Applications for Authorisation

Amendments to the National Electricity Code

Victorian Metering Derogations

2 March 2005

Authorisation Nos:	**Commissioners:**
A90915	Samuel
A90916	Sylvan
A90917	King
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File no: M2004/101

Contents

Glossary

ACCC	Australian Competition and Consumer Commission
AEMC	Australian Energy Market Commission
AGL	Australian Gas Light Company
AMR	Automated Meter Reading
Code	National Electricity Code
Centurion	Centurion Metering Technologies
DUoS	Distribution Use of System
EAG	Energy Action Group
ENES	Embedded Networks Electricity Solutions
ESC	Essential Services Commission (Victoria)
EziKey	EziKey Group Pty Ltd
First tier customers	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
LNSP	Local Network Service Provider (distributor)
NECA	National Electricity Code Administrator
NEM	National Electricity Market
NEMMCO	National Electricity Market Management Company
Origin	Origin Energy Retail Limited
Review	Joint Jurisdictional Regulators' Review
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 customers	End-use customers who consume electricity provided by a retailer other than by the local or host retailer in that geographical area
TPA	*Trade Practices Act 1974*
TTEG	Trans Tasman Energy Group
Type 4 meters	Remotely read interval meters, capable of storing half hourly consumption data, which is downloaded daily
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)
UED	United Energy Distribution
Victoria	Victorian Minister for Energy Industries and Resources

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 Victorian Minister for Energy Industries and Resources (Victoria).

The stated purpose of the applications for authorisation is to extend the existing Victorian derogations contained in Chapter 9 of the Code, until 31 December 2006. The existing 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 smaller customers by distribution businesses in Victoria. 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.

The proposed amendments will also make minor changes to the Code in the nature of a statute law revision.

The ACCC granted interim authorisation of the derogations on 16 June 2004.

Consultation process

The ACCC received Victoria's application for authorisation on 6 April 2004. Notification of the application and a request for submissions was placed on the ACCC's website. The ACCC received eight written submissions from interested parties, which were also placed on the ACCC's website.

The ACCC released a draft determination on 2 December 2004 outlining its views on the application for authorisation. The applicant and interested parties were provided an opportunity to call a pre-determination conference (PDC) in relation to the draft determination.

Following a request by Intermoco Solutions Pty Ltd, a PDC was held on 13 January 2005, and a further eight written submissions were received. The minutes of the PDC and the submissions are available on the ACCC's website.

Draft Determination – proposed condition of authorisation

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.

ACCC's considerations

The ACCC considers 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 distribution businesses as the Responsible Persons where this is perceived to be efficient. Furthermore, some of the perceived problems associated with metering competition as identified in Victoria's application, including meter churn and barriers to switching, could be addressed through amendment of retail licensing and Code obligations, rather than by maintaining a monopoly on metering services.

However, there are several public benefits that would be lost if the derogations were not extended until 31 December 2006. These include the facilitation of the commencement of the Essential Services Commission's (ESC) mandated rollout of manually read interval meters in Victoria, and consistency of regulatory arrangements until Code changes to respond to the Joint Jurisdictional Regulators' (JJR) Review of Metrology Procedures are finalised.

Mandated Interval Meter Rollout

The ACCC recognises that the implementation of metering contestability for small customers may create additional logistical complexity for the interval meter rollout, and recognises that it may lead to accelerated recovery of the rollout costs. The ESC's calculation of benefits anticipated from the rollout, including establishing a digital platform for remote reading innovation, are predicated on the continuation of distributor exclusivity for type 5 meters. The ACCC considers that the extension of the derogations will provide more certainty regarding the necessary logistical processes and the timeliness with which the anticipated benefits of the rollout will be delivered, than if the rollout were to occur under competitive conditions.

Joint Jurisdictional Regulators' Review of Metrology Procedures

The ACCC considers 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 JJR Review. 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.

Impact on innovation

As noted above, the ACCC considered that some anti-competitive effects of the derogation could be addressed through a condition of authorisation that would ensure 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. The draft determination therefore proposed a condition to this effect. The ACCC considers that it is still appropriate to impose the condition of authorisation as specified in the draft determination.

Stranded asset risk

TXU, United Energy Distribution (UED), and Intermoco Solutions submitted that the ACCC's draft determination would introduce stranded asset risk. The ACCC recognises that a potential consequence of enabling contestability in the provision of remotely read metering services is that distributors' metering assets could become stranded if they are replaced by retailers before the existing asset has been fully depreciated. However, the ACCC notes that the cost recovery framework proposed by the Essential Services Commission of Victoria (ESC) for the Victorian Distribution Pricing Review 2006-2010, ensures that distributors can recover the costs of standard interval meter offerings in circumstances where these are replaced following a customer or retailer request.

ACCC's Final Determination

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

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 9.9A.1 must be amended by the addition of the following provisions:

(c) For the purposes of clause 9.9A.2 and 9.9A.3 of this *derogation*, a reference to a "type 5 *metering installation*" is a reference to a type 5 *metering installation* that includes an interval meter that is manually read.

(d) Despite anything in the preceding paragraph, clauses 9.9A.2 and 9.9A.3 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.

(e) In the previous 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.**

(f) This clause 9.9A.1 ceases to apply on the date on which clause 9.9A.2 ceases to apply.

1. Introduction

On 6 April 2004, the Australian Competition and Consumer Commission (ACCC) received applications for authorisation (Nos A90915, A90916 and A90917) of amendments to the National Electricity Code (Code). The applications were submitted by the National Electricity Code Administrator (NECA) on behalf of the Victorian Minister for Energy Industries and Resources ("Victoria").

The stated purpose of the applications for authorisation is to extend the existing Victorian derogations contained in Chapter 9 of the Code. The existing derogations relate to metering arrangements in Chapter 7 of the Code, and grant exclusivity for the provision of metering services for certain metering installation types for small customers by distribution businesses in Victoria.

The purpose of the proposed extension is to:

1. extend Victoria's current derogations relating to metering which were due to expire on 30 June 2004, until 31 December 2006;

2. ensure the ongoing smooth operation of full retail competition (FRC) in Victoria; and

3. enable consultation on, and the development of, a co-ordinated response to the recommendations of the Joint Jurisdictional Review of Metrology Procedures (the 'Review').[1]

The proposed amendments would also make the following minor corrections to the derogations contained in chapter 9 of the Code in the nature of a statute law revision:

- 9.8.7 (d) (2) – the amendment replaces "apply", which is incorrect, with "comply";

- 9.9A.2 – the amendment to the heading clarifies that this clause derogates from clause 7.2.3; and

- 9.9A.2 (c) – the amendment corrects a cross reference.

Authorisation under Part VII of the *Trade Practices Act 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 ACCC authorised changes to the Code on 1 August 2001 to facilitate FRC. As part of that authorisation, the ACCC mandated changes to the Code requiring Jurisdictional Regulators to conduct a review of type 5 and type 6 metering and metrology procedures by 31 December 2003 (clause 7.13(f) of the Code).

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. The background to the proposed derogations and summary of submissions are set out in chapter 4. The ACCC's analysis of the issues is provided 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 TPA. 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 TPA to follow a public process when assessing an application for authorisation.

The ACCC received the applications for authorisation of amendments to the code on 6 April 2004. Notification of the applications and a request for submissions was placed on the ACCC's website[2]. Although not required under the TPA, 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 derogations to the Code. The ACCC received eight submissions in relation to the application. All submissions have been placed on the ACCC's public register and are available from the ACCC's website.

The ACCC received submissions from the following interested parties:

1. CitiPower and Powercor (distribution businesses)
2. United Energy Distribution (distribution business)
3. Centurion Metering Technologies (metering business)
4. TXU Networks (distribution business)
5. Origin Energy (retailer)
6. AGL (retailer)
7. EziKey Group[3] (prepayment metering business)
8. Trans Tasman Energy Group on behalf of the Retirement Villages Association

The ACCC produced a draft determination outlining its analysis and views of the derogations 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]

Following a request by Intermoco Solutions Pty Ltd, a metering company, a PDC was held on 13 January 2005 in Melbourne, with approximately 28 people attending. A further eight submissions were received in response to the draft determination and PDC (see Appendix B). The submissions, and the minutes from the PDC are available from the ACCC's public register and from the ACCC's website. 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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2 www.accc.gov.au

3 EziKey's submission was made Commercial in Confidence and therefore was not placed on the ACCC's website.

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,

4. Victorian metering derogations

4.1 Background to the existing derogations

The ACCC has previously granted authorisation of Code changes that facilitated the introduction of electricity FRC 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 NEM and to assume the role of Metrology Coordinator in their respective jurisdictions.[6] The Metrology Coordinator for each jurisdiction is responsible for developing a metrology procedure within that jurisdiction for metering installation types 5, 6 and 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 which 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 establishes the rules, processes, algorithms and procedures necessary for the conversion of metering data into a format suitable for wholesale market settlement.

4.2 Background to Victorian metering regulatory framework

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. FRC for small customers commenced in Victoria on 13 January 2002.

The Victorian derogations were authorised by the ACCC on 11 August 2001, and were to expire on 30 June 2004. The derogations grant exclusivity for the provision of metering services by distribution businesses in Victoria for types 5-7 metering installations for small customers.

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claims to have an interest in the application and the ACCC is of the opinion that the interest is real and substantial.

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 Independent Competition and Regulatory Commission (Australian Capital Territory), the Independent Pricing and Regulatory Tribunal (New South Wales), the Queensland Competition Authority, the Essential Services Commission of South Australia, the Office of The Tasmanian Energy Regulator, and the Essential Services Commission of Victoria (ESC).

The derogations, which are set out in clause 9.9A of Chapter 9 of 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 payment for metering arrangements. These are described in fuller detail at sections 4.3.1 and 4.3.2 of this document.

The Victorian Government has applied for authorisation to extend the derogations to the Code until 31 December 2006. For the purposes of this document, the LNSP will be referred to as the distributor or distribution business.

4.2.1 Victorian Mandatory Rollout of Interval Meters

In July 2004 the Essential Services Commission of Victoria (ESC) released its final decision on the Mandatory Rollout of Interval Meters for Electricity Customers.

Currently, the standard meters used by most small customers record a customer's accumulated total energy. To obtain the energy use for billing, the previous accumulated reading is subtracted from the current reading.

Accumulation meters provide a 'profile' of a customer's consumption levels across a billing period. This profile does not demonstrate the energy usage, nor the costs of that consumption at different times of the day. Therefore, customers do not face signals to adapt their consumption according to the price of electricity at different times of the day. The lack of price signals is a key reason for the inelasticity of demand, particularly amongst small electricity customers.

In contrast, interval meters record the consumption of electricity each half hour. This enables retailers to structure tariffs that more closely reflect the costs of purchasing power in the wholesale market, in which costs can vary on a half-hourly basis. Interval meters also facilitate more efficient pricing signals for distribution and transmission.

Interval meters are generally only used by large electricity customers because the costs of the meter are generally small in proportion to those customers' total energy bills. The interval meters used by large customers are generally classified as types 1- 4 metering installations. These classifications refer to meters that are remotely read, that is, the data can be uploaded from the meter to a centralised database at a location that is remote from the meter itself.

In its final decision on the mandated interval meter rollout, the ESC states that there is currently not a clear link between the electricity wholesale market – which provides price signals about the supply-demand balance and the cost of supplying electricity – and the retail market – which sets prices for customers and influences their consumption patterns.[7] The ESC states that price signals that are more closely linked to

[7] Essential Services Commission (Victoria), *Mandatory Rollout of Interval Meters for Electricity Customers – Final Decision*, July 2004.

the wholesale market would enable customers to choose how much energy they consume, the time of use, and the prices they are prepared to pay.

In this context, the ESC believes that interval metering would provide a means of effectively linking the wholesale and retail markets and therefore provide customers with efficient price signals and thus lead to more effective demand management. The ESC states that among other benefits, interval metering will allow retailers to match their price offers to customers with the prices at which they purchase electricity from the wholesale market.

4.2.2 Process for proposed rollout of interval meters

The ESC's decision to mandate a rollout of interval meters in Victoria is based on the results of a cost-benefit analysis and industry consultation. Following this process, the ESC concluded that a rollout of interval meters would improve the competitiveness and efficiency of the electricity market in Victoria, and therefore contribute future net economic benefits to electricity customers and the wider economy.

The ESC states that interval meters enable retailers and customers to measure real time electricity consumption and to send and respond to the cost-related price signals that are essential to sustainable and efficient energy supply and consumption.

The ESC's decision is based on the following assessments:

- market forces alone would fail to deliver a timely interval meter rollout on a scale sufficient to provide economies in meter manufacture, installation and reading;
- regulatory intervention is necessary to achieve the economic benefits that would result from a more timely and large scale rollout;
- based on the ESC's cost-benefit analysis, a net economic benefit would arise from a timely, mandatory rollout of interval meters; and
- the current cost increment between accumulation and interval meters is expected to fall over time.

The benefits that the ESC has quantified are based on the demand management efficiency gains that it contends will arise from avoided generation, transmission and distribution investment. The ESC has estimated these efficiency gains on the basis that customers will respond to interval meter based price signals, particularly during the peak periods in summer.

Therefore, the ESC has decided to proceed with the mandated interval meter rollout as follows:

- for large commercial electricity customers (those consuming more than 160 MWh per year), installation of new meters is to be completed by 2008 with new and replacement installation commencing in 2006 (there are around 4000 meters in this group);

- for business and large household consumers (using between 20 MWh and 160 MWh per year), interval meters are to be installed by 2011 with new and replacement installations commencing in 2006 (there are around 220,000 meters in this group);

- for small business and household consumers (using less than 20 MWh and with more complex meters)[8], installation is to be completed by 2013 with new or replacement installations beginning in 2006 – (there are around 650,000 meters in this group); and

- for all small business and household customers with the simplest metering, new and replacement installations will begin in 2008 (there are around 1.3 million customers in this group).

4.2.3 Joint Jurisdictional Regulators' Review

Under clause 7.13(f) of the Code, the Jurisdictional Regulators were responsible for jointly conducting a review to examine whether barriers currently 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. Clause 7.13(i) also required the Jurisdictional Regulators to review the effectiveness of the ringfencing arrangements for prescribed services and other services.

4.2.4 Summary of recommendations of the final report

For the purposes of this draft determination, the key recommendations of the Joint Jurisdictional Regulators' Review of the Metrology Procedures[9] final report 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. 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 Off-peak metering or three-phase metering.

9 See *Joint Jurisdictional Review of Metrology Procedures – Final Report*, October 2004.

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 - 4, as defined by NEMMCO's definitions of metering types.

These recommendations are 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 metering installation types 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.

4.3 Effect of the proposed Victorian 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.

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.

Under the existing Victorian derogations to the Code, clause 9.9A.2 of the Code provides that until 1 July 2004, distributors are *mandated* as the Responsible Person for type 5, type 6 and type 7 metering installations. The derogations also impose a requirement that the offer by the distributor to be the Responsible Person must be on terms that are fair and reasonable and do not unreasonably discriminate between retailers, with any dispute about the fairness and reasonableness of the terms to be determined by the ESC.

The current 'Responsible Person' derogation was to expire on 30 June 2004 by virtue of clause 9.9A.2(e) of the Code. It was subsequently extended by an interim authorisation.

4.3.2 Payment for Metering

Clause 7.3.6(a) of the Code states that an FRMP for a connection point is responsible for payment of all 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.

Clause 9.9A.3 of Victoria's derogations to the Code provides that the costs incurred by the distributor as Responsible Person for type 5, type 6 and 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 the ESC. The current derogation in respect of payment for metering was to expire on 30 June 2004 by virtue of clause 9.9A.3(b) of the Code. It was subsequently extended through an interim authorisation.

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 distribution business; or
- provisions substantially lessening competition, as the derogation effectively prevents competition for the provision of metering services; or
- 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

Victoria contends that metering competition is not necessary to enable the substantial benefits of FRC to be realised. It states that the market needs certainty about the regulatory environment, and in the absence of a recommendation from the JJR Review to require competition in meter provision and metering data services,[12] it is reluctant to embrace competition in these areas.

The central public benefit arguments put forward by Victoria in requesting the continuation of the existing derogations relate to the maintenance of efficient,

[12] Victorian Application, *Proposed Derogations to the National Electricity Code Victorian Full Retail Competition Transitional Metering Arrangements* April 2004, p 6

streamlined metering arrangements, the maintenance of efficient cost-recovery arrangements, concerns about 'meter churn' and increased costs, and the maintenance of arrangements that may facilitate the uniform rollout of manually read interval (type 5) meters.

4.5.1 Efficient, streamlined arrangements

Victoria contends that the current derogations are simple and ensure clear metering arrangements. If retailers were able to elect to be responsible for meters and metering services, additional systems and processes would need to be implemented requiring complex arrangements to be established between retailers and distributors.[13] These arrangements may have to be undone if changes to Chapter 7 of the Code, which would restore distributor exclusivity, are made to implement the recommendations of the Review.[14] Victoria contends that the risks inherent in introducing a large number of new systems if metering were to become contestable could have a negative impact on developing FRC, including negative publicity associated with complex transfer arrangements or system failure that could undermine consumer confidence in FRC, thereby inhibiting its development.

Victoria submits that the current arrangements have the public benefit of streamlining meter data arrangements between retailers and distributors, which would not necessarily be present if the existing derogations were removed. Additional costs would arise from the development of additional systems and procedures necessary for retailers to act as the Responsible Person. These costs would be passed on to end consumers in the contestable market. Distributors also enjoy the benefits of economies of scale in meter reading resulting from meter rounds that are undertaken within their entire distribution area.[15]

Victoria submits that local retailers servicing sub-160 MWh per annum electricity customers account for approximately 90% of the sub-160 MWh market (as at the time of the application). Victoria submits that because of this, it remains efficient for the distributors to continue to be the provider of metering services, and that it would take some time for second-tier retailers to establish a customer base that would provide potential economies of scale for competitive provision of these services.[16]

Victoria maintains that the market for efficient metering is still in transition, and therefore, distributor responsibility for existing metering should be retained.[17]

4.5.2 Efficient cost-recovery arrangements

Victoria contends that current cost-recovery arrangements are efficient. Recovery of the net costs associated with a type 6 meter is through network tariffs until 31 December 2005.[18] The provision of manually read interval (type 5) meters is currently regulated as an 'excluded service' and cost-recovery for these meters is

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13 *Ibid*
14 *Ibid*
15 *Ibid* p 7
16 *Ibid* p 8
17 *Ibid*
18 *Ibid*

regulated by the ESC on a 'fair and reasonable' basis until 31 December 2005.[19] Cost-recovery for type 7 metering installations (unmetered supply) is also regulated in this way until 31 December 2005. Licence conditions imposed on distributors require them to provide these excluded services on terms and conditions which are fair and reasonable, consistent with relevant guidelines and price determinations by the ESC.[20]

4.5.3 Meter churn

Victoria contends that the development of a more competitive retail environment in the shortest practicable timeframe is best achieved by making the process of switching retailers as simple as possible. Victoria 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. If meters were replaced each time that a customer switched retailer, the result could be inefficient meter churn on an ongoing basis.

Victoria also submits that allowing retailers to become responsible for meter provision at this time may promote meter churn, which may become a barrier to the further development of competition in the supply of electricity to small customers by imposing unnecessary 'switching costs' on customers.

4.5.4 Rollout of interval meters

In relation to the facilitation of a rollout of manually read interval meters, Victoria states that it supports in-principle an interval meter rollout where the benefits exceed the costs.[21] Victoria notes that the ESC has determined that for most customer sectors the benefits to be gained from manually read interval meters exceed the costs. Furthermore, the ESC submits that it would be difficult and less economic to mandate a rollout of manually read interval meters and share the costs of that rollout without distributors remaining responsible for these meters as under the existing derogations.[22]

Victoria notes that the Parer Report recommended that an accelerated interval meter rollout should occur, with distributors owning the meters and their cost being included in the regulated distribution use of system asset base.[23]

Victoria's application quotes the ESC, which noted that the metering derogations provide the following benefits:

> "Mandating an interval meter rollout to be carried out by distributors may seem contrary to the policy to allow competition in metering services expressed in the NEC. This approach does, however, enable the benefits of a mandated rollout to be captured where the incremental costs can be smeared (via an excluded service charge) across all qualifying customers, not just those

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[19] '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 by the Essential Services Commission.

[20] Victorian Minister for Energy Industries and Resources, *Application for Authorisation*, 5 April 2004, p8.

[21] Victorian Minister for Energy Industries and Resources, *Application for Authorisation*, 5 April 2004, p11.

[22] *Ibid* p12.

[23] Victorian application cited in footnote 11, p 12

with interval meters on the grounds that customers as a whole are better off than in the absence of such a rollout."

An issue arises if a rollout were mandated and the current derogation to the NEC that retains distributor exclusivity for meter provision for small customers…were lifted within the time frame of the rollout. If a retailer were to be able to appoint a meter service provider other than the distributor, the distributor should be assured of recovery of the outstanding costs of the program. Coordination between the jurisdiction and national market will be needed to avoid such a complication and to provide proper signals to all participants."[24]

4.6 Initial submissions from interested parties

Prior to the ACCC's draft determination, eight submissions were received in response to Victoria's initial application. These are summarised below.

4.6.1 Transitional issues

CitiPower and Powercor, TXU Networks (TXU), and United Energy Distribution (UED) support the proposal to extend the existing derogations to 31 December 2006 on the grounds that the current arrangements are practical, efficient and that distributors are best placed to continue the efficient provision of type 5, type 6 and type 7 metering and related services. UED submits that an extension to the derogations will allow time for the development of Code changes to implement recommendations from the JJR review. UED also notes that if the existing derogations are not continued beyond 30 June 2004, IT systems and processes would not be in place to cope with competition in metering services for small customers.

TXU submits that the extension of the derogations would also ensure that costs are not unnecessarily incurred by stakeholders in implementing arrangements that might be changed once the JJR review is finalised. TXU also believes that the current metering arrangements are necessary in light of the proposal by the ESC to mandate the rollout of interval meters to all customers. The introduction of competition in the provision of the type 5, type 6 and type 7 metering services would impact significantly on the ability to rollout interval meters in the most efficient and cost-effective way.

AGL supports the proposal to extend the metering derogations, but only until June 2005, to ensure a smooth transition to alternative market-based metering arrangements.

4.6.2 Efficiency of monopoly metering services provided by distributors

AGL believes that once the derogations are removed there may be significant market benefits. AGL maintains that the analogy between FRC and metering contestability is strong. If it is sensible to have FRC, then it is sensible to also have metering contestability (at least for type 5 meters). AGL would support metering contestability as long as appropriate checks and balances are in place to ensure that industry and customers are not adversely impacted by the changes.

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[24] Victorian application, cited in footnote 34, p12

Centurion Metering Technologies (Centurion) submits that there is no evidence to conclude that the proposed derogations can achieve greater efficiencies. It argues that if the existing arrangements for metering services are optimal, then there would be no risk in introducing competition into metering, and that retailers would have the choice of remaining with their current service providers. Centurion states that there has been little to no innovation in metering since the introduction of FRC.

Origin Energy (Origin) and Centurion believe that distributors do not provide particularly efficient metering services. Centurion submits that the cost of the services provided by distributors is unnecessarily inflated because distributors add a margin to the outsourced services while double-handling service orders when initiated by retailers.

Origin submits that the overriding benefit of enabling contestable metering services is the competitive discipline that would be imposed on the prices and quality of metering services to retailers and customers. Origin states that removing barriers to competition allows customers to exercise choice if and when net benefits are available. Origin contends that instead of being a case for exclusivity, the current high cost of meter reading provides a case for greater competition which would be facilitated by ending the derogation. Centurion argues that economies of scale could actually improve as contracted service providers would not have to operate within geographic boundaries, and could incorporate readings of gas, water and electricity meters.

4.6.3 Innovation

Centurion submits that for retailers to be competitive, they must have access to competitive services, but that this is precluded by the derogations. It argues that competition for metering services will enable electricity retailers to obtain metering data at competitive rates while encouraging innovation among metering service providers, which will enable retailers to differentiate their products and service offerings.

Centurion and EziKey argue that churn is an inevitable consequence of a de-regulated market. Centurion submits that meter churn is a necessary component of a competitive market; innovation will occur to ensure that there is no cause to remove the meter upon transfer. In a competitive market, it would be in no party's financial interest to replace useful assets.

Origin argues that distributors' metering exclusivity provides little incentive for innovation in metering. Origin also argues that the retailer is in the best position to measure the performance of a metering service provider, and has the financial incentive to ensure that quality data is delivered in a way that supports the retailer's billing processes. AGL and Origin also contend that the ESC's decision to conduct a rollout of interval meters should not be used as a justification for extending the derogation.

AGL and EziKey argue that ownership and control of meters by distributors creates a market structure that impedes innovation in retailing. EziKey also submits that the derogations deprive industry service providers of their ability to enter and compete in new markets.

EziKey submits that by uncoupling meter ownership and service provision from distributors, retailers will be able to select technologies and service providers that best meet their market objectives. Consumers will have a broader range of choices in electricity supply and will be able to select retailers that have the ability to package new and targeted offerings that acknowledge an array of consumer needs and lifestyles.

4.6.4 Embedded Networks

The Retirement Villages Association, in a submission prepared by the Trans-Tasman Energy Group, argues that the derogations should be amended to enable the provision of meters and metering services within embedded networks by 'exempt retailers', where the retirement village operator could opt to become an 'exempt retailer', on the grounds that there are efficiencies with this approach. Retirement village residents could still choose to be serviced by a retailer other than the 'exempt retailer'/retirement village operator.

4.7 Submissions on 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 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 13 January 2005 a PDC was held in Melbourne at the ACCC offices. Eight parties, consisting of Intermoco Solutions, AGL, the ESC, Embedded Networks Electricity Solutions, Origin Energy, the Victorian Department of Infrastructure, the Energy Action Group, and the Trans Tasman Energy Group, made oral submissions at the PDC.

Subsequent to the PDC, the ACCC received eight written submissions in relation to the draft determination. These were from AGL, the Victorian Department of Infrastructure, Centurion Metering Technologies, Intermoco Solutions, TXU Networks, Embedded Network Electricity Solutions, CitiPower and Powercor, and United Energy Distribution. The written submissions received following the PDC, with the exception of Centurion Metering, gave general support to the ACCC's proposed decision to extend the derogations.[25] 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.

[25] At the Pre-Determination Conference, Origin Energy made an oral submission in which it opposed the extension of the derogations.

4.7.1 Stranded asset risk

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

UED submits that the proposed condition of authorisation introduces stranded asset risk for distributors. UED states that the contestability for remotely read type 5 interval meters has cost recovery impacts as a meter installed in good faith under the mandated rollout is subject to prescribed service charges. UED notes that as soon as a retailer chooses to add a communications facility the metering charge alters to an excluded service charge which has less certainty of recovery over 15 years than the prescribed service. A further change of retailer could render the asset stranded or re-used in situ as a prescribed service. UED submits that given the significant value of the investment and the low return, this approach offers no certainty of complete cost recovery over the ESC's proposed 15 year timeframe.

TXU submits that in the context of the mandated rollout, where distributors are being encouraged to assign meters with long asset lives, the proposed condition of authorisation does not provide certainty that these investments will be recovered in full.

4.7.2 Incentives to innovate

Intermoco does not consider that the proposed condition of authorisation would encourage retailers to innovate, and submits that to date, only distributors have demonstrated interest in metering innovation, based on the direct benefit accruing to them.

At the PDC, Origin Energy agreed with the ACCC's view in the draft determination that retailers have commercial incentives to pursue metering innovation. 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 its trial.

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.

4.7.3 Meter type definitions

UED submits that the draft determination's description of a remotely read type 5 interval meter is not consistent with the Code's meter type definitions. It states that an interval meter which is remotely read with a frequency other than daily/weekly fits neither the type 4 category nor the type 5 definition. UED submits that the remotely

read meter definition as drafted is causing confusion and different interpretations across the market.

AGL supports the derogation covering type 6 metering installations, however, it submits that the definition of these metering installations is too broad and that prepayment meters should be specifically excluded from this category. AGL is of the view that this type of metering installation could be used by retailers to distinguish their services from those of other retailers.

4.7.4 Duration of derogations

UED supports the ACCC's view that an extension of the derogations until 31 December 2006 provides sufficient time to allow for a response to the JJR review to be finalised. However, it considers that any process and IT impacts from incorporating first tier metering into the Code may not be implemented until sometime in 2007.

CitiPower and Powercor, in a joint submission, support the draft determination's proposal to extend the derogations until 31 December 2006 as this will allow time for the implementation of the JJR review recommendations.

AGL submits that as there is still considerable debate on the future metering framework, it may be appropriate to shorten the derogation period to review these matters after the outcome of metering trials which are being conducted by various distributors and retailers.

4.7.5 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 the requested 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 response. 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 where the distributor has not cooperated with the retailer's request. 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.

4.7.6 Contestability threshold

In a presentation at the PDC, Origin submitted that the >160 MWh per annum metering contestability threshold is arbitrary and unjustified, and recommends that >20MWh per annum is a more appropriate threshold. Origin argued that the worst case scenario from changing the threshold is that the status quo would remain and that no retailers would elect to be the Responsible Person. AGL considers that Origin's suggestion could facilitate competition. CitiPower/Powercor oppose Origin's suggestion on the basis that it is an arbitrary figure, and would undermine the mandatory rollout of interval meters to customers in the 20-160MWh per annum consumption range.

4.7.7 Condition of authorisation

The Victorian Government supports the effect of the draft determination, and reiterated the arguments put in its original application. However, it does not support the proposed condition of authorisation. Victoria considers that although there may be significant benefits from a rollout of interval meters with remote communications, it is premature to introduce contestability in remotely read metering, as envisaged by the proposed condition of authorisation. In particular, it would be appropriate to conduct a thorough assessment of the costs and benefits of a deployment of remotely read interval meters before this option were mandated. At the PDC, Victoria also noted that the ESC was correct in not mandating remote meter communications at this stage, and stated that the relevant process for assessing this subject is the change procedure for metering codes and metrology procedures.

Centurion Metering Technologies 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. However, Centurion does support the proposed condition of authorisation and the proposed definition of a remotely read type 5 interval meter. Centurion considers that the proposed condition provides a firm basis for a competitive metering services market and will encourage innovation and the use of remote meter polling.

4.7.8 Remote communications

Intermoco supports the substance of the draft determination but considers that its economic and social effect, and that of the ESC's IMRO decision, would be enhanced if automated meter reading (AMR) were mandated.

The ESC noted that it determined there would be a net benefit from a rollout of interval meters with remote communications for customers consuming >10 MWh per annum, but that this was not mandated due to uncertainty about the costs and benefits as technology has developed between the time of the analysis and the scheduled deployment of meters.

4.7.9 Statutory test

At the PDC, Origin argued that the draft determination did not adequately address the statutory test. It argued that the cost to consumers of extending the derogation has not been addressed and the benefits should be quantified. Origin argues that the burden of proof lies with the applicant, and that competition must be assumed to be the best outcome. A substantive analysis of whether the application overturned this presumption is necessary, but was not included in the draft determination.

4.7.10 Efficiency of metering services

Origin argued that current charges for metering services indicate inefficiencies in the services provided by distributors. In this context, Origin stated that achieving electricity industry best practice for metering services could deliver annual savings, estimated as approximately $25 million per annum. This was based on the best-practice costs of scheduled and special meter reads. Origin submits that the gas industry's best practice for meter reads is estimated as approximately $51 million per

annum, and that the Victorian Government must demonstrate that the continuation of metering exclusivity will deliver benefits in excess of this amount.

4.7.11 Embedded Networks

Embedded Network Electricity Solutions (ENES) supports the proposed condition of authorisation but submits that it should be extended to include customers in embedded networks who have interval meters that may not be read remotely. ENES states that this would enable embedded network owners to provide metering services to customers in embedded networks who purchase energy from a retailer, instead of the embedded network owner. The Trans Tasman Energy Group (TTEG) endorses the draft determination's proposal to exclude embedded networks from the derogations. TTEG argued that metering services should either be fully regulated or fully competitive, and not a half-way solution.

4.7.12 Regulatory consistency

The Energy Action Group (EAG) submits that the draft determination promotes neither competition nor consumer protection. It stated that there is a need for direction and national consistency in metering, and that this is essential for facilitating market settlement and developing the NEM into a real time market based on users paying for their consumption.

AGL submits that there is a lack of a national approach to metering which is detrimental to efficiency, and that the metering derogations in Victoria and New South Wales should be consistent.

4.7.13 Peak demand/network investment

The EAG submits that the draft determination did not address the issue of summer peaking, and the inefficient use of networks due to the maximum capacities only being utilised during infrequent peak periods. The EAG argues that the derogation should be amended so that all type 5 meters are capable of conversion to type 4 meters so that accurate market data can be collected in real time. The EAG noted that some type 5s are currently being read as type 6 meters which increases inaccuracies in market data.

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 Victorian derogation is to provide distributors with the exclusive right to provide metering services for small[26] electricity retail customers using metering installation types 5-7, or in other words, assume the role of the Responsible Person for metering. In the absence of the derogation, the Code allows retailers to elect to be the Responsible Person. This is also referred to as metering competition.

The derogation also makes minor "statute law revisions", and the ACCC accepts that there are public benefits associated with these changes.

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 Victoria's application and the submissions from this premise.

This section considers the arguments advanced by Victoria, 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 Transition to effective full retail competition

The applicant argues that the derogations provide a net public benefit because the retail market, and the market for efficient metering, is still in a transitional phase, and needs to be regulated accordingly. The ACCC notes that in 2004 approximately 19 percent of Victorian residential and small business electricity customers had switched retailers.[27]

Some interested parties have submitted that the benefits of metering competition only materialise in the large customer segment, where the benefits of a type 4 metering

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[26] The definition of "small" customers is currently determined by each state jurisdiction according to consumption thresholds. In Victoria, "small" customers are defined as customers who consume less than 160 MWh per annum, and therefore includes the bulk of commercial electricity customers. Average Victorian residential customers consume 5.2 MWh per annum.

[27] Minister for Energy Industry and Resources, Media Release *Victorians Embrace Energy Market Competition*, 31 January 2005.

installation exceed the costs. As meter costs are a small percentage of large customers' bills, large customers would be in a better position to absorb any transaction costs arising from meter churn.

The ACCC acknowledges this assertion, and notes that the Joint Jurisdictional Regulators' report on metrology makes recommendations which aim to extend metering competition in the large customer segment – to large first tier customers and for customers that have a meter that meets the requirements of a metering installation type 1, 2, 3 or 4. The recommendations avoid definitions of "small" and "large" that are purely consumption based, to ensure dynamic responses in the market as the costs of innovative metering solutions change.

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 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.

5.4 Meter churn and barriers to switching

Victoria's application acknowledges that in some circumstances, meter churn may be efficient, such as when a more efficient meter technology is suitable for the customer. The ACCC considers that meter churn can also be a by-product of the adoption of innovative forms of metering.

However, Victoria submits that allowing retailers to become responsible for meter provision while the market is still in a transitional phase, may promote inefficient meter churn and hence become a barrier to the further development of retail competition. A related problem is that distributors' metering assets could become stranded where they are replaced by retailers before the asset has been fully depreciated.

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 procuring 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.

5.4.1 Barriers to switching

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 Victoria'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, mean that retailers would only compete for customers once, resulting in the market becoming static after initial switching and meter replacement.

The ACCC acknowledges that if retailers did remove meters in circumstances where it was not efficient to do so, the cost of a new meter and its installation is likely to deter some customers from switching retailers. Customers may subsequently be deterred from switching by any exit charges associated with the meter. However, concern that retailers would have an incentive to use the new meter 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.

5.5 Facilitation of the mandated interval meter rollout

The ACCC notes that a major driver for Victoria's application is to facilitate the mandated interval meter rollout which is due to commence in Victoria in 2006. The

interval meters to be rolled out to small customers are manually read interval meters (i.e. type 5 meters), which are currently subject to distributor exclusivity.

In considering this application for derogations, the ACCC recognises that the ESC's decision regarding the mandated rollout is a legitimate policy initiative. While applying the authorisation test, the ACCC aims to accommodate that decision. However, in weighing up the benefits and detriments of Victoria's application, the ACCC has also considered whether the rollout could be successfully implemented in the absence of the derogation.

Although the derogation also involves type 6 accumulation meters, this particular section of the ACCC's analysis focuses on the natural monopoly properties of manually read type 5 meters given their relevance to the mandated rollout.

Victoria submits that distributors should remain exclusively responsible for manually read type 5 meters for several reasons. For the purposes of this authorisation analysis, the more pertinent claims are that distributors have significant economies of scale in the provision of manually read type 5 meters.

In weighing up the benefits and detriments of distributor exclusivity, the ACCC considered the counter-factual scenario, while taking the interval meter rollout as a given. The ACCC considered whether it would be possible to mandate the Responsible Person, whether it were a distributor or retailer, to install interval meters according to the ESC's stipulated time frame, without negative impacts on the mandated rollout.

The ACCC recognises that enabling retailers to elect to be the Responsible Person, and install manually read interval meters, may add logistical complexity to the roll-out. For example, in a competitive metering environment, the ESC would be required to monitor retailers to ensure that the rollout was occurring in accordance with the ESC's schedule. In a competitive retail market, the possibility that one of a number of parties would be responsible for installation of an interval meter would complicate the regulator's monitoring role. Distributor exclusivity provides greater certainty over the timing of meter installation and facilitates regulation of the roll-out.

5.5.1 Cost recovery arrangements: Victorian Distribution Price Review 2006-2010

The ACCC understands that, assuming the derogation is extended, the proposed cost recovery arrangements for metering for small customers, will commence from 1 January 2006 as follows:

- All standard metering services for types 5-7 meters, including the associated metering data services, will be classified as prescribed services on the basis that there is not potential or effective competition for these "basic" metering services. These services are to be unbundled from the DUoS charges and regulated as a separate metering charge;

- Any non-standard meter, such as one with remote reading capabilities, would be classified as an excluded service; and

- If the meter were a metering installation type 1, 2, 3 or 4, it would not be regulated on the basis that these are competitive services.

The ESC has advised that, in the absence of the derogation, metering services for all type 5 meters would remain as excluded services. According to the ESC, this has significant implications for the cost recovery program of the interval meter rollout, which is predicated on the classification of these services as prescribed services.

The ESC expressed concern that if metering services for type 5 interval meters were excluded services, the Responsible Person, whether a distributor or retailer, would seek to recover their upfront costs over a shorter time period relative to prescribed services. For example, a distributor might wish to accelerate the cost recovery to compensate for not having the certainty of recovering the cost of the asset through regulated charges over an extended period. The ESC contends that metering exclusivities will enable the cost of replacing meters for small customers to be amortised over an extended timeframe, and across the customer base with that type of meter.

Therefore, the ACCC recognises that a competitive metering environment would add some complexity to the cost recovery arrangements proposed by the ESC for the roll-out.

5.5.2 Retailer as Responsible Person

In a competitive metering environment, a retailer may wish to recover costs quickly given the risk that its customer may switch to another retailer at a later stage. The ACCC understands that there are concerns that retailers would be reluctant to rollout interval meters on the basis of these risks, or alternatively, retailers would only install interval meters in a manner that maximises their profit margin. The ESC claims that in the absence of the derogation, retailers would be less likely to install interval meters to customers with high peak loads, but that the benefits of the interval meter rollout are more likely to accrue from these customers. The ESC perceives these factors to be significant risks to the success of the mass rollout of interval meters.

The derogations will enable the ESC to smooth the impact of the roll-out on customer bills. The ESC submits that a distinct upfront charge for an interval meter will have an adverse impact on small customers, as that charge may be significant relative to a customer's bill. The ESC also states that where customers are liable for an upfront metering charge and the retailer installs an interval meter at the time of transfer, they would be less likely to switch retailers, thus creating a barrier to competition in the primary electricity market.

The ACCC acknowledges that enabling retailers to be the Responsible Person would require the costs of interval metering to be recovered on the basis that they are contestable services, which (in the absence of regulatory intervention) would result in the additional cost of interval metering being borne by customers through a distinct upfront charge. If these arrangements deter customer switching, or increase the initial financial impact of the interval meter rollout, then metering competition may present logistical difficulties for the rollout.

However, in relation to the perceived risk that retailers would not rollout interval meters to customers with high peak loads, the ACCC notes that the interval meter

rollout would presumably be subject to some form of regulatory oversight, and not left to the retailers' discretion.

The ACCC also examined whether, in the absence of the derogation, and in the context of the mandated manually read interval meter rollout, the regulatory framework in Victoria would provide incentives for retailers to be the Responsible Persons for metering, and pursue innovation in interval metering.

The ACCC considers that in the context of the mandated interval meter rollout, retailers would face limited incentives to own or procure manually read meters. Instead, future innovations in the market are likely to stem from forms of remotely read interval metering. The proposed condition of authorisation reflects the ACCC's expectation that metering innovation is likely to involve forms of remotely read interval meters.

The ACCC considers that metering contestability within embedded networks is a complex issue that is best addressed in the response to the JJR review's recommendations, rather than in the ACCC's determination.

5.6 Stranded asset risk

A potential consequence of meter churn is that distributors' metering assets could become stranded where they are replaced by retailers before the asset has been fully depreciated. This issue was raised in submissions by UED, Intermoco, and TXU following the draft determination.

The ACCC notes that metering contestability raises stranded asset risks, however, the materiality of these risks is not clear. The ACCC considers that the cost recovery mechanisms proposed by the ESC with respect to the mandated rollout of interval meters will address concerns about potential asset stranding.

The proposed condition of authorisation, which relates to remotely read type 5 interval meters, does not alter the cost recovery framework proposed by the ESC and is consistent with its definition of a non-standard interval meter.

The ESC has indicated that the remaining costs of type 6 accumulation meters will be recovered through smeared prescribed services charges, and that the costs of standard type 5 interval meter installations would be recovered over a period in the order of 15 years. The ACCC also understands that the ESC has advised distributors that they may consider including a termination or exit fee to reduce the stranded asset risk where the meter is stranded based on a customer or retailer request.[28]

Furthermore, once a standard type 5 meter is converted to or replaced by a remotely read type 5 interval meter, it can no longer be classified as a prescribed service and re-used *in situ* as UED suggests. If the distributor remains as the metering provider it is eligible to receive excluded service charges from the retailer; however, if the provider

[28] Essential Services Commission, Electricity Distribution Price Review 2006-2010, *Issues Paper*, December 2004, p215.

of the remotely read meter is another party (such as the retailer or a third party in the contestable market), the retailer would no longer be liable for excluded service charges.

The ESC stated that distributors will not face stranded asset risk because they will recover the costs of a standard interval meter installation through prescribed service charges. The ACCC concurs; as distributors may recover the costs of manually read type 5 interval meters either through prescribed services charges or through a termination fee, it appears that there is very little stranding risk.

Given the ESC's proposed cost recovery framework for manually read interval meter installations, the ACCC considers that Victorian distributors face neither a substantial degree of stranded asset risk, nor a disincentive to innovate in remotely read metering as Intermoco suggests. The motivation of distributors to innovate in remotely read metering is more likely to be influenced by their expectations about the regulatory and cost recovery framework for such assets. In situations where a distributor invested in remotely read meters, a termination fee, such as the one that the ESC has suggested in its *Issues Paper*, is one of the possible mechanisms to address stranding risk.

Furthermore, as noted above, a rational retailer is unlikely to replace a metering installation where it is not commercial to do so. Assuming that any meter transfer charges (if used) to the new retailer are cost reflective, it is unclear why retailers 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 also considers that measures can be designed to remove any deterrents to customers switching retailers, and notes that the issue of stranded meters has been addressed by the Ofgem as part the introduction of metering competition in the United Kingdom.

5.7 Impact on innovation, including use of remote metering communications

During the ACCC's initial consultation on Victoria's application, interested parties submitted that extending the derogation could have a detrimental effect on innovation in metering and metering services.

In relation to metering data services, and as noted in submissions, retailers have raised the potential economies of scope from enabling innovation in metering services, primarily across gas and electricity, but potentially also for water metering. Retailers have also submitted that the ability 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 do not face the same commercial incentives to pursue innovation to provide more innovative price/service offerings.

It can be argued that although meter reading in the gas and water markets is currently not contestable, combined utility meter reads, such as those suggested by Origin Energy, are currently possible despite the derogation, because price controls give distributors an incentive to lower the costs of meter reading. However, the ACCC

understands that retailers would prefer to be in a position where they would not have to negotiate with distributors to innovate in this way.

5.7.1 Use of remote metering communications

The ACCC recognises that in the context of a mandated interval meter rollout, new type 6 meter installations will be phased out. The standard interval meters that will be installed by distributors under the mandated rollout, will be manually read interval meters. Therefore, metering innovations in Victoria are likely to involve enhancements to interval meters, particularly remotely read interval metering.

Furthermore, it appears that currently, the metering innovations identified in submissions, and those that are emerging internationally, mostly involve meters with remote reading and communications technologies. 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.

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 expected innovation involves remotely read interval meters that may not be read at the frequency required to be classified as a type 4 metering installation.

Therefore, 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, thereby enabling innovations to materialise. Under the exclusivity derogations submitted to the ACCC, NEMMCO's classifications would need to be amended to enable innovations such as remotely read interval meters that are read less frequently to penetrate the market through retailer innovation. However, the issue of meter classifications is a broader Code issue which is more appropriate to be addressed during the response to the JJR final report.

The ACCC recognises UED's concerns that the definition of a remotely read interval meter as drafted by the ACCC in the draft determination does not align with the existing definitions of type 4 or type 5 interval meters. The ACCC notes that the condition of authorisation may necessitate consequential changes to jurisdictional metering instruments and metrology procedures.

The ACCC notes Intermoco's submission that the ACCC should consider either mandating the rollout of AMR equipment or incentivising metering businesses to install such equipment to those customers for which the net benefits of two-way communications (AMR) exceed manual meter reading processes. Although the ACCC is cognisant of the potential benefits of remotely read metering, and is eager to see this technology develop in the market, the decision to mandate any kind of metering or metering data technology is a Victorian Government policy decision. The ACCC also

notes that the Victorian Government considers that mandating remote communications would justify some degree of exclusivity in the provision of these services.

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

5.8 Efficient streamlined arrangements

Metering data must be collated, processed and delivered to NEMMCO for use in settlement of a retailer's energy purchases in the wholesale market. Metering data is also transferred to participants. Distributors require metering data for billing network charges, and retailers require metering data both for billing their customers for energy consumption and for reconciling their wholesale settlement obligations.

Victoria submits that the current arrangements are practical and efficient, and that distribution businesses are best placed to continue efficient provision of metering services for types 5-7 metering installations.

The ACCC notes that distribution businesses routinely contract with independent parties for the provision of metering and metering data services. This is also the case in the market for metering types 1 – 4, where the retailers commonly elect to undertake the role of the Responsible Person.[29] It could be expected that metering services would also be provided to retailers on a similar basis in a competitive market for metering types 5 – 7.

The ACCC considers that retailers have a commercial incentive to pursue metering solutions that are efficient and that would be to the benefit of their businesses. In the absence of the derogation, if the most efficient metering solution is for retailers to retain the services provided by distribution businesses, then this is likely to be the case. This view is supported by the conclusions of a consultancy commissioned by the ACCC from Frontier Economics.

The ACCC also notes Frontier's view that, as distributors are the default providers of metering services, retailers will only choose to become responsible for metering where the competitive market can provider better services than the distributors. The ACCC also notes that the role of the Responsible Person is subject to monitoring and enforcement by NEMMCO, and therefore that retailers would be subject to the same pressure to maintain obligations regarding data integrity as distributors would. NEMMCO notes that there has not been a significant difference in the quality of metering data where retailers have elected to be the Responsible Persons for metering installation types 1-4. However, NEMMCO has expressed concern that retailers have effectively subcontracted the role of Responsible Person to third parties, and that this may have implications for the quality of metering data in the mass metering market (i.e., metering installation types 5 and 6). The ACCC notes that NEMMCO has the ability to monitor Responsible Persons' compliance with their obligations, but that

[29] Types 1–4 meters are typically used by very large electricity users. Under the Code, retailers have the choice to be the Responsible Person for these metering installations. Hence, the market for metering types 1–4 is competitive.

NEMMCO's responsibilities currently do not extend to enforcement of those obligations.[30]

5.9 Economies of scale

It is argued that distributors have economies of scale in manual meter reading due to meter rounds that are undertaken within their entire distribution area. Therefore, Victoria submits that an increase in the number of metering providers due to metering competition would not derive the same efficiencies.

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.

The ESC also states that its cost-benefit analysis of the manually read interval meter rollout assumes that distributors will be exclusively responsible for providing manually read type 5 meters, and hence that there will be economies of scale in procuring and installing the manually read interval meters for the rollout. The ESC claims that additional costs that will be incurred if retailers are able to choose whether to rollout interval meters include a potential reduction in quantity discounts.

However, as with meter reading, the ACCC expects that a retailer would only elect to undertake this responsibility if it faced efficient price signals. If distributors are the most efficient providers of metering services, then it would be in the retailers' commercial interests to continue to procure metering services in this way.

5.10 Distributors' accountability for quality and timeliness of metering services

Electricity distributors and retailers have an agreement for the use of the distribution system, and licence conditions which are enforced in Victoria by the ESC.[31] 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 Victorian 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.

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30 National Electricity Market Management Company 2003, *Annual Metering & Retail Development Report 2003, p34*.

31 These are imposed under the *Electricity Industry Act 2000* (Vic).

The ACCC notes that the provision and installation of metering installations for second tier customers is also regulated under the Victorian regulatory regime[32] and that this regime can be used to increase the responsiveness of distributors. The ACCC also 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.

5.11 Joint Jurisdictional Regulators' Review of Metrology: duration and coverage of derogations

The Jurisdictional Regulators have recommended a number of metering-related Code changes. One of the recommendations 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 Victorian 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) would introduce market complexities.

Victoria has applied for the derogations to be extended 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 extend 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 the 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 JJR review.

5.11.1 Metering contestability threshold

Origin Energy submitted that the contestability threshold should be lowered to >20 MWh per annum customers. The ACCC acknowledges that metering contestability thresholds are currently set at relatively high consumption levels. However, the responsibility for determining those thresholds currently resides with each jurisdiction.

[32] In particular, the Electricity Customer Metering Code issued by the Essential Services Commission.

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 review. 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 full retail competition to be realised.

5.12 Definition of Type 6 metering installations

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.

5.13 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 distribution businesses as the Responsible Persons where this is perceived to be efficient. Furthermore, some of the perceived problems associated with metering competition, as outlined in Victoria's application, could be addressed through amendment of retail licensing and Code obligations, rather than by maintaining a monopoly on metering services.

There are several public benefits that would be lost if the derogations were not extended until 31 December 2006. These include the facilitation of the commencement of the mandated rollout of interval meters in Victoria, and code changes to respond to the JJR review.

The ACCC notes that a major driver for Victoria's application is the facilitation of effective competition in the retail market through the mandated interval meter rollout which is due to commence in Victoria in 2006. In considering this derogation, the ACCC has taken the ESC's decision to mandate a rollout of interval meters, and the calculated economic benefits of the rollout, as a given.

The ACCC accepts that the implementation of metering contestability for small customers may create additional logistical complexity for the rollout, and recognises that it may lead to accelerated recovery of the rollout costs. The ESC's calculation of benefits anticipated from the rollout, including establishing a digital platform for remote reading innovation, is predicated on the continuation of distributor exclusivity for type 5 meters. The ACCC considers that the extension of the derogations will provide more certainty regarding the necessary logistical processes and the timeliness with which the anticipated benefits of the rollout will be delivered, than if the rollout were to occur under competitive conditions.

In regard to concerns about stranding risk, the ACCC notes that the ESC's proposed cost recovery framework enables distributors to recover the costs of standard (manually read) interval meter offerings through either prescribed charges or through a proposed termination fee, including in circumstances where those meters are replaced following a customer's or retailer's choice to install a remotely read interval meter. Therefore, Victorian distributors do not appear to face a substantial degree of stranded asset risk. Moreover, in situations where a distributor invested in remotely read meters, the cost recovery methods such as those proposed by the ESC, or other changes to Victorian regulatory instruments, are some of the possible mechanisms to address stranding risk.

The ACCC considers that a further 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 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 also facilitate the commencement of the mandated interval meter rollout.

The ACCC also considers that there is public benefit in authorising the "statute law revisions", which make minor corrections to the derogations contained in clauses 9.8.7 (d) (2), 9.9A.2 and 9.9A.2 (c) of chapter 9 of the Code.

The ACCC considers that the case for ongoing distributor exclusivity is likely to be stronger in relation to unmetered supply. Due to the distributors' 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 for meter types 5 and 6 is that it prevents responsibility for metering residing with the entity most likely to introduce innovative metering arrangements, the retailer.

In the context of the mandated interval meter rollout, innovations in type 6 metering are unlikely. Metering innovation beyond the standard manually read meter offering is likely to involve forms of remotely read interval meters, including type 4 meters that are not currently subject to the derogation. The ACCC understands that currently, type 4 meters are generally suitable for very large retail customers only. Therefore, the existing meter classifications may not enhance the opportunities to extend metering competition to small customers where it is efficient.

Taking into account the various public benefits and the anti-competitive detriment 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. The ACCC also considers that the condition of authorisation will mitigate concerns regarding the efficiency and responsiveness of monopoly metering services provided by distributors.

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 9.9A.1 must be amended by the addition of the following provisions:

(c) For the purposes of clause 9.9A.2 and 9.9A.3 of this *derogation*, a reference to a "type 5 *metering installation*" is a reference to a type 5 *metering installation* that includes an interval meter that is manually read.

(d) Despite anything in the preceding paragraph, clauses 9.9A.2 and 9.9A.3 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.

(e) In the previous 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.

(f) This clause 9.9A.1 ceases to apply on the date on which clause 9.9A.2 ceases to apply.

6. Determination

On 6 April 2004, the ACCC received applications for authorisation (Nos A90915, A90916 and A90917) of amendments to the code. The applications were submitted by NECA on behalf of the Victorian Minister for Energy Industries and Resources.

The stated purpose of the applications for authorisation is to authorise the extension of the existing Victorian derogations contained in Chapter 9 of the Code. The existing derogations relate to metering arrangements in Chapter 7 of the Code, and grant exclusivity for the provision of metering services for certain metering installation types for small customers by distribution businesses in Victoria.

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

- engage in conduct that constitutes or may constitute the practice of exclusive dealing, within the meaning of section 47 of the TPA (Form E).

For the reasons outlined in Section 5 of this determination, the ACCC therefore grants authorisation to applications A90915 and A90916 pursuant to subsection 88(1) of the TPA and to grant authorisation to application A90917 pursuant to subsection 88(8) of the TPA.

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.

C1 Clause 9.9A.1 must be amended by the addition of the following provisions:

(c) For the purposes of clause 9.9A.2 and 9.9A.3 of this *derogation*, a reference to a "type 5 *metering installation*" is a reference to a type 5 *metering installation* that includes an interval meter that is manually read.

(d) Despite anything in the preceding paragraph, clauses 9.9A.2 and 9.9A.3 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.

(e) In the previous 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.

(f) This clause 9.9A.1 ceases to apply on the date on which clause 9.9A.2 ceases to apply.

Appendix A – Submissions received in relation to the application

1. AGL (Energy Sales & Marketing)
2. Centurion Metering Technologies
3. CitiPower/Powercor
4. Embedded Network Electricity Solutions
5. EziKey
6. Origin Energy
7. Trans Tasman Energy Group
8. TXU

Appendix B – Written submissions received in relation to the Draft Determination

1. AGL (Energy Sales & Marketing)
2. Centurion Metering Technologies
3. CitiPower and Powercor
4. Intermoco Solutions
5. TXU
6. United Energy Distribution
7. Victorian Department of Infrastructure
8. United Energy Distribution