



**Ministerial Council on Energy**

Review of Consumer  
Advocacy Requirements -  
Report for User Participation  
Working Group

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# 1 Executive summary

The Ministerial Council on Energy (MCE) has recognised active participation by energy users as being central to equitably distributing the benefits arising from competition policy reform of the energy sector. In this context, the aims of this report are to:

- review existing national consumer advocacy arrangements; and
- develop options for a workable national advocacy model which takes into account future advocacy requirements in the Australian energy market.

We suggest that the increasing complexity of the Australian energy market will mean that future advocacy arrangements:

- will require access to a high level of technical expertise to provide the standard of advice that is required to positively influence market regulation developments;
- should provide advocacy on behalf of consumers, through one focused point, to the Australian Energy Market Commission (AEMC) and the Australian Energy Regulator (AER); and
- will need to adopt a strategic forward looking approach to help select and prioritise issues requiring advocacy, that are significant to consumers.

However, the number and diversity of focus of existing consumer organisations mean that there is not at present, one unified voice on consumer issues. The consultations we undertook to inform this report also suggest that current organisations collectively have neither the capacity nor coordination capability to meet the advocacy needs posed by energy market reform, in a streamlined and efficient manner. In addition, most organisations lack the technical expertise to advocate in the changing energy market.

The National Consumers Electricity Advocacy Panel (the Panel) is the National Electricity Market consumers' advocacy body established under the National Electricity Code. The review and consultations we carried out, indicated that the achievements of the Panel include:

- funding projects that have allowed valuable work to be undertaken, which would not otherwise have been possible;
- increasing capacity building in the community advocacy sector; and
- deploying funding for advocacy in a way that is responsive to certain current issues.

However we have also identified a number of issues related to the current Panel model, including:

- the governance arrangements;
- the lack of a coherent strategic approach;

- the approach to managing the submissions basis for funds allocation; and
- the sectoral composition of the Panel.

We suggest that the Panel model of advocacy, in its current form, does not provide the best model for consumer advocacy in the current and emerging national energy markets.

However, this then begs the question of what features should characterise a new consumer advocacy body. We have referred to the needs of the changing energy market and principles of good corporate governance, to formulate key criteria to guide the development of a new consumer advocacy model. These criteria consider whether a model has the potential to:

- deliver efficiency, effectiveness and accountability;
- deliver independence;
- avoid duplication of existing arrangements;
- facilitate a proactive and strategic approach to advocacy;
- build advocacy capacity; and
- incorporate appropriate expertise.

The options we considered all share the following common features. Each would:

- have a scope of addressing consumer interests in relation to pricing, access, equity of access, and service standards
- serve all consumers and avoid unduly prejudicing any one consumer group;
- need to have a primary focus on national energy market arrangements, but with the flexibility to address matters of significance to consumers that may fall within the States' or Territories' areas of responsibility, where this may be appropriate;
- undertake direct advocacy to the AEMC and AER, allocate funds to consumer advocacy organisations, commission and undertake research, and regularly communicate with and disseminate information to, consumer advocacy organisations;
- operate within a well defined strategic framework; and
- ultimately be accountable to the MCE but also report publicly on its objectives and performance.

We also suggest that the new model would need to be supported by a small staff, to operate in this way.

Having established their common features, we distinguished the 4 options from one another as follows.

*Option 1: A national committee building on State and Territory based consumer advocacy bodies*

Under this model there would be:

- a committee of 11 (including an independent chair), comprising representatives from States and Territories and two positions for members representing large consumer interests;
- members (excluding the chair) nominated by consumer organisations with appointments made by the MCE; and
- an independent chair appointed by the MCE.

*Option 2: A panel with sectorial representation*

This option would provide:

- a representational model with a composition similar to that of the existing Panel but expanded to include the gas industry; and
- an independent chair appointed by the MCE.

A number of core features which we propose as common to any option, would mean that some of the issues identified in the existing Panel would be addressed in this model.

*Option 3: A skills based board and a consultative committee*

Under this model there would be:

- an independent board of six members plus an independent chair, appointed by the MCE on the basis of their skills and ability to conduct themselves independently of sectoral interests; and
- a broad based consultative committee to advise on issues of importance to consumers and to assist with communication with feeder organisations and jurisdictions.

*Option 4: A skills based board with an executive director and a consultative committee.*

This model provides:

- a number of similarities with Option 3 but with more streamlined governance and a full time executive director;

- a board of two members plus an independent chair, all appointed by the MCE;
- a chair and executive director who between them, would have skills in key areas or the ability to readily engage external expertise as required; and
- a consultative committee similar to Option 3.

We assessed each of these options against the criteria we describe above. We concluded that on balance, Option 4, a skills based board with an executive director and a consultative committee, would be the most suitable of the four options for effective and efficient consumer advocacy in the future national energy market. This is because:

- it offers a skills based advocacy body;
- it has a reduced risk of its governance being unduly influenced by sectoral influences;
- the size of its board offers a balance between efficient and effective decision making and appropriate governance;
- liaison with the consultative committee allows active and relevant stakeholder involvement without undue risks to the body's independence; and
- the position of an executive director would allow a senior representative of the body to participate in the body's activities and further its objectives on a day to day basis. This is likely to provide a more effective and efficient means of achieving the body's objectives, than the other options.

## 2 Introduction

The Ministerial Council on Energy (MCE) has recognised that active participation by energy users and suppliers is important to the development of a more innovative and responsive energy market, achieving effective competition and maximising the benefits of market reform of the energy sector.

The far-reaching consequences of the current program of reform underline the need for effective participation by both consumers and suppliers. In particular, the growing convergence of electricity and gas markets will require “effective and strategic consumer advocacy” across the whole energy market.<sup>1</sup>

As a consequence, MCE agreed that action needed to be taken to “assess existing consumer advocacy models and develop a workable institutional model to take account of the changing advocacy needs of the Australian energy market”.<sup>2</sup> This project is a result of the MCE endorsement of the User Participation Policy Statement of August 2004.

### 2.1 Aims of the project

The aims of this project are to:

- review existing national consumer advocacy arrangements; and
- develop options for a workable national advocacy model, which take into account future advocacy requirements in the Australian energy market.

The final agreed terms of reference for the project require consideration of:

- the model and framework adopted for the existing National Consumers Electricity Advocacy Panel (the Panel);
- the need for advocacy arrangements to satisfy the requirements of all consumers and be able to avoid conflict of interest with other participants in the national energy market;
- an appropriate advocacy model including operational and governance structures;
- the scope and functions of a national advocacy model;
- the operational arrangements for a national advocacy model to enable appropriate consumer response to the development and regulation of the national energy market whilst retaining capabilities to respond to State and Territory specific issues;

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<sup>1</sup> Ministerial Council on Energy Standing Committee of Officials, *User Participation Policy Statement*, August 2004, p. 3.

<sup>2</sup> Ministerial Council on Energy Standing Committee of Officials, *User Participation Policy Statement*, August 2004, p. 3.

- the interaction of a national advocacy model with other State and Territory advocacy groups; and
- the process by which a national advocacy model would allocate funds to consumer groups including the development of funding guidelines.

## **2.2 Project scope**

This project has focused on exploring options for a future advocacy model for the national energy market.

Recommended advocacy arrangements are based on:

- assessing current developments in the Australian energy market;
- reviewing existing consumer advocacy arrangements;
- obtaining the views of a range of consumer and supplier representatives; and
- principles of good governance.

This project has not drawn extensively on research into overseas models as a basis for the options developed. Research of this nature was undertaken as part of earlier projects<sup>3</sup> and this work has been drawn on as appropriate.

Recommendations in this report have taken into account future as well as current energy market developments in Australia.

Although the model needs to respond to the national market, the terms of reference require it should also have capacity to respond to State and Territory issues.

This project has not dealt with matters of consumer protection, which are addressed through ombudsman functions at the State and Territory level. It also does not cover the consultation functions conducted by State Regulators (at the jurisdictional level) and the Australian Competition and Consumer Commission (ACCC) at the national level.

The definition of advocacy used in this report is:

*the function of making a case on behalf of consumers, in the best interests of consumers, with the intention of influencing policy or rule making.*

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<sup>3</sup> *The NECA End-User Advocacy Review*, June 2000 and *National Energy Market Consumer Advocacy, emerging needs and institutional models*, June 2004, prepared for the Consumer Federation of Australia

## **2.3 Methodology**

The methodology used focused on reviewing relevant documents and consultations held with stakeholders. The documents we reviewed included:

- MCE Standing Committee of Officials (SCO) statements on user participation;
- publicly available documentation relating to the Panel and additional material made available by the Panel; and
- relevant research such as the work commissioned by the Consumer Federation of Australia - *National Energy Market Consumer Advocacy* and the *NECA End-User Advocacy Review* of June 2000.

These documents have been utilised as sources of background information for this project.

We conducted forums, teleconferences and interviews with consumer organisation representatives, energy suppliers, the ACCC, the Essential Services Commission of Victoria and current members of the existing Panel. This provided stakeholders from all NEM jurisdictions and Tasmania, which is to join the NEM in 2005, with the opportunity to provide views on existing national advocacy arrangements and to provide input into the development of potential new arrangements.

The consultation process also invited preliminary written submissions, with six responses being received.

## **2.4 Disclaimer**

Please note that, in accordance with our firm's policy, we are obliged to advise that neither the firm nor any member nor employee undertakes responsibility in any way whatsoever to any person or organisation (other than the Ministerial Council on Energy) in respect of information set out in this report, including any errors or omissions therein, arising through negligence or otherwise however caused.

### **3 Consumer advocacy in a changing context**

This report assumes that there is a clear case for a strong and well-informed consumer voice in energy markets. The case is generally a function of key features of the market, including:

- the “essential” nature of the services provided;
- the “imbalance” created by having a few large and sophisticated sellers but many buyers, for whom energy typically represents a small proportion of their expenditure; and
- the highly technical nature of the industry and complex institutional arrangements that are necessary to facilitate competition in these markets, which limits the capacity for most consumers to participate actively in debate on key issues affecting energy supply.

It is not the purpose of this report to make the case on the “need” for energy sector consumer advocacy *per se*. We note, however, that facilitating some degree of energy sector consumer advocacy would appear to have widespread support in most developed countries and the levels of consumer involvement desired by policy-makers have been typically achieved with some level of government facilitation and support.

#### **3.1 Implications of the broad context for consumer advocacy**

The MCE’s Energy Market Reform program, which commenced December 2003, will see significant changes to the structure and operation of the Australian energy industry.

The reform program will streamline Australia’s electricity and gas markets through:

- the development of a national regulatory framework for the distribution and retail of electricity and gas. This will see the gradual transfer of distribution and retail regulatory functions from jurisdictional regulators to the national regulatory framework;
- a more streamlined approach to regulation, featuring the creation of two national bodies, the Australian Energy Market Commission (AEMC), who will be responsible for rule making and market development and the Australian Energy Regulator (AER) who will be responsible for economic regulation. These bodies will take over the functions of existing state and national regulators, thus reducing duplication of regulatory effort;
- increased co-operation between regulatory bodies; and
- streamlined National Electricity Rule change procedures.

Further details of recent energy market changes, which provide the background to this project, are provided in Appendix A.

The reform program is aiming to develop an Australian energy market whose market design, economic regulation and institutional arrangements all operate on a national basis.

In addition, there will arguably be a number of broader industry policy issues that are likely to increase the need for consumer input particularly at a national level. These include, as the MCE and State and Territory governments have recognised, increasing needs to replace ageing infrastructure, meet changing usage patterns and to respond to broad environmental pressures. These challenges are likely to have price and price structure implications for many consumers if they are to be addressed.

This raises the question of how well placed is the current consumer advocacy model to respond effectively to these changes.

The pattern and timelines for the development of the national energy market will mean that:

- in the immediate term, there is a need for national advocacy arrangements to focus on wholesale and transmission matters while allowing State and Territory based consumer organisations to continue to focus on distribution and retail issues; and
- in the future, consumer advocacy arrangements will need to be able to adapt to changes in the allocation of economic regulatory responsibilities between the States and Territories and the AER.

The AEMC will have obligations to consult on rule making<sup>4</sup> and the AER will have obligations to consult on its regulatory responsibilities. The respective management by these bodies of their consultative functions has the potential to create implications for consumer advocacy. For example:

- there are obvious efficiency advantages for both the AEMC and AER if they are able to deal with a single entity which provides input on consumer advocacy issues. However, this would not necessarily preclude the AEMC and AER calling more broadly for consumer views; and
- for an advocacy body to effectively contribute to the two bodies' consultative processes, input will need to be sophisticated and responsive to complex and emerging issues. This would require the advocacy body to possess high-level skills and the appropriate expertise to prioritise complex market issues and provide relevant, focussed input.

## **3.2 Current consumer advocacy arrangements**

### **3.2.1 Consumer advocacy groups**

A wide range of organisations provide consumer advocacy on energy matters. Most of these organisations operate at a State or Territory level, but there are several that also operate at a national level. These organisations range from those with specific charters to address consumer energy matters, to those with more general interests in consumer rights, but with specialist functions in relation to energy.

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<sup>4</sup> See National Electricity Law Exposure Draft, Part 7, Division 3 – Procedure for making a rule by the AEMC, December 2004,

Appendix B lists the main consumer advocacy organisations involved in energy issues and briefly describes the work of a number of the more prominent organisations. There is also a range of informal and formal consumer consultation processes conducted by State regulators.

The nature of these organisations and the work that they undertake is central to the consideration of future national consumer advocacy arrangements. It is vital that any new national consumer advocacy arrangements do not duplicate the existing efforts of these bodies. This is not meant to suggest that any new national advocacy body would work in isolation from existing advocacy groups; in fact it would be highly desirable that there be a complementarity of efforts and sharing of information, where practical, between the various levels of consumer organisations.

We do not question that these groups strive to represent their constituents in the best manner possible. However, consultation with consumer organisations and other stakeholders undertaken as part of this project would tend to suggest that these organisations, in their current state, have a limited capacity to effectively undertake work in the current energy market environment as a result of:

- the number and the diversity in focus of these organisations - this means that there is not one unified voice on consumer issues;
- insufficient co-ordination capability resulting in impaired ability to operate in a streamlined and efficient manner;
- the scale of many of the organisations, especially those concerned with smaller and more vulnerable consumers, which means that they have limited capacity to cover current and emerging issues. A number of the groups representing smaller consumers have focused on the most pressing issues for many of their constituents, such as disconnection and matters relating to hardship and fuel poverty;
- most organisations, particularly smaller ones with fewer resources, acknowledge that they do not have the necessary information to provide expert input on complex issues; and
- difficulties reported by organisations in accessing the technical expertise required to provide informed advice on complex issues arising from the wholesale side of the market.

A comparison of projects recently undertaken by consumer groups with current/emerging consumer issues also suggests that (in part due to the reasons described above) there are gaps in the coverage of consumer issues by these groups (i.e. not all issues of consumer importance can be addressed).

The above points also tend to suggest that, from the perspective of consumers, there is a need for consideration to be given to the creation of additional arrangements in order to provide effective consumer advocacy as the national energy market continues to evolve.

### **3.2.2 The NECA Panel**

The Panel has operated since 2003 and was established under clause 8.10 of the National Electricity Code (the Code). This clause of the Code includes provisions that address the functions of the Panel, how it is to be constituted and requirements for transparency and accountability, including responsibilities to publish funding criteria and arrange for auditing of funds.<sup>5</sup> The Panel consists of a Chairperson (the Chair) appointed by NECA for a term of three years, and other members appointed by the Chair and based on a sectoral representation model comprising:

- one domestic consumer representative;
- one business consumer representative;
- one representative of electricity market generators; and
- one representative of electricity market participants<sup>6,7</sup>.

The Code stipulates that guidelines and terms and conditions for appointment of representatives to the Panel be published and that, in developing guidelines, regard be given to “the need to ensure that representatives selected are capable of reflecting the viewpoints and concerns of the constituencies they represent”.<sup>8</sup>

In addition to powers to appoint members, the Chair also has the casting vote in all decisions of the Panel. The Code sets out situations in which NECA can remove the Chair of the Panel, such as in the event that the Chair ceases to be independent of NECA or fails to discharge the obligations of that office imposed by the Code. However, the Code is silent on situations which warrant the removal of members or on where the power to remove members is held.

The Panel’s main function is to receive and assess submissions for grant funding and where appropriate, to grant funds. The criteria for issuing funds are very broad. This means that the Panel has considerable discretionary power in determining whether an application is eligible. The Panel also has power to call for projects, where it sees the need and where these would be eligible under its funding criteria and to commission projects directly. Two projects have been commissioned to date.

Grant funding is available for advocacy in the interests of domestic and/or business consumers of electricity traded in the National Electricity Market (the NEM):

- as they are affected by the Code;
- in relation to the development, design or policy behind the Code;

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<sup>5</sup> [www.neca.com.au/files/necacode](http://www.neca.com.au/files/necacode)

<sup>6</sup> A market participant is defined in section 2.4.1 (a) of the Code as a person registered with NEMMCO as a market customer and/or market generator and/or market network service provider. Market customers are supplied electricity from a national grid connection point and must purchase all electricity supplied at the point from the spot market. This includes retailers and some large business customers (section 2.3.4).

<sup>7</sup> [www.neca.com.au/files/necacode](http://www.neca.com.au/files/necacode), National Electricity Code section 8.10.2 (a)

<sup>8</sup> [www.neca.com.au/files/necacode](http://www.neca.com.au/files/necacode), National Electricity Code section 8.10.2 (e)

- in relation to the responsibilities of the Code;
- related directly to the responsibilities of NECA and/or the National Electricity Market Management Company (NEMMCO) under the National Electricity Law and the Code; or
- in relation to matters which have implications for the NEM as a whole.

The Panel granted approximately \$1.7 million in funding across 2003 and 2004. Appendix C summarises the funding applications and funds granted by the Panel.

**Table 1: Funding issued to date by the Panel**

NEM Issue	Total \$ Funding	% of Funding
Transmission	\$469,010	27.4%
Capacity Building	\$376,684	22.0%
Distribution	\$313,892	18.4%
Wholesale Market Design	\$207,545	12.1%
Connection	\$57,410	3.4%
Demand Management	\$53,300	3.1%
Retail	\$48,352	2.8%
Attendance at Forums etc	\$36,161	2.1%
Other	\$148,140	8.7%
<b>Total</b>	<b>\$1,710,494</b>	<b>100.0%</b>

Most funding was made available for projects related to transmission issues (27 per cent of successful applications). Examples of such projects include submissions to the ACCC on the regulatory test and the Statement of Principles for the Regulation of Transmission Revenues.

Capacity building grants total 22 per cent of the funds made available for advocacy. Examples include a three-year funding arrangement to employ an electricity market specialist for a nationally focused consumer organisation; funding to assist consumers to make an informed contribution to the NEM and the Code; and funding to provide consumers training in the NEM across a number of States and Territories.

Advocacy groups dealing with distribution price reviews undertaken by the Independent Pricing and Regulatory Tribunal (IPART), ESCOSA and the Independent Competition and Regulatory Commission (ICRC) received approximately 18 per cent of total funding.

***Achievements***

To date, the Panel has contributed to consumer advocacy through the following areas:

- its establishment has allowed \$1.7 million in funds to be distributed for consumer advocacy;

- the approval of a number of projects which have allowed valuable work to be undertaken which would not otherwise have been possible;
- increased capacity building in the community advocacy sector. This has resulted directly from projects specifically funded for this purpose and indirectly through consumer advocacy organisations receiving funds to undertake or commission projects;
- the use of funds by the Panel in a way that is responsive to certain current issues;
- the submissions-based approach, which allows stakeholders to bring issues to the attention of the Panel that it may not otherwise have been aware of, and to attract funds to work on those issues; and
- the encouragement of the development of some proposals with merit to a standard which can justify funding.

### *Issues*

#### *The governance model*

The Chair, who is appointed by NECA, has significant powers including the power to appoint other members from within the sectors prescribed in the Code. The Chair also has the casting vote on all Panel decisions.

In other models, the appointing authority for members is clearly an external party, such as the MCE or its equivalent. Although in such models appointees are ultimately responsible as part of the board structure, to the appointing authority, they operate independently from that authority to meet their responsibilities as board members. This principle of separation between appointment and execution of duties is fundamental to independent governance in advisory and other bodies.

Concentrating these powers in the hands of the Chair places at risk the actual and perceived independence of Panel members. While we do not suggest that these powers have been abused in the operation of the Panel to date, the potential for such abuse exists under the current model.

#### *Lack of coherent strategic approach*

Consumer consultations suggested that the Panel does not operate within a clear and coherent strategic framework. The apparent absence of an agreed set of strategic priorities relevant to the NEM means that the Panel tends to follow a reactive rather than a proactive operating mode.

The Panel has used its capacity to commission work, but only to a very limited extent. Without a coherent strategic framework to guide choices of work to be undertaken, there is no demonstrable basis for ensuring that projects which reflect priorities are identified, or that projects effectively address current and emerging consumer issues.

A compounding issue is the complexity of issues in the NEM. The result is that the Panel's funding decisions tend to be driven by the circumstances and priorities of external organisations, who may not necessarily be well placed to assess which issues are of greatest overall strategic significance to consumers in the NEM.

In the absence of a strategic approach there is a limited basis for determining the effectiveness of the Panel's operation. Performance assessment has been based purely on activity (such as how many submissions were assessed and how many were funded) rather than outcomes (such as the level of funded work in areas of key significance) or the impacts of such work (the effect on the NEM in areas of key significance).

The published funding guidelines, finalised by the Chair on behalf of the Panel in July 2003, basically reflect the statements contained in the clauses of the Code which relate to the constitution of the Panel<sup>9</sup>. There is no further articulation of over-arching criteria. This provides little guidance for stakeholders considering lodging a submission. Also, there is no detailed decision making framework to guide the determinations of the Panel. A further consequence is that such broad criteria do not facilitate transparency in decision making. Finally, the absence of a set of strategic priorities, which would change as issues change and be used in conjunction with the fixed funding criteria, increases the risk that the Panel will not be able to use funds in the most effective way.

#### *The submission basis for funds allocation*

The submission basis for funds allocation was also noted as having a number of drawbacks:

- it can cause delays in decision-making. The Panel currently must determine applications for funding on a quarterly basis, making its funding decisions for the next quarter before that quarter commences. It is possible for funding decisions to be made between quarterly meetings. However, in some situations, as in the case for funds sought to help prepare a submission to an inquiry, decisions may be made too late to leave enough time for the work to be undertaken within required timeframes;
- the funding criteria are very broad. A number of consumer organisations expressed concern about consistency in decision-making. Whether or not there is a basis for such concerns is difficult to determine in the absence of a clearly defined framework for assessing submissions. However, the perception of inconsistency is damaging, irrespective of the reality of the situation;
- the submission based process favours those applicants who have experience and expertise in such processes, which may not necessarily favour those who have the most meritorious requests; and

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<sup>9</sup> One addition relates to the requirement for an application to include the qualifications of consultants or professional staff who will be carrying out the project. Other additions are not criteria as such but statements of the Panel's expectations of funded bodies in terms of meeting timelines and submission of reports.

- the rigorous application process can discourage smaller groups with limited resources, especially when there is no assurance of funding. The Panel has only made limited use of an ‘expression of interest’ type approach.

Overall, the absence of a clearly defined and publicly advertised strategic framework to guide how the Panel manages the submissions based approach, appears to result in the Panel functioning reactively rather than proactively and it not applying a longer-term perspective to its operations.

A number of other issues raised in the consultations that relate to the project based nature of funding allocations and the level of funding provided are worth noting. These issues, which influence the overall effectiveness of the Panel’s operations include:

- the project-based nature of the funding encourages the use of consultants by submitting organisations. This means that much of the knowledge gained as a result of undertaking the project will be held by the consultant rather than the managing organisation; and
- the project-based nature of the funding makes it harder for small groups to have funding certainty, to build capacity and to plan for the future. Rather than being able to build on their capacity over time, their development is heavily impacted by their ability to gain funding, which, for the reasons outlined above, has proven difficult for some smaller groups. This can result in spasmodic development of consumer group capacity.

#### *The sectoral composition of the Panel*

Four Panel members (excluding the Chair) are representatives of sectoral interests, two consumer and two supply side representatives. Further, the Code clearly states the expectation that representatives reflect the viewpoints and the concerns of the constituencies they represent. Representatives of electricity generators or electricity market participants who are bound by the terms of their appointment to present the views of their sector are not well placed to make decisions which are in the best interests of consumers as there will often be a conflict between the interests of these sectors and consumers. We anticipate that it will be difficult for these members to make disinterested decisions.

The objectives of consumer advocacy may be better delivered by the appointment of members who do not risk conflict of interest in operating as part of the Panel.

The absence of an agreed strategic framework to guide funding decisions also means that a mechanism that might assist the Panel to address conflicts of interest in members’ stances on particular submissions, has not been available.

#### *Other operational issues*

A number of other operational issues relating to internal business and accounting processes were identified. These include:

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- we understand that, at the moment, no budget is set to cap operating costs as opposed to grant funding;
- there has been a need for secretariat and accounting services. We understand that arrangements have now been made for external accounting services to be provided; and
- the need for processes to assess the performance of funded organisations in relation to approved projects.

***Recent changes***

The Panel has been in operation for a limited time and we understand that it has recently adopted revised administrative arrangements that may address the operational issues described above.

## **4 Criteria to guide the development of a new model**

An assessment of good practice in terms of corporate governance principles prepared by the Australian Stock Exchange (ASX)<sup>10</sup>, has been used to formulate key criteria to guide the needs for a consumer advocacy model. Although the ASX principles have been developed to apply to publicly listed companies, many of the principles can be used to provide guidance on good practice for a range of boards and committees. Particularly relevant principles include:

- laying solid foundations for management and oversight including the needs to:
  - provide strategic guidance;
  - ensure a balance of authority so that no single individual has unfettered powers;
- structuring the board to add value, including:
  - ensuring the board has a proper understanding of, and competence to deal with, the current and emerging issues of the business;
  - promoting ethical and responsible decision-making; and
- encouraging enhanced performance:
  - ensuring directors and key executives are equipped with the knowledge and information they need to discharge their duties responsibly.

We therefore propose six key criteria to guide the development of consumer advocacy.

### **4.1 Efficiency, effectiveness and accountability**

Efficiency and effectiveness are fundamental requirements applicable to any publicly funded body. While these are not specific to an advocacy function, their importance as a foundation in the design of a new model warrants them being articulated as a principle in their own right.

An efficient and effective model will make the best use of available resources to achieve its objectives. This requires operational arrangements that clearly align with overall goals.

Any consumer advocacy body must also be able to be held accountable, by publicly demonstrating its efficiency and effectiveness.

It must not only have clearly documented processes and operational policies based on best practice, but must also be able to demonstrate its adherence to these processes and policies, providing consumers and the general public with the opportunity to assess the level of efficiency and effectiveness with which the advocacy body has conducted its operations.

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<sup>10</sup> *Guidance notes 9A: Corporate governance – principles and recommendations* at [www.asx.com.au](http://www.asx.com.au)

## **4.2 Independence**

It is critical that any new advocacy function be free of conflict, whether it is from supply side or regulatory interests. This principle will underpin decisions about:

- representation on the governing structure of any new model;
- how members of that governing structure are elected;
- the ability to provide advice directly to the AEMC and the AER without it being “filtered” by another body; and
- how any funding criteria are developed and applied.

The perception of independence is just as important as the existence of actual independence. The many consumer advocacy groups working in the energy area can be expected to closely scrutinise the operations of any new body. As well as consumer groups, consumers themselves should feel confident that any new body is operating independently and in the best interests of consumers. The ASX Corporate Governance principle relating to the promotion of ethical and responsible decision-making highlights the importance of maintaining confidence in an organisation’s integrity. The corollary of such confidence is credibility.

It is therefore important that any advocacy body provides public disclosure of membership, strategic plans, policies, procedures, funding decisions and performance assessment to demonstrate that its operations are conducted in a manner that is free from any conflicts of interest.

## **4.3 Avoiding duplication of existing arrangements**

Any new advocacy model needs to be clearly based on the needs of consumers in the national energy market. This will not necessarily preclude work in areas within the State and Territory jurisdictions. However, it will be vital that work undertaken by a national advocacy body does not duplicate work being undertaken by State and Territory based bodies or provide a disincentive for those bodies to continue working on issues.

The consultations with suppliers suggested that existing regulators already perform a consultation function and that a future consumer advocacy function should not duplicate this. However, State and Territory based regulators will consult on State and Territory issues and duplication of the activities of a national advocacy body is unlikely except to the extent that national and jurisdictional issues are in concert.

In relation to the consulting function incorporated into the new AER and the AMEC, a new advocacy function will need to respond to these bodies to provide input on regulatory and rule making issues in the contexts of the national energy market and broader market development advice.

A further point made in the forums was that any new consumer advocacy should not duplicate ACCC and existing ombudsman functions. Duplication is unlikely, as there should be a clear

separation between consumer advocacy functions and consumer protection such as is currently provided by ombudsmen to ensure that consumers are not unfairly treated under existing codes of practice.

Certain consumer stakeholders saw future advocacy arrangements as enhancing existing consumer advocacy structures; a repeated comment made in consultations related to the perception of under-resourced advocacy arrangements at the State and Territory level. Hence, it will be important that there is clear delineation between existing State and Territory based consumer groups and any future arrangements at a national level.

A new advocacy body could be called on to provide funding to support smaller consumer groups in addressing matters that fall within the States' or Territories' areas of responsibility. Certain areas, such as energy concessions, are State / Territory funding responsibilities and are not part of national energy market arrangements. It would not seem appropriate based on the identification for a national advocacy body to initiate or sponsor work on areas outside of national market arrangements. However, in practical terms the boundaries of appropriate scope for a national body may not always be clear.

#### **4.4 Being proactive and strategic**

A consumer advocacy model must be able to analyse current and future market arrangements, determine strategic priorities for consumer advocacy and arrange for projects to be undertaken in response to these needs in a forward looking, timely manner.

It is reasonable to expect that the new energy market will see constant and often unanticipated change. Flexibility to adapt to such changes will form an integral part of a pro-active approach.

To ensure a pro-active approach, the work program of any new body needs to be derived from a forward looking strategic planning process which considers new and emerging needs.

A strategic approach would see prioritisation of current and emerging issues in the national energy market of particular importance to the interests of consumers. Consideration would then be given to the likely impact of consumer advocacy or its absence, on consumer outcomes, with both short and long term implications assessed.

#### **4.5 Ability to build capacity**

A repeated theme of the stakeholder consultations was the complexity of the current market arrangements and the difficulties this placed on existing advocacy groups seeking to provide high-level consumer advocacy.

This complexity seems unlikely to decrease. It may in fact become more pronounced as a result of the continual development of the national energy market and the coverage of gas as well as electricity issues.

To be able to respond effectively to this complexity, any future consumer advocacy body will need to undertake its functions in a manner that contributes to the broader development of

advocacy capacity. This includes the capacity of a new advocacy body as well as the capacity of the many other smaller organisations currently undertaking advocacy.

## **4.6 Incorporating appropriate expertise**

A consumer advocacy body should have the necessary skills and expertise to understand the national energy market and the issues it poses for consumers. Skills in strategic planning, organisation and direct advocacy will also be necessary to develop a strategic planning framework and liaise effectively with the AEMC and the AER as required. Experience in governance will also be vital.

Incorporating such elements into an advocacy body would require that the members of the governing body of an advocacy group should be selected:

- on the basis of appropriate skills and experience;
- to provide an appropriate balance of required skill and expertise; and
- so that the aggregate skills and experience of members should be more important than the skills and experience of any one member.

## **5 Elements common to the development of a new advocacy model**

There are certain elements that are common to all the national advocacy models we review later in this report. We describe these elements below so that the models described in section 6 can be more clearly represented in terms of their differences.

### **5.1 Scope**

Given the fluidity of the current reform process and the considerable detail still to be finalised in relation to the operation of the AEMC and AER, there are inevitable constraints in anticipating the specific issues that will emerge and the specific needs that a consumer advocacy body might address.

The stakeholders we consulted varied in their views on the appropriate scope of a national advocacy body. While there was general agreement about the need for social and economic issues to be covered, there were differences in views as to whether environmental issues should also be included.

It would seem reasonable to define the scope of a new national consumer advocacy body by:

- first, defining the outputs that consumers are interested in receiving; and
- second, outlining the sorts of issues that might pertain to or bear on those interests.

It seems reasonable to assume that most consumers are not interested in energy *per se*, but rather they are interested in the services it provides (e.g. as an affordable and reliable source of temperature control, light, refrigeration and so on). The demand for energy is therefore derived from the demand for these services and it has few other intrinsic attributes valued by consumers.

This suggests that consumers are primarily interested in the final outputs of energy supply. Hence, the following general topics can be anticipated to require the attention of any consumer advocacy body:

- pricing, including all factors that might impact on price to the consumer, such as wholesale, transmission and distribution matters;
- service access and equity of access; and
- service standards (particularly such issues as interruption of supply and safety standards in the industry).

These interests are largely consistent with the draft National Electricity Law<sup>11</sup>, which sets out market objectives in relation to price, reliability; quality, and safety and security.

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<sup>11</sup> National Electricity Law Exposure Draft 1 December 2004 at [www.mce.gov.au](http://www.mce.gov.au)

While the issues that are currently of most concern in the gas industry are different, it is not obvious that gas consumers' interests are substantially different to those of electricity consumers.

We suggest that the market objectives set out above also provide guidance that appears relevant to defining the scope of the new body and more importantly, the context in which those issues are addressed.

### **5.1.1 Consumer coverage**

There were diverse opinions in all the consultation sessions with consumer groups on who should be represented by a new advocacy model. These views included:

- representation of the most vulnerable consumers only;
- small consumers only (including both domestic and small business); and
- all consumers.

The case for the model covering all consumers is based on the premise that there is a significant body of common issues and an advocacy body that takes into account all end user interests would benefit the energy market as a whole.

The case for limiting coverage of an advocacy body to only smaller consumer issues is based on views that:

- there is a divergence of issues between the very large consumers and other consumers, particularly in relation to pricing. Some stakeholders believe that large consumers are better placed to undertake their own advocacy; and
- there is a need to ensure that those least able to look after their own interests (vulnerable, or small and possibly medium sized consumers) have an advocate.

The key questions for determining coverage include:

- what is the extent of common issues?
- what is the extent to which a united approach to common issues will benefit all consumers?  
and
- what is the extent to which a combined approach would result in the needs of smaller consumers, including the vulnerable, being overlooked because their voice was not heard?

In relation to the extent of common issues, there is clearly a convergence of views at the very highest level. It is in the best interests of all consumers that the energy market operates efficiently and more specific issues relating to the Code, regional boundaries such as

transmission rights trading will be of shared interest. All end users, regardless of their size, are likely to be concerned with prices, reliability and quality of supply as well as access to services.

The potential tension between consumers' interests relates to issues of price where price shifts are not shared equally. Advocates for small consumers argue that large consumers are in a strong bargaining position to reap price benefits because of the amount of energy they purchase, their superior knowledge of the market relative to smaller consumers and because of the resources they can apply to ensuring they get the best market offer. This can ensure they achieve good price outcomes. However, many consumer advocates argue that these are paid for by other sections of the market, namely the smaller consumers.

There are areas of convergence in the interests of small, medium and large consumers, meaning that there are potential benefits in a new advocacy body covering all consumers, as issues of common interest will benefit all involved in the energy market. There are also diverging interests and it is likely that small and vulnerable consumers will need some protection in place to ensure their interests are protected.

The tensions that arise when the interests of different consumer groups are in conflict can, to some degree, be addressed through the operational policies and procedures by which a new consumer body operates. Strategic priorities developed as part of a strategic framework to guide and focus operations must therefore ensure that the needs of small consumers are addressed. It is suggested that a strategic framework would articulate responsibilities in relation to consumers and effectively provide guidance on matters where there is a potential conflict of interest.

A strategic priority framework will also help identify where the advocacy body needs to be proactive in commissioning research that is in the interests of different consumer segments.

We propose that a new body retains some form of grant funding utilising an expression of interest/submission based process of application. However, a submissions based approach generates project proposals which often come from organisations representing particular consumer interests which can potentially conflict with the interests of other consumer groups.

In addition to strategic priorities, funding criteria can provide some guidance in grant decision making by including clear statements that projects are not to disadvantage any particular segment of consumers.

We suggest that in providing advocacy directly to the AER and AEMC, issues of potential conflict between consumers on specific issues should be assessed and appropriate advice developed. To achieve this, the new body could undertake impact assessments of the implications for different consumer groups.

### **5.1.2 Coverage of issues which relate to State and Territory responsibilities**

A new advocacy body could be called on to fund smaller consumer groups to address matters that fall within the States' or Territories' areas of responsibility.

We do not believe that there is merit in applying rigid rules about what is and is not included, in the scope of a new advocacy body. For example, there may be matters relating to retail pricing which would not be investigated without the support of the new advocacy body yet could be in the interests of certain consumers. However, it will also be important to ensure that the new advocacy body does not financially support, commission or directly undertake work which duplicates current findings of other consumer bodies.

We see there could be value in developing a scope guidance statement to help the new advocacy body make decisions about what is and what is not within the domain if what can be funded.

## **5.2 Functions of new advocacy body**

The AEMC and the AER will require a body capable of directly advising them on consumer views on market, Code and regulatory issues. It will be critical that a new advocacy body can draw on well-researched evidence. Providing funding to organisations to undertake projects in the consumer interests will supply part but not all of the intellectual capital required by the advocacy body. It will also be necessary to supplement this source of information with other projects determined by the body's strategic priorities. As a minimum this will require the capacity to commission research. The capacity to undertake projects directly, using a secretariat staff, will also be required.

We therefore propose that the functions, which will be common to any advocacy body, are as follows:

- direct advocacy to the AEMC and the AER on a range of market and regulatory issues;
- allocating funding to consumer advocacy organisations and other stakeholders for projects which align with strategic priorities;
- commissioning research to meet strategic priorities and deliver expert advice to the AEMC and AER on key issues. We would anticipate that research funds would generally go to bodies that could potentially undertake technical work to inform consumer interests and better balance the work regularly commissioned by supplier interests, rather than bodies with a historic consumer advocacy role;
- undertaking research and information gathering directly with staff resources;
- gathering the views of consumer organisations and other market stakeholders to feed into the strategic planning process; and

- disseminating research findings and information about the market development to consumer advocacy organisations in order to build their understanding and capacity to address consumer issues directly.<sup>12</sup>

A number of existing advocacy groups support a model which could deliver information to constituent members. A role of providing information to consumer organisations to contribute to building their capacity can be incorporated into the options we consider. At a minimum, this would involve dissemination of research conducted directly or as a result of funded projects. It could also include sharing material used by the national advocacy body or other advocates to help develop thinking on issues relevant to consumers.

### **5.3 A strategic framework**

A broad scope for a new advocacy model requires a strategic framework to provide guidance, flexibility and focus.

A strategic framework would be based on the identification and prioritisation of current and emerging issues in the national energy market that consumers are likely to regard as significant. This would need to be a forward-looking approach. It would require the national advocacy body to assess how future developments might affect consumers and the likely impacts of effective consumer advocacy or its absence, on consumer outcomes. Both long and short-term issues and outcomes would need to be assessed.

This thinking would then provide a strategic framework that the advocacy body could use to assess and prioritise requests for funding, and key issues where the advocacy body needs to initiate research or advocacy, to help consumers get the most benefit in both the long and short term, from what will be inevitably constrained consumer advocacy resources and funds.

It is proposed that the inputs to the strategic planning process would include:

- the views of existing consumer advocacy bodies, both State / Territory based and those with a more national focus;
- advice on Ministerial priorities, which would be used as an information input and not as a directive; and
- assessments informed by a program of research and by identified current and emerging issues and risks to and opportunities for, consumers in national energy markets.

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<sup>12</sup> It may also be worth considering the value of the ABARE OUTLOOK conference model as a strategy for information dissemination and capacity building. The ABARE conference, which is held once a year, brings primary industries stakeholders together to hear presentations on the latest research and forecasts.

## **5.4 Administrative Support/Research Functions**

All the models we discuss would need administrative support to assist with, for example:

- processing requests for funding in readiness for consideration by the advocacy body decision makers;
- support for meetings;
- administering grants and monitoring the AEMC and the AER; and
- fulfilling performance reporting and accountability requirements such as annual reports.

In addition, a research capacity is vital to conduct or commission investigations at the request of the advocacy body and to collect information on energy market developments. We also believe that assistance to advocacy body members with project management of research will be important.

We have also assumed that common to each governance structure would be the need for staff with technical and industry experience and that a core staff of three could be required to meet the functional requirements outlined above. However, there would be provision for staff numbers to expand as the workload of the advocacy body increased.

## **5.5 Funding model for new advocacy arrangements**

Under the current advocacy arrangements in the NEM, the funding for the Panel is derived from a levy on electricity market participants collected by NEMMCO. As in any market where all participants bear similar charges, it seems reasonable to assume that these costs will be passed on to consumers, who therefore ultimately pay for their own advocacy.

Further consideration of the funding mechanism needs to be undertaken as part of the process of operationalising any new national advocacy model. The resolution of the matters of practical detail necessary to finalise any recommendation is beyond the scope of this report.

### **5.5.1 Quantum of funds**

The amount of funding will need to be reviewed to allow the consumer advocacy function to be adequately resourced.

At the current time, the Panel receives \$1 million per annum, but has requested funding increases to \$1.1 million in 2004-05 and \$1.2 million in 2005-06<sup>13</sup> to allow it to address consumer advocacy within the electricity industry.

Even if a revised model were to be applied only to advocacy in the electricity industry, there may be a need for additional funding. This would be largely driven by requirements to develop

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<sup>13</sup> National Consumers Electricity Advocacy panel, *Draft report on provisional funding requirements for end user advocacy for 2004-07*, May 2004

and implement a more proactive strategic agenda, undertake associated research and monitor the efficiency of, and consumer benefits arising from, advocacy funding.

Within this context, empirical evidence suggests that a funding increase for a national advocacy function operating in both the gas and electricity markets appears to be warranted given:

- the extension of the advocacy function to cover gas issues (in the future);
- the increasingly complex issues arising in national energy markets and the heightened need to ensure that consumer interests are more adequately represented; and
- the sheer size of the market. The national expenditure on gas and electricity is \$12.1 billion which represents approximately 1.6 per cent of GDP.

On the other hand, the quantum of funds required may be offset by any efficiency gains that a revised model may be able to realise.

At this stage it is difficult to be definitive on the quantum of funds required by any new model for several reasons.

Firstly, there is the absence of any currently available measure of output performance to accurately assess the level of consumer benefits delivered for funding currently distributed by the Panel. Instead one can only refer to the level of inputs (such as resources or research) that the funding might reasonably be expected to procure and assume that if a model satisfies the criteria set out in Section 4 customer benefits will accrue in proportion to the level of funding applied.

A further consideration is that, like funding for many social services, the demand for consumer advocacy is unlikely to ever be completely satisfied. In practical terms, there will always be a case at the margin for additional funding. But in practical terms, the amount of consumer advocacy activity is more likely to be set by the amount of funding provided rather than the budget being determined by “need”.

Our review of the options which we describe in the next section, indicated that all the options are likely to incur similar levels of cost and that cost is unlikely to be a factor that would materially distinguish one option from another.

## **5.6 Funding guidelines**

The guidelines to be applied to funding decisions need to be able to provide clear guidance in assessing funding requests and provide consistency and transparency in decision making. We propose that the following criteria could be applied:

### *Threshold criteria for assessing submissions*

Eligibility would be determined by with reference to the following criteria:

- whether the submission relates to the current operation or development of, the national energy market and/or to market objectives of price, reliability security and quality;
- whether the submission clearly relate to the interests of one of more segments of the consumer market (where a segment is defined by size, by location as in the case of rural and remote consumers, or by other key features);
- whether the proposed project aligns with priorities developed by the advocacy body in its strategic framework; and
- whether the submitting body has the ability to manage the project efficiently and engage with stakeholders as required to develop informed advice.

#### *Prioritising criteria*

Further criteria would be used to establish the relative priority of submissions. The advocacy body would consider whether:

- the proposed project relates to an issue or area of work that is clearly of considerable value to consumers and does not duplicate projects or work already being undertaken or about to be undertaken;
- the proposed project relates to an issue where recent findings on the issue are deemed not to be accurate, conclusive or substantial;
- the project can be undertaken in a reasonable timeframe so that the project findings will be available to influence regulation and policy development (consideration should be given to the forward looking strategic framework with respect to this);
- the proposed project has clear deliverables;
- the submission would not work unreasonably against the interests of a particular consumer group; and
- the submitting body has the capacity to financially contribute to the proposed project and is likely to undertake the project using its own resources.

In relation to this last prioritising criterion, views at the consultations indicated that very large consumers could have the capacity to fund projects. and would proceed with these works themselves if funding was not provided from the advocacy body.

## **5.7 Reporting arrangements**

An advocacy body will need to report to the body to which it is ultimately responsible. The reporting arrangements should minimise the ability for actual, potential or perceived conflicts of interest regarding the operation of the advocacy body. This excludes from consideration

regulatory bodies such as the AER and the AEMC, because both would receive advocacy input and advice from the national advocacy body.

We propose that the reporting relationship would be directly to the MCE. There is a risk in such an arrangement that the body will be perceived as being subject to political influence, especially in light of the proposal that these appointments be made by the MCE. However, we suggest that the independent nature of much of the body's operations, whereby it determines its own strategic priorities and manages its own budget, and its public accountability, would ensure independence in reality.

The new advocacy model would be required to report annually to the MCE on performance in relation to strategic objectives as well as on budget expenditure. It should be accountable to the MCE against a predefined and transparent set of objectives. These objectives would be set as part of the new advocacy body's strategic planning and management process and monitored on the basis of performance measures identified and implemented by the new body.

The national advocacy body would need to establish budgeting and financial control processes to control its operational costs and help ensure that available funding is directed to the greatest possible extent to achieving consumer outcomes.

Performance monitoring measures could be developed concurrently. Their purpose would be to help the national advocacy body to monitor and report on whether it may be achieving its intended objectives. Wherever possible these measures should be based on outcomes of rather than inputs to, the consumer advocacy process.

An outcome based performance measurement framework that demonstrates whether the national advocacy body delivers value for money could help to provide a basis for determining future funding requirements.

Transparency and accountability would be aided by appropriate public reporting. We suggest that the national advocacy body would:

- publish copies of the advocacy body's strategic framework, funding criteria and priority issues on an annual and forward looking basis as stand-alone documents;
- publish promptly after the completion, all commissioned consultancy reports including those undertaken through the grant function;;
- prepare an annual report for public (in particular consumer) consideration outlining:
  - the advocacy body's strategic framework and priority issues for the reporting period;
  - the number of funding applications received and the issues they related to;
  - summary of funding applications approved, including the level of funding, the use of the funding, the receiving organisation and the issue the application related to;

- in-house research conducted and external research commissioned by the advocacy body to third parties, including the aim and scope of such work, resources used and outcomes/findings;
  - financial statements; and
  - an assessment of the overall effectiveness of the advocacy body's operations.
- publish, in a timely manner, decisions on applications for funding grants, including reasons for acceptance or rejection of the application; and
  - publish, in a timely manner, details of advocacy/advice provided to the AER and AEMC on consumer issues.

## **6 Options for Consumer Advocacy**

### **6.1 No separate consumer advocacy body**

Under this arrangement, there would be no consumer advocacy body as such, but dependence on consumer consultative functions located within existing structures such as the ACCC and jurisdiction based regulators.

As part of their decision-making process, regulators can use various measures to inform and involve stakeholders, including:

- advertising upcoming reviews on websites and in state / national newspapers;
- directly informing key stakeholders (for example, via email);
- conducting public hearings, seminars and workshops;
- seeking submissions from the public;
- consulting with various stakeholders directly; and
- publishing issues and discussion papers, and research reports.

In addition, the state regulators of Victoria, South Australia and Tasmania have established committees that provide forums for consumer representatives to advise the regulator on consumer issues and needs for example, ESCOSA's Consumer Advisory Council, ESC Victoria's Customer Consultative Committee and Tasmania's Energy Customer Consultative Committee.

However these functions do not exist in all States and Territories. They do not seem likely to provide the level of consumer advocacy suggested in Section 3 of this report. This is because they do not have a remit to operate independently of regulators to set advocacy agendas; do not have a national scope either singly or in total; and are constituted by and do not have access to funding independently of, regulators. The state regulators' model could, however, be used as a basis for an AEMC and AER consultation model in the future. This arrangement would see these bodies calling for input from consumer organisations as required for specific issues.

Similar consultative functions exist in other regulated industries. The Australian Communications Authority (ACA) consults with consumer representatives through its Consumer Consultative Forum (CCF). The CCF meets twice a year to consult on a wide range of communications issues and ensure that consumer interests are adequately considered in the decision-making process. Membership of the CCF is at the invitation of the ACA, and includes consumer organisations, government agencies and industry bodies.

There are parallels between the concept of not having a separate consumer advocacy body for national energy market matters and the arrangements currently used by the ACA. It is significant however, that the ACA has identified the need to improve the effectiveness of

consumer participation in the regulation and governance of the telecommunications industry<sup>14</sup>. The ACA has also identified needs for appropriate program funding and for commissioned research for the consumer sector.

The ACA example suggests that the option of no separate consumer body is not a viable way to deliver a robust consumer advocacy function.

A further important consideration is that a dependence on existing regulatory structures for advocacy of consumer interests would ignore the extent to which regulators have duties to operate independently of both industry and consumers. Such an arrangement would therefore be contrary to regulator independence.

The absence of a national body would also place the total responsibility for independent consumer advocacy on the large number of mainly small, state-based consumer organisations that currently exist. As well as being inappropriately positioned to tackle national market issues as a result of their specific charters, these bodies have, in the main, been clear in their advice that they do not have the resources or the technical knowledge necessary to participate effectively in advocacy on complex national market issues.

Because of these reasons and the general case for a national advocacy model outlined in Section 3, the scenario of no separate consumer advocacy body is not discussed further.

## **6.2 Option 1 - A national committee building on State and Territory based consumer advocacy bodies**

Under this model, a national committee, including but not restricted to representation from all States and Territories, would be established to provide consumer advocacy on national energy market issues.

This option, has arisen from views expressed in the consultations. This model would have particular advantages in addressing matters of relevance to small consumers. This is because most State and Territory organisations in the consumer advocacy field working on energy issues, which would form the majority of the membership, focus on small consumers and could bring detailed knowledge of issues in this domain.

The national committee would be similar to the Ministerial Council model which involves:

- State, Territory and Commonwealth Ministers meeting regularly over matters of shared interest;
- support from secretariats,
- managing research funds;

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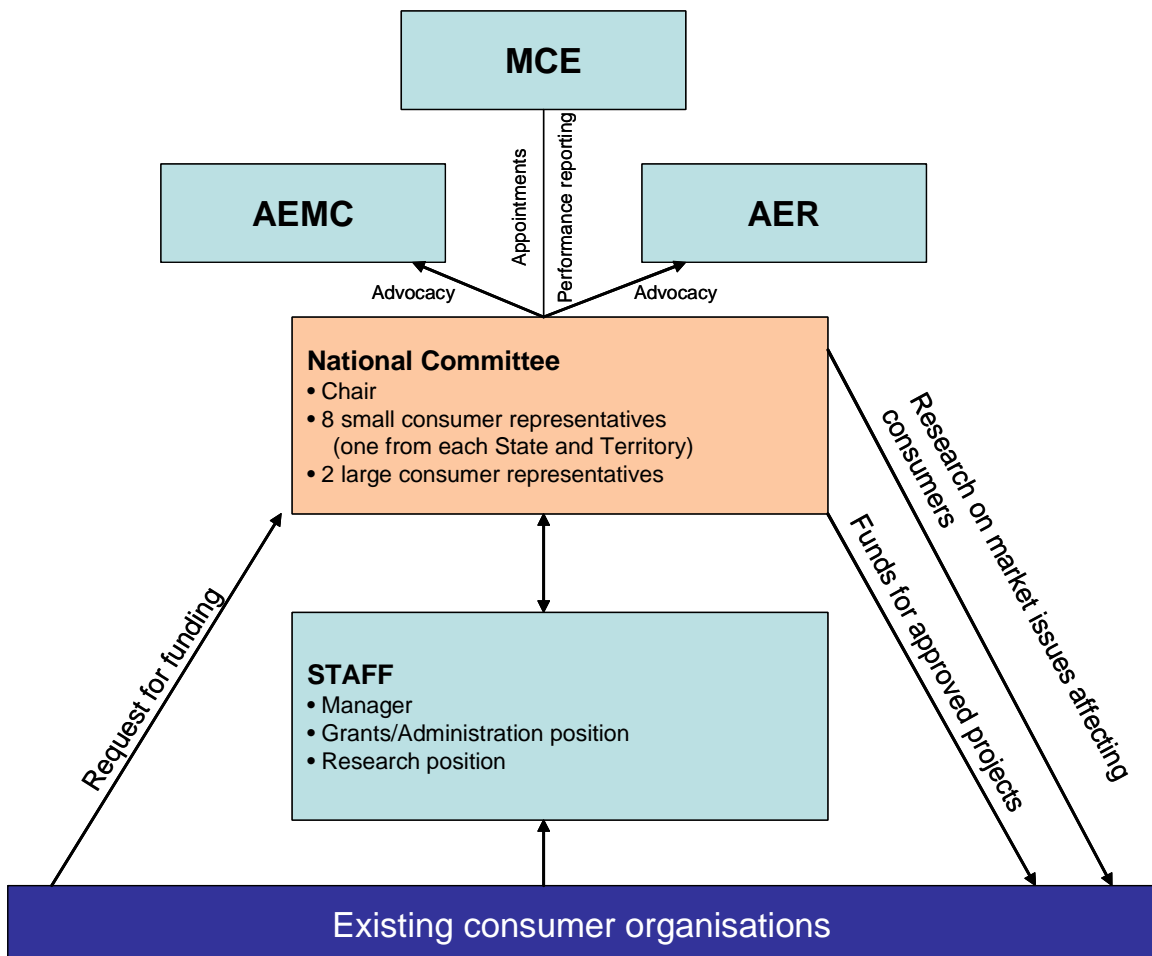
<sup>14</sup> Australian Communications Authority, 2004, 'Consumer Driven Communications: Strategies for Better Representation Issues paper',

- the use of a priority setting process to guide decisions about research and other projects;
- organise complex workloads through a system of taskforces (for time limited projects) and sub-committees (for management of issues of a more ongoing nature), with sub-committees managing a number of projects at any one time; and
- receiving submissions for project funding from member jurisdictions and responsibility for leading projects resting with the submitting jurisdiction.

One difference would be that, under the Ministerial Council model, representation from the member jurisdictions is ex officio whereas the national committee model would require selection of a jurisdictional representative from a number of relevant organisations.

The chart below demonstrates how this model would operate.

**Option 1 – National Committee**



### **6.2.1 Chairing arrangements**

In this model, an independent Chair is appointed by the MCE. An independent Chair would help ensure balance across jurisdictional interests. It would also allow the Chair to be selected on the basis of skill and independence.

### **6.2.2 Membership**

As this option is based on a consumer representative model, the draft Principles for the Appointment of Consumer Representatives prepared by the Commonwealth Consumer Affairs Advisory Council have been drawn on to provide guidance on appointment matters.<sup>15</sup> The relevant principles include:

- appointments are to be made on merit with nominees demonstrating:
  - expertise in consumer affairs;
  - links to relevant consumer organisations;
  - capacity and willingness to consult with relevant consumer organisations; and
  - knowledge or the ability to acquire knowledge, of the industry / issues involved in the appointment.
- appointees must be independent of industry or government;
- consumer organisations must be involved in appointments; and
- a wide range of candidates should be sought.

This model would see a committee made up of nominated representatives from all States and Territories and could also include national consumer bodies. As most State and Territory organisations working on energy in the consumer advocacy field focus on small consumers, a model purely based on State and Territory representation may not be able to represent interests of all consumers. To address this two positions could be made available for members representing business interests, although it may be difficult to determine a method by which these members could be elected that is consistent with the representational nature of the model.

This would mean a committee of 10 members excluding the Chair, with one representative of each State and Territory nominated by existing consumer organisations and two members elected to represent larger business consumers.<sup>16</sup> As Western Australia and Northern Territory are subject to the AEMC on gas access matters they should be included within the membership of the new structure. In addition, there is provision under the current arrangements for Western Australia to join the national energy market, and for coverage by the AER, by agreement.

<sup>15</sup> Commonwealth Consumer Affairs Advisory Council, Principles for the appointment of consumer representatives: a process for governments and industry, May 2002.

<sup>16</sup> We have suggested two members drawn from bodies with a national focus but this number may need to be further debated

In keeping with the representational focus of this option, we would see that members would be nominated by consumer organisations with appointments made by the MCE. The MCE would have the right to remove members under certain prescribed conditions. The Code currently prescribes the grounds on which the NECA Panel Chair can be removed. These include such grounds as insolvency, the Chair no longer being independent of NECA and failure to discharge the obligations of the role. Grounds for removal of national committee members would need to parallel these requirements, but clearly not be able to impact on the provision of frank and independent advice by members.

The MCE role in making appointments would not contravene the criterion for independence provided it is clear that the MCE does not have any involvement with the day to day operation of this or any model adopted and that it cannot in any way direct the Chair or board on how they operate within the context of their charter and strategic plan.

Under such an arrangement, State or Territory organisations would nominate their jurisdictional representatives. National members selected to represent large consumers could be nominated by organisations representing broad business interests.

### **6.2.3 Assessment of the model in terms of the proposed criteria**

#### *Efficiency, effectiveness and accountability*

A committee structure made up of State / Territory and national consumer body representatives may face serious challenges in terms of the efficiency of its decision making processes. Members can be expected to bring the interests of their jurisdiction to the decision making process and be bound to represent the interests of those who have nominated them rather than being able to act independently in the interests of consumers in general and the issues posed by the national energy market. The jurisdictional interests represented by this model can therefore be expected to have consequences for the quality of decision making, and the capacity for reaching agreements, including agreement about a strategic planning framework to guide the body's work agenda.

The size of the body also poses challenges for efficient and effective operations. Representation based on State / Territory jurisdictions with some national organisation representatives and an independent Chair requires a body of some 11 members<sup>17</sup>. The size of a decision making body is critical to the efficiency and effectiveness of its operation. A body of this size, given the likely divergence of perspectives, is likely to be beyond the optimal size for efficient decision making.

The model outlined proposes an independent Chair as the only arrangement likely to be able to mediate between the different member interests. However, such an arrangement could potentially lead to conflict between Chair and members as a result of the different appointment procedures used.

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<sup>17</sup> If the number of business representatives were to be increased this would make for an even more unwieldy committee.

Given the scope of the body to cover all consumers there could be serious drawbacks with this model's ability to represent these various interests. The board composition is likely to be divided between those representing small consumers (who would be in the majority) and those representing business interests. We anticipate that this would lead to problems in reaching an agreed position on matters such as funding applications and strategic priorities.

We also anticipate the need for strict protocols in relation to decision making on funding applications, given that board members will have links with some submitting groups. In such situations it will be important for members with a potential conflict of interest to declare that interest and stand aside from the decision-making process.

### *Independence*

The jurisdictional nature of member representatives is a major issue with this model and will impact on the ability of members to act independently of their constituents' interests. Given the strong links between committee members and consumer organisations, it is likely that conflicts of interest may arise in relation to requests for grant funds. It would be important for there to be operating rules to govern these situations and guidelines on when members need to stand aside from the decision making process.

### *Avoiding duplication of existing consumer arrangements*

Under this model, members would bring an informed understanding of work that was being undertaken at the State and Territory level and by nationally focused consumer organisations. This could be of benefit in ensuring that duplication was avoided.

However, it would be important to ensure that there was a clear and shared agreement about the delineation of the scope of the national body and that of existing organisations so that, for example hardship issues covered by state groups were not addressed by the national body.

### *Being proactive and strategic*

This principle requires the ability to analyse current and future market arrangements and determine implications for consumers and respond accordingly. Flexibility to allow change in priorities is essential.

A robust strategic planning and priority setting approach can enable any consumer advocacy model to articulate and address new issues. However, the size and jurisdictional nature of the representation may constrain flexibility for the reasons outlined above under discussion of the efficiency, effectiveness and accountability of the model.

A theme that recurred as part of the consultations with consumer organisations related to the constraints applying to their ability to be informed about the many complex, often technical aspects of the current NEM. This constraint can be expected to become more pronounced with the shift to a national market context. A model based on representation from existing consumer organisations may not have the full set of technical skills required to undertake the necessary

market analysis to the extent required to determine new and emerging needs in consumer advocacy, even with support provided by staff.

#### *Ability to build capacity*

The relationships of members with consumer organisations in their jurisdictions would assist in the development of both in-house and consumer capacity. Members with experience in energy issues would bring a certain level of specific consumer knowledge to the advocacy body's operations. They would also be a conduit through which consumer input could be received by the advocacy body in a timely fashion. In addition, their relationships with these organisations will provide a natural advantage in the development of consumer capacity, particularly through the dissemination of information.

#### *Incorporating appropriate technical skills and market understanding*

A key issue emerging from the consultations was the high level of technical skill and market knowledge required to participate as advocates in the current gas and electricity markets.

Individual consumer organisations may have skills and knowledge relevant to certain aspects of the market. However, inevitable constraints of time, resourcing and workload means it is unlikely to be feasible for the membership to acquire the breadth of knowledge required to fully appreciate all aspects of the market, especially when significant change is occurring on an ongoing basis.

The consequence for this model is that the membership can be expected to have strong skills and expertise relevant to some, but not all areas of the market. To perform as a strong lead advocate for consumers, it may be necessary to supplement the skill base of the membership. This would require the ability to co-opt members as required, as in the case where a particular issue required specific technical expertise not contained in the membership.

A key drawback in such an approach is that the committee is dependent on external parties for the skills it needs to make certain decisions. This risks compromising its ability to operate proactively and is likely to slow its decision-making and the finalisation of advocacy advice to the AER and AEMC.

The mismatch between the skills that would be included in this model and those required of a new consumer body, would appear to be a critical issue with this option.

### **6.3 Option 2 –Panel with sectoral representation**

Section 3.2.2 outlines the arrangements of the current NECA Panel along with its strengths and weaknesses. This option, while modelled on the NECA Panel, seeks where possible to modify that model in line with the key criteria as outlined under Section 4 and the requirement to provide advocacy in a national energy market rather than a national electricity market.

### **6.3.1 Chairing arrangements**

The panel chair would be appointed independently by the MCE. Power to remove the Chair under prescribed circumstances would also rest with the MCE.

### **6.3.2 Membership**

The representational model, which determines membership, would be retained, as it is a central feature of this option. However membership would need to be increased to include representatives of the gas industry. We would anticipate membership would include:

- a representative of electricity generators;
- representatives of gas and electricity retailers. This could be two members, one each from gas and electricity or one representative from a retailer providing both. In practice we envisage that the latter option would more likely to reflect developments in the national market for energy retailing;
- similarly, one or two representatives from gas and electricity networks businesses may also be considered because of the accountabilities of these businesses for service standards;
- one representative of business consumers; and
- one representative of domestic consumers.

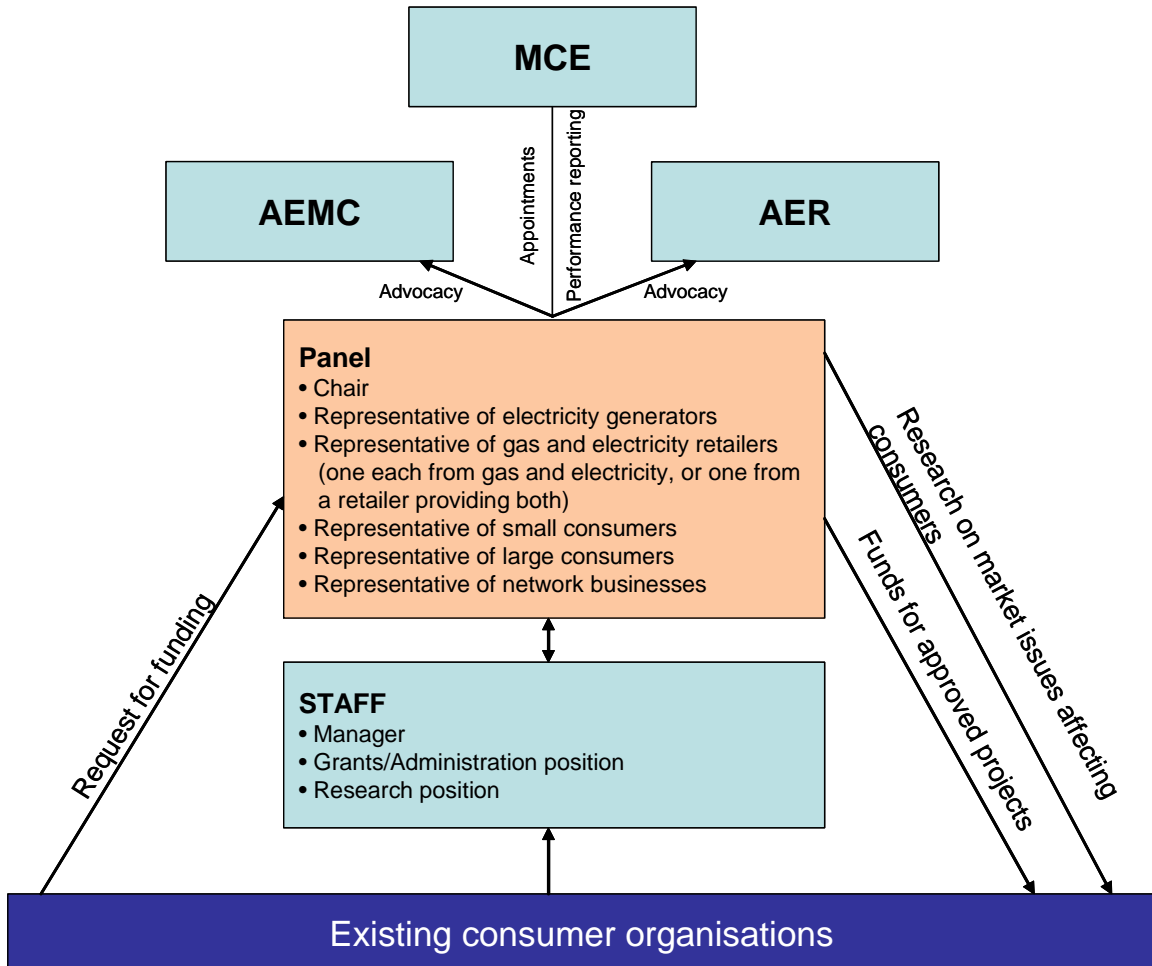
It would be critical for members to be appointed by the MCE and not the Chair. Similarly, the MCE should have the authority to remove members. The grounds for removal would be based on those currently contained in the Code in relation to the Panel Chair and which have been referred to above in discussion of the national committee model. In making appointments, we would anticipate that the MCE would seek the views of a broad arrange of stakeholders.

The MCE would not direct, nor intrude, on the operations of the panel.

Under arrangements for the current Panel outlined in the Code, there is an expectation that members will reflect the viewpoints and concerns of the constituencies they represent. We suggest it is preferable that there not be such a directive, but rather that all members have responsibility for acting in the best interests of consumers.

Members could be appointed for up to three years, but with reappointment timelines staggered so that any changeover in members does not occur at the one time and greatly diminish the levels of in-house experience and capacity.

**Option 2 – Panel with sectoral representation**



**6.3.3 Assessment of the model in terms of the proposed criteria**

*Efficiency, effectiveness and accountability*

The business and small consumers’ representatives would be selected on their ability to represent consumers of both forms of energy. This would ensure the panel did not become too large for efficient decision-making. However, as with the national committee model, the representational model of membership works against efficient decision making with consequences for the overall effectiveness of the body.

There is currently a range of accountability mechanisms in place with the current Panel, including publication of funding criteria and annual reporting. These could be retained and strengthened under an enhanced model.

The inclusion of a panel member to represent small consumers and one to represent large consumers allows the interests of these groups to be represented. However the sectoral nature of the representation does not necessarily allow for the panel as whole to act in the best interests of consumers on all matters. This is a key failing of such a model where supply side interests are represented which potentially conflict with consumer interests.

We have considered options such as increasing the number of members representing consumer interests. However, although this may allow the consumer case to be put more strongly, we do not believe it will resolve differences that result from members reflecting their constituencies' positions.

### *Independence*

As with the national committee option, the independence of a model based on the current Panel may be compromised by the sectoral nature of the representation. The selection of an independent Chair is not sufficient to address inherent problems arising from members representing their sectoral interests rather than the interests of all consumers.

In anticipating the future role of an advocacy body in the national energy market, we have assumed that it will have a role in directly advocating to the AEMC and the AER. This could pose a serious conflict of interest for industry representatives and result in either poor advice, or advice that was not independent or perceived to be independent. The risks appear likely to compromise direct advocacy to the AEMC and AER under this model.

Appointments of all members and the Chair by the MCE would ensure independence (both actual and perceived) of the AEMC and AER.

### *Avoiding duplication of existing consumer arrangements*

This can be achieved through the development of a clearly articulated statement of the scope of the panel, and establishment of clear funding criteria, a rigorous process for assessing submissions for funding and arrangements for the panel to be well informed about the nature of work being undertaken by existing consumer groups.

### *Being proactive and strategic*

In terms of flexibility to adapt to change, the sectoral nature of the governance structure works against this given that members will be bound to positions based on the interests of their constituencies. This will also impact on the ability of this model to construct a pro-active agenda based on consumer issues.

### *Ability to build capacity*

As with other models, capacity can be built through funded projects, research and the dissemination of information through the proposed measures of an internet website, newsletters, seminars and forums.

*Incorporating appropriate technical skills and industry understanding*

This model offers strong industry knowledge, because it includes supply side representation. panel members can be anticipated to have a high level of industry knowledge and, between them, a significant mix of well developed skills. However, the skill mix is not necessarily aligned to what we consider are the requirements of the new advocacy model. As has been discussed above, we suggest that high level skills are required in economics/finance, engineering and consumer rights law as well as governance. A panel chosen on a sectoral representation basis would have individual skills and collective skill mix as secondary considerations.

## **6.4 Option 3 –Board and consultative committee**

This model would see an independent board with the skills necessary to understand the national energy market and consumer issues. A major difference to Option 2 is that, under this model, board members would be selected on the basis of their skills and ability to conduct themselves independently of sectoral interests. Suitable candidates may be those who are from an academic background or who have worked in the consumer advocacy or energy industry in a legal, technical or financial capacity.

Unlike Options 1 and 2, the representation does not guarantee strong links with the market and/or consumer groups. To compensate for this we propose a consultative committee made up of existing consumer interests to provide these perspectives.

### **6.4.1 Chairing arrangements**

The Chair would be appointed by the MCE on say, a three year basis with the MCE also having the power to remove the Chair under prescribed circumstances as discussed under other models.

### **6.4.2 Membership**

The board would have specific expertise relevant to the advocacy task in the new national energy market, described in Section 3.1.

This seems likely to require a board of six members, with each member having expertise in at least one of the key areas. Knowledge of consumer issues and the energy sector and the ability to develop and operate within, a strategic planning framework, would be pre-requisites for all board members.

We suggest that like Option 1, members would be appointed on three-year non-synchronous terms to ensure the expertise and knowledge built up within the board is retained.

### **6.4.3 Consultative committee**

To ensure that the new body is informed of “coalface” issues, it is proposed that a consultative committee would provide detailed advice on issues of importance to consumers. While it would

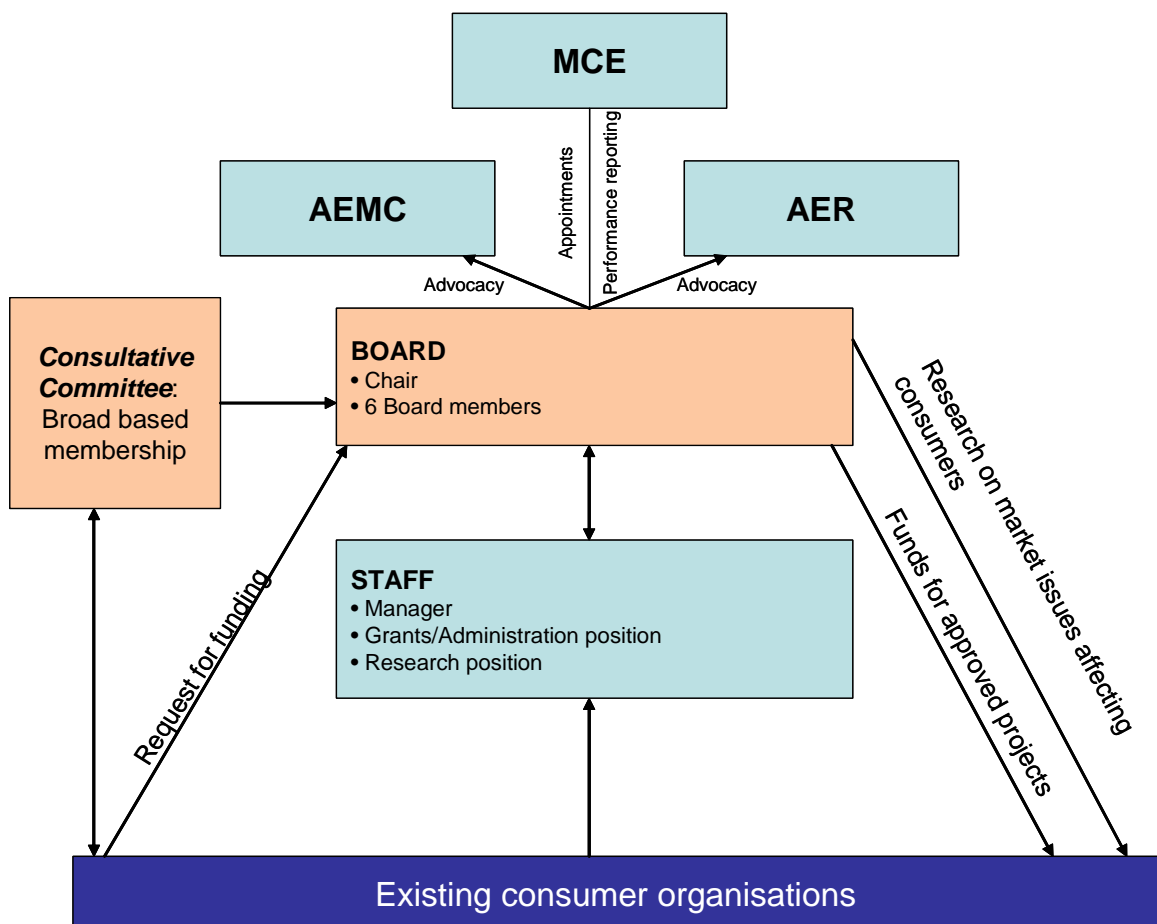
not be an element of the advocacy body structure, the consultative committee would play an important role by providing advice and guidance to the Board on the strategic direction of the advocacy body and identifying emerging issues. A secondary function of the consultative committee would be as a conduit back to feeder organisations and jurisdictions.

The committee’s role would be advisory. It would not have the ability to *direct* the new advocacy body on its priorities or policy.

Meetings of the committee with the board could include consumer representatives (from both state and national bodies) at the invitation of the committee or the board, with the objective of garnering a wide range of appropriate and relevant input.

The consultative committee would be convened by the board once or twice a year, with meetings timed to enable input to the strategic planning process and with additional meetings convened as and when might be necessary to consult on important current and emerging issues.

**Option 3 –Board and consultative committee**



#### **6.4.4 Assessment of the model in terms of the proposed criteria**

##### *Efficiency, effectiveness and accountability*

A larger board may put efficient decision making at risk.

Effectiveness would be assisted, as with the other options discussed, by developing and applying a strategic framework to guide the board's activities and decision making.

Similarly, appropriate reporting should provide accountability.

##### *Independence*

One of the main advantages of this model is independence from being locked into a position according to sectoral representation. The board members would be required to act as individuals, bringing only their skills and expertise to the issue at hand. As the board is not chosen on the basis of sectoral representation, members should be able to respond to the issue at hand with a view to the impacts on all consumer groups, without a risk of conflict of interest.

However, it would still be important that the board is kept apprised of new and emerging consumer issues. This would be central to the development, regular review and development of the strategic plan. The consultative committee, an advisory body operating at arms length, would help to achieve this.

##### *Avoiding duplication of existing consumer arrangements*

The same strategies to avoid duplication, suggested for other options, would be applied.

##### *Being proactive and strategic*

As well as using a the strategic planning approach common to all options, the body would seek the input of consumers through the consultative committee to re-assess the body's strategic priorities on a regular and forward looking basis.

##### *Ability to build capacity*

As with other models, capacity can be built through funded projects, research and the dissemination of information through the proposed measures of an internet website, newsletters, seminars and forums.

*Incorporating appropriate skills and industry understanding*

This would be provided by the skill basis of appointment to the board. The main differentiation between this and other models is its ability to deliver the skills and industry knowledge requirements that we suggest is critical to an effective advocacy model.

## **6.5 Option 4 –Board, executive director and consultative committee**

### **6.5.1 Chair, board and executive director**

Under this model, an independent chair and the two board members would be appointed by the MCE. The MCE would have the powers to remove the chair and board under certain prescribed circumstances, as discussed in the other models.

The executive director would be appointed by the chair and board for a minimum of three years.

It is proposed that the chair and executive director be appointed for a period of three years while each board member would be appointed for a period of two years. The ‘staggering’ of the Chair, Board and Executive Director appointments would assist with building and maintaining in-house capacity.

The chair and board would be responsible for consulting with relevant stakeholders through the consultative forums. The chair and board would meet on a regular basis (eg. every 2 months) to assess funding applications and monitor the strategic framework. These responsibilities are additional to their responsibility for the functions set out in section 5.2.

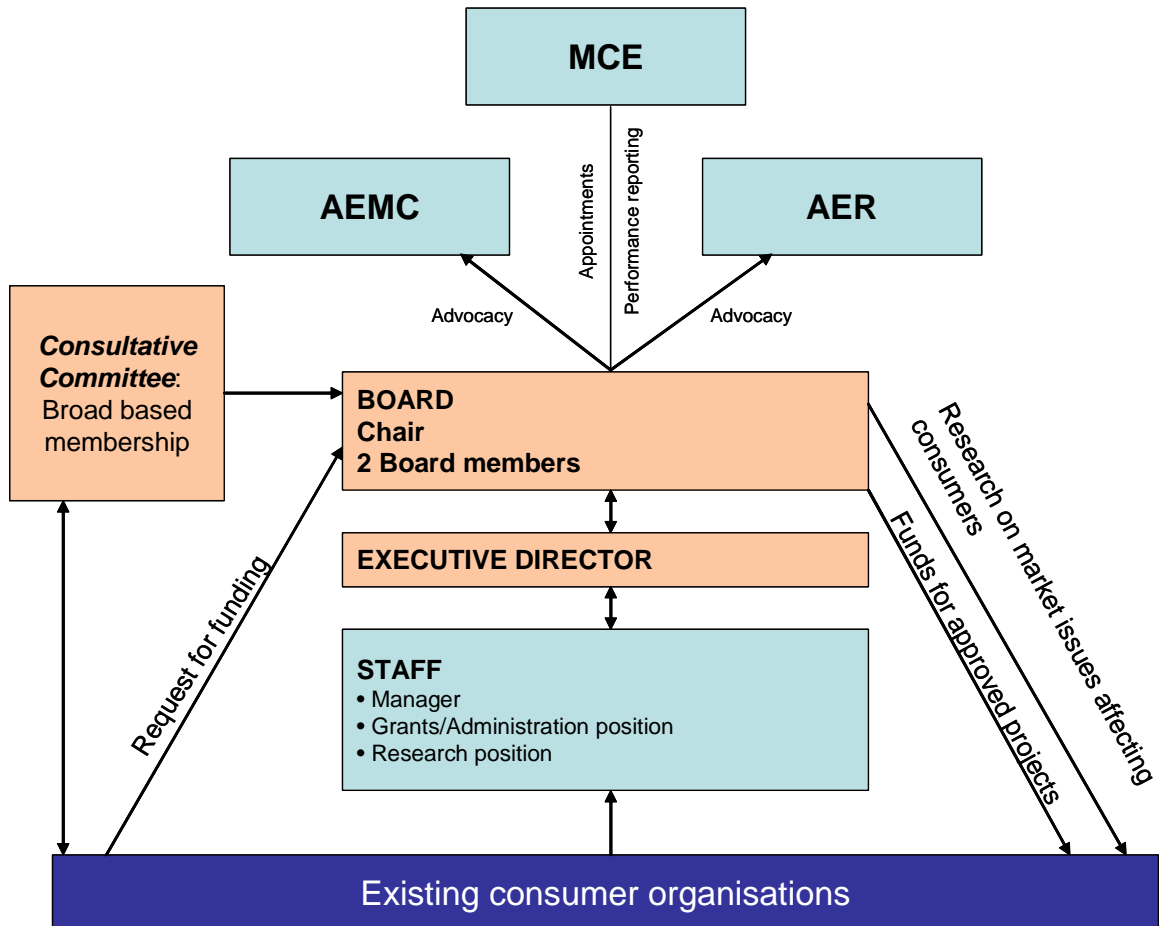
The executive director would be the active ‘face’ of the advocacy body, responsible for engaging with consumers on a frequent, ad hoc basis to gather their views and input on consumer issues in a timely manner and hold responsibility for the day to day running of the body. The executive director would also lead advice and advocacy to the AER or AEMC.

The chair, board and executive director would require considerable experience in the energy industry and a balance of skills in areas such as finance, economic, law or technical/engineering and organisational governance would be necessary. Importantly, the individuals selected to these appointments should have no current ties to particular energy market participants, including consumer groups.

### **6.5.2 Consultative committee**

Arrangements for the consultative committee would be the same as those outlined for Option 3.

**Option 4 – Board plus executive director and consultative committee**



**6.5.3 Assessment of the model in terms of the proposed criteria**

*Efficiency, effectiveness and accountability*

The Board would be sufficiently sized to enable informed and timely decisions to be made, without being so large as to present the risks of inefficient decision making that would be seen under the National Committee Model.

Effectiveness would be assisted by implementing a strategic framework, but enhanced in this option, by the executive director’s role.

Similarly, accountability would be achieved through the reporting mechanisms suggested for the other options.

### *Independence*

As with Option 3, this model has the advantage of its composition not being based on sectoral representation.

### *Avoiding duplication of existing consumer arrangements*

Strategies to avoid duplication are the same as for the other options discussed.

### *Being proactive and strategic*

This would be aided, as in the other models, by using a strategic planning approach. It should also be enhanced in this Option by the role of the executive director, who would solicit 'face to face' input from consumers and when necessary, provide rapid responses to new and emerging issues or special circumstances.

### *Ability to building capacity*

As with other models, capacity would be built through funded projects, research and the dissemination of information through the proposed measures of an internet website, newsletters, seminars and forums.

### *Incorporating appropriate skills and industry understanding*

Like Option 3, this Option delivers critical skills and experience at an executive level.

## **6.6 Comparison of options**

To allow comparison, Table 2 summarises the four options in terms of the six criteria developed to guide the development of a new advocacy body. Table 3 summarises their strengths and weaknesses.

The options are principally distinguished by how they provide independence and relevant skills. Options 3 and 4 offer greater independence and more scope to incorporate the appropriate skills and expertise in the governance structure. The other two options are both constrained, in these regards, by representatives being appointed from specific sectors.

The sectoral nature of representation can bring advantages in terms of links with consumer groups and/or knowledge of the energy market. However, the analysis of strengths and weaknesses in Table 2 below shows that the sectoral nature of Options 1 and 2 substantially inhibits their overall effectiveness as models, as it prevents independence of operations and does not sufficiently provide for the necessary skills and expertise to adhere to an overarching strategic framework and ultimately deliver upon consumer interests.

In summary:

- The capacity of the National Committee in Option 1 to provide effective consumer advocacy in the new national energy market is significantly constrained by the representational nature of the model and associated constraints on skills and expertise. Its size may make it a cumbersome decision making mechanism.
- The panel model in Option 2 also suffers from constraints, which impede its ability to meet current and future energy market consumer advocacy needs. These chiefly arise from the sectoral nature of the representation. Even with significant modification, the panel model is not likely to meet advocacy needs in the future national energy market.
- The board and consultative committee model in Option 3 provides advantages not offered by Options 1 or 2 in terms of independence and the capacity to incorporate required skills. The consultative committee will ensure that the board is informed of 'coalface' issues'.
- Option 4 offers similar advantages to Option 3 in terms of independence and, to a lesser extent, skills mix. However, it is a more streamlined model that will lend itself to being more efficient. It also offers the advantage of the new body and its stakeholders having a full-time executive available to deal with issues on a daily basis. The smaller board, relative to Option 3, does create a greater governance risk because it does not allow as broad a separation of responsibilities and diversity of oversight. However, provided that the board is of sufficient size and integrity to allow effective governance this risk can be addressed by ensuring a high standard of public reporting and accountability.

On the basis of this comparative analysis we suggest that Options 3 and 4 both have significant merit in terms of their ability to meet the challenges posed by the unfolding national energy market. We also suggest that on balance, Option 4 would be the most suitable of the four options for effective and efficient consumer advocacy in the future national energy market because:

- it offers a skills based advocacy body;
- it has a reduced risk of its governance being unduly influenced by sectoral influences;
- the size of its board offers a balance between efficient and effective decision making and appropriate governance;
- liaison with the consultative committee allows active and relevant stakeholder involvement without undue risks to the body's independence; and
- the position of an executive director would allow a senior representative of the body to participate in the body's activities on a day to day basis. This is likely to provide a more effective and efficient means of achieving the body's objectives, than the other options.

Given the size of the advocacy task and the demands placed on it as market reform unfolds, (eg the scope, number and complexity of issues that need to be addressed) there may be a future need to increase the size of the advocacy body's operations. It would be reasonable to expect

that this could only occur in the event that the board demonstrated to the MCE that the advocacy body was delivering its stated objectives and there was a legitimate need for greater activity.

**Table 2: Comparison of models against the key criteria**

Options	Key Criteria					
	Efficiency effectiveness & accountability	Independence	No duplication of existing arrangements	Pro-active and Strategic	Builds capacity	Technical & governance skills & industry understanding
<b>1 - National committee</b>	Achieved through developing appropriate strategic, business process and reporting frameworks.	May be compromised by representation from existing state, territory and national organisations,	Can be achieved if there is clear delineation between the national committee's agenda from that of constituent bodies.	Would be facilitated by existing links with consumer groups. Dependent on appropriate skills and being available to agree upon, and manage, a strategic framework.	Central website, newsletter and seminars and forums would operate, with committee composition facilitating effective capacity building for consumer groups.	Not guaranteed as representation is not primarily on a skills basis.
<b>2 - Panel</b>	Can be achieved through developing appropriate strategic, business process and reporting frameworks.	Independence (both actual and perceived) is adversely affected by the sectoral representation model.	Achievable, providing the Panel had accurate and current information about work undertaken by existing consumer organisations.	Yes, if a strategic framework is applied and appropriate skills are available.	Central website, newsletter and seminars and forums would operate as in other models, but success here could be inhibited by the model's sectoral representation.	Will have industry experience and may have some or all of other skills required.
<b>3 - Board and consultative committee</b>	Can be achieved through developing appropriate strategic, business process and	This model allows appointments to governance positions which are independent of	Achievable, providing the Board had accurate and current information about	Yes if a strategic framework is applied. Ability enhanced by skills based composition	Central website, newsletter and seminars and forums would operate as in other models and	Yes, as Board members selected on a skill basis.

	<b>Key Criteria</b>					
<b>Options</b>	<b>Efficiency effectiveness &amp; accountability</b>	<b>Independence</b>	<b>No duplication of existing arrangements</b>	<b>Pro-active and Strategic</b>	<b>Builds capacity</b>	<b>Technical &amp; governance skills &amp; industry understanding</b>
	reporting frameworks.	sectoral or existing consumer group interests	work undertaken by existing consumer organisations	of Board.	would be enhanced by staggered appointments.	
<b>4 - Board, executive director and consultative committee</b>	Streamlined governance should facilitate efficiency.	This model allows appointments to board and executive director positions which are independent of sectoral or existing consumer group interests.	Yes, providing the board and executive director had accurate and current information about work undertaken by existing consumer organisations.	Yes if a strategic framework is applied and all necessary skills are available	Central website, newsletter and seminars and forums would operate as in other models. Enhanced by executive director's roles.	Selection of the board and executive director is on a skills basis.

**Table 3: Comparison of strengths and weaknesses**

	<b>Option 1 - National committee</b>	<b>Option 2 - Panel</b>	<b>Option 3 - Board and consultative committee</b>	<b>Option 4 - Board , executive director and consultative committee</b>
<b>Governance</b>	<ul style="list-style-type: none"> <li>▪ Committee – 10 members plus Chair</li> <li>▪ 6 meetings a year (quarterly meetings with provision for two additional meetings if required)</li> <li>▪ no consultative committee</li> <li>▪ permanent staff who will commission research on key market issues affecting consumers</li> </ul>	<ul style="list-style-type: none"> <li>▪ Panel – 4 or more members plus Chair</li> <li>▪ 6 meetings a year (quarterly meetings with provision for two additional meetings if required)</li> <li>▪ no consultative committee</li> <li>▪ permanent staff who will commission research on key market issues affecting the consumers</li> </ul>	<ul style="list-style-type: none"> <li>▪ Board – 6 members plus Chair</li> <li>▪ 6 meetings a year (quarterly meetings with two additional meetings if required)</li> <li>▪ consultative committee with consumers at least once or twice per year</li> <li>▪ permanent staff who will commission research on key market issues affecting the consumers</li> </ul>	<ul style="list-style-type: none"> <li>▪ Board – 2 members plus Chair</li> <li>▪ Executive Director</li> <li>▪ 6 meetings a year (with provision for additional meetings if required)</li> <li>▪ consultative committee with consumers at least once or twice per year</li> <li>▪ permanent staff who will commission research on key market issues affecting consumers</li> </ul>
<b>Strengths</b>	<p>Should avoid duplication of work of existing organisations as members will be well informed of projects undertaken by these bodies.</p> <p>Potential for strong links and good communication including the dissemination of research findings and transfer of intellectual capital with existing organisations.</p>	<p>Can benefit from the experience and the learnings of the current Panel. This advantage may be eroded if the membership has to alter to significantly reflect the shift to a national energy market focus.</p> <p>Panel members with industry background can bring an in-depth understanding of how gas and electricity markets operate.</p>	<p>Ability to access skills that are likely to:</p> <ul style="list-style-type: none"> <li>• allow the body to take a proactive approach to managing the national agenda of consumer advocacy issues; and</li> <li>• make decisions about funding and research based on a capacity to balance big picture issues and</li> </ul>	<p>Streamlined governance model can deliver efficient decision-making.</p> <p>As with Option 3, the ability to access skills required for good governance offers a model that can be pro-active and make decisions which balance longer term objectives with short term consumer and funding submission imperatives.</p> <p>Ability to deliver actual and</p>

	<b>Option 1 - National committee</b>	<b>Option 2 - Panel</b>	<b>Option 3 - Board and consultative committee</b>	<b>Option 4 - Board , executive director and consultative committee</b>
		<p>Established accountability procedures can be built on and improved.</p> <p>Opportunity to modify the model to include provision for strategic planning and management, the addition of responsibilities to undertake research and expand the role in commissioning projects directly.</p>	<p>longer-term objectives with short-term consumer and funding submission imperatives.</p> <p>Ability to deliver actual and perceived independence.</p> <p>Ability to draw on the perspectives of consumer groups, through a consultative committee, but not be bound to take on any particular view.</p>	<p>perceived independence.</p> <p>Ability to draw on the perspectives of consumer groups, through a consultative committee, but not be bound to take on any particular view.</p> <p>Inclusion of an executive director who can interact with consumers on a timely basis, which is beneficial for development and refinements to the strategic framework and, if necessary, grant funds in special circumstances.</p>
<b>Weaknesses</b>	<p>Requirement to build a new model from the ground up, and learning curve required for committee members to become experienced in their role.</p> <p>Not well suited to representing the interests of all consumers as there will be an in-built bias to small consumers.</p> <p>Constraints on efficiency and effectiveness resulting from the size and representational nature of the membership.</p> <p>Potential conflicts between membership, representing</p>	<p>Requirement to build a new model from the ground up, and learning curve required for panel members to become experienced in their role.</p> <p>A more streamlined transition from current to new model.</p> <p>Lack of independence from sectoral interests.</p> <p>Reduced ability to advocate directly to the AEMC and AER on consumer issues because of the potential for conflict of interest for individual members.</p> <p>May not provide the full range of</p>	<p>Requirement to build a new model from the ground up, and learning curve required for board members to become experienced in their role.</p> <p>Links with consumer groups are not as developed as they would be under the national committee model.</p> <p>Initially, Board members are likely to possess less knowledge of consumer groups. May be harder to appreciate the work undertaken by those organisations and hence harder to delineate work programs</p>	

	<b>Option 1 - National committee</b>	<b>Option 2 - Panel</b>	<b>Option 3 - Board and consultative committee</b>	<b>Option 4 - Board , executive director and consultative committee</b>
	<p>jurisdictional interests, and an independent Chair.</p> <p>Independence and flexibility potentially compromised by the jurisdictional nature of the representation and members operating in the interests of their constituencies.</p> <p>Potential mismatch between skills and expertise of members and those required for a proactive approach to managing the national agenda of consumer advocacy issues, making decisions about funding and research based on a capacity to anticipate big picture issues</p>	<p>skills (such as economic expertise) needed to provide an effective advocacy function.</p> <p>Consumer groups who have been critical of the current panel may not have confidence in a revised Panel model</p>		

## **7 Recommendations**

The following recommendations are presented under the terms of reference they address:

### **Review of the model and framework adopted for the existing National Consumer Electricity Advocacy Panel.**

#### *Recommendation 1:*

*That the existing NECA Panel not be used as a basis for a new consumer advocacy model as it does not provide the best option for consumer advocacy in the current and emerging national energy market*

Findings in relation to the Panel are in section 3.2.2.

### **Review the need for advocacy arrangements to satisfy the requirements of all consumers and other participants in the national energy market**

#### *Recommendation 2:*

*That a new independent consumer advocacy body be established to undertake consumer advocacy in the national energy market.*

We have found that a new consumer advocacy arrangement is required as a result of:

- the emergence of a national energy market;
- the increasing complexity of the issues and the need for a sophisticated consumer advocacy response that can access the expertise necessary to address these issues;
- the need for a capacity to prioritise according to a strategic view of how developments in the national energy market are likely to affect consumer interests; and
- the desirability of a single point of interface with the AEMC and AER over consumer issues.

### **The appropriate advocacy model including operational and governance structures**

#### *Recommendation 3:*

*That the new advocacy body be governed by a board comprised of a chairperson and two members appointed on the basis of their:*

- *expertise in one or more of the areas of economics, consumer law, or engineering;*
- *skills and understanding of governance requirements;*

- *knowledge of the energy industry and understanding of energy markets and how they might develop;*
- *advocacy skills; and*
- *understanding of the requirements of representing consumer interests.*

*Recommendation 4:*

*That appointments to the new advocacy body be made by the MCE.*

*Recommendation 5:*

*That the new body be accountable to the MCE against transparent objectives. These would be set as part of the new advocacy body's strategic planning and management process and monitored on the basis of performance measures identified and implemented by the new body.*

*Recommendation 6:*

*That the new advocacy body provides a public annual report on its activities and performance, which would include its financial statements, strategic priorities, performance objectives and funding criteria, and account for its operations and performance against the objectives and criteria.*

## **The scope and functions of a national advocacy model**

*Recommendation 7:*

*That the scope of the new advocacy body includes:*

- *setting and implementing an agenda to advocate consumer interests on matters of price, reliability, quality and safety and security in the national energy market; and;*
- *covering national energy market issues as well as issues which fall within the State and Territory domain where there is no material duplication of work undertaken by other consumer organisations; and*
- *providing advocacy in the interests of all consumers identifying and dealing appropriately with potentials for conflict between different groups, in accordance with strategic objectives and priorities.*

*Recommendation 8:*

*That this scope would be achieved by the new advocacy body's principal activities which would include:*

- *developing and operating within a strategic framework informed by new and emerging issues;*
- *undertaking or commissioning relevant research to inform both its own strategic agenda and, where congruent with that strategy, those of State and Territory consumer groups;*
- *maintaining a repository of knowledge and intellectual capital relevant to consumer advocacy objectives resulting from its work and research, that can strengthen the efficacy of consumer advocacy nationally;*
- *disseminating relevant information and findings to State and Territory consumer groups. This would involve presenting findings and research in way that would be relevant to and readily assimilated by those groups. It might include but not necessarily restricted to:*
  - *the publication of reports, summaries and newsletters, in hard copy and or by internet;*
  - *the maintenance of an internet forum; and*
  - *holding seminars and providing training;*
- *undertaking direct advocacy to the AEMC and the AER on behalf of the consumer interest; and*
- *managing a submissions based grant funding process that would include:*
  - *publishing readily assimilated guides to and criteria for successful funding submissions;*
  - *assisting consumer groups to identify and develop viable proposals for project funding;*
  - *assessing funding submissions and the potential impacts on different consumer groups;*
  - *granting funds;*
  - *monitoring funded project outcomes against objectives and expectations; and*
  - *reviewing project outcomes and their implications for future planning and work.*

**The operational arrangements for a national advocacy model**

*Recommendation 9:*

*That the board of the new advocacy body meet initially between four and six times a year to develop and implement its strategic framework in accordance with the scope and functions described by Recommendation 7.*

*Recommendation 10:*

*That the board of the new advocacy body be supported by an executive director and a permanent staff that it appoints to assist it to meet its strategic objectives and to execute its functions on a day to day basis.*

*Recommendation 11:*

*That the new advocacy body establishes a consultative committee made up of representatives of all States and Territories in the national energy market as well as of broader consumer interests. The functions of this group would be to provide:*

- *advice and guidance to the Board on the strategic direction of the advocacy body;*
- *advice on new and emerging issues; and*
- *a conduit back to feeder organisations and jurisdictions..*

*Recommendation 12:*

*That the national advocacy body establishes budgeting and financial control processes to provide control over its operational costs and help ensure that available funding is directed to the greatest possible extent to achieving consumer outcomes.*

*Recommendation 13:*

*That performance monitoring measures be developed, concurrently with budgeting and financial control processes, to help the national advocacy body to monitor and report on the extent to which it may be achieving its intended objectives and be delivering value to consumers. Wherever possible these measures should be based on outcomes of rather than inputs to, the consumer advocacy process.*

**The interaction of a national advocacy model with other State and Territory advocacy groups**

See recommendation 11 above.

*Recommendation 14:*

*That the relationship between the board and executive director of the new advocacy body conduct, and State/ Territory advocacy groups would be based on:*

- *funding of State/ Territory advocacy groups for projects of strategic significance to consumers;*
- *dissemination of research results to State/ Territory advocacy groups;*

- *input from State/ Territory advocacy groups to inform the development of the advocacy body's strategic plan; and*
- *the gathering of consumer issues through the consultative committee.*

**The process by which a national advocacy model would allocate funds to consumer groups including the development of funding guidelines.**

*Recommendation 15:*

*That funds be allocated according to the following criteria:*

*Threshold criteria for assessing eligibility of submissions:*

- *whether the submission relates to the current operation, or development of, the national energy market and/or to market objectives of price, reliability security and quality;*
- *whether the submission clearly relate to the interests of one of more segments of the consumer market (where a segment is defined by size, by location as in the case of rural and remote consumers, or other key features);*
- *whether the proposed project aligns with priorities developed by the advocacy body in its strategic framework; and*
- *whether the submitting body has the ability to manage the project efficiently and engage with stakeholders as required to develop informed advice.*

*Criteria to establish the relative priority of submissions:*

- *whether the proposed project relates to an issue or area of work that is clearly of considerable value to consumers and does not duplicate projects or work already being undertaken or about to be undertaken;*
- *whether the proposed project relates to an issue where recent findings on the issue are deemed not to be accurate, conclusive or substantial;*
- *whether the project can be undertaken in a reasonable timeframe so that the project findings will be available to influence regulation and policy development;*
- *whether the proposed project has clear deliverables;*
- *whether the submission is sufficiently broad to advance the interests of all consumers or conversely would not work unreasonably against the interests of a particular consumer group; and*
- *whether the submitting body has the capacity to financially contribute to the proposed project.*

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## **A Recent energy market changes**

Recent energy sector reform in Australia has largely occurred within the context of a much broader policy of competition reform. Australia's recent competition policy reform began with an historic agreement between the Council of Australian Governments (COAG) in February 1994.

This agreement was necessary because, under Australia's Federal government structure, responsibility for some of the relevant matters (including energy) was and continues to be held at the State and Territory level.

The rationale for reform came from the 1993 National Competition Policy Review (widely called the "Hilmer Report").<sup>18</sup> The Hilmer Report argued that Australia had no choice but to improve the productivity and international competitiveness of its firms and institutions so that they would become more efficient, more innovative and flexible. Competition was seen to have a role in meeting those challenges, offering a promise of lower prices, improved choice for consumers, greater efficiency, higher economic growth and increased employment opportunities for the economy as a whole.

The Hilmer Report began a process of introducing competition in wholesale and retail gas and electricity markets where it did not already exist (for example, through the creation of the National Electricity Market) and, in some cases, privatising the businesses. The National Electricity Code and the National Gas Codes and various other regulatory instruments and institutions were also developed in response to the Hilmer Report's recommendations, to provide the regulatory framework primarily for the network elements of these industries.

In 2002, CoAG issued a report by the Energy Market Review Panel entitled 'Towards a Truly National and Efficient Energy Market'.<sup>19</sup> The broad thrust of the report was that, although substantial progress had been made, further reform could lead to additional and worthwhile productivity improvements. A key theme of the report was, as its title indicated, the need to facilitate the development of a national energy market wherever feasible.

The MCE was established in recognition that the reform process needed to be reinvigorated and required leadership from key policy-makers. The MCE has five working groups assessing different energy issues.

The work stream which led to this consultancy involves improving user participation, one element of which is developing consumer advocacy arrangements.

The changing environment includes the following key developments:

- the establishment of the Australian Energy Market Commission (AEMC) as the new body with responsibility for rule making and market development both for the wholesale electricity market (from NECA in 2005) and access to gas transmission and distribution networks (from the National Gas Pipelines Advisory Committee in June 2005). The AEMC

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<sup>18</sup> Report by the Independent Committee of Inquiry, National Competition Policy, August 1993.

<sup>19</sup> Council of Australian Government's Energy Market Review Panel, Towards a Truly National and Efficient Energy Market, 20 December 2002, p. 12.

will have some specific consultation obligations, with arrangements for strengthened consumer consultation in developing rule changes to be put in place;

- the establishment of the Australian Energy Regulator (AER) which is to be a constituent part of the Australian Competition and Consumer Commission (ACCC) but operate as a separate legal entity, having sole responsibility for final decision making. The AER will be responsible for independent economic regulation of both the electricity and gas markets. The AER is initially to have responsibility for economic regulation of the NEM wholesale market and transmission networks and, by June 2005, the economic regulation of gas transmission networks, except in Western Australia where the AER's jurisdiction over gas transmission networks will be at the volition of that State. As with existing regulatory arrangements, the AER will also have specific consultation obligations; and
- States and Territories will initially retain responsibility for a range of distribution and retailing matters, for both gas and electricity, namely:
  - regulation of distribution and retail pricing;
  - environmental matters relating to distribution and retailing; and
  - occupational health and safety matters relating to distribution and retailing.

However, following development of an agreed national framework no later than 31 December 2006, the AER will assume responsibility for the regulation of distribution and retailing other than retail pricing, which will remain the responsibility of the States and Territories.

The ACCC will retain responsibility for competition regulation under the Trade Practices Act, for competition related code changes authorisations, and for industry access code approvals.

## B Consumer advocacy organisations

### B.1 Issues addressed by current consumer organisations

The list below does not necessarily reflect all issues addressed by these organisations, but provides an indication of the types and range of matters covered.

Interest group	Issues/Submissions/Papers	Positions and other information
<b>NATIONAL GROUPS</b>		
<p><b>Australian Consumers' Association</b> - An independent, not-for profit organisation that conducts research and campaigns on behalf of consumers across a wide range of issues such as products, health, money and rights, food, computers and cars.</p>	<p>Submission on Energy Market Review Issues Paper</p> <p>Submission to IPART's enquiring into the provision of energy services</p> <p>'Price caps – A consumer safety net'</p>	<p>Areas of concern are equal protection for all consumers across Australia, service guarantees, protection from extreme price spikes, interconnection of electricity markets and consumer education.</p> <p>ACA supports conservation, minimisation of energy consumption, and reduction in green house gas emissions.</p> <p>With the introduction of interval metres, consumer protection needs to be sufficient to protect consumers from peak energy prices.</p>
<p><b>Brotherhood St Laurence</b> - The Brotherhood of St Laurence is a welfare agency with a strong history of advocacy and support that is working towards an Australia free of poverty. Major campaign areas include employment, affordable housing, justice for refugees, welfare reform, ethical business and corporate responsibility, and oral health.</p>	<p>Submission to the ESC – Review of effectiveness of retail competition in gas and electricity</p>	<p>Submission focuses on the collections processes of utility companies.</p>

Interest group	Issues/Submissions/Papers	Positions and other information
<p><b>Business Council of Australia</b> -An association of Chief Executives from around 100 leading Australian corporations, which provides a forum for business leaders to contribute directly to public policy debates. BCA’s policy agenda includes business reform; education, skills and innovation; employment and participation; sustainable growth; and trade and international relations</p>	<p>BCA made a submission to the Parer Report in the early 1990s. Since then, no submissions have been made to energy regulatory bodies or governments.</p> <p>‘Australia’s Energy Reform: An Incomplete Journey’</p>	<p>BCA only expresses high-level, in-principle views on energy, as specific views may cause disputes between different members.</p> <p>Recommends that ownership of the major generators in New South Wales and Queensland be diversified to create an efficient market to deliver sustainable, competitive prices.</p>
<p><b>Consumers’ Federation of Australia</b> - The national peak body for consumer organisations has a membership of 95, including legal centres, health rights groups, local consumer organisations and public interest bodies. The focus is primarily to advance the interests of disadvantaged and vulnerable consumers across a number of policy issues such as credit cards, credit reporting, credit law, debt collection, finance brokers, home building, insurance, pay day lenders, telecommunication, unfair contract terms, unit pricing, and utilities.</p>	<p>Commissioned the Allen’s Report into a model for consumer advocacy in NEM</p>	<p>Recommends the establishment of a national advocacy body, independent of government and industry. The body should focus on advocacy for small energy consumers.</p>
<p><b>Energy Users Association of Australia</b> - EUAA is a not-for-profit organisation funded mainly by membership fees, focusing wholly on energy issues for business users. EUAA is</p>	<p>‘The Power of the Customer – Trial of demand side response facility’</p> <p>Review of the ACCC Regulatory</p>	<p>EUAA have undertaken a trial demand side response to look at potential solutions to high short term electricity prices. The study found that 1000 MW taken out of the NEM is enough to affect the price.</p>

Interest group	Issues/Submissions/Papers	Positions and other information
<p>active in government policy, regulation, environmental and market-based issues. They also have state representation.</p>	<p>Test (co-report with Energy Action Group)</p> <p>Submission to ACCC review of Transend's Revenue Application (co-report with EAG)</p> <p>Submission to IPART on the preliminary analysis report for the 2004 Electricity Distribution Price Review (co-report with EAG)</p> <p>Submission to the Reliability Panel's review of VoLL and the cumulative price threshold in the NEM</p> <p>Submission to ACCC review of the draft statement of principles for the regulation of transmission revenues</p> <p>Submission to ACCC on review of Transgrid and EnergyAustralia revenue cap (co-report with EAG,</p>	<p>EUAA believes that the ACCC should consider the impact of the regulatory test on end-users and restructure the regulatory test so that it can be applied by Network Service Providers in the form of a cost-benefit analysis of investment options from the point of view of the end-users who pay for network services.</p> <p>EUAA believe that Transend have inflated their revenue requirements which will result in the imposition of unfair transmission system charges on end users.</p> <p>Analysis identifies data discrepancies that create doubt upon the calculation of some key building blocks, which would produce an erroneous determination by IPART.</p> <p>Recommends the continued existence of a price cap, but be set at a lower level than currently applies combined with a lower cumulative price threshold, on the basis that it reduces the level of financial risk to generators and retailers and thus prices to customers.</p> <p>Discusses the revenue cap decision making process; revaluation of the asset base versus the merits of roll-forward; expenditure evaluation and efficiency incentives; weighted average cost of capital; and service standards incentives.</p> <p>Discussion relating to both Transgrid and EnergyAustralia inflating</p>

Interest group	Issues/Submissions/Papers	Positions and other information
	Australian Business Ltd, Australian Consumers' Association and National Farmers' Federation)	their revenue requirements, and why their applications should not be approved by the ACCC.
<b>Total Environment Centre</b> - A not-for-profit, non-government organisation funded mainly by public donations, TEC focuses on environmental advocacy, consultancies and information. Environmental protection campaign areas include toxics, drift, natural areas, energy, waste, genetically modified organisms, paths to a green economy, and environment sustainability assessment for corporations.	Discussion paper on demand management and the NEM  'Environmental and Social Issues' – NGO position paper	Outlines the potential for demand management and four key steps to overcome the existing barriers to implementing demand management.  Discusses issues including whether the NEM works; demand management and energy efficiency; interval metering; network access for distributed generators; suppression of price signals; mandatory renewable energy target and emission trading.
<b>STATE-BASED GROUPS</b>		
<b>Consumer Law Centre Victoria</b> - CLCV is an independent, not-for-profit organisation that conducts public interest law and consumer advocacy for low-income and vulnerable consumers. Consumer issues covered include unfair contracts; provision of telephone services; high-pressure and door-to-door sales; pawnbrokers; banking issues; motor vehicle contracts; public transport; provision of essential services (electricity, gas, water, sewerage); price discrimination against women; assisting access to complaint schemes; car and appliance repairs;	NEM capacity building project  Submission to ESC Issues Paper on retail competition  Project on behalf of the Consumer Consultative Committee (ACCC)  Submission to ESC Review of Victorian Energy Retail Codes	Established a national network of community organisations to facilitate communication of NEM issues.  Comment on the extent to which retail competition has been effective for the sale of electricity and gas to consumers or classes of consumers.  Project to advocate to NECA on the need for a single harmonised retail electricity code for operation in the NEM.  Discuss the legality of late payment fees and other issues.

Interest group	Issues/Submissions/Papers	Positions and other information
and any breach of the Trade Practices Act, Fair Trading Act or Good Act.		
<p><b>Consumer Utilities Advocacy Centre - Victoria</b> - An independent organisation, established to provide advocacy for Victorian electricity, gas and water consumers. CUAC focuses on representing low income, disadvantaged, rural and regional, and indigenous consumers, by providing a voice in policy and regulatory debates, conducting in-house research and capacity building.</p>	<p>Initiated research with the following groups:</p> <p>CLCV – Access to energy and water in Victoria; the report focuses on consumer disconnections due to an inability to pay</p> <p>SED – Indigenous utility consumer issues</p> <p>Committee for Melbourne – ‘Preventing low income consumers from hardship’</p>	<p>The report focuses specifically on Victorian households disconnected due to an inability to pay their energy or water bills and examines various existing or proposed measures to address affordability and prevent disconnections. The report contains 20 recommendations to improve affordability and prevent disconnection on the basis of incapacity to pay alone.</p> <p>Documenting the extent of disconnections, use of refundable advances and access to customer assistance schemes in Indigenous communities.</p> <p>Collaborative project involving government, industry and the community to identify ways to help prevent low-income consumers in hardship, focusing on the viability of utilities bills as a possible early warning system.</p>
<p><b>Energy Action Group – Victoria</b> - EAG is a Victorian-based advocate on consumer and environmental issues in the electricity, gas and water sectors, on behalf of domestic and small business consumers with emphasis on low-income consumers.</p>	<p>Submission to the ACCC in support of EUAA findings in regards to Victorian Gas Market and System Operations Rules</p> <p>Submission to MCE discussion paper ‘Improving User Participation in the Australian Energy Market’</p>	<p>The allocation of risk between stakeholders in the Victorian gas market, also accountability and transparency of VenCorp needs to improve.</p> <p>Discusses issues including direct ongoing consumer participation; demand management; interval metering; and retail pricing; and how</p>

Interest group	Issues/Submissions/Papers	Positions and other information
		these can be interrelated.
<p><b>Energy Users Coalition of Victoria – EUCV</b> was formed specifically to provide comment on applications for access arrangements by gas and electricity service providers in Victoria. Its members are Ford, Holden, BlueScope Steel, OneSteel, Air International, Toyota and Unidrive.</p>	<p>Submission to ESC draft decision on gas distribution access arrangement</p> <p>Submission to ESC review of significant producers legislation</p>	<p>Asserts that the ESC fails to provide rights for access that are fair and reasonable to both service providers and users.</p> <p>Recommends that the significant producers provisions be repealed, as they no longer serve their purpose; they replicate powers included in other legislation; and the inhibit competition in gas.</p>
<p><b>Business SA</b> - The South Australian peak business and employer group, represent business to government and the community through advocacy and lobbying on current and emerging policy issues</p>	<p>Submission to MCE discussion paper ‘Improving User Participation in the Australian Energy Market’</p>	<p>Recommend addressing the information asymmetry in the NEM; mandate the rollout of time-of-use meters to all consumers; greater demand side facilities to promote increased participation; and a shift to full retail contestability for all consumers.</p>
<p><b>Electricity Consumers Coalition of South Australia - ECCSA</b> contributes to policy development and regulatory decision-making processes, with an aim to reduce the price for South Australian electricity consumers.</p>	<p>Submission on the ESCOSA discussion paper on ‘Return on Assets’ for the review of ETSA Utilities distribution prices.</p> <p>Submission to the MCE discussion paper ‘Improving User Participation in the Australian Energy Market’ (co-report with Energy Users Coalition of Victoria and Energy Markets Reform Forum)</p>	<p>Recommends that ESCOSA make adjustments to re-align a number of mismatches between the proposed use of some elements of the CAPM formulae and their derivation for use in developing an acceptable and technically correct rate of return for regulated assets.</p> <p>Discusses demand responses; interval metering; and retail pricing and FRC.</p>

Interest group	Issues/Submissions/Papers	Positions and other information
	Report on the evidence from capital markets in relation to the market risk premium and equity beta values used by regulators for regulated businesses in the NEM	Australian regulators are granting regulated networks MRP and $\beta$ values which are too high and are outside the realm of latest empirical estimates derived from capital markets.
<p><b>South Australia Council of Social Service - SACOSS</b> is a not for profit organisation that represents the interests of its members in social welfare, health and community services. SACOSS is a member of the national network, consisting of the Australian Council of Social Service and the associated state member councils. SACOSS' mission is to influence public policy in a way that best promotes fair and just outcomes for all South Australians.</p>	<p>Low income electricity consumers protection - joint SACOSS/Council on the Ageing project, funded by SA Independent Industry Regulator</p> <p>Electricity Consumer Advocates' Training Project</p>	<p>A need arose to develop a systematic and comprehensive base of information to identify how low income people will be affected by price increases, and how negative consequences could be reduced.</p> <p>The project aims to build capacity within community organisations to understand the electricity market, to ensure that the interests of households are understood, to identify opportunities for strategic advocacy and, ultimately, to contribute to better outcomes for disadvantaged households.</p>
<p><b>Energy Markets Reform Forum – NSW</b> - The Energy Markets Reform Forum consists of major energy using and energy infrastructure-using companies operating in most Australian States. The EMRF has made submissions to groups like the Productivity Commission and the National Competition Council to promote the view of its members.</p>	<p>Submission to ACCC on review of Transgrid and EnergyAustralia revenue cap</p> <p>Analysis of regulatory risk in the NEM</p>	<p>ACCC review process is flawed and without transparency, and the starting date for the new regulatory period should be delayed.</p> <p>To assess whether it is appropriate to further analyse the impact of regulatory risk on regulated businesses and consumers.</p>

Interest group	Issues/Submissions/Papers	Positions and other information
<p><b>Public Interest Advocacy Centre (Utility Consumers' Advocacy Program) – NSW</b> - An independent, non-profit legal and policy centre, providing legal and research services for consumers. One PIAC project is the Utilities Consumers' Advocacy Program, representing the interests of residential users of electricity, gas and water through policy development; advocacy; ensuring consumer protection mechanisms work effectively and facilitate partnerships between stakeholders in utility service provision.</p>	<p>Review of National Competition Policy arrangements</p> <p>Submission to the Ministry of Energy and Utilities consultation paper 'Proposed Market Operations rule on Prepayment Metering'</p> <p>Submission to MCE discussion paper 'Improving User Participation in the Australian Energy Market' (co-report with Council of the Ageing NSW)</p>	<p>Addresses concerns over the distribution of benefits from the NCP. PIAC argues that some of the benefits of competition in the energy industry may not have been passed on to the end consumers.</p> <p>Advocating appropriate consumer protection measures in regards to the proposed introduction of prepayment metering.</p> <p>Discusses demand side responses, interval metering and retail pricing.</p>
<p><b>Centre for Consumer and Credit Law – Queensland</b> - The Centre for Consumer and Credit Law conducts research and undertakes projects with the aim to promote a fairer and safer and more efficient market place. The CCCL's projects are primarily designed to promote the needs of low income and vulnerable consumers.</p>	<p>Launched May 2004 to conduct research and undertake advocacy to promote a fairer and more efficient market place, particularly for low-income and vulnerable consumers. No energy specific work as yet.</p>	
<p><b>Commerce Queensland</b> - Commerce Queensland is the State's leading business group. Commerce Queensland represents its members on a wide range of topics, making</p>	<p>Submission to MCE discussion paper 'Improving User Participation in the Australian Energy Market'</p>	<p>Recommend development of a more structured and comprehensive plan to identify the key issues of insufficient user participation in the NEM.</p>

Interest group	Issues/Submissions/Papers	Positions and other information
<p>submissions to all levels of government. Commerce Queensland is a founding member of the Australian Chamber of Commerce.</p>		
<p><b>Queensland Consumers Association - QCA</b> aims to increase awareness about consumer issues and promote the interests of consumers. Priorities include energy, health rights, eco-consuming, false advertising and unfair trading practices.</p>	<p>Submission to MCE discussion paper 'Improving User Participation in the Australian Energy Market'</p> <p>Response to Queensland Competition Authority discussion paper on service quality</p> <p>Submission to the Somerville review of the Queensland electricity distribution system</p>	<p>Discusses various energy market issues, focusing on interval metering from a Queensland consumers' perspective.</p>
<p><b>Tasmanian Council of Social Service - TasCOSS</b> is another member of the national network of Councils of Social Service, representing the interests of low-income and vulnerable Tasmanians across issues such as unemployment, health, age and disability, gambling, domestic violence, living on a low income and consumer issues.</p>	<p>Submission to MCE discussion paper 'Improving User Participation in the Australian Energy Market'</p> <p>Domestic end-user training project</p>	<p>The paper discusses issues surrounding demand side response mechanisms, the need for cost neutrality in interval meters; retail pricing that is supportive of low-income users and the potential need to increase user participation in the energy market.</p> <p>The project involved planning a four-part training program that would equip domestic end users and their advocates in Tasmania to participate in discussions, debates and consultations on electricity issues in general and on issues associated with the NEM.</p>

Interest group	Issues/Submissions/Papers	Positions and other information
<p><b>ACT Council of Social Service</b> - ACTCOSS is another member of the national network of Councils of Social Service, representing the interests of low-income and vulnerable individuals in the ACT. ACTCOSS is involved in issues include housing and homelessness, mental health, disability services, health, employment and economic policy, corrections, gambling, community sector workforce issues, consumer rights and complaints bodies.</p>	<p>Electricity consumer advocates training program</p> <p>Submission to ICRC draft decision on electricity distribution prices in the ACT (co-report with the Consumer Law Centre ACT)</p>	<p>The training session aimed to educate the community sector to ensure that their interests are articulated in debates in relation to the NEM.</p> <p>Discusses the draft determination; structure of electricity tariffs in the ACT; and the broader issues of competition policy and the role of ICRC.</p>
<p><b>OTHER ORGANISATIONS</b></p> <p>Other organisations which also perform work in the consumer advocacy area at the State/Territory level include:</p> <ul style="list-style-type: none"> <li>• Energy Users Coalition of Victoria (EUCV);</li> <li>• Energy Consumers' Council (ECC) in South Australia;</li> <li>• Property Council;</li> <li>• Consumers Association of South Australia;</li> <li>• Carers Association;</li> <li>• Western Region Area Actions Group (in South Australia);</li> <li>• Council of the Ageing;</li> <li>• South Australian Farmers Federation; and</li> <li>• Western Australian Council of Social Service (WACOSS) Inc.</li> </ul>		

## B.2 Current and emerging issues for energy consumers

The list of issues below is provided to give an indication of the range of matters that the consumer advocacy model may be called on to address. It is not a complete or comprehensive list, given the complexity of national energy market and the early stage of the reform process.

Category	Current and emerging issues for energy consumers
<b>Transmission</b>	<ul style="list-style-type: none"> <li>• Reliability, safety and service standards</li> <li>• Capital and operating expenditures</li> <li>• Network valuation methodology</li> <li>• Weighted average cost of capital assumed for individual entities</li> <li>• Expansion of interconnection between regions</li> <li>• Ring fencing from associated distribution and retail businesses</li> </ul>
<b>Distribution</b>	<ul style="list-style-type: none"> <li>• Reliability and service standards (voltage fluctuations, interruptions)</li> <li>• Capital and operating expenditures</li> <li>• Network valuation methodologies (determining the overall revenue received by the distributor)</li> <li>• Costs of alternatives to network expansion/augmentation, eg. demand management, embedded generation (electricity)</li> <li>• Weighted average cost of capital assumed for individual entities</li> <li>• Ring fencing from associated retail businesses</li> </ul>
<b>Production and wholesale</b>	<ul style="list-style-type: none"> <li>• Generator behaviour (electricity)</li> <li>• Upstream and intra / inter-basin competition (gas)</li> <li>• Level of vertical integration between retailers and</li> </ul>

Category	Current and emerging issues for energy consumers
	<p>generators/producers and the impact on liquidity in the wholesale market/contractual arrangements</p> <ul style="list-style-type: none"> <li>• Growth of peak demand and remaining reserves across the NEM (electricity)</li> </ul>
<b>Retail</b>	<ul style="list-style-type: none"> <li>• Retail cost to serve customers</li> <li>• Full Retail Contestability</li> <li>• Hardship policies</li> <li>• Interval metering (electricity)</li> <li>• Pre-payment meters (electricity)</li> <li>• Level of vertical integration between retailers and generators/producers and the impact on liquidity in the wholesale market/contractual arrangements</li> </ul>
<b>Greenhouse</b>	<ul style="list-style-type: none"> <li>• Nationally consistent greenhouse abatement policy (electricity)</li> <li>• Renewable energy certificates (primarily for large end-users) (electricity)</li> </ul>

## C NECA Advocacy Panel Applications and Approvals

### C.1 Total Number of Applications

The Panel has received 98 applications since inception in 2003. The breakdown is outlined in the table below.

Year of Application	No. of Applications
2003	46
2004	52
<b>Total</b>	<b>98</b>

### C.2 Breakdown of Applications by NEM Issue

NEM Issue	2003 <sup>20</sup>	2004 <sup>21</sup>	Total Number of Applications
<b>Transmission</b>	9	7	<b>16</b>
<b>Distribution</b>	6	7	<b>13</b>
<b>Retail</b>	2	1	<b>3</b>
<b>Demand Management</b>	6	3	<b>9</b>
<b>Capacity Building</b>	8	4	<b>12</b>
<b>Wholesale Market Design</b>	6	10	<b>16</b>
<b>Connection</b>	1	1	<b>2</b>
<b>Attendance at forums/seminars/meetings</b>	0	13	<b>13</b>
<b>Other</b>	8	6	<b>14</b>
<b>Total</b>	<b>46</b>	<b>52</b>	<b>98</b>

<sup>20</sup> National Consumer Electricity Advocacy Panel – Draft Report on Provisional Funding Requirements for Consumer Advocacy for 2004-2007

<sup>21</sup> National Consumer Electricity Advocacy Panel – Applications List 2004

### C.3 Breakdown of Application Numbers

Breakdown of successful applications is outlined below.

Outcome	Total
Approved	59
Rejected	21
Withdrawn	6
Pending	4
Deferred	8
<b>Total</b>	<b>98</b>

The year on year breakdown is provided below.

Year	2003	2004	Total
Approved	24	35	<b>59</b>
Rejected	15	6	<b>21</b>
Withdrawn	4	2	<b>6</b>
Pending	0	4	<b>4</b>
Deferred	3	5	<b>8</b>
<b>Total</b>	<b>46</b>	<b>52</b>	<b>98</b>

The status of the applications by NEM issue for combined 2003 and 2004 is provided below.

NEM Issue	Approved	Rejected	Withdrawn	Pending	Deferred	Total
Transmission	12	1	1	0	2	<b>16</b>
Distribution	7	2	1	2	1	<b>13</b>
Retail	1	0	1	1	0	<b>3</b>
Demand Management	3	5	1	0	0	<b>9</b>
Capacity Building	8	4	0	0	0	<b>12</b>
Wholesale Market Design	7	5	1	1	2	<b>16</b>
Connection	2	0	0	0	0	<b>2</b>
Attendance at forums/seminars/meetings	12	1	0	0	0	<b>13</b>
Other	7	3	1	0	3	<b>14</b>
<b>Total</b>	<b>59</b>	<b>21</b>	<b>6</b>	<b>4</b>	<b>8</b>	<b>98</b>