

National Electricity Law Changes for Smart Meter Roll-Outs and Trials - Explanatory Note

The Ministerial Council on Energy (MCE) Standing Committee of Officials (SCO) has approved for public exposure and consultation changes to the National Electricity Law (NEL) to facilitate and support the accelerated roll-out and trials of smart meters in participating jurisdictions.

These changes are the first component of the national smart metering legislative framework being developed by MCE. They will underpin decisions to roll out smart meters where benefits outweigh costs in National Electricity Market jurisdictions, except in Victoria where the established arrangements for the smart meter roll-out will continue to apply. MCE's commitment to a national minimum functionality will be achieved in Victoria through subsequent arrangements that do not compromise efficient investments in that State under existing State provisions.

The NEL changes proposed should be read alongside this Explanatory Note.

Background/History

The intent of these changes is to implement decisions made by the Council of Australian Governments (COAG) and MCE regarding the roll-out of smart meters.

In April 2007, COAG endorsed a staged approach for a national mandated roll-out of electricity smart meters, to areas where benefits outweigh costs, and directed MCE to oversee this roll-out process.

To inform the roll-out, MCE commissioned a cost-benefit analysis (CBA) to review smart meter roll-out costs and benefits. In December 2007 MCE reviewed the first stage of this CBA and supported a national minimum functionality for smart meters, to ensure that benefits are maximised across all stakeholders.

In June 2008 MCE reviewed the second stage of the CBA and noted a wide range of potential net benefits, but that benefits and costs were not certain in all jurisdictions. On this basis, the MCE supported the development of a national smart metering framework and smart meter deployments in Victoria and New South Wales. MCE also supported extensive pilots and business cases in most other jurisdictions to confirm benefits, costs and risks. MCE also agreed to consider further deployment timelines by June 2012, based on the findings of the pilots at that time.

Also in June 2008, MCE noted the formation of the National Stakeholder Steering Committee (NSSC) to lead the development of the technical and operational aspects of the smart metering framework and build on the national CBA to inform future MCE decisions.

Regulatory arrangements (including cost recovery arrangements), consumer protection measures and safety standards for a national framework for smart metering are being developed by MCE, in consultation with market bodies and stakeholders.

MCE to provide guidance on regulatory arrangements

MCE has provided guidance on the direction of regulatory arrangements through its December 2007 and June 2008 smart meter Decision Papers and its June 2008 smart meter Statement of Policy Principles.

Decisions in these papers guiding the development of a legislative framework include:

- "...To maximise the net benefits of a mandated roll-out of smart meters in a timely manner and capture the operational benefits for distribution network service providers (DNSPs), DNSPs will be legislatively obliged to roll out smart meters to

some or all residential and other small customers in those jurisdictions where a mandated roll-out will take place..."

- "...while deployment in different jurisdictions will be on varied timescales, as relevant to net benefits in individual jurisdictions, the underlying regulatory arrangements for National Electricity Market jurisdictions will remain within a consistent national framework....";
- "...Legislative support for the roll-out is to be included in the National Electricity Law, including the obligation to roll-out smart meters on the distribution businesses where a jurisdictional implementation date has been set. This will include any legislative support necessary to ensure appropriate cost recovery, as well as proposed supporting Rules as necessary..."
- "...Supporting changes are to be included in the National Electricity Rules and NEM procedures to support: the National Minimum Functionality; service and performance standards; metrology arrangements; NEM management processes; data management; and business interfaces. This work will be undertaken by NSSC and reviewed by officials..."
- "Equivalent arrangements are to be developed as relevant in WA and NT, in a timeline relevant to their jurisdictional deployment".

MCE has also discussed the importance of pilots and agreed that:

- "...co-ordinated pilots and business-specific business case studies should be completed to confirm the findings of the cost-benefit analysis; and
- "...these pilots and business cases should be initiated as quickly as possible and coordinated through the NSSC to share results, optimise learning and ensure all aspects of smart meters and associated systems, and their impact on network and market operation and customer responses are tested..."
- "...a framework to support prudent costs of pilots be considered by SCO".

Relevant to the design of regulatory arrangements, MCE has also provided direction on elements of smart meter cost recovery including:

- "...in complying with any jurisdictional obligation to roll-out smart meters, distributors should receive regulatory cost recovery for direct costs consistent with the revenue and pricing principles in the National Electricity Law. However, MCE agrees that this cost-recovery should be clearly limited. Cost recovery should be net of reasonably achievable network operational benefits to ensure that these benefits are passed directly to consumers and the regulator should also consider mechanisms to smooth any related impacts on tariffs over time..."
- "Cost recovery should include meters and communications infrastructure which meet the National Minimum Functionality and systems directly required to meet agreed service requirements to other parties, such as billing and settlement. MCE will also review regulatory incentives to maximise the competitive purchase of meters and metering services, which is already common practice, and maximise cost-transparency..."
- "The regulatory framework for distribution network tariffs, consistent with the revenue and pricing principles, should ensure that distribution network service providers:
 - are able to recover in a transparent manner the costs directly resulting from meeting the mandated service standards for smart meters and the

- costs of their existing investment which has been stranded by any mandatory roll out; and
- promptly pass on cost efficiencies resulting from the installation of smart meters to tariff classes affected by the costs of a smart meter roll-out."

Key tenets to be in the NEL

This paper contains proposed legislative provisions to implement those aspects of MCE's decisions that must be reflected in legislation. A vital aspect of the MCE proposal to accelerate the roll-out of smart meters is that the key tenets of the legislative framework are included in the NEL. Specifically this means that the smart metering services the NEL will require to be delivered will have a national focus – they will be defined in accordance with the requirements of the National Electricity Rules (Rules) and will reflect the high level functionality endorsed by the MCE in December 2007 and June 2008.

Supporting framework to be in the Rules and applied by a jurisdictional determination

These proposed NEL changes are intended to define roll-out responsibilities and provide high level guidance on the scope of the roll-out. The NEL changes are to specify the mechanism by which the obligation to roll out or trial smart meters in a jurisdiction will be facilitated and outline the concept of smart metering for this purpose. This is then to be supported through technical and operational details for smart meters to be included in the Rules and roll-out timing and geographical coverage requirements outlined in jurisdictional instruments.

As mentioned earlier, these NEL changes are to work alongside rather than replace Victorian roll-out arrangements. Victoria has its own processes and requirements for their roll-out of smart meters in place and the outlined amendments are not intended to replace these. Victoria is to develop subsequent arrangements that do not compromise efficient investments in that State under existing State provisions.

Proposed NEL changes

The NEL changes proposed are to provide:

- that a Minister of a participating jurisdiction may make a determination in relation to a regulated DNSP operating predominantly in that jurisdiction such that the regulated DNSP must, in accordance with the Rules ensure that customers:
 - specified in the determination (as defined by the minimum number of relevant customers, the class of relevant customers and the minimum number of supply points); and
 - in the regions prescribed by the determination (e.g. all of their network)

must be provided with smart metering services:

- which meet the standards specified in the Rules;
 - in accordance with a timetable prescribed by the determination; and
- that a Minister of a participating jurisdiction may specify in a determination that a regulated DNSP operating predominantly in that jurisdiction must conduct such pilots and trials of remotely read interval meters of a nature and to timings, performance standards and service levels specified in the determination. It is anticipated the determination would specify:
 - which businesses are involved;
 - the customer numbers and types of customers covered by the determination;
 - the type or functionality of remotely read meters or of associated processes and systems that would be trialled (noting that the Rule definition and standards for smart meters might not be finalised at the time the determination is issued);
 - relevant timeframes for the pilots or trials; and

- pilots or trials process requirements.

The central link to the Rules would be that 'smart metering services' would be defined as services provided to a customer by means of a remotely read interval meter which, at the time it was installed, met the specifications of a smart meter in the Rules.

The application of the mandate to a DNSP and the timing over which this framework will apply will be in the hands of the relevant jurisdictional Minister for the region in which the DNSP is predominately situated. This is intended to allow DNSP's who operate across jurisdictions to conduct pilots or roll-out across all of their customers, regardless of which jurisdiction these customers reside in. This will also allow Ministers to reflect the differing jurisdictional circumstances mainly affecting that DNSP. Each jurisdiction's timeframe for roll-out to target customers or for pilots and trials is to be set according to the requirements of that jurisdiction, by specifying the implementation timetable in the relevant determination.

Of note, the Rules will specify any detailed requirements in relation to cost recovery and the pass-through of benefits to customers and would be the key mechanism to encourage prompt compliance with the timetable outlined in the jurisdictional instrument.

Rationale Supporting the Proposed Approach

SCO considers that providing for the key tenets of the proposal in the NEL is appropriate and provides a national regulatory framework, while allowing jurisdictional governments to decide on the application and the timing of the smart meter roll-out mandate and pilots. It maintains the strong national approach MCE endorsed in its June 2008 decision. Additionally, however, it recognises that it is appropriate to provide the Minister of each participating jurisdiction with the relevant mechanism by which the provision of the smart metering services or pilots will be required. This approach reflects the different levels of certainty about smart meter roll-out costs and benefits in different jurisdictions.

The provision in the NEL allowing for the obligation to roll out smart meters to be specified is the first step in the implementation of a national smart metering framework. It will help provide regulatory certainty to DNSPs and therefore assist with associated risk management. It will also facilitate consideration by the AER (when exercising an economic regulatory function or power) of the terms of that regulatory obligation (refer to the revenue and pricing principles provided by s 7A(2)(b) of the NEL, read with definitions contained in s 2 of the NEL).

The provision in the NEL allowing for the obligation to conduct specific pilots to be specified is intended to support timely and nationally coordinated pilots. Current Rule provisions only allow for the AER to reconsider a DNSP's revenue determination (providing for cost recovery) in light of a new regulatory obligation or change in the external environment that would materially affect the DNSP's costs of providing regulated services. A Ministerial mandate for particular pilots made under the NEL provision would trigger the 'regulatory obligation' element of the cost recovery framework and will allow pilot cost recovery to proceed more quickly. The NEL changes are for the specific purpose of supporting the MCE decision on cost recovery for pilots.

SCO envisages that DNSPs will develop pilot programs in consultation with one another where appropriate, based on an NSSC evaluation of pilot needs. Ministers may consider these programs when mandating pilots. This determination may also allow Ministers to require that information be shared to minimise duplication and maximise roll-out benefits, as outlined in MCE's June 2008 decision.

Consultation on NEL provisions

SCO has consulted on these NEL provisions with key stakeholders during their development and is now seeking public comment in conjunction with the exposure draft of the Australian Energy Market Operator (AEMO) legislation by close of business on Tuesday 10 February 2009. In accordance with the exposure draft process, parties interested in commenting on the proposed legislative framework are invited to submit comments.

Existing cost recovery provisions may not be adequate

It is recognised that existing economic regulation provisions for DNSPs need to be reviewed to ensure that they are adequate to allow for smart meter cost recovery in light of MCE policy. The next steps are to progress an appropriate cost recovery framework in the Rules, which is consistent with MCE's Statement of Policy Principles issued in June 2008.

In developing this framework it will be important to ensure that it provides appropriate incentive for prudent and efficient cost recovery, recognising smart meter technology is relatively new and industry experience of roll-out costs and benefits is limited. It will also be important to provide incentives for roll-out benefits to be promptly passed on to consumers.

Consultation on economic regulatory framework proposal

In parallel with consultation on the draft NEL provisions, SCO will draft a Terms of Reference (TOR) for an Australian Energy Market Commission (AEMC) review of the economic regulatory aspects of the Rules in relation to smart metering. SCO is keen to engage relevant stakeholders to assist it in finalising the TOR, which will be submitted to MCE for approval. SCO will continue to rely on the services of the NSSC to assist. Additionally, SCO expects to learn from the work that Victoria has carried out over the past few months and that has culminated in the revision of its Order in Council dealing with cost recovery for Victorian businesses required to provide smart meters.

SCO expects to hold a consultation workshop in February 2009 to progress this work further and to assist it to finalise the TOR for the AEMC review, prior to MCE consideration.

SCO notes that in conducting a review the AEMC must adhere to its prescribed consultation process when developing the associated Rule changes, giving stakeholders further opportunity to comment.

Feedback Questions

SCO welcomes stakeholder feedback on the proposed way forward. In providing feedback SCO is particularly keen to understand stakeholder views in regards to the following questions:

- Do stakeholders consider the intended framework and proposed NEL changes an appropriate implementation of MCE's policy principles for accelerated smart meter roll-outs – particularly the split of details to be provided in the NEL versus the Rules?
- For pilots, do stakeholders consider this an appropriate implementation of MCE's decision to develop a framework for prudent recovery of pilot costs, where pilots are initiated without delay, coordinated through the NSSC and results shared?