



25 July 2008

By email: info@advocacypanel.com.au

Mr Frank Peach
Chair
Consumers Advocacy Panel
PO Box 43
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Dear Mr Peach

Advocacy Process: Final report on the gaps and overlaps in advocacy

We write in reference to ACIL Tasman's *Advocacy Process: Final report on the gaps and overlaps in advocacy* (the **Report**) that was published by the Consumers Advocacy Panel (the **Panel**) on its website on 14 July 2008.

We wish to express our concern about the reliability of the Report in two key respects, namely, that in our view it:

- contains factual inaccuracies; and
- demonstrates a failure to understand key aspects of consumer advocacy.

In our view, these shortcomings significantly undermine the Report's credibility.

Factual inaccuracies in the Report

Consumer Action has noted a number of inaccuracies in the Report. We identify the most significant inaccuracies relating to Consumer Action to include:

- Table 13 (Issues advocated by advocacy organisations) on page 21 omits Consumer Action's advocacy across a range of areas, including price, consumer protection, supply, quality, market operations and customer service obligations. The table states that Consumer Action advocates only in the areas of demand management, environment/climate change and renewable energy. This is incorrect and is at odds with what the consultants were informed at the time of the interview. Even a cursory

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examination of the regular funding reports we provide to the Panel or the submissions on our website demonstrate that we advocate across a wide range of issues affecting energy consumers.

- The Report suggests Consumer Action does not represent Domestic (general) consumers, and only focuses on Domestic (disadvantaged) consumers. The discussion on page 14 excludes Consumer Action as representing the Domestic (general) classification altogether, despite being included in Table 6 (Groups most represented in advocacy). Consumer Action advocates across both of these classes of consumers. Indeed, our Policy Plan 2008, which is posted on our website, states, 'We undertake consumer focused research, policy and advocacy to advance the interests of consumers as a whole'.
- Table 12 (Key needs and interests of each class of consumer) identifies the key needs and interest of each class of consumer. When interviewed by the consultants, Consumer Action clearly stated that all of these needs and interests are relevant to both Domestic (general) and Domestic (disadvantaged) consumers. This view is not reflected in the Report's findings.

We understand that other organisations that receive Panel funding also have concerns regarding factual inaccuracies. Given the Report's key purpose is to identify gaps and overlaps in advocacy, errors of this type must give rise to questions regarding its ultimate findings and recommendations.

Understanding of advocacy

In our view, the content and structure of the report reflects a poor understanding of the overall nature of consumer advocacy.

The Report and the questions asked by the consultants suggest an assumption that there is not significant coincidence between the interests of domestic (disadvantaged) and domestic (general), and that there is difficulty in one organisation advocating in relation to both classes of consumers. In our view, attempting to disaggregate advocacy between domestic (disadvantaged) and domestic (general) is arbitrary, as ensuring access to quality, reliable and sustainable energy services at affordable prices benefits all consumers.

We recognise that some consumers will have a stronger interest in some aspects of energy services than others. For example, low-income or vulnerable consumers might have a stronger interest in a retail business's hardship policies. We note, however, that hardship is not only a concern for a discrete group of consumers. Financial hardship is not a static concept and all consumers may experience fluctuations in life and financial circumstances for a number of reasons and, as such, may benefit from the safety-net that hardship arrangements provide.

The Report also spends some time discussing advocacy in situations where needs and interests of consumers do not coincide. The Report gives the examples of environmental benefit or consumer protection that comes at a financial cost to consumers. While giving some analysis about how consumer advocates resolve such conflicts, the Report states that

‘while the survey respondents considered there was a high level of coincidence of interests across consumer classifications, in practice the level of coincidence was probably not as high in practice’ (sic). The Report provides no basis for this statement and then concludes that ‘it would be preferable for the advocacy organisation to represent only one interest’.

Such an approach fails to understand that consumer advocacy aims to ensure public interest outcomes. The public interest involves outcomes that advance the interests of all, not any particular group; determining what is in the public interest inevitably involves balancing and trade-offs. This is generally done by considering both benefits and detriments of particular courses of conduct to various types of consumers and weighing up an appropriate course of conduct. Similarly, the proposal that a consumer advocate could advocate on ‘price’ rather than ‘environmental benefit’ fails to understand that consumers have an interest in ensuring sustainable energy services.

The Report also suggests that an advocate can cope with situations where the needs and interests of consumer groups do not coincide by focusing advocacy ‘on achieving an efficiently operating market in electricity and gas’. Not only is this statement surprising in that it appears to suggest what consumer advocates should advocate, it fails to acknowledge that many consumer advocates consider efficiency to be only one of a number of factors necessary to ensure effective and fair outcomes for consumers. We note that this view finds support in a wide range of quarters, including Nobel prize winning economist Joseph Stiglitz, former Chief Economist to the World Bank.¹

Finally, we note that the general tenor of the Report suggests that there is overlap in advocacy that represents residential consumers and that advocacy funding could be rationalised. For example, the Report states on page 47 that ‘[t]he Executive Officer of the Panel has expressed concern that advocacy is often undertaken by several organisations (with similar mandates) from different jurisdictions representing the same consumer classifications’. The consultants accept this statement in its recommendation that ‘the Panel encourage advocacy groups to adopt a national approach to advocacy in each classification as a means of reducing the amount of duplication in advocacy by organisations within each category’. This recommendation is at odds with recent findings from the Productivity Commission that there is case for *more* assistance to ensure consumer representatives are able to provide effective input into policy.²

Next steps

Considering the above views, we have not provided detailed comments on the individual findings and recommendations of the Report. Indeed, it is our suggestion to the Panel that it ought to think carefully before accepting the Report as a reliable analysis of gaps and overlaps in advocacy. It follows that in our view the recommendations ought not to be adopted.

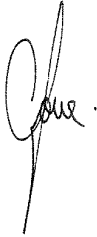
¹ Stiglitz, J. *Making Globalisation Work* Penguin 2007 pp xvi - xvii

² Productivity Commission, *Review of Australia’s Consumer Policy Framework – Final Report*, April 2008, p 280-1.

Should the Panel wish to discuss any aspect of this letter we would welcome the opportunity. We further request that a copy of this letter be published on the Panel's website adjacent (and equally prominent) to the Report.

Yours sincerely

CONSUMER ACTION LAW CENTRE

A handwritten signature in black ink, appearing to read 'C. Lowe', with a large loop at the top and a long vertical stroke extending downwards.

Catriona Lowe
Co-CEO

cc. Alan Smart, ACIL Tasman
Rowena Hodges, ACIL Tasman