

Our Ref: 49598

17 September 2012

Ms Sophie Dunstone
Committee Secretary
Senate Select Committee on Electricity Prices
Parliament House
CANBERRA ACT 2600

By email: electricityprices.sen@aph.gov.au.

Dear Ms Dunstone

Submission to Senate Select Committee on Electricity Prices

The Australian Energy Regulator (AER) welcomes the opportunity to provide the attached submission to the Senate Select Committee's inquiry into electricity prices.

Our submission highlights that while recent price increases have been significant, a range of reforms are being considered which have the potential to curb electricity price increases into the future.

Should you have any questions, please feel free to contact the AER's Chief Executive Officer, Michelle Groves, on (03) 9290 1423 or me on (03) 9290 1419.

Yours sincerely



Andrew Reeves
Chairman



Senate Select Committee on Electricity Prices

Submission

September 2012

1 Introduction

The Australian Energy Regulator (AER) welcomes the opportunity to provide a submission to the Senate Select Committee's inquiry into electricity prices.

The AER is Australia's national energy market regulator and an independent statutory authority. Our responsibilities are set out in national energy market legislation and rules, and mostly relate to energy markets in eastern and southern Australia. These functions include:

- setting the prices charged for using energy networks (electricity poles and wires and gas pipelines) to transport energy to customers
- monitoring wholesale electricity and gas markets to ensure suppliers comply with the legislation and rules, and taking enforcement action where necessary
- publishing information on energy markets, including the annual State of the Energy Market report and more detailed market and compliance reporting, to assist participants and the wider community.

From 1 July 2012, the AER took on responsibility for regulating conduct in retail energy markets in some jurisdictions under the National Energy Customer Framework (NECF).

Given these responsibilities, the AER has a unique perspective on the issues being considered by the Committee. The AER's submission focuses on the following terms of reference:

- the key causes of electricity price increases over recent years and those likely in the future
- the legislative and regulatory arrangements and drivers in relation to network transmission and distribution investment decision making and the consequent impact on electricity bills, and on the long term interests of consumers
- the opportunities for improved customer advocacy and representation arrangements bringing together current diffuse consumer representation around the country
- the adequacy of current consumer information, choice, and protection measures, including the benefits to consumers and industry of uniform adoption of the NECF
- the arrangements to support and assist low income and vulnerable consumers with electricity pricing.

The AER's submission emphasises the following points:

- There have been significant electricity price increases, particularly in the past five years. The key driver for these price increases in most jurisdictions has been higher network costs. Some increases in network costs have been necessary to replace ageing assets and meet peak demand.
- There have been shortcomings in the rules for setting prices for energy network businesses. However, recently announced reforms significantly improve these rules and should ensure that in future, consumers pay no more than necessary for the network services they require.

- There are a range of initiatives underway to actively engage and empower consumers in electricity markets. Adoption of the NECF across all National Electricity Market (NEM) jurisdictions is a key initiative that has the potential to significantly promote the interests of electricity consumers.

While the AER's submission focuses on the terms of reference that directly relate to our responsibilities, the AER notes that a very broad range of electricity market issues are covered in the terms of reference. There are a range of policy reforms and Rule changes that are currently being progressed to address many of the issues highlighted in the terms of reference.

The more significant of these reviews include:

- Australian Energy Market Commission's (AEMC) Transmission Frameworks Review – this review is considering how generation and transmission network investment and operating decisions can be more effectively aligned to deliver efficient overall outcomes.
- AEMC's Power of Choice Review – this review is considering new ways of enabling consumers to have more control about how they use electricity and manage their costs through greater demand-side participation in the NEM.
- AEMC's Review of Distribution Reliability Outcomes and Standards – this review is considering whether there is currently an effective balance between ensuring sufficient investment in distribution networks to maintain reliability, and pricing outcomes for customers.
- The Expert Panel Review of the Limited Merits Review Regime – this review, initiated by the Standing Council on Energy and Resources, is considering whether the current arrangements for seeking review of regulatory decisions need to be amended.
- The Productivity Commission's Electricity Network Regulation Review – this review is investigating the use of benchmarking under the regulatory framework and considering whether efficient levels of electricity transmission interconnection are being delivered.

In addition, the Commonwealth Government's draft Energy White Paper outlines a series of proposed priorities to address challenges confronting Australia's energy sector.

It is therefore imperative that the Senate Committee's inquiry is cognisant of these other reviews that are being progressed.

2 Causes of recent price increases

The terms of reference for the Senate Committee's review require an 'identification of the key causes of electricity price increases over recent years and those likely in the future.'

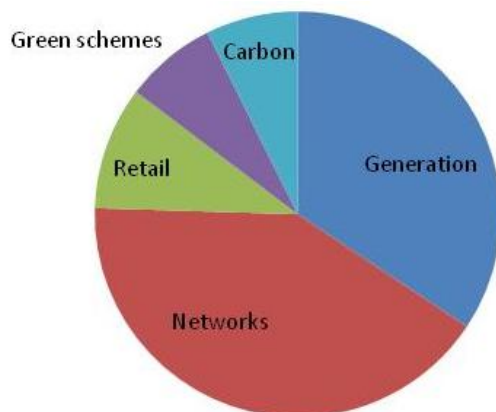
The AER's response to this term of reference outlines the composition of the final electricity prices paid by consumers, recent trends in electricity prices paid by consumers, and the key drivers of these recent price trends.

2.1 Composition of electricity prices

The electricity retail price paid by consumers is a build-up of the costs of the discrete elements in the supply chain. The main categories of cost are:

- Generation – the cost of generating electricity. These costs are determined in a wholesale market and are not regulated.
- Transmission and distribution – the costs of transporting electricity across transmission and distribution networks from the generator to the final business or household where it will be used. These network costs are regulated by the AER in the states that are in the National NEM – that is the ACT, NSW, Queensland, South Australia, Tasmania and Victoria. The AER sets the network costs taking into account factors such as the investment required to meet the mandated reliability standards for each network, the cost of funds for the required investment and the operating costs of the network businesses.
- Green schemes – the costs of green initiatives, including renewable energy targets, incentives for small scale solar generation and energy efficiency schemes. These are a mix of Federal and State Government schemes.
- Retail – the costs associated with operating a retail business, including billing and customer service.

In each state these cost components vary considerably depending on factors such as climate and geography, customer density and age of network. A typical breakdown is shown in the graph below.



Note: These components are averages across all NEM jurisdictions and can vary. Generation contributes 30-40 per cent, networks contribute 37-50 per cent, retail is 10 per cent, and green schemes and carbon price each contribute 5-10 per cent of an electricity bill.

In all NEM states other than Victoria, household consumers have access to a regulated retail electricity price, determined by a state or territory based (jurisdictional) regulator and approved by the relevant Minister. The regulated retail prices are set by the jurisdictional regulator, taking into account the costs to the retailer of purchasing electricity in the wholesale market, the costs of transportation along the transmission and distribution networks, the costs of green scheme initiatives together with the costs of running a retail business.

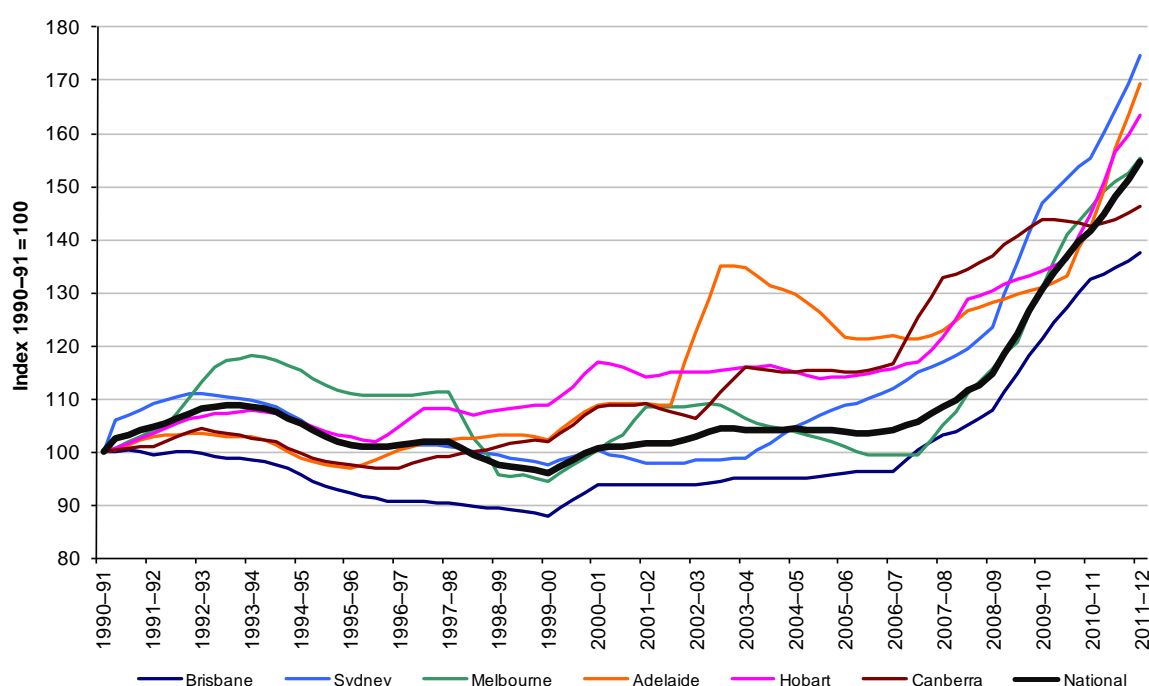
The jurisdictional regulators estimate the wholesale energy and retail cost estimates of an efficient retailer, as well as the costs of various green schemes such as the renewable energy target or state

based energy efficiency schemes. These are separate to the carbon price that came into effect from 1 July 2012. To determine the charge to household consumers, the jurisdictional regulators add the network price (set by the AER) to these other cost estimates that they have determined.

2.2 History of electricity prices

As the graph below shows, electricity prices have been increasing since 2001. In part, this increase in real electricity prices reflects the unwinding of historical cross-subsidies from business to household customers as the retail market has been gradually opened up to competition (particularly in Melbourne and Adelaide early in the decade). In Brisbane (where small customer prices remained fully regulated until 2007) and Hobart (where small customer prices are still fully regulated) electricity retail prices remained relatively stable until the past five years.

Electricity retail price index (inflation adjusted)—Australian capital cities, 1990-91 to 2011-12



Note: CPI electricity and gas series, deflated by the CPI for all groups.

Source: ABS, Consumer price index, cat. no. 6401.0.

There have recently been steep increases in the price of electricity, increasing 45–84 per cent in most jurisdictions (30–62 per cent in real terms) over the five years to June 2012.

In all NEM states other than Victoria, retail household electricity prices for the default ‘standby offers’ are set by a jurisdictional regulator. The table below summarises the movement over the past five years in the nominal default offer price that all consumers have a right to access. These prices vary between states and across states where there is more than one distributor. In all NEM states other than Tasmania, customers have access to competitive market offers which may be substantially below the regulated prices.

Comparisons of energy costs across (and sometimes within) jurisdictions are difficult as the average consumer in each location uses a different amount of electricity. For example, the NSW Independent Pricing and Regulatory Tribunal (IPART) estimates that an average household annual electricity bill varies between \$1,972 and \$2,590 depending on the distribution zone for the same level of consumption. In South Australian and Tasmania, the regulators estimate the average annual bill to be closer to \$1,800.

Movements in retail electricity prices (default offer prices)

Region	Average price increase				
	2008-09 (%)	2009-10 (%)	2010-11 (%)	2011-12 (%)	2012-13 (%)
NSW	6-8 depending on distribution area	17.9–21.7 depending on distribution area	7–13 depending on distribution area	15.5–18.1 depending on distribution area	11.8–20.6 depending on distribution area
Qld	5.4	15.5	13.3	6.6	10.6
Vic	5.6–9.9 depending on network area & retailer	11.3–17.3 depending on network area & retailer	3.9–23.5 depending on network area & retailer	4.9–11.6 depending on network area & retailer	8.5–14.8 depending on network area & retailer
SA	4.1	4.4	18.3	17.4	18.0
Tas	4.1	6.2	15.3	11.0	10.6
ACT	7.1	6.4	2.3	6.5	17.7

Notes: The Victorian price rises are estimates based on unregulated default tariffs published in the government gazette.

The table lists price movements for the local area retailer in each of Victoria's five distribution areas.

A further increase is expected in Victoria in January 2013. The Queensland price rise for 2012–13 is based on the Queensland Government decision to freeze the standard residential tariff, except for the carbon price component. The estimate is based on QCA analysis.

2.3 Drivers of the price increases

The AER has analysed decisions made by jurisdictional regulators to assess the key drivers of price increases over the past five years. While the proportion of price increases attributable to each element of the supply chain varies from state to state, the following trends are observable:

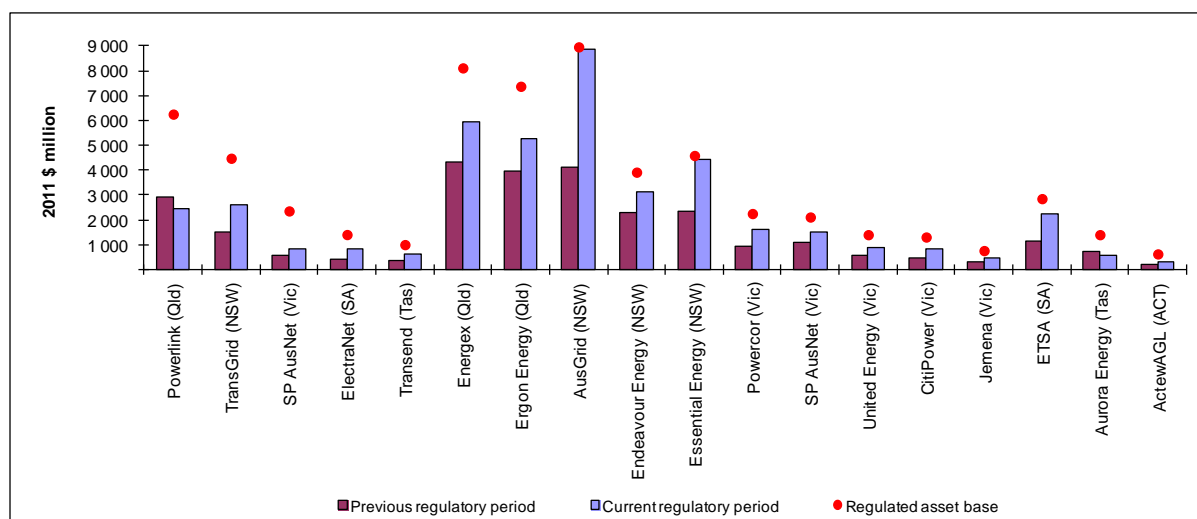
- The most significant contributor to the price rises over the last five years in each state has been the impact of rising network costs – accounting for 35–50 per cent of the total price rise.
- Green schemes (including renewable energy targets, incentives for small scale solar generation and energy efficiency schemes) account for 10 to 20 per cent of the price rise.
- Generation costs account for up to 25 per cent of the price rise. In South Australia in particular, higher wholesale electricity prices in 2006/07, 2007/08 and 2008/09 have been a significant contributor to electricity price increases.
- Retail operating costs account for around 10 per cent of the total price rise.

In addition, the impact of the carbon price from 1 July 2012 varied by region. Jurisdictional regulators have estimated that the carbon price raised retail prices by 4.6 per cent in SA, 5.6 per cent in Tasmania, 8.9 per cent in NSW, 10.6 per cent in Queensland, and 14.2 per cent in the ACT.

With network costs accounting for 37 – 50 per cent of a typical electricity bill, rising network costs and revenue allowances are flowing through to higher retail prices for energy customers.

A major contributor to rising network costs has been higher investment in the network. The table illustrates investment allowances for electricity networks in the current five year period compared with previous periods. It shows the asset base of each network as a scale reference.

Electricity Network Investment



Energy network investment in the current five year regulatory cycle is running at historically high levels—\$7.4 billion in electricity transmission and \$36.1 billion in electricity distribution. These forecasts represent an increase on investment in the previous regulatory periods of around 27 per cent in electricity transmission and 60 per cent in electricity distribution (in real terms).

The table illustrates that there have been significant investment increases for most network businesses. Indeed, for two businesses – the New South Wales’ distributors AusGrid and Essential Energy – the level of investment in the current five year period is equal to the previous existing total asset base.

A range of factors have driven higher network investment, including:

- ageing assets (including significant electricity infrastructure built between the 1950s and 1970s that is reaching the end of its useful life), requiring significant replacement and reinforcement capital expenditure
- load growth and rising peak demand (driven by the use of air conditioners during summer heatwaves)
- more rigorous licensing conditions and other obligations for network security, safety and reliability (such as higher reliability requirements in New South Wales and new bushfire safety standards in Victoria)
- new connections reflecting strong population and economic growth over recent years.

Rising capital financing costs—reflected in higher rates of return on the investment made by the network businesses—were the other major factor that contributed to higher network revenues and

charges. The increase in the cost of capital in the most recent round of determinations led to allowed network revenues increasing on average by around 7 per cent more than if the cost of capital was unchanged. The primary driver was rising borrowing costs arising from changes and fluctuations in global financial markets following the Global Financial Crisis that reduced liquidity in debt markets and increased perceptions of risk. More recently, however, we have seen a reversal of this trend which is reflected in the most recent AER decisions (such as the decision for the Tasmanian electricity distribution network).

Finally, it is also worth noting the impact of legal appeals to the Australian Competition Tribunal of AER decisions on electricity prices. While decisions of the AER have allowed increases in the funding to electricity network owners, many of the network businesses have sought review of these decisions to further increase the allowed revenue. The decisions of the review body, the Australian Competition Tribunal, have increased the money recovered from customers by approximately \$3 billion (which represents 7 per cent). Most of this was related to financing costs and tax allowances. A review of this appeals mechanism by the Standing Council on Energy and Resources is underway.

3 Network regulation framework

The terms of reference for the Senate Committee's review require an investigation of 'the legislative and regulatory arrangements and drivers in relation to network transmission and distribution investment decision making and the consequent impacts on electricity bills, and on the long term interests of consumers.'

The AER is responsible for setting expenditure allowances for transmission and distribution networks in the NEM, which in turn determines the prices they can charge. This role gives the AER a strong understanding of the framework for network regulation. The AER believes that while there have been significant shortcomings in this framework, recently announced reforms will significantly improve the rules for setting prices for energy network businesses.

3.1 Shortcomings of the regulatory framework

Rising network costs have been the main driver for electricity price increases since 2007. While increased spending has been necessary, the AER believes that shortcomings in the regulatory framework — the national electricity rules that set out how the AER must regulate electricity networks — has led to some price increases that are higher than necessary.

The substantial price impact of recent determinations led the AER in 2011 to internally examine the framework that governs the regulatory process. While this examination considered that many aspects of the framework operate well, several features were contributing to consumers paying more than necessary for energy services. In particular:

- The current Electricity Rules restrict the way in which the AER can make an overall assessment of how much expenditure proposed by network businesses is efficient or necessary.
- The current Electricity Rules create incentives for overinvestment by allowing businesses to receive a rate of return on investment regardless of whether that investment was efficient or necessary.

- Inconsistent approaches to setting rates of return for electricity and gas network businesses, along with constraints on the AER from setting costs that reflect current commercial practices, lead to inflated cost estimates.
- The current consultation arrangements in the Electricity Rules hinder effective consumer engagement.

3.2 Proposed reforms to the regulatory framework

Following this examination, the AER in September 2011 submitted proposals to the rule making body, the AEMC to address these concerns with the electricity rules.

In August 2012, the AEMC released its draft decision on the AER's proposals. The AEMC argues the 'proposed new rules ... better equip the regulator to set network prices so consumers don't pay more than necessary for reliable supplies of electricity and gas.'¹

While the AEMC's proposals are detailed and are still being fully evaluated by the AER, we believe that the AEMC's proposals will significantly improve the regulatory framework. The draft decision gives the regulator greater ability to assess the overall reasonableness of a business's expenditure needs and reject excessive forecasts. The draft decision also reforms the process of consumer engagement in setting network prices.

Expenditure forecasts

The AEMC's draft decision gives the AER greater scope to reject excessive cost forecasts. In particular, the draft decision gives the AER clear authority to benchmark network business practices and costs and use the results to inform its decision on efficient levels of forecast costs. The AER will be required to publish annual benchmarking reports to compare the performance of network businesses.

The draft decision also removes several provisions of the Electricity Rules that have constrained the AER's ability to diverge from network businesses' cost forecasts.

Expenditure incentives

The draft decision gives the AER a number of tools that it can use to ensure that network businesses have adequate incentives to spend capital expenditure efficiently. The tools are:

- applying capital expenditure sharing schemes, which are to be designed by the AER, to provide incentives to incur efficient capital expenditure
- undertaking reviews of efficiency of past capital expenditure, including the ability to preclude inefficiently incurred expenditure, which is in excess of the regulatory allowance, from being rolled into the regulatory asset base (RAB).

¹ AEMC (2012) *Media release – Better regulation for networks*, 23 August 2012.

Rate of return

At present the AER must use a different methodology when setting the rate of return for each of electricity distribution, electricity transmission and gas. The AEMC's draft decision establishes a common framework.

The AEMC's draft decision allows the AER to make the 'best possible estimate' of the rate of return at the time a regulatory determination is made. The AEMC also indicates that the regulator should be focusing on the overall rate of return, rather than looking at the individual parameters that make up the rate of return in isolation, an approach that has been the subject of several successful legal appeals by the network businesses to the Australian Competition Tribunal.

The AER will be required to develop its approach to setting the rates of return in consultation with the industry, consumers and other interested parties.

Regulatory process

The AEMC has added several features that are designed to help consumers to become involved in the reset process, including obligations on the AER to:

- publish an issues paper which highlights the main issues from a consumer perspective
- hold a public forum
- produce an annual benchmarking report.

In addition, the AEMC's draft decision requires network businesses to outline the extent to which they have engaged with electricity users in the development of their spending proposals and provide an overview paper for consumers. The AER, in setting expenditure allowances for network businesses, can take into account the extent to which the business has engaged with consumers. This will create an incentive for network businesses to genuinely engage with consumers and create greater focus for network businesses to provide services that are valued by consumers.

The overall length of the determination process has been increased, in order to allow for more consultation on the regulatory framework during the early stages of the review, and to give interested parties more time to prepare consultation responses.

Next steps

The AEMC is currently consulting on its draft proposals, with final rules due to be released in November 2012.

4 Customer advocacy

The terms of reference for the Senate Committee's review require an investigation of 'the opportunities for improved customer advocacy and representation arrangements bringing together current diffuse consumer representation around the country.'

The AER recognises the important contribution consumer advocacy plays in improving consumer outcomes. Through raising public awareness of consumer issues and problems, direct provision of information to better inform consumer choice and providing legal representation, advocacy allows

consumers to have meaningful input into, and influence over, decisions that affect them. Consumer advocacy is critical in ensuring consumers can access affordable, reliable and safe energy services.

Consumer organisations regularly provide information to the AER on consumer complaints and issues that may warrant the AER's intervention as well as providing input into regulatory development, implementation and review processes.

4.1 Consumer advocacy and the Australian energy market

A key feature of advocacy in the Australian energy market to date has been the diversity of approach with a range of organisations involved including those:

- with a social policy focus, such as the Brotherhood of St Laurence, the Country Women's Association and New South Wales's Public Interest Advocacy Centre (PIAC)
- with a general consumer policy and advocacy focus like the Consumers Federation of Australia, CHOICE — the Australian Consumers Association and Victoria's Consumer Action Law Centre (CALC)
- which attach consumer advocacy to specific services, including community legal and other advice services.

The Consumer Advocacy Panel (CAP) provides funding to consumer and community agencies for research and advocacy and in particular to facilitate their responses to government and regulatory reviews. Funding has also been provided to agencies to facilitate the employment of policy officers to undertake research and advocacy and build capacity within those agencies on energy issues.

The CAP also provides funding to the National Consumer Roundtable on Energy. The Roundtable enables consumer organisations from each jurisdiction to come together three times a year, to meet with government, regulatory and other relevant representatives on current energy issues. The Roundtable has proven highly effective in allowing consumer organisations to share information and coordinate advocacy efforts on key consumer issues, including on the development of the NECF.

The Consumer Utilities Advocacy Centre (CUAC) is currently the only consumer organisation in Australia which focuses specifically on the energy and water sectors. Whilst it does contribute to the debate on national energy issues, its remit is to ensure the interests of Victorian consumers are effectively represented in the policy and regulatory debate in the electricity, gas and water sectors.

Part of the AER's role is to promote the welfare of Australian consumers through enforcement and education activities and supporting the activities of consumer representative bodies. A good example of this work is the early establishment of the AER's Customer Consultative Group (CCG) in 2009. The operation of the CCG is a requirement under the National Energy Retail Rules and its function is to provide advice to the AER on issues affecting energy consumers across participating jurisdictions. The early establishment of the [CCG](#) enabled this group to further contribute to the development of the AER's retail guidelines and assisted the AER in developing an understanding of retail energy issues prior to the commencement of the National Energy Retail Law (Retail Law) on 1 July 2012 in some jurisdictions.

Membership of the CCG provides participating organisations with the opportunity to inform the AER about issues that impact on the groups they represent. It also provides members with the opportunity to meet with other consumer representatives to discuss key energy consumer issues. The CCG

meets up to three times a year and has nine current members—Australian Council of Social Service, Australian Council on the Ageing, Consumer Action Law Centre, Consumer Utilities Advocacy Centre, Public Interest Advocacy Centre, Queensland Council of Social Service, Saint Vincent de Paul Society, Tasmanian Council of Social Service and Uniting Communities.

4.2 Limitations in current consumer advocacy framework

The development of the Retail Law and creation of national institutions such as the AEMC and AEMO has changed the nature and scope of energy advocacy in Australia. Consumer organisations are now required to directly interact with a broad range of stakeholders, including both national institutions and jurisdictional regulators.

The 2011 CUAC Report: *Making Markets Work for Consumers* identified a number of constraints on consumer advocacy in the energy market. This included the absence of a national consumer organisation dedicated to energy issues and insufficient resources and technical capacity to participate in the full range of regulatory processes across the energy supply chain.

The transition to a national framework for the regulation of the Australian retail energy market and initiatives to increase consumer engagement in network revenue regulatory processes will only increase the scope of further advocacy work. The AER believes that these developments highlight the need for the establishment of a well resourced, national independent consumer advocacy body. The establishment of this body would ensure that customers' views can be represented effectively in the new regulatory environment and the impacts upon them are appropriately considered and reflected in decision-making.

5 Consumer information, choice and protection measures

The terms of reference for the Senate Committee's review require an investigation of 'the adequacy of current consumer information, choice, and protection measures, including the benefits to consumers and industry of uniform adoption of the National Energy Customer Framework.'

5.1 Adequacy of current consumer information and choice

To consider the adequacy of current consumer information and choice in the retail energy market, it is important to understand the nature and key characteristics of this market.

Energy is an essential service and as such, access to electricity and gas supplies is considered to be a prerequisite to social participation and adequate standards of living. It is also a homogenous product/service (all electrons are the same) which can make it more difficult for consumers to distinguish between the services and products offered by different providers (energy retailers).

Energy is also generally considered to be a 'low involvement' product. That is, most consumers have relatively little interest in the service (as long as the lights go on) and few make a proactive effort to purchase it. A CUAC research report² cited that for a significant proportion of customers who haven't

² Consumer Utilities Advocacy Centre (2011) Improving Energy Market Competition Through Consumer Participation: A CUAC Research Report, CUAC: Melbourne

switched, the main reasons given for this included that it was 'too hard to choose', 'not worth the effort' and that they 'could not be bothered'. Given this limited interest in retail energy offers amongst consumers, energy retailers need to be proactive in selling the product. This is why energy is often marketed and sold using the door-to-door sales channel. Australian Competition and Consumer Commission (ACCC) research³ into the door-to-door sales industry in Australia estimates that in 2011 over 1.3 million sales were conducted through this sales channel and of these, approximately 1 million sales related to energy services. On average, every home in Australia is being door-knocked eight times a year.

A key disadvantage of this sales approach is that consumers may make sub-optimal switching decisions as they will only be comparing their current energy offer to the offer being presented by the salesperson (rather than all of the offers that may be available to them).⁴ Further, the ACCC's research identified that energy companies usually engage third party sales agents to market door-to-door, with remuneration typically based on commission. This may encourage door-to-door sales agents to adopt tactics that are not fully compliant with their obligations in order to secure more sales. Complaints about poor door-to-door sales practices remain a key concern for the AER and ACCC and a number of actions are underway to improve practices in this area (see discussion on the adequacy of protection measures below). A number of other reports highlight that customer dissatisfaction with door-to-door sales approaches remains high.⁵

However, even when customers are proactive in searching out energy offers and products, they face a number of challenges and barriers in accessing information and exercising effective choice. There are a number of energy contract comparison websites run by jurisdictional energy regulators and also some commercially run switching websites that enable customers to compare or switch energy retailers. While these sites potentially offer customers a simple way to compare a wider range of offers than when approached at the door, a number of concerns have been identified. The ACCC has taken some action in this area (see discussion in section 5.4).

Issues faced by proactive customers searching out information on energy offers can include (but are not limited to) the complexity of the retail energy market and the structure and proliferation of energy offers. Most offers include a fixed and variable component which can change depending on the season, time of day, and metering configuration at a customer's premise. Energy offers may also include a premium for green energy, conditional and non-conditional discounts and rebates, fixed contract terms and early termination fees. All of these elements can make it difficult for consumers to compare 'apples with apples' to work out what their likely costs would be under a range of different energy offers and effectively assess what offer would best meet their needs. The likely outcome is that customers may often make poor switching decisions.

Whilst there is little research available which assesses the 'quality' of customer switching in Australian retail energy markets, Ofgem, the energy regulator in Great Britain, undertook analysis as part of its Energy Supply Probe which indicated that 'as many as one third of switchers may not achieve a price

³ ACCC (2012) Research into the Door-to-Door Sales Industry in Australia:
<http://www.accc.gov.au/content/index.phtml/itemId/1070526>

⁴ AER qualitative research found that amongst those who had switched, no one had considered or compared the offers of more than two energy companies and in most cases switching had occurred as a result of a direct sales contact.
<http://www.aer.gov.au/sites/default/files/Consumer%20research%20report%20-%20Wallis%20Consulting%20Group.pdf>

⁵ Consumer Utilities Advocacy Centre (2012) The consumer experience of door-to-door energy sales in Victoria: Findings from a CUAC survey, CUAC: Melbourne. Also CALC research at:
<http://www.consumeraction.org.au/downloads/Doortodoorsales-Consumerviews2012-ConsumerActionLawCentre.pdf>

reduction.⁶ The AER's research also found that few respondents had proactively looked for independent pricing information prior to choosing a retailer. Most made contact with the retailer and gathered pricing information verbally. Those customers who received a face-to-face sales approach were generally given a quote comparing their current bill with a projected bill. No respondents had been given or were referred to any pricing factsheets or disclosure statements. This information asymmetry, combined with high search costs, may also reinforce consumers' lack of engagement and unwillingness to participate in the retail energy market.

It would appear that many consumers are not yet benefiting fully from the competitive retail energy market and it is likely that disadvantaged and vulnerable customer groups are disproportionately affected. In addition to being more at risk of misleading sales practices, these customers are more likely to be 'sticky'—customers who don't or have never switched. They may, therefore, not be getting the best deal available to them. Possible reasons for this may be:

- some find it difficult or time consuming to assess the merits of different energy offers
- some are not confident that they can make a good choice about what offer will best meet their needs
- some remain unconvinced about the level of potential savings to be made and whether these will last
- some worry about administrative or billing errors that might result because of the switch, or service problems or inadvertently choosing a worse deal
- some are also unable to find out about the best deals because they do not have internet access.

These customers could benefit from improved consumer confidence and information to enable better engagement (and choice) in the retail energy market.

5.2 The benefits of uniform adoption of the National Energy Customer Framework

The NECF provides a holistic and consistent set of consumer protections regarding the sale and supply of energy and prescribes a role for retailers to provide assistance to their customers experiencing payment difficulties or financial hardship. Under the NECF retailers must:

- provide clear and transparent contracts with a minimum set of terms and conditions
- protect customers from disconnection in certain circumstances, including if a customer's premises are registered as requiring life support equipment
- undertake a series of steps to assist customers experiencing financial difficulties and before considering disconnection (as a last resort) for non-payment of a customer's bill, including the requirement to offer payment plans and provide access to an AER approved hardship program.

⁶

<http://www.ofgem.gov.uk/Markets/RetMkts/ensuppro/Documents1/Energy%20Supply%20Probe%20-%20Initial%20Findings%20Report.pdf>

The NECF commenced in Tasmania and the Australian Capital Territory on 1 July 2012. It is expected that the law will commence in New South Wales by the end of the year and in South Australia as soon as possible. Victoria has now committed to a 2014 start-date and the new Government in Queensland is yet to consider its position on the NECF.

The benefits of having a nationally consistent framework, as envisaged under NECF, is that it provides a single set of consumer protections and obligations for energy businesses to abide by. Under the current jurisdictional frameworks, requirements vary slightly for each jurisdiction. As such, energy businesses that work across multiple jurisdictions need to be aware of, and abide by, differing reporting frameworks and obligations. Energy businesses are required to collect and report data in different ways and submit it to different regulators at different times. This also means that currently the protections available to customers with regard to energy will vary depending on where the customer lives.

Uniform adoption of the NECF will create certainty, allow for more efficient and streamlined knowledge and training around the obligations in the framework, can result in greater levels of compliance (given that jurisdictional differences would largely be removed) and allow for a single set of uniform reporting requirements, with accountability to a single regulator. This is likely to result in greater efficiencies across the retail energy market, especially for retailers which operate across multiple jurisdictions. A nationally consistent consumer protection framework for energy will also result in benefits to consumers. In particular, it provides opportunities to improve the clarity, understanding of and confidence in their rights and obligations. It is also likely to be of assistance to consumer intermediaries and welfare agencies that play a role in assisting customers (particularly hard-to-reach customers) in understanding their rights and obligations.

Recognising the way energy is sold to customers, the NECF provides additional protections for energy marketing above those prescribed in the Australian Consumer Law, including in relation to door-to-door sales approaches.

The NECF requires that energy retailers and anyone marketing on their behalf must provide customers with an Energy Price Fact Sheet for the offer being promoted—this is a one page summary of the terms and conditions of the contract including the price, contact details for the retailer and any discounts or charges that apply, presented in a standardised format. Under its Retail Pricing Information Guideline, the AER has prescribed the information, format, layout, units and nomenclature that is to be used by retailers when preparing their factsheets. The Guideline also prescribes when energy retailers must provide these factsheets, publish them on their websites and advise they are available. The AER's research⁷ highlighted that consumers need pricing and other comparative information when they are in the process of choosing between energy retailers. This happens when a direct sales contact is made with them or if they are pro-actively motivated to switch. This research informed the AER's approach in this area and is designed to better equip consumers to accurately compare 'apples with apples' when looking at retailers' energy offers.

Under the NECF, retailers and their marketers and salespeople must also obtain customers' explicit informed consent before signing or switching them over to a new contract, observe no canvassing signs (such as 'Do not knock' or 'no advertising material') and maintain a 'no contact list', allowing consumers to advise an energy retailer that they do not wish to be contacted for marketing purposes by that retailer. Consumers will remain on that retailer's list for two years. As each energy retailer

⁷ <http://www.aer.gov.au/sites/default/files/Consumer%20research%20report%20-%20Wallis%20Consulting%20Group.pdf>

maintains their own list and the 'no contact' information is not shared between retailers, consumers have to contact individual retailers to prevent future visits from salespeople representing those retailers.

Of particular importance is the requirement under the Retail Law for the AER to maintain and operate a price comparison website, Energy Made Easy (www.energymadeeasy.gov.au). This website, which was launched on 1 July, provides customers with independent, objective, and free comparisons of all generally available energy offers to help customers work out which is the best energy deal for them.

As noted earlier, one disadvantage of the prevalence of door-to-door selling of energy offers is that it is likely to result in customers making sub-optimal switching decisions as they are only able to compare their current offer with the offer being presented by the salesperson. This is one of the critical benefits of the AER's Energy Made Easy website. The website provides customers (in jurisdictions where the Retail Law has commenced) with estimated annual costs of all the generally available energy offers, including conditional and unconditional discounts, as well as the key fees and terms of each offer, making it easier for customers to exercise well-informed choice in the market.

The AER aims to position Energy Made Easy as the primary, trusted and reliable source of information about energy offers. It also includes simple and easy-to-read information about a range of energy issues, providing customers with a 'one-stop' energy tool. The website is accessible and contains features to assist users from culturally and linguistically diverse backgrounds. It provides accurate and up-to-date comparisons on energy offers available, based on the information input by customers. In developing this website, the AER has also recognised the importance of catering to a range of user needs, from customers with low energy literacy, to those with an advanced awareness.

Currently, the price comparator function of the Energy Made Easy website is limited to ACT and Tasmania.

The website also includes useful information and tips about how consumers can save energy and save money on their bills, including the electricity consumption benchmarking information. This function enables customers to see how their own electricity use compares to other similar sized households in their local area. Previous AER research found that respondents of all types demonstrated a poor understanding of their energy usage in terms of the amount of energy used. Not only did they struggle with the terminology to describe the amount of energy used, but also they were unable to imagine the size and energy value of a kilowatt hour of electricity or a megajoule of gas. Respondents were more able to work out how much they spent annually on energy, but this capacity was not universal. The electricity consumption benchmarks, developed under the NECF, and available on the AER's Energy Made Easy website and on customers' electricity bills in NECF jurisdictions from October 2012 will further assist in addressing this gap.

Ensuring that customers are confident in engaging with the retail energy market; that they can easily shop around to get the best deal for their circumstances; and know how to use energy as efficiently as possible are all critical steps in ensuring that customers can do all they can to best manage their energy bills. It is also critical to realising the benefits of competition in the retail energy market.

5.3 Education and information campaigns

A key area of work being undertaken in this area by the AER and ACCC is to provide guidance to consumers in relation to their rights and obligations under the Retail Law and the Australian

Consumer Law (ACL). This work aims to improve consumer confidence, capacity and engagement in the retail energy market.

As a first step, the AER has developed a suite of consumer materials and factsheets. Factsheets developed include:

- [Shopping around and switching contracts](#)
- [Energy marketing - your rights](#)
- [Ways to save energy and money on your bills](#)
- [Energy bills, hardship programs and disconnection](#)
- [What can I do if I have a complaint.](#)

The ACCC has been active in raising consumer awareness of rights and obligations under the ACL, particularly when approached by a door-to-door salesperson, and has actively engaged with industry to ensure greater compliance with the law. On 17 August 2012 the ACCC launched the *Knock! Knock! Who's There?* awareness raising campaign to help consumers be confident and exercise their rights when buying at their door.

As part of the campaign, the ACCC released several practical tools to help consumer understand their rights in relation to unsolicited sales approaches, including:

- [Knock! Knock! Who's There? Door to door sales – a guide for consumers](#)
- [Knock! Knock! Who's There? Door to door sales - a consumer's guide \(brochure\)](#)
- [ACCC 'Do Not Knock' sticker](#)
- *Knock! Knock! Who's There?* Door hanger and magnet.

The ACCC received over 7 000 requests for 'Do Not Knock' stickers and consumer guides following the launch. The *Knock! Knock! Who's There?* brochure will shortly be available in 14 languages to assist potentially disadvantaged and vulnerable consumers from non-English speaking backgrounds understand their rights.

5.4 Compliance and enforcement activities and information campaigns

The AER is responsible for retailer and distributor compliance with the Retail Law and Rules in areas including the retailer/customer relationship (such as contracting, marketing, hardship) and providing information to assist retailers and distributors in applying the new rules and performing their functions.

The AER carefully monitors the complaints and inquiries it receives and recently entered into tripartite memoranda of understanding with state and territory energy ombudsman schemes and the ACCC to enhance information-sharing in relation to complaints and systemic issues in the energy market. The AER has wide ranging powers to investigate and address breaches of the Retail Law. This includes pecuniary penalties, court-enforceable undertakings and infringement notices.

The ACCC has wide ranging powers to investigate and address unscrupulous door-to-door selling practices under the ACL's unsolicited consumer agreement provisions. For the period 1 January 2011

to March 2012, the ACCC received 187 consumer complaints related to the door-to-door sales provisions of the ACL and around half of these concerned the electricity sector.

Many of the complaints were from vulnerable consumers, including consumers from culturally and linguistically diverse backgrounds; consumers living in areas with low socio-economic indicators; recently arrived communities; from older people and those on fixed incomes; and others with disabilities. Many of the consumers claim to have felt 'harassed' by door-to-door marketers, agreeing to sign contracts after the salesperson applied pressure selling tactics or in an effort to remove the salesperson from their property. Other customers said they felt misled by door-to-door salespeople and agreed to sign contracts on the promise of savings that never eventuated, on the basis of claims made by the salesperson that they were acting on behalf of an Australian-owned company when this was not the case, or the false claim that they were a Government official.

The AER and ACCC have also seen a range of problems with commercial switching sites. Concerns have been raised regarding statements made by some sites that they compared the rates of all or many of the energy retailers in the relevant geographic area of a consumer when this may not be the case as well as potentially misleading claims about the amounts consumers have saved, and will save, by using these services. In August 2011, the ACCC commenced proceedings in the Federal Court against Energy Watch (a commercial switching site). On 30 April 2012, the Court declared that Energy Watch made false and misleading representations ordered declarations and pecuniary penalties against the company and its Director of almost \$2 million.

The ACCC has also taken enforcement action in relation to door-to-door selling under the general prohibitions on false, misleading or unconscionable conduct as well as under the new unsolicited consumer agreement provisions. In particular, in March 2012 the ACCC initiated proceedings against three energy retailers (and their relevant marketing companies) alleging contraventions of the ACL in relation to door-to-door sales marketing. Against two of the retailers, the ACCC is alleging that their salespeople did not comply with some of the requirements under the unsolicited consumer agreement provisions despite being requested to leave by the placement of a 'do not knock' sign near their door. The ACCC continues to investigate at least three other energy retailers in this area and further enforcement actions may follow.

The ACCC and AER are continuing to monitor energy switching sites and examining closely the price representations being made by energy companies. Together, and with other ACL regulators, work is ongoing to identify and stamp out illegal energy marketing practices. Both the AER and the ACCC recognise that the scope and precise application of the ACL in relation to door-to-door selling is likely to be tested by the ACCC's current proceedings. This litigation addresses many, but not all of the undesirable practices in door-to-door marketing that have been identified through complaints to the ACCC, AER, fair trading agencies and energy ombudsman services.

Given that the ACL has been recently introduced and the NECF not yet fully implemented (and both frameworks are untested in the Courts), it is too early to comment on the adequacy of these protections.

6 Low income and vulnerable consumers

The terms of reference for the Senate Committee's review require an investigation of 'the arrangements to support and assist low income and vulnerable consumers with electricity pricing, in particular relating to the role and extent of dividend redistribution from electricity infrastructure.'

When considering the arrangements to support and assist low income and vulnerable consumers with electricity pricing, the AER believes a shared model of responsibility should be adopted. Customers, consumer advocates and welfare organisations, energy retailers, regulatory agencies and governments all have a role to play.

Customers have a responsibility to pay their energy bills on time and ideally to consume energy at their premises as efficiently as they can. Where they are experiencing difficulties they should contact their retailer as soon as possible to let them know and to access the help that is available. For some consumers, typically those from vulnerable and disadvantaged groups, this can be very challenging and further support may be required to ensure access to energy supplies is maintained.

Consumer advocates and welfare organisations play a crucial role in providing this support and advice to those customers who are typically harder-to-reach and who are likely to be experiencing a greater level of vulnerability or disadvantage. They can act as trusted intermediaries and help these customers understand their rights and obligations and access the assistance available.

Energy retailers must ensure they bill their customers in an accurate and timely manner. This can help customers to avoid payment difficulties that can arise from billing errors or large 'catch-up' bills that result from previous undercharging. Energy retailers must ensure that when their customers are experiencing financial difficulties, they feel supported to contact their retailer to discuss their circumstances and make alternative payment arrangements. Retailers also need to be proactive in identifying customers who might be experiencing payment difficulties and who would benefit from participation in their hardship programs. Early identification of financial difficulty or hardship, before customer debt levels become unmanageable, is critical.

These retailer obligations are set out clearly in the NECF. The Retail Law requires energy retailers to assist their customers experiencing financial difficulty and to identify them early. Retailers are obliged to have an AER approved customer hardship policy in place and they must publish, implement and maintain that approved policy. In May 2011, the AER published guidance on the approval of customer hardship policies to provide retailers (and other interested stakeholders) with information on:

- the factors the AER will consider in deciding whether to approve a retailer's hardship policy
- how the approval process will work for new and transitioning retailers
- what retailers may submit to help satisfy the AER that their customer hardship policy contains all the minimum requirements specified in the Retail Law and Rules.

The AER has worked very closely with retailers, providing feedback on their customer hardship policies, to ensure they satisfy NECF requirements and to raise the standard of these policies across the industry. Many hardship policies go beyond the minimum requirements specified in the Retail Law—for example, with debt waivers to help customers reduce their debt more quickly; and in-home energy audits to reduce energy usage and bills.

Regulators play a key role in monitoring the performance of energy retailers and the energy market in general. They enforce compliance with the laws and rules and where issues are identified take swift action to address these concerns. They also publish information which aims to improve retailer compliance and performance over time and to educate and inform customers, to ensure they can fully participate in the competitive market. Under the NECF, the AER will be monitoring the performance of retailers' customer hardship programs and policies. This will provide important information on access to hardship programs and how effective this assistance is in helping customer better manage their

energy bills and avoid disconnection. Comparing performance across retailers will help to identify examples of good practice in this area which can then be shared across the industry to further raise standards.

Finally, governments have a role to play in ensuring that the regulatory frameworks are fit for purpose, provide an appropriate level of protection, and so that low income customers—particularly those on income support—have sufficient income to meet their basic living expenses.

These issues will become increasingly important as we see continued upwards pressure on energy prices and rising concerns about energy affordability.