

LEGAL ADVICE
Re Smart Meter Installation
October 2012

The members of the Broadmeadows Progress Association requested that the Secretary, John Rutherford, seek legal advice regarding the right of an electricity customer to refuse installation of a smart meter and the validity of the bullying tactics and threatened retribution by the power distributors .

A solicitor was approached who in turn briefed a Barrister Eugene White.

The following legal advice on the following 3 pages was received.

John Rutherford

P.S.

This notice is for individual use. Please feel free to quote from it, including the Barrister's name, but, it would be appreciated if you did not give a complete copy to power distributors, Government authorities, or the media just for the time being. Any suggestions as to the best way to use this in a public way would be welcome. The highlighted sections have been added to assist with accentuating the most pertinent aspects of the letter.

John Rutherford,
47 Stanhope St.,
Broadmeadows. 3047

Eugene White,
c/ Michael Green,
Barristers' Clerk, 525 Lonsdale St.,
Melbourne.

9 October 2012.

John,

You asked me to have a look at some problems associated with Smart Meter Rollout, particularly whether consumers are obliged to allow people onto their property to install smart meters.

On the work I have been able to do to date it appears that there is currently no statute that requires a domestic electricity consumer to allow a distributor onto their premises to remove an analogue meter and install a "smart meter", otherwise known as "Advanced Metering Infrastructure" or "AMI". A complex network of contracts, deemed contracts, Legislation, Orders and Codes, governs the obligations of domestic customers.

Under the Electricity Act if notice is given and contracts approved and gazetted a consumer can be bound by a deemed contract. I have not seen all deemed contracts. I have seen one applicable to Powercor titled "Deemed Electricity Distribution Contract". That document does not appear to have an obligation binding on consumers to allow persons on to their property to install new meters. All the deemed contracts have been gazetted and can be found and examined. No doubt the Companies would have the deemed contracts on their websites.

The Electricity Distribution Code does not contain express terms to the effect that consumers are obliged to allow persons on to their property to install smart meters. Further, by cl 1.4 of the Code a customer is deemed to comply with an obligation under the Code unless expressly informed of the non-compliance or otherwise becomes aware of a non-compliance or could reasonably be expected to be so aware. I am not aware that customers have been given any such notices or if they have the content of such notices.

The Electricity Customer Metering Code does not contain express terms to the effect that consumers are obliged to allow persons on to their property to install smart meters.

Pursuant to clause 14.1 of the Victorian Government Order in Council No S200 (28 August 2007), Distributors are required to use their "best endeavours" to complete the rollout of AMIs. This undoubtedly involves using all manner of means to persuade domestic customers to accept the installation of an AMI. I am told the Essential Services Commission has said, the use of bullying tactics such as threatening to disconnect electricity or impose fines are not consistent with using their "best endeavours" to persuade.

I am told that the Distributors argue that domestic customers are obliged to provide access to install AMI because of the operation of the "deemed contract". They then assert that the "deemed contract" incorporates a part of the Electricity Distribution Code, and specifically clause 3.3.2, which requires customers to provide access to the distributor for purposes associated with supply, metering and billing. They then argue that this clause creates a requirement that the customer allow people onto their property to install an AMI. None of these assertions have been tested.

- . Cl 3.3.2 provides: “3.3.2 Provided official identification is produced by the **distributor’s** representatives on request, a **customer** must provide to the **distributor’s** representatives at all times convenient and unhindered access:
 - . (a) to the **distributor’s** equipment for any purposes associated with the **supply**, metering or billing of electricity; and
 - . (b) to the **customer’s electrical installation** for the purposes of:
 - the inspection or testing of the **customer’s electrical installation** for the purpose of assessing whether the **customer** is complying with this Code; or
 - **connecting, disconnecting or reconnecting supply**, and safe access to and within the **customer’s** premises for the purposes described in this clause 3.3.2.
- . 3.3.2 Provided official identification is produced by the **distributor’s** representatives on request, a **customer** must provide to the **distributor’s** representatives at all times convenient and unhindered access:
 - . (a) to the **distributor’s** equipment for any purposes associated with the **supply**, metering or billing of electricity; and
 - . (b) to the **customer’s electrical installation** for the purposes of:
 - the inspection or testing of the **customer’s electrical installation** for the purpose of assessing whether the **customer** is complying with this Code; or
 - **connecting, disconnecting or reconnecting supply**, and safe access to and within the **customer’s** premises for the purposes described in this clause 3.3.2. “

It is arguable that the obligations extend only to allow access to the Companies’ existing equipment and then only for specified purposes, that is, not for the purpose of installing alternative meters or equipment.

Subject to legislative or contractual obligation or licence, people are allowed to refuse entry on to their property of persons they do not wish to be on their property. In the absence of such an obligation where a domestic customer is opposed to the installation of an AMI they are entitled to refuse people access to their property for the purpose of installing a smart meter. What the Distributor may then do is subject to strict controls. There are many “hurdles” for the Distributor to jump before they could confidently disconnect supply to a retail customer whose bills had been paid. Not only is it entirely inconsistent with “best endeavours” for a distributor or their representative to make the kinds of threats identified above, but it is improper and highly misleading.

There are a number of options open to the distributor to persuade the customer, including dispute resolution. Disconnection of supply is highly regulated and is a course only available after a process has been followed by the distributor and the distributor has complied with its obligations under the Electricity Distribution Code.

A distributor may only disconnect supply to a customer's supply address if it:

- asserts that the customer has not complied with the Code;
- does not consider that there is any immediate danger to the health or safety of any person;
- has notified the customer, in writing of the details of the non-compliance and its implications,
- has notified the customer of actions that the customer could take to remedy the non-compliance,
- has given a reasonable time period to comply,
- has specified any consequences of non-compliance,
- has set out the distributor's procedure for handling complaints;
- has completed any dispute resolution proceedings (internal or before the Energy and water Ombudsman); and
- has, following the giving of time to comply, given another 5 business days' written notice of disconnection ;

and still the customer fails to comply with the notice.

It is misleading simply to advise customers that if they refuse to accept the installation of an AMI, their power will be cut off. It also raises some significant problems for the retailer. Arguably the retailer would be in breach of its supply contract with the consumer if the consumer had paid his/her bills but was disconnected by the distributor for refusing the installation of an AMI.

I can see no basis for threats of fines. If such threats have been made then no doubt reference would have been made to the relevant power to impose any fine. I would be pleased to look at any such alleged power to advise if it supports an assertion that fines may be levied. I note clause 17 of the Electricity Distribution Code prohibits the distributor from including in its deemed contract any penalty amount against the customer for any breach of the Code.

Regards,

Eugene White.