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Commission



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ENERGY  
REGULATOR

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Energy Consumer Advocacy Secretariat – Energy Division  
Department of Resources, Energy and Tourism  
GPO Box 1564  
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Dear Dr Tamblyn and Mr Ryan

**Submission - Proposal for a National Energy Consumer Advocacy Body**

The Australian Energy Regulator (AER) and the Australian Competition and Consumer Commission (ACCC) welcome the opportunity to make a submission to the Proposal for a National Energy Consumer Advocacy Body.

The AER and ACCC's submission supports the creation of a national energy advocacy body that has the skills and capacity to engage in vigorous and robust debate with industry and government energy stakeholders (including particularly the AER and Australian Energy Market Commission).

The body should provide a strong, critical voice, particularly in those regulatory processes which have traditionally seen industry positions and proposals presented without a counterbalancing consumer perspective. Among other things, this will require strong engineering, regulation and energy market knowledge, as well as consumer advocacy skills.

The submission outlines a number of key considerations in terms of structure, governance, roles and functions that the AER and ACCC consider are critical in ensuring the body can advance the long term interests of energy customers. The establishment of such a body will promote a strategic evidence based approach to advocacy in the energy market.

Should you have any questions, please contact Michelle Groves on (03) 9290 1423 or Sarah Proudfoot on (03) 9290 6965.

Yours sincerely

Andrew Reeves  
Chairman  
Australian Energy Regulator

Rod Sims  
Chairman  
Australian Competition and Consumer Commission

# 1. Introduction

The Australian Energy Regulator (AER) and Australian Competition and Consumer Commission (ACCC) welcome the opportunity to comment on the *‘Proposal for a national energy consumer advocacy body – preliminary statement of issues and questions for consultation’*.

Consumer advocacy plays an important role in the regulatory process. It enables consumers to provide meaningful input into, and influence over, government policies that affect their interests. This helps promote more efficient market outcomes that better reflect consumer needs.

The AER and the ACCC’s view is that strong consumer advocacy in the energy sector is particularly important, where the complex nature of the issues that impact on end users present considerable challenges for consumers to participate in regulatory processes.

The AER and the ACCC consider that consumer issues in the energy sector encompass a wide range of interests, including those of residential consumers (including disadvantaged and vulnerable consumers); small and medium businesses; and large and industrial energy users. The term ‘consumer’ in this submission refers to this collective group of energy users.

A significant concern is that individual consumers and their representatives often lack the technical knowledge and resources to effectively engage with many key regulatory processes, including those that impact on price, reliability and other issues of importance to consumers. Limited consumer representation has meant consumer views may not be expressly represented in these processes, and energy businesses’ positions and proposals not directly challenged from a consumer perspective.

Accordingly the AER and the ACCC welcome and support the establishment of a national energy consumer advocacy body (advocacy body) that can engage across a range of energy sector issues on behalf of Australian energy consumers.

The AER is Australia’s national energy market regulator and is committed to promoting outcomes in the long-term interests of consumers.

The ACCC promotes competition and fair trade in markets to benefit consumers, businesses, and the community, and is Australia’s national utilities regulator.

To assist the AER and ACCC to achieve their respective objectives, the advocacy body should have the skills and capacity to engage in vigorous and robust debate with industry and government energy stakeholders (including the AER), assuming the role of a ‘contradictor’ when necessary.

The advocacy body's objective should be to promote the long-term interests of consumers consistent with the National Electricity Objective, National Gas Objective and the National Energy Retail Objective.

Broadly described, the scope of the advocacy body's work should include:

- energy network regulation, which includes network pricing
- wholesale energy market issues
- retail energy market issues under the National Energy Retail Law (Retail Law) and, in the context of problematic sales practices in the sector, the Australian Consumer Law (ACL)
- energy sector competition, such as mergers and authorisations.

The AER and ACCC consider that key characteristics of an effective advocacy body will include:

- a clear objective that promotes the long-term interests of Australian energy consumers
- a governance structure that allows it to act independently and advocate on behalf of all consumers
- a proactive and evidence-based approach
- the capacity to respond to economic, regulatory, competition and consumer protection issues that impact on energy consumers
- a diversity of expertise, including energy market, technical, regulatory and consumer advocacy to allow full participation in regulatory and policy processes
- an efficient and effective organisational structure that is transparent and accountable
- the capacity to undertake campaigns that empower and educate consumers.

To meet the above criteria, the advocacy body will require sufficient, ongoing funding to build expertise and knowledge, to attract suitable staff and undertake a broad works program that builds capacity in energy advocacy.

## **2. Limitations in the current framework**

Consumer energy issues are of high importance to the AER and ACCC. Energy has traditionally been a 'low engagement' purchase for consumers, but this is changing as markets become more competitive and energy costs become a greater proportion of household expenditure. In addition, energy offers are not always presented in a way that makes them

easy to understand or to compare. Current priority areas for the AER and ACCC are outlined in **Appendix 1**.

While there are a range of opportunities for consumers and consumer organisations to participate in specific regulatory and policy development processes (see **Appendix 2**), the complexity of issues has restricted their capacity to engage fully across the range of processes.

There are a number of factors driving the need for national consumer representation. Specifically:

- Energy users have not been well represented in regulatory processes. Regulatory outcomes are less effective as they are not informed by an equal representation of interests.
- A lack of expertise to deal with the range of complex regulatory and technical issues in the energy market.
- No nationally coordinated research program to understand the key issues of concern for consumers.
- Increasing asymmetry of information and resourcing that exists between consumers and service suppliers.
- Increasing energy costs have led to a higher proportion of household spending on energy (particularly for disadvantaged consumers).

## **3. Objectives and principles of the proposed body**

### **3.1 Proposed objectives**

The advocacy body should have a single objective that focuses on promoting the long-term interests of energy consumers with respect to their access to the supply of efficiently priced, reliable and safe energy services.

The proposed objective set out in the consultation paper reflects the main elements from the National Electricity Objective, the National Gas Objective and the National Energy Retail Objective and this consistency between objectives provides a strong foundation for a proactive and evidence-based approach to consumer advocacy.

In addition, the objective of the advocacy body should ensure that it contributes to the broad range of policy, competition and consumer protection issues that affect Australian energy consumers.

## 3.2 Proposed guiding principles

The following key principles would provide a solid framework for the establishment of the advocacy body:

- 1) *The body must adopt a strategic, proactive and evidence-based approach to its advocacy and other work*

This principle will enshrine the importance of an evidence-based approach. This will allow the body to build a research base that clearly identifies the most significant and important issues for all energy consumers.

It will also enable the advocacy body to more authoritatively contribute to energy sector processes, and more efficiently develop and report against key performance indicators. It will also allow the body to build capacity for energy advocacy groups to participate in jurisdictional regulatory processes.

- 2) *The body must incorporate skills that reflect the range of energy market consumer issues*

This principle is critical to ensuring the body has the capacity to participate fully in policy, regulatory and decision making processes. It will be important that the advocacy body is able to attract individuals with the necessary range of skills and expertise at a staff and board level, including expertise in engineering, economic regulation, consumer engagement, advocacy and energy markets. Directors of the advocacy body's board should be appointed based on their expertise in these areas. This should be established through the body's governance instruments.

- 3) *The body must build and maintain its own advocacy capacity and support capacity building in energy advocacy bodies at the state and territory level*

This principle will allow the advocacy body to build capacity to respond to newly emerging issues that have the potential to cause more widespread detriment if not addressed early. Additionally, it must be able to contribute to the capacity of jurisdictional advocacy groups. This will ensure that direct consumer experience and specific local issues can inform the advocacy agenda.

- 4) *The body is accountable and transparent*

This principle will ensure that the advocacy body is independent and transparent in its operations and performance. The body will face considerable scrutiny and will need to satisfy market participants that its governance structure is sufficiently robust to manage conflicts, represent consumers collectively (not favour one consumer segment over others)

and devote its resources to areas of greatest priority. The advocacy body's independence should be enshrined in its constitution or other relevant governing articles.

Development of strategic plans, policies, procedures, funding decisions and performance assessment are critical to ensuring its operations are conducted in an independent, transparent and accountable manner that is free from any conflicts of interest or perceptions thereof.

- 5) *The body must maintain effective communication and coordination with consumer advocacy bodies at the national, state and territory level and, where appropriate, support their advocacy work while avoiding duplication of effort.*

This principle will ensure that the advocacy body adds to the capacity for consumers to participate in regulatory and policy decision making processes and does not duplicate or discourage work already undertaken at a jurisdictional level. A key role for the body in the early phase of establishment will be to develop strong links to other consumer advocacy bodies and a strategy to manage communication and co-ordination.

## **4. Scope and functions**

### **4.1 Scope**

#### *4.1.2 Scope of work*

The advocacy's body primary focus should be the economic, regulatory, competition and consumer protection issues that have the most direct impact on consumers in the national energy market.

There are a range of issues that may more or less directly affect energy consumers, including occupational health and safety, environmental issues and standards and the introduction of new technologies.

There may be merit in the body having a role in relation to some of these issues, so a degree of flexibility in scope to respond to emerging issues is desirable.

#### *4.1.3 Scope of representation*

The commonality of issues of significance to both small and large energy consumers nationally, means that the advantage of a single advocacy body representing all consumers outweighs any potential disadvantages.

Currently, the capacity of small energy consumers and their representatives to engage in technical and complex regulatory processes is limited. The

development of a single advocacy body that also represents large energy consumers would introduce a range of important skills and perspectives that small consumer representatives may not have had the opportunity to develop.

This sharing of knowledge will ensure a more holistic and considered consumer view is presented by the advocacy body.

Such broad representation may, at times, risk a conflict between the priorities and concerns of consumer segments. However, an advocacy body that focuses only on small consumers risks excluding a significant segment of the market. Large energy consumers, which includes many small and medium businesses, consume somewhere in the order of 60-70 per cent of electricity generated in the National Electricity Market and a similar amount of total gas consumption.

An advocacy body that represents all energy consumers would also ensure the interests of small businesses whose energy consumption is above the threshold for protection as a 'small user' under the Retail Law are also fully recognised.

Care will be needed to ensure broad representation is not at the expense of the smaller consumers' interests, including disadvantaged and vulnerable consumers. These risks can be managed with appropriate governance mechanisms, procedures and guidelines that ensure the advocacy body represents the interests of small users and an evidence-based approach that identifies priority areas with regular reporting against key performance indicators.

## 4.2 Functions

### 4.2.1 *Contribute to regulatory processes*

A key function for any advocacy body will be to directly participate in energy market policy and regulatory processes through formal submissions, participation in working groups and formal regulatory review processes. For example;

- participating in revenue/price determination processes, particularly if issues are raised of broad and national significance
- participating as an interested party in merit review processes to provide views to challenge and counterbalance the positions taken by energy businesses during these processes
- participating in processes to develop and review regulatory guidelines and schemes that establish key regulatory approaches

- ACCC mergers and authorisations processes – for example, to provide consumer views about the potential impact of a proposed merger of energy businesses
- contributing to reviews of national rule change processes. Over the longer term, and with the adoption of the National Energy Customer Framework in each jurisdiction, reviews into changes proposed to the National Energy Retail Rules will require strong consumer engagement and advocacy.

#### *4.2.2 Undertake campaigns to educate and empower consumers*

There is a clear need for the advocacy body to have a role in proactively undertaking consumer campaigns designed to improve consumer understanding of the energy market. Experience from advocacy organisations in Australia show that this role can deliver a number of benefits by bringing a range of new consumer perspectives and empowering consumers to take action.

#### *4.2.3 Develop a model for stakeholder engagement*

Any model of energy advocacy needs to facilitate consumer engagement and work with grass-roots organisations. This will allow the body to reflect a national focus that is informed by direct consumer experience and monitoring. Developing effective engagement strategies with state and territory consumer organisations, government departments, energy ombudsman schemes as well as the AER's jurisdictional consultation groups, Consumer Consultative Group and Consumer Challenge Panel is a critical role.

#### *4.2.4 Develop a research program based on identified organisational priorities*

Effective advocacy needs to be driven by evidence-based research that informs organisational priorities and supports evidence-based policy development and consumer education.

In this context, the Australian Communications Consumer Action Network (ACCAN), the national advocacy body for the telecommunications industry, specifically lists research as one of its organisational objectives. It has conducted detailed research (sometimes in partnership) into a range of consumer issues, including phone cards and consumer responses to complex products.

This has enabled ACCAN to be an authoritative voice in policy discussions, such as the recent review of the telecommunications industry's Telecommunications Consumer Protection Code.



The Department of Broadband, Communication and the Digital Economy (DBCDE), in its 2012 mid-term review of ACCAN found there was strong support for ACCAN's growing body of research.<sup>1</sup>

#### *4.2.5 Undertake capacity building*

A further function of the advocacy group should be to improve and extend the total advocacy effort in the energy market by providing training and support to improve the capacity of consumer organisations to represent energy consumer interests.

The advocacy body should have a role building jurisdictional advocacy groups' capacity to advocate directly where there are issues that would have implications at a national level and would inform and contribute to other regulatory processes.

## **5. Resourcing**

The level and manner of funding will have a significant impact on the advocacy body's capacity to effectively represent the interests of Australian energy consumers.

To effectively advocate on issues of importance to energy consumers, the advocacy body must be able to attract expert staff with skills ranging from finance, technical to consumer advocacy experience, as well as conduct broad-ranging research and a wide program of works.

Additionally, it will be critical to the effective operation of the body that funding is provided on an ongoing basis and from a stable source. This is necessary to enable the advocacy body to develop the necessary expertise and knowledge to take a long-term approach to its activities.

The funding model employed for ACCAN may provide a useful model for consideration. Specifically, ACCAN's annual funding is paid by the DBCDE, but ultimately recouped through a levy on telecommunications carriers<sup>2</sup>. A further example of industry funding that has proven effective is the Consumer Advocacy Panel.

In terms of the overall resourcing of energy sector consumer advocacy, it is important that the advocacy body adds to the range of perspectives brought to bear in decision making, and that its establishment and ongoing operation does not occur at the expense of existing consumer advocacy programs.

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<sup>1</sup> Mid-term review of the Australian Communications Consumer Action Network (ACCAN), Department of Broadband, Communications and the Digital Economy, April 2012, p20

<sup>2</sup> Mid-term review of ACCAN, DBCDE, April 2012, p25

## 6. Conclusion

While current reforms underway in energy sector policy are expanding consumer participation in regulatory decision making, there is currently no single national consumer voice that can advocate across all sectors of the market for all consumers.

A national advocacy body can fill this gap.

To do so effectively, it must have the resources to authoritatively identify issues of greatest importance to energy customers. It will need a full complement of skills and expertise to enable it to meaningfully take part in an increasingly complex technical and regulatory landscape, across a broad range of issues.

A national energy advocacy body that meets these criteria will be strongly placed to influence the decisions and processes that impact on Australian energy consumers.

The AER and ACCC support the creation of such an advocacy body.

## Appendix 1 — ACCC and AER compliance and enforcement activities in the energy market

The AER is Australia's national energy market regulator and is committed to promoting outcomes in the long-term interests of consumers. The AER's functions include:

- setting the prices charged for using energy networks (electricity poles and wires and gas pipelines) to transport energy to consumers
- monitoring wholesale electricity and gas markets to ensure suppliers comply with the legislation and rules, and taking enforcement action where necessary
- publishing information on energy markets, including the annual State of the energy market report and more detailed market and compliance reporting, to assist participants and the wider community
- assisting the ACCC with energy-related issues arising under the *Competition and Consumer Act 2010* (CCA), including enforcement, mergers and authorisations.
- responsibilities under the Retail Law, including: monitoring and enforcing compliance; authorising retailers to sell energy; approving retailers' hardship policies; administering a national retailer of last resort scheme; and reporting on retailer performance and market activity.

The ACCC promotes competition and fair trade in markets to benefit consumers, businesses, and the community, and is Australia's national utilities regulator. One of its primary responsibilities is to ensure that individuals and businesses comply with Australian competition, fair trading, and consumer protection laws – in particular the CCA.

Complaints to the ACCC and the AER, energy ombudsman schemes and other consumer bodies suggest that the marketing practices of a number of energy retailers may be leading consumers into poor decisions. The conduct of concern includes: door-to-door marketing; energy price comparator services, including switching services; and claims made in relation to the level of saving and discount available to consumers.

### A1.1 Energy marketing

For consumers, door-to-door marketing can often be intimidating, and inside their own homes, consumers feel more susceptible to pressure from salespeople. Door-to-door sales agents work on a commission basis, which encourages them to push the boundaries of acceptable and legal behaviour.

The ACCC and AER commenced a series of coordinated compliance and enforcement activities seeking an increase in business and consumer

awareness of their rights and responsibilities and to minimise consumer harm in this area. Some key highlights of this project to date include a co-signed letter (ACCC and AER) to energy retailers reminding them of their obligations under the CCA, including the ACL, and to inform them of the then-impending commencement of the new Retail Law. In March 2012, the ACCC instituted civil proceedings against AGL Sales Pty Ltd and AGL South Australia Pty Ltd, and Neighbourhood Energy Pty Ltd for allegedly engaging in misleading and deceptive conduct, making false representations and breaches of some of the unsolicited consumer agreement provisions in the course of door to door selling of energy products to consumers.

On 27 September 2012 the Federal Court ordered Neighbourhood Energy and Australian Green Credits by consent, to pay a total penalty of \$1 million for illegal door-to-door selling practices. The AGL matter is ongoing. The ACCC continues to investigate at least four other energy retailers and their relevant marketing firms regarding allegations of inappropriate behaviour in the door-to-door area. To assist consumers more directly, the ACCC has also produced a range of practical educational tools. These include a guide, brochure, 'Do Not Knock' sticker and door hanger postcard and translated versions of the brochure. The AER has also produced a range of fact sheets that inform consumers of their rights under the Retail Law, available in hard copy and on the AER website.

## A1.2 Energy price comparison services

This is another area where the ACCC and AER believe information could be more clearly and fully presented to consumers. In the ACCC's proceedings against the company formerly known as Energy Watch Pty Ltd and its former CEO, Mr Benjamin Polis, the Federal Court found that Energy Watch misled consumers in relation to its energy price comparison service and the savings that could be achieved using the service. The Court imposed penalties of more than \$2 million on the company and Mr Polis. The ACCC has continued to work with a number of other energy comparator websites to ensure broader industry compliance is achieved. The AER has launched an energy price comparison website, Energy Made Easy, as a trusted source of information on energy offers.

## Appendix 2 – Current consumer participation in the energy market

There are currently a range of opportunities for consumer organisations to participate in energy regulatory and policy processes. These include participation in the AER's Better Regulation reform program, consultation forums such as the AER's Consumer Consultative Group and by accessing funding for research and advocacy through the Consumer Advocacy Panel.

### A2.1 AER Better Regulation reform program

In 2012, the AER commenced the Better Regulation reform program to deliver an improved regulatory framework focused on promoting the long-term interests of consumers. The Program will ensure mechanisms and processes are in place to hear and consider consumer perspectives and concerns as they relate to the AER's specific functions and roles under energy laws.

A key part of the program is publishing a range of guidelines that explain the AER's approach to the new rules for network regulation finalised by the Australian Energy Market Commission (AEMC) in November 2012. Of these, the consumer engagement guideline will set out how the AER expects network service providers to engage with customers and respond to issues raised in preparing regulatory proposals.

#### *a. Consumer Reference Group*

The Consumer Reference Group (CRG) was established to facilitate consumer input into the development of the Better Regulation guidelines and will operate until completion of this process in November 2013. The role of the CRG is to distil key issues and information to constituents for consideration, consult and report back to the AER. Representatives on the CRG range from welfare organisations and general consumer groups through to small business and larger user groups.

The AER will consider CRG members' contributions as part of its decision making processes on the guidelines, with members able to provide additional input or submissions on behalf of the groups they represent.

#### *b. Consumer Challenge Panel*

The AER is establishing an internal resource—the Consumer Challenge Panel—to ensure its network revenue/price decisions properly incorporate consumers' interests. Experts drawn from the panel will assist the AER in individual determination processes by:

- advising the AER on whether network businesses' proposals are justified in terms of the services to be delivered to consumers, and; whether those services are acceptable to, and valued by, consumers
- assisting the AER in ensuring network businesses' proposals reflect the level of service, price, quality, safety, reliability and security of supply that consumers value, and whether the proposals are in the long-term interests of consumers
- advising the AER on the effectiveness of network businesses' engagement activities with their consumers and how this engagement has informed, and been reflected in, the development of their proposals.

## A2.2 AER Customer Consultative Group

The AER is required, under the Retail Rules, to establish and maintain a Customer Consultative Group. The role of the CCG is to provide advice to the AER in relation to issues affecting energy consumers that fall within the scope of the AER's functions under energy laws. Members also assist the AER with information dissemination strategies and external networks available to enhance communication with community and consumer groups and energy consumers.

## A2.3 Consumer Advocacy Panel

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

The CAP is funded through market fees collected by the Australian Energy Market Operator (AEMO).