

Attachment 2

Energy Consumers Australia's (ECA) objective and functions

ECA was established in 2015 as an initiative of the Council of Australian Governments (**COAG**) Energy Council, and its predecessor the Standing Council on Energy and Resources (**SCER**). The COAG Energy Council comprises the energy and resources ministers from the Commonwealth, each state and territory, and New Zealand.

ECA was registered on 29 January 2015 as a company limited by guarantee, and is governed by a constitution. Its sole member is the South Australian Minister of Energy.

Clause 4.1(a) of ECA's constitution provides that ECA's object is:

To promote the long term interests of Consumers of Energy with respect to the price, quality, safety, reliability and security of supply of Energy services by providing and enabling strong, coordinated, collegiate evidence based consumer advocacy on National Energy Market matters of strategic importance or material consequence for Energy Consumers, in particular for Residential Customers and Small Business Customers.

Clause 4.2 of ECA's Constitution provides that ECA will seek to achieve its objects through the following activities (among others):

- (a) *Effectively and objectively participating in National Energy Market issues and influencing regulatory activities and Energy market reform to benefit Consumers;*
- (b) *Frequently engaging and communicating with Consumers and consumer advocates to discuss, support, liaise, collaborate, educate, identify and to receive and provide updates on the National Energy Market and its policies, reforms, issues and general news;*
- (c) *Building national and jurisdictional expertise and capacity through research, knowledge development and consultation to advance the interests of Australian Energy Consumers, in particular residential and small business Energy Consumers;*
- (d) *Undertaking robust research to build knowledge, engage and influence policy development and educate Consumers in the Energy markets;*
- (e) *... funding and managing grants to build knowledge and sectoral capacity supporting policy development and consumer education in the National Energy Market...* (emphasis added)

The events leading up to the establishment of ECA are summarised below:

- (f) On 7 March 2012, an Expert Panel was established by the SCER to undertake a review of the Limited Merits Review (**LMR**) Regime, by which decisions made by the Australian Energy Regulator under the National Electricity Law and National Gas Law were reviewed by the Australian Competition Tribunal.
- (g) On 29 June 2012, the Expert Panel published a Stage One Report on the review of the LMR Regime. At page 3 and 4 of that report, the Panel identified a number of deficiencies in the LMR Regime, including the following:
 - *The [LMR] arrangements have not ensured that all stakeholders' interests have been adequately taken into account. Specifically, the long*

term interests of consumers have typically not been explicitly considered when review decisions have been made.

- Consumer bodies and network user associations (with justification) feel excluded from the appeals process, including, but not exclusively, for cost reasons.
 - The regime lacks legitimacy with important stakeholder groups: trust and confidence in the AER and the ACT [Australian Competition Tribunal] has not been established, and the AER itself does not appear to have any great confidence in the regime as currently constituted.
 - Doubts about the effectiveness of the regulatory arrangements have a basis in the facts that (a) some of the ACT's decisions have had major implications for network charges and end consumer prices, (b) convincing and coherent accounts of how these decisions might have positive effects on the long term interests of consumers have been lacking, and (c), more generally, an informed consumer would find it very difficult to discover a credible account, from any authoritative source, of why energy prices are changing as they are.
- (h) On 30 September 2012, the Expert Panel published a 'Stage Two Report' making certain recommendations regarding the LMR Regime.
- (i) Among other things, at page 2 the Stage Two Report noted two particular weaknesses of the LMR Regime as it was presently constituted:
- *The tendency for the scope of reviews of regulatory decisions to be unduly narrow, such that the merits of reviewable decisions concerning overall allowable revenue/prices were themselves never assessed.*
 - An insufficiency of attention to the National Electricity Objective (NEO) and the National Gas Objective (NGO), and hence to the long-term interests of consumers, not only in the LMR process itself but also in business and regulatory decision making prior to the appeals stage. (emphasis added)
- (j) By letter dated 29 November 2012, the Chair of SCER notified the then-Prime Minister Julia Gillard of the SCER's agreement to progress energy market reform in four key areas, among them 'empowering consumers'.
- (k) The specific measures agreed by SCER, as described in that letter, included the following:
- Enhancing consumer representation*** – *SCER endorsed the strengthening of consumer input into network pricing decisions and noted the Commonwealth's proposal to establish a Consumer Challenge Panel within the AER to ensure that consumers are better represented within regulatory decision and appeal processes. SCER further agreed to develop, in close consultation with consumer bodies, a proposal on the form, scope and funding of an institution that would be a strong national advocate for consumer interests that is well equipped to contribute constructively to energy policy and market development issues.* (emphasis added)

- (l) On 30 April 2013, a panel of experts appointed by SCER issued a report titled 'Proposal for a National Energy Consumer Advocacy Body'. The report noted at page 20 that '*the Productivity Commission, the [Australian Energy Markets Commission], the [Australian Energy Regulator], and the Australian Competition and Consumer Commission... have all commented on the need for a well-resourced, independent national energy consumer advocacy body to provide an effective coordinated consumer voice in relation to ongoing national energy market policy and regulatory developments.*'
- (m) On 31 May 2013, the COAG Energy Council agreed in principle to establish a national energy consumer advocacy body.
- (n) Necessary legislative amendments regarding the creation of ECA were passed in December 2014 – see, for example, the *Statute Amendment (Energy Consumers Australia) Act 2014* (SA).
- (o) ECA was established on 29 January 2015.

ECA is the only consumer body that is afforded the same full participation status by the COAG Energy Council as the Australian Energy Markets Commission, the Australian Energy Regulator and the Australian Energy Markets Organisation.