



## **National Stakeholder Steering Committee**

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### **NSSC Submission on Second Exposure Draft of the Amendment to the National Electricity Law in Relation to Smart Meters and the Draft Initial Rule**

#### ***Introduction***

1. The National Stakeholder Steering Committee (**NSSC**) has been established by the MCE to recommend a national framework for the roll-out of smart metering infrastructure. As an expert industry/consumer body, the NSSC is well positioned to provide expert advice that reflects a common view of distributors, retailers and consumers in relation to the roll-out.
2. On 9 July 2009 the Ministerial Council on Energy (**MCE**) Standing Committee of Officials (**SCO**) released for public comment the:
  - a. Second Exposure Draft of legislative amendments to the National Electricity Law (**NEL**) in relation to smart meters (**revised NEL SM amendments**); and
  - b. Exposure Draft Transitional Rule to implement the MCE policy in relation to a defined exclusivity over smart meter provision and related metering data provision (**draft Initial Rule**).
3. The NSSC responded to the first exposure draft of NEL amendments in February 2009 to apply its expertise in promoting the policy objectives of the MCE. The revised NEL SM amendments and the SCO's Policy Response published with those amendments positively address many of the points raised then and the NSSC is pleased its contribution has been valuable. The NSSC welcomes the opportunity to contribute further through this submission.



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4. As it did in its February submission, the NSSC has identified aspects of the revised NEL SM amendments and draft Initial Rule (together referred to as **the legislative package**) which present some risks to achieving a workable framework for the roll-out and which may hinder achievement of the MCE's policy objectives.

### **Summary**

5. The NSSC has six main concerns:
  - a. **the legislative package is premature** because:
    - the revised NEL SM amendments may limit the development of the underpinning national regulatory framework, and
    - the Initial Rule would be better contemplated when the further issues around exclusivity and contestability have been fully considered by the NSSC as proposed;
  - b. **principles for retailer cost recovery must be addressed at the national level** as smart metering is a national policy initiative<sup>1</sup>;
  - c. **cost recovery for retailers and distributors for trials and assessments is not adequately addressed:**
    - distributors contracting with retailers to provide necessary services is not assured,
    - the problem that the current requirement that pass through costs be 'material' has not been solved, and
    - the issue of cost pass through for alternative control services has not been addressed;
  - d. **insufficient protections are proposed for public disclosure of information** so the disincentive for participation in trials and assessments remains;
  - e. **transitional delivery of smart metering services risks the full set of services being delayed** beyond the end of the roll-out; and
  - f. **ministerial determinations creating loss on existing contracts** has not been addressed.
6. Suggested solutions to these matters are:
  - a. deferral of the legislative package, or short of that, limiting it to trials and assessments;

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<sup>1</sup> It is acknowledged that this issue is not technically a necessary part of the legislative package, however, the NEL SM amendments will be the first formal recognition that a roll-out will most likely occur and the associated issue of retailer cost recovery should be dealt with at the same time.



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- b. MCE support for the principle of full retail cost recovery for any mandated smart meter roll-out, where retail price regulation continues, with consequent amendments to the Australian Energy Market Agreement;
- c. if amendments to the NEL go ahead (either in whole or just for trials and assessments), a ministerial pilot metering determination cannot be made until retailer and distributor cost recovery is certain and those determinations should be limited to those matters a distributor is able to deliver. Absent a satisfactory mechanism for particular industry participants, cost recovery through direct government funding and legislatively enabled amendments to the National Electricity Rules (Rules) is required;
- d. further matters to be considered before the release of sensitive information be included in the NEL;
- e. the intent that by the end of the roll-out period all the smart metering services specified in the Rules would be activated has legislative backing; and
- f. the NEL provides that no cause of action will lie against a party for breach of contract where that breach is compelled by a ministerial determination.

### ***Discussion of main concerns***

#### Legislative package is premature

- 7. The legislative package is premature as it relies on a supporting regulatory framework that has not been developed and making the legislation first may constrain the development of that framework or mean more amending legislation could be required.
- 8. If the MCE chooses to proceed with the revised NEL SM amendments, they should be limited to creating a head of power for a ministerial pilot metering determination, however such a determination should only be made where cost recovery for distributors and retailers is certain **but only where these costs are assessed independently through appropriate regulatory processes and found to be i) directly attributable to the mandated trials and assessments and ii) reasonable and efficient.** Whilst there may be some benefit in providing legislation soon to support trials and assessments, there is no conceivable need for the head of power for roll-out determinations or the rule for implementing the exclusivity decision to be made now.
- 9. Deferring the roll-out provisions would probably solve the problem of the possible mismatch between the NEL and the supporting regulatory framework. Deferring the Initial Rule will allow the further policy issues associated with the exclusivity decision to be resolved and a MCE made rule to deal with all the policy issues at the same time can be made.



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10. These points are explored in more detail in this section (paragraphs 11 to 24). There is a related point: even if the NEL is amended to provide a head of power for ministerial determinations for trials and assessments the ministerial pilot metering determinations themselves cannot go ahead until cost recovery for retailers and distributors is resolved. This issue is discussed in paragraphs 28 to 39.

### *The revised NEL SM amendments*

11. To progress the revised NEL SM amendments without the underlying instruments risks that the NEL will not have dealt with all the matters it needs to or, in relation to the matters the NEL does deal with, it does so inadequately. Amendments may be required. Premature legislation may also constrain the drafting of the supporting regulatory instruments because the priority will be for those instruments to comply with the legislation rather than what may be the best for the instruments internally.

12. An example of this difficulty occurs in the definitions of 'required smart metering infrastructure' and 'smart metering services' and clause 118G dealing with the provision of smart metering services. The drafting refers to compliance with smart metering infrastructure standards specified under the Rules, smart metering services specified under the Rules and that smart metering services must be provided in accordance with standards specified under the Rules.

13. However there are currently different views on whether infrastructure standards will be regulated at all and whether all smart metering services will be specified under the Rules (particularly those services related to 'switching load'). It remains to be finally determined if smart metering service standards are regulated in NEM procedures (rather than the Rules) as is currently proposed. So the assumption in the revised NEL SM amendments that these matters will be regulated in the Rules may not hold.

14. Then there is the matter of different terminology: the NSSC is likely to prefer that the Rules refer to infrastructure standards as 'performance levels' and service standards to be met by distributors as 'service levels', leaving 'service standards' as a term that applies to the final service delivered to customers.

15. The NSSC supports the intent that the specification of smart metering infrastructure and smart metering services not take place in the Ministerial determinations but instead occur in national regulatory instruments not subject to Ministerial discretion. It seems that the drafting is designed to achieve this objective but in doing so the expressed concerns arise. These concerns are explored further in the Appendix to this letter which contains submissions on drafting matters.

16. The NSSC does not share the SCO's confidence that the revised NEL SM amendments will not affect or impose limitations on the development of the national regulatory framework. For this reason, the legislative package should be deferred.



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17. The NSSC understands it is considered important to have the draft Initial Rule available so the supporting head of power to be introduced into the NEL can be considered in context. The same thinking should apply to the revised NEL SM amendments generally so that they should not be progressed until the supporting regulatory framework is available. To do otherwise does not promote certainty but has the opposite effect.
18. If the MCE chooses to proceed with the revised NEL SM amendments, they should be limited to creating a head of power for a ministerial pilot metering determination, however such a determination should only be made where cost recovery for distributors and retailers is certain **but only where these costs are assessed independently through appropriate regulatory processes and found to be i) directly attributable to the mandated trials and assessments and ii) reasonable and efficient.** The NSSC supports in principle the need for a Ministerial determination in respect of trials and assessments and recognises there may be some benefit in providing legislation soon to support these. However, there is no such imperative in relation to legislative support for a mandated roll-out, a Ministerial determination for which will not conceivably be made within the next 12 months, or in relation to legislative support for the implementation of the exclusivity decision, the timing for which is the same as the timing of a roll-out determination.
19. Making the legislation for trials and assessments will give a clear public message that the smart metering policy initiative is well underway whilst allowing the issues concerning the overall regulatory framework discussed above to be resolved in a considered way.
20. If the MCE determines to proceed with the legislative package, the NSSC submits a number of drafting amendments need to be addressed and these are outlined in the Appendix. The NSSC would also welcome recognition in any supporting papers published in the policy environment (but not in the parliament) that further NEL amendments may be required to address issues as they arise.

### *The draft Initial Rule*

21. As mentioned in paragraph 17, the inclusion of a head of power for the South Australian Minister to make an MCE recommended Transitional Rule demands that a draft of that Rule be available to give content to the head of power. The NSSC does not question this approach but submits that it results in a premature draft Initial Rule.
22. There remain difficult issues to resolve concerning the scope of the distributor exclusivity during a roll-out period, most obviously whether the exclusivity should extend beyond metering data services to 'switching load' services. Also, as noted in paragraph 55, the NSSC looks forward to fulfilling the responsibilities the SCO has conferred upon it to define smart metering services, roles and responsibilities, and



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draft possible rules for where there is a mandate, after a mandate and where there is no mandate.

23. However these are policy issues which will be ultimately determined by the MCE following advice from the NSSC. It would be sensible to wait for the resolution of these issues before making a MCE recommended Rule. The MCE could deal with these issues, rather than the Australian Energy Market Commission (AEMC), because the decisions about market structure are policy decisions and they are not so closely related to a broad set of the Rules such that the AEMC needs to have a broad oversight. In that sense the Rules changes around market structure are different to the technical and operational changes to Chapter 7 generally which should be considered by the AEMC.
24. As noted in paragraph 18 there is no substantive urgency for the making of the Transitional Rule concerning exclusivity and contestability to support a roll-out of smart metering infrastructure.

### National principles for retailer cost recovery

25. The NSSC submission of February 2009 outlined the costs that will be incurred by retailers in relation to both trials and assessments and a mandated roll-out. That submission established that retailer cost recovery needs to be specifically addressed.
26. It is inconsistent with the national nature of the smart metering program to simply note that retailer cost recovery is a jurisdictional matter and therefore retailer costs resulting from a smart meter roll-out should be considered by the relevant jurisdictional authority at the appropriate time. The smart meter roll-out costs will be incurred as a result of a national policy initiative and the principles for the recovery of those costs must be addressed at the national level.
27. The NSSC does not question that smart meter roll-out costs should be considered by the relevant jurisdictional authority. Importantly, these existing mechanisms provide independence and a transparent process for the assessment of the costs which is open to scrutiny. However the NSSC does consider that these jurisdictional processes ought to be guided by nationally agreed principles and submits that:
  - a. the Ministers of Energy, through the MCE, support the principle of full retail cost recovery for any mandated smart meter roll-out, where retail price regulation continues;
  - b. the principle of retail cost recovery embraces both the direct pass-through of any network charges associated with a mandated smart meter roll-out and incremental efficient costs of amending a retailer's systems and processes;



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- c. this principle is incorporated into the Australian Energy Market Agreement, in a form similar to the recent amendment for the pass-through of the Carbon Pollution Reduction Scheme;
- d. a method for retailer cost recovery for trials and assessments mandated by a jurisdictional minister (or equivalent) is agreed to, such that the retailer involved in the trials and assessments is assured of full cost recovery.

### Cost recovery for retailers and distributors for trials and assessments is not adequately addressed

28. If amendments to the NEL proceed for trials and assessments, a ministerial pilot metering determination cannot be made until the recovery of **retailer and distributor** costs for meeting the imposed obligation is certain (**subject to the proviso as per paragraphs 8 and 18**) and should be limited to those matters a distributor is able to deliver.

29. That certainty can be achieved in a variety of ways:

- a. there may be circumstances for a particular distributor that give it cost recovery certainty, perhaps by way of a distribution determination of the Australian Energy Regulator (**AER**);
- b. the AEMC might conduct a review which may give the necessary comfort, perhaps with consequent Rule changes;
- c. the MCE could recommend a Rule addressing the recognised difficulties in the drafting of the current Rules; and
- d. direct government funding where there are gaps in the cost recovery framework.

30. These points are now explored in more detail.

#### *Retailer costs*

31. The submission made at paragraph 27.d, that a method is found such that the retailer involved in trials and assessments is assured of full cost recovery, is not met by the revised NEL SM amendments.

32. The proposal that distributors contract a retailer to provide trials and assessments services and that the effectiveness of this model be referred to the AEMC to consider in its review has these problems:

- a. it does not recognise incremental retail costs that are not trial costs but may be a consequence of a trial or assessment (for example the costs of processing interval data not otherwise required for accumulation meter customers whose response is not a part of the trial);



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- b. it assumes there will be no difficulty in establishing the distributor-retailer contract but that may not be so. There may be practical difficulties with such a contract (for example in relation to required access (if any) to distributor systems and the relationship of those systems to network security). Also, retailers may not respond to a tender, particularly if the tender occurs before the AEMC's review and the distributor's terms seek to pass on regulatory risk;
  - c. until such time as the AEMC has completed its review, distributors cannot be assured that costs incurred under the contracts will be recoverable. There are identifiable regulatory risks about the *ex ante* nature of a pass through application that may need to be made in response to a ministerial pilot metering determination (the application needs to be made within 90 days of that determination and that may be before the actual costs are known, *ie* before the contract is entered into) when the pass through framework of clause 6.6.1 of the Rules is built around the event having occurred and the incremental costs being known. Even if the costs are known and arise from a tender there is nothing which compels the AER to approve a tender outcome as efficient, about which there may be some conjecture in the circumstances.
33. The obvious principle that a distributor should not be obliged by ministerial determination to deliver something over which it has no control coupled with the possible difficulty in establishing the distributor-retailer contract leads to the conclusion that a ministerial pilot metering determination cannot include matters going to consumer response and awareness, yet these will be critical matters for consideration.

### *Distributor costs*

34. A distributor may be assured of cost recovery through mechanisms that are particular to it. For example trials and assessment costs may be fully dealt with by the AER in a distribution determination. However in other cases there may be no relevant determination or the determination may not fully deal with the scope of work under a ministerial determination. In these cases reliance may need to be placed on the pass through provisions of the Rules.
35. In the SCO Policy Response paper issues about the materiality threshold for a pass through and the classification of services are recognised and referred to the AEMC for consideration. However, where these issues are relevant to a particular distributor and have not been resolved a ministerial pilot metering determination cannot be made. Waiting for an AEMC review to be completed will mean a ministerial pilot metering determination may not be possible for perhaps nine months or more.

### *Submission*



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36. A ministerial pilot metering determination cannot be made until the recovery of costs for meeting the imposed obligation is certain.
37. For ministerial pilot metering determinations that deal with consumer related issues direct government funding for retailer costs is required.
38. Similarly, direct government funding of distributor costs is required wherever the regulatory framework does not provide cost recovery certainty. A distribution determination of the AER may provide that certainty. If reliance is to be placed on the pass through provisions of the Rules, an AEMC review may provide the required certainty though there will be delay. Alternatively, proposed section 90C(1) of the NEL is a broad enough head of power for the draft Initial Rule to deal with the problem of 'materiality' and the classification of services as alternative control services. To illustrate that this would be a simple matter, indicative drafting of the Rule is:

Despite anything to the contrary in these Rules or a distribution determination, a Ministerial pilot metering determination is a *positive change event* for the *distribution network service provider* to whom the Ministerial pilot metering determination applies and clause 6.6.1 shall apply (including, where necessary, as if the reference to *standard control services* were a reference to *alternative control services*).

39. There may be other problems with the Rules; if the SCO is attracted to this solution the NSSC, through its advisers, would welcome the opportunity to explore required Rules changes further.

### Insufficient protections for public disclosure of information

40. The NSSC's thoughts about this issue were set out in the February 2009 submission and the provision of statutory protection against suit for breach of confidence is welcomed. However, the fundamental concern that public disclosure of information may inhibit the effectiveness of trials and assessments by creating a disincentive for participation remains. A commercial party will be hesitant to expose its technology and cost information in circumstances where that information may be seen by its competitors or its reputation may be damaged in a trial environment.
41. The NSSC is concerned that the comfort obtained from the legal and economic framework of the national electricity objective may not be immediately obvious to a commercial person considering participation in a trial. To address the concerns about participation additional, directly expressed constraints are required. The NSSC recognises this may look like a 'list of objectives' but in the specific circumstances under consideration that seems to do little harm.



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42. The NSSC submits that information released publicly (as distinct from that released to a minister or other party involved in the trial or assessment):
- a. must only be the results of the trial not any proprietary information,
  - b. must not identify the person to whom the information relates unless otherwise agreed,
  - c. must be aggregated;
  - d. must not be released unless the minister is satisfied that to do so would not cause detriment to the person to whom the information relates or that if such detriment would be caused it is outweighed by the benefit in disclosing it;
  - e. must not be released without consultation with the person to whom the information relates.

### Transitional delivery of smart metering services risks the full set of services being delayed

43. The NSSC welcomes the SCO view that the specification of smart metering services be consistent across the national framework. The NSSC acknowledges that there may be a need for flexibility in the activation of functionalities and the SCO's intent that by the end of the roll-out period all the smart metering services specified in the Rules would be activated.
44. This intent should be reflected in the NEL. The National Consumer Roundtable on Energy strongly believes consumers are entitled to know that the smart metering services they are funding will be delivered in a timeframe that reflects the period in which that funding occurs. Similarly, if there is the requirement for an end date the possibility of an extended period in which retailers face differing circumstances across jurisdictions should be minimised.
45. There is a technical question of how the "end of the roll-out period" should be expressed and the NSSC's preferred mechanism for effecting the SCO's intent is for the revised NEL SM amendments to require the ministerial smart meter roll out determination to prescribe a date by which all the smart metering services the subject of the determination are to be provided.

### Ministerial determinations creating loss on existing contracts

46. The revised NEL SM amendments continue to provide that a Ministerial determination might have effect despite anything to the contrary in any agreement or contract. The NSSC remains concerned about this provision, however, acknowledges that its earlier submission that such a provision is not appropriate has been rejected.



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47. However, the SCO Policy Response does not address that aspect of the NSSC submission that a provision of this sort needs to deal with the consequences to the contracting parties including who bears the financial loss arising. It is unlikely costs to distributors would be recoverable under current economic regulation and costs to retailers would likely be borne by them where subject to retail price regulation. In a manner similar to the statutory protection now acknowledged as necessary for any breach of confidence that may arise from complying with a determination to share information, the NEL must provide that no cause of action will lie against a party for breach of contract where that breach is compelled by a ministerial determination.

### ***Other concerns***

48. In addition to the six main concerns, the NSSC has two further matters to raise.

#### End date of amendments

49. The NSSC welcomes the SCO recommendation that the MCE agree to review the smart meter NEL provisions in 2020 and submits that there is no reason that such a review not be mandated in the NEL to provide certainty that ministers will not continue to hold the powers conferred by these provisions beyond a period that is necessary to achieve the policy objectives of the roll-out.

#### MCE adoption of SCO positions

50. In its Policy Response the SCO has stated that an obligation created by a minister under the revised NEL SM amendments triggers the definition of a changed regulatory obligation or requirement based on its interpretation of the Rules and those amendments. If the pass through provisions of the Rules remain the preferred mechanism for distributor cost recovery, it is desirable that the MCE endorse that position to assist in providing comfort to distributors about the operation of those provisions.

51. The revised NEL SM amendments no longer contain a specific provision allowing the incorporation of documents in a ministerial determination as reliance is placed instead on Item 21 of Schedule 2 of the NEL. The SCO states that the intent is not to provide a minister with the ability to apply standards different to those in the NEL. Again, it is desirable that the MCE endorse that position to assist in providing comfort that documents will not be adopted if they are inconsistent with the Rules.

### ***Exclusivity, contestability and the draft Initial Rule***

52. At paragraphs 21 to 24 a submission is made that the draft Initial rule is premature. In this section the NSSC makes comment on the draft Initial Rule itself.



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53. The nature of the draft Initial Rule shows that the decision of the MCE in June 2008 in relation to a distributor exclusivity over smart meter provision and related metering data provision for the period of a roll-out is to be implemented within the context of the existing contestability framework for remotely read interval metering and related data services.
54. The SCO note that the NSSC will define smart metering services, roles and responsibilities, and draft possible rules for where there is a mandate, after a mandate and where there is no mandate. Those rules may include amendments to the Initial Rule once made. There may also be a subsequent review of these issues in the long run.
55. The NSSC looks forward to fulfilling these responsibilities. In the meantime, and preserving the primary submission that the legislative package is premature, the following drafting comments are made:
- a. the draft Initial Rule operates by reference to a ministerial smart meter roll out determination that applies to a metering installation but under clause 118E of the revised NEL SM amendments the ministerial smart meter roll out determination is "about the provision of smart metering services". Clause 118(4)(a) does provide for the determination to specify when smart metering infrastructure must be operational but this does not seem to form a satisfactory link to a metering installation for the purposes of the draft Initial Rule;
  - b. the definition of 'volume consumption' provides "energy consumed by a customer at the relevant supply point". The customer does not consume energy "at the relevant supply point", it is consumed in the electrical apparatus connected to the electrical installation. Consider changing "at" to "through";
  - c. item 11.28.2(a) seeks to carve out type 1 or type 2 metering installations as they are located at transmission connections points. In some jurisdictions, however, boundary meters may be types 3 and 4, but in any event transmission connection points will not be a small customer supply point;
  - d. item 11.28.2(b)(1) seeks to carve out metering under the control of the Market Participant. This would appear to have difficulties in jurisdictions where the distributor and the retailer are the same entity. This does not occur in Victoria where distributors and retailers are separate entities;
  - e. item 11.28.2(b)(3) seeks to carve out "a metering installation located at a high voltage connection point" but this does not work given the breadth of the definition of "metering installation". It would be better to provide "a metering installation for a high voltage connection point". Moreover, this



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carve out was relevant for Victoria but may not be appropriate in all jurisdictions

Thank you again for the opportunity to provide comments on the legislative package. If you have any questions on the points raised in our submission please do not hesitate to contact me on 0413-079-484 or via email on [Harry.Koller@au.pwc.com](mailto:Harry.Koller@au.pwc.com). I can arrange for you to discuss any queries with the NSSC's Legal and Regulatory Advisors, Rohan Madders and Alex Badham of Johnson Winter and Slattery.

Kind regards

A handwritten signature in black ink that reads "Harry Koller". The signature is written in a cursive, flowing style.

Harry Koller  
NSMP Program Director



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### **Appendix**

#### **Drafting matters in the NEL SM amendments**

The NSSC submits that the legislative package is premature. However, if the MCE determines to proceed, the NSSC submits a number of drafting amendments need to be addressed as outlined in this Appendix.

- A. The amendments concern smart metering. In clause 4(2) 'Ministerial metering determination' should be 'Ministerial smart metering determination' (with consequential changes throughout).
- B. We now have 'smart meter assessments' and 'smart meter trials' but not pilots. 'Ministerial pilot metering determination' might be 'Ministerial smart meter assessment or trial determination'.
- C. In the definition of 'smart meter assessment', insert '(or both)' after 'operational performance'.
- D. The definition of smart metering infrastructure is too narrow in its reference to 'remotely read electricity metering' (smart meters have broader functions than metering) but at the same time too broad in that it would capture all remotely read metering installation types (ie 1 - 4) under the Rules. This will adversely affect the allowed scope of smart meter assessments and smart meter trials both directly and indirectly through the interpretation of 'other related technologies'. The definition should be deleted as the scope of 'smart metering infrastructure' should be specified in the Rules. The definitions of 'smart meter assessment' and 'smart meter trials' need not rely on a definition and instead could simply include appropriate text; a definition is not required.
- E. Following on from that change, the definition of 'required smart metering infrastructure' should be recast as simply 'smart metering infrastructure'. Substantively, it need only adopt the language of paragraph (a). In relation to paragraph (b), 'required smart metering infrastructure' is used only in clause 118E(4)(a) to indicate the infrastructure that must be operational by specified dates. For that clause to be effective one only needs to have the Rules specify what 'required smart metering infrastructure' is and there is no need for a condition in the legislation that 'required smart metering infrastructure' comply to a particular standard. In any event, the Rules may not regulate these 'standards' at all and, if they do, they are likely to be referred to as 'performance levels'.
- F. The words "that are specified as smart metering services under the Rules" in the definition of 'smart metering services' should be deleted. It is not clear that all smart metering services will be specified under the Rules. Moreover, the



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definition suggests there will be some separate category of services that are provided by smart metering infrastructure and that is not correct.

- G. Clause 118G states that the smart metering services under a ministerial smart meter roll out determination must be provided “in accordance with the standards applying to the provision of those services specified under the Rules”. The purpose of these words is unclear; if it’s to create an obligation to comply with the Rules they are unnecessary as provision of the services will need to comply with the Rules as a matter of obligation under the Rules and there is no need for additional statutory obligation. However, if the purpose is to constrain the minister from requiring the provision of smart metering services at a different standard from that which may be in the Rules then they don’t operate to have that effect. Finally, these standards may not be specified in the Rules but in the NEM procedures and are likely to be referred to as ‘service levels’.
- H. As noted in paragraph 15 of the submission, the NSSC supports the intent that the specification of smart metering infrastructure and smart metering services not take place in the Ministerial determinations but instead occur in national regulatory instruments not subject to Ministerial discretion. However the mechanisms used to achieve this objective gives rise to the concerns raised in paragraphs D to G of this Appendix which are, in turn, examples of the problem identified in paragraph 10 of the submission about the premature nature of these amendments:
  - a. including a legislative definition of ‘smart metering infrastructure’ is problematic when the work has not been done to understand the proper scope of that term;
  - b. including paragraph (b) in the definition of ‘required smart metering infrastructure’ raises difficulties when there is currently uncertainty whether there will be a ‘standard’ in the Rules for the smart metering infrastructure;
  - c. there is no clarity that all smart metering services will be specified in the Rules; and
  - d. standards for smart metering services may not be specified in the Rules (the current thinking is that participant service levels be regulated in the NEM procedures).
- I. However, deleting the current definition of ‘smart metering infrastructure’ and changing ‘[required] smart metering infrastructure’ so that it refers only to specification in the Rules (and not standards) will ameliorate the difficulties from making the revised NEL SM amendments at this time. To complete that work, however, there must be a provision which makes it clear that a ministerial smart



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meter roll out determination cannot be inconsistent with any other instrument (the Rules or in a procedure authorised by the Rules may be sufficient) that defines smart metering services and standards (or performance levels) for the provision of those services.

- J. The reference to 'performance' in clause 118B(4) seems better suited to infrastructure than the relevant operator. It is not clear why clause 118B(4)(a) and (b) relate only to smart meter trials and not smart meter assessments.
- K. Delete "the contents of" in clause 118C.
- L. Whilst clause 118E(3)(b) allows the ministerial smart meter roll out determination to specify different classes of relevant customers to whom smart metering services must be provided, the discretion for the smart metering infrastructure to be operational by certain dates for different classes of relevant customers is not provided by clause 118E(4). That may be intentional.
- M. Related to the discussion about the transition in specifying smart metering services in paragraphs 42 to 44 of the submission, the draft Initial Rule depends upon the ministerial smart meter roll out determination ceasing to have effect to define the period of exclusivity (see draft rule 11.28.3(b)) but neither section 118E nor section 118K require the ministerial smart meter roll out determination to specify a date by which the roll out will end.
- N. Delete "the contents of" in clause 118F.