

# **Draft Determination**

## **Applications for Authorisation**

### **Amendments to the National Electricity Code**

#### **South Australian Metering Derogations**

**11 May 2005**

**Authorisation Nos:**

A 40103

A 40104

A 40105

**Commissioners:**

Samuel

Sylvan

Martin

Willett

King

Smith

**File no:** C2005/483

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# Glossary

ACCC	Australian Competition and Consumer Commission
AEMC	Australian Energy Market Commission
AER	Australian Energy Regulator
AGL	AGL Retail Energy
code	National Electricity Code
ESCOSA	Essential Services Commission of South Australia
ETSA	ETSA Utilities
First tier customer	End-use customers who consume electricity provided by the local or host retailer in that geographical area
FRC	Full Retail Competition
FRMP	Financially Responsible Market Participant
ICRC	Independent Competition and Regulatory Commission
JJReview	Joint Jurisdictional Review of Metrology Procedures Final Report October 2004
LNSP	Local Network Service Provider (distributor)
MWh	Megawatt Hours
NECA	National Electricity Code Administrator
NEM	National Electricity Market
NEMMCO	National Electricity Market Management Company
Responsible Person	The person who has responsibility for the provision of a metering installation for a particular connection point, being either the Local Network Service Provider or the Market Participant as described in chapter 7 of the code
SA	South Australia
SA Government	South Australian Government
Second tier customer	End-use customers who consume electricity provided by a retailer other than by the local or host retailer in that customer geographical area

the Act	<i>Trade Practices Act 1974</i>
Type 5 meters	Interval meters, capable of storing half hourly electricity consumption data
Type 5MRIM	For the purposes of this document, a type 5MRIM is a manually read type 5 meter.
Type 5RRIM	For the purposes of this document, a type 5 RRIM is a remotely read type 5 meter.
Type 6 meters	Basic or accumulation meters
Type 7 meters	Unmetered supplies (eg streetlights, telephone boxes)

# 1. Introduction

On 22 March 2005, the Australian Competition and Consumer Commission (ACCC) received applications for authorisation (Nos A40103, A40104 and A40105) of amendments to the National Electricity Code (code). These applications were lodged by the National Electricity Code Administrator (NECA) on behalf of the SA Government.

The applications also seek an interim authorisation of the amendments. The ACCC has the power to grant interim authorisations under section 91(2) of the *Trade Practices Act 1974* (TPA) pending the ACCC's final determination in respect of the derogations taking effect.

South Australia's (SA's) primary reason for seeking the code change is to amend the existing derogation by extending the existing expiry date from 1 July 2005 to 31 December 2006. This change is as stated in the application 'to further facilitate the transition to full retail competition by simplifying the metering arrangements as well as for consistency across the jurisdictions and hence with the recommendations contained in the Final Report of the Joint Jurisdictional Review of the Metrology Procedures (JJReview)'.<sup>1</sup>

The existing derogations grant exclusivity for the provision of metering services to small customers by distribution businesses in SA. The derogations to the code make the distributor the 'responsible person' for second tier customers for types 5 – 7 meter installations. Under existing jurisdictional instruments, the distributor is the 'responsible person' for first tier customers.

The applications for authorisation are in similar terms to previous derogations in relation to SA's metering arrangements that were authorised by the ACCC on 27 November 2002. These derogations in relation to "the Responsible Person" and "Payment for Metering" (clause 9.30.1) will expire on 1 July 2005. The substance of the current applications is to extend the duration of these derogations until 31 December 2006 subject to the difference in relation to type 5RRIMs (remotely read interval meters) outlined below.<sup>2</sup>

The applications differ to the extent that this application includes changes to the section 9.30.1(2), "Definitions and Application" involving the category of type 5 metering installation that will be affected by the derogation. The proposed wording reflects the conditions imposed in the ACCC determinations for New South Wales and

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<sup>1</sup> see *Joint Jurisdictional Review of Metrology Procedures – Final Report*, October 2004, The Essential Services Commission, the Essential Services Commission of South Australia, the Independent Competition and Regulatory Commission (ACT), the Independent Pricing and Regulatory Tribunal (IPART), the Office of the Tasmanian Energy Regulator and the Queensland Competition Authority

<sup>2</sup> Type 5MRIM and type 5RRIM are terms of use used in this document for the purpose of distinguishing between the different ways these type 5 meters may be read. This is done notwithstanding that for NEMMCO's classifications and purposes these are the same type 5 meter.

Victorian metering derogations.<sup>3</sup> The proposed amendments provide that any interval meter that incorporates remote reading capabilities (type 5RRIMs), irrespective of how frequently the meter is remotely read, will not be subject to the derogations in clause 9.30.1 of the code.

SA submits that the benefits to the public outweigh the detriment to the public from the lessening in competition.

Authorisation under Part VII of the *Trade Practices Act 1974* (Act) provides immunity from court action for certain types of market arrangements or conduct that would otherwise be in breach of Part IV of the Act.

The ACCC has prepared this draft determination outlining its analysis and views on the applications for authorisation of the derogations. Chapter 2 of this draft determination sets out the statutory test that the ACCC must apply when assessing an application for authorisation. Chapter 3 contains an outline of the ACCC's public consultation process. Chapter 4 deals with the proposed derogations. The ACCC's analysis of the proposed derogations is set out in chapter 5, the ACCC's draft determination is in chapter 6 and chapter 7 sets out the ACCC's interim authorisation.

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<sup>3</sup> ACCC, Determination, Applications for Authorisation, Amendments to the National Electricity Code- New South Wales Metering Derogations, 2 March 2005; and ACCC, Determination, Applications for Authorisation, Amendments to the National Electricity Code -Victorian Metering Derogations, 2 March 2005.

## 2. Statutory test

The applications were made under subs 88(1) and 88(8) of the Act.

Applications made under subs 88(1) of the Act are for authorisation to make a contract or arrangement, or arrive at an understanding, a provision of which would have the purpose, or would or might have the effect, of substantially lessening competition within the meaning of s 45 of the Act; and to give effect to a provision of a contract, arrangement or understanding where the provision is, or may be, an exclusionary provision within the meaning of s 45 of the Act. Further subs 88(6) provides that an authorisation made under subs 88(1) has effect as if it were also an authorisation in the same terms to every other person named or referred to in the application.

Applications made under subs 88(8) of the Act are for authorisation to engage in conduct that constitutes, or may constitute, the practice of exclusive dealing in accordance with the provisions of s 47 of the Act. Further, subs 88(8AA) provides that where authorisation has been granted under subs 88(8) and this particular conduct is expressly required or permitted under a code of practice, the authorisation applies in the same terms to all other persons named or referred to as a party or proposed party to the code. Authorisations may also apply to any corporation who becomes a party in the future.

The Act provides that the ACCC shall only grant authorisation if the applicant satisfies the relevant tests in subs 90(6) and 90(8) of the Act.

Subs 90(6) provides that the ACCC shall grant authorisation to arrangements with the purpose or effect of substantially lessening competition or exclusive dealing arrangements (other than third line forcing) only if it is satisfied in all the circumstances that:

- the provisions of the proposed contract, arrangement or understanding would result, or be likely to result, in a benefit to the public
- that benefit would outweigh the detriment to the public constituted by any lessening of competition that would, or would be likely to result from the proposed contract, arrangements or understanding.

Subs 90(8) provides that the ACCC shall grant authorisation to exclusionary provisions or third line forcing arrangements only if it is satisfied in all the circumstances that the proposed provision or conduct would result, or be likely to result, in such a benefit to the public that the proposed contract, arrangement, or understanding should be allowed.

In considering whether or not to grant authorisation the ACCC must consider what the position is likely to be in the future if authorisation is granted and what the future is likely to be if authorisation is not granted.

If the ACCC determines that the public benefits do not outweigh the detriment to the public constituted by any lessening of competition, or that the public benefits likely to result from the proposed conduct or arrangements are not such that the proposed

conduct or arrangements should be allowed, the ACCC may refuse authorisation or grant authorisation subject to conditions.

The value of authorisation for the applicant is that it provides protection from action by the ACCC or any other party for potential breaches of certain restrictive trade provisions of the Act. It should be noted, however, that authorisation only provides exemption for the particular conduct applied for and does not provide blanket exemption from all provisions of the Act. Further, authorisation is not available for misuse of market power (s 46).

A more expansive discussion about the ACCC's authorisation process and the statutory test that the ACCC applies can be found in the *Guide to authorisations and notifications*, ACCC, November 1995.



### 3. Public consultation process

The ACCC has a statutory obligation under the Act to follow a public process when assessing an application for authorisation.

The ACCC received the applications for authorisation of amendments to the code on 22 March 2005. Notification of the applications and a request for submissions was placed on the ACCC's website<sup>4</sup> the same day.

Although not required under the Act, interested parties were asked to make submissions to the ACCC regarding their views on the issues of public benefit and anti-competitive detriment arising from implementation of the proposed amendments to the code. The ACCC received one submission from AGL Retail Energy (AGL).

The ACCC made this draft determination on 11 May 2005 outlining its analysis and views of the amendments to the code according to the statutory assessment criteria set out in chapter 2.

The ACCC invites NECA and interested parties to notify it in writing by 26 May 2005 whether they wish the ACCC to hold a conference in relation to this draft determination.<sup>5</sup> Alternatively, NECA and interested parties may make written submissions to the ACCC. These must be received by 10 June 2005.

If a conference is requested, it will be held in Adelaide on 3 June 2005 at a time and venue to be notified. NECA, and interested parties who receive a copy of the draft determination and any interested parties whose presence the ACCC considers appropriate are entitled to participate.

Following the conference, the ACCC will take into account any relevant issues raised and any related submissions, and issue a final determination. If no conference is called or written submissions received, then the draft determination will form the basis of the final determination.

A person dissatisfied with the final determination may apply to the Australian Competition Tribunal for its review.

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<sup>4</sup> [www.accc.gov.au](http://www.accc.gov.au)

<sup>5</sup> For the purposes of the conference, an interested person is a person who has notified the ACCC in writing that the person, or a specified unincorporated association of which the person is a member, claims to have an interest in the applications and the ACCC is of the opinion that the interest is real and substantial.

## 4. South Australian Full Retail Competition Derogations

### 4.1 Background to the existing derogations

On 4 August 2001, the ACCC granted authorisation of code changes that facilitated the introduction of Full Retail Competition (FRC) in the electricity markets in the States and Territories participating in the National Electricity Market (NEM) (FRC code changes).<sup>6</sup>

The ACCC's authorisation of the FRC code changes imposed conditions requiring the Jurisdictional Regulators to jointly review certain metering issues in the NEM and to assume the role of Metrology Co-ordinator in their respective jurisdictions.<sup>7</sup> The Metrology Co-ordinator for each jurisdiction is responsible for developing a metrology procedure within that jurisdiction for metering installation types 5 and 6 and 7.

Type 5MRIMs are manually read interval meters capable of reading and storing half-hourly electricity consumption. Type 5RRIMs are remotely read interval meters.<sup>8</sup> Type 6 meters are accumulation meters, which do not provide interval metering data (but may provide time-of-use information). Type 7 meters relate to unmetered supply. Type 5 and 6 meters may be prepayment meters. A prepayment meter is a meter located at the customer's premises that incorporates technology that relies generally on the prepayment of credit to supply electricity.

Metrology procedures contain information on the devices and processes that measure the flow of electricity and establish the rules, processes, algorithms and procedures necessary for the conversion of metering data (or relevant data in relation to unmetered loads) into a format suitable for wholesale market settlement.

### 4.2 South Australian metering regulatory framework

FRC for small customers commenced in SA on 1 January 2003. The FRC code changes authorised a set of provisions concerning the metering arrangements in the retail sector. Those NEM jurisdictions which introduced FRC individually pursued derogations from those metering provisions.

The existing SA derogations were authorised by the ACCC on 27 November 2002, and will expire on 1 July 2005. The derogations grant exclusivity for the provision of metering services for types 5-7 metering installations to small customers. The

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<sup>6</sup> ACCC, Final Determination, Full Retail Competition and Registration of Code Participants, 4 August 2001.

<sup>7</sup> The jurisdictions that participated in the Review and their corresponding jurisdictional regulators are the ACT (ICRC), New South Wales (IPART), Queensland (QCA), South Australia (ESCOSA), Tasmania (OTTER) and Victoria (ESC).

<sup>8</sup> *Op cit* 2

derogations as set out in clause 9.30.1 of Chapter 9 of the code made the Local Network Service Provider (LNSP), ETSA Utilities, the responsible person for second tier customers for metering installations types 5, 6 and 7 under the code. Under existing jurisdictional instruments, the distributor is the default 'responsible person' for first tier customers. The purpose of the current applications is to extend the derogations until 31 December 2006. The derogations also amend the provisions relevant to payments for metering. These aspects of the derogations are described in fuller detail in this paper at 4.4.1 and 4.4.2.

The SA Government has applied to extend the derogations with some amended provisions in relation to type 5 metering arrangements (see 4.3.1 below) until 31 December 2006.

#### ***4.2.1 Joint Jurisdictional Review of Metrology Procedures***

Under clause 7.13(f) of the code, the Jurisdictional Regulators were responsible for conducting a Review to examine whether barriers exist to the adoption of economically efficient metering solutions, and, if so, to make recommendations about the reduction of those barriers. The Jurisdictional Regulators were required to review metering installation types 5 and 6, and consider options for developing nationally consistent metrology procedures. They were also required to review the effectiveness of the ring fencing arrangements for distribution prescribed services and other services.

#### ***4.2.2 Summary of recommendations of the final report***

For the purposes of this draft determination, the key recommendations of the JJReview<sup>9</sup> relate to the Responsible Person for metering services for small customers.

Specifically, the report recommends that Chapter 7 of the code be amended to give distributors permanent responsibility for metering services for "small" customers (first and second tier). These are defined as customers who consume less than a certain threshold ('z')<sup>10</sup> and have a metering installation that does not meet the requirements of metering installation types 1 – 4. The final report also recommends that metering for all large customers, and/or those with a meter that meets the requirements of metering installation types 1 – 4, should be contestable (first and second tier). This is depicted in the following table:

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<sup>9</sup> *Opcit 1*

<sup>10</sup> The 'z' MWh per year consumption threshold is to be set by each jurisdiction.

**Table 1: Recommended responsibilities for metering services**

	<b>First and second tier customers</b>
<b>Competitive metering services</b>	Subject to jurisdictional decision, customers that consume more than 'z' MWh per annum and/or customers that have a meter installed that meets the requirements of a metering installation type 1, 2, 3, or 4.
<b>Distributor responsible</b>	Customers that do not have a meter that meets the requirements of a metering installation type 1, 2, 3, or 4.

In summary, the Jurisdictional Regulators recommended that distributors should be responsible for metering services for all small first and second tier customers with a meter that does not meet the requirements of a metering installation type 1 – 4, and in the longer term, the code should be changed to reflect this position. The report recommends that a package of code changes to Chapter 7 of the code to bring the recommendations of the Review into effect be submitted to NECA by 31 December 2005. In the shorter term, this position should be reflected by extensions to the existing derogations.

### **Single metrology procedure**

The Jurisdictional Regulators also made a number of other recommendations. Key recommendations include:

- that a single national Metrology Procedure should be developed to include technical metrology provisions for both first and second tier customers,
- that the Jurisdictional Regulators would remain responsible for developing key policy decisions underpinning the Metrology Procedure,
- that Chapter 7 of the code should be amended to include first tier metering, and
- that the code should be amended to give NEMMCO the responsibility for implementing the single national Metrology Procedure.

#### **4.2.3 Type 5 RRIM Meters - Decisions on derogations from Chapter 7 to apply in New South Wales and Victoria**

On 2 March 2005 the ACCC issued final determinations in relation to the FRC metering derogations sought by Victoria and NSW, imposing a condition of authorisation on each application in relation to Type 5 RRIM meters. The conditions ensure that remotely read interval meters, irrespective of how frequently they are read, will not be subject to the derogation.

### **4.3 Metering provisions and Chapter 7 of the code**

The role of the Responsible Person is essentially a formal responsibility for managing the commercial aspects of the metering services process.

Currently, clauses 7.2.2 and 7.2.3 of the Code specify that the distributor is the Responsible Person for metering installations within the distributor's local area, unless the Financially Responsible Market Participant (FRMP) *elects* to be responsible for a metering installation.

Except where the distributor is the Responsible Person, and is a registered Metering Provider, the Responsible Person must engage a registered Metering Provider to provide, install and maintain metering installations for which they are responsible.

The code enables the Responsible Person to engage different Metering Providers for different aspects of the metering services. For example, the Responsible Person may engage a Metering Provider to install the meter, another to test the meter's technical capabilities, and another Metering Provider to carry out routine maintenance. Although it is between the two parties to establish the commercial arrangements, the Responsible Person cannot transfer its obligations under the code to another party.<sup>11</sup>

### **4.4 Effect of the proposed South Australian derogations**

#### ***4.4.1 Responsible Person***

The effect of the extension to the SA metering derogation in clause 9.30.1 will be that distributors will continue to be exclusively responsible for providing metering services for customers with types 5MRIMs, 6 and 7 metering installations. However, in line with the ACCC's 2 March 2005 determinations in respect of the NSW and Victorian FRC metering derogations, the SA derogations sought, if granted, would have the effect that the provision of metering services for type 5RRIMs will become competitive.

#### ***4.4.2 Payment for Metering***

Clause 7.3.6(a) of the code states that a FRMP for a connection point is responsible for all payment of costs associated with the provision, installation, maintenance, routine testing and inspection of the metering installation for that connection point. This is not limited to types 5, 6 and 7 metering installations. Under the proposed extension to the derogations to the code, costs incurred by the distributor as Responsible Person for type 5, 6 and 7 metering installations may only be recovered in accordance with the Electricity Price Order, the LNSP's distribution licence or any other applicable South Australian regulatory instrument. The 2005-10 Electricity Distribution Price Determination will regulate pricing of distribution services provided by ETSA within South Australia during the regulatory period. That is, from 1 July 2005 costs will be recoverable in accordance with this draft determination. Cost recovery for type 5

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<sup>11</sup> NEMMCO, *A Guide to the Role of the Responsible Person*, September 2004.

metering services (and 1 to 4 ) is to be as an excluded service whereas costs will be recovered as a prescribed service for type 6 and 7 meters.<sup>12</sup>

## **4.5 Issues for the ACCC**

The arrangements that provide distributors with exclusivity for metering provision may raise the following trade practices issues:

- the conduct may be taken to be an exclusionary provision, as the arrangements have the effect of restricting the supply of metering services to electricity retailers by providers other than the LNSP; or
- the provisions substantially lessen competition, as the derogation effectively prevents competition for the provision of metering services; or
- the conduct may be taken to be exclusive dealing, as the derogation requires electricity retailers to procure meters and metering data services from distributors for each connection point, to the exclusion of other potential suppliers.

## **4.6 Submission from the applicant**

SA is of the view that the level of transfer activity in the small customer market since the commencement of FRC has been assisted by the simple transfer process, including the ability for small customers to retain their existing metering arrangements. SA asserts that it is recognised that forcing small customers to purchase their own meters may prove a costly barrier to entry to a customer taking advantage of competition. SA further state that the economies of scale which are created by having one party own and service meters will be considerably diminished if competition in metering is required at this early stage of market development.

SA states that allowing ETSA to have temporary exclusivity in meter provision for type 5MRIM and types 6 and 7 metering installations will continue the ease of transition to FRC, thereby maximising the benefits of enabling customers a choice of a retailer or market contract that best meets their individual needs, without the potential cost burden of purchasing a meter. SA further states that this in turn would outweigh any detriments to competition in metering caused by the temporary exclusivity arrangements.

### ***4.6.1 Consistency provided by the derogations***

SA notes that submissions to the JJReview highlighted that industry is seeking to minimise the regulatory differences across jurisdictions in the long term.

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<sup>12</sup> Excluded services are services that are not regulated as part of a distributor's regulatory asset base, and are regulated on a fair and reasonable basis as set out in ESCOSA's 2005-2010 Electricity Distribution Price Determination Part A – Statement of Reasons.

SA notes that its application is consistent with the 1 December 2004 draft determinations in respect of New South Wales and Victoria FRC derogations whereby it incorporates the condition imposed in the draft determination in respect of Type 5 interval meters which have remote meter reading capabilities. That is, the derogation sought does not apply to such meter installations, which will be competitive. The conditions imposed in the New South Wales and Victorian final determinations did not differ substantively to those conditions in the draft determinations.

#### ***4.6.2 Joint Jurisdictional Review of Metrology procedures***

SA notes that one of the key recommendations of this review is that the code is to be amended such that the distributor is exclusively responsible for metering services for all first and second tier customers, with annual consumption less than a level of annual consumption to be set by the jurisdictions.

SA further notes that in recognition of the time required for such code changes to be implemented, particularly in view of the current regulatory reform program and the establishment of the Australian Energy Market Commission (AEMC) and the Australian Energy Regulator (AER), the jurisdictional regulators have also recommended extensions to the current jurisdictional derogations in the shorter term.

SA seeks an extension of its existing derogations consistent with the recommendations made in the JJReview, to 31 December 2006.<sup>13</sup> SA is of the view that such an extension will provide sufficient time for the recommended code changes to be pursued through the usual code consultation process. SA further note that, in the event the code changes recommended in the JJReview are implemented, the derogations may be removed.

### **4.7 Submissions from interested parties**

The ACCC has received one submission on SA's application to date from AGL.

AGL notes that it has previously provided comments on the recent NSW and Victorian applications for Metering FRC derogations.

The AGL submission supports regulatory convergence and aligning the SA derogations with the recent final determinations for NSW and Victoria however they are of the view that contestability of metering should ultimately be pursued and that, as with FRC, it will ultimately provide benefits for consumers. AGL note three particular points:

- distributors should be accountable as well as responsible for the metering arrangements
- prepayment meters should be considered a new type of meters – and retailers should be responsible, in order to increase competition and

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<sup>13</sup> Recommendation 4.4, Jurisdictional Regulators, Joint Jurisdictional Review of Metrology Procedures Final Report p11

- during the period of the derogations, further amendments may be desirable if current meter trials suggest new benefits.

AGL notes that it is currently undertaking trials and engaging in industry discussions regarding future optimum metering arrangements.



## **5. ACCC's considerations**

### **5.1 Introduction**

The intention of Part VII of the TPA is to grant authorisation where benefits to the public result from conduct, and the detriments resulting from the conduct, including the lessening of competition, are outweighed by those benefits.

The effect of the SA derogation is to provide distributors with the exclusive right to provide metering services for small electricity retail customers using meter types 5MRIM, 6 and 7, or in other words, assume the role of the Responsible Person. In the absence of the derogation, the code allows retailers to elect to be the Responsible Person.

By imposing a legal monopoly over service provision, the derogation has the potential to impede the basic economic efficiencies that generally can be achieved in competitive markets, particularly in relation to innovation and lowering costs. In the absence of the derogation, retailers' ability to pursue innovative metering is enhanced, and they are free to procure meters and metering data services more cost effectively where they are available.

Under the authorisation test, to justify the extension of the derogations, it must be demonstrated that the derogation produces net public benefits. It must be demonstrated that these would not occur, or would be lost, in the absence of the derogation. The ACCC has considered SA's application and the submissions from this premise.

This section considers the question of net public benefit generally with reference to the position advanced by SA.

### **5.2 Joint Jurisdictional Review of Metrology**

#### ***5.2.1 Duration and coverage of derogation***

SA seeks an extension of the derogations to 31 December 2006 which it says is consistent with the recommendations in the JJReview.

The JJReview proposed a number of metering-related code changes. One of the recommendations in the JJReview is that all small customers should be treated equitably in relation to metering services. Currently the code only regulates metering services provided to second tier customers. The default position for first tier metering is that the distributor is the responsible person.

A code change will be necessary to bring regulation of first tier customer metering under the code. Therefore, if the SA derogations were to lapse now, the result would be that second tier retailers retailing to small customers would have the choice to be the Responsible Person, but first tier retailers for small customers would not. The ACCC

recognises that having different metering arrangements for small first and second tier customers (pending any future code changes) introduces market complexities.

SA is of the view that an extension to December 31 2006 will provide sufficient time for the code changes recommended in the JJReview to be pursued through the usual code consultation process. This response will involve the preparation and consideration of changes to the code to include first tier metering, and more relevantly, the recommendation to make distributors permanently responsible for metering services for small customers. SA further note that in the event that the code changes recommended in the JJReview are implemented, the derogations may be removed.

The ACCC considers that it is necessary to extend the derogations to ensure that there is a comprehensive response to the final recommendations in the JJReview, and to provide regulatory certainty in the interim.

### ***5.2.2 Consistency prior to response to JJR***

If the derogations were to lapse now, the competitive conditions would differ between SA and other jurisdictions. Extending the derogations until 31 December 2006 would ensure both the time for a comprehensive response to the JJReview, and also consistency between NEM jurisdictions in the interim.

The ACCC anticipates that the substantive issues concerning metering competition will be revisited in the code change process that responds to the recommendations of the JJReview. Nevertheless, the ACCC considers that the process of developing permanent metering arrangements in the code is an opportunity to promote efficiency and innovation in metering, to enable the full benefits of FRC to be realised.

## **5.3 Unmetered supply**

Type 7 installations relate to unmetered supply which generally involves forms of public lighting. The ACCC considers that the case for ETSA to continue in the longer term to be the exclusive provider of metering data services for unmetered supply is much stronger for this class of installation, particularly as distributors are required to maintain inventory, load and on/off tables that drive the load profiles for each class of type 7 load. Furthermore, innovation is not likely in this particular area of metrology.

## **5.4 Impact on innovation**

The ACCC has previously considered whether metering derogations could have a detrimental effect on innovation in meter types and metering services. In the absence of the derogation, retailers may be well placed to utilise their knowledge of their customers and the market to pursue efficient metering solutions.

In relation to metering data services, retailers have the potential economies of scope for enabling innovation in metering services, primarily across gas and electricity, but potentially also for water metering. The ability of retailers to source alternative metering data providers could improve the quality of the metering data, and lower costs. Conversely, distributors have incentives under CPI – X regulation to pursue cost

efficiencies, but unlike retailers they may not face the same commercial incentives to provide more innovative price/service offerings.

Furthermore, the ACCC understands that the metering innovations that are emerging internationally, mostly involve forms of time of use or interval metering with remote reading and communications technologies. In the Victorian and NSW determinations, the ACCC imposed a condition of authorisation allowing competition in respect of remotely read interval meters (type 5RRIMs) with reference to the expected innovation in these meter types. SA is seeking derogations that do not cover type 5RRIMs. That is, SA is seeking derogations which ensure that remotely read interval meters, irrespective of how frequently they are read, will not be subject to the derogation. This means that the potential for losses in innovations in metering is a much less significant issue with respect to the present application.

As noted above in paragraph 5.3, the ACCC considers that innovation is unlikely to occur in metering services related to unmetered supply.

## **5.5 Meter churn and barriers to switching**

SA states that forcing small customers to purchase their own meters may prove a costly barrier to switching to a customer taking advantage of competition. Meter churn occurs when a customer changes retailer and the existing metering installation is replaced with a new meter prior to supplying that customer, whether or not the installation has reached the end of its useful life.

As noted in the recent NSW and Victorian metering determinations, barriers to switching can arise from retailer initiated meter churn because the retail contract may provide for meter charges, including exit charges, which deter a customer from switching to another retailer, and hence limit the extent of retail competition. If meters were replaced each time that a customer switched retailer, the result could be inefficient meter churn on an ongoing basis.

The ACCC acknowledges that a possible outcome from customers electing to switch retailers could be the inefficient removal of a previous retailer's meter and the installation of a new one. If retailers did elect to remove meters in circumstances where it was not efficient to do so, it may be the case that retailers would charge customers the cost of a new meter and its installation, which may have an effect on customers switching retailers. It is not clear the extent to which retailers would engage in such practices, as it could result in the stranding of newly installed metering assets. It is possible that a rational retailer (that does not wish to create barriers to switching) will only choose to replace meters when it is efficient to do so, such as when the meter has reached the end of its useful life, or if greater efficiencies can be obtained from procuring a new meter from the competitive market.

The ACCC considers that the cost of regulating meter churn in the context of a competitive market is a legitimate issue that should be considered as part of the response to the recommendations of the JJReview.

## 5.6 Economies of scale

SA states that any economies of scale which are created by having one party own and service meters will be considerably diminished if competition is required at this early stage of market development.

Conversely, it could be argued that although economies of scale in manual meter reading may exist, metering competition does not mean that these economies will be lost, but merely that retailers would have the choice to adopt the most efficient metering services that are available in the market. The relevant question is whether the extension of the derogation will prevent economies of scale from being lost, and not whether or not further efficiencies can be gained under metering competition.

As noted above, if economies of scale exist, the ACCC would expect that retailers would not opt to become the Responsible Person. Therefore, the ACCC considers that metering competition would not necessarily reduce economies of scale in manual interval meter reading. Moreover, the ACCC considers that the same is true for type 6 metering.

## 5.7 Distributor accountability

The ACCC notes AGL's concern about distributor accountability while the derogations are in place. Electricity distributors and retailers have an agreement for the use of the distribution system, and licence conditions which are enforced in South Australia by ESCOSA.<sup>14</sup> These provisions govern the service obligations of distributors to their customers. The ACCC recognises that monopoly service provision lessens the incentives for the provider to provide superior service quality. However, the ACCC considers that the South Australian regulatory framework provides a mechanism for the resolution of disputes relating to distributors' conduct in providing metering installations following a request by a retailer or customer.

The ACCC notes that the provision and installation of metering installations for second tier customers is also regulated under the South Australian regulatory regime<sup>15</sup> and that this regime can be used to increase the responsiveness of distributors until a response to the JJReview is completed. The ACCC also considers that SA's application, which effectively removes the provision of type 5 RRIMs from the derogation, will help to address AGL's concerns about the responsiveness of distributors when providing metering services to retailers' customers, by enabling retailers to assume responsibility for remotely read interval metering. The ACCC also notes that the JJReview recommends that an obligation should be imposed on distributors to not unreasonably withhold consent where a retailer or a customer has requested a meter other than the standard type meter to be installed (recommendation 5.3 (b)). Code changes to implement this recommendation may help to alleviate AGL's concerns.

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<sup>14</sup> These are imposed under the *Electricity Act 1996* (SA)

<sup>15</sup> IN particular, the Electricity Metering Code issued by ESCOSA.

## **5.8 Prepayment meters**

The ACCC notes that ESCOSA is in the process of developing a regulatory framework to assess applications by retailers for approval of prepayment metering systems. ESCOSA has advised that it has proceeded on the basis that the South Australian prepayment arrangements will involve additional functionality to existing meter types 5 and/or 6. The ACCC notes that a recommendation of the JJReview is that the existing classifications of types 4, 5 & 6 be revisited to account for the evolution in metering technology since the categories were first determined. The ACCC considers this to be an appropriate forum to comprehensively consider the issue of classification of prepayment meters as raised by AGL.

## **5.9 Meter trials**

The ACCC notes AGL's recommendation that amendments to the derogations may be desirable if the outcomes of metering trials suggest new benefits. However, the ACCC recognises that disruption may occur if the derogations were to expire or change before the resolution of future Code changes which are expected to be initiated in response to the recommendations of the JJReview.

## **5.10 Conclusion**

The Act requires the ACCC to assess whether the extension of the derogations would produce a net public benefit that would not occur, or would be lost in the absence of the derogations.

The ACCC considers that a key public benefit provided by the derogations is to ensure there is sufficient time to respond to the recommendations of the JJReview. The ACCC therefore accepts that the derogations should be authorised in order to provide interim arrangements that enable the development of a coordinated response to the recommendations of the JJReview. The ACCC considers that allowing the derogations to be in place until 31 December 2006 will allow sufficient time to implement any code changes in response to the JJReview and also that pending that response, the derogations will maintain consistency in arrangements for first and second tier metering, and between the NEM jurisdictions.

The ACCC considers that the case for ongoing distributor exclusivity is likely to be stronger in relation to unmetered supply. Due to the LNSP's requirement to keep up to date information on these Type 7 installations they are likely to be best placed to administer these installations. Further, the possibility of innovation in this area is minimal.

From an economic and commercial perspective, it could be expected that, given the choice, a rational retailer would tend to pursue metering solutions that are efficient and beneficial to its business. This may involve two main options. Firstly, retailers might elect to become the Responsible Person and seek innovative or cost-advantageous metering services. Alternatively, retailers may choose to retain LNSPs as the Responsible Persons where this is perceived to be efficient.

In previous authorisations of metering derogations, the ACCC considered that the key detriment arising from metering exclusivity is that it prevents responsibility for metering residing with the entity most likely to introduce innovative metering arrangements, the retailer. However SA is seeking derogations that do not cover type 5RRIMs. That is, SA is seeking derogations which ensure that remotely read interval meters, irrespective of how frequently they are read, will not be subject to the derogations. This means that the potential for losses in innovations in metering is a much less significant issue with respect to the present application.

The ACCC believes there is a net public benefit from authorising the derogations until 31 December 2006.

SA has sought interim authorisation of the amendments to clause 9.30.1 of the code. The ACCC considers that all the amendments to the code proposed in the application should be granted interim authorisation. The ACCC's interim authorisation for the application is in chapter 7 of this draft determination.

## 6. Draft Determination

On 22 March 2005, the ACCC received applications for authorisation (Nos A40103, A40104, and A40105) of amendments to the code. The applications were submitted by NECA on behalf of the Minister for Energy.

The stated purpose of the applications for authorisation is to further facilitate the transition to full retail competition by simplifying the metering arrangements as well as for consistency across the jurisdictions and hence with the recommendations contained in the Final Report of the Joint Jurisdictional Review of the Metrology Procedures.

The applications were made under sub-sections 88 (1) and 88 (8) of the Act to:

- make or give effect to a contract or arrangement, or arrive at an understanding, where a provision of that proposed contract, arrangement or understanding would be, or might be, an exclusionary provision within the meaning of section 45 of the Act (Form A)
- make or give effect to a contract or arrangement, or arrive at an understanding, a provision of which would have the purpose, or would or might have the effect, of substantially lessening competition within the meaning of section 45 of the Act (Form B)
- engage in conduct that constitutes or may constitute the practice of exclusive dealing, within the meaning of section 47 of the Act (Form E).

For the reasons outlined in Section 5.10 of this determination, the ACCC therefore proposes subject to any pre-determination conference requested pursuant to s 90A of the Act, to grant authorisation to applications Nos A40103 and A40104 pursuant to subsection 88(1) of the Act and to grant authorisation to application A40105 pursuant to subsection 88(8) of the Act.

The period of authorisation is to 31 December 2006.

## **7. Interim Authorisation**

Section 91 of the TPA allows the ACCC to grant interim authorisations of applications without it making a decision on the merits of the application. SA has sought interim authorisation of the derogations.

Simultaneously with the release of this Draft Determination, the ACCC grants interim authorisation of SA's application for authorisation, numbers A40103, A40104 and A40105.

The interim authorisation comes into force on 12 May 2005 and will lapse when the ACCC final determination in regard to each application comes into force.

Under subsection 91(2) of the TPA the ACCC can revoke an interim authorisation at any time.