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# The Consumer Knows Best: Involving Consumers

# in Regulatory Processes and Decision-making

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Recent intense media and political interest in utility prices, particularly in energy and water, has served as an important reminder of how the perceived legitimacy of a set of regulatory arrangements and institutions can depend critically on how effective they are in accounting for all relevant interests. In the United Kingdom, a pioneer of the modern approach to utility regulation, the political interest feeds off a general perception that companies are allowed to profiteer under the current regulatory arrangements to the detriment of consumers. One recent survey found that 83 per cent of people believed that energy suppliers maximised profits at the expense of customers, while another found that energy companies are now trusted less by consumers than banks and car salespersons.[[1]](#footnote-1) Politicians, including the Prime Minister and the Leader of the Opposition, are demanding that ‘something be done’ (with the Leader of the Opposition proposing that energy prices be ‘frozen’ and the energy regulator abolished and replaced with ‘a more consumer friendly watchdog’) (*The Economist*, 28 September 2013). Despite this current interest, the issue of how the views of consumers, particularly household consumers, are heard in regulatory processes and decisions is not new. The question of how to more effectively involve consumers in regulation has been a focus of some regulators for a number of years. Against this background, this article considers the various factors that lie behind this regulatory focus, and the specific arrangements that have emerged in different parts of the world, including Europe and North America. In doing so, it explores some of the trade-offs involved in allowing for consumer involvement in regulatory decision-making, and the relevance of international approaches in the Australian context.

**Contents**

Lead Article 1

From the Journals 9

Regulatory Decisions in Australia   
and New Zealand 12

Notes on Interesting Decisions 18

Regulatory News 19

**Why the Focus on Consumer Involvement?**

In recent years, there has been a general trend for regulators in some countries to focus on the role that consumers play in regulatory processes and decision-making, and specifically whether that role is considered to be adequate. In the UK, this can be seen in the reviews and reports in energy, water and aviation, while in Australia and Europe, it has been a particular focus in the energy sector. A common theme across jurisdictions and sectors is a perception that, in some way, consumers are not being effectively heard in regulatory decision-making, and that changes to regulatory arrangements may be required in order to facilitate the more effective incorporation of their interests. This accords with a more general view, which has developed in some quarters, that regulators may not, under standard regulatory arrangements – such as those adopted in the UK and Australia – be best placed to represent different interests, particularly consumer interests. As Professor Stephen Littlechild (one of the architects of the modern approach to independent utility regulation) argues: the centralisation of decision making in a regulatory body has led to a situation where regulated companies and their customers no longer engage with one another effectively, but direct their views and complaints toward the regulator and to politicians and government (Littlechild, 2009, p. 11). In his view, under these arrangements, ‘customers are effectively deprived of choice, and regulators decide on the basis of limited information’ (Littlechild, 2008, p. 33).

While enhancing the influence of consumers in regulatory decisions is seen by many as a positive development, in so far as it raises the expectation of ‘better outcomes’ (more balanced and efficient) and greater transparency, it also raises a number of issues. Firstly, depending on the mechanism deployed, there can sometimes be a trade-off between greater levels of consumer involvement, and the time and cost of regulatory decision-making. Secondly, there may be questions about the capacity of consumers to effectively engage in sometimes highly technical matters, and about the likelihood that consumers will want to be involved in such processes. On this point, there seems to be a degree of policy tension in some jurisdictions. For example, as discussed below, the British energy regulator (Ofgem) has, in recent years, sought to introduce various mechanisms to improve the level and effectiveness of consumer involvement in regulatory decision-making. Such initiatives appear to be predicated on an assumption that: (a) consumers are interested in being more involved in regulatory decision making; and (b) consumers are sufficiently equipped to be capable of being involved in such processes. However, at the same time, Ofgem has – drawing upon concepts and research from behavioural economics – been introducing policy measures to address what it has termed ‘biases’ in consumer decision-making; including, ‘limited capacity’ (that is, finite time and ability to process information) and a perceived status quo bias (leading to a lack of engagement with the market). Thirdly, there is a question about how consumer involvement in the regulatory domain interacts with citizen involvement in the political domain. To take a concrete, and very topical, example, if electricity and water prices are rising as a result of policies directed at effecting a transition to more environmentally friendly supply methods, is this a regulatory issue or a political issue? A final set of issues, addressed in more detail in the sections that follow, concerns how consumers might best be organised to be effective in the regulatory process, and relatedly, how any consumer representative body is integrated into decision-making. This raises a general issue of how consumer involvement mechanisms ‘fit’ with existing institutional arrangements, and whether adaptations are required to regulatory frameworks to make consumer involvement more effective.

**Different Forms of Consumer Involvement**

There is considerable diversity in how consumers get involved in regulatory decision-making, both across the different utility areas and across jurisdictions. The ACCC’s Better Economic Regulation of Infrastructure (BERI) project highlights this diversity, which range from arrangements in some jurisdictions where retail tariffs are largely determined by government without any apparent consumer involvement, to the elaborate forms of consumer involvement and representation observed in the United States, and increasingly, in the UK (see discussion below).

This wide variation in how consumers become involved in utility regulation across jurisdictions and sectors makes it difficult to develop a precise typology of different forms of consumer involvement. However, for the purposes of exposition, it is useful to organise the consumer involvement mechanisms observed in different jurisdictions into four general categories, ranging from relatively passive forms of consumer involvement to more active forms. These are: (i) consult–and-respond mechanisms; (ii) consumer panels and advisory committees; (iii) constructive engagement; and (iv) negotiated agreement/settlement. It is recognised, however, that there are no bright lines between these four categories, and some consumer-involvement mechanisms could be classified under two of these categories. In addition, in some jurisdictions, a number of consumer-involvement mechanisms and approaches are employed concurrently.[[2]](#footnote-2)

**Consult–and-Respond Mechanisms**

Consult-and-respond mechanisms involve consumers being given an opportunity to respond to consultations on major regulatory decisions, but leave the regulator to take the final decision. This is the most common mechanism by which consumers are invited to participate in regulatory decision-making and is adopted by many regulators around the world.

Among the potential strengths of this approach is that it is typically open to all consumers to respond, which is important in terms of addressing any potential misalignment between the interests of consumers (or sub-sets of consumers) and consumer representatives. In addition, as typically applied, the consult-and-respond approach gives consumers discretion about how they choose to respond to a regulatory consultation; there are, for example, generally no restrictions on the length or format of responses. A final advantage of the approach is that it is relatively inexpensive to operate, although consumers obviously bear their own costs. An interesting development observed in some jurisdictions involves the regulator producing a document at the end of a consultation process which summarises, at a general level, the different responses received, and, in some cases, addresses each response individually.

In practice, there can be limitations to relying solely on this mechanism to involve consumers in regulatory processes. Firstly, given the frequently technical nature of the issues that are the subject of regulatory consultations, only large and well-resourced consumers may choose to participate in the consultation process. While it is sometimes argued that the interests of household consumers are represented by large intermediate users (such as distribution or supply companies in the energy sector), this depends on the nature of the issue, and in particular, the extent to which any cost impacts are able to be passed through by the intermediate user to the final consumer (in which case, their interests will not be aligned). The impact of consult-and-respond mechanisms on regulatory decisions can also be unclear, for example: how do regulators take account of responses; and how are views of different consumers and other interests balanced? To the extent to which consumers feel as though their submissions and views are systematically being ignored, or are not influencing regulatory decisions, this can lead to disengagement with the regulatory process, or perceptions that it is ineffective in representing their interests.

Generally speaking, consult-and-respond mechanisms are increasingly seen as a necessary, but often insufficient, form of consumer involvement. As a consequence, regulators in a number of jurisdictions have supplemented this approach to consumer involvement with other measures.

**Consumer Panels and Advisory Committees**

In some jurisdictions and sectors, consumer panels or advisory committees have been established to provide the ‘consumer view’ in certain regulatory processes. Final decisions still rest with the regulator. Consumer panels can be established statutorily, or may be formed voluntarily, by a regulated company or a regulator. The use of consumer panels is sometimes seen to mirror private sector consultation with representatives of different consumers, or a sample of individual consumers (focus groups), to discuss performance, or ‘test out’ new proposals.

Consumer panels and advisory committees are used in many jurisdictions around the world, although the ACCC’s BERI project reveals that there is considerable diversity in the design, funding and status of such panels and committees across infrastructure areas and jurisdictions. For example, while some consumer panels are established on a permanent basis, others are ad hoc, some sit within regulators, some are required to be established by regulated companies, some are effectively voluntary, and yet others are funded by industry. Panels also vary considerably in terms of size and composition (for example, Ofgem’s ‘consumer first panel’ comprises 100 members).

Different arrangements exist in the US, where the consumer view in regulatory processes is provided through the offices of the consumer advocate (that exist in over 40 US states and are established either within, or outside, the regulator). These bodies, which are typically composed of a permanent technical staff (including attorneys, financial accounting experts, and administrative/clerical staff), are statutorily required to represent consumers and the public in federal and state regulatory processes involving utilities (including: rate increase cases; retail competition issues; mergers; and alternative regulation plans). They can also become involved in consultations on rulemakings, policy statements, and state and federal court cases that involve either the price consumers pay for utility services or the quality of service they receive. In addition, they play a role in negotiated settlements, which are discussed below.

In principle, the use of consumer panels/advisory committees can address some of the limitations associated with consult–and-respond mechanisms described above, and can allow for a wide cross-section of consumer views to be fed into the regulatory decision-making process. In particular, consumer panels/advisory committees can potentially address the ‘representation gap’ that has been associated with standard consult-and-respond mechanism (where only large, well-resourced consumers tend to participate) and allow for the voice of the small consumer or household to be heard. Moreover, where such bodies are permanently established they can ensure that regulators hear the ‘consumer view’ on all relevant issues, while the members themselves can build expertise over time to allow them to better engage on technical issues.

While there is much to commend this approach as a supplement to the standard consult-and-respond approach to consumer involvement, some problems have arisen in certain implementations of the approach. For example, in practice, there can be issues associated with whether panel or committee members are sufficiently representative, or whether the people that are attracted to participate in such panels differ from the vast majority of consumers.[[3]](#footnote-3) There may also be issues associated with whether consumer ‘representatives’ are sufficiently diverse, and whether they have the requisite skills or expertise to provide meaningful input to regulatory decisions. Finally, questions remain as to how influential the views of these panels are on regulatory agencies.

A related issue is whether institutionalised consumer-representative bodies, such as certain panels and consumer-advocacy offices, effectively represent the interests of all consumers or only certain types of consumers and issues. Research in the United States has focused on the relative incentives, and effectiveness, of so-called ‘proxy advocates’ (such as offices of consumer advocates) relative to so-called ‘grass roots’ representative bodies. Some studies conclude that proxy advocates only represent the immediate interests they believe all citizens have in common (such as reductions in utility rates), and do not seek to champion a full range of underrepresented interests in society (Gormley, 1981, p. 459). More generally, it has been suggested that consumers do not always uniformly benefit from ‘institutionalised representation’ with some studies concluding that ‘all else equal, consumer advocates, on average, thus leave residential consumers worse off but industrial consumers better off’ (Holburn and Spiller, 2002, p. 22).

**Constructive Engagement**

A third mechanism by which consumers can become involved in regulatory decision-making involves so-called ‘constructive engagement’. Broadly, under this approach, regulated companies are required to consult with consumers about their activities, and in particular their submissions in relation to price controls (such as aspects of their business plans). While constructive engagement requires consultation with consumers on price-control matters, it differs from the negotiated-agreement approach (described below) in so far as the regulator typically remains the final determinative body. However, in practice, the regulator may take into account the fact that agreement has been reached between the regulated company and consumers on specific issues. Accordingly, the difference with negotiated settlements may, in some cases, be more one of degree than kind.

Variants of the constructive-engagement approach have been used in UK aviation and energy, and are being introduced in water and wastewater. The CAA introduced the approach as part of it price-control review of UK airports in 2004-05, describing it as a ‘process for structured discussion and negotiation between airport operators and airlines’ which produced information relevant for CAA’s economic regulation of airports. The constructive-engagement approach has since been applied by the CAA in subsequent price-control reviews for the air traffic control operator (NATS) and for the airports. In all cases, the ‘consumers’ involved (principally airlines) were relatively small in number, and in no case were end-consumers (that is, passengers) directly involved. In all of these implementations the outcome of the process was non-binding advice to the regulator.

The British energy regulator (Ofgem) has also recently adopted a particular form of constructive engagement, which places the burden on regulated companies to consult with their users on key issues relating to future price controls. Specifically, transmission and distribution companies are required to engage (and are rewarded for engaging) with consumers of their services on various aspects of their proposed business plans, submitted as part of the price-control process. In particular, the ‘primary outputs’ produced by the regulated company need to be directly connected to consumer and stakeholder views. Various measures, including financial incentives, have been introduced which directly relate to consumer/stakeholder views of each company’s performance. In addition, companies that demonstrate that they have engaged with consumers, and have taken into account their views, are eligible to be ‘fast tracked’ in the price-control process. As an adjunct to these arrangements, Ofgem has established a ‘consumer challenge panel’, which comprises six ‘consumer experts’ who meet with the regulated companies to discuss their business plans, and with the price-review team during the price-control process.

Another form of constructive engagement, to be introduced in the water industry in England and Wales from 2014, has a number of elements, including: (i) requirements that each company undertake ‘local engagement’ to understand its customers’ views and to inform the development, and test the acceptability, of its business plan (this testing includes the collection of quantitative evidence); (ii) the establishment of customer-challenge panels charged with ensuring that the overall package is acceptable to consumers; and (iii) the creation of a sector-wide customer-advisory panel to influence Ofwat’s thinking. Critically, unlike in energy, where the regulator establishes the customer-challenge panel, in this case it is the water companies that are responsible for establishing their own panel (there are requirements for an independent chair). Ofwat expects that the customer-challenge panels will be able to tell it how effective a company’s engagement with consumers has been, and how the priorities identified by customers have been taken into account in the company’s final business plan. However, Ofwat has not set out how it intends to take account of customers’ views when it sets price controls.

Various strengths and weaknesses have been identified with the constructive-engagement approach in its various implementations. A perceived benefit, noted across the industries where it has been applied, is that it has encouraged regulated companies to interact with their consumers, and ‘build relationships’ with these consumers over time. In this way, companies are able to identify what consumers are interested in, or concerned about, and also their potential willingness-to-pay for different programmes and activities (for example, in relation to capital expenditure). At the same time, the process is seen to make consumers better informed about the activities of the regulated firm, the different drivers of price changes, and the constraints on decision-making faced. A related advantage of the constructive-engagement approach is that consumers and regulated firms can discuss, and negotiate positions on, issues that they consider important, which can lead to creative compromises, or arrangements.

In practice, however, the potential effectiveness of the constructive-engagement approach is influenced by a number of factors, including: the degree to which the engagement process is structured and managed, particularly how, and when, relevant information is made available between the different parties; and the clarity of the role of the regulator in the process, particularly how the regulator will deal with areas of agreement between the parties. A corresponding potential limitation of the approach is that it can be burdensome for the regulator to manage, and for the parties to participate in, thus raising the costs associated with consumer involvement. There have also been problems associated with some implementations. In the first application in UK airports, for example, concerns were raised about the information asymmetry between parties, and the absence of a dispute-resolution process. Teething problems have also arisen in implementations in the energy sector – with the process perceived to have been more successful in electricity than in gas – however attention has since been given to addressing the problems identified in these implementations.

**Negotiated Agreements/Settlements**

A fourth general approach to consumer involvement involves negotiated agreements or settlements, which in general terms, refer to arrangements whereby companies and consumers are able to negotiate settlements or agreements between themselves on the price and other aspects of regulated services. Where agreement is reached through such negotiation, the regulator typically approves the settlement without conducting the full regulatory process. If agreement is not reached, the regulator can act as an arbitrator, or, alternatively, the matter can revert to the standard regulatory process, with the regulator taking the final decision. The negotiated-settlement approach has been adopted for many years in parts of North America, and has recently been advocated as an alternative to the standard R/CPI–X price-control approach in other jurisdictions, particularly in water and energy in parts of the UK. Central to the negotiated-settlement approach is the direct and active participation by consumers and utilities in decision-making. Indeed, the active role of consumers, and their representatives (such as offices of consumer advocates) in negotiating directly with the regulated firm is seen as the key distinguishing element of this process; the regulator no longer takes all of the decisions.

At a general level, numerous advantages of the negotiated-settlements approach as applied in North America have been advanced (Littlechild, 2008, p. 32). Most important among these is that the approach allows consumers and utilities to achieve outcomes that may not be possible under the standard regulatory process. In this respect, negotiated settlements are seen to be more flexible and innovative, allowing for the introduction of various initiatives that would not be available under traditional rate-setting processes. An important element of the negotiated-settlement approach is that it can allow parties to make trade-offs across price-control issues as a package, rather than requiring a separate decision to be made on each issue.[[4]](#footnote-4) In terms of process, the approach is seen as faster, less burdensome, and to frequently involve less technical analysis than the standard regulatory process. This can allow parties to focus their attention on the ‘bottom-line’. There is also some evidence that the negotiated-settlement approach can bring real benefits for consumers in terms of rate reductions. Littlechild (2008, p. 35), for example, estimates that between 1976 and 2002, the average negotiated settlement in Florida resulted in a rate reduction of $50 million (compared with an average of $7 million for traditional rate reviews).

While this is compelling evidence that such an approach can bring benefits to both consumers and utilities, there remain some concerns about the approach. One concern flows directly from the observation noted above that many negotiated settlements tend to focus on the ‘bottom line’ rather than the individual elements that make up a final settlement. This has led to concerns about ‘black box’ settlements, which limit the transparency of the assumptions on which individual components of the settlement rest. As the agreements are typically concluded between the regulated firm and consumer representatives, there is also a risk that not all views will be represented in the negotiation process. There are two aspects to this issue. First, there is a long-standing concern that a negotiated-agreement approach might not satisfactorily account for customer heterogeneity, and that, settlements may be agreed with some groups of consumers, which other groups of consumers may consider to be inferior to that which would have been achieved through the standard regulatory process.[[5]](#footnote-5) A recent example of this potential was the approval by the Florida Public Service Commission in 2012 of a utility rate increase negotiated between a power company and a number of its largest users, without the participation of the state appointed Office of Public Counsel. The agreement is argued to have been made with groups representing only one per cent of the utility’s consumers, and has been reported to represent a poor deal for household and residential customers. A second concern relates to whether the views of future consumers are adequately represented in negotiated settlements. The specific concern here is that, while negotiated agreements may reflect an acceptable bargain between current consumers and utilities, such an agreement may not be in the best interests of future consumers. For this reason, it is sometimes argued that there remains a residual role for a regulator in some industries – particularly electricity and water – to ‘represent’ the views of future consumers, and ensure they are not unduly burdened by agreements between current consumers and utility companies (such as through adjustments in the depreciation profile, which have the effect of deferring depreciation costs and therefore increasing the costs levied on future consumers).[[6]](#footnote-6)

**The Relevance of Different Consumer Involvement Approaches to Australia**

In Australia, consult/respond mechanisms and consumer panels are already a feature of regulatory arrangements to some degree. For example, it is common for both federal and state regulators to publish and seek comments on all important draft decisions and proposals, which typically includes both industry-wide policy issues and specific issues/decisions relating to particular firms (such as draft price-control determinations). Consumer panels and advisory committees have also, to different degrees, been a feature of Australian regulatory arrangements, and recent initiatives in energy appear to further develop the role of consumer-representative bodies in that sector.

In considering whether either of the other general approaches to consumer engagement could be effective in the Australian context, it is important to first consider differences in regulatory frameworks and architecture. For example, the principles, institutions and processes of traditional US-style regulation are considerably different to those that exist in the UK, Australia and most EU member states. In particular, the traditional US approach to regulatory determinations is adversarial and trial-like in nature, consumers need to be represented in the ‘hearing’, and rate petitions are assessed according to judicially-established standards such as being ‘just and reasonable’. By contrast, the price-setting approaches in Australia and Europe (including the UK) are more administrative in nature, and regulators are typically required to make sure decisions are consistent with a range of statutory objectives (for example, consumer protection, promotion of long-term interests, competition, and social and environmental objectives). In addition, in Australia and Europe, prices are generally set under the regulatory framework on the basis of forward-looking estimates of costs and for a set period of time (for example, five-year price controls). Further, to different degrees, companies are afforded some flexibility within this period as to how they set prices. In contrast, under the standard rate-of-return approach in the US, prices are based on a test year (typically historic) and are not set for any fixed period. Indeed, if a company wishes to increase (or decrease) its rates, it has to make an application to the regulator for approval; this can occur frequently (every year) or infrequently.

Given the close connections between the general institutional design of the Australian regulatory arrangements and those of the UK, the constructive engagement approach might represent a good fit for Australia. As the experience of the UK shows, for such an approach to be effective it is necessary to clarify the respective roles of the regulator, the firm and consumers. This task might be complicated in the Australian context by high levels of state ownership of some utility companies in some sectors, (such as energy). It is also important for the regulator to be clear about how it proposes to treat any areas of agreement reached between the firm and consumers on specific points. In addition, there may be a need to introduce incentives to encourage companies to effectively participate in such processes. As described above, in the British energy sector, participation is encouraged through a combination of financial rewards and penalties, and other incentives (such as the possibility of being ‘fast tracked’ at the time of the next price review).

The ability to go one step further and introduce the negotiated settlements approach in the Australian context – which, recall, involves the firm and consumers directly negotiating with the aim of reaching a settlement with a substantially reduced role for the regulator – is less immediately clear. On the one hand, such an approach should not be seen as necessarily incompatible with the Australian regulatory arrangements. For example, a ‘negotiate/arbitrate’ approach is applied to infrastructure access issues in Australia under Part IIIA of the Competition and Consumer Act, and was previously applied in telecommunications issues under Part XIC of the Trade Practices Act until 2011.[[7]](#footnote-7) Although this approach involves negotiations at the business-to-business level – not generally with end-consumers or their representatives – it does allow for access users (the intermediate consumers) to negotiate the terms of access directly with the access provider. To date, there have only been a small number of price-related arbitrations under the economy-wide access provisions (Part IIIA), but there was, until recent changes, a substantial number of access arbitrations under the previous arrangements in telecommunications. However, it was this very proliferation of arbitrations – the tendency for negotiations to end, almost without exception, with arbitration by the regulator – that ultimately affected its viability.

However, an obvious difference between the arrangements as used in Australia and the US model in relation to end users is the existence of offices of consumer advocates to represent users in the negotiation process. For negotiated settlements to work for end-user prices in Australia, there would arguably need to be a well-resourced and technically competent body to represent consumers’ interests in negotiations with regulated firms.[[8]](#footnote-8)

There are, however, other features of the general Australian regulatory arrangements that might limit the applicability of US-style negotiated settlement arrangements. First, it is arguably an open question whether the negotiated settlements approach could be reconciled with the various statutory obligations placed on Australian regulators. A purported benefit of the negotiated-settlements approach is that it allows parties to negotiate on the ‘whole package’ or the ‘bottom line’, and not on specific elements. However, this may not be consistent with the remit of regulators in Australia who must take account of a range of statutory criteria in reaching decisions. Secondly, and relatedly, the adoption of a negotiated-settlement approach could potentially give rise to a situation where different ‘standards’ and ‘levels of scrutiny’ are applied under the formal process as compared with the informal negotiated-settlements process. For example, a decision subject to the formal process would need to satisfy the regulator that it is consistent with its various statutory objectives, while informal negotiated settlements may not need to satisfy such a burden providing the agreement is seen as reasonable for all parties. There is also a question about the incremental benefits that the negotiated-settlement approach would bring in the Australian context, given that one of its perceived benefits is that it introduces incentive elements of the R/CPI–X approach into the rate–of-return approach. In the US, a perceived benefit of the negotiated-settlements process is that it offers an alternative to the inflexible, litigious and trial-like formal rate process. However these features are not characteristic of the arrangements in Australia, where the regulatory approach is more administrative in nature.[[9]](#footnote-9) Finally, consideration would need to be given to the different roles and functions performed by the regulator and other bodies in the event of breaches of negotiated settlements.

**Conclusion**

The current interest in the role of consumers in regulatory processes and decision-making across a number of jurisdictions appears to be motivated by a number of factors. Importantly, for the Australian context, it reflects a perception that, particularly under R/CPI–X-style regulatory arrangements, the centralisation of decision-making in the regulator may have disengaged companies from their consumers (in terms of understanding their preferences and concerns) and customers from their utility providers (in terms of understanding their cost drivers, and constraints). Against this background, this article has sought to describe, in a general way, the mechanisms by which consumers become involved in regulatory decision-making in other parts of the world. It has also considered some of the strengths and weaknesses of these different forms of consumer involvement, and the potential applicability of these approaches to the Australian context.

Observed approaches to consumer involvement in regulatory decision-making across jurisdictions range from relatively passive approaches (where, although consumers are consulted, the regulator remains central to decisions) to relatively active approaches (where utilities and their consumers negotiate with each other on prices and other aspects of regulated services, and the regulator’s role is more limited). The applicability of specific approaches to consumer involvement in the Australian context relies, in part, on how they ‘fit’ with Australia’s institutional frameworks and architecture. The experience of implementations of the various approaches show that careful consideration needs to be given to design issues to ensure mechanisms provide appropriate incentives for utilities to engage constructively with consumers, and to ensure consumers (and their representatives) have the capacity to advocate effectively for their interests. Among the important issues in this respect are: how diversity in the interests of current consumers are represented in the process; how the interests of current consumers and future consumers are balanced; how wider regulatory objectives can be served where a regulator has a reduced role in decision-making; and how more direct engagement mechanisms are managed in terms of information disclosure, timeliness, and the protocol for the regulator in dealing with issues on which the parties have reached agreement. While these issues present a number of challenges, it seems clear that if regulatory arrangements are to maintain their public legitimacy (and in some cases re-build trust), regulators and regulated companies alike will need to better understand and incorporate the views of consumers in regulatory decision-making.

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# Critical Issues in Regulation – From the Journals

***PC Productivity Update***, Productivity Commission, Commonwealth of Australia, May 2013.

This is a new publication from the Productivity Commission (PC) for all those ‘who share an interest in improving Australia’s productivity performance’. It will be published annually. The publication has three main sections: ‘Productivity: What, why and how’; ‘2012 market sector update’; and ‘Insights from recent productivity research’.

The first section defines productivity, and sets out three measures of productivity compiled by the Australian Bureau of Statistics (ABS): labour productivity; capital productivity and multi-factor productivity. The section also covers topics such as ‘why productivity growth is important’; the importance of allocative efficiency and dynamic efficiency in addition to productive efficiency; drivers of productivity growth; and challenges in measuring and interpreting MFP growth. These topics are illustrated by detailed analysis of Australia’s productivity since the 1970s.

The second section covers the ‘2012 market sector update’, which reviews recent productivity developments in Australia. This includes a disaggregated analysis of productivity change by industry (twelve categories). Industry categories include: ‘electricity, gas, water and waste services’; ‘transport, postal and warehousing’; and ‘information, media and telecommunications’. This section includes a detailed disaggregated analysis of the ‘productivity slowdown’ since 2003-04. Amongst the many observations in this section, the PC concludes that utilities ‘has been a major source of weakness in market sector productivity growth … for many years’ (p. 30).

The third section surveys recent research on productivity, searching for valuable insights. This includes a discussion of the research presented at a conference jointly organised by the PC and the ABS in November 2012, with a useful list of key references. Keynote speakers at the conference included Erwin Diewert and David Gruen. Perhaps by way of conclusion for this publication, the final sub-heading of the *PC Productivity Update* is ‘small sustained improvements can make a big difference’. Available at: <http://www.pc.gov.au/research/productivity/update/2013>

**‘Vertical Integration and Market Power: A Model-based Analysis of Restructuring in the Korean Electricity Market’**, Derek W Bunn, Maria Martoccia, Patricia Ochoa, Haein Kim, Nam-Sung Ahn and Yong-Beom Yoon, *Energy Policy*, 38, 2010, pp. 3710-3716.

This paper develops an agent-based simulation model using computation learning to investigate the impact of vertical integration between electricity generators and retailers on market power in a competitive wholesale-market setting. This model is applied to the 2007 Korean power system. The results of the analysis are reported below.

The results demonstrate that there is clearly substantial market power in the concentrated Korean market structure. However, it is found that the generator with the largest market share does not have the most market power to raise prices. This is due to the interaction with technology, and given a large market share in base load (nuclear) is not as amenable to the exercise of market power as a moderate share of marginal technologies. As a result, market shares by themselves, can be unreliable indicators of market power.

It is found that permitting vertical integration may have a market mitigation effect. It is also found that creating integrated energy companies with their own retail obligations can restrict strategic inclinations for generators to operate to lower utilisation levels, and may moderate the motivations of integrated generators to increase wholesale prices. However, the effects are quite delicate and can be overcompensated by increasing the market power of other generators in a residual market, if vertical integration effectively removes the generator from a voluntary wholesale market.

Conversely, it is found that in some cases, vertically integrated entities can promote other individual entities to increase prices. However, overall the paper finds that vertical integration appears to exert a downward pressure on prices in both extreme cases of all companies behaving competitively and of all behaving strategically.

**‘Inefficiency in Japanese Water Utility Firms: A Stochastic Frontier Approach’**, Michelle Phillips, *Journal of Regulatory Economics*, 44(2), 2013, pp. 197-214.

In this paper, Michelle Phillips uses a one-step stochastic frontier approach (SFA) to examine the efficiency of Japanese water utilities. SFA is used in economic benchmarking to establish performance-based rankings of firms in an industry. Economic benchmarking seeks to identify firms that perform better than others, and to identify the reasons behind predicted differences in efficiency between firms in an industry. Phillips notes that benchmarking is an important activity that can help reduce the information asymmetry between managers and those providing oversight. It can: inform government policy regarding regulation; and improve managerial performance by identifying the ‘best practices’ to be emulated. In this paper, a firm is considered to be efficient if it maximises output given a fixed level of inputs. The focus of the paper is on the identification and policy implications of the inefficiency effects, and not on identifying the most efficient producers in the industry.

There are 1190 water service suppliers in Japan. The ten largest suppliers provide 28 per cent of water services. The remaining water services are provided by 1180 utilities. The utilities are generally owned by the local governments of cities, towns and villages. Each utility is supposed to be self-supporting and to operate in an efficient manner under Japan’s Water Laws. Utilities engage in self-regulation and operating revenues are often accompanied by subsidies.

Phillips estimates a Cobb-Douglas stochastic frontier production function using a data set of all 1190 water utilities across a four-year period. The results indicate that a major source of inefficiency for the Japanese water utilities is subsidies. That is, there is a correlation between water utilities that receive higher levels of subsidies and those with higher degrees of technical inefficiency. Phillips argues that the introduction of an independent regulator in the sector would improve transparency and develop a subsidy scheme with better incentives than at present.

The results indicate that engagement in more outsourcing is correlated with greater levels of inefficiency. Outsourcing of functions of Japanese water utilities started in 2001 and can occur for specific tasks, such as routine operation and maintenance of treatment plants, or for entire operations. This finding is different from earlier studies, and Phillips suggests that further investigation of this issue is necessary. The results also suggest a correlation between the amount of water purification undertaken by the utility, suggesting lower initial water quality, and a lower measure of efficiency.

Customer density, average operation rate and size are all associated with less inefficiency. This suggests that larger firms tend to be less inefficient. This is consistent with earlier studies that suggest that water utilities in Japan are much smaller than the optimal size.

Finally, the results suggest that differences based on regional location are generally negative and significant. That is, technical efficiency varies systematically across regions. This is expected given the differences in weather, topography and geography. As noted by Phillips, since this factor is exogenous in the sense that regional location is beyond management control, this may not indicate levels of inefficiency. Rather, it may indicate that more resources are required in some regions to produce the same output.

**‘A Note on Contradictions in Australian Water Policy’**, by Lin Crase, Nicholas Pawsey and Sue O’Keefe, *Economic Papers*, 32(3), September 2013, pp. 353-359.

Lin Crase, Nicholas Pawsey and Sue O’Keefe begin by reviewing the ‘mounting empirical evidence … that water markets play a major role in increasing the efficiency of the allocation of water resources’ (p. 354). Given this weight of evidence, the authors contend that it is ‘difficult to reconcile recent policy choices’ relating to government subsidisation of irrigation infrastructure’ (p. 354). The authors analyse four policy choices that have been made to deal with what is euphemistically called ‘over-allocation [of water rights] in the Murray-Darling Basin. The policies carried out to address this problem have included: buy-backs of previously allocated water; reductions in the water allocated to existing rights; and government subsidisation of water-saving measures. This paper raises the question of whether there is a contradiction or inconsistency between policies to establish property rights and water markets, on the one hand, and government subsidies for water infrastructure, on the other.

One of the benefits of establishing property rights and water markets is that it empowers potential market participants by providing them with options and opportunities. However, the authors argue that the programme of irrigation infrastructure subsidies has empowered some irrigators over others, in a way that is driven by political forces and ‘the rent seeking capacity of different individuals and groups’. Another potential problem relates to the external impact of private decisions. This is a complex issue, illustrated by the authors noting that some irrigators in the Murrumbidgee claim that local wetlands have dried out due to upstream ‘water saving projects’ funded under the guise of securing water for the environment.

The rationalisation of farming practices has led to consolidation of farms, potentially with fewer farmers left to bear the cost of the remaining irrigation infrastructure. While government funding for water infrastructure may be justified on the basis that it reduces the cost burden on those remaining farmers, the authors note that doing this defers the burden of the infrastructure cost. Further, they question the justification of intervention in the face of the externality being a pecuniary one.

The authors also note that irrigation infrastructure paid for by the government does not enter the regulatory asset base. As a result, irrigators do not face the full cost of their actions. The authors estimate that water tariffs would need to increase by 302 per cent in order for water users to cover the full costs of the existing water network.

While the authors acknowledge the benefits of introducing water markets, they conclude that government investment in irrigation infrastructure has resulted in a ‘serious contradiction’. Their assessment (p. 358) is that this approach:

largely undermines many of the incentives that attend water markets and in some cases gives rise to moral hazards that have not been thoroughly investigated. At best, a case for this approach can be found in the potential gains in dynamic efficiency, but even this relies on ambitious assumptions about the capabilities of the state to access and process information about the future.

**‘Unconstrained Estimates of the Equity Risk Premium’**, Tristan Fitzgerald, Stephen Gray, Jason Hall and Ravi Jeyaraj, *Review of Accounting Studies*, 18, 2013, pp. 560-639.

This paper presents a novel version of a three-stage dividend discount model (DDM) for estimating the cost of equity. In this version of the model, the long-term growth rate of dividends is not an input to the model, but rather is jointly estimated with the cost of equity. The authors use the model to estimate the equity risk premium (ERP) for the United States.

Over the past two decades, a number of models have been developed in which the growth rate is jointly estimated with the cost of equity. This paper contributes to this recent strand of research on DDMs. Rather than using the long-term growth rate as a parameter, this model instead uses book value per share as an input to the model. For each firm and for each analyst, the model generates a firm value for 3012 combinations of the cost of equity, long-term return on equity and the long-term growth.

An algorithm is used to select one of these 3012 combinations on the basis of the valuation error of each combination. The valuation error is defined as the difference between the firm value generated by the model and the analyst’s target price. The mean valuation error is calculated across the different analysts. The algorithm selects a combination which is such that the 90 per cent confidence interval around the mean valuation error is within ten per cent of zero.

The authors apply the DDM model to US-listed companies that were members of the S&P 1500 index. The data are half-year observations, and cover the period from 1999 to 2008. The model generates an average equity risk premium of 5.3 per cent over this period. The authors argue that their findings address a puzzle about estimates of the cost of capital. The puzzle is that, on the one hand, *ex post* historical estimates of the premium typically imply estimates of about 6.0 per cent, but on the other hand, *ex ante* estimates are generally in the range from two to four per cent. The difference between *ex post* and *ex ante* methods is commonly explained by an argument that observed returns were unexpected, either because of survivorship bias or because of a fall in expectations about volatility or the price of risk. Having generated an *ex ante* estimate that is close to the *ex post* estimates, the authors question this standard explanation for difference between *ex post* and *ex ante* methods.

# Regulatory Decisions in Australia and New Zealand

## Australia

## Australian Competition and Consumer Commission (ACCC)

### ACCC Issues Draft Decision on Viterra's Wheat Port Undertaking

On 21 November 2013 the ACCC issued a draft decision proposing to consent Viterra Operations Limited’s (Viterra) application to extend and vary its 2011 Port Terminal Services Access Undertaking. Feedback is required by 6 December 2013. [Read more about the draft decision.](http://www.accc.gov.au/media-release/accc-issues-draft-decision-on-viterras-wheat-port-undertaking)

### ACCC Publishes NBN Co’s Varied Special Access Undertaking

On 20 November 2013 the ACCC announced receipt of a varied Special Access Undertaking (SAU) from NBN Co. If accepted, this SAU will form part of the regulatory framework that governs the price and other terms upon which NBN Co will supply services over its fibre, wireless and satellite networks to telecommunications businesses, until 2040. A final decision is anticipated before the end of the year. [Read about the varied SAU.](http://www.accc.gov.au/media-release/accc-publishes-nbn-co%E2%80%99s-varied-special-access-undertaking-for-consultation)

### ACCC to not Oppose NBN Co’s Proposed Acquisition of TransACT's Fibre to the Premises Network

On 14 November 2013 the ACCC announced that it will not oppose the proposed acquisition of TransACT Capital Communications Pty Ltd’s (TransACT) fibre to the premises network (TransACT FTTP network) by NBN Co Limited (NBN Co). [Read more about the ACCC's decision.](http://www.accc.gov.au/media-release/accc-to-not-oppose-nbn-cos-proposed-acquisition-of-transacts-fibre-to-the-premises-network)

### ACCC Identifies Reform Priorities to Support Competition at Australia’s Growing Container Ports

On 7 November 2013 the ACCC released its 15th annual monitoring report which highlights that further economic reforms are required if future benefits of continuing industry reforms and increasing competition in the container stevedoring industry are to be realised. [Read the report.](http://www.accc.gov.au/media-release/accc-identifies-reform-priorities-to-support-competition-at-australia%E2%80%99s-growing-container-ports)

### ACCC Allows Electricity Generators to Jointly Negotiate

On 17 October 2013 the ACCC announced that it has granted authorisation to allow Queensland power generators CS Energy, Callide Energy, InterGen and Callide Power Management to jointly renegotiate existing coal supply arrangements with Anglo Coal. The arrangements relate to coal supplied to the Callide B and Callide C power stations in central Queensland by the nearby coal mine owned by Anglo Coal. [Read about the authorisation which has been granted until 17 October 2023.](http://www.accc.gov.au/media-release/accc-allows-electricity-generators-to-jointly-negotiate)

### ACCC Approves Emerald's Wheat Port Access Arrangements

On 26 September 2013 the ACCC announced that it has accepted an access undertaking from Emerald Logistics Pty Ltd setting out arrangements for bulk wheat exporters using its Melbourne Port Terminal. The new undertaking will apply until 30 September 2014, after which port access is expected to be governed by a mandatory industry code of conduct. [Read about the port access arrangements.](http://www.accc.gov.au/media-release/accc-approves-emeralds-wheat-port-access-arrangements)

### ACCC Approves Telstra's Measures Developed under the Migration Plan

On 26 September 2013 the ACCC announced approval of three Telstra measures that will support the migration of customers onto the National Broadband Network (NBN) in regions where NBN Co has rolled out its fibre to the premises network. [Read about the ACCC's decision.](http://www.accc.gov.au/media-release/accc-approves-telstras-measures-developed-under-the-migration-plan)

### ACCC Varies the Facilities Access Code

On 23 September 2013 the ACCC announced its decision to vary the Facilities Access Code (the Code) to ensure it continues to be a useful tool for industry members when negotiating access to the facilities of other carriers. The ACCC commenced a review of the Code in July 2012. [Read about the ACCC's decision.](http://www.accc.gov.au/media-release/accc-varies-the-facilities-access-code)

## Australian Energy Regulator (AER)

### Electricity Consumers to get a Fairer Deal

On 29 November 2013 the AER announced a range of regulatory reforms to protect consumers from paying more than necessary for electricity and gas network services. [Read about the AER’s Better Regulation program.](http://www.aer.gov.au/node/22867)

### Report on ACT Energy Market

On 26 November 2013 the AER released its [first annual performance reports on the retail energy market](http://www.aer.gov.au/node/22827) under the National Energy Retail Law, in three different states. [Read the report on the ACT.](http://www.aer.gov.au/node/22833) [Read the report on SA.](http://www.aer.gov.au/node/22835) [Read the report on Tasmania.](http://www.aer.gov.au/node/22832)

### AER Approves Victorian Gas Network Tariffs for 2014

On 22 November 2013, the AER approved gas distribution and ancillary reference services tariffs for the period 1 January to 31 December 2014 in accordance with the 2013-17 Victorian access arrangements for Multinet, Envestra Albury, Envestra Victoria and SP AusNet. [Read about the tariffs.](http://www.aer.gov.au/node/22811)

### Victorian Electricity Distribution Pricing Proposals 2014

On 1 November 2013 the AER announced that it will assess the Victorian distribution network service providers’ proposed annual network tariffs for the twelve months commencing on 1 January 2014. [Read about the pricing proposals.](http://www.aer.gov.au/node/22652)

### AEMO Transmission Determination – Request for Submissions

On 15 October 2013 the AER invited written submissions on the pricing methodology and negotiating framework proposed by the Australian Energy Market Operator (AEMO) in August 2013. [Submissions were required by 25 November 2013.](http://www.aer.gov.au/node/22287)

### SP AusNet Revised Revenue Proposal – Request for Submissions

On 11 October 2013, SP AusNet submitted a [revised revenue proposal](http://www.aer.gov.au/node/19819) responding to the AER’s draft decision on SP AusNet’s electricity transmission determination for the regulatory control period 1 April 2014 to 31 March 2017. [Submissions were required by 1 November 2013.](http://www.aer.gov.au/node/22282)

### AER Releases Remade Decision on Multinet Gas Distribution Network

On 8 October 2013 the AER released its remade access arrangement decision for Multinet’s Victorian gas distribution network. The original decision was made on 29 July 2013 and has been remade in accordance with orders from the Australian Competition Tribunal (Tribunal). [Read about the remade decision.](http://www.aer.gov.au/node/22150)

### AER Releases Determination on South Australia to Victoria Electricity Transmission Interconnector

On 4 September 2013 the AER released a determination on the proposal by ElectraNet and the Australian Energy Market Operator ([AEMO](http://www.aer.gov.au/glossary#AEMO)) to upgrade the South Australia to Victoria (Heywood) electricity transmission interconnector. [Read the determination.](http://www.aer.gov.au/node/21633)

## National Competition Council (NCC)

Application for coverage of the South Eastern Pipeline System

On 17 October 2013 the NCC received from the Hon Tom Koutsantonis MP, South Australian Minister for Mineral Resources and Energy, the decision and reasons not to make a coverage determination. This followed the NCC’s receipt on 28 November 2012 of an application under the National Gas Law from Kimberly-Clark Australia Pty Limited for coverage of the South Eastern Pipeline System. [Read the decision and reasons.](http://www.ncc.gov.au/index.php/application/application_for_coverage_of_the_south_eastern_pipeline_system)

## Australian Energy Market Commission (AEMC)

### Potential Measures to Improve Financial Resilience of the National Electricity Market (NEM)

### On 8 November 2013 the AEMC called for public submissions on its options paper about how to reduce the risk of financial distress of one electricity business spreading to other businesses. Financial contagion occurs when the financial distress or failure of one business has a cascading effect in the market. [Read the options paper.](http://www.aemc.gov.au/News/Whats-New/assessing-financial-resilience-in-the-national-electricity-market.html)

### Review of the National Framework for Transmission Reliability

### On 1 November 2013 the AEMC published a final report on a framework for setting and regulating transmission reliability standards in the National Electricity Market. [View the final report.](http://www.aemc.gov.au/News/Whats-New/final-report-published-on-review-of-the-national-framework-for-transmission-reliability.html)

### Final Report Published on AEMC Strategic Priorities for Energy Market Development 2013

### On 23 October 2013 the AEMC published its strategic priorities for energy market development. [Read the final report.](http://www.aemc.gov.au/News/Whats-New/final-report-published-on-aemc-strategic-priorities-for-energy-market-development-2013-.html)

### Supplementary Report Published on Retail Competition Review of NSW

On 31 October 2013 the AEMC published the supplementary report of its 3 October 2013 review of competition in the retail electricity and natural gas markets in New South Wales. [Read the review.](http://www.aemc.gov.au/News/Whats-New/supplementary-report-published-on-retail-competition-review-of-nsw.html)

### AEMC Releases a Report on the Current State of the East Coast Gas Market

On 27 September 2013 the AEMC released a report on the current state of the east coast gas market, providing an overview of changes in the market, and identifying areas of potential improvement in the market and regulatory arrangements. [Read the report.](http://www.aemc.gov.au/News/Whats-New/aemc-releases-a-report-on-the-current-state-of-the-east-coast-gas-market.html)

### Final Report Published on Advice on Best Practice Retail Price Regulation

On 27 September 2013 the AEMC published the final advice on a recommended method for setting regulated retail prices. [Read the final report.](http://www.aemc.gov.au/News/Whats-New/final-report-published-on-advice-on-best-practice-retail-price-regulation.html)

### Review of the National Framework for Distribution Reliability

On 27 September 2013 the AEMC published its final report on its review of the framework for distribution reliability in the National Electricity Market, to better determine the levels of reliability in distribution networks that reflect the needs of customers. [Read the report.](http://www.aemc.gov.au/News/Whats-New/final-report-published-on-review-of-the-national-framework-for-distribution-reliability.html)

### Draft Determination on Victorian Jurisdictional Derogation

### On 19 September 2013, the AEMC released its draft determination to make a jurisdictional derogation in relation to meters installed under the Advanced Metering Infrastructure (AMI) program in Victoria. [Submissions were due 31 October 2013.](http://www.aemc.gov.au/News/Whats-New/draft-determination-made-on-victorian-jurisdictional-derogation-advanced-metering-infrastructure.html)

## Australian Capital Territory

## Independent Competition and Regulatory Commission (ICRC)

### Release of Issues Paper – Retail Prices for Franchise Electricity Customers

### On 4 October 2013, the ICRC commenced its investigation to determine retail franchise tariffs that will apply in the ACT from 1 July 2014. Feedback was required by 15 November 2013. [View the issues paper.](http://www.icrc.act.gov.au/review/retail-prices-for-franchise-electricity-customers-from-1-july-2014/)

## New South Wales

## Independent Pricing and Regulatory Tribunal (IPART)

### Essential Energy Broken Hill Water Prices

### On 31 October 2013 the IPART published Essential Energy’s Cost-Reflective Mines Pricing Attachment 8. Essential Energy's pricing submission proposes that all customers will be paying prices that are cost-reflective, with no subsidy between small customers and the mines. [Read the proposal.](http://www.ipart.nsw.gov.au/Home/Industries/Water/Reviews/Metro_Pricing/Review_of_prices_for_Essential_Energys_Broken_Hill_water_and_sewerage_services_from_1_July_2014/News_HYS/Essential_Energy_Broken_Hill_Water_Prices_public_consultation)

### Appointment of New CEO

### On 31 October 2013 the IPART announced the appointment of Hugo Harmstorf as its new Chief Executive Officer, commencing 25 November 2013. [Read about the appointment.](http://www.ipart.nsw.gov.au/Home/News/IPART_welcomes_new_CEO_Hugo_Harmstorf)

### Draft Report on Early Termination Fees for Electricity Contracts for Small Customers

### On 23 October 2013 the IPART released its draft report on the maximum amounts for early termination fees to commence on 1 March 2014, limiting the fees that retailers can charge customers for breaking their electricity supply contracts early. [View the draft report.](http://www.ipart.nsw.gov.au/Home/Industries/Electricity/Reviews/Retail_Pricing/Review_of_requirements_for_early_termination_charges/21_Oct_2013_-_Media_Release/Media_Release_-_Draft_Report_on_early_termination_fees_for_electricity_contracts_for_small_customers_-_October_2013)

### Draft Report – WACC Methodology

In September 2013 the IPART released its draft decision on the review of its WACC methodology. Feedback was required by 1 November 2013. [View the draft report.](http://www.ipart.nsw.gov.au/Home/Industries/Research/Reviews/WACC/Review_of_method_for_determining_the_WACC/25_Sep_2013_-_Draft_Report/Draft_Report_-_WACC_methodology_-_September_2013)

### New Tribunal Member Appointed

### On 24 September 2013 the IPART announced the appointment of Dr Paul Paterson as a new Tribunal Member. [Read more about the appointment.](http://www.ipart.nsw.gov.au/Home/News/New_Part_Time_Tribunal_Member_appointed)

### Draft Decision on Financeability Test

On 9 September 2013, the IPART released a [draft decision](http://www.ipart.nsw.gov.au/files/21f14e4f-2b19-4e20-93d5-a23400aae57a/Draft_Decision_-_Financeability_tests_in_price_regulation_-_September_2013.pdf) for its financeability test. When conducting a price review the IPART conducts a test to assess the implications of its determinations for the financial sustainability of a utility. [View the draft decision.](http://www.ipart.nsw.gov.au/Home/Industries/Research/Reviews/Financeability_Tests/Financeability_test_in_price_regulation_-_2012/News/Draft_decision_released_on_Financeability_test_in_price_regulation)

## Northern Territory

## Utilities Commission

### [Network Capital Contribution Policy](http://www.utilicom.nt.gov.au/Newsroom/Lists/Posts/Post.aspx?ID=170)

On 4 November 2014 the Utilities Commission announced receipt of four submissions on Power and Water Corporation’s proposed Network Capital Contribution Policy. In accordance with the NT Access Code, the network service provider may require a network user to make a capital contribution, either in the form of assets or a financial payment. [Read more about the Network Capital Contribution Policy.](http://www.utilicom.nt.gov.au/Newsroom/Lists/Posts/Post.aspx?ID=171)

### [Independent Review of Wholesale Generation Market – Terms of Reference](http://www.utilicom.nt.gov.au/Newsroom/Lists/Posts/Post.aspx?ID=168)

On 21 October 2013 the Utilities Commission announced that it had been asked by the Treasurer to conduct a review and recommend wholesale electricity market arrangements appropriate for the Northern Territory. The Utilities Commission will release a draft report in December 2013. [Read more about the review.](http://www.utilicom.nt.gov.au/Newsroom/default.aspx)

### Initial Regulatory Proposal – Power and Water Corporation

On 10 October 2013 the Utilities Commission announced receipt of Power and Water Corporation’s (PWC) Initial Regulatory Proposal as part of the 2014 Network Price Determination, which details the expenditure PWC believes it requires to operate its regulated networks for the next regulatory control period, 2014-19. The Utilities Commission will make a Draft Determination in December 2013. A Final Determination will be made in April 2014. [Read about the proposal.](http://www.utilicom.nt.gov.au/PMS/Publications/MR-PWC-IRP-1013.pdf)

## Queensland

## Queensland Competition Authority (QCA)

### Extension of DAAU Termination Date

### On 5 November 2013, the QCA received from Queensland Rail a draft amending access undertaking (DAAU) to extend its 2008 undertaking’s termination date from 31 December 2013 to the earlier of 30 June 2014; or the date at which the QCA approves Queensland Rail’s [June 2013 draft access undertaking](http://www.qca.org.au/rail/QRail2013DAU/). [View the DAUU.](http://www.qca.org.au/rail/QLDRail/Nov13ExtDAAU/)

### 2013 Standard User Funding Agreement Draft Amending Access Undertaking

On 14 October 2013 the QCA requested feedback on Aurizon Network Pty Ltd’s standard user funding agreement draft amending access undertaking (the 2013 SUFA DAAU). This follows Aurizon Network’s withdrawal of the 2012 SUFA DAAU. Submissions are required by 13 December 2013. [Read about the 2013 SUFA DAAU.](http://www.qca.org.au/rail/2010-DAUamend/SUFADAAU13/)

### Aurizon Network’s 2011-12 Capital Expenditure

On 10 October 2013, the QCA released a final decision letter to approve the $1.3 billion in capital expenditure claimed by Aurizon Network. [Read about QCA's final decision.](http://www.qca.org.au/rail/2010-DAUamend/QRNCapEx/)

### QCA Annual Report 2012-13

On 24 September 2013 the QCA released its annual report for 2012-13. [Read the QCA Chairman's introduction.](http://www.qca.org.au/about/annualreport1213chair.php)

## South Australia

## Essential Services Commission of South Australia (ESCOSA)

### Inquiry into Drinking Water and Sewerage Retail Services Pricing Reform

On 18 November 2013 the ESCOSA published the submissions received in response to a series of Issues Papers released as a part of its Inquiry into Drinking Water and Sewerage Retail Services Pricing Reform. [View the submissions.](http://www.escosa.sa.gov.au/article/newsdetail.aspx?p=16&id=1220)

### 2013 Ports Price Monitoring Report Released

# See ‘Notes on Interesting Decisions’.

### Standby Power Controllers – Deeming Value Variation

On 7 November 2013 the ESCOSA announced that as, effective 7 October 2013, the deeming value assigned to approved models of SPCs under South Australian Residential Energy Efficiency Scheme (REES) will be changed. Deeming values are based on those of the Essential Services Commission of Victoria (ESCV), which has reduced the deeming values for approved SPCs under the Victorian Energy Efficiency Target (VEET). [Read about the change.](http://www.escosa.sa.gov.au/article/newsdetail.aspx?p=16&id=1218)

### Release of NERL Review Issues Paper

On 7 November 2013 the ESCOSA released an Issues Paper outlining its proposed approach to conducting a review of the operation of the National Energy Retail Law (NERL) in South Australia. [The review is to be undertaken after 1 February 2015.](http://www.escosa.sa.gov.au/article/newsdetail.aspx?p=16&id=1217)

## Tasmania

## Office of the Tasmanian Economic Regulator (OTTER)

### 2013 Feed-in Tariff Inquiry – Final Report

On 31 October 2013 the OTTER completed its regulated feed-in tariff inquiry and provided its Final Report to the Government. [View the report.](http://www.energyregulator.tas.gov.au/domino/otter.nsf/8f46477f11c891c7ca256c4b001b41f2/b713302decf91d0cca257bb8000a655f?OpenDocument#The%20Regulator%20completed%20its%20regul)

Regulatory Framework – Wholesale Contract Regulation

On 6 November 2013, the OTTER announced that, as part of the Government’s electricity reform program, the OTTER will, from 1 January 2014, be responsible for regulating Hydro Tasmania’s wholesale contract activities. [Read about the electricity reform program.](http://www.energyregulator.tas.gov.au/domino/otter.nsf/8f46477f11c891c7ca256c4b001b41f2/e1084e049607e3b8ca257c210015731d?OpenDocument)

## Victoria

## Essential Services Commission (ESC)

### Review of the Return of Unrequired Desalination Payments

In November 2013 the ESC released its paper *Review of the Return of Unrequired Desalination Payments*. This follows the June 2012 request from the Minister for Water to provide oversight and independent verification of the return of all unrequired payments by water users to the metropolitan water businesses for the Victorian Desalination Plant. The unrequired payments occurred due to delays to the completion of the plant. [Read the review.](http://www.esc.vic.gov.au/getattachment/84d3fe13-1cf7-4e47-98ed-dfdc5f6973a4/Opinion-Report-Return-of-Additional-Desalinati-(1).pdf)

### Notice Of Application For An Electricity Generation Licence from Alcoa of Australia Limited

On 22 November 2013 the ESC announced that Alcoa of Australia Limited has applied for a licence to generate electricity at the Anglesea Power Station, Victoria. Submissions regarding the application are required by 19 December 2013. [Read about the application.](http://www.esc.vic.gov.au/Energy/Notice-Of-Application-For-An-Electricity-Generatio)

### Coliban Water’s Proposed Form of Price Control

In October 2013 the ESC released its final decision on the June 2013 *Price Review 2013: Regional Urban Water Businesses*, not approving Coliban Water’s proposal for a demand adjusted revenue cap form of price control. [Read the final decision.](http://www.esc.vic.gov.au/getattachment/81f2d1da-bc87-46e6-9241-c1440c6d5ce5/Final-Decision-Coliban-Water-s-proposed-form-of-pr.pdf)

### Minimum Electricity Feed-in Tariffs: For Application from 1 January 2014 to 31 December 2014 – Final Decision

In August 2013 the ESC released its final decision on Minimum Electricity Feed-in Tariffs: For Application from 1 January 2014 to 31 December 2014. The ESC’s decision is for the minimum FiT to apply for the period 1 January 2014 to 31 December 2014 pursuant to s 40FBB of the *Electricity Industry Act 2000* (Victoria). [Read the final decision.](http://www.esc.vic.gov.au/getattachment/36719711-eccb-454b-b4d3-00139d88d87d/FDP-Final-Decision-Minimum-Feed-in-Tariff-for-2014.pdf)

## Western Australia

## Economic Regulation Authority (ERA)

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| Inquiry Into the Microeconomic Reform of Western Australia  On 8 November 2013 the ERA announced that it has been asked by the Treasurer to undertake an independent inquiry to develop a package of reforms that will lead the State’s economy to, amongst other things, improving the efficiency of State infrastructure spending, planning, and utilisation. [Read about the inquiry.](http://www.erawa.com.au/cproot/11786/2/Media%20Release%20(Discussion%20Paper)%20-%20Inquiry%20into%20Microeconomic%20Reform.pdf)  Guidelines for the Rate of Return for Gas  On 7 November 2013 the ERA published submissions received on the development of the *Rate of Return Guidelines for Gas Transmission and Distribution Networks*. [View the submissions.](http://www.erawa.com.au/cproot/11898/2/Information%20-%20Guidelines%20for%20the%20Rate%20of%20Return%20for%20Gas%20Transmission%20and%20Distribution%20Networks%20-%20Publication%20Of%20Submissions%20Received.pdf) The Pilbara Infrastructure Pty Ltd – Floor and Ceiling Costs On 12 September 2013 the ERA issued a determination of the floor and ceiling costs to apply to The Pilbara Infrastructure (TPI) railway between Christmas Creek mine and Port Hedland. The determination has been made following a proposal by Brockman Iron Pty Ltd to use these two sections of TPI’s railway. [Additional information was released on 18 October 2013.](http://www.erawa.com.au/access/rail-access/the-pilbara-infrastructure-pty-ltd/floor-ceiling-costs) |

## New Zealand

## Commerce Commission (CCNZ)

### Final Decision on UBA Price Review

On 5 November 2013 the CCNZ released its final decision on the additional costs of telecommunication infrastructure company Chorus’s unbundled bitstream access (UBA) service. [Read about the additional costs.](http://www.comcom.govt.nz/the-commission/media-centre/media-releases/detail/2013/commerce-commission-releases-final-decision-on-uba-price-review)

### Transpower’s Maximum Allowable Revenues Adjusted for 2014-15

On 31 October 2013 the CCNZ announced that it had reduced Transpower’s maximum allowable revenue for the coming pricing year from 1 April 2014 to 31 March 2015 by $25.1 million. [Read more about the revenue reduction.](http://www.comcom.govt.nz/the-commission/media-centre/media-releases/detail/2013/transpowers-maximum-allowable-revenues-adjusted-for-the-coming-year)

CCNZ Releases Draft Liability Allocation Determination

On 30 October 2013 the CCNZ released its draft determination for the amount 22 telecommunications providers will pay towards the $50 million Telecommunications Development Levy (TDL) for 2012-13. [Read more about the annual levy.](http://www.comcom.govt.nz/the-commission/media-centre/media-releases/detail/2013/commission-releases-draft-lad)

Statement of Preliminary Issues for Applications from Telecom and Vodafone to Acquire 700 MHz Spectrum

On 22 October 2013 the CCNZ published a statement of preliminary issues relating to the applications from Telecom and Vodafone seeking clearance to acquire the management rights to 700 MHz radio spectrum. [Read about the Crown’s auctioning of management rights to radio spectrum.](http://www.comcom.govt.nz/the-commission/media-centre/media-releases/detail/2013/statement-of-preliminary-issues-for-applications-from-telecom-and-vodafone-to-acquire-700-mhz-spectrum)

New Information Disclosure Requirements for Transpower

On 21 October 2013 the CCNZ released for consultation its draft information disclosure requirements for electricity lines services supplied by Transpower. [Read about the regulation of Transpower.](http://www.comcom.govt.nz/the-commission/media-centre/media-releases/detail/2013/new-information-disclosure-requirements-for-transpower)

Draft Report Issued on Information Disclosure at Christchurch International Airport

See ‘Notes on Interesting Decisions’.

Draft Decision on Orion’s Customised Price-quality Path Proposal

On 14 August 2013, the CCNZ released its draft decision on Orion’s customised price-quality path (CPP) proposal which takes into account Orion’s extraordinary circumstances following the Canterbury earthquakes in 2010 and 2011. [Read the draft decision.](http://www.comcom.govt.nz/the-commission/media-centre/media-releases/detail/2013/commerce-commission-releases-draft-decision-on-orions-customised-price-quality-path-proposal)

# Notes on Interesting Decisions

**Monitoring Report on Pricing by South Australian Ports**

Under the Maritime Services (Access) Act 2000 (MSA Act), the Essential Services Commission of South Australia (ESCOSA) is the economic regulator for the six commercial ports operated by Flinders Ports. Under the price regulatory regime in South Australia, Flinders Ports is allowed to adjust its prices for services subject to price regulation, subject to the requirement to publish a price list and inform the ESCOSA of changes to that list. The ESCOSA may then publish annual ports price monitoring reports to provide information on prices, and commentary on factors underpinning price movements.

The ESCOSA released its first annual ports price monitoring report following its 2012 Ports Price Determination. The ESCOSA’s price monitoring regime involves an evaluation of Flinders Ports’ price increases as compared to changes in the Consumer Price Index (CPI), with the expectation of adequate justification for any rise in charges above CPI.

The Commission has observed that all of Flinders Ports’ 2013-14 ports charges have increased at a rate above the Adelaide, March 2012 to March 2013, CPI figure of 2.2 per cent. In the case of Essential Maritime Services (EMS), both Cargo and Harbour Service charges have increased by an average 2.9 per cent due to the recovery of increased wage costs as a result of Flinders Ports’ current Enterprise Bargaining Agreement (EBA) with the Maritime Unions. The EBA also continued to raise Pilotage Service charges above CPI, with the price rising by 3.8 per cent (nominal) due to this service being heavily dependent on wages. The Navigational Services charge also experienced an above-CPI increase, with a nominal 3.2 per cent rise in 2013-14 prices due to the continued implementation of capital expenditure.

The ESCOSA has examined information presented by Flinders Ports to justify the price increases in its regulated service charges and has found no areas for concern. [View the report.](http://www.escosa.sa.gov.au/article/newsdetail.aspx?p=16&id=1219)

Information Disclosure Regulation of Christchurch International Airport

On 15 October 2013 the Commerce Commission (CCNZ) released a draft of its report to the Ministers of Commerce and Transport on the effectiveness of the information disclosure regulation in relation to Christchurch International Airport.

Christchurch International Airport’s proposed prices over the next 20 years target a return of 8.9 per cent, which is significantly higher than the CCNZ’s view of an acceptable return of between 6.6 and 7.6 per cent. The CCNZ’s draft finding is that information disclosure regulation has not had a significant influence on Christchurch Airport. In particular, information disclosure has not constrained Christchurch Airport from targeting excessive profits over the next 20 years.

For the first five years of the 20-year period Christchurch International Airport has decided to set relatively lower prices to avoid ‘price shocks’ to consumers. The CCNZ’s draft report concludes that it appears that the drop in demand following the Christchurch earthquakes has been the influential factor in this decision, rather than information disclosure. According to the CCNZ’s draft report, this decision means that Christchurch International Airport is not targeting excessive profits over the first five years.

In terms of the other performance areas considered in the draft report, Christchurch International Airport appears to have incentives to innovate and is providing services at a quality that reflects consumer demands. However, it is unclear to the CCNZ whether information disclosure has had much impact on these. The CCNZ also considers that information disclosure has not been as effective in promoting pricing efficiency as it expected.

The review does not make any recommendations about whether regulation other than information disclosure should apply to Christchurch International Airport (or whether information disclosure should continue to apply). Recommendations on these matters are outside the scope of the review required by the legislation. [Read the draft report.](http://www.comcom.govt.nz/the-commission/media-centre/media-releases/detail/2013/commission-issues-draft-report-on-christchurch-international-airport)

# Regulatory News

### 2014 ACCC/AER Regulatory Conference

Planning is underway for the 2014 ACCC/AER Regulatory Conference to be held in Brisbane on Thursday 7 and Friday 8 August 2014. This will be the fifteenth regulatory conference held by the ACCC/AER. The theme for the 2014 conference is ‘Regulating for Efficient Infrastructure Outcomes’. More detailed information will be available in February 2014.

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1. See *Financial Times* (2013b). In relation to the water industry, see *Financial Times* (2013a). [↑](#footnote-ref-1)
2. There are also various other approaches to consumer involvement observed in the different sectors across the world, including: the use of consumer surveys conducted either by the regulator or by the regulated companies themselves; inclusion of a consumer representative on the decision-making body of the regulator; or interaction with consumers through social media and the Internet. [↑](#footnote-ref-2)
3. Franceys and Gerlach (2011, p. 63) recently suggested that the average person who joined the customer consultative committees established in the England and Wales water sector could be described as a ‘middle-class professional early retiree looking to make a public service contribution’. [↑](#footnote-ref-3)
4. Littlechild (2012b, p. 58) and see also Wang (2004, p. 141). [↑](#footnote-ref-4)
5. As early as 1978, Morgan (1978, p.72), a strong supporter of the use of settlements, saw the real challenge with the approach as ‘guaranteeing that all significantly affected interests are represented in any settlement negotiation’. See also Wang (2004, p.162). [↑](#footnote-ref-5)
6. See Kent Fellows (2011, p. 1506). [↑](#footnote-ref-6)
7. From 1 January 2011, regulatory arbitrations were replaced by ‘access determinations’ (where the ACCC provides a set of terms and conditions upon which all access seekers can rely if they are unable to come to an agreement with an access provider on the supply of a declared service). [↑](#footnote-ref-7)
8. The effectiveness of the negotiated settlements approach at the US state level appears to be more mixed than at the federal level. Littlechild (2012a, p. 183) conjectures that one reason for this might be that rate increases at the state level are more immediate to final consumers and therefore political, and therefore customer representatives ‘need to be seen to be scrutinising and challenging rate increases, not simply agreeing them with the utilities’. [↑](#footnote-ref-8)
9. There are, however, separate concerns about the costs and burdens associated with the standard R/CPI–X approach to regulation as it has developed. See Littlechild (2012b, p. 56). [↑](#footnote-ref-9)