ADVOCACY PANEL

Final report by the chairman,
pursuant to cl 8.9(k) of the National Electricity Code,
on
terms and conditions for appointment of representatives to the Advocacy Panel

7 April 2003

On 20 March 2003 I published, pursuant to cl 8.9(g) of the National Electricity Code my draft report on terms and conditions for appointment of representatives of the Advocacy Panel. This is now the final version of that draft report.

I notified the terms and conditions on the website of the panel on 11 February 2003 and sought submissions no later than 19 March 2003. I received the last of the submissions on 14 March. None of the persons making submissions sought a meeting with me. I have now also received submissions on the draft report. Before summarising and dealing with the submissions I will give what in my view is the context to the broad issue raise by submissions, which is: the amount and the form (sitting fees or annual sums) that should be paid representative members of the panel.

Context

Chapter 8 of the National Electricity Code provides for a number of panels: a Dispute Resolution Panel; a Code Change Panel to examine suggested changes to the code; and, to monitor and give guidance on the reliability of the market established by the code, a Reliability Panel. The National Electricity Tribunal under both this chapter and the National Electricity Law is a legal tribunal for the code with enforcement powers. These bodies administer aspects of the market or issues arising under the code. The Advocacy Panel, also provided for in chapter 8, is different in that it administers funds for advocacy by end user representatives about aspects of the market or issues arising under the code. The panel does not directly concern itself with the market or the code as the other panels might.

The National Electricity Code Administrator also has a Government Liaison Panel and a Market Liaison Panel. Their functions of liaison and communication of policy and experiences about the market are functions which the Advocacy Panel does not have. It is possible that some applications for funding will require the panel to have some knowledge of policy and experiences about the market, but it is not the main function of the panel to have that knowledge.

The costs arrangements of the code panels vary. Cl 8.2.8 provides that the costs of a Dispute Resolution Panel (which could be quite substantial and would vary with the dispute) are met by the parties to the dispute. The Code Change Panel examines what can be very significant changes to the code. The two appointed members of this panel receive a daily sitting fee for this[1]. The Reliability Panel has 10 members who with one exception are either from market participants or very large electricity users. The exception is Mr J Dick, vice president of the Energy Action Group. Putting aside the exception, it seems to me that the commercial interests of the members' employers justify their work without fee on that panel.

The members of the National Electricity Tribunal (NET), an administrative law tribunal, receive, I understand, a retainer and a daily sitting fee. One of the purposes of a retainer fee is to compensate a person for being available and not being able to take conflicting work.

The broader context is that of the industry dispute resolution schemes, such as the Telecommunications Industry Ombudsman (TIO), the Australian Banking Industry Ombudsman Scheme, Insurance Enquiries and Complaints Ltd (IEC) and Financial Industry Complaints Service. Victoria also has the Consumer Utilities Advocacy Centre (CUAC). None of the

[1] The other member is the chief executive of NECA.

submissions about these schemes identified features which provide a precedent for the present issue.

In the case of the TIO there is, according to its website, a 10 member council and a somewhat smaller board. The council provides policy and procedural advice to the ombudsman in that scheme. The council members are chosen for their knowledge of consumer interests and issues within the context of the telecommunications industry. Five of the members represent consumer interests. I understand they are each paid $15,000 a year, which covers meeting fees and consultation with their 'constituency'. The board members are from the industry and according to the annual report for 2002 they are not paid, with the exception of the independent board member who appears to be entitled to some $32,000 a year. The board members act as a company board and not in an executive role. The TIO has a staff of some 55. The ombudsman and appropriate staff perform the ombudsman function.

In the case of the Australian Banking Industry Ombudsman Scheme its website shows there is a company with three consumers' directors, three members' or banking industry directors and an independent chairman. The "decision makers and employees of ABIO are:/(a) entirely responsible for the handling and determination of complaints;/[and] (b) accountable only to the Directors". There is a total staff of some 44. Denis Nelthorpe, panel member, in his submission, states that consumer representatives are paid $15,000 a year on this scheme.

The IEC, in addition to having a company board, has a three member complaints panel which includes a consumer representative. The panel's functions are adjudicative and the members receive a sitting fee.

CUAC is a company financed by the Victorian government to represent the interests of utility customers in Victoria, particularly low income, rural and disadvantaged customers by advocacy and research, including by means of a grants program. It has a five member board, which among its functions determines applications for grants. There is also a 13 member reference group and an executive director. I understand that $38,000 is available for board fees and $5000 for expenses; thus some $8.600 per board member.

I understand that the Energy and Water Ombudsman scheme in Victoria (EWOV) and similar schemes in other states have boards of directors. The Victorian scheme has a substantial staff. These schemes appear to be in the category of the TIO and ABIO. I have not looked at details of the schemes as I did not receive submissions that directors' fees in such schemes should guide what is payable for the Advocacy Panel.

In my view the panels and the NET show that members generally performing adjudicative or determinative functions are paid on a sitting or daily basis, unless the members are from code participants or major electricity users. The members of the TIO and ABIO schemes do not have adjudicative or determinative functions but policy and company board functions and if they are consumer members they are paid an annual fee and not sitting fees. These schemes and EWOV are executed by substantial staffs. CUAC's board, which appears to have both determinative and policy functions, receive a modest fee apparently not based on sittings. The members of the Advocacy Panel, by contrast, have no staff. They themselves will perform the function of determining funding applications. They have no policy setting or company-governing functions.

Proposed terms and conditions

The terms and conditions for appointment of representatives that I have proposed, and on which submissions were received, are as follows:

1. The term of a representative is three years. However (i) the terms of the initial Market Participant, Market Generator and business end-use customer representatives expire on 9 December 2005 and the term of the initial domestic end-use customer representative

expires on 31 July 2004; (ii) the terms will expire on any cessation of funding in accordance with cl 8.10.4 of the National Electricity Code (under which clause funding is to be reviewed and may terminate on 30 June 2005); and (iii) the term of a person appointed to fill a casual vacancy expires when his or her predecessor's term would have expired.
2. A representative may be removed from office by the chairman of the panel, with the concurrence of NECA, if the person becomes insolvent or under administration or becomes of unsound mind or his or her estate is liable to be dealt with in any way under a law relating to mental health. If the person fails to discharge the duties of his or her office imposed by the code, NECA may remove the person on the recommendation of the chairman. A representative's term is also terminated by his or her resignation or death.
3. A retiring representative is eligible for reappointment.
4. A representative is entitled to be paid: $520 per day of meeting of the panel in accordance with the "Condition for payment of daily fees" (which also provides for part days) as published by the Remuneration Tribunal of the Australian Government from time to time; expenses in accordance with Tier 3 of the "Travelling allowance rates" as so published; and other expenses properly incurred by the representative in connection with the business of the panel.

Condition 4 incorporates publications of the Remuneration Tribunal which help deal with some minutiae of fees. The publication "Condition for payment of daily fees" enables, at para 2.3 and 2.5, engagement "on the business of the authority" other than at meetings to attract the daily fee.

Analysis of issues in submissions

For the purpose of cl 8.9(g)(4) of the code I now set out the material issue in written submissions both before my draft report and since then, the submitters positions on the issue and my response.

i. The functions of the consumer representatives which should be compensated.

Mr Nelthorpe, 20 February 2003: "consumer representatives are expected to consult widely, participate in industry and consumer consultative forums, meet with regulators and generally inform themselves about industry issues". He recited the view of representatives of four consumer bodies (Consumer Law Centre Victoria, Consumer Utilities Advocacy Centre, Queensland Consumers Association and Consumers Federation of Australia) that within one month the domestic consumer representative should "Consult with 10-15 organisations nationally regarding priorities for Panel funding;/Meet with the ACCC and arrange a national video link up for small end user groups;/Discuss with those groups the establishment and funding of a national energy network to be co-ordinated by a small end-user group."

Jim McLeod, panel representative for business consumers, 4 March 2003: supports Mr Nelthorpe. In his case he needs to consult consumer groups in three possibly four cities before and after panel meetings and possibly at their annual conferences. In a further submission of 23 March Mr McLeod saw panel members' functions as those related to meetings of the panel, and as:

- Maintaining a reasonable awareness of the market activity and efficiency, Regulator hearings on relevant issues, and proposed market additions, including economic questions of viability regulation, or market orientation. Attendance at one or two key conferences.
- Liaison with large end user participants/participants representatives in the market. Understanding local problems with national significance, advising on appropriate applications for funds, and encouraging new submissions. Being informed

on submissions so as to be able to speak to submissions in absence of attendance of fund seeker.
- In accordance with the Panel's desire to initiate work for research, assist in preparation of submissions.

AGL Electricity Limited, 14 March 2003, AGL: support paying consumer representatives for “attendance”, which in the context of their submission I read as attendance at meetings of the panel. In a further submission of 20 March AGL say that it was inherent in the job of being a representative member of the panel that there be an ability to meet with and consider the views of ‘stakeholders’, presumably the sector of the market represented by the member. Their prime task is to decide applications not to consult applicants and not to be paid to lobby.

Headberry Partners Pty Ltd, Chris Field, 12 March 2003: industry issues and consulting with constituency will require significant time in addition to sitting at meetings.

Energy Users Association of Australia, 12 March 2003: the relevant functions are consultation and contact with consumer advocates in their constituency and other tasks to enable panel function to be performed in an informed way.

Mark Landis, panel representative of retailers, advised me that he/the retailers recognise reasonable payments for consumer representatives but not for ‘support’ functions.

In my view the source of the consumer representatives’ functions is first cl 8.10(a) of the code, which lists the Advocacy Panel’s functions. To carry out these functions the members need to be able to form a global view of funding for end user advocacy, so as to perform their first function, of determining the annual funding requirements for end user advocacy, and to perform from time to time the third function, of developing criteria for allocating funding. They need to have some knowledge of the code, the market and related policy to be able to determine applications for funding in an informed way (the fourth function) or to commission research (also the fourth function), as envisaged in the Final Report of NECA, of December 2000 on “End-User Advocacy in the National Electricity Market” at p 3. The other source of functions, in my view, is the principle in cl 8.10.3(d)(1) which requires diversity of numbers, interests and issues in allocation of funding. To do this members have to have some contact with or knowledge of domestic and business electricity consumers and their interests and issues.

The consumer representative functions are thus narrower than put in the separate submissions of Messrs Nelthorpe and McLeod, and they involve more than attendance at panel meetings (a narrow reading of AGL’s initial submission). They will require some consultation with consumer groups so that the member will have the necessary global view and, for determining applications or commissioning research, an informed view alert to the need for diversity in funding. I do not see this view as necessarily inconsistent with the other submissions.

An ability to represent either the business or the domestic consumers is a condition of appointment but it is not necessarily a function of an appointee. At the beginning of the life of this novel panel, when there is a reasonable expectation of receiving applications for funding, I do not believe that the consumer representatives on the panel should expect to have to perform the sorts of representative functions described in the three points quoted from Mr McLeod.

However the novelty of the panel, at least in its early work will create many and varied demands on the consumer representatives to become informed. After a while the demands will reduce, perhaps with the formation of a single consumer-representative group, or in other ways. I believe that the consumer representatives should be compensated for these demands.

ii. *The amount of compensation*

Messrs Nelthorpe, McLeod, Headberry and Field: $15,000 as an annual retainer and sitting fees at an appropriate level. In a second submission Mr McLeod said that the sitting fee should be $520. In addition to the TIO and ABIO schemes, Mr Nelthorpe refers to the fees of $20,000 for consumer board members of the IEC and Financial Industry Complaints Service schemes.

Energy Action Group: $12,000 per consumer representative, and "a budget allocation be made to facilitate a regular telephone hook up between consumers".

AGL: I interpret their submission as supporting $520 per day of meeting.

EUAA: a reasonable level pursuant to requests approved by the chairman under transparent rules.

In my view, first, the daily sitting fee of $520 that I had included in the terms and conditions was too low by comparison with the TIO council and the ABIO board fees. especially noting that they do not perform executive functions. However the payment should remain as a sitting fee, since the panel will do most of its regular work in sittings. In this respect it is more like the NET and the complaints panel of the IEC, which have sitting fees, and the DRP, the fees of which are likely to be on a sitting day basis. In my view the sitting fee should be increased to $750 a day.

I do not consider it appropriate to have an annual retainer or fee of $12,000 or $15,000 to consumer representatives to cover their functions outside sittings, because I do not believe their functions are so extensive as to warrant this. Their (and the other panel members') tasks will primarily relate to the practical job of determining funding applications. However there should be an allowance for the increased work of the consumer representatives in the early life of the panel, which I would fix at $5000 for six months, and a further $1000 because they could involve travelling expenses, a total of $6000, after which non-meeting work of the consumer representatives which is necessary to their functioning on the panel could be dealt with under the pro-rata provisions of condition 4 of the terms and conditions.

The EAG's submission that there be a payment for a phone hook up relates to the organisation of the consumer representatives, which is not a concern of the panel, other than possibly in an application for funding.

The EUAA submission mentions that the chairman should approve remuneration. My response to this is that the chairman as a practical matter will administer the terms as to payment of panel members.

Mr Landis on behalf of the Energy Retailers Association of Australia, who I understand are the successors to the National Retailers Forum, suggested in response to the draft report that any payment in respect of the extra demands on the consumer representatives be to the organisation from which they come or which employs them and that payment in respect of the extra demands be verified. However neither of the consumer representatives come from or is employed by an organisation. Thus the first suggestion cannot be taken further. In response to the second suggestion I have made a modification to item 4 of the terms and conditions.

iii. *Payment for market representatives*

AGL: payment of fees and expenses to market representatives on the panel "is inappropriate and inconsistent with NEM practice. Market representatives have sufficient resources to provide for their own representatives at their own cost . . . "

There were no other submissions on this issue. I note that in a letter from Ms S Richards, Secretariat, National retailers Forum, of 30 December 2002, dealing with nomination of a representative to the panel, the NRF also opposed this payment. She said the "NRF strongly objected to the costs of market participants being covered when attending and participating in market committees across all levels."

The present issue does not arise if the two market representatives do not take fees and expenses. Item 4 in the terms and conditions does not say that they have to take payment: it gives them an entitlement which they can decide not to exercise. Market representatives also assist the panel by allowing meetings to be held in their offices and by sharing their industry knowledge in deliberations of the panel. It is possible that the facilities of other code participants will be used for future meetings.

I appreciate that panels such as the Reliability Panel and NECA's two liaison panels need not attract fees for members from the industry. However the Advocacy Panel's function is different in that it determines funding applications of third parties (consumer representatives). Even for market representatives this is additional and new work and they should have the opportunity to be paid fees or expenses, especially as their employers may contribute in other ways, such as providing offices for meetings. I would not be surprised if the market representatives decline fees and only accept expenses.

iv. *Level of expenses*

It was also suggested to me on behalf of the Energy Retailers Association of Australia that the expenses, which had been fixed in the draft terms and conditions at Tier 3 as published by the Remuneration Tribunal, were the highest level and allowed business class travel. In fact item 1 in Tier 3 says that the class of travel is economy and Tiers 1 and 2 allow higher expenses than Tier 3. Thus no change is required. However the rate of expenses will be set out as an attachment to the terms and conditions.

Conclusion and determination

For the forgoing reasons I conclude and determine that item 4 of the terms and conditions should be amended, both as in my draft determination and as a result of my response to the further submissions, to read, with the changes highlighted, as follows:

> A representative is entitled to be paid: $750 per day of meeting of the panel in accordance with the "Condition for payment of daily fees" (which also provides for part days) as published by the Remuneration Tribunal of the Australian Government from time to time; expenses in accordance with Tier 3 of the "Travelling allowance rates" as so published; and other expenses properly incurred by the representative in connection with the business of the panel. The current form of the Condition for payment of daily rates and the Tier 3 rates is in the schedule. In addition an end-use customer representative is entitled to $6000 for the period ~~l April 2003~~ to 30 September 2003 ~~(payable in 3 instalments)~~ in respect of his or her attending on the functions of the panel, other than at meetings of the panel or in reading papers for meetings. This sum is payable in three instalments in connection with each of which the representative should supply a brief note to other panel members of the attendances to which it relates. During the period to 1 September pro-rata daily fees and expenses shall not be payable to a representative who is paid the sum except for meetings themselves and any related reading of papers.

ADVOCACY PANEL

The form of the terms and conditions in accordance with this report follows

Adam Bisits
Chairman
Advocacy Panel

Terms and conditions for appointment of representatives to the Advocacy Panel

1. The term of a representative is three years. However (i) the terms of the initial Market Participant, Market Generator and business end-use customer representatives expire on 9 December 2005 and the term of the initial domestic end-use customer representative expires on 31 July 2004; (ii) the terms will expire on any cessation of funding in accordance with cl 8.10.4 of the National Electricity Code (under which clause funding is to be reviewed and may terminate on 30 June 2005); and (iii) the term of a person appointed to fill a casual vacancy expires when his or her predecessor's term would have expired.

2. A representative may be removed from office by the chairman of the panel, with the concurrence of NECA, if the person becomes insolvent or under administration or becomes of unsound mind or his or her estate is liable to be dealt with in any way under a law relating to mental health. If the person fails to discharge the duties of his or her office imposed by the code, NECA may remove the person on the recommendation of the chairman. A representative's term is also terminated by his or her resignation or death.

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Schedule

Condition of Payment of Daily Fees

Consolidated as at 5 April 2002.

Specified Offices 2.2 In this Part, unless the sense otherwise requires:

a. a reference to an 'authority' is a reference to a commission, board, committee, tribunal or other body or office, the member or members of which are entitled to be paid daily fees referred to in this determination;

b. a reference to 'business of the authority' means any business of the authority conducted by a member of the authority with the approval of the authority, other than attendance at a formal meeting; and
c. the daily fee for a formal meeting includes a component to cover normal preparation time, but where the chairperson of the authority considers the period of preparation time involved is so unusual as to warrant recognition that period may be included as business of the authority.

2.3 A part-time holder of a public office in an authority shall be paid the daily fee specified in Table 2 in respect of such period, not less than three hours, on any one day on which he or she attends a formal meeting of the authority, and/or is engaged on business of the authority, subject to the following conditions:

a. the chairperson, or nominated presiding officer, shall in each case certify whether the period of three hours has elapsed and in so certifying may have regard to reasonable travelling time incurred by an office holder away from the metropolitan area of the capital city or the environs of the town in which he or she lives; and
b. the maximum payment in respect of any one day shall be the appropriate daily fee.

2.4 An office-holder may be paid in respect of formal meetings of less than three hours subject to the following conditions:

a. for formal meetings aggregating less than two hours, an amount equal to two-fifths of a daily fee;
b. for formal meetings, or formal meetings and business of the authority on the day of a formal meeting, of two hours or more, but less than three hours on any one day, an amount equal to three-fifths of a daily fee;
c. the maximum payment in respect of any one day shall be the appropriate daily fee;
d. eligibility for each payment shall be certified by the chairperson or nominated presiding officer and in so certifying the chairperson may have regard to reasonable travelling time in accordance with 2.3; and
e. preparation time shall only be included

in accordance with 2.2.

2.5 An office-holder may also be paid a daily fee in respect of aggregates of periods of business of the authority of less than three hours undertaken on behalf of the authority, subject to the following conditions:

a. individual periods of business must be on other than formal meeting days and each period must be for a minimum of one hour;
b. to attract payment of a daily fee, aggregated periods shall total at least five hours;
c. the maximum payment in respect of any one day shall be the appropriate daily fee;
d. eligibility for each payment shall be certified by the chairperson and in so certifying the chairperson may have regard to reasonable travelling time in accordance with 2.3; and
e. preparation time shall only be included in accordance with 2.2.

~~Offices Not Specified~~ ~~2.6~~ ~~A part-time holder of a public office in respect of whom a fee has not otherwise been specified in this determination shall, subject to the conditions outlined in paragraphs 2.2 to 2.5 of this determination, be paid a daily fee as follows:-~~

~~Office~~	~~Category 1 $~~	~~Category 2 $~~	~~Category 3 $~~
~~Chairperson~~	~~280~~	~~380~~	~~460~~
~~Member~~	~~210~~	~~280~~	~~410~~

~~2.7~~ ~~The category of fee to be paid shall be determined by the Minister within whose portfolio responsibility the public office is located in accordance with the nature and function of the office.~~

~~2.8~~ ~~A part-time holder of a public office in respect of whom a fee has been determined in accord with paragraphs 2.6 and 2.7 shall be entitled to travelling allowance for travel on official business within Australia at the Tier 2 rate specified in Determination Number 6 of 2000.~~

TOP

ADVOCACY PANEL

TIER 3 - RATES OF TRAVEL ALLOWANCE - per overnight stay (inclusive of accommodation, meals and incidentals)

Sydney	Melbourne, Brisbane, Perth,	Adelaide, Darwin, Hobart, Canberra	Other than Capital City
$215	$205	$170	$145

These provisions should be read in conjunction with the Travelling Allowance provisions contained in the principal determination for the office.

1.Class of Travel: Economy

2.Part Payment of Travel Allowance:

i. (a) These provisions apply when an entity other than the office holder meets the cost of accommodation and/or meals.

(b) "Part Day Travelling Allowance" is no longer payable (ie, an entitlement to travelling allowance occurs only when an office holder that is travelling on official business has an overnight stay).

(c) Where an office holder is accommodated in private, noncommercial accommodation, such as the home of a family member or friend, a rate of one third of the specified rate is payable, rounded upwards to the nearest dollar.

ii. Where the cost of accommodation is met by an entity other than the office holder, travelling allowance of $78 per overnight stay shall be payable (comprised of: Dinner $31, Lunch $18, Breakfast $16, Incidentals $13).

iii. Where the cost of a meal or meals is met by an entity other than the office holder, the amount of travelling allowance should be reduced by the relevant amount(s) referred to in clause 2 (ii).

iv. Where the Commonwealth meets the travel costs of a spouse or partner accompanying the office holder, an additional $10 a night shall be payable or such other amount as is vouched as the difference between the cost of a single and double room.

Part 3 - Rates of Motor Vehicle Allowance

The following rates apply to all Tier 1, 2 and 3 office holders

With effect on and from 23 November 2000

Item	Engine capacity of motor vehicle not being a motor vehicle powered by a rotary engine	Engine capacity of motor vehicle powered by a rotary engine	Rate of allowance per kilometre
1	Above 2,600 cc	Above 1,300 cc	59.5 cents
2	1,601 to 2,600 cc	801 cc to 1,300 cc	58.5 cents
3	1,600 cc or less	800 cc or less	48.9 cents

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ADVOCACY PANEL