



**National Energy Market
End User Advocacy Arrangements
Comment on Options proposed by the MCE**

**Submission by the EUAA: End User Advocacy Arrangements in the
Energy Sector**

July 2005

	Page
1. Introduction.....	1
2. End User Funding should be Entrenched in the National Electricity Law	1
3. Roles and Functions of Effective Advocacy	2
4. Advocacy Principles	5
4.1.1. The Funding Body role should be restricted to allocating funds.	6
4.1.2. The Funding Body should focus on the best interests of end users.	8
4.1.3. Funds should be allocated to energy reform matters, which relate to both gas and electricity.....	8
4.1.4. Funds should be allocated to a broad range of initiatives.	9
4.1.5. The Funding Body should be independent with no conflicts of interest.	9
4.1.6. Appointment of Funding Body representative(s) should be made after consultation with end user groups, and removal on normal and accepted grounds.....	11
4.1.7. Funds should be allocated exclusively to member-based organisations whose members are direct end users of energy	11
4.1.8. Funds should be distributed on a tied basis.....	11
4.1.9. Level of funding should be appropriate for active and robust participation in energy policy development.....	12
5. Consumer Participation in the Regulatory Process	14
5.1. Consumer input to regulatory processes	14
5.2. Regulators' comments on end user advocacy	16
5.3. EUAA Response	17
5.4. Lessons for End User Advocacy	20
6. Preferred Funding Arrangements.....	21
APPENDIX: Allens Report Proposed Funding Model.....	23

FOREWARD

Marsden Jacob Associates (MJA) has assisted the Energy Users Association of Australia (EUAA) prepare this submission to the Ministerial Council on Energy Standing Committee of Officials' (SCO) proposal to improve existing end user advocacy funding arrangements for Australia's energy markets.

The submission has also been assisted by funding provided by the National Electricity Consumer Advocacy Panel. This support is gratefully acknowledged.

MJA provides specialist advice on economics, finance and utility regulation. Dr Jeff Washusen, MJA Principal, has extensive experience in the energy sectors and has provided advice and assistance to utility companies and end-users on a range of matters related to energy markets, energy market reform and energy market regulation. Dr Washusen authored the report to NECA on end user advocacy for the National Electricity Market. MJA's views are based on experience assisting utility businesses and end-user advocacy organisations over many years.

The EUAA was formed on 1 January 2001 and has existed under other names since 1996. The EUAA is a non-profit organisation that has substantial experience in advocacy on energy policy and regulatory issues. Members determine EUAA policy and direction. The Association members are business users of energy with activities across all states and many sectors of the economy. The EUAA activities cover national and State issues dealing with electricity and gas, as well as greenhouse and energy efficiency.

The submission is underpinned by a number of principles developed by a group of established and recognised end-user advocacy organisations. Organisations that endorsed the principles are Australian Plantation Products & Paper Industry Council (A3P), Energy Action Group, Electricity Consumers Coalition of South Australia, Energy Markets Reform Forum, Energy Users Association of Australia, Energy Users Coalition of Victoria and Victorian Council of Social Services. This group represents some 100 major energy-consuming companies and Victoria's low income and disadvantaged families. The group unanimously supports the need for end user advocacy funding principles underpinned by, and giving effect to, the National Electricity Law Single Market Objective of promoting the 'long-term interests of consumers of electricity'.

1. Introduction

This submission comments on the Ministerial Council on Energy Standing Committee of Officials (MCE/SCO) Consultation Paper¹ on end-user advocacy and the KPMG report² on which options presented in the MCE/SCO Consultation Paper are based. Reference is also made to proposals contained in the Allen Consulting Group prepared for the Consumers' Federation of Australia.³

Key points made in this submission are that:

- the submission represents views based on extensive involvement by the EUAA in end user advocacy in national and jurisdictional forums since 1996;⁴
- the end user advocacy options proposed by KPMG do not anticipate all of the roles and functions required for effective advocacy in national energy market processes;
- the KPMG proposals explicitly ignore the needs for advocacy in jurisdictional processes;⁵
- the principles identified by KPMG that underpin the options proposed are too narrowly defined; and
- alternative proposals made in this submission build on experience gained with the current NEM Advocacy Panel arrangements taking into account feedback provided by Australian regulators and consideration of issues raised in the Allen Consulting Group report to the MCE.

2. End User Funding should be Entrenched in the National Electricity Law

To date, the need for funding of end-users of electricity has been recognised in the new National Electricity Rules (and previously the National Electricity Code). The new Rules (under clause 8.10) gives effect to the principle that ALL end users have access to funding. Clause 8.10 also outlines the arrangements for the National Consumer Advocacy Panel.

¹ *Consumer Advocacy Consultation Paper*, Ministerial Council on Energy Standing Committee of Officials, March 2005.

² *Ministerial Council on Energy - Review of Consumer Advocacy Requirements – Report for User Participation Working Group*. KPMG, March 2005.

³ *National Energy Market Consumer Advocacy: Emerging needs and institutional models*, Final Report to Consumers' Federation of Australia, Allen Consulting Group, June 2004. Specific comments on some elements of the Allens report are contained in the Appendix to this submission

⁴ The EUAA has also worked closely with a significant number of other organisations representing both large and small consumers in developing advocacy positions and in preparing submissions to regulatory and policy forums.

⁵ KPMG says explicitly that “*This project ... 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.*” (see: p.6, KPMG March 2005)

The new Rule Change process, as outlined in the NEL, means that the breadth of policy and/or regulatory areas that funds are available for remains susceptible to constant modification and potentially elimination.

End users have already witnessed attempts to restrict the breadth of electricity policy and regulatory matters for which they can source funding. For example, the Energy Network Association (ENA) submitted to the SCO through the NER consultation phase (in January 2005) that the new Rules clause 8.10.3 does not entitle end users (or their representatives) access to funds to participate on specific Regulatory Price/Revenue Determinations. Thankfully, the SCO recognised that this did not preserve the *status quo* and did not accept the ENA's proposal.

Therefore, the EUAA **strongly recommends** that the new legal structure of the NEL provides the appropriate legislative support for end user funding arrangements. The new Rules (or possibly NEL Regulations) would then contain the funding arrangements that would give effect to the NEL requirement that ALL end users have access to funding to participate in energy policy and regulatory reform.

It is imperative that the principle of end user funding is embedded in the NEL as a matter of principle to give proper and unequivocal effect to the Single Market Objective of the NEL.

3. Roles and Functions of Effective Advocacy

In August 2004, the MCE released the following statement relating to current funding arrangements for consumer advocacy in the energy sector:

*MCE recognises the need for more effective consumer advocacy arrangements in the Australian energy market and supports the development of proposals to improve existing arrangements.*⁶

Yet KPMG's paper limits definition of advocacy to:

*... 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.*⁷

This definition is too narrow to encompass the need for effective advocacy, the need for which is appropriately identified by the MCE.

As the initial report to NECA by Pareto states, effective advocacy requires execution of four distinct functions:⁸

⁶ MCE Statement: *User Participation Policy Framework*, August 2004

⁷ p.6, KPMG, March 2005.

⁸ The roles and functions of effective advocacy were thoroughly canvassed in the report to NECA prepared by Pareto Associates Pty Ltd in June 2000. See: *End-User Advocacy in the National Electricity Market - Report to NECA for Consideration in its Review of Feasibility and Resourcing of a NEM End-User Advocacy Group*, Pareto Associates Pty Ltd, June 2000.

Advocacy is not a passive function. It aims to inform and influence using arguments supporting a case based on the perspectives of a particular constituency or interest. In the US, in particular, it is widely recognised that effective advocacy is an essential element of due process; recognition that is enshrined in legislation that seeks to ensure that the interests of consumers are advocated in regulatory, legal and market forums dealing with electricity and energy along with other stakeholders. The legitimate role of consumer advocacy is also recognised in the UK Electricity Act 1989, a role that will be formally constituted in an independent statutory body, the Gas & Electricity Consumers Council (GECC), following passage of the Utilities Bill through Parliament.

Advocacy has four distinct and fundamentally different elements; each focussed on achieving a different advocacy objective. In many of the precedents examined in the report, these elements are combined; in some cases they are separate. Understanding that these distinct elements exist is an important first step in selecting preferred governance arrangements, funding allocation approaches and funding quantum.

In the context of end-user advocacy in regard to NEM decision-making and operation, these advocacy elements and the objectives they aim to achieve are:

- representation of end-users that seeks to ensure physical participation in NEM-related decision-making processes;*
- presenting the views of end-users that seeks to assist policy-makers understand end-user concerns about the NEM and positions on NEM issues, and persuade them that a particular position should be adopted (or that a position they have adopted or other parties have put should be modified);*
- informing and educating end-users about the NEM that seeks to increase their involvement (either directly as Market Participants; or indirectly by more effective assertion of values when dealing with Retailers) and so maximise the economic power of end-users (as customers) in the NEM; and*
- conducting on-going research and policy studies on issues specifically relevant to end-users in the NEM that seeks to provide the "substance" supporting positions and views put by end-users. This may include detailed economic, legal, financial and engineering studies covering such topics as market performance by end-user segments, evolving end-user needs, and conditions for effective market participation or any other aspect related to the NEM.*

... UK and US precedents indicates that inclusion of each of the above elements is likely to add value to end-user participation in the NEM. UK and US experiences show that these elements can be funded separately and, by different mechanisms; but combining them may, in fact, be more efficient and more effective (if one or more is absent - or not already funded separately).⁹

⁹ *Op Cit.*, p(iii).

The KPMG report correctly notes that it is essential for end-user organisations representing both large and small consumers to be actively involved in energy market reform and regulatory processes. The EUAA agrees that undertaking advocacy to increase the understanding by consumers about the benefits to be gained from competitive markets is important. So is advocacy that seeks to promote administrative protection of disadvantaged consumers. These could be termed ‘social’ and/or ‘policy’ advocacy. But neither is sufficient by itself (or together) to optimise benefits that consumers can (or should be able to) get from energy market reforms.

Australia’s energy markets are based on complex rules determined by considering interactions between technical, financial, economic and legal issues. The administrative rule-making process is necessarily equally complex.

The debates and advocacy presented by stakeholders in the policy and regulatory processes that determine market rules and the outcomes of regulatory review are an important adjunct to the operation of reformed energy markets.

Advocacy is also important to end users in the broadest meaning of that term. It goes to the heart of energy reforms and allows end users to comment directly on whether the reforms deliver benefits to energy users. This is generally acknowledged to be the ultimate aim of the reforms and is now codified in the Single Market Objective of the new National Electricity Law. Active advocacy by end users also allows them to comment on whether the market faced by energy users is capable of benefiting them.

That is, advocacy is not just about which policy option should be given consideration or priority, or what the working of a particular rule should be. Nor is advocacy just about the role that Governments or regulators should take in protecting consumers from the effects of the market. Advocacy should also be about ‘how to increase, and how to cut the economic cake’. This requires that the debates and arguments presented to regulators and policy makers contain sufficient substance to allow them to ‘sit above the fray of the market and the debates’. It also requires understanding by energy users that the issues at debate are important and relevant to their economic well-being. The only really effective way to ensure this happens is to provide adequate resources to advocates who have a close affinity and relationship with energy users; and make sure the resources are sufficient for the advocates to effectively engage in each of the advocacy functions of *representation, presentation, information and research* listed above.

It should be noted that the contents of this submission are underpinned by consultation (by both MJA and EUAA) with large and small end-user advocacy organisations¹⁰. This consultation covered discussion about how these organisations believe current advocacy arrangements could be improved; noting that each has attempted to be actively involved in regulatory and energy reform processes in the past, and wishes to remain involved in the future.

¹⁰ Organisations consulted were Australian Plantation Products & Paper Industry Council (A3P), Energy Action Group, Electricity Consumers Coalition of South Australia, Energy Markets Reform Forum, Energy Users Coalition of Victoria and Victorian Council of Social Services.

The content of the submission also takes into account views expressed by a number of Australia's energy regulators about what they find as useful attributes of end-user advocacy.¹¹

This input from end user advocacy organisations and regulators has assisted the development of principles that should be used by the MCE to develop the model for end user funding arrangements preferred by the end user groups sponsoring this submission. Further commentary on the regulators' views of end user advocacy is provided in section 5 of this submission.

4. Advocacy Principles

The MCE/SCO and KPMG papers make valid observations on key aspects and challenges for effective advocacy in Australia's energy markets. The papers also make valid observations about some of the shortcomings of current end-user advocacy funding arrangements and draw conclusions about the need for changes to these arrangements. The KPMG paper also correctly identifies the need to assure the independence of a consumer advocacy funding arrangement. However, principles upon which its proposed consumer advocacy funding arrangements are founded are too general to provide practical assistance in developing workable arrangements in the Australian energy sector.

KPMG's report says that "*key criteria to guide the development of a new consumer advocacy model ... 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.*"¹²

These criteria are relevant, but insufficient. Achievement of effective advocacy will require more precisely specified and structured principles designed to assist in the development of an appropriately effective end-user advocacy model.

As mentioned above, the EUAA believes that the principles on which sound end user advocacy is based should include:

1. The Funding Body role should be restricted to allocating funds. It should not seek to supplant or duplicate the role of existing, established advocacy organisations.
2. The Funding Body should focus on the best interests of end users. It should not be concerned about achieving a balance between all stakeholders; this is a role assigned

¹¹ MJA sought feedback on regulators' views about the useful attributes of end-user advocacy from senior executive managers in the ACCC, ESC (Vic), ESCoSA, IPART, QCA and ERA (WA).

¹² p.2, KPMG, March 2005.

to policy makers and regulators that need not be duplicated by end-user advocates or the Funding Body.

3. Funds should be allocated to energy reform matters, which relate to both gas and electricity.
4. Funds should be allocated to a broad range of initiatives across sectors, markets and jurisdictions (including energy market reform in Western Australia and the Northern Territory).
5. The Funding Body should be capable of making informed and knowledgeable decisions on funding end user advocacy but otherwise be demonstrably 'independent' with no conflicts of interest between the supply side or between end user segments.
6. Appointment of Funding Body representative(s) should be made after consultation with end user groups, and removal of a Funding Body representative should be on normal and accepted grounds consistent with legislated requirements applying to corporations and Incorporated Associations.
7. Funds should be allocated exclusively to member-based organisations whose members are direct end-users of energy. This will ensure advocacy is directly relevant to energy users and that advocates are seen to be accountable to their constituents.
8. Funds should be distributed on a tied basis (say 3 years) to lower process and administration costs and ensure limited resources are efficiently applied but with provision for some specific projects/advocacy to be funded.
9. Level of funding should be appropriate for an active and robust participation in energy policy development.

The rationale for each of these principles is outlined below.

4.1.1. The Funding Body role should be restricted to allocating funds.

One of the key weaknesses of the KPMG report is that it effectively ignores the fact that substantial body of advocacy 'talent' already exists. The expertise and experience of this 'human capital' has developed progressively over a number of years, especially since the progression of energy reform in the 1990s.

The KPMG report contains an assessment of the current NEM Panel structure and operation and identifies its strengths and weaknesses, but then dismisses this arrangement without considering how the experience gained to date can be best used to contribute to a more effective arrangement. The KPMG report contains no assessment of how any of the three options (other than modifying the existing Panel) would actually improve outcomes for end users compared to improving what is currently in place.¹³ None of the four options proposed

¹³ For example, the KPMG report notes (on p. 16) that the NEM Panel has had a relatively short life and has made some recent changes to improve its operations; but this experience and the impact from the changes are dismissed.

address accountability of end user groups to their constituents; and three of the four options provide another layer of administration between actual users and their representative associations.

The question must be asked: *wouldn't it be more cost-effective to improve the current structure, especially as it has only been in operation for 2 to 3 years?*

The organisations and individuals currently involved in advocacy, whilst relatively few in number, are advocates who are experienced in energy market, energy reform and associated regulatory issues. They have been involved in these issues for the best part of ten years.

The advent of the NEM Advocacy Panel has assisted to some extent in building their capacity and efforts. It is also relevant that some of these existing organisations are directly accountable to end users and were deliberately set up to provide end user advocacy. The KPMG report, unfortunately fails to recognise or give due credit to this important fact.

The EUAA is firmly of the belief that any future end user advocacy funding arrangement would be more effective if it sought to build on the existing resources and skills base. This would be best achieved by limiting the role of the Funding Body to allocating funds to organisations established solely for the purpose of advocating on behalf of energy users. That is, maximum value and efficiency from any advocacy funding arrangement will be derived through supporting existing, committed advocacy resources – and building on the experiences gained through the long and arduous process of establishing and operating the current NEM Panel scheme.¹⁴

It is a primary contention of this submission, supported by the cumulative experience of the groups sponsoring the principles, that the Funding Body should only have the responsibility of allocating funds. That is, the role of the body should be limited to administering allocation of funds to recognised advocacy bodies. The role of advocacy should be the domain of the end user groups that seek the funding and genuinely represent end users. There is no requirement for the Funding Body to duplicate existing end user advocacy activities. Indeed, this would divert scarce advocacy funds and (given the remoteness of any advocacy body from actual users) probably lead to less relevant and representative advocacy.¹⁵

For instance, allocating funds to groups that directly represent end users allows the group to fulfill the ingredients of advocacy. First, such groups are best placed to

¹⁴ Some of the organisations sponsoring the principles contained in this submission were involved in the process that led to establishment of the NEM Panel. This process commenced in the earliest days of the NEM, and was itself based on prior consumer advocacy experience going back to the early 1980s.

The initial proposal for a publicly funded advocacy arrangement in the NEM was drafted by the Australian Cogeneration Association (now the Business Council for Sustainable Energy), the Australian Consumers' Association, the Energy Action Group and the Energy Users Group (now Energy Users' Association of Australia) and submitted to the ACCC in early 1999 (see: *Ensuring Customer Participation in the National Electricity Market - A Solution; A joint proposal by customer representatives*, March 1999.)

¹⁵ The loss of effective advocacy experience in the UK was raised by several Chairmen of Offer's Customer Committees during research undertaken by Pareto Associates Pty Ltd for the report to NECA on end-user advocacy arrangements for the NEM. The UK arrangements "socialised" end-user advocacy by integrating this role into remnant public service organisations responsible for administration of pre-existing schemes partially funded directly by Offer and Offgas with the UK consumer protection agency. A large proportion of the voluntary expertise that had been built up (by economic regulators) over a decade was dissipated in this arrangement. (See: Pareto Associates, 2000. *End User Advocacy in the National Electricity Market*.)

efficiently and effectively educate their members of the options and projects available to them to participate as more informed end users. Second, it allows the group to efficiently and effectively gather information on issues/concerns of end users, and to ‘test’ the likely impact of any new policy proposal.

Such an arrangement provides the benefits of simplicity and clarity. In addition, it will assist in avoiding conflicts of interest among Funding Body representatives (which is discussed in more detail below).

4.1.2. The Funding Body should focus on the best interests of end users.

The Funding Body should support and protect the rights and interests of end user groups seeking funding by making funding decisions that promote the interests of end users. It is not necessary or appropriate for the Funding Body to consider the best outcome for all stakeholders. That is the role taken by policy makers and regulators – after they hear the informed and considered views of end user advocates and advocates of other stakeholders.

The KPMG report appears to be based on a fundamental assumption that one end user advocacy group is more effective than a number of groups representing the interests of different customer segments. While it is true that some, perhaps many, of the issues of interest to end user advocates are common, KPMG provides no justification of this position. Even where an issue may be of common interest, there may still be benefit in allowing different end user groups to present their views on the common issue from the perspective of different consumer segments. This is especially the case where each group has a strong and close relationship with its constituents.

Indeed, it can be persuasively argued that ALL consumers have a right to be represented through effective and representative advocacy, particularly given that they ‘pay’ for this privilege (at least under the NEM advocacy scheme).

Having a number of end user groups representing different constituents would allow greater coverage and knowledge of issues. For instance, low income and/or disadvantage consumer groups may take an active role in developing energy policy that pertains to consumer protection measures such as Ombudsman schemes, while larger business groups could focus on Transmission/Distribution regulation and retail contracts.

It is widely recognised that smaller/domestic consumers do not have well resourced and pervasive advocacy at the moment and that a future advocacy arrangement needs to make some allowance for this shortcoming. A diversity of funding would better allow the interests of these groups to be channelled and advocated.

4.1.3. Funds should be allocated to energy reform matters, which relate to both gas and electricity.

Funds should be allocated for energy reform matters that cover both gas and electricity. Advocacy funding should cover all issues included in the National Electricity Code, the National Gas Access Code and the development of the NEM and the gas market. Both large and small consumers make choices between these energy sources and advocacy across the energy sectors is an essential and rational adjunct to participation in those markets. Many of

the issues covered in one sector involve issues of energy and policy convergence. This would make it more effective to broaden advocacy funding beyond one type of energy only.

The issues identified in the KPMG report as requiring advocacy (price, service, access and equity of access) are important but too narrow. End user input is also required to advocate on matters such as electricity market design, energy market performance (and monitoring), cross-jurisdictional gas market alignment, and alignment between the electricity and gas markets.

There are also matters that relate to individual jurisdictions, such as regulation (and deregulation) of energy retail markets and the WA and NT energy reform programs.

Currently, issues that involve the regulation of energy retail are not covered by the functions of the Advocacy Panel. For instance, the EUAA has unsuccessfully sought funding to undertake a review of, and possibly simplify, Electricity Terms and Conditions of Electricity Contracts between end users and electricity retailers, notwithstanding that this is an important matter for end users. As part of the review, the SCO should broaden the functions/scope of funds to ensure energy (electricity and gas) retails matters are covered.

Further, WA and NT are part of the MCE and WA and NT end users will presumably be required to pay the industry levy to fund the AEMC. They should be part of the scope of future advocacy funding.

4.1.4. Funds should be allocated to a broad range of initiatives.

As noted above, the KPMG report explicitly says that coverage was constrained to matters related to AER and AEMC processes. In addition to areas identified by KPMG, funds should be allocated to advocacy functions that cover:

- responding to Federal and State Governments' energy policy proposals and issues;
- proactively developing and promoting energy policy and reform issues of importance to end users;
- representing and presenting energy users views at public forums (including public hearings, conferences, governmental consultative groups), and to relevant policy-makers and regulators;
- building the capacity of end users, including through informing and educating end-users about the NEM and energy markets more broadly and increasing end user involvement;
- challenging detrimental decisions of the AEMC, AER, NEMMCO, ACCC, NCC and jurisdictional regulators in terms of judicial and/or merits review; and
- undertaking research that supports advocacy.

4.1.5. The Funding Body should be independent with no conflicts of interest.

There is a fundamental problem with the current NEM Panel arrangements, which has two members representing supply-side stakeholders, one member representing small consumers, one representing large consumers and an independent Chair. Even if there is no actual conflict of interest, this arrangement creates a perceived conflict of interest for the supply

side representatives, which can negatively affect efficient decision-making and the confidence of end users in the advocacy arrangement.¹⁶

KPMG argues that inclusion of supply-side representatives can assist an advocacy body deal with technical issues. But even with good will and the best of intentions, supply-side representatives will see issues from their own sectoral perspective and this will inevitably affect their decision-making. The argument that supply-side representatives have an additional capacity to provide technical expertise is also a spurious one when mixed with the risk of conflict of interest. A mixture of technical expertise and supply side view of the world (or bias) is more likely to result in decisions that are consistent with a supply-side view. That view would not be in the interests of end user advocacy. If technical expertise is required it can and should be obtained by the end user advocates themselves, or by the Funding Body through a more independent and transparent process.

There are many areas where the supply-side perspective is very different to the perspective of end-users. Just some of the issues where this difference is substantial range from:

- views on the existence of and exercise of market power by generators;
- the merits of vertically re-integrating firms in different market segments;
- benefits of greater interconnection between NEM Regions;
- values judged appropriate for parameters for the Capital Asset Pricing Model;
- methodologies and mechanisms for cost allocation between customer segments in network pricing;
- terms and conditions for connection and ‘default supply’;
- structure and designs of tariffs; and
- design of incentives for demand side response.

It is unreasonable to expect any supply-side representative to exercise unbiased judgements in all areas where potential conflict of interest (or even difference of understanding) might occur. The credibility of any public funding arrangement ultimately rests on broad and general acceptance that the arrangement produces fair and unbiased outcomes – and is seen to do this.

Structures must be in place to avoid potential or actual conflicts of interest by Funding Body members. Hence, members of the Funding Body should not be directly:

- affiliated with energy end-user advocacy groups; or
- involved with energy market participants.

The EUAA believes that members of the Funding Body should be knowledgeable in energy matters and end-user impacts. The Funding Body should also be required to liaise with end user representatives on a regular basis to stay abreast of key end user priorities and matters.

¹⁶ The perceptions of possible conflict of interest are aggravated by lack of complete disclosure by the NEM Panel of the basis for its decisions. The Panel has in the past given reasons for rejection or approving a modified funding application (to the applicant at least). However, that has not meant that the reasons are sound or that they are rational/objective/consistent. The lack of transparency reduces opportunities for the Panel to improve the quality and consistency of its decision making.

Such liaison should, of course, be meaningful and aimed at ensuring that the advocacy body stays ‘in touch’ and continues to enjoy the confidence of end users advocates.

4.1.6. Appointment of Funding Body representative(s) should be made after consultation with end user groups, and removal on normal and accepted grounds.

Public credibility of an advocacy funding arrangement rests ultimately on the fact that consumer advocates and consumers generally have confidence in the funding processes. The appointment of the Funding Body representative(s) should only occur after consulting and taking recommendations from end user groups representing end user interests. This consultation should be with recognised and well-established end user groups that have a track record of involvement in the issues and are membership based.

This principle is consistent with the proposed National Electricity Rule for the appointment of the end user representative to the Reliability Panel under the new National Electricity Law. Consultation should be based on a pre-determined and open process. This acknowledges the need to maintain the confidentiality of any individual being nominated while at the same time ensuring transparency and consistency in the process.

Removal of Funding Body members should be on the normal and generally accepted grounds applying under legislation covering corporations and publicly registered Incorporated Associations.

4.1.7. Funds should be allocated exclusively to member-based organisations whose members are direct end users of energy

Allocation of funds to member-based organisations imposes more of a discipline on the advocate to apply the resources efficiently to issues that are of genuine concern to members, as the advocate is ultimately accountable to represented constituents.

To date, the Advocacy Panel has allocated funds to a broad range of groups including associations representing large, medium and small business energy users, household users, organisations representing environmental groups and energy industry consultants. It is questionable if all of these stakeholders are capable of expressing the valid concerns of energy users or that some of them even have legitimate claims to represent end users. Moreover, allocation of limited funds to interest groups that do not directly represent the interests of end users risks reducing returns to end users from advocacy funding.

It is crucial that limited funds be allocated first and foremost to member-based groups advocating on core issues of reliable and competitively priced energy supply, and those advocating for broader community goals be excluded from this source of funding.

4.1.8. Funds should be distributed on a tied basis

The existing NEM Panel allocates funds mainly on a project-by-project basis, requiring end-user advocates to complete individual applications each time they seek to participate in an advocacy activity. In May 2005 the Panel amended its funding criteria. Under the new criteria end users are entitled to:

1. Seek project specific funding for NEM related policy and regulatory matters; and/or
2. Seek 'global funding' across a range of projects and for a specified period of time.

The EUAA is pleased to see that the revised Panel criteria have flexibility in the type of funding available. The EUAA has also made a separate submission to the Panel on the new funding criteria. Our comments on the new funding criteria focused on ensuring that there are appropriate 'checks and balances' for end user groups seeking 'global funding'. However, we also submitted that the 'checks and balances' are not overly prescriptive.

Furthermore, Panel processes have resulted in significant transactional costs and time delays before actual advocacy can take place. Both these practices result in significant time delays and substantial administrative costs to both advocacy groups and the Panel itself (for example, the Panel estimates expenditure of 30% of its budget on fulfilling its obligations).¹⁷

A more efficient system of funding would be one in which advocacy groups made application for funds on a longer term basis against a forecast work program (of, say, one to three years).¹⁸ This approach would limit transactional, resource and administrative costs to both the Funding Body and advocacy groups. It would also provide advocacy groups with direction on efficient expenditure of funds across their entire work program. Provision for an end of year report to the Funding Body - and the advocacy groups' constituents - would ensure public accountability. It would also ensure that advocacy groups would be accountable to their members in terms of funding allocation and provision of tangible benefits to members.

4.1.9. Level of funding should be appropriate for active and robust participation in energy policy development

The NEM Advocacy Panel currently controls the allocation of \$1.1 million per annum to end user advocacy.¹⁹ In the 2000 Victorian Distribution Pricing Review, the Office of the Regulator-General allowed \$65 million over five years for the cost of regulation.²⁰ It was estimated that Victorian Distribution Businesses spent between \$10 and \$12 million on the review and subsequent Appeals and Supreme Court challenge to the ORG's Determination, compared to \$65,000 spent on behalf of end users.²¹

¹⁷ The 30% administrative cost has been estimated from information provided by the Advocacy Panel (to the EUAA) of its annual 2004/05 running cost of approximately \$350,000 from the \$1.1 million in funds allocated to NEM End User Advocacy by NECA for 2004/05. The 30% overheads cost has increased two-fold from 2003/04. Based on the 2003/04 NEM Advocacy Panel Annual Report, the Advocacy Panel spent around 15% of its allocated budget in 2003/04 on administration.

¹⁸ Preparation of a program of 'core activities' would be coordinated with (but not fully aligned with, as end users groups would also be entitled to seek funding for proactively leading the energy policy debate) forward work programs published by national and jurisdictional regulators.

¹⁹ This amount has been increased to \$1.4 million in NEMMCO's budget for 2005/06.

²⁰ KPMG's report to the ORG states that this amount was intended to exclude costs associated with protection of the DBs interests in regulatory reviews, but no details were provided to prove this outcome was achieved.

²¹ The ORG made \$65,000 available to engage consultants to assist consumer groups respond to the Draft Determination. Significant *pro bono* contributions from the consultants were also made and substantial effort was expended, on an unpaid basis, by members of the ORG Customer Consultative Committee. All up, the total value of cash and in-kind support was almost certainly less than \$300,000.

Furthermore, it is generally accepted that a significant ‘free-rider’ problem exists in terms of energy sector end user advocacy. This occurs where parties benefit from outcomes without contributing to the effort required to achieve the outcome. It is uncontroversial to highlight that while interests and resources are concentrated into a relatively small number of well informed and well funded bodies on the supply side, this is far from the case on the end user side, where interests and resources are quite obviously dispersed.

In light of this, and in the interests of well-informed and balanced debate in the energy sector, a higher level of funding allocated to end user advocacy is recommended. An appropriate figure for funding was suggested by Pareto Associates in its report to NECA:

The report shows that each of the end-user advocacy elements listed above is supported by regulators and government in the US and UK. Precedents from the US and UK also show that funding for end-user advocacy (by Government, regulators or even market levees) is common; and typically involves funding between the range of AU\$1-18 million per year in each Jurisdiction, depending on the scope of advocacy that is funded in any particular scheme and the funding allocation mechanism adopted. This translates to end-user advocacy funding equivalent to as little as \$0.10/customer/year for the current arrangements in the UK and probably around \$1.60/customer/year on average in the US. In Washington DC, funded advocacy "costs" at least AU\$21.00/customer/year. The proposed arrangements for the GECC in the UK look like they might increase funding to at least \$0.25-0.30/customer/year, but this would include the consumer protection functions currently carried out by the regulators OFFER and OFGAS. Advocacy in Australia at these levels (with around 8 million NEM end-use customers) would represent funding quantumms of:

- \$12.8 million/year at US levels; or
- \$2.2 million/year at the UK GECC levels.

A number of the funded advocacy schemes in the US and the UK are for narrower focussed activities than occur in the NEM, or for arrangements where there are fewer Jurisdictions and regulatory/market bodies than for the NEM. For example, in the UK, there is only one market and one regulator (or at least one set of regulatory laws, rules and practices applying in England, Scotland, and Wales). In the US there are, obviously, a much larger number of regulators and numerous emerging regional markets but, as a general rule, regulatory proceedings are constrained to the federal and one state jurisdictions and their attendant regulatory and legal processes.

...

That is, we are inclined to the view that the funding levels of around \$2.7 million per year in the end-users proposal to the ACCC, which they suggest would impose costs of between \$0.20-0.40/household per year on customers, is in the right "ball park".²²

²² Pareto Associates, 2000. *End User Advocacy in the National Electricity Market*. P(v). Note that this estimate was based on consideration of advocacy funding in areas dealing with NEM issues only. However, the UK

Pareto's 2000 recommendation to NECA would translate to around \$3.0 million per year in 2005 dollar terms.

A further provision that should be granted to the Funding Body is the capacity to apply for top-up funding in exceptional circumstances if annual funds are exhausted. This will ensure that the Funding Body has the capacity to meet its obligation of supporting and protecting the best interests of end users. Alternatively, surplus funds could be carried over and held in trust.

5. Consumer Participation in the Regulatory Process

The importance of consumer participation in regulatory processes led the EUAA to request that MJA seek feedback from Australian regulators about their experiences and views on consumer advocacy as part of the input to this submission. This feedback was sought from ACCC, Victorian ESC, ESCoSA, Western Australia's ERA, IPART and QCA.²³ Input from regulators was seen to be important in terms of helping to develop the structure of future end user advocacy in energy. There does not seem to have been any systematic attempt to do this previously, including by KPMG. The EUAA saw this as a major gap in the information being used to inform future direction for end user advocacy.

This section of the submission contains a synthesis of regulators' comments on the role and effectiveness of end user advocacy.

5.1. Consumer input to regulatory processes

Input to regulatory processes should be a key aspect of consumer advocacy in energy markets. These processes are used, among other things, to set and administer market 'rules', and determine prices for monopoly services. In effect (and in the short term), the regulatory processes end with decisions taken by regulators that determine how the 'market cake' is cut and also how it will grow over time. That is, the outcome of the regulatory processes determines which market stakeholders get what benefits and which bear what costs.

Regulators openly acknowledge that there is no one or 'right' outcome from some of these processes. Some aspects of regulators' decisions rely on judgement. Regulators are required to consider a wide range of issues in an effort to reach an outcome. They are also required to balance the interests of consumers with those of the owners of energy businesses. All Australian regulators are required, by law, to consider the impacts on consumers of their judgements and decisions. For example, the recent National Electricity Law and most

arrangements referred to in the Pareto report provided funding for the involvement of GECC (later re-named *energywatch*) in both gas and electricity issues.

²³ Some respondents requested that their views not be attributed. Accordingly, MJA has synthesized a range of comments into more or less general observations that are consistent with views expressed by regulators. A draft of this section of the submission was circulated to regulators prior to its inclusion in the submission. Several responded that the contents reasonably reflected their views. None indicated discontent with the content.

jurisdictional legislation state that a main statutory objective is to protect the long-term interests of consumers.²⁴ Clause 7 of the (new) National Electricity Law states that:

*The national electricity market objective is to promote efficient investment in, and efficient use of, electricity services **for the long term interests of consumers of electricity** with respect to price, quality, reliability and security of supply of electricity and the reliability, safety and security of the national electricity system. (Emphasis added)*

However, the regulators are also required to pursue other objectives, primarily those of efficiency and investment. Regulators must also be seen to be independent when making their decisions and they must balance competing interests for the best overall outcome. It is unambiguously clear that while regulators need to ensure outcomes that benefit consumers on the long term, it is important for the credibility of the regulatory process that they act independently and dispassionately in doing so.

The need for regulators to demonstrate their independence is one very good reason why consumer advocates should involve themselves in regulatory processes. This is reinforced by provisions of the new National Electricity Law that allow:

- *any person whose interests are adversely affected to apply to the Court for judicial review of the decision or determination, failure or conduct or proposed conduct (by the AEMC or NEMMCO);²⁵ and*
- *any person or body that has made a written submission or comment (in respect of a proposed change to a market Rule) to request, in writing, within one week after the publication of a notice under section 99(1), the AEMC to hold a hearing in relation to a draft Rule determination.²⁶*

Well structured and thought out submissions, and other input by consumer advocates – that are directly relevant to the issues that regulators must deal with – provide an important mechanism for regulators to be certain that they are achieving balance and independence. They will also give effect to the right of end users to participate in regulatory processes.

It is also important to recognise that economic and market efficiency considerations dominate the regulatory decision-making process used in determining the price of monopoly services. Protection of consumer interest is implied through effectively operating markets or regulatory processes that seek to achieve outcomes that mimic the workings of efficiently operating markets. This is, for example, the case with both the National Gas Access Code and new National Electricity Rules, as well as relevant State legislation and regulations.²⁷

The new National Electricity Law explicitly refers to protection of consumer interests (see above). In competitive markets, this outcome is assumed to occur. However, given that

²⁴ See: Section 7 *National Electricity (South Australia) (New National Electricity Law) Amendment Bill 2005*, Section 6(1)(a) *Essential Services Commission Act 2002*, Section 8(1) *Essential Services Commission Act 2001*, Section 15(1)(e) *Independent Pricing and Regulatory Tribunal Act 1992*, Section 26(1)(b) *Economic Regulation Authority Act 2003* and Section 2, Part I and Section 95E, part VII *Trade Practices Act 1974*.

²⁵ Section 70, *National Electricity (South Australia) (New National Electricity Law) Amendment Bill 2005*.

²⁶ See Sections 87, 97 and 100, *Op Cit*.

²⁷ See: Introduction to the *National Third Party Access Code for Natural Gas Pipeline Systems* and Clause 1.4(b), new *National Electricity Rules*.

energy markets operate under rules and are in a transition from monopoly to competition, consumers will only be able to fully express the economic sovereignty that is assumed to be the basis of policy if they are able to effectively advocate for outcomes that they support in regulatory processes.

5.2. Regulators' comments on end user advocacy

In general, regulators expressed strong support for the participation of all consumers, although a common view is that resources should be allocated to structured input, which assists the regulatory process.

Not surprisingly, all Australian regulatory agencies express interest in receiving the views of consumers and other end users on issues related to the regulatory process. All regulatory agencies are required to consult with consumers and there is a general awareness that this is a valuable part of the regulatory process. It is generally understood by regulators that the views of consumers, or end users, represent an important perspective on issues, as regulators often make determinations dealing with industries where perspectives and market power are highly concentrated or at the extreme (monopoly). Regulators understand that the views of consumers about performance and service standards may be different to the views put by regulated businesses.

Regulators welcome relevant, structured and well thought out contributions from all consumer groups. However, regulators prefer to receive a balance of views across the breadth of large, small and disadvantaged consumers. There is an understanding of the difficulties involved for end user groups in meeting this need – budgetary and otherwise. Regulators commented that they sometimes lack submissions representing the views of different consumers. This suggests there is a need for advocacy funding to permit an expression of different views.

Regulators stress the point that the views expressed by consumer advocates need to be relevant to the issues to be of any real value to the regulatory process. In this regard, there was some concern expressed that some consumer advocates do not make the best of the opportunities they are given. For example, the bases of passionate pleas for relief from increased prices from large consumer advocates or pleas for protection from adverse market impacts on disadvantaged consumers are understood by regulators; but the pleas are likely to be ineffective unless they are backed by sound and well thought out alternatives that could be adopted by the regulators.

There is also concern that some consumer advocates present material that regulators have no legal power to address, regardless of the legitimacy of the points raised. This may represent a poor allocation of limited resources on the part of advocacy groups, as well as an inefficient allocation of the regulators' time and resources. It should be noted that regulators appreciate the legitimacy of all views expressed, but recognise that some approaches may be ineffective in securing the outcomes desired.

This reinforces the potential benefit from understanding of regulatory process and an understanding of how decisions are reached. Such understanding would enable consumer input to be most effective. More understanding of the structures of the regulatory process could well result in better contributions from groups and prioritisation on approaches and

issues, which can be of use to the regulator in making determinations. This would be more likely to deliver tangible outcomes for consumer advocacy groups.

There is a general recognition that the skills of some consumer advocacy groups has increased over the years,²⁸ but no consumer advocacy group is able to match the input of supply side stakeholders (even though that input is sometimes itself less than ideal). This comment also relates to the input by advocates into government policy processes.

None of the regulators were able to identify a specific example where input from a single or multiple consumer advocates had been instrumental in fundamentally changing the views of a regulator. In many cases, even quality submissions made by consumer advocates frequently focus too narrowly on issues that are well understood by the regulators to be controversial, but had insufficient detail and depth to provide the basis for an alternative decision. The regulators acknowledged that this was a challenge of expertise and resourcing and several commented that input from experts and consultants could be a useful contribution to the process, especially in regard to more technical regulatory decisions (for example, a network price determinations).

While regulators are quite prepared to accept written submissions prepared by consultants on behalf of consumer advocates, these would be considered to carry more weight if the positions they espoused were directly supported by consumer advocates who are representative of end users. Without the technical skills themselves, consumer advocates are sometimes unable to articulate the points raised by consultants, diminishing the value of the consultants' contributions. This is a difficult balance for consumer advocates, given their time and resource constraints. Those that can fund expert contributions through the entire regulatory process suffer less from this problem and are more likely to have an impact.

Finally, there is some concern that small consumer advocates are excluded from the process, while larger consumer advocates do get a hearing.²⁹ This is seen as being partly due to a lack of expertise and resources and partly due to focus on issues that regulators are unable to deal with.

In summary, regulators are interested in hearing the views of end users relating to their regulatory activities. However, in general they suggest that resources should be focussed on sound structured input that is directly relevant to the processes of regulation. While expert knowledge can be helpful, it must be carefully managed by consumer advocacy groups in order to result in desired outcomes.

5.3. EUAA Response

The EUAA has been involved in many energy reform issues and over 20 regulatory reviews over the past decade. This is greater than any other end user advocacy organisation and indeed more than most regulators. The EUAA believes that this experience provides a sound basis for responding to the regulators' comments on advocacy.

²⁸ This type of comment was generally made by way of reference to large consumers or large consumer advocacy groups.

²⁹ Whilst this observation is undoubtedly correct, it should be noted that several of the respondents also acknowledged that no consumer groups would ever be likely to have access to a similar level of resources and expertise as supply-side stakeholders.

Generally, the EUAA agrees with their remarks. Some specific areas that the EUAA has comments on are:

- The EUAA supports the view that ALL consumers should have access to the regulatory process and be able to avail themselves of it, noting that advocacy funds make this easier and more likely. This includes bodies representing large users, who also have difficulty finding sufficient resources to undertake detailed advocacy work of the kind sought by regulators. These bodies are only funded by a small sub-set of larger users. It is unfair to expect these users to fully fund advocacy that benefits a much larger group. This is the same ‘free rider’ problem that afflicts small consumer groups; and it is coupled with a lack of information and appreciation of the policy/regulatory framework and its impact on end users by the majority of larger users.
- It should also be kept in mind that bodies representing large users have often engaged in advocacy that actually benefits ALL users; and gains that are achieved are generally spread far more widely than the immediate membership of those bodies. The effectiveness of such advocacy comes from the fact that the bodies represent actual end users. It is not advocacy from a ‘bureaucracy’ set up to purportedly be an advocate for end users. Unfortunately, the above point was not well understood by KPMG, and their report and its recommendations reflect this.
- The EUAA also supports the desire by regulators to have sound and structured input from end users, noting that regulators generally make decisions in a framework and process designed to place greater weight on analytical input. The EUAA has always appreciated this fact and has always sought to provide submissions that are based on factual analysis, even before the advent of advocacy funds.

One clear benefit of advocacy funding has been that it has allowed end-user advocates participating in policy and regulatory debates to access additional resources and expertise that provide better submissions that meet this expectation of regulators.

- Whilst regulators recognise that the advocacy skills of some consumer groups have improved over time, they also recognise that advocacy groups are unable to match the input regulators’ receive from the supply side.

The EUAA generally agrees with this view. However, it is important to recognise that improvement in advocacy skills has resulted from a combination of

- experience these groups have gained over numerous regulatory reviews;
- the additional resources that have become available through the existing NEM advocacy funds; and
- the ability that both aspects has given for such groups to develop better submissions and also to work with recognised experts in the field.

However, it remains a fact that there is currently no advocacy group that could sustain its regulatory effort without continuing support from the NEM advocacy scheme. It is also the case that the experience these groups have gained and the

improvements they have made needs to be sustained and further developed. Access to future advocacy funding is critical to this.

- It is interesting that regulators hold a view that submissions made by consumer advocates on “controversial” issues were not sufficiently detailed to force a change in regulatory position:
 - The EUAA has always attempted to include in its submissions with reasoning and argument to support positions. It is accepted that more could have been done to persuade regulators to change a position on “controversial” issues; and also recognised that the hurdle to obtain a change in position will be higher if an issue is “controversial”;
 - The EUAA also understands that regulators are reluctant to change their position on such matters. They tend to rely on precedent, making any one regulator more difficult to shift; and they sometimes admit that they adopt a “conservative” position in some areas, even when they know this has the effect of giving the benefit of the doubt (ie “favouring”) to a supply side entity; and
 - This creates a practical problem for advocacy funding and means that considerably more effort is required to put views that will shift regulators away from decisions they made years before without any effective input from end users. This challenge has not always been recognised by the NEM Panel. Some applications for funding have been significantly reduced, which has prevented advocates from fulsomely addressing all relevant areas.
- The EUAA also notes the regulators’ comments to the effect that submissions supported by direct consumer input are more likely to have an influence on regulators. This confirms the EUAA’s own experience.
 - It seems inherently logical and sound that the views of member-based consumer advocates would be seen to be more representative of actual end users and therefore more likely to be given weight by regulators.
 - On the other hand, submissions or input from advocates who are not representative of actual consumers would be given less weight and could even be considered to be unrepresentative.
 - It is also interesting that regulators are seeking ongoing input from end users. The EUAA is currently seeking ways to increase the allocation of its internal resources to advocacy and also to ensure that involvement extends throughout the many processes currently underway.

However, it is disappointing to see that some regulators might hold a view that small consumers are excluded from the process and large consumers given a hearing. This requires a firm response from the EUAA. Whilst the EUAA acknowledges that it has had no difficulty in being given a “hearing” by regulators, nor have small consumer groups that seek to make an input.

The MCE should not conclude that the fact large user groups are given a hearing supports a view that they are already effective and do not need funding in future. Any reduction in funding would reduce overall advocacy effort and result in submissions to regulators that are less sound. This would be contrary to the Single Market Objective of the new National Electricity Law and also to the desire of regulators to get better input from end users.

Furthermore, the MCE should understand that the submissions made to regulators and policy makers by the EUAA are more often than not taking a position that is in the interests of ALL consumers, not just large consumers. The EUAA recognises that many of the issues of interest to its members impact on all energy users. The EUAA also fully understands that it is very difficult to quarantine benefits from decisions to a single class of user.

To repeat, it is the firm view of the EUAA that regulators need to ensure outcomes that benefit consumers in the long term. It is also important for the credibility of the regulatory process that they are seen to act independently and dispassionately in doing so. Providing access to end user advocacy funds for ALL end users helps this to happen.

5.4. Lessons for End User Advocacy

It is possible to identify a number of issues from the regulators' views that are likely to lead to more effective advocacy. Some of the issues are:

- There is a need to adequately resource end user advocacy to build capacity and deepen knowledge of issues that impact on end users.
- Advocacy should be undertaken by groups that have a direct link to end users and this should be used to collect and channel views of the 'real' world that can be compared and contrasted with views put by the supply side.
- Advocacy is likely to be most effective when it is undertaken by experienced groups that have an ongoing role in the regulatory process and the knowledge to provide effective advocacy and the skills to influence outcomes.
- There is a need for end user advocates to prioritise issues and focus allocation of limited resources on matters that are within the regulators' remit. Focus on issues or concerns that regulators have no power to address delivers little value, irrespective of the legitimacy of the arguments being presented. Therefore funding needs to be directed at relevant issues that matter to end users.
- Support from expert consultants can be of value in assisting end user advocates, but would be more effective if the positions espoused by the consultants was supported directly by end user groups. Consultant input would also be more effective if the position espoused (by the consultant and end user group) was sufficiently persuasive to encourage regulators to take a different position.
- Groups representing ALL end users continue to have difficulty finding sufficient resources to make a major impact on the regulatory process and counter the impact of regulatory precedent and/or regulated entities. Although it is unlikely that there will ever be an equal match in this area, advocacy funding can play an important role

in redressing some of the imbalance and has done so under the existing NEM advocacy scheme.

- The existing NEM advocacy scheme has played a role in overcoming some of the problems previously experienced in advocacy on electricity policy and regulatory issues. It has also contributed to the improvement in advocacy effort observed by regulators. The existing Panel has also improved its processes over time and shown evidence of improvements in its own decision-making. These facts should not be overlooked in the present review of end user advocacy in the NEM.

6. Preferred Funding Arrangements

Given the principles detailed above and the feedback received from regulators, it follows that some change to current arrangements for end user advocacy in the Australian energy sector should be enacted to facilitate more effective and efficient advocacy on behalf of end-users.

As mentioned above, a new model for effective end user advocacy has been developed by several end user bodies. This proposed model is based on the principles and feedback outlined above. It is also based on consideration of how best to incorporate learnings from development of the current NEM Advocacy Panel and how best to address issues raised by different end user advocacy groups.

The proposed model would exhibit the following characteristics:

- The Funding Body role should be restricted to allocating funds. It should not seek to supplant or duplicate the role of existing, established advocacy organisations.
- The Funding Body should focus on the best interests of end users. It should not be concerned about achieving a balance between all stakeholders; this is a role assigned to policy makers and regulators that need not be duplicated by end-user advocates or the Funding Body.
- Funds should be allocated to energy reform matters, which relate to both gas and electricity.
- Funds should be allocated to a broad range of initiatives across sectors, markets and jurisdictions (including energy market reform in Western Australia and the Northern Territory).
- The Funding Body should be capable of making informed and knowledgeable decisions on funding end user advocacy but otherwise be demonstrably 'independent' with no conflicts of interest between the supply side or between end user segments.
- Appointment of Funding Body representative(s) should be made after consultation with end user groups, and removal of a Funding Body representative should be on normal and accepted grounds consistent with legislated requirements applying to corporations and Incorporated Associations.

-
- Funds should be allocated exclusively to member-based organisations whose members are direct end-users of energy. This will ensure advocacy is directly relevant to energy users and that advocates are seen to be accountable to their constituents.
 - Funds should be distributed on a tied basis (say 3 years) to lower process and administration costs and ensure limited resources are efficiently applied but with provision for some specific projects/advocacy to be funded.
 - Level of funding should be appropriate for an active and robust participation in energy policy development.

APPENDIX: Allens Report Proposed Funding Model

In June 2004, the Allens Consulting Group (ACG) prepared a report on behalf of the **Consumers' Federation of Australia** titled *National Energy Market Consumer Advocacy: Emerging needs and institutional models*. The Allen Consulting report focuses exclusively on issues related to small consumer advocacy. The report says it was *commissioned by the Consumers' Federation of Australia, ... and assisted by a reference group of member consumer organizations*, but does not identify members of the reference group. Nor is there any indication of whether its findings or recommendations were supported by any particular consumer group. The report refers to only a limited number of organisations involved in end-user advocacy, some of whom have made little contribution to advocacy in Australian energy markets.

The ACG report developed characteristics for (what it called) an optimal national energy consumer advocacy institution:

An optimal national energy consumer advocacy institution must:

- *be effective in meeting its objective — by representing those least likely to participate in the policy-making process otherwise, small consumers; through proactive well-focused participation in issues relevant to the development and regulation of the national energy market and of greatest importance to small consumers; and with participation informed by relevant on the ground experience and consumer views;*
- *be independent of other participants in the national energy market and without conflict of interest;*
- *be efficient, achieve the maximum outcomes for the available resources;*
- *have simple and transparent administration, including in establishment, funding and operations;*
- *be accountable to those who fund it (through the Ministerial Council on Energy) and to its constituents; and*
- *be flexible to accommodate changing priorities and changes of focus as the development of the national energy market proceeds.*³⁰

These characteristics are consistent with the principles that underpin this submission and further outlined in section 3, except that the focus of the ACG report is solely on advocacy arrangements for small consumers. This is an important difference because the ACG report failed to come to terms with the fundamental nature of end user advocacy in the NEM, what underpinned its beginnings, the fact that the existing scheme is underpinned by the notion that ALL consumers should have a right to advocacy, that the interests of consumers are

³⁰ p viii, *National Energy Market Consumer Advocacy: Emerging needs and institutional models*, Allens Consulting Group., June 2004,

often aligned on advocacy issues and that large users are not well resourced enough to engage in effective advocacy without access to funding. These matters were all basically accepted by NECA and the ACCC in developing the NEM End User Advocacy scheme, after an exhaustive investigation. However, the ACG report has failed to understand this and this adversely affects its recommendations. It is worth noting, for example, that neither ACG nor the Consumers' Federation of Australia (nor any member of the reference group) contacted the EUAA to discuss our experience with advocacy. Yet ACG adopted a position on large user advocacy.³¹

Further, ACG recommended the establishment of a new national energy consumer advocacy institution for low income, disadvantaged and small business users. The ACG state³² that:

The structure of the institution should strike a balance between having a clear focus on national issues and having ways of making sure it is informed about consumer views, issues and impacts on the ground. There are several ways of achieving this with a national board — including establishment of a reference group, sub-boards or an employee presence in each jurisdiction — each may be appropriate at different stages of national energy market development. The institution's structure needs to be reviewed every few years to ensure it remains appropriate as the national market develops and the advocacy task changes.

A major shortcoming with this model is that it has no direct linkage to the consumers it is attempting to represent. This would open the arrangement to the criticism that the views put are “unrepresentative” and, potentially, devalue the advocacy.

Putting advocacy into the hands of a “Board” begs the question of who the Board would or should represent, how they would maintain contact with actual users, how actual users would influence the directions of the body and how appointment to the Board would be made. It is the EUAA's understanding from consultation with a number of small consumer groups that the ACG report had only limited support.

The appointment of a ‘reference group’, whilst intended to overcome some of these problems about “representation” and lack of contact with users, would still result in imperfect outcomes. The experience with such reference groups is, in the EUAA experience, unlikely to overcome the fundamental problem of a lack of representation.

The EUAA also find the reference to “an employee presence” in the ACG report not at all consistent with a ‘consumer advocacy scheme’.

Moreover, the experience with schemes such as those proposed by the ACG, both here and elsewhere, is that they suffer from such shortcomings and diminishes the value of advocacy and the funds applied to it. The fact that such schemes often require a ‘bureaucracy’ to support their activities only lessens their relevance and impact (and the funds available for actual advocacy). The plain fact is that an advocacy body ‘bureaucracy’ is also susceptible to either capturing the direction of the body or else prone to the production of unrepresentative advocacy work.

³¹ The only references to the EUAA in the ACG report are taken directly from the EUAA web site.

³² See p vi, *Op Cit*.

In the EUAA's view, it would be entirely possible (and preferable) for an existing group with some links to household consumers, such as the Australian Consumers Association (in conjunction with established expertise in the small consumer end), to take on the role of advocating on behalf of domestic consumers.

Nevertheless, if small consumer representatives wished to form a separate body to represent their interests, it would be possible for them to formulate an application on this and submit it to an the Funding Body in an arrangement supported by this submission.