



Review of Energy Consumers Australia

**Report of Stage 1 – Operational Performance
Preliminary Report**

Date June 2018
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Executive Summary

Stage 1 of the Review of Energy Consumers Australia has reviewed the operational performance of the ECA. Overall, this review has not identified any areas of concern in the ECA's governance arrangements, organisational structure or operational performance. It has, however, identified two areas for further consideration:

- The risk to the ongoing operations of the ECA if the Board is subject to high turnover in a short period of time. This should be taken into consideration in the Council of Australian Governments (COAG) Energy Council deliberations over future ECA board appointments.
- Opportunities to improve the ECA's performance reporting and demonstrating its achievement of strategic initiatives. The ECA should prioritise its efforts to introduce more mature and insightful performance reporting.

The ECA is a relatively new entity, with a small, highly motivated staff. It has demonstrated throughout this review a commitment to ongoing improvement and its policies and procedures continue to be subject to an active internal process of increasing maturity. These are indicators that the ECA will address these matters in the short term.

Stage 2 of the ECA Review will commence from July 2018, and will incorporate findings from this report. Stage 2 will be focused on the overall effectiveness and impact of the ECA in achieving its objective, as described in the Terms of Reference for the review set out by COAG Energy Council.

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Introduction

Energy Consumers Australia (ECA) was established by the Council of Australian Governments Energy Council (COAG EC) in 2015 as an advocate for residential and small business consumers. ECA has core functions in research, consumer advocacy and grant funding.

The ECA operates in a dynamic and increasingly complex environment. Emerging technologies, new businesses entering the markets, and concerns about energy affordability are creating challenges for the regulatory framework. In turn, the ECA must identify the impact of these challenges for customers and help identify solutions that are in consumers' interests.

Energy prices have a major impact on the productivity and competitiveness of the Australian economy. Through its advocacy for energy consumers, the ECA's role is to influence government policy so as to protect customer interests. The key issues facing policy makers today which the ECA needs to understand, research and advocate in cover:

- Energy affordability and increasing disconnections
- Ensuring reliability and security of the market with the shift from fossil fuel generation to renewables
- Integration of new technologies and new business models and their impact on customer protection
- Regulation of network and pipeline business' costs and prices

The ECA is governed by the Constitution of Energy Consumers Australia (the Constitution), where its object is defined as:

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 Customers¹. (Section 4.1)

Context of this review

The Constitution directs that an independent review will be conducted after the first three years of the Company's operations, with subsequent reviews every five years or at the discretion of the Energy Council (section 11.1 (i)). The Terms of Reference² for the review have been published by COAG EC, specifying that it is to be conducted in two stages:

Stage 1

The first stage of this review has focused on the effectiveness of the governance arrangements, organisational structure, and operational performance of the ECA.

1 Constitution of Energy Consumers Australia Limited, 2015. Retrieved from: <http://energyconsumersaustralia.com.au/wp-content/uploads/Constitution-Energy-Consumers-Australia-Limited.pdf>

2 ECA Review Terms of Reference, 2018. Retrieved from: <http://www.coagenergycouncil.gov.au/publications/review-energy-consumers-australia>

Stage 2

A second stage will assess the effectiveness of the ECA in undertaking its activities, in performing against stakeholder expectations, and in its grant allocation functions. This stage of the review will address ECA activities including:

- Participating in National Energy Market (NEM) issues and influencing regulatory activities and energy market reform to benefit consumers;
- Engaging and communicating with consumers and consumer advocates regarding NEM policies, reforms and issues;
- 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;
- Undertaking robust research to build knowledge, engage and influence policy development and educate consumers in the energy markets;
- Other Activities outlined in article 4.2 of the ECA Constitution;
- The performance of the ECA against stakeholder expectations;
- The effectiveness of grant allocation functions in delivering tangible benefits for energy consumers.

Approach

Stage 1 of the review of ECA has focused on three areas of the operations of the ECA. Each has been analysed through the following review activities:

1. Governance Arrangements:

- Assessing existing skills matrix and analysing current board membership to provide advice to inform upcoming appointment process
- Assessing structure within the board of directors, including the minimum required tenure lengths and rotations of board members and whether length of tenure for board members is sufficient for effective governance and in line with ECA's constitution
- Evaluating the remunerations of the board members, ensuring it is in line with constitutional agreements

2. Organisational Structure:

- Assessing functional capacity and capability of directorates within the ECA
- Assessing whether proper hierarchy of functions are in place
- Ensuring proper channels of communication are in place and followed for all decision making made by the Member, CEO and Board.
- Assessing whether objectives and implementation planning (from key establishment documents) was clearly articulated and consistently addressed

3. Operational Performance:

- Reviewing priority arrangement of strategic functions and development of key projects
- Demonstrating effectiveness in the implementation of strategic initiatives
- Assessing stakeholder engagement
- Assessing key risks and mitigation strategies.

Data and information

In undertaking these key review activities a wide range of ECA documents were reviewed. These include policies, procedures and governance documents, internal to the organisation as well as those publicly available online.

A number of stakeholders have been consulted in the course of this review. These include:

- Government officials from the Commonwealth and from state and territory jurisdictions
- Representatives from ECA, including:
 - the Chair of the Board
 - all current Board Members
 - the CEO
 - all current internal Directors
 - all current members of the ECA Reference Committee.

Attribution of comments has been avoided, in order to encourage frank and open dialogue, and the issues summarised below represent a composite of input from these discussions.

Scope and limitations

Stage 1 of this review was tightly scoped, and confined to desktop research and discussions with key stakeholders within the ECA and relevant areas of public administration. Time and budget limitations have excluded detailed exploration of findings, including comparison of elements of the ECA with other energy sector bodies. Where issues have been found, these have been identified for further work by relevant decision makers.

While a number of observations regarding areas for review have been made, only those likely to have material consequences for the successful operation of the ECA have been identified as areas for improvement.

Governance Arrangements

Skills of the Board

Assessing the existing skills matrix and analysing current board membership

In order to assess the skills of the current Board against the skills matrix specified in the Constitution, curricula vitae of current Board Members were reviewed, and discussions were held individually with each Board Member and the CEO.

Key observations from this review activity include:

- While different Board members bring different strengths, all required skills and abilities are covered in the current Board.
- The skills mix in the Constitution is overly complex, however it remains relevant for future appointments.
- Board members identified a consistent set of skills which they feel are drawn on most regularly in performing their duties as a Board, namely:
 - Energy industry knowledge
 - Understanding energy consumer issues
 - Understanding the environment in which the ECA operates
 - Governance and regulatory expertise.

Conclusions:

The review of the current Board against the skills in the ECA Constitution indicates that all required skills and abilities are covered. This mix of skills is also seen as appropriate for selecting future Board members for the ECA, and a focus on those skills utilised most by the current board should be prioritised.

Structure of the Board

Assessing structure within the board of directors, including the minimum required tenure lengths and rotations of board members

The ECA Constitution was examined and discussions were held with Board members individually, and as a group, to explore issues around tenure and effective governance.

Key observations from this review activity include:

- All current ECA Board members are due to be reappointed or replaced by January 2019. A high degree of turnover of the Board would be likely to create a period of low productivity for the ECA, while new Board members build their knowledge of the organisation³.

³ The Australian Institute of Company Directors, Good Governance Principles and Guidance for Not-for-Profit Organisations (2013), page 19. The ASX Corporate Governance Council, Corporate Governance Principles and Recommendations, (2014), page 14.

- The number of meetings required is set out in the Constitution, and occur more frequently than Board members feel is helpful. Compared with other energy market bodies, such as the Australian Energy Market Operator (AEMO), the Australian Energy Regulator (AER) and the AEMC, the ECA Constitution is more prescriptive on this matter.

Conclusions:

The structure of the Board has been an area of tension for the ECA, due to prolonged uncertainty of tenure for current members and lack of clarity around the extent of future reappointments. Effort to balance continuity of members with introduction of fresh perspectives should be a priority, to avoid risk to the ongoing operation of the ECA.

Remuneration of Board Members

Evaluating the remunerations of the board members, ensuring it is in line with constitutional agreements

Documentation provided by the ECA was reviewed to assess whether Board members have been remunerated in line with the Constitution.

Key observations from this review activity include:

- Board member remuneration for the 2016-17 financial year is in line with terms and conditions set out in the Constitution.
- Remuneration is capped at two days per month per member, and the workload of the Board is seen to exceed this cap. Further analysis and comparison of the workload of the ECA Board with other, similar bodies could be useful to explore this issue. However, given the Board is currently operating effectively, this does not appear to be a material impediment to the operation of the ECA.
- Remuneration is not subject to indexation to ensure it retains its value over time. A comparison of these arrangements against similar bodies could also be useful here. However, given the ECA is funded through AEMO by electricity and gas consumers, any increase in remuneration would come at a cost to consumers.
- The adequacy of remuneration arrangements has been raised by a number of stakeholders, with indications that this may restrict the pool of candidates with strong energy market expertise who may be selected for future Board appointment.

Conclusions:

The ECA's approach to remuneration of Board members is in line with the Constitution, however the workload of the Board exceeds the two days per month which may be remunerated under the Constitution. This may reduce the pool of potential candidates for appointment to the Board.

Many stakeholders observed that the ECA Constitution is unusually prescriptive, whilst also lacking clarity on crucial points. A number of improvements to the Constitution could be considered, to assist the effective governance of the ECA, including:

- Introducing a principles based approach to Board tenure, so that appointments can be made in a responsive manner and ensure staggering of new members over time
- Introducing a discretionary approach to the number of Board meetings per year
- Giving consideration to lifting the two day cap on chargeable days for ECA Board members, to reflect the workload required and attract quality candidates

While the evidence reviewed does not indicate that the limitations of the current Constitution are preventing the effective operation of the ECA, they introduce added complexity and are not in line with best practice principles.

Organisational Structure

Staffing and budgets

Assessing functional capacity and capability of directorates

In order to examine the functional capacity and capability of ECA directorates, a number of areas were reviewed. This included confirming that the ECA is sufficiently staffed and operating on a break even basis, as well as assessing whether staff have the appropriate skills and abilities to undertake the core functions of the Company.

Financial management

ECA financial statements were reviewed, to confirm it is operating on a break-even basis over time and that there is no evidence of transfers to the Member, in accordance with section 2.3 of the Constitution.

Key observations from this review activity include:

- Evidence reviewed indicates that ECA is operating on a break even basis and, according to its audited financial statements, ECA has not made transfers by way of bonus or dividend to the Member.
- The Company currently manages its exposure to key financial risks, including interest rate and currency risk, through ongoing monitoring of the Company's financial instruments by management.
- The ECA provides regular financial reporting to the Board. This reporting is based on variances between budgeted and actual income and expenses. The reporting also contains monitoring of the ECA's cash position and the approval of grants.

Conclusion:

A review of ECA documentation indicates that appropriate financial management practices are in place, including:

- Auditing of financial statements
- Operating on a break even basis in line with the Constitution
- Regular monitoring of ECA financial position risks by management.
- Review activities did not identify any areas of concern.

Staffing capacity and capabilities

Consultation with internal and external stakeholders was undertaken to explore the current capacity and capabilities of staff at the ECA.

Key observations from this review activity include:

- The ECA is a relatively small organisation, with 16 employees in total.

- Directors feel they have enough staff and appropriate mix of skills to carry out activities under the Constitution.
- Where necessary, the ECA engages consultants to provide technical expertise to supplement the skillsets of its permanent staff.

Conclusion:

ECA staff have access to the appropriate skills and abilities to undertake the core functions of the Company. Review activities did not identify any areas of concern.

Hierarchy of functions

Assessing whether proper hierarchy of functions are in place

In order to examine whether proper hierarchy of functions are in place, the ECA organisational structure was reviewed, and the clarity of roles and responsibilities was assessed.

Key observations from this review activity include:

- ECA organisational structure reflects the Constitution, and is designed to support ECA Activities as defined by the Constitution.
- Directors are clear on their own and each other's roles and responsibilities.
- Roles are functionally based rather than being based on policy issues, particular matters or projects in train.

Conclusion:

At this point in time, organisational structure appears to be fit for purpose and supports ECA object and activities established in the Constitution. If the ECA was to become larger, the organisational structure might require a greater degree of formal clarity. Review activities did not identify any indications that the current organisational structure is not fit for purpose.

Communication and decision making

Ensuring proper channels of communication are in place and followed

In order to examine whether proper channels of communication are in place, and being followed for decision making, ECA Board members, Directors and the CEO were interviewed, and documented communication protocols were reviewed.

Key observations from this review activity include:

- Issues for decision are escalated through regular reporting, face to face discussions and team meetings between Directors, the CEO and the Board.
- Active energy market issues and ECA actions are formally documented and tracked over time.

Conclusion:

ECA internal communications appear to be effective and appropriate for the small size of the organisation. No impediments to effective communication were identified.

Implementation and establishment

Assessing whether the ECA was established consistently with intended objectives and implementation plan

In order to assess whether the ECA was established in line with intended objectives and implementation planning documentation, Business Plans and Annual Reports were compared with the Proposal for a National Energy Consumer Advocacy Body Final Report provided by Dr John Tamblyn and Mr John Ryan to the Standing Council on Energy and Resources (SCER) in April 2013, and the SCER Approved Implementation Plan.

Key observations from this review activity include:

- The ECA Constitution, and other key ECA governance documents, reflect the recommendations of Tamblyn and Ryan, and appear to have been implemented to a high degree of fidelity with the intended approach.
- Some stakeholders have been critical of the implemented approach to the Grants Program, perceiving a potential conflict where ECA is both an advocate in its own right and also a granting agency for funding of other advocacy groups.
 - This approach is consistent with the constitution and recommendations of Tamblyn and Ryan.
 - Reference committee members considered this a structural conflict where ECA's standing as granting agency may constrain advocacy groups' willingness to raise divergent views.
 - However interviews with ECA staff and CEO indicated that advocacy groups in receipt of ECA grants frequently put forward views in disagreement with ECA, and the ECA continues to fund a diversity of other voices, indications that this is not cause for concern.
- The ECA was established as a company limited by guarantee, and was not given tax exempt status. This was an additional issue raised by ECA, Board and government stakeholders:
 - This can lead to ECA paying tax on unpaid grant funding as 'profit', where grant recipients have not met milestones and payments cannot be made within the allocated financial year.
 - While the Final Report from Tamblyn and Ryan did not explicitly address the issue of whether ECA should be tax exempt, discussions with government stakeholders indicates that this was an unintended outcome from the establishment of the ECA as an independent Company.

Conclusions:

Intended objectives and activities from establishment documentation have been reflected in the ECA Constitution, Business Plans and Annual Reports.

While in line with the intended approach, the Grants Program raises concern for certain stakeholders.

While the ECA's tax status was not overtly contemplated in the establishment documentation, it adds complexity and creates barriers to effective functioning of the grants program.

Operational Performance

Prioritisation of effort

Reviewing priority arrangement of strategic functions and development of key projects

In reviewing the operational performance of the ECA, its prioritisation of effort and development of key projects were explored through consultation with key internal stakeholders and governance documentation.

Key observations from this review activity include:

- Key activities are identified through the annual ECA Business Plan. This is based on priorities identified by the Board in consultation with key sector stakeholders, and then approved by the member in consultation with COAG Energy Council.
- Directors maintain a tool which lists significant market activities, prioritised against predetermined criteria. This is kept up to date and used as a decision making tool to target effort and tailor the ECA's approach across the sector.

Conclusions:

The ECA has formal, agreed processes for prioritising its key activities, and a coherent methodology for determining to which regulatory and advocacy issues it responds.

This area of the ECA's operations will be further explored in Stage 2, as this will be integral to exploring the effectiveness of the ECA in undertaking its activities.

Implementation of strategic initiatives

Demonstrating effectiveness in the implementation of strategic initiatives

The ECA's reported performance against performance measures in its Business Plans was reviewed as key evidence of implementation of strategic initiatives. This assessment reviewed whether ECA has a rigorous and transparent performance reporting framework.

Key observations from this review activity include:

- ECA Business Plans identify Strategic Initiatives and Performance Measures for each of its Directorates, however, the Performance Measures are written as tasks or 'deliverables'. The Performance Measures are not outcome focused.
- The 2016-17 ECA Annual Report does not clearly report its performance against Performance Measures in its 2016-17 Business Plan.
- Improved reporting against current Performance Measures in the upcoming 2017-18 Annual Report would increase the visibility of ECA's delivery effectiveness. The inclusion of outcome focused performance indicators as part of its 2018-19 Business Plan would improve the ECA's ability to demonstrate its value.

Conclusions:

There are opportunities for the ECA to introduce a more rigorous and transparent performance reporting framework, to more clearly demonstrate effectiveness in the implementation of strategic initiatives.

Stakeholder engagement

Assessing stakeholder engagement

Stakeholder engagement is a key activity of the ECA, and was assessed as part of its operational performance. Internal and external stakeholders were consulted, and relevant performance measures were reviewed to assess whether the ECA demonstrates effective stakeholder engagement.

Key observations from this review activity include:

- The ECA runs regular stakeholder forums and conferences which are well received.
- It publishes an online calendar which tells advocates when sector relevant issues and activities are occurring.
- Media protocols are in place and are understood by staff.

Conclusions:

The ECA demonstrates effective stakeholder engagement.

Stakeholder engagement will also form a key component of Stage 2 of this review. Here, further detail will be considered regarding aspects such as the frequency of engagement, level of interest from stakeholders, how well ECA plans for and approaches engagement and consultation, and any observed differences between stakeholder responses across jurisdictions.

Key risks and mitigation strategies

Assessing key risks and mitigation strategies

The ECA's risk and mitigation strategies were reviewed in its operational procedures and governance artefacts. The ECA Strategic Risk Register was reviewed, and the CEO and Director of Governance and Operations were consulted regarding the effectiveness of identified mitigations.

Key observations from this review activity include:

- The ECA has developed a Strategic Risk Register, reflecting the ECA's broader risk environment, and mitigations are in place to treat each risk.
- The ECA manages risk through policies and procedures including a fraud control framework, work health and safety framework and a Business Continuity Plan.
- ECA risk management practices are in compliance with AS/NZS ISO 31000: 2009.

Conclusions:

The ECA's approach to managing risk is well developed and fit for purpose.

Summary and next steps

Summary of priority areas from Stage 1

While a number of observations regarding areas for review have been made in Stage 1 of this review, only those likely to have material consequences for the successful operation of the ECA have been identified as areas for improvement. Two areas have been identified here:

- The risk to the ongoing operations of the ECA if the Board is subject to high turnover in a short period of time. This should be taken into consideration in the Council of Australian Government's (COAG) Energy Council deliberations over future ECA board appointments.
- Opportunities to improve the ECA's performance reporting and demonstrating its achievement of strategic initiatives. The ECA should prioritise its efforts to introduce more mature and insightful performance reporting.

Next steps for Stage 2

Stage 2 is due to commence in July 2018, and will consider the effectiveness of the ECA in undertaking its activities, in performing against stakeholder expectations, and in its grant allocation functions.

Stage 2 will include broader stakeholder consultation and result in the consolidation of findings from both Stage 1 and Stage 2 into a final report with recommendations, where relevant. The ECA Review is scheduled for completion by December 2018.



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