



**Tasmanian Small
Business Council**
Uniting Small Business

Proposed Consumer Engagement Framework

May 2020

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ABN: 31 674 232 899



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Executive Summary

Background.

The Energy Security Board (ESB) commented in their 2018 assessment of the health of the National Electricity Market¹:

“The NEM is transforming at a rapid rate. It is moving toward a system that requires the integration of more variable and distributed energy resources, and both chemical and hydro storage. The shift toward more variable and distributed energy resources has been driven by government policies, significant reductions in technology costs and changing consumer preferences. This transformation will continue with the addition of embedded micro-systems, peer to peer trading through block chain capability and, over time, electrification of the transport sector. With these changes, traditional concepts of the way in which the system is managed, how investment should be rewarded, and the role played by supply, storage, networks and consumers must be revisited”.

Consumers are making their own capital investments in electricity assets, with collectively significant value, both financially and in terms of contribution to supply. Consumers are rapidly becoming “prosumers” – producing and consuming.

They are no longer prepared to passively accept the investment decisions of network companies and expect a seat at the decision making table, in order to ensure their own investments deliver the expected rewards, and the network assets which they pay for via network charges deliver the services they need, at the lowest possible cost.

It is the view of the TSBC that current level of consumer engagement across the entire spectrum of regulatory decision making processes surrounding investment in electricity assets and the management of those assets is inadequate and in need of review.

A key objective of such a review is to ensure that changing consumer expectations are met and consumers pay no more than they need to for the services they want.

The TSBC notes the difference between stakeholder and consumer engagement. Stakeholders in NEM related regulatory processes include a variety of interest groups such as retailers, generators, specific interest (such as EV, solar, battery) associations, and developers, each with different interests to consumers.

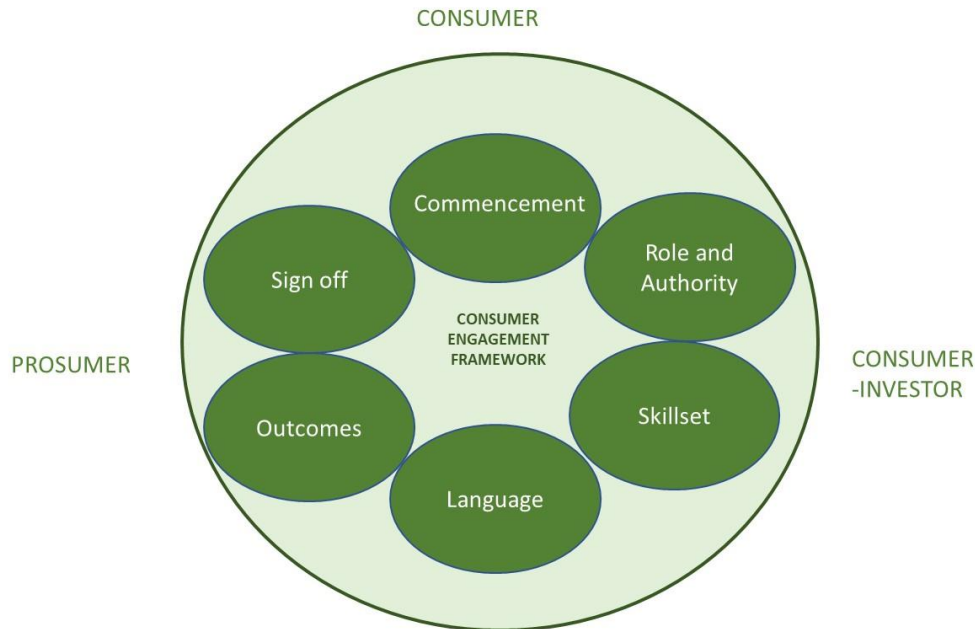
Compared to genuine consumer representatives, those stakeholders are well resourced, with access to specialist advisors, usually represented by salaried professionals and therefore able to achieve significant influence in regulatory processes.

A second key objective of the proposed Consumer Engagement Framework is to provide an effective balance to that influence.

¹ The Health of the National Electricity Market 2018 ENERGY SECURITY BOARD, page 6

Consumer Engagement Framework

The TSBC's proposed Consumer Engagement Framework is depicted below:



The elements of the proposed Consumer Engagement Framework are:

Commencement

Central to the TSBC's proposed CEF is the timing of the establishment of a consumer representative group, with a role which includes sign off on key aspects of any relevant regulatory process. We contend that such a group should be established at the commencement of such a process, ahead of the release of (for instance) any initial discussion papers.

Authority

The New Reg initiative of the ECA, AER and ENA² proposes that the Consumer Representative Group (Consumer Forum) would be the party with which a network, seeking regulatory approval for a revenue proposal, would reach agreement. Appendix 1 to this paper outlines the New Reg Proposed Approach.

Under the TSBC's CEF the Consumer Representative Group would assume a similar role in, for example, the development of the ISP, approval of a revenue proposal, or approval via the RIT-T of an interconnector proposal.

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

Skillset

It is essential that the proposed Consumer Representative Group has to have the right combination of skills for the task, which can be expected to vary, depending on the regulatory process.

There are a range of effective mechanisms to ensure that a Consumer Representative Group has the necessary skills and the TSBC does not seek to prescribe a mechanism, noting however that the required skill set, including the number of members, would be driven by the role definition for the Group.

It is essential that the membership of the proposed Consumer Representative Group includes people who have a solid understanding of the changing role and expectations of the emerging “prosumer” and are able to inject that perspective into considerations of proposed network investments.

Language

Under the TSBC’s Consumer Engagement Framework, proposals such as a revenue proposal or RIT-T application would be structured as a proposal to consumers and would be capable of being read and understood by a reasonably well informed consumer, or consumer representative.

Outcomes

All outcomes of any regulatory proposal should be spelled out - the benefits to consumers in the first instance, but also those accruing to other beneficiaries, and the Consumer Representative Group should sign off on the projected benefits which will accrue to consumers, and the allocation of costs to consumers

Sign off

We suggest the mechanism for sign off for the overall proposal should be in accordance with the ECA/ENA/AER’s New Reg initiative, that is:

“The core outcome is the extent to which the Consumer Forum agrees to the network’s revenue proposal. The extent of that agreement (or disagreement) needs to be formally reported to the AER (and all other stakeholders) together with the basis for reaching that agreement.”³

We contend that the skill set of the Consumer Representative Group should be sufficient to expect that all other sign-off elements would be absolute, that is that unless the Consumer Representative Group endorses that element then the proposal cannot proceed.

Next steps

The TSBC intends to steward the development of its proposed Consumer Engagement Framework (CEF) and seek feedback and views from a range of consumer advocates through a national workshop and regular updates through mechanisms such as the National Consumer Roundtable on Energy and Energy Consumers Australia Board Reference Group.

We understand that an ECA aspiration of the CEF, together with the TSBC’s Consumer Review of the Marinus Link project⁴, is that it will lead to the establishment of a National Consumer Council on Interconnector and Transmission Investment, with one outcome being a coalition of energy advocates, nationally co-ordinated, which can be expected to be significantly more influential on

³ 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, page 10

⁴ TSBC - A consumer perspective on interconnector and transmission investment – Marinus link (case study), April 2020

behalf of consumers than fragmented, poorly resourced and poorly informed consumer representation.

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1 Introduction

1.1 BACKGROUND

The suggested model for a Consumer Engagement Framework which is the subject of this report follows the work undertaken by the TSBC, assisted by Goanna Energy and SavvyPlus Consulting and funded by Energy Consumers Australia, which reviewed the regulatory arrangements relating to interconnectors, with the Marinus Link project as a case study⁵.

As noted in that review, the world, including Australia, is undergoing an energy revolution transitioning from fossil fuel generation to renewable generation, affecting all levels of consumers from large industrials through to households and small businesses. The pace and scale of change is almost impossible to keep track of.

As part of the energy revolution, a very small sample of activities includes:

- Consumers are responding to price increases and price uncertainty and are investing in their own energy assets to gain security, both of supply and service. Consumers are becoming “prosumers”, with a different attitude to electricity services delivered via the grid;
- Consumers are adopting technology such as PV rooftop generation at a pace which in many areas exceeds the capacity of electricity networks to accommodate the new generation source, thereby limiting the value of consumers’ energy investments;
- Large scale wind generation is being installed at a rate which at times exceeds the capacity of the electricity grid to cope;
- Major industrial consumers are examining mechanisms which will allow them to cope with the intermittency of renewable generation; and
- Large scale batteries are being installed at grid level.

The task of responding to the challenges posed by the energy revolution has been assigned by the COAG Energy Council, at the highest level, to the Energy Security Board (ESB).

The role of the ESB is to coordinate the implementation of the energy reform blueprint produced by Australia’s Chief Scientist, Dr Alan Finkel AO⁶. The ESB also provides whole of system oversight for energy security and reliability to drive better outcomes for consumers, through the Australian Energy Market Commission (AEMC), the Australian Energy Market Operator (AEMO), the Australian Energy Regulator (AER) and other agencies and organisations.

The view of the ESB, as expressed in their 2018 assessment of the health of the National Electricity Market⁷, provides an appropriate contextual setting for the TSBC’s project:

“The NEM is transforming at a rapid rate. It is moving toward a system that requires the integration of more variable and distributed energy resources, and both chemical and hydro storage. The shift

⁵ <https://energyconsumersaustralia.worldsecuresystems.com/> - grants archive reference 1037

⁶ Independent Review into the Future Security of the National Electricity Market, Blueprint for the Future, 9 June 2017

⁷ The Health of the National Electricity Market 2018 ENERGY SECURITY BOARD, page 6

toward more variable and distributed energy resources has been driven by government policies, significant reductions in technology costs and changing consumer preferences. This transformation will continue with the addition of embedded micro-systems, peer to peer trading through block chain capability and, over time, electrification of the transport sector. With these changes, traditional concepts of the way in which the system is managed, how investment should be rewarded, and the role played by supply, storage, networks and consumers must be revisited”.

Consumers’ investments in electricity assets have collectively significant value, both financially and in terms of contribution to supply. They are no longer prepared to passively accept the investment decisions of network companies and expect a seat at the decision making table, in order to ensure their own investments deliver the expected rewards, and the network assets which they pay for via network charges deliver the services they need, at the lowest possible cost.

The increasing consumer focus on decisions made concerning investments in regulated electricity assets matches the increasing level of scrutiny by shareholders and investors on the performance of listed companies and their increasing focus on the environment and ethics.

It is the view of the TSBC that the role of consumers in regulatory processes, including the conduct of a RIT-T, should be elevated well beyond the current level.

The purpose of this paper is to propose a Consumer Engagement Framework which can be applied to all aspects of regulatory processes, from policy development to consideration of investments as part of a Regulatory Investment Test (RIT-T) process.

Our review of TasNetwork’s Marinus Link proposal provides a reference point for our proposal and flags the weaknesses of the degree of consumer engagement in both the RIT-T process for interconnectors, which involve the largest investments in electricity networks, and the development of the ISP which is a critical input into the RIT-T process for each interconnector.

The TSBC is concerned that the risks associated with investments in very costly interconnector assets in an extremely uncertain environment as the NEM transitions from fossil fuel generation to renewables will be mostly carried by consumers.

That situation arises because the current regulatory framework provides a near guaranteed return to investors over the life of the assets, in excess of forty years, and a pricing regime which sees consumers paying network charges over the life of the asset, when there is no guarantee that the services provided to consumers by the assets will continue to be received over the life of the assets, or that the services provided will meet consumers’ requirements.

The TSBC recognizes that consumer engagement is a suite of activities in any regulatory process and that the RIT-T Guidelines, the AER’s Consumer Engagement Guidelines⁸ and the ENA’s Consumer Engagement Handbook⁹ serve a valuable purpose in guiding the suite of activities. We believe however that the contents of the suite of activities should be determined by consumers and proponents jointly, not by the proponents who determine the contents of the suite of activities and proceed with consumer engagement accordingly.

The TSBC notes the difference between stakeholder and consumer engagement. Stakeholders in NEM related regulatory processes include a variety of interest groups such as retailers, generators,

⁸ Better Regulation, Consumer Engagement Guideline for Network Service Providers, 2013.

⁹ <https://www.energynetworks.com.au/customer-engagement-handbook/>

specific interest (such as EV, solar, battery) associations, and developers, each with different interests to consumers.

Compared to genuine consumer representatives, those stakeholders are well resourced, with access to specialist advisors, usually represented by salaried professionals and therefore able to achieve significant influence in regulatory processes.

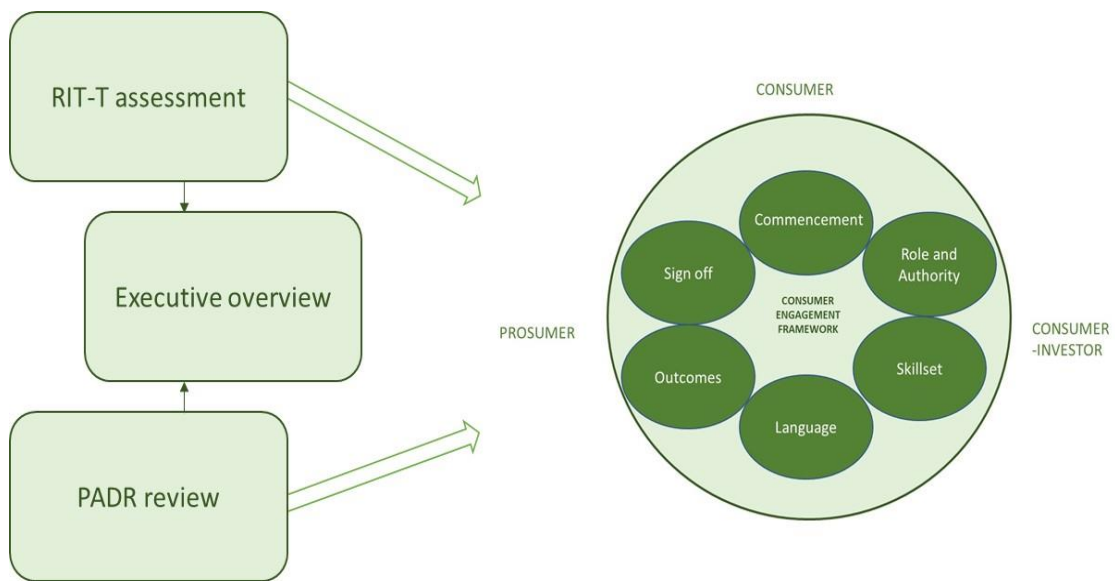
A second key objective of the proposed Consumer Engagement Framework is to provide an effective balance to that influence.

1.2 TSBC CONSUMER REVIEW – MARINUS LINK PROJECT

The TSBC’s consumer review of the proposed Marinus Link project was conducted in two parts – an assessment of the RIT-T process, with Marinus Link as a case study, and a review of the Marinus Link PADR.

The findings of the RIT-T assessment and PADR review are discussed in sections 2 and 3 respectively.

Those findings inform the development of our proposed Consumer Engagement Framework:



2 RIT-T assessment

The RIT-T process is critical to ensuring that major network investments are in the best interest of consumers. It is our view however that the current RIT-T Guidelines lack sufficient definition around how exactly consumers will benefit from such investments.

The TSBC's assessment of the RIT-T process delivered 10 recommendations and 81 findings. The recommendations in particular are relevant to the proposed Consumer Engagement Framework and are discussed below.

2.1 AER RIT-T GUIDELINES AND CONSUMER FOCUS

The AER's RIT-T Guidelines suggest¹⁰ that the identified need for a major network investment should be framed such that it is:

“A proposal to consumers. To assist consumers engage with the RIT-T, it is valuable for them to understand why it is in their interest to meet the identified need. Given this, in describing an identified need, a RIT-T proponent may find it useful to explain what will or may happen if it performs BAU activities rather than taking a specific action to address the identified need. For example, better voltage support might deliver benefits to consumers by increasing the quality of electricity supply, and preventing brown-outs, black-outs and damaged electrical appliances”.

At the same time however NER clause 5.16.1 states that the purpose of the RIT-T is to:

“... identify the credible option that maximises the present value of net economic benefit to all those who produce, consume and transport electricity in the market (the preferred option)”.

The TSBC is of the view that the two statements are not necessarily in alignment. We agree that the identified need should be a proposal to consumers in the sense that it should be written in language which consumers are able to understand and should articulate exactly what benefits consumers will receive over the life of the investment, given that they will be paying for the investment through network charges. Further, we believe the concept of a “proposal to consumers” should extend to the whole PADR.

Clause 5.16.1 however refers to a net economic benefit to a range of beneficiaries including, but not limited to, consumers. It is conceivable that a particular investment might deliver net benefits to producers and entities who transport electricity in the market, but none to consumers.

The concept of a “proposal to consumers” underpins the Consumer Engagement Framework (CEF) suggested by the TSBC.

¹⁰ Application guidelines, Regulatory investment test for transmission, December 2018

2.2 TSBC RIT-T ASSESSMENT - RECOMMENDATIONS COMPARED TO MARINUS LINK RIT-T

The ten recommendations arising from the TSBC’s RIT-T assessment, referenced to the contents of the Marinus Link PADR, are listed in table 1 below. All recommendations are relevant to the proposed CEF, however those shaded in green are directly relevant.

Table 1- - RIT-T assessment recommendations

No.	Recommendation	Marinus Link PADR
1	The RIT-T should include additional tools that help to minimise risks to consumers from poor decision making based on a RIT-T analysis, including (potentially) a “least regrets” analysis.	Whilst the ISP utilizes Least Regrets analysis, EY’s analysis of market benefits for the Marinus Link PADR uses the cost benefit analysis prescribed under the current RIT-T guidelines. Least Regrets analysis is not applied, and consumers do not have the benefit of such analysis.
2	Any RIT-T evaluation of an interconnector (including Marinus Link) should incorporate explicit consideration of the possible impacts of a revision to the NEM framework/design and an evaluation of the economic impact of other interconnectors which are or proposed but yet to be constructed.	The ESB’s post 2025 market design project is scheduled to identify, by early 2020, potential fit-for-purpose market frameworks for evaluation against each other and the NEM design. Those (alternative) frameworks have not yet been identified. The PADR therefore could not consider the impacts of any such alternative frameworks. Consumers have not been made aware of any possible implications.
3	The AER should revisit the RIT-T Guidelines and expand Section 3.1 to provide guidance specifically for interconnector projects. In particular expand on the current reference to “An identified need may consist of an increase in the sum of consumer and producer surplus in the NEM”, supported with relevant examples.	The TSBC considers the Identified Need for Marinus link as specified in the PADR does not meet the AER’s requirements and should be more specific and meaningful to consumers.
4	The AER should revisit the RIT-T Guidelines and mandate that an appropriate consumer representative body is established ahead of any RIT-T process and, amongst other roles, that body must endorse the Identified Need of the proposed project.	No such consumer body was established as part of the Marinus Link RIT-T process. One outcome is that the definition of the Identified Need for the project lacks any direct consumer input or consumer focus. The Identified Need for Marinus Link has therefore not been endorsed by consumer representatives.

No.	Recommendation	Marinus Link PADR
5	Assessment of credible options identified as part of the ESB's Post 2025 Market Design Project should precede the consideration, via the RIT-T process, of any given interconnector, including Marinus Link.	The TSBC expects that as part of the ESB's post 2025 market design project non network alternatives to the network (interconnector) solutions will be identified. The PADR is constrained to simply evaluating four different sizes for the undersea cable. Consumers are not provided with a view of the relative merit of non-network (interconnector) alternatives.
6	The RIT-T should be amended to include a formal requirement for RIT-T proponents to report on regional consumer impacts where these are material, and with interconnectors, regional NPVs and projected price impacts across broad customer classes.	The PADR does not provide a view of regional consumer price impacts, including network charges. The TSBC's review of the draft 2020 ISP and the Marinus Link PADR, summarized in section 3 of this overview, examines this shortcoming, noting that the allocation of Marinus Link costs is not yet determined. Attachment 3 to the PADR – "Discussion Paper: Beneficiaries pay pricing arrangements for new interconnectors", addresses the existing shortcomings of interconnector cost allocations under the current NER. Consumers impacted by the construction of Marinus Link cannot know what the impact on electricity prices they pay will be until that issue is resolved.
7	The RIT-T as it is applied to interconnectors should be modified to provide a test or trigger point based on an assessment of the risk of the interconnector becoming redundant or underutilised and therefore not delivering the expected market benefits, under a range of plausible scenarios, and the associated need for governments to carry that risk rather than consumers.	There is no consideration in the benefits analysis for Marinus Link of the link becoming redundant. Such an outcome has a high degree of probability given the changes which are occurring in the NEM, including the consumer revolution noted by the AEMC ¹¹ : <i>"Australians are at the forefront of a technological revolution in energy"</i> . The probability of such an outcome represents a substantial risk to consumers.
8	The ESB should undertake an extensive review of the RIT-T and the provisions of Chapter 6A of the NER and effect the necessary Rule changes to require that the RIT-T clearly identifies all parties who will benefit from interconnector investments, in all applicable jurisdictions of the NEM, the value of those benefits, and that the resulting cost allocations and changes to transmission prices are directly aligned to those benefits.	The PADR broadly identifies (eg figure 19) customer benefits by jurisdiction. There is however no identification of which parties, other than electricity customers, would derive benefits. Those parties would include generators and network operators (current and existing). The ESB has been tasked with addressing this issue in 2020. Without an explicit examination and alignment of benefits and costs, consumers cannot be confident that they are paying a fair price for the benefits they receive from the construction of any interconnector.

¹¹ AEMC Chairman John Pierce, published on 26 September 2019 in the Australian Financial Review

No.	Recommendation	Marinus Link PADR
9	The RIT-T be amended to require the inclusion of a comprehensive consumer risk assessment, including mitigating actions. The risk assessment would be one of the components of the RIT-T requiring agreement between the Consumer Forum and the Proponent.	A comprehensive risk analysis and risk mitigation strategy is a key component of any business plan or major investment analysis, but is notably absent from the current RIT-T guidelines and therefore absent from the Marinus Link PADR. The current uncertainties surrounding the future shape of the NEM introduce substantial risks to all NEM participants, but particularly to consumers who will ultimately bear the costs of major regulated network investments such as interconnectors.
10	The requirement for consumer engagement in the RIT-T process should be significantly strengthened in line with the mechanisms outlined in the New Reg process, incorporating the establishment of a Consumer Forum noted at recommendation 4 to negotiate key inputs and outcomes from the conducting of any RIT-T.	No such forum is currently required under the RIT-T guidelines, and none was established as part of the evaluation of the Marinus Link proposal.

2.3 MARINUS RIT-T – CONSUMER FOCUS

In short, noting the comparison at Table 1 between the TSBC’s RIT-T Assessment recommendations and the contents of the Marinus Link PADR, it is our conclusion that the PADR does not have a consumer focus. Such a focus is not a RIT-T requirement, however a sufficiently proactive and consumer focused TNSP would nonetheless have it.

That conclusion can be tested against the findings and conclusions of our review of the PADR discussed in section 3 and the Consumer Engagement Framework which is proposed at section 4.

3 Consumer Review of the PADR – Marinus Link

The headline finding from our review of the Marinus Link PADR is *“We are unconvinced that proceeding with the proposed Marinus Link is in the best interests of consumers”*¹², a finding which is based on the more detailed findings and conclusions in our review.

Those findings which relate directly to consumer engagement and the need to develop a more consumer focussed approach are described at section 3.2 below.

Comments of a more general nature regarding the consumer focus of the Marinus Link PADR are provided at section 3.1.

3.1 THE MARINUS LINK PADR – CONSUMER FOCUSED?

Given the limited capacity of the great majority of electricity consumers to understand the complexity of the market through which electricity is delivered to their homes and businesses, and the enormously complex mechanisms for determining the prices they pay for electricity, it is reasonable to expect that a proposal for any investment which will significantly impact both the means by which electricity is delivered and the price which consumers will pay should be capable of being read and understood by a reasonably well informed consumer, or consumer representative.

As discussed at section 2.1, we believe the concept of a “proposal to consumers” should extend to the whole PADR in line with the above expectation.

We contend that the Marinus Link PADR falls well short of meeting that expectation. Specifically:

3.1.1 Identified Need

The stated Identified Need for Marinus Link is *“The characteristics of customer demand, generation, and storage resources vary significantly between Tasmania and the rest of the NEM. Increased interconnection capacity between Tasmania and the other NEM regions has the potential to realise a net economic benefit by capitalising on this diversity”*.¹³ The word “consumer” does not feature in the identified need, which refers only to a broad net economic benefit, without articulating the consumer benefits which will arise or the consumer needs which will be met. There is nothing in the PADR Identified Need that is a proposal to consumers, as required by the RIT-T, and the Identified Need, as presently expressed, would not be meaningful to consumers as a clear statement of how they will benefit from Marinus Link.

¹² TSBC - Consumer Review of the PADR – Marinus Link, April 2020, page ii

¹³ Project Marinus, RIT-T Project Assessment Draft Report, page 42

3.1.2 Financial outcomes

As an absolute minimum, the PADR should identify the high level derivation of any expected net benefits. As noted at section 3.1.1 above, the Marinus Link PADR identifies only a broad net economic benefit, as opposed to consumer benefits. Nonetheless the document should provide any reader with a simple outline of the derivation of those benefits. The Marinus Link PADR fails to do so.

The headline number for the net market benefits of \$1.674 billion, first referred to at page 9, is at no point explained by way of “gross net market benefits, less total costs, gives net market benefits”.

The headline number for net market benefits is an average over four scenarios, as described at table 11 on page 77.

The value of average gross market benefits from which the net market benefits value is derived, \$2.945 billion, appears only once in the document, at table 34 on page 162.

Table 34 is also the only place in the document where the calculation of average net market benefits is spelled out.

That calculation contains a critical number, being the median expected costs of \$1.271 billion. Table 16 at page 86 indicates at note 2 “*Marinus Link and supporting transmission estimated costs are less than the estimated capital cost of the 1500 MW option presented in section 4.7 because the market benefit calculation considers only the annualised costs which occur during the modelling period (to 2050), whereas Marinus Link has an asset life of 40 years*”. There is no explanation anywhere else in the document as to why the total estimated base cost of \$2.762 billion is discounted by 46%.

The materiality of such a discount of the total (average across scenarios) capital cost cannot be understated.

In summary, any reader, let alone a reader lacking in financial analysis skills, has to search very hard to find the derivation of the highest level net market benefits.

That situation, in the view of the TSBC, is not representative of a document intended to inform consumers about what is in their best interests.

3.1.3 Options Considered

The TSBC considers that the contents of section 4, Description of Credible Options, provides a representative insight into the language and focus of the document, when viewed from a consumer perspective.

In short, it fails the test of “consumer focus”.

By way of example, section 4.8 deals with options which have been considered, but not assessed further.

Consumers can be expected to ask – “*which alternatives have you considered which would achieve the desired outcomes from a consumer perspective, but would (for example) cost more or involve greater risk, and have therefore not been assessed further?*”

The lack of a consumer-focused Identified Need, together with defined consumer outcomes, makes it impossible to answer that question. Nonetheless the only option considered was to convert Marinus Link from a monopole to a bipole link – a technical variation.

It is the view of the TSBC that there are innumerable alternatives, standalone or combination, to a major investment in an interconnector. The Battery Link option described in our consumer review of the Marinus Link PADR¹⁴ is one of those.

3.1.4 Summary – Consumer Focus

In our view, sections 3.1 to 3.3 above are indicative of the lack of an adequate consumer focus of the Marinus Link PADR in its entirety.

3.2 MARINUS LINK REVIEW FINDINGS – RELEVANT TO A CONSUMER ENGAGEMENT FRAMEWORK

Our review of the Marinus Link PADR¹⁵ provided findings and conclusions relevant to a Consumer Engagement Framework. A summary of those is presented in Table 2 on the next page.

¹⁴ TSBC - Consumer Review of the PADR – Marinus Link, April 2020

¹⁵ Ibid

Table 2 – Findings relevant to a consumer engagement framework

Observation	Finding
Price Impacts and Price Signals	<ul style="list-style-type: none"> • It would appear the Net Market Benefits are not being passed through to consumers, despite consumers enabling the benefits • Consumers would benefit from better price signals to drive behind-the-meter benefits which would also improve system stability
Investment Proposition	<ul style="list-style-type: none"> • Consumers are expected to pay for regulated transmission assets and therefore carry the project risks (technology, modelling and market risks) • The discount rate applied for such investments is not risk-adjusted and if a more appropriate rate was applied, commensurate with the risk, the benefits would be marginal or unsatisfactory
Alternative Proposal (option to be considered)	<ul style="list-style-type: none"> • Marinus Link proposal expects consumers to pay \$193m pa for the next 40-years • An alternative approach is to invest in accelerating the consumer-led energy revolution by subsidising the purchase of behind-the-meter batteries • After being complemented with gas powered generation most likely located in Latrobe Valley, batteries could exceed the capability of Marinus Link • The benefits from Battery Link are expected to far exceed the benefits estimated for Marinus Link
Least Regret Plan	<ul style="list-style-type: none"> • The ISP adopts the principle of developing a Least Regret Plan, however there is no transparency of the criteria applied and scoring • The Least Regret methodology and other techniques at times of high uncertainty, lean towards smaller and incremental investments rather than a large, single 40-year asset investment
Net market benefits	<ul style="list-style-type: none"> • Failure to include the full cost of the project when determining net market benefits overstates those benefits. • Consumers are not the beneficiaries of the Net Market Benefits and, as the surrogate investor, consumers find the economics of Marinus Link questionable. If the beneficiaries wish to invest in the Link, consumers would have no objection

The relevance of those findings to our proposed Consumer Engagement Framework is discussed in section 4.

4 Proposed Consumer Engagement Framework

The TSBC considers that a Consumer Engagement Framework which can be applied to all aspects of regulatory processes, including policy development, AEMC reviews, rule changes, revenue resets, and consideration of investments as part of a Regulatory Investment Test process, is a necessary addition to the current regulatory framework.

Adherence to such a consumer engagement framework should be required under the NEL, NER and associated guidelines and mandatory for all parties involved.

The overall objective of such a framework is to ensure that Network Service Providers deliver services that are directly aligned with consumers' needs and requirements as they have expressed them, as well as their long term interests.

The need for such a framework is evidenced by the Marinus Link case study and the consumer issues which are described in sections 2 and 3 above, discussed further in this section (4), which we believe is an outcome of the current National Electricity Rules, which are not prescriptive on consumer engagement.

The AER's RIT-T Guidelines suggest¹⁶ that:

“While the NER is not prescriptive on consumer engagement, it is best practice for the RIT–T proponent to describe in each of the three RIT–T reports how they have:

- *engaged with consumers, as well as other stakeholders; and*
- *sought to address any relevant concerns identified as a result of that engagement”.*

It is our view that the role of consumers in regulatory processes should be elevated beyond the current, loosely defined expectations.

We note that elements of the framework we propose are appearing in the regulatory landscape. These include the New Reg process, a joint initiative of the Australian Energy Regulator, Energy Consumers Australia, and Energy Networks Australia¹⁷, and the proposed expert consumer panel to advise AEMO during the development of the ISP¹⁸.

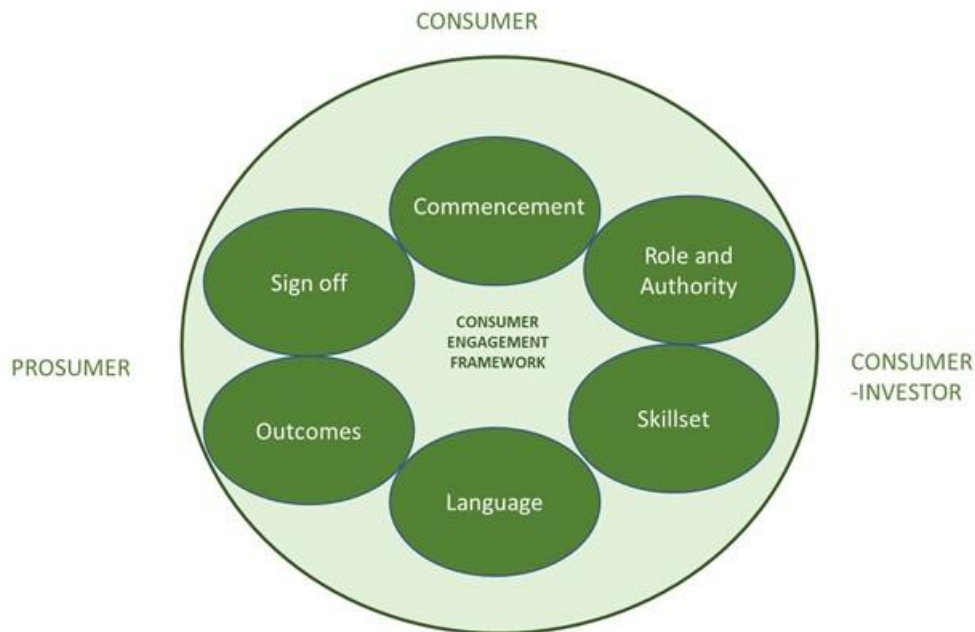
Our proposed Consumer Engagement is represented in figure 1 below:

¹⁶ Application guidelines, Regulatory investment test for transmission, December 2018, page 64

¹⁷ 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

¹⁸ ENERGY SECURITY BOARD, CONVERTING THE INTEGRATED SYSTEM PLAN INTO ACTION. Response to submissions on Consultation Draft ISP Rules, March 2020

Figure 1 – Consumer Engagement Framework



The elements of the Consumer Engagement Framework (CEF) are:

4.1 COMMENCEMENT

Existing regulatory processes typically involve consumers by two means - in a “propose-respond” relationship, whereby consumers are able to respond to formal proposals, and in an engagement process during the production of the proposals.

4.1.1 Marinus Link – consumer engagement

In the Marinus Link case study, TasNetworks issued the Project Assessment Draft Report (PADR) in December 2019 and invited submissions by April 2020. The TSBC, representing small business consumers, duly responded to that invitation.

The Project Specification Consultation Report (PSCR) which preceded the PADR also provided the opportunity for consumers to provide feedback, which was subsequently acknowledged in the PADR. The TSBC also provided feedback on the PSCR.

TasNetworks also engaged with consumers during its preparation of the PADR, in accordance with the AER’s RIT-T Guidelines, the AER’s Consumer Engagement Guidelines¹⁹, Energy Network Australia’s Consumer Engagement Handbook²⁰ and in parallel continued with a Pricing Reform Working Group, including consumer representation.

There was however no consumer representative group/forum/committee with a clearly defined role and purpose established at the commencement of the RIT-T process, in accordance with recommendations 4 and 10 from our RIT-T assessment (refer section 2.2 of this paper).

¹⁹ Better Regulation, Consumer Engagement Guideline for Network Service Providers, 2013

²⁰ <https://www.energynetworks.com.au/customer-engagement-handbook/>

4.1.2 ISP development

AEMO's draft 2020 ISP was a critical input to the marinus Link PADR and the TSBC notes the extensive consultation undertaken by AEMO in its preparation of the ISP, including contributions and submissions from consumers and consumer representative groups. We further note however that there was no consumer representative group/forum/committee established as part of the development of the ISP.

As noted above, AEMO is however in the process of establishing an expert consumer panel to provide advice during the further ongoing development of the ISP.

4.1.3 TSBC position – commencement of consumer involvement.

Central to the TSBC's proposed CEF is the timing of the establishment of a consumer representative group, with a role which includes sign off on key aspects of any relevant regulatory process. We contend that such a group should be established at the commencement of such a process, ahead of the release of (for instance) any initial discussion papers.

The composition of such a group is critical, as is the process for selection, which the TSBC expects would vary, depending on the regulatory process which is being addressed (discussed further at section 4.3).

We note the current process the AER is conducting as part of its Rate of Return Instrument 2022.

The process is scheduled to run from early 2020 to April 2023 and a Consumer Reference Group, with a clearly defined role, will be in place by June 2020, ahead of the issue by the AER of the first working papers. The timing for the establishment of such a group accords with the TSBC's CEF commencement element – at the start of the process.

4.2 ROLE AND AUTHORITY

In the majority of regulatory processes, the role of consumers or consumer representative bodies is to inform research by consumer network operators, to provide guidance on consumer perspectives, to respond to invitations from regulatory bodies or network operators, or to provide advice to regulatory bodies or network operators.

In general, there is no obligation on regulatory bodies or network operators to act on any specific input from consumers or consumer representative bodies.

By way of example the AER's RIT-T Guidelines²¹ state:

“On this basis, RIT–T proponents might find it valuable to engage with key stakeholders (including consumer representatives and ourselves) on framing the identified need early on, potentially even prior to formally commencing the RIT–T process.....”

The words “might find it valuable” indicate the relationship between the proponent (network operators) and consumers – there is a lack of obligation on network operators to act, in this example to engage with consumers early to frame the identified need.

The lack of an appropriate, consumer focused identified need is one of the weaknesses in the Maribus Link proposal, highlighted in our RIT-T assessment, and reflected in recommendation 3.

The TSBC notes the suggestion to network operators (not an obligation) to engage prior to commencing the RIT-T process, which is in accord with the TSBC position outlined in section 4.1 above.

²¹ AER - Application guidelines, Regulatory investment test for transmission, December 2018, page 15

The TSBC’s proposal is that the role of the consumer representative group referred to at 4.1.3 above, appointed at the commencement each regulatory process, (for interconnector investments, the commencement of the RIT-T process) should have to be one which is significantly greater than advisory.

Applying the IAP2²² Engagement Spectrum at figure 2 below, the proposed consumer representative group would operate at the “empower” level.

Figure 2 – IAP2 engagement spectrum

		INCREASING IMPACT ON THE DECISION				
		INFORM	CONSULT	INVOLVE	COLLABORATE	EMPOWER
PUBLIC PARTICIPATION GOAL		To provide the public with balanced and objective information to assist them in understanding the problem, alternatives, opportunities and/or solutions.	To obtain public feedback on analysis, alternatives and/or decisions.	To work directly with the public throughout the process to ensure that public concerns and aspirations are consistently understood and considered.	To partner with the public in each aspect of the decision including the development of alternatives and the identification of the preferred solution.	To place final decision making in the hands of the public.
	PROMISE TO THE PUBLIC	We will keep you informed.	We will keep you informed, listen to and acknowledge concerns and aspirations, and provide feedback on how public input influenced the decision.	We will work with you to ensure that your concerns and aspirations are directly reflected in the alternatives developed and provide feedback on how public input influenced the decision.	We will look to you for advice and innovation in formulating solutions and incorporate your advice and recommendations into the decisions to the maximum extent possible.	We will implement what you decide.

The New Reg initiative of the ECA, AER and ENA²³ proposes that the Consumer Representative Group (Consumer Forum) would be the party with which a network, seeking regulatory approval for a revenue proposal, would reach agreement. Appendix 1 to this paper outlines the New Reg Proposed Approach.

Under the TSBC’s CEF the Consumer Representative Group would assume a similar role in, for example, the development of the ISP, approval of a revenue proposal, or approval via the RIT-T of an interconnector proposal.

In the case of approval of an interconnector or a revenue proposal, a key role for the Consumer Representative Group would be to sign off on the Consumer Engagement plan developed as part of the proposal (recognizing that broader consumer engagement would extend beyond the Consumer Representative Group itself).

4.2.1 Recent examples

At the end of January 2020, New Reg trial participant AusNet Services formally lodged its regulatory proposal with the AER – a proposal which was developed and negotiated over more than a year in partnership with a specially appointed Customer Forum.

²² International Association for Public Participation

²³ 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

Published alongside the proposal is the Customer Forum’s detailed Final Engagement Report²⁴. The report sets out its perspectives on the key issues for customers and the draft regulatory proposal.

The role of the Customer Forum and the customer engagement strategy employed by AusNet Services are in accord with the TSBC’s proposed Customer Engagement Framework.

On the 28th April 2020 the ENA released the judges report²⁵ for the 2019 Energy Networks Australia and Energy Consumers Australia Consumer Engagement Awards. The entries for the award demonstrated a range of approaches to consumer engagement, however a common theme was the move towards increasing the level of authority offered to consumers impacted by the various proposals which were the subject of the award.

Joint winner Jemena Gas Networks (Jemena) established a consumer representative group, labelled the People’s Panel:

“With compact geography and a strong desire to do more, a representative citizen’s jury - our People’s Panel - was created to involve household customers more deeply than ever before in complex decision making”²⁶.

4.2.2 Recent examples and the TSBC’s proposed CEF

The Consumer Forum adopted by AusNet Services in their revenue proposal and Jemena Gas Networks’ People’s Forum in their revenue proposal, both lodged in January 2020, accord with the TSBC’s proposed role for a Consumer Representative Group as part of its Consumer Engagement Framework.

In both cases the consumer/people’s forums demonstrably impacted the decision making of the Network Service Providers - “our customers became decision-makers.”²⁷

4.3 SKILLSET

It is essential that the proposed Consumer Representative Group has to have the right combination of skills for the task, which can be expected to vary, depending on the regulatory process.

The skills mix for an effective Consumer Representative Group appointed to reach agreement with the proponent for the construction of an interconnector such as Marinus Link would be different to the skills mix for a Consumer Reference Group to assist and advise the AER in its review of the treatment of inflation in the regulatory framework.

There are a range of effective mechanisms to ensure that a Consumer Representative Group has the necessary skills and the TSBC does not seek to prescribe a mechanism, noting however that the required skill set, including the number of members, would be driven by the role definition for the Group.

Funding of the Consumer Representative Group will invariably be necessary to ensure that the right skills mix is achieved, and education and training of representatives in order to strengthen their skills and maximize their engagement value would also be expected.

²⁴ <https://www.ausnetservices.com.au/-/media/Files/AusNet/About-Us/Electricity-distribution-network/2020/AusNet-Services-Customer-Forum-Final-Engagement-Report-FINAL.ashx?la=en>

²⁵ <https://www.energynetworks.com.au/resources/reports/2020-reports-and-publications/consumer-engagement-report-2020/>

²⁶ Ibid, page 27

²⁷ Ibid, page 28

As noted in the introduction to this paper, consumers are no longer prepared to passively accept the investment decisions of network companies and expect a seat at the decision making table, in order to ensure their own investments deliver the expected rewards, and the network assets which they pay for via network charges deliver the services they need, at the lowest possible cost.

It is therefore essential that the membership of the proposed Consumer Representative Group includes people who have a solid understanding of the changing role and expectations of the emerging “prosumer” and are able to inject that perspective into considerations of proposed network investments.

We note that in the ECA’s research on Negotiated Settlement and Consumer Engagement²⁸ which examined consumer engagement in the development the business plan for Scottish Water²⁹ at a time when there was a drive by the Water Industry Commission for Scotland (WICS) to increase the level of consumer engagement in regulatory processes:

“Having identified the need to increase consumer input in the regulatory processes, the first option for was simply to engage the existing consumer advocacy body, Consumer Focus Scotland (CFS), but the [CEO of WICS] formed the view that CFS was not up to the task.

A total of eight members were appointed, including the Chair Peter Peacock. Two members represented independent retailers, the remainder were chosen for their specific expertise..... This included a market researcher, a consumer law specialist, an environmental lawyer, a former senior bureaucrat who had become a CFS volunteer and a former water industry executive”.

The TSBC’s view is that the combination of skills which make up the Consumer Representative Group must be fit for purpose.

4.4 LANGUAGE

We proposed at section 3.1 above that given the limited capacity of the great majority of electricity consumers to understand the complexity of the market through which electricity is delivered to their homes and businesses, and the enormously complex mechanisms for determining the prices they pay for electricity, it is reasonable to expect that a proposal for any investment which will significantly impact both the means by which electricity is delivered and the price which consumers will pay should be capable of being read and understood by a reasonably well informed consumer, or consumer representative.

We believe the concept of a “proposal to consumers” should extend to the whole PADR in line with the above expectation and contend that the Marinus Link PADR falls well short of meeting that expectation.

We further contend that the language in which regulatory proposals are framed should be subject to the same level of scrutiny and reform as was applied to legal documents in the late 70s/early 80s in the USA - the birth of what has become known as the "plain English movement".

Leading up to that time lawyers had been derided for the nature of their prose - a word will not suffice where two or even three can take its place; long sentences are preferable to short ones.

²⁸ Negotiated Settlement and Consumer Engagement, UK Experience and lessons for Australia, ECA Research Report No. 2, May 2016

²⁹ Ibid, page 7

The plain English movement is the name given to the first effective effort to change this and to write legal documents, particularly those used by consumers, in a manner that can be understood, not just by the legal technicians who draft them, but by the consumers who are bound by their terms.

Under the TSBC's Consumer Engagement Framework, proposals such as a revenue proposal or RIT-T application would be structured as a proposal to consumers and would be capable of being read and understood by a reasonably well informed consumer, or consumer representative.

One role of the Consumer Representative Group would be to provide oversight to the "look and feel" of the relevant written outputs to achieve that objective.

We believe it is possible to achieve the right balance between ensuring that the technical and financial information presented is capable of being assessed by the relevant approving body (such as the AER) and ensuring that consumers understand exactly what benefits they will receive and the costs they will incur.

4.5 OUTCOMES

Under the TSBC's proposed Consumer Engagement Framework, all outcomes of any regulatory proposal should be spelled out - the benefits to consumers in the first instance, but also those accruing to other beneficiaries.

Recommendations 6 and 8 of our RIT-T Assessment, discussed at section 2.2 above, refer, and include the comments:

- Recommendation 4 - The PADR does not provide a view of regional consumer price impacts, including network charges (noting the current issues around cost allocations); and
- Recommendation 6 - The PADR broadly identifies ... customer benefits by jurisdiction. There is however no identification of which parties, other than electricity customers, would derive benefits. Those parties would include generators and network operators (current and existing). The ESB has been tasked with addressing this issue in 2020. Without an explicit examination and alignment of benefits and costs, consumers cannot be confident that they are paying a fair price for the benefits they receive from the construction of any interconnector.

We contend that the benefits which the proposal claims will be delivered should be quantified and measurable over the time period covered by the proposal. We also suggest that there should be an incentive scheme established which rewards or penalizes the proponent on the basis of actual outcomes compared to those which were projected in the proposal.

Having established the benefits, the proposal should inform consumers as to their share of the costs which will be passed on to them, compared to the benefits they will receive. The analysis of consumer cost allocations should extend to price impacts for broad customer classes, by jurisdiction.

The TSBC proposes that there should be a requirement that the Consumer Representative Group sign off on the projected benefits which will accrue to consumers, and the allocation of costs to consumers.

4.6 SIGN-OFF

Formal sign-off is the final element of the TSBC's proposed Consumer Engagement Framework. We propose that the Consumer Representative Group should sign off on any overall proposal, using a mechanism such as the one described below, and significant elements of the proposal.

For example, where a proposed investment is subject to the RIT-T, significant elements would include, but are not limited to:

- Consumer Engagement Strategy
- Identified Need
- Options considered
- Consumer Risk Analysis
- Financial cost benefit analysis
- Consumer benefits analysis
- Cost allocation methodology
- Projected consumer price impacts
- Overall proposal – draft and final reports.

We suggest the mechanism for sign off for the overall proposal should be in accordance with the ECA/ENA/AER's New Reg initiative, that is:

“The core outcome is the extent to which the Consumer Forum agrees to the network’s revenue proposal. The extent of that agreement (or disagreement) needs to be formally reported to the AER (and all other stakeholders) together with the basis for reaching that agreement.”³⁰

We contend that the skill set of the Consumer Representative Group should be sufficient to expect that all other sign-off elements would be absolute, that is that unless the Consumer Representative Group endorses that element then the proposal cannot proceed.

5 Next steps

The TSBC intends to steward the development of its proposed Consumer Engagement Framework (CEF) and seek feedback and views from a range of consumer advocates through a national workshop and regular updates through mechanisms such as the National Consumer Roundtable on Energy and Energy Consumers Australia Board Reference Group.

We understand that an ECA aspiration of the CEF, together with the TSBC’s Consumer Review of the Marinus Link project³¹, is that it will lead to the establishment of a National Consumer Council on Interconnector and Transmission Investment, with one outcome being a coalition of energy advocates, nationally co-ordinated, which can be expected to be significantly more influential on behalf of consumers than fragmented, poorly resourced and poorly informed consumer representation.

* * * *

³⁰ 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, page 10

³¹ TSBC - A consumer perspective on interconnector and transmission investment – Marinus link (case study), April 2020

Appendix 1 – ECA/ENA/AER - New Reg Proposed Approach

The overarching principle in the design of the process is the opportunity for a network to reach agreement with its consumers on its revenue proposal resulting in a regulatory proposal that reflected consumer preferences.

We are conscious that we are seeking an innovative approach and do not want to be so prescriptive that the network business, consumers or the regulator can't try different approaches. Nevertheless, there are certain elements to the model that need to exist to fulfil the objective. In the Directions Paper we outline the elements of the process in more detail.

In this section we simply outline the elements in the process and the reasons for their inclusion.

- The Counterparty** The most significant departure from the current practice is that the network is seeking to present the AER with a revenue proposal, which has been developed and agreed with the network's consumers. As such, the network needs an entity with which it can reach agreement with. This entity is called the Consumer Forum, although we note that the title is unimportant. What is important is that this entity can be credibly seen to represent the perspective and interests of consumer. In this context we mean 'consumer' in the same way as it is used in the National Electricity Objective; which is all end users, be they residential, small business or commercial and industrial.
- The Plan A network business** could change the way it conducts its engagement and seek to end with a formal agreement of some kind. But in doing so there is no 'buy in' from the regulator on that outcome. The process proposed seeks to create a basis on which the regulator can be involved early and assist the network and consumers to reach an agreement to which the AER can have regard to when considering the network's revenue proposal. To do so we think the starting point is for the network to set out the process by which it will create the Consumer Forum and how the revenue proposal will be developed to reach agreement with the Consumer Forum.
- Governance and Support** The governance arrangements for the Consumer Forum need to promote independence, transparency and accountability. The Consumer Forum also needs support from both the business and the AER to be able to form a view on the revenue proposal.
- The Consumer Perspective** The Consumer Forum is not 'representing consumers', it is representing the consumer perspective. It is not composed of people selected from consumer constituencies. Its function is to take information from a wide variety of sources to develop a composite view of consumer preferences. The Consumer Forum needs to satisfy itself that it, and the network business, are properly researching consumer preferences and that this information is properly incorporated in the development of the revenue proposal.
- Reaching Agreement** The core outcome is the extent to which the Consumer Forum agrees to the network's revenue proposal. The extent of that agreement (or disagreement) needs to be formally reported to the AER (and all other stakeholders) together with the basis for reaching that agreement.