



## **Draft National Electricity Amendment (Advocacy Panel) Rule 2006**

under the National Electricity Law as applied by:

- (a) the National Electricity (South Australia) Act 1996; and
- (b) the Electricity (National Scheme) Act 1997 of the Australian Capital Territory; and
- (c) the National Electricity (New South Wales) Act 1997 of New South Wales; and
- (d) the Electricity - National Scheme (Queensland) Act 1997 of Queensland; and
- (e) the Electricity - National Scheme (Tasmania) Act 1999 of Tasmania; and
- (f) the National Electricity (Victoria) Act 1997 of Victoria; and
- (g) the Australian Energy Market Act 2004 of the Commonwealth.

The Australian Energy Market Commission makes the following Rule under the National Electricity Law.

John Tamblyn  
Chairman  
Australian Energy Market Commission

**Draft National Electricity Amendment (Advocacy Panel) Rule 2006**

**1. Title of Rule**

This Rule is the *National Electricity Amendment (Advocacy Panel) Rule 2006*.

**2. Commencement**

This Rule commences operation on the day the notice of the making of the Rule is published in the South Australian Government Gazette.

**3. Amendment of the National Electricity Rules**

The National Electricity Rules are amended as set out in Schedule 1.

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## Schedule 1 Amendment of National Electricity Rules

(Clause 3)

### [1] Clause 2.11.3 Budgeted revenue requirements

Omit clause 2.11.3(b)(6) and substitute:

- (6) *NEMMCO's* obligation to provide funds to the *AEMC* to meet the approved *Advocacy Panel* funding requirements in accordance with clause 8.10.5.

### [2] Clause 8.10 Advocacy Panel

Omit the clause and substitute:

## 8.10 Advocacy Panel

### 8.10.1 Establishment of the Advocacy Panel

- (a) The *AEMC* must establish an *Advocacy Panel*. The *Advocacy Panel* must, in accordance with clause 8.10:
  - (1) determine the annual funding requirements for end-user advocacy;
  - (2) develop and publish criteria for the allocation of funding for end-user advocacy;
  - (3) develop and publish guidelines for applications for funding for end-user advocacy;
  - (4) allocate funding to individual projects; and
  - (5) ensure appropriate auditing arrangements.

### 8.10.2 Constitution of the Advocacy Panel

- (a) The *Advocacy Panel* is to consist of:
  - (1) a person appointed by the *AEMC* as a member who is also appointed to act as the Chairperson; and
  - (2) 4 members appointed by the *AEMC*.
- (b) In appointing a Chairperson or any other member to the *Advocacy Panel* under clause 8.10.2(a), the *AEMC* must, to the extent practicable:

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- (1) have regard to any nominee recommended by the *Ministers of the participating jurisdictions* and to any guidelines prepared under clause 8.10.3(a); and
  - (2) ensure that the person so appointed is independent of the *AEMC*, the *AER*, *Jurisdictional Regulators*, *NEMMCO* and all *Registered Participants*.
- (c) The Chairperson and other members of the *Advocacy Panel* will be appointed for a period of up to 3 years on terms and conditions as to remuneration and other matters specified in the instrument of appointment.
- (d) If at any time the Chairperson of the *Advocacy Panel* ceases to be independent of the *AEMC*, the *AER*, *Jurisdictional Regulators*, *NEMMCO* and all *Registered Participants*, the *AEMC* must remove that person from the *Advocacy Panel*.
- (e) Subject to clause 8.10.2(f) any person who has previously served as Chairperson of the *Advocacy Panel* is eligible for reappointment to the *Advocacy Panel* in accordance with this clause 8.10.2.
- (f) The *AEMC* may remove the Chairperson or any other member of the *Advocacy Panel* at any time during his or her term in the following circumstances:
  - (1) the person becomes insolvent or under administration;
  - (2) the person 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;
  - (3) the person resigns or dies;
  - (4) the person ceases to be independent of the *AEMC*, the *AER*, *Jurisdictional Regulators*, *NEMMCO* and all *Registered Participants*; or
  - (5) the person fails to discharge the obligations of that office imposed by the *Rules*, the terms and conditions in the instrument of appointment as referred to in clause 8.10.2(c), or the appointment guidelines developed pursuant to clause 8.10.3.
- (g) The *AEMC* may not exercise its powers under 8.10.2(f)(4) or (5), without prior consultation with the *Ministers of the participating jurisdictions*.
- (h) A person may resign from the *Advocacy Panel* by giving notice in writing to that effect to the Chairperson of the *Advocacy Panel* and to the *AEMC*.

## 8.10.3 Appointment guidelines

- (a) The *AEMC* must, in consultation with the *Ministers of the participating jurisdictions*, and in accordance with the *Rules consultation procedures*, develop and publish guidelines for the appointment of members of the *Advocacy Panel*.
- (b) The guidelines referred to in 8.10.3(a) are to set out details of:
  - (1) the remuneration of *Advocacy Panel* members;
  - (2) the requirements for independence of members of the *Advocacy Panel*;
  - (3) the requisite skills, knowledge and experience of members of the *Advocacy Panel*; and
  - (4) any other matter that the *AEMC* considers contributes to good governance.
- (c) The *AEMC* must review the guidelines referred to in 8.10.3(a) where the *AEMC* considers this is necessary.

## 8.10.4 Meetings of the Advocacy Panel

- (a) The *Advocacy Panel* must meet at least quarterly each year and regulate its meetings and conduct its business in accordance with the *Rules* and any guidelines developed and published by the Chairperson of the *Advocacy Panel* for the regulation and conduct of its meetings.
- (b) A quorum for a meeting of the *Advocacy Panel* consists of the Chairperson and 2 other members and the Chairperson has the casting vote in all decisions of the *Advocacy Panel*.
- (c) The Chairperson may determine that a member or members may participate in, and form part of the quorum for, a meeting of the *Advocacy Panel* by telephone, closed circuit television or other means, but only if the member who speaks on any matter at that meeting can be heard by other members.

## 8.10.5 Funding of the Advocacy Panel

- (a) For the purposes of clause 8.10:

***Advocacy Panel funding requirements*** means, for each *financial year*:

  - (1) the funding requirements for end-user advocacy; and
  - (2) the estimated expenses of the *Advocacy Panel* in carrying out its functions under the *Rules*.
- (b) The *Advocacy Panel* must determine the proposed *Advocacy Panel* funding requirements in accordance with the *Rules consultation procedures* and submit the proposed requirements

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to the *AEMC* by 12 February each year for approval under this clause.

- (b) The *AEMC* must, subject to this clause 8.10.5, approve the funding requirements referred to in clause 8.10.5(a) by 14 March each year, (the approved *Advocacy Panel* funding requirements).
- (c) If the *AEMC* considers that the proposed *Advocacy Panel* funding requirements are unreasonable, the *AEMC* may request the *Advocacy Panel* to propose revised requirements for re-submission and approval by the *AEMC*.
- (d) If by 31 March each year, the proposed *Advocacy Panel* funding requirements have not been approved by the *AEMC*, then the *AEMC* may substitute an amount that it considers reasonable in all the circumstances as the approved *Advocacy Panel* funding requirements.
- (e) The *Advocacy Panel* must not vary the amount referred to in clause 8.10.5(a)(2) without the prior written consent of the *AEMC*.
- (f) The *AEMC* may only consent to a variation referred to in clause 8.10.5(e) where it is satisfied that exceptional circumstances have resulted in the request by the *Advocacy Panel* for the variation.
- (g) The *AEMC* must provide to the *Advocacy Panel* in respect of each *financial year* the amount that is the approved *Advocacy Panel* funding requirements.
- (h) *NEMMCO* must pay to the *AEMC* such amounts as are necessary to enable the *AEMC* to comply with clause 8.10.5(g) in respect of the approved *Advocacy Panel* funding requirements each *financial year* as advised by the *AEMC* no later than 15 May each year.
- (i) *NEMMCO* may recover the amounts referred to in clause 8.10.5(h) from *Participant fees* and may allocate the amounts to *Market Customers*.

### **8.10.6 Guidelines for funding applications and funding criteria**

- (a) The *Advocacy Panel* must develop and publish guidelines for applications to the *Advocacy Panel* for funding for end-user advocacy in accordance with the *Rules consultation procedures* (the funding application guidelines).
- (b) The *Advocacy Panel* must submit the funding application guidelines to the *AEMC* for approval, and the *AEMC* must approve those guidelines if they:

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- (1) have been developed in accordance with the *Rules consultation procedures*;
  - (2) are consistent with the *Rules* and national electricity market objective; and
  - (3) specify the procedure for making applications.
- (c) The *Advocacy Panel* must determine applications for funding on at least a quarterly basis, having regard to the funding criteria prepared in accordance with clause 8.10.6(d) and (e).
- (d) The *Advocacy Panel* must develop and publish funding criteria for use by the *Advocacy Panel* in allocating funding based on applications for funding for end-user advocacy, in accordance with the *Rules consultation procedures* and submit the proposed funding criteria to the AEMC for approval.
- (e) The *AEMC* may approve the funding criteria submitted to it in accordance with clause 8.10.6(d) if it is satisfied that the criteria are, to the extent practicable, consistent with the following principles:
- (1) there should be diversity in the allocation of funding with respect to the number of end-users represented, the nature of the interests represented and the issues which are the subject of the application for funding;
  - (2) a project proposed in an application for funding should:
    - (i) relate to the development, design or policy behind the national electricity market or the *Rules*; or
    - (ii) relate directly to:
      - (A) the responsibilities of the *AEMC* or *NEMMCO* under the *National Electricity Law* and the *Rules*; or
      - (B) the monitoring, investigation or enforcement responsibilities of the *AER*, or functions of the *AER* relating to the exemption from registration of *Network Service Providers*, under the *National Electricity Law* and the *Rules*; or
    - (iii) have implications for the national electricity market as a whole;
  - (3) the applicant for funding must represent the interests of a reasonable number of end-users;
  - (4) the applicant for funding must fund a share of the project costs from a source other than funding provided by the *Advocacy Panel*. In considering the contribution

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made by an applicant the *Advocacy Panel* may consider non-financial contributions, for example staff time, in lieu of a direct pecuniary contribution. An applicant may seek to waive the requirement to fund a share of the project costs but the *Advocacy Panel* has discretion as to whether or not to grant the waiver;

- (5) the applicant for funding must provide a project plan, outlining the purpose of the project, the project category, budget estimates and the amount of funding sought from the *Advocacy Panel*;
- (6) a successful applicant for funding must maintain and make available to the *Advocacy Panel* appropriate records, accounts and reports on the expenditure of funding provided by the *Advocacy Panel* on the project; and
- (7) a successful applicant for funding must within 2 months of the completion of the project or as soon as practicable after receipt of a written request for a report from the *Advocacy Panel* publish a report setting out:
  - (i) the purpose of the project;
  - (ii) the issues considered and outcomes of the project; and
  - (iii) the costs and expenses of the project.

### **8.10.7 Annual report of the Advocacy Panel**

- (a) Not later than 31 March each year the *Advocacy Panel* must prepare and publish an annual report.
- (b) The annual report of the *Advocacy Panel* must:
  - (1) include details of its approved *Advocacy Panel* funding requirements pursuant to clause 8.10.5;
  - (2) summarise the submissions received from *interested parties* regarding the proposed *Advocacy Panel* funding requirements and the *Advocacy Panel's* response to each submission;
  - (3) detail expenditure for the *financial year* and the individual projects to which funding was allocated for that *financial year*;
  - (4) detail the extent to which the allocation of funding in the *financial year* satisfies the principles in clause 8.10.6(e); and
  - (5) include the audited financial statements of the *Advocacy Panel*.



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- (c) The *Advocacy Panel* must submit a draft of its annual report under clause 8.10.7(b) to the *AEMC* by 15 March of each year.

### **8.10.8 Audit**

- (a) The *Advocacy Panel* must ensure to the extent practicable that the financial records and accounts of the *Advocacy Panel* are audited by an independent auditor who is appointed by the *Advocacy Panel* with the approval of the *AEMC*.
- (b) The *Advocacy Panel* may require a successful applicant for funding to conduct an audit of the financial records, accounts and expenditure reports prepared and maintained by the applicant.
- (c) The audit referred to in clause 8.10.8(b) must be carried out by an independent auditor, who is appointed by the *Advocacy Panel* with the approval of the *AEMC*, and the *Advocacy Panel* bears the cost of any audit undertaken.
- (d) The *AEMC* may, when the *AEMC* considers it appropriate to do so, direct the *Advocacy Panel* to conduct an audit of all or any particular activities of the *Advocacy Panel* to determine whether the *Advocacy Panel* is carrying out those activities effectively, efficiently and in compliance with the *Rules*.
- (e) The audit referred to in clause 8.10.8(d) must be carried out by an independent auditor, who is appointed by the *AEMC*, and the *Advocacy Panel* bears the cost of any such audit undertaken.

### **[4] Chapter 10**

In Chapter 10, insert in alphabetical order, the following definition:

#### **Minister of a participating jurisdiction**

Has the same meaning as in the National Electricity Law.

### **[5] Chapter 11**

After Clause 11.1 insert:

#### **11.2 Rules consequent on making of the National Electricity Amendment (Advocacy Panel) Rule 2006**

##### **11.2.1 Continuation of things done under old clause 8.10**

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- (a) For the purposes of clause 11.2.1:

**Commencement date** means the date of commencement of the National Electricity Amendment (Advocacy Panel) Rule 2006;

**new clause 8.10** means clause 8.10 after the commencement of the National Electricity Amendment (Advocacy Panel) Rule 2006;

**old clause 8.10** means clause 8.10 before the commencement of the National Electricity Amendment (Advocacy Panel) Rule 2006;

- (b) On the commencement date:

- (1) persons appointed under the old clause 8.10 and clauses 24 and 25 of Schedule 2 to the National Electricity Law as Acting Chairperson and members of the *Advocacy Panel*, are taken to be the persons appointed to comprise the interim *Advocacy Panel* under the new clause 8.10 until 1 October 2006;
- (2) any action taken by the interim *Advocacy Panel* referred to in clause 11.2.1(b)(1) for the purpose of preparing the provisional funding requirements for end-user advocacy for the 2006-2007 *financial year*, is deemed to have been taken for the purposes of the new clause 8.10 and continues to have effect for this purpose;
- (3) an application for funding for end-user advocacy that was determined by the *Advocacy Panel* in accordance with the old clause 8.10 as at the commencement date, continues in effect and is taken to be a determination made by the *Advocacy Panel* under the new clause 8.10;
- (4) an application for funding for end-user advocacy made to, but not determined by, the *Advocacy Panel* under the old clause 8.10 as at the commencement date, is taken to be an application under the new clause 8.10, and the *Advocacy Panel* must take any action after the commencement date for the purpose of determining that application in accordance with the new clause 8.10;
- (5) guidelines for making funding applications and funding criteria in force under the old clause 8.10.3, continue to

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have effect, and are taken to have been issued, for the purposes of the new clause 8.10.6 until 1 March 2007;

- (6) guidelines for the appointment of members of the *Advocacy Panel* in force under the old clause 8.10.2(e), continue to have effect and are taken to have been issued, for the purposes of the new clause 8.10.3 until 1 March 2007; and
  - (7) any action taken by *NEMMCO* for the purpose of recovering amounts from *Participant fees* for the 2006-2007 *financial year* in contemplation of the commencement of the amending Rule, is deemed to have been taken for the purposes of the amending Rule.
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