



18 November 2013

Manager, SCER Secretariat  
Department of Resources, Energy and Tourism  
GPO Box 1564  
Canberra ACT 2601  
SCER@ret.gov.au

Dear Sir/Madam,

**Joint submission to the National Smart Meter Consumer Protection and Safety Review - Consultation Paper - National Energy Retail Rules Amendment Rule 2013, September 2013 (Amendment Rule 2013)**

Jointly, the undersigned organisations welcome the opportunity to comment on SCER's *National Smart Meter Consumer Protection and Safety Review Consultation Paper* (Consultation Paper) and the *National Energy Retail Rules Amendment Rule 2013* (Draft Amendment Rule). Our organisations represent the interests of residential and small business energy consumers – are particularly cognisant of the special needs of low income and vulnerable households – and have a keen interest in ensuring that consumers receive strong consumer protections with the introduction of smart meters.

The Consumer Utilities Advocacy Centre (CUAC), Consumer Action Law Centre (Consumer Action) and Uniting Care responded to draft policy paper 1 on 29 September 2009 in a joint consumer group submission with seven other consumer organisations. CUAC responded to draft policy paper 2 on 30 March 2012. We note that some of our suggestions have been included in *SCER's Official Report on the National Smart Meter Consumer Protection and Safety Review* released in November 2012 (SCER's Official Report).

Significant developments have occurred, in Victoria, since these papers were issued as Victoria progresses towards the completion of the AMI rollout. A mandatory rollout of smart meters to 2.5m households is largely due for completion at the end of 2013. Flexible pricing was also introduced in Victoria from September 2013. Consumer Action, CUAC and the Victorian Council of Social Service (VCOSS) have been involved in consultation processes with the Victorian government and the Essential Services Commission around the development of a comprehensive smart meter customer protection framework. We have also advocated for consumer information and education initiatives to accompany the roll out of this new technology and the introduction of flexible pricing. We have considered additional policy matters through our participation in these processes.

We are concerned about the potential detriment if consumers do not have sufficient

information to understand the new technology and new products and services, and the need to provide adequate protection to ensure that the long term interests of consumers are served. We wish to comment in some detail on the following matters which are addressed in the Consultation Paper and Amendment Rule:

- Explicit informed consent
- Third parties
- Supply capacity control
- Direct load control
- Customer billing
- Data collection
- Other matters

We believe that some of the policy positions articulated in SCER's Official Report, have not given adequate consideration to the implementation at the operational level including the business-to-business processes that need to be developed to support any new product offerings. Further, we share increasing concerns about the way in which consumers will interact with the energy market as it embraces the technology provided through smart meters and as such, support best practice consumer protection in essential services. This should be reflected in the overall approach towards enhancing the national framework in light of smart meters, regardless of the complexities involved.

## **Jurisdictional differences**

While each jurisdiction is likely to pursue the roll out of smart meters and smart grids in a different manner (Victoria is a mandated approach via distribution businesses, other jurisdictions may have a market-led approach), we believe that every consumer should have equal customer protections regardless of how the technology is delivered and the type of technology that is delivered<sup>1</sup>. In particular, consumers must receive optimum protections in the face of supply capacity control (SCC), direct load control (DLC) and critical peak pricing products/rebates as well as, how they are billed and most importantly, the way in which their data, is handled and by whom. We acknowledge the consumer benefits that smart meters can bring, one of which is the greater visibility of real time information for consumers to track their consumption. At the same time, we are concerned about the potential consumer detriment that may arise should personal information that is collected through smart meters be mis-used. It is therefore extremely important to engage with consumers and encourage transparency about how personal information is to be used so as to avoid any risk of further distrust by consumers of the energy market. There also needs to be a regulatory framework if third parties are going to be involved in the provision of these products

By introducing robust consumer protections in the national framework now, we can be assured that consumers in each jurisdiction, as it adopts smart meter technology, will be well placed to

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<sup>1</sup> We are cognisant of the issue of different meters being available in different jurisdictions and that as yet there is no minimum functionality for smart meters. Until such time however, in any instance, consumers who have interval meters, advanced metering infrastructure, remotely read meters, meters that can charge time of use tariffs etc should all be covered by this protection.

participate in the market with confidence. Accordingly, this submission comprises a summary of our key concerns with the Consultation Paper and the proposed Draft Amendment Rule.

## Explicit informed consent (EIC)

We are very concerned that the requirement for legitimate explicit informed consent (EIC) for the proposed products can not be consistently (or reliably) met, on the basis that there is minimum guidance to businesses in the Draft Amendment Rule. Specifically, the way in which it is proposed that businesses communicate these complex products (this includes SCC, DLC and critical peak pricing/rebates), will not guarantee that customers will be able to sufficiently understand what they are being sold, and therefore cannot provide EIC. Any business which claims to have a customer's EIC on these products will need to be monitored very closely.

Further, Section 39(1) of the National Energy Retail Law (NERL), requires a retailer to '*clearly, fully and adequately disclos[e] all matters relevant to the consent of the customer...*' for there to be EIC. We are concerned with this definition, particularly in the context of smart meters and their associated technology as:

1) It is unclear what disclosing matters '*relevant to the consent of the customer*' means as this appears to be subject to each retailer's interpretation, and depending on the approach taken by the retailer, may be a rather low hurdle. There is a risk that customers would not be provided with sufficient information which enables them to make an informed decision about these products because retailers limit the information to a particular customer's degree of comprehension rather than providing the customer with information which may enable the customer to genuinely provide EIC. Given the complexity of products such as DLC, SCC and critical peak pricing/rebates, we see this as a significant failure in the provision of consumer protections.

2) Given the complexity of the abovementioned products, we believe that the type of information and the way in which information is presented, needs to be standardised to facilitate customer understanding, comprehension and their ability to compare products in the market. Without this, we question whether customers are able to provide their EIC. We further suggest that this obligation on retailers include defining the products, as discussed further below.

### Recommendation 1:

Require retailers and distribution businesses to provide information on SCC, DLC, and critical peak pricing/rebate products in a standardised format. Information provided should include a definition of the product.

In addition, it is unclear why the comments on EIC on page 3 of the Consultation Paper do not specifically include a reference to SCC products or tariffs. We perceive SCC to be incredibly complex in comparison with other products, regardless of how it is introduced to consumers. As such, it is essential that customers fully understand the product, and give their EIC to it. Consumers are likely to be faced with having to understand and, realistically, know the minimum kilowatt level required for them to run basic appliances (such as fridges, freezers, heaters, cooking appliances and lights) within their home. Further, each household's usage

varies based upon a number of factors, such as; the number of occupants, behaviour of occupants, the housing stock, location, season, type and energy efficiency level of appliances and medical equipment on premises. Regardless of the complexity, retailers and distribution businesses marketing SCC, DLC and critical peak pricing/rebates must be accountable and responsible for ensuring that consumers fully understand the nature of the product before entering into the contract.

## **Third Parties**

Our comments in this section should not be taken to imply that we unequivocally support the provision of SCC or DLC products by third parties. We recognise that third parties may encourage competition which could result in lower prices and more innovation. However, there are consumer protection issues which in our view are still not yet resolved in relation to these products, whether supplied by a retailer, distributor or a third party.

SCER's view is that *'as third parties cannot offer products related to the supply of energy, by definition they would not be able to offer a supply capacity control product.'* We understand that SCER will provide further advice to Ministers as to whether third parties should be regulated under the National Energy Customer Framework (NECF). We agree with the Australian Energy Market Commission's (AEMC) view in the *Power of Choice Review* that there is a need to clarify the role of third parties providing 'energy management services.' The smart meter environment opens the possibility for third parties to be involved in providing a range of smart meter-related services to consumers. Currently, these third parties are not covered by the Australian Energy Regulator's (AER) framework for retailer authorisation or exemptions, and are therefore outside energy specific regulation. Third parties would also fall outside the jurisdiction of energy ombudsman schemes unless they are acting as the agents of retailers, which means, that these customers would not have access to the ombudsman. The AER's October 2013 issues paper on the *"Regulation of Alternative Energy Sellers under the National Energy Retail Law"* discusses the emerging energy selling models in which third party energy suppliers will potentially be engaged in. Energy is provided as an add-on or supplementary service and not as an essential service. The AER has acknowledged that these businesses are selling energy in ways which involve further consideration under the AER's authorisation and exemptions framework. Implicit in the AER's issues paper is a recognition of the need for some regulation of third party energy suppliers who are now evolving their business models to sell energy.

In light of the above, we are of the view that if third parties are to be involved in the provision of 'energy management services,' it is appropriate for there to be a regulatory framework, especially with the potential consumer detriment that SCC products and DLC products can lead to (see comments on SCC and DLC below). Not regulating third parties may lead to a perverse outcome where a customer with a SCC or DLC product from a retailer or distributor has a higher standard of customer protection than a customer with such a product obtained from a third party. Given that third parties are not addressed in the Consultation Paper and Amendment Rule, we reserve further comments until this issue is the subject of further consultations.

## Supply Capacity Control (SCC)

Our comments in this section should not be taken to imply that we completely support the use of SCC. We do not support SCC for credit management purposes or as a product offered to customers experiencing hardship or customers who are on payment plans due to payment difficulties. In our previous submissions to SCER on the national smart meter consumer protections policy papers, we have raised significant concerns with the use of SCC as a discretionary product for credit and non-credit related purposes, and we note that these concerns are reflected in Chapter 4 of SCER's Official's Report. These include safety concerns, potential damage to appliances, the need to protect vulnerable customer groups from SCC products which may be detrimental to them (e.g. people with medical and cooling needs, customers experiencing financial hardship). While SCC products have the potential to benefit some customer groups; they also have the potential for consumer detriment. As SCC is a complex technical concept, there is considerable risk that a consumer may not fully grasp the implications of these products. This includes consideration of the limit/threshold and the duration in which the household will be without power if the limit is reached. As mentioned above, explicit informed consent may be very difficult to achieve or test in these circumstances.

Regulation is therefore appropriate to ensure that these interests are well balanced and that there is an adequate framework in place to protect the rights of all consumers. It is also prudent to test consumer acceptance of SCC products through customer trials before SCC products are made generally available and for a risk assessment to be undertaken prior to their introduction. A regulatory framework should be complemented by a comprehensive government consumer education campaign about SCC products as consumers currently do not have a good understanding of these products. It is our experience that it is not necessarily in the retailers' interest for consumers to understand price offerings as they may benefit from 'confusopoly.' SCC has the potential to be more confusing than choice offers including flexible pricing. It is therefore incumbent on government and regulators to ensure that in addition to robust consumer protections, that consumers have the information tools needed for their full understanding.

We note that the AEMC had in the *Power of Choice Review* recommended a comprehensive consumer awareness program prior to the implementation of pricing and metering reforms to assist consumers make informed choices about their electricity consumption and realise the benefits and opportunities of taking up DSP products and services. We view the AEMC's recommendation on consumer awareness as relevant to SCC products but reiterate that a regulatory framework needs to be in place that prioritises the interests of consumers in relation to SCC, prior to it becoming available in the market. **Subject** to our comments in this section, we have the following points to make on SCC below.

## **SCC definition**

SCER has suggested that it is unnecessary to define ‘supply capacity control’ in the Draft Amendment Rule. We suggest that this term be defined for the avoidance of any doubt. It is highly likely that this term will be used in SSC contracts with customers and in communications between businesses and customers. Thus, some clarity as to what this term actually means in the Draft Amendment Rule is appropriate. The generic description of SCC in the Consultation Paper could be used as a starting point to define this term in the Draft Amendment Rule; i.e. *“an offer to supply electricity to a customer’s premises on the basis, that when an agreed limit has been reached, the supply to the premises may be made temporarily unavailable or may be temporarily curtailed.”*

Further, for consumers to adequately compare and contrast products available in the market, when it comes to a product of such complexity as SCC, it will be necessary for consistent language to be used and for information to be presented in simple English. The inability for consumers to understand if the product they are being offered by Company X differs from the product they are being offered by Company Y will lead to significant additional confusion in the market, contributing to barriers to effective competition.

### **Recommendation 2:**

Define SCC in clause 1 of the Draft Amendment Rule.

### ***Policy position 24, Draft Amendment Rule, Clause 12, SCC offered by distributors may be part of the connection agreement***

We note that the proposed amendment relates to discretionary SCC and not SCC for management of the network during emergencies or network stress. We recognise that SCC can assist distributors with managing network constraints and if offered as part of a connection agreement to customers on a constrained line, it can avoid costly network augmentation. Obtaining the customer’s explicit informed consent to this, and providing full disclosure on how SCC would work and under what conditions, are critical. We agree that if SCC is offered by distributors as part of a connection agreement, it is not the same as de-energisation under part 6 of the National Energy Retail Rules (NERR).

### ***Policy position 25, Draft Amendment Rule, Clause 11 – To the extent that these [SCC] products are marketed, the same marketing rules as would apply directly to retailers offering this product should be applied to distributors.***

We have provided a response to this draft rule below, in relation to DLC. We consider our response also applies to SCC.

### ***Policy position 28, Draft Amendment Rule, Clauses 8 & 10 – For avoidance of doubt, SCC may not be used as an alternative to disconnection (credit management) and may not be offered to any customers entering or participating in a hardship program***

In our previous submissions, we have argued against the use of SCC for credit management

purposes. We strongly support the prohibition of SCC for credit management purposes, as this is punitive and acts as a disincentive to retailers proactively assisting customers in financial hardship. In addition, using SCC for credit management purposes may also result in customers reducing their usage to a level which is detrimental to their safety, health and wellbeing. It may result in a 'second class' supply access due to a customer's low income or payment difficulties.

Clause 8 (which will be rule 46B of the NERR) prohibits retailers from using SCC for any credit management purposes. Rule 46B sits in Part 2 Division 7 of the NERR which relates to 'Market retail contracts – particular requirements.' We believe that the prohibition of SCC for any credit management purposes should also cover customers with smart meters who, are on standard retail contracts. We recommend that the Draft Amendment Rule be amended to reflect this.

Clause 10 (which will be rule 72A of the NERR) prohibits retailers from making SCC a condition for customers entering into a payment plan. Rule 72A sits in Part 3 of the NERR which is on 'Customer Hardship.' Thus, the prohibition on SCC applies to customers who are in a retailer's hardship program. At the public forum, retailers strongly objected to clause 10, on the basis that clause 8 already prohibited retailers from making SCC a condition for customers entering into or participating in a hardship program. We disagree with the retailers' position. In policy position 28, SCC is prohibited for **both** (1) credit management purposes and (2) as a condition for customers entering into or participating in a hardship program. Arguably, there is a distinction between (1) and (2), which possibly accounts for both being mentioned in policy position 28. Credit management, hardship and payment plans are related concepts but they are by no means synonymous. In order to reflect policy position 28 clearly, both clauses 8 and 10 must be retained in the Draft Amendment Rule.

We are also of the view that clause 10 should be expanded to cover any customer who is on a payment plan due to payment difficulty and not just a customer who is in a hardship program. Rule 33(1) of the NERR obliges retailers to offer payment plans to (a) hardship customers and (b) other residential customers experiencing payment difficulties if the customer informs the retailer in writing or by telephone that the customer is experiencing payment difficulties. SCC products should not be offered to customers requesting a payment plan due to payment difficulties as this is a credit management interaction.

The Consultation Paper refers to the EMRWG not proposing to '*generally prohibit the use of SCC by retailers as a discretionary product at this time.*' (i.e. SCC for non-credit management related purposes). We are concerned with this approach and have in our introductory comments on SCC above mentioned the need for an appropriate regulatory framework which should also cover customer trials, not to curtail innovation but to ensure that consumers are not exposed to risk if such products are introduced. We caution against a 'wait-and-see' approach, i.e. regulate after products are introduced, because by then consumers may have suffered detriment.

### Recommendation 3:

Extend clause 8 of the Draft Amendment Rule to cover customers with smart meters who are on standard retail contracts.

Retain clauses 8 and 10 of the Draft Amendment Rule.

Extend clause 10 (which will be rule 72A of the NERR) to cover any customer who is on a payment plan due to payment difficulties rather than limiting this provision to customers who are in a hardship program.

Develop regulatory framework for SCC for non-credit management purposes

## **Demand Management - Direct Load Control (DLC)**

***Policy position 38, Draft Amendment Rule, Clauses 9 & 11 – EMRWG recommends that customers with life support should not be excluded from entering into DLC contracts. However, EMRWG also recommends that any guidelines for explicit informed consent for DLC contracts include provision for life support customers to place non-essential equipment on DLC, and consideration of the needs of customers with medical cooling needs.***

We are broadly supportive of DLC when used as a tool to better coordinate the supply of, and demand for, electricity in the interests of consumers. This includes ensuring that consumers are fully informed about the 'ins and outs' of any DLC product they sign up to. We support the need to provide information to alert customers on life support not to place essential equipment on DLC and the need to give due consideration of the needs of customers with medical cooling needs.

DLC must, however, be defined as a product/service that consumers are able to identify and compare across service providers. Therefore, the need for common language to describe the basic functions of the product and for information to be presented in simple English. We reinforce the point raised earlier in this document in relation to definitions and SCC. It is essential that there is sufficient regulation of current and upcoming forms of DLC (this needs to acknowledge the rights of consumers currently on various DLC products, e.g. ripple control). Issues of timing, frequency etc need to be clearly communicated to consumers. Without common definitions or minimum standards on the technical aspects of the product, consumers are unlikely to be able to provide their EIC.

While we support the intent of the proposed clause 9 (which will be rule 64(1A) of the NERR) and its corresponding provision in clause 11 (which will be rule 91E(2) of the NERR) which requires businesses to alert customers on life support and medical cooling about the potential risks of placing essential items on DLC, we are concerned with the interaction of these provisions with other provisions in the NERR.

In particular, under rule 63(1) of the NERR (Form of disclosure to small customers), '*required information provided to a small customer before the formation of a market retail contract may be provided electronically, verbally or in writing.*' We have significant concerns with the provision of verbal information to consumers especially in the context of complex products and services, including DLC, SCC and critical peak pricing/rebates products. For a consumer to fully understand the intricacies of the pricing arrangement and the terms and conditions associated with the product, including details of when, for how long and how their appliances may be



controlled is a significant amount of information to absorb, and reasonably comprehend. We share similar concerns with SCC and critical peak pricing products/rebates which are mentioned in the proposed clause 11 (which will be rule 91(E)(1) and (3) of the NERR. As previously mentioned, for SCC products customers need to fully understand the limit/threshold and the duration in which the household will be without power if the limit is reached. Further, given the high pressure sales and marketing environments, it is an unrealistic expectation for any consumer to fully understand the nature of these products with only verbal information.

In view of the above, we strongly recommend that the required information for the products mentioned in the proposed clause 9 (which will be rule 64(1A) of the NERR) and all the products mentioned in clause 11 (which will be rule 91E of the NERR) be provided in written format before the formation of a contract for any of these products. Consumers cannot realistically be expected to provide their EIC prior to receiving this information. We strongly recommend that the proposed rule 91C (b) of the NERR be deleted, and corresponding amendments be made to the proposed rule 91D of the NERR.

#### Recommendation 4:

Support clauses 9 and 11 (i.e. proposed rule 91E(2) of the NERR) of the Draft Amendment Rule.

Ensure that 'required information' in relation to DLC products mentioned in clause 9 and SCC, DLC and critical peak pricing products/rebates mentioned in clause 11 (i.e. proposed rule 91(E) of the NERR) be provided in written format before the formation of the contract for any of these products.

Delete the proposed rule 91C(b) and amend the proposed rule 91D of the NERR to give effect to the need to ensure that distribution businesses provide customers with information about the abovementioned products in written format before the formation of the contract.

## Energy Marketing

We have highlighted our concerns with the proposed Division 6A of the NERR in relation to 'required information' and the importance of ensuring customers receive this information in a written format before the formation of the contract, in the previous section. In this section, we address other concerns with Division 6A which we have not yet covered.

In relation to the proposed rules **Division 61 Energy marketing by distributors** we do have concerns with *91C Requirement for and timing of disclosure to small customers (b) as soon as practicable after the formation of the contract.*

For any information in relation to products marketed by distribution businesses and specifically in relation to products such as supply capacity control and direct load control, it is essential that consumers are provided all relevant information before the formation of the contract. Consumers can not realistically be expected to provide their explicit informed consent prior to receiving this information. As such we strongly recommend the removal of draft sub clause 91C (b). Further, as it is referred to again in clause 91D we reiterate the complexity of these

products and consumer understanding of these means that information must be provided before the formation of the contract and it must not be provided verbally, as such Clause 91D (2) and (3) must be removed.

Further we reiterate the comments made above, that required information must be provided in writing in relation to these products. As such clause 91D Form of disclosure to small customers (1) must be amended.

We are of the view that the proposed rule 91(1)E of the NERR is inadequate in terms of what a distribution business has to provide to customers as 'required information.' In addition to the 'limit' 'at which the supply of energy to a customer's premises will be made temporarily unavailable or will be temporarily curtailed', there are other matters which customers need to be aware of before they are able to make an informed decision about the product. This includes duration the premises will be cut-off supply. More information is essential, and it must form part of the 'required information.' Otherwise customers would not be aware of "*the possible impact of providing the service[e]... including the potential risk that arise[s] from adopting the services.*"

We, together with other consumer organisations, have previously conducted a significant amount of work around the consumer protections necessary in relation to automated products such as DLC and SCC. The full document is provided in **Appendix 1** however the key items for consideration in relation to DLC are provided in the table below. We are concerned that the current Draft Amendment Rule does not go far enough to ensuring consumer rights are upheld.

#### Direct Load Control of Consumer Appliances

These principles apply to a consumer appliance where the consumer has entered into direct load control contract with an authorised (or third) party. These principles are an addition to the Consumer HAN Device Registration and Deregistration Principles<sup>2</sup>. These principles relate to the load control management, including but not limited to schedules and load control switch actions, that may be applied to a consumer appliance on direct load control via:

- A Controlled Load Contactor / Relay located on the meter
  - The Utility HAN
  - Any other technology for Direct Load Control
1. The consumer may cede control of a specific device for direct load control on the Utility HAN or CLC/R to an authorised party, with explicit informed consent. The default position for DLC of any consumer appliance will be "opt-in" rather than "opt-out".
  2. The consumer may opt out of direct load control during or at the completion of the direct load control contract period.
  3. Any contract entered into in granting consent to control a consumer's device must include a cooling-off period during which the consumer can withdraw their consent without penalty.
  4. The DLC appliance settings for consumer HAN devices will be preserved and maintained as standing data against the NMI or until the device is deregistered by the customer.
  5. The DLC appliance settings for consumer HAN devices are confidential information.

<sup>2</sup> As outlined in the full document in Appendix 1.

6. The consumer will be provided with a facility to provide consent to one or more authorised parties for the purpose of DLC at any one time.
7. The consumer may provide consent to access all or a subset of the consumer's HAN devices for DLC.
8. Any consent granted for direct load control of an appliance will be revoked when the consumer moves out, provides explicit informed consent to another authorised party to operate that device, or otherwise withdraws their consent, regardless of contract conditions. For example, while a consumer may incur a penalty for cancelling a contract within a contract period, this will not affect their right to withdraw consent.

#### **Move Out**

9. When a consumer moves out of a property that consumer has the right to deregister any devices on direct load control that they intend to remove from the property. Any other devices on direct load control will remain registered.
10. On a move out, the standing data associated with devices on direct load control of that NMI is no longer confidential information solely for the purposes of informing the incumbent customer of the status of DLC devices.

#### **Move in**

11. When a consumer moves into a property they will have the right to access the standing data that has been preserved against that NMI. Any market participant or authorised party may access that preserved standing data on request from that consumer.
12. On a move in, the preserved standing data associated with devices on direct load control on that NMI becomes confidential information once a consumer enters into a contract for the supply of electricity to the property.
13. Prior to commencement of any new retail contract, the new FRMP must disclose to the consumer all information preserved in standing data regarding registered DLC devices associated with that NMI
14. When a consumer moves into a property they have the right to register or deregister any devices on direct load control on that NMI.
15. Parties will not modify the list of registered HAN devices on direct load control around move-out, and move-in events without consumer consent.

#### **Change in Retailer**

16. When a consumer changes retailer, any explicit informed consent granted to the previous retailer will be revoked. The list of registered HAN devices on direct load control will be maintained in the market systems. The consumer can establish consent with the new retailer or other authorised party.

#### **Meter replacement**

17. When an electricity meter is replaced, the list of devices on direct load control registered against that NMI will be maintained.

#### **Confidential DLC Appliance Settings Information**

18. Access to confidential consumer DLC appliance settings information will be restricted to the authorised parties required to facilitate the direct load control, based on explicit informed consent.
19. Market participants may need to handle confidential consumer information in the course of facilitating a customer service function for direct load control. In such a case, the market participant must not use that information for any other purpose and must implement

processes that protect the confidentiality of that information.

To ensure that sufficient information is provided to consumers in relation to DLC products, we believe that additional regulation is necessary. This will further ensure that these interests are well balanced and that there is an adequate framework in place to protect the rights of all consumers.

#### Recommendation 5:

Remove draft sub clause 91C (b) and Clause 91D (2) and (3).

Amend Clause 91D to ensure required information is provided in writing in relation to these products.

Expand the required information in the proposed rule 91E(1) of the NERR to include other information customers should be aware of, apart from the 'limit' (threshold).

Task the AER with the development of clear guidelines around what specific information needs to be provided in relation to DLC products (as well as SCC, and critical peak pricing/rebates products).

Develop clear protocols in relation to the flow of information between the HAN, the DLC appliance, the retailer/distributor or any third party and the consumer. (In referring to third parties, we are not implying that we agree to their involvement – see our comments in the section on third parties)

The proposed rule 91E(3) of the NERR addresses 'required information' in relation to critical peak events. We are of the view that, in addition to what is required under this rule, a customer must also be provided with information that clearly defines the implications for not modifying behaviour in a critical peak pricing event, including clear information about what the potential implications for their bill may be.

On a side note, Consumer Action through its 'do not contact' campaign, learnt that energy retailers are, for the large part, not sufficiently meeting their obligations under rule 65 of the NERR and the proposed rule 91F of the NERR. As such we suggest that this section is not meeting the needs of consumers as it stands and needs the attention of both the Australian Energy Regulator and the Australian Energy Market Commission.

***Policy position 39 & 40, Draft Amendment Rule, Clause 10 –Consistent with existing regulatory requirements no customer should be required to involuntarily place any appliance on DLC, including as a condition of participation in a hardship program.***

***Retailers must demonstrate that, if a customer on a hardship program has agreed to a DLC service, this service is part of the overall assistance package provided to the customer and is appropriate to that customer's individual circumstances.***

We strongly support policy position 39 in relation to the prevention of consumers being placed

on a DLC product as a condition of a hardship program. We raise the same concern we have expressed in relation to SCC earlier in this submission. Clause 10 of the Draft Amendment Rule (which will be rule 72B of the NERR) sits in Part 3 (Customer hardship) of the NERR. Therefore, this suggests that it is only customers in a retailer's hardship program who will benefit from the proposed rule. We believe that customers who are in a hardship program as well as customers who are on a payment plan because of payment difficulties should not be required to place an appliance on DLC as a condition of entering into a payment plan.

In addition, the use of the word 'condition' in rules 72B(1) and (2) of the NERR is confusing and contradictory..Rule 72B(2) refers to "if a hardship customer agrees to enter into a payment plan on condition that the supply to an appliance ...will be temporarily switched off..." Rule 72B(1) refers to "a retailer must not make it a condition of entering into a payment plan". We are of the view that the proposed rule 72B(2) of the NERR should be deleted.

#### **Recommendation 6:**

Extend clause 10 of the Draft Amendment Rule (which will be rule 72B of the NERR) to cover any customer who is on a payment plan due to payment difficulties rather than limiting this provision to customers who are in a hardship program.

Delete clause 10 of the Draft Amendment Rule (which will be rule 72B(2) of the NERR).

## **Customer Billing**

Provisions relating to customer billing should be premised on best enabling customers to understand their bills and, when necessary, verify them. We support measures that make the billing process as transparent as possible without causing confusion.

### **Index reads on interval meter bills**

***Policy Position 46, Draft Amendment Rule, Clause 6 - Bills based on interval data will be required to show the accumulated total at the beginning and end of the billing period.***

***Policy Position 47: Supporting metrology processes to ensure that accumulated readings are collected and passed on to the relevant parties need to be developed.***

We are aware that there are a number of technical issues that make displaying index reads on bills problematic. We agree with retailers that divergence between index reads and interval data is potentially confusing for customers. We understand that some of this divergence is temporary and resolved subsequently when actual data replaces estimated data. We understand also that over time some degree of divergence can remain. However this seems to us to signify an accuracy problem in the metrology or data systems that, one way or another, will need to be addressed if customers or ombudsman are to be able to identify billing errors. We support the use of Schedule 3, Part 4, Rule 8 as a transitional measure to provide that the requirements of subrule 25(1)(j)(ii) do not apply if the required index read values are not available; but support policy positions 46 and 47 because customers, their advocates, and

ombudsman need to be able to compare index reads to interval data to help identify whether billing system errors may be a factor in disputed bills cases. If necessary, an independent process should be established to investigate the alleged obstacles to consistent index reads and interval data and determine how to resolve them. With these issues resolved, minor differences between index reads and interval data that arise due to estimations unable to be corrected before the end of a billing period may still arise, but can be addressed by a notice on the bill that such small variations are normal.

**Recommendation 7:**

Implement policy positions 46 and 47 to require start and end index reads on interval meter bills (Draft Amendment Rule clause 6) and adjust metrology processes to ensure index reads are passed on between relevant parties.

**Recommendation 8:**

Initiate a process to identify and address the specific issues preventing index reads from being fully reconcilable with interval data.

**Expressing time-variant tariffs in local time**

***Policy position 48, Draft Amendment Rule, Clause 5 - All small retail customer time-varying tariffs should be expressed in local time.***

The introduction of time-variant pricing is a huge change for consumers and the development of extensive consumer education campaigns in Victoria, where smart meters and flexible pricing are being implemented on a large scale, is indicative of the enormity of the cultural shift required for consumers to be mindful of the times in which they use electricity as well as the amount they are using. Part of this adjustment is ensuring that consumers understand as best as possible how time-variant tariffs work. The Customer Impact Study undertaken in Victoria in 2010–11 found that even small changes in the times in which differential tariffs applied could have significant impacts on customer bills. Thus it is critical that time-variant tariffs are expressed clearly. In our view, this will only be achieved if times are expressed in local time. We believe that many consumers would find it difficult to calculate local time from AEST. Retailers, on the other hand, can integrate the conversion into their billing systems – which already distinguish between distribution zones.

**Recommendation 9:**

Implement policy position 48 to require time-variant tariffs to be expressed in local time (Draft Amendment Rule clause 5).

## Estimated and substituted data

### *a) Signified on bills*

***Policy position 51, Draft Amendment Rule, Clause 51 - Where retailers are required to inform customers that the bill contains estimated data, "estimated" should refer to any data that has been estimated or substituted in accordance with the Metrology Procedure.***

***Policy position 52, Draft Amendment Rule, Clauses, 3, 7, 16 - Retailers should be required to inform customers that a customer's bill is estimated and the extent of any estimations/substitutions if the total number of estimated/substituted intervals exceeds 96 intervals of a quarterly bill, or 32 intervals of a monthly bill. Retailers would have the discretion to inform customers of any estimation below this threshold if they wished.***

An indication as to whether a bill is based on actual or estimated data is another aspect of billing transparency. Community service workers assisting clients with bill payment difficulties routinely check whether or not a bill has been estimated in their initial consultation.

As noted in SCER's Official Report and the Consultation Paper, estimations with accumulation meters are manifestly different from those with smart meters. We agree with the EMRWG that estimations and substitutions be considered together and that the terminology "estimated" should be used in customer-facing material; and we agree with retailers that, because of the nature of estimations and substitutions with interval metering, a robust materiality threshold needs to apply. If an estimated bill is indicated when the number and distribution of estimated or substituted intervals has a negligible impact on the bill amount, unnecessary customer uncertainty or confusion could be the result.

We believe that an appropriate materiality threshold should not be arbitrarily determined, but evidence-based. The Victorian energy market offers a ready-made sample of hundreds of thousands of remotely-read interval meters whose data can be analysed to determine an appropriate materiality threshold, in terms of both the number of estimated or substituted readings and their distribution over the billing period. Setting the threshold in this manner will minimise the impact of confusion and uncertainty that may result from bills being marked as "estimated" when the extent of estimation or substitution is insignificant, while ensuring customers are appropriately informed when there may in fact be a material billing irregularity.

#### **Recommendation 10:**

Implement policy position 51 to consider substitutions as estimations for the purposes of informing customers that their bill includes substitutes or estimated data (Draft Amendment Rule clause 4).

### **Recommendation 11:**

Analyse Victorian interval meter data to determine the degree of estimation and substitution that could potentially have a material impact on a small customer bill, and modify the definition of *estimation threshold* in Rule 3 and the references to *estimation threshold* in the proposed Subrules 21(3A) and 46(6)(a) accordingly.

#### ***b) During critical peak pricing (CPP) or critical peak rebate (CPR) events***

***Policy position 54, Draft Amendment Rule, Clause 7 - If any estimation or substitution of data occurs during a CPP event, the customer should be charged at tariff rate that would have applied if a CPP event was not called.***

***Policy position 55, Draft Amendment Rule, Clause 55 - Ongoing monitoring of estimated and substituted data used for billing retail customers by the AER should take into account estimation and substitution of data during CPP events. This ongoing monitoring may inform future Metrology Procedure amendments if it is deemed necessary.***

***Policy position 56, Draft Amendment Rule, Clause 7 - The CPR contract should stipulate how estimated/substituted data will affect eligibility for the rebate, and includes a right of appeal against denial of the rebate due to estimated data.***

Critical peak pricing- and critical peak rebate-based contracts have in common the transfer of risk from the business to the customer. This runs counter to the essential role of energy businesses in aggregating and managing risk *on behalf of* small consumers. Thus it is appropriate that deficiencies in the metrology system, which is totally outside the control of customers (but the responsibility of energy businesses), do not serve to further increase the risk to customers.

The fundamental problem is that while the procedures for estimated and substituted data are premised on the reasonable assumption that households generally use energy in predictable patterns, critical peak contracts are explicitly designed to modify behaviour and thus disrupt these patterns. No data can be estimated or substituted during critical peak events without enormous margins for error. And due to the very nature of CPP and CPR contracts, even small variations in usage can lead to significant bill impacts.

With regard to CPP contracts, we support policy position 54 and the proposed subrules 46(8) and 46(9) stipulating that where a CPP customer's meter data during a critical peak event contains any estimated or substituted data, they should be charged for the entire event at the tariff that would have applied had the event not been called.



With regard to CPR contracts, we contend that any missing data be counted as zero during the critical peak periods. Households choosing CPR contracts are more likely to be low income<sup>3</sup> and are likely to have made significant sacrifices to comfort or convenience to obtain the rebate, as well as to have factored the rebate into their household budgets. Disqualifying them from the rebate due to factors outside their control is not only unjust, but if not uncommon could negatively impact consumer confidence in critical peak-based contracts and the broader smart metering system.

#### **Recommendation 12:**

Implement policy position 54 to add subrules 46(8) and 46(9) stipulating that where a CPP customer's meter data during a critical peak event contains any estimated or substituted data, they should be charged for the entire event at the tariff that would have applied had the event not been called.

#### **Recommendation 13:**

Modify proposed subrule 46(7) to stipulate that estimated and substituted data during a critical peak event be figured as zero in contracts whereby a customer is to be given a benefit (which may be either a lower tariff or a non-tariff benefit) in return for a reduction in electricity usage by the customer during that event.

#### **Recommendation 13(a):**

If *Recommendation 13* is not adopted, implement policy positions 56 and 57 to add subrule 46(7) stipulating that CPR contracts must specify how estimated and substituted data will be treated during critical peak events.

## **Data Collection**

***Policy position 17, Draft Amendment Rule, clause 15 – The AER should undertake monitoring and reporting in a number of areas. These are:***

- ***The number of hardship consumers on any particular tariff type;***
- ***The particular tariff choices of vulnerable consumers; and***
- ***The number of consumers choosing a flat standing offer tariff***

Any policy or regulatory change that will impact on consumers, needs to be undertaken, with the best available data, to enable decision making to be evidence based and consequently in the best interests of consumers. We therefore strongly support policy position 17 and agree that the AER should report on the above as part of their annual retail market performance report. However, there are additional items which we believe the AER should also report on which we mention below.

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<sup>3</sup> Frank A Wolak, Stanford University: *Increasing the IQ of the smart grid through active customer participation in wholesale electricity markets*, presentation to ACCC/AER Regulatory Conference, 26 July 2013, Brisbane, Australia.

We support the views of the ‘officials’ to not try to define too precisely what is meant by a “vulnerable consumer.” This is sensible because there are many people who are vulnerable at some stage of their life, e.g. prolonged sickness, retrenchment etc, where their vulnerability is a difficult but transitory time. We note that in the ABS’ survey of financial stress in 2010, about 14% of the population reported that they were unable to pay their utility bills on time. This is probably a reasonable perspective on the extent of vulnerability. It is also a substantially larger number of customers than the 0.4 to 0.6% of energy customers who we estimate to be on retailer hardship programs.

Monitoring the tariff choices of vulnerable customers, particularly during times of change, and after continuing high rates of price increases, is essential to enable policy makers, retailers, regulators and consumer groups to know, with more confidence, the impacts of changes on these consumers. This can then inform retailer programs and communication to customers, as well as concessions, energy efficiency and other related services designed to assist vulnerable and potentially vulnerable consumers. We also suggest that, in addition to customers who are on flat tariffs, the number of customers who are on flexible pricing tariffs should also be monitored given that this will very likely be introduced in a smart meter environment. Public reporting would provide useful information on the level of take up of flexible pricing. In Victoria, the government’s website My Power Planner lists all the electricity offers including the flexible pricing offers. The Essential Services Commission reports on the price trends in the annual performance report of energy retailers, and traditionally they have included data on standing offers and market offers. With the introduction of flexible pricing in September 2013, we envisage they will also provide data on flexible pricing in Victoria. We note that the AER’s price comparator on the EnergyMade Easy website lists the energy offers which are available to customers residing in the jurisdictions which have signed on to the National Energy Customer Framework (NECF). Any flexible pricing offers would likely be listed on their website as well. We recommend that the AER also report on the number of customers who are on flexible pricing offers in their annual retail market performance report. We believe that information on flexible pricing offers (like number of customers on such offers) would be data which retailers would already be aware of; therefore it would not be onerous for them to provide this information to the AER.

***Stakeholders are asked to identify other groups that should be referred to in the Amendment Rule having regard to:***

- ***the purpose of policy position 17 and***
- ***information available to retailers about customer characteristics.***

We suggest that in addition to customers who are on hardship programs and / or in receipt of concessions programs, other categories of customers who should be closely monitored for tariff impacts are:

- Indigenous households
- People who have recently arrived into Australia through refugee and humanitarian programs
- People in receipt of Parenting Payment (Single)
- Possible HESS (Household Energy Saver Scheme) clients

#### Recommendation 14:

Include in clause 15 of the Draft Amendment Rule (which will be after rule 167(1)(g) of the NERR) a requirement on the AER to report on number of customers who are on flexible pricing offers.

Amend clause 15(h) to include other categories of customers including:

- Indigenous households
- People who have recently arrived into Australia through refugee and humanitarian programs
- People in receipt of Parenting Payment (Single)
- Possible HESS (Household Energy Saver Scheme) clients

## Other Comments

***Policy position 83, Draft Amendment Rule, clause 14 – Retailers should be required to inform customers with smart meters that disconnection of their electricity supply may occur remotely rather than manually in all disconnection warning notices and in the model standard contract.***

We support the inclusion of clause 14 of the Draft Amendment Rule (which will be rule 110(2)(g) of the NERR), the amendment to subrule 14(1) and the inclusion of 15(c) of Schedule 1 of the NERR, the amendment to rule 12.1 and the inclusion of 13.1c of Schedule 2 of the NERR. Customers should be aware (stated in their contract, disconnection notice) that their premises may be disconnected or reconnected remotely.

Please contact the listed representatives of each organisation listed below if you would like to discuss these matters further/have any questions.

Yours sincerely

**Consumer Action Law Centre** - Janine Rayner, ph: 03 8554 6907, email:  
janine@consumeraction.org.au

**Consumer Utilities Advocacy Centre** - Jo Benvenuti, ph: 03 9639 7600, email:  
jo.benvenuti@cuac.org.au

**Uniting Communities** - Mark Henley, ph: 08 8202 5135, email:  
markh@unitingcommunities.org.au

**Victorian Council of Social Service** - Dean Lombard, ph: 03 9654 5050, email:  
dean.lombard@vcoss.org.au

# Appendix 1

## Consumer Principles for Home Area Networks and Direct Load Control DRAFT

These principles have been developed through extensive consultation with various participant organisations of the National Energy Consumer Roundtable, based on our best understanding of smart metering as of 2011.

This document was previously submitted to the NSSC, BPPWG and the IEC, RMEC, and was released to some SCO representatives.

The principles within this document remain relevant, however given the time that has passed since their last iteration, it is doubtless that some updates will need to be made in relation to content and in relation to the endorsement status of consumer organisations.

As such, this document remains a working draft.

### Scope

These principles apply both to the period of exclusivity of delivery of smart meter services (the “mandated rollout” scenario) and to the ensuing “post-mandate” period.

Most of the principles will apply generally to the “non-mandate” scenario, however we acknowledge that due to the uncertainty over what a “non-mandate” scenario looks like, the principles may need to be further refined to fit that context. We also welcome the opportunity to further explore the context of a “non-mandate” scenario.

### Consumer Policy Principles for the Utility HAN and DLC

1. Appropriately authorised representatives, including family members, administrators and financial counsellors, must be able to act on behalf of account holders with respect to utility HAN and DLC contracts and services.
2. The onus will be placed on new/potential financially responsible market participant (frmp), customer function service provider (cfsp) or authorised third parties to ensure that the account holder (or the representative of the account holder) is capable of providing explicit informed consent, in line with consumer laws.
3. The HAN shall be based on an Open Interface Standard supporting consumer HAN devices from multiple manufacturers.
4. HAN devices sold in or imported to Australia will be certified according to the relevant technical standards consistent with the HAN Open Interface Standard and relevant technical and safety standards.
5. The consumer may choose to cede management of the Utility HAN or specific consumer HAN devices on the Utility HAN to an authorised party (on the provision of explicit

informed consent (“opt-in” rather than “opt-out”), typically as part of a contracted service.

6. A consumer will be responsible for registration and deregistration of their consumer HAN devices (i.e. in home display, domestic appliances) on the HAN interface enabled by their smart meter.
7. Consumers will be provided with secure facilities for the registration and deregistration of consumer HAN devices. Secure facilities must only be provided by an authorised party who is accredited by AEMO.
8. A consumer may register their consumer HAN devices without those devices being associated with a contract with any party (For example, a consumer may purchase the device from a retail electronics outlet.)
9. Any information stored on a meter relating to a consumer is confidential. The appropriate NEM Procedures will be developed and implemented to ensure these requirements are met.
10. On move-out the outgoing consumer may choose to modify the list of consumer HAN devices registered on a Utility HAN.
11. A CFSP, AEMO, or potentially another authorised party will exclusively retain standing data for registered HAN devices at a property for the duration of the period between a move out and a move in, and this data will be released to authorised parties only when the incoming customer has provided explicit informed consent to that authorised party.
12. On move-in the incoming consumer may choose to modify the list of consumer HAN devices registered on a Utility HAN.
13. A consumer will have the right to real time access to all types of metered data (such as electricity, water, and gas) for an IHD or other HAN device via the HAN interface at no cost. For the removal of doubt, this does not suggest that consumers support mandated wide scale rollout of smart gas or water metering.
14. A consumer may authorise their metered data to be provided to any authorised third party, via a secure HAN device.
15. No consumer will be required to involuntarily place any appliance on direct load control via the Utility HAN.
16. When a new consumer moves into a premises where a consumer appliance was previously on direct load control via the Utility HAN, the new consumer will have the right to reset, or modify, all settings relating to the device including direct load control without payment of compensation to any party.
17. A consumer may, with explicit informed consent, allow a third party to send messages to an IHD or other HAN devices via the Smart Meter Infrastructure (SMI) and Utility HAN without visibility of the message content to the FRMP or Distributor.

18. Authorised third parties will be required to register with AEMO and/or CFSPs to undertake a contractual agreement that they will abide by the NSMP Procedures which govern the use of the facility.
19. Where supported by legislation, a person who is the representative of an emergency service may use the Utility HAN to send emergency messages to a community of customers provided that the person does so directly through a Registered Participant, or a third party accredited system. The person must abide by the NSMP Procedures which govern the use of the facility.

### **Consumer Utility HAN Device Registration and Deregistration**

These principles define how the registration and deregistration of a consumer device by a consumer should be designed.

#### Consumer HAN Device Registration

1. All consumers will be provided with accessible facilities to register and deregister consumer HAN devices, without charge.
2. The consumer may register certified consumer HAN devices of their choosing.
3. Consumer HAN devices must be registered against the correct smart meter, and unauthorised access by any other devices will be prevented.
4. The registration information for consumer HAN devices and other utility meters or utility devices will be preserved as standing data against the NMI.
5. The registration information for consumer HAN devices is confidential
6. The consumer will be provided with a facility to provide consent to one or more market participants or third parties to access all or a subset of the consumer's HAN devices.
7. Any contract entered into in granting access to a consumer's HAN device must include a cooling-off period during which the consumer can withdraw their consent without penalty.
8. Any consent granted will be revoked when the consumer moves out, changes retailer or revokes their consent. The revocation itself will not be subject to contract conditions.
9. While a consumer may incur a penalty for early cancellation of a contract within a contract period, this will not affect their right to withdraw consent and any charge for this will be reflective of the true cost to the business of this early cessation of the contract.

#### **Move Out**

10. When a consumer moves out of a property the consumer will have the right to deregister any consumer HAN devices they plan to remove from the property. Any other consumer HAN devices will remain registered, however the communication between consumer HAN devices and the smart meter will be disabled via the SMI.
11. On a move out, the standing data associated with the HAN devices of that NMI remains confidential information until a new customer moves in.

### **Move in**

12. On a move in any existing standing data can be released to potential authorised parties only when the incoming customer has provided explicit informed consent to that specific party.
13. On a move in, the preserved standing data associated with the HAN devices of that NMI becomes confidential information specific to a consumer once that consumer enters into a contract for the supply of electricity to the property.
14. When a consumer moves into a property they will have the right to access the standing data that has been preserved against that NMI.
15. When a consumer moves into a property they have the right to register or deregister any existing consumer HAN devices on that NMI.
16. Market participants will not modify the list of registered HAN devices around move-out, and move-in events without consumer consent.

### **Change in Retailer**

17. When a consumer changes retailer, any consent granted to the previous retailer will be revoked. The list of registered HAN devices will be maintained as standing data. The consumer can establish consent with the new retailer for the Consumer HAN devices registered on the Utility HAN.

### **Meter replacement**

18. When an electricity meter is replaced, the list of consumer HAN devices registered will be maintained and the setting and operation of the device will not be required to be changed by the consumer.

### **Confidential Information**

20. Access to confidential registration information will be restricted to authorised parties that are required to facilitate the customer service function, based on explicit informed consent.
21. Market participants and authorised third parties may need to handle HAN device registration data and other confidential consumer information in the course of facilitating a customer service function. At no time may the market participant use that information for any other purpose, and it must protect the confidentiality of that information.

## **Consumer Access to Energy Data via the Utility HAN**

These principles apply to an In-Home-Display and equally to any other device that allows the consumer to access real time energy consumption information directly from the Smart Meter via the Utility HAN.

22. Meter data available directly from the smart meter will be made available to registered HAN devices without limitation and without any additional charges.
23. While NER Chapter 7 rules govern the handling of metering and energy data, this data is considered confidential customer information.
24. Historical interval data represents a signature of a consumers usage patterns and may indicate personal details or behavioural traits. As such it is essential that there is no unauthorised access to this data.
25. The HAN technology standards, security protocols and business procedures will together ensure that unauthorised HAN devices are not able to access a consumer's metering data stored in the smart meter or other registered and authorised HAN devices.
26. On a move-in there will be a means for the incoming consumer to prevent devices that belong to the previous consumer from continuing to read consumption data from the smart meter. This implies the incoming consumer may deregister a consumer HAN device.
27. The HAN shall also support communication of metering data from any embedded generation and sub-metering of end-use devices and controlled circuits.

### **Consumer Access to Tariff and Billing Data via the Utility HAN**

These principles apply to an In-Home-Display and equally to any other device or system that allows the consumer to access, evaluate and respond to energy, tariff and price data from the Smart Meter via the HAN.

1. Tariff information is based on a contract between the retailer and consumer and is classified as confidential information.
2. Upon request a consumer must be given ongoing access to their retail tariff data via the Utility HAN. Whenever tariff or other cost details change they will be routinely loaded to the smart meter, in line with the regulated notification requirements to customers.
3. On a move-in, or with a change of retail product or retailer, the consumer may request their retailer to load their tariff information.
4. Based on the consumer request the retailer will arrange for the tariff information to be loaded into the smart meter. The retailer has an obligation to provide such a service whether or not the consumer HAN device has been provided by that retailer.
5. All cost and related billing data made available to a consumer HAN device will be accurate to the extent that it reflects what appears on a consumer's bill, with only immaterial inaccuracies.
6. At the time of move-out or change of retailer tariff information will be removed (cleared) from the smart meter.
7. Tariff information will be automatically loaded into a smart meter on installation of replacement smart meter.



### **Confidential Information**

8. Those parties that are required to facilitate the transfer and loading of tariff information in to the smart meter must not use that information for any other purpose and must protect the confidentiality of that information.

### **Messaging from market participants and other third parties to the consumer via the Utility HAN**

These principles apply to an In-Home-Display and equally to any other device that allows the consumer to receive text messages from market participants or third parties via the Utility HAN. (principles for larger messages and advertising will need to be further considered, because the capability to send these messages may add significant overhead to the SMI).

1. With the exception of
  - a. messages from emergency services (where supported by legislation)
  - b. messages from an authorised party with whom a consumer has a contract and has provided their explicit informed consent
  - c. notices of potential disconnection or current de-energisation

any messaging by any third party to the consumer over the Utility HAN requires explicit informed consent to be established in advance (“opt-in” rather than “opt-out”).

2. With the exception of messages from emergency services (where supported by legislation), consumers will be provided with an automated facility, via the utility HAN, to opt-out of receiving messages from any individual party, including authorised parties with whom that consumer has a contract
3. Where supported by legislation, a person who is the representative of an emergency service may use the Utility HAN to send emergency messages to a community of customers provided that the person does so directly through an authorised party, or a third party accredited system. The person must abide by the NSMP Procedures which govern the use of the facility.
4. Whether an individual message is general in nature or consumer specific, the data is considered confidential consumer information, excluding emergency services messages.
5. On a move-out any messages will be removed (cleared) from the smart meter, and any consent to messaging services granted by the outgoing consumer will be revoked and will not transfer to the new consumer.

6. Those market participants and authorised third parties that are required to facilitate the transfer and communication of messages and information to the smart meter must not use that information for any other purpose and must protect the confidentiality of that information.

### **Direct Load Control of Consumer Appliances**

These principles apply to a consumer appliance where the consumer has entered into direct load control contract with an authorised party. These principles are an addition to the Consumer HAN Device Registration and Deregistration Principles. These principles relate to the load control management, including but not limited to schedules and load control switch actions that may be applied to a consumer appliance on direct load control via

- A Controlled Load Contactor / Relay located on the meter
- The Utility HAN
- Any other technology for Direct Load Control

20. The consumer may cede control of a specific device for direct load control on the Utility HAN or CLC/R to an authorised party, with explicit informed consent. The default position for DLC of any consumer appliance will be “opt-in” rather than “opt-out”.
21. The consumer may opt out of direct load control during or at the completion of the direct load control contract period.
22. Any contract entered into in granting consent to control a consumer’s device must include a cooling-off period during which the consumer can withdraw their consent without penalty.
23. The DLC appliance settings for consumer HAN devices will be preserved and maintained as standing data against the NMI or until the device is deregistered by the customer.
24. The DLC appliance settings for consumer HAN devices are confidential information.
25. The consumer will be provided with a facility to provide consent to one or more authorised parties for the purpose of DLC at any one time.
26. The consumer may provide consent to access all or a subset of the consumer’s HAN devices for DLC.
27. Any consent granted for direct load control of an appliance will be revoked when the consumer moves out, provides explicit informed consent to another authorised party to operate that device, or otherwise withdraws their consent, regardless of contract conditions. For example, while a consumer may incur a penalty for cancelling a contract within a contract period, this will not affect their right to withdraw consent.

### **Move Out**

28. When a consumer moves out of a property that consumer has the right to deregister any devices on direct load control that they intend to remove from the property. Any other devices on direct load control will remain registered.
29. On a move out, the standing data associated with devices on direct load control of that NMI is no longer confidential information solely for the purposes of informing the incumbent customer of the status of DLC devices.

### **Move in**

30. When a consumer moves into a property they will have the right to access the standing data that has been preserved against that NMI. Any market participant or authorised party may access that preserved standing data on request from that consumer.
31. On a move in, the preserved standing data associated with devices on direct load control on that NMI becomes confidential information once a consumer enters into a contract for the supply of electricity to the property.
32. Prior to commencement of any new retail contract, the new FRMP must disclose to the consumer all information preserved in standing data regarding registered DLC devices associated with that NMI
33. When a consumer moves into a property they have the right to register or deregister any devices on direct load control on that NMI.
34. Parties will not modify the list of registered HAN devices on direct load control around move-out, and move-in events without consumer consent.

### **Change in Retailer**

35. When a consumer changes retailer, any explicit informed consent granted to the previous retailer will be revoked. The list of registered HAN devices on direct load control will be maintained in the market systems. The consumer can establish consent with the new retailer or other authorised party for .

### **Meter replacement**

36. When an electricity meter is replaced, the list of devices on direct load control registered against that NMI will be maintained.

### **Confidential DLC Appliance Settings Information**

37. Access to confidential consumer DLC appliance settings information will be restricted to the authorised parties required to facilitate the direct load control, based on explicit informed consent.
38. Market participants may need to handle confidential consumer information in the course of facilitating a customer service function for direct load control. In such a case, the market participant must not use that information for any other purpose and must implement processes that protect the confidentiality of that information.