

Submission
to the

National Electricity Consumers Advocacy Panel

**“A structured approach to the allocation of the Panel’s
funding budget”**

19 September 2006

by

Alternative Technology Association
Centre for Credit and Consumer Law
Consumer Law Centre Victoria
Consumer Utilities Advocacy Centre
Kildonan Child and Family Services
Public Interest Advocacy Centre
Queensland Consumers Association
St Vincent de Paul Society Victoria
Unitingcare Wesley Adelaide
Victorian Council of Social Service

This submission represents the views of the following organisations: the Consumer Utilities Advocacy Centre, Queensland Consumers Association, Centre for Credit and Consumer Law, Alternative Technology Association, Consumer Law Centre Victoria, Unitingcare Wesley Adelaide, Public Interest Advocacy Centre, Victorian Council of Social Service, St Vincent de Paul Society Victoria, and Kildonan Child and Family Services.

Our organisations welcome the opportunity to comment on the Advocacy Panel's issues paper *A structured approach to the allocation of the Panel's funding budget* (the Paper).

Significant increased demand for Panel funding, and a greater diversity of applications, is a very positive development. The Panel is to be congratulated for its role in driving greater interest and facilitating the active involvement of a range of consumer advocacy organisations in regulatory and policy decisions pertaining to the National Electricity Market (NEM).

Much of the growth in diversity has been among organisations representing small end-users, who have become increasingly active in representing the interests of their constituency in energy market regulation and reform.

Growth of consumer advocacy in the energy sector

That growth has been driven by a number of factors, which are worth outlining in some detail, as they contribute to a better understanding of the needs of the sector, and so how to support consumer advocacy.

A key driver has been the move to national regulation of retail and distribution, which has

- prompted increased recognition by regulators and policy-makers that to design the right regulatory regimes, they must understand the needs of small consumers and, in particular, classes of vulnerable consumers, such as tenants, rural communities or low-income consumers;
- meant that consumer and community organisations representing residential and low-income and disadvantaged consumers have been able to justify the expenditure of scarce resources on national energy market issues given the pace and potential impact of reform; and
- highlighted the need to ensure jurisdictional differences, including in particular the need to harmonise the different regulatory and non-regulatory protections in place in each State and Territory, are adequately addressed in a national consumer protection framework.

Indeed, recognising the difficulties inherent in designing such a regime, regulators and policy-makers have welcomed the involvement of consumer advocacy organisations from across the NEM, who can represent the interests of classes of consumers within different NEM jurisdictions.

Another key factor in facilitating the growth of a more sophisticated and diverse input from small end-users has undoubtedly been the ability to secure additional resources through the Advocacy Panel.

The Panel has been able to provide significant support to the sector, particularly through:

- providing grants to organisations to employ staff – which has enabled organisations to represent the interests of their constituencies in the full range of regulatory and policy decisions at a national level. Without this financial base support, there would be very little capacity for consumer advocacy in Queensland, South Australia and Tasmania; and
- building capacity in the sector – through initiatives such as the NEM Network and the Roundtable, the Panel has enabled organisations who hail from different jurisdictions but who share common interests to meet to share information and intelligence about consumers’ needs and market failure, to collaborate to leverage scarce resources to develop more effective advocacy strategies, and to consult with national regulatory agencies and policy makers. We now have a critical mass of expertise on NEM issues that can be built on and developed, to ensure that consumer and community organisations are able to continue to participate in the breadth of NEM issues.

Effective advocacy is more than just writing a submission - it includes, inter alia,

- participating in regulatory consultation processes, such as working groups which often occur over a number of months,
- making your constituency’s needs known to the regulator, all relevant areas and levels of government, and, sometimes, the general public through the media;
- building alliances with like-minded organisations, and
- engaging consumers through the direct and related networks within each organisation to identify emerging issues, facilitate research, and ensure advocacy accurately reflects consumers’ concerns and needs.

Without the Panel, advocacy on behalf of small consumers would be significantly limited. State funding of advocacy on consumer energy issues remains effectively limited to CUAC in Victoria, PIAC in NSW and WACOSS in WA, and organisations in other States have in the past depended heavily on those resources for expertise on NEM issues.

Given that brief overview of the factors driving consumer participation, and the key ways in which the Panel has been able to successfully support advocacy, we have some significant concerns with the ‘structured’ approach, as it has been outlined in the Paper.

The ‘structured’ approach – its impact on advocacy

The Paper proposes fundamental changes to the way in which funding priorities are decided and how funds will be allocated. We believe that the approach proposed would in fact restrict the Panel’s capacity to support effective consumer advocacy. (At attachment A is a paper outlining the value of consumer advocacy in the NEM, which the Panel may find useful).

We are particularly concerned by the statement that the Panel has “allowed” applicants to set the advocacy agenda by enabling them to make grant applications on the basis of their

own priorities for research and/or capacity-building projects. Consumer organisations are best placed to identify the needs of their constituencies, and the Panel has neither the mandate nor the resources to identify comprehensively the plethora of consumer issues pertaining to the NEM or national energy market reform.

While we agree that an “agreed, planned approach to dealing with the electricity reform agenda” would be useful, we are extremely sceptical of whether it can in fact be achieved in any practical manner.

This is a debate characterised by extensive (and increasingly diverse) activity by governments and regulators –in the last three months alone, the draft legislative packages that will cede authority over retail and distribution have both been pushed back (at least) six months, COAG announced a major overarching review in its creation of the Energy Reform Implementation Group and State Governments sought feedback on their model of an emissions trading system, which will invariably affect NEM wholesale market prices.

The pace and unpredictability of the sector has meant that consumer organisations have developed strategies to enable resources to be deployed to meet areas of greatest need at the appropriate time. And it is one of the reasons why full-time staff are a more attractive option for many agencies.

The level of activity on energy market reform also requires that the Panel must be able to provide support when it is needed for consumer advocacy, to ensure that decisions are made with knowledge of the impact on and needs of consumers. We have therefore welcomed the Panel’s readiness to consider urgent and/or out of session applications. We are concerned that the ‘structured’ approach would in fact impede the Panel and make it less responsive to emerging issues or a changed regulatory or policy agenda.

We are also concerned that the structured approach - of prioritising announced regulatory and policy reviews - ignores the fact that an important function of consumer advocacy is in fact to set the agenda – e.g. by researching and raising market failure issues which may have been ignored or overlooked by the regulator, or by bringing to the attention of decision-makers that classes of consumers require particular regard.

The approach could also restrict applications for capacity-building projects that have proved of real value – including for regulators and government - such as the NEM Network and the National Consumers Roundtable. The establishment of national consumer networks has, for the first time, provided a mechanism for national energy regulatory agencies, such as the AEMC and AER, to engage with and consult consumers. Under the structured approach, it would appear difficult to secure funding for projects that transect current regulatory processes.

We therefore view the structured approach as serving only to create difficulties for the Panel in identifying and prioritising research with such objectives, regardless of its greater value to consumers.

Another problem with the structured approach is that it serves to create a shopping list - applications to the Panel should be driven solely by an organisation’s clear decision based solely on the needs of its constituency, not on an assessment of what the Panel is more or less likely to fund.

Recommendation 1

In summary, we would therefore strongly encourage the Panel to consult actively, widely and regularly with key stakeholders – consumer organisations, regulators, and governments – to ensure its funding decisions accurately reflect sectoral priorities and the trends in the debate.

We do not support an attempt to codify that knowledge, which simply places unnecessary limitations on the Panel’s capacity to support valuable consumer advocacy.

We appreciate that increased demand on the Panel has highlighted a series of issues around the timing and prioritisation of funds allocation, and that is further complicated by the imminent appointment of a new Panel and the creation in the medium term of the new consumer advocacy body.

These are however essentially only administrative problems, and there are more effective ways of addressing them that do not attract the risks outlined above and which have been used successfully by other grant-making bodies facing similar pressures. Such strategies could include, for example, capping the amount any one organisation could receive within one financial year, and/or capping the amount to be distributed in any one round of funding (but retaining the power to distribute more funds should the debate warrant such support). There are a number of organisations who face similar problems in allocating funds, such as CUAC, philanthropic foundations such as Myer or Reichstein, and government grant-making bodies such as the Australian Research Council, who have developed systems to respond to just this issue to assess how they ensure their decisions are made in a way that best meets their corporate objectives and stakeholders.

Recommendation 2

We strongly recommend that the Panel consult with grant-making organisations who face similar pressures, to identify best practice grant making policies and procedures.

We do not support allocating funds between classes of consumers (e.g. business/residential) as these arbitrary divides do not accurately reflect the needs of consumers or trends in the debate.

Finally, we are also perplexed by the timing of the Paper, given the imminent appointment of new members to the Panel, as it would seem to pre-empt the capacity of the new Panel members to contribute to the guidelines. Given those new members will be appointed on the basis of their expertise, not as sectoral representatives, it would seem reasonable to assume that the need to adopt a ‘structured approach’ to assist the Panel may in fact decrease with the appointment of the new Panel.

We would appreciate the Panel’s views as to how this consultation process will be managed in line with the appointment of new members to the Panel.

The Value of Consumer Advocacy in the National Energy Market

The need for consumer advocacy within a national regulatory regime has been recognised by the Ministerial Council on Energy. We are confident that the finalisation and implementation of a national regulatory regime for electricity and gas will continue to require well-informed and well-researched input on the impact on consumers, and classes of consumers. The benefits from consumer advocacy to regulators, governments and industry are clear, and include the following:

- Consumer involvement improves the quality of decision-making, by ensuring that policy-makers and regulators are more easily aware of the impact of their decisions in the marketplace;
- Consumer input and guidance enables regulators and government to identify market failures at an early stage, thus minimising the regulatory and political risk of emerging systemic problems;
- Well-informed consumer input assists in the identification of regulatory and policy solutions to address market failures, such as information asymmetries and high transaction costs;
- The support and active participation of consumers are integral to the development of competition in the marketplace
- Consumers support is also vital to the success of any effective demand side management initiatives, including reducing the need for investment in peak load generation, promoting the need for renewable and embedded generation, and reducing greenhouse gas emissions.

For consumers, consumer advocacy meets the following needs:

- As the largest group of stakeholders to be affected and, it must always be remembered, ultimately the bearer of all costs associated with reform (either through energy tariffs or taxes), consumers have a right to be heard and to ensure that their interests are effectively represented;
- The very substantial changes already underway or to be introduced in the regulatory framework require the adequate resourcing of consumer advocates to manage this larger and broader environment, that is more complex and technical, and that will continue to evolve over the next few years;
- National consumer advocates will continue to rely heavily on the information provided by State-based consumer groups, which will ensure a wide range of voices will be heard, from the truly national to those of the local community;