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Australian Energy Market Commission
PO Box A2449
Sydney South, NSW 1235

AEMC Draft Determination on Expanding Competition in Metering and Related Services

The Consumer Action Law Centre (**Consumer Action**) welcomes the opportunity to provide input into the AEMC's draft rule determination to expand competition in metering and related services.

Consumer Action Law Centre is an independent, not-for profit consumer organisation based in Melbourne. We work to advance fairness in consumer markets, particularly for disadvantaged and vulnerable consumers, through financial counselling, legal advice and representation, and policy work and campaigns. Delivering assistance services to Victorian consumers, we have a national reach through our deep expertise in consumer law and policy and direct knowledge of the consumer experience of modern markets.

Advanced metering is a necessary platform for a more efficient energy market which provides value and the benefits of efficiency to the consumer. Advanced meters will unlock innovation, enable cost-reflective pricing and give people greater choice in how they produce and consume energy to best meet their needs, at a cost they are willing to pay.

Competitive provision of metering will also maximise the likelihood that consumers will pay only the efficient costs of accessing a smart meter. We therefore support the premise of the rule change. Together with the other *Power of Choice* reforms, it has the potential to enable a modern and flexible energy market with a high degree of consumer choice.

The *Power of Choice* reforms are, however, at risk if consumers are unable to understand the market, or the products and services on offer, and so make effective decisions about the products and services they contract.

There is already evidence that consumers are unable to engage optimally in the market—the average consumer interacts with their energy provider only 12 minutes per year, with 70% of those interactions negative,ⁱ and consumer trust in energy providers is at only 9%ⁱⁱ. A market that delivers a much wider array of products, services and delivery mechanisms will be much more complex. If we fail to adequately explain new products and services to consumers, engagement and trust will sink even lower. The integrity of the *Power of Choice* reforms will be materially threatened through consumers failing to play the engaged and participating role that it is currently assumed they will play.

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Mitigating this risk must be the focus of all further *Power of Choice* reforms and market transformations, including expanding competition in metering and related services, in order to achieve efficient asset utilisation and efficient allocation of costs. While this draft determination addresses the important technological and economic aspects of a move to competitive metering, it must also address the consumer engagement challenge: **how does the AEMC plan to foster good consumer outcomes and build consumer trust through this rule change, to ensure that consumers understand the benefits to them of smart meters and want to engage with the products and services they unlock?**

Consumer Action receives approximately 16,000 calls a year from low-income and disadvantaged Victorians needing financial counselling to assist them with access and affordability in a range of markets. We also receive approximately 5,000 calls a year from consumers needing legal advice in the consumption of competitive products and services. We are therefore experts in what constitutes 'good consumer outcomes' that are necessary to build trust.

We define good consumer outcomes as:

- Safe and fair products and services
- Useable information which is simple, clear and consistent
- Easy and equitable access to products and services
- Efficiency benefitting consumers
- Clear dispute resolution processes.

In competitive metering, good consumer outcomes involve:

1. Clarity on the cost of the meter, when and how it can be replaced and how the consumer will be informed of the replacement;
2. Access to technology and services regardless of income;
3. Access to clear and independent information about the energy services available, and therefore the meter functionality required;
4. The ability to opt out of meter replacement if the existing meter is not faulty;
5. Fair and efficient allocation of costs for new meters or other metering infrastructure;
6. Flexibility to change energy products and services if they are no longer suitable;
7. Protection from inappropriate disconnection from energy;
8. Clear and consistent data handling and access processes to ensure that privacy is protected; and
9. Simple access to dispute resolution services in the event of problems.

In light of this, we are very supportive of the opt-out provisions recommended in the draft determination and of energy retailers having overall responsibility for provision of metering, as this ensures that metering is captured within Ombudsman schemes.

However in relation to the other elements, we believe that the draft determination could go further. At its core it seems that the rule change relies on consumers 'choosing' not only retail contracts but energy services provided by a retailer that accord with their needs, and therefore the meter that will deliver those services. There is plenty of evidence of retailer sales techniques that indicate that energy contracts have largely been 'sold' rather than 'bought' (ie. door to door sales). In this sort of environment, there is a significant risk that consumers will be sold products that don't suit their needs, therefore paying more for a meter which may not be suitable. The AEMC must take care to

ensure that the rule change is supported by measures that protect consumers' ability to make unpressured and informed choices that provide them with meters and services that best meet their needs.

Our comments are detailed more fully below.

1. Consumer clarity

It is critical to effective competition that consumers are empowered to make decisions which suit their needs and are in their own interests. Decisions regarding whether a smart meter is appropriate for an individual consumer will be dependent on many factors. However, a universal factor will be the price of the meter (and potentially any flow on costs related to upgrading the wiring of the consumer's residence to accommodate the new meter, see Section 2: Access below) and its impact on the consumer's bill. This will be particularly significant for low income and vulnerable consumers, who are least able to absorb increases in costs driven from new metering, but could benefit most from the energy management services they unlock.

We believe that the final determination must include clear obligations on retailers to proactively communicate with consumers well in advance of any meter replacement. Communications must be in simple and terminology must be clear, including:

- Why the meter replacement is required;
- The services that the proposed meter will enable;
- The services which the proposed meter will *not* enable;
- The total cost of the meter, and the cost per bill (or per bill over the contract term, in the case of fixed term contracts);
- The right of the consumer to opt out of the meter;
- The date on which the meter will be replaced;
- Responsibilities for rewiring, where this is required to accommodate the new meter; and
- Access to dispute resolution processes.

This communication should be required a well in advance of the meter replacement, and then again immediately prior to the meter replacement to ensure that the consumer is aware of the changes that will flow through to their bill and access to services.

In order to ensure that consumers are able to see the cost impact of the new meter on their bill, we support unbundling of metering costs in retail energy bills.

Recommendation 1: The final determination includes clear obligations on retailers to proactively communicate with consumers well in advance of meter replacement, and then again immediately prior to meter replacement, to ensure that the consumer is aware of the changes that will flow through to their bill and access to services.

2. Access

Smart meters have the potential to provide a range of benefits to consumers, from the simple ability to access their data and understand consumption patterns and the financial implication of usage decisions, through to the ability to engage energy management services to minimise consumption, maximise comfort, or both. All energy consumers, regardless of income, can benefit from these

services. We are concerned, however, that in the competitive roll out of smart metering, the poorest households will face barriers to accessing technology which could ultimately assist them in bringing down their consumption and save money.

Barriers to accessing smart meters in a competitive environment could exist through lack of independent, clear and understandable information about which meter best suits their needs, or through the responsibilities around rewiring where required in old housing stock to safely support upgraded meters.

In the Victorian smart meter roll out, significant problems were encountered around rewiring responsibilities where houses were unable to safely support the installation of a smart meter. Ultimately, householders had responsibility for upgrading the wiring where it was required, at their own cost.ⁱⁱⁱ This creates significant equity problems where people are not able to afford rewiring costs, or where renters are concerned—there is currently little incentive for a landlord to prioritise this spending. The AEMC must learn from the Victorian experience, and address this problem in the final determination—we recommend a principles-based approach to ensure that those consumers that can't afford to rewire their properties to support a smart meter, or have no control over the rewiring of their property, do not miss out on technology that is fundamental to their ability to participate in the transforming energy market.

Information barriers will also exist for consumers trying to work out which energy services, smart meter, or both, suits their needs. This will apply to all consumers regardless of socioeconomic background—as above, in a market where consumers are 'sold' products, rather than choosing them proactively, consumers will have trouble making informed decisions in their own interests.

The Victorian experience of smart meters confirms this: benefits have largely accrued to industry, and benefits relying on consumers "choosing" new products and services have not eventuated. For example, only approximately 6,000 households have chosen a time of use tariff and it appears very few are using the My Power Planner comparison service. This is largely due to the complexity of offers and consumers' default bias which means they are likely to defer change where the impact is uncertain. Competitive metering, particularly where it is lightly regulated, may mean that benefits accrue largely to retailers (not even distributors if they cannot access energy management services) and benefits will not flow to consumers without further assistance and advice.

Competitive metering must therefore be accompanied by a strong information and education program. Consumer Action believes there is a need for an independent, government-sponsored 'energy advice' service to help consumers to make these decisions, which should be included as a recommendation in the final rule change. For households unable to make the complex choices themselves, such an advice service might be an independent telephone service run along the lines of telephone financial counselling services.

Recommendation 2: The AEMC includes a principles-based approach to provision of metering to low-income and vulnerable households to ensure that those consumers that can't afford to rewire their properties to support a smart meter, or have no control over the rewiring of their property, do not miss out on advanced metering.

Recommendation 3: The AEMC recommends that competitive metering is supported by a strong, independent, government-sponsored energy advice service to help consumers make choices about products, services and meters.

3. Efficient Cost Allocation

Efficient cost allocation is a necessary element of effective competition and a market which provides good consumer outcomes. We are therefore concerned by the proposal that DNSPs are able to maintain metering infrastructure in addition to that provided by the retailer through the Metering Coordinator. While we understand that in the early years, consumers are likely to be paying for meters that are part of the regulated asset base, consumer trust will be significantly undermined if they are paying for a new meter which they were told was required, while the old meter is still working and remains in place for use by another company. We therefore believe that all metering services for both retail and distribution purposes should be performed by a single meter. At a minimum, DNSPs should not be able to install a new meter for network purposes beyond the lifetime of an existing meter if it is retained.

We are also concerned about the efficiency of investment in metering with such limited minimum functionality. The list proposed by the AEMC is greatly reduced from the functionality required in the Victorian smart meter roll out.^{iv} While lower functionality may ensure lower basic costs for consumers to move to smart metering, it also increases the likelihood of meter churn as consumers have to pay to upgrade their meter to access what may be quite basic benefits of smart meters.

We are particularly concerned about the exclusion of load control services from the minimum functionality. Direct load control has very strong potential to benefit consumers (especially with the introduction of flexible network pricing) while also providing network benefits in reducing critical peak demand. For example, Energex's 'Positive Payback' rewards program gives consumers a rebate on load control-enabled air conditioners, hot water systems and pool pumps. The program allows Energex to cycle enabled equipment for short periods on several days of forecast peak demand a year and is designed to be 'set and forget' so consumers won't notice a difference to their amenity. While there is yet to be an evaluation of the programs, Energex reports that uptake has been positive and is on track to reach its target of 144MW of peak demand reduction for 2010-2015.^v

In addition, work done by the Equipment Energy Efficiency (E3) Program found that it was important to peak load reduction that air conditioners, pool pumps and other products that contribute significantly to peak demand, were 'load-control ready', as energy efficiency measures alone would not be sufficient to control growth in peak demand.^{vi} It is therefore counterproductive and inefficient to recommend that load control not be part of the minimum functionality of new smart meters.

Consumer Action supports that the minimum functionality specification of all new smart meters should be in line with the Victorian specifications at a minimum.

Recommendation 4: Metering services are provided by a single meter in order to build consumer trust in the energy market.

Recommendation 5: The minimum functionality specification of all new smart meters is in line with the Victorian specifications at a minimum.

4. Flexibility

As people's circumstances change, so too will the products and services which best suit their needs. It is important that the products and services on offer allow flexibility to encourage competitive switching of retail contracts, energy services, and even meters as required. Long lock-in contracts will not allow consumers to realise the benefits of smart meters or the energy services that they enable as their situation or understanding changes.

In light of this, there are some contract terms that will need to be regulated and accompanied by proactive compliance and enforcement by regulators. This is particularly the case around allowable contract terms and explicit and informed consent processes where consumer protections are being provided by different frameworks. Recent experience with the crossover between the National Energy Customer Framework and the Australian Consumer Law (**ACL**) have identified a number of areas where retailer behaviour has breached the ACL through omitting information which is fundamental to a consumer's ability to make an informed decision (see the AGL 'Discounts off What?' case pursued by the ACCC^{vii}). This Federal Court decision, however, also demonstrated the insufficiency of the ACL when it comes to misleading omissions. In relation to one group of affected customers, the ACCC alleged that there was a positive obligation on AGL to inform its customers that contract "discounts" would be lost when the price was later increased. The Federal Court found there was no such obligation under the ACL: the conduct was not misleading.

We believe that the ACL or energy-specific regulation should be expanded to prohibit misleading omissions. Such a prohibition exists in UK consumer protections, which prohibit suppliers from omitting or hiding material information, or providing it in an unclear, unintelligible, ambiguous or untimely manner.^{viii} This general prohibition is useful, reducing the need for prescriptive regulation about exactly what information should be provided and when—it provides the freedom for retailers to inform consumers as they see fit, as long as they don't breach the general prohibition.

If enacted in the NEM, it would ensure that service providers have to tell consumers about features and details of products that are necessary to a consumer being capable of deciding whether or not the meter or energy service suits them. Moreover, it would require providers to inform consumers at an appropriate time and in clear, unambiguous and intelligible manner.

Recommendation 6: The ACL or energy-specific regulation is expanded to prohibit misleading omissions.

5. Protection from disconnection

We are pleased to see recognition in the draft determination of the significance of protection from unsafe disconnection, and an increased focus on communication between retailers and DNSPs to avoid unsafe disconnections. We are, however, concerned about an increased risk of inappropriate disconnection for non-payment which may arise from having retailers in control of metering services. The introduction of the remote disconnection function of the meter speeds up the disconnection process as the distribution business no longer needs to physically visit the property.

In Queensland, staff of distribution business Energex are required to check in on householders prior to proceeding with disconnection. Energex has been tracking this since October 2013 and report that these checks have resulted in the avoidance of about 700 disconnections.^{ix} The following types of checks are performed before proceeding with disconnection:

- Indications that disconnection may cause a risk to customer's life (e.g. customer requires supply for oxygen concentrator);
- Indications that disconnection may cause a risk to other people in the customer's care (e.g. child care centre);
- Risk to livestock (e.g. disconnecting a fish farm's pumps may result in loss of all stock, disconnecting a cattle property may result in cattle not being able to be watered); and
- Advice of family bereavement.

We believe that this is a best-practice process that should be employed across the industry to ensure that wrongful disconnections do not continue to increase across the NEM. While remote disconnection may be appropriate and convenient at other points (i.e. move-ins), we do not believe it is appropriate for disconnection for non-payment. At a minimum, this rule change should include a requirement for the AER to undertake strict compliance and enforcement activities around energy retailer hardship and disconnection practices on an annual basis.

Recommendation 7: The AEMC recommends that processes for disconnection for non-payment are updated to include a requirement for the DNSP to visit the property prior to disconnection.

Recommendation 8: The rule change includes a requirement for the AER to undertake strict compliance and enforcement activities around energy retailer hardship and disconnection practices on an annual basis.

6. Privacy

While we do not foresee that data handling and provision processes will be much different from the consumer perspective under the new processes, the metering arrangements will mean that there are now potentially more companies and individuals who have access to a consumer's data (between the retailer, metering coordinator, metering provider, metering data provider and DNSP). We expect that data access and provision for the consumer will be governed by the retailer's privacy policy. It is therefore critical that the rule change requires retailers' privacy policies to be up to date, in plain and understandable English, and easily available on retailers' websites. It should also be provided in hard copy with all communications provided proactively to consumers about new meter provision and installation. Failing to address this issue could result in consumer backlash akin to that seen in the Victorian roll out, where trust was very low through poor communication of the benefits and poor understanding amongst consumers of the privacy and security of their consumption data.

Recommendation 9: The AEMC requires retailers' privacy policies to be up to date, in plain and understandable English and easily available on retailers' websites. It should also be provided in hard copy with all communications provided to consumers about new meter provision.

7. Smooth transition

Given the lengthy and fraught process to roll out smart metering in Victoria, we strongly support transition arrangements for Victoria that allow a move to competitive metering services in a managed and careful way. Many Victorian consumers lost confidence in smart metering, due to poor communication about the program's benefits and poor governance that contributed to a lack of accountability. This was confirmed by the Auditor General's 2009 report, *Towards a Smart Grid*.^x Following that report, the Government undertook a strategic review which resulted in a better governance framework and a strong focus on consumer benefit. So as to maintain that focus, and ensure that Victorian consumers see the benefits of meters which they are already paying for before further change in regulations and infrastructure are allowed, a slow and managed transition with consumer confidence at its heart is required.

We believe that the derogation which allows DNSPs to be the Metering Coordinator in Victoria at the commencement of this rule change should be extended so that DNSPs remain the Metering Coordinator for all existing smart meters in Victoria for the life of those meters (in practice, this will be approximately seven years). This will ensure that the risks of installing new meters where they are not required are minimised. Competition could be phased in in Victoria during this time where replacement of faulty meters is required, or in greenfield sites where new metering is being installed.

Recommendation 10: Extend the derogation that allows DNSPs to be the Metering Coordinator in Victoria so that they remain the Metering Coordinator for the life of all existing meters.

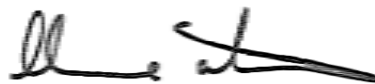
If you would like to discuss any of these matters further, please do not hesitate to contact Claire Maries, Senior Energy Policy Officer, directly on 03 8554 6907 or at claire@consumeraction.org.au

Yours sincerely,

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- ⁱ Accenture (2014). *The Balance of Power: Why Australian utilities need to defend, delight and disrupt*. http://www.accenture.com/SiteCollectionDocuments/Local_Australia/PDF/Accenture-Why-Australian-Utilities-Need-to-Defend-Delight-and-Disrupt.pdf
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- ⁱⁱⁱ Smart Meters <http://www.smartmeters.vic.gov.au/installation>. Accessed on 18 May 2015.
- ^{iv} Energy and Earth Resources (2013). *Minimum AMI functionality specification (Victoria)*. <http://www.energyandresources.vic.gov.au/energy/about/legislation-and-regulation/advanced-metering-infrastructure>.
- ^v Energex. *Positive Payback for Households*. <https://www.energex.com.au/residential-and-business/positive-payback/positive-payback-for-households>
- ^{vi} Department of Climate Change and Energy Efficiency (2011). *Energy efficiency and peak load reduction - the work of DCCEE and the Equipment Energy Efficiency (E3) Program*. <http://www.aemc.gov.au/getattachment/e8022d79-2a59-495e-8466-3bde1e386f5c/Department-of-Climate-Change-and-Energy-Efficiency.aspx>
- ^{vii} K&L Gates (2015) <http://m.klgates.com/australias-federal-court-mandates-greater-care-when-offering-discounts-on-energy-usage-charges-02-06-2015/>
- ^{viii} Unfair Trading Regulations 2008 (UK).
- ^{ix} As reported by a Queensland-based consumer advocate.
- ^x Victorian Auditor-General (2009). *Towards a smart grid - the roll out of Advanced Metering Infrastructure*. <http://www.audit.vic.gov.au/publications/2009-10/111109-AMI-Audit-Summary.pdf>