

Standing Committee of Officials of the
Ministerial Council on Energy

2006 Legislative Package:
Consumer Advocacy Arrangements

April 2007

Introduction

The Ministerial Council on Energy (MCE) agreed in November 2005 to strengthen the consumer advocacy arrangements for both gas and electricity including a long term funding model to facilitate consumer engagement with industry.

The legislative basis for the proposed consumer advocacy arrangements forms part of the 2006 legislative package. The first exposure draft of the relevant proposed legislation was released on 1 November 2006 (see [MCE Bulletin No. 71](#) – 2006 Legislative Package: Gas and Consumer Advocacy).

Stakeholder submissions to the *Draft Australian Energy Market Commission Establishment (Consumer Advocacy Panel) Amendment Bill 2006* (referred to hereafter as ‘the Bill’), were sought by 19 December 2006. Eleven submissions were received, canvassing a wide range of issues. The Standing Committee of Officials (SCO) has prepared a public response to each issue raised by stakeholders (refer to document entitled *SCO Response to Issues Raised in Submissions on Consumer Advocacy*).

The issues raised by stakeholders have been considered by the SCO and many have been addressed in the second exposure draft of the Bill. This document, accompanied by the proposed legislation and regulations is designed to facilitate meaningful consultation on the proposed legislative changes, and as such contains a high level description of the substantive changes to the first exposure draft of the Bill.

The MCE intends to have the new consumer advocacy legislation passed in the South Australian Parliament at the same times as the other elements of the 2006 legislative package.

Australian Energy Market Commission Establishment (Consumer Advocacy Panel) Amendment Bill 2007 (SA)

The new Panel established under the amendments to the *Australian Energy Market Commission Establishment Act 2004 (SA)* will replace the Consumer Advocacy Panel established under Clause 8.10 of the National Electricity Rules. The National Electricity Rules will be amended to remove references to the existing Panel. The current obligations on the National Electricity Market Management Company to collect its share of the Panel's funding from market participants and to transfer the funds to the Australian Energy Market Commission will be retained in the Rules (Clause 8.10.5 (h)–(j)).

Statutory Immunity – New Clause 18

The current section 18 of the Act will be deleted and replaced with a new provision which deals with the statutory immunity of AEMC personnel. The new section will provide the AEMC Commissioners and staff with immunity from personal liability where they have acted in good faith in the performance of their functions. Similarly, the new clause 40 provides the same immunity to Panel members and staff. Any liability that would have arisen will lie instead against the AEMC.

Functions of the Panel – New Clause 29(2)

The functions of the Panel have been clarified such that the Panel may initiate its own research projects to be undertaken by other persons or bodies and funded through the provision of grants.

Objectives – New clause 30

A number of submissions were received from a wide range of stakeholders which considered that the Bill did not adequately reflect the policy intention that all consumers of energy should benefit from the new consumer advocacy arrangements.

The Bill has been amended to emphasize that the Panel must seek to promote the interests of all consumers of electricity or natural gas while paying particular regard to benefiting small to medium consumers of electricity or natural gas. The proposed focus on small to medium consumers is not designed to limit consumer advocacy and research funding to a narrow group, but to ensure that a wide range of suitable projects which benefit all consumers are eligible to be considered for funding.

For further information on the threshold definition of small to medium consumers in the regulations, please refer to explanatory materials on the regulations below.

Meeting of the Panel – new clause 38

New clause 38(6) allows the Chair of the Panel to have a casting vote if there are equal votes between Panel members.

Annual Budget – New clause 41

New clause 41(4) clarifies the intention of clause 41(1)(a) such that the Panel will be required, in preparing its annual budget, to separately budget for costs relating to projects for electricity, natural gas and for projects that covers both areas. This process will assist the AEMC and NEMMCO in its own budget process so that they will know the amount that the Panel requires to perform its functions.

In response to submissions received, the Bill has been amended to clarify that the Panel will have a broad duty, in preparing its budget, to seek to maximise the proportion of the total budget available for grant funding while minimising the proportion of the total budget to be allocated to administrative costs – new clause 41(6).

The Bill has also removed the old clause 44(8) which previously allowed the Panel to vary its approved budget. The current Bill will require the Panel to conduct its affairs within the constraints of the approved budget. This provision is removed as the ability for the Panel to increase or decrease its total budget would cause excessive administrative burdens upon the AEMC and NEMMCO, as these bodies do not have the ability to vary their own budgets.

Grant funding and Provision of funding – New clauses 43 and 44

New clause 43 has been inserted to cover the source of funding for meeting grant funding. It sets out that NEMMCO will be responsible for grant funding for consumer advocacy and research projects that relate to electricity and the AEMC will be responsible for grant funding for consumer advocacy and research projects that relate to natural gas. Where there is a project that benefits both electricity and natural gas consumers, both bodies will be jointly responsible for the costs associated with grant funding. Funding gas advocacy by the AEMC is only an interim measure, pending resolution of gas funding arrangements.

New clause 44(2) deals with how funds are to be made available for consumer advocacy and research projects. NEMMCO, the AEMC and the Panel are to agree on a scheme in relation to the frequency of funds being made available for the Panel's functions. In the absence of an agreement, NEMMCO and the AEMC would be required to make the funds available on a quarterly basis in advance.

New clause 44(2) sets out that the money made available by NEMMCO and the AEMC for the purposes of providing grant funding will be held by the AEMC on behalf of the Panel. This amount will be held in an account that is separate from the AEMC's general accounts and is not to be used other than for the purposes of the Panel's functions.

Implementation of determinations of the Panel – New clause 46

Clause 46(3) allows the Panel to determine the terms and conditions on which a grant is to be made. New clause 46(4) provides that conditions may include, for example, a requirement for a grant recipient who has received funding from the Panel for a particular project to provide an independent financial audit with regard to the use of the funds it has received.

Annual Report – New clause 47

Consistent with the requirements of the annual budget, the Panel will be required, in its annual report, to provide a breakdown of grants made between gas and electricity funding during the year.

Exemption from the South Australian State Procurement Act 2004

Additionally, the Bill is intended to be amended to provide an exemption for the Australian Energy Market Commission (AEMC) from the South Australian *State Procurement Act 2004*. Although the AEMC is established through State legislation, as it is a national body, it would be inappropriate for the AEMC to be subject to this particular South Australian legislation. This arrangement mirrors the exemption already provided to the *Public Sector Management Act (1995)*.

Regulations to Australian Energy Market Commission Establishment (Consumer Advocacy Panel) Amendment Bill 2007

Definition of small to medium consumer – new regulation 3A

The new regulation 3A defines small to medium consumers as those that use less than 4GWh of electricity or 100TJ of natural gas per year.

Annual Report – new regulation 5

New regulation 5 sets out the minimum contents of the annual report to contain at least the following information:

- A summary of the applications for grant funding received and the Panel's response to each application;
- A summary of the individual projects to which grant funding was allocated and the amount of the funding granted; and
- A statement from the Panel discussing the extent to which the allocation of funding in the financial year satisfies the Panel's objectives.

Annual Budget – new regulation 6

The Panel would be required, in preparing its annual budget, to publish a draft of the budget on its website for public comment. This provides an opportunity for the public to scrutinise the Panel's budget and to provide submissions to the proposed budget.

Criteria for grant allocation – new Schedule 1

The regulations set out the criteria for funding allocations including that there is diversity in the allocation of funding with respect to the number of end users that are represented and the nature of their interests.

Additionally, the criteria provide a cap on research projects that the Panel can initiate to a maximum of 25 per cent of the Panel's total annual budget.

The criteria also provide that projects that are intended to benefit consumers of electricity or natural gas should relate to a wide range of issues dealing with the development or design of policies associated with the national electricity market and/or natural gas as well as responsibilities of the Australian Energy Regulator, the AEMC and NEMMCO.

Applications for funding must relate to a significant number of consumers. Applications will also be required to provide details of the purpose of the grant; whether the grant relates to electricity or natural gas or both; the proposed budget and the amount sought for the project. Applicants will generally be required to fund a portion of the costs of the project unless the Panel explicitly agrees to waive this requirement.

To reduce overlap, where an approved project benefits both consumers of electricity and natural gas, only one set of reporting requirements for the entire project are required.

Consultation

The Standing Committee of Officials of the MCE welcomes feedback on the draft bill and regulations.

Comments are sought on the revised ***draft Bill by 14 May 2007.***

Comments are sought on the ***draft regulations by 28 May 2007.***

Submissions relating to the amendments and draft regulations can be sent to the MCEMarketReform@industry.gov.au. Any comments will be considered prior to the finalisation of the Bill to be introduced into the South Australian Parliament. It is intended that these arrangements will provide a more effective framework for funding consumer advocacy across the gas and electricity sectors as the full national framework is being implemented.