

Standing Committee of Officials of the
Ministerial Council on Energy

2006 Legislative Package:
Consumer Advocacy Arrangements

November 2006

Introduction

This document seeks to explain the legislative changes proposed by the Ministerial Council on Energy (MCE) for the purpose of strengthening consumer advocacy arrangements for both gas and electricity, including a long term funding model to facilitate consumer engagement with industry. This document, and the attached draft legislation, should be read in conjunction with the "2006 Legislative Package: Gas Legislative Framework" document issued this month by the Standing Committee of Officials of the MCE.

The legislative basis for the proposed consumer advocacy arrangements forms part of the 2006 legislative package. A draft of the relevant proposed legislation has been released with this paper (see the *Draft Australian Energy Market Commission Establishment (Consumer Advocacy Panel) Amendment Bill 2006*, referred to hereafter as 'the Bill'). This document is designed to facilitate meaningful consultation on the proposed legislative changes, and as such contains a high level description of the Bill's provisions.

The MCE has decided that the most appropriate mechanism to implement the new consumer advocacy arrangements would be via amendments to the South Australian *Australian Energy Market Commission Establishment Act 2004*. Unlike the arrangements for the National Gas Law and National Electricity Law, these arrangements do not have to be formally applied in other jurisdictions by way of application Acts.

The MCE intends to have the new consumer advocacy arrangements in place by 1 July 2007, consistent with the other elements of the legislative package.

Policy Background

The current national consumer advocacy arrangements were developed by the National Electricity Code Administrator (NECA) in 2001 recognising that end-users should have the same rights to be involved in national electricity market decision-making as participants in the market. Clause 8.10 of the National Electricity Rules governs the current consumer advocacy arrangements, which include the establishment of an Advocacy Panel by the AEMC, and the conferral of functions on the Advocacy Panel including the allocation of funding to individual projects for end-user advocacy in accordance with established criteria.

In 2005, the MCE decided to implement new arrangements to strengthen consumer advocacy across the entire energy sector, with a particular focus on small to medium end-users. The new arrangements are intended to replace those currently in place under clause 8.10 of the National Electricity Rules. The MCE further decided that the new arrangements will provide for the establishment of a consumer advocacy funding body which will be responsible for grant allocation activities and commissioning research in both the gas and electricity sectors, and which will be accountable to the MCE and AEMC.

Establishment of the Consumer Advocacy Panel

The new Consumer Advocacy Panel (the Panel) is to be established by the Bill as a constituent, but independent, part of the AEMC. This will clearly recognise the Panel's role in energy rather than just gas or electricity. The Panel will not have any separate legal status (i.e. it will have no ability to enter into funding contracts in its own right) but will be a panel under the AEMC. This is considered preferable to establishing a separate body corporate or statutory authority due to the relatively small size of the Panel and the scope of its functions.

The Panel is expressly enabled by the Bill to perform its functions and exercise its powers in and outside of the State of South Australia (see new clause 29(2)), and the Panel is not subject to the direction or control of the AEMC or MCE in relation to the performance of its functions (see new clause 31).

Functions of the Panel – new clause 29

The Panel's functions under the Bill include:

- a) the identification of areas of research that would be of benefit to consumers of electricity or natural gas (or both);
- b) the development of 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); and
- c) the determination of 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.

In undertaking its functions, the Panel will have regard for all energy users with a focus on “small to medium consumers” (see new clause 30). A “small to medium consumer” is defined in the Bill to mean a consumer with an annual electricity consumption level less than ‘a number’ MWh per year specified by regulation for that purpose, or with an annual gas consumption level less than ‘a number’ TJ specified in regulation for that purpose. It is proposed that small to medium consumers would be defined in regulations as those that use less than 4 GWh per annum for electricity and 100TJ for gas.

Appointment of Panel Members – new clauses 32 to 36

The Panel is to comprise a Chair and four ordinary members, to be appointed by the SA Energy Minister on the recommendation of the MCE, which is to be made on the basis of relevant expertise and experience, including knowledge of the energy sector. As a condition of application, potential Panel members are required to declare any known actual, potential or perceived conflicts of interest prior to the selection process.

Panel members may be appointed for up to four years. The MCE is responsible for fixing the terms and conditions of appointment of Panel members, which must include the condition that the Panel member remain independent of relevant regulators and corporations for the duration of their appointment. Panel members will be eligible for re-appointment.

Before appointments are made, the AEMC will call for expressions of interest for appointment to the Panel. The AEMC will be required to provide the MCE with a list of all interested applicants, along with a shortlist of applicants recommended by the AEMC. The MCE must consider any eligible nominees recommended by the AEMC prior to appointing a member to the Panel.

The SA Minister must, if the MCE so resolves, remove a Panel member from office for:

- breach of, or non-compliance with, a condition of appointment; or
- misconduct; or
- failure or incapacity to carry out official functions satisfactorily.

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.

The office will be vacated if the panel member:

- dies;
- completes a term of office and is not reappointed;
- resigns by written notice to the SA Energy Minister; or
- is removed from office by the SA Energy Minister on the recommendation of the MCE.

The AEMC will be able to make acting appointments to the Panel during the vacancy in office of a member for a period of up to 6 months. An acting appointment would cease on the making of an appointment by the SA Energy Minister on the recommendation of the MCE.

Executive Director and other Panel staff – new clause 37

The Panel will be assisted by an Executive Director and a small secretariat to provide an administrative and research capability. The Executive Director and other staff of the Panel will be jointly appointed by the AEMC and the Panel, and may not be removed from office without the Panel's consent. Although the Executive Director and other staff of the Panel will be AEMC employees, they are not subject to direction by the AEMC which might interfere with their independence in assisting the Panel with its functions.

The precise role of the Executive Director is to be determined by the Panel and the AEMC. It is likely to include:

- managing stakeholder interactions;
- seeking advocacy funding applications and proposals for research;
- assessing the applications; and
- making recommendations to the Panel on funding proposals.

Panel procedure, disclosure of interests and immunity of members – new clauses 38, 39 and 41

The procedure for the calling of meetings of the Panel and for the conduct of business at those meetings will be determined by the Panel, although Regulations will also be able to deal with Panel procedure.

The Bill includes the following provisions related to the disclosure of interests by Panel members:

- All members of the Panel will be required to disclose to the Panel any direct or indirect interest in a matter to be considered by the Panel as soon as possible after the relevant facts come to the members' knowledge.
- After a member has disclosed the nature of an interest in any matter or thing, the member will not, unless the Panel otherwise determines, be present during any deliberation of the Panel, or take part in any decision of the Panel, with respect to that matter.

The Bill further provides that no personal liability attaches to a Panel member for an act or omission in good faith in the exercise of Panel functions. Any liability that would have attached to the Panel member lies instead against the AEMC.

Costs associated with the Panel – new clause 40

The administrative costs incurred by the Panel, including Panel members' and staff salaries, are to be jointly funded by NEMMCO participant fees and the AEMC. The Panel will be required to allocate its administrative costs between electricity- and gas-related projects in its annual budget.

Panel funding, grants and annual report – new clauses 42 to 46

The Panel will be responsible for directing the AEMC to make grant allocations on criteria to be set out in Regulations. The proposed initial criteria are intended to be consistent with the criteria currently in the National Electricity Rules, with some amendments to take into account their application to the gas industry.

The Panel will also be required to develop guidelines to apply those criteria. These guidelines will be developed in consultation with the AEMC and stakeholders. These guidelines will need to be approved by the MCE. If no guidelines are approved, the Panel must still apply the criteria as specified in the Regulations in assessing grant applications.

The Panel's budget for each financial year must be prepared in accordance with consultation required by Regulations, and must be submitted in advance to the MCE by 31 October for approval of the following financial year's budget. The Panel's budget must set out the amounts required for the administrative costs associated with the work of the Panel along with the proposed amounts for funding to be allocated to consumer advocacy and research projects across the gas and electricity sectors. A budget must conform with any limitation, imposed by regulation, on the amount or proportion of available funding that may be allocated to research projects.

The MCE may approve the budget with or without amendment, and must seek comments from the AEMC prior to any approval. The Bill provides the ability for the budget to be amended after MCE approval where the MCE considers it appropriate to do so.

All electricity-related grants will be funded through NEMMCO participant fees. Grants will only be available for projects in non-National Energy Market (NEM) jurisdictions if those jurisdictions empower and fund the Panel separately.

All gas-related grants will be funded initially by the AEMC. It is not expected that the initial budget for gas-related grants will be significant, particularly while the National Gas Law is concerned primarily with national gas access. A long-term funding mechanism will need to be determined for gas-related grants. It is intended that the MCE will investigate such a mechanism by July 2007.

All funds received by the mechanisms discussed above will be held separately by the AEMC, and then transferred by the AEMC to grant recipients on the Panel's direction. The Panel is to direct the making of such grants in accordance with specific funding criteria and relevant guidelines.

The Panel must, within 2 months after the end of each financial year, report to the AEMC:

- on the grants made for projects for consumer advocacy or research during the financial year;
- on the outcomes achieved during the financial year by such projects or research supported by grants made during the financial year or earlier; and
- generally on the work of the Panel during the financial year.

Regulations are intended to specify the minimum content of the annual report. These Regulations are likely to require the Panel to:

- summarise the submissions received from interested parties for grants and the Panel's response to each submission;

- detail expenditure and the individual projects to which grant funding was allocated for that financial year; and
- detail the extent to which the allocation of funding in the relevant financial year satisfies the underlying objectives of the Panel.

The AEMC will, as part of its annual report, report to the MCE on outcomes of the Panel's grant allocation activities (i.e. the outcomes of the funded advocacy and research projects) and overall operations of the Panel.

It is intended that there will be a Panel website, which will be linked via the AEMC website. It is intended that the website will contain, amongst other things:

- the Panel's annual reports;
- any reports or research prepared as part of funded projects; and
- guidelines for applicants on the grant allocation criteria and preparing applications.

Miscellaneous provisions

The Bill additionally provides that the SA *Public Sector Management Act 1995* does not apply to the AEMC, AEMC Commissioners, Panel members or Panel staff (see new clause 47), and also updates references to the National Gas Law in the definitions section of the Act (see clause 5).

Transitional provisions – Schedule 1

It is intended that persons holding positions with the Advocacy Panel established under the National Electricity Rules will be transferred for an interim period into the new Consumer Advocacy Panel on its establishment, subject to formal appointments being made by the SA Energy Minister on the recommendation of the MCE. Existing legal rights and obligations of the Advocacy Panel will also be transferred to the new Consumer Advocacy Panel on its establishment.

Regulations

Although yet to be drafted, it is anticipated that Regulations will be made for at least the following purposes:

- to set gas and electricity consumption levels so as to define “small to medium consumer” (4GWh / 100TJ, as discussed above);
- to set out the grant allocation criteria; and
- to set out requirements as to the form and content of the Panel's annual report.

Consultation

The Standing Committee of Officials of the MCE welcomes feedback on the draft bill. Submissions relating to the amendments can be sent to the MCEMarketReform@industry.gov.au along with comments on the National Gas Law. Any comments will be considered prior to the finalisation of the Bill to be introduced into the South Australian Parliament in early 2007. It is hoped 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.