

South Australia

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

A BILL FOR

An Act to amend the *Australian Energy Market Commission Establishment Act 2004*.

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Bill 2007**
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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Australian Energy Market Commission Establishment (Consumer Advocacy Panel) Amendment Act 2007*.

5 **2—Commencement**

This Act will come into operation on a day to be fixed by proclamation.

3—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

10 **Part 2—Amendment of *Australian Energy Market Commission Establishment Act 2004***

4—Insertion of heading

Before section 1 insert:

Part 1—Preliminary

5—Amendment of section 3—Interpretation

- (1) Section 3(1), definition of *Chairperson*—delete the definition and substitute:

Chairperson means (according to context)—

- (a) the Commissioner appointed to be Chairperson of the AEMC under section 12;
- (b) the Panel member appointed to be Chairperson of the Panel under section 32;

- (2) Section 3(1), definitions of *Gas Pipelines Access Application Act*, *Gas Pipelines Access Law* and *Gas Pipelines Access Regulations*—delete the definitions

- (3) Section 3(1), definition of *National Electricity Code*—delete the definition

- (4) Section 3(1)—after the definition of *National Electricity Regulations* insert:

National Electricity Rules means the National Electricity Rules as defined in section 2 of the National Electricity Law;

- (5) Section 3(1), definition of *National Energy Law*, paragraphs (d) to (h) (inclusive)—delete the paragraphs and substitute:

- (d) the National Electricity Rules; or
- (e) a National Gas Application Act; or
- (f) the National Gas Law; or
- (g) the National Gas Regulations; or
- (h) the National Gas Rules;

- (6) Section 3(1), definition of *National Third Party Access Code for Natural Gas Pipeline Systems*—delete the definition and substitute:

National Gas Application Act means—

- (a) the *National Gas (South Australia) Act 2007*; or
- (b) the *Australian Energy Market Act 2004* of the Commonwealth; or
- (c) any other Act of a State or Territory of the Commonwealth—
- (i) that applies the National Gas Law as a law of that jurisdiction; or
- (ii) that incorporates the National Gas Law, with or without modification, into the text of the Act and then applies that text as a law of that jurisdiction;

National Gas Law means the National Gas Law set out in the Schedule to the *National Gas (South Australia) Act 2007*;

National Gas Regulations means the *National Gas (South Australia) Regulations* as applied by a National Gas Application Act;

National Gas Rules means the National Gas Rules as defined in section 2 of the National Gas Law;

natural gas has the same meaning as in the National Gas Law;

Panel means the Consumer Advocacy Panel established under section 28;

Panel member means the Chairperson or another member appointed to the Panel under section 32;

small to medium consumer—

- 5 (a) of electricity—means a consumer whose annual consumption of electricity does not exceed a level (expressed in megawatt hours) fixed by regulation for the purposes of this definition;
- (b) of natural gas—means a consumer whose annual consumption of natural gas does not exceed a level (expressed in terajoules) fixed by regulation for the purposes of this definition.
- 10

6—Insertion of heading

After section 4 insert:

Part 2—Australian Energy Market Commission

7—Substitution of section 18

15 Section 18—delete the section and substitute:

18—Immunity

- 20 (1) No personal liability attaches to a Commissioner or a member of the staff of the AEMC for an act or omission in good faith in the performance or exercise, or purported performance or exercise, of a function or power associated with the activities of the AEMC under this Act.
- (2) A liability that would, but for subsection (1), lie against a person lies instead against the AEMC.

8—Amendment of section 26—Accounts and audit

25 Section 26—after subsection (1) insert:

- (1a) The accounts must include a proper record of payments into, and out of, the account established for the purposes of Part 4.

9—Amendment of section 27—Annual report

Section 27—after subsection (1) insert:

- 30 (1a) The AEMC must include as part of its report the separate report of the Panel made to it for the relevant financial year under Part 4.

10—Insertion of Parts 3, 4 and 5

After section 27 insert:

Part 3—Consumer Advocacy Panel

Division 1—Establishment and Functions of the Panel

28—Establishment of Panel

The *Consumer Advocacy Panel* is established.

29—Functions of the Panel

(1) The Panel has the following functions:

- (a) to identify areas of research that would be of benefit to consumers of electricity or natural gas (or both);
- (b) to develop, and submit for the approval of the MCE, guidelines for the allocation of grants for consumer advocacy projects and research projects for the benefit of consumers of electricity or natural gas (or both);
- (c) to prepare, and submit for the approval of the MCE, annual budgets for the allocation of grants for consumer advocacy projects and research projects for the benefit of consumers of electricity or natural gas (or both);
- (d) to determine (subject to the approved guidelines and the approved budget) how grants for consumer advocacy projects and research projects for the benefit of consumers of electricity or natural gas (or both) are to be allocated;
- (e) to prepare, and submit for the approval of the MCE, guidelines for the assistance of applicants for grants for consumer advocacy projects and research projects for the benefit of consumers of electricity or natural gas (or both);
- (f) to publish on the Panel's website and in other appropriate ways the results of research supported by a grant under Part 4 and other research of interest to consumers of electricity or natural gas (or both);
- (g) to exercise any other functions conferred on the Panel by the National Energy Laws or the Jurisdictional Energy Laws;
- (h) to exercise any power or function that is reasonably incidental to any of the foregoing.

(2) The Panel may, in performing its functions with respect to the making of grants—

- (a) initiate its own research projects to be funded through the provision of grants;
- (b) invite or accept applications for grants from other persons or bodies.

- (3) The Panel may perform its functions and exercise its powers in and outside the State.

30—Objectives

In performing its functions—

- (a) the Panel must have regard to any relevant objectives set out in National Energy Laws; and
- (b) 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.

31—Independence

Subject to this Act, the Panel is not subject to direction by the AEMC or the MCE in the performance of its functions.

Division 2—Membership of Panel

32—Membership of Panel

- (1) The Panel is to consist of a Chairperson and 4 other members appointed by the Minister.
- (2) The Chairperson and the other Panel members must be persons who are recommended for appointment as such by the MCE on the basis that together they have knowledge, experience or abilities of the following kinds:
- (a) knowledge of the energy sector;
- (b) an ability to assess funding applications against specified criteria;
- (c) experience in public interest advocacy;
- (d) an ability to assess proposals for energy sector research that would benefit consumers of electricity or natural gas.
- (3) A person is not eligible for appointment to the Panel unless the person has made a statutory declaration disclosing to the AEMC and the MCE interests that—
- (a) conflict, or could conflict, with the Panel member's duty as such; or
- (b) would be reasonably perceived as being interests of a kind that would create, or could lead to, such a conflict.
- (4) Before the MCE recommends a person for appointment to a vacant position in the membership of the Panel—
- (a) the AEMC must, by advertisement in a newspaper circulating generally throughout Australia—

- (i) call for applications from persons who may be interested in appointment to the vacant position; and
 - (ii) fix a date (the *cut-off date*) by which applications are to be submitted to the AEMC; and
 - (b) the AEMC must provide the MCE with a list of the applicants who submitted applications before the cut-off date and a short-list of applicants whom the AEMC would recommend for the appointment; and
 - (c) the MCE must consider the short-listed applicants; and
 - (d) the person to be appointed must have made the statutory declaration required under subsection (3).
- (5) The MCE is not, however, limited to the short-listed applicants in making recommendations for appointment to the Panel.
- (6) An act or proceeding of the Panel is not invalid by reason only of a vacancy in its membership or a defect in the appointment of a member.

33—Terms and conditions of appointment

- (1) A Panel member will be appointed—
- (a) for a term (not exceeding 4 years) specified in the instrument of appointment; and
 - (b) on conditions (including conditions as to remuneration) specified in the instrument of appointment.
- (2) A Panel member's term and conditions of appointment are to be fixed in accordance with a resolution of the MCE.
- (3) It will, however, be a condition of appointment that the Panel member remain independent (to the satisfaction of the MCE) of—
- (a) the regulatory authorities exercising functions or powers under the National Energy Laws; and
 - (b) corporations engaged in the industries regulated under the National Energy Laws; and
 - (c) bodies prescribed by regulation for the purposes of this paragraph.

34—Removal from office

- (1) The Minister must, if the MCE so resolves, remove a Panel member from office for—
- (a) breach of, or non-compliance with, a condition of appointment; or
 - (b) misconduct; or
 - (c) failure or incapacity to carry out official functions satisfactorily.

- (2) If the AEMC has reason to believe that material grounds for removal of a Panel member exist, the AEMC must bring the matter to the attention of the MCE.

35—Vacation of office

- 5 (1) The office of a Panel member becomes vacant if the member—
- (a) dies; or
 - (b) completes a term of office and is not re-appointed; or
 - (c) resigns by written notice to the Minister; or
 - (d) is removed from office under section 34.
- 10 (2) On the office of a Panel member becoming vacant, a person must be appointed in accordance with this Act to the vacant office.

36—Acting appointments as Chairperson or Panel member

- 15 (1) The AEMC may—
- (a) appoint a Panel member to act in the office of the Chairperson during any period for which the Chairperson is unable to perform official functions or the office of the Chairperson is vacant; or
 - (b) appoint a person to act in the office of a Panel member for any period for which the member is unable to perform official functions, is acting in the office of the Chairperson, or the office is vacant.
- 20 (2) A person appointed as acting Chairperson has, while acting in the office of the Chairperson, all the functions and powers of the Chairperson and a person appointed as an acting Panel member has, while acting as such, all the functions and powers of a Panel member.
- 25 (3) If—
- (a) the office of the Chairperson or a Panel member is vacant; and
 - (b) a person is appointed under this section to act in the vacant office,

the acting appointment will be for a period ending when the office is filled by an ordinary appointment or for a period of 6 months (whichever ends first).

- 35 (4) The conditions of appointment of an acting Chairperson or acting Panel member will be as determined by the AEMC subject to relevant guidelines (if any) issued by the MCE.
- 40 (5) An act or proceeding of the Panel is not invalid by reason only of a defect in an appointment under this section or the fact that a person appointed under this section acts in the office concerned when the circumstances for so acting have not yet arisen or have ceased to exist.

Division 3—The Panel's Executive Director and other staff

37—Executive Director and other staff

- (1) There is to be an Executive Director of the Panel.
- 5 (2) The Panel is to have such other staff as are reasonably necessary for the effective performance of its functions.
- (3) The Executive Director and other staff of the Panel are to be appointed by agreement between the AEMC and the Panel on conditions determined by agreement between the AEMC and the Panel.
- 10 (4) The Executive Director and other staff of the Panel are to be employed by the AEMC but are not to be subject to any direction by the AEMC in assisting the Panel with the performance of the Panel's functions.
- 15 (5) The AEMC cannot remove the Executive Director or any other member of the Panel's staff from office unless the Panel agrees.

Division 4—The Panel's Proceedings

38—Meetings of the Panel

- (1) The Chairperson may convene as many meetings of the Panel as he or she considers necessary for the efficient conduct of its affairs.
- 20 (2) The Chairperson must convene a meeting of the Panel if requested to do so in writing signed by the other members.
- (3) The Chairperson must preside at a meeting of the Panel.
- (4) A quorum of the Panel consists of the Chairperson and 2 other members.
- 25 (5) A decision carried by at least 3 votes cast by members present at a meeting of the Panel concur is a decision of the Panel.
- (6) Each member present at a meeting of the Panel has 1 vote on a matter arising for decision and, if the votes are equal, the Chairperson may exercise a casting vote.
- 30 (7) If the Panel so determines, a telephone, video or other form of conference between members of the Panel will, for the purposes of this section, be taken to be a meeting of the Panel at which the participating members are present.
- (8) The Panel must have accurate minutes kept of its meetings.
- 35 (9) To the extent the Panel's procedure is not prescribed by provisions of this Act (or the regulations), the Panel may regulate its own procedure.

39—Disclosure of interest

- (1) If—
- (a) a Panel member has a direct or indirect interest in a matter under consideration, or about to be considered, by the Panel; and
 - (b) the interest could conflict with the Panel member's duty, the Panel member must, as soon as practicable, disclose the interest at a meeting of the Panel.
- (2) A disclosure under subsection (1) must be recorded in the minutes of the meeting at which the disclosure is made.
- (3) A Panel member who discloses a potential conflict of interest in relation to a matter under this section must not, unless the Panel otherwise determines, take part in any deliberations or decision of the Panel in relation to the matter.

Division 5—Immunity**40—Immunity**

- (1) No personal liability attaches to a Panel member or a member of the staff of the Panel for an act or omission in good faith in the performance or exercise, or purported performance or exercise, of a function or power associated with the activities of the Panel.
- (2) A liability that would, but for subsection (1), lie against a person lies instead against the AEMC.

Part 4—Panel funding, grants and annual report**41—Annual budget**

- (1) The Panel must prepare, and submit for the approval of the MCE, budgets for—
- (a) administrative costs associated with the work of the Panel, including the remuneration of Panel members and the costs of employing its staff; and
 - (b) the allocation of available funding.
- (2) A budget is to be prepared for each financial year and is to be submitted for the approval of the MCE by 31 October in the year preceding the financial year to which the budget relates.
- (3) The Panel must furnish a copy of its proposed budget to the AEMC at the same time as it submits that budget to the MCE under subsection (2).

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- (4) The part of a budget prepared under subsection (1)(a) must deal with the allocation of administrative costs (in the form of proposals or projections) between—
 - (a) costs relating to the performance of the Panel's functions relevant to consumers of electricity; and
 - (b) costs relating to the performance of the Panel's functions relevant to consumers of natural gas; and
 - (c) costs relating to the performance of the Panel's functions relevant to both consumers of electricity and consumers of natural gas.
 - (5) The part of a budget prepared under subsection (1)(b) must deal with the allocation of grants (in the form of proposals or projections) between—
 - (a) consumer advocacy projects for the benefit of consumers of electricity; and
 - (b) research projects for the benefit of consumers of electricity; and
 - (c) consumer advocacy projects for the benefit of consumers of natural gas; and
 - (d) research projects for the benefit of consumers of natural gas; and
 - (e) projects in research or consumer advocacy for the joint benefit of consumers of electricity and consumers of natural gas.
 - (6) The Panel must, in preparing a budget—
 - (a) seek to maximise the amount of funding available for the allocation of grants by keeping administrative costs associated with the work of the Panel to a minimum; and
 - (b) clearly distinguish between—
 - (i) money that is proposed to be made available for research projects initiated by the Panel; and
 - (ii) money that is proposed to be made available for research projects put forward by other persons or bodies.
 - (7) The Panel must, in preparing a budget, undertake consultations in accordance with the regulations.
 - (8) The MCE may approve the budget with or without amendment.

42—Funding for administrative costs associated with the Panel

The AEMC and NEMMCO are to be responsible for meeting all administrative costs associated with the work of the Panel, as set out in the approved budget, on the basis that—

- 5
- (a) AEMC will be responsible for such costs relating to the performance of functions relevant to consumers of natural gas; and
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- (b) NEMMCO will be responsible for such costs relating to the performance of functions relevant to consumers of electricity; and
- 15
- (c) both bodies will be jointly responsible for such costs relating to the performance of functions relevant to both consumers of electricity and consumers of natural gas (on the basis that the budget will specify the division of costs between the 2 bodies).

43—Grant funding

The AEMC and NEMMCO are to be responsible for meeting the grant funding requirements of the Panel, as set out in the approved budget, on the basis that—

- 20
- (a) AEMC will be responsible for grant funding of consumer advocacy and research projects for the benefit of consumers of natural gas; and
- 25
- (b) NEMMCO will be responsible for grant funding of consumer advocacy and research projects for the benefit of consumers of electricity; and
- 30
- (c) both bodies will be jointly responsible for such costs relating to grant funding of projects in research or consumer advocacy for the joint benefit of consumers of electricity and consumers of natural gas (on the basis that the budget will specify the division of costs between the 2 bodies).

44—Provision of funding

- 35
- (1) The amounts to be provided by NEMMCO and AEMC under this Part are to be made available under a scheme agreed between NEMMCO, AEMC and the Panel or, in default of an agreement, on a quarterly basis in advance.
- (2) Any money provided under subsection (1) is to be held by AEMC in a separate account and is not to be dealt with except as provided by this Part.

45—Criteria and guidelines for grant allocation

- 40
- (1) The criteria for grant allocation are to be determined by the MCE and promulgated in the form of regulations under this Act.

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- (2) The Panel is responsible for developing, in consultation with the AEMC and other interested stakeholders, guidelines for grant allocation that are consistent with the MCE's criteria.
 - (3) The guidelines are to be submitted for the approval of the MCE.
 - (4) The MCE may approve the guidelines with or without amendment.
 - (5) The criteria and approved guidelines for grant allocation are to be published on the Panel's website.

46—Implementation of determinations of the Panel

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- (1) The AEMC must, as directed by the Panel, make grants towards consumer advocacy projects and research projects for the benefit of consumers of electricity or natural gas (or both).
 - (2) A direction under this section must be consistent with—
 - (a) the approved budget; and
 - (b) the MCE's criteria for grant allocation; and
 - (c) the approved guidelines (if any) for grant allocation.
 - (3) The terms and conditions on which a grant is to be made are to be as determined by the Panel.
 - (4) The conditions may include, for example—
 - (a) that the person to whom the grant is made must ensure that the application of the funds is audited by an independent person;
 - (b) that the person to whom the grant is made must provide a report or reports on the activities undertaken or outcomes achieved on account of work undertaken pursuant to the grant.
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47—Annual report

- (1) The Panel must, within 14 days after the end of each financial year, submit to the AEMC a draft report—
 - (a) on the grants made for projects for consumer advocacy or research during the financial year, distinguishing between each form of project identified under section 41(5); and
 - (b) on the outcomes achieved during the financial year by projects for consumer advocacy or research supported by grants made during the financial year or earlier; and
 - (c) generally on the work of the Panel during the financial year.
 - (2) The draft report must conform with any requirements imposed by regulation.
 - (3) The Panel must—
 - (a) consider any comments made by AEMC on the draft report within 28 days after submission of the draft report; and
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- (b) make any revisions of the draft report the Panel considers appropriate in the light of those comments; and
 - (c) submit a final report to the AEMC within 2 months after the end of the financial year to which the report relates.
- 5 (4) The Panel's final report is to be included as part of the AEMC's report for the relevant financial year.
- (5) The Panel's final report for each financial year is to be published on the Panel's website.

Part 5—Miscellaneous

48—*Public Sector Management Act 1995* not to apply

The *Public Sector Management Act 1995* does not apply in relation to—

- (a) the AEMC; or
- (b) a Commissioner; or
- 15 (c) the chief executive or other staff of the AEMC; or
- (d) the Panel; or
- (e) a Panel member; or
- (f) the Executive Director or other staff of the Panel.

11—Renumbering of section 28—Regulations

20 Section 28—renumber as section 49 (to be included as part of Part 5)

Schedule 1—Transitional provisions

1—Interpretation

25 Terms used in this Schedule that are defined in the *Australian Energy Market Commission Establishment Act 2004* have the same respective meanings as in that Act.

2—Membership of Consumer Advocacy Panel

- (1) Subject to subclause (3), the person who was Chairperson of the Advocacy Panel under clause 8.10 of the National Electricity Rules immediately before the commencement of this clause will be taken to have been appointed as the Chairperson of the Panel on the same terms and conditions as to remuneration and other matters as were specified in the instrument of the person's appointment as Chairperson of the Advocacy Panel.
- 30 (2) Subject to subclause (3), a person who was a member (other than the Chairperson) of the Advocacy Panel under clause 8.10 of the National Electricity Rules immediately before the commencement of this clause will be taken to have been appointed as a member of the Panel on the same terms and conditions as to remuneration and other matters as were specified in the instrument of the person's appointment as a member of the Advocacy Panel.
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- 5 (3) An appointment under this clause will be for an interim term that expires when the first members of the Consumer Advocacy Panel are appointed by the Minister under Part 3 Division 2 of the *Australian Energy Market Commission Establishment Act 2004*, as enacted by this Act (and the procedures to appoint those members under that Act may be commenced at any time after the commencement of this Act in accordance with a timetable determined by the MCE).

3—Panel to decide certain funding applications

- 10 (1) This clause applies to an application for funding lodged with the Advocacy Panel under clause 8.10 of the National Electricity Rules and not determined by the Advocacy Panel immediately before the commencement of this clause.
- (2) The Panel must determine an application to which this clause applies and may, subject to Part 4 of the *Australian Energy Market Commission Establishment Act 2004*, as enacted by this Act, give a direction for the making of a grant by the AEMC to the applicant under that Part.

4—Payment of funding balance to AEMC

- 15 (1) This clause applies to the amount remaining with the Advocacy Panel immediately before the commencement of this clause from the money provided to the Advocacy Panel for the approved Advocacy Panel funding requirements.
- 20 (2) The amount to which this clause applies must be paid to the AEMC and placed by the AEMC in a separate account in accordance with Part 4 of the *Australian Energy Market Commission Establishment Act 2004*, as enacted by this Act.

5—Contracts, etc

- 25 (1) All rights and liabilities held by or on behalf of the Advocacy Panel are transferred to the AEMC.
- (2) The transfer of rights and liabilities under this clause operates by force of this clause and despite the provisions of any other law.
- (3) All references to the Advocacy Panel in an instrument or agreement that gives rise to or evidences a right or liability under subclause (1) will have effect as if it were a reference to the AEMC.

6—Initial Panel budget

30 The MCE may approve an initial budget which will be taken to be the approved budget under Part 4 of the *Australian Energy Market Commission Establishment Act 2004*, as enacted by this Act, for the financial year preceding the first financial year that commences after the commencement of this clause.