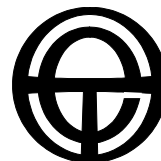


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**Proposed National Electricity Rule Change Process**

**Submission to Proposed National Electricity Rule Change Process**

27 August 2004

**Public Benefits Must Be Considered**

The Market Objectives, upon which the Rule Making Criteria is based, are overly narrow and inappropriately exclude the public benefits that should be considered in the authorisation of market arrangements. This erodes confidence in the AEMC's ability to effectively consider Code Change Proposals. The exclusion of wider public benefits from the Rule Making Criteria supports the case for the ACCC to avoid reliance on the AEMC's consultation processes under 44ZZAB of the TPA.

If the ACCC is to rely on the AEMC to undertake consultation processes, the Rule Making Criteria must be widened to include public benefits to reflect current jurisprudence. It is noted that the Courts have, in past cases, taken a very broad view of what constitutes a public benefit and that the ACCC considers all benefits, be they economic, financial or environmental, in determining to authorise arrangements. The AEMC should provide consistency in this broad view of public benefits.

The contradiction that the narrowing of the net benefits test brings about is highlighted by the proposal for the AEMC to invite comment on whether the Code Change Proposal would 'be likely to result in any detriment to the public'.<sup>1</sup> This consideration of public benefit, however, comes too late to the Rule Change Process as it is absent from the prior Market Objectives which constitute the Rule Making Criteria.

The Rule Making Criteria upon which Rule Change Proposals are assessed should be improved in one of the following ways:

- a) the net public benefits test should be widened to include assessment of Rule Change Proposals against *both* the Market Objectives *and* public benefit or detriment; or
- b) the Market Objectives should be widened to include regard for whether the Proposed Rule Change would be likely to result in any benefit or detriment to the public.

The 'net benefits test' should also be restored to its full title of 'net *public* benefits test'.

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<sup>1</sup> Ministerial Council on Energy, Standing Committee, *Proposed National Electricity Rule Change Process: Consultation Paper*, August 2004, p. 16.