



**NATIONAL ELECTRICITY CODE  
ADMINISTRATOR LIMITED**

ACN 073 942 775

Level 5, 41 Currie Street

Adelaide SA 5000

Telephone (08) 8213 6322

Facsimile (08) 8213 6300

5 April 2004

FILE No:

DOC:

MARS/PRISM:

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

Dear Sebastian,

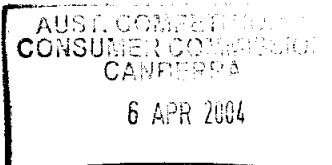
**NATIONAL ELECTRICITY CODE: CHAPTER 9 DEROGATIONS**

I enclose proposed amendments to Chapter 9, Part E of the National Electricity Code relating to derogations in Victoria.

The application relates to the Victorian regulatory framework for metering arrangements for full retail competition and a change of a statutory law nature. I understand that officers of the Victorian Department have discussed these matters with Commission staff and the Commission is expecting this submission. Details of the proposed changes are contained in the attached letter dated 1 April 2004 and application from the Honourable Theo Theophanous, Minister for Energy Industries and Resources.

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

**David Swift**  
Associate Director



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 1 April 2004 from the Minister for

Energy Industries and Resources of the State of Victoria, the participating jurisdiction, submitted with this Form A (and the accompanying Forms B & E) ("the jurisdictional letter"). These amendments relate to Chapter 9 of the State of Victoria 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.

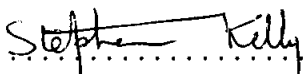
4. (a) **Grounds for grant of authorisation** Authorisation is sought on grounds set out in the jurisdictional letter, prepared by the participating jurisdiction in accordance with clause 9.1.1 of the Code, submitted with this Form A.
- (b) **Facts and contentions relied upon in support of those grounds (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) 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: 5 April 2004

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.

## DIRECTIONS

1. Where there is insufficient space on this form to furnish the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the applicant.
2. Where the application is made by or on behalf of a corporation, the name of the corporation is to be inserted in item 1(a), not the name of the person signing the application and the application is to be signed by a person authorised by the corporation to do so.
3. In item 1(b), describe that part of the applicant's business relating to the subject matter of the contract, arrangement or understanding in respect of which the application is made.
4. Furnish with the application particulars of the contract, arrangement or understanding in respect of which the authorisation is sought. Those particulars shall be furnished:
  - (a) in so far as the particulars or any of them have been reduced to writing - by lodging a true copy of the writing; and
  - (b) in so far as the particulars or any of them have not be reduced to writing - by lodging a memorandum containing a full and correct statement of the particulars that have not been reduced to writing.
5. Where the application is made also in respect of other contracts, arrangements or understanding which are or will be in similar terms to the contract, arrangement or understanding referred to in item 2, furnish with the application details of the manner in which those contracts, arrangements or understandings vary in their terms from the contract, arrangement or understanding referred to in item 2.

## NOTICES

1. In relation to item 4, your attention is drawn to sub-section 90(8) of the *Trade Practices Act 1974* which provides as follows:

“(8) The Commission shall not:

  - (a) made a determination granting:
    - (i) an authorisation under subsection 88(1) in respect of a provision of a proposed contract, arrangement or understanding, that is or may be an exclusionary provision; or
    - (ii) an authorisation under subsection 88(7) in respect of proposed conduct; or

- (iii) an authorisation under subsection 88(8) in respect of proposed conduct to which subsection 47(6) or (7) applies; or
- (iv) an authorisation under subsection 88(8A) for proposed conduct to which section 48 applies;

unless it is satisfied in all the circumstances that the proposed provision or the proposed conduct would result, or be likely to result, in such a benefit to the public that the proposed contract or arrangement should be allowed to be made, the proposed understanding should be allowed to be arrived at, or the proposed conduct should be allowed to take place, as the case may be; or

- (b) made a determination granting an authorisation under subsection 88(1) in respect of a provision of a contract, arrangement or understanding that is or may be an exclusionary provision unless it is satisfied in all the circumstances that the provision has resulted, or is likely to result, in such a benefit to the public that the contract, arrangement or understanding should be allowed to be given effect to."

2. If an authorisation is granted in respect of a proposed contract, arrangement or understanding, the names of the parties to which are not known at the date of application, the authorisation shall, by sub-section 88(14) of the *Trade Practices Act 1974*, be deemed to be expressed to be subject to a condition that any party to the contract, arrangement or understanding will, when so required by the Commission, furnish to the Commission the names of all the parties to the contract, arrangement or understanding.

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 1 April 2004 from the Minister for Energy Industries and Resources of the State of Victoria, the participating



jurisdiction, submitted with this Form B, being amendments to the Code in respect of Chapter 9 of the State of Victoria 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.

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.

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.

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

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

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

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

**4. (a) Grounds for grant of authorisation**

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

**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** Not applicable.

that joint venture?

(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: 5 April 2004

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.

## DIRECTIONS

1. Where there is insufficient space on this form to furnish the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the applicant.
2. Where the application is made by or on behalf of a corporation, the name of the corporation is to be inserted in item 1(a), not the name of the person signing the application and the application is to be signed by a person authorised by the corporation to do so.
3. In item 1(b), describe that part of the applicant's business relating to the subject matter of the contract, arrangement or understanding in respect of which the application is made.
4. Furnish with the application particulars of the contract, arrangement or understanding in respect of which the authorisation is sought. Those particulars shall be furnished:
  - (a) in so far as the particulars or any of them have been reduced to writing - by lodging a true copy of the writing; and
  - (b) in so far as the particulars or any of them have not be reduced to writing - by lodging a memorandum containing a full and correct statement of the particulars that have not been reduced to writing.
5. Where the application is made also in respect of other contracts, arrangements or understanding which are or will be in similar terms to the contract, arrangement or understanding referred to in item 2, furnish with the application details of the manner in which those contracts, arrangements or understandings vary in their terms from the contract, arrangement or understanding referred to in item 2.

## NOTICES

1. In relation to item 4, your attention is drawn to sub-sections 90(6) and (7) of the *Trade Practices Act 1974* which provide as follows:
  - “(6) The Commission shall not make a determination granting an authorisation under sub-section 88(1), (5) or (8) in respect of a provision (not being a provision that is or may be an exclusionary provision) of a proposed contract, arrangement or undertaking, in respect of a proposed covenant, or in respect of proposed conduct, unless it is satisfied in all the circumstances that the provision of the proposed contract, arrangement or understanding, the proposed covenant, or the proposed conduct, as the case may be, would result, or be likely to result, in a benefit to the public and that that benefit would outweigh the detriment to the public

constituted by any lessening of competition that would result, or be likely to result, if:

- (a) the proposed contract or arrangement were made, or the proposed understanding were arrived at, and the provision concerned were given effect to;
- (b) the proposed covenant were given, and were complied with; or
- (c) the proposed conduct were engaged in,

as the case may be.

- (7) The Commission shall not make a determination granting an authorisation under sub-section 88(1) or (5) in respect of a provision (not being a provision that is or may be an exclusionary provision) of a contract, arrangement or understanding or, in respect of a covenant, unless it is satisfied in all the circumstances that the provision of the contract, arrangement or understanding, or the covenant, as the case may be, has resulted, or is likely to result, in a benefit to the public and that benefit outweighs or would outweigh the detriment to the public constituted by any lessening of competition that has resulted, or is likely to result, from giving effect to the provision or complying with the covenant."

- 2. If an authorisation is granted in respect of a proposed contract, arrangement or understanding, the names of the parties to which are not known at the date of application, the authorisation shall, by sub-section 88(14) of the *Trade Practices Act 1974*, be deemed to be expressed to be subject to a condition that any party to the contract, arrangement or understanding will, when so required by the Commission, furnish to the Commission the names of all the parties to the contract, arrangement or understanding.

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(1) 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 1 April 2004 from the Minister for Energy Industries and Resources of the State of Victoria, 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.

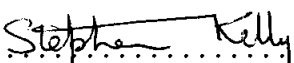


- |   |  |                              |
|---|--|------------------------------|
| <b>(b) Number of those persons</b>  | <b>(i) At present time</b>   |                              |
|   |  | NECA and NEMMCO 2            |
|   |  | Generators 51                |
|   |  | Customers 31                 |
|   |  | Network Service Providers 24 |
|   |  | Special Participants 17      |
|   |  | Intending Participants 13    |
|   |  | Traders 8                    |
|   | <b>(ii) Estimated within the next year</b>   |                              |
|   |  | Unknown                      |
| <b>(c) Where number of persons stated in item 3(b)(i) is less than 50, their names and addresses</b>  | Not applicable   |                              |
| <b>4. (a) Grounds for grant of authorisation</b>  | 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>(b) Facts and contentions relied upon in support of those grounds (See Notice)</b>   | The facts and contentions relied upon in respect of the Code changes are set out in the jurisdictional letter.   |                              |
| <b>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>)?</b> | No.  |                              |
| <b>(b) If so, are any other applications being made simultaneously with this application in relation to that joint venture?</b>             | Not applicable.  |                              |
| <b>(c) If so, by whom or on whose behalf are those other applications being made?</b>   | 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: 5 April 2004

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.

# Appendix A

to

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

**List of Code Participants**



### List of Code participants

<b>Company Aliases</b>	<b>Street Address</b>	<b>City</b>	<b>State</b>	<b>Postcode</b>
AGL Gas Company (ACT) Ltd and ACTEW Distribution Ltd t/a ActewAGL (Distribution)	221-223 London Circuit	CANBERRA	ACT	2601
AES Transpower Holding Pty Ltd t/a Ecogen Energy	Level 5 416 Collins Street	MELBOURNE	VIC	3000
AGL Electricity Ltd	PO Box 14120 MCMC	MELBOURNE	VIC	8001
AGL South Australia Pty Ltd	1 Anzac Highway	KESWICK	SA	5035
Aurora Energy Pty Ltd	GPO Box 191	HOBART	TAS	7000
Australian Energy Services Pty Ltd	38 Gilby Road	MT WAVERLEY	VIC	3149
Australian Inland Energy and Water	Administrative Building 160-162 Beryl Street	BROKEN HILL	NSW	2880
BIEP Pty Ltd	PO Box 4	PINKENBA	QLD	4008
Callide Power Trading Pty Ltd	Level 9 133 Mary Street	BRISBANE	QLD	4000
Citipower Pty	Level 15 Citipower House 628 Bourke Street	MELBOURNE	VIC	3000
Country Energy	PO Box 172	BATHURST	NSW	2795
CS Energy Ltd	GPO Box 769	BRISBANE	QLD	4001
CSR Limited	Pioneer Mill	BRANDON	QLD	4808
Cummins Engine Company Pty Ltd	2 Carribean Drive	SCORESBY	VIC	3179
Delta Electricity	Level 12, Darling Park 201 Sussex Street	SYDNEY	NSW	2000
Duke Energy Australia Trading and Marketing Pty Ltd	Level 17 1 Castlereagh Street	SYDNEY	NSW	2000
Duke Energy Bairnsdale Operations Pty Ltd	PO Box 7863	BRISBANE	QLD	4000

<b>Company Aliases</b>	<b>Street Address</b>	<b>City</b>	<b>State</b>	<b>Postcode</b>
EdgeCap Pty Ltd	Level 8, IBM Building 60 City Road	SOUTH BANK	VIC	3006
Edison Mission Energy Australia Ltd	Level 20, HWT Tower 40 City Road	SOUTH MELBOURNE	VIC	3205
ElectraNet Pty Ltd	PO Box 7096	ADELAIDE	SA	5000
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	150 Charlotte Street	BRISBANE	QLD	4000
Energex Retail Pty Ltd (formerly Southern Electricity Retail Corporation Pty Ltd)	GPO Box 1461	BRISBANE	QLD	4001
Energy Australia	Level 22 570 George Street	SYDNEY	NSW	2000
Energy Brix Australia Corporation Pty Ltd	Level 1 677 Springvale Road	MULGRAVE	VIC	3170
Energy Developments (Operations) Pty Ltd	Level 2 199 Toorak Road	SOUTH YARRA	VIC	3141
Enron Australia Finance Pty Ltd	Level 21 9 Castlereagh Street	SYDNEY	NSW	2000
Eraring Energy (formerly Pacific Power)	GPO Box 5257	SYDNEY	NSW	2000
Ergon Energy Corporation Ltd (Distribution)	Level 4 126 Margaret Street	BRISBANE	QLD	4002
Ergon Energy Pty Ltd (Retail)	Ground floor 61 Mary Street	BRISBANE	QLD	4001
Ergon Energy (Victoria) Pty Ltd	Level 2 150 Albert Road	SOUTH MELBOURNE	VIC	3205
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	Level 17 2 Market Street	SYDNEY	NSW	2000

<b>Company Aliases</b>	<b>Street Address</b>	<b>City</b>	<b>State</b>	<b>Postcode</b>
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	51 Huntingwood Drive	HUNTINGWOOD	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	Level 12 37 Bligh Street	SYDNEY	NSW	2000
Millmerran Energy Trader	Level 18 Comalco Place 12 Creek Street	BRISBANE	QLD	4000
Morgan Stanley Dean Witter Australia Finance Ltd Attention: Commodities Electricity Group	1585 Broadway Fourth Floor	NEW YORK	NY	10036- 8293 USA
National Power Synergen Power Pty Ltd	Level 37 Rialto Tower North 525 Collins Street	MELBOURNE	VIC	3000
NRG Flinders Operating Services Pty Ltd	168 Greenhill Road	PARKSIDE	SA	5063
Origin Energy Electricity Ltd	GPO Box 910	SYDNEY	NSW	1041
Pelican Point Power Ltd	Level 2 122 Frome Street	ADELAIDE	SA	5000
Powercor Australia Ltd	Level 8 40 Market Street	MELBOURNE	VIC	3000
Pulse Energy Pty Ltd	Shell House 1 Spring Street	MELBOURNE	VIC	3000
Queensland Electricity Transmission Corporation Ltd (Powerlink Queensland)	33 Harold Street	VIRGINIA	QLD	4104

<b>Company Aliases</b>	<b>Street Address</b>	<b>City</b>	<b>State</b>	<b>Postcode</b>
Queensland Power Trading Corporation (t/a Enertrade)	15th Floor 61 Mary Street	BRISBANE	QLD	4000
Redbank Project Pty Ltd	112 Longpoint Road West	WALKWORTH via Singleton	NSW	2330
RMB Australia Ltd	Level 5 37-49 Pitt Street	SYDNEY	NSW	2000
SG Australia Ltd	Level 21 400 George Street	SYDNEY	NSW	2000
Sithe Australia Power Services Pty Ltd	Level 12 The Chifley Tower 2 Chifley Square	SYDNEY	NSW	2000
Snowy Hydro Trading Pty Ltd	Level 25 Norwich House 6-10 O'Connell Street	SYDNEY	NSW	2000
Snowylink 1 Pty Ltd	GPO Box 7707 Riverside Centre	BRISBANE	QLD	4001
Snowy Mountains Hydro-Electric Authority	Monaro Highway	COOMA	NSW	2630
Infratil Australia Hydro Pty Ltd, Alliant energy Southern Hydro Australia Pty Ltd, SSAU Hydro Holdings Pty Ltd t/a Southern Hydro Partnership	Level 13 500 Collins Street	MELBOURNE	VIC	3000
SPI PowerNet Pty Ltd	Level 17 452 Flinders Street	MELBOURNE	VIC	3000
Stanwell Corporation Ltd	GPO Box 773	BRISBANE	QLD	4001
State Electricity Commission of Victoria	Level 5 452 Flinders Street	MELBOURNE	VIC	3000
Tarong Energy Corporation Ltd	Level 10, AMP Place 10 Eagle Street	BRISBANE	QLD	4000
TransGrid (NSW Electricity Transmission Authority)	Park and Elizabeth Streets	SYDNEY	NSW	2000
Transmission Lessor Corporation	ETSA, 1 Anzac Highway	KESWICK	SA	5035
TXU Electricity Ltd	168 Greenhill Road	PARKSIDE	SA	5063
TXU (South Australia) Pty Ltd	Level 18 452 Flinders Street	MELBOURNE	VIC	3000
United Energy Limited	Level 13 101 Collins Street	MELBOURNE	VIC	3000

<b>Company Aliases</b>	<b>Street Address</b>	<b>City</b>	<b>State</b>	<b>Postcode</b>
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
VENCorp (Victorian Energy Networks Corporation)	PO Box 1721	COLLINGWOOD	VIC	3066
Yallourn Energy Pty Ltd	Level 31 360 Collins Street	MELBOURNE	VIC	3000
Yamasa Seafood Australia Pty Ltd	20 Gilbertson Road	LAVERTON NORTH	VIC	3026



### Known intending participants

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
Ergon Energy Pty Ltd (Generator)	Applicant only at this stage – no address details			
Herschel Electricity Partners Pty Ltd (Customer)	Applicant only at this stage – no address details			
Hydro-Electric Corporation	GPO Box 335	HOBART	TAS	7001
Jackgreen (International) Pty Ltd (Customer)	Applicant only at this stage – no address details			
Murraylink Transmission Co Pty Ltd	GPO Box 7707 Riverside Centre	BRISBANE	QLD	4001
National Grid International Ltd	Level 52 Rialto South Tower 525 Collins Street	MELBOURNE	VIC	3000
Pacific Hydro Limited (Generator)	Applicant only at this stage – no address details			
Sleiman Trading Pty Ltd	PO Box 334	POTTS POINT	NSW	2001
Snowy Hydro Limited (Generator)	Applicant only at this stage – no address details			
Southernlink Transmission Company Pty Ltd	GPO Box 7707 Riverside Centre	BRISBANE	QLD	4001
Stanwell Corporation Limited (Generator)	Applicant only at this stage – no address details			
Wambo Power Ventures Pty Ltd	Level 1 Princeton Court Three 13 Princeton Street	KENMORE	QLD	4069

**National Electricity Code Administrator**  
27 March 2002



## Minister for Energy Industries and Resources

Ref: MBN003593

80 Collins Street  
GPO Box 2797Y  
Melbourne Victoria 3001  
Telephone +61 3 9655 6087  
Facsimile +61 3 9655 6304  
DX210410

Mr Stephen Kelly  
Managing Director  
National Electricity Code Administrator Limited  
Level 5, 41 Currie St  
**ADELAIDE SA 5000**

Dear Mr Kelly

### **APPLICATION FOR DEROGATIONS UNDER CHAPTER 9 OF THE NATIONAL ELECTRICITY CODE**

I enclose a submission to the Australian Competition and Consumer Commission (*the Commission*) in relation to amendments that Victoria is seeking to the Victorian derogations in relation to metering.

I understand that Carmel Collins of the Energy and Security Division, Department of Infrastructure, has already contacted your organisation in regard to this matter.

The draft form of the amendments is attached to the submission. The purpose of the amendments is to extend Victoria's current metering derogations, due to expire on 30 June 2004, to ensure the ongoing smooth operation of full retail competition in Victoria and to enable development of and consultation on a response to the recommendations of the Joint Jurisdictional Review of Metrology Procedures. In addition, the proposed amendments will make minor correction of a statute law revision nature. The amendments have been discussed with the Commission, and the Commission is expecting to receive the enclosed submission.

I would therefore be grateful if you could forward the submission to the Commission, together with the necessary accompanying documents, as expeditiously as possible.

I have sent the draft amendments to the relevant Ministers in each of the other participating jurisdictions and sought their comments. My Department will forward copies of any such comments to you.

If your officers have any queries concerning this matter, they may contact Ms Collins on (03) 9655 6918.

Yours sincerely

**Theo Theophanous MP**  
**Minister for Energy Industries and Resources**

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**Application to the  
Australian Competition and Consumer  
Commission**

**Proposed Derogations to the National  
Electricity Code**

**Victorian Full Retail Competition  
Transitional Metering Arrangements**

**30 March 2004**

## **1. Introduction**

### **1.1 Application for authorisation**

Victoria is seeking to amend its derogations contained in Chapter 9 of the National Electricity Code (the Code). The proposed amendments to the Victorian derogations relate to Chapter 7 of the Code. Chapter 7 deals with metering arrangements for the wholesale market. An extension of existing metering derogations is sought until 31 December 2006 to ensure the ongoing smooth operation of full retail competition in Victoria and to enable development of and consultation on a response to the recommendations of the Joint Jurisdictional Review of Metrology Procedures. In addition, the proposed amendments will make minor correction of a statute law revision nature.

Application is made:

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

Victoria's existing metering derogations are due to expire on 30 June 2004. Given this timeline, granting authorisation on an interim basis under section 91(2) of the *Trade Practices Act* may be appropriate to enable the Commission to give due consideration to this application.

### **1.2 Derogations sought**

The proposed amendments to Victoria's derogations are set out in Schedule 2. The main amendment is to clause 9.9A.2(e). Its effect is to extend the requirement for the Local Network Service Provider to be the Responsible Person for all type 5, type 6 and type 7 metering installations. This amendment also effectively extends the operation of clause 9.9A.3 which deals with payment for metering installations. The other amendments are minor corrections of a statute law revision nature – see section 4 on page 13.

## **2. Regulatory framework**

### **2.1 Background to the derogations and this application**

Electricity full retail competition began in Victoria on 13 January 2002.<sup>1</sup> In 2001, the Victorian Government sought transitional derogations from the Code,<sup>2</sup> to facilitate the smooth implementation of full retail competition. On 8 August

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<sup>1</sup> The subordinate instrument which gave effect to full retail competition was made under section 23 of the *Electricity Industry Act 2000* on 27 November 2001 (Gazette 48 of 2001, p. 2968). It removed restrictions on customer contestability for consumers consuming up to 40MWh per annum. Some forms of unmetered supply are not contestable.

<sup>2</sup> Application for authorisation Nos A90786, A90787, and A90788 of 2001.

2001, the ACCC approved the application for authorisation of the derogations, which are set out in clause 9.9A of Chapter 9 of the Code. In 2001, the ACCC also authorised full retail competition changes to the Code.<sup>3</sup> In authorising the full retail competition Code changes, the ACCC imposed conditions that required jurisdictional regulators to jointly review certain metering issues in the National Electricity Market, and to assume the role(s) of Metrology Coordinator in their respective jurisdictions.<sup>4</sup>

Clause 7.13(f) of the Code requires that Jurisdictional Regulators must, by 31 December 2003, review metering installations types 5 (manually read interval meters) and 6 (basic, or “accumulation” meters) and the metrology procedures that have been implemented in each jurisdiction. The Jurisdictional Regulators must propose to NECA any changes to the Code that are necessary to implement the recommendations made by the review (clause 7.13(g)(3)) and must specify a date for a further review to be conducted (clause 7.13(g)(4)).

The Essential Services Commission (ESC) is Metrology Coordinator for Victoria under clause 7.2.1A(b) of the Code, and has participated in the Joint Jurisdictional Review of Metrology Procedures. The other jurisdictions that have participated in the Review are New South Wales (through the Independent Pricing and Regulatory Tribunal), Queensland (through the Queensland Competition Authority), South Australia (through the Essential Services Commission of South Australia), Tasmania (through the Office of the Tasmanian Energy Regulator) and the Australian Capital Territory (through the Independent Competition and Regulatory Commission).

A draft report was released on 23 December 2003 for consultation. Submissions were invited until 20 February 2004. It is understood that the final report will be released in early May 2004.

The key recommendations in the draft report are for the Code to be varied to regulate first tier metrology and for the development of a single national metrology procedure. The draft report also recommends that distributors should remain responsible for small customer metrology. It is understood that the recommendations in the final report are unlikely to vary greatly from those in the draft report.

It will take some time to implement the recommendations of the Joint Jurisdictional Review. Therefore, a comprehensive package of Code changes to address the jurisdictional regulators’ recommendations cannot be developed before Victoria’s existing transitional metering derogations expire on 1 July 2004. The draft report recommends that the National Electricity Market Management Company Ltd (NEMMCO) should lead the Code change work, with a target date of 30 June 2005 for submission of Code changes to NECA. NEMMCO has indicated its willingness and capacity to take on this role.<sup>5</sup>

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<sup>3</sup> Amendments to the National Electricity Code, Full Retail Competition and Registration of Code Participants, ACCC, 1 August 2001, page 19.

<sup>4</sup> Amendments to the National Electricity Code, Full Retail Competition and Registration of Code Participants, ACCC, 1 August 2001, page 19.

<sup>5</sup> NEMMCO response to Joint Jurisdictional Review draft report, available on ESC website.

This application therefore seeks an extension of Victoria's existing transitional metering derogations in Chapter 9 of the Code:

- to ensure the ongoing smooth operation of full retail competition in Victoria in the medium term; and
- to enable development and implementation of changes to Chapter 7 of the Code in response to the recommendations of the Joint Jurisdictional Review of Metrology Procedures.

When the changes to Chapter 7 are finalized, Victoria will also seek a change to remove the Chapter 9 derogations at the same time as the Chapter 7 changes take effect.

An extension is sought until 31 December 2006 in order to avoid uncertainty should the changes to Chapter 7 of the Code be delayed for any reason. As noted, however, it is intended that removal of the metering derogations will occur at the same time as the Chapter 7 changes take effect and therefore the derogations are likely to cease earlier than 31 December 2006.

## 2.2 Victorian metering regulatory framework

In Victoria, distribution businesses (termed "local network service providers" (LNSP) under the Code) are responsible for the provision of metering services to first tier customers (ie, customers that buy electricity from their local retailer).<sup>6</sup> The cost of providing these services is generally recovered by a distribution business for their distribution area through distribution use of system charges under the ESC's Electricity Distribution Price Determination 2001-2005.

The provision of metering services to second tier customers is primarily regulated under Chapter 7 of the Code. Chapter 7 (clauses 7.2.2, 7.2.3 and 7.3.6) provides:

- The Code Participant that is responsible for providing, maintaining and installing metering installations for market connection points is the "**Responsible Person**" (clause 7.2.1);
- A **financially responsible Market Participant** ("FRMP") – ie, a retailer – can elect to be the Responsible Person (ie, responsible for providing, maintaining and installing metering installations for market connection points) (clause 7.2.3);
- If the FRMP does not elect to be the Responsible Person, the **Local Network Service Provider** (ie, the distribution business) is the Responsible Person for metering installations in the LNSP's local area (clause 7.2.2); and
- With some 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 (clause 7.3.6).

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<sup>6</sup> A "first tier" customer is a person who buys electricity from their local retailer – see clause 2.3.2 of the National Electricity Code.

Victoria has transitional derogations from clauses 7.2.2, 7.2.3 and 7.3.6. These transitional arrangements apply to “second tier” metering installations with meter types 5 and 6, and unmetered supply (“type 7”) and particularly, provide that the LNSP (or distribution business) is to be the Responsible Person for Code purposes. The transitional derogations cease to apply on 1 July 2004.

The Code also provides for jurisdictionally based Metrology Procedures<sup>7</sup> for metering installation Types 5, 6 and 7 which are generally applicable to small customers. The Victorian Electricity Supply Industry Metrology Procedure (“Victorian Metrology Procedure”) sets out the key obligations of the Responsible Person in relation to the provision, installation and maintenance of type 5, 6 and 7 metering installations for *second tier loads* including the measurement of electrical energy and the provision of data to facilitate the efficient operation of the market.

The provision of metering services to first tier customers is primarily regulated by the Electricity Customer Metering Code (ECM Code). The ECM Code also regulates some aspects of metering for second tier customers (ie, customers that have switched to a retailer other than the local incumbent retailer<sup>8</sup>) that are not covered by either the National Electricity Code or the Metrology Procedure. The ECM Code is enforced through distribution licence conditions.

### **2.3 Effect of Victoria’s metering derogations**

In summary, Victoria’s transitional metering derogations provide that electricity distribution businesses are responsible for the provision, maintenance and installation of all manually read interval meters, basic meters and unmetered supply points until 1 July 2004.

#### ***Responsible Person – clause 9.9A.2 of the Victorian derogations***

Victorian derogations in clause 9.9A of Chapter 9 provide that, until 1 July 2004, LNSPs are the Responsible Person for type 5, type 6 and type 7 metering installations. The derogations also impose 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 ESC.

#### ***Payment for Metering – clause 9.9A.3 of the Victorian derogations***

Until 1 July 2004, the costs incurred by the LNSP as Responsible Person for types 5, 6 and 7 metering installations, described in clause 7.3.6 of the Code, may only be recovered in accordance with the distribution businesses’ licence conditions and regulatory instruments administered by the ESC. This

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<sup>7</sup> National Electricity Code clause 7.2.1A

<sup>8</sup> A “second tier” customer is a person who buys electricity from a retailer other than the local retailer or directly through the spot market – see clause 2.3.3 of the National Electricity Code.

arrangement facilitates the recovery of the costs associated with implementing full retail competition from all customers, rather than directly from second tier customers.<sup>9</sup>

### **3 – Rationale for extension of the derogations**

Victoria submits that the public benefits resulting from the proposed amendments to its chapter 9 derogations, including the extension of the metering derogations described above, outweigh any detriment to the public which may result from those amendments for the reasons described below.

The Victorian Government considers that metering competition is not immediately necessary to enable the substantial benefits of full retail competition to be realised. The Victorian Government considers that, in the medium term, the market needs certainty about respective responsibilities for metering, and that there are both practical and economic benefits in making LNSPs responsible for metering and metering data for types 5, 6 and 7 metering installations. In the absence of a contrary view from the jurisdictional regulators, the Victorian Government is reluctant to require competition in relation to meter provision and metering data services for small customers from 1 July 2004. It also notes that the current arrangements may facilitate an interval meter rollout.

#### ***3.1 – Efficient, streamlined metering arrangements***

Continuing with arrangements under which the LNSP is the Responsible Person for types 5, 6 and 7 metering installations will provide simplicity and clarity of obligations relating to metering services until Chapter 7 of the Code is amended to reflect the outcomes of the jurisdictional regulators' review.

If a Victorian retailer (FRMP) was allowed to act as the Responsible Person for types 5, 6 and 7 metering installations from 1 July 2004, additional systems and processes would need to be implemented, requiring complex arrangements to be established between LNSPs and retailers. Examples of the systems and processes that have been identified as being necessary to enable the FRMP to act as Responsible Person (allowing the introduction of competition in metering and data services) are set out in Schedule 1.

There is a risk that such arrangements may subsequently have to be undone if changes to Chapter 7 of the Code are made as a result of the recommendations of the Joint Jurisdictional Review of Metrology Procedures. In their draft report, the jurisdictional regulators, in considering the responses to the Issues Paper on the question of the provision of metering service for small customers, state:

“there are a number of practical issues associated with a competitive market for metering services which were discussed in detail in the Issues Paper and submissions to the Issues Paper. Disadvantages associated with introducing competitive metering services include:

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<sup>9</sup> There are several mechanisms available, depending on the nature of the costs - Office of the Regulator General Electricity Distribution Price Determination 2001 – 2005, Volume 1 Statement of Purpose and Reasons, pages 71 to 73.



- The operational complexities – maintenance and testing of meters, universal metering, coordination of processes across multiple parties, and load control;
- The potential for increased costs due to loss of economies of scale;
- The continuity of metering services in a Retailer of Last Resort event;
- The risk of errors in metering data because retailers do not necessarily have the appropriate skills; and
- The potential barrier for new entrant retailers and to customers switching retailers, thus diminishing the potential for customers to choose their retailer.”<sup>10</sup>

The Victorian Government considers that the current arrangements are practical and efficient, and LNSPs are best placed to continue efficient provision of metering services for types 5, 6 and 7 metering installations in the medium term. The current arrangements have the public benefit of providing streamlined arrangements for access to metering data, as follows:

- LNSPs require 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 are simplified by virtue of LNSPs providing a single source of data for all (types 5 and 6) metering points within the LNSP’s area (rather than a range of disparate service providers); and
- Streamlined arrangements for maintaining the data required for the load tables and inventory tables that are used in calculating the settlement ready data for unmetered (type 7) loads.

Additional costs would arise from the development of additional systems and processes necessary for the FRMPs to act as Responsible Person, which would be passed through to end consumers in the contestable market. LNSPs currently enjoy the benefit of economies of scale in manual meter reading<sup>11</sup> resulting from meter rounds that are undertaken within their entire distribution area. This is illustrated by the difference between the ESC approved meter reading charges in Victoria (for type 5 and type 6 meters) which range from \$13 to \$21 per annum for quarterly reads, with charges for a “special” read of approximately \$20 to \$25 per read.<sup>12</sup>

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<sup>10</sup> See *Joint Jurisdictional Review of Metrology Procedures – Draft Report*, December 2003, The Essential Services Commission, the Essential Services Commission of South Australia, the Independent Competition and Regulatory Commission (ACT), IPART, the Office of the Tasmanian Energy Regulator and the Queensland Competition Authority. Page 41. The draft report is available on the NEMMCO website via the following link: <http://www.nemmco.com.au/operating/metering/648-0001.htm>

<sup>11</sup> The metering derogations, coupled with the provisions of the Electricity Customer Metering Code, mean that the distributor is responsible for both type 5 and 6 metering for both first- and second-tier customers, resulting in the retention of efficiencies in manual meter reading: see “Installing Interval Meters for Electricity Customers – Costs and Benefits”, ESC Position Paper, November 2002, p. 46.

<sup>12</sup> The ESC’s approved charge for this service of \$13 to \$21 per annum represents a smeared charge across the distribution business.

Local retailers servicing sub-160MWh per annum consumers through “standing offers” and deemed contracts under the consumer safety net provisions of the *Electricity Industry Act 2000 (Vic)*<sup>13</sup> account for approximately 90 per cent of the sub-160 MWh per annum market, with “market contracts” accounting for approximately 10 per cent of the sub-160 MWh market.<sup>14</sup> This suggests that it remains efficient for the LNSP to continue to be the provider of metering services, and that it will take some time for second tier retailers to establish a customer base that would provide potential economies of scale for competitive provision of these services.

The market for efficient metering is still in transition, and LNSP responsibility should therefore be retained.

### ***3.2 – Efficient cost recovery arrangements***

Provision of interval meters, and charges for the provision of metering data services are regulated by the Essential Services Commission as “excluded services”.<sup>15</sup> That is, recovery of the net costs associated with a type 5 meter (rather than a type 6 meter where the cost continues to be recovered by network tariffs) will be regulated by the ESC on a fair and reasonable basis.<sup>16</sup> The costs associated with type 7 metering installations (ie, unmetered supply) are also treated as data collection and processing services and, accordingly, are subject to regulation by the ESC on a fair and reasonable basis. Licence conditions imposed on distributors require them to provide these services on terms and conditions which are fair and reasonable, and consistent with relevant guidelines,<sup>17</sup> the Price Determination and any “approved statement”.<sup>18</sup>

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<sup>13</sup> Division 5 of Part 2 of the *Electricity Industry Act 2000 (Vic)*.

<sup>14</sup> The data to October 2003 can be found at <http://www.nemmco.com.au/data/retail/330-0287.pdf> or, alternatively, <http://www.nemmco.com.au/data/retail.htm> (which gives the latest month's figures for each State). NEMMCO advises that the one month annualised transfer rate for small consumers in Victoria is 10 per cent. Since FRC commencement and to 31 October 2003, 261,584 small consumer gross transfers have been completed in Victoria.

<sup>15</sup> The distribution price review (for the period 2001-2005) specifies that the provision of interval metering will be regulated as an excluded service. Clause 5.7.3(ra) of the Victorian Electricity Supply Industry Tariff Order provides that charges for the collection and processing of meter data are to be regulated as excluded services. The distribution price review also contains an allowance for the provision of type 6 meters over the period to which it applies. The distribution price review (for the period 2001-2005) specifies that the provision of interval metering will be regulated as an excluded service.

<sup>16</sup> It is noted that the distribution price review requires that, if a customer (ie the FRMP) elects to have an interval meter provided by a person other than the LNSP, the LNSP must pay that customer its avoided costs resulting from not providing that meter (see Electricity Distribution Code clause 2.1.2; Office of the Regulator General Electricity Price Determination 2001 – 2005, Volume 2 Price Controls clause 6.7). However, this requirement would only apply in relation to meter types 1 to 4 during the period in which the derogation sought by this submission is effective as all type 5 meters would be provided by the LNSP during that period. Cost recovery by the Victorian LNSPs in relation to meter provision and services will be the subject of review by the ESC for the purposes of the next regulatory reset for the period 2006 to 2010.

<sup>17</sup> See the ESC's “Electricity Industry Guideline No. 1: Access to and use of Distribution Systems, Statements of Approved Charges and Charges for Other Services”.

<sup>18</sup> There are currently no “approved statements”.

Some LNSPs outsource meter provision and metering data services, engaging Metering Providers following competitive tenders. Competitive tendering by LNSPs has the potential to maintain downward pressure on their costs. Each distributor has a default Use of System agreement approved by the ESC, and licence conditions imposed by the ESC ensure that distributors are required to offer to enter into a Use of System agreement on request by a retailer. The licence conditions also ensure that the default Use of System agreement must contain terms and conditions which are fair and reasonable, and do not unreasonably discriminate between retailers. This ensures that all retailers can access the services provided by LNSPs, including meter provision and data collection.

These obligations on LNSPs will be enhanced by ring-fencing guidelines which will ensure operational separation between distribution and retail businesses.<sup>19</sup>

### ***3.3 – Barriers to switching - “meter churn” and increased costs***

“Meter churn” may occur where meter provision is open to competition. “Meter churn” involves the physical replacement of meters, for example where a consumer changing electricity retailer is required to remove the installed meter, with the new retailer’s Metering Provider installing a new meter. In some circumstances, “meter churn” may be efficient (eg installation of an interval meter, to enable the retailer to bill using cost reflective tariffs). In other circumstances, meter churn is unnecessary and inefficient. For example, a complying meter may be replaced by the same type of meter simply because a new Metering Provider/retailer begins to serve the customer.<sup>20</sup> As meters tend to have relatively long useful lives, meter churn in the latter circumstances is costly and wasteful, and may discourage customers from switching retailers.

In relation to meter provision, the ESC has stated that:

Aligning responsibility for meter provision with the activities of retailers has the potential to lower costs and to enable innovation in pricing and the terms and conditions of supply. However, competitive meter provision has produced meter churn, which has created unnecessary inefficiencies and barriers to switching retailer. These problems may be overcome by empowering customers to contract directly with competitive metering providers. However, this is unlikely to appeal to small customers.

In the early stages of [full retail competition], the introduction of competition in metering provision would require process changes to be implemented. In view of the limited benefits that are likely to arise, there is a case for limiting competition in metering provision until [full retail competition is established] and the process changes can be more readily made.<sup>21</sup>

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<sup>19</sup> In March 2004, the ESC released a draft decision: “Electricity Ring-Fencing”. The ESC intends to impose operational separation on distribution businesses that have an affiliated retailer, but will not require legal separation. The ESC has invited submissions by 21 May 2004.

<sup>20</sup> “Installing Interval Meters for Electricity Customers Costs and Benefits” November 2002, P. 46 (section B4.6).

<sup>21</sup> Office of the Regulator General Electricity Distribution Price Determination 2001 – 2005, Volume 1 Statement of Purpose and Reasons, page 72.

These concerns are reflected in the Issues Paper released by jurisdictional regulators in their review of metrology procedures.<sup>22</sup> In their draft report the regulators state:

“If a party, other than the distributor, owns the meters for small customers, then this may create a barrier to those customers switching retailers. This barrier may arise as a result of:

- A meter, owned by a party other than the distributor, being of a type that is not commonly used, and:
  - Can only be read by a limited number of Metering Providers, that may not be accessible to the new retailer;
  - Can or will only be tested by a limited number of Metering Providers, that may not be accessible to the new retailer; or
  - Does not provide metering data in a form that is compatible with the new retailer’s tariff;
- The potential for meter churn and stranded costs;
- The potential for increased metering costs;
- The potential barrier to entry to retailers that do not have the skills to take responsibility for meter ownership, resulting in reduced choice of retailers and subsequently offers for consumers; and
- The potential for anti-competitive retailer behaviour.”<sup>23</sup>

Allowing retailers to become responsible for meter provision at this time may promote meter churn, which may become a barrier to the further development of competition in the supply of electricity to small customers.

It is acknowledged that some small loss may occur in the in the availability of tailored meter solutions for customers; however this loss is not material, especially if the technical specifications of meters and meter services remain flexible. (This issue is a matter for Metrology Coordinators to address through the Metrology Procedures). To ensure that the market continues to benefit from retailer led innovation through metering, the jurisdictional regulators in their draft report propose a range of measures that include the unbundling of meter provision costs from distribution use of system (“DUoS”) charges and ensuring that distributors do not unreasonably withhold consent to retailer choice of meter type.<sup>24</sup>

The current FRC derogations, coupled with the ESC’s regulatory approach, has ensured that barriers to switching retailers are reduced, through the minimisation of transfer costs. As jurisdictional regulators have noted, the benefits of introducing competition in metering services need to be viewed in the context of the relative importance of metering services compared to the total retail service.<sup>25</sup> The jurisdictional regulators note that:

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<sup>22</sup> “Joint Jurisdictional Review of Metrology Procedures – Issues Paper”, Prepared by KPMG in conjunction with the Jurisdictional Regulators, August 2003. – page ix.

<sup>23</sup> Page 45 of draft report referenced at footnote 10.

<sup>24</sup> Page 48 of draft report referenced at footnote 10.

<sup>25</sup> “Joint Jurisdictional Review of Metrology Procedures – Issues Paper”, Prepared by KPMG in conjunction with the Jurisdictional Regulators, August 2003. – page ix.

“a small change in the effectiveness of retail competition could result in greater change in the costs or benefits to consumers than the introduction of competition in metering services”.<sup>26</sup>

The Victorian Government is concerned to ensure that the process for switching retailers is as simple as possible. This is conducive to the development of a more 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 developing full retail competition. 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.

### ***3.4 – Facilitation of interval meter rollout***

The Parer Review has recommended that an accelerated roll-out of interval meters should occur, with distributors owning the meters and their cost being included in the regulated distribution use of system cost base.<sup>27</sup> The jurisdictional regulators also recognise that a continuing role for the distributors in metering can facilitate innovation and minimise cost, stating in their draft report:

“If the distributor is responsible for metering services, and retailers and customers were provided with greater choice of metering services, then innovation may be facilitated as:

- The distributor will have greater certainty of recovering the costs associated with innovation;
- The distributor will have the economies of scale for installing the infrastructure required for innovation; and
- Where innovation benefits the broad customer base, there is a mechanism for smearing the costs associated with innovation.”<sup>28</sup>

The Victorian Government supports in-principle the rollout of interval meters where the expected benefits exceed the expected costs. On 12 March 2004, the ESC published a draft decision on Mandatory Rollout of Interval Meters for Electricity Customers. The draft decision requires rollout of interval meters in Victoria – within two years for large customers and within five years for small business and residential customers. The ESC’s final decision on interval meters is expected in May 2004.

The ESC’s Price Determination 2001-2005 provides flexibility for an interval meter rollout for domestic and small business customers to commence during the current regulatory period, with costs to be recovered through a regulated charge,

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<sup>26</sup> Ibid.

<sup>27</sup> “Towards a Truly National and Efficient Energy Market” – Final report of the Council of Australian Governments’ Independent Review of Energy Market Directions, December 2002, pp 181-182.

<sup>28</sup> Page 43 of draft report referenced at footnote 10.

provided that the additional cost of interval metering is justified by the benefits.<sup>29</sup> The Commission's position paper on interval metering<sup>30</sup> noted that for most customer sectors the benefits to be gained from interval meters exceed the additional cost of these meters.<sup>31</sup>

It would be difficult, and less economic, to mandate a roll-out of interval meters and share the cost of that roll-out (as the benefits of a rollout would be shared<sup>32</sup>) without LNSPs remaining responsible for metering. The continuation of the metering derogations would facilitate a roll-out of interval meters, as LNSPs would continue to have the responsibility to install manually read interval meters (ie, Type 5 meters) for first-tier and second-tier customers, and to provide them with all necessary meter services. The ESC has noted that the metering derogations have the following benefits:<sup>33</sup>

“Mandating an interval meter rollout to be carried out by distributors may seem contrary to the policy to allow competition in metering services expressed in the NEC. This approach does, however, enable the benefits of a mandated rollout to be captured where the incremental costs can be smeared (via an excluded service charge) across all qualifying customers, not just those with interval meters on the grounds that customers as a whole are better off than in the absence of such a rollout.

An issue arises if a rollout were mandated and the current derogation to the NEC that retains distributor exclusivity for meter provision for small customers (which expires on 1 July 2004) were lifted within the time frame of the rollout. If a retailer were to be able to appoint a meter service provider other than the distributor, the distributor should be assured of recovery of the outstanding costs of the program. Coordination between the jurisdiction and national market will be needed to avoid such a complication and to provide proper signals to all participants.”<sup>34</sup>

The ESC has also stated in its draft report:

“The question of a further extension of competition in metering has important implications for an interval meter rollout. The Commission's position is that distributors should continue to own and be responsible for meters for small customers. The costs of the rollout discussed in this draft decision assume a

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<sup>29</sup> Office of the Regulator General Electricity Distribution Price Determination 2001 – 2005, Volume 1 Statement of Purpose and Reasons, page 73.

<sup>30</sup> The ESC released a position paper in November 2002 on “Installing Interval Meters for Electricity Customers – Costs and Benefits”.  
[http://www.esc.vic.gov.au/apps/page/user/pdf/PositionPaperESC\\_IMRO\\_3\\_Nov02.pdf](http://www.esc.vic.gov.au/apps/page/user/pdf/PositionPaperESC_IMRO_3_Nov02.pdf)

<sup>31</sup> *ibid* pp 7-8 of the Executive Summary.

<sup>32</sup> The ESC has noted that all customers, not just those who have interval meters installed, benefit from the demand management gains of interval meters. See “Installing Interval Meters for Electricity Customers – Costs and Benefits”, November 2002, P. 33 (section 5.3.4).

<sup>33</sup> See page 35 of the position paper, section 5.3.6 (“Competition in metering services”).

<sup>34</sup> “Installing Interval Meters for Electricity Customers – Costs and Benefits”, Essential Services Commission, November 2002, P. 36 (section 5.3.6).

continuation of the current approach. It is likely that the costs of a rollout would be higher if distributors become no longer responsible for metering.”<sup>35</sup>

The extension of Victoria’s metering derogations for an interim period will enable the ESC to address a number of regulatory policy issues that arise in considering an interval meter rollout in Victoria, including how distributors should recover the additional costs of the installation of interval meters during the current distribution pricing regulatory period<sup>36</sup>, and what effect the introduction of competition in metering services might have on an interval meter rollout program.

#### **4 - Other amendments**

The other proposed derogation amendments will make minor corrections of a statute law revision nature:

- 9.8.7 (d) (2) – the amendment replaces “apply”, which is wrong, with “comply”
- 9.9A.2 – the amendment to the heading clarifies that this clause derogates from clause 7.2.3
- 9.9A.2 (c) – the amendment corrects a cross reference.

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<sup>35</sup> “Mandatory Rollout of Interval Meters for Electricity Customers” Draft Decision, Essential Services Commission, March 2004, p. 38.

<sup>36</sup> For customers consuming below 160 MWh distributors currently have a monopoly on providing basic meter services and the additional costs for interval meters would need to be recovered by the distributors. The ESC has noted that a shared charge to all customers consuming less than 160 MWh per year would be the simplest approach to adopt, and could be implemented as an Excluded Service Charge based on meter type and further reviewed at the time of the next Electricity Distribution Price Review. The main justification for a general charge is that all customers, not just those who have interval meters installed, benefit from the demand management gains of interval meters in the market.” - “Installing Interval Meters for Electricity Customers – Costs and Benefits”, Essential Services Commission, November 2002, P. 33 (section 5.3.4).

## **Schedule 1 – Systems and Processes<sup>37</sup>**

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 which 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 is 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.
- 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).

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<sup>37</sup> 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. The Department of Infrastructure considers that these arguments remain valid.



## Schedule 2 – Proposed amendments to the Code

### 9. Jurisdictional Derogations and Transitional Arrangements

#### Part A - Transitional Arrangements for Victoria

#### 9.8.7 Distribution Network Pricing From 1 January 2001 (Clause 6.10.1, 6.10.3 and 6.10.5)

- (a) Any:
- (1) national guidelines for *distribution service* pricing formulated under clause 6.10.1(c) as they apply to *distribution networks* situated in whole or in part in Victoria; and
  - (2) guidelines and rules formulated by the *Jurisdictional Regulator* for Victoria under clause 6.10.1(f),
- must be consistent with clause 5.10 of the *Tariff Order*.
- (b) The arrangements outlined in Parts D and E of Chapter 6 will also be applied by the *Jurisdictional Regulator* in Victoria subject to clause 5.10 of the *Tariff Order*.
- (c) The value of sunk assets determined under clause 6.10.3(e)(5)(B) must be consistent with clause 5.10(b) of the *Tariff Order*.
- (d) In regulating *distribution service* pricing in respect of a *distribution network* situated in whole or in part in Victoria after 1 January 2001:
- (1) the *Jurisdictional Regulator* must specify explicit price capping as the form of economic regulation to be applied in accordance with clause 6.10.5(b); and
  - (2) the *Jurisdictional Regulator* must ~~apply~~ comply with clause 5.10 of the *Tariff Order*.
- (e) Notwithstanding clause 6.10.5(c) of the *Code* and subject to clause 9.4.5, the *regulatory control period* in respect of a *distribution network* situated in whole or in part in Victoria must not be less than 5 years.

#### 9.9 Transitional Arrangements for Chapter 7 - Metering Code

##### 9.9.1 Metering Installations To Which This Schedule Applies

The transitional arrangements set out in this clause 9.9 apply in relation to a *metering installation* (including a *check metering installation*) in use at *market commencement* that was required to comply with, and did comply with, the *Wholesale Metering Code* at *market commencement*.

**9.9.2 [Deleted]****9.9.3 [Deleted]****9.9.4 Meter Accuracy (clause 7.3.4 and schedule 7.2)**

- (a) The minimum level of accuracy for a *metering installation* to which this Part A applies is, for the time period specified in column 1 of Table 1 below (Transitional Accuracy Requirements), calculated by multiplying the values in tables 1, 2, 3 and 4 of schedule 7.2 of the *Code* by the multiplier in column 3 of Table 1 below.
- (b) The *responsible person* must ensure that *metering installations* in respect of which it is the *responsible person* are modified to meet the accuracy required by clause 9.9.4(a) above within the time frame set out in Table 1.

**Table 1: Transitional Accuracy Requirements**

Time Period	Level	Multiplier
<b>Period 1:</b> <b>Start:</b> <i>market commencement.</i> <b>End:</b> at the end of the second anniversary of <i>market commencement.</i>	Entry level	3
<b>Period 2:</b> <b>Start:</b> from the end of Period 1. <b>End:</b> at the end of the fifth anniversary of <i>market commencement.</i>	Transitional level	2
<b>Period 3:</b> <b>Start:</b> from the end of Period 2.	Code level	1

**9.9.5 Accuracy at Market Commencement**

- (a) A *Code Participant* must, within six months of *market commencement* (or such other period agreed between *NEMMCO* and the *Code Participant*) demonstrate that all *metering installations* for which it is the *responsible person* meet the accuracy levels required under clause 9.9.4(a).
- (b) The *responsible person* may demonstrate compliance under clause 9.9.5(a) by:
- (1) using all of items 1, 2, 5 and 7 in Table 2 below; or

- (2) if it is not possible to demonstrate compliance under clause 9.9.5(b)(1), by using all of items 1, 3, 4, 6 and 7 in Table 2; or
- (3) if it is not possible to demonstrate compliance under either clause 9.9.5(b)(1) or (2), by using both of items 1 and 8 in the Table 2.

**Table 2**

<b>Item</b>	<b>Evidence</b>
Item 1	Records of an inspection of the wiring and impedance within the past 5 years.
Item 2	Test records of <i>VTs/CTs</i> that show the equipment has been tested to Australian or <i>IEC</i> standards and the results are able to be used for overall error calculations.
Item 3	Name plate data (including the class) of the <i>CTs</i> and <i>VTs</i> .
Item 4	Sample testing of <i>CTs</i> and <i>VTs</i> manufactured under the same contract specification.
Item 5	Routine and type tests for that <i>meter</i> .
Item 6	Demonstration that the <i>meter</i> has been installed for less than 5 years.
Item 7	The overall accuracy of the <i>metering installation</i> is calculated to be better than the entry or transitional level calculated under clause 9.9.4 of this schedule.
Item 8	Comparison against other metering equipment of known accuracy.

**9.9.6** [Deleted]

**9.9.7** [Deleted]

**9.9.8** [Deleted]

**9.9.9 Periodic Energy Metering (clause 7.9.3)**

- (a) Subject to clause 9.9.9(b), for the purposes of clause 7.9.3 of the *Code*, *NEMMCO*, the *Local Network Service Provider* and the *Market Participant* are taken to have agreed that the data referred to in clause 7.9.3 which is obtained from a *metering installation* to which this clause 9.9 applies may be collated in 15 minute intervals.
- (b) This clause 9.9.9 ceases to apply in respect of a *metering installation* if *NEMMCO*, the relevant *Local Network Service Provider* or the relevant *Market*

*Participant* gives notice requiring an agreement to be reached under clause 7.9.3 of the *Code*.

#### **9.9.10 Use of Alternate Technologies (clause 7.13)**

- (a) Subject to this clause 9.9.10, if at *market commencement* the *Wholesale Metering Code* provides for the use of alternate technologies or processes for the purpose of calculating the consumption of energy by a *non-franchise customer* (as defined in the *EI (RP) Act* and in force immediately before the commencement of section 39(a) of the Electricity Industry Act 1995 (Vic)), then the use of these technologies or processes is taken to have been agreed for the purposes of clause 7.13(a) of the *Code* but only to the extent to which the alternate technology or process was in use at *market commencement* in relation to that *non-franchise customer*.
- (b) *NEMMCO*, the relevant *Local Network Service Provider* or the relevant *Market Participant* may give notice requiring agreement to be reached under clause 7.13(a) of the *Code* in respect of a technology or process referred to in clause 9.9.10(a) and clause 9.9.10(a) ceases to apply to that technology or process from the date specified in the notice.

#### **9.9.11 Ancillary Services**

The *ancillary services* provisions set out in schedule 9G apply to Victoria.

### **9.9A Transitional Arrangements for Chapter 7 - Full Retail Competition**

#### **9.9A.1 Definitions and Application**

- (a) This clause 9.9A applies to *metering installations* for *connection points* located in Victoria.
- (b) For the purposes of Chapter 7 of the *Code* and this clause 9.9A, if there is more than one *Local Network Service Provider* for a *local area*, a reference to the *Local Network Service Provider* in respect of a *metering installation* or *connection point* is a reference to the *Local Network Service Provider* that holds a *licence* or has been granted an exemption from holding a *licence* under the *EI Act* in respect of the *network* to which that *metering installation* or *connection point* is connected.

#### **9.9A.2 Responsible Person (Clauses 7.2.1, ~~and 7.2.2~~ and 7.2.3)**

- (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 9.9A.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~~ clause 7.2.2(a) in respect of a type 5, type 6 or type 7 *metering installation* must:
  - (i) be fair and reasonable and consistent with the Victorian regulatory instruments referred to in clause 9.9A.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 9.9A.2(c) or whether the terms of such an offer unreasonably discriminate shall be decided by the *ESC* on the basis of the *ESC*'s opinion on the matter.
- (e) This clause 9.9A.2 ceases to apply on ~~1 July 2004~~ 31 December 2006.

### **9.9A.3 Payment for Metering (Clause 7.3.6)**

- (a) 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 *Tariff Order*, the *Local Network Service Provider's distribution licence* or any other applicable Victorian regulatory instrument.
- (b) This clause 9.9A.3 ceases to apply on the date on which clause 9.9A.2 ceases to apply.

### **9.9A.4 [Deleted]**