

1 October 2004

**Via email: skelly@neca.com.au**

Mr Stephen Kelly  
Managing Director  
National Electricity Code Administrator  
PO Box 2575  
ADELAIDE SA 5000

Dear Stephen

**Proposed Code Changes: B2B Governance (“B2B Code Change Proposal”)**

Business-to-Business (“B2B”) processes collectively define the communication processes used between Distribution Network Service Providers (“DNSPs”) and Retailers (which includes both Local Retailers and 2<sup>nd</sup> Tier Retailers) when communicating the large volume of information that underpins full retail competition activities. Issues such as business process definition, technical communication protocol specification and data delivery mechanisms for B2B are fundamental to how DNSPs and Retailers conduct their commercial affairs.

Currently, B2B communications involve manual processes (e.g. telephone, email, manual file transfer) and the attendant protocols have been developed separately across the jurisdictions.

In 2002 NEM participants and jurisdictions initiated work to define a consistent, national B2B framework that would facilitate the automation of B2B communications. Work by participants through 2002 / 2003 to develop a B2B solution confirmed the need for a central B2B Hub and for the enforcement of B2B standards and procedures through the Code. This preliminary B2B work also confirmed that amending the Code to include arrangements for the development of, and compliance with B2B procedures would be the most appropriate way to provide the certainty required before participants will invest in B2B Processes.

The attached changes to the National Electricity Code have been developed by industry (and have been the subject of considerable consultation) and are submitted by NEMMCO on behalf of industry together with formal support from the signatories of the Participants businesses listed below:

1. AGL South Australia Pty Ltd
2. Country Energy
3. Energex Retail Pty Ltd
4. EnergyAustralia
5. Powerdirect Pty Ltd

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**Carlingford Office**  
PO Box 3175  
Telopea NSW 2117  
Tel: (02) 8838 5100  
Fax: (02) 8838 5200

**Mansfield Office**  
PO Box 2516  
Mansfield QLD 4122  
Tel: (07) 3347 3100  
Fax: (07) 3347 3200

**Melbourne Office**  
Level 12  
15 William Street  
Melbourne VIC 3000  
Tel: (03) 9648 8777  
Fax: (03) 9648 8778

**Sydney Office**  
Level 22, Norwich House  
6-10 O’Connell Street  
Sydney NSW 2000  
Tel: (02) 9239 9199  
Fax: (02) 9233 1965

6. TXU Electricity Limited

Please find attached the B2B Code Change Proposal which comprises:

Attachment A Overview of B2B Code Change Proposal – this document sets out an overview of the B2B Code Change Proposal, including the reasons why this Code Change is considered to be of benefit, and a brief description of the contents of the documents which make up the Code Change Proposal.

Attachment B B2B Code Change Proposal – a table which sets out the proposed Code Changes to support B2B

Attachment C Information Exchange Committee Election Procedures

Attachment D Information Exchange Committee Operating Manual

NEMMCO submits the Code changes attached to this letter on industry's behalf for consideration by NECA and for consultation with the market through NECA's formal Code Change process. We are aware that work is proceeding to convert the Code into a statutory instrument to be known as the National Electricity Rules. It is not yet clear, however, what ramifications this and other changes to the legal and regulatory framework may have to the proposed B2B Code changes. Once these are clear, we may need to submit amendments to the B2B Code change proposal. However, since efficient and effective B2B communications are of paramount importance to industry and to the efficient operation of the market, NEMMCO and the Code Participants listed above request that this matter is progressed by NECA at its earliest opportunity.

Yours sincerely



**Dr Charlie Macaulay**  
**General Manager Development & Strategy**

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# B2B Code Change Proposal

## Attachment A – Overview of the B2B Code Change Proposal

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### 1 Background

#### 1.1 Current information exchange arrangements

Electricity Distribution Network Service Providers (“DNSPs”) and Market Customers and Local Retailers (together referred to in this paper as “Retailers”) in the National Electricity Market operated by NEMMCO routinely exchange information (other than communications which are supported by MSATS and MMS) in relation to end-use customers under jurisdictional schemes.

By way of example, these information exchanges include:

- *Service Orders* – requests for services by Retailers to DNSPs including special meter readings, requests for disconnection, arranging new connection and reconnections and meter maintenance issues.
- *Customer and site details* – requests by DNSPs to Retailers for customer and site data, including customer details, site address and site access details.
- *Network billing*- billing and remittance of network charges and associated charges for services including issuing an invoice, disputing and invoice and resolution of disputes and payment advice.

(together referred to as “**B2B Communications**”.)

B2B Communications between DNSPs and Retailers at present occur on a State and bilateral basis. For instance, in Victoria, DNSPs and Retailers exchange information with each other under B2B information exchange schemes that were approved by the Essential Services Commission (**ESC**) in early 2003. These schemes came into existence pursuant to clause 14A of the distribution licences which required Victorian DNSPs to submit them to the ESC for approval. To ensure that these schemes operate effectively, Retailers in Victoria are required by condition 5A of their retail licences to participate in the approved schemes. A similar scheme is proposed for New South Wales.

#### 1.2 Problems with existing model

There are concerns with the jurisdictional B2B governance model as it exists today, including:

- **Inefficiency** – The jurisdictional arrangements are proving less efficient than is considered optimal with the required level of manual intervention and related disputes in relation to B2B Communications proving to be costly to the industry and inhibiting the development of competition. The ESC of Victoria states “problems with B2B information systems appear to be impeding the timely transfer of customers between retailers, and generating billing problems for a significant number of customers. This has the effect of reducing the efficiency and raising the cost of the

competitive retail market, and may undermine the willingness of customers to participate in the market”.<sup>1</sup>

- **Limited enforceability** – other than Victoria, compliance with B2B arrangements is voluntary. Despite agreements in forums such as the NSW B2B Steering Committee and the National B2B Working Group (“**B2BWG**”), each business can decide whether, when and how to implement any B2B arrangements.
- **Inadequate management/direction** – the current model involves the National B2BWG developing national B2B specifications and jurisdictional B2B specifications that are considered by state-based committees. The National B2BWG has over 200 interested people on its mailing list – however it does not have a clearly defined membership, it does not have a formal head of power in the Code or any other jurisdictional instrument, nor does it report to a peak body on national matters. Industry has identified the clear need for the development and implementation of national B2B Procedures under the control of a properly constituted, representative body that considers and balances the benefits and detriments of B2B investments to the industry as a whole.
- **Inconsistencies** – different specifications and information exchange protocols exist between jurisdictions for the same or similar B2B Communications. These differences have added cost and complexity to DNSPs and Retailers operating in more than one jurisdiction and present a cost barrier to businesses expanding into additional jurisdictions.

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## **2 B2B Code Change Proposal**

In essence, the B2B Code Change Proposal is that B2B Communications be conducted to uniform national specifications prescribed by B2B Procedures and mostly using a central eHub.

The content of this B2B Code Change Proposal may be summarised as follows

***Provision of B2B e-Hub*** – An e-Hub will be provided and operated by NEMMCO to handle information exchanges on a largely automated basis. The proposed scheme will move away from jurisdictional schemes by establishing a national system of information exchange that is mostly communicated via the NEMMCO e-Hub.

***Governance arrangements*** - Under this B2B Code Change Proposal, an Information Exchange Committee (**IEC**) will be established under the Code with functions and powers to develop and consult upon the procedures that govern the transfer and receipt of the B2B Communications (known as “B2B Procedures”). As the B2B Code Change Proposal limits the application of the B2B Procedures to DNSPs and Retailers, the IEC will comprise 6 industry representatives (3 DNSPs and 3 Retailers) and 2 Independent Members, who are to be elected by all DNSPs and Retailers. Care has been taken to include within the Code changes, processes which ensure that the IEC is representative of DNSPs and Retailers, accountable to its stakeholders and that the operation of the IEC is transparent in accordance with current good governance best practice.

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<sup>1</sup> Review of effectiveness of retail competition in gas and electricity, 22 June 2004, p.18.

***Application of B2B Procedures*** - The proposed B2B arrangements will apply to DNSPs, Retailers, Metering Providers and NEMMCO. To cater for existing DNSP and Retailer relationships which involve large volumes of B2B Communications in respect of 1<sup>st</sup> tier connection points, DNSPs and Retailers will be permitted to enter into bilateral agreements to undertake B2B Communications on a basis other than that set out in the B2B arrangements - individuals may thus *opt out* of the codified B2B arrangements. The B2B Procedures will apply to both first and second tier connection points.

***Content of B2B Procedures*** - The B2B Procedures will prescribe the content of, the processes for, and the information to be provided to support B2B Communications. The B2B Procedures will, for each B2B Communication, contain the required data inputs and data outputs, the business process flows and related timing requirements, the required content and format, the required delivery method, and the back-up delivery method to be used where the required delivery method cannot be used.

In summary, the B2B Procedures will describe:

- Technical standards and procedures to be applied to transactions that involve the eHub; and
- Information exchange standards and procedures associated with the information to be the subject of information flows.

Each DNSP and Retailer will need to have in place facilities that meet the technical requirements of the B2B Procedures (subject to any bilateral arrangements) to enable them to receive and respond to requests for B2B information.

***Development of B2B Procedures and/or changes to existing procedures*** – NEMMCO, a Retailer or a DNSP will be able to propose B2B Procedures or a change to those Procedures. The IEC, having referred certain matters to NEMMCO, will conduct consultation (based on the consultation procedures set out in the Code) on the proposal and make a recommendation to NEMMCO, having regard to a defined ‘B2B Objective’ and ‘B2B Principles’. Upon receipt of a recommendation in relation to the B2B Procedures, NEMMCO must approve the recommendation unless it is satisfied that the IEC has failed to have regard to certain matters. NEMMCO cannot act without a recommendation from the IEC and is not to consider the merits of the recommendation. NEMMCO will ensure the policy underpinning the establishment of B2B Procedures, articulated in the B2B Principles, is considered; but it will not review how it is considered. Both the recommendation of the IEC and the decision of NEMMCO will be subject to “merits review”.

***Transitional arrangements*** – This B2B Code Change Proposal sets out the manner in which existing B2B Procedures (proposed to be made under MSATS) will be transitioned to the IEC and the new process proposed under this B2B Code Change Proposal. At this time the B2B Procedures will apply to 1<sup>st</sup> tier connection points.

***Cost recovery*** – This B2B Code Change Proposal provides that shared costs incurred in the management of the B2B Procedures and the provision of the B2B e-Hub are to be funded by NEMMCO in the first instance and recouped as part of Participant Fees. The costs of the IEC will be incorporated into the NEMMCO budgetary process and the IEC will be required to prepare a budget, annual report and work programme to facilitate the accountability of the IEC in relation to the costs it incurs. Participant

costs in implementing systems and processes to comply with the B2B Procedures will be met by those participants.

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### **3 Consultation process to date**

This B2B Code Change Proposal was developed by a representative industry group comprising DNSPs, Retailers (both 1<sup>st</sup> and 2<sup>nd</sup> tier, large and small), dual-fuel companies, companies operating in one or more jurisdictions including Victoria, New South Wales, Queensland and South Australia and NEMMCO.

This B2B Code Change Proposal was then reviewed by a broader industry group which includes 14 DNSPs from all states, 18 Retailers (both 1<sup>st</sup> and 2<sup>nd</sup> tier, large and small) and dual fuel companies. This group was given an opportunity to comment on and approve for submission this B2B Code Change Proposal. The Department of Energy, Utilities and Sustainability (NSW), the Department of Energy (Qld), the Department of Infrastructure (Victoria) and NEMMCO were observers on this broader group. Comments from this broader industry group have, to the maximum extent practicable, been included in this B2B Code Change Proposal.

This B2B Code Change Proposal has also been discussed with the ACCC on 2 occasions (and their concerns and comments have been considered in preparing the B2B Code Changes) and NECA on 2 occasions.

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## **4 The public benefits of this B2B Code Change Proposal**

### **4.1 Facilitation of full retail contestability**

This B2B Code Change Proposal will have a positive effect on competition in the electricity retail market. In its recent report on the effectiveness of competition in retail gas and electricity, the ESC expressed concern that inefficient B2B systems and processes could raise barriers to new entry. The ESC stated that “efficient performance of B2B arrangements is key to fully effective competition in the gas and electricity retail markets. Inefficient systems and processes may raise barriers to entry by new retailers and impede market contracts being accepted by customers on a large scale and the markets’ capacity to handle more frequent switching among retailers”. The ESC noted the work being undertaken to improve the electricity B2B systems, the subject of this B2B Code Change Proposal, will assist<sup>2</sup>.

Different B2B specifications exist between jurisdictions for the same or similar B2B Communications. These differences have added cost and complexity to Retailers and DNSPs operating in more than one jurisdiction and presented a cost barrier to businesses expanding into additional jurisdictions.

Enforceable, national B2B Procedures will allow Retailers operating in one jurisdiction to enter other jurisdictions using the same B2B systems and procedures, thereby incurring only incremental costs. New entrants will be able to enter the NEM in the segment of their choice, using common B2B Procedures and readily available B2B systems; expansion to other segments

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<sup>2</sup> Ibid 9.23.

can be achieved with incremental investments to cater for capacity, without the need to cater for differences.

#### **4.2 Efficiency**

Businesses will have the opportunity to implement and maintain only one version of B2B Procedures (subject to any bilateral arrangements). This is expected to minimise long-term investments in related systems, procedures and people (especially training) and maximize the opportunity to utilise the same resources across different markets (at a marginal cost).

#### **4.3 Representative and accountable management/direction**

The proposed composition and structure of the IEC is intended to provide and ensure that the committee is representative of DNSPs and Retailers (as a whole) and includes balancing views, hence the inclusion of independent members. The structure and defined consultation process do not preclude any affected parties from the decision making process. The IEC is subject to checks and balances on its decision making powers but is still capable of decision making in an effective and efficient manner. Good governance principles have been applied to the decision making model and a merits review process is available at the conclusion of the process.

## **B2B Code Change Proposal**

### **Attachment B – Table of Code Changes**

**1 October 2004**

#### **Brief overview**

The B2B Code Changes provide that the Information Exchange Committee, comprised of industry representatives, be responsible for the management of the B2B Procedures. This includes managing the change process for the B2B Procedures and recommending changes to NEMMCO. NEMMCO, in turn, must approve the proposed change unless it is not satisfied in relation to certain defined matters.

These matters are likely to give rise to significant obligations for affected Code Participants.

The B2B Code Changes address the need for accountability in such circumstances by considering both the process of making the decision and the scope for independent review of the decision once made.

For the processes of decision-making, governance arrangements are established for both the Information Exchange Committee and NEMMCO. These arrangements address the composition and internal procedures of the Information Exchange Committee as well as external processes of consultation and transparency. NEMMCO's role is clearly defined. The amendments to Chapter 7 of the Code together with the Information Exchange Committee Election Procedures and the Information Exchange Committee Operating Manual are the instruments dealing with these matters.

In addition, accountability requires a mechanism for a review on the merits of both the Information Exchange Committee Recommendation and NEMMCO's B2B Decision. The availability of such a review mechanism is considered to be important for promoting confidence in all affected Code Participants in the overall scheme. The matters are addressed in the amendments to Chapter 8.

Attachment B – Table of Code Changes

REFERENCE	CLAUSE WITH PROPOSED AMENDMENTS	REASON
<b>Application of metering chapter</b>		
Clause 7.1.1	<p>(a) This Chapter applies to the following:</p> <p>(1) Local Network Service Providers and <i>Market Network Service Providers</i>;</p> <p>(2) <i>Market Customers</i> in accordance with clause 7.1.1(b);</p> <p>(3) <u>Local Retailers in accordance with clause 7.1.1(c1)</u>;</p> <p>(4) <i>Market Generators</i>;</p> <p>(5) <i>Metering Providers</i> in accordance with clause S7.4.1(c); and</p> <p>(6) <i>NEMMCO</i>.</p>	<p>The Code as currently drafted limits the application of Chapter 7 to 2<sup>nd</sup> tier load. The amendment expands the application of Chapter 7 to 1<sup>st</sup> tier load in respect of MSATS and B2B Procedures.</p>
New Clause 7.1.1(c1)	<p><u>(c1) This Chapter applies to a Local Retailer in respect of any connection point at which load may be classified as a first-tier load (whether so classified or not) to the extent required by the Market Settlement and Transfer Solution Procedures and B2B Procedures.</u></p>	<p>This provides that Local Retailers (and therefore 1<sup>st</sup> tier connection points) are only bound by Chapter 7 in relation to MSATS Procedures and B2B Procedures.</p>
<b>Purpose of metering chapter</b>		
Clause 7.1.2(a)	<p>(a) The purpose of this Chapter is to set out the rights and obligations of <i>Code Participants</i> described in clause 7.1.1, and the rights and obligations and qualifications of <i>Metering Providers</i> associated with the measurement of electrical <i>energy</i>, the provision of <u>data for the operation of the market metering data and B2B Data and the performance of B2B Communications</u>.</p>	<p>This clause is to clarify that there are 3 types of data relevant to the metering chapter, namely energy data, metering data and B2B Data.</p> <p>B2B Data is defined as data relating to B2B Communications.</p> <p>B2B Communications mean communications between Local Retailers, Market Customers and Distribution Network Service Providers relating to an end-user or supply to an end-user.</p>
Clause 7.1.2(b)(2)	<p>(b) This Chapter sets out provisions relating to:</p> <p>...</p> <p>(2) collection <u>and provision</u> of <i>metering data</i> <del>for settlements and B2B Data</del>.</p>	<p>This amendment reflects that data is not only collected but also needs to be provided to various sources, and is also consequential to amendments incorporating B2B.</p>

Attachment B – Table of Code Changes

REFERENCE	CLAUSE WITH PROPOSED AMENDMENTS	REASON
Clause 7.1.2(b)(6)	(b) This Chapter sets out provisions relating to: ... (6) security of, and rights of access to <i>metering data</i> and <i>B2B Data</i> .	This amendment is consequential to amendments incorporating B2B.
<b>B2B e-Hub</b>		
New Clause 7.2A.1	<u><i>NEMMCO must provide and operate a B2B e-Hub. As required by B2B Procedures and subject to clause 7.2A.4(k), Local Retailers, Market Customers and Distribution Network Service Providers must use the B2B e-Hub for B2B Communications.</i></u>	<p>This clause provides NEMMCO with a head of power under which to provide the IT platform which will facilitate B2B Communications. This clause also requires Local Retailers, Market Customers and Distribution Network Service Providers to use the e-Hub as required by the B2B Procedures, subject to any bilateral contracting between the parties.</p> <p>It is technically efficient for these to be a single B2B e-Hub. Many across industry believe that NEMMCO providing and operating the B2B e-hub will result in lower cost solution for businesses as the B2B e-hub will use the same technical protocols as MSATS.</p>
<b>Information Exchange Committee</b>		
New Clause 7.2A.2(a)	<u><i>NEMMCO must establish the Information Exchange Committee in accordance with the Information Exchange Committee Election Procedures.</i></u>	This clause clearly outlines NEMMCO's role in relation to the Committee and provides that while NEMMCO must establish the Committee its role does not extend to the selection of the Committee members.

Attachment B – Table of Code Changes

REFERENCE	CLAUSE WITH PROPOSED AMENDMENTS	REASON
New Clause 7.2A.2(b)	<p><u>(b) The Information Exchange Committee shall only be constituted by:</u></p> <p>(1) <u>3 Distribution Network Service Provider Members;</u>            (2) <u>3 Local Retailer/Market Customer Members; and</u>            (3) <u>2 Independent Members.</u></p> <p><u>Local Retailers and Market Customers together and Distribution Network Service Providers must, in relation to categories of Members in relation to which they are entitled to vote under the Information Exchange Committee Election Procedures, use their best endeavours, to ensure that the Information Exchange Committee is established in accordance with the Information Exchange Committee Election Procedures. Each Member must serve on the Information Exchange Committee for the term specified in the Information Exchange Committee Election Procedures and must only be removed or replaced in accordance with the Information Exchange Committee Election Procedures.</u></p>	<p>This clause sets out the composition of the Committee, who must be elected in accordance with the IEC Election Procedures. This clause also specifies that the term and removal of any IEC member be regulated by the IEC Election Procedures.</p> <p>The structure of the IEC has been designed to protect the domination of the IEC by any one category of participant, i.e. Retailers or DNSPs.</p>
New Clause 7.2A.2(c)	<p><u>(c) Local Retailers, Market Customers and Distribution Network Service Providers must ensure that the Information Exchange Committee Election Procedures include provisions in respect of Member qualifications, procedures for voting for Members, the term of a Member, determination and publication of results of elections and the removal and resignation of a Member.</u></p>	<p>This clause sets out the required contents of the Information Exchange Election Procedures (a copy of which is attached). It is intended to remove considerable detail about the management of the Information Exchange Committee from the Code into the ancillary documentation.</p>

Attachment B – Table of Code Changes

REFERENCE	CLAUSE WITH PROPOSED AMENDMENTS	REASON
<p>New Clause 7.2A.2(d)</p>	<p><u>(d) The first <i>Information Exchange Committee Election Procedures</i> must be <i>published</i> with the <i>changes</i> to the Code which introduce this Clause 7.2A. The <i>Information Exchange Committee Election Procedures</i> can only be amended in accordance with the procedure set out in the <i>Information Exchange Committee Election Procedures</i> and with the support of:</u></p> <p>(1) <u>not less than 75% of all <i>Code Participants</i> registered with NEMMCO as a <i>Distribution Network Service Provider</i> in accordance with clause 2.5.1; and</u></p> <p>(2) <u>not less than 75% of that class of <i>Code Participants</i> comprising <i>Code Participants</i> listed with and <i>published</i> by NEMMCO as a <i>Local Retailer</i> and that class of <i>Code Participants</i> comprising <i>Market Customers</i>, where that <i>Market Customer</i> is not also listed as a <i>Local Retailer</i> and is not a <i>related company</i> of a <i>Local Retailer</i>.</u></p> <p><u>A <i>Code Participant</i> is not obliged to comply with an amendment to the <i>Information Exchange Committee Election Procedures</i> unless made in accordance with this clause.</u></p> <p><u>NEMMCO must <i>publish</i> the current version of the <i>Information Exchange Committee Election Procedures</i>.</u></p>	<p>This clause provides for the acceptance of the first Information Exchange Committee Election Procedures and sets out the basis upon which the Information Exchange Committee Election Procedures may be altered in the future.</p> <p>This clause has been designed to protect the wider interests of DNSPs and Retailers as a whole and ensure that any changes to the Election Procedures, which govern how members are elected and the qualifications of members for example, are supported by a significant number of DNSPs and Retailers.</p>
<p>New Clause 7.2A.2(e)</p>	<p><u>(e) A <i>Code Participant</i> must ensure that a person it nominates as a <i>Member</i> for a category satisfies the requirements for that particular category of <i>Member</i> as set out in the <i>Information Exchange Committee Election Procedures</i>.</u></p>	<p>This clause is required to ensure that Members of the Information Exchange Committee (who are not Code Participants) meet the requirements for Members as set out in the Information Exchange Committee Election Procedures.</p>

Attachment B – Table of Code Changes

REFERENCE	CLAUSE WITH PROPOSED AMENDMENTS	REASON
<p>New Clause 7.2A.2(f)</p>	<p><u>(f) The first <i>Information Exchange Committee Operating Manual</i> must be <i>published</i> with the <i>changes</i> to the Code which introduce this Clause 7.2A. The <i>Information Exchange Committee Operating Manual</i> can only be amended in accordance with the procedure set out in the <i>Information Exchange Committee Election Procedure</i> and with the support of:</u></p> <p>(1) <u>not less than 75% of all <i>Code Participants</i> registered with <i>NEMMCO</i> as a <i>Distribution Network Service Provider</i> in accordance with clause 2.5.1; and</u></p> <p>(2) <u>not less than 75% of that class of <i>Code Participants</i> comprising <i>Code Participants</i> listed with and <i>published</i> by <i>NEMMCO</i> as a <i>Local Retailer</i> and that class of <i>Code Participants</i> comprising <i>Market Customers</i>, where that <i>Market Customer</i> is not also listed as a <i>Local Retailer</i> and is not a <i>related company</i> of a <i>Local Retailer</i>.</u></p> <p><u>A <i>Code Participant</i> is not obliged to comply with an amendment to the <i>Information Exchange Committee Operating Manual</i> unless made in accordance with this clause.</u></p> <p><u><i>NEMMCO</i> must <i>publish</i> the current version of the <i>Information Exchange Committee Operating Manual</i>.</u></p>	<p>This clause provides for the acceptance of the first Information Exchange Committee Operating Manual and sets out the basis upon which the Information Exchange Committee Operating Manual may be altered in the future.</p> <p>The Operating Manual includes within it some processes for the operation of the IEC which are important to the transparent and accountable operation of that group.</p> <p>This clause has been designed to protect the wider interests of DNSPs and Retailers as a whole and ensure that any changes to the Operating Manual are supported by a significant number of DNSPs and Retailers.</p>

Attachment B – Table of Code Changes

REFERENCE	CLAUSE WITH PROPOSED AMENDMENTS	REASON
New Clause 7.2A.2(g)	<p><u>(g) The functions and powers of the Information Exchange Committee include:</u></p> <ul style="list-style-type: none"> <li><u>(1) developing, consulting on and making an Information Exchange Committee Recommendation;</u></li> <li><u>(2) managing the ongoing development of the B2B Procedures and any changes to them;</u></li> <li><u>(3) establishing the Information Exchange Committee Working Groups;</u></li> <li><u>(4) developing, consulting on and approving the Information Exchange Committee Works Programme;</u></li> <li><u>(5) reviewing and considering work completed by the Information Exchange Committee Working Groups;</u></li> <li><u>(6) developing proposed amendments to the Information Exchange Committee Election Procedures; and</u></li> <li><u>(7) developing proposed amendments to the Information Exchange Committee Operating Manual.</u></li> </ul>	This clause sets out the functions and powers of the Information Exchange Committee.
New Clause 7.2A.2(h)	<p><u>(h) The Information Exchange Committee must provide to NEMMCO the current version of the B2B Procedures and the Information Exchange Committee Works Programme.</u></p>	This clause provides that the Information Exchange Committee must provide the B2B Procedures and the Information Exchange Committee Works Programme to NEMMCO for publishing to facilitate the transparent and accountable operation of the Information Exchange Committee.
New Clause 7.2A.2(i)	<p><u>(i) NEMMCO must publish the B2B Procedures and the Information Exchange Committee Works Programme provided to it by the Information Exchange Committee.</u></p>	This clause provides that NEMMCO must publish the B2B Procedures and the Information Exchange Committee Works Programme to facilitate the transparent and accountable operation of the Information Exchange Committee.

Attachment B – Table of Code Changes

REFERENCE	CLAUSE WITH PROPOSED AMENDMENTS	REASON
New Clause 7.2A.2(j)	<u>(j) The Information Exchange Committee, NEMMCO, Local Retailers, Market Customers and Distribution Network Service Providers must comply with the Information Exchange Committee Election Procedures and the Information Exchange Committee Operating Manual.</u>	This clause obliges the Information Exchange Committee, Local Retailers, Market Customers and Distribution Network Service Providers to comply with the Code, the Information Exchange Committee Election Procedures and Information Exchange Committee Operating Manual.
New Clause 7.2A.2(k)	<u>(k) The Information Exchange Committee must meet at regular intervals and at least once every 3 months.</u>	This clause obliges the <i>Information Exchange Committee</i> to meet at least once every 3 months and facilitates the accountability and transparency of the Committee's operation.
New Clause 7.2A.2(l)	<u>(l) The quorum for a meeting of the Information Exchange Committee is 5 Members comprising 2 Distribution Network Service Provider Members, 2 Local Retailer/Market Customer Members and 1 Independent Member.</u>	This clause provides for a quorum for meetings of the <i>Information Exchange Committee</i> and ensures that each category of Member is represented at a meeting for a decision to be made.
New Clause 7.2A.2(m)	<u>(m) A decision of the Information Exchange Committee is not valid and enforceable unless it is made as follows:</u>  <u>(1) an Information Exchange Committee Recommendation requires the support of 6 or more Members;</u>  <u>(2) any decision that a proposal under clause 7.2A.3(a) should not be considered further after initial consideration under clause 7.2A.3(b), and any decision to not recommend B2B Procedures or a change to the B2B Procedures for approval by NEMMCO requires the support of 6 or more Members;</u>  <u>(3) any decision to approve the Information Exchange Committee Works Programme requires the support of 6 or more Members; and</u>  <u>(4) any other decision by the Information Exchange Committee requires the support of 5 or more Members.</u>	<p>This clause sets out the minimum support required for a decision of the <i>Information Exchange Committee</i> to be valid and enforceable.</p> <p>The thresholds for support were set to ensure that any decisions of the IEC reflected the industry as a whole. Any decision requiring 6 or more members requires the support of both industry categories or the support of a majority of members from both industry categories and an independent member.</p>

Attachment B – Table of Code Changes

REFERENCE	CLAUSE WITH PROPOSED AMENDMENTS	REASON
New Clause 7.2A.2(n)	<p><u>(n) Each Member in performing his or her duties or in exercising any right, power or discretion must have regard to the B2B Objective and the B2B Principles and must:</u></p> <p>(1) <u>at all times act honestly;</u></p> <p>(2) <u>exercise the degree of care and diligence that a reasonable person in a like position would exercise;</u></p> <p>(3) <u>not make improper use of information acquired by virtue of his or her position to gain, directly or indirectly, an advantage for himself or herself, or the Code Participant by which he or she is employed and/or which nominated him or her to be Member, and</u></p> <p>(4) <u>not make improper use of his or her position to gain, directly or indirectly, and advantage for himself or herself or the Code Participant by which he or she is employed and/or which nominated him or her to be Member.</u></p>	This clause sets out the objectives and principles to which Members must have regard in exercising their duties and powers and facilitates the good governance of the <i>Information Exchange Committee</i> . (Note the provisions replicate those found in the Corporations Act in respect of directors.)
New Clause 7.2A.2(o)	<p><u>(o) Subject to clause 7.2A.2(n), a Distribution Network Service Provider Member may take into account the interests of the Distribution Network Service Providers in performing his or her duties or in exercising any right, power or discretion.</u></p>	This clause which is to be read subject to the B2B Objective, the B2B Principles and clause 7.2A.2(m) permits a Distribution Network Service Provider Member to take account of the interests of the Distribution Network Service Providers (considered as a whole) in performing his/her duties and in exercising any right, power or discretion.
New Clause 7.2A.2(p)	<p><u>(p) Subject to clause 7.2A.2(n), a Local Retailer/Market Customer Member may take into account the interests of the Local Retailers and Market Customers in performing his or her duties or in exercising any right, power or discretion.</u></p>	This clause which is to be read subject to the B2B Objective, the B2B Principles and clause 7.2A.2(m) permits a Local Retailer/Market Customer Member to take account of the interests of the Local Retailers/Market Customers (considered as a whole) in performing his/her duties and in exercising any right, power or discretion.

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REFERENCE	CLAUSE WITH PROPOSED AMENDMENTS	REASON
New Clause 7.2A.2(q)	<u>(q) The Information Exchange Committee must prepare the Information Exchange Committee Annual Report for the period ended 31 December in the first calendar year following the establishment of the Information Exchange Committee and the year ended 31 December in each year thereafter. The Information Exchange Committee must provide the Information Exchange Committee Annual Report to NEMMCO by 31 March each year and NEMMCO must publish that Information Exchange Committee Annual Report.</u>	This clause requires the Information Exchange Committee to produce an Annual Report and also facilitates accountability and transparency of the operation of the Committee.
New Clause 7.2A.2(r)	<u>(r) The Information Exchange Committee Annual Report must contain the information required by the Information Exchange Committee Operating Manual.</u>	This clause specifies that the contents of the Annual Report must comply with the Information Exchange Committee Operating Manual.
New Clause 7.2A.2(s)	<u>(s) By 28 February each year the Information Exchange Committee must prepare a draft budget for the following financial year in a form which is consistent with the budget procedures of NEMMCO. Following discussion with NEMMCO the Information Exchange Committee must prepare a budget by 31 March and provide that budget to NEMMCO. When NEMMCO publishes its budget pursuant to clause 2.11.3, NEMMCO must advise the Information Exchange Committee of the final budget for the Information Exchange Committee for that financial year.</u>	This clause enables the Information Exchange Committee's budget to fit with NEMMCO's budgeting requirements and timing for preparation of those budgets.
<b>Method of making and changing B2B Procedures</b>		
New Clause 7.2A.3(a)	<u>(a) NEMMCO, a Local Retailer, a Market Customer or a Distribution Network Service Provider may propose B2B Procedures, or a change to the B2B Procedures, to the Information Exchange Committee. The proposal must be submitted in writing to the Information Exchange Committee and must provide details of the proposal and supporting information, including reasons for any change or B2B Procedure.</u>	This clause allows a Local Retailer, Market Customers or a Distribution Network Service Provider to propose a new B2B Procedure or a change to an existing B2B Procedure. The proposal must include certain information.

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REFERENCE	CLAUSE WITH PROPOSED AMENDMENTS	REASON
New Clause 7.2A.3(b)	<u>(b) Within 25 business days of receipt by the Information Exchange Committee of a proposal under clause 7.2A.3(a), the Information Exchange Committee must meet to determine whether on a prima facie basis making new B2B Procedures and/or changing the B2B Procedures is warranted having regard to the B2B Objective and the B2B Principles.</u>	This clause obliges the Information Exchange Committee to consider any proposal within a certain time period. As part of this consideration the Information Exchange Committee must determine if on a prima facie basis the proposed B2B Procedure or change to an existing B2B Procedure is warranted having regard to the B2B Objective and the B2B Principles.
New Clause 7.2A.3(c)	<u>(c) If after its consideration under clause 7.2A.3(b), the Information Exchange Committee decides that the proposal made under clause 7.2A.3(a) should not be considered further, the Information Exchange Committee must within 5 business days provide written reasons for that decision to NEMMCO, the Local Retailer, Market Customer or Distribution Network Service Provider making the proposal.</u>	This clause requires the Information Exchange Committee to provide in writing reasons for any decision to not consider any B2B Proposal further and facilitates the transparent and accountable operation of the Information Exchange Committee.
New Clause 7.2A.3(d)	<u>(d) If after its consideration under clause 7.2A.3(b), the Information Exchange Committee decides that the proposal made under clause 7.2A.3(a) should be considered further, the Information Exchange Committee must develop the proposal into a B2B Proposal (which may differ from the proposal originally made) and an accompanying B2B Procedures Change Pack for consultation. The Information Exchange Committee must seek NEMMCO's advice on whether a conflict with the Market Settlement and Transfer Solution Procedures arises from the B2B Proposal and include any such advice in the B2B Procedures Change Pack.</u>	If the Information Exchange Committee decides that the B2B Proposal should be considered further, this clause obliges the Information Exchange Committee to develop certain materials for consultation (Called a B2B Procedures Change Pack). At this stage the Information Exchange Committee is also required to liaise with NEMMCO and obtain NEMMCO's advise as to whether the proposed B2B Procedure or change to an existing B2B Procedure conflicts with any Market Settlement and Transfer Solution Procedure.

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REFERENCE	CLAUSE WITH PROPOSED AMENDMENTS	REASON
New Clause 7.2A.3(e)	<u>(e) The Information Exchange Committee is required to comply with the Code consultation procedures in relation to the B2B Proposal. For the purposes of clause 8.9(b), the nominated persons to whom notice must be given are Local Retailers, Market Customers, Distribution Network Service Providers and NEMMCO. The matters under consideration in the notice must include a copy of the B2B Procedures Change Pack.</u>	In consulting on any proposed B2B Procedure, the Information Exchange Committee is required to undertake a code consultation (in a manner as set out in clause 8.9 of the Code) with slight variations. This clause requires that notice of any consultation and the B2B Procedures Change Pack must be provided to Local Retailers, Market Customers and Distribution Network Service Providers, thereby facilitating the transparent and accountable operation of the Information Exchange Committee.
New Clause 7.2A.3(f)	<u>(f) NEMMCO must pursuant to clause 8.9(c) publish the notice of consultation and must notify all Local Retailers, Market Customers and Distribution Network Service Providers of the consultation.</u>	The notice referred to above, must be published by NEMMCO on its website and Local Retailers, Market Customers and Distribution Network Service Providers notified of the consultation – this in practice is done by a NEM Communication. This is consistent with current code consultation procedures.
New Clause 7.2A.3(g)	<u>(g) In addition to the matters which clause 8.9(g) requires be included in the draft report, the draft report must contain details of the Information Exchange Committee's consideration of the B2B Objective and each of the B2B Principles and how the Information Exchange Committee has considered each submission made having regard to the B2B Objective and the B2B Principles.</u>	This clause provides that after the Information Exchange Committee has conducted the consultation it must prepare a draft report. This clause specifies the minimum contents of this draft report. This is consistent with current code consultation procedures and provides accountability and transparency of decisions of the Information Exchange Committee.
New Clause 7.2A.3(h)	<u>(h) In addition to the matters which clause 8.9(k) requires be included in the final report, the final report must contain details of the Information Exchange Committee's consideration of the B2B Objective and each of the B2B Principles and how the Information Exchange Committee has considered each submission having regard to the B2B Objective and the B2B Principles.</u>	This clause specifies the minimum contents of the final report produced by the Information Exchange Committee and facilitates the transparent and accountable operation of the Information Exchange Committee.

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REFERENCE	CLAUSE WITH PROPOSED AMENDMENTS	REASON
New Clause 7.2A.3(i)	<p><u>(i) The Information Exchange Committee can conclude not to recommend the proposed B2B Procedures be made or not to recommend a change to the B2B Procedures. The Information Exchange Committee may make an Information Exchange Committee Recommendation and in doing so may recommend a different B2B Procedure or change to the B2B Procedures from that originally proposed under clause 7.2A.3(a). A conclusion not to recommend the B2B Procedures be made, or not to recommend a change to the B2B Procedures, or to make an Information Exchange Committee Recommendation must be included in the final report required under clause 8.9(k).</u></p>	<p>This clause permits the Information Exchange Committee to recommend not to make a B2B Procedure, or change an existing B2B Procedure. This clause also permits the Information Exchange Committee to recommend a B2B Procedure or a change to a B2B Procedure which is different from that originally proposed.</p>
New Clause 7.2A.3(j)	<p><u>(j) In coming to a conclusion not to recommend the B2B Procedures, or not to recommend a change to the B2B Procedures, to make an Information Exchange Committee Recommendation, the Information Exchange Committee must have regard to the B2B Objective and the B2B Principles.</u></p>	<p>This clause requires the Information Exchange Committee to have regard to the B2B Objective and the B2B Principles in making a recommendation to NEMMCO in respect of a B2B Procedure or a change to a B2B Procedure.</p>
New Clause 7.2A.3(k)	<p><u>(k) If the Information Exchange Committee concludes not to make the B2B Procedures or not to change the B2B Procedures, NEMMCO must take no further action. NEMMCO must consider an Information Exchange Committee Recommendation and must approve that Information Exchange Committee Recommendation, unless it concludes that:</u></p> <p><u>(1) the Information Exchange Committee has failed to have regard to the B2B Objective and/or the B2B Principles;</u></p> <p><u>(2) the Information Exchange Committee Recommendation would conflict with the Market Settlement and Transfer Solution Procedures; or</u></p> <p><u>(3) The Information Exchange Committee has not followed the Code consultation procedures (as supplemented by this clause 7.2A.3).</u></p>	<p>This clause requires NEMMCO to consider any recommendation from the Information Exchange Committee, and requires NEMMCO to approve the recommendation unless certain conditions have not been met.</p> <p>This reflects industry’s view that the Information Exchange Committee representing industry and those who will be primarily affected by a B2B Proposal should consider the merits of the decision. NEMMCO has two roles, namely to ensure that there is no conflict between the B2B Procedures and the MSAT Procedures and providing an administrative check to the processes of the Information Exchange Committee.</p>

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REFERENCE	CLAUSE WITH PROPOSED AMENDMENTS	REASON
New Clause 7.2A.3(l)	<p><u>(l) In considering an Information Exchange Committee Recommendation, NEMMCO must not consider:</u></p> <p>(1) <u>the manner in which the Information Exchange Committee considered the B2B Objective and the B2B Principles or the weight given by the Information Exchange Committee to the different B2B Principles or the balancing between them; or</u></p> <p>(2) <u>the merits of the Information Exchange Committee Recommendation.</u></p>	<p>This clause prohibits NEMMCO from considering the merits of any recommendation made by the Information Exchange Committee.</p> <p>This clause is consistent with clause 7.2A.3(k).</p>
New Clause 7.2A.3(m)	<p><u>(m) NEMMCO must not amend the Information Exchange Committee Recommendation and must not conduct any further consultation on the Information Exchange Committee Recommendation prior to its making of a B2B Decision.</u></p>	<p>This clause prohibits NEMMCO from amending any recommendation from the Information Exchange Committee or undertaking external consultation on the recommendation.</p> <p>This clause is consistent with clause 7.2A.3(k).</p>
New Clause 7.2A.3(n)	<p><u>(n) NEMMCO must publish and make available on its website its B2B Decision, with reasons, within 10 business days of receiving an Information Exchange Committee Recommendation from the Information Exchange Committee.</u></p>	<p>This clause requires NEMMCO to publish its decision, with reasons, to approve or not approve the recommendation from the Information Exchange Committee within a certain time frame.</p>

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REFERENCE	CLAUSE WITH PROPOSED AMENDMENTS	REASON
New Clause 7.2A.3(o)	<p><u>(o) If NEMMCO decides not to approve the Information Exchange Committee Recommendation, the reasons for the B2B Decision which are to be published in accordance with clause 7.2A.3(q) must include an explanation of the following, where applicable:</u></p> <p>(1) <u>to which of the B2B Objective and/or the B2B Principles, NEMMCO considers the Information Exchange Committee did not have regard;</u></p> <p>(2) <u>how the Information Exchange Committee Recommendation would give rise to a conflict with the Market Settlement and Transfer Solution Procedures; or</u></p> <p>(3) <u>how the Information Exchange Committee did not follow the Code consultation procedures (as supplemented by this clause 7.2A.3).</u></p>	This clause requires NEMMCO if it decides not to approve a recommendation from the Information Exchange Committee to address in its reasons for doing so particular matters.
<b>Content of the B2B Procedures</b>		
New Clause 7.2A.4(a)	<u>(a) The B2B Procedures may provide for B2B Communications.</u>	
New Clause 7.2A.4(b)	<p><u>(b) For each B2B Communication, the B2B Procedures must contain:</u></p> <p>(1) <u>the required B2B Data inputs and B2B Data, outputs;</u></p> <p>(2) <u>the required business process flows and related timing requirements;</u></p> <p>(3) <u>the required content and format;</u></p> <p>(4) <u>the required delivery method; and</u></p> <p>(5) <u>the back-up delivery method to be used where the required delivery method cannot be used.</u></p>	This clause sets out the minimum contents of the B2B Procedures. These elements are required to ensure that the B2B Procedures contain all necessary information required for the B2B Procedures to be effective.

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REFERENCE	CLAUSE WITH PROPOSED AMENDMENTS	REASON
New Clause 7.2A.4(c)	<u>(c) The B2B Procedures may include obligations in relation to the information to be maintained and provided to support B2B Communications.</u>	This clause provides for the provision and maintenance of data ancillary to B2B Communications, for example contact lists.
New Clause 7.2A.4(d)	<u>(d) For each B2B Communication the B2B Procedures may also include:</u>  <u>(1) details for testing and certification;</u>  <u>(2) provisions relating to contingency arrangements;</u>  <u>(3) examples of how a B2B Communication may operate in practice; and</u>  <u>(4) the method for dealing with a dispute (which may include provisions deferring the use of the dispute resolution procedures in the Code and access the courts).</u>	This clause sets out other matters which the B2B Procedures may contain. This clause provides some examples of other matters which may be included in the B2B Procedures, while not mandatory they will be useful to drafters of the B2B Procedures to have regard to when drafting B2B Procedures in years to come.
New Clause 7.2A.4(e)	<u>(e) The B2B Procedures or a change to the B2B Procedures, must also include a date for the commencement of the B2B Procedures or the change. That date must be not less than 10 business days after the related B2B Decision is published. The Information Exchange Committee may extend that date following consultation with affected Code Participants. If the date is extended by the Information Exchange Committee, the Information Exchange Committee shall provide NEMMCO with that date and NEMMCO shall publish that date.</u>	This clause provides that the B2B Procedures may include a commencement date for the date on which a B2B Procedure is to become effective. The potential delay between the promulgation of the B2B Procedure and the effective date allows affected parties to undertake any IT build or address any other implementation matters.
New Clause 7.2A.4(f)	<u>(f) A change to the B2B Procedures may also include provisions relating to a date for the end of a process related to a B2B Communication. That date may be after the date of commencement of the change and may be left to the discretion of the Information Exchange Committee. If the date is set by the Information Exchange Committee, the Information Exchange Committee shall provide NEMMCO with that date and NEMMCO shall publish that date.</u>	This clause allows for the grandfathering of existing requirements contained in the B2B Procedures.

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REFERENCE	CLAUSE WITH PROPOSED AMENDMENTS	REASON
New Clause 7.2A.4(g)	<u>(g) The B2B Procedures may be constituted by one or more separate documents.</u>	This clause is to provide clarity as to the architecture of the B2B Procedures.
New Clause 7.2A.4(h)	<u>(h) The B2B Procedures may include roles and responsibilities for Metering Providers.</u>	This clause allows the B2B Procedures to also govern Metering Providers.
New Clause 7.2A.4(i)	<u>(i) Subject to the Information Exchange Committee following the requirements placed upon it in the Code in relation to the B2B Procedures, Local Retailers, Market Customers, Distribution Network Service Providers, NEMMCO and Metering Providers must comply with the B2B Procedures.</u>	This clause requires Local Retailers, Market Customers, Distribution Network Service Providers, NEMMCO and Metering Providers to comply with the B2B Procedures.
New Clause 7.2A.4(j)	<u>(j) Notwithstanding clause 7.2A.4(i), Local Retailers, Market Customers, Distribution Network Service Providers, and Metering Providers operating in a participating jurisdiction in which there are franchise customers need not comply with the B2B Procedures, unless that participating jurisdiction agrees otherwise and in so doing specifies in a notice to the Information Exchange Committee the B2B Communications and related obligations with which the relevant Code Participants or Metering Providers must comply. Upon receipt of such a notice the Information Exchange Committee shall change the relevant B2B Procedure in accordance with the notice and shall specify a date from which the relevant Code Participants must comply with the amended B2B Procedure. The Information Exchange Committee shall notify NEMMCO of that date which NEMMCO shall publish. The B2B Procedure as amended shall be the subject of clauses 7.2A.1 to 7.2A.4 (inclusive) and 7.2A.6 save that the relevant Code Participants shall only be able to propose a change to the B2B Procedure under clause 7.2A.3(a) to the extent that they are bound to comply with it.</u>	This clause means that the B2B Procedures shall not apply to Code Participants operating in states in which there is not yet FRC, such as Queensland, unless and until the participating jurisdiction agrees that the B2B Procedures, or certain parts of the B2B Procedures shall apply.

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REFERENCE	CLAUSE WITH PROPOSED AMENDMENTS	REASON
New Clause 7.2A.4(k)	<u>(k) Local Retailers, Market Customers and Distribution Network Service Providers may on such terms and conditions as agreed between them communicate a B2B Communication on a basis other than as set out in the B2B Procedures in which case the parties to the agreement need not comply with the B2B Procedures to the extent that the terms and conditions agreed between them are inconsistent with the B2B Procedures.</u>	This clause permits Code Participants to vary by way of contract the manner in which they communicate a B2B Communication.
New Clause 7.2A.4(l)	<u>(l) B2B Data is confidential information and may only be disclosed as permitted by the Code.</u>	As B2B Data is potentially commercially sensitive this clause provides that B2B Data must be considered confidential and only disclosed as permitted by the Code.
New Clause 7.2A.4(m)	<u>(m) If a change to the B2B Procedure is of a minor or procedural nature or is necessary to correct a manifest error in the B2B Procedures, the Information Exchange Committee may recommend the change to NEMMCO. The Information Exchange Committee need not consult on such change in accordance with the Code consultation procedures. Clauses 7.2A.3(i) to (o) (inclusive) and clauses 7.2A.4(e) and (f) apply to such change (with any necessary modifications). In addition to publication of its B2B Decision, NEMMCO must notify all Local Retailers, Market Customers and Distribution Network Service Providers of the change.</u>	This clause permits an amendment to a B2B Procedure on a “fast-track” basis where the amendment relates to a minor or procedural matter or is necessary to correct a manifest error. Any such change requires a decision of the Information Exchange Committee and NEMMCO both of which are decisions which may be disputed pursuant to clause 8.2 of the Code.
<b>Transition of B2B Communications from the Market Settlement and Transfer Procedures</b>		
New Clause 7.2A.5(a)	<u>(a) At 9.00am (EST), on the day immediately following the day on which the Information Exchange Committee is established pursuant to Clause 7.2A.2(a) (“transition day”), those Market Settlement and Transfer Solution Procedures entitled “MSATS Procedures : B2B Procedures” shall be deemed to have been the subject of an Information Exchange Committee Recommendation under clause 7.2A.3(k) and approved by NEMMCO in accordance with Clause 7.2A.3(m) and shall be B2B Procedures.</u>	This clause provides for the transition of certain procedures relating to B2B made under the Market Settlement and Transfer Procedures to B2B Procedures.

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REFERENCE	CLAUSE WITH PROPOSED AMENDMENTS	REASON
New Clause 7.2A.5(b)	<u>(b) All things done in relation to a B2B Communication the subject of the Market Settlement and Transfer Solution Procedures entitled “MSATS Procedures:B2B Procedures” immediately before the transition day must under the B2B Procedures continue to have the same the status, operation and effect as they would have under the Market Settlement and Transfer Solution Procedures entitled “MSATS Procedures:B2B Procedures”. In particular, this clause 7.2A.5 does not disturb the status, operation or effect of any B2B Communication or any proceeding, liability, rights or other matter or thing made, done, effected, obtained, given, accrued, incurred, acquired, existing or continuing before the transition day. Such a deemed Information Exchange Committee Recommendation and deemed B2B Decision shall not be within the scope of clause 8.2.5(f).</u>	This clause provides that the transition from the Market Settlement and Transfer Procedures to B2B Procedures does not affect the operation of those procedures including any liability, rights or other matter or thing made, done, effected, obtained, given etc before the transition day.
<b>Cost Recovery</b>		
New Clause 7.2A.6(a)	<u>(a) The development of the B2B Procedures, the establishment and operation of the Information Exchange Committee (including the engagement costs of specialist advisers, remuneration and payment of the reasonable expenses of the Independent Members), all of which shall be set out in the budget prepared by the Information Exchange Committee pursuant to clause 7.2A.2(s) and the Information Exchange Committee Annual Report and the operational costs associated with any service provided by NEMMCO to facilitate B2B Communications (including providing and operating a B2B e-Hub) must be paid by NEMMCO in the first instance and recouped by NEMMCO as Participant fees.</u>	This clause permits NEMMCO to pay for the costs of the development of the B2B Procedures, the establishment and operation of the Information Exchange Committee and recover those costs as part of Participant Fees.
New Clause 7.2A.6(b)	<u>(b) Subject to clause 7.2A.6(a), the cost of any Member (other than an Independent Member) and involvement of individuals in the Information Exchange Committee Working Groups shall not be borne by NEMMCO.</u>	This clause makes clear that any costs of a Member (other than an Independent Member) shall not be borne by NEMMCO and therefore will not be recouped as part of Participant Fees.

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REFERENCE	CLAUSE WITH PROPOSED AMENDMENTS	REASON
New Clause 7.2A.6(c)	<u>(c) The cost to a Local Retailer, Market Customer and Distribution Network Service Provider of implementing and maintaining the necessary systems and processes to ensure compliance with a B2B Procedure must be met by that Local Retailer, Market Customer and Distribution Network Service Provider.</u>	This clause makes clear that the cost of implementing, maintaining and ensuring compliance with the B2B Procedures is the responsibility of each Code Participant and is to be recovered under paragraph (a).
<b>Rights of access to data</b>		
Clause 7.7(a)	(a) The only persons entitled to have either direct or remote access <i>metering data</i> from a <i>metering installation</i> , the <i>metering database</i> or <i>metering register</i> in relation to a <i>connection point</i> are:  ... (4) NEMMCO and NECA and its authorised agents; <del>and</del> (5) any <i>Customer</i> who is registered with NEMMCO and who purchases electricity at the associated <i>connection point</i> ; <del>and</del> <u>(6) Code Participants as provided for in the Market Settlement and Transfer Solution Procedures and B2B Procedures.</u>	This amendment makes it clear that parties named as having the right to information (for example connection point information for the transfer of a customer, where the relevant party has explicit informed consent) may have that information even those that Code Participant may not have an account with NEMMCO which relates to energy flowing through that connection point.
<b>Application of clause 8.2 to B2B Determination Disputes</b> <b>Application of this Chapter</b>		
New Clause 8.2A.1(a)	<u>(a) For the purposes of a B2B Determination Dispute, this Chapter applies to Code Participants and the Information Exchange Committee.</u>	This provision is necessary to broaden the scope of clause 8.1.2 to allow Chapter 8 to apply to the proposed review by way of a dispute under the Code.
New Clause 8.2A.1(b)	<u>(b) For clause 8.2.1(a) substitute:</u> <u>(a) “Clause 8.2 applies to a B2B Determination Dispute subject to clause 8.2A.2.”</u>	This provision is necessary to broaden the scope of Chapter 8 to apply to the proposed review by way of a dispute under the Code.
<b>How this Chapter applies</b>		
New Clause 8.2A.2(a)	<u>In relation to a B2B Determination Dispute:</u> <u>(a) For clause 8.2.1(e)(1) substitute:</u> <u>“(1) be guided by the B2B Objective and the B2B Principles.”</u>	This provision ensures the DRP is guided by appropriate objectives.

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REFERENCE	CLAUSE WITH PROPOSED AMENDMENTS	REASON
New Clause 8.2A.2(b)	<p><u>(b) In clause 8.2.1(f):</u></p> <p>(i) <u>after “clauses 8.2.4 to 8.2.10” insert “(as amended by clause 8.2A.2)”;</u> and</p> <p>(ii) <u>insert a new sentence at the end of the paragraph as follows: “The subject matter of a <i>B2B Determination Dispute</i> which has been determined by the DRP cannot be the subject of further review.”</u></p>	Consequential drafting change.
New Clause 8.2A.2(c)	<u>(c) Clauses 8.2.3 does not apply to the <i>Information Exchange Committee</i>.</u>	NEMMCO is the Secretary for the Information Exchange Committee. It is administratively sensible that NEMMCO also be the DMS Contact for the Committee.
New Clause 8.2A.2(d)	<u>(d) The contact for the <i>Information Exchange Committee</i> in relation to disputes will be the <i>DMS Contact</i> for NEMMCO.</u>	As for previous amendment.
New Clause 8.2A.2(e)	<u>(e) Clause 8.2.4 does not apply.</u>	As the dispute is in the nature of a “merits review” there is no role for Stage 1 dispute resolution.
New Clause 8.2A.2(f)	<u>(f) Clauses 8.2.5(a), (b), (c) and (d) do not apply.</u>	As the dispute is in the nature of a “merits review” new clause 8.2.5(f) provides for how such a dispute can be commenced. These clauses are appropriate for a dispute moving from stage 1 to stage 2 but are not so for the initiation of a “merits review”. Publication of the dispute remains important.

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REFERENCE	CLAUSE WITH PROPOSED AMENDMENTS	REASON
New Clause 8.2A.2(g)	<p><u>(g) Insert a new clause 8.2.5(f) as follows:</u></p> <p><u>“(1) A Market Customer, Local Retailer or a Distribution Network Service Provider adversely affected by an Information Exchange Committee Recommendation or a B2B Decision may apply to the Adviser for review of that Information Exchange Committee Recommendation or that B2B Decision. The application must be made within 10 business days of publication of the Information Exchange Committee Recommendation or the B2B Decision, state grounds for the review and give full particulars of where the applicant believes the Information Exchange Committee Recommendation or a B2B Decision is in error.</u></p> <p><u>(2) Where an application for review of an Information Exchange Committee Recommendation is made, NEMMCO must not take any further action in relation to that Information Exchange Committee Recommendation until the DRP has made its decision in relation to the dispute.</u></p> <p><u>(3) An application for review of a B2B Decision stays the B2B Decision.</u></p> <p><u>(4) On receiving the application the Adviser must refer the dispute to a DRP for determination in accordance with clauses 8.2.6A to 8.2.6D.”</u></p>	As the dispute is in the nature of a “merits review” new clause 8.2.5(f) provides for how such a dispute can be commenced. The clause also provides that the initiation of the dispute acts as a “stay” of the decision under challenge to provide investment certainty to affected Code Participants. Finally, a dispute must be referred to a DRP for resolution.
New Clause 8.2A.2(h)	<u>(h) In clause 8.2.6A(a), for “decides to refer” substitute “refers”.</u>	Consequential drafting change.
New Clause 8.2A.2(i)	<u>(i) In clause 8.2.6A(c), for “the parties to the Stage 1 dispute resolution process” substitute “the parties to the dispute”.</u>	Consequential drafting change.
New Clause 8.2A.2(j)	<u>(j) In clause 8.2.6A(h)(1) before “a Code Participant” insert “the Information Exchange Committee or”</u>	The Information Exchange Committee is not a Code Participant.

Attachment B – Table of Code Changes

REFERENCE	CLAUSE WITH PROPOSED AMENDMENTS	REASON
<p>New Clause 8.2A.2(k)</p>	<p><u>(k) For clause 8.2.6B(a)(1) substitute:</u></p> <p><u>“(1) The Code Participant making application for a review of the Information Exchange Committee Recommendation or the B2B Decision, a Code Participant affected by the Information Exchange Committee Recommendation or the B2B Decision under review and the Information Exchange Committee or, if the Information Exchange Committee is unable to act as a party, any other Code Participant wishing to support the position of the Information Exchange Committee. NEMMCO is a party to an application for review of a B2B Decision and may be a party, in accordance with clauses 8.2.6B(b) and 8.6.2(B)(c), to an application for review of an Information Exchange Committee Recommendation.</u></p> <p><u>(2) Where the Information Exchange Committee is unable to act as a party, and another Code Participant is a party to support the position of the Information Exchange Committee, the Information Exchange Committee must give to that party all assistance including access to both documents and Members. A Code Participant of which a Member is an employee must ensure that Member is available to provide such assistance.</u></p> <p><u>(3) Where NEMMCO is a party to a B2B Determination Dispute, the Information Exchange Committee must give NEMMCO all assistance including access to both documents and Members. A Code Participant of which a Member is an employee must ensure that Member is available to provide such assistance.”</u></p>	<p>This clause provides for the parties to the dispute. It recognises that the Information Exchange Committee, not being a Code Participant, may need to be represented by a Code Participant. It is considered that this structure is sensible and that a Code Participant which has supported the decision of the Information Exchange Committee will continue to support that decision when challenged.</p>
<p>New Clause 8.2A.2(l)</p>	<p><u>(l) Clause 8.2.6C(d) does not apply to a B2B Determination Dispute.</u></p>	<p>Mediation is inappropriate for a dispute in the nature of “merits review”.</p>

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REFERENCE	CLAUSE WITH PROPOSED AMENDMENTS	REASON
New Clause 8.2A.2(m)	<p><u>(m) Insert a new clause 8.2.6C(g) as follows:</u></p> <p><u>“In considering a <i>B2B Determination Dispute</i>, the <i>DRP</i> must conduct a full reconsideration of the <i>Information Exchange Committee Recommendation</i> or <i>B2B Decision</i> and:</u></p> <p><u>(1) can rely on any material available and is not confined to only considering material that was before the <i>Information Exchange Committee</i> in relation to an <i>Information Exchange Committee Recommendation</i> or <i>NEMMCO</i> in relation to a <i>B2B Decision</i>; and</u></p> <p><u>(2) may exercise all powers and discretions that are conferred on the <i>Information Exchange Committee</i> in relation to an <i>Information Exchange Committee Recommendation</i> or <i>NEMMCO</i> in relation to a <i>B2B Decision</i>.”</u></p>	Powers are provided to the <i>DRP</i> akin to those provided to a tribunal engaged in a “merits review”.
New Clause 8.2A.2(n)	<p><u>(n) Insert a new clause 8.2.6D(da) as follows:</u></p> <p><u>“The <i>DRP</i> must make a decision in writing:</u></p> <p><u>(1) affirming the <i>Information Exchange Committee Recommendation</i> or the <i>B2B Decision</i></u></p> <p><u>(2) varying the <i>Information Exchange Committee Recommendation</i> or the <i>B2B Decision</i>; or</u></p> <p><u>(3) setting aside the <i>Information Exchange Committee Recommendation</i> or the <i>B2B Decision</i> and substituting its own decision.”</u></p>	Decision making authority is provided to the <i>DRP</i> akin to those provided to a tribunal engaged in a “merits review”.
New Clause 8.2A.2(o)	<u>(o) Clause 8.2.7(a) does not apply.</u>	Consequential drafting change.
New Clause 8.2A.2(p)	<u>(p) Clauses 8.2.9(a), (b), (c)(2) and (d) do not apply.</u>	Once a dispute in the nature of a “merits review” has commenced it is inappropriate for it to be resolved by agreement.

Attachment B – Table of Code Changes

REFERENCE	CLAUSE WITH PROPOSED AMENDMENTS	REASON
New Clause 8.2A.2(q)	<u>(q) In clause 8.2.12(a), after “Code Participant” insert “or the Information Exchange Committee”.</u>	The Information Exchange Committee is not a Code Participant.
<b>Chapter 10 – Glossary</b>		
Insert new definition	<b><u>B2B Data</u></b> <u>Data relating to B2B Communications.</u>	
Insert new definition	<b><u>B2B Communications</u></b> <u>Communications between Local Retailers, Market Customers and Distribution Network Service Providers relating to an end-user or supply to an end-user provided for in the B2B Procedures.</u>	
Insert new definition	<b><u>B2B Decision</u></b> <u>The decision of NEMMCO to approve or not approve the Information Exchange Committee Recommendation.</u>	
Insert new definition	<b><u>B2B Determination Dispute</u></b> <u>A dispute in relation to either a B2B Decision or an Information Exchange Committee Recommendation.</u>	
Insert new definition	<b><u>B2B e-Hub</u></b> <u>An electronic information exchange platform established by NEMMCO to facilitate B2B Communications.</u>	
Insert new definition	<b><u>B2B Objective</u></b> <u>The Information Exchange Committee’s objective is that the benefits from B2B Communications to Local Retailers, Market Customers and Distribution Network Service Providers as a whole outweigh the detriments to Local Retailers, Market Customers and Distribution Network Service Providers as a whole.</u>	

Attachment B – Table of Code Changes

REFERENCE	CLAUSE WITH PROPOSED AMENDMENTS	REASON
Insert new definition	<p><b><u>B2B Principles</u></b></p> <p><u>In seeking to achieve the <i>B2B Objective</i> the <i>Information Exchange Committee</i> must have regard to the following principles:</u></p> <p><u>(a) <i>B2B Procedures</i> should provide a uniform approach to <i>B2B Communications</i> in <i>participating jurisdictions</i> in which there are <i>no franchise customers</i>;</u></p> <p><u>(b) <i>B2B Procedures</i> should detail operational and procedural matters and technical requirements that result in efficient, effective and reliable <i>B2B Communications</i>;</u></p> <p><u>(c) <i>B2B Procedures</i> should avoid unreasonable discrimination between <i>Local Retailers</i>, <i>Market Customers</i> and <i>Distribution Network Service Providers</i>; and</u></p> <p><u>(d) the <i>B2B Procedures</i> should protect the confidentiality of commercially sensitive information,</u></p> <p><u>and to the extent of any conflict between these principles, the <i>Information Exchange Committee</i> may determine the manner in which they can best be reconciled or which of them should prevail.</u></p>	
Insert new definition	<p><b><u>B2B Procedures</u></b></p> <p><u>Procedures prescribing the content of, the processes for, and the information to be provided to support, <i>B2B Communications</i>.</u></p>	

Attachment B – Table of Code Changes

REFERENCE	CLAUSE WITH PROPOSED AMENDMENTS	REASON
Insert new definition	<p><b><u>B2B Procedures Change Pack</u></b></p> <p><u>A document consisting of:</u></p> <p>(a) <u>the <i>B2B Proposal</i>;</u></p> <p>(b) <u>a report setting out an overview of the likely impact of the <i>B2B Proposal</i> on <i>NEMMCO, Local Retailers, Market Customers</i> and <i>Distribution Network Service Providers</i> ;</u></p> <p>(c) <u>draft <i>B2B Procedures</i> (incorporating proposed changes in mark up, where appropriate); and</u></p> <p><u>an issues paper explaining why the <i>B2B Proposal</i> is being presented.</u></p>	
Insert new definition	<p><b><u>B2B Proposal</u></b></p> <p><u>A proposal for <i>B2B Procedures</i>, or a change to the <i>B2B Procedures</i>, the subject of consultation by the <i>Information Exchange Committee</i>.</u></p>	
Insert new definition	<p><b><u>Distribution Network Service Provider Member</u></b></p> <p><u>A <i>Member</i> appointed to the <i>Information Exchange Committee</i> in that membership category as set out in the <i>Information Exchange Committee Election Procedure</i>.</u></p>	
Insert new definition	<p><b><u>Independent Member</u></b></p> <p><u>A <i>Member</i> appointed to the <i>Information Exchange Committee</i> in that membership category as set out in the <i>Information Exchange Committee Election Procedure</i>.</u></p>	
Insert new definition	<p><b><u>Information Exchange Committee</u></b></p> <p><u>The committee established under clause 7.2A.2(a) of the <i>Code</i>.</u></p>	

Attachment B – Table of Code Changes

REFERENCE	CLAUSE WITH PROPOSED AMENDMENTS	REASON
Insert new definition	<p><b><u>Information Exchange Committee Annual Report</u></b></p> <p><u>The annual report prepared by the <i>Information Exchange Committee</i> in accordance with the <i>Information Exchange Committee Operating Manual</i></u></p>	
Insert new definition	<p><b><u>Information Exchange Committee Election Procedures</u></b></p> <p><u>Those procedures of that title which set out the process for election of <i>Members</i>.</u></p>	
Insert new definition	<p><b><u>Information Exchange Committee Operating Manual</u></b></p> <p><u>The manual of that title prepared by the <i>Information Exchange Committee</i> which sets out the processes pursuant to which the <i>Information Exchange Committee</i> operates.</u></p>	
Insert new definition	<p><b><u>Information Exchange Committee Recommendation</u></b></p> <p><u>A recommendation made by the <i>Information Exchange Committee</i> to <i>NEMMCO</i> to make <i>B2B Procedures</i> or a change the <i>B2B Procedures</i>.</u></p>	
Insert new definition	<p><b><u>Information Exchange Committee Works Programme</u></b></p> <p><u>The work programme prepared by the <i>Information Exchange Committee</i> in respect of the development, implementation and operation of the <i>B2B Procedures</i> and other matters which are incidental to effective and efficient <i>B2B Communications</i>.</u></p>	
Insert new definition	<p><b><u>Information Exchange Committee Working Groups</u></b></p> <p><u>The groups established by the <i>Information Exchange Committee</i> to assist with the <i>Information Exchange Committee Works Programme</i>.</u></p>	

Attachment B – Table of Code Changes

REFERENCE	CLAUSE WITH PROPOSED AMENDMENTS	REASON
Insert new definition	<p><b><u>Local Retailer/Market Customer Member</u></b></p> <p><u>Means a Member appointed to the Information Exchange Committee in that membership category as set out in the Information Exchange Committee Election Procedure.</u></p>	
Insert new definition	<p><b><u>Member</u></b></p> <p><u>Means a person appointed to the Information Exchange Election Committee pursuant to the Information Exchange Committee Election Procedures, and includes all membership categories, unless a contrary intention appears.</u></p>	

# Attachment C

## Information Exchange Committee – Election Procedures

### 1. Introduction

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- (a) The *Information Exchange Committee* is to be established by *NEMMCO* pursuant to clause 7.2A.2(a) of the *Code*.
- (b) These are the *Information Exchange Committee Election Procedures* (“**Election Procedures**”).
- (c) These Election Procedures commence on the day the *changes* to the *Code* to introduce clause 7.2A.2 are effective.
- (d) These Election Procedures (including this provision) may only be amended in accordance with clause 7.2A.2(d) of the *Code* and clauses 7.1 and 7.2.
- (e) In the event of any inconsistency between these Election Procedures and provisions of the *Code*, the provisions of the *Code* shall prevail to the extent of any such inconsistency.

### 2. Interpretation

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#### 2.1 Definitions

In these Election Procedures, a word or phrase appearing in italics has the meaning given to it:

- (a) in Part 1 of Schedule 1; or
- (b) if no meaning is given in Part 1 Schedule 1, then as defined in the *Code*.

#### 2.2 Interpretation

These Election Procedures shall be interpreted in accordance with the rules of interpretation set out in Part 2 of Schedule 1.

### 3. Returning Officer

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*NEMMCO* must be the returning officer for any election of a *Member* and for any procedure for amendments to these Election Procedures.

### 4. Nominations

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#### 4.1 Nomination Requests

- (a) When a position of *Member* is vacant *NEMMCO* must within 10 *business days* of the vacancy request nominations to fill that vacancy. In the case of the initial establishment of the *Information Exchange Committee*, *NEMMCO* must request nominations for the *Information Exchange Committee* within 10 *business days* of the

*changes to the Code which require NEMMCO to establish the Information Exchange Committee becoming effective.*

- (b) The *Nomination Requests* must be made as follows:
- (i) where there is a vacancy in respect of a *Distribution Network Service Provider Member* position, *NEMMCO* must request nominations to fill that vacancy from *Distribution Network Service Providers* who are *Eligible Voters*.
  - (ii) where there is a vacancy in respect of a *Local Retailer/Market Customer Member* position, *NEMMCO* must request nominations to fill that vacancy from *Local Retailers* and *Market Customers* who are *Eligible Voters*.
  - (iii) where there is a vacancy in respect of an *Independent Member* position, *NEMMCO* must request nominations to fill that vacancy from *Distribution Network Service Providers*, *Local Retailers* and *Market Customers* who are *Eligible Voters*.
- (c) *Nomination Requests* must be made by *NEMMCO* giving notice to the relevant *Eligible Voters* in accordance with Clause 8 and must include a *Nomination Form*.

#### **4.2 Distribution Network Service Provider Nominations**

Each *Code Participant* registered with *NEMMCO* pursuant to clause 2.5.1 of the *Code* as a *Distribution Network Service Provider* on the date of the *Nomination Request* is an *Eligible Voter* and is entitled to nominate one person to fill a vacancy in the position of a *Distribution Network Service Provider Member*.

#### **4.3 Local Retailer/Market Customer Nominations**

Each:

- (a) *Code Participant* listed by *NEMMCO* as a *Local Retailer*;
- (b) *Code Participant* registered with *NEMMCO* as a *Market Customer* where the load at the *connection point* is, or is capable of being classified as, a *second-tier load* and where that *Market Customer* is not also listed with *NEMMCO* as a *Local Retailer* and is not a *related company* of a *Local Retailer*; and
- (c) *Code Participant* registered with *NEMMCO* as a *Market Customer* who purchases *market load* at a *connection point* directly from the *market*,

is an *Eligible Voter* and is entitled to nominate one person to fill a vacancy in the position of a *Local Retailer/Market Customer Member*.

#### **4.4 Independent Member Nominations**

Each:

- (a) *Eligible Voter* within the meaning of Clause 4.2; and
- (b) *Eligible Voter* within the meaning of in Clause 4.3,

is entitled to nominate one person to fill a vacancy in the position of an *Independent Member*.

A representative of *NEMMCO* is capable of nomination as an *Independent Member* despite *NEMMCO* performing the role of Secretary to the *Information Exchange Committee*.

#### 4.5 Contents of nominations

- (a) Nominations must be:
  - (i) in writing;
  - (ii) signed by the person being nominated;
  - (iii) signed by the *Eligible Voter* making the nomination; and
  - (iv) on a *Nomination Form* which includes details as to how the nominator fulfils the relevant criteria of this Clause 4 and how the nominee fulfils the membership criteria specified in Clause 5.
- (b) The *Nomination Form* must be submitted to NEMMCO to the person and at the address specified in the *Nomination Form* by the *Return Date*.

#### 5. Member qualifications

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- (a) *Eligible Voters* must ensure that a nominee for *Distribution Network Service Provider Member* and *Local Retailer/Market Customer Member* can competently fulfil the role of a *Member* and has:
  - (i) knowledge of and experience with the national electricity *market*;
  - (ii) experience with and skills in considering issues that affect-
    - (A) *Distribution Network Service Providers*, and
    - (B) *Local Retailers* and *Market Customers*,respectively;
  - (iii) experience with and skills in resolving issues, by making decisions, in a competent manner;
  - (iv) knowledge of the subject matter of *B2B Procedures*: and
  - (v) knowledge and understanding of the *Code* and the related legislative and regulatory framework.
- (b) *Eligible Voters* must ensure that a nominee for *Independent Member* can competently fulfil the role of a *Member* and:
  - (i) is not currently an employee or director of a *Distribution Network Service Provider, Local Retailer* or *Market Customer*;
  - (ii) is not-
    - (A) an employee of, or a partner in, any partnership; or
    - (B) an employee of, or a director of, any company,which partnership or company is an adviser or consultant to a *Distribution Network Service Provider, Local Retailer* or *Market Customer*, where such relationship is a significant source of income for that partnership or company; or
  - (C) an adviser or consultant to a *Distribution Network Service Provider, Local Retailer* or *Market Customer*, where such relationship is a significant source of income for that adviser or consultant.

- (iii) has knowledge of and experience with the national electricity *market*;
- (iv) has experience with and skills in considering issues that affect *Distribution Network Service Providers* and *Local Retailers* and *Market Customers* respectively;
- (v) has experience with and skills in resolving issues, by making decisions, in a competent manner;
- (vi) has knowledge of the subject matter of *B2B Procedures*;
- (vii) has knowledge and understanding of the *Code* and the related legislative and regulatory framework; and
- (viii) has the ability to remain impartial.

## 6. Elections

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### 6.1 Appointment where the number of nominations is equal to or less than the number of vacancies

- (a) Where the number of nominees fulfilling the qualifications for a category of *Member* is less than the number of vacancies for that category (having regard to clause 6.3(b)), *NEMMCO* must advise the *Eligible Voters* in relation to that category and give them 5 *business days* to provide additional nominations for that category in accordance with Clause 4.
- (b) If no further nominations are made, *NEMMCO* will have satisfied its obligation under the *Code* to establish the *Information Exchange Committee* and *NEMMCO* must inform *Eligible Voters* by way of a notice that the election has failed.
- (c) If, at any time during the 6 months after the date of the notification given under paragraph (b), not less than 75% of *Eligible Voters* in relation to a vacancy request *NEMMCO* to request nominations in relation to that vacancy *NEMMCO* must comply with Clause 4 in relation to that request.
- (d) Where the number of nominees fulfilling the qualifications for a category of *Member* is equal to the number of vacancies for that category (having regard to clause 6.3(b)), *NEMMCO* must determine those nominees to have been successfully elected to the *Information Exchange Committee*.

### 6.2 Election of members where the number of nominations is more than the number of vacancies for a category

- (a) Where the number of nominees fulfilling the qualifications for a category of member is more than the number of vacancies for that category (having regard to clause 6.3(b)) *NEMMCO* must prepare and distribute to *Eligible Voters* in relation to that category:
  - (i) a ballot paper, listing the nominees for that category in alphabetical order; and
  - (ii) a resumé for each nominee prepared by that nominee (if available).
- (b) In order to be counted, the ballot paper must be served on *NEMMCO*:
  - (i) by 5 pm on the *Return Date*;

- (ii) to the person noted as the person to whom the ballot paper should be returned; and
  - (iii) at the address noted as the address for the return of the ballot paper.
- (c) Each *Eligible Voter* within the meaning of Clause 4.2 shall be entitled to 1 vote in an election for *Distribution Network Service Provider Members*.
- (d) Each *Eligible Voter* within the meaning of Clause 4.3 shall be entitled to 1 vote in an election for *Local Retailer/Market Customer Members*.
- (e) In addition, each *Eligible Voter* within the meaning of Clause 4.2 or 4.3 shall be entitled to 1 vote in an election for *Independent Members*.
- (f) Voting by each *Eligible Voter* shall be by way of a mark in the box against the name of the nominees in the *Member* category for which the *Eligible Voter* is entitled to vote.
- (g) If a ballot paper has more than one mark against the names of the nominees or the intention of the *Eligible Voter* is otherwise unclear, such vote shall not be valid and shall not be included in any count under Clause 6.3.

### **6.3 Determination and publication of results**

- (a) Subject to paragraph (b), *NEMMCO* must within 10 *business days* of the *Return Date* determine those nominees which have been successfully elected to the *Information Exchange Committee*, as follows:
  - (i) the nominee who receives the highest number of votes in each *Member* category shall be elected as a *Member* of the *Information Exchange Committee* for that *Member* category;
  - (ii) the nominee who receives the second highest number of votes in each *Member* category shall be elected as a *Member* of the *Information Exchange Committee* for that *Member* category;
  - (iii) and so on until all vacancies are filled.
- (b) Where the count of votes under paragraph (a) would result in two or more *Members* who are:
  - (i) employed by the same Code Participant, *related body corporates* or *Code Participants* in which the same person holds a *Controlling Interest*, or
  - (ii) employed by, or were nominated by, *Eligible Voters* which are *related body corporates* or *Code Participants* in which the same person holds a *Controlling Interest* (other than *Independent Members*),

the later in time *Member* who would have been elected is ineligible for election and the votes that were cast for that person will be disregarded. Where in any election there are 2 or more vacancies in a *Member* category and the count of votes would result in the circumstances described in paragraphs (i) and (ii) of this clause 6.3(b), *NEMMCO* shall place the names of the nominees in a container and without favour randomly draw a name and that person shall be deemed to be the *Member* appointed later in time for the purposes of this clause 6.3(b).

- (c) In any election in which there is a vacancy in the *Member* categories of both *Distribution Network Service Provider Member* and *Local Retailer/Market Customer*

*Member NEMMCO* shall conduct the election for *Distribution Network Service Provider Members* first.

- (d) Where there is an equal number of votes for two or more nominees, if there are sufficient vacancies each of those nominees shall be elected in priority to a nominee who has received fewer votes. If there are insufficient vacancies, *NEMMCO* shall conduct the election again under this clause 6. If after that re-election there is an equal number of votes for two or more nominees (whether the same nominees as before or otherwise), *NEMMCO* shall place the names of the nominees in a container and without favour randomly draw a name and that person shall be appointed as a *Member*.
- (e) In the first election, where two or more *Members* are elected as a result of an equality of votes the *Member*, in order to determine the term of the *Members* *NEMMCO* shall place the names of those *Members* in a container and without favour randomly draw a name and that person shall be appointed as the longest serving *Member* and so on.
- (f) *NEMMCO* must within 5 *business days* of the count in paragraph (a) declare the election and *publish* the results of the election.

## **7. Amendments to Election Procedures and Information Exchange Committee Operating Manual**

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### **7.1 Procedure for amendments**

- (a) Where the *Information Exchange Committee* has developed proposed amendments to these Election Procedures or the *Information Exchange Committee Operation Manual* it must provide the proposal to *NEMMCO*. *NEMMCO* must prepare and distribute to *Eligible Voters* a ballot paper in which the proposal is presented with a box for a vote in favour of each amendment and a box for a vote against each amendment.
- (b) In order to be counted, the ballot paper must be served on *NEMMCO*:
  - (i) by 5 pm on the *Return Date*;
  - (ii) to the name of a person noted as the person to whom the ballot paper should be returned; and
  - (iii) at the address noted as the address for the return of the ballot paper.
- (c) Each *Eligible Voter* within the meaning of Clause 4.2 shall be entitled to 1 vote
- (d) Each *Eligible Voter* within the meaning of Clause 4.3 shall be entitled to 1 vote.
- (e) Voting by each *Eligible Voter* shall be by way of a mark in the preferred box.
- (f) If a ballot paper has more than one mark in relation to an amendment or is otherwise unclear, such vote shall not be valid and shall not be included in any count under Clause 7.2.

### **7.2 Determination and publication of results**

*NEMMCO* must within 5 *business days* of the *Return Date* determine the outcome of the vote and must within a further 5 *business days* *publish* the results of the vote and an updated version of these Election Procedures or the *Information Exchange Committee Operating Manual* if necessary.

## 8. Notices

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### 8.1 NEMMCO

- (a) Any *Nomination Form* or ballot paper issued by *NEMMCO* must provide the details of the *Return Date* and the person to whom the *Nomination Form* or ballot paper should be returned, including their:
  - (i) name,
  - (ii) position; and
  - (iii) contact details (including a fixed and mobile phone number, facsimile number and an electronic mail address).
- (b) The *Return Date for a Nomination Form* must be a date which is not more than 20 *business days* from the date of despatch of a *Nomination Form* by *NEMMCO*.
- (c) The *Return Date for a ballot paper* must be a date which is at least 7 *business days* from the date of despatch of a ballot paper by *NEMMCO*.

### 8.2 Nominated Representatives

- (a) Each *Eligible Voter* must provide to *NEMMCO* the details of the representative from its company and contact details (including a postal address, fixed and mobile phone number, facsimile number and an electronic mail address) for the purpose of these Election Procedures. The first set of details must be provided within 5 *business days* of these Election Procedures commencing. The details must be updated within 7 *business days* of any change in relation to the representative or the contact details.
- (b) *NEMMCO* shall be deemed to have complied with its obligations in these Election Procedures when it serves notices on the *Nominated Representatives* who have been notified to it in accordance with paragraph (a). If an *Eligible Voter* has not complied with paragraph (a) *NEMMCO* shall not be responsible for that *Eligible Voter* failing to be aware of a notice.

### 8.3 Service of notices

- (a) Any notice required by these Election Procedures to be given by *NEMMCO* to an *Eligible Voter* may be given by:
  - (i) serving it on the *Nominated Representative* personally;
  - (ii) leaving it at the *Nominated Representative's* notified address;
  - (iii) sending it by prepaid post addressed to the *Nominated Representative's* notified address;
  - (iv) sending it by facsimile transmission addressed to the *Nominated Representative's* notified facsimile transmission address; or
  - (v) sending it by electronic mail to the *Nominated Representative's* notified electronic mail address.
- (b) Any notice served on the *Nominated Representative* personally or left at the *Nominated Representative's* notified address is deemed to have been served when delivered.

- (c) Any notice sent by post is deemed to have been served 48 hours after the envelope containing the notice is posted and, in proving service, it is sufficient to prove that the envelope containing the notice was properly addressed and posted.
- (d) Any notice served on the *Nominated Representative* by facsimile transmission is deemed to have been served when the transmission is sent and the sender has received electronic or other confirmation that the facsimile transmission has been successfully sent.
- (e) Any notice served on the *Nominated Representative* by electronic mail is deemed to have been served when the electronic mail is sent, provided that the sender has not received electronic notification that the electronic mail was not deliverable or otherwise not successfully delivered to its intended recipient.
- (f) Any notice to be served on *NEMMCO* other than a *Nomination Request* or a ballot paper shall be served on the Chief Executive Officer (however titled).
- (g) Sub-clauses (b) to (e) inclusive of this clause apply to any notice to be given or served on *NEMMCO* or a person nominated by *NEMMCO* (with any necessary amendments being made).

## 9. Term, removal and resignation

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### (a) Term of office

- (i) Of the first *Distribution Network Service Provider Members* and *Local Retailer/Market Customer Members*:
  - (A) the *Member* appointed with highest number of votes is appointed for 3 years;
  - (B) the *Member* appointed with second highest number of votes is appointed for 2 years; and
  - (C) the remaining *Member* appointed is appointed for 1 year.
- (ii) Of the first *Independent Members* appointed:
  - (A) the *Independent Member* elected with highest number of votes is appointed for a term of 3 years; and
  - (B) the other *Independent Member* is elected for a term of 2 years.
- (iii) Thereafter all *Members* are elected for a period of 3 years.
- (iv) A retiring *Member* or one who has been is eligible for re-election.

### (b) Method of removal, resignation and replacement

- (i) A *Member* must immediately cease to be a *Member* if the *Member* (including an *Independent Member*) is absent from 3 consecutive meetings of the Information Exchange Committee without approval. *NEMMCO* will act on notification of cessation under this clause served on it by the *Information Exchange Committee*.
- (ii) An *Independent Member* who no longer meets the criteria in clause 5(b)(i) or (ii) must immediately resign as a *Member*. *NEMMCO* will act on notification of

resignation under this clause served on it by the *Information Exchange Committee*.

- (iii) A *Member* nominated by an *Eligible Voter* may be removed as a *Member* by that *Eligible Voter* where that *Eligible Voter* believes the *Member* no longer meets the criteria in clause 5(a). *NEMMCO* will act on notification of removal under this clause served on it by the *Information Exchange Committee*.
- (iv) A *Member* elected by *Distribution Network Service Providers* may be removed for any reason at any time with the support of not less than 75% of *Eligible Voters* within the meaning of Clause 4.2.
- (v) A *Member* elected by *Local Retailers* and *Market Customers* may be removed for any reason at any time with the support of not less than 75% of *Eligible Voters* within the meaning of Clause 4.3.
- (vi) An *Independent Member* may be removed for any reason at any time with the support of more than 50% of:
  - (a) *Eligible Voters* within the meaning of Clause 4.2 and
  - (b) *Eligible Voters* within the meaning of Clause 4.3.
- (vii) 5 or more *Eligible Voters* may request the removal of a *Member* (for the category for which those *Eligible Voters* are entitled to vote) by giving notice to *NEMMCO*. *NEMMCO* must within 10 *business days* of such a request advise the *Members* and the affected *Eligible Voters* of such a request and issue a ballot paper for the purposes of voting on the matter and the voting procedures set out in clauses 7.1 and 7.2 are to apply as if the proposal for an amendment were a proposal for removal (and with such other modifications as are necessary).
- (viii) Any vacancy on the *Information Exchange Committee* arising under this clause must be filled using the election procedures described in Clauses 4, 5 and 6 and above. A *Member* elected to fill such a vacancy shall be elected for the term of office remaining to the *Member* whose position the new *Member* has filled.

# Schedule 1 - Definitions and Interpretation

## 1. Definitions

In these Election Procedures:

**Eligible Voter** means -

- (a) a *Distribution Network Service Provider* who is eligible to vote in elections for *Members* because it satisfies the requirements of Clause 4.2;
- (b) a *Local Retailer* or *Market Customer* who is eligible to vote in elections for *Members* because it satisfies the requirements of Clause 4.3.

**Controlling Interest**

A person has a controlling interest in a corporation if the person's voting power in the corporation is more than 50%.

**Nomination Form** means a form substantially in the form set out in Schedule 2.

**Nomination Request** means the request which NEMMCO gives to the relevant *Eligible Voters* in accordance with Clause 4.1(a).

**Nominated Representative** means the person nominated under Clause 8.2.

**Return Date** means the date specified in the *Nomination Form* or ballot paper as the date by which *Eligible Voters* must return the *Nomination Form* or ballot paper to NEMMCO.

## 2. Interpretation

Headings are for convenience only and do not affect the interpretation of these Election Procedures. The following rules apply unless the context requires otherwise:

- (a) Words in the singular include the plural and vice versa;
- (b) Words importing a gender include each other gender;
- (c) Words and phrases which are given a special meaning by the Code have the same meaning in these Election Procedures;
- (d) If a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (e) A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it;
- (f) A reference to **conduct** includes, without limitation, an act, omission, statement or undertaking, whether or not in writing;
- (g) A reference to **person** and words importing persons include partnerships, associations and corporations, unincorporated and incorporated by Ordinance, Act of Parliament or registration, as well as individuals;
- (h) A reference to **writing** or **written** includes printing, typing, lithography, facsimile and other modes of reproducing words in a visible form; and
- (i) Mentioning anything after **includes, including, for example** or similar expressions, does not limit what else might be included.

- (j) A reference to a clause, paragraph, part or schedule is to a clause, paragraph, part or schedule of these Election Procedures; and
- (k) Where a given number of days' notice or notice extending over any other period is required to be given the day of service shall not be included in the number of days or other period.

## Schedule 2 Nomination Form

***This Nomination Form has been issued to you by NEMMCO pursuant to Clause 5 of the Information Exchange Committee Election Procedures.***

Please complete this form and return it to:

*[insert name of contact person at NEMMCO and contact details for that person]*

by no later than 5.00pm (EST) on *[insert date]*.

### 1. Nominee

(a) **Name of nominee:**

(b) **Company by whom nominee is employed:**

(c) **Contact details for nominee:**

(d) **Member category:**

**DNBP**

**Local Retailer/Market Customer**

**Independent Member**

(Cross out inapplicable categories)

(e) **Evidence of satisfaction of criteria of Clause 5 of the Election Procedures:**

### 2. Nominator

(a) ***Eligible Voter* nominating (the “Nominator”):**

(b) **Evidence of satisfaction of criteria of Clause 4 of the Election Procedures:**

**Signature Nominee**

**Signature Nominator**

**Date**

# B2B Code Change Proposal

## Attachment D

### Information Exchange Committee – Operating Manual

#### 1. Introduction

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- (a) The *Information Exchange Committee* is to be established by NEMMCO pursuant to clause 7.2A.2(a) of the *Code*.
- (b) This is the *Information Exchange Committee Operating Manual* (“**Operating Manual**”).
- (c) This Operating Manual commences on the day the *changes* to the *Code* to introduce clause 7.2A.2 are effective.
- (d) This Operating Manual (including this provision) may only be amended in accordance with clause 7.2A.2(f) of the *Code* and clauses 7.1 and 7.2 of the *Information Exchange Committee Election Procedures*.
- (e) In the event of any inconsistency between this Operating Manual and provisions of the *Code* or the *Information Exchange Committee Election Procedures*, the provisions of the *Code* or the *Information Exchange Committee Election Procedures* shall prevail to the extent of any such inconsistency.

#### 2. Interpretation

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##### 2.1 Definitions

In this Operating Manual, a word or phrase appearing in italics has the meaning given to it:

- (a) in Part 1 of Schedule 1; or
- (b) if no meaning is given in Part 1 Schedule 1, then as defined in the *Code*.

##### 2.2 Interpretation

This Operating Manual must be interpreted in accordance with the rules of interpretation set out in Part 2 of Schedule 1.

#### 3. Functions

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The functions of the *Information Exchange Committee* are set out in clause 7.2A.2(g) of the *Code*.

#### 4. Composition

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##### 4.1 Information Exchange Committee

The *Members* must be elected in accordance with the *Information Exchange Committee Election Procedures* and be constituted in accordance with Clause 7.2A.2(b) of the *Code*.

## 4.2 Chairperson

- (a) The *Information Exchange Committee* must elect one of the *Independent Members* to be *Chairperson* of its *Meetings* and may determine the period for which he or she is to hold office.
- (b) If at any meeting the *Chairperson* is not present at the time appointed for holding the *meeting*, the other *Independent Member* present at the *meeting* must be the *Chairperson* of the *Meeting*.

## 4.3 Secretary

The *Chairperson* must appoint a *Secretary* to the *Information Exchange Committee* who must not be a *Member* and therefore shall not have any voting rights. The first *Secretary* is NEMMCO and is deemed to have been appointed by the *Chairperson*.

## 4.4 Alternates

- (a) A *Member* other than an *Independent Member* may appoint an *Alternate* to act on his or her behalf if the *Member* is unable to attend a *meeting*. The appointment shall be subject to the approval of the *Information Exchange Committee*.
- (b) The *Alternate* must meet the qualifications for membership of the *Information Exchange Committee* as set out in the *Information Exchange Committee Election Procedures*.
- (c) A *Member* may seek the approval of the *Information Exchange Committee* of a person to act as his or her *Alternate* at any *Meeting* of the *Information Exchange Committee* and any approval given shall be valid for all *Meetings* until revoked by the *Information Exchange Committee*.
- (d) At the commencement of a *Meeting* an *Alternate* representing a *Member* must advise the *Chairperson* of the name of the *Member* the *Alternate* is representing. If the *Alternate* has not been approved prior to the *Meeting* under paragraph (c), consideration of approval of the *Alternate* shall be the first item of business at the *Meeting*. If approval is not granted, the proposed *Alternate* shall leave the *Meeting* and the *Meeting* shall proceed subject to the other clauses of this Operating Manual.
- (e) Subject to approval by the *Information Exchange Committee*, an *Alternate*:
  - (i) is entitled to attend *Meetings*;
  - (ii) is entitled to vote at *Meetings*, if the *Member* represented by the *Alternate* is not present at that *Meeting*; and
  - (iii) may exercise all the powers and perform all the duties of the *Member*, if the *Member* represented by the *Alternate* is not present at that *Meeting*.

## 5. Meetings

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### 5.1 Meetings

- (a) Subject to this Operating Manual and clauses 7.2A.2(k) and (l) of the *Code*, the *Information Exchange Committee* may meet together for the dispatch of business, adjourn and otherwise conduct its *Meetings* as it thinks fit.

- (b) Any *Member* may call a *Meeting* by giving notice in writing to the *Secretary*. The notice must set out the reasons for calling the *Meeting*.
- (c) The *Information Exchange Committee* must meet within 20 *business days* of a notice being given to the *Secretary* under clause 5.1(b).

## 5.2 Notice of *Meeting* and agenda

- (a) The *Secretary* must at least 15 *business days prior* to a *Meeting* give notice of that *Meeting* to the *Members* and cause that notice to be *published*.
- (b) Any notice for a *Meeting* must include:
  - (i) the reasons for the *Meeting*;
  - (ii) details of the business to be considered at that *Meeting*;
  - (iii) the place, date and time of the *Meeting*; and
  - (iv) details for attending the *Meeting* by electronic means, if any.
- (c) The *Secretary* must at least 10 *business days prior* to a *Meeting* give briefing materials in relation to each item of business to be considered at that *Meeting* to the *Members* and cause those briefing materials to be *published*.

## 5.3 Meetings by electronic means

- (a) If:
  - (i) the *Members* confer by radio, telephone, closed circuit television or other electronic means of audio or audio-visual communications;
  - (ii) all of the *Members* who are entitled to receive notice of a *Meeting* receive notice of the conference and have access to the means by which the conference is to take place; and
  - (iii) each of the *Members* taking part in the conference is able to hear each of the other *Members* taking part in the conference,then all of the provisions of this Operating Manual relating to *Meetings* apply to the conference as if the conference were a *Meeting* and as if the *Members* taking part in the conference were physically present together at a *Meeting* and any resolution passed by the conference is deemed to have been passed at a *Meeting* held:
  - (iv) on the day on which and at the time at which the conference was held; and
  - (v) at the place agreed on by the *Members* taking part in the conference, provided that at least one of the *Members* present at the *Meeting* was at that place for the duration of the *Meeting*.
- (b) The fact that a *Member* is taking part in a conference must be made known to all other *Members* taking part and no *Member* may intentionally disconnect or otherwise cease to take part in the conference unless they make known to all other *Members* taking part that they are ceasing to take part in the conference.
- (c) Until a *Member* makes it known that they are ceasing to take part in a conference or it is otherwise apparent to the remaining *Members* that a *Member* has ceased to take part in the conference, they will be deemed to continue to be present and to continue to form part of the quorum.

#### **5.4 Adjournment**

- (a) The *Chairperson* of a *Meeting* may adjourn the *Meeting* from time to time and place to place, but the only business that may be transacted at the reconvened *Meeting* is the business left unfinished at the adjourned *Meeting*.
- (b) If a *Meeting* is adjourned for more than 5 *business days* then notice of the reconvened *Meeting* must be given in accordance with Clause 5.2 of this Operating Manual above.

#### **5.5 Resolutions in Writing**

A resolution in writing signed by the requisite number of *Members* being entitled to vote at that *Meeting*, shall be valid and effectual as if it had been passed at a duly convened *Meeting*. Any such resolution may consist of several identical documents each signed by one or more *Members*.

#### **5.6 Quorum**

A quorum must be present at all times during a *Meeting*. A *Member* having an interest in any matter to be considered or determined at a *Meeting* may be counted in a quorum, notwithstanding that interest.

#### **5.7 Other attendees**

- (a) If at any time the *Information Exchange Committee* is of the view that it does not possess the requisite skills, it may seek to invite parties to attend its *Meetings* to provide input (but not vote) on matters which the *Information Exchange Committee* is considering.
- (b) All *Meetings* are open and the *Chairperson* may determine in his or her sole discretion who, other than the *Members*, may have speaking rights at any *Meeting*.

### **6. Minutes**

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#### **6.1 Secretary to take minutes**

The *Secretary* must take, or arrange to take, and keep minutes of each *Meeting*.

#### **6.2 Secretary to deliver minutes and cause them to be published**

- (a) The *Secretary* must deliver a copy of the minutes of a *Meeting* to each *Member* and *Alternate* within 5 *business days* after the *Meeting* has taken place.
- (b) The *Members* and *Alternates* present at the *Meeting* to which the minutes relate must confirm the contents of the minutes within 5 *business days* of receipt of the minutes from the *Secretary*. If a *Member* or *Alternate* does not provide confirmation or otherwise provide comments on the minutes to the *Secretary*, that *Member* or *Alternate* shall be deemed to have confirmed the contents of the minutes.
- (c) If the *Members* and *Alternates* present at the *Meeting* to which the minutes relate provide any comments on the minutes, the *Secretary* must amend the minutes accordingly and re-circulate the minutes for confirmation within 5 *business days* of the date on which the last comments on the minutes pursuant to clause (b) above were received.

- (d) The *Members* and *Alternates* present at the *Meeting* to which the minutes relate must confirm the contents of the amended minutes within 5 *business days* of receipt of the amended minutes from the *Secretary*. If a *Member* or *Alternate* does not provide confirmation or otherwise provide comments on the minutes to the *Secretary*, that *Member* or *Alternate* shall be deemed to have confirmed the contents of the minutes.
- (e) The procedure outline in clauses (c) and (d) above must be repeated until the minutes are confirmed.
- (f) Within 3 *business days* of confirmation of the contents of the minutes the *Secretary* must cause them to be *published*.
- (g) The *Secretary* must keep hard copies of the minutes of a *Meeting* at the offices of *NEMMCO* for a period of 5 years.

### 6.3 Contents of minutes

The minutes of a *Meeting* must record, but shall not be limited to:

- (a) date and location of the *Meeting*;
- (b) those present at the *Meeting*;
- (c) a record of business discussed;
- (d) decisions made, including proposals approved, not approved or deferred, and the supporting and contrary arguments for the decisions or a reference to the documentation containing the supporting and contrary arguments for the decisions; and
- (e) for each decision made, record the voting results in a manner that shows how each *Member* and *Alternate* (if applicable) voted.

## 7. Decisions

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- (a) The *Secretary* must cause all decisions of the *Information Exchange Committee* to be *published* as part of the minutes.
- (b) The *Secretary* must ensure that any decisions so *published* are accompanied by a report of the decision, including the main reasons for the decision and an Executive Summary (no more than 2 pages in length) which must summarise the key issues and recommendations relating to the decision. Where the decision is not to recommend that *B2B Procedures* be made, not to recommend that a *change* to the *B2B Procedures* be made or to make an *Information Exchange Committee Recommendation* and that decision is to be included in the final report of a consultation process under clause 8.9 of the *Code* the minutes shall be *published* with that final report but without a separate report of the decision under this clause..

## 8. Voting

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### 8.1 General

- (a) Subject to clause 9.1(g) and (h), each *Member* is entitled to one vote in relation to any question or matter arising at a *Meeting*.

- (b) In the case of an equality of votes, the *Chairperson* of the *Meeting* is not entitled to a second or casting vote and the resolution shall fail.
- (c) A *Member* must not take part in any decision or determination of the *Information Exchange Committee* where it is considered, in accordance with clause 9.1, that the *Member* has a material conflict of interest in the matter to be decided or determined by the *Information Exchange Committee*, in which case, the procedures in clause 9.1(g) and (h) must be followed.

## 9. Conflicts of interest

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### 9.1 Conflicts of interest

- (a) The Secretary must prepare, and *Members* must sign, declarations of interest recording the existence or absence of issues which may give rise to conflicts on a personal level. All disclosures must be as full as possible and should make clear the extent of the conflict. The declaration must also include a prominent statement reminding the person signing it that they should also declare any future conflicts that might arise.
- (b) The agenda for all *Meetings* must include a standing item relating to declaring conflicts of interest.
- (c) If any interests are declared or are otherwise discovered, their materiality must be considered by the *Information Exchange Committee* and any decision taken, and the reasons for it, minuted or recorded.
- (d) Whether a conflict is material will depend on the circumstances. As a guide to this assessment, section 191 of the **Corporations Act** requires a director who has a “material personal interest” in a matter to give notice of that interest, and section 195 prohibits the director from being present at the *Meeting* which considers the matter or from voting on the matter. In this context, “material” is synonymous with “substantial” and an interest which gives rise to a “real sensible possibility of conflict” will be considered to be material.
- (e) Although a conflict may appear trivial, those outside the decision making process may have a different perception. Courts use an objective “fair minded observer” test to determine some conflicts. Even if a perceived conflict may not satisfy this test, it may nevertheless damage the *Information Exchange Committee*’s credibility or reputation. External perceptions must therefore be taken into account.
- (f) If a material conflict arises, the relevant person must be excluded from the entire decision making process to which the conflict relates.
- (g) If a person is excluded from a *Meeting* in respect of a single agenda item because of a conflict of interest in relation to that item, then their leaving the *Meeting* for that item and rejoining it after the item is dealt with must be clearly recorded in the relevant minutes.

## 10. Consultation

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Each *Member* and *Alternate* must consult:

- (a) in the case of the *Distribution Network Service Provider Members* with such *Distribution Network Service Providers* as is reasonable in the circumstances,
  - (b) in the case of *Local Retailer/Market Customer Members* with such *Local Retailers* and *Market Customers* as is reasonable in the circumstances, and
  - (c) in the case of *Independent Members* with such *Distribution Network Service Providers* and *Local Retailers* and *Market Customers* as is reasonable in the circumstances,
- concerning items of business to be raised or considered at a *Meeting*.

## **11. Information Exchange Committee Annual Report**

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### **11.1 Preparation and approval**

- (a) The contents of the *Information Exchange Committee Annual Report* must be discussed at a *Meeting* during which the *Information Exchange Committee* must consider whether its contents comply with clause 11.2 below.
- (b) The *Information Exchange Committee Annual Report* must be signed by at least three *Members*, one of whom must be a *Distribution Network Service Provider Member*, a *Local Retailer/Market Customer Member* and the *Chairperson*.

### **11.2 Contents**

The *Information Exchange Committee Annual Report* must include the following information:

- (a) a review of the operations of the *Information Exchange Committee* during the year, including details of *Meetings* held and significant issues considered, work undertaken pursuant to the *Information Exchange Committee Works Programme* and the status of that work;
- (b) a review of the operation of the *B2B Procedures* during the year;
- (c) details of any *changes* to the *B2B Procedures*, the reasons for the *change* and an assessment of the success or otherwise of the *change*;
- (d) details of any matter or circumstance which has arisen that has or may significantly affect the operation of the *Information Exchange Committee* and/or *B2B Procedures*, including any amendments to the *Code* which have or may impact on either the *Information Exchange Committee* and/or *B2B Procedures*;
- (e) details of any developments to policy, the *Code* or other areas which are likely and which may impact on the operation of either the *Information Exchange Committee* and/or the *B2B Procedures*;
- (f) the qualification, experience and any special responsibilities of each *Member*; the attendance record of each *Member* at *Meetings* held during the year and any *Meetings* of the *Information Exchange Committee Working Groups*; and
- (g) technological advances that have had or are likely to have a significant impact on the *B2B Procedures*.

## 12. Notices

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### 12.1 Notified Address

- (a) Each *Member* and *Alternate* must notify the *Secretary* of contact details (which must include a postal address, a facsimile number, a fixed and mobile phone number and an electronic mail address) within Australia to which notices may be served on or delivered to him or her.
- (b) Each *Member* and *Alternate* must notify the *Secretary* within 7 *business days* of any change in his or her notified address.

### 12.2 Service of notices

- (a) Any notice required by this Operating Manual to be given to a *Member* or *Alternate* may be given by:
  - (i) serving it on the *Member* or *Alternate* personally;
  - (ii) leaving it at the *Member's* or *Alternate's* notified address;
  - (iii) sending it by prepaid post addressed to the *Member's* or *Alternate's* notified address;
  - (iv) sending it by facsimile transmission addressed to the *Member* or *Alternate* at the *Member's* or *Alternate's* notified facsimile number; or
  - (v) sending it by electronic mail to the *Member's* or *Alternate's* notified electronic mail address.
- (b) Any notice served on the *Member* or *Alternate* personally or left at the *Member's* or *Alternate's* notified address is deemed to have been served when delivered.
- (c) Any notice sent by post is deemed to have been served 48 hours after the envelope containing the notice is posted and, in proving service, it is sufficient to prove that the envelope containing the notice was properly addressed and posted.
- (d) Any notice served on the *Member* or *Alternate* by facsimile transmission is deemed to have been served when the transmission is sent and the sender has received electronic or other confirmation that the facsimile transmission has been successfully sent.
- (e) Any notice served on the *Member* or *Alternate* by electronic mail is deemed to have been served when the electronic mail is sent, provided that the sender has not received electronic notification that the electronic mail was not deliverable or otherwise not successfully delivered to the *Member* or *Alternate*.

### 12.3 Notices to the *Information Exchange Committee*

Notices from *Members*, *Alternates* and *Code Participants* to the *Information Exchange Committee* should be sent to the *Secretary*. The *Secretary* must cause to be *published* a contact name, postal address, facsimile number, a fixed and mobile phone number and an electronic mail address for provision of such notices. Clauses 12.2(b) to (e) inclusive shall apply to the provision of such notices.

## Schedule 1 - Definitions and Interpretation

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### 1. Definitions

In this Operating Manual:

**Alternate** means a person appointed as an alternate for any *Member* in accordance with this Operating Manual.

**Chairperson** means a person appointed under clause 4.2 to preside at a *Meeting*.

**Meeting** means a Meeting of the *Information Exchange Committee*.

**Secretary** means a person appointed as the secretary to the *Information Exchange Committee* by the *Chairperson* pursuant to clause 4.3 of this Operating Manual.

### 2. Interpretation

Headings are for convenience only and do not affect interpretation of this Operating Manual. The following rules apply unless the context requires otherwise.

- (a) Words in the singular include the plural and vice versa.
- (b) Words importing a gender include each other gender.
- (c) Words and phrases which are given a special meaning by the Code have the same meaning in this Operating Manual.
- (d) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (e) A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
- (f) A reference to **conduct** includes, without limitation, an act, omission, statement or undertaking, whether or not in writing.
- (g) A reference to **person** and words importing persons includes partnerships, associations and corporations, unincorporated and incorporated by Ordinance, Act of Parliament or registration as well as individuals.
- (h) A reference to **writing** or **written** includes printing, typing, lithography, facsimile and other modes of reproducing words in a visible form.
- (i) Mentioning anything after **includes, including, for example** or similar expression, does not limit what else might be included.
- (j) A reference to a clause, paragraph, part, schedule is to a clause, paragraph, part or schedule of this Operating Manual.
- (k) Where a given number of days' notice or notice extending over any other period is required to be given the day of service is not to be reckoned in the number of days or other period.