the AER determinations. Significant co-contributions, especially in kind, were also committed by these organisations.

It should also be noted that the demand for funding by consumer advocates for participation in network revenue determinations as a proportion of annual grants funding approvals has fluctuated – from 20% in 2014-15, up to 26% in 2015-16, and down to 5% in 2016-17. This funding was primarily for engagement in the AER and appeals processes. A further 6% of funding in 2016-17 was approved at the request of consumer advocates to engage directly in the development of network business regulatory proposals.

The experience of Energy Consumers Australia and other consumer advocates in participation in AER revenue determination and appeals processes has demonstrated that a different approach is warranted to ensure that the consumer voice is heard and responded to in the process of determining network revenues. Our experience shows that consumer advocates were at a disadvantage compared with network businesses and the AER in being able to marshal the resources and skills to engage on complex technical questions as well as providing evidence of consumer views on proposed network expenditure and the impact on consumer outcomes.

The AER's recent approach to the review of inflation, which is one parameter in the setting of network revenues, shows how the consumer voice can effectively be represented in a complex technical issue. As outlined in Box 1, there were two important parts to this contribution, the use of external experts, but also the support provided by Energy Consumers Australia, in the form the expertise of our Senior Economist, who briefed and managed the consultants as well as participating in the process.

Box 1

Alternative approaches to consumer engagement – AER Review of inflation

The AER in its review of inflation established a Consumer Reference Group (CRG) to assist with the process. Energy Consumers Australia's was represented by the Senior Economist as a member of the CRG.

Following the initial meeting of the group, Energy Consumers Australia contracted two experts, whose reports were shared with the CRG members and used by three of them in their submissions.

The consumer advocate member submissions to the CRG placed their emphasis on the outcome that best promoted the long-term interest of consumers, rather than focusing on the technical modelling arguments.

Energy Consumers Australia has considered the consumer engagement approach taken by Scottish Water¹ and concluded that negotiated outcomes with consumers should not include the calculation of parameters such as the rate of return. However, as our experience in the AER's review of the regulatory treatment of inflation has shown, a well-resourced consumer advocacy process can be effective.

A CRG for the AER's review of the rate of return guideline has recently been established. Energy Consumers Australia's expectation is that this CRG will benefit from a similar use of expert resources to be made available to consumer advocates more widely, to support their participation in this process.

A mechanism that enables better consumer participation

As previously stated, Energy Consumers Australia believes a new funding mechanism (the Mechanism) is desirable to support consumer participation in the network revenue determination process. Energy Consumers Australia believes the Mechanism should support both:

¹ Havyatt, D, 2016, *Negotiated Settlement and Consumer Engagement: UK Experience and lessons for Australia*, ECA research report Number 2. Available at: <http://energyconsumersaustralia.com.au/publication/negotiated-settlement-and-consumer-engagement-uk-experience-and-lessons-for-australia/>

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- the deployment of expert analysis and contributions to network revenue determinations and related processes; and
- the resourcing of ongoing advocacy capacity, at a level that allows for external experts to be properly briefed and used.

The nature of network revenue setting processes can present enormous challenges for consumer advocates who generally work largely autonomously within their organisations or, at best, in very small teams. The engagement in these processes is episodic (usually once every five years), a significant component is highly technical and consumer advocates are insufficiently resourced to develop the evidence base on the attitudes and preferences of the local community served by the network business. The consequence is that consumer advocates often prioritise other issues where they can be more effective in influencing the outcome for consumers in energy markets. Where these consumer advocate organisations do choose to participate in the revenue determination process they are often faced with having to 're-learn' the issues.

To overcome this challenge, the Mechanism could provide advocates with access to a 'base' level of ongoing funding for the specific purpose of remaining engaged with network revenue determination issues. Funding ongoing advocate engagement with network revenue processes would support continuous improvement, and enhance the opportunities for ongoing engagement between networks, the regulator and consumers.

Depending on the level of funding and the rules of the mechanism, funding could also be provided to support consumer participation in Australian Energy Market Commission (AEMC) rule changes and reviews (either closely or more broadly related to the network revenue determination regulatory processes). This would both help consumers to make contributions to rule changes and to build their understanding of the rules (with a view to applying that understanding to the network revenue setting process).

Possible features of the mechanism

Energy Consumers Australia anticipates that if the Energy Council agrees to the introduction of increased funding for consumer participation, the precise features of the Mechanism would then be the subject of further detailed consideration and consultation. Nonetheless, Energy Consumers Australia makes the following observations about possible features of the mechanism.

Funding source and bill impact

Energy Consumers Australia believes it is appropriate for increased funding for consumer participation to be funded by networks and included as a cost recovered in allowed revenue. The AER determines a network business a revenue allowance that provides for efficient operation of all their required functions. Because Energy Consumers Australia believes that high-quality consumer participation is a key part of the network 'business as usual' scenario, it follows that the associated cost be paid by consumers.

At a time when Energy Consumers Australia's *Energy Consumer Sentiment Survey* is saying that consumers do not see value for money in electricity. Energy Consumers Australia supports funding of high quality consumer contributions to network revenue determination processes as a means of achieving the lowest possible network cost. However, as discussed further in Box 2, Energy Consumers Australia is confident both that the cost imposition on an average small customer would be extremely modest and that the benefits of the Mechanism in reducing network costs overall would substantially outweigh those costs.

Box 2

Bill impact and cost vs benefit

Energy Consumers Australia has calculated that each million dollars that is collected for the Mechanism would increase a small electricity consumers' annual bill by 5.7 cents. For example, collecting \$4 million per year for distribution through the Mechanism would increase the annual bill of an average small customer (household and small business) by 22.8 cents.²

At 22.8 cents, in order for the benefits of the Mechanism to outweigh the costs, a reduction in network charges of at least 30 cents per year would be required, allowing for transaction costs. According to the ACCC's recent Preliminary Report, the average household pays \$731.52 per year in electricity network charges.³ \$0.30 is 0.041% of \$731.52.

Given the AER regularly makes draft and final determinations to reduce network revenue caps by 10% or more, it seems likely to Energy Consumers Australia that well-resourced and directed consumer contributions could impact final revenue by more than 0.5% makes the Mechanism comfortably cost benefit positive. Cost reduction is also only one category of benefit

Energy Consumers Australia involvement in the administration of the Mechanism

Energy Consumers Australia already has a grants program administration capability which could provide a basis for placing any additional funding under Energy Consumers Australia's existing governance and accountability structure. Energy Consumers Australia notes, however, that:

- increased demand for Energy Consumers Australia grants supports the idea of keeping any new funding strictly separate from the existing Energy Consumers Australia grants program

² Assuming small customers are 90% of the total in the NEM (8.84m of 9.82m, see [State of the Energy Market](#) at p97) and that 50% of network charges are recovered from small consumers. In this analysis, electricity consumers are bearing the entire burden and gas customers none.

³ The ACCC, *Retail Electricity Pricing Inquiry – Preliminary Report*, states that the average annual household bill is \$1524, of which 48% is network charges (p6).

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- there are plausible scenarios in which Energy Consumers Australia may itself seek access to funds for its own participation in newer regulatory processes, including those related to the rate of return.
- the availability of greater resources is the primary issue; we would happily work with all stakeholders to find the best design for the Mechanism, regardless of ECA's level of involvement in that design.

The Energy Consumers Australia grants program

Energy Consumers Australia is now in its third year of managing the grants program that was previously managed by the Consumer Advocacy Panel. As stated in Energy Consumers Australia's recent Annual Report:

advocates that sought funding in 2016-17 included organisations that represent low income consumers, residential consumers including rural and regional consumers, and small and large businesses, including agribusiness. Funding for research has been provided to environmental advocates, as well as research centres, universities, and expert consultants.⁴

Energy Consumers Australia also reported that demand for grants had significantly outstripped available funds in 2016/17, with 70 applications having been made, seeking a total of \$6.2 million. Energy Consumers Australia approved 39 grants, totalling \$2.9 million, \$2.1 million of which was for 2016/17. As shown in Figure 3, below, these projects covered a vast array of strategic themes.

Any increased use of the Energy Consumers Australia grant money towards consumer participation in network processes would come at the opportunity cost of the other good work that would, necessarily, go unfunded.

Energy Consumers Australia's Annual Report is at **Attachment 1**. A table of current projects being funded under the grants program is on page 31.

⁴ Energy Consumers Australia, *Annual Report 2016-17*, p30.

Figure 3: Grants projects approved in 2016-17 by strategic theme



Ability of Energy Consumers Australia to access funds under the Mechanism

Energy Consumers Australia is currently engaged in numerous processes related to network revenue determinations, ranging from the remittal of the NSW electricity network matters, to consideration of specific capex proposals in the current Transgrid determination process, and the final analysis of the Victorian electricity distributors’ appeals of their determinations. Nonetheless, Energy Consumers Australia’s preference is for other, jurisdictionally-based advocacy groups to be the ones making formal submissions to individual determinations. Energy Consumers Australia takes the view that local groups are much better placed to understand (and therefore represent) consumers in their area.

However, there may be a scenario where no local advocacy group is able to play that role. In the case of major determinations (such as for electricity distributors or a binding rate of return guideline) it may be necessary for Energy Consumers Australia to provide expert submissions to ensure that consumers are appropriately present at the table. As shown in Box 1, such a

contribution requires both the resources to engage expertise and the internal capacity to manage that expertise.

It is not possible (including under accounting standards) for Energy Consumers Australia to give itself a grant. Accordingly, Energy Consumers Australia believes there is merit in the Mechanism being able to operate flexibly including in a manner, that permits Energy Consumers Australia to receive and spend the funds.

Standing in Judicial Review

The Bill to abolish LMR of network revenue decisions was passed by the Senate on 16 October 2017. In recommending the passage of the Bill, the Senate Standing Committees on Environment and Communications (the Committee),⁵ noted that it:

also supports mechanisms to ensure standing in judicial review for stakeholders such as consumer groups and unions and for their protection against adverse cost orders. The committee notes that a consultation process on consumer participation in the regulatory process is underway. These matters should be included in that process and that further consideration be given to standing and costs issues once the consultations have been completed.⁶

Energy Consumers Australia reaffirms to the Energy Council, as it did to the Committee, our strong doubts about consumers' ability to participate in the judicial review of an AER network price determination under current law. Consideration should, therefore, be given to special arrangements that could give consumers an increased opportunity to gain standing in such cases, including protection from adverse cost orders.

Conclusion

Energy Consumers Australia thanks the Energy Council for the opportunity to provide comment on this issue. Energy Consumers Australia supports the creation of a new Mechanism for supporting consumer participation in network revenue processes.

If you would like to discuss anything related to this issue further, please contact Rosemary Sinclair, Energy Consumers Australia CEO, or Oliver Derum, Associate Director of Advocacy and Communications.

⁵ https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Environment_and_Communications/LimitedMeritsReview

⁶ Senate Environment and Communications Committee, *Inquiry into the Competition and consumer amendment (abolition of Limited Merits Review) Bill 2017*, para 2.97. Available at: https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Environment_and_Communications/LimitedMeritsReview/Report/c02

