



TOTAL ENVIRONMENT CENTRE



Consumer Advocacy
C/- MCE Market Reform
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**SUBMISSION TO THE MINISTERIAL COUNCIL ON ENERGY
STANDING COMMITTEE OF OFFICIALS
CONSUMER ADVOCACY ARRANGEMENTS**

1. Background

In June 2004 the Consumers' Federation of Australia (CFA) commissioned the Allens Consulting Group to review and report on proposed models for effective ongoing consumer contributions to debates involving the Australian electricity and gas markets (the **Allens Report**).

CFA brought the Allens Report to the attention of the Ministerial Council on Energy (MCE) and in August the MCE agreed that action was needed to develop a model for consumer advocacy in the Australian energy market.

In March 2005 the MCE released a Consultation Paper and research report by KPMG¹ (**KPMG Report**) asking for submissions on four proposed Options for future consumer advocacy arrangements.

This submission is in response to the Consultation Paper and represents a joint response of a number of organisations who participated in briefing the Allen Consulting Group or have otherwise advocated for better arrangements to respond to changing requirements for advocacy in the NEM.

This submission supports the creation of a new national advocacy body to add to and enhance the ongoing work of existing community organisation based advocacy. There remains a continued need for grass-roots information about consumers' experiences, and State-based advocacy must be recognised by the MCE as an important source of information for regulators and industry.

Further, in addition to the creation of the addition advocacy body to carry out in-house research and advocacy and provide funding grants, the AEMC and AER must ensure that they engage in effective consultation with various community and other organisation representatives in each of the NEM jurisdictions.

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| Alternative Technology Association | Australian Consumers' Association |
| Consumer Law Centre Victoria | Consumer Utilities Advocacy Centre |
| Consumers Federation of Australia | Griffith University Centre for Credit and Consumer Law |
| Queensland Consumers Association | Total Environment Centre |
| Uniting Care Wesley | |
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2 Recommendations

Options 1 and 2 are inadequate because they would further constrain the organisations currently advocating on behalf of consumers of electricity and gas. Option 3 envisages that advocacy be carried out by the board, with some administrative assistance, and for reasons discussed below, would also be ineffective to achieve the desired increase in, and more strategic approach to, national consumer advocacy.

Overall we support Option 4. However, there are some key aspects to Option 4 that have not, in our view, been canvassed in sufficient detail in the KPMG Report or the Consultation Paper. This submission sets out the key elements where the body envisaged in Option 4 needs to be further developed, or varied.

Below is a summary of the main recommendations included in this submission.

Option 4 be adopted with the following additions/amendments:

2.1 STRUCTURE

2.1.1 *Company limited by guarantee*

- *The body be established as a company limited by guarantee, with one member, being the Minister of the Commonwealth responsible for the time being for the Trade Practices Act 1974.*

2.1.2 *Board:*

- *The number of board members be increased to five including a chair;*
- *The role of the board be focused on organisational governance, long-term strategic direction and grant making.*

2.1.3 *Staff*

- *The number of staff be increased to 7;*

2.1.3 *Consultative Committee*

- *The Consultative Committee be primarily responsible for advising, on a quarterly basis, the executive director and the staff in relation to policy, that is, research and advocacy strategy and direction, and annually advise the board in relation to the long-term strategic direction of the body;*

2.2 SCOPE

2.2.1 *Consumer coverage*

- *The constitution of the body should make clear that its focus of attention and operational priorities are governed by public interest principles, addressing issues in national energy policy and regulation of relevance to Australian consumers.*

2.2.2 *Breadth of advocacy*

- *The scope of the organisation should be closely related to, although not limited to, the range of issues that fall within the authority of the MCE.*

2.2.3 *Grant making*

- *The new body's funding policies and principles, which will be developed by the board, be guided by the public interest, and incorporate the flexibility to fund research and capacity-building projects, as well as advocacy.*

2.3.4 RESOURCING

- *The new body be sufficiently resourced to represent the interests of the 17 million citizens residing in NEM jurisdictions, internally through ensuring it is appropriately staffed, and retains the capacity through the Grants Program to support research and advocacy projects relating to consumer utility issues.*

3. STRUCTURE

3.1 Company limited by guarantee

The new national consumer advocacy body should be a company limited by guarantee. It should have one member, probably being the Minister of the Crown in the right of the Commonwealth for the time being administering the *Trade Practices Act 1974*. This would avoid the complication associated with establishment under the MCE and will enable the body to operate with regards to both electricity and gas.

The objects of the Company should be clearly set out in the constitution and could include:

- To facilitate and provide an independent, proactive and informed advocacy voice for citizens and consumers of electricity and gas in Australia and to effectively represent their interests in regulatory processes, and in the consultation processes of other relevant energy sector stakeholders.
- To facilitate and undertake the preparation and dissemination of independent research on consumer related electricity and gas market issues, including environmental issues, to enable consumers to take full advantage of those markets.
- To monitor grass roots issues for particular Australian electricity and gas consumers, with particular regard to low income, disadvantaged and rural consumers.
- To provide grants for advocacy and research to organisations, research institutions or individuals who meet the criteria set by the board.
- To undertake other activities that the board considers are ancillary or incidental to the above objects.

3.2 Board

Role

The Consultation Paper states that in Option 4 'the Chair and Executive Director would together undertake the responsibilities that are performed by the board in Option 3'.²

² Consumer Advocacy Consultation Paper, Ministerial Council on Energy Standing Committee of Officials. March 2005, at 8.

We agree that the role of the board in the new consumer advocacy body should be to facilitate and manage the operational requirements of the body. The board members should be responsible as individuals and not as representatives of their nominating organisation if such a nomination process occurs. The board should set the long-term strategic direction of the body with input from the consultative committee and the staff on perhaps an annual basis (see discussion below at 3.5.5).

In contrast, the short term work plan and policy objectives for the organisation will be set by the Executive Director in consultation with the consultative committee and staff (see discussion below at 3.5.5).

Option 3 envisages a board that will carry out the day-to-day advocacy and research work of the body. In our view, this is not likely to be effective. Firstly, it may be difficult to obtain board members that would be willing and able (including expertise and time constraints) to manage the operations of the body, including making grants decisions, and carry out the research and policy work. Secondly, the salary that might be required for such full time positions is likely to limit the number of positions and therefore the resulting advocacy that would be achievable, and may also constrain the funding available for the research and grant-making functions of the body.

However, we consider that the board is best placed to make decisions in relation to the grant making function of the body. In our view, the board should make grant decisions based on reports provided by the research staff and thereby the time involved in this decision making process would be limited (see below 3.3).

Size

One the key differences between Option 3 and Option 4 is the size of the board. While overall our preference tends toward the model depicted in Option 4, a board of the size somewhere between Option 3 and Option 4 is likely to be optimal. Despite the role of the board being limited to organisational governance, long term strategic goal setting and grant-making, a board of only three members including the chair might be at risk of having an insufficient breadth of expertise and an insufficient divergence of views to properly carry out these functions. Our preference is for a board of 5 members including the chair. This is a familiar model, for example existing organisations such as the Consumer Utilities Advocacy Centre Limited based in Victoria, have a board of five members.

Appointments

Our view is that the initial appointment of board members should be made by the AEMC. Thereafter the member, in consultation with AEMC should make appointments.

The board composition should be determined by members' capacity to represent the interests of consumers, through their expertise in consumer advocacy, skills in public interest administration or on consumer utilities issues. Directors should be independent of industry and government.

Recognising the technical and complex nature of the work, and the fact that expertise on consumer utilities issue may need to be acquired 'on the spot', Directors should be appointed for a minimum of three years.

Accountability

We agree with the KPMG Report that the board should provide disclosure of the body's grant-making activities, but that the extent of reporting be developed in consultation with its stakeholders (in this respect we note that the Reference Group of the Consumer Utilities Advocacy Centre requested that applications be made confidential). The requirements of corporations law will mandate the extent of public reporting on the new body's finances and general activities, and we would see that as providing sufficient transparency to stakeholders. We would however recommend that the new organisation have some formal linkage in its structure to report to the members of the consultative committee on its advocacy strategies.

Remuneration

Board members should be receive remuneration that reflects the level of responsibility and workload borne by those individuals, and is in alignment with comparable Commonwealth public interest bodies and/or guidelines.

3.3 Staff

Executive Director

A key aspect of Option 4 is apparent from the title used in the Consultation Paper, namely that it is a 'consultative committee model led by a Board and Executive Director'. We see the role of executive director as crucial. It is imperative that significant resources are placed into selecting an appropriate executive director. It is that individual who will be the public face of the organisation, as well as responsible for its operational management. We have some concerns about the ability of the Board to act effectively as advocates on a day-to-day basis, unless there is some intention to appoint a full-time Chair.

Magnitude of work – number of staff

We strongly agree with the KPMG Report's observation that 'a consumer advocacy model must be able to analyse current and future market arrangements, determine strategic priorities for consumer advocacy and arrange for projects to be undertaken in response to these needs in a forward looking, timely manner.'³

Given the task as stated above, the number of staff suggested in Option 4 is far too small. Broken down, the magnitude and scope of the research and advocacy necessary is:

- on behalf of consumers spread throughout Australia;
- in relation to both electricity and gas;
- with analysis of current and future market arrangements;
- in relation to regulatory and policy debates at both a national and state level; and
- in a forward looking and timely manner.

We therefore estimate that at least 7 staff members plus an executive director would be required for the body to fulfil its objectives.

³ KPMG report at 19.

Composition of staff

In our view, an appropriate mixture of skills would include the following staff positions:

- 2/3 policy officers/advocates with existing energy and advocacy experience;
- 3 research staff with a combination of economics/law/public policy/environment and energy sector experience, and who carry out in-house research and can contribute to providing advice to the Board on grants applications;
- 2 administration positions, 1 with financial reporting skills;

Remuneration

Staff salaries should reflect market standards and skillsets, to attract persons with adequate leadership, management and advocacy skills as well as familiarity with the energy sector, including the economic and regulatory frameworks. In our view, the executive director position should attract a salary of between \$100,000 to \$120,000 and the research and policy positions should attract a salary in the range of \$70,000 to \$90,000.

3.4 Consultative Committee

Benefits of a consultative committee

Both the Option 3 or Option 4 models propose that a consultative committee be established. We view this as a critical and necessary measure for a new national advocacy body.

A consultative committee would provide an important path for input into strategic planning and policy development from consumers and their organisations that otherwise can be distant from major issues and debates in the energy industries. This is critical to the credibility of the proposed advocacy body and its ability to represent the interests of end-users. Based on experience, our organisations are confident that the new national advocacy body's effectiveness will be enhanced by an appropriate consultative committee.

Entrenching the consultative committee

We believe it is appropriate that the consultative committee be included formally in the structure of the new national body and be set out in its constitution. This should clarify the role of the consultative committee as an advisory body.

Further, a typical approach also involves providing the consultative committee with terms of reference. For example, the NSW electricity businesses are required to adhere to the provisions of a consultative committee 'charter'. The organisations making this submission should be involved in setting the terms of reference.

Function of consultative committee

The consultative committee should be a 'two-way' mechanism. It should provide for the views of consumers to be transmitted 'up' to the national policy debate via the new consumer advocacy body. It must also allow informal accountability and communication 'down' to consumers and their representative groups.

A fundamental aspect of the consultative committee is that its function be limited to giving input and advice on policy matters. While the new national advocacy body should exhibit some informal accountability to end-users, we do not expect that this extend to formal governance or participation in the running of the national advocacy body.

Accordingly, our view is that the structure of the national advocacy body should provide for the consultative committee to have input at the level of key policy staff and the executive director. This is a key difference from the model described for both Option 3 and 4. We base this on our view that the new national body should incorporate a clear separation of governance and the day-to-day policy development and advocacy functions. Since the consultative committee is to be limited to an advisory role it is more appropriate that this be focussed on operational matters than on the functions and decisions of a board.

Some formal link between the board and the consultative committee would be appropriate. For example, the charter or terms of reference could provide for a role for the consultative committee to participate with the board in an annual strategic planning event. Alternatively, these rules could provide for attendance of a member of the governing board at meetings of the consultative committee.

Membership of the consultative committee

A critical issue for the effectiveness of a consultative committee will be the membership.

The credibility of the consultative committee and the national advocacy body itself will depend on policy development and advocacy being built on the views of a range of end-users. This can be achieved by formalising the consultative committee within the structure of the new body and stipulating the interest which are to be represented. One example of this approach is the Customer Consultative Committee of the Victorian Essential Services Commission. Another is the nationally based consultative group established by AGL.

The membership of the consultative committee should be drawn predominantly from those groups of residential consumers and citizens most likely to experience negative impacts from competition reform and the transition to a more national energy market. This reflects the heterogeneity of residential consumers. More to the point, it reflects the reality that many of these groups have no effective capacity to make their views known other than through participation in a consultative mechanism such as this. Key groups would include low-income consumers, private tenants, residents of boarding houses and caravan parks, migrant communities, the aged, rural consumers and Indigenous communities. Members should be advocates representing the interests of these groups and not individuals drawn from these groups.

Environmental views should also be incorporated into the membership of the consultative committee. So, too, should representatives of small business customer interests. Membership easily could be extended to include larger commercial end-users. However, again we stress that the membership structure needs to reflect that many residential consumers are especially vulnerable in energy markets.

An important corollary issue is the mechanism for appointments. Members of consultative committees who are drawn from or are endorsed by an existing sectoral organisation are more accountable to the interests they advocate and have a greater level of resources to grapple with the issues at hand. While some consultative mechanisms rely on individual membership we do not

believe this will be sufficient to establish the credibility of the new advocacy body or to ensure adequate input from residential consumers and environmental organisations as a whole.

The method for appointment and obtaining of nominations should be formalised. We consider it appropriate that the board of a new national consumer advocacy body have a role in determining the membership of the consultative committee. This should be accomplished by the board seeking direct nomination of members from organisations they identify as key advocates for or having a specific constituency among one of the sets of interests stipulated for the consultative committee. A number of energy companies currently utilise this approach with respect to their own customer consultative groups.

Sitting fees

On the basis that other similar organisations pay sitting fees, we consider that the members of the consultative committee should be paid a sitting fee. However, the level of the fee should take into account that the body is a public interest organisation and therefore, in our view, the sitting fee should be limited to between \$500 and \$750 per quarterly meeting.

4. SCOPE

4.1 Who is the advocacy to benefit?

Public interest principles

Disappointingly, not addressed in any detail in the Consultation Paper is the mandate of the proposed new national consumer advocacy body. Universal access to safe, reliable, affordable energy remain the objectives underpinning energy market reform, and the new organisation should be constructed in a way that ensures that this objective remains clearly in sight.

Environmental sustainability, articulated repeatedly by the MCE, and efficiency in the use of electricity, as a core market objective under the new National Electricity Law, should be included within the mandate of the national consumer advocacy body.

We therefore recommend that the constitution of the body make clear that its focus of attention and operational priorities are governed by public interest principles, addressing issues in national energy policy and regulation of relevance to Australian citizens and consumers.

Public interest principles relating to energy include

- Preserving universal access to safe, reliable, affordable energy should remain a national goal.
- The public interest must guide all decisions with regard to the energy system.
- Market mechanisms should be employed when they benefit the public interest and supplanted by regulatory decision-making when they do not.
- Decisions with regard to the energy system should be made at the level of government most accessible and responsive to the public, keeping in mind the need for broader coordination across jurisdictional boundaries.

- Improved energy efficiency and increased use of renewable resources are in the long-term national interest and often have short-term benefits for consumers. Government policy should actively promote the development and use of these resources.

(Source: National Association of State PIRGs, Toward a Consumer-Oriented Electric System, June 2004, pp 10-11)

Such an approach offers a number of advantages, it:

- enables the new organisation to collaborate easily with a range of consumer and citizens advocacy groups on issues of common interest (transmission and distribution pricing regulation, for example).
- negates the necessity to define consumer coverage in a way that forces it to differentiate between consumer groups
- enables environmental issues to be considered specifically in relation to the impacts and operation of energy markets .
- allows the organisation to undertake advocacy on behalf of disadvantaged consumers (which could include groups such as culturally and linguistically diverse migrant communities, rural communities that are expensive to serve but have limited capacity to secure network augmentation, or tenants unable to impel landlords to repair appliances).

A public interest focus also ensures that the new body has the ability to incorporate a medium to longer-term strategic approach into its advocacy and research activities. It allows the executive of the new organisation, taking into account the advice of consumer groups through the consultative committee, to make an independent assessment of how to respond to issues where consumer groups may adopt differing stances. Tying the new organisation's mandate and overarching objectives directly to pursuit of the public interest will ensure that the body has the correct focus from its establishment, as well as providing it with greater capacity to respond to emerging issues.

Attention to low-income and disadvantaged

That said, we strongly recommend that the constitution of the organisation direct its board and staff to give special attention to the needs of low-income and disadvantaged consumers, recognising the particular detriment that can be caused to those groups.

In all of the NEM jurisdictions, there exists undeniable evidence that low-income consumers require ongoing and robust protection from that potential harm – they pay a higher proportion of their income to secure supply of energy to their households, are less able to purchase appliances or undertake building improvements to increase the energy-efficiency of their households and, often, will be less capable of representing their individual interests effectively with energy retailers. Their interests on some issues, e.g. such as interval metering tariffs, may differ significantly from business or even other residential customers, but the degree of potential harm disproportionate. Similarly, at times the needs of disadvantaged classes of consumers would certainly merit representation by a national consumer advocacy organisation.

Inclusion of environmental issues

The absence of any significant reference to the need for advocacy related to the environmental impacts of the energy markets in the KPMG Report is disappointing. Impacts on low-income consumers and the environment provide many synergies, including the need for and benefits of energy efficiency and demand management. Despite the fact that energy consumption in

Australia is the largest contributor to greenhouse emissions, there is a dearth of consistent advocacy related to the market framework within which those emissions occur. We strongly recommend, therefore, that environmental issues are represented at the board, staff and consultative committee level.

4.2 Range of advocacy

While we agree with the statement made in the KPMG Report that the issues of direct relevance to consumers relate to the outputs of energy supply (ie. pricing, service access, equity of access and service standards) it is important to ensure that the new body and its grants-making mechanism are able to address the range of issues that affect, or are affected by, those outputs.

As is clear in the Consultation Paper, there is general understanding that the new body's advocacy role will be directed largely to the decisions or consultations made by the AER and AEMC. But it is crucial that the new organisation be able to comment on issues that may not be directly regulated, such as energy efficiency programs or environmental implications.

We therefore strongly recommend that the scope of the organisation be closely related to, although not limited to, the range of issues that fall within the authority of the Ministerial Council on Energy, which are:

- the national energy policy framework;
- policy oversight of, and future strategic directions for the Australian energy market;
- governance and institutional arrangements for the Australian energy market;
- the legislative and regulatory framework within which the market operates and natural monopolies are regulated;
- longer-term, systemic and structural energy issues that affect the public interest; and
- any other energy related responsibilities as are conferred on the MCE.⁴

We do not envisage or recommend that the new consumer advocacy organisation involve itself in every aspect of the MCE's work (e.g. issues pertaining to resources and minerals exploration) but we are confident that the consultative committee, if implemented effectively, would act as a guide to those issues of greatest importance to energy consumers.

4.3 Scope of grant-making

Funding criteria – public interest principles

We do not recommend that the new organisation's focus on low-income and disadvantaged consumers be carried over into grant-making decisions or criteria, as that would restrict its ability to support independent research into upstream issues, as well as potentially prevent some business consumer and environment groups from access to funds.

There are issues of common interest to both large and small end-user groups, and we would see no value in limiting access to the grant-making facilities by any consumer organisation. By configuring the funding criteria on public interest principles, the new organisation should be able to support advocacy, research and capacity-building projects on the range of consumer energy issues.

⁴ COAG *Energy Market Agreement* 2004, clause 4.3

A fundamental flaw of the Advocacy Panel has been its restrictive funding criteria. By tying research directly to advocacy outcomes, it has not been able to support independent academic research into the operations of the NEM, a fundamental structural weakness in the Australian debate compared to other comparable international jurisdictions. Similarly, the Advocacy Panel has not been able easily to support projects that are clearly of direct relevance to consumers but do not relate directly to the regulations of the National Electricity Code. This should be avoided by the board in developing the criteria for its grants-making.

As a result, the number of grant applicants has been relatively small, and the Panel's ability to build capacity in the consumer movement to participate in NEM issues has been unnecessarily limited.

National retail and distribution regulation would exponentially increase both the importance of the new consumer advocacy organisation to its State-based stakeholders, but also heighten a need for research on the experience of consumers in a national framework.

We therefore recommend that the new body's funding policies and principles, which will be developed by the board, be guided by the public interest, and incorporate the flexibility to fund research and capacity-building projects, as well as advocacy.

4. RESOURCING

The model outlined above must be adequately resourced.

The KPMG Report is far too sanguine about the number of staff required to meet the demands that will be placed on this new organisation. The experience of the organisations who have signed this submission has uniformly been that this is a technical and complex debate, and the organisation must be able from the outset to ensure that its staff and Board will be able to address the issues within their scope.

The quantum available to support other consumer advocacy groups and research into consumer utility issues must also be sufficient to meet demand. While some funds for the new organisation may be able to be derived from the industry levy allocated to the Advocacy Panel, that amount could not support both a new organisation and a grants program able to offer real support to consumer groups. It is worth noting that industry commits a significant amount of resources to advocacy, often by way of staff such as regulatory affairs managers, the costs of which are included in the costs of the business and mostly recovered via regulated revenues.

The emphasis placed on capacity-building in the Options Paper and the KPMG Report is welcome and we endorse it. What has been overlooked, however, is not only how resource-intensive such an activity might be, but also that it will generate new demand for grants to support research and advocacy.

As has been repeatedly stated by government and regulators alike, energy market reform can only benefit from increased end-user participation – under-resourcing the new advocacy mechanism will only set it up to fail.

As an indication of the sort of funds that should be committed through the establishment of a specialist centre and a grants program to support consumer advocacy in NEM jurisdictions, the Victorian Consumer Utilities Advocacy Centre expended \$617,000 in 2003/04 (including

\$275,556 in grants) representing the interests of nearly 5 million people. There are over 17 million people in the NEM states and territories.

5. SUMMARY

We are pleased that steps are being taken to ensure effective and continued consumer representation in the energy sector in Australia. This is in keeping with the Productivity Commission's recommendation contained in the *Discussion Draft, Review of National Competition Policy Reforms*, that building and sustaining support for further reform will require 'appropriate consultation and engagement with those parties directly affected'⁵. Such a development will also ensure that Australia is keeping pace with overseas jurisdictions such as the UK. The UK's HM Treasury and Department of Trade and Industry released a report in July last year, *Consumer Representation in Regulated Industries*, which provides for the establishment of a National Utilities Consumer Council to undertake consumer advocacy across a number of sectors, to entrench longer-term consumer representation.

In the first instance, please contact Natasha Leigh on (03) 9629 6300 or natasha@clcv.net.au, or Kerry Connors on (03) 9686 0025 or kerry.connors@cuac.org.au should you have any questions about this submission.

Yours sincerely

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⁵ Review of National Competition Policy Reforms, Discussion Draft, Productivity Commission, p 300.