



**NATIONAL ELECTRICITY CODE
ADMINISTRATOR LIMITED**

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9 December 2002

Mr S Roberts
Acting General Manager
Regulatory Affairs – Electricity
Australian Competition & Consumer Commission
PO Box 1199
DICKSON ACT 2602

Dear Sebastian,

NATIONAL ELECTRICITY CODE: CHAPTER 9 DEROGATIONS

I enclose proposed amendments to Chapter 9, Part C of the National Electricity Code relating to derogations in the ACT contained in chapter 9 of the Code in connection with the introduction of full retail competition in the ACT.

The application relates to chapter 7 of the Code which deals with metering arrangements for the wholesale market. A further amendment clarifies the way in which responsibility for performing the role of Jurisdictional Regulator in the ACT is assigned.

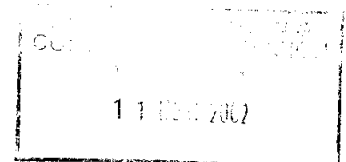
These are similar derogations to those recently authorised in Victoria and New South Wales and need to be in place by 1 March 2003, and the Minister has requested interim authorisation to achieve that date.

The Minister has formally consulted on these proposed derogations with the corresponding designated Ministers of the other participating jurisdictions.

Yours,

Stephen Kelly

**Stephen Kelly
Managing Director**





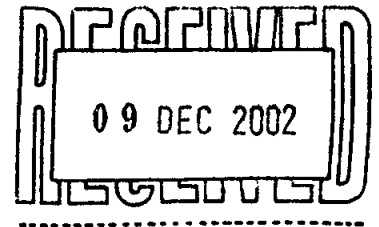
Ted Quinlan MLA

DEPUTY CHIEF MINISTER

TREASURER MINISTER FOR ECONOMIC DEVELOPMENT, BUSINESS AND TOURISM

MINISTER FOR SPORT, RACING AND GAMING MINISTER FOR POLICE, EMERGENCY SERVICES AND CORRECTIONS

MEMBER FOR MOLONGLO



Stephen Kelly
Managing Director
National Electricity Code Administrator Limited
Level 5, 41 Currie Street
Adelaide SA 5000

Dear Mr Kelly

Proposed Derogations to the National Electricity Code - Transition to Full Retail Competition

The ACT is seeking to amend its derogations contained in chapter 9 of the Electricity Code in connection with the introduction of FRC in the ACT. The proposed amendments to the derogations relate to chapter 7 of the Code, which deals with metering arrangements for the wholesale market. A further amendment clarifies the way in which responsibility for performing the role of Jurisdictional Regulator in the ACT is assigned.

The derogations that are being sought are essentially the same as the derogations that were recently granted to Victoria and to New South Wales. The reasons for seeking the derogations are the same as offered by those jurisdictions.

It is important that these derogations be in place by 1 March 2003 to coincide with the introduction of FRC in the ACT on that date. To that end, I seek an interim authorisation in case a final authorisation cannot be secured before that date. When authorisation is granted, would you please arrange publication in the relevant Government Gazettes, as required by clause 9.1.1 of the Code and section 6(2) of the National Electricity Law, before the changes are to take effect on 01 March 2003.

I have written to designated Ministers in other NEM Jurisdictions in accordance with the consultation requirements of the National Electricity Code and attach a copy of one of those letters. I have also arranged for ACT Treasury to forward copies of responses received to you and to the ACCC.

I would appreciate your forwarding this application to the ACCC as soon as possible. Please contact Mr David Butt, Director, Economic Management Branch, ACT Treasury on (02) 62075904 if you would like to discuss this submission.

Yours sincerely

Ted Quinlan MLA
Treasurer

4.12.2002

ACT LEGISLATIVE ASSEMBLY

London Circuit, Canberra ACT 2601 GPO Box 1020, Canberra ACT 2601

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Application to the
Australian Competition and Consumer Commission

Proposed Derogations to the National Electricity Code
Transition to Full Retail Competition

ACT Department of Treasury

November 2002

INTRODUCTION

The Australian Capital Territory (*ACT*) is seeking to amend its derogations contained in chapter 9 of the National Electricity Code (*Code*) in connection with the introduction of full retail competition in the ACT. The proposed amendments to the derogations relate to chapter 7 of the Code, which deals with metering arrangements for the wholesale market. Two minor amendments are also sought to clarify the appointment of the jurisdictional regulator.

Application is made:

for the approval of those amendments by the Australian Competition and Consumer Commission (*Commission*) under clause 9.1.1(e) of the Code; and
through the National Electricity Code Administrator (*NECA*), for authorisation of those amendments by the Commission under sections 88(1) and 88(8) of the Trade Practices Act 1974 (Cth).

DEROGATIONS SOUGHT

The proposed amendments to the ACT's derogations are summarised below. The terms of the proposed amendments are set out in Schedule 1.

Responsible Person

Clauses 7.2.2 and 7.2.3 of the Code specify the Code Participant that is responsible for providing, maintaining and installing metering installations for market connection points (*the Responsible Person*). These clauses provide that, unless otherwise elected by the financially responsible Market Participant (*FRMP*), the Local Network Service Provider (*LNSP*) is the Responsible Person for metering installations in the LNSP's local area. It is noted that the ACT currently has a sole LNSP, ActewAGL.

It is proposed that, during a transitional period of approximately three years, ~~the LNSP should be the Responsible Person for type 5, type 6 and type 7~~ metering installations. Therefore, during this period, the FRMP would not have the option of electing to be the Responsible Person.

This proposed derogation is supported by imposing a requirement that the offer by the LNSP to be the Responsible Person must be on terms that are fair and reasonable and do not unreasonably discriminate between retailers, with any question as to fairness and reasonableness or whether a term unreasonably discriminates to be resolved by the Independent Competition and Regulatory Commission (*ICRC*).

Payment for Metering

Clause 7.3.6 provides that (subject to certain exceptions) the FRMP for a connection point is responsible for the payment of all costs associated with the provision, installation, maintenance, routine testing and inspection of the metering installation for that connection point.

As discussed in section 3 below, one of the benefits sought to be realised by requiring the LNSP to be the Responsible Person for types 5, 6 and 7 metering installations is to facilitate the recovery of the costs associated with implementing full retail competition from all customers, rather than directly from second tier customers.

It is therefore proposed that, during the transitional period described above, the costs of the LNSP described in clause 7.3.6 would be recovered in accordance with the distribution businesses' licence conditions and price determinations made by the ICRC.

Metering Provider

Clause 7.4.2 requires a person to be accredited by and registered with NEMMCO to be a Metering Provider. The Code requires that the Responsible Person must engage a Metering Provider to carry out the provision, installation and maintenance of a metering installation unless the Responsible Person is the LNSP and a registered Metering Provider.

The LNSP is already responsible for first tier metering and performs the following functions that are similar to those that will be required for types 5, 6 and 7 metering installations:

- Meter provision
 - Installation only of the whole current (direct connected) meters (“Metering Provider category A”); and
 - Provision, installation and maintenance of the meter, data logger (where required) and current transformer (where required) (“Metering Provider category B”); and

- Metering data services
 - Collection only of energy data (“Metering Provider category C”).

The processing of energy data and transfer of this data to NEMMCO (“Metering Provider category D”) is a new function that is currently not undertaken by the LNSPs.

It is proposed that, to facilitate the LNSP immediately taking on the role of the Responsible Person for types 5, 6 and 7 metering installations, the LNSP be deemed to be accredited and registered as a Metering Provider category A, B and C, for these types of metering installations with effect from the introduction of the metrology procedure for the relevant type of metering installation.

It is proposed that this derogation expire on 29 February 2004, requiring the LNSP to obtain registration and accreditation within that time. In addition, NEMMCO's right to deregister a LNSP as a Metering Provider under clause 7.4.3 is expressly preserved during this period.

NEMMCO has indicated that it does not object to a derogation on these terms.

Jurisdictional Regulator

Clauses 9.19 and 9.23.3 refer to the Energy and Water Charges Commission, which no longer exists. Amendment of these clauses is proposed to remove this reference.

REASONS FOR THE DEROGATIONS

Introduction

The derogations are aimed at facilitating a smooth transition to full retail competition in the ACT. The National Competition Council has recognised that further derogations to the Code may be necessary in this context.¹

The ACT Government recognises that maximising the degree of contestability in the provision of settlement ready data is an important goal.

However, the immediate focus for the ACT Government has been developing an approach that meets its competition timetable in a logical and manageable process. The ACT is currently working towards publishing a metrology procedure that would enable types 5, 6 and 7 metering installations to be used with effect from 1 March 2003. It is also proposed that the current restriction on switching by customers consuming less than 100MWh per annum would be removed with effect from 1 March 2003.

It is submitted that metering competition is not necessary to enable substantial benefits of full retail competition to be realised. Rather, it is considered that introducing competition in relation to meter provision and metering data services for small customers at the same time as the introduction of full retail competition would add an extra element of complexity that may inhibit the development of core retail competition.

In designing the trading arrangements, ensuring a smooth transition to competitive arrangements has been paramount and, accordingly, it has been determined that it is desirable to delay the introduction of competition in relation to the responsibility for meter provision and metering data services during a transitional period to facilitate the development of full retail competition.

¹ National Competition Council Third Tranche Assessment Framework, chapter 6

The ACT submits that the public benefits resulting from the proposed amendments to its chapter 9 derogations outweigh any detriment to the public which may result from those amendments for the reasons described below.

Smooth Introduction of Full Retail Competition

One of the main purposes of making the LNSP the Responsible Person for types 5, 6 and 7 metering installations for a transitional period is to provide simplicity and clarity of obligations relating to meter provision and metering data services to ensure a smooth and stable introduction of full retail competition. Essentially, it is proposed that the current arrangements continue through a transitional period.

While there is currently only one LNSP in the ACT, the potential complexity arises from the possibility that the retailer (FRMP) may act as the Responsible Person for types 5, 6 and 7 metering installations. This would require additional systems and processes to be in place, and complex arrangements to be established between the LNSP and the retailers operating in the ACT, for the implementation of full retail competition. It is submitted that it would be extremely difficult to introduce this additional layer of complexity at the same time as the initial implementation of full retail competition.

Making the LNSP the exclusive Responsible Person for these classes of metering installations will remove this layer of complexity and enable the ACT Government to meet its core objective of the introduction of full retail competition. The LNSP is currently responsible for the bulk of the tasks that are required for meter provision and metering data services for types 5, 6 and 7 metering installations. In addition, the current role of the LNSP places it in the best position to facilitate the efficient development of the new systems and processes that are required in any case by the introduction of the new metering installation types.

For example:

- There will be a number of parties that will want access to metering data: the LNSP requires metering data for billing requirements and retailers require metering data both for billing their customers and for reconciling their wholesale settlement obligations. The necessary data flows could be extremely complicated if there is the potential for FRMPs to engage other service providers, as it would be necessary for the LNSP and retailers to establish relationships with, and systems and processes for obtaining data that is collected by, all of those service providers. In contrast, if the LNSP acts as the Responsible Person there is a single source of data for all metering points within the LNSP's entire distribution area.
- In relation to type 7 metering installations, the LNSP currently maintains the data required for the load table and inventory table that will be used in calculating the settlement ready data for unmetered loads. If other parties

are calculating that data, new systems and processes will be required for transferring data to and from the relevant parties.

Further examples of the systems and processes that have been identified to date as being necessary to enable the FRMP to act as Responsible Person are set out in Schedule 2. It is also likely that further significant issues would arise from the introduction of full retail competition in combination with the introduction of competition in metering and data services.

The introduction of such new systems and processes could be feasible but would take time and, at this stage, the net benefits of introducing those systems and processes have not been determined.

Cost Effectiveness

The development of additional systems and processes necessary for the FRMPs to act as Responsible Person would also increase the implementation costs of full retail competition.

To the extent that the LNSP already carries out the tasks that will be required for types 5, 6 and 7 metering installations, additional costs would result if the FRMPs were to carry out those tasks in the short term.

For example, the LNSP enjoys the benefit of economies of scale resulting from meter rounds that are undertaken within its entire distribution area. This is illustrated by the difference between the cost of a normal meter read of less than \$10 per meter per annum and the costs associated with a special meter read which is approximately \$40 per read². This argues for the LNSP to continue to be the provider of metering services to retailers in the early stages of introducing retail competition, while the host retailer has most of the customers, and thus would command a cost advantage in the procurement of metering services.

It will take some time for new retailers to establish a customer base that will provide economies of scale for competitive provision of these services. While the precise economies of scale are not known, it is recognised that it is a reasonably large proportion of the market. Accordingly, it is likely that such economies of scale will only be achieved over time or as a result of technological innovation, which is not expected in the short term.

In any case, to some extent, the benefits of competition in meter provision and metering data services are already provided through the LNSP. The LNSP already out sources some of these functions, engaging Metering Providers based on competitive tenders. This means that there is competition for the market, rather than in the market. Further, in seeking to recover its costs of providing these services (see section 3.4(a) below) the LNSP will be required

² ActewAGL's excluded service charge is \$37.40 including GST for 2001/02

to demonstrate to the ICRC that such costs are competitively based. In addition, anecdotal evidence suggests that the experience to date of enabling the FRMP to act as the Responsible Person in respect of types 1 to 4 metering installations (for customers consuming greater than 160MWh per annum) has not seen a substantial reduction in the costs of providing these services. This is probably less likely to occur in the below 160MWh per annum customer class.

As mentioned above, given the complexity of the systems and processes required to effect full retail competition, the development of optimal solutions for all of those systems and processes would be extremely difficult to achieve at the same time. Making the LNSP the exclusive Responsible Person for types 5, 6 and 7 metering installations would reduce the amount of work required in relation to meter provision and services for those metering installation types. Delaying the development of the systems and processes required to enable the FRMP to act as Responsible Person for these customers would enable the relevant industry participants to benefit from the experience gained during the initial transitional period in terms of identifying the optimal systems and processes required to deliver the maximum benefits to customers. This is likely to result in the most cost effective, technically efficient solutions and create opportunities for market and technological evolution. The National Competition Council has noted that, as part of its assessment criteria, leaving room for innovation is an important aspect of creating a competitive market.³

Barriers to Switching

Minimisation of Transfer Costs

A key objective of the ACT Government in relation to full retail competition is to minimise the costs charged to a customer that is transferring to a new retailer. Such cost minimisation is seen as essential to encourage competition.

The effect of customer switching charges on the development of competition is illustrated by experience in Norway where, even after the introduction of profiling in 1995, very few household customers changed supplier. One of the factors identified as deterring customer switching was a charge of approximately A\$54 imposed directly on a customer in connection with changing supplier. Once this charge was eliminated in 1997, the rate of switching increased immediately so that, by October 1998, around 4.5% of households had changed to a supplier other than their local supplier.⁴

The ACT Government considers that the development of a competitive market would be promoted by the recovery of prudent implementation costs across a broad customer base rather than those costs being imposed on customers that

³ National Competition Council Third Tranche Assessment, chapter 6

⁴ Trowbridge Consulting, Victorian Electricity Load Profiling Study March 2000, Appendices pages 20 to 24.

chose to switch retailers. Therefore, the ACT Government wants to ensure that broad-based cost recovery can be easily facilitated.

The ICRC's current proposal is for the LNSP's prudent full retail competition implementation costs to be recovered either:

- as a pass through during the current regulatory period; or
- during the next regulatory reset in July 2004,

depending on the magnitude of the costs that the LNSP is seeking to recover.

Simplicity

The more complicated the process for switching, the more reluctant customers will be in making the decision to switch. It is submitted that it would be preferable for the development of full retail competition to ensure that, in the initial stages of full retail competition, switching retailers is as simple as possible. This is conducive to the development of a competitive retail environment, in the shortest practicable timeframe.

Further, the risks inherent in introducing a large number of new systems could also have a negative impact on full retail competition. The more new systems that are required to be in place for full retail competition to proceed, the greater the risk of a failure of one of those systems. The experience of ineffective transfer and the resulting publicity associated with any significant (or even not so significant) system failure would have the effect of undermining customer confidence in full retail competition and deter customers from exercising retail choice, thereby inhibiting the development of competition.

For example, in the early stages of introducing competition in New Zealand in 1999, there was extensive reporting of individual problems with transfer, especially those related to retailer ownership of meters. In particular, there were reported cases of retailers removing customer meters (on the grounds of ownership) when that customer sought to transfer to a new retailer. This contributed to the view in New Zealand that the introduction of retail competition had not been successful, which in turn led to the establishment of the New Zealand electricity industry inquiry. The inquiry found that:

Retail company ownership of meters has impeded the efficient switching of customers, contributing to unnecessary delays and costs that are ultimately borne by consumers. On the other hand, were the meters to have remained with the distribution companies, they would be provided by a monopoly. There are gains to be made in having meters provided in a properly functioning competitive market.⁵

⁵ Inquiry into the Electricity Industry - Report to the Minister of Energy - June 2000, page 52 paragraph 229

SCHEDULE 1 DEROGATIONS

The following new subclause 9.19(e) is substituted for the current subclause 9.19(e) in Part C of chapter 9 of the Code:

- (e) provide for the appointment of the *Regulator* and *Jurisdictional Regulator* for the purposes of the Code

The following new clause 9.23.3 is substituted for the current clause 9.23.3 in Part C of chapter 9 of the Code:

9.23.3 Distribution Service Pricing – Jurisdictional Regulator

For the purposes of the Code the *Jurisdictional Regulator* for the Australian Capital Territory is the person or body appointed for this purpose from time to time in writing by the Minister.

The following new clause 9.24A is inserted immediately following clause 9.24 in Part C of chapter 9 of the Code:

9.24A Transitional Arrangements for Chapter 7 - Full Retail Competition

9.24A.1 Application

This clause 9.24A applies to *metering installations* for *connection points* located in the Australian Capital Territory.

9.24A.2 Responsible Person (Clauses 7.2.1 and 7.2.2)

- (a) The *Local Network Service Provider* will be the *Responsible Person* for all type 5, type 6 and type 7 *metering installations*.
- (b) ~~Clause 7.2.3 does not apply in respect of type 5, type 6 or type 7 *metering installations* and the *financially responsible Market Participant* for any *market connection point* which has or is proposed to have a type 5, type 6 or type 7 *metering installation* must:~~
 - (i) request an offer from the *Local Network Service Provider* under clause 7.2.2 in relation to the *metering installation*; and
 - (ii) subject to the resolution of any dispute in accordance with clause 9.24A.2(d), accept an offer made by the *Local Network Service Provider* under clause 7.2.2,for the provision, installation and maintenance of the *metering installation*.

- (c) The terms of an offer made by the *Local Network Service Provider* under clause 7.2.1 in respect of a type 5, type 6 or type 7 *metering installation* must:
 - (i) be fair and reasonable and consistent with the regulatory instruments of the Australian Capital Territory referred in clause 9.24A.3(a); and
 - (ii) not unreasonably discriminate, or have the effect of creating unreasonable discrimination, between *Market Participants* or between customers of any *Market Participant*.
- (d) Any question as to the fairness and reasonableness of the terms of an offer referred to in clause 9.24A.2(c) or whether the terms of such an offer unreasonably discriminate shall be decided by the *Jurisdictional Regulator* on the basis of the *Jurisdictional Regulator's* opinion on the matter.
- (e) This clause 9.24A.2 ceases to apply on 28 February 2006.

9.24A.3 Payment for Metering (Clause 7.3.6)

- (f) Clause 7.3.6(a) does not apply in respect of the payment to a *Local Network Service Provider* of its costs associated with the provision, installation, maintenance, routine testing and inspection of a type 5, type 6 or type 7 *metering installation* in accordance with the requirements of the relevant *metrology procedure*, which costs may only be recovered by the *Local Network Service Provider* in accordance with the *Local Network Service Provider's distribution licence* or any other applicable regulatory instrument in the Australian Territory Capital.
 - (g) This clause 9.24A.3 ceases to apply on 30 June 2004.
-

9.24A.4 Metering Providers (Clause 7.4.2)

- (a) Immediately prior to the date on which the initial *metrology procedure* for type 5, type 6 or type 7 *metering installations* for the Australian Capital Territory becomes effective each *Local Network Service Provider* holding a *licence* in the Australian Capital Territory is deemed to be accredited by and registered with *NEMMCO* as a *Metering Provider* in respect of the following services:
 - (i) *installation of direct connected meters (Metering Provider category A);*
 - (ii) *provision, installation and maintenance of metering equipment (Metering Provider category B); and*
 - (iii) *collection of energy data from metering equipment (Metering Provider category C),**for type 5, type 6 or type 7 metering installations respectively.*
 - (b) This clause 9.24A.4 does not affect the rights of *NEMMCO* set out in clause 7.4.3, which apply in respect of each person deemed to be accredited and registered under clause 9.24A.4(a) as if the person was registered as a *Metering Provider*.
 - (c) This clause 9.24A.4 ceases to apply on 29 February 2004.
-

SCHEDULE 2 – SYSTEMS AND PROCESSES⁶

The additional systems and processes that it is currently envisaged may be required to support fully competitive Metering Providers would include:

- LNSPs would require additional arrangements with Metering Providers. For example:
 - Where meters are removed by competitive Metering Providers there would need to be processes in place to manage/track the meter and data handling.
 - The LNSPs would need to be notified so they could keep track of meter changes and update meter reading rounds.
 - Processes would need to be established for Metering Providers carrying out work on the LNSPs' systems, especially safety issues.
 - LNSPs would need to be satisfied that any person working on their network was competent and authorised to carry out that work.
- Coordination facilities would be required by the LNSPs for multiple Metering Providers to avoid delays in supply to customers. For example:
 - New connections would be complicated by competitive Metering Providers as work can currently be carried out by a single crew.
 - Re-energisation of sites would be complicated for electronic meters that have been off supply as registers and times may need to be reset by the Metering Provider.
 - Restoration of supply may be delayed if the fault is in a competitively provided meter as the LNSP may be called initially but would be unable to act to correct the fault.
- Systems would be required to track the meter details and Metering Provider for each site. For example:
 - It would be necessary to ensure that, regardless of Metering Provider and customer churn, the technical requirements relating to meter and testing are managed.
 - If there were no single entity with overarching responsibility for maintenance programs a coordination program would be required in case of Metering Provider churn.
 - A tracking system would also be required to ensure the exact location of the meter at the site is known by the relevant LNSP and meter reader, otherwise billing and settlement errors may occur.

⁶ Compiled from submissions made by the Victorian LNSPs in response to the Victorian Department of Natural Resources and Environment and New South Wales Treasury Metrology Procedures Joint Issues Paper, 27 October 2000

- Metering Providers would require systems equivalent to the LNSPs' current databases which store records of meters and their details, links those details to a premise/connection point and provide an input to the meter reading scheduling software (which matches meter data, premises and billing cycle to initiate the meter reading schedule and programs the hand held devices).
-



Ted Quinlan MLA

DEPUTY CHIEF MINISTER

TREASURER MINISTER FOR ECONOMIC DEVELOPMENT, BUSINESS AND TOURISM
MINISTER FOR SPORT, RACING AND GAMING MINISTER FOR POLICE, EMERGENCY SERVICES AND
CORRECTIONS

MEMBER FOR MOLONGLO

FILE COPY
ORIGINAL SENT 5:12:02

The Hon. Kim Yeadon MP
Minister for Energy
Level 34 Governor Macquarie Tower
1 Farrer Place
SYDNEY NSW 2000

Dear Minister

Ministerial Consultation under the National Electricity Code – Exclusivity Provisions

The purpose of this letter is to give notice to you that the Australian Capital Territory intends to seek approval from the ACCC for changes to its jurisdictional derogations from the National Electricity Code as set out in the attachment to this letter.

The ACT is seeking to amend its derogations contained in chapter 9 of the National Electricity Code in connection with the introduction of FRC in the ACT. The proposed amendments to the derogations relate predominately to chapter 7 of the Code, which deals with metering arrangements for the wholesale market.

The derogations that are being sought are essentially the same as the derogations that were recently granted to Victoria and New South Wales. The reasons for seeking the derogations are the same as offered by those jurisdictions. Therefore the ACT submission, which is attached, is based on the Victorian submission, with a few differences to reflect the specific ACT environment.

A further amendment clarifies the way in which responsibility for performing the role of Jurisdictional Regulator in the ACT is assigned.

Should you or your officers have any questions or require any information in relation to my proposal please contact Mr David Butt, Director, Economic Management Branch, ACT Treasury on (02) 62075904.

Yours sincerely

Ted Quinlan MLA
Treasurer

4.12.2002

ACT LEGISLATIVE ASSEMBLY

London Circuit, Canberra ACT 2601 GPO Box 1020, Canberra ACT 2601
Phone (02) 6205 0001 Fax (02) 6205 0135

FORM A

COMMONWEALTH OF AUSTRALIA

Trade Practices Act 1974 - Sub-section 88(1)

EXCLUSIONARY PROVISIONS:

APPLICATIONS FOR AUTHORISATION

To the Australian Competition and Consumer Commission:

Application is hereby made under sub-section 88(1) of the *Trade Practices Act 1974* for an authorisation under that sub-section:

- to make a contract or arrangement, or arrive at an understanding, where a provision of the proposed contract, arrangement or understanding would be, or might be, an exclusionary provision within the meaning of section 45 of that Act; and
- to give effect to a provision of a contract, arrangement or understanding where the provision is, or may be, an exclusionary provision within the meaning of section 45 of that Act.

-
1. (a) **Name of applicant** (*See Direction 2*) National Electricity Code Administrator Limited (ACN 073 942 775) ("NECA").
- (b) **Short description of business carried on by applicant** Administration of the National Electricity Code ("the Code").
- (c) **Address in Australia for service of documents on the applicant** Mr Stephen Kelly
Managing Director
National Electricity Code Administrator Limited
Level 5
41 Currie Street
ADELAIDE SA 5000
Phone: (08) 8213 6307
Fax: (08) 8213 6300
2. (a) **Description of contract, arrangement or understanding and, where already made, its date** The contract, arrangement or understanding with respect of which this application is made are those entered into by participants in the National Electricity Market, pursuant to the Code as amended in accordance with the letter dated 4 December 2002 from the

Treasurer of the Australian Capital Territory ("ACT"), the participating jurisdiction, submitted with this Form A (and the accompanying Forms B & E) ("the jurisdictional letter"). These amendments relate to Part C of Chapter 9, the ACT derogations.

For the avoidance of doubt, this application relates only to the changes to the jurisdictional derogations and not to the Code as a whole.

(b) Brief description of those provisions of the contract, arrangement or understanding that are, or would or might be, exclusionary provisions
(See Direction 4)

See the jurisdictional letter prepared by the jurisdiction in accordance with clause 9.1.1 of the Code submitted with this Form A (and the accompanying Forms B & E).

(c) Names and addresses of other parties or proposed parties to contract, arrangement or understanding

Code Participants, being the National Electricity Market Management Company Limited (ACN 072 010 327) ("NEMMCO") and every person registered with NEMMCO as a Code Participant as at the date of this application and whose names and addresses are listed in Appendix A to this Form A and any other persons who subsequently register with NEMMCO under the Code as a Code Participant.

3. Names and addresses (where known) of parties and other persons on whose behalf application is made

This application is made on behalf of all Code Participants, being NEMMCO and every person registered with NEMMCO as a Code Participant as of the date of this application and whose names and addresses are listed at Appendix A to this Form A.

In addition, this authorisation application is made on behalf of and in relation to all persons who become parties to the proposed contract or arrangement after it is made, or become a party to the proposed understanding at a time after it is arrived at, within the meaning of section 88(10) of the Act.

4. (a) **Grounds for grant of authorisation** Authorisation is sought on grounds set out in the jurisdictional letter, prepared by the participating jurisdiction in accordance with clause 9.1.1 of the Code, submitted with this Form A.
- (b) **Facts and contentions relied upon in support of those grounds (See Notice 1)** These facts and contentions are set out in the jurisdictional letter.
5. **This application for authorisation may be expressed to be made also in relation to other contracts, arrangements or understandings or proposed contracts, arrangements or understanding, that are or will be in similar terms to the abovementioned contract, arrangement or understanding.**
- (a) **Is this application to be so expressed?** Yes, this application is made with respect to each other similar contract, arrangement or understanding or proposed contract arrangement or understanding for the purposes of sections 88(13), (14) and (15) of the Act.
- (b) **If so, the following information is to be furnished:**
- (i) **the names of the parties to each other contract, arrangement or understanding** The applicant and all Code Participants (being NEMMCO and every person registered with NEMMCO as a Code Participant as at the date of this application and whose names and addresses are listed in Appendix A to this Form A within the meaning of section 88(10) of the Act).
- (ii) **the names of the parties to each other proposed contract, arrangement or understanding which names are known at the date of this application (See**

Direction 5 and Notice
2)

NEMMCO under the Code as a Code Participant. The names of those persons who will register with NEMMCO as a Code Participant are not known at this time.

6. (a) Does this application deal with a matter relating to a joint venture (See section 4J of the *Trade Practices Act 1974*)?

No

(b) If so, are any other applications being made simultaneously with this application in relation to that joint venture?

Not applicable

(c) If so, by whom or on whose behalf are those other applications being made?

Not applicable

7. Name and address of person authorised by the applicant to provide additional information in relation to this application.

Mr Stephen Kelly
Managing Director
National Electricity Code Administrator
Limited
Level 5
41 Currie Street
ADELAIDE SA 5000
Phone: (08) 8213 6307
Fax: (08) 8213 6300

Date: 9 December 2002

Signed on behalf of NECA

.....Stephen Kelly.....
(Signature) ~~Mr Stephen Kelly~~

Managing Director
National Electricity Code Administrator Limited

* **Note:** References in this application to the Act are references to the *Trade Practices Act 1974* and also include the Competition Codes of New South Wales, Victoria and the Australian Capital Territory as defined in the Competition Reform legislation in force in each jurisdiction.

FORM B

COMMONWEALTH OF AUSTRALIA

Trade Practices Act 1974 - Sub-section 88(1)

AGREEMENTS AFFECTING COMPETITION:

APPLICATIONS FOR AUTHORISATION

To the Australian Competition and Consumer Commission:

Application is hereby made under sub-section 88(1) of the *Trade Practices Act 1974* for an authorisation under that sub-section:

- to make a contract or arrangement, or arrive at an understanding, a provision of which would have the purpose, or would have or might have the effect, of substantially lessening competition within the meaning of section 45 of that Act; and
- to give effect to a provision of a contract, arrangement or understanding which provision has the purpose, or has or may have the effect, of substantially lessening competition within the meaning of section 45 of that Act.

-
1. (a) **Name of applicant** (*See Direction 2*) National Electricity Code Administrator Limited (ACN 073 942 775) (NECA)
- (b) **Short description of business carried on by applicant** Administration of the National Electricity Code ("the Code").
- (c) **Address in Australia for service of documents on the applicant** Mr Stephen Kelly
Managing Director
National Electricity Code Administrator Limited
Level 5
41 Currie Street
ADELAIDE SA 5000
Phone: (08) 8213 6307
Fax: (08) 8213 6300
2. (a) **Description of contract, arrangement or understanding and, where already made, its date** The contract, arrangement or understanding in respect of which the application is made is set out in the letter dated dated 4 December 2002 from the Treasurer of the Australian Capital Territory ("ACT"), the participating

jurisdiction, submitted with this Form B, being amendments to the Code in respect of Part C of Chapter 9, the ACT derogations (“the jurisdictional letter”).

For the avoidance of doubt, this application relates only to the changes to the jurisdictional derogations and not to the Code as a whole.

(b) Names and addresses of other parties or proposed parties to contract, arrangement or understanding

Code Participants, being the National Electricity Market Management Company Limited (ACN 072 010 327) (“NEMMCO”) and every person registered with NEMMCO as a Code Participant as at the date of this application and whose names and addresses are listed in Appendix A to this Form B and any other persons who subsequently register with NEMMCO under the Code as a Code Participant.

3. Names and addresses (where known) of parties and other persons on whose behalf application is made

This application is made on behalf of all Code Participants, being NEMMCO and every person registered with NEMMCO as a Code Participant as of the date of this application and whose names and addresses are listed at Appendix A to this Form B.

In addition this authorisation application is made on behalf of and in relation to all persons who become parties to the proposed contract or arrangement after it is made, or become a party to the proposed understanding at a time after it is arrived at, within the meaning of section 88(10) of the Act.

4. (a) Grounds for grant of authorisation

Authorisation is sought on the grounds set out in the jurisdictional letter submitted with this Form B and the accompanying Forms A and E.

(b) Facts and contentions relied upon in support of those grounds (See Notice 1)

The facts and contentions relied upon are set out in the jurisdictional letter.

5. This application for authorisation may be expressed to be made also in relation to other contracts, arrangements or understandings or proposed contracts, arrangements or understandings, that are or will be in similar terms to the above-mentioned contract, arrangement or understanding.

(a) Is this application to be so expressed?

Yes, this application is made with respect to all similar other contracts, arrangements or understandings, or proposed other contracts arrangements or understandings, for the purposes of sections 88(13), (14) and (15) of the Act. The terms of such other contracts are comprised in the Code as amended by the Code changes.

(b) If so, the following information is to be furnished:

(i) the names of the parties to each other contract, arrangement or understanding

The applicant and all Code Participants (being NEMMCO and every person registered with NEMMCO as a Code Participant as at the date of this application and whose names and addresses are listed in Appendix A to this Form B within the meaning of section 88(10) of the Act).

(ii) the names of the parties to each other proposed contract, arrangement or understanding which names are known at the date of this application (*See Direction 5 and Notice 2*)

The applicant and all Code Participants (being NEMMCO and every person registered with NEMMCO as a Code Participant as at the date of this application and whose names and addresses are listed in Appendix A to this Form B within the meaning of section 88(10) of the Act) and any other persons who subsequently register with NEMMCO under the Code as a Code Participant. The names of those persons who will register with NEMMCO as a Code Participant are not known at this time.

6. (a) Does this application deal with a matter relating to a joint venture (See section 4J of the *Trade Practices Act 1974*)? No.
- (b) If so, are any other applications being made simultaneously with this application in relation to that joint venture? Not applicable.
- (c) If so, by whom or on whose behalf are those other application being made? Not applicable.
7. Name and address of person authorised by the applicant to provide additional information in relation to this application. The person nominated in item 1(c) of this form.

Date: 9 December 2002

Signed on behalf of NECA

.....
(Signature) Mr Stephen Kelly

Managing Director
National Electricity Code Administrator Limited

* **Note:** References in this application to the Act are references to the *Trade Practices Act 1974* and also include the Competition Codes of New South Wales, Victoria and the Australian Capital Territory as defined in the Competition Reform legislation in force in each jurisdiction.

FORM E

COMMONWEALTH OF AUSTRALIA

Trade Practices Act 1974 - Sub-section 88(8)

EXCLUSIVE DEALING:

APPLICATIONS FOR AUTHORISATION

To the Australian Competition and Consumer Commission:

Application is hereby made under sub-section 88(8) of the *Trade Practices Act 1974* for an authorisation under that sub-section to engage in conduct that constitutes or may constitute the practice of exclusive dealing.

-
1. (a) **Name of applicant (See Direction 2)** National Electricity Code Administrator Limited (ACN 073 942 775) ("NECA").
- (b) **Short description of business carried on by applicant** Administration of the National Electricity Code ("the Code").
- (c) **Address in Australia for service of documents on the applicant** Mr Stephen Kelly
Managing Director
National Electricity Code Administrator Limited
Level 5
41 Currie Street
ADELAIDE SA 5000
Phone: (08) 8213 6307
Fax: (08) 8213 6300
2. (a) **Description of the goods or services in relation to the supply or acquisition of which this application relates** The goods or services in relation to the supply or acquisition of which this application relates is electricity sold into the National Electricity market, as affected by the amendments set out in the letter dated 4 December 2002 from the Treasurer of the Australian Capital Territory ("ACT"), the participating jurisdiction, submitted with this Form E ("the "jurisdictional letter").

For the avoidance of doubt, this application relates only to changes to the jurisdictional derogations and not to the Code as a whole.

(b) Description of the conduct that would or may constitute the practice of exclusive dealing (See Direction 4)

The supply of electricity or provision of network services on condition that both the acquisition and resale is in accordance with the Code.

The acquisition of electricity or network services on the condition that the supply is in accordance with the Code.

Refusing to supply or acquire electricity or network services because the supplier/acquirer has failed to comply with the Code.

Aiding, abetting, procuring, counselling or inducing any corporation to engage in any of the above-mentioned conduct.

3. (a) Class or classes or persons to which the conduct relates

The classes of persons are:

- (i) the applicant;
- (ii) Code Participants, being the National Electricity Market Management Company Limited (ACN 072 010 327) ("NEMMCO") and every person registered with NEMMCO as a Code Participant and whose names and addresses are listed in Appendix A to this Form E; and
- (iii) any other subsequent parties to the Code, being all parties who register with NEMMCO under the Code as a Code Participant.

This application is made on behalf of each person identified in Appendix A to this Form E. In addition:

- (a) the authorisation being applied for by this application is, in accordance with section 88(8AA) of the Act, to be expressed so as to apply to the applicant and every person who is registered with NEMMCO as a Code Participant as at the date of this application (being the persons identified in Appendix A to this

Form E), and in relation to each other person who becomes a party to the Code by registering with NEMMCO as a Code Participant; and

- (b) this application is expressed to be made also in relation to other proposed contracts, industry codes of practice, arrangements or understandings that will be in similar terms to the Code within the meaning of sections 88(13), 88(14) and 88(15) of the Act, being each of the proposed contracts, industry codes of practice, arrangements or understandings to be made between a person who registers with NEMMCO under the Code as a Code Participant, the applicant, and each existing participant under the Code at that time.

The names of the parties to each other proposed contract, industry code of practice, arrangement or understanding which are known at the date of this application are the applicant and Code Participants (being NEMMCO and each person who is registered with NEMMCO as a Code Participant as at the date of this application and identified in Appendix A to this Form E). Other than to state that the other parties to each proposed contract, industry code of practice, arrangement or understanding for the purposes of sections 88(13), (14) and (15) of the Act will be persons who register with NEMMCO under the Code as a Code Participant and each existing Participant under the Code at that time, the names of those other parties are not known as at the date of this application.

- | | | |
|---|--|------------------------------|
| (b) Number of those persons | (i) At present time | |
| | | NECA and NEMMCO 2 |
| | | Generators 46 |
| | | Customers 29 |
| | | Network Service Providers 24 |
| | | Special Participants 17 |
| | | Intending Participants 10 |
| | | Traders 9 |
| | (ii) Estimated within the next year | |
| | | Unknown |
| (c) Where number of persons stated in item 3(b)(i) is less than 50, their names and addresses | Not applicable | |
| 4. (a) Grounds for grant of authorisation | Authorisation is sought on the grounds set out in the jurisdictional letter, a copy of which is submitted with this Form E (and the accompanying Forms A and B). | |
| (b) Facts and contentions relied upon in support of those grounds (<i>See Notice</i>) | The facts and contentions relied upon in respect of the Code changes are set out in the jurisdictional letter. | |
| 5. (a) Does this application deal with a matter relating to a joint venture (See section 4J of the <i>Trade Practices Act 1974</i>)? | No. | |
| (b) If so, are any other applications being made simultaneously with this application in relation to that joint venture? | Not applicable. | |
| (c) If so, by whom or on whose behalf are those other applications being made? | Not applicable | |

6. Name and address of person authorised by the applicant to provide additional information in relation to this application.

Mr Stephen Kelly
Managing Director
National Electricity Code Administrator
Limited
Level 5
41 Currie Street
ADELAIDE SA 5000
Phone: (08) 8213 6307
Fax: (08) 8213 6300

Date: 9 December 2002

Signed on behalf of NECA

.....Stephen Kelly.....
(Signature) ~~Mr Stephen Kelly~~

Managing Director
National Electricity Code Administrator Limited

*** Note:** References in this application to the Act are references to the *Trade Practices Act 1974* and also include the Competition Codes of New South Wales, Victoria and the Australian Capital Territory as defined in the Competition Reform legislation in force in each jurisdiction.

Appendix A

to

Form A	Application for Authorisation in respect of Exclusionary Provisions
Form B	Application for Authorisation in respect of Agreements Affecting Competition
Form E	Application for Authorisation in respect of Exclusive Dealing

List of Code Participants



List of Code Participants

Company Aliases	Address	City	State	Postcode
AGL Gas Company (ACT) Ltd and ACTEW Distribution Ltd t/a ActewAGL (Distribution)	GPO Box 366	CANBERRA	ACT	2601
AES Transpower Holding Pty Ltd t/a Ecogen Energy	PO Box 61	NEWPORT	VIC	3015
AGL Electricity Ltd	PO Box 14120, MCMC	MELBOURNE	VIC	8001
AGL South Australia Pty Ltd	GPO Box 77	ADELAIDE	SA	5001
AGL Victoria Pty Ltd	GPO Box 4728UU	MELBOURNE	VIC	3001
Aurora Energy Pty Ltd	GPO Box 191	HOBART	TAS	7001
Australian Energy Services Pty Ltd	PO Box 868	MT WAVERLEY	VIC	3149
Australian Inland Energy & Water	PO Box 800	BROKEN HILL	NSW	2880
BIEP Pty Ltd	PO Box 4	PINKENBA	QLD	4008
Callide Power Trading Pty Ltd	PO Box 575, Albert Street	BRISBANE	QLD	4001
Citipower Pty	Locked Bag 14031 MCMC	MELBOURNE	VIC	8001
Country Energy	PO Box 172	BATHURST	NSW	2795
CS Energy Ltd	GPO Box 769	BRISBANE	QLD	4001
CSR Limited	PMB 6, Townsville Mail Centre	TOWNSVILLE	QLD	4816
Cummins Engine Company Pty Ltd	2 Caribbean Drive	SCORESBY	VIC	3179
Delta Electricity	PO Box Q863 Queen Victoria Building	SYDNEY	NSW	1230
Duke Energy Australia Trading and Marketing Pty Ltd	Level 30, Angel Place 123 Pitt Street	SYDNEY	NSW	2000
Duke Energy Bairnsdale Operations Pty Ltd	PO Box 7863	BRISBANE	QLD	4001
EdgeCap Pty Ltd	Level 9, 446 Collins Street	SOUTH BANK	VIC	3006

Company Aliases	Address	City	State	Postcode
Edison Mission Energy Australia Ltd	Level 20, HWT Tower 40 City Road	SOUTH MELBOURNE	VIC	3205
Electranet Pty Ltd	PO Box 7096, Hutt Street	ADELAIDE	SA	5001
Electricity Supply Industry Planning Council (ESIPC)	GPO BOX 2010	ADELAIDE	SA	5001
EMMLINK Pty Ltd	Level 24, AMP Place 10 Eagle Street	BRISBANE	QLD	4000
ENERGEX Ltd	GPO Box 1461	BRISBANE	QLD	4001
Energex Retail Pty Ltd <i>(formerly Southern Electricity Retail Corporation Pty Ltd)</i>	GPO Box 1461	BRISBANE	QLD	4001
Energy Australia	GPO Box 4009	SYDNEY	NSW	2001
Energy Brix Australia Corporation Pty Ltd	Level 1 677 Springvale Road	MULGRAVE	VIC	3170
Energy Developments (Operations) Pty Ltd	PO Box 535	RICHLANDS	QLD	4077
Energy Pacific (Victoria) Pty Ltd	Level 8 474 Flinders Street	MELBOURNE	VIC	3000
Enron Australia Finance Pty Ltd	Level 21 9 Castlereagh Street	SYDNEY	NSW	2000
Eraring Energy <i>(formerly Pacific Power)</i>	GPO Box A2238	SYDNEY SOUTH	NSW	1235
Ergon Energy Corporation Ltd (Distribution)	PO Box 1090	TOWNSVILLE	QLD	4810
Ergon Energy Pty Ltd (Retail)	PO Box 107 Albert Street	BRISBANE	QLD	4001
Ergon Energy (Victoria) Pty Ltd	PO Box 107 Albert Street	BRISBANE	QLD	4001
CKI Utilities Development Ltd, HEI Utilities Development Ltd, CKI Utilities Holdings Ltd, HEI Utilities Holdings Ltd and CKI/HEI Utilities Distribution Ltd t/a ETSA Utilities	GPO Box 77	ADELAIDE	SA	5001
Ferrier Hodgson Electricity Pty Ltd	GPO Box 4114	SYDNEY	NSW	2001

Company Aliases	Address	City	State	Postcode
National Power Australia Investments Ltd, Hazelwood Pacific Pty Ltd, Australian Power Partners BV, CISL (Hazelwood) Pty Ltd, Hazelwood Investment Company Pty Ltd t/a Hazelwood Power	Brodribb Road	MORWELL	VIC	3840
HQI Australia Limited Partnership	Level 24, AMP Place 10 Eagle Street	BRISBANE	QLD	4000
Integral Energy Australia	PO Box 6366	BLACKTOWN	NSW	2148
Loy Yang Power Management Ltd	Bartons Lane	TRARALGON SOUTH	VIC	3844
Macquarie Bank Ltd	GPO Box 4294	SYDNEY	NSW	1164
Macquarie Generation	34 Griffiths Road	LAMBTON	NSW	2299
Meridian Energy Australia Pty Ltd	PO Box 79	PALMERSTON	NT	0830
Millmerran Energy Trader	PO Box 5743, Central Plaza	BRISBANE	QLD	4001
Morgan Stanley Dean Witter Australia Finance Ltd Attention: Commodities Electricity Group	1585 Broadway Fourth Floor	NEW YORK	NY	10036- 8293 USA
Murraylink Transmission Company Pty Ltd	GPO Box 7077 Riverside Centre	BRISBANE	QLD	4001
NRG Flinders Operating Services Pty Ltd	GPO Box 2535	ADELAIDE	SA	5001
Origin Energy Electricity Ltd	GPO Box 910	SYDNEY	NSW	1041
Pelican Point Power Pty Ltd	PO Box 1276	NORTH HAVEN	SA	5018
Powercor Australia Ltd	Locked Bag 14090	MELBOURNE	VIC	8001
Queensland Electricity Transmission Corporation Ltd (Powerlink Queensland)	PO Box 1193	VIRGINIA	QLD	4016
Queensland Power Trading Corporation t/a Enertrade	GPO Box 10	BRISBANE	QLD	4001
Redbank Project Pty Ltd	PO Box 311	SINGLETON	NSW	2330
RMB Australia Ltd	GPO Box 202	SYDNEY	NSW	2001
SG Australia Ltd	Level 21 400 George Street	SYDNEY	NSW	2000

Company Aliases	Address	City	State	Postcode
Sithe Australia Power Services Pty Ltd	PO Box 2097	SMITHFIELD	NSW	2164
Snowy Hydro Ltd	GPO Box 4351	SYDNEY	NSW	4351
Snowy Hydro Trading Pty Ltd	GPO Box 4351	SYDNEY	NSW	4351
Alliant Energy Hydro Pty Ltd, Alliant Energy Southern Hydro Australia Pty Ltd, Alliant Energy Hydro No 2 Pty Ltd t/a Southern Hydro Partnership	Level 13 500 Collins Street	MELBOURNE	VIC	3000
SPI PowerNet Pty Ltd	PO Box 222, Collins Street West	MELBOURNE	VIC	8007
Stanwell Corporation Ltd	GPO Box 773	BRISBANE	QLD	4001
State Electricity Commission of Victoria (SECV) t/a Vicpower	GPO Box 2765Y	MELBOURNE	VIC	3001
Synergen Power Pty Ltd	PO Box 3286 Rundle Mall	ADELAIDE	SA	5001
Tarong Energy Corporation Ltd	GPO Box 800	BRISBANE	QLD	4001
TransGrid (NSW Electricity Transmission Authority)	GPO Box A1000	SYDNEY SOUTH	NSW	2001
Transmission Lessor Corporation	ETSA, 1 Anzac Highway	KESWICK	SA	5035
TXU Electricity Ltd	Locked Bag 14060, MCMC	MELBOURNE	VIC	8001
TXU (South Australia) Pty Ltd	PO Box 195	PORT ADELAIDE	SA	5015
United Energy Limited	Locked Bag 13	MT WAVERLEY	VIC	3149
Utilities Management Pty Ltd	Level 6 1 Anzac Highway	KESWICK	SA	5035
Valley Power Pty Ltd	Level 20, HWT Tower 40 City Road	SOUTH MELBOURNE	VIC	3205
Victorian Energy Networks Corporation (VENCorp)	PO Box 413, World Trade Centre	MELBOURNE	VIC	8005
Westpac Banking Corporation	Level 5 Dealing Floor 255 Elizabeth Street	SYDNEY	NSW	2000
Yallourn Energy Pty Ltd	Box 444	MOE	VIC	3825
Yamasa Australia Pty Ltd	20 Gilbertson Road	LAVERTON NORTH	VIC	3026



Known intending participants

Company Aliases	Street Address	City	State	Postcode
ACTEW Retail Ltd and AGL (ACT) Retail Investments Pty Ltd t/a ActewAGL (Retail)	GPO Box 366	CANBERRA	ACT	2601
Auspine Green Energy Pty Ltd	PO Box 79	MOUNT GAMBIER	SA	5290
CEPA (Kogan Creek) Holding Pty Ltd	GPO Box 2256	BRISBANE	QLD	4001
Hydro-Electric Corporation	GPO Box 335	HOBART	TAS	7001
National Grid International Ltd	PO Box 4606SS	MELBOURNE	VIC	3001
Sleiman Trading Pty Ltd	PO Box 334	POTTS POINT	NSW	2001
Snowylink 1 Pty Ltd	GPO Box 7077 Riverside Centre	BRISBANE	QLD	4001
Southernlink Transmission Company Pty Ltd	GPO Box 7077 Riverside Centre	BRISBANE	QLD	4001
Victoria Electricity Pty Ltd	PO Box 1242	BRISBANE	QLD	4001
Wambo Power Ventures Pty Ltd	Level 1 Princeton Court Three 13 Princeton Street	KENMORE	QLD	4069

**National Electricity Code Administrator
9 December 2002**