

**NATIONAL ELECTRICITY CONSUMERS
ADVOCACY PANEL**

**FINAL REPORT ON RESPONSES BY INTERESTED PARTIES TO THE DRAFT
REPORT ON THE FUNDING REQUIREMENT FOR 2007/2008 ISSUED ON 7
DECEMBER 2006 AND FINAL DETERMINATION**

5 February 2007

Final determination

Following consideration of comments on its draft report, the National Electricity Consumers Advocacy Panel (the Panel) now publishes this final report, available to all consulted parties, setting out:

1. the conclusions and determinations of the Panel in relation to the funding requirement for the 2007/2008 financial year;
2. its reasons for those conclusions;
3. the procedure followed by the Panel in considering the matter;
4. summaries of each issue, that the Panel reasonably considers to be material, contained in comments on the draft report and the Panel's response to each such issue; and

subject to any confidential issues in the responses, the Panel will provide on request by a consulted party copies of any material submitted to it.

The Panel having, in accordance with the consultation provisions of clause 8.9 of the National Electricity Rules (the Rules), sought comments on the proposed funding requirement for 2007/2008 and issued a draft report on those comments has now considered the comments received on the draft report and has made the following determination:

The proposed Advocacy Panel funding requirement for the 2007/2008 financial year to fund the Panel's operating costs and electricity advocacy projects to be submitted to the Australian Energy Market Commission (AEMC) by 12 February 2007 is \$2,245,100 including GST.

Readers of this report should refer to the original consultation paper and the draft report on responses to the consultation paper for further information on the background to and the development of this determination. The documents can be found under Latest News and Updates on the Panel's website at www.advocacypanel.com.au.

This final report has been provided to the AEMC for display on its website and is published on the Panel's website.

Consultation process

Calls for submissions

Under clause 8.10.5 of the Rules, the Panel is required to determine the proposed funding requirement for each financial year. The proposed funding requirement must be submitted to the AEMC by 12 February each year for its approval. Once approved, the AEMC must provide to the Panel in respect of the financial year the amount that is the approved funding requirement and is reimbursed by the National Electricity Market Management Company (NEMMCO).

The Panel must determine the proposed funding requirement in accordance with the Rules consultation procedures and therefore a consultation paper was issued on 18 September 2006 in order that interested parties could comment on the electricity advocacy funding requirement proposed by the Panel for the 2007/2008 financial year.

A notice advising of the consultation paper and inviting responses to it was provided to NEMMCO for distribution to registered participants and intending participants. The notice was also displayed on the Panel's website and forwarded to each organisation on the Panel's distribution list of former applicants. The notice was also provided to the AEMC for its information. The notice called for submissions to be made by no

later than 5.00 pm on 30 October 2006 i.e. at least 25 business days was provided for responses.

By the deadline for the submission of responses to the consultation paper, five submissions were received. No respondent requested a meeting with the Panel to discuss its response.

On 14 November 2006 the Panel considered the responses and on 7 December 2006 published a draft report setting out:

1. the conclusions and any determinations of the Panel in relation to the proposed funding requirement for 2007/2008;
2. its reasons for those conclusions;
3. the procedure followed by the Panel in considering the matter;
4. summaries of each issue, that the Panel reasonably considered to be material, contained in the responses by interested parties and the Panel's response to each such issue; and
5. a notice inviting consulted parties to make written submissions to the Panel on the draft report.

The Panel provided notice of the draft report to NEMMCO for it to distribute to registered participants. The draft report was also provided to the AEMC for publication on its website and was published on the Panel's website. The Panel sought responses to its draft report by 8 January 2007 i.e. at least 10 business days was provided for responses.

Assessment of submissions in response to the draft report of December 2006

By the deadline of 8 January 2007, the Panel received notice that a response would be made by the Consumer Utilities Advocacy Centre (CUAC) and received responses from the Major Energy Users Inc (MEU), the Centre for Credit and Consumer Law at Griffith Law School (CCCL), and the Australian Council of Social Service (ACOSS). The CUAC response was received on 17 January 2007. On 12 January 2007 a submission was received from the Energy Retailers Association of Australia (ERAA) which the Panel agreed to accept after considering the reasons for the delay.

No respondent requested a meeting with the Panel.

In its response, CUAC said that information in the Panel's draft report regarding CUAC's operating costs gave the impression that the costs of its grant-making activities are disproportionately high by comparing its entire operating costs with the costs of the Panel, the Myer Foundation, World Vision and Oxfam, where grant-making is the main activity. The draft report stated that the Panel was unable to identify a directly equivalent organisation but it noted the overhead ratios of four grant-making organisations including the CUAC which

"in 2005/06 had an overhead ratio of 57.2%. CUAC undertakes research and direct advocacy and also makes grants for research into utilities issues"¹.

CUAC's response noted that the cost of administering its grants program constitutes only a small portion of its total expenditure as the program is a small part of its overall activities. CUAC's main activities relate to advocacy at the State and national levels on behalf of Victorians in the policy and regulatory areas of electricity, gas and water.

¹ Page 8, Advocacy Panel Draft Report on Responses by Interested Parties to the Funding Requirement for 2007/2008 Consultation Paper, 7 December 2006

The draft report therefore did not adequately reflect CUAC's actual activities and was an inaccurate representation of the costs incurred by CUAC in administering its grants program.

The Panel agrees that as the grants program is a small part of CUAC's activities, it is invalid to compare CUAC's overhead ratio with that of the Panel where grant-making is the primary activity.

The MEU and ERAA commented on the increase in the Panel's funding requirement.

The MEU said the funding requirement should not increase unreasonably in future. When considering its annual funding requirement, the Panel is mindful that the funding is obtained from fees charged to electricity retailers who are then able to pass the cost onto end-users of electricity. The budget is therefore based on assessments of the anticipated requirement for advocacy on behalf of end-users and the need to keep any increase in the Panel's funding to a reasonable level.

The ERAA maintained its position that it was unclear why the Panel has and continues to seek "significant increases" in its funding.

In its response to ERAA's first submission, the Panel had explained that its funding requirement reflects the number and cost of applications for funding anticipated to be made by end-user advocates and, as the funding of end-user advocacy is still in its early years and end-user involvement in national electricity market issues is still developing, the annual increases in funding in these early years will be more significant as a percentage.

The details of the calculation of the funding requirement for 2007/2008 were provided in the consultation paper and the draft report. A key factor in the preparation of the funding requirement is the number and complexity of issues for which end-user advocates may wish to seek funding to advocate on during the year in question. To a large extent, the agenda for such issues is driven by regulatory and policy-making bodies such as the AEMC, Australian Energy Regulator, and the Ministerial Council on Energy and varies from year to year. The matter of changes in the funding requirement after 2007/2008 is therefore not something that the Panel can comment on at this time.

The ERAA suggested that increases in the funding requirement be restricted to the lesser of the consumer price index and the weighted average increase of electricity retailers' price caps. In the Panel's view, restricting the funding requirement in the manner suggested by the ERAA would at this time disadvantage end-users, particularly domestic end-users, in comparison with other interested parties, such as electricity generators and retailers, who have greater financial resources to commit to advocacy of their views.

The ERAA stated that if the 2007/2008 funding requirement is approved, it expects future increases to be negligible and that retained funds will be minimised. As explained above, it is difficult at this time to predict the extent of any increase in the Panel's funding requirement for 2008/2009 and beyond. Any retained funds above the level needed to cope with urgent, new issues will be used to reduce the funding requirement otherwise required in the following year.

The MEU raised the size of the Panel and said it doubts the need to expand the Panel's membership to five members and to have a fulltime executive director and secretariat.

The number of members on the Panel is not an issue the Panel has a say on.

According to the current Rules and the MCE's proposed legislation for the operations of the Panel scheduled to take effect on 1 July 2007, the Panel has a membership of five.

In relation to administration costs, the Panel's position is that its staffing will be expanded only when justified by an increased workload and then only expanded to the extent necessary to cope with the increased workload. At present no specific information is available to the Panel as to the likely workload that will result from it being given responsibility for gas advocacy and for initiating research on issues of importance to end-users which are not being adequately dealt with by end-user advocates. The Panel has assumed that the new responsibilities will result in a doubling of the existing workload and has therefore concluded that the current staffing complement of one part-time executive officer working approximately three days per week will increase, as from 1 July 2007 (the anticipated date for the commencement of the new responsibilities), to two fulltime staff - an executive director and an administrative assistant. The Panel has budgeted for these additional resources as from 1 July 2007 but will not engage them until the increased workload makes it necessary.

The CCCL encouraged the Panel to provide recurrent funding for the roundtable meetings conducted by the Consumer Action Law Centre.

The Panel will, in its normal way, consider an application for funding of such meetings in the light of its funding criteria, the funds available for advocacy projects, and any alternate uses for those funds. This approach recognises the reality that the Panel's budget is set on a financial year basis and the reform agenda changes from year to year. If it were to provide recurrent funding for these meetings or any other project, the Panel may be committing itself to a level of expenditure that it subsequently could not justify in relation to its budget and new issues that develop and require advocacy on behalf of end-users. By considering applications one year at a time, the Panel will have greater flexibility to respond to new funding requests thus enabling end-user advocates to be involved in new and emerging issues.

In its response, ACOSS noted that the comment in the Panel's draft report to the effect that ACOSS had not provided evidence to demonstrate that the Panel's staff budget for 2007/2008 is equivalent to four external advocate positions was incorrect.

In its submission to the Panel's consultation paper, ACOSS stated that the Panel's staff budget, including rent and utilities, is equivalent to the cost of four Panel-funded external advocate positions and referred to the relevant cost items in the Panel's budget. The Panel's draft report was incorrect when it reported that ACOSS had not provided evidence of this relationship.

The Panel is not sure of the relevance of a comparison of the costs of Panel-funded advocates and the Panel's administrative staff.

Summaries of the issues contained in the responses by interested parties that the Panel considered to be material and the Panel's responses to them are set out in a table below.

Final determination

Having considered the responses to the draft report of 7 December 2006, the Panel makes the following determination:

The proposed Advocacy Panel funding requirement for the 2007/2008 financial year to fund the Panel's operating costs and electricity advocacy projects to be submitted to the Australian Energy Market Commission (AEMC) by 12 February 2007 is \$2,245,100 including GST.

SUMMARY OF RESPONSES

Main comments	Response
Consumer Utilities Advocacy Centre	
<p>The reference to CUAC's overhead ratio incorrectly suggests that as a grant-making organisation its costs are disproportionately high. Grant-making constitutes only a small part of CUAC's activities, and its operating expenditure, and therefore it is invalid to compare it with other organisations whose primary function is grant-making.</p>	<p>Agreed. As the grants program is a small part of CUAC's activities, it is invalid to compare CUAC's overhead ratio with that of the Panel where grant-making is the primary activity.</p>
Major Energy Users Inc	
<p>Notwithstanding the importance of consumer advocacy funding, the MEU has a concern that the fees that produce the Panel's funding should not increase unreasonably into the future. The Panel's corporate plan should specify targets and benchmarks for its efficient operations.</p>	<p>When considering its annual funding requirement, the Panel is mindful that its funding requirement is obtained from fees charged to electricity retailers who are then able to pass the cost onto end-users of electricity. The budget is therefore based on assessments of the anticipated requirement for advocacy on behalf of end-users and the need to keep any increase in the Panel's budget to a reasonable level.</p> <p>The Panel is unaware of any directly comparable organisation against which it can benchmark its costs. However, the Panel continuously monitors the level of its administration costs.</p>
<p>The MEU doubts whether the Panel needs to expand to five members and to have a fulltime executive director and secretariat. The inclusion of gas advocacy in the Panel's remit is not a reason to expand its membership. Scarce funding resources should not be absorbed by excessive administration and salary costs.</p>	<p>The number of members on the Panel is not an issue the Panel has a say on.</p> <p>According to the current Rules and the MCE's proposed legislation for the operations of the Panel scheduled to take effect on 1 July 2007, the Panel has a membership of five.</p> <p>During 2006 on the two occasions that the AEMC was required to appoint a new Panel, it only appointed four members and, as</p>

Main comments

Response

of December 2006, it was considering the appointment of the fifth member. The fifth member was appointed on 16 January 2007.

In relation to administration costs, the Panel's position is that its staffing will be expanded only when justified by an increased workload and then only expanded to the extent necessary to cope with the increased workload. At present no specific information is available to the Panel as to the likely workload that will result from it being given responsibility for gas advocacy and for initiating research on issues of importance to end-users which are not being adequately dealt with by end-user advocates. The Panel has assumed that the new responsibilities will result in a doubling of the existing workload and has therefore concluded that the current staffing complement of one part-time executive officer working approximately three days per week will increase, as from 1 July 2007, to two fulltime staff - an executive officer and an administrative assistant. The Panel has budgeted for these additional resources as from 1 July 2007 but will not engage them until the increased workload makes it necessary.

Centre for Credit and Consumer Law at Griffith Law School

The CCCL encouraged the Panel to reconsider assuming responsibility for the recurrent funding of the Consumer Action Law Centre's (CALC) roundtable meetings.

The Panel will, in its normal way, consider an application for funding of such meetings in the light of its funding criteria, the funds available for advocacy projects, and any alternate uses for those funds. This approach recognises the reality that the Panel's budget is set on a financial year basis and the reform agenda changes from year to year. If it were to provide recurrent funding for these meetings or any other project, the Panel may be committing itself to a level of expenditure that it

Main comments

Response

Australian Council of Social Service

ACOSS noted that the comment in the Panel's draft report to the effect that ACOSS had not provided evidence to demonstrate that the Panel's staff budget for 2007/2008 is equivalent to four external advocate positions was incorrect.

subsequently could not justify in relation to its budget and new issues that develop and require advocacy on behalf of end-users. By considering applications one year at a time, the Panel will have greater flexibility to respond to new funding requests thus enabling end-user advocates to be involved in new and emerging issues.

In its submission to the Panel's consultation paper, ACOSS stated that the Panel's staff budget, including rent and utilities, is equivalent to the cost of four Panel-funded external advocate positions and referred to the relevant cost items in the Panel's budget. The Panel's draft report was incorrect when it reported that ACOSS had not provided evidence of this relationship.

The Panel is not sure of the relevance of a comparison of the costs of Panel-funded advocates and the Panel's administrative staff.

Energy Retailers Association of Australia

The ERAA repeated the view expressed in its submission to the Panel's original consultation paper that it is not clear why the Panel has, and continues to seek "significant increases" in funding each year. The ERAA is concerned about the increases and is of the opinion that they should be restricted to the lesser of CPI and the weighted average increase of electricity retailers' price caps. If the current funding is approved it expects future increases to be negligible and that retained funds would be minimised.

In its response to ERAA's first submission, the Panel explained that its funding requirement reflects the number and cost of applications for funding anticipated to be made by end-user advocates and, as the funding of end-user advocacy is still in its early years and end-user involvement in national electricity market issues is still developing, the annual increases will be more significant as a percentage.

Details of the calculation of the funding requirement for 2007/2008 were provided in the consultation paper and the

Main comments

Response

Until the Panel is given responsibility for gas advocacy it should limit itself to consideration of electricity matters. Thus additional rent relating to staff engaged to assist with gas matters should not be considered.

draft report. A key factor in the preparation of the funding requirement is the number and complexity of issues for which end-user advocates may wish to seek funding to advocate on during the year in question. To a large extent, the agenda for such issues is driven by regulatory and policy-making bodies such as the AEMC, Australian Energy Regulator, and the Ministerial Council on Energy and varies from year to year. The matter of changes in the funding requirement after 2007/2008 is therefore not something that can be commented on at this time.

Restricting the funding requirement in the manner suggested by the ERAA would at this time disadvantage end-users, particularly domestic end-users, in comparison with other interested parties such as electricity generators and retailers who have greater financial resources to commit to advocacy of their views.

As explained in the draft report, the Panel's intention is to maintain a small reserve of retained funds to cope with any urgent, new issues that arise during the year. Any retained funds above that level will be used to reduce the funding requirement otherwise required in the following year.

Until legislation is enacted or the Rules amended to give it responsibility for gas advocacy, the Panel is restricted to funding advocacy on relevant electricity issues.

The Panel's policy is to incur additional staff time or resources only when justified by its workload and therefore no additional space will be rented until the need is justified.