



14 May 2007

By email: MCEMarketReform@industry.gov.au

Manager, MCE Secretariat
Department of Industry, Tourism and Resources
GPO Box 9839
CANBERRA ACT 2601

Dear MCE Secretariat

Second exposure draft of the *Australian Energy Market Commission (Consumer Advocacy Panel) Amendment Bill 2007 (SA)* and exposure draft of the *Australian Energy Market Commission Establishment (Variation) Regulations 2007 (SA)*

Consumer Action Law Centre (**Consumer Action**) welcomes the opportunity to comment on the second exposure draft of the *Australian Energy Market Commission (Consumer Advocacy Panel) Amendment Bill 2007 (SA)* (the **Draft Bill**) and exposure draft of the *Australian Energy Market Commission Establishment (Variation) Regulations 2007 (SA)* (the **Draft Regulations**). We note that while the Ministerial Council on Energy (**MCE**) Standing Committee of Officials (**SCO**) has requested separate comments on the Draft Bill and the Draft Regulations, we are addressing them together as they raise common issues.

Objectives of the Panel

We note that section 30(b) of the Draft Bill has been altered to require the Panel 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. We only support this amendment, however, subject to an amendment to the definition of 'small to medium consumers' in the Draft Regulations. We believe that in proposing draft regulation 3A, which states that the definition of 'small to medium consumers' is those that consume less than 4000 megawatt hours of electricity and 100 terajoules of natural gas per annum, the SCO is misinterpreting the MCE's intention, to the detriment of consumers and consumer advocacy.

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In the Energy Market Reform Bulletin 57, the MCE gave the following policy direction in relation to the long term model for consumer advocacy:

The long term model for consumer advocacy will comprise a new independent Panel which has the capacity to allocate funding for the purpose of energy end user advocacy, with a particular focus on small to medium consumers.¹

This statement accords with the original driver for establishment of the Advocacy Panel. In its report proposing the establishment of the original Advocacy Panel, the then National Electricity Code Administrator stated:

Small and medium end users, in particular, currently generally do not have access to sufficient human and financial resources to ensure adequate representation whatever those arrangements. They should not be left out of the decision-making process solely because of lack of resources. The diverse and diffuse nature of the customer base, however, and the individually small scale of the direct benefits to those end-use customers as a result of national market reforms means that is unrealistic to expect self-funding coalitions of small and medium end-users to emerge.²

It is clear, therefore, that the policy intention of the consumer advocacy arrangements is to ensure that consumers who lack the resources or financial incentive to engage in advocacy are provided with funding to do so.

In Victoria, a 'small to medium consumer' pursuant to the Draft Regulations could be paying an annual bill of around \$350,000 for electricity and close to \$1 million for natural gas. We note that such consumers (generally larger companies) have contracts with retailers and distributors tailored to their individual consumption patterns and rely on specialist staff (either internal or through subcontractors) to negotiate energy contracts. We do not view such consumers as being 'small to medium consumers' and in need of funding from the Panel.

We note that Panel funding is essentially a levy imposed on energy bills (at least the funding of electricity advocacy through NEMMCO fees), and that the levy disproportionately impacts on people on low and fixed consumers, who pay a greater proportion of their income on energy. We see no reason that small residential consumers should be made to subsidise research and/or advocacy that will benefit larger users who already have the financial resources to support their own research and advocacy.

The MCE SCO has stated that the purpose of the proposed definition in Regulation 3A is to not exclude larger users, and to ensure the consumer advocacy arrangements are available to a wide range of consumers.³ Section 30(b) of the draft Bill already ensures larger users are not excluded and the consumer advocacy arrangements are available to all consumer types. The rest of section 30(b) is, in

¹ Ministerial Council on Energy, *Energy Market Reform Bulletin No 57*, 15 December 2005.

² National Electricity Code Administrator, *End-user Advocacy in the National Energy Market – Final report*, December 2000.

³ SCO Response to Issues raised in Submissions on Consumer Advocacy, April 2007.

fact, attempting to protect against the opposite danger – that *smaller* consumers are not excluded – by explicitly stating that the Panel should pay 'particular regard' to them. It is therefore unnecessary and inappropriate that larger users are included in the definition of small to medium users, so that they get the benefit of 'particular regard' in section 30(b).

It is Consumer Action's position, and we believe the MCE's intention, that as a general rule, advocacy funding should be directed towards those who are, in reality, small to medium consumers. In jurisdictional frameworks, a definition of small consumer is generally those that use less than 160 megawatt hours of electricity or 10 gigajoules of natural gas per annum. We believe that these are more appropriate limits for the definition of small to medium consumers.

Functions of the Panel

We support section 29 of the Draft Bill, which lists the functions of the Panel. We also support allowing the Panel to initiate its own research projects in addition to accepting applications for grants from other organisations. As the Panel develops expertise on the state of the energy market and the areas in need of advocacy, it could usefully identify research projects. These projects should be open to a public tender process. We also support the Regulations making it clear that funding for research projects initiated by the Panel cannot exceed 25 per cent of the panel's annual budget.

Annual budget

We strongly support clause 41(6)(a) of the Draft Bill which requires the Panel to 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. As outlined in our submission to the current Advocacy Panel on its determination of funding requirements for 2007/08, we are concerned about the Panel's high level of operating costs, which is almost 25% of its entire budget.

We also support the removal of the clause which allowed the Panel to vary its approved budget. We agree that varying the budget will cause problems with respect to the Panel funding arrangements with NEMMCO and the AEMC. Further, we support the requirement in the proposed regulation 6 of the Draft Regulations that the Panel be required to publicly consult on its budget.

Annual report

We strongly support the need for appropriate and public accountability for the expenditure of Panel grants, and the requirement to prepare an annual report which provides information about grants made and outcomes achieved by projects for consumer advocacy or research. We welcome the further guidance provided in the proposed regulation 5(5), in particular in relation to the meaning of 'outcomes achieved' in section 47(1)(b) of the Draft Bill. We understand this guidance to mean

that the Panel is not required to identify the outcomes achieved in terms of the effect on decision makers' decisions as a result of advocacy projects funded by the Panel, which we consider would be difficult and problematic to do. By aligning the reporting about advocacy funding with the objectives of the Panel, a more realistic and perhaps useful statement can be gleaned about the appropriateness and effectiveness of advocacy funding.

Criteria for grant allocation

We support the criteria for grant allocation outlined in Schedule 1 to the Draft Regulations and note that these reflect the requirements of the current Panel in clause 8.10.6(e) of the National Electricity Rules.

In supporting clause 1 of the Schedule in relation to diversity in the allocation of funding, we are concerned about possible interpretation of that requirement. In its recent final determination on its funding criteria, the current Panel determined that diversity means:

Diversity in the number of end-users represented is taken as diversity in the number of classes and sectors, and geographical areas, of end-users.

Diversity in the nature of interests represented is taken as diversity in the range of end-user interests represented in successful applications (e.g. the interests of various categories of business and domestic end-users, etc).

Diversity in the issues which are the subject of applications for funding is taken as including diversity in the issues arising within the different sectors of the electricity industry, the Rules and the national electricity market generally.

We would support this interpretation, but not one that required diversity in the types of positions being advocated by different organisations or advocates. Organisations and advocates that represent different market segments may often (though not always) reach the same or similar advocacy positions. This should not prevent the Panel funding such advocacy.

Clause 6 of the Schedule also reflects the current Panel's criteria relating an expectation that a successful applicant for grant funding should fund a share of the costs of the project themselves. We note that the equivalent provision in relation to the current Panel (clause 8.10.6(e)(4) of the National Electricity Rules) states:

in considering the contribution made by the applicant the Advocacy Panel may consider non-financial contributions, for example staff time, in lieu of a direct pecuniary contribution.

Considering the current Panel's investigation into the appropriateness of funding the fixed (or imputed) costs associated with projects, we strongly believe that the Schedule should make it clear that such costs can count towards the applicant's co-funding of a project. Our views on this issue are set out in more detail in our submission to the current Panel in relation to its review of the effectiveness of capacity building projects and the inclusion of fixed costs in funding budgets. A copy of that submission is attached.

Should you have any questions about this submission, please contact me on 03 9670 5088.

Yours sincerely

CONSUMER ACTION LAW CENTRE

A handwritten signature in black ink that reads "Gerard Brody". The signature is written in a cursive style with a large, sweeping initial 'G'.

Gerard Brody
Senior Policy Officer