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Consumer Advocacy
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Dear Sir,

Consumer Advocacy

I attach a Submission on consumer advocacy from the Energy Markets Reform Forum, Electricity Consumers Coalition of South Australia, and the Energy Users Coalition of Victoria.

Yours sincerely

Mark Gell
Chairman
Energy Markets Reform Forum

CONSUMER ADVOCACY:

SUBMISSION FROM:-

THE ENERGY MARKETS REFORM FORUM
THE ELECTRICITY CONSUMERS COALITION OF SOUTH AUSTRALIA
AND THE ENERGY USERS COALITION OF VICTORIA

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1. Introduction

The Energy Market Reform Forum (EMRF), the Electricity Consumers Coalition of South Australia (ECCSA) and the Energy Users Coalition of Victoria (EUCV) appreciate the opportunity to provide their views on the Consumer Advocacy Consultation Paper. Companies represented by the EMRF, ECCSA and the EUCV are major energy and energy infrastructure using entities, predominantly located in New South Wales, Victoria and South Australia. The members comprise:- OneSteel, BlueScope Steel, Tomago Aluminium, Visy Pulp and Paper, BHP Billiton, Orica, Amcor, Holden, Ford, Toyota, Unidrive, Air International, Mitsubishi Motors, Seeley International, Adelaide Brighton Cement, Kimberly Clarke and Zinifex.

The EMRF is the successor body to the Business Council of Australia Energy Reform Task Force, which was established in 1992 by the CEO's of the top 100 corporations in Australia to engage in the electricity reform process from the stand-point of major electricity consuming down-stream industries. The EMRF has, therefore, a long record of advocacy activities on behalf of major energy consumers, and it has been the model for bodies such as ECCSA (established in 2001) and EUCV (established in 2002)

The EMRF, ECCSA and EUCV have been engaged in the national energy reform agenda (MCE, NECA, NEMMCo and ACCC and national processes including Ministerial reviews and membership advisory bodies) as well as in the State-based energy and related greenhouse agenda (NSW, VIC and SA Governments' inquiries, State-based regulatory processes and membership of advisory bodies).

The 3 bodies each have a chair and have engaged consultants to operate as advisors and manage all secretariat functions. The advisors and Corporate members represent the 3 bodies in a number of governmental or energy agencies. In addition to representing the interests of the 3 bodies, members also separately engage in energy and related activities on behalf of their companies. The 3 bodies concerned have, to date, also accessed corporate resources to make representations at the very senior policy levels on behalf of major energy users.

2.. Active Participation

All member companies of EMRF, ECCSA and the EUCV are major energy and energy infrastructure users and these represent significant business costs. For example, energy costs as a proportion of production costs are as high as 20% in the aluminium smelting industry; 20% in paper manufacturing; 11% in steel production and 7% in cement production. Member companies, therefore, agree with the MCE that active participation by energy users is

“important in the development of a more innovative and responsive energy market, achieving effective competition and maximizing the benefits of market reform of the energy sector” KPMG Report, (page 3).

The 3 bodies also agree that the current MCE reform program is very substantial and has far reaching consequences thereby underlining the need for :-

“effective and strategic consumer advocacy” KPMG Report, (page 3).

In this regard, the availability of the Consultation paper and the current process of seeking stakeholder views are appreciated.

Notwithstanding the above comment, consumer advocacy needs in the energy and related greenhouse sector are very extensive. They include the need to engage in activities initiated by a myriad of bodies, including the following:-

- Ministerial Council of Energy
- Commonwealth Government Departments and Agencies
- State Government Departments and Agencies (e.g. VENCORP)
- NEM institutions e.g. NEMMCO and NECA
- Regulators e.g. NCC, ACCC and State Regulators

There is substantial duplication and overlap in many activities as often the same inquiry may be repeated several times over, as each State conducts its own inquiry, and implements decisions at the discretion of the relevant state government.

Whilst against this background of myriad multiple energy and related activities and programs, end-user groups, such as the EMRF, ECCSA and EUCV, find themselves challenged (sometimes even overwhelmed) by the range, variety and complexity of issues they need to confront, especially with the limited resources they have available, both financial and human. These difficulties have been well identified by the KPMG report (page 4) although we consider that the magnitude of the problem is considerably larger. The situation certainly requires

“the creation of additional arrangements” (KPMG Report, page 4)

as well as a clear appreciation of the urgency to which these additional arrangements need to be put into place and be functioning as early as possible. We endorse the KPMG report’s review of the existing Advocacy Panel funding arrangements.

3. Consumer Advocacy: Is it only about funding?

The KPMG report seems to envisage that the scope of consumer advocacy in the various options discussed to provide for:-

- funding to provide information;
- funding to enable capacity building;
- funding to undertake research; and
- representation of end user interests (e.g. in advising / advocating to the AER or AEMC)

When the Utility Regulators Forum examined the options for providing support for consumers to be more actively involved in regulatory issues, they identified that it was not that consumers were not represented in the various debates (consumers have been active in all regulatory debates since the first regulatory review by IPART in 1996 and even before through the Business Council of Australia's Energy Reform Task Force when the NEM structure was debated) but that there was a need for consumers to have:-

1. Access to increased funding so that consumers could carryout additional research in order that their views could be seen to have a sounder footing than had previously occurred, and
2. A more equitable basis for carrying out consumer advocacy because the regulators had identified that consumer advocacy was being funded by a very few but more active entities, whilst the work performed provided a consumer wide benefit – that is a very few were acting to provide a benefit for the many. The regulators saw that there was a distinct benefit in facilitating wider, in depth and more diverse participation by stakeholders.

As a result the Utility Regulators Forum recommended to NECA that it establish a mechanism for providing funds to consumer advocates so that consumer views could be better presented in electricity market issues. NECA did so and sought input to what was required. They subsequently proposed a change to the Electricity Code which was endorsed by the ACCC after it, as well, sought input from the NEM. Thus, whilst there are some concerns about the way the current Advocacy Panel performs its duties, the **basic principle of providing funds directly to consumer advocates** in order to provide direct consumer input to various electricity debates and reviews, has been addressed and accepted by the supply side and by consumers already.

At no stage during this lengthy and involved process was there any suggestion that there should be a body established to represent consumer interests. To the contrary, both consumers and regulators were of the view that the best way to gain wider and more vigorous consumer input was to ensure that consumers themselves were directly involved in the advocacy process, as it was recognized that research bodies and those without direct access to consumers do not necessarily appreciate (perhaps even understand) what motivates consumers or able to advocate what are in consumers' interests.

The EMRF, ECCSA and EUCV strongly believe that the current consumer Advocacy review should be confined to examining consumer advocacy funding models and they do not believe that the options examined should cover activities whereby independent bodies are established seek, or are required, to represent end user groups in advising/advocating to the AER or AEMC or any other body.

It is therefore our considered opinion that the proposed option 4 (which would carryout its own advocacy on behalf of consumers) is not an appropriate model to further examine as it will not have direct access to consumers and can therefore only respond with a high level viewpoint, based on concepts as to what is considered to be what consumers seek from their advocacy¹.

¹ An example of such a high level view about what consumers seek is where certain proponents continue to espouse the view that consumers will significantly modify their electricity usage to avoid usage during peak times. In fact what does happen is that almost all consumers seek tariffs that insulate themselves from these price peaks, rather than getting involved in turning power off. This approach is driven by the view of consumers that their needs (such as

Certainly the advocates concerned should have expertise and knowledge about relevant national energy issues, but it is essential that they also have a direct understanding of consumer interests. We strongly doubt that any consumer advocacy group would be prepared to accept an independent body that does not have direct exposure to consumers needs and therefore be able to properly represent consumers interests and views, no matter the level of expertise it may have. Indeed, the KPMG report states that:-

"It is vital that any new national consumer advocacy arrangements do not duplicate the existing efforts of these bodies (i.e. the main consumer advocacy organizations). This is not meant to suggest that any new national advocacy body would work in isolation from existing advocacy groups; in fact it would be highly desirable that there be a complementarity of efforts and sharing of information, where practical, between the various levels of consumer organizations " (KPMG Report, page 10)

Whilst we agree with those sentiments, we do not consider that it gives sufficient grounds to support any view that:-

- "the number and diversity in focus of these organizations",
- "insufficient co-ordination capability", or
- "the scale of many of the organizations"

is necessarily such a bad thing that there is a necessity to develop and fund the proposed new consumer advocacy body which would purport, let alone seek, to represent consumer interests directly, but without the ability to get such consumer input in sufficient detail so as to claim it can represent consumer interests.

Whilst the KPMG report also seeks to point to its assessment of gaps in the projects undertaken by consumer groups as support for:-

"the creation of additional arrangements",

its assessment would be more thorough if it had examined the projects rejected for funding by the Advocacy Panel. In other words, the gaps identified may well be due to reasons other than that assumed to be the case by KPMG. Consumer energy advocates are well aware of the aspects of the NEM and gas markets that need addressing.

The current Advocacy Panel has no remit to fund any projects relating to gas supplies and this is a major gap.

cooling for domestic consumers, keeping the office functional for commercial consumers, or keeping production going for industrial users) has priority over saving a relatively small amount when spread over a year of usage.

We also understand that the current Advocacy Panel has been advised by certain officers in government departments that certain issues should not be funded as to do so is against government policy or that the issue may have been addressed by governments previously. Such unwarranted interference (if that is the case) has been to the detriment of consumers and the establishment of an independent body such as option 4 (perhaps under the influence of such government departments) will have even less ability to withstand such external influences.

4. The NECA Panel activities so far

It must be remembered that the current NECA Panel has been successful in providing funding to a wide and diverse range of consumer organizations and, in so doing, achieved (and met their objectives) in promoting consumer advocacy interests in national electricity issues. Some funding has been usefully provided to enable more effective consumer involvement and consumer representative views in regulatory pricing reviews. Funding for certain research projects, such as on the Market Risk Premium and Equity Beta, have been particularly successful in promoting consumer interests. EMRF, EUCV and ECCSA members have realized real benefits from the advocacy activities funded by the Panel.

Whilst there have been 'operational' issues and questions involving the Panel's modus operandi to date, the EMRF, ECCSA and EUCV strongly consider that the Panel has had major achievements in performing its role and functions.

The task before us now, is to build on the valuable work of the Panel achieved so far, to increase its value and relevance in the evolving national energy market, and further developing on the experience of the Panel's operations over the past 2 years.

5. Issues Involving The Panel

Rather than replacing the Panel with a totally different model, the EMRF, ECCSA and EUCV are of the view that it requires some improvement. The major enhancement will be to allow the Panel to provide funding for consumer advocacy in the gas market. Other than this we provide the following additional comments which will enhance the performance of the Panel.

5.1 The Governance Model

We agree that governance arrangements need to be at a high level when a new consumer advocacy body is established. Its Board would need to meet stringent requirements, possibly equivalent to those pertaining to the Corporations Law. This is to ensure there are professional standards and outcomes.

There is no need to provide for a Board and a separate Advisory Committee. Whilst such an approach has been applied to other bodies established in the Utility sector it has been seen that such a segregation of functions is neither necessary nor advisable. An example of this was the development of the Victorian electricity ombudsman which commenced with a separate Board and advisory panel, and severe problems occurred as a result. The structure has since been revised to have a single board and the consumer representative

sit on this. Since then the Ombudsman scheme has easily accommodated a major increase in activities by absorbing ombudsman activities for gas, water and LPG.

A number of criticisms have been leveled at the current Panel relating to its ability to respond to issues in sufficient time. With the recent appointment of an executive officer the current Panel appears now to be performing its duties more effectively, so that some criticisms at least could be attributed to its attempts to minimize its operating costs.

5.2. Lack of coherent strategic approach

We note the KPMG Report's suggestion

"that the Panel does not operate within a clear and coherent strategic framework".

The experience of consumer advocates is that the current Panel has spent too little time seeking input from consumers and their advocates. In fact the option 4 proposal would suffer the same disadvantages in this regard as has the current Panel.

However, this criticism can be easily rectified by the consumer advocacy body developing much closer communications with consumers and their organizations. The strategic framework can be guided by that adopted by the MCE reform programme, although it need not necessarily parallel the MCE programme. This is an operational issue and we would not want this to be the cause of being too prescriptive in developing the new consumer advocacy model.

We do have strong reservations with the statement that:-

"A compounding issue is the complexity of issues in the NEM. The result is that the Panel's funding decisions tend to be driven by the circumstances and priorities of external organizations, who may not necessarily be well placed to assess which issues are of greater overall strategic significance to consumers in the NEM" (KPMG Report, page 14).

We consider that many consumer organizations do have a well-considered and developed understanding of strategic issues and priorities in the NEM. For example, we have mentioned earlier that the EMRF is the successor to the original BCA Energy Reform Task Force formed in 1992, which was the key non-governmental body involved closely in the energy reform process over the past decade and more. Some EMRF members were also members of the original BCA Task Force.

The statement quoted above causes us great concern in that there is an implicit suggestion that a new consumer advocacy body necessarily, will be more alive to the key strategic and priority issues in the NEM than the range of consumer organizations currently involved or which may develop as funding is made available to consumer advocates. We do not agree with the statement at all! Nor do we believe that it should lead logically to the suggestion in Option 4 (see later) that the new body needs to be created which should represent the interests of consumers in advising and advocating to the AER or AEMC. This denies the significant achievements already made under the existing structure.

5.3. The sectoral composition of the panel

We have had an adequate exposure to the existing Panel's operations and consider that the Panel would have been more effective and efficient if membership had been confined to an independent chair, and a representative each from the major business / industrial and community / household sectors. We strongly believe that the supply side representatives should never have been appointed and we endorse the general principle voiced in the KPMG report viz:-

“Representatives of electricity generators or electricity market participants who are bound by the terms of their appointment to present the views of their sector are not well placed to make decisions which are in the best interests of these sectors and consumers. As there will often be a conflict between the interests of these sectors and consumers, we anticipate that it will be difficult for these members to make disinterested decisions” (KPMG Report, page 15)

We also make the observation that consumer representatives, familiar with the viewpoints, concerns, and interests of their constituencies (ie actual consumers and their advocates), are best placed to contribute successfully to a new consumer advocacy body.

We also do not consider that appointing members who do not represent consumer constituencies is necessarily an appropriate or an effective way to move forward. It is even less appropriate for appointees to be made by governments, as some energy issues will be created by governments (such as by the MCE) and therefore a government appointee will have a conflict of interest. Some governments also own energy assets (retailers, generators, network businesses) and this will create an even greater conflict of interest. There is also concern that appointees by governments may not be devoid of possible conflicts of interest - there may be an interest in making risk-free appointments or even appointees that may be uncritical of government policy or decisions. It must be remembered that consumers do not always agree with government viewpoints as the Victorian government observed when it was in the process of selling its gas assets.

Whilst appointing “independent” members may, superficially, appear attractive, there are strong concerns that consumer views, interests and concerns can be filtered by such representatives, in which case the voice of consumers would be lost, minimized or misrepresented. It was noted by the KPMG Report that this was the outcome of having retailer and generator representatives appointed to the current Panel.

There is no alternative to having genuine consumer representatives appointed by consumers themselves to represent the best interests of consumers. It should be remembered that the funds allocated are levied on consumers and are not part of government revenue.

6. Criteria to guide the development of a new model

In general, we support the requirement that the new consumer advocacy body be based on good corporate governance principles and the ASX principles present a useful guide. Consistent with the ASX principles, it would seem that board members would need to comprise directors appointed by shareholders. In this case, the directors of the new consumer advocacy body should be appointed by the consumer organizations. Directors should not be appointed by governments as the funds are not provided by taxpayers, but by energy consumers via a levy on consumption. Some governments are also owners of energy assets, and so a clear conflict of interest exists.

The direct involvement of governments in appointing directors appears to be against good governance practice. Early precedents, involving the establishment and appointment of directors by governments (e.g. NECA and NEMMCo), clearly demonstrate the inadvisability of such a course of action. For example, NECA was unable to resolve efficiently the issue of transmission charges and who pays them, whilst NEMMCo has never been able to address the issue of regional boundaries. In both cases, government ownership issues played the part in preventing critical NEM issues from progressing and being based on economic efficiency grounds. Consumer interests were subordinated to governmental vested interests.

The EMRF, ECCSA and EUCV are all strongly opposed to the appointment of directors by entities where there are clear conflicts of interest - in this case consumer interests - which are seen to be prominent by KPMG in its report and by consumer organizations.

6.1 Efficiency, effectiveness and accountability

The EMRF, ECCSA and the EUCV support these requirements with respect to the new consumer advocacy body. We believe, from the experiences of the past two years, that consumer advocacy funding could be better targeted, more efficiently discharged, and proposed projects more objectively assessed, with improved transparency and accountability.

In this regard, we refer to earlier comments with respect to the undesirability of appointing supply side representatives to the new consumer advocacy body, and that appointments should also not be made by governments. There are potential conflicts of interest, especially as some governments are asset owners. There is a strong preference that appointees nominated by consumer organizations. Because consumer organizations are in regular contact with actual consumers, such appointees are more likely to be most knowledgeable of consumer interests, views and requirements.

The appointment of directors by governments to a new body, which is also provided with the role of actively representing consumer interests, is even less desirable - it will fail on all three criteria of efficiency, effectiveness and accountability. There must be a limit to government intervention, because the three groups and their members all believe in the desirability of strengthening the institutions of civil society.

6. 2 Independence

We support the requirement that the new consumer advocacy body be independent from government. This criterion will not be met by government appointments. We strongly believe that consumers not only have direct representation on the new body, but that consumers control the new body – after all it is the consumers' money that is allocated. The directors must be independent from government and free to be critical of government if necessary, and there should not be the ability to have consumer views and interests filtered by an unrepresentative person appointed to the funding body.

6. 3 Avoiding duplication of existing arrangements

We are strongly opposed to a new consumer advocacy body being tasked with representing consumer views to the AER and AEMC on regulatory and rule making issues. Because the new body does not have direct access to informed consumer views there is a distinct potential for it to provide a consumer view which runs counter to that from established consumer organizations. This will not only result in the creation of parallel consumer advice to that provided by existing consumer organizations (and is a clear case of duplication), but it could well diffuse the impact of advice from existing consumer organizations, and possibly even create confusion and uncertainty.

6. 4 Being proactive and strategic

Whilst there is much to be gained in the new consumer advocacy body being proactive and strategic, care should be exercised that its energy and ambitions do not displace activities or projects that consumer organizations actually wish to progress. In other words, it must not usurp the role of existing consumer advocacy and consumer organizations.

Any major initiative proposed by the new body must be discussed and endorsed by consumer organizations.

6. 5 Ability to build capacity

Again, there is concern with empire building by the new consumer advocacy body.

We support the need to build capacity in existing groups and even in new representative consumer groups, but we have major concerns with building "the capacity of a new advocacy body" in any way that duplicates existing groups, usurps the role of existing groups or limits the ability of existing consumer groups (eg financial counsellors, consumer legal groups, Australian Consumers Association, etc) to develop an understanding of the energy markets.

The proposal in the KPMG Report is far too open-ended. There will be severe concerns if significant proportions of the consumer advocacy budget is to be diverted to administration and capacity building of the new advocacy body.

6. 6 Incorporating appropriate expertise

We envisage the new consumer advocacy body to be a small, lean and (consumer) supportive agency, not the supra-national organization that is implied in the KPMG Report (page 20).

It should be remembered that rather than building all of the expertise into a new super body there are already existing specialist resources available to consumer organizations to assist in responding to aspects outside their normal advocacy activities. This is the approach used by supply side entities and regulators. Thus there is no need to develop such knowledge into a new advocacy body.

We do not need that kind of consumer advocacy body.

7. Elements common to the development of a new advocacy model

7. 1 Scope

We consider that the scope of the new consumer advocacy body be confined to:-

- Providing grants to enable and to promote consumer advocacy and capacity building
- Commission research and provide information where there are clearly gaps in existing consumer advocacy organizations.

We envisage, on the basis of the above, that the new organization will be small and lean, with the over-whelming proportion of the budget allocated to providing grants to consumer advocacy organizations and capacity building.

There is no support for the new consumer advocacy body to be proactive in representing consumer interests in advising and advocating to the AER and AEMC.

The scope of the new organization will deal with the "General topics" identified in the KPMG Report (page 21) but these must also include an ability to fund consumer interests in appeals and other legal representations coming before relevant NEM and gas institutions.

We particularly draw the attention of the MCE to legal appeals in regard to this issue of energy supply side dominance. This issue is one where the energy supply businesses have the necessary financial incentive and funding to appeal decisions of regulators to the National Electricity Tribunal and the Australian Competition Tribunal. In these cases regulators are often financially constrained and have difficulty in adequately matching the resources dedicated by supply side entities. In particular, end users are not only financially constrained, but in many cases their rights are also constrained.

In an earlier submission on the 'User Participation Policy Statement', the EMRF, ECCSA and EUCV drew attention to the asymmetry in funding as between consumers and the energy supply side, especially in appeals to relevant NEM institutions. In particular the submission argued that:-

"Since the commencement of the National Gas Access Regime, consumers have not been able to fully participate in appeals before the Australian Competition Tribunal by gas transmission pipeline operators against the final determinations of the ACCC on access arrangements. In all cases, either the 'standing' of certain parties precluded participation, or the costs of participation outweighed the advantage that any single consumer or major industrial user could obtain.

More recently an appeal to the Tribunal by a number of major industrial users against a decision by the Minister of Industry, Resources and Tourism involving coverage of the EAPL, was withdrawn, as costs became prohibitive and unsustainable, and progressively the three major industrial users withdrew from the appeal.

The above experience indicates that in all appeals (or decisions that were contested) no consumer interest or view was considered by the Tribunal, and therefore would appear to be inconsistent with the gas code objectives regarding the need for consideration of the "public interest" and "the interests of users".

The EMRF, ECCSA and EUCV strongly consider that the scope of a new Consumer Advocacy Fund must include an ability to fund consumer interests in appeals and other representations before relevant authorities.

In the cases mentioned above, most if not all the appeals, resulted in the gas transmission operators improving their economic and commercial interests compared with the ACCC's earlier determinations. In the case where the Ministerial decision on "coverage" has remained in situ, the scope for significant economic rent recovery by the pipeline owner is now considerable."

The KPMG Report disappointingly ignores these issues completely, but they are regarded as critical issues by industrial consumers.

7.2 Consumer coverage

Industrial consumers consume some 60-70% of electricity generated in the NEM and a similar amount of total gas consumption. In other words, these consumers will be contributing the bulk of the funds levied to provide the budget for the current and new Advocacy Panel.

As major consumers of energy, it is a 'no brainer' that industrial consumers should have access to consumer advocacy funding. It is not only an exaggeration but mainly incorrect,

when certain groups advocate limiting funding coverage to only small consumers, and point to the divergent interests of small and large consumers. A simple review of the interests of large and small consumers shows that in most cases their views are coincident. The only significant aspect of divergence is the allocation of costs which comprises less than 10% of the advocacy activity. In this case representatives of large and small consumers can work together to resolve their differences.

7.3 Coverage of issues which relate to State and Territory responsibilities

The new consumer advocacy funding body will have many national issues on which to provide assistance to consumer advocacy organizations. It is highly undesirable for it to be responsible for funding smaller consumer groups that fall exclusively within the States' or Territories' areas of responsibility, and have no impacts or interest in other jurisdictions. Not only does it duplicate existing State-based funding organizations (such as CUAC and PIAC), it will detract from its primary role of funding activities falling under the National Electricity Law and the gas equivalent. In other words, it should not have responsibilities which relate exclusively to one State, given that the funding is provided on a national basis for electricity and (hopefully) gas supplies to consumers, that we do have national electricity and gas markets, and given the Federal system that we operate in.

7.4 Function of new advocacy body

We have already detailed our opposition to the new consumer advocacy body usurping the role of existing consumer organizations in advising and advocating to the AER and the AEMC.

The strengths in existing consumer advocacy organizations are that they are inherently directly driven by consumers and are member-based. Members decide on priorities and issues and these are obviously reflective of consumer interests and expertise. The new body will have no franchise to represent consumer views.

8. The EMRF, ECCSA and EUCV Preferred Funding Model

Against the above background, representatives from the EMRF, ECCSA and EUCV participated in a meeting to discuss and debate the KPMG Report on 26 April. Other consumer groups also present were the:-

- Energy Action Group
- Energy Users Association of Australia
- Victorian Council of Social Services

Collectively, the groups present at the meeting comprised nearly 100 major energy using companies and several hundred thousand household energy users.

The group adopted a consumer advocacy model based on certain key principles that it considers would underpin a robust funding model that ensures that end user interests can be appropriated, advocated and promoted.

The statement of principles and the preferred funding model supported by the all of the groups involved are attached to this submission.

9. Conclusion and Recommendation

The EMRF, ECCSA and the EUCV appreciate the opportunity to provide its views on the options for a new consumer advocacy funding model, against the background of the MCE's stated support for such an arrangement.

The EMRF, ECCSA and EUCV have strong reservations with option 4, especially with aspects provided for the body to lead advice and advocacy to the AER or the AEMC.

There is no argument in favour of creating a new consumer advocacy funding body to duplicate the activities, roles, and functions of existing consumer advocacy organizations.

The new funding body should be tasked with providing consumer advocacy funding, and no more.

Against the background of such concerns, the EMRF, ECCSA and EUCV join with other groups in proposing a set of key principles to guide the development of a new consumer advocacy funding model, including elements of a preferred funding model.

PRINCIPLES OF FUNDING FOR END-USERS IN THE ENERGY SECTOR

In August 2004 the Ministerial Council of Energy (MCE) released the following statement concerning the 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 (Source: MCE Statement: USER PARTICIPATION POLICY FRAMEWORK, August 2004).

Subsequently, the Standing Committee of Officials (SCO) for the MCE has begun to consider the matter with the appointment of KPMG to develop an Options Paper.

Based on the KPMG Options Paper, which was released by the SCO for public Consultation in March 2005, the following signatories have developed principles that will assist in developing an effective, relevant and robust energy end user advocacy-funding model. Our starting point is that there is a need for such arrangements and the MCE's stated support for such an arrangement. Hence, what is more at issue is the form such an arrangement should take.

The signatories to these principle comprise:

- Energy Action Group;
- Electricity Consumers Coalition of South Australia
- Energy Users Association of Australia;
- Energy Users Coalition Of Victoria;
- Energy Markets Reform Market Forum; and
- Victorian Council of Social Services.

This group of end users (representing some 100 major energy consuming companies and several hundred thousand household energy consumers) met on 26 April to discuss the KPMG Report and the Four Options recommended by the Report as possible end user funding arrangements. Based on the discussion, the groups have adopted a number of key principles and a preferred funding arrangement model.

The groups unanimously supported the need that the principles should be underpinned by, and give effect to, the National Electricity Law Single Market Objective of promoting the 'long term interests of consumers of electricity'. The signatories believe it is essential that the principles are used to develop a robust funding model to ensure that end user interests can be appropriately advocated.

Hence, an appropriately structured end-user advocacy model should satisfy the following principles:

- The Funding Body should only have the responsibility of allocating funds. That is, the role of the body is one of administering funds. The role of advocacy should be the domain of the end user groups that seek the funding and generally represent end users. There is no requirement for the Funding Body to duplicate existing end user advocacy activities.
- The Funding Body should support and protect the rights and interests of end user groups seeking funding by making funding decisions that promote the best interests of end users.
- Funds should be allocated for energy reform matters that includes both gas and electricity and covers energy issues that are wider than the National Electricity Code, the national Gas Code and the development of the NEM and the gas market;
- Funds should be allocated to advocacy functions that cover:
 - responding to Federal and State Governments' energy policy proposals and issues;
 - undertaking research and proactively developing and promoting energy policy reform;
 - 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 increasing their involvement;
 - challenging detrimental decisions of the AEMC, AER, NEMMCO NCC in terms of judicial and/or merits review;
- Funds should be allocated by an independent body with no conflicts of (or vested) interests. Hence, members of the Panel should not:
 - Be directly affiliated with energy end-user advocacy groups but be knowledgeable in energy matters and end-user impacts; and
 - Be directly involved with energy market participants;
 - However, the Funding Body should liaise with end user representatives on a regular basis to stay abreast of key end user priorities and matters.

- The appointment of the Funding Body representative(s) should only occur after consulting and taking recommendations from end user groups representing end user interests. Removal of representatives should be on the normal and generally accepted grounds.
- Funds should only be allocated to member-based organisations whose members are direct end-users of energy;
- Provide end-user advocates with flexibility in undertaking advocacy by distributing funds on an annual tied basis, whereby member-based energy end-user advocates can outline a forward work program (say up to three years) and then provide a report on how the funds were spent; and
- An appropriate level of funding that will allow for an active and robust participation in energy policy development. For example, a Report prepared by Pareto Associates for NECA in establishing the current Funding Arrangements under the National Electricity Code suggested a level of funding of approximately \$2.7 million pa for NEM related matters. This level of funding would involve costs of between only \$0.20-0.40/household per year.
- The Funding Body should also have a special provision to allow it to make an application for top-up funding if the 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 user groups.

A Proposed Funding Model

Based on these principles, the signatories support a Model whereby:

- There is a small and independent Advocacy Funding Body, with minimum overheads, including an Executive Officer and administrative support.
- Representatives are not conflicted or have a vested interest based on a direct relationship with an end user group, a market participant or jurisdictions.
- The Body **does not** act as an advocate but rather assesses and distributes funding to end user groups.
- The Body supports and promotes the interests of end user groups in its funding allocation decision-making function.

- Advocacy is undertaken by end user groups that have a direct relationship and therefore accountability to their members.
- The Board representatives meet regularly with end user groups to stay abreast of important matters.
- The advocacy is adequately resourced to ensure that the NEL Single Market Objective is supported by robust advocacy by end user groups.”