Executive summary

Consumer advocacy on energy is an integral part of Australia's energy market. The need for and benefits of advocacy are recognised by government, energy suppliers and a wide range of consumer, welfare and environment organisations.

Consumer advocacy has significantly influenced key decisions made by governments, regulators and industry participants. There are however many areas of need for consumer advocacy that are not currently being met. Available evidence about the impact of advocacy and the unmet need for further advocacy is set out in this report.

This project has been sponsored by four consumer advocacy organisations and funded by the Consumer Advocacy Panel. The project sponsors believe there is a need t*o identify the demand for and most effective way of delivering general consumer advocacy on energy*. One reason for initiating the project was as a response to perceptions that, given limited resources, some important consumer advocacy on energy is not being undertaken. The project was also motivated by a desire to ensure that the delivery of advocacy is able to respond to the complex and changing nature of the energy market and its regulation in the most effective way.

This report and the research underlying it explore the level of need for consumer advocacy, and identify options for refining the way in which advocacy is currently delivered.

Findings

Current advocacy arrangements

1. Consumers' interests in relation to the supply and consumption of energy are significantly affected by decisions made by parliaments, the executive, regulators and energy supply businesses. Advocacy is one way in which consumer interests can be better taken into account when those decisions are made.

2. In particular, consumers' interests have and continue to be significantly affected by the foundational decision made by Australian governments in the recent past to introduce competition into those areas of the energy market where this is possible (generation and retailing), and to privatise a significant proportion of formerly state-owned energy assets. It is generally accepted that governments and regulators have a responsibility to ensure that consumers are in a position to make competition work effectively, and that policy decisions lead to an increase in net consumer welfare (the stated aim of introducing the reforms).

3. Consumers' experience of the energy market has changed significantly over the past 15 years. A product that once demanded little attention has become increasingly expensive and increasingly confusing. A dynamic market means there is a risk that change happens more quickly than most consumers can keep up. One role for advocacy is to urge that consumers have access to the information and tools they need to make informed choices, and that the choices they face are not unnecessarily complex. It is in consumers'

interests that energy suppliers deliver suitable products, offer fair contracts and use fair marketing practices, and that the non-competitive parts of the market (such as distribution prices) are subject to appropriate network regulation.

4. The need for consumer advocacy in the energy market has long been recognised by governments, energy market regulators, energy suppliers, non-government organisations (NGOs) and others. Energy consumer advocacy is highly valued by many stakeholders, including the regulators and policy-makers who seek out and draw on the input of advocates.

5. That advocacy requires financial support from government and/or industry is also widely recognised. Currently advocacy is supported through the Consumer Advocacy Panel (a body created as part of the legislation which regulates the energy market in Australia), by funding from State and Territory governments in NSW, Victoria, WA and Queensland, and from the internal resources of a small number of larger non-government organisations.

6. Energy consumer advocates must consider a diverse range of issues that involve complex technical, economic, financial and political problems. The structure and design of the energy market is rapidly evolving and is subject to competing demands from different industry sectors and State, Territory and Commonwealth governments. Energy policy often has political sensitivity, and is significantly affected by other priority areas of public policy, including access to essential services, social inclusion, environment policy generally and climate policy in particular.

7. Advocacy is undertaken by a diverse group of non-government organisations, including general consumer organisations, welfare organisations, organisations established specifically to undertake energy advocacy, university centres, environmental advocacy organisations, and organisations that represent specific consumer or business interests. The report identifies 37 organisations that have made submissions to the formal processes of energy market regulators in the past few years. A large subset of these organisations participate in a national network of energy advocacy organisations known as the National Consumers Roundtable on Energy. Among other things, the Roundtable supports advocates to share information and coordinate activities.

8. There is no agreed definition of consumer advocacy on energy, nor of the consumer interests that are to be served. The report proposes a working definition of consumer advocacy on energy. The report considers the extent to which consumer interests do or may vary and the ways in which consumer advocacy can and should serve those diverse consumer interests.

9. Advocates work on a wide range of issues; the report identifies more than 20 distinct issues that have been the focus of advocacy work. Affordability, financial hardship, concessions and pricing are significant areas of work. Other issues include market problems, the effectiveness of competition, complaint handling, smart metering, energy efficiency, and the regulatory framework (including but not only the consumer protection provisions of that framework).

10. Consumer advocates inform their advocacy via multiple sources. The most common methods (each used by more than 50% of advocates) are:

    > drawing on their own research and the research of others

    > drawing on the experience of their member organisations and/or consultation with community organisations, and

    > analysing the information gained through providing advice and casework services directly to individuals.

11. Advocates undertake different kinds of activities in the interests of consumers. These include:

    > participating in regulator or industry consultative forums

    > participation in working committees on specific issues

    > preparation of submissions

    > monitoring industry practices and policies and the services provided to consumers, and

    > informing consumers and other stakeholders of energy consumer advocacy issues through the media and otherwise.

12. Much consumer advocacy is undertaken in response to requests for input into processes undertaken by regulator or policy agencies. Such *formal consumer advocacy* can take the form of preparing a submission to an inquiry or responding to an issues paper, discussion paper or draft report; holding membership of a formal advisory committee; or participating in a working group on a particular issue.

13. Over a two-and-a-half-year period (1 January 2008 to 30 June 2010), consumer advocates made at least 337 submissions to 178 identified formal processes operated by regulators, the Ministerial Council on Energy (MCE) and others. Several processes received more than 10 submissions.

14. Advocates also engage in a range of *informal* activities, including staying in touch and exchanging views with industry participants, regulators, policy agencies, consumers and relevant NGOs. Advocacy initiated by consumer organisations – *proactive advocacy* – is an important area of mostly informal advocacy. Identifying and exploring consumer problems and then getting them onto the agenda of industry and policy-makers is undoubtedly a central function of any advocacy system if it is to adequately represent the interests of consumers.

15. Informal advocacy, including proactive advocacy, is somewhat harder to define and much harder to quantify than the formal advocacy of submission writing and committee work. The report provides a number of case studies that demonstrate the potential impact of informal and proactive advocacy on policy outcomes. The case studies suggest that such informal advocacy must often be sustained over lengthy periods of time to be successful.

16. A number of mechanisms have been developed to improve the quality of advocacy, to support advocates, and to promote cooperation among advocates and advocacy agencies. The Roundtable has been a particularly successful way for advocacy organisations to work together. Cooperation through other networks has also helped coordinate and strengthen advocacy.

17. Consultees identified a range of perceived strengths in current consumer advocacy arrangements. These include:

    > the diversity of organisations and perspectives available to undertake and inform advocacy

    > the wide coverage of advocacy – most States and Territories benefit from the physical location of an advocacy organisation in their capital city

    > the experience, skills, knowledge and passion of current individuals employed by advocacy organisations

    > the strong collaborative network and culture among advocates, and

    > the strong links to consumers' views and experience obtained through consumer research, provision of direct services to consumers, and extensive links with community organisations.

18. Consultees identified a number of perceived weaknesses in current arrangements. The following weaknesses had reasonably wide resonance:

    > lack of a national voice

    > insufficient coordination of advocacy, especially at the national level

    > lack of access to the full range of required skills and technical expertise

    > insufficient access to research, including but not only consumer research

    > a tendency, despite a commitment to proactive advocacy, to direct resources to some parts of the narrower agenda of regulators and policy-makers, and

    > a focus on the most visible issues to consumers, and hence insufficient attention to the overall regulatory framework.

    The following were identified less frequently:

    > absence of a widely agreed and articulated statement about the precise consumer interests served by advocacy, and a lack of capacity to fully meet the advocacy needs of some classes of consumers (e.g. the frail aged and those in rural areas)

    > absence of a strong commitment from all policy-makers to consult with consumers on all issues, or to consult in a timely way, and

    > a concern among a small number of regulators/policy-makers about the quality of advocacy and/or a perceived 'pro-regulation' default position among some advocates.

Some of these perceived weaknesses are important inputs to a discussion about the need for greater support for advocacy and/or the most effective model for the delivery of advocacy. Others do not accurately reflect current advocacy taken as a whole, and need to be qualified and/or require further analysis before they can be used to assist in program design.

The need for increased resources for energy consumer advocacy

19. The weakness most persistently raised by stakeholders, however, is simply a lack of resources to undertake all the advocacy that is required to advance important consumer interests.

20. Not all the formal advocacy that is required is undertaken. The formal advocacy that is undertaken requires more coordination and greater access to technical skills. And the formal advocacy that is undertaken does not necessarily respond to all the issues that are directly or indirectly raised in the relevant process due to lack of resources.

21. The need for increased resources for formal advocacy is probably only the tip of the iceberg. Advocates need a much greater capacity to research the needs of a more diverse range of consumers, and to explore the costs and benefits of potential changes and their likely impact on the market and consumers, including but not only through greater analysis of overseas experience.

22. Case studies of effective advocacy and a number of evaluations and reports demonstrate the impact that advocacy has in securing change in consumers' interests.

23. Other indicators of the likely need for increased resources for advocacy include substantial increases in the number of consumer complaints handled by the energy ombudsman schemes and the ongoing dynamic and uncertain nature of energy regulation, with the full impact of a large number of recent changes not yet known and many more flagged.

24. In response, the report suggests that governments collectively should consider developing means to provide a very substantial increase in the funds available for consumer advocacy. The benefits of an increase in resources will likely include:

    > capacity for consumer advocates to respond to a greater proportion of the formal processes initiated by decision-makers (whether through submissions or participation in working committees and similar)

    > capacity for advocates to provide higher quality input to all formal processes

    > capacity for advocates to respond to a greater range of issues, including issues which are currently engaged with less frequently due for example to their complexity, the requirement for specialist knowledge and/or their relative remoteness from the issues experienced directly by consumers

    > ability of the advocacy system–through increased research and better engagement with consumers and service provider and other local organisations–to identify additional issues facing consumers, and to identify issues at an earlier

stage, and to undertake 'proactive' advocacy to have these issues taken up by policy makers

> increased capacity of advocates to lobby more effectively for decision-makers to include consumer interests at an earlier stage in the decision-making process

> efficiencies flowing from greater coordination of advocacy

> increased access to technical expertise, whether through staff appointments, formal arrangements with relevant university centres and/or capacity to retain professional consultants,

> the potential to develop a centralised repository of research and other knowledge that would be accessible to consumers, consumer advocates and others, and

> overall, an increased capacity to respond to the breadth and complexity of issues in the energy market.

Models for the delivery of energy consumer advocacy

25. Changes to decision-making processes and likely changes to the kinds of issues that will be addressed by decision-makers suggest that a review of the way in which advocacy is delivered is appropriate.

26. There have also been calls for improvements to the current approach to advocacy. Those calls focus on one or more of three claimed desirable improvements to current advocacy:

    > a clearer 'national voice'

    > greater access to technical expertise, and/or

    > action to ensure that under-represented consumer interests have the benefit of advocacy.

    While none of these claims is as straightforward as is sometimes imagined, each raises issues worth considering.

27. In appropriate cases a stronger national voice on particular issues would assist advocates to advance consumers' interests. The report finds, however, that any suggestion there is a need for a *single* national voice is misconceived.

28. Over the years, advocates have had the benefit of access to technical advice in relation to economic, environmental and engineering issues. Nevertheless, there is no doubt that increased access to such technical expertise would enhance advocacy. Further, the report notes that consumer advocacy itself involves a set of technical skills for which there is and will be an ongoing need (a need which is not always fully recognised), and that recruitment or development of such skills can often be as challenging as engaging economic, environmental or engineering skills.

29. While there are a wide range of consumer interests that are not routinely represented by advocacy, the situations where this is likely to cause disadvantage to consumer interests is generally more limited. The report notes a wide divergence in opinion among those consulted about the particular interests that are under-represented: for nearly every view that a particular interest is under-represented, there is a view that that same interest is over-represented. Notable exceptions relate to the interests of Indigenous and rural/regional consumers–these groups are widely accepted as under-represented in current advocacy.

30. The findings of the report suggest that there may be ways to improve current arrangements above and beyond providing additional resources. But one should not underestimate the strengths evident in current arrangements, as noted at 17 above. These strengths are likely to have been important preconditions for the successful outcomes achieved by advocates to date.

31. The report proposes that decisions as to the best system for the provision of energy consumer advocacy should be considered having regard to a set of *system design principles* for an advocacy system, and an agreed conception of the functions an advocacy system should perform. The report also identifies some *good practice principles* that, while valuable, will not strongly aid in discriminating between alternative potential models of advocacy.

32. The system design and good practice principles are the following:

System design principles

P1. The advocacy system is strategic: that is it is able to allocate resources to the activities most likely to advance energy consumers' interests, including proactive and responsive advocacy as required.

P2. Advocacy is based on a robust connection to energy consumers (whether through membership, casework, service provision, research or otherwise)

P3. The advocacy system is able to build and sustain expertise, interest and engagement in local-level organisations

P4. The advocacy system includes the capacity to support the informed voices of diverse energy consumer interests reaching decision-makers

- The advocacy system uses a principled approach to balance the interests of different groups or classes of energy consumers.
- The advocacy system supports advocates representing different interests to exchange views, explore common positions and, where appropriate, coordinate advocacy

P5. The advocacy system has a credible, effective and responsive national voice where required.

P6. The advocacy system ensures that necessary advocacy at a State/Territory level is supported

P7. The advocacy system ensures that relevant local and State/Territory issues that impact on consumers and energy markets are available to national decision-makers through consumer advocacy

P8. The advocacy system includes or has effective access to expertise on technical energy issues, including engineering issues, regulatory economics and environmental issues

P9. The advocacy system is efficient, effective and accountable

- The advocacy system includes incentives and support for effective collaboration among advocates
- The advocacy system has the capacity to generate or collate, store and retrieve relevant data and research
- The advocacy system possesses a strong corporate memory.

Other good practice principles for an advocacy system

GP1. Advocates work in consumers' interests, *are independent and free of conflict of interest*

GP2.The advocacy system ensures a long-term strategic approach to consumers' interests in energy policy and regulation

GP3.The advocacy system uses a principled approach to balance the long-term and short-term interests of energy consumers

GP4.Advocates have expertise in consumer advocacy

GP5.*The advocacy system and its elements is sustainable*

GP6.*The advocacy system promotes interaction with other consumer advocates*

GP7.*The advocacy system promotes early engagement with consumer issues by government to ensure advocates are involved in all stages of the policy development process.*

33. The broad function of advocacy is to improve consumer welfare in relation to energy. A key way to do this is by ensuring consumers' interests are given sufficient weight in decision-making by regulators, policy-makers and energy suppliers. In addition, many believe that advocates should also work to ensure energy consumers are able to influence outcomes directly through their individual decisions as purchasers and users of energy.

34. The report identifies the following as the main specific functions of energy consumer advocacy:

Direct and indirect advocacy

a. Participating in the review and development of legal, policy, regulatory and market reforms, and industry practices and codes, including:
   - informal consultation
   - formal submissions
   - participation in working groups and similar

b. Participating in formal regulatory review processes (e.g. distribution price reviews)

c. Participating in regulator or industry consultative forums

d. Highlighting consumer concerns with the functioning of the energy market or with particular policy proposals (e.g. in the media)

e. Taking legal action to advance energy consumers' interests

f. Providing training and other support to consumer organisations to build their capacity to represent energy consumer interests

Informing advocacy: Understanding the energy market and its impact on consumers

g. Researching and analysing trends and emerging issues that have an impact on energy consumers

h. Monitoring industry practices and policies and the services provided to consumers

i. Monitoring the effectiveness of regulators

j. Engaging with industry ombudsman processes

Ensuring consumers can take action to benefit from the energy market

k. Informing consumers of energy consumer advocacy issues through the media and otherwise

l. Creating or advocating systems or tools to make it easier for consumers to navigate the market.

35. The report identifies six models for energy consumer advocacy in Australia. In doing so the report assumes for this purpose that the level of support from State/Territory governments and from NGOs' own resources will remain largely the same and that the level of support from the Consumer Advocacy Panel will increase from current levels in accordance with the suggestion include in section 4.9 of this report.

36. Current arrangements are listed as the first 'model' for energy consumer advocacy Current advocacy is supported by funding for a diverse array of mostly small, jurisdiction-specific advocacy services, the work of which is coordinated and supported through the Roundtable and related secretariat functions.

37. The six models of energy consumer advocacy identified are:

    A. Current arrangements

    B. Current arrangements but with a stronger secretariat

    C. A National Energy Consumer Advocacy Council speaking on behalf of a diverse range of funded constituent members

    D. A Small National Energy Advocacy Centre, together with continued funding of jurisdiction-specific advocacy services

    E. A larger National Energy Advocacy Centre with a commitment to State/Territory-based projects

    F. A larger National Energy Advocacy Centre, primarily located in one city.

    Further detail on each model is provided in Section 6.3 of the report.

38. The final section of the report considers some of the strengths and weaknesses of the models in light of the principles for system design set out in the report. The report cautions that this assessment is somewhat tentative, as it tries to apply broad principles to models for advocacy which are described at a high level of generality, and because there is no attempt to weigh the principles, whereas in fact some may be more important than others.

39. While no preferred model is selected the analysis and other factors suggest the following.

    > It is difficult to see how the current arrangements without amendment can deliver all the advocacy required in the most effective way. It is generally agreed that the current model is insufficiently capable of delivering a national voice when required, does not deliver to advocates all the technical expertise they need and may not adequately represent the interests of Indigenous and/or rural consumers. While coordination between services through the Roundtable is effective, there is widespread agreement that there is scope for additional coordination and cooperation.

    > It is difficult to see how a funding program that supports only a larger national centre that does not include a commitment to a strong jurisdiction-based presence could deliver all the required functions or reasonably comply with the system design principles.

    > While the National Energy Consumer Advocacy Council model (model 'C' above) has some attractions in relation to capacity to provide a national voice where needed while maintaining the strengths of current arrangements in relation to local advocacy and connection to local consumers and issues, there are concerns about the high governance costs that such arrangements may require, diverting resources away from undertaking advocacy.

> Applying the principles to the models suggests that Model D in particular and also models 'B', 'C' and 'E' above are more likely to deliver the functions of advocacy and to comply with the principles as this report has proposed them than the status quo.

> Models B and D involve the least change and disruption to the current effective system of energy consumer advocacy in Australia.