



Strawman Scenario & Notes from Workshop

For Workshop 15th March 2018

Developed by: **Uniting Communities**

Note: Uniting Communities is South Australia's first accredited Carbon Neutral organisation/business.

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March 2018

Straw man Scenario

For Uniting Communities workshop: “the End Game” for consumer engagement

Background

Uniting Communities, as part of UnitingCare Australia first used the term ‘DNA approach’ to network regulation in 2015. We were responding in part to the frustration of network regulatory processes that we observed to be based on an approach that we summarised as: “propose, defend, litigate.” We observed network businesses, in general, to not give much regard to consumer input, in practice if not in rhetoric, while challenging the regulator’s decision was common practice and we observed that some aspects of the process of regulation are intended for the appeal process rather than in the best interests of consumers through the regulatory process.

We proposed an alternative approach of active partnership with consumers in developing regulatory proposals in particular we said that regulation of energy networks should involve deliberation and negotiation with consumer interests and other stakeholders, seeking agreement on the key aspects of the proposal to be lodged with the AER – the DNA approach. A particular methodology was not being proposed, but we were convinced that any regulatory proposal developed that included deliberative processes and negotiation with the objective of reaching agreement with consumers and stakeholder interests would almost certainly be a substantial improvement on what was then the prevailing approach.

In December 2017, Energy Networks Australia’s end of year event included the first Consumer Engagement award for a member, awarded to ElectraNet. The first 2 months of 2018 have seen substantial consumer engagement activities being undertaken by all three NSW distribution businesses with a significant number of ‘deep dive’ sessions. Currently electricity distribution businesses from Victoria, SA and Queensland are actively implementing their engagement strategies for coming regulatory proposals, with AusNet Services committing to trailing a new approach to regulation, in line with the NewReg trial being developed by ENA, AER, ECA. This reflects some of the substantial recent development in commitment to and application of consumer engagement approaches by energy network businesses.

The End Game?

With so much recent progress, the next question is to ask where all of this actively is heading, what is the “End Game” for consumer engagement?

The ultimate goal is for every regulatory proposal lodged with the AER, by a network business to be centred on a transparent and arms-length process that delivers a comprehensive documented agreement with recognised groups representing consumer interests and other key stakeholders (government, retailers etc), adhering to the NEO, with costs paid by consumers aligned with the expected level of service and efficient returns maintained for network businesses.

Achieving the “End Game”

The documentation of agreement could take many forms but would need to include a clear statement outlining areas of agreement, areas of disagreement - with a summary of the arguments for and against and quite possibly a category of “probably near agreement but not quite there yet.”

Periodically and particularly prior to finalisation there should also be a network led, pro-active and transparent communications program to the broader stakeholder group and consumers at large of the key elements of the agreement and the implications for consumers.

The national electricity and gas rules are expected to continue to require that the AER as the independent regulator will ultimately make a final determination. A key assumption is that there will be a high level of trust between Boards and their staff teams for both the business and the regulator; between consumer groups, network staff and regulator staff; between consumer groups and with other stakeholders.

There are process elements which will be an important part of achieving “the end game”, these include:

- A clear identification of all key stakeholders and their objectives from the process – this would cover network businesses, consumers, regulators, governments, retailers and other parties. There would also need to be ongoing refinement and updates of the stakeholder identification and objectives process.
- Ongoing dialogue between network businesses and consumer representatives, including annual reporting on consumer engagement activities, issues and resolutions to the AER and consumers in general. This means that network regulation would be a much more ongoing process rather than being focused on the major activity for the months leading up to the once every five years lodgement. The notion of annual reporting of consumer engagement and shared network development goals can be initiated by network’s, could be in the form of an incentive scheme managed by the regulator or could be established in a number of other ways.
- Signals of expectations from the AER at the commencement of the official regulatory process about aspects of consumer engagement, emerging issues for networks and ranges for key parameters within which the AER would be minded to accept an agreed proposal. This would include capacity for the Regulator to ‘reward’ network proposals that were in line with the regulators signals, which were regarded as adhering to high calibre consumer engagement practice and which included significant documented agreement between the network business and consumer interests.
- An arms-length and transparent process where network businesses appoint an independent 3rd party to source suitable individuals or groups to represent consumer interests based on a network developed document outlining specific selection criteria and other requirements.
- AER acceptance of designated consumer interest groups to be part of negotiations, including an understanding of resourcing for designated consumer interests
- A preliminary regulatory proposal released for stakeholder response, at least six months prior to the due date for lodgement of the regulatory proposal
- “Deep Dive” sessions both before and after release of the preliminary regulatory proposal, to enable detailed understanding of significant issues and to seek a shared understanding of the best solution to the identified issue. Participants to at least include senior and expert staff from the network, people representing consumer interests, other relevant stakeholders, AER subject experts and Consumer Challenge Panel (CCP).
- Periodic process reports to the AER, as an audit rather than an assessment, designed to identify any roadblocks or potential process issues, before they become entrenched problems, so the matters can be resolved and the process gets back on track. The CCP would be one group that could undertake the process reports providing them to the AER and consequently the network business and relevant consumer groups about the calibre of

discussions / engagement as well as complex and disputed issues. The AER initial “signals” would be used as a guide for the process stocktake.

- Peer review of key documents developed by the network, particularly statements reporting on consumer engagement.
- A network led, pro-active and transparent communications program to the broader stakeholder group and consumers at large.

Relationships

For a sound consumer engagement approach to be effective, there will need to be high level of trust and goodwill between key parties, and continuity. There will be significant relationships between individuals who are from the network business and from consumer representatives / community organisations at the centre of the engagement process.

Key relationships with consumers are likely to be formalised through an arms-length independently established consultative group / reference group /customer forum model, supported by but independent of the network business. The multilateral relationship between individuals from the reference group and the network business will be supported by specific 1:1 relationships between lead discussants from the network business and consumer representatives / consumer groups.

The next layer of relationships is also of critical importance and this will include other stakeholders including specific commercial and industrial businesses and significant business sectors, energy retailers, state /local / regional government and quite possibly academics / researchers.

Roles

Roles of the Regulator

- formally start the regulatory process by giving due dates for regulatory lodgement to the network business and potentially interested parties, along with other detail as required by the rules.
- provide “signals” to the network business and other stakeholders regarding expectations about aspects of consumer engagement, emerging issues for networks and ranges for key parameters within which the AER would be minded to accept an agreed proposal.
- ratify designated consumer interests to be party to the process leading up to documenting agreement has been reached.
- provide information and observation to the network or other stakeholders as soon as practical on a “no surprises” basis.
- participate in deep dive and other relevant processes
- facilitate the mechanisms to enable good network practice to be rewarded
- oversee annual / regular reporting of consumer engagement practice, topics and direction
- actively seek transparency in all aspects of the process
- make draft and final determinations in line with national electricity and gas rules
- encourage ‘plain English’ use for all publications, whether from networks, consultants or the regulator.

Roles of the Network Business

- board approval for the “end game” consumer engagement objective with strategy to achieve this

- development of a stakeholder identification and requirements process to frame the desired outcomes and participants in the process.
- sponsor the arms-length process to establish and resource the appropriate consumer representatives.
- pro-active communications and reporting framework for consumer engagement, agreements and future focus
- ensure the relevant consumer and stakeholder interests are effectively briefed and have access to all relevant information
- enable the facilitation of process to document areas of agreement for regulatory proposal lodgement
- commission expert reports on key topics agreed with consumer representative groups and the AER
- assisting in resourcing for consumer representative involvement as needed
- facilitation of deep dive and other engagement activities
- seek to promptly resolve any roadblocks to effective process
- prepare draft and final regulatory proposals and relevant support documentation
- follow the national electricity or gas rules

Roles of Consumers / Consumer Groups

- agree to the “end game” objective
- agree to the parties to the negotiation seeking agreement with the network business
- participate in engagement activities
- seek to resolve significant differences between consumer groups
- proactively seek resourcing to participate
- seek to promptly resolve any roadblocks to effective process
- document areas of agreement with the network business for lodgement with the network business regulatory proposal

Roles of the Consumer Challenge Panel

- actively observe consumer engagement processes
- identify any roadblocks to the process and potential stumbling points. Intervene to initiate action to resolve any emergent problems
- initiate periodic progress reviews, pre-lodgement, advising all parties of observations and any concerns
- participate in relevant engagement activities
- provide feedback and advice to the AER at relevant stages of assessment of the regulatory proposal through the formal regulatory process

Roles of the Government

- actively participate in the processes
- provide assistance and support to networks, consumer groups and other stakeholders as required to ensure a smooth process

Roles of Retailers

- actively participate where required throughout the process

- assist in enabling the delivery of desired, agreed and expected outcomes to consumers and other stakeholders
- observe consumer engagement processes

Process Summary

To conceptualise what a process might look like that fits in with this “Straw man” perspective of where we want to end up, the following outlines one of many ways that the End Game objective could be met. It maps out a potential sequencing of the regulatory proposal process assuming a context of ongoing engagement between network businesses and consumer interests with ongoing pro-active reporting by the network of engagement activity issues agreement and future issues, timing is indicative only.

- **30 months before lodgement:**
 - network business commences planning and develops a stakeholder engagement strategy or plan that articulates the key stakeholders and their objectives and the process to achieve these objectives.
 - This includes liaising with an existing customer reference group. (Assumes that an ongoing consumer advisory group exists, meets and has good rapport with senior staff in the network business).
 - The network business will propose a set of selection requirements and criteria for the appointment of the consumer representatives. This would indicate whether the existing consumer advisory group for the network business, or another will be the ‘focussing’ consumer perspective group, particularly for negotiation activities.

Note. The Consumer and other Stakeholder Engagement plan will include budget for all aspects of consumer and stakeholder engagement, including reimbursing consumer representatives for their time.

- **24 months before lodgement:**
 - Network businesses appoint an independent 3rd party to establish the consumer representative groups in line with the stated requirements.
 - The 3rd party establishes the required consumer representative groups.
 - Network business brings the independently appointed consumer representatives, a range of other consumer representatives (if required) and other stakeholders together, probably 2-3 times over a couple of months.
 - Main purpose is to generate a list of issues / challenges for the coming regulatory period resulting in a short of list of difficult problems and areas with potentially the greatest budgetary impact.

Note. All stakeholders will be advised at this stage that one of the hoped for outcomes is a written statement from individual consumer or stakeholder groups identifying aspects of the regulatory proposal that they agree too, to be included with the proposal on lodgement

- **21 months before lodgement:** Most difficult / most contentious issue is identified and a (full) deliberative process (eg Citizen’s jury) instigated, led by an independent facilitator / consultant.

- **21 months before lodgement:** other key issues are identified and scoped by the network and consumer groups to clarify the questions to be put to broader groups of consumers that will give the network sound consumer advice.
- **18 months before lodgement:** the network business releases a document for the next stages of engagement, summarising intended consumer engagement processes and key events up to lodgement.
- **18 months before lodgement:** any deliberative processes are instigated and issues for consideration are explored and negotiated. Deep dives likely for significant issues.
- **9 months before lodgement:** the network business summarises progress to date on issues considered by deliberative activity, negotiation and identifies any other matters where little or no progress has been made regarding shared view.
- **6 months before lodgement:**
 - the network business releases its draft revenue proposal for consultation, covering all significant aspects of its intended proposal for lodgement
 - Agreements sought between the business and consumer groups about the draft revenue proposal (AER actively involved to provide advice and observation).
- **Lodgement:** with documented support of areas of agreement with consumer group(s)

Note

This document summarises at “high level” a strawman version of a desirable end game for consumer engagement on energy network businesses, with some explanation of aspects of achieving the end game. It is intended as a basis for discussion and debate, it does not intend to present “a position.”

Now to examine the “straw man,” with the next step being a workshop in Melbourne on 15th March 2018, contact Mark Henley for more details: MarkH@unitingcommunities.org

“End Game” Workshop, 15th March 2018

Notes from report backs

Session 1: The Strawman

- There was some initial discussion about the appropriateness of referencing the national energy objective (NEO) with the view that it is not fit for purpose, so therefore questions about how important it is as context for the end game. Part of the argument about the NEO not being fit the purpose was associated with the comment that there is no trilemma, because emission reduction is not included directly as part of the trilemma nor is it part of the Neo. The view was expressed that the end game will have to include agreement which includes understanding of an agreement about emissions reduction.
- The term “recognised consumer groups” was challenged - who are they?
- Other stakeholder groups are also crucial, along with consumer groups, so the use of the term stakeholders, and consumer groups, it needs to be unpacked.
- Who is agreement with for the networks, is it with a predetermined consumer group also has consumer groups, broader range of consumer groups or even broader range of stakeholders?
- How important is documentation? Can agreement be reached, released, understood without separate documentation? Can agreement simply be incorporated into the networks proposal to the regulator?
- It is really important to acknowledge the role of the AER upfront
- An important question is the extent to which consumers can impact on other aspects of a regulatory decision where these areas are subject to other jurisdictional or national regulation; for example technical regulations, OH&S, privacy, bushfire mitigation, service standards etc
- What is negotiable and what is not negotiable, for example EPA and in New South Wales IPART role. Recent discussions in New South Wales proposal developments have involved capital contributions (cap cons) agreements between networks and developers. How can these issues and interested parties like developers be represented in an agreement?
- This leads to the question as to who are customers and what about community energy groups, at a consumer - provider or both?
- Is consumer / consumer interest the best language conceptually given changing energy market paradigms? Perhaps a better thinking is to be talking about “community compacts” rather than agreements with consumer groups?
- Decisions are already being made and there are processes in place, as imperfect as these may be. Processes however are not transparent, to most consumers so it is important that the end game enables movement beyond the “black box of regulatory decision-making”
- Is the regulatory proposal the right focus for the end game, or is it an intermediary process when the real outcome is the price and quality mix? The end game is the service not the process.

Session 2

- When thinking about outcomes, is the Global Reporting Indicator approach a better way to go?
Refer: <https://www.globalreporting.org/Pages/default.aspx>

- PRIMO needs to be considered as an appropriate model noting that where a robust case is demonstrated by network's acting in the consumer interest, they should be rewarded example with a higher rate of return. Rate of return should be cost recovery not using the building block approach.
- An alternative view is that there is no place for incentives regimes with consumer engagement. The consumer engagement is the end focus, not a mechanism for higher returns for network businesses
- Questions the network businesses is whether to outsource consumer engagement or in source?
- End game is about consumer voice leading to price and service outcomes reflecting community/consumer/user interests and capacity
- In the new network world there is a shift from simple to complex markets and issues along with new objectives including climate change, extreme events carbon pricing and the like. Trust is the key, consumers need to be able to influence the network of the future.
- Shortfalls of regulatory processes include that consumer views are often not included in regulatory proposals and there is uncertainty about how to engage on complex issues, particularly all once as tends to happen with the five yearly regulatory proposal. Therefore there needs to be a move towards consistency with approaches to address gaps resulting in a value proposition to both consumers and businesses
- Keywords: transparent, tailored, resourced, defined (in scope), material impact, embedded in practice, two-way, outcomes, proportionality.
- Engagement is not box ticking
- the reason for an end game is for more efficient pricing and better outcomes including better outcomes for vulnerable customers
- the long-term game is for increased efficiency so that consumers are not being ripped off
- There needs to be shared understanding between network and non-network solutions so that all are considered. The question was asked whether there are barriers to non-network solutions.
- The end game must lead to mutually beneficial outcomes leading to trust in networks to deliver outcomes in the future
- there is not much experience in negotiation noting the IAP2 spectrum were historically the focus of networks has been on inform and consult rather than collaborate and empower. How far can we go with the IAP2 framework, can react to get to the empower end of the spectrum?
- Inform consult lead to a legal and mitigation regulatory model
- there was consideration about the customer forum model being promoted by AusNet and the question as to how far a customer forum can push other debates?
- So much of regulation is about implementing other policies set by government (Jemena)
- how big is the box that consumers can influence?
- Consumer engagement may be more potent on issues that are outside the purview of the AER regulatory process
- negotiated settlement = empowerment (as per IAP2 spectrum "promise to the public")
- We need to move from comfort and reassurance to discomfort?

- there is a role for consumers in the discussions and negotiation as well is a role for consumer advocates
- there is also a critical role for retailers who should be more engaged. In the end game retailers are a good proxy for consumers
- the big question is how to incentivise retailers to engage
- retailers need to innovate too
- Who is “the community”? When engaged can and should weight to be given to a community perspective when compared to individual consumer interests?
- Who is the voice of the future consumer? Is it property developers, local government, young people, other?
- (After a little discussion about the role of the customer forum) a key role of a customer forum or reference group is to represent local issues in distribution business regions
- regarding resourcing: networks ask how can they be certain that consumers are adequately resourced
- different engagement needs to be funded in different ways
- What are we asking to be funded, by way of consumer engagement, what value is provided from resourcing consumer engagement?
- Is there potential for standardisation across consumer engagement, perhaps starting with some principles including
 - Openness
 - good governance
- note the AER consumer engagement guideline
- How can capacity for consumers and consumer groups be built? For example resourcing individual customers and/or existing advocacy groups what about partnerships example with consumer groups and the ENA
- there is a role for networks to play in supporting consumer engagement for example supporting engagement that is specific to a particular networks interests or internal to that network, for example a customer forum / reference group etc
- it was noted that jurisdictional officials (through the COAG process) are currently asking if there is a business case for increased funding to consumer groups. It was observed that the whole notion of “AER 2.0” is predicated on significant increased funding to consumer engagement.
- Networks should also increase their funding to consumer engagement
- there needs to be a process to hold advocates accountable
- Resourcing for consumer groups should be split between networks who fund internal engagement for example customer forum and public purse funding for broader consumer advocacy.
- Maybe there is capacity for some standardisation since there are similarities for networks across jurisdictions, so the potential exists to get as far as possible when everyone (transmission, distribution, gas, water and sewerage) all in the same room at the same time. Under this approach, jurisdictional governments should be contributing to resourcing consumer interests.
- Whatever happens don't be too prescriptive

Session 3: Roles of the parties

- The role of government is to be proactive, providing funding and open to be influenced by consumer engagement this includes local government.
- How can with tailors be incentivised to participate
- Regarding the notion of agreement, what sort of agreement and who are parties to any agreement?
- Is agreement a synonym for dialogue?
- In a negotiation / agreement process, who represents the interests of future consumers (recurring question)
- a network role is to also consider who has been missed out in consumer engagement
- engagement needs to go beyond the rules

Roles of government

- not blocking consumer engagement.
- Setting the policy framework
- They should also engage as policy is developed and regard consumer engagement on policy issues as separate from the regulatory process which is more strongly defined by the rules
- government to be advocating for broader social and economic impacts
- providing concessions
- partnering in education strategies, most likely in combination with other government institutions / maybe market bodies too.

The AER

- should be involved during the process, there is a role for them
- they can help to empower customers
- needs to understand that they are not experts on consumer engagement, they need to look elsewhere for in consumer engagement expertise
- The AER needs to develop skill sets associated with consumer engagement as part of their evolution; they need to move beyond a submit and respond approach
- What about the AEMC and AEMO, and maybe other bodies too, what is their role with consumer engagement.
- Concerns regarding consumer engagement include who is represented.
- A culture shift is needed for consumer engagement for all parties
- Timeframes in regulatory processes are moving to much more “front ended” engagement and may lead to a more ongoing process rather than for a once in five year regulatory proposal.
- What happens if consumers don’t want to be engaged, or engage differently than is anticipated / hoped for by the engaging party. *(This is a topic that I have strong views on, I think that the industry has overstated the “consumers won’t engage” argument - something of a blame the victim situation. I argued that in consumers are engaging extensively e.g. nearly 90% of installed more energy efficient lighting and/or appliances, 50% of consumers have or want to install PV this is massive engagement!)*

Role of Retailers

- They are clearly a stakeholder and need to be able to advocate for themselves and for their customers.
- Retailers prefer one-to-one discussions with network businesses on specifics rather than broader multilateral processes.

Session 4: Next steps

- There was specific discussion about COAG process where it had come to light that the SCO working party dealing with resourcing for consumer engagement was not inclined to see that there was benefit in further resourcing for consumers, rather that resourcing for further consumer engagement would only lead to higher costs for customers.
- Agreed that collective action was needed in response to the COAG process
- There was discussion about who should lead the charge, recognising that the alternative was for 'organic evolution' which will most certainly would not be the best outcome.
- Agreed that the workshop would send a paragraph to the COAG working group basically saying "don't make a hasty decision."
- There was a shared view that there is good and improving practice in engagement between energy networks and consumers
- Further consumer engagement will require extra funding, how much? To whom? Who decides? And related questions are still to be determined.
- The recent move to more front ended regulatory processes for networks increases cost some costs upfront but is more than likely that cost savings later in the process, including end outcomes are consumers, make this approach cost-effective.
- There is international trend in economic regulation for regulators to expect enhanced consumer engagement, this is not just some new fandangled thing dreamt up in Australia.
- *Note to self and Peter - check the UK regulators network for in recent research / papers relevant to this discussion, also check CEER (European regulators); <http://www.ukrn.org.uk> and <https://www.ceer.eu/> note particularly: http://www.ukrn.org.uk/wpcontent/uploads/2017/04/UKRNConsumer_Engagement_WEB.pdf*
- Maybe a future forum would be useful dealing with "before engagement process thinking", this could be outcome of the current project.
- A business case is needed which will mostly demonstrate that there is the most impact early in the process rather than reactive action at the end of a process.
- Upfront process almost certainly gives the cost savings for in consumers and most likely businesses as well
- We need to progress from the AER (consumer engagement) guidelines to include a clear call to action
- Networks are investing in consumer engagement, there is a reciprocal requirement for funding for consumer advocates and community organisations to partner in these processes are half baked solution is not helpful
- Networks and the regulator can't do it on their own
- Note the current situation where a lack of trust in the market is leading to inefficient outcomes and high cost to consumers, engagement builds better trust
- Government can and should promote and fund some trials exploring partnership and collaborative processes.

- Note that the essential remitted decision for 2014 to 19 alone yield savings of something like \$1.7 billion over five years, based heavily on this active consumer engagement

Who should lead the charge?

- Whoever stumps up the cash leads the charge!
- There is need for leadership from individual businesses
- Should there be evolution of existing processes and practices, or a stronger focus on new processes?
- Networks are doing a lot behind-the-scenes, no doubt this needs to be seen more publicly (Jemena)
- Should there be incentives for consumer engagement?
- Is there a conflict of interest for advocates if they take funding directly from network businesses? How is this juxtaposed against network businesses valuing consumer (group) input and therefore being willing to pay for it?

Specific action

Mark Henley to produce a short statement to be sent to the COAG officials working group, indicating shared view amongst a diversity of the disciplines at the day's forum to so that consumer engagement is important and urge COAG to not make a hasty decision.

This to be circulated before sending

Post workshop email to Paul Locke, Director, Wholesale Markets and Networks Policy | Department of the Environment and Energy

“Hi Paul,

It is understood that there is a meeting of Commonwealth and jurisdictional officials next Tuesday, and that part of the discussion will be about Consumer Resourcing for network engagement, a process that the COAG Energy Council commenced last year. It is also understood that this process has slowed and that there is some ambivalence about the benefit for consumers of increased resourcing for consumer engagement.

Yesterday, 15th March, Uniting Communities hosted a workshop in Melbourne to consider the desired "End Game" of consumer engagement with network businesses. Participants were from network businesses, retailers, consumer groups, Local Government and regulators, key perspectives relevant to the discussion. The workshop was conducted with a very strong spirit of goodwill and considerable agreement about the value of further developing consumer engagement approaches, recognising the considerable efforts that have been made by network businesses and consumer groups over the last year or so, much of this has been formally recognised by the AER in their draft and final decisions.

Participants also discussed opportunities to trial a small number of consumer and network engagement processes with evaluation of effectiveness, and in the context of the broader funding question, the need for an evaluation, including costs and benefits for consumers. There are recent examples of consumer engagement with network businesses that are widely considered to be effective including Essential Energy and the recent proposal they have lodged with the AER regarding the remitted decision for 2014-19, ElectraNet's recently concluded regulatory process, Victorian gas network decisions and Tasnetworks' recent determinations and others.

The workshop agreed with a request that I advise you that the participants encourage the Officials to hold a forum with representatives of consumer groups, networks, retailers and ombudsman schemes to discuss concerns and possibilities arising from more consistent resourcing for consumer engagement, including the development of a 'business case' for strengthened consumer resourcing and to start developing trials.

We encourage the Officials to consider further evidence and recent engagement experiences before making any shorter term decisions that could diminish current goodwill and emerging good practice.

Best wishes,

Mark Henley”