



Excellence in Consumer Engagement: 10 Fundamentals



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Overview

Over the past decade, we have witnessed a radical transformation in consumer engagement in regulation in Australia. Previously, there was a saying that “regulation is something that gets done to consumers.” Consumers had little input or influence on the process but had to reach into their pockets to pay for the outcomes.

We are now seeing a growing maturity in consumer-centric regulation, where consumers can influence and own outcomes. This is a far superior model for all concerned and worthy of study and repetition.

Make no mistake, it has been a challenging journey. Multiple approaches have been tried, and there have been painful experiences and missteps along the way. There are still pockets of resistance where traditional regulatory detailed analysis is needed.

However, the tide has turned, and the picture going forward looks bright. No one who has experienced a consumer-centric regulatory process wants to return to the traditional regulatory model.

Fundamentals of excellence

We have identified 10 fundamentals necessary for excellence. In summary these are:

1. **Consumer engagement matters.** What can consumer engagement add? What is to be gained from the extra time, resources, and cost of engaging with your consumers? Who needs that aggravation?
2. **Understanding social licence.** Twenty years ago, the term “social licence” was little known. Now it is everywhere. It is not sufficient to have all the necessary regulatory and legal approvals, you also need the goodwill of the community to operate.
3. **When it goes badly.** The rise of social licence, in part, has been in response to high profile incidents of poor conduct. Unfortunately, there are many.
4. **When it goes well.** It is harder to identify examples of good consumer engagement because when it is done well, it is quiet, there is no media attention.
5. **Commitment from the top.** We have seen two regulated businesses undertake almost identical consumer engagement activities, with one being a great success and the other a disappointing failure. The distinguishing characteristic being the involvement at the top of the organization.
6. **The right attitude.** If you only take one lesson from this paper, let it be this: attitude is everything. Attitude makes the difference between remarkable success and destructive failure.
7. **Growing consumers.** Perhaps the hardest part of consumer engagement is finding the consumers to engage with. Typically, consumers are busy, dispersed and poorly resourced. The regulator needs to have confidence in the consumers that are taking part in the process.
8. **Consumers as partners.** The best consumer groups operate on an ongoing basis outside of the regulatory process, but with special resourcing and focus during the period when the regulatory proposal is being developed.

- 9. Set the right incentives.** In some cases, there are natural incentives for consumers and suppliers to effectively negotiate outcomes with little regulatory input. However, in most cases there is not sufficient balance between the supplier and their consumers, and some other incentive is needed.

- 10. Engagement activities.** We have listed this topic last because it is the least important. In the early days, some businesses would approach the regulator and ask for a check list of activities. This completely missed the point. Consumer engagement is not a box to be ticked.

1. Consumer engagement matters

You're a regulated utility. Your consumers don't have a choice, they are going to pay and use your company irrespective of whether they like you or not. Your regulator is going to set your revenue according to well established rules.

What can consumer engagement add?

What is to be gained from the extra time, resources, and cost of engaging with your consumers? After all, they are an annoying lot who complain plenty. Who needs that aggravation?

The short answer: there is much to be gained and much to be lost. Consumer engagement, done well, is a supercharger for company value and a strong antidote to serious problems. Done badly (or not done at all), it is the road to destruction.

Competition analysis tells us that companies thrive when they listen well to their customers and act on their wishes. Conversely, companies die when they lose touch and become arrogant.

On the positive side, the Australian Energy Regulator has articulated the benefits of consumer engagement as follows:

Networks that engage in genuine engagement with consumers are likely to result in better quality proposals being submitted to the AER. Proposals that reflect consumer preferences, and meet our expectations, are more likely to be largely or wholly accepted at the draft decision stage, creating a more effective and efficient regulatory process for all stakeholders. By encouraging network businesses to improve their consumer engagement, consumers will be central to the regulatory determination process. This will allow consumers to have a greater influence over the development of regulatory proposals by network businesses and, more importantly, ensure network businesses deliver outcomes valued by consumers.¹

On the negative side, as a utility in a monopoly position, your future is less secure than it appears. Even though your consumers are dispersed and poorly resourced, their collective voices can resound with government. In a crisis, when governments are looking to act, there is no easier, or more satisfying, target than the "greedy monopolist."

In the face of escalating energy prices, the government is taking action to stop energy networks using the LMR (Limited Merits Review) to extract monopoly rents from consumers.²

There is a fancy name for this phenomenon: "social licence."

¹ AER, Better Resets Handbook: Towards Consumer Centric Network Proposals, December 2021, page 3.

² House of Representatives, BILLS, Competition and Consumer Amendment (Abolition of Limited Merits Review) Bill 2017, Second Reading Speech, Thursday, 10 August 2017

2. Understanding social licence

Over the past decade, we have seen a radical transformation in consumer engagement in regulation in Australia. Previously, there was a saying that “regulation is something that gets done to consumers.” Consumers had little input or influence on the process but had to reach into their pockets to pay for the outcome.

We are now seeing a growing maturity in consumer-centric regulation, where consumers can influence and own outcomes. This is a far superior model for all concerned and worthy of study and repetition.

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3. When it goes badly

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The rise of social license, in part, has been in response to high-profile incidents of poor conduct. Unfortunately, there are many, but here are a few to illustrate the point.

Australian banking royal commission

Billions of dollars returned to customers. Thousands of pages of new laws. Reams of court cases chastening wrongdoing.³

Not to mention the careers ended (senior executive and board), the regulator humiliated and the companies no longer operating.

The Australian Government established the Royal Commission into Misconduct in the Banking, Superannuation, and Financial Services Industry on 14 December 2017. At the time, there was an expectation that some degree of misconduct would be unearthed; however, no one anticipated the breadth and seriousness of the issues. Perhaps the most grievous was continuing to charge fees to people who had died.

The final report concluded:

Very often, the conduct has broken the law. And if it has not broken the law, the conduct has fallen short of the kind of behaviour the community not only expects of financial services entities but is also entitled to expect of them.⁴

³ Australian Broadcasting Commission, Unintended consequences and more work to do: Five years after the banking royal commission, by business reporter Daniel Ziffer Posted Mon 5 Feb 2024 at 6:39am

⁴ Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry Final Report, Volume 1, 2019, page 1.

Australian energy regulation

In 2005, new economic regulation legislation and rules were established for energy networks in Australia. The legislation and rules were highly supportive of the entities that were regulated, including a favourable merits review framework. However, following a series of large price increases led by the regulated networks, action was taken. First, the supportive rules were rebalanced toward consumers.

*The rules improve the strength and capacity of the regulator to determine network price increases, so consumers don't pay more than necessary for reliable supplies of electricity and gas. The new rules better equip the Australian Energy Regulator (AER) to develop methods and processes to achieve efficient outcomes in setting revenues and prices for consumers in several areas. They include how the rate of return on capital is set.*⁵

Second, the merits review framework was removed.

*To date LMR has increased consumer bills by \$6.5 billion.... the Council of Australian Governments (COAG) Energy Council reviewed the LMR regime again in 2016. The review found that the 2013 amendments to the regime had largely failed, including that LMR: remained routine; had significant costs to all participants; presented barriers to meaningful consumer participation; led to significant regulatory and price uncertainty; and was failing to demonstrate outcomes that were in the long-term interests of consumers. In the face of escalating energy prices, the government is taking action to stop energy networks using the LMR to extract monopoly rents from consumers.*⁶

⁵ Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry Final Report, VOLUME 1, 2019, page 1.

⁶ House of Representatives, Bills, Competition and Consumer Amendment (Abolition of Limited Merits Review) Bill 2017, Second Reading Speech, Thursday, 10 August 2017

Lock the gate



Bad behaviour by mining companies has led to strong community action to limit access. While initially focused on mining, community attention now extends to all types of infrastructure, including toll roads, airports, flight paths, wind and solar farms, mobile phone towers, gas pipelines, electricity transmission lines, and so on. Poor consumer engagement heightens community concerns, leading to delays and cost increases.

The Lock the Gate Alliance was formed in 2010 following meetings in New South Wales and Queensland of landholders, organisations and communities concerned about the ongoing and rapid expansion of coal and coal seam gas development.

A declaration was made farmers would lock their gates to these rapacious industries. Ten years on and the Alliance continues to gain momentum, with rural and urban communities all over Australia stepping up to defend our land, water, and future from the invasive coal and unconventional gas industries.⁷

⁷ https://www.lockthegate.org.au/who_we_are

4. When it goes well

It is harder to identify examples of good consumer engagement because when it is done well, it is quiet, there is no media attention. Here is one example:

Powerlink Queensland electricity transmission decision 2022

The Powerlink Queensland electricity transmission decision in 2022 was a watershed moment in the cycle of regulatory determinations. Powerlink approached its determination with the objective of putting forward a proposal that was acceptable to consumers, the regulator, and itself. Its success meant that both the AER and Powerlink were able to reach a final decision with modest effort and could therefore focus on more valuable work. Most importantly, consumer acceptance of the outcome provided Powerlink with more degrees of freedom in its operations.

In its final decision, the AER noted:

This final decision recognises the collaborative efforts of Powerlink and its stakeholders, particularly Powerlink's Customer Panel and its Revenue Proposal Reference Group (RPRG), who worked together constructively in developing Powerlink's proposal over almost three years for the long-term interests of consumers.

Powerlink put forward a well-informed initial proposal, underpinned by significant consumer engagement and its overarching goal of lodging a proposal that is acceptable to Powerlink, its consumers and the AER. This allowed us to undertake a targeted review of the proposal, focussing on the key areas of concern raised by stakeholders and our own assessments. This led us to determine that the proposal was capable of acceptance at the draft decision stage of this revenue determination process.

The high-quality nature of Powerlink's initial proposal has meant that the final stage of this process, where we assessed Powerlink's revised proposal, has been non-contentious and a more efficient regulatory process for all stakeholders, including Powerlink, consumers and the AER. It is worth noting that Powerlink's revised proposal was lodged two weeks early, allowing stakeholders extra time to consider the proposal and Powerlink staff to resume their focus on network operations.⁸

⁸ AER, Final Decision Powerlink Queensland Transmission Determination 2022 to 2027 (1 July 2022 to 30 June 2027), April 2022

5. Commitment from the top

We have seen two regulated businesses undertake almost identical consumer engagement activities, with one being a remarkable success and the other a disappointing failure. The distinguishing characteristic was the involvement at the top of the organization:

- In the first, the Board and CEO made it a priority, directly engaged with consumers at events and provided their teams with authority to reach outcomes.
- In the second, the CEO told the staff to go away and do something on consumer engagement. There was no link back to the regulatory proposal, let alone the day-to-day operation of the business. The staff had no authority to influence outcomes and consumers disengaged.

An example in the first class is Endeavour Energy electricity distribution in New South Wales. After observing Endeavour's consumer engagement, the AER's Consumer Challenge Panel observed:

We then observed a highly functioning and extensive engagement process that was the subject of regular, frank and honest review. The result is a regulatory proposal that has been widely supported as capable of acceptance at draft determination stage.⁹

A key feature leading to this success identified by the CCP was:

This is coupled with the fact that the CEO, senior executives and Board members were active participants and carefully listening in every activity that we observed.¹⁰

But this principle is not just for the regulated business, it is critical for the regulator to engage and adapt its approach to reviewing regulatory proposals. What is the point of consumer engagement if the regulator does not value it and give it weight?

This requires commitment from the top of the regulator, especially its statutory office holders. It can be difficult for regulators to give commitments in advance given their legislative responsibilities and detailed review processes.

In any proposal, it is possible to find small components that are not supported by evidence. For the consumer engagement model to work, the regulator needs to be willing to take a step back and view the larger picture in context. This can be an uncomfortable space because the regulator will feel it may be approving prices that are higher than necessary. However,

⁹ CCP26 Advice to AER re 2024-29 Endeavour Energy Regulatory Proposal and AER Issues Paper, Consumer Challenge Panel (CCP) Sub-Panel CCP26: Robyn Robinson, Elissa Freeman, Mark Henley, 12th May 2023, page 4.

¹⁰ CCP26 Advice to AER re 2024-29 Endeavour Energy Regulatory Proposal and AER Issues Paper, Consumer Challenge Panel (CCP) Sub-Panel CCP26: Robyn Robinson, Elissa Freeman, Mark Henley, 12th May 2023, page 10.

there is a high likelihood that the proposal in totality before the regulator is better than anything it could have achieved through its traditional regulatory tools.

An illustration of the type of commitment that can be given by the regulator is set out in the AER's Better Resets Handbook:

As the economic regulator of energy networks, we are required to make decisions that best advance the long-term interests of consumers, as expressed in the National Electricity Objective⁴ and National Gas Objective. If a network business meets our expectations this will increase the likelihood that its regulatory proposal advances the long-term interests of consumers, giving us the confidence to rely on a more targeted assessment to meet our obligations.¹¹

This commitment is then given life in the AER's most recent decision for Endeavour Energy, where the AER was able to accept most of the Endeavour's proposal at the draft decision stage:

Endeavour's consumer engagement has been a material factor in our decision to accept most of Endeavour's proposal.¹²

¹¹ AER, Better Resets Handbook: Towards Consumer Centric Network Proposals, December 2021, page 3.

¹² AER, Draft Decision Endeavour Energy Electricity Distribution Determination 2024 to 2029 (1 July 2024 to 30 June 2029), Overview, September 2023, page x

6. The right attitude

If you only take one lesson from this paper this, is it: attitude is everything. Attitude makes the difference between great success and destructive failure. Simultaneously, I have seen two businesses undertake almost the same set of activities with one being a successful and one destructive.

The first business came with an open mind to listen to their consumers and then build their proposal around what they heard. Their consumers had a genuine influence on the outcome.

The second business had already decided what it wanted to propose and went to its consumers looking for a tick of approval. Consumers may lack in resources, but they are highly attuned to cynicism and know when they are being railroaded. The process then descended into farce. The regulator was also alert to the situation and recognised that it could not rely on the representations of the business and brought its assessment tools to bear in full measure.

It is better to do no consumer engagement at all rather than undertake engagement with the wrong attitude.

The AER refers to this principle as sincerity of engagement:

Sincere engagement requires:

- *genuine commitment from network businesses extending down from their Boards and Executives to giving effect to consumer preferences*
- *openness to new ideas and a willingness to change*
- *ongoing engagement with consumers about outcomes that matter to them, which allows consumers to 'set the agenda'*
- *ensuring consumer confidence in the engagement process and alleviating concerns consumers may have¹³*

¹³ AER, Better Resets Handbook: Towards Consumer Centric Network Proposals, December 2021, page 13.

7. Growing Consumers

Perhaps the hardest part of consumer engagement is finding the consumers to engage with. Typically, consumers are busy, dispersed, and poorly resourced. The regulator needs to have confidence in the consumers participating in the process. These consumers need to be sufficiently mature to understand the choices and trade-offs they are making and then take responsibility for the outcome.

There is no easy solution. It is rare to find consumers who are ready, equipped, and willing to engage in these processes. While there are some peak consumer bodies like Energy Consumers Australia, they face multiple challenges and may struggle to represent consumers in general.

The best solution seems to be for regulated businesses to grow their own consumer groups. Typically, these groups will comprise representatives from peak bodies, large users, and smaller users. This is a long-term commitment; it takes years for consumers to become sufficiently conversant with the business, regulator, and consumer interests more generally.

When putting together a consumer group, it is important that the strongest voice comes from consumers who face the final bill. Nevertheless, in a world of social license, it is helpful to have broader perspectives. For example, consider including people who see your transmission lines, those who live on the water table beneath your assets, and welfare groups that look after the flora and fauna on the land you use. However, avoid including people who supply services to your business, including unions, as these groups have different incentives because you pay them.

The area where consumer groups feel most exposed is in understanding the technical aspects of your business and the underlying cost drivers. Typically, consumers lack the engineering, economic, and analytical background needed to address such material. It can be very helpful to provide your consumer group with access to specialized independent expertise. For example, you might fund your consumer group to engage an independent engineering consultant. The regulator can also be helpful in this area. Regulators have access to detailed data on the business and are likely to have conducted benchmarking analysis. This allows the regulator to outline “tram tracks” for outcomes that are likely to be broadly acceptable.

The regulator can play a role in growing consumers. In the early days of the AER, regulatory determinations were a very one-sided affair. During one budget round, the Australian Government provided funding for the AER to establish a Consumer Challenge Panel (CCP).

The objective of the CCP is to:

- *advise the AER on whether the long-term interests of consumers are being appropriately considered in regulatory proposals and the AER's decision making*
- *provide an assessment of networks' consumer engagement, including the extent to which proposals reflect consumer preferences.*

- *The AER has developed an approach and framework to optimise the quality, timeliness and usefulness of the CCP's advice to the AER.¹⁴*

The CCP laid an important foundation for future consumer engagement. It facilitated early experimentation of consumer views in regulatory processes. More importantly, it developed the capabilities of a cohort of consumer advocates that were then able to move on and train future partners.

¹⁴ AER Consumer Challenge Panel, <https://www.aer.gov.au/consumer-challenge-panel>

8. Consumers as partners

The best consumer groups operate on an ongoing basis outside of the regulatory process, but with special resourcing and focus during the period when the regulatory proposal is being developed.

The regulated businesses that do this well make a substantial resource contribution to the process both in access to their time (including senior staff) and in direct financing of consumer participation. Be upfront with potential candidates so they know the commitment they are making. The businesses that do this well see little turnover in their groups.

The AER describes this principle as consumers as partners:

We want consumers to be partners in forming proposals rather than simply being asked for feedback on a proposal. Network businesses should collaborate with and, where appropriate, empower consumers in developing regulatory proposals.

In addition, consumer engagement should be a continuous business-as-usual process, not a one-off process only undertaken in preparing for regulatory proposals. Consumers should not have to wait for a once-in-5-year regulatory proposal to be heard.¹⁵

¹⁵ AER, Better Resets Handbook: Towards Consumer Centric Network Proposals, December 2021, page 13.

9. Set the right incentives first

In some cases, there are natural incentives for consumers and suppliers to effectively negotiate outcomes with little regulatory input. Typically, these are situations where consumers are large and well-resourced and there is a degree of countervailing power. The AER notes examples in gas transmission in the United States and airports in the United Kingdom.¹⁶ However, in most cases there is not sufficient balance between the supplier and their consumers, and some other incentive is needed.

The following are a range of options we have observed:

1. Self-starting

The best businesses have told us they have found consumer engagement to be immensely valuable. They are a better business because of the consultation they have undertaken. Having experienced the value of consumer engagement they would undertake it even if it were not a factor in the regulatory process. Consumer engagement is built into senior executive performance agreements.

2. Reputation

For some businesses, their public reputation is important to them and effective consumer engagement allows them to build their reputation. For these businesses, positive reviews by their consumer groups and regulators are sufficient to encourage good engagement. Conversely, the potential for negative reviews is also a factor.

3. An easier regulatory process

Regulatory processes are an unwell distraction from the day-to-day running of a business. Good staff are dedicated to the process and there are numerous information requests for others not directly involved. The prospect of a smoother or truncated review process offers considerable value.

The AER states:

Network businesses will be rewarded for meeting our expectations set out in the Handbook. We will provide reputational and procedural incentives for networks to meet our expectations.¹⁷

¹⁶ AER, New Reg: towards consumer-centric energy network regulation: A joint initiative of the Australian Energy Regulator, Energy Consumers Australia, and Energy Networks Australia, Approach Paper, March 2018, page 4.

¹⁷ AER, Better Resets Handbook: Towards Consumer Centric Network Proposals, December 2021, page 3.

4. Financial rewards

This is a tricky space and there are limited examples of regulators offering a financial uplift for good engagement. The countervailing is that consumers end up paying higher prices for something that the regulated businesses should be delivering by course.

The Victorian Essential Services Commission operated a scheme called PREMO that offers reputational and financial rewards for the water businesses it regulated.

First introduced at our 2018 water price review, the purpose of PREMO is to provide incentives for water businesses to deliver outcomes most valued by customers. PREMO includes reputation incentives, via the rating of price submissions as Leading (the highest available rating), Advanced, Standard or Basic, depending on the level of ambition expressed by a water business in its price submission. Financial incentives are provided by linking the return on equity to the PREMO rating.¹⁸

5. Merits review

Merits review is a clear inhibitor of consumer engagement. If businesses are not satisfied with the regulator's decision they have an option for a second decision. Setting up for the merits review process requires the initial proposal to be presented technical and legal framework that is not at all conducive to consumer access. The removal of merits review in Australia has been the pre-eminent catalyst for the transformation in consumer engagement that we are currently witnessing.

In addition, to the possibility of achieving a superior outcome in merits review, businesses also are conscious of the risk of action from their shareholders. If the board and senior management do not pursue all avenues for improving shareholder value, they potentially face sanctions.

¹⁸ Essential Services Commission, Yarra Valley Water final decision 2023, Water Price Review, 23 June, page 5. 2023

10. Engagement activities

We have listed this topic last because it is the least important. In the early days, some businesses would approach the regulator and ask for a check list of activities. This completely missed the point and displayed considerable naivety. Consumer engagement is not a box to be ticked.

Having said that, the activities themselves are not unimportant. It is essential to have a well-considered and broad engagement plan. Such a program takes considerable time to execute. If you have not started at least 18 months before lodging your proposal, you are in big trouble.

The AER notes:

No single avenue of engagement is perfect. Consumer panels, surveys, forums, direct meetings, workshops, focus groups and 'deep dives' are suited to certain types of issues and have their downsides. To gain a comprehensive understanding of consumer preferences multiple complementary channels are necessary...

Different consumers will have different preferences in how they engage in the development of regulatory proposals and participants should have input into designing how they participate. For example, a network business's approach to engaging with vulnerable consumers and culturally and linguistically diverse consumers would be quite different to its approach to engaging with commercial and industrial consumers.

*A network business should aim to understand, represent and balance the interests of all its consumer cohorts. Where network businesses identify competing interests, they should seek to develop agreed positions with consumers. If this isn't possible, then network businesses should set out the competing interests in relation to elements of their proposals.*¹⁹


¹⁹ AER, Better Resets Handbook: Towards Consumer Centric Network Proposals, December 2021, page 15.


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