

**NATIONAL CONSUMERS ELECTRICITY  
ADVOCACY PANEL**

**Submission to the**

**Ministerial Council on Energy  
Standing Committee of Officials**

**on**

**Consumer Advocacy in the  
Australian Energy Market  
Consultation Paper**

**May 2005**

**National Consumers Electricity  
Advocacy Panel**

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## Introduction

The Advocacy Panel (the Panel) does not wish to present a view on the matters raised in the consultation paper and the attached report by KPMG other than to comment on what we perceive to be errors of fact or of analysis in the KPMG report that require rebuttal in order for the report to be of assistance in the consultation process.

In the Panel's view, there is acceptance on the part of government, regulators and all participants in the national energy market that the objectives of the market will be best met if there is active involvement in market processes by properly informed and resourced end users. The panel also notes that in the recently legislated 'national market objective', designed to guide conduct in relation to the market, a central element is the 'long term interests of consumers of electricity'.

The Consultation Paper issued by the Ministerial Council on Energy's Standing Committee of Officials (SCO) represents an opportunity to review the current arrangements for encouraging and facilitating advocacy by end user groups or their representatives and to agree on and implement a model for the future.

## Observations on the KPMG report

The KPMG report comments as follows:

*"We suggest that the increasing complexity of the Australian energy market will mean that future advocacy arrangements:*

- *will require access to a high level of technical expertise to provide the standard of advice that is required to positively influence market regulation developments;*
- *should provide advocacy on behalf of consumers, through one focused point, to the Australian Energy Market Commission (AEMC) and the Australian Energy Regulator (AER),"<sup>1</sup>*

The Panel's experience indicates that while the Australian energy market is complex, the complexity can be overcome by end user advocacy bodies through the engaging of appropriately skilled and experienced staff or consultants. The key issue for many of these advocacy bodies is how to obtain the financial resources needed to engage the skills required. The Panel has seen examples of where advocacy bodies have dealt with complex issues beyond their normal range of experience by engage appropriate resources.

The KPMG conclusion that the increasing complexity of the energy market means that effective consumer advocacy can only take place through one focused point is not supported by the Panel's experience<sup>2</sup>.

The Panel's experience also indicates that regulators appreciate receiving the views of a range of advocates each representing a different end user perspective on the issue at hand.

On page 12 of its report, KPMG provided an analysis of the funding granted by the

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<sup>1</sup> Page 1 Review of Consumer Advocacy Requirement – Report for Users Participation Working Group, KPMG

<sup>2</sup> The domestic user representative disagrees with this comment

Panel. The data to 3 May 2005 is as follows:

Decision	No of applications - by end user				Value of funding granted - by end user			
	Domestic	Business	Other	Total	Domestic	Business	Other	Total
					\$	\$	\$	\$
Approved	34	43	9	86	999,472	1,527,555	263,827	2,790,854
Rejected	8	23	5	36				
Deferred	8	4		12				
Withdrawn	2	6	1	9				
Total	52	76	15	143				

The Panel has approved 86 applications and has granted funding to the value of \$2,790,854. Generally, applicants are required to provide 30% of the cost of the project from their own funds.

KPMG note a number of “achievements” of the Panel<sup>3</sup>. In the Panel’s view, one of its achievements has been to enable diversity in terms of the issues addressed by applicants and the range of applicant viewpoints. The Panel’s charter requires it to encourage diversity of issues, views and applicants.

In relation to “Issues”<sup>4</sup> KPMG comments on various aspects of the Panel’s structure and performance.

The Chair of the Panel is appointed by NECA and KPMG raise the potential for this process to place at risk the independence of the Chair. The Panel notes that the appointment process has not at any stage influenced the independence of the Chair.

KPMG also discuss the submission basis for funding and conclude that it can cause delays in decision-making. This conclusion is based on the requirement that the Panel determine applications on a quarterly basis. In fact, the Panel met on eight occasions in calendar year 2004 and plans to hold five meetings in 2005. The Panel also has in place procedures for the conducting of meetings by telephone in order that urgent applications can be dealt with promptly.

The Panel strongly disagrees with KPMG’s assertion that:

*“Representatives of electricity generators or electricity market participants who are bound by the terms of their appointment to present the views of their sector are not well placed to make decisions which are in the best interests of consumers as there will often be a conflict between the interests of these sectors and consumers.”<sup>5</sup>*

KPMG appear to have misinterpreted the meaning of clause 8.10.2(e) of the National Electricity Code (the Code). The Code requires that the representatives be “capable of reflecting the viewpoints and concerns of the constituencies they represent”<sup>6</sup>. In fact, the four sectoral representatives are appointed by the Chair of the Panel and are required under that appointment to act in the best interests of the Panel and its charter to foster end user advocacy.

The Chair of the Panel notes that the representatives of electricity market generators

<sup>3</sup> Page 13 KPMG

<sup>4</sup> Page 13 KPMG

<sup>5</sup> Page 15 KPMG

<sup>6</sup> Clause 8.10.2 (3) of the National Electricity Code

and electricity market participants have complied with the terms of their appointments and have not used their position to disadvantage the best interests of consumers.

KPMG comment that the Panel has a need for secretarial and accounting services and that “arrangements have now been made for external accounting services to be provided”<sup>7</sup> Since its inception, the Panel has had external accountants. This is evident from the Panel’s annual reports. The Panel assumes that KPMG are referring to administrative services which previously were provided by an accounting firm but are now provided by an administrative officer employed by the Panel.

In its comments on “Consumer coverage”<sup>8</sup>, KPMG concludes that a central advocacy body will need to consider the tension between various advocacy groups resulting from the sometimes conflicting interests of the end users they represent and develop processes for reconciling those views. This has not been an issue for the Panel because it has not been involved in advocacy other than as a facilitator of submissions through its funding role.

KPMG have proposed four options for a consumer advocacy body. The Panel does not comment on the merits of any particular option but wishes to make two observations.

Based on its experience over the past two years in dealing with some 140 applications for funding, if it is decided to establish a new organisation as a funding facilitator rather than as a direct advocate, the board of the organisation should be kept to no more than seven or eight members in order for matters to be dealt with expeditiously.

In relation to KPMG option 2 – panel with sectoral representation, the Panel observes as follows:

- KPMG recommend that members of the body be required to act independently in the best interests of consumers and not be required to reflect the viewpoints and concerns of their constituencies. The Panel supports this recommendation. As mentioned above, this is the basis on which members of the Panel are currently appointed.
- KPMG’s concern that:

*“the sectoral nature of the representation does not necessarily allow for the panel as whole to act in the best interests of consumers on all matters”<sup>9</sup>*

can be overcome if the members are appointed with specific responsibility for acting in the best interests of consumers.

- A problem that KPMG anticipate with this option – avoiding duplication of existing consumer arrangements – would be avoided if the organisation did not have a direct role in advocacy, or if the panel had any direct role it was exercised so as not duplicate (as happens now).

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<sup>7</sup> Page 16 KPMG

<sup>8</sup> Page 22 KPMG

<sup>9</sup> Page 40 KPMG

**Conclusion**

The Panel has been advised that its funding has been extended until 30 June 2006.

As part of its on-going review of operation, the Panel is considering new funding criteria based on the principles set down in the Code. Submissions on the criteria have been sought from interested parties and are presently being considered in order that the Panel may respond to them. The Panel has also recently adopted rules and procedures for its operations which are available for viewing on its website.

The Panel has decided that it does not wish to engage in advocacy over any new arrangements for the future other than to correct any errors of fact or analysis in the KPMG report. However, the Panel recommends that whatever option is decided on, the primary objective should be the fostering of diversity of views and participants in the advocacy process so that regulators and participants are best informed when making important decisions.

The Panel is available to answer any questions on this submission.

Adam Bisits  
Chair  
13 May 2005