



**Australian Energy Regulator**

**Better Regulation**

**Consumer Engagement Guideline**

**Comments on the Draft Guideline**

**Submission by**

**The Major Energy Users Inc**

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The views expressed in this document do not necessarily reflect the views of the Consumer Advocacy Panel or the Australian Energy Market Commission. The content and conclusions reached in this submission are entirely the work of the MEU and its consultant.

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## **Summary of MEU views**

The Major Energy Users Inc (MEU) welcomes the opportunity to comment on the AER's draft Consumer Engagement Guideline.

Overall, the MEU considers the AER draft guideline addresses the issues well. It provides a reasonably clear replication of what consumers consider is required for consumer engagement and what consumers expects NSPs to do regarding implementation of effective consumer engagement.

The two major shortcomings of the guideline lie with the lack of any:

- Identified sanction that will result from NSPs not embracing the concept – if the NSPs were subject to competition, the sanction would be loss of customers but this does not occur in relation to monopolies.
- Indication as to how the costs resulting from such increased engagement will be recovered by the NSP and, more particularly, by the consumer representatives actively involved in the process

The MEU has noted five suggestions for improvement of the draft guideline.

As the draft guideline is perforce set at a high level, the MEU considers that the real test of its effectiveness will be when the NSPs develop their detailed consumer engagement approaches and implement them.

## 1. Introduction

The Major Energy Users Inc (MEU) welcomes the opportunity to provide input into the AER draft of the Consumer Engagement guideline that it has prepared following many face-to-face meetings with consumers and NSPs. The MEU recognises the difficulties that the AER has faced in the development of the draft as this concept is relatively new to both consumers and NSPs.

### 1.1 A view on consumer engagement

The MEU considers that the NSPs must embrace the concept of consumer engagement in its entirety, not only because it is a Rule requirement but because of the benefits to consumers and the NSPs that will result. In this regard, the AER guideline is being used as a driver to force NSPs to do what they should be doing as a matter of course. Firms that are exposed to competition have found that unless they embrace all facets of good engagement of their customers, they will lose market share to those that do embrace customer engagement wholeheartedly.

Monopolies, by definition do not have competition to drive change in their customer relationships in order to improve market share. Despite this, it has been widely recognised that improved customer relationships result in better outcomes for all.

There are a number of models that address the processes needed to achieve change and where those changes must be made to achieve the desired outcome<sup>1</sup>. All of these models imply that the AER guideline addresses just one aspect (eg Wilber's quadrant 4) of the changes that must be made. The MEU considers that to gain the full benefit, more than a guideline is required.

There are other aspects (eg the other three quadrants of Wilber's model) that also need to be addressed and all of these are solely within the purview of the NSP. These aspects include development of internal beliefs and culture within the organisation, along with development of the capabilities and skills of those responsible for dealing with customers; these are essential elements that must be implemented across the entire NSP operations for the guideline to deliver the benefits envisaged.

The MEU sees that whilst the guideline itself might provide a driver to convince senior management within NSPs to take action, unless the other aspects are implemented across the organisation, the guideline itself will not achieve the desired result. This means that the AER has to monitor and report on the

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<sup>1</sup> One such model is Ken Wilber's approach to relationships and his "All Quadrants All Levels" (AQAL) model of change. Details of Ken Wilber's theory can be found at [http://en.wikipedia.org/wiki/Ken\\_Wilber](http://en.wikipedia.org/wiki/Ken_Wilber)

actions taken by the NSPs to develop and implement the internal changes needed to fully achieve the required outcome.

In a competitive environment, a failure to implement all aspects of the changes required (especially those internal to the firm) results in a loss of market share and profitability. This imposes the discipline required to force the change.

Regulation is intended to be a surrogate for competition. Unless the AER imposes the same discipline on the monopoly NSP that actual competition would force, the MEU has concerns that this guideline will not achieve the outcome that is needed and therefore will not deliver the benefits to both consumers and NSPs that could be achieved. Unless there is some penalty for failure to implement comprehensive change, the MEU has concerns that the guideline will not deliver the benefits consumers are seeking or that the new Rule anticipated.

The MEU expects that the AER will have to monitor the outcomes of the better consumer engagement implemented and will, over time, report on the success (or otherwise) for each NSP of the new approach.

## **1.2 Assumption of consumer homogeneity and access to information**

The reference to consumers in the Rules seems to implicitly assume that all consumers are alike. This is not the case, although there are many features where consumer views are aligned, but even when this occurs, there are variances in the degree to which different consumers see the importance of issues.

The MEU considers that unless this variety of difference in needs and different emphases is recognised then the best outcome will not result. The guideline needs to reflect that the consumer base is not homogeneous and that the NSP has to take this into consideration in development of its consumer engagement plan.

The MEU is aware that the regional energy ombudsman services act to resolve disputes between consumers and networks over a variety of issues. Because of this, the energy ombudsman services have first-hand experience of how networks interact with individual consumers (particularly small energy users). The MEU considers that the AER should access this information to provide it with “real life” experiences of actual consumer engagement.

Whilst the MEU recognises that such interaction that the ombudsman services observes would not necessarily cover the entire range of issues that consumer engagement should cover, it will provide a very good indication of the network attitudes towards consumers and their concerns. The MEU considers that the guideline should highlight that the AER will access information from a wide range of sources to test the extent of a network’s consumer engagement

processes, including the experiences gathered by the energy ombudsman services

### **1.3 Recent trends**

The MEU recognises the importance of implementing better consultation between consumers and their service providers. To some extent, MEU members have been able to gain reasonable access to the service providers on issues impacting them. Despite this perhaps easier access, the MEU members have experienced similar outcomes to those reported by advocates for smaller users of energy – a typical response from NSPs reported by MEU members follows a common thread “we are a monopoly and this is what will occur”.

Another common feature of NSP/consumer dialogue (but not universal) is a lack of preparedness to explain in detail the costs and technical aspects of NSP approaches to issues. Often responses from NSPs are made along the lines of “we have determined the best option and this is the cost”.

However, some MEU members have reported that in more recent times some NSPs have appeared to be more willing to consider issues facing consumers on a more reasonable basis and how they might be able to assist get an optimum solution for all concerned. This is not a universal experience and the introduction of this guideline should improve relationships between consumers and NSPs.

### **1.4 The need for change**

The MEU is pleased that there is a drive towards a more inclusive environment between consumers and the monopoly providers that service them. The MEU sees that greater involvement of consumers in the decision making by NSPs will lead to overall better outcomes for consumers and therefore the MEU is keen to be an active participant in developing better relationships between the two.

The MEU cannot overstate the importance in improving relationships between consumers and NSPs. In this regard the MEU points to the massively increasing costs of energy delivered to consumers, and comments that, along with the imposition of significant costs aimed at reducing carbon emissions (carbon tax, renewable generation and efficiency measures), the recent very large increases in network costs have been the major cause of the massive increase in the cost of delivered energy. The MEU sees that better consumer engagement with NSPs should provide a moderating influence on network costs.

The benefits of better consumer engagement lie clearly within two main aspects. The first is that the NSPs have to embrace the concept and commit to making the process work. Equally consumers have to commit to the process

and recognise that their involvement must also include a commitment to the process. The MEU has noted that, even under the current but quite limited engagement, the process is not costless. The MEU sees that the new requirements will cost more but that the benefits to both consumers and NSPs will readily exceed the higher costs involved.

### **1.5 Achieving change is not costless**

The AER considers that good consumer engagement may result in significant change to the way NSPs run their businesses; the MEU strongly agrees. While it is obvious that the NSPs will incur additional costs to establish and implement the engagement process, the outcome of the better engagement should deliver considerable benefit to the NSPs and those to whom they provide their services.

It must also be noted that there will be considerable costs incurred by consumer representatives who will be involved in the process. They will be required to better understand the activities of the NSPs, their processes and develop sufficient knowledge of the way energy is delivered in order to participate sensibly in the engagement process. This will require consumer representatives to devote considerable time and effort into learning and support from the NSPs to enable this better understanding to occur.

One of the observations made by the NSPs and reported by the AER regarding consumer engagement was that (explanatory statement page 17):

“The service providers undertake limited consumer engagement in preparing their expenditure proposals because they consider the technical material makes the engagement less effective”

The MEU agrees that many of the issues facing the NSPs are technical and complex, making consumer engagement more challenging. This means that either the NSPs continue with their current practices (which it is recognised does not sufficiently embrace consumer engagement) or for the NSPs to provide consumer representatives sufficient training and consideration for their time commitment so that they can adequately engage in the process. Unless this additional training and support is provided, the best outcomes will not eventuate. Equally, it is important that any financial support provided to the consumer representatives by the NSPs must be transparent to limit the potential for “capture” of these consumer representatives by the NSPs.

### **1.6 Overall view**

The MEU notes the decision by the AER to provide a guideline based on high level principles. The NSPs are then expected to develop and implement their

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own unique consumer engagement processes which reflect the specific needs of the NSP and its operations.

The MEU supports this approach but recognises that the real test of the success of the guideline will be when there are substantive better outcomes that are implemented by the NSPs in delivering their services to consumers. This will require the AER to undertake investigations to assess the performance of the NSP in implementing the guideline and report back to all stakeholders.



## 2. Comments on the draft guideline

The AER has developed a set of high level principles that recognise the purpose of and define the process for consumer engagement. The draft guideline does not prescribe how each NSP is to implement consumer engagement and allows each NSP the flexibility to develop their own unique approach to consumer engagement. The MEU supports this approach by the AER.

Overall, the MEU considers the draft guideline has been well developed and, should NSPs embrace the concept, is structured to deliver benefits for both consumers and NSPs.

### 2.1 Concerns with the draft

The MEU generally supports the draft guideline in concept form but has identified some concerns with the detailed drafting which is intended to implement the concepts and thoughts included in the explanatory statement. .

#### 2.1.1 Benefits vs detriments

The draft guideline is predicated on the premise that the AER expects consumers will benefit from greater involvement in the processes undertaken by NSPs. While the primary focus of the consumer engagement process surrounds the proposals for regulatory reset reviews, the AER notes that it expects NSPs will implement the process of consumer engagement on a continuous basis. The MEU supports this aim as consumers should better benefit from this continuous involvement rather than a process which is just focussed on regulatory resets.

The AER included in its explanatory statement (page 18) that:

*“However, service providers will also benefit [from better consumer engagement]. These benefits may come in the form of improved consumer satisfaction, higher consumer willingness to pay for services, and greater ease in obtaining regulatory approval of expenditure proposals.”*

The MEU agrees with the AER that effective consumer engagement should also benefit the NSP

The explanatory statement also mentions that the AER will assess the degree of consumer engagement that underpins the regulatory reset proposals from NSPs. The AER comments that a perceived lack of effective consumer engagement may impact the assessment the AER has of a regulatory reset proposal. How the AER will implement this is not detailed and would appear to be an observation made to encourage effective engagement.

Whilst the MEU considers that the AER must provide an incentive to (and a disincentive not to) implement better engagement with consumers, the MEU is concerned about how the AER would implement any concern that there had been a lack of consumer engagement prior to a reset review. In a revenue reset determination (which is also subject to a merits review) the AER must assess the proposal on its merits, and this must apply regardless of whether there has been effective consumer engagement.

The MEU is content for the draft guideline to be silent on how the AER might implement its approach to a regulatory reset proposal not supported by effective engagement.

However, the guideline will achieve little unless there is a strong driver for the NSP to implement the processes inherent in it. As noted above, a competitive market does provide consequences where good customer engagement is not established, but there are little apparent consequences should a monopoly NSP fail in this process.

The MEU considers that the AER must develop its own internal processes on how sanctions might be implemented, and how it would address these when presenting to the Australian Competition Tribunal should there be an appeal by the NSP, even though it would appear that such arguments would primarily be needed only in the case where the lack of engagement was limited to just reset proposals rather than the envisaged engagement on a continuous basis.

### 2.1.2 Costs

Costs incurred by NSPs for regulatory resets are currently recovered as part of the opex allowance provided at each regulatory period, with actual costs incurred in one period being used as the basis for setting the cost allowance in the next period.

The MEU considers that not only will the NSPs incur direct costs as a result of increased consumer engagement<sup>2</sup>, but so will the consumers and their representatives who are actively involved in the engagement process. It is not clear how these consumer incurred costs will be recovered.

The MEU can see that NSPs could increase their opex allowances to include the costs they see they will be exposed to, but the costs incurred by consumers and their representatives who are engaged in the process

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<sup>2</sup> Such as for additional staff time, carrying out surveys, convening meetings, etc

need to be recovered also. As the costs for those involved in the engagement process will benefit all consumers being served by the NSP's assets, then the costs incurred by those active in the engagement process should be a cost to all the beneficiaries of their activities.

The MEU considers that the costs involved in enhanced consumer engagement need to be addressed in the guideline, both in terms of how NSPs address the costs, how the costs of those consumers active in the engagement process will be reimbursed and how to ensure their transparency.

### 2.1.3 AER monitoring and reporting

Whilst those consumer representatives actively involved in the better engagement process might see directly the improvements resulting from the improved engagement process, consumers in general and other stakeholders, need to see there is has been a positive outcome from the implementation of the improved engagement.

This means that the AER needs to monitor the performance of the engagement processes and report widely on how it sees the process has resulted in better outcomes.

The MEU considers that the guideline should include for AER monitoring and reporting on outcomes.

### 2.1.4 Consumers vs customers

In analysing the detail of the draft guideline, the MEU notes that the focus of the engagement by NSPs is with "consumers". This creates confusion between the terminology used between "consumers" and "customers". The term "customer" is defined in the Rules but the term consumer is not. Whilst the concept has apparent acceptance, the MEU considers that the term "consumer" should be defined in the glossary of the guideline.

Customers are defined in the Rules as those who are connected to the networks and include generators, retailers and consumers.

In the case of DNSPs, consumers are those parties connected to the distribution networks and which consume the energy transported by the NSP through the connection point, although there maybe other consumers who should be involved who are embedded in unregulated networks which are in turn connected to DNSPs.

In the case of TNSPs, the bulk of their connections are to DNSPs and, generators, although there are some consumers directly connected to the transmission networks. The MEU (and presumably the AER) would expect, as a result of the implementation of the consumer engagement guideline, TNSPs to engage with the consumers who are embedded in the DNSP networks (and pay for the transmission services through their distribution charges) as well as those end users directly connected to the transmission networks.

#### 2.1.5 Review of the guideline

The MEU considers that should be a time set when the guideline is to be reviewed. Such a review would look at the extent to which NSPs have actively engaged in the process and what changes are required in the guideline to make the process of consumer engagement more effective.