

SCO RESPONSE TO ISSUES RAISED IN SUBMISSIONS ON CONSUMER ADVOCACY

April 2007

The following table sets out the position of the Standing Committee of Officials of the Ministerial Council on Energy on submissions to the Consumer Advocacy exposure draft which was released on 1 November 2006. The table does not deal with issues relating to the National Gas Law or Rules. The SCO response also does not take into account any of the submissions on the National Electricity Law amendments.

1.	Definition should be consistent with the definition of "consumer" in the National Energy Retail Code which is being developed as a part of the MCE's national retail regulation reform process.	Retailers	Not accepted The definition of small to medium consumers for the purposes of eligibility for advocacy funding is different to the definition of consumer in the National Retail Code which is for developing the retail legislative package in relation to consumer protections. The purpose of the proposed definition is not to exclude larger users, but to ensure that consumer advocacy arrangements are available to a wide range of consumers.
2.	Larger energy consumers that fall outside the definition of small to medium consumers should be required to demonstrate that their current funding levels are inadequate in order to be eligible for a grant.	Retailers	Not accepted The purpose of the proposed definition is not to exclude larger users, but to ensure that consumer advocacy arrangements are available to a wide range of consumers.
3.	The threshold definition of small to medium consumers is too high as the proposed definition would include large consumers that have the ability to advocate on their own behalf. Advocates for a reduction in the threshold (to eg. 160MWh for electricity and 10GJ for gas).	Small end users/groups	Not accepted The purpose of the proposed definition is not intended to exclude larger users, but to ensure that consumer advocacy arrangements are available to a wide range of consumers.
4.	Focus on small to medium consumers discriminates against those who are essentially the primary financial contributors to funding for advocacy arrangements. Consumer advocacy should be available to all energy users and that if there is going to be a focus on small to medium users which limits large users' ability to access funds, then NEMMCO fees should not be levied on large users.	Large end users/groups	Partially accepted The purpose of the proposed definition is not to exclude larger users, but to ensure that consumer advocacy arrangements are available to a wide range of consumers. Wording of Clause 30(b) has been amended to clarify that all consumers are intended to benefit from the Panel arrangements, whilst paying particular regard to benefiting small to medium consumers.
5.	Highlights that the wording of Clause 30(b) of the Bill is	Large end	Partially accepted

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	contradictory to the explanatory materials. That is, the Bill only refers to benefiting small to medium consumers whereas the explanatory materials explains that the Panel will have regard to <u>all</u> energy users.	users/groups	Wording of Clause 30(b) has been amended to clarify that all consumers are intended to benefit from the Panel arrangements, whilst paying particular regard to benefiting small to medium consumers.
Panel Members and staff			
6.	Panel members need to have more extensive industry knowledge to prevent wasteful resources being dedicated to research.	Retailers	Noted Clause 32(2)(a) already specifies that the Chair and Panel members need to have knowledge of the energy sector.
7.	The Panel should not be expanded from 4 members to 5 members as well as have its own Executive Director and secretariat. The proposed arrangements indicate an increase in personnel which may lead to misallocation of funds to management and administration at the expense of funding advocacy projects.	Large end users	Noted The Panel has always comprised of 4 members and a Chair and the long term arrangements will not change this. In the previous arrangements, members had to be representatives of electricity sectoral interests with an independent Chair. The current arrangements have and the long term arrangements will have an independent Chair and Panel members. A person employed to carry out the executive director functions for the Panel has always been a part of the Panel's arrangements. Given that the Panel's functions will be expanded to cover both electricity and gas, ad hoc staff may be needed from time to time to assist the executive director. The new Clause 41(6) requires the Panel, in preparing its budget, to seek to maximise the amount of funding available for grant funding and to minimise administrative costs.
8.	Neither the AEMC, nor the MCE is the appropriate body to appoint Panel members.	Large end user groups	Not Accepted The current arrangements for appointment of Panel members by the Chair are considered inadequate. The new model providing for appointment by the MCE after a public recruitment process is open and transparent and is considered to be much more robust.
9.	The Panel should be able to employ its own staff and not draw on the resources of the AEMC, particularly as the Panel is currently based in Melbourne and the AEMC is based in Sydney. To require the Panel to move to Sydney would involve significant financial costs which would outweigh the benefits.	Large end user groups	Not accepted The Panel will not have a separate legal status and thus would not have the authority to employ staff of their own accord. As such, the AEMC is the employing authority. Consequently, the AEMC in agreement with the Panel will employ the Executive Director, and any other staff required. It is expected that this employment decision will determine the role and location of these staff.
10.	Panel should be remunerated at a higher level as the low remuneration discourages good quality candidates.	Large end user groups	Noted
Functions of the Panel			
11.	The main functions of the Panel should be to develop	Large end user	Noted

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	<p>guidelines for the allocation of grants and to prepare and submit the annual budget to the MCE. Identifying areas of research should have a lower priority.</p> <p>Particular concern if the Panel gives primacy to itself and dominates resource allocations rather than providing the funding for advocacy projects and research.</p>	groups	<p>Clause 29 provides for the Panel's functions which, among other things, include identifying research, developing guidelines for allocation of funds and preparation and submission for approval of MCE annual budgets for the allocation of funds. Additionally, the Panel is required to submit for the approval of MCE a budget for administrative costs and the allocation of available funding (cl.41(1)).</p> <p>Under the new Clause 41(6), the Panel will be required, in preparing its budget, to distinguish between money made available for research projects initiated by the Panel and for research projects initiated by others.</p>
12.	<p>The Panel should not have any research functions and any research should be preserved for consumer advocacy bodies as these bodies will be best placed to know which areas require research.</p>	Large end user groups	<p>Not accepted</p> <p>Under the new Clause 41(6), the Panel will be required, in preparing its budget, to distinguish between money made available for research projects initiated by the Panel and for research projects initiated by others. It is intended that Regulations to be made under the Act will require that funding allocated to research projects commissioned on the Panel's initiation, not exceed more than 25% of the Panel's total budget in any financial year.</p>
13.	<p>One of the functions of the Panel should include publishing on the website the details of all applications received and the status of those applications.</p>	Large end user groups	<p>Noted</p> <p>The current Panel already does this.</p>
Funding issues and consultation			
14.	<p>Changes to the funding criteria and guidelines for grant allocations should be made in accordance with the Rules consultation procedures. This is because the regulations made under the Act will be subject to review by the SA parliament which would not necessarily ensure that all interested parties would be given the opportunity to make submissions.</p>	National Electricity Consumer Advocacy Panel (NECAP)	<p>Not Accepted</p> <p>MCE has decided that it will determine the criteria for grant allocation which will be promulgated by regulation – see Clause 45(1). This does not exclude public consultation of the criteria. Clause 45(2) states that the Panel will be responsible for developing the guidelines for grant allocation in consultation with the AEMC and other interested stakeholders.</p> <p>Regulations made pursuant to Clause 41(7) regarding the Panel's proposed budget will deal with the consultation procedures the Panel needs to undertake in preparing its budget.</p>
15.	<p>Panel members should meet with energy advocates on a regular basis such that the Panel can be informed of the issues that are seen to be important to consumer advocates; to develop a sound funding strategy; and to review the outcomes of advocacy funded by the Panel.</p>	Large end user groups	<p>Noted</p> <p>Regulations made pursuant to Clause 41(7) regarding the Panel's proposed budget will deal with the consultation procedures the Panel needs to undertake in preparing its budget.</p> <p>Under clause 47(1)(b) the Panel will be required to report on the outcomes achieved during the financial year on grants made for consumer advocacy and research projects.</p>

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16.	Funding guidelines should not be made to provide personnel to act as advocates and should be used for capacity building.	Retailers	Noted It will be a matter for the Panel to determine the relevant allocation of funding in accordance with the obligations imposed by Clause 46(2) which include that it be consistent with the approved budget, MCE's criteria for grant allocation and the approved guidelines for grant allocation.
17.	Funding should not be provided in areas where other government or funded agencies are already providing community consultation or advocacy. Network pricing determinations should be excluded from advocacy funding.	Retailers	Noted It will be a matter for the Panel to determine the relevant allocation of funding in accordance with the obligations imposed by Clause 46(2) which include that it be consistent with the approved budget, MCE's criteria for grant allocation and the approved guidelines for grant allocation.
18.	There is a need for consultation in the development of guidelines for grant allocations.	Large end user groups	Noted Clause 45(2) provides that the Panel will be responsible for developing the guidelines for grant allocation in consultation with the AEMC and other interested stakeholders.
19.	Panel should remain the custodians for the funds received from NEMMCO (as is currently the case) rather than for the AEMC to hold the funds as this creates an extra layer of administration.	Large end user groups	Not accepted The Panel will not have any legal or financial status in its own right. Hence, the AEMC will act on its behalf in distributing the funds.
20.	Funding should not be from 2 separate sources (i.e. NEMMCO and AEMC) and all advocacy funding should be derived solely from NEMMCO participant fees.	Large end user groups	Not accepted It is not appropriate that gas functions be funded by electricity (NEMMCO) participant fees. AEMC funding is only an interim measure, pending resolution of gas funding arrangements.
21.	There should be a greater focus on the environment, in particular DSR and renewable energy which is currently under-represented.	Environmental group	Noted It will be a matter for the Panel to determine the relevant allocation of funding in accordance with the obligations imposed by Clause 46(2) which include that it be consistent with the approved budget, MCE's criteria for grant allocation and the approved guidelines for grant allocation.
22.	Bill should include specific allowance for funding of appeals-based advocacy such as merits review. This needs to be followed by presentation of a soundly based appeal and for representatives that have standing.	Large end user groups	Noted It will be a matter for the Panel to determine the relevant allocation of funding in accordance with the obligations imposed by Clause 46 (2) which include that it be consistent with the approved budget, MCE's criteria for grant allocation and the approved guidelines for grant allocation.
Reporting requirements			
23.	As electricity and gas related projects will be funded separately, the Advocacy Panel should be required to prepare an annual budget and report that accounts for electricity and	Retailers	Accepted Agree that whilst separating gas and electricity funding is addressed in relation to the annual budget, this should be reflected in the annual report.

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	gas related projects separately.		The Panel is now required to report separately on the allocation of grants between gas and electricity for both its annual budget and annual report – see new Clauses 41(5) and 47(1).
Annual Budget			
24.	There is no provision in the Bill which allows NEMMCO or the AEMC to increase the fee it charges or seek increases in its budget to accommodate increases in the Panel's budget. Queries that if these provisions are not in place, it would be useless to allow the Panel to vary its budget.	NECAP	Accepted The previous provisions allowing amendment of the budget have been removed. The Panel should be required to conduct its affairs within the approved budget.
25.	Concerned that NEMMCO is liable for funding rather than jurisdictions.	Retailers	Noted There is no change from existing arrangements. NEMMCO is/will be funding the electricity component of advocacy and research. The AEMC will fund the gas component.
26.	The Bill proposes the removal of Clause 8.10 from the NER on which NEMMCO relies to recover funding for the Advocacy Panel via participant fees. The Bill does not adequately give NEMMCO power to recover these funds from market participants.	NEMMCO	Partially Accepted Although section 55(2)(a) of the NEL and Rule 8.10 of the NER provide for NEMMCO to pay funds to the NECAP, this does not apply to the new arrangements. There appears to be a need for provisions in the NEL (within section 55) which gives NEMMCO the power to disburse funds from participant fees for the purpose of this Bill. Rule 8.10 will be amended so as to remove everything except the obligation on NEMMCO to provide funding in accordance with the Panel's approved budget to the AEMC. New Clause 90A(1)(c) of the NEL allows for the new NER to revoke / amend a Rule as a consequence of the Consumer Advocacy Bill. Although most of Rule 8.10 should be revoked, the substance of paragraphs 8.10.5 (h)-(j) of that Rule should be retained. Rule 2.11.3(b)(6) may also require consequential amendment.
27.	Under the proposed Bill, NEMMCO is required to provide funding at the start of the year. This poses problems as NEMMCO recoups fees on a weekly basis and would require a loan to be able to provide the funding upfront. Additionally, NEMMCO's funding is determined on an annual level and if there is a change in the Panel's funding needs, this would create a problem as NEMMCO would require a loan to accommodate any increases in the Panel's budget. If such a loan is required, it is not certain who would be responsible for	NEMMCO	Accepted Clause 44(1) has been inserted so as to allow NEMMCO, the AEMC and the Panel flexibility to agree the terms of when payments are required within the budget year, as currently occurs. The previous provisions allowing amendment of the budget have been removed. The Panel will be required to conduct its affairs within the approved budget.

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	any interest incurred.		
28.	Funds have been misallocated in the past with Panel operating costs being very high and not looking like it will reduce in the future. The projected administrative cost for 2007/08 budget is 23 per cent of the total amount expected to be received. Administration costs should be reduced to 15 per cent as a maximum with preference towards best practice of between 7-10 per cent.	Large end user groups	Noted The new Clause 41(6) requires the Panel, in preparing its budget, to seek to maximise the amount of funding available for grant funding and to minimise administrative costs. The MCE approves the Panel's budget (Clause 41(8)).
29.	Supplementary funding should be allowed to cater for unforeseen circumstances which require advocacy (e.g. ERIG, etc).	Large end user groups	Not accepted The previous provisions allowing amendment of the budget have been removed. The Panel should be required to conduct its affairs within the approved budget.
Annual Report			
30.	There is potentially insufficient time for the Panel to submit its final annual report within the 2 month timeframe specified in Clause 46 (new Clause 47) of the Bill. This is because the Panel needs to submit its draft report to the AEMC within 14 days of the end of the financial year; the AEMC has up to 27 days to review it. If the full amount of days is used up, NECAP says that the Panel will only have 1 day to prepare its final annual report which would be insufficient time. The Panel proposes shortening the AEMC's time to review the report to 14 days.	NECAP	Noted It is noted that the final annual report needs to be submitted within 2 months after the end of the financial year, that is, 31 August (being 62 days). The Panel has 14 days to submit its draft report to the AEMC. The AEMC has 28 days to review it. This totals 42 days. A further 20 days remains for the Panel to finalise the final report. (Note: The above calculations are based on calendar days.)
31.	Reporting of outcomes achieved on funded advocacy projects and research has two connotations attached. First, it could mean the outcome of the project in terms of publishing a report or submission lodged. Secondly, it could mean the outcome in terms of the effect on a decision maker's decision as a result of the advocacy project funded by the Panel. NECAP advocates for Clause 46(1)(b) (new Clause 47(1)(b)) to be clearer as the second interpretation would involve a significant workload. In addition, there may be areas which cannot be easily reported back upon. For example, submissions that were made with recommendations not being adopted by the decision maker could be viewed as unsuccessful.	NECAP / large and small end user groups	Partially accepted Further guidance in relation to the expected level and substance of reporting as set out in Clause 47(1)(b) are clarified in the Regulations.
32.	The Panel should be required to report against a set of Key	Large end user	Not accepted

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	Performance Indicators.	groups	The proposed governance arrangements for the panel are considered to be adequate.
Decision Making of Panel			
33.	The Chairperson should have a casting vote in the case of a stalemate.	NECAP	Accepted Clause 38(6) has been amended to provide the Chair of the Panel with a casting vote.
Independent audit of successful applicant's records			
34.	The provision for independent audits is in the existing Rules, but is not in the Bill. Although this provision will be rarely used (and NECAP says that it has not been invoked), it would be useful as a last resort power in the event that the Panel is concerned about the costs incurred in a particular project.	NECAP	Partially Accepted The new clause 46(3) allows the Panel to impose terms and conditions on which a grant is to be made, which could include reporting / audit requirements. See also Clause 46(4).
Other issues			
35.	Question whether the advocacy process could be better served by the AEMC or the AER establishing specific reference groups rather than an actual consumer advocacy body.	Retailers	Not Accepted A previous review of the effectiveness of the advocacy Panel has already been discussed and considered. Further work on this issue is not considered necessary.
36.	Panel should be able and willing to provide grants for a wide range of research and advocacy projects which benefit consumers and not limited to those initiated by the MCE, AEMC, AER, etc.	End user groups	Noted It will be a matter for the Panel to determine the relevant allocation of funding in accordance with the criteria and obligations imposed by Clause 30.
37.	Clarification that advocacy is not limited to just NGL/NGR or the NEL/NER	Large end user groups	Noted The Bill specifies that advocacy is available for both electricity and natural gas end users. The funding criteria will specify that a project in an application for electricity or gas funding should relate to the national electricity/gas market as covered by the National Energy Laws or Rules; the responsibilities of the AEMC or NEMMCO under the National Energy Laws or Rules; the responsibilities or functions of the AER or have implications for the national electricity or gas markets.

Abbreviations:

- NECAP: National Electricity Consumers Advocacy Panel
- NEMMCO: National Electricity Market Management Company