



Manager
MCE Secretariat
Department of Industry, Tourism and Resources
GPO Box 9839
Canberra ACT 2601
sent via email: mcemarketreform@ret.gov.au

06 August 2009

Dear Manager

**Re: Proposed amendments to National Electricity Law (NEL)
Second exposure draft**

ACOSS welcomes the opportunity to respond to the second exposure draft of this legislation and the draft initial rule. ACOSS has participated in processes to consider the proposed legislation in conjunction with partner organisations in the National Consumer Roundtable on Energy and through membership of the National Smart Metering Program (NSMP) National Stakeholder Steering Committee (NSSC).

ACOSS is generally supportive of the submission lodged by the NSSC. This letter highlights some overarching concerns about the legislation as proposed.

ACOSS is the peak council of the community welfare sector in Australia and the national voice for the needs of people affected by poverty and inequality. Our interest in energy markets is primarily the result of our interest in matters affecting low income and disadvantaged Australians. Our interests primarily concern residential 'small' end-users of electricity and gas. We hold the view that energy services are essential services and should be supplied equitably, affordably, reliably and sustainably.

The Policy Response (to submissions in response to the first exposure draft) provided by MCE Standing Committee of Officials (SCO) notes that the "proposed amendments are intended to provide heads of power for state and territory energy ministers to mandate pilots and roll-outs of smart meters" and that "[t]hese legislative changes support the Council of Australian Governments' (COAG) commitment to a staged national roll-out of electricity smart meters to areas where benefits outweigh costs".

Legislation unnecessary, untimely, unhelpful

Our main concern is simply that the legislation is not required, or not at this stage and not over the course of the next 18 months. Related to that concern is our genuine belief that the amendments as proposed pre-empt and may detrimentally affect other current and imminent processes, notably the wide-ranging work of the NSMP and the impending review by the Australian Energy Market Commission (AEMC), at the request of MCE, of the adequacy of the National Electricity Rules with regard to cost recovery

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Our understanding is that no jurisdictional energy minister is remotely likely to consider the mandate of a roll-out of smart meters over the course of the next 18 months. Our understanding is that there are appropriate and robust alternative means to facilitate meter trials and to provide for the recovery of costs incurred by distribution businesses and retailers in the course of such trials.

Critical policy issues unresolved by stakeholders or governments

Towards the end of its first year of work the NSSC has identified two major and interlinked issues affecting consideration of technological, regulatory and institutional matters. These issues are the question of exclusivity (and contestability) in provision of meters and meter services and the question of responsibility (and accessibility) for so-called switching functions or ‘customer services’. A process to inform and consult with stakeholders has begun and is due for completion in October. The product of this process will be analysis and advice to MCE SCO and MCE. These questions and the manner in which they are resolved have implications for the subjects of the proposed amendments.

The Policy Response acknowledges that “[s]ignificant analysis is required to define smart metering services and the long run responsible person for these services” and that “SCO expects the NSSC to define smart metering services, roles and responsibilities, and draft possible rules”. The proposed amendments seem to us to either tacitly assume the results of this as yet incomplete analysis or to act without regard to this analysis. We suggest that neither approach aligns with evidence based policy or good regulatory practice.

Particular concerns with amendments as drafted

We have suggested that the proposed amendments are not well considered and thus ought to be delayed. However, we offer some observations about the detail of the Bill on the understanding that MCE may proceed to the Parliament of South Australia.

Division 1 – Interpretation

s118A Definitions

required smart metering infrastructure

means smart metering infrastructure

(a) that is specified under the Rules to be required smart metering infrastructure

(b) that complies with a standard specified under the Rules

We are of the view that this text goes to highlight our concern that further development is required. The definition of ‘smart metering infrastructure’, the subject of the Bill, has yet to be resolved, is the focus of continuing research and is contested. There is as yet no agreed standard for the infrastructure, however defined, and if there were it has not been incorporated into the NEL. In the event that MCE does proceed to legislate these amendments to the NEL, we suggest that this definition be revamped and/or that the transitional Rule include a more definite definition.

Division 3 – Ministerial smart meter determinations

s118E (4)

(4) Without limiting subsection (1), a Ministerial smart meter roll out determination may specify

(a) the date or dates by which required smart metering infrastructure, or different classes of smart metering infrastructure, become operational;

(b) the date or dates by which, and the location at which, smart metering services, or different classes of smart metering services, must be provided.

We are of the view that any ministerial determination should, that is ‘must’, specify dates for both (a) and (b) above. There is otherwise an intolerable lack of certainty for consumers. If there is some chance that the infrastructure for which consumers have paid (and dearly) does not become operational and/or provide all of the specified services by the end of the period of a mandate (or indeed, in some locations at earlier dates), consumers can have no confidence that the promised benefits of smart metering infrastructure will flow to them in a timely way.

Cost recovery and certainty

In the course of developing an NSSC-agreed response to the second exposure draft of the Bill, one particular issue has exercised stakeholders. Distribution businesses and retailers are dedicated to codification of ‘certainty’ in recovery of costs associated with both trials and roll-outs. Consumer advocates are concerned to ensure that costs are assessed independently through appropriate regulatory processes and found to be i) directly attributable to trials and/or roll-outs and ii) reasonable and efficient. Consumer advocates have continuing concerns to ensure that assessments of the costs and benefits of smart metering infrastructure, however finally defined, are comprehensive and transparent. Developments in Victoria, while not necessarily precedent setting, give us cause for alarm. It does seem that roll-out costs have been significantly underestimated, while benefits remain amorphous and distant. Consumer advocates continue in good faith to contribute to processes towards the roll-out of smart meters in areas where benefits outweigh costs. We seek to be certain that costs are thoroughly and accurately estimated, monitored and reported and to ensure that anticipated benefits are realised.

Summary

We support the submission of the NSMP NSSC, made jointly on behalf of consumers, distribution businesses and retailers. The unambiguous view expressed in that submission, by consensus of the three key stakeholder groups, is that the amendments as proposed are premature and ought to be put in abeyance pending the outcome of work in train. The submission offers an alternative but much less preferred suggestion such that amendments be made with regard only to trials ie that roll-outs not be addressed in this first tranche of smart meter-related amendments.

Through the NSMP NSSC and the AEMC, MCE has set in train extensive and expensive research and development efforts towards the COAG mandate. As advocates for the interests of affected consumers and as contributors to these efforts, we strongly suggest that the proposed amendments be rested until such time as the NSSC has finalised its programmed work on business requirements, regulatory matters and business procedures and the AEMC has provided advice, as requested, to the MCE. We suggest that to act ahead of these processes would be to jeopardise the project.

Should you have any questions regarding our views please contact Tony Westmore, Senior Policy Officer on 02 9310 6200

Yours sincerely
Australian Council of Social Service

A handwritten signature in black ink, appearing to read 'Clare Martin'. The signature is fluid and cursive, with a large initial 'C' and 'M'.

Clare Martin
Chief Executive Officer