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Email: Phil.Waren@esc.vic.gov.au

Mr Phil Waren
Senior Regulatory Manager, Energy
Essential Services Commission of Victoria
Melbourne VIC 3000

Jemena Electricity
Networks (Vic) Ltd
ABN 82 064 651 083

321 Ferntree Gully Road
Mount Waverley VIC 3149
Locked Bag 7000
Mount Waverley VIC 3149
T +61 3 8544 9000
F +61 3 8544 9888
www.jemena.com.au

Dear Phil

Draft Report on Smart Meter Privacy Impact Assessment – May 2012

Jemena Electricity Networks (Vic) (**Jemena**) welcomes the opportunity to respond to the Essential Services Commission's (**ESC**) Consultation Paper on the Draft Report on Smart Meter Privacy Impact Assessment.

Our key messages are:

- Jemena supports an independent audit regarding compliance with National Privacy Principles (**NPPs**) relating to Advanced Metering Infrastructure (**AMI**) systems and processes. However, we object to the publication of the audit results on our website.
- Jemena welcomes the ESC's recommendation that when compliance is assured, audits should be limited to those participants who generate complaints.
- Jemena supports the development of an Industry Code on privacy principles specifically designed for use by organisations involved in AMI. It will provide a basis for audits and organisations can include reference to the Code in their generic privacy statement.
- We believe privacy complaints should be handled by the Privacy Commissioner and not the Energy and Water Ombudsman of Victoria (**EWOV**) or the Australian Energy Regulator (**AER**). Referring privacy complaints to these other bodies would result in confusion in responsibilities, as well as create uncertainty and confusion for industry stakeholders.
- We agree third party providers should be encouraged to abide by the NPPs. However, we do not believe the AER should be burdened with publishing the names of third party providers who agree to abide by NPPs. The cost of verification and keeping the list of third party providers updated can be considerable as they increase in number in the future.
- A Home Area Network (**HAN**) device like an In-home Display (**IHD**) is a consumer appliance and is outside the control of distributors. The Energy Service Interface (**ESI**) between a smart meter and the HAN is the last


domain of control for distributors and the ESI cannot manage downstream devices. Consequently, purging of data in an IHD, as recommended by the ESC, is problematic and not achievable.

- Jemena supports the ESC recommendation that the National Smart Metering Program take into account the following considerations in developing business processes and protocols for HAN activation.

Jemena's detailed response on the ESC's recommendations 1 to 16 is set out in Annexure 1.

If you have any questions in relation to this submission, please contact me on (03) 8544 9442 or by email siva.moorthy@jemena.com.au.

Yours sincerely

A handwritten signature in grey ink that reads "Siva Moorthy". The signature is written in a cursive, slightly slanted style.

Siva Moorthy
Manager Network Regulation and Strategy

Annexure – 1

Jemena Electricity Networks (Vic) response to the Draft Report on Smart Meter Privacy Impact Assessment

ESC Recommendation	Jemena's Comments
<p>Recommendation1</p> <p>Retailers and Distributors should be required to conduct an independent audit of their compliance with NPPs before the roll out of smart meters is completed or as soon as possible thereafter. The audit should follow principles laid down by the Office of the Australian Privacy Commissioner and should include:</p> <ul style="list-style-type: none"> • Security systems (including data storage and quarantining, online portals) • Staff training • Staff access to systems and information • The systems and processes of third party providers contracted by Retailers and Distributors, where customer metering data is accessed or stored by these. <p>In the short term all industry participants should be audited, and then, as compliance is assured, audits should be limited to those participants who generate complaints.</p> <p>Audit results should be published in their annual report/on the company website and provided to the Australian Energy Regulator through regulatory performance or compliance reporting.</p> <p>To promote industry readiness and consumer confidence, Retailers and Distributors should also:</p> <ul style="list-style-type: none"> • Conduct induction and on-going training for 	<p>Jemena supports an independent audit regarding compliance with National Privacy Principles (NPPs) relating to Advanced Metering Infrastructure (AMI) systems and processes including those identified in recommendation 1. This would increase the public's confidence that metering data is properly managed and that there is no inappropriate access to the customer's energy consumption data. It would demonstrate to them that we have effective controls in place to identify and rectify any non-compliance.</p> <p>Additionally, we support the publication of privacy policy on our website. However, we strongly object to the publication of compliance audit results.</p> <p>If necessary, we are happy to provide audit results to the Australian Energy Regulator (AER) as part of regulatory performance or compliance reporting. The AER can then publish a summary of audit findings, any non-compliance and shortcomings, and the corrective actions taken. This would be akin to the ESC's past practice of publishing a summary of audit findings (conducted pursuant to Regulatory Audit Guidelines No.16) in the annual energy retail and energy distribution performance reports.</p> <p>Jemena welcomes the ESC's recommendation that when compliance is assured, audits should be limited to those participants who generate complaints. This would minimise the cost of smart meter services such as online portals and the binding of HAN devices (e.g. IHD).</p> <p>Jemena supports the activities identified to promote industry readiness and consumer confidence.</p>

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<p>their staff in Privacy principles, and</p> <ul style="list-style-type: none"> • Satisfy themselves as to the scope, completeness and regularity of the training provided by third party providers to their staff, as part of initial and ongoing contractual arrangements with third party providers engaged by them. • Ensure that they can identify and react to systemic non-compliance. 	
<p>Recommendation 2</p> <p>Industry should develop a common layered Privacy Notice that can be used as the basis for all organisations involved in AMI; and consider developing an industry-wide Privacy Policy (perhaps as an Industry Code to be approved by the Privacy Commissioner). The Notice, and the Policy or Code should include:</p> <ul style="list-style-type: none"> • Plain English wording and provision for customers of non-English speaking background • An agreed definition and explanation of secondary uses of personal information (within the meaning of section 2.1 of the NPPs) developed by the National Smart Meter Program in conjunction with Industry. • A list of examples of secondary uses according to the current practice of each business, and provision to expand as new uses are introduced. • An explanation of why smart metering data is collected, how it is used, under what circumstances is it disclosed, and the range of regulatory and operational safeguards that protect it. 	<p>It is not clear to Jemena whether this common layered Privacy Notice is intended to be specific to AMI, or a generic statement that includes reference to AMI. If the former, it is not practical for businesses to have more than one privacy statement. Privacy statements need to be kept simple and capable of being understood by all consumers. Detailed information specific to AMI (such as some of the information suggested by the ESC) has the potential to complicate our generic privacy statement, make it unnecessarily lengthy, and confuse the public.</p> <p>Jemena supports the development of an Industry Code on privacy principles specifically designed for use by organisations involved in AMI. The code can be approved by the Privacy Commissioner. It will provide a basis for audits referred to in recommendation 1 and organisations can include reference to the code in their generic privacy statement.</p> <p>Jemena supports all the matters identified for inclusion in a Code, except for the recommendation that both the Office of the Australian Information Commissioner (OAIC) and the EWOV are to facilitate complaint handling.</p> <p>We believe privacy complaints should be handled by</p>

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<ul style="list-style-type: none"> Contact details for the business, the OAIC and EWOV or its equivalent, to facilitate complaint handling. <p>All Privacy Codes should be easy to locate on Industry websites.</p> <p>Third Party providers that voluntarily opt in to the NPPs would be subject to the requirements of the Privacy Act.</p>	<p>the Privacy Commissioner and not these other bodies, which do not have jurisdiction in this area.</p> <p>Referring privacy complaints to these other bodies would result in confusion in responsibilities, as well as create uncertainty and confusion for industry stakeholders, and risks inconsistent regulation in this area. Moreover, it can result in a waste of scarce regulatory resources as various agencies complete the same or similar tasks. It may even result in competition between regulatory agencies to assert jurisdiction and control over a matter, to the detriment of all sector stakeholders.</p>
<p>Recommendation 3</p> <p>The Commission recommends that consumers who seek it be given access to their smart metering data to the extent this is possible under existing National Electricity Rules.</p>	<p>Jemena agrees with the ESC's recommendation that consumers who seek smart metering or energy data should be given it—to the extent this is possible under the existing National Electricity Rules (NER).</p> <p>Jemena has written to the AER seeking clarification as to whether the AER believes that section 7.7(a)(7) of the NER operates as a barrier to prevent Jemena (and other distributors) from providing a customer's energy data or metering data directly to that customer following a request from the customer or its representative.</p> <p>Additionally, we note that access to smart metering data would need to align with the Privacy Commissioner's guidelines relating to requests for access to personal information, including Jemena's rights to deny access in certain circumstances.</p>
<p>Recommendation 4</p> <p>We support the Opt-In process for customers consenting to the secondary use of metering data.</p> <p>We recommend that the process used by Industry for obtaining customers' consent to the use of their 'Personal Information', including</p>	<p>Jemena supports the ESC's Recommendation 4.</p>

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<p>metering data from smart meters, should be structured to permit consent to separate secondary data uses over time as new products and capabilities are developed for the market.</p> <p>Further, we consider that a customer's express consent should not be required for secondary purposes exempted by the AMI Policy Committee and uses stipulated and required by legislation.</p>	
<p>Recommendation 5</p> <p>This aspect of data security should be subject to internal and external audit processes as outlined in ESC Recommendation 1 above.</p>	<p>Jemena supports this recommendation.</p>
<p>Recommendation 6</p> <p>We recommend that any regulatory obligation to provide data to the market should be clarified by the AER in terms of who bears this responsibility, time frame and detail having regard to the new paradigm presented by smart meters.</p> <p>Staff access to retained interval data should be monitored and audited (as per the Commission's Recommendation 1 above) to ensure it remains appropriate and required for defined business purposes.</p> <p>External access to aged interval data should only be permitted with a customer's consent if it is their data, and otherwise, only where it is aggregated or otherwise unable to identify individual customer's usage.</p>	<p>Jemena supports this recommendation.</p>
<p>Recommendation 7</p> <p>All unregulated third party providers that access</p>	<p>Jemena supports an aspect this recommendation. We believe third party providers should be encouraged to abide by the NPPs. However, we do</p>

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<p>or store 'Personal Information', including metering data of electricity customers from customers themselves via their HAN should be encouraged to abide by the NPPs in their business.</p> <p>This could be in the form of encouragement to Opt-In to coverage under the Privacy Act 1988 as allowed for by the Office of the Australian Information Commissioner. We also recommend that the AER consider publicising the names of third party providers who agree to abide by NPPs as a form of 'tick' or approval of such action.</p> <p>The ESC should monitor compliance of Accredited Persons (VEET accredited installers of IHDs) with privacy obligations. In the event any APs expand their business model to provide other services involving accessing and storing data from IHDs (such as for energy efficiency analysis) the ESC should:</p> <ul style="list-style-type: none"> • Further specify Privacy obligations as part of the process for seeking accreditation • Amend or develop regulation to be able to suspend or remove accreditation for breaches of privacy. <p>Small electricity retailers should be under the same obligation to protect customer data as other Retailers. Accordingly they should be made subject to the NPPs as a condition of their authorisation by the AER.</p>	<p>not believe the AER should be burdened with publishing the names of third party providers who agree to abide by NPPs. The cost of verification and keeping the list of third party providers updated can be considerable as they increase in number in the future.</p> <p>Instead, customers should be educated on only dealing with third party providers who comply with the NPPs to ensure their personal information is protected.</p>
<p>Recommendation 8</p> <p>We recommend the development of a minimum industry standard for data provision with respect to smart meter interval data; and separate information materials to inform consumers of the value of metering data information and to clarify</p>	<p>Jemena supports this recommendation.</p>

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industry terms.	
<p>Recommendation 9</p> <p>Retailers' and Distributors' online portals should comply with industry best practice standards, including when operational, the conduct of regular security audits. This should also be included as part of an independent audit of data security systems and processes.</p> <p>Sites not applying recognised industry best practice standards should be subject to an independent threat and risk assessment.</p> <p>We recommend that DPI work with industry to identify acceptable standards for online portals, monitor online portals and keep industry informed of changes in industry best practice standards.</p> <p>Further, the Government should clarify what powers would be required to rectify/remedy deficient websites and which agency would be responsible for undertaking this assessment.</p>	<p>Jemena supports this recommendation.</p>
<p>Recommendation 10</p> <p>We support Lockstep's recommendation and consider that a Protocol will be essential to clarify the respective roles of customers, Retailers, Distributors and third party providers to protect customer data (by purging it from an IHD) at the time of unbinding from a HAN. This protocol should consider:</p> <ul style="list-style-type: none"> • The present primary communication role of Retailers with customers, • The possible involvement of other third party providers (other than meter readers and Accredited Person) in accessing data via the HAN in future, 	<p>Smart meters connected to Home Area Network (HAN) devices (as deployed in Victoria) are at minimum compliant to ZigBee Smart Energy Profile 1.0 (SEP). The smart meter includes an Energy Service Interface (ESI), which is a performance requirement of Zigbee SEP.</p> <p>A HAN device like an In-home Display (IHD) is a consumer appliance and is outside the control of distributors. The ESI between a smart meter and the HAN is the last domain of control for distributors and the ESI cannot manage downstream devices. Consequently, purging of data in an IHD, as recommended by the ESC, is problematic and not achievable.</p>

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<ul style="list-style-type: none"> The requirement to give customers the opportunity to explicitly Opt-In to use of their data for secondary purposes. <p>We recommend that the unbinding process be an industry managed solution that does not rely on customer knowledge or memory to prevent wrongful access to another customer's data.</p>	<p>The ESC notes that it supports The Lockstep's Recommendation 21. But Lockstep recommendation requires a customer's HAN devices be unbound upon the customer vacating the premise. Jemena supports Lockstep's recommendation as appropriate to ensure the privacy of the customer's ongoing energy data is maintained as confidential. The Lockstep report does not however prescribe purging of energy data from HAN devices as per ESC Recommendation 10.</p> <p>Because HAN devices are not limited to IHDs, the ESC should consider other product such as Energy Management System, ZigBee dongles for computers, smart appliances, and HAN Gateways which are all capable of storing and forwarding energy data to other devices, networks or hosted services. Once energy data enters the consumer domain, the customer must take responsibility for their own energy data and how it is stored, transmitted, analysed and utilised by the customer, or other parties.</p> <p>Presently the smart meters in Victoria must have the capability of storing interval energy data for a period of 200 days (pursuant to clause 2.4.23 of Metrology Procedure part A, for a type 5 metering installation). Consequently the energy data in the meter can never be erased and any HAN device can retrospectively collect 200 plus days of energy data once connected. The National Smart Meter Functional Specification prescribes a commencement date for the ESI implementation so that a customer cannot collect energy data from the meter before the nominated date (i.e. move in date). Such an enhancement to the VIC AMI Spec would improve customer protections for Smart Meters in Victoria. However, this capability would require a significant upgrade of the meter firmware and AMI end-to-solution.</p> <p>None of the present or forthcoming Zigbee SEP</p>

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	<p>standards (SEP 1.0, SEP 1.1, SEP 1.2 or SEP 2.0) has provision for a command/control to purge data from a HAN device. Even if a future implementation of SEP supported such a command, it may not be adopted by device vendors as it is not compulsory to implement all features of the ZigBee stack.</p> <p>Therefore there will be no certainty that issuing a purge to HAN devices from the Smart Meter ESI will have the desired outcome. The only way a HAN device can be purged of historical data with any certainty is individually and at the device.</p> <p>In our view, consumer education is the key outcome to address the privacy concern of HAN devices so that the consumer is aware of the type of personal information that is stored in a HAN device, and how care should be taken in authorising those HAN devices to pass this data onto other parties or services. The consumer needs to be aware that moving out and leaving a HAN device behind may expose the customer to others accessing their historical energy data which may or may not be of concern to the consumer.</p> <p>As IHDs and other HAN devices are consumer products and not in the control domain of the distributors or retailers, the consumer is ultimately responsible for the management of these devices including the stored data within those devices. These issues are not unique to the smart meters. Some useful comparisons of comparable consumer devices which hold personal information that a consumer needs to consider when they are disposed are:</p> <ul style="list-style-type: none"> • Retiring a mobile phone which may contain contacts, messages, notes, appointments and photographs • Disposing of a USB Flash drive where the files should be scrubbed or destroyed if sensitive • Selling a car where your car built in Bluetooth

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	<p>hands free may store your contacts, and call history</p> <p>Each of these are examples where consumer communications and storage devices need to be managed when disposed of in line with the risk of the data contained may be used in an unauthorised manner.</p> <p>Unbinding an IHD will prevent new data being passed to the IHD but will not erase data already collected by the IHD previously. To erase the historical data from the IHD device, it will still require the customer's direct intervention.</p>
<p>Recommendation 11</p> <p>We recommend that the National Smart Metering Program take into account the following considerations in developing business processes and protocols for HAN activation:</p> <ul style="list-style-type: none"> • The need for a clear and common understanding of secondary uses of metering data and a clear delineation of the responsibilities of Retailers, Distributors and/or others for obtaining customer consent are minimum requirements for effective enforcement of customer Opt-In provisions. • The development of a specific regulatory relationship with unregulated third party businesses, beyond encouraging the adoption of the NPPs, may impose potentially excessive regulatory burden, and that this issue be revisited in the light of future experience with smart meters. • At this stage the Commission sees value in the provision of some structured form of information or support for customers (see 	<p>Jemena supports ESC's Recommendation 11.</p> <p>It will be useful to clarify the delineation of responsibilities on the minimum requirements on obtaining customer consent for the effective enforcement of customer Opt-In provisions.</p> <p>We agree that development of a specific regulatory relationship with unregulated third party businesses may impose potentially excessive regulatory burden and cost on smart meter services.</p> <p>In Jemena's view, customer education on how they can protect personal information vis-à-vis smart meters is the way forward.</p>

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<p>also Consumer Information Recommendation 14 below).</p>	
<p>Recommendation 12</p> <p>We don't see an immediate need to introduce regulations in relation to Lockstep's recommendation.</p> <p>Government and the relevant regulatory agencies would need to consider whether a completely new form of contract would be required given the type of service envisaged and what the complexities, risks and cost benefit of taking the proposed approach could be.</p>	<p>Jemena supports this recommendation.</p>
<p>Recommendation 13</p> <p>While we agree the recommended wording may have been preferable, we consider that any amendment to previous Commission decisions may be unnecessary and undesirable at this point particularly given the scheduled transfer of retail regulatory functions to the Australian Energy Regulator in July 2012.</p>	<p>Jemena has no comments.</p>
<p>Recommendation 14 - EWOV</p> <p>We recommend that the Energy and Water Ombudsman of Victoria review its current Privacy complaint classifications to maintain relevant statistics and to report specifically on complaints related to Smart meters and breach of privacy. Further, we recommend that the AER review its key performance indicator definitions to ensure that Smart Meters and Privacy concerns will be sufficiently identified and captured by relevant licensed entities.</p> <p>Further consideration of privacy issues should be undertaken by the AER in future when more</p>	<p>The ESC is recommending privacy issues should be undertaken by the AER in future when more detailed complaint and industry audit information becomes available.</p> <p>Jemena considers privacy complaints should be handled by one body, namely the Privacy Commissioner who has jurisdiction in this area.</p> <p>See Jemena's response to ESC's Recommendation 2.</p>

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detailed complaint and industry audit information becomes available.	
<p>Recommendation 15 - Consumer Information</p> <p>We recommend the following consumer information be developed as to assist customers contracting with unregulated third party providers of services where this involves access to and storage of customers' metering data:</p> <ul style="list-style-type: none"> • Publish a list of third party providers who agree to opt in to the NPPs; and • Develop a standard contract (or standard contract terms) dealing with information privacy protection for the use of consumers entering into arrangements with a third party provider not already subject to any compliance regime. • Advice regarding complaints and the relevant complaint resolution agency. 	Jemena supports this recommendation.
<p>Recommendation 16 - Further Privacy Impact Assessment</p> <p>The Commission recommends that the Department of Primary Industries commissions another privacy impact assessment of the Industry after smart meters have been fully rolled out and operating for five years or sooner if evidence emerges of unresolved privacy concerns.</p>	Jemena supports this recommendation.