Applications for Authorisation

Amendments to the National Electricity Code

Amendments to the National Electricity Code – New South Wales Metering Derogations

2 March 2005

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Glossary

ACCC	Australian Competition and Consumer Commission
Code	National Electricity Code
Centurion	Centurion Metering Technologies
DEUS	NSW Department of Energy, Utilities and Sustainability
DUoS	Distribution Use of System
ESC	Essential Services Commission (Victoria)
F.I.	Frequency Injection
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
IPART	Independent Pricing and Regulatory Tribunal (NSW)
ICRC	Independent Competition and Regulatory Commission
Integral	Integral Energy
LNSP	Local Network Service Provider (distributor)
MWh	Megawatt Hours
NECA	National Electricity Code Administrator
NEM	National Electricity Market
NEMMCO	National Electricity Market Management Company
NSW	New South Wales
OTTER	Office of the Tasmanian Energy Regulator
PIAC	Public Interest Advocacy Centre
QCA	Queensland Competition Authority
Review	Joint Jurisdictional Regulators Review of Metrology
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
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
TCA	Testing & Certification Australia
TPA	*Trade Practices Act 1974*
Type 5 meters	Manually read interval meters, capable of storing half hourly electricity consumption data
Type 6 meters	Basic or accumulation meters
Type 7 meters	Unmetered supplies (eg streetlights, telephone boxes)

Executive Summary

The Australian Competition and Consumer Commission (ACCC) assesses changes to and derogations from the National Electricity Code (Code), which governs the National Electricity Market (NEM). Code changes and derogations are proposed by the National Electricity Code Administrator (NECA) under Part VII of the *Trade Practices Act 1974* (TPA).

Authorisation under Part VII of the TPA provides immunity from court action for certain types of market arrangements or conduct that would otherwise be in breach of Part IV of the TPA. Authorisation may be granted where the ACCC concludes that the public benefits of the arrangements or conduct would outweigh the anti-competitive detriment of such arrangements or conduct.

Application for authorisation

NECA applied for authorisation of derogations from the Code on behalf of the New South Wales (NSW) Department of Energy, Utilities and Sustainability and the Minister for Energy and Utilities.

The stated purpose of the applications for authorisation is to reinstate the NSW derogations previously contained in Chapter 9 of the Code, until 31 December 2006. These derogations relate to metering arrangements in Chapter 7 of the Code, and grant exclusivity for the provision of metering services for metering installation types 5-7 for small customers by distribution businesses in NSW. Type 5 meters are manually read interval meters capable of reading and storing half-hourly electricity consumption. Type 6 meters are accumulation meters, which do not provide interval metering data (but may provide time-of-use information), and are read manually. Type 7 'meters' relate to unmetered supply.

ACCC's Draft Determination

The ACCC released its draft determination on 2 December 2004 outlining its views on the application for authorisation.

In the draft determination, 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.

The ACCC considered that a key public benefit provided by the extension of the derogations until 31 December 2006 is to provide sufficient time for a comprehensive response to the recommendations of the Joint Jurisdictional Regulators' (JJR) Review of Metrology Procedures. This will ensure sufficient time for NECA or the Australian Energy Market Commission (AEMC) to complete a process of consultation and analysis of metering issues, including the inclusion of first tier metering rules in the Code, and more relevantly, the recommendation to make distributors permanently responsible for metering services for small customers

The draft determination concluded that there would be a net public benefit from authorising Victoria's application, subject to a condition of authorisation. The proposed condition specified that any remotely read interval meters would not be captured by the derogation regardless of the frequency with which they are read, and irrespective of whether they meet the existing requirements for type 4 metering installations, thereby enabling innovations for small retail customers to materialise.

Key Issues arising from the Draft Determination

Following the release of the draft determination the ACCC held a Pre-Determination Conference (PDC) and also called for further submissions. From the PDC and additional submissions the ACCC notes that the main additional issue raised by interested parties was in relation to the potential for metering assets to be stranded.

Stranded Asset Risk

Energy Australia submits metering contestability could raise this risk where metering assets are replaced by retailers before the asset has been fully depreciated.

The ACCC notes that such risks may exist, however considers that the materiality of these risks is unclear. The extent of this risk depends on several factors. In particular is the decision by IPART to allow Energy Australia $46 million to roll out interval meters to larger customers in the most recent pricing determination for the period 2004 to 2009. IPART's decision does not state how the regulator will address stranding issues where a retailer replaces an interval meter installed by Energy Australia.

Further the ACCC considers that rational retailers would not replace meters where it is not commercial to do so. Assuming Energy Australia's roll-out is cost competitive, and that transfer charges to the new retailer are cost reflective, it is unclear why retailers in Energy Australia's distribution area would opt to install their own meter.

Finally the ACCC notes that regulatory instruments may be used to mitigate stranding risks.

ACCC's Final Determination

The ACCC took the issues raised in the draft determination into consideration when making its final determination.

Having considered all of the issues raised by interested parties and the applicant, 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 JJR review. 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 JJR Review.

The ACCC maintains the view that, taking into account the public benefits and anti-competitive detriment associated with metering exclusivity, it is necessary to impose a condition of authorisation to ensure that the derogations meet the statutory test.

Therefore, this determination imposes conditions of authorisation to ensure that any interval meter that incorporates remote reading capabilities, irrespective of how frequently the interval meter is remotely read, will not be subject to the derogation.

Conditions:

C1 Clause 9.17.A.0(a) must be amended to read:

a) For the purposes of clauses 9.17A.1 and 9.17A.2 of this *derogation*, a reference to a "type 5 *metering installation*" is a reference to a type 5 *metering installation* where the electricity flowing through a *connection point* is less than 100MWh per annum and which includes an interval meter that is manually read.

C2 Clause 9.17A.0 must be amended by the insertion of the following provisions:

ba) Despite anything in the preceding paragraph, clauses 9.17A.1 and 9.17A.2 of this *derogation* do not regulate the provision, installation and maintenance of a type 5 *metering installation* that includes an interval meter that is remotely read, regardless of the frequency with which that interval meter is read.

bb) In the preceding paragraph, "an interval meter that is remotely read" means an interval meter that:

i) is designed to transmit metering data to a remote locality for data collection; and

ii) does not, at any time, require the presence of a person at, or near, the meter for the purposes of data collection or data verification (whether this occurs manually as a walk by reading or through the use of a vehicle as a close proximity drive-by reading);

and includes but is not limited to an interval meter that transmits metering data via:

1) Direct dial-up;
2) Satellite;
3) The internet;
4) General Packet Radio Service;
5) Power line carrier; or
6) Any other equivalent technology.

1. Introduction

On 27 August 2004, the Australian Competition and Consumer Commission (ACCC) received applications for authorisation (Nos A90928, A90929, and A90930) of amendments to the National Electricity Code (Code). The applications were submitted by the National Electricity Code Administrator (NECA) on behalf of the New South Wales Department of Energy, Utilities and Sustainability and the Minister for Energy and Utilities ('NSW').

The stated purpose of the applications for authorisation is to authorise derogations to the Code in relation to metering arrangements in Chapter 7 of the Code, and grant exclusivity for the provision of metering services for certain metering installation types for smaller customers[1] by distribution businesses in NSW.[2]

The applications for authorisation are in similar terms to previous derogations in relation to NSW's metering arrangements that were authorised by the ACCC on 23 January 2002. These derogations expired on 30 June 2004 and the substance of the current applications is to re-instate their operation until 31 December 2006.

NSW submits that:

- the substantial public benefits provided by the derogations;
- the jurisdictional consistency provided by reinstating the derogations;
- the public detriments that would result from the introduction of metering services competition without resolving technical co-ordination issues; and
- the need for unbundling pricing methodology before the introduction of metering services competition,

mean that the public benefits resulting from the proposed extension of the Chapter 9 derogations would outweigh any detriment to the public that may result from those amendments.

Authorisation under Part VII of the *Trade Practices 1974* (TPA) provides immunity from court action for certain types of market arrangements or conduct that would otherwise be in breach of Part IV of the TPA. Authorisation may be granted where the ACCC concludes that the public benefits of the arrangements or conduct would outweigh the anti-competitive detriment of such arrangements or conduct.

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1 The definition of "small" customers is currently determined by each state jurisdiction according to consumption thresholds. In NSW, "small" customers are defined as customers who consume less than 160 MWh per annum for Type 6 and 7 meters, and less than 100 MWh per annum for Type 5 meters, and therefore includes the bulk of commercial electricity customers.

2 Type 5 metering is contestable in NSW for customers who consume more than 100 MWh per annum. Type 6 metering is contestable in NSW for customers who consume more than 160 MWh per annum.

The ACCC has prepared this determination outlining its analysis and views on the applications for authorisation of the derogations. Chapter 2 of this 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 contains a summary of the application and submissions received in response to the application and draft determination. The ACCC's analysis of the proposed derogations is set out in chapter 5 and the ACCC's determination is in chapter 6.

2. Statutory test

The applications were made under sub-sections 88(1) and 88(8) of the TPA.

Applications made under sub-section 88(1) of the TPA 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 section 45 of the TPA; and to give effect to a provision of a contract, arrangement or understanding where the provision is, or may be, an exclusionary provision within the meaning of section 45 of the TPA. Further sub-section 88(6) provides that an authorisation made under sub-section 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 sub-section 88(8) of the TPA are for authorisation to engage in conduct that constitutes, or may constitute, the practice of exclusive dealing in accordance with the provisions of section 47 of the TPA. Further, sub-section 88(8AA) provides that where authorisation has been granted under sub-section 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 TPA provides that the ACCC shall only grant authorisation if the applicant satisfies the relevant tests in sub-sections 90(6) and 90(8) of the TPA.

Sub-section 90(6) provides that the ACCC shall grant authorisation to arrangements with the purpose or affect 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 conduct would result, or be likely to result, in a benefit to the public; and

- 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 conduct.

Sub-section 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, understanding or conduct 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 TPA. 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 (section 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 derogations from the Code on 27 August 2004. Notification of the applications and a request for submissions was placed on the ACCC's website[3] on 30 August 2004. 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 two submissions (see Appendix A). All submissions have been placed on the ACCC's public register and are available from the ACCC's website.

The ACCC produced a draft determination on 2 December 2004 outlining its analysis and views of the amendments to the Code according to the statutory assessment criteria set out in chapter 2. Following the release of the draft determination on 2 December 2004, the applicant and interested parties were provided with the opportunity to call a pre-determination conference (PDC) or make written submissions in relation to the draft determination[4]. Intermoco Solutions Pty Ltd, a metering company, notified the ACCC on 17 December 2004 that it wished the ACCC to convene a conference in relation to the draft determination.

The PDC was held on 14 January 2005 in Sydney, with approximately 13 people attending. The minutes of the conference are available from the ACCC's website. A further eight submissions were received in response to the draft determination and PDC (see Appendix A). The submissions are available from the ACCC's public register. This determination takes into account matters raised in response to the draft determination

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

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3 www.accc.gov.au

4 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 application and the ACCC is of the opinion that the interest is real and substantial.

4. New South Wales Full Retail Competition Derogations

4.1 Background to the existing derogations

The ACCC has previously granted authorisation of Code changes that facilitated the introduction of Full Retail Competition (FRC) in the electricity market in the States and Territories participating in the National Electricity Market (NEM) (FRC Code changes).[5]

The ACCC's authorisation of the FRC Code changes imposed conditions requiring the Jurisdictional Regulators to jointly review certain metering issues in the National Electricity Market and to assume the role of Metrology Co-ordinator in their respective jurisdictions.[6] 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.[7]

Type 5 meters are manually read interval meters capable of reading and storing half-hourly electricity consumption. Type 6 meters are 'basic' or 'accumulation' meters. They do not provide interval metering data (but may provide time-of-use information) and are read manually. 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.

A "metrology procedure" contains 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 New South Wales metering regulatory framework

FRC for small customers commenced in NSW on 13 January 2002. 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 NSW derogations were authorised by the ACCC on 23 January 2002, and expired on 30 June 2004. The derogations grant exclusivity for the provision of metering services by distribution businesses in NSW for types 5-7 metering installations for small customers. The derogations, which are set out in clause 9.17A of Chapter 9 of

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5 ACCC, Final Determination, Full Retail Competition and Registration of Code Participants, 4 August 2001.

6 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).

7 Type 5 meters are manually read interval maters capable of reading and storing half-hourly electricity consumption. Type 6 meters are 'basic' or 'accumulation' meters. They do not provide time-of-use information and are read manually. Type 7 'meters' relate to unmetered supply.

the Code, amended the definition of a Local Network Service Provider (LNSP) under the Code, amended the provisions relevant to metering providers, and introduced transitional arrangements covering the role of the Responsible Person and metering arrangements which are described in fuller detail in this paper at 4.3.1 and 4.3.2.

The NSW Government has applied for authorisation to reinstate the derogations to the Code until 31 December 2006.

4.2.1 Joint Jurisdictional Regulators' Review

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.[8] The Jurisdictional Regulators were required to review metering installation types 5 and 6, and consider options for developing nationally consistent metrology procedures. Clause 7.13(i) also required the Jurisdictional Regulators to review the effectiveness of the ring fencing arrangements for 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 Joint Jurisdictional Regulators' (JJR) Review of the Metrology Procedures[9] final report relate to the Responsible Persons 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. These are defined as customers who consume less than a certain threshold ('z')[10] 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.[11]

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8 The Terms of Reference for the Review appear in this paper as Appendix A.

9 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.

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

11 The Joint Jurisdictional Regulators' final report recommends that metering competition be extended to customers who consume more than 'z' MWh per annum and to those who use a meter that meets the requirements of metering installation types 1 to 4, as defined by NEMMCO's definitions of metering types.

This is depicted in the following table:

Table 1: Responsibilities for metering services

	First and second tier customers
Competitive metering services	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.
Distributor responsible	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. Additional recommendations included that meter charges should be unbundled from distribution use of system charges, and that there should be equitable metering arrangements for first and second tier customers.

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 The NSW Accredited Service Provider Scheme

Currently in NSW, a category of metering services is already provided on a competitive basis. The Accredited Service Provider Scheme (ASP Scheme) allows for first-tier customers to contract directly with an Accredited Service Provider (ASP) for the installation of types 5 and 6 meters. The ASP, who may or may not be a subsidiary of an LNSP, is responsible for arranging for a new meter and connection to the local network.

This Scheme also covers second-tier customers, in so far as they are able to contract with an ASP for the installation and connection of a meter. However, other metering services in relation to that meter will be the responsibility of the LNSP.

4.3 Effect of the proposed New South Wales derogations

4.3.1 Responsible Person

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.[12]

The effect of the NSW metering derogation in clause 9.17A is that distributors are exclusively responsible for providing metering services for small customers with types 5-7 metering installations, with the exception of some second-tier customers with type 5 metering installations who consume more than 100 MWh per annum.

Between 1 July 2004 and 1 December 2004 (when interim authorisation re-instating the derogations was granted), second-tier customers with types 6-7 metering installations and type 5 metering installations consuming less than 100MWh per year ceased to be covered by derogations previously in force and the supply of meters and metering-related services to those customers was deemed by the Code to be contestable, with a retailer having the option of becoming the Responsible Person for a relevant connection point.[13] However, it should be noted that unless and until the retailer elects to become the Responsible Person, the responsibility defaults to the distributor.

NSW now seeks to reinstate the derogations that were in force prior to 1 July 2004 for a transitional period. The proposed derogation would enshrine the distributor as the exclusive Responsible Person until 31 December 2006.

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[12] NEMMCO, *A Guide to the Role of the Responsible Person*, September 2004.

[13] Clause 7.2.2 of the Code

The derogations would also reinstate the requirement that the distributor provide metering services to retailers on a non-discriminatory, fair and reasonable basis, with any dispute about the fairness and reasonableness of the terms to be determined by IPART.

4.3.2 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 derogations to the Code, costs incurred by the distributor as Responsible Person for most type 5, all type 6 and all type 7 metering installations may only be recovered in accordance with the distributor's licence conditions and other applicable regulatory instruments, which would include price determinations made by IPART.

4.4 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.

4.5 Submission from the applicant

NSW contends that the introduction of customer choice in the provision of all metering services for small retail customers will create complexity and confusion that could endanger the success of the core FRC reforms.

Further, NSW contends that there are substantial public benefits provided by the derogations, in particular increased consistency across jurisdictions, as there are metering derogations in place in other NEM jurisdictions that have introduced FRC.

NSW also submit that the public detriment that would result from the introduction of metering services competition without resolving both technical co-ordination issues and

the need for an unbundled pricing methodology would outweigh any benefit to the public that may result from metering services competition.

4.5.1 Public benefits provided by the derogations

NSW contends that significant customer choice in the installation of metering installations has already been introduced in NSW through the ASP Scheme and that the ASP Scheme has been highly successful. NSW notes that all distribution businesses in NSW engage Metering Providers for metering services on a competitive tender basis through the Scheme, and claims that this process maintains downward pressure on Metering Provider costs.

NSW proposes to continue the current arrangements through the derogations. It states that existing levels of competition, including metering competition for Type 5 customers that consume greater than 100 MWh per annum, will be preserved.

NSW submits that to date, very few Type 5 customers that consume greater than 100 MWh per annum and are eligible to choose their own Metering Provider have elected to do so. NSW argues that this fact demonstrates the limited benefit customers perceive from metering competition.

As such, NSW notes that many of the competitive benefits for the provision of these services have already been captured and therefore any potential public benefits available through the implementation of metering contestability are substantially reduced.

4.5.2 Consistency provided by the derogations

NSW contends that the derogations will also promote consistent regulation of metering services across jurisdictions. NSW notes that several other NEM jurisdictions currently have derogations in place which are similar to the derogations requested in these applications, and Victoria has applied to extend similar derogations to 31 December 2006.

4.5.3 Technical Co-ordination issues in the transition to metering competition

NSW argues that there are significant technical coordination issues that need to be resolved between Market Participants and NEMMCO before competition for the provision of metering services is introduced for meter types 5, 6 and 7 for small retail customers.

NSW states that the risks associated with introducing new systems specific to NSW over a short lead period are likely to have a negative impact on the overall success of metering competition. Ineffective transfer and concerns regarding supply failure would have the effect of undermining customer confidence in electricity retail contestability.

Therefore, NSW submits that delaying the introduction of full metering competition for small customers will allow time to enable resolution of these issues. NSW noted that details of these technical coordination issues have already been highlighted in the Victorian derogation application.

The key areas of concern to NSW in this regard are as follows:

- load control activities;
- meter churn; and
- fault management and customer service standards.

4.5.4 Load Control

LNSPs utilise load control equipment that allows them to remotely switch off certain customers at peak demand times as an alternative to network augmentation. Customers subject to LNSP remote switch off are typically in the sub-40 MWh pa consumption category and are offered a lower tariff as compensation for their willingness to accept interruptions. The ACCC understands that in most cases, customers who agree to load control arrangements are those who have had new connections (for example for a new house), and who have installed off-peak hot water systems.

If a retailer can elect to be a Responsible Person, Metering Providers other than LNSPs or those directly engaged by LNSPs, will be able to provide meters for installation to such households. According to NSW, this would require the following issues to be addressed:

- Processes need to be determined to ensure that metering installations installed by metering service providers that are not subsidiaries of the LNSP comply with the requirements for LNSP "frequency injection" ("FI") systems.

- Standards need to be established to ensure compatibility between distributors' FI systems, meters and relays, with responsibility allocated to various parties for the satisfaction of these standards.

- A testing regime needs to be established to ensure compliance with the above standards.

4.5.5 Meter Churn

NSW submits that if meter provision is opened to competition, 'meter churn' may occur.

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 life. NSW claims that this could result in delays in the transfer process and inconvenience to the customer and lower customer service standards.

NSW submits that for most 'smaller' customers (i.e. those with below 100 amps, or 'non-CT' (current transfer) meters, which can be either type 5 or type 6 meters), it is not possible to change meters without interrupting supply in the interim and, given that

two different Metering Providers could be involved in the meter replacement process, the customer may be left without power for long periods of time.

Further, as meters tend to have relatively long useful lives (over 20 years) meter churn could be regarded as a costly and wasteful by-product of the introduction of competition for the provision of metering services, effectively stranding meter assets.

While tailored meter solutions for customers in a competitive environment may result in some public benefit, NSW submits that the barrier to switching retailers created by increased transaction costs resulting from meter churn would create an overriding public detriment.

4.5.6 Fault Management

NSW contends that where a meter stops functioning, management of the reinstatement of customer supply becomes a problematic issue in the context of a competitive meter provision market. It states that if metering for small customers were competitive, it would be unclear whether the LNSP, who would probably be the party responding to a distress call from a customer, could immediately install a new meter. This has significant implications for customer service standards.

4.5.7 Need for Unbundled Pricing Methodology

In addition to meter provision, installation and maintenance, the Responsible Person under the Code is also responsible for the provision of metering data services. These services include meter reading, data validation and substitution, estimation, data storage and forwarding. NSW submits that whilst the opening up, over time, of customer choice to most metering data services would not raise significant co-ordination problems for the market, effective competition would require the unbundling of these services from distribution use of system charges (DUoS) and consequently, the resolution of pricing issues.

NSW submits that successful unbundling of meter data services would require considerable work to determine how meter reading should be unbundled from overall DUoS charges.

NSW acknowledges that LNSPs should not be able to charge for meter reading via DUoS charges if this service is performed by another party in a competitive market. It states that under these circumstances, the LNSP's charges should be reduced by an amount representing the cost of meter reading.

NSW submits that the question is whether the reduction should be based on the incremental or average cost savings of the relevant meter read. In a static sense, it would be more efficient for the incremental cost of meter reads to be deducted from DUoS charges. Therefore, rebating only the incremental meter reading costs to retailers who choose to take responsibility for this function may not promote effective competition, nor would the benefits to customers outweigh the costs ultimately imposed upon customers to establish second tier metering competition.

4.6 Initial Submissions from interested parties

Prior to the draft determination, two submissions were received in response to the NSW application. These are summarised below.

4.6.1 Centurion Metering Technologies Pty Ltd

Centurion submits that the derogations are anti-competitive, will stifle innovation, and will ultimately be detrimental to the interests of electricity consumers. Centurion raised the following issues to support this claim:

1. Centurion contends that metering providers would only be able to offer the best technical innovations and prices for asset installation, maintenance and repair where the retailer is given options aside from the distributors' standard offerings.

2. In response to DEUS' claim that metering competition has not been particularly strong in those categories where it is allowed, Centurion argues that this is due to the fact that at present there is little choice in meter service providers beyond those that are subsidiaries of the distributors. Lifting the derogation would promote more effective competition by forcing metering providers to actively market their services across a wider client base.

3. Centurion considers that Load Control is irrelevant to the continuation of the LNSPs' monopoly over metering services. Centurion states that Load Control is solely the domain of, and for the benefit of distributors as an alternative to network augmentation.

   Centurion contends that meters and Load Control devices should be totally segregated. Further, Centurion notes that in a competitive market the distributors would have the option of installing separate such devices within their network. Load Control via the meter could be offered by metering service providers as a value-added contestable service on commercial terms.

4. Whilst Centurion agrees that meter churn may occur, it considers that competition will rapidly extinguish inefficient practices and will force distributors and competitive meter providers to make wiser decisions regarding the types of meters installed.

4.6.2 Integral Energy

Integral Energy ("Integral") supports the proposal to extend the period for which LNSPs are responsible for metering services to small customers. Whilst noting that the cost of metering services to small customers is only in the order of 1-2% of customer bills, Integral states that the entire National Electricity Market relies on the integrity of these services.

Integral highlights three main reasons for allowing the derogations to be amended as proposed:

1. Apart from the significant technical difficulties outlined in the applications for the proposed derogations, there would be issues associated with system changes, ongoing additional transaction complexity, failure to identify unrecorded additions and processes for billing for metering services that would only be resolved at significant cost to the industry and ultimately consumers.

2. By accepting responsibility for metering, a FRMP inherently creates a barrier to competition, through both an increase in the complexity of the transfer process and through the additional metering set-up costs that would be faced by a competitor.

3. There could potentially be a conflict of interest created in regions where the FRMP is not the first-tier retailer for a given customer. In these cases, any failure in metering accuracy will negatively impact on the first tier retailer in a given region. The FRMP is only liable for the cost of energy and network charges as recorded by the meter, whereas the first-tier retailer is liable for any difference between the recorded energy and actual usage. The FRMP has little incentive to ensure meter accuracy where any inaccuracy only impacts upon their competitor (i.e the first-tier retailer).

4.7 Submissions in response to the Draft Determination

In its draft determination, the ACCC considered that some anti-competitive effects of the derogation could be addressed through conditions of authorisation that would ensure that any remotely read interval meters (remotely read type 5 metering installations) are not captured by the derogation regardless of the frequency with which they are read, and irrespective of whether they meet the existing requirements for type 4 metering installations, thereby enabling innovations to materialise. The draft determination proposed a condition to this effect.

On 14 January 2005 a PDC was held in Sydney at the ACCC offices. Five parties (Energy Australia, Testing and Certification Australia, Intermoco Solutions, AGL Retail, and Commercial and Strategic Solutions) made oral submissions at the PDC.

In addition to the submissions made at the PDC, the ACCC received a further four written submissions in relation to the draft determination. These were from Energy Australia, AGL Retail, the Public Interest Advocacy Centre (PIAC) and Centurion Metering Technologies.

Each of these parties, with the exception of Centurion Metering, gave general support to the ACCC's proposed decision to reinstate the derogations, however some parties opposed the proposed condition allowing competition in relation to *remotely read* Type 5 Meters, as specified in the draft determination. The reasons for this opposition are summarised below.

4.7.1 Asset stranding

Energy Australia argues that the condition causes a potential risk of asset stranding that could prevent planned initiatives in rolling out Type 5 meters. Energy Australia submits that changes in a customer's chosen retailer could result in a new meter being installed and the LNSP's installed meter being stranded. Energy Australia is currently in the process of a roll-out of Type 5 meters, which it initiated, to customers consuming between 40 and 160 MWh per annum, which will be funded through prescribed distribution service charges[14]. This will enable the implementation of Time of Use and seasonal pricing to promote demand side management. Energy Australia proposes to extend this roll-out to customers consuming between 15 and 40 MWh per annum once the current roll-out is completed. Energy Australia states that, against this background, the stranding risk created by the condition would jeopardise this future roll-out and the inclusion of those assets already installed into Energy Australia's regulated asset base.

Intermoco submits that the proposed condition may result in reluctance by distribution businesses to invest in innovative metering solutions for fear of stranding assets or being unable to recover capital investment within an acceptable time period.

4.7.2 Complexity and effect on Full Retail Contestability

Commercial and Strategic Solutions (CSS) submits that the proposed condition will compound and raise barriers to entry and embed existing market failure in relation to metering for small customers.

Energy Australia also contends that the condition is detrimental to the provision of metering services and could increase prices and increase the complexity of technical issues. Energy Australia argues that a piece-meal approach to multiple competitors will reduce quality of metering data, introduce more complex billing and complaint management procedures and exacerbate Code compliance issues. Energy Australia further argues that this complexity would have an overall detrimental effect on the outcome of Full Retail Contestability and that any losses in that area would offset the gains in the provision of metering services.

This was also the position of Testing and Certification Australia (TCA), a subsidiary of Energy Australia, which argues that the extension of contestability in metering could make asset management more difficult and raise uncertainty about responsibility for meter reading and testing.

PIAC also opposes the condition, and states that the condition is a half-measure between promoting full competition and allowing the distributors to retain exclusivity. PIAC argues that the proposed condition would increase metering costs for small customers. PIAC further submits that retailers are less likely than LNSPs to opt for the installation of remotely read metering installations.

[14] IPART, *NSW Electricity Distribution Pricing 2004/05 to 2008/09 – Final Report*, p. 37.

4.7.3 Innovation

Energy Australia states that as LNSPs are faced with pressure to undertake capital expenditure to meet rising peak demand which places them in a better position to be innovative with regard to metering solutions. Energy Australia further submits that retailers are not in this position as metering service makes up only approximately 2% of a typical retail customer's bill. Thus the retailers have no incentive to spend resources innovating in this area.

Intermoco supported the statements made by Energy Australia, submitting that most retailers have shown minimal interest in innovation, especially in relation to smaller customers. Any innovation is aimed at larger customers (i.e >100 MWh for type 5 and >160 MWh for type 6), which would remain contestable without the condition.

AGL stated that retailers were innovative where possible, citing AGL's trial of interval meters with small customers in Victoria, which is due for completion in early 2006. AGL further stated that whether the condition was appropriate would not be known until the completion of the trial of these interval meters.

Centurion disputes the argument that retailers have no incentives to innovate. It submits that metering data is essential to retailers, who have had no chance to innovate to date, because of the derogations. Centurion submits that allowing distributors to determine where interval meters are installed renders demand side management virtually impossible for retailers to achieve. It notes that interval metering provides the retailer the opportunity to structure products and hedging contracts around time of use patterns. If distributors haphazardly spread meters across a retailer's customer base, retailers would not be in a position to discern consumption patterns and thus innovate beyond the existing peak/off-peak product structure.

Further, Centurion considers that the proposed condition provides a firm base for a competitive metering services market and will encourage innovation and the use of remote meter polling.

4.7.4 Benefits of demand side management compared to metering competition

PIAC contends that the current focus on metering contestability is too narrow and misses the point that demand side response would result in greater benefits for consumers than could be gained from increased metering competition. PIAC submits that the type of metering technology itself will not provide benefits to customers, rather, it is the range of tariffs and prices that LNSPs or retailers offer to customers that will create benefits.

4.7.5 Impact on innovation and competition

Centurion opposes the draft determination's proposal to authorise the derogations, and argues that the electricity market would be best served by open competition amongst metering service providers for all metering types.

Centurion submits that allowing distributors to determine where interval meters are installed renders demand side management virtually impossible for retailers to achieve. It notes that interval metering provides the retailer the opportunity to structure products

and hedging contracts around time of use patterns. If distributors haphazardly spread meters across a retailer's customer base, retailers would not be in a position to discern consumption patterns and thus innovate beyond the existing peak/off-peak product structure.

4.7.6 Duration of derogation

AGL submits that the length of the derogation is too long and that a reduction of the length of time which it is in effect, by 6 months would be more appropriate. It is at this time that the results of the trial of interval meters for small customers would be known.

4.7.7 Distributors' service quality

AGL argues that the derogation gives metering responsibility for manually read interval meters to distributors, but that distributors are not sufficiently accountable in carrying out this role. AGL contends that distributors do not always install meters within a timeframe that is suitable to the retailer, and cited an instance of several months between a retailer request and a distributor's action. AGL submits that there should be stronger safeguards to ensure that retailers receive adequate service provision from distributors. Alternatively, there should be stronger incentives for distributors to respond to retailer requests cooperatively, otherwise, retailers should be allowed to be responsible for type 5 meters. AGL states that an additional problem is that distributors also determine metering standards of operation which meet their own needs, not those of the retailer.

4.7.8 Contestability Threshold

Energy Australia notes that in the interests of jurisdictional consistency the NSW threshold for contestable metering services should be raised to 160 MWh per annum, in line with states such as Victoria.

TCA notes that the 100 – 160 MWh per annum metering service market has been contestable in NSW, yet there had not been any competition in that sector to date.

4.7.9 Definition of Type 6

AGL supports the derogation covering Type 6 meters, however it submits that the definition of Type 6 metering installations is too broad and that pre-payment meters should be specifically excluded from that category. AGL believes this type of metering installation could be used by retailers to offer distinguishing services from competitors.

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 NSW derogation is to provide distributors with the exclusive right to provide metering services for small electricity retail customers using meter types 5-7, or in other words, assume the role of the Responsible Person for metering. This is also referred to as metering competition.

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 NSW's application and the submissions from this premise.

This section considers the arguments advanced by NSW, submissions from interested parties, and issues raised by interested parties in relation to the draft determination, including issues raised by participants at the PDC.

5.2 Unmetered supply

Type 7 installations relate to unmetered supply which generally involves forms of public lighting. The ACCC considers that the case for distributors to continue in the longer term to be the exclusive providers 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.

5.3 Meter churn and barriers to switching

NSW submits that where a retailer can elect to be the Responsible Person for meter types 5 and 6, it may have an incentive to unnecessarily replace an existing meter with a new meter, and charge the customer for the costs.

This meter churn could also be a barrier to switching as the meter charges, which in the absence of the derogation would be determined by the retail contract, may deter the customer from switching to another retailer and hence limit the success of FRC. If meters were replaced each time that a customer switched retailer, the result could be inefficient meter churn on an ongoing basis.

NSW submits that allowing retailers to become responsible for meter provision while the market is still in a transitional phase, may promote meter churn and hence become a barrier to the further development of retail competition.

The ACCC considers that concerns that meters will be removed in circumstances where it is inefficient to do so, may be overstated, and that avoiding meter churn is not of itself sufficient reason to continue the metering derogations. The ACCC further considers that such concerns assume that retailers will tend to replace meters, irrespective of whether this is a commercially beneficial decision. It is likely 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 obtaining a new meter from the competitive market. As noted by AGL at the PDC, it may be uneconomic for a retailer to choose to remove a meter from a customer's site if the meter still has a useful life. The ACCC considers that meter churn can also be a by-product of the adoption of innovative forms of metering and tariffs.

A separate but related issue is that meter churn may create barriers to switching. 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.

The discussion in NSW's application on barriers to switching reflects a concern that metering competition provides retailers with incentives to lock customers into retail contracts by way of upfront or exit meter charges.

Additionally, discussions with interested parties have highlighted a view that in a competitive metering market, the transaction costs associated with changing meters when a small customer chooses to switch retailer, means that retailers may only compete for customers once, with the potential for the market to become static after an initial phase of switching and meter replacement.

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. Additionally, customers may also be deterred from switching by any exit charges associated with the meter. 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.

Any concern that retailers would have an incentive to use such practices as a means of discouraging the customer from changing retailers again may be addressed through regulatory arrangements. The ACCC notes that, in the United Kingdom, the Office of Gas and Electricity Markets (Ofgem) has endeavoured to address the problem of meter churn and barriers to switching through regulation.

Ofgem recently introduced licence conditions for retailers, whereby meter churn is discouraged if the customer and new retailer do not want it to occur. These regulations

ensure that customers only choose to enter into supply contracts with retailers based on the customer's express consent for the replacement of meters. Ofgem's arrangements are also designed to protect the distributor from stranded asset risk. The ACCC notes that these regulations will become of material relevance from 1 April 2005 when Ofgem will formally remove metering charges from the distribution regulated asset base. Therefore the effectiveness of the regulations will only become apparent from that time.

Furthermore, interested parties have argued that regulation might ensure that meter churn is minimised, but that this would merely replicate the outcomes that presently result from the distributor exclusivity. Therefore, the transaction costs associated with introducing regulation in this area would need to be considered and weighed against the potential benefits of metering competition.

The ACCC considers that the cost of regulating meter churn is a legitimate issue that should be considered as part of the response to the recommendations of the JJR review of metrology.

5.4 Stranded Asset Risk

Energy Australia highlights a potential consequence of meter churn, that distributors' metering assets could become stranded where they are replaced by retailers before the asset has been fully depreciated.

The ACCC notes that metering contestability raises stranded asset risks, however, the materiality of these risks is not clear. Energy Australia currently faces stranded asset risk in the 100 – 160 MWh per annum customer segment, as type 5 metering services for this customer segment are contestable. However, the number of customers in this segment is relatively low.[15]

IPART's price determination for the period 1 July 2004 to 30 June 2009 allowed Energy Australia $46 million for capital expenditure to provide interval meters to consumers who use greater than 15MWh per annum.[16] IPART's decision does not specify how the regulator will address stranding issues where a retailer replaces an interval meter installed by Energy Australia. The decision does not state whether these interval meters will remain in the regulatory asset base at the next reset. The only implicit reference to optimisation of interval meters is a statement to the effect that the regulator may need to adjust Energy Australia's regulatory asset base at the next regulatory reset if Energy Australia replaces type 6 meters that are not at the end of their effective lives and the regulator concludes that the expenditure is not prudent.[17] Therefore, the materiality of the stranded asset risk that Energy Australia currently faces with respect to retailers replacing the type 5 meters it has rolled out is unclear.

As noted above, in section 5.3, a rational retailer is unlikely to replace a metering installation where it is not commercial to do so. Assuming that Energy Australia's roll-out is cost competitive, and that transfer charges to the new retailer are cost reflective,

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15 According to IPART, these customers represent less than 5% of the market.

16 IPART, *NSW Electricity Distribution Pricing 2004/05 to 2008/09 – Final Report*, p. 37

17 *Ibid*

it is unclear why retailers in Energy Australia's distribution area would opt to install their own meter. Alternatively, it may be possible for the retailer to offer to purchase the existing metering installation, removing the possibility of that asset becoming stranded. These points have an impact upon the materiality of the mooted stranded asset risk.

The ACCC understands that in NSW, various regulatory instruments regulate aspects of metering and switching.[18] To the extent that type 5 meter stranding risks are material, the NSW regulatory arrangements could be used to mitigate these risks for NSW distributors. The ACCC notes that similar stranding issues will arise in the context of the Victorian Mandated Interval Meter Roll-out. The ACCC understands that the Victorian Essential Services Commission intends to put in place a framework that will ensure that distributors are recompensed for any interval meter assets that become stranded as a result of contestability.

The ACCC considers that if stranding risks are significant, and commercial arrangements between retailers and distributors are not considered feasible to address meter churn, then NSW regulatory instruments such as the *Market Operations Rules* could be used to mitigate these risks for NSW distributors. Measures can be designed to remove any deterrents to customers switching retailers. The ACCC notes that termination fees are likely to be a deterrent to switching retailers if used where type 6 meters are replaced, but may be appropriate for new type 5 meters rolled out to larger customers by Energy Australia.

5.5 Impact on innovation, including use of remote communications

Some submissions noted that retailers have not driven a great deal of innovation in metering to date. However, the majority of metering services remain the exclusive responsibility of LNSPs, and so the opportunity and incentives to innovate have not been as great as they may be under more competitive circumstances. As AGL stated at the PDC, being able to offer tailored metering solutions to more consumers may be utilised by retailers as a means of differentiation between competitors. This opportunity may increase retailer innovation in relation to metering services.

The ACCC has considered whether the derogation could have a detrimental effect on innovation in meter types and metering services. In relation to metering data services, retailers have the potential economies of scope from 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 pursue innovation to provide more innovative price/service offerings.

Furthermore, the ACCC understands that the metering innovations that are emerging internationally, mostly involve meters with remote reading and communications technologies.

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[18] For example, the *New South Wales Market Operations Rules* made pursuant to Section 63C of the *Electricity Supply Act 1995.*

While the ACCC recognises that metering innovation is likely to arise through technologies that involve remote meter reading capabilities, NEMMCO's current metering type classifications reflect the specific differences in meter capabilities. For example, type 4 interval meters must be read on a frequency to meet market settlement timeframes (generally, weekly), and these are therefore typically only cost effective for very large customers.

The ACCC understands that some interval meters may have the capability to meet the requirements of a type 4metering installation, even though they may not be read at the frequency required to be classified as a type 4 metering installation. Some anti-competitive effects of the derogation could be addressed through conditions of authorisation that would ensure that any remotely read interval meters are not captured by the derogation regardless of the frequency with which they are read, and irrespective of whether they meet the existing requirements for type 4 metering installations, thereby enabling innovations to materialise.

The ACCC understands that, under the exclusivity derogations as submitted to the ACCC, NEMMCO's classifications would need to be amended to enable innovations such as remotely read meters that are read less frequently to penetrate the market through retailer innovation. However, the issue of meter classifications is a broader National Electricity Code issue which is more appropriate to be addressed during the response to the Jurisdictional Regulators' report.

As interval meters are being rolled out to certain customers in NSW, the ACCC considers that future innovation is likely to comprise forms of remotely read interval metering. The ACCC considers that a condition is necessary to ensure that retailers can pursue innovation in remote (interval) meter reading solutions that are most suitable for their customers.

Further, the ACCC notes that as the roll-out is limited to customers consuming over 15 MWh per annum who are located in Energy Australia's distribution network, the benefits of interval meters are unlikely to be realised by consumers not fitting that profile. The ACCC notes that the average consumption in a typical NSW household is approximately 7 to 8 MWh per annum, and many customers are located in other distributors' areas, which demonstrates that most households would be unlikely to have a type 5 meter installed. The proposed condition will facilitate retailers making such interval meters available to their customers where benefits are likely.

As noted above in paragraph 5.2, the ACCC considers that innovation is unlikely in metering services related to unmetered supply.

5.6 Load Control Systems

NSW submits that load control at present relies upon the LNSP being able to ensure that the relevant meters conform to specified standards. NSW states that allowing parties other than the LNSP to become the Responsible Person for metering could result in the Load Control system failing due to non-conforming meters being used by those Responsible Persons. The ACCC notes that LNSPs are currently best placed to co-ordinate selection, purchase and installation of such equipment.

However, the ACCC notes that Load Control is, in essence, a separate system to the metering systems themselves. As has been noted by Centurion, in many instances the Load Control device is segregated from the actual meter and has no affect on the meter itself. It has been suggested that if metering services were contestable, the LNSP would still be able to install, activate and maintain Load Control devices separately from the meter. Further, from discussion with market participants, the ACCC understands that once a conforming Load Control device has been installed, minimal further intervention by the LNSP is required to enable the system to function.

The ACCC notes that Load Control devices do play a beneficial role in network operation, by reducing the maximum peak demands through the centralised switching off of appliances, such as hot water systems, on participating sites. This in turn reduces the need for more expensive network augmentation and thus reduces overall costs for end-users. It is possible that if metering services were to be fully contestable those retailers that elected to be Responsible Persons and installed new meters may have an incentive not to install Load Control devices. It is in a retailer's commercial interest to themselves determine disconnection of certain loads, for example air-conditioners at times of price spikes, rather than allow disconnection by the LNSP when efficient for the LNSP. However, the ACCC envisages that this could be addressed through regulatory arrangements, so as to provide certainty to both retailer and LNSP in relation to load disconnection. The ACCC notes that if significant numbers of second-tier retailers elected to be Responsible Persons and did not offer Load Control as part of their metering services, it may result in a need for network augmentation, which would result in higher DUoS charges and thus increased tariffs for end-users.

The ACCC considers that Load Control does provide a public benefit by reducing the need for more expensive network augmentations and that the derogations are likely, in the short term, to ensure the ongoing viability of the Load Control system. In the future, however, it may be possible to develop arrangements under which Load Control can still be offered where the retailer is the Responsible Person.

5.7 Accredited Service Provider Scheme

The ACCC notes that the ASP Scheme does allow for increased contestability in relation to certain metering services. Whilst the derogations do not cover first-tier customers the ASP Scheme provides clear benefits by allowing customers to contract with any ASP, it is clear that scope exists for competition and thus price reductions.

The fact that the ASP Scheme covers second tier customers changing their metering arrangements, allows for a measure of competition in relation to one aspect of metering services. The ACCC notes that competition in relation to these services raises fewer logistical and regulatory issues than in relation to other metering services such as meter reading, maintenance and data transfer. Although NSW contends that the ASP Scheme has captured many of the benefits of metering competition, the ACCC notes that further dynamic efficiencies in the areas of meter reading, maintenance and data transfer are possible and that competition could result in further price reductions. These are the issues that are the subject of the derogation.

5.8 Conflict of Interest

Integral submits that there could be a conflict of interest created in areas where the FRMP is not the first-tier retailer for a given customer. This would arise from the FRMP only being liable for the energy consumption registered by their metering installation and that the possibility exists for financial impacts on the first-tier retailer, the FRMP's competitor, where inaccuracies exist in the meter.

The ACCC considers that the problem of conflict of interest may be overstated, and that this issue is not material to its deliberations. While metering inaccuracies do exist, trade measurement legislation places accuracy requirements on meters. Meter inaccuracies may work both for and against the FRMP, as inaccurate recording of consumption with affect both the FRMP's wholesale market liability, as well as its retail market takings.

5.9 Joint Jurisdictional Regulators' Review of Metrology: duration and coverage of derogation

The Jurisdictional Regulators have proposed a number of metering-related Code changes. One of the recommendations of the Jurisdictional Regulators' review 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 NSW 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.

NSW has applied for the derogations to be reinstated until 31 December 2006, to provide sufficient time for a comprehensive response to the recommendations of the JJR review. 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. Therefore, the ACCC considers that it is necessary to reinstate the derogations to ensure that there is a comprehensive response to the final recommendations of the Jurisdictional Regulators, and to provide regulatory certainty in the interim.

Furthermore, the ACCC notes AGL's recommendation that derogations should expire in mid-2006, at which time the outcomes of its critical peak pricing trials will be known. However, the ACCC recognises that disruption may occur if the derogations were to expire before the resolution of future Code changes which are expected to be initiated in response to the recommendations of the Review.

Energy Australia submits that the contestability threshold in NSW for type 5 metering installations ought to be increased from consumers using more than 100 MWh per

annum to consumers using more than 160 MWh per annum. While the ACCC understands Energy Australia's position that the metering contestability thresholds should be consistent across jurisdictions, the ACCC notes that metering contestability thresholds are already set at relatively high consumption levels, and that responsibility for determining these thresholds currently resides with each jurisdiction.

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 JJR final report. 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.

5.10 Accountability for quality and timeliness of metering services

The ACCC considers that the condition of authorisation imposed in this determination will help to address concerns raised by retailers 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 notes that the provision and installation of metering installations for second tier customers is also regulated under the NSW regulatory regime and that this regime can be used to increase the responsiveness of distributors.

5.11 Definition of Type 6 metering installation

The ACCC notes AGL's concerns that the definition of a Type 6 metering installation is too broad, however the ACCC considers that the responsibility for determining the classification of metering installations lies with NEMMCO.

5.12 Conclusion

The TPA 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 derogation.

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. Furthermore, some of the perceived problems associated with metering competition, as outlined in NSW's application, could be addressed through amendment or enhanced enforcement of retail licensing and Code obligations, rather than by maintaining a monopoly on metering services. The ACCC acknowledges Energy Australia's concerns about stranded asset risks. However, the ACCC also notes that IPART has allowed $46 million Energy Australia for the roll-out of type 5 meters, further there is no explicit optimisation proposal from IPART. However, if Energy Australia has ongoing concerns the ACCC encourages them to take that matter up with IPART or the NSW government to consider appropriate regulatory measures.

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 Jurisdictional Regulators' review. 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 JJR review. 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 JJR review.

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.

The ACCC considers 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.

Taking into account the public benefits and anti-competitive detriments associated with metering exclusivity, the ACCC considers that it is necessary to impose a condition of authorisation to ensure that the derogations meet the authorisation test. The ACCC considers that the derogations should be amended so that remotely read interval metering solutions that are suitable for small retail customers are not subject to distributor metering exclusivity. This would facilitate retailers' pursuit of innovative metering solutions that are most suitable for their customers.

Therefore, this determination imposes a condition of authorisation to ensure that any interval meter that incorporates remote reading capabilities, irrespective of how frequently the interval meter is remotely read, will not be subject to the derogation.

C1 Clause 9.17.A.0(a) must be amended to read:

a) For the purposes of clauses 9.17A.1 and 9.17A.2 of this *derogation*, a reference to a "type 5 *metering installation*" is a reference to a type 5 *metering installation* where the electricity flowing through a *connection point* is less than 100MWh per annum and which includes an interval meter that is manually read.

C2 Clause 9.17A.0 must be amended by the insertion of the following provisions:

ba) Despite anything in the preceding paragraph, clauses 9.17A.1 and 9.17A.2 of this *derogation* do not regulate the provision, installation and maintenance of a type 5 *metering installation* that includes an interval meter that is remotely read, regardless of the frequency with which that interval meter is read.

bb) In the preceding paragraph, "an interval meter that is remotely read" means an interval meter that:

i) is designed to transmit metering data to a remote locality for data collection; and

ii) does not, at any time, require the presence of a person at, or near, the meter for the purposes of data collection or data verification (whether this occurs manually as a walk by reading or through the use of a vehicle as a close proximity drive-by reading);

and includes an interval meter that transmits metering data via:

1) Direct dial-up;
2) Satellite;
3) The Internet;
4) General Packet Radio Service;
5) Power line carrier; or
6) Any other equivalent technology.

6. Determination

On 27 August 2004, the ACCC received applications for authorisation (Nos A90928, A90929, and A90930) of amendments to the Code. The applications were submitted by NECA on behalf of the NSW Department of Energy, Utilities and Sustainability and the Minister for Energy and Utilities.

The stated purpose of the applications for authorisation is to authorise derogations to the Code in relation to metering arrangements in Chapter 7 of the Code, and grant exclusivity for the provision of metering services for small customers with certain metering installation types by distribution businesses in NSW.

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 4.8 of this determination, the ACCC therefore grants authorisation to applications Nos A90928 and A90929 pursuant to subsection 88(1) of the Act and to grant authorisation to application A90930 pursuant to subsection 88(8) of the Act.

The period of authorisation is to 31 December 2006.

The ACCC proposes to impose a condition that any meter that incorporates remote reading capabilities, irrespective of how frequently the meter is remotely read, will not be subject to the derogation.

Conditions:

C1 Clause 9.17.A.0(a) must be amended to read:

a) For the purposes of clauses 9.17A.1 and 9.17A.2 of this *derogation*, a reference to a "type 5 *metering installation*" is a reference to a type 5 *metering installation* where the electricity flowing through a *connection point* is less than 100MWh per annum and which includes an interval meter that is manually read.

C2 Clause 9.17A.0 must be amended by the insertion of the following provisions:

ba) Despite anything in the preceding paragraph, clauses 9.17A.1 and 9.17A.2 of this *derogation* do not regulate the provision, installation and maintenance of a type 5 *metering installation* that includes an interval meter that is remotely read, regardless of the frequency with which that interval meter is read.

bb) In the preceding paragraph, "an interval meter that is remotely read" means an interval meter that:

i) is designed to transmit metering data to a remote locality for data collection; and

ii) does not, at any time, require the presence of a person at, or near, the meter for the purposes of data collection or data verification (whether this occurs manually as a walk by reading or through the use of a vehicle as a close proximity drive-by reading);

and includes but is not limited to an interval meter that transmits metering data via:

1) Direct dial-up;
2) Satellite;
3) The Internet;
4) General Packet Radio Service;
5) Power line carrier; or
6) Any other equivalent technology.

Appendix A – Submissions to the ACCC

- Integral Energy – written submission in response to application.
- Centurion Metering– written submission in response to application, written response in relation to draft determination.
- Intermoco Solutions – oral submission at the PDC.
- Energy Australia – oral submission at the PDC and written submission post-PDC.
- Testing and Certification Authority – oral submission at the PDC.
- AGL – oral submission at the PDC and written submission post-PDC
- Commercial and Strategic Solutions – oral submission at the PDC