



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

under the National Electricity Law as applied by:

- (a) the National Electricity (South Australia) Act 1996; and
- (b) the Electricity (National Scheme) Act 1997 of the Australian Capital Territory; and
- (c) the National Electricity (New South Wales) Act 1997 of New South Wales; and
- (d) the Electricity - National Scheme (Queensland) Act 1997 of Queensland; and
- (e) the Electricity - National Scheme (Tasmania) Act 1999 of Tasmania; and
- (f) the National Electricity (Victoria) Act 1997 of Victoria; and
- (g) the Australian Energy Market Act 2004 of the Commonwealth.

The Australian Energy Market Commission makes the following Rule under the National Electricity Law.

John Tamblyn  
Chairman  
Australian Energy Market Commission

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

## **1. Title of Rule**

This Rule is the *National Electricity Amendment (Advocacy Panel) Rule 2006*.

## **2. Commencement**

This Rule commences operation on 1 July 2006.

## **3. Amendment of the National Electricity Rules**

The National Electricity Rules are amended as set out in Schedule 1.

## Schedule 1      Amendment of National Electricity Rules

(Clause 3)

### [1]      Clause 2.11.3      Budgeted revenue requirements

Omit clause 2.11.3(b)(6) and substitute:

- (6) *NEMMCO's* obligation to provide funds to the *AEMC* to meet the approved *Advocacy Panel* funding requirements in accordance with clause 8.10.5.

### [2]      Clause 8.10      Advocacy Panel

Omit the clause and substitute:

## 8.10      Advocacy Panel

### 8.10.1      Establishment of the Advocacy Panel

- (a) The *AEMC* must establish an *Advocacy Panel*. The *Advocacy Panel* must, in accordance with clause 8.10:
  - (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;
  - (5) publish an annual report; and
  - (6) ensure appropriate auditing arrangements.

### 8.10.2      Constitution of the Advocacy Panel

- (a) The *Advocacy Panel* is to consist of:
  - (1) a person appointed by the *AEMC* as a member who is also appointed to act as the Chairperson; and
  - (2) 4 members appointed by the *AEMC*.
- (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 practicable:

- (1) have regard to any nominee recommended by the *Ministers of the participating jurisdictions* and to any guidelines prepared under clause 8.10.3(a); and
  - (2) ensure that the person so appointed is independent of the *AEMC*, the *AER*, *Jurisdictional Regulators*, *NEMMCO* and all *Registered Participants*.
- (c) The Chairperson and other members of the *Advocacy Panel* will be appointed for a period of up to 3 years on terms and conditions as to remuneration and other matters specified in the instrument of appointment.
  - (d) If at any time the Chairperson of the *Advocacy Panel* ceases to be independent of the *AEMC*, the *AER*, *Jurisdictional Regulators*, *NEMMCO* and all *Registered Participants*, the *AEMC* must remove that person from the *Advocacy Panel*.
  - (e) Subject to clause 8.10.2(f) any person who has previously served as Chairperson or as a member of the *Advocacy Panel* is eligible for reappointment to the *Advocacy Panel* in accordance with this clause 8.10.2.
  - (f) 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*, the *AER*, *Jurisdictional Regulators*, *NEMMCO* and all *Registered Participants*; or
    - (5) the person fails to discharge the obligations of that office imposed by the *Rules*, the terms and conditions in the instrument of appointment as referred to in clause 8.10.2(c), or the appointment guidelines developed pursuant to clause 8.10.3.
  - (g) The *AEMC* may not exercise its powers under 8.10.2(f)(4) or (5), without prior consultation with the *Ministers of the participating jurisdictions*.
  - (h) A person may resign from the *Advocacy Panel* by giving notice in writing to that effect to the Chairperson of the *Advocacy Panel* and to the *AEMC*.

### **8.10.3 Appointment guidelines**

- (a) The *AEMC* must, in consultation with the *Ministers of the participating jurisdictions*, and in accordance with the *Rules*

*consultation procedures*, develop and publish guidelines for the appointment of members of the *Advocacy Panel*.

- (b) The guidelines referred to in 8.10.3(a) are to set out details of:
  - (1) the remuneration of *Advocacy Panel* members;
  - (2) the requirements for independence of members of the *Advocacy Panel*;
  - (3) the requisite skills, knowledge and experience of members of the *Advocacy Panel*; and
  - (4) any other matter that the *AEMC* considers contributes to good governance.
- (c) Where the *AEMC* considers it necessary, the *AEMC* must review the guidelines and may propose changes to the guidelines following this review.
- (d) Proposed changes must be made to the guidelines in consultation with the *Ministers of the participating jurisdictions*, and in accordance with the *Rules consultation procedures*.
- (e) Clause 8.10.3(d) does not apply to the making of proposed changes that in the *AEMC's* reasonable opinion are of a minor or administrative nature.

#### **8.10.4 Meetings of the Advocacy Panel**

- (a) The *Advocacy Panel* must meet at least quarterly each year and regulate its meetings and conduct its business in accordance with the *Rules* and any guidelines developed and published by the Chairperson of the *Advocacy Panel* for the regulation and conduct of its meetings.
- (b) A quorum for a meeting of the *Advocacy Panel* consists of the Chairperson and 2 other members and the Chairperson has the casting vote in all decisions of the *Advocacy Panel*.
- (c) The Chairperson may determine that a member or members may participate in, and form part of the quorum for, a meeting of the *Advocacy Panel* by telephone, closed circuit television or other means, but only if the member who speaks on any matter at that meeting can be heard by other members.

#### **8.10.5 Funding of the Advocacy Panel**

- (a) For the purposes of clause 8.10:

***Advocacy Panel funding requirements*** means, for each *financial year*:

  - (1) the funding requirements for end-user advocacy; and
  - (2) the estimated expenses of the *Advocacy Panel* in carrying out its functions under the *Rules*.

- (b) The *Advocacy Panel* must determine the proposed *Advocacy Panel* funding requirements in accordance with the *Rules consultation procedures* and submit the proposed requirements to the *AEMC* by 12 February each year for approval under this clause.
- (c) The *AEMC* must, subject to this clause 8.10.5, approve the funding requirements referred to in clause 8.10.5(b) by 14 March each year, (the approved *Advocacy Panel* funding requirements).
- (d) If the *AEMC* considers that the proposed *Advocacy Panel* funding requirements are unreasonable, the *AEMC* may request the *Advocacy Panel* to propose revised requirements for re-submission and approval by the *AEMC*.
- (e) If by 31 March each year, the proposed *Advocacy Panel* funding requirements have not been approved by the *AEMC*, then the *AEMC* may substitute an amount that it considers reasonable in all the circumstances as the approved *Advocacy Panel* funding requirements.
- (f) The *Advocacy Panel* must not vary the amount referred to in clause 8.10.5(a)(2) without the prior written consent of the *AEMC*.
- (g) The *AEMC* may only consent to a variation referred to in clause 8.10.5(f) where it is satisfied that exceptional circumstances have resulted in the request by the *Advocacy Panel* for the variation.
- (h) The *AEMC* must provide to the *Advocacy Panel* in respect of each *financial year* the amount that is the approved *Advocacy Panel* funding requirements.
- (i) *NEMMCO* must pay to the *AEMC* such amounts as are necessary to enable the *AEMC* to comply with clause 8.10.5(g) in respect of the approved *Advocacy Panel* funding requirements each *financial year* as advised by the *AEMC* no later than 15 May each year.
- (j) *NEMMCO* may recover the amounts referred to in clause 8.10.5(i) from *Participant fees* and may allocate the amounts to *Market Customers*.

#### **8.10.6 Guidelines for funding applications and funding criteria**

- (a) 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* (the funding application guidelines).
- (b) The *Advocacy Panel* must submit the funding application guidelines to the *AEMC* for approval, and the *AEMC* must approve those guidelines if they:
  - (1) have been developed in accordance with the *Rules consultation procedures*;
  - (2) are consistent with the *Rules* and *NEM objective*; and
  - (3) specify the procedure for making applications.

- (c) The *Advocacy Panel* must determine applications for funding on at least a quarterly basis, having regard to the funding criteria prepared in accordance with clause 8.10.6(d) and (e).
- (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 the proposed funding criteria to the *AEMC* for approval.
- (e) The *AEMC* may approve the funding criteria submitted to it in accordance with clause 8.10.6(d) if it is satisfied that the criteria 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*; or
    - (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) a 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) a successful applicant for funding must within 2 months of the completion of the project or as soon as 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;
  - (ii) the issues considered and outcomes of the project; and
  - (iii) the costs and expenses of the project.

### **8.10.7 Annual report of the Advocacy Panel**

- (a) Not later than 31 March each year the *Advocacy Panel* must prepare and publish an annual report.
- (b) The annual report of the *Advocacy Panel* must:
  - (1) include details of its approved *Advocacy Panel* funding requirements pursuant to clause 8.10.5;
  - (2) summarise the submissions received from *interested parties* regarding the proposed *Advocacy Panel* funding requirements and the *Advocacy Panel's* response to each submission;
  - (3) detail expenditure for the *financial year* and the individual projects to which funding was allocated for that *financial year*;
  - (4) detail the extent to which the allocation of funding in the *financial year* satisfies the principles in clause 8.10.6(e); and
  - (5) include the audited financial statements of the *Advocacy Panel*.
- (c) The *Advocacy Panel* must submit a draft of its annual report under clause 8.10.7(b) to the *AEMC* by 15 March of each year.

### **8.10.8 Audit**

- (a) The *Advocacy Panel* must ensure to the extent practicable that the financial records and accounts of the *Advocacy Panel* are audited by an independent auditor who is appointed by the *Advocacy Panel* with the approval of the *AEMC*.
- (b) The *Advocacy Panel* may require a successful applicant for funding to conduct an audit of the financial records, accounts and expenditure reports prepared and maintained by the applicant.
- (c) The audit referred to in clause 8.10.8(b) must be carried out by an independent auditor, who is appointed by the *Advocacy Panel* with the approval of the *AEMC*, and the *Advocacy Panel* bears the cost of any audit undertaken.



- (d) The *AEMC* may, when the *AEMC* considers it appropriate to do so, direct the *Advocacy Panel* to conduct an audit of all or any particular activities of the *Advocacy Panel* to determine whether the *Advocacy Panel* is carrying out those activities effectively, efficiently and in compliance with the *Rules*.
- (e) The audit referred to in clause 8.10.8(d) must be carried out by an independent auditor, who is appointed by the *AEMC*, and the *Advocacy Panel* bears the cost of any such audit undertaken.

#### [4] Chapter 10

In Chapter 10, insert in alphabetical order, the following definition:

##### **Minister of a participating jurisdiction**

Has the same meaning as in the *National Electricity Law*.

#### [5] Chapter 11

After Clause 11.2 insert:

### **11.3 Rules consequent on making of the National Electricity Amendment (Advocacy Panel) Rule 2006**

#### **11.3.1 Continuation of things done under old clause 8.10**

- (a) For the purposes of clause 11.3.1:
  - amending Rule** means the National Electricity Amendment (Advocacy Panel) Rule 2006;
  - commencement date** means the date of commencement of the amending Rule;
  - new clause 8.10** means clause 8.10 after the commencement of the amending Rule;
  - old clause 8.10** means clause 8.10 before the commencement of the amending Rule.
- (b) On the commencement date:
  - (1) persons appointed under the old clause 8.10 and clauses 24 and 25 of Schedule 2 to the *National Electricity Law* as Acting Chairperson and members of the *Advocacy Panel*, are taken to be the persons appointed to comprise the interim *Advocacy Panel* under the new clause 8.10 until 1 October 2006;
  - (2) any action taken by the interim *Advocacy Panel* referred to in clause 11.3.1(b)(1) for the purpose of preparing the

provisional funding requirements for end-user advocacy for the 2006-2007 *financial year*, is deemed to have been taken for the purposes of the new clause 8.10 and continues to have effect for this purpose;

- (3) an application for funding for end-user advocacy that was determined by the *Advocacy Panel* in accordance with the old clause 8.10 as at the commencement date, continues in effect and is taken to be a determination made by the *Advocacy Panel* under the new clause 8.10;
  - (4) an application for funding for end-user advocacy made to, but not determined by, the *Advocacy Panel* under the old clause 8.10 as at the commencement date, is taken to be an application under the new clause 8.10, and the *Advocacy Panel* must take any action after the commencement date for the purpose of determining that application in accordance with the new clause 8.10;
  - (5) guidelines for making funding applications and funding criteria in force under the old clause 8.10.3, continue to have effect, and are taken to have been issued, for the purposes of the new clause 8.10.6 until 1 March 2007;
  - (6) guidelines for the appointment of members of the *Advocacy Panel* in force under the old clause 8.10.2(e), continue to have effect and are taken to have been issued, for the purposes of the new clause 8.10.3 until 1 March 2007; and
  - (7) any action taken by *NEMMCO* for the purpose of recovering amounts from *Participant fees* for the 2006-2007 *financial year* in contemplation of the commencement of the amending Rule, is deemed to have been taken for the purposes of the amending Rule.
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