

24 July 2008

Mr David Bremner
Executive Officer
National Electricity consumers Advocacy Panel
By email: info@advocacypanel.com.au

Dear Mr Bremner

The Consumer Utilities Advocacy Centre (CUAC) appreciates the opportunity to provide input to the Panel's consideration of the report *Advocacy process: final report on the gaps and overlaps in advocacy* prepared by ACIL Tasman (**the report**).

CUAC has a number of concerns with the methodology and conclusions of the ACIL Tasman report, including the need to correct some inaccuracies about CUAC and its advocacy.

First, is the report's classification of CUAC as advocating only for domestic disadvantaged consumers. As we made clear in responding to the survey, CUAC's mandate is to represent the interests of Victorian energy and water consumers in policy and regulatory decisions, with a focus on the interests of low-income, disadvantaged, and rural consumers.

CUAC does not advocate solely for low-income households. Its advocacy within national energy market reform, particularly in relation to developing a national regulatory regime for retail and distribution, has been on behalf of Victorian residential and small business consumers, particularly those in rural areas. As a grant-maker, CUAC has also provided funds for research on behalf of large end-users and used the results of that research in its submissions to regulators and government, to highlight market problems such as information asymmetries. To classify CUAC as an advocate for domestic disadvantaged consumers alone (p 8 of the report) is simply inaccurate.

While we welcomed the opportunity to participate in the survey conducted by ACIL Tasman, its authority to comment on gaps and overlaps in advocacy is limited. There were only a small number of respondents from consumer organisations, and ACIL Tasman only consulted the national regulators, including the AER whose contact with domestic consumer organisations has been very limited until the last year. We would have recommended consultation with RPWG members, who have been the recipient of most consumer advocacy, as well as a broader range of consumer organisations.

Another key flaw in the report's methodology is that the implicit assumption that the interests of domestic (general) and domestic (disadvantaged) consumers are intrinsically different. This assumption is untested and there is no articulation of what is perceived to be the interests of either consumer class or how they differ.

CUAC's experience has been that the interests of general households and low-income households do often coincide:

- Market failures such as information asymmetries affect all households not just low-income, requiring effective product information disclosure, oversight of contractual terms and conditions to prevent unfair contracts, regulation around marketing, access to dispute resolution, as well as robust performance reporting and compliance regimes;
- The rollout of smart meters will not only add a significant cost to consumers, it is also likely to introduce a range of new and more complex products to the market, so regulation of bill content and format, use of metering data, etc remains necessary to ensure that consumers have the information required to make informed choices about when and how they consume;
- Consumers are facing significant price increases. These trends – caused by capacity constraints, the interval meter roll-out and climate change responses (such as MRET, feed in tariffs and emissions trading) - place pressure on a range of households, necessitating effective competition around price to keep it at its efficient level. Consumers of all sizes are therefore interested in market design that promotes effective competition, including the capacity to easily compare prices.

The report claims that “issues such as feed in tariffs, interval meters, potential price increases and the introduction of an emissions trading scheme may not be of equal interest to both classifications” (p24). The inference to be drawn from the report is that the participation of consumer advocates representing domestic (disadvantaged) in those debates should not be supported by the Panel. We disagree.

There may be different areas of engagement or foci of advocacy – advocacy focusing on low-income consumers might weigh into those decisions to ensure equity is a consideration in the policy design of a feed in tariff, or that energy efficiency assistance is a major factor in the revenue generated by emissions trading.

By not identifying precisely what and where are the perceived shortfalls in advocacy (as opposed to focusing on the mix of organisations receiving funding), the report fails to understand how consumers' interests can coincide.

The report's failure to provide a context and timeline to these questions also weakens its recommendations, by ignoring that the type and degree of consumer advocacy will change in response to the level of decision being taken.

There are some clear short-term trends: the harmonisation of a national retail regulatory regime benefits from participation by consumers in all jurisdictions who inform the process of how consumer needs may differ across the NEM, and will work with their constituencies to smooth the transition (eg by training community case workers dealing with consumers in hardship). Equally, as prices rise, we would expect that more

organisations representing low-income households will be involved in decision-making to ensure their constituencies' needs are met.

The face of advocacy is likely to look quite different in the medium-term, however. As the regulatory regime becomes national, we would expect that many community sector organisations would vacate the field, as other issues assume a higher priority. The removal of competing demands, coupled with the capacity that has been built over the previous years, will facilitate the emergence of consumer advocates able to more easily participate in some of the more complex matters.

But the Panel should be aware that harmonization could take time – we can expect the legislation enabling a national retail and distribution (non-economic) regime to be passed for 1 January 2010, but jurisdictions will then determine their own timetables to join it. Victoria is the state most easily able to do so, but we were informed by RPWG representatives that other States could take 3-5 years.

In relation to consumer classifications, we would note that the use of the term 'disadvantaged' is not clearly explained in the report – it seems to be used primarily to mean 'low-income', which is a narrower interpretation than is usually the case. Disadvantage can arise from lack of access to competitive offers, market power, information asymmetries, or language barriers; attached is a matrix of vulnerability developed by Consumer Affairs Victoria, which outlines the range of features that can cause disadvantage in the marketplace, and which the Panel may find of interest.

The report's recommendation of a national advocate for each classification generates most concern.

We believe it will only have detrimental impacts on consumer advocacy:

- It reduces the number of organisations involved in energy issues, which would appear to be at odds with the Panel's primary objective of enhancing consumer advocacy – less voices equals less participation
- It devalues the contribution of agencies not funded directly through the Panel, but who are participating in and contributing to Roundtable processes.
 - the Roundtable organisations have leveraged from each other's expertise (e.g. in Victoria, we used CUAC knowledge of rural and regional needs, CALC legal expertise, St Vincent de Paul on pricing, and Tenants Union Victoria on tenancy issues to develop a collaborative position on small-scale licensing of exempt networks that ensured no unintended consequences in other areas)
- It is operationally impractical
 - it overlooks the fact that the mandate and members or networks of organisations deemed to be duplicating work are different
 - complicating accountability arrangements – a Steering Committee will not help a national advocate decide whether to focus on the interests of SA consumers over NSW consumers within a regulatory process (and those trade-offs are now being made within the RPWG)

July 24, 2008

- individual organisations operate under their own mandates which may not be easily altered to suit Advocacy Panel processes. For example, CUAC's mandate is defined by its Constitution and changing the mandate would require the approval of CUAC's Member, the Victorian Minister of Consumer Affairs, and the CUAC Board.
- one advocate cannot possibly participate in the range of regulatory reviews - the workload is simply too great, even in the doubtful event you could recruit someone with the right skillset to cover everything. CUAC has 3 full-time staff, and still does not participate in some reviews due to resource limitations.

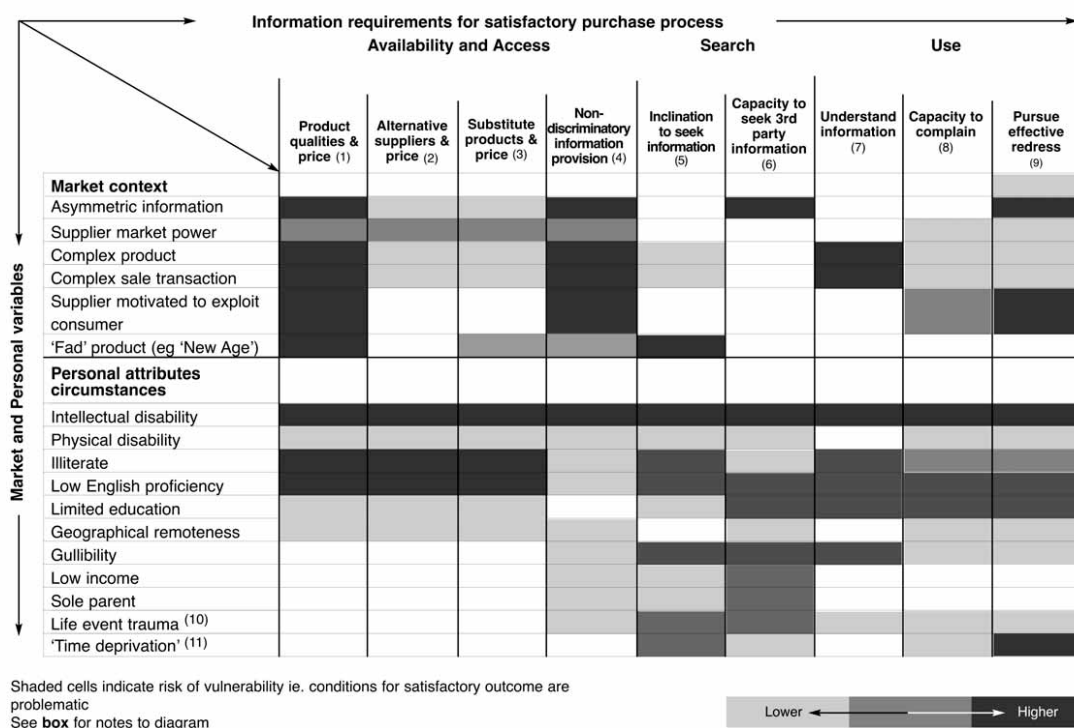
The only value of the model proposed by ACIL Tasman, formulated with a poor understanding of the current debate and the ways in which consumer advocacy organizations are collaborating, seems to be that it offers the potential for administrative efficiencies in relation to funding. It does not offer (or even propose) that outcomes for consumers would be better. As such we strongly encourage the Panel to look more widely for ways to classify gaps and overlaps in advocacy.

Please do not hesitate to contact me should you have any queries about the attached.

Yours sincerely

May Mauseth Johnston
Senior Policy Officer

Matrix of Consumer Vulnerability¹



Notes to Matrix of Consumer Vulnerability (above)

Satisfactory purchases are those that result in the consumer obtaining the utility he or she expected on entering the transaction. Market variables (i.e. the market context and product/transaction characteristics) and personal variables (i.e. individual attributes and circumstances) will affect how a consumer makes purchase decisions and how he or she is positioned in transactions relative to sellers. Given the significance of information to buyers' decision-making and bargaining positions, personal attributes or circumstances that affect access to and effective use of information are most relevant to the concepts of consumer vulnerability. Major information requirements for effective consumer purchases are summarised in the horizontal headings in the matrix. Where these requirements are not likely to be met the outcome for the consumer is problematic and potential for vulnerability exists.

(1) Product qualities & price: Information about a product's capacity to satisfy a consumer's needs, its quality and price is available from suppliers and a consumer is able to easily access the information.

(2) Alternative suppliers & prices: Information about prices is available from alternative suppliers and the consumer is able to easily access the information.

(3) Substitute products & prices: The consumer is aware substitute products exist and information about potential substitutes and their prices is available from suppliers and the consumer is able to easily access the information.

(4) Non-discriminatory provision: Suppliers of the product in question do not provide to certain categories of customers information which is inferior to or more costly to access than that provided to customers generally (in other words, suppliers do not inform prospective customers on a discriminatory basis due to their perception of customers' capacities/circumstances).

¹ Consumer Affairs Victoria (CAV) Discussion Paper *What do we mean by 'vulnerable' and 'disadvantaged' consumers?*, 2004, p 18, available at [http://www.consumer.vic.gov.au/CA256902000FE154/Lookup/CAV_Publications_Reports_and_Guidelines/\\$file/vulnerabledisadvantaged.pdf](http://www.consumer.vic.gov.au/CA256902000FE154/Lookup/CAV_Publications_Reports_and_Guidelines/$file/vulnerabledisadvantaged.pdf)

- (5) Inclination to search: The consumer is inclined to seek information relevant to his or her purchase decision.
- (6) Capacity to obtain third party provided information: The consumer is inclined to search for product and price information provided by third parties and can afford third party provider charges.
- (7) Ability to understand: The consumer is able to understand the information provided by suppliers, recognise deficiencies such as likely exaggerations or deceptions and draw reasonable conclusions about the capacity of a particular product to meet his/her needs.
- (8) Capacity to complain: The consumer is inclined to complain/seek redress in the event that the expected satisfaction from a particular purchase is not realised after consumption and there is an avenue for complaint handling provided by the supplier.
- (9) Pursue effective redress: The consumer has the capacity to pursue redress through available complaint and dispute resolution processes.
- (10) 'Life event' trauma: An event, such as the sudden death of an immediate family member, serious acute illness or retrenchment, where a complex and/or infrequent purchase is required urgently and/or the consumer's financial position is significantly adversely affected without notice.
- (11) 'Time deprivation': Insufficient time due to work, family, household or other circumstances to access and absorb information relevant to a particular purchase decision.