

Mr John Pierce
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21 March 2019

Dear Mr Pierce,

RE: Electricity Network Economic Regulatory Framework Review

Thank you for the opportunity to provide comments as part of the Electricity Network Economic Regulatory Framework Review. SACOSS has appreciated the engagement with AEMC staff in the preparation of our submission, as it has provided us with the opportunity to fully consider our views and be informed about the AEMC's early thinking for this Review.

As the peak body for the health and community services sector in South Australia, the South Australian Council of Social Service (SACOSS) has an established history of interest, engagement and provision of proposed advice on the supply of essential services including electricity. SACOSS research shows that the cost and supply of basic necessities like electricity have significant and disproportionately greater impacts on vulnerable people. SACOSS' advocacy is informed by our members and direct consultations with consumers and other consumer organisations: organisations and individuals who witness and experience these impacts in our community.

SACOSS supports the AEMC's annual Economic Regulatory Framework Review and the continued exploration of better ways to regulate the network businesses – these are priority issues for consumers.

SACOSS considers that the current regulatory framework is relatively robust however:

- Limited Merits Review, although now abolished, has left a legacy of very conservative regulatory decision making;
- The Rules were not designed to facilitate the level of consumer engagement that has developed especially in more recent years. The AER is experimenting with negotiated-settlement type approaches. SACOSS has significant concerns with this approach as outlined in attachment A. A concern is that the regulatory framework does not provide adequate safeguards in the process to ensure decisions are in the long term interests of consumers.

SACOSS questions whether risk is allocated efficiently between consumers and the networks. The risks seem to be mostly borne by consumers. SACOSS believes that the networks should more so bear the financial consequences of inefficient expenditure, especially if these are necessary investments to transform their business models to meet future market developments.

SACOSS believes that regulatory approaches such as output or performance-based regulation and totex assessment approaches appear to have merit, and may be a way to re-allocate risk and create incentives for networks to undertake efficient DER-related investments. This is an area that SACOSS would appreciate further information and discussion to understand the issues, so it can provide an informed view.

SACOSS has reflected on our experience in the SA Power Networks revenue determination 2020 process to date:

- SA Power Networks has proposed significant expenditure to manage increased distributed energy resources (DER) penetration, such as solar PV. This brings questions of regulatory and market design, in the context of the transformation of the sector, to the forefront.
 - SACOSS has significant concern with the pace of the reform that is happening – regulators are being asked to decide on a future pathway now
- SACOSS is concerned about the transparency of SA Power Networks proposed expenditure to manage this transition. This is important to understand because consumers are ultimately paying for these investments through network charges and they bear the risk of inefficient expenditure:
 - Current consumers are being asked to pay now to enable the transformation of the sector for future consumers benefits;
 - Network businesses and policy makers should demonstrate the overall benefits to the community from these investments – such as how the operation of the energy market will be improved to lower final energy bills;
 - Although SACOSS supports spending that will benefit future consumers, even if it means higher network charges now, the lack of transparency and justification of some proposed network expenditure to support DER makes it difficult for SACOSS to make informed submissions.
- SACOSS notes that network expenditure that increases capacity for DER exports creates potentially significant cross-subsidies between consumers that have and have not invested in DER. DER can create additional costs for the networks. Under current tariff arrangements, network costs are ‘smeared’ across all of the business’ customers through network charges, though DER expenditure will mostly benefit only a subset of customers:
 - SACOSS wishes to raise the policy question of whether current network access and charging arrangements for exporting energy onto the grid remain appropriate given these cross subsidies – SACOSS believes that the ‘causer’ should pay?;
 - Cross subsidies will be less of a concern if or when DER technology can be used to improve the overall operation of the energy market and to manage network constraints, rather than just benefit individual households (and the environment).

Broadly speaking, SACOSS is concerned that consumer groups are finding it challenging to engage on these important policy discussions – especially given limited consumer resources with many competing priorities

- For example, AER revenue determinations, AEMC rule changes and the Open Energy Networks project are raising complicated issues around the transformation of the energy

sector. They do not always explain these issues in plain English and the consultation documents can be very technical. And some processes, such as for contingent project assessments (once 'triggered'), provide only limited opportunities for consumers to make informed submissions

SACOSS considers this is of particular concern given consumer choices (consumer empowerment) are what is driving the major developments of the energy market and the overall test is the long term interests of consumers. Such barriers to consumer engagement, whereby consumer views and preferences are not fully understood and taken into account in regulatory processes, may undermine energy market developments.

SACOSS believes that more can be done by governments and the energy market bodies to improve the quality of their engagement and communication with consumers, and to increase the capacity of consumers to engage effectively in regulatory processes. For example, consumers will be better equipped to participate in and influence regulatory processes and policy debates if technical training and information seminars are offered to understand the relevant issues.

If you have any questions relating to the above, please contact SACOSS Policy Lead, Jo De Silva on (08) 8305 4211 or via jo@sacoss.org.au.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'RWomersley', written in a cursive style.

Ross Womersley
Chief Executive Officer



Mr Mark McLeish
Director
Regulatory Innovation
Australian Energy Regulator
GPO Box 520
Melbourne, VIC 3001

16 November 2018

By email: mark.mcleish@aer.gov.au

Dear Mr McLeish,

RE: New Reg process: towards consumer-centric energy network regulation, a joint initiative of the Australian Energy Regulator (AER), Energy Consumers Australia (ECA) and Energy Networks Australia (ENA)

As the peak body for the health and community services sector in South Australia, the South Australian Council of Social Service (SACOSS) has an established history of interest, engagement and provision of proposed advice on the necessary market mechanisms and policy for essential services, including electricity. SACOSS would like to thank Energy Consumers Australia (ECA), Energy Networks Australia (ENA) and the Australian Energy Regulator (AER) for providing SACOSS with the ongoing opportunity to comment on the New Reg process. SACOSS would also like to thank AusNet Services for its willingness to engage with SACOSS and be transparent through the trial process.

This letter outlines the background to our involvement in New Reg and makes the following recommendations and requests for clarification which are detailed in the letter, after the background:

Consumer Advocacy Organisations

SACOSS recommends that the AER consider the operation of the ESCOSA Consumer Experts Panel and whether a formal role for consumer advocacy organisations is warranted in New Reg.

SACOSS would like to seek clarity from the AER about the following:

- Where is the evidence that consumer advocacy organisations were consulted during the preparation of the Directions and Approach papers, or after their release?
- What will be the role for consumer advocates once the Customer Forum has ceased its role?
- What does the AER see as the role for consumer advocates in regulatory determinations in a New Reg context?

Reference Committee

SACOSS believes there should be regular meetings, timely minutes is important and a Terms of Reference for the Reference Committee.

Evaluation Framework and Monitoring

SACOSS recommends that the AER undertake formal engagement on each key element of New Reg, including the Evaluation Framework and monitoring reports.

SACOSS recommends that an important part of the Trial is to consider how New Reg compares against existing models, including in cost terms, and strongly recommends that the Project Team provide the Reference Committee with a proposal of how this task will be undertaken.

SACOSS believes that it is critical for the trial assessment to consider the role of consumer advocacy organisations. Important questions for evaluation of consumer representative experiences include:

- Did these representatives understand their roles and responsibilities?
- What did these representatives think of the process and content outcome?
- Did these representatives have adequate funding to participate as they wanted to?

SACOSS also believes that the assessment needs to consider the question of how the diversity of views amongst consumers was balanced by the Customer Forum.

Reflections on Meeting with the Customer Forum and AusNet Services

If SACOSS were a jurisdictional party engaged in the AusNet determination, SACOSS would seek to further explore the Customer Forum focus on reliability and seek to ensure that this did not lead to imprudent expenditure on reliability.

SACOSS seeks clarification on what the CCP role would be on the out of scope negotiation issues and during 2019.

Reflections on the October Reference Group Meeting

SACOSS believes that the New Reg objective needs to be provided publicly with sufficient clarity. SACOSS recommends formal engagement on the objective for any future trials.

Background

The AER, ENA and ECA (the Project Team) have agreed to develop and trial an alternative approach to network regulation, referred to as the New Reg process. The Project Team states that it has identified the need for an alternative approach on the basis of the ‘poor outcomes’ of the current regulatory process, and general negative observations about the process by stakeholders.¹ The proposed approach focuses on an alternative path for network businesses to take in building their regulatory proposals, and (importantly for our purposes) for the AER in assessing those proposals.² The overall vision of the New Reg process is that ‘consumers’ priorities and stated preferences should drive, and be seen to drive, energy network businesses proposals and regulatory outcomes’.³

In February this year, SACOSS participated in a teleconference with ECA and other consumer advocates, during which the New Reg process was discussed. Given the potential broader impact of the New Reg process on the AER’s current and future revenue determination decision-making, SACOSS expressed concern about the level of engagement which had been undertaken on the New Reg up to that time. ECA then provided SACOSS with a ‘working draft’ Approach Paper and Directions Paper, dated February 2018 for consideration and comment (the Draft Papers) as well as an Overview Paper, dated 20 August 2017 (Overview Paper).

On 23 March 2018, the AER published the first draft of the New Reg process as explained in the following two papers:

- New Reg: Towards a Consumer-Centric Energy Network Regulation: A joint initiative of the Australian Energy Regulator, Energy Consumers Australia and Energy Networks Australia, Directions Paper (working draft), March 2018 (**Directions Paper**).
- New Reg: Towards a Consumer-Centric Energy Network Regulation: A joint initiative of the Australian Energy Regulator, Energy Consumers Australia and Energy Networks Australia, Approach Paper (working draft), March 2018 (**Approach Paper**).

AusNet Services has agreed to trial the New Reg process for its Victorian electricity distribution business.⁴ The process involves the establishment of a Customer Forum⁵ to negotiate with the network business and SACOSS understands AusNet’s Customer Forum was appointed in February 2018 (with applications for positions on the Customer Forum closing on 10 January 2018). An Early Engagement Plan (EEP) prepared by AusNet was published on its website in March 2018. The EEP timeline (figure 2) indicates that the ‘intensive training, investigation, scoping and agreeing of time-frames’⁶ commenced in March 2018 and will be finalised by the end of July, with negotiations between AusNet, AER and the Customer Forum commencing on the issues in scope in August 2018. It is worth noting that up to the end of March 2018, there was limited

¹ New Reg: Towards Consumer-Centric Energy Network Regulation: A joint initiative of the Australian Energy Regulator, Energy Consumers Australia, and Energy Networks Australia: Approach Paper, March 2018 (**Approach Paper**) p. 5

² New Reg: Towards Consumer-Centric Energy Network Regulation: A joint initiative of the Australian Energy Regulator, Energy Consumers Australia, and Energy Networks Australia: Directions paper, March 2018 (**Directions Paper**) p.3

³ Approach Paper, p.3

⁴ Approach Paper, p.10

⁵ AusNet Services’ Early Engagement Plan refers to the Customer Forum, whereas the Directions and Approach Papers refer to the Consumer Forum – in the interests of consistency, we refer to Customer Forum throughout the submission, which includes references to the Consumer Forum

⁶ AusNet Services, Early Engagement Plan, EDPR 2021-25 Customer Forum, p.11

public information available about the New Reg process, even though the trial had been underway for several months.

The Approach Paper indicated the Reference Group for the New Reg process requested the Project Team not release a discussion paper and submissions process, and that they ‘consider alternative means’⁷ of undertaking consultation with stakeholders. The AER indicated that it will run a public engagement process on New Reg throughout 2018, and are open to receiving comments and submissions on the New Reg process at any time. SACOSS welcomed the open engagement from early 2018, but was disappointed by the limited stakeholder involvement in the development of the model and trial up to that point. In April 2018 we stated that we believed the consultation on the New Reg process and trial up to that point was inadequate, and potential adverse outcomes, as well as alternative models, were not sufficiently canvassed with stakeholders prior to development and implementation.

AusNet Services, the AER and the Customer Forum signed a Memorandum of Understanding (MOU) on 8 June 2018. The MOU outlines the purpose and objectives of the Customer Forum. The fourth objective of the Consumer Forum is to “negotiate with AusNet Services, with a view to preparing, as far as possible, a Regulatory Proposal that, in the opinion of the Customer Forum, will or is likely to contribute to the achievement of the National Electricity Objective.”⁸ The MOU also outlines the resources and support provided by parties to the Agreement.

The AER published a series of Guidance Notes over July and August 2018. In Guidance Note 2, the AER outlined the scope of the Negotiation:⁹

Topic proposed by AusNet	In scope of AusNet/Forum negotiation?	Relevant to AusNet’s revenue proposal?
Operating expenditure	Yes – material, price/service trade-offs	Yes
Major augex projects	Yes – price/service trade-offs	Yes
Revenue path profile	Yes – price timing trade-offs	Yes
Customer experience	Yes – customer views significant	If cost or incentive scheme implications
Customer hardship arrangements	Yes – customer views significant	Likely dealt with through other processes
Major repex projects	No – but price/service trade-offs	Yes
DER integration expenditure	No – wider consultation appropriate	Yes

⁷ Approach Paper, p.4

⁸ AER, AusNet, Customer Forum (2018) Memorandum of Understanding at https://www.aer.gov.au/system/files/AusNet%20Trial%20-%20Early%20Engagement%20Memorandum%20of%20Understanding_0.pdf p.3

⁹ AER Guidance Note 2 at <https://www.aer.gov.au/system/files/AER%20-%20AusNet%20Trial%20Staff%20Guidance%20Note%202%20-%20Scope%20of%20negotiation%20-%20July%202018.pdf> pp.1-2

Topic proposed by AusNet	In scope of AusNet/Forum negotiation?	Relevant to AusNet's revenue proposal?
Innovation expenditure	No – technically complex in the available time	Yes
Regulatory protections	No – no specific proposals	Unlikely
Metering	No – policy issue, although metering also affects customer experience	Not the policy aspects

In June 2018, the AER outlined the price review timeline included provision for AusNet Services to negotiate expenditure proposals with the Customer Forum between July and September 2018. The Draft regulatory proposal public release was scheduled for late 2018.¹⁰ AusNet Services released a series of notes mid 2018 setting out its negotiating position. AusNet Services provided an update to consumer advocacy organisations on 31 August 2018 outlining that AusNet Services would formally commence negotiations with the Forum on 3 September 2018. AusNet Services also provided advocacy organisations with contact details for the Chair of the Customer Forum to enable interaction about the negotiations.

In terms of SACOSS involvement, SACOSS provided a submission to the New Reg Project Team on 23 March 2018 which was a response to the 'working draft' Approach Paper and Directions Paper. Upon request for a publishable document, we then provided on 24 April 2018 an updated submission for public circulation on the first draft of the New Reg process Approach Paper and Directions Paper published on 23 March 2018.

SACOSS met with AusNet Services to discuss the trial on 10 April 2018 and 18 October 2018. The meeting on 18 October included representatives from the Customer Forum.

Around March 2018, SACOSS was invited to join the New Reg Reference Group. SACOSS was unable to attend the meeting of the Reference Group on 20 June due to conflicting commitments. Our first meeting with the Reference Group was on 7 November 2018. SACOSS understands that in the first part of 2018, the Reference Group discussed how to monitor and evaluate the trial of the New Reg process. SACOSS understands that farrierswier has been engaged to monitor the trial and Cambridge Economic Policy Associates are to conduct the evaluation of the trial. The AER sought input from the Reference Group on the trial assessment factors on 27 August 2018.

SACOSS Comments

Consumer Advocacy Organisations

SACOSS recently undertook a Study Tour to the UK to consider consumer engagement in regulatory determinations. A report of that trip is attached to this submission. A key finding is reproduced below.

The role of consumer advocacy organisations in regulatory determinations is vital. Unlike other stakeholders, consumer representatives from these types of bodies have a direct connection back to consumers typically

¹⁰ AER, ENA, ECA New Reg Newsletter at <https://www.aer.gov.au/system/files/D18-95463%20New%20Reg%20Newsletter%20%28June%202018%29.PDF>

via a membership structure. This provides consumer representatives with a unique position, a position which is distinct from that of the type of consumer expert engaged in the Customer Forum. The distinct position of a consumer representative includes:

- They interact directly with consumers, engaging in conversations and developing perspectives on systemic consumer issues based on this engagement;
- Because of their direct connection, they provide perspectives on issues which filter consumer perspectives through every issue;
- They are generally tied back to organisational missions and visions, so that their underlying ideologies are transparent and mediated through consumers;
- They are not representing the perspective of an individual, as their connections back to their organisations and directly with consumers mean they speak from a broader mandate, and;
- They are accountable back to a cohort/s of consumers, which both gives them legitimacy and keeps them answerable for their positions.

Each of the above parameters makes a consumer representative distinct from a consumer expert, who is generally an individual with no direct tie back to organisations and community.

It is important to consider how consumer advocacy organisations are formally represented in the New Reg process. Unlike in the ESCOSA Framework for its SA Water Regulatory Determination 2020, there is no formal role. Earlier in 2018, ESCOSA introduced a new approach to consumer engagement for its SA Water Regulatory Determination 2020. The new approach will provide consumers with earlier and more structured opportunities to engage on regulatory issues than in previous determinations. ESCOSA believes that the new approach will better challenge SA Water to deliver the lowest sustainable prices and best service levels to customers.

ESCOSA has invited members of its existing Consumer Advisory Committee and SA Water's Customer Advisory Group to join a Consumer Experts Panel. The Panel's membership will cover a diverse group of consumers who represent customers with an interest in SA Water's service provision. Members will be expected to work directly with their constituencies to gather evidence on issues that impact them, and provide research and evidence to inform and challenge SA Water's business plan. The Panel will also be able to request that ESCOSA undertakes specific research on issues that may be contended or assist in determining how stakeholders should view a particular issue. The Panel's output will include the preparation of a Priorities Report, which will be a critical input into the Negotiation Forum (parallel to the AusNet Customer Forum).

SACOSS recommends that the AER consider the operation of the ESCOSA Consumer Experts Panel and whether a formal role for consumer advocacy organisations is warranted in New Reg.

In addition to the above recommendation, SACOSS would like to seek clarity from the AER about the following:

- Where is the evidence that consumer advocacy organisations were consulted during the preparation of the Directions and Approach papers, or after their release?
- What will be the role for consumer advocates once the Customer Forum has ceased its role?
- What does the AER see as the role for consumer advocates in regulatory determinations in a New Reg context?

Reference Committee

SACOSS notes that since being invited to join the Reference Committee, there have been only two meetings. This is infrequent given the scope of the matter under consideration. SACOSS has viewed minutes from the June 2018 meeting which were issued one month after the meeting. SACOSS has not received minutes from the November 2018 meeting. SACOSS believes the issuing of timely minutes is important, given the pace of the trial. SACOSS has not received a Terms of Reference for the Reference Committee and is unclear about what our role is, as distinct from that of the Project Team.

Evaluation Framework and Monitoring

SACOSS notes the lack of engagement by members of the Reference Committee with CEPA on the development of the Framework. SACOSS understands that some consumer representatives gave feedback on the draft Framework, but there has been no formal response to this feedback. SACOSS also notes that there has been no engagement with farrierswier as they prepare their monitoring reports. SACOSS recommends that the AER undertake formal engagement on each key element of New Reg, including the Evaluation Framework and monitoring reports.

SACOSS notes that there has been extensive discussion in the Reference Committee on what is the counterfactual against which New Reg is being assessed. SACOSS is not clear what the response from the Project Team has been to these discussions in the Reference Committee and can find no record of a formal response. Many Reference Committee members have queried how much the New Reg model is going to cost and whether it is better than other engagement being undertaken by network businesses during their regulatory determination processes. Reference Committee members are still keen to understand how the New Reg model compares against existing models. SACOSS recommends that an important part of the Trial is to consider how New Reg compares against existing models, including in cost terms, and strongly recommends that the Project Team provide the Reference Committee with a proposal of how this task will be undertaken.

SACOSS believes that it is critical for the trial assessment to consider the role of consumer advocacy organisations. Important questions for evaluation of consumer representative experiences include:

- Did these representatives understand their roles and responsibilities?
- What did these representatives think of the process and content outcome?
- Did these representatives have adequate funding to participate as they wanted to?

SACOSS also believes that the assessment needs to consider the question of how the diversity of views amongst consumers was balanced by the Customer Forum. For example, the assessment might consider whether some consumers felt that the Customer Forum was inappropriately focussed on increasing individual customers' reliability or if all consumers agreed with the Forum selection of three priority capex projects. Decisions made within the overall allocation of expenditure can sometimes be contested by different consumer perspectives, and the assessment needs to consider how well this balancing act by the Forum was completed.

Reflections on Meeting with the Customer Forum and AusNet Services

The main point of concern for SACOSS in discussions with the Customer Forum about their priorities was the Customer Forum focus on individual customer's reliability. SACOSS has not had the time to delve further in to this issue, but was concerned at the meeting with AusNet Services in October that the Forum seemed to

be focussed on reliability issues at a very granular level. If SACOSS were a party engaged in the AusNet determination, SACOSS would seek to further explore the Customer Forum focus on reliability and seek to ensure that this did not lead to imprudent expenditure on reliability. SACOSS notes that the Customer Forum has no prior experience in electrical engineering or regulation and considers this may be a factor in explaining how they are focussing on reliability.

During the October meeting, SACOSS also queried the ongoing role of the Consumer Challenge Panel. SACOSS considers that the CCP has a critical role to play in advising the AER, and that the Customer Forum does not replace the CCP. SACOSS was concerned at the October meeting that no indication was given to attendees of what the CCP role would be on the out of scope negotiation issues and during 2019.

Reflections on the October Reference Group Meeting

During the meeting, SACOSS queried whether participants in the AusNet trial were adequately familiar with the objectives of the trial. In a follow up email to the AER, the AER clarified that the actual objective is contained in the CEPA evaluation framework, and the AER Approach and Directions papers state the overall vision for the project. SACOSS believes that stakeholders need to be provided the objective with sufficient clarity. SACOSS does not believe that at this point, the objective is clearly and transparently provided to stakeholders in publicly available documents.

The point about lack of clarity of the objective was apparent to SACOSS during the October Reference Group meeting. Some stakeholders had the understanding that the negotiation would consider dollar amounts for expenditure. However, on review of the objective, it is clear that the process is about revealed priorities and preferences which would lead one to consider that the negotiation will address the scope of expenditure and consider what the pertinent matters are for consideration by the business. This is a critical point of difference from a negotiation focussed on actual dollar amounts.

SACOSS is also perplexed that the discussion about what the objective for New Reg should be has not been a matter for consultation. SACOSS believes that the objective is at the heart of the project and that consultation about it should have been undertaken in an open consultation process. SACOSS does not believe that the public engagement process undertaken by the project team is an adequate replacement for formal consultation. SACOSS recommends formal engagement on the objective for any future trials.

We thank you in advance for consideration of our comments. If you have any questions relating to the submission, please contact Jo De Silva via jo@sacoss.org.au or 08 8305 4211.

Yours sincerely,



Ross Womersley
Chief Executive Officer