

**NATIONAL CONSUMERS ELECTRICITY  
ADVOCACY PANEL**

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9 February 2006

Dr John Tamblyn  
Chairman  
Australian Energy Market Commission  
1 Margaret Street  
Sydney NSW 2001

Dear Dr Tamblyn

**National Electricity Amendment (Advocacy Panel) Rule 2006**

The Advocacy Panel (the panel) welcomes the opportunity to comment on the Rule change proposed by the Ministerial Council on Energy (the MCE).

The panel has limited itself to practical issues where its views and experience will hopefully be of relevance and assistance to the Commission in its consideration of the new Rules. The panel does not comment on 'policy' issues such as the extent of independence to be given to the panel.

The clauses on which the panel wishes to comment are set out below.

**Constitution of the Advocacy Panel**

**Clause 8.10.2 (b)**

The MCE's proposed clause refers to the appointment of a chairperson or any other member to the Advocacy Panel under cl 8.10.2 (a) (1). The clause reference is incorrect as sub-clause (1) relates only to the chairperson. The reference should be to cl 8.10.2 (a) which relates to both the chairperson and the members.

Proposed amended clause

- (b) In appointing a chairperson or any other member to the Advocacy Panel under clause 8.10.2(a), the AEMC must, to the extent reasonably practicable,*

**Clause 8.10.2 (b) (2)**

The proposal that the panel chairperson and members must be and remain independent of the AEMC, NEMMCO and all Registered Participants is intended to avoid any perception that a listed organisation could influence the panel's decision making as a result of the dependence of a member of the panel on the organisation. If this is the case, it would be prudent to also designate the Australian Energy Regulator (the AER) and state and territory energy regulatory bodies, such as the Essential Services Commission of Victoria, as organisations from which the chairperson and members of the panel must be independent.

It is recommended that the proposed clause be amended so the chairperson and members of the panel must also be independent of the AER and state and territory energy regulatory bodies.

Proposed amended clause

- (2) *ensure that the person so appointed is independent of the AEMC, NEMMCO, AER, all Registered Participants and all state or territory energy regulatory bodies and, if at any time the person ceases to be independent of the AEMC, NEMMCO, AER, all Registered Participants and all state or territory energy regulatory bodies, the AEMC must remove that person from the Advocacy Panel.*

#### **Clause 8.10.2(d) (4)**

For the reasons outlined above, it is recommended that this clause also be amended to include the AER and state and territory energy regulatory bodies as prescribed organisations of which the chairperson and members of the panel must be independent.

Proposed amended clause

- (4) *the person ceases to be independent of the AEMC, NEMMCO, AER, all Registered Participants and all state or territory energy regulatory bodies; or*

### **Functions of the Advocacy Panel**

#### **Clause 8.10.3(a)**

The clause does not specify for which financial year the panel must provide a determination of the funding requirement. In the National Electricity Code which preceded the Rules, the equivalent clause referred to the provisional funding requirement being for “the next three financial years on an annual basis”. In the interests of clarity and certainty, the clause should specify that the funding requirement is for the next financial year.

It would be prudent to also change the dates by which the panel must submit its funding determination and the AEMC must consider it.

The draft of the annual report by the panel to be provided to the AEMC by 15 March (cl 8.10.3 (b1)) may be incomplete unless the approval of the determination takes place prior to 15 March. Also, to comply with the requirement to issue its annual report by 31 March (cl 8.10.3 (b)) the panel would require approval of its funding determination prior to 31 March. It is therefore recommended that the date for submitting the determination should be 12 February and the latest date for approval, 14 March, in order to allow sufficient time for the panel to complete its annual report.

Proposed amended clause

- (a) *The Advocacy Panel must determine the provisional funding requirements for end-user advocacy in the next financial year in accordance with the Rules consultation procedures and submit them to the AEMC by 12 February each year for approval under this clause. The AEMC must approve the funding requirements by 14 March each year, unless satisfied that there are no reasonable grounds for approving the funding requirements.*

The MCE's proposed cl 8.10.3 (a) makes no provision for the process to be followed in the event the AEMC refuses to approve the panel's funding determination.

As the determination is the result of the panel's consultation with end-users and interested parties, if the determination was rejected by the AEMC the panel may be obliged to undertake another round of consultations to seek views on the AEMC's grounds for refusing approval. The complications that would occur if the AEMC did not approve the panel's funding determination could be avoided if the approval requirement was removed.

In attachment A to the MCE's letter to you of 9 December 2005, the proposal to have the AEMC approve the funding determination appears to be based on the comment in the enclosed statement of issues concerning the existing Rules which states that "the amount of funding required for consumer advocacy is unilaterally determined by the Panel." The problem with the current Rule is then stated as "There is no accountability for this amount or how it was determined". The solution proposed by the MCE is to require the AEMC to approve the panel's determination.

The justification of the need for confirmation of the funding determination by the AEMC is flawed because the argument that the panel unilaterally determines the funding requirement is misleadingly simple.

Under the current Rules, cl 8.10.3 (a) provides that the panel must determine the provisional funding requirements in accordance with the Rules consultation procedures thus ensuring the involvement of all interested parties – both the end-users who will apply to the panel for funding and the market participants who provide the funding through the fees they pay to NEMMCO. To describe the determination by the panel as 'unilateral' is therefore misleading because the description does not take account of the influence other parties have on the panel's final determination.

Accountability on the part of the panel for the amount determined and transparency of the process of arriving at the determination are both ensured through the consultation procedures.

The MCE's proposal will also create a situation where end-users and market participants have input to the panel on what it should determine as the funding requirement but there is no provision for them to have input to the AEMC on what it determines should it not approve the panel's determination.

As outlined above, the approval process proposed by the MCE creates potential difficulties all of which could be avoided if the panel were permitted to make a determination that was not subject to AEMC approval. If the AEMC has any concerns or issues that it wishes to raise in relation to the funding requirement suggested by the panel under the consultation procedures either in its initial invitation to comment or its subsequent draft report, the AEMC has the same opportunity as other interested parties to raise them with the panel through the consultation procedures.

The panel views the decision to have the AEMC approve any determinations made by it as being a policy issue on which it is inappropriate for the panel to comment. However, the panel wishes you to be fully informed of the difficulties that the approval process may encounter and of the basis on which funding determinations are currently made and the panel's accountability under the current determination process.

**Clause 8.10.3 (b)**

In the interest of clarity, the clause should accurately describe the financial year to be reported on. In addition, the word "current" in sub clauses (3) and (4) should be deleted as it is the previous financial year that is being reported on not the current financial year.

The clause should also include a requirement that the panel report the date on which the AEMC approved the determination so readers of the annual report will know whether or not the determination is final (if it is confirmed that the AEMC will have this responsibility). The amendment would also be consistent with the assumption underlying clause 8.10.3 (c) that the funds provided for in the panel's annual report have been approved by the AEMC.

Proposed amended clause

- (b) *Not later than 31 March each year the Advocacy Panel must prepare and publish an annual report for the previous financial year which:*
- (1) *includes details of its funding determination pursuant to clause 8.10.3(a) including the date on which the AEMC approved the funding requirement;*
  - (2) *summarises the submissions received from interested parties regarding the funding requirements for end-user advocacy and the Advocacy Panel's response to each such submission;*
  - (3) *details expenditure in the financial year and the individual projects to which funding was allocated for the financial year; and*
  - (4) *details the extent to which the allocation of funding in the financial year satisfies the principles in clause 8.10.3(d).*

**Clause 8.10.3(c)**

The words "for that year" in the MCE's proposed clause should be deleted as they are illogical. The funding the AEMC is to provide for a financial year is the funding determination made by the panel and reported in the annual report for a previous financial year, not the annual report for the year of funding.

Proposed amended clause

- (c) *The AEMC must provide to the Advocacy Panel in respect of each financial year the funds stated in the funding determination for that financial year published in the Advocacy Panel's annual report.*

**Clause 8.10.3 (d)**

It is recommended that the word "may" be replaced by "must".

As presently worded, the clause gives the AEMC an option as to whether or not to approve funding criteria developed by the panel, even if the criteria are, to the extent practicable, consistent with the principles in sub-clauses (1) to (7).

The national electricity market (the NEM) and end-users would expect the criteria to be approved if they are consistent with the principles set down in the Rules. If the criteria are consistent with the principles but are not approved by the AEMC, this could only be because the AEMC has effectively introduced a principle not set down in the Rules and which has not been considered and debated by the NEM and end-users as Rules are during the Rule change process. To avoid the perception that the AEMC may introduce a principle that has not been previously

debated through the Rule change process, it is recommended that the AEMC be required to approve the criteria if they are consistent with the principles set down in the Rules.

It is also recommended that clause 8.10.3 (d) (7) (iii) be deleted.

A successful applicant should publish a report on the project but to require that the report include the costs and expenses of the project may lead to the disclosure of confidential information such as salary rates for staff of the applicant and fees paid to external consultants. It should be noted that sub clause (6) requires a successful applicant to make available to the panel information on the expenditure of funds provided. This requirement, together with the requirement in clause 8.10.3 (b) (3) that the panel report on funding provided to each approved project, ensures accountability on the part of the applicant for the costs incurred in a project and transparency in that the expenditure is reported in the panel's annual report.

For the sake of clarity, it recommended that the comma which follows the word "plan" in sub-clause (5) be deleted.

Proposed amended clause

- (d) *The Advocacy Panel must develop and publish funding criteria for use by the Advocacy Panel in allocating funding based on applications for funding for end-user advocacy, in accordance with the Rules consultation procedures and submit them to the AEMC for approval. The AEMC must approve the funding criteria if they are, to the extent practicable, consistent with the following principles:*
- (1) *there should be diversity in the allocation of funding with respect to the number of end-users represented, the nature of the interests represented and the issues which are the subject of the application for funding;*
  - (2) *a project proposed in an application for funding should:*
    - (i) *relate to the development, design or policy behind the national electricity market or the Rules;*
    - (ii) *relate directly to:*
      - (A) *the responsibilities of the AEMC or NEMMCO under the National Electricity Law and the Rules; or*
      - (B) *the monitoring, investigation or enforcement responsibilities of the AER, or functions of the AER relating to the exemption from registration of Network Service Providers, under the National Electricity Law and the Rules; or*
    - (iii) *have implications for the national electricity market as a whole;*
  - (3) *the applicant for funding must represent the interests of a reasonable number of end-users;*
  - (4) *the applicant for funding must fund a share of the project costs from a source other than funding provided by the Advocacy Panel. In considering the contribution made by an applicant the Advocacy Panel may consider non-financial contributions, for*

*example staff time, in lieu of a direct pecuniary contribution. An applicant may seek to waive the requirement to fund a share of the project costs but the Advocacy Panel has discretion as to whether or not to grant the waiver;*

- (5) *the applicant for funding must provide a project plan outlining the purpose of the project, the project category, budget estimates and the amount of funding sought from the Advocacy Panel;*
- (6) *the successful applicant for funding must maintain and make available to the Advocacy Panel appropriate records, accounts and reports on the expenditure of funding provided by the Advocacy Panel on the project; and*
- (7) *the successful applicant for funding must within 2 months of the completion of the project or as soon as reasonably practicable after receipt of a written request for a report from the Advocacy Panel publish a report setting out:*
  - (i) *the purpose of the project; and*
  - (ii) *the issues considered and outcomes of the project;*

#### **Clause 8.10.3 (e)**

The clarity of the clause would be improved if a comma was inserted after the word "procedures".

Proposed amended clause

- (e) *The Advocacy Panel must develop and publish guidelines for applications to the Advocacy Panel for funding for end-user advocacy, in accordance with the Rules consultation procedures, and submit them to the AEMC for approval. The AEMC must approve those guidelines if they:*

#### **Clause 8.10.3 (f)**

The MCE's proposed clause requires the panel to determine applications for funding on a quarterly basis prior to the commencement of a quarter. The clause is undesirable and impractical as it will severely restrict the range of projects that could be funded, for example, if after the commencement of a quarter a body such as the MCE, AEMC or AER issues a discussion paper and sets a deadline for submissions which is prior to the end of the quarter, the panel would not be authorised to approve funding for a submission to the paper because it may only approve projects which commence in a future quarter.

It is recommended that in the interests of end-users being able to respond to all relevant issues, not only those that arise in the next quarter and for which there is sufficient notice to submit an application for funds prior to the commencement of the quarter, the clause should be amended to permit the panel to meet as often as circumstances require and to approve projects irrespective of when they are to commence.

Proposed amended clause

- (f) *The Advocacy Panel must meet at least quarterly and must determine applications for funding having regard to the criteria prepared in accordance with clause 8.10.3(d)"*

**Clause 8.10.3(g)**

The MCE's proposed clause requires that the panel must ensure, to the extent reasonably practicable, that its financial records and "the financial records and accounts and expenditure reports prepared and maintained by a successful applicant for funding" are audited by an independent auditor appointed by the panel and approved by the AEMC.

It is impractical to expect the panel to potentially bear the costs of auditing the financial records and accounts and expenditure reports prepared and maintained by successful applicants for funding. The cost of this audit task could be significant, for example in financial year 2005/2006 the panel approved twenty projects submitted by nine applicants who are located in four different States.

If the intention of the clause is to give to the panel the power to audit an applicant's records where it sees a need to do so, it would be preferable to make specific provision for such a power.

Proposed amended clause:

- (g) *The Advocacy Panel must ensure that its financial records and accounts are audited by an independent auditor appointed by the Advocacy Panel and approved by the AEMC. If the Advocacy Panel sees fit, it may require a successful applicant for funding to provide, at the applicant's cost, an expenditure report on the project certified by the applicant's auditor.*

**Urgent funding**

A further issue that the panel raises for consideration is the practical problem of what happens if the panel has an unforeseeable need for additional funding.

The process of arriving at the panel's determination of funding requirements for the next financial year would, under the Rules consultation procedures, have to commence by the October prior to the financial year in order to allow time for the consultation procedures that culminate in the panel's determination to be submitted to the AEMC no later than 12 February (the panel's suggested date). During the period 12 February to 1 July, the commencement date for the financial year for which funding is determined, the situation previously anticipated by the panel and interested parties could change in way that has a significant impact on funding required for the following year.

The funding requirement is based on a number of factors including the number and cost of projects that end-users wish to undertake and the issues covered in the work programs of regulatory and policy making bodies such as the AEMC, AER and MCE that end-users wish advocate on. For example, if after 31 March a new work program is introduced by the MCE for the following financial year in which end-users wish to participate, the fact that the panel's funding budget is fixed under the Rules at that time would either prevent participation by end-users in that work program or would require the panel to make funds available for it by refusing to fund other equally worthwhile projects provided for in the original budget.

The provision of additional funds could be dealt with through the following proposed clause:

- The AEMC may in special circumstances, upon request by the Advocacy Panel, provide additional funding to the Advocacy Panel in excess of the amount determined in the Advocacy Panel's annual report for the financial year.*

*NEMMCO must pay to the AEMC such amounts as are necessary to enable the AEMC to comply with the Advocacy Panel's request under this clause.*

**Summary**

The panel's view is that the changes outlined above to the MCE's proposed Rule are practical and will ensure the efficient operations of the panel. A consolidated Rule 8.10, including the panel's recommendations, is attached.

Please advise if any additional information is required.

Yours sincerely

A handwritten signature in black ink, appearing to read "D. Brennan". The signature is fluid and cursive, with a large initial "D" and "B".

Executive Officer



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**Consolidated Rule 8.10 based on amendments (in italics)  
proposed by the Advocacy Panel**

**8.10 Advocacy Panel**

**8.10.1 Establishment of the Advocacy Panel**

- (a) The AEMC must establish an Advocacy Panel. The Advocacy Panel, in accordance with this Clause 8.10, must:
  - (1) determine the annual funding requirements for end-user advocacy;
  - (2) develop and publish criteria for the allocation of funding for end-user advocacy;
  - (3) develop and publish guidelines for applications for funding for end-user advocacy;
  - (4) allocate funding to individual projects; and
  - (5) ensure appropriate auditing arrangements.

**8.10.2 Constitution of the Advocacy Panel**

- (a) The Advocacy Panel must consist of
  - (1) a person appointed by the AEMC to act as the chairperson for a period of up to three years. Such chairperson will have a casting vote in all decisions of the Advocacy Panel;
  - (2) four members appointed by the AEMC,
  - (3) (deleted).
- (b) *In appointing a chairperson or any other member to the Advocacy Panel under clause 8.10.2(a), the AEMC must, to the extent reasonably practicable,*
  - (1) have regard to any nominee recommended by the MCE and any guidelines prepared under clause 8.10.2(e); and
  - (2) *ensure that the person so appointed is independent of the AEMC, NEMMCO, AER, all Registered Participants and all state or territory energy regulatory bodies and, if at any time the person ceases to be independent of the AEMC, NEMMCO, AER, all Registered Participants and all state or territory energy regulatory bodies, the AEMC must remove that person from the Advocacy Panel.*
- (c) Subject to clause 8.10.2(d) any person who has previously served as chairperson of the Advocacy Panel is eligible for reappointment to the Advocacy Panel in accordance with this clause 8.10.2.
- (d) The AEMC may remove the chairperson or any other member of the Advocacy Panel at any time during his or her term in the following circumstances:
  - (1) the person becomes insolvent or under administration;

- (2) the person becomes of unsound mind or his or her estate is liable to be dealt with in any way under a law relating to mental health;
  - (3) the person resigns or dies;
  - (4) *the person ceases to be independent of the AEMC, NEMMCO, AER, all Registered Participants and all state or territory energy regulatory bodies; or*
  - (5) the person fails to discharge the obligations of that office imposed by the Rules or the terms and conditions developed pursuant to clause 8.10.2(e).
- (d1) The AEMC may not exercise its powers under 8.10.2(d)(4) or (5), without prior consultation with the MCE.
  - (e) The AEMC must develop and publish guidelines and terms and conditions for the appointment of members of the Advocacy Panel in consultation with the MCE and in accordance with the Rules consultation procedures.
  - (f) (deleted)
  - (g) A person may resign from the Advocacy Panel by giving notice in writing to that effect to the chairperson of the Advocacy Panel and the AEMC.
  - (h) The Advocacy Panel must meet and regulate its meetings and conduct its business in accordance with the Rules.

### **8.10.3 Functions of the Advocacy Panel**

- (a) *The Advocacy Panel must determine the provisional funding requirements for end-user advocacy in the next financial year in accordance with the Rules consultation procedures and submit them to the AEMC by 12 February each year for approval under this clause. The AEMC must approve the funding requirements by 14 March each year, unless satisfied that there are no reasonable grounds for approving the funding requirements.*
- (b) *Not later than 31 March each year the Advocacy Panel must prepare and publish an annual report for the previous financial year which:*
  - (1) *includes details of its funding determination pursuant to clause 8.10.3(a) including the date on which the AEMC approved the funding requirement;*
  - (2) *summarises the submissions received from interested parties regarding the funding requirements for end-user advocacy and the Advocacy Panel's response to each such submission;*
  - (3) *details expenditure in the financial year and the individual projects to which funding was allocated for the financial year; and*
  - (4) *details the extent to which the allocation of funding in the financial year satisfies the principles in clause 8.10.3(d).*
- (b1) The Advocacy Panel must submit a draft of its annual report under clause 8.10.3(b) to the AEMC by 15 March of each year.
- (c) *The AEMC must provide to the Advocacy Panel in respect of each financial year the funds stated in the funding*

*determination for that financial year published in the Advocacy Panel's annual report.*

- (c1) NEMMCO must pay to the AEMC such amounts as are necessary to enable the AEMC to comply with clause 8.10.3(c) in respect of the Advocacy Panel's funding requirements each financial year.
- (d) *The Advocacy Panel must develop and publish funding criteria for use by the Advocacy Panel in allocating funding based on applications for funding for end-user advocacy, in accordance with the Rules consultation procedures and submit them to the AEMC for approval. The AEMC must approve the funding criteria if they are, to the extent practicable, consistent with the following principles:*
  - (1) *there should be diversity in the allocation of funding with respect to the number of end-users represented, the nature of the interests represented and the issues which are the subject of the application for funding;*
  - (2) *a project proposed in an application for funding should:*
    - (i) *relate to the development, design or policy behind the national electricity market or the Rules;*
    - (ii) *relate directly to:*
      - (A) *the responsibilities of the AEMC or NEMMCO under the National Electricity Law and the Rules; or*
      - (B) *the monitoring, investigation or enforcement responsibilities of the AER, or functions of the AER relating to the exemption from registration of Network Service Providers, under the National Electricity Law and the Rules; or*
    - (iii) *have implications for the national electricity market as a whole;*
  - (3) *the applicant for funding must represent the interests of a reasonable number of end-users;*
  - (4) *the applicant for funding must fund a share of the project costs from a source other than funding provided by the Advocacy Panel. In considering the contribution made by an applicant the Advocacy Panel may consider non-financial contributions, for example staff time, in lieu of a direct pecuniary contribution. An applicant may seek to waive the requirement to fund a share of the project costs but the Advocacy Panel has discretion as to whether or not to grant the waiver;*
  - (5) *the applicant for funding must provide a project plan outlining the purpose of the project, the project category, budget estimates and the amount of funding sought from the Advocacy Panel;*
  - (6) *the successful applicant for funding must maintain and make available to the Advocacy Panel appropriate records, accounts and reports on the expenditure of funding provided by the Advocacy Panel on the project; and*

- (7) *the successful applicant for funding must within 2 months of the completion of the project or as soon as reasonably practicable after receipt of a written request for a report from the Advocacy Panel publish a report setting out:*
  - (i) *the purpose of the project; and*
  - (ii) *the issues considered and outcomes of the project;*
- (e) *The Advocacy Panel must develop and publish guidelines for applications to the Advocacy Panel for funding for end-user advocacy, in accordance with the Rules consultation procedures, and submit them to the AEMC for approval. The AEMC must approve those guidelines if they:*
  - (1) *have been through the Rules consultation procedures;*
  - (2) *are consistent with the Rules and National Electricity Market Objective;*  
*and*
  - (3) *specify the procedure for making applications.*
- (f) *The Advocacy Panel must meet at least quarterly and must determine applications for funding having regard to the criteria prepared in accordance with clause 8.10.3(d)"*
- (g) *The Advocacy Panel must ensure that its financial records and accounts are audited by an independent auditor appointed by the Advocacy Panel and approved by the AEMC. If the Advocacy Panel sees fit, it may require a successful applicant for funding to provide, at the applicant's cost, an expenditure report on the project certified by the applicant's auditor.*

8.10.4 (deleted)

8.10.5 *The AEMC may in special circumstances, upon request by the Advocacy Panel, provide additional funding to the Advocacy Panel in excess of the amount determined in the Advocacy Panel's annual report for the financial year. NEMMCO must pay to the AEMC such amounts as are necessary to enable the AEMC to comply with the Advocacy Panel's request under this clause.*