



**Response to the
*Proposal for a National Energy Consumer
Advocacy Body
Directions Paper***

Energy consumer submission

12 April 2013

This submission is in response to the *Proposal for a National Energy Consumer Advocacy Body Directions Paper* (Directions Paper) by Dr Tamblyn and Mr Ryan (the Reviewers), and is on behalf of the organisations whose names appear on the final page. It does not replace individual organisations' submissions, which may differ in some details, but is intended to indicate where there is broad agreement among the signatories.

We appreciate the opportunity to input into this important process. Most of the signatories to this submission also participated in the process that resulted in the Energy Consumers Australia Business Plan (the ECA Plan) being submitted to the Standing Committee of Officials (SCO) and the Federal Minister for Energy in October 2012. We continue to support that plan in most respects. However, as the Directions Paper supports a model that differs substantially from the ECA proposal, this submission provides a targeted response to issues of greatest concern and a record of our support for aspects of the proposal that we believe represent positive outcomes for consumers.

1. OBJECTIVE

The joint signatories agree that there should be a single, high-level objective for the NAB. However, it remains our view that the objective should include affordability and environmental sustainability, primarily because these are issues of significant concern for millions of consumers.

In relation to the expert advisors' recommended objective, we agree with the focus on the long term interest of consumers, but do not agree that this should be defined only in terms of efficient pricing, reliability and safety. 'Efficient pricing' would appear to be skewed towards network pricing rather than retail pricing, and is not a concept included in the NEO, which refers to 'efficient investment in, and efficient operation and use of, electricity services'¹ with respect to price and other criteria.

We do not consider that the role of the NAB is to quarantine consumers' interests into matters that appear or do not appear to fall within the confines of the current NEO; rather it is to reflect and advocate in those interests, including, if necessary, challenging current market arrangements.

Finally, our group had two almost opposite understandings of the word 'all' in relation to energy consumers; for some it is inclusive and implies 'all groups of' consumers, whereas for others it is selective and implies 'only where these relate to the entire spectrum' of consumers—ie potentially excluding important matters that are relevant to many but not all consumers. We therefore recommend that this word be removed.

Our recommendation to overcome these issues is to define the objective of the NAB as:

To promote the long term interests of Australian energy consumers, by presenting a strong, coordinated consumer advocacy voice on national energy market matters of strategic importance and material consequence for energy consumers, particularly household and small business energy consumers.

¹ National Electricity Law s 7

2. CONSTITUENCY

It remains the view of the joint signatories that the national advocacy body should solely represent residential and small business consumers. A lack of access to technical skills and the funding for greater co-ordination has resulted in these consumers continuing to be under-represented in a range of national processes. We believe available funds should be targeted in this way, so as to ensure that the new national body genuinely adds value to the current landscape of consumer advocacy, and in recognition that large users are more able to allocate resources toward outcomes that are in their own interests.

There is general agreement that there can be some alignment of interest between large and small users. To date, large users have had access to grants from the Consumer Advocacy Panel and their work has added value to high-level processes related to regulatory reform. This work has opened up a number of opportunities to work collegially where interests are clearly aligned. The informal, ad hoc groupings work effectively because they allow parties to represent their respective constituencies in a manner that is responsible, transparent and manageable—it also provides the capacity for a range of views to be put forward where interests diverge.

The joint signatories remain concerned that formalising such ad hoc working relationships through a national body structure has the potential to dilute the effectiveness of the national body. It could spend a great deal of time looking for consensus, rather than working to achieve the best result for either small or large users. While we acknowledge that the Directions Paper explains that should matters of conflict arise, 'the NAB should emphasise the interest of residential and small business users in its advocacy work' (p 9), it is unclear whether there is an organisational structure capable of meeting this aim or whether internal conflict would undermine or reduce the effectiveness of the body.

The joint signatories also have concerns about the level to which large users will be positioned to drive the strategic direction of a national body if that body is expected to represent all users. Indeed, a mandate to represent all energy users would set the expectation of this being the case. Small users are already out-numbered and out-resourced by those on the supply side. It is the belief of the joint signatories that overcoming this dynamic requires a national body charged unambiguously with advocating in small users' interests.

3. GOVERNANCE STRUCTURE

We agree with the selection of a company limited by guarantee as the appropriate legal structure for NAB. This model can ensure that the good governance principles required by corporations law are applied to the NAB. We also strongly agree that the NAB be accountable to governments, the consumer advocacy sector and the general public. However, we are concerned that some aspects of the model will limit the organisation's effectiveness, legitimacy and ability to operate efficiently.

The process for appointing board directors raises two concerns. First, although there is proposed to be an independent selection panel, the approval by SCER may cause practical difficulties due to delays in sign off. Our experience in government appointments, particularly those that require the approval of a number of jurisdictions, is that they can take time. We note that the current membership of the Consumer Advocacy Panel is not complete, and there is a vacancy of the chair (although there is an acting chair). Delays in appointments will

impinge on the effective operation of the board and the NAB. Second, as noted by the directions paper, a central issue is the independence of the NAB. Independence needs to be not only real, but also perceived. Despite the existence of the selection panel, the ability of SCER to reject candidates with for board positions will necessarily impinge on the independence of the body.

The appointment of the SA Energy Minister as the sole member also raises independence concerns. For example, any change in the constitution of the NAB would have to be approved by that minister. Further, an independent national advocacy body undertaking research and advocacy may adopt a policy position that conflicts with the position/s of various state governments or the federal government from time to time. We believe that consideration should be given to the potential difficulties that may arise from the suggested governance model where a minister is the sole member of the company, including any public embarrassment that may occur should the national body be in disagreement with a government policy. Similarly public perception (including media perception) may be that the national body, in taking a policy position that agrees with a government position is not independent and is consequently ineffective in representing consumer interests.

We strongly support the proposed skill set of the board.

In the joint consumer submission, we proposed additional safeguards to ensure there is a level of accountability to governments establishing the NAB, which do not appear to have been considered in the Directions Paper. First, the funding agreement is a key accountability mechanism. The funding agreement can set out the broad remit of the organisation, and require the development of an annual workplan and reporting against that work plan. Second, it was suggested that the chair of the board could be appointed in consultation with the AER, the AEMC and the Consumers' Federation of Australia. These mechanisms would provide governments with a level of oversight over the organisation, without impinging upon its independence or effectiveness.

At the public forums, questions were asked about the NAB's connection with consumers and its legitimacy. As a specialist advocacy body, it will not have direct interactions with consumers. However, as noted in the Directions Paper, it will establish a reference group to ensure strong links with other consumer advocacy bodies—we strongly support this. In our joint submission, we also suggested that it undertake an annual survey of consumers to inform its advocacy, and potentially facilitate the National Consumer Roundtable on Energy, which has facilitated information sharing and joint advocacy for energy consumer advocates over some years.

4. FUNDING

Funding source

The joint signatories have consistently identified an industry levy as the preferred source of funding for a national advocacy body. We are, therefore, pleased this approach has garnered further support in the Directions Paper. The fact that this mechanism is currently used to fund the CAP clearly illustrates it is both viable and practical.

Funding and accountability

Irrespective of the source of its funding, the joint signatories believe that any funding agreement under which the NAB operates should create strong measures to promote the NAB's accountability and independence from any particular interests beyond those it is established to represent. This means that the funding agreement should set out clear parameters about the way in which funding may be deployed, with transparent reporting processes. It should also provide the NAB with sufficient autonomy and independence to carry out its work effectively.

Level of funding

During the many stages of advocating for a national consumer body, the joint signatories have stressed the need for a national body to increase the capacity of energy consumer advocacy – with this measured in terms of improved quality of input, a broader coverage of issues from a consumer perspective, and an enhanced ability to engage with the many highly technical aspects of energy issues.

That there is room for improvement in these areas is almost entirely the result of insufficient resources being available to consumer advocacy. As the contribution made by existing consumer advocates is crucial, there is a clear need for an injection of additional funding, rather than a redirection of existing funds.

The Directions Paper outlines a model for the NAB that relies on input from the jurisdictional advocates through a reference group and working in a complementary manner to avoid duplication. The yearly operational budget for the NAB is projected at between \$5 and \$7 million with a complement of 15 FTE staff. Notwithstanding the significant difference between \$5 and \$7 million, the joint signatories have some concerns that this budget represents a redirection of funding away from jurisdictional and sectoral advocacy towards national body functions. Whether this is rationalisation or redirection of funding remains unclear without further detail—especially given the unresolved question of co-contributions from state and territory governments.

Regardless, it is the view of the joint signatories that the symbiotic nature of the NAB and jurisdictional/sectoral advocacy must be reflected in the funding model. Jurisdictional and sectoral consumer advocates each make important contributions to positive outcomes for energy consumers and, of course, robust advocacy at one level allows other levels of advocacy to remain focused on their core business. In light of this, the success of the NAB requires its funding arrangements to create a net positive for consumer advocacy as a whole. This model should support the strong foundation jurisdictional and sectoral advocacy can provide the NAB—thereby maximising its potential to add value to the current landscape.

It is our view that the budget for Energy Consumers Australia (ECA) of \$2.56 million in year one with 9.5 FTE staff achieved this goal. It was envisaged that CAP grant funding of \$3.08 million and various contributions from jurisdictional governments would remain available to support work at national, jurisdictional and sectoral levels.

The joint signatories acknowledge the need to assess the effectiveness of new funding and its capacity to fill current gaps to generate additional positive outcomes for consumers. However, we believe any changes to CAP or other advocacy funding should be informed by a review of advocacy arrangements in action—rather than a wholesale change from year

one of the NAB's establishment. This proposed review, which has been outlined in earlier ECA submissions, would allow any change to be built on an evidence base that has had the benefit of a thorough analysis of both the costs and benefits of any resultant change. Our concern is that premature rationalisation may incur a permanent loss of the advocacy skills that have taken years to build within the community sector.

5. LIMIT OF ONE CAPACITY BUILDING GRANT RECIPIENT PER JURISDICTION

The joint signatories strongly oppose the proposed limit of one consumer organisation being funded per jurisdiction, and believe this arrangement would be counter to the original intention of the COAG Energy Market Reform Implementation Plan to '*enhance consumer representation*'.

Our position, and that of the stakeholders involved in the Renouf Report (2011), is that the new national body should enhance and augment the current advocacy system, rather than undermine or erode the capacity of advocacy work that is already being undertaken.

The impact on existing advocacy resources of a 'one state/territory organisation per jurisdiction'² approach would be substantial. The adoption of this model would see the loss of specialist knowledge in the current system. For instance, because of their access to clients, the Consumer Action Law Centre (CALC) undertakes case-work informed advocacy that has been invaluable in addressing and prosecuting unfair practices related to energy marketing. This work has contributed to energy marketing being taken up as a key priority of the Australian Competition and Consumer Commission (ACCC)—therefore benefiting consumers nationally.

Similarly, a working knowledge of peak demand, innovation and technology allowed the Alternative Technology Association (ATA) and the Total Environment Centre (TEC) to provide specialist, consumer-focused advocacy to the Australian Energy Market Commission's third review of Demand-Side Participation (DSP). This resulted in some extremely positive outcomes for consumers, including the AEMC's proposal to phase in cost-reflective pricing and options for vulnerable consumers to remain on flat tariffs.

It is doubtful whether these outcomes could have been achieved under the model proposed in the Directions Paper.

Of those organisations funded by the Panel for Research projects, we also suggest that the majority of the small user consumer organisations would not have the internal resources to be able to undertake these types of research projects on an ongoing basis, should they be unsuccessful in acquiring NAB funding for related advocacy work.

This approach would therefore likely lead to a significant reduction in important aspects of small energy consumer advocacy nationally and also within jurisdictions and advocacy sectors.

We would also point out that there is currently a formal review of the CAP funding Guidelines being managed by DRET, and it would be unfortunate for this NAB review to pre-empt the outcome of that review.

² Discussion Paper, page 12.

Ultimately, our position and in line with our proposals under the *Energy Consumers Australia Business Plan*, is that jurisdictional and sectoral advocacy arrangements should remain unchanged, particularly while the national advocacy body is established, with a review period after 2-3 years. With issues such as demand side participation, competition reviews and deregulation progressively rolling out in jurisdictions across the country, it would be detrimental to consumer representation to limit the number of consumer voices and interests that can inform these policy debates.

6. CO-CONTRIBUTION

The joint signatories also urge against the concept of a required co-contribution by State Governments to complement NAB funding to consumer advocacy organisations.

Dual funding sources would subject funding applicants to the different and possibly divergent policy agendas of two separate jurisdictional funding bodies. If funding application and accountability processes were not streamlined, some consumer advocacy resources may need to be redirected to administrative tasks, thereby reducing the capacity of the organisation to deliver consumer-driven outcomes. Additionally, any change of government, funding or policy priorities could legitimately increase funding uncertainty and reduce the ability of the advocacy system to attract and retain expertise over time.

A number of consumer organisations have had previous experience with national bodies such as SCER and some regulators making policy commitments that require dedicated consumer input—only for State Governments to subsequently renege on, or delay, those policy directions. NECF implementation, the National Smart Meter Program and retail price de-regulation are three classic examples of this.

Given this experience, it is not difficult to imagine a scenario where the NAB prioritises funding in specific areas of reform, based on national policy commitments, which jurisdictional or sectoral consumer organisations then respond to by way of applications for advocacy and/or research, only for their respective State Governments to deny funding on the basis that they do not support the national approach.

This is likely to lead to significant confusion and resource inefficiency at the consumer level. It is also likely to lead to problems in the inherent negotiation process that will occur between State Governments and the NAB as they both seek to influence consumer advocacy output.

Further, in States that do not currently offer funding for consumer advocacy, co-contribution will be difficult to implement. The joint signatories are unaware of an existing model that assures permanent contributions from states or territories—even where in-principle agreement to do so has been reached at an official level. In States that do already support a range of consumer advocacy work (e.g. Victoria), this approach may see a reduction in advocacy output.

Separately, removing the requirement for co-contribution would enhance the independence and autonomy of the organisation in their interaction with state governments.

And finally, it would also appear that a co-contribution approach entrenches the idea of 'jurisdictional-only' funding of consumer organisations. As previously articulated, a number of consumer organisations in the energy market are national in their membership and sectoral in their interest. We remain unconvinced that such a co-contribution arrangement would be

able to provide opportunities for these organisations to contribute to the energy policy debate.

7. CONCLUSION

The joint signatories consider that any move to the establishment of the NAB must represent a net positive for energy consumers. It is our view that the case for evaluating whether that net positive has been facilitated relies on effective management of the transition. Therefore we retain the view that any rationalisation or redirection of funding to a national body should be informed by a review of the overall energy consumer landscapes once the NAB has operated for a minimum of two years.

We recognise the strong links between jurisdictional, sectoral and national advocacy and urge any model to avoid strengthening one element of this network at the cost of others.

We reiterate the need for a strong governance structure that is transparent and independent in nature.

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