



STOP SMART METERS AUSTRALIA INC

Reg. No. A0059190N ABN 14 717 028 504

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Mr Michael Brett Young
Charter Review Secretariat
Level 24
121 Exhibition Street
Melbourne VIC 3000

By electronic lodgment

Dear Mr Young

Thank you for the opportunity to comment on the 2015 review of the *Charter of Human Rights and Responsibilities Act 2006*.

Stop Smart Meters Australia (SSMA) is a volunteer-based advocacy group which incorporated as an Association in April 2013 in response to widespread community objection to the Victorian State Government mandated Advanced Metering Infrastructure (AMI) rollout. Paramount within our legal purposes is to provide support and assistance to people opposed to the forced rollout of smart meters on the grounds of health, privacy, security, safety or costs.

SSMA wholeheartedly supports legislative recognition of human rights. Our comments centre on the effectiveness of the Charter in relation to SSMA's advocacy concerns; how this might be strengthened and how its provisions might be broadened.

Impact of the Charter on the rollout of smart meters

Whilst the initial amendment to legislation to facilitate the rollout of smart meters in Victoria, and the resulting Order in Council, occurred prior to the commencement of the Charter, it does not appear that the full implications of the Charter have, at any stage, been taken into account in the rollout.

The mandate to roll out smart meters to all residential and small business premises was approved by Cabinet in early 2006. This was followed by the passing of an amendment to the *Electricity Industry Act 2000* in August 2006, in order to provide the Government with

legislative power to make Orders-in-Council (OIC) establishing the requirements of the AMI rollout. Further amendments to the *Electricity Industry Act 2000* and OICs ensued, culminating with the *Energy Legislation Amendment (Customer Metering Protections and Other Matters) Act 2014*, No. 46 of 2014, which was assented to on 1 July 2014, and the *Advanced Metering Infrastructure Order In Council 2014*, No. S 263, which was gazetted on 5 August 2014.

In the Parliament of Victoria's *No. 5 of 2014 Alert Digest*, which reported on the work of the *Scrutiny of Acts and Regulations Committee* (SARC) during the period to 6 May 2014, it was stated that the purpose of the most recent amendment to the *Electricity Industry Act 2000* (in relation to SSMA's concerns) was to further provide for the powers to make Orders about advanced metering infrastructure. The conclusion was that the *Energy Legislation Amendment (Customer Metering Protections and Other Matters) Bill 2014* was compatible with the rights set out in the Charter of Human Rights and Responsibilities.¹

Rollout of smart meters is not compatible with human rights

This conclusion by SARC, however, evidences the Bill's overly simplified *Explanatory Memorandum*, as well as a glaring lack of awareness about the issues surrounding the rollout of smart meters in Victoria. In fact, the Bill (and resulting OIC) impacted upon a number of human rights.

The Bill provided for the continuation of the rollout of smart meters, despite escalating demonstration of the rollout's incompatibility with human rights. The Bill also provided for smart meter refusers to be charged a manual meter reading fee, neglecting to take into account the significant potential for harm to individuals in consequence of a smart meter installation, in addition to the fact that the manual meter reading fee amounts to double-dipping on the part of power distributors, as all Victorian account holders have been subsidising the rollout of smart meters since 1 January 2010.

Some examples of how the Bill may be in breach of the Charter are outlined in Appendix A. Rights that might be impacted include the right to equal and effective protection against discrimination, the right to life, the right to protection from torture and cruel, inhuman or degrading treatment, the right to freedom of movement, the right to privacy and the rights of children.

SSMA's experience with the Charter

In general, it does not appear that Victorians who have suffered an abuse of human rights in consequence of the rollout of smart meters have been able to avail themselves of the rights protected under the Charter.

¹ http://www.parliament.vic.gov.au/file_uploads/Alert_Digest_No_5_of_2014_Y58xj6Ms.pdf

SSMA's own experience, in relation to the rollout of smart meters, is that Victorian government agencies have avoided considering its implications. For instance, SSMA made mention of the Charter in our June 2012 submission on the *Safety of Advanced Metering Infrastructure in Victoria* to Energy Safe Victoria (ESV). Our comment on ESV's Draft Report stated "*The government's forcible introduction of increased near-field and far-field electromagnetic exposure violates a number of basic human rights including Sections 8, 9, 10, 12, 13, 17, 20 and 21 of Victoria's Charter of Human Rights and Responsibilities Act 2006 in addition to other significant declarations of human rights to which Australia is a signatory. Stop Smart Meters Australia requests that the concerns and questions delineated in this submission are not taken lightly and are addressed in ESV's final report on the Safety of Advanced Metering Infrastructure in Victoria.*"² Despite a copy of all the questions contained in the body of our submission (a number of which raised issues relevant to the Charter) also being included in the appendix, these were not addressed in ESV's response. The only reference in ESV's final report to the various issues which had been raised was that the potential health effects of smart meters was beyond the scope of the report, and not the ESV's responsibility.³

Recommendations for improving the Charter's effectiveness

- Invite community consultation on all Bills in regards to their impact on the Charter's rights.
- Require SARC to respond (on the parliamentary website) with substantive comment addressing the issues raised by the community, in order to provide transparency and ensure that the committee fully understands the Bill's impact.
- Extend the requirement for a Statement of Compatibility with the Charter to be completed by all bodies preparing expert reports commissioned by the Victorian Government. For instance, in the case of the Victorian smart meter rollout, reports have included the *Advanced Metering Infrastructure Cost Benefit Analysis* by Deloitte in August 2011, *Privacy Impact Assessment Report: Advanced Metering Infrastructure (AMI)* by Lockstep Consulting in August 2011, *Advanced Metering Infrastructure Customer Impact Study* by Deloitte in October 2011, *AMI Meter Electromagnetic Field Survey* by EMC Technologies in October 2011 and the *Deloitte Flexible Pricing Customer Impact Study - Stage 2* in July 2012.

In the above instances, it appears that Lockstep Consulting was the only organisation to have given consideration to the requirements of the Charter. However, by making a Statement of Compatibility a mandatory requirement, it might more deeply ingrain the principles of the Charter within the community, as well as lead to the Government availing itself of more informed advice.

² <https://stopsmartmetersau.files.wordpress.com/2012/06/esv-submission.pdf>

³ <http://www.esv.vic.gov.au/About-ESV/ESVs-reviews-into-smart-meters>

A Statement of Compatibility with the Charter should also be required by all Government agencies conducting reviews. For example, SSMA believes that Energy Safe Victoria should have taken into consideration the rights protected by the Charter in its July 2012 report on the *Safety of Advanced Metering Infrastructure in Victoria*.

Desirable amendments to improve the operation of the Charter

- Strengthen the avenues by which public authorities can be brought to account. Currently, it appears that the Government is merely required to 'turn its mind' to the Charter. There is a serious lack of incentives in place to ensure that the Government will actively engage with the Charter.

SSMA believes that it should be possible to directly bring legal action against a public authority on the basis that it has acted incompatibly with the Charter or has failed to give proper consideration to a relevant Charter right when making a decision. The current situation, which only allows a Charter claim to be 'piggy-backed' onto an existing claim, is overly restrictive.

- SSMA also advocates for more easily obtainable relief to be available to the community where Charter rights have been breached. Ease of access is especially important for members of the community who have become electrically hypersensitized, as this condition can lead to an inability to tolerate irradiating technologies (including even computer screens), or situations where there are high levels of radiofrequency emissions, such as where there is WiFi; thereby effectively limiting the ability of individuals to pursue their rights.
- SSMA suggests that giving VCAT the power to oversee all claims of Charter breaches, thereby extending its current overly narrow focus in regards to human rights, might be an appropriate solution. There also needs to be adequate remedies available, including monetary compensation, in view of the severe financial consequences which some individuals have borne following breaches of human rights.
- Although the Charter already includes many important rights, some of which are related to health, SSMA believes that it would benefit from more explicit content covering the protection of the health and wellbeing of Victorians.

For instance, Article 10 of the *Protocol of San Salvador*, which is an additional protocol of the *American Convention on Human Rights*, states that "*Everyone shall have the right to health....*" and outlines various measures to ensure the right, including prevention and treatment of endemic, occupational and other diseases; education of the population on the prevention and treatment of health problems; and satisfaction of the health needs of the highest risk groups.⁴

⁴ <http://www.oas.org/juridico/english/treaties/a-52.html>

Reinforcement of this right would be extremely helpful for Victorians who have suffered in consequence of exposure to smart meter emissions. To-date, the Victorian Government has stated that it considers radiofrequency matters to be outside the scope of *the Public Health and Wellbeing Act 2008*. As a result of this position, the Department of Health and Human Services, unlike what occurs in some countries, does not see the need to monitor the situation, investigate cases, train the medical profession on how to identify triggers and symptoms or educate the population on means of reducing exposure.

In particular, SSMA would like to see individuals with environmental sensitivities afforded protection under the Charter.

Recommendation as to whether any further review of the Charter is necessary

- SSMA considers that ongoing reviews of the Charter are necessary, especially in view of the fact that it is still in its early stages, and would benefit from a number of amendments. At the very least, another review in four years would seem to be appropriate.

SSMA hopes that consideration will be given to the issues which we have raised and looks forward to seeing the outcome. Improvements in our human rights culture will inevitably be of benefit to all Victorians.

Yours sincerely



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APPENDIX A

Examples of how the *Energy Legislation Amendment (Customer Metering Protections and Other Matters) Bill 2014* may be incompatible with the rights set out in the *Charter of Human Rights and Responsibilities Act 2006*.

Note that Dr Isaac Jamieson has also provided a comprehensive analysis of human rights in existence elsewhere in the world, and their relevance to smart meter rollouts, in a paper titled 'Smart Meters – Smarter Practices' (Jamieson 2011, pp. 41-76).

Right to recognition and equality before the law (section 8)

There has been increasing evidence, from Australia and as well as overseas, that the rollout of smart meters contravenes the overriding right to enjoy human rights without discrimination. The deployment of AMI is particularly discriminatory in relation to vulnerable segments of the population in consequence of increased exposure to pulsed electromagnetic radiation.

For instance, applied physicist Dr. Ronald Powell analysed wireless smart meter emissions in the light of the conclusions reached by the *BioInitiative 2012 Report*, a report compiled by 29 experts from ten countries which reviewed 1800 new scientific studies on non-ionizing radiation since the *BioInitiative 2007 Report* (which had, in turn, reviewed over 2,000 studies). He concluded that the power density at 100 metres from a smart meter is "*higher than the power density that triggered biological effects in 6 of the 67 studies*" which he considered. His analysis also showed that the radiofrequency (RF) power density from a smart meter does not drop down to the level of the RF exposure limits proposed by the *BioInitiative 2012 Report* until distances of *180 to 200 metres* from a smart meter are reached (Powell, 2013, p. 12).

The Government's position, in making provision for power distributors to charge smart meter refusers for manual meter reads in addition to requiring refusers to subsidise AMI deployment, appears to be particularly discriminatory. Furthermore, the Government has taken an extremely harsh position in relation to individuals who have already had a smart meter installed, and who are suffering adverse health effects in consequence, as the Bill makes no provision for the meter's wireless transmissions to be switched off and manual reads reinstated, even where individuals have supporting medical documentation requesting accommodation.

The right to life (section 9)

The mandatory transmission of a Group 2B carcinogenic agent (IARC 2011) may lead to an initiation of cancer (Johansson 2011). Whole-body exposure from wireless smart meters may produce immune system imbalances, and lowered resistance to disease across multiple pathways (Sage & Carpenter 2012). Adverse health outcomes as a result of exposure to

non-thermal exposure levels of microwaves on cells include DNA single strand and double strand breaks, breaching of the blood-brain barrier and increased production of heat-shock proteins (Maret 2012, p. 19). All of these factors may lead to premature death.

The right to protection from torture and cruel, inhuman or degrading treatment (section 10)

Dr. Jamieson discusses this right, which is also embodied in the U.K.'s Human Rights Act, in *Smart Meters – Smarter Practices*, pointing out that the European Court's definition of degrading treatment appears "*very similar to descriptions provided by some electrohypersensitive (EHS) individuals describing how their condition makes them feel*" (Jamieson 2011, p. 44).

Written evidence submitted to the UK Parliament in 2013 attested to the fact that the pulsed radiation from smart meters has resulted in thousands of health complaints world-wide. More than 10,000 health-related complaints were submitted to the California Public Utilities Commission alone, and included personal testimonies from medical doctors, psychotherapists and nurses regarding their own symptoms (Stop Smart Meters! 2013).

SSMA is in receipt of in excess of 370 (unsolicited) reports alleging a variety of adverse symptoms, some of which have been life-threatening, as a result of exposure to smart meter emissions. This cohort is viewed as being the 'tip of the iceberg'. The majority of the population and medical fraternity have no previous experience, nor training, in identifying biological changes as a result of increased radiation exposure and are unlikely to link the rollout of AMI technology with the symptoms which have been triggered. The emissions from Victoria's smart meters appear to have exacerbated existing symptoms, as well as triggering new symptoms in parts of the population that had not previously exhibited sensitivities to wireless technology.

The impact on people's lives has been profound in some cases, resulting in high personal costs for the people and their families, as well as the community. Outcomes which SSMA has been advised of include a number of cases where people have ceased employment as a result of exposure to smart meters, have undergone unnecessary medical procedures, have ended up being hospitalised, have outlaid many thousands of dollars to partially shield their homes from smart meter emissions, are no longer able to access parts of their homes and gardens, and the relocation of families interstate to escape the emissions.

A PubMed-listed, peer-reviewed study of 92 Victorian cases offers the hypothesis that "*some people can develop symptoms from exposure to the radiofrequency fields of wireless smart meters*" (Lamech 2014, p. 38). The study's conclusions point to the "*possibility that smart meters may have unique characteristics that lower people's threshold for symptom development*" and calls for caution in the rollout of wireless AMI.

To-date no study, anywhere in the world, has shown that long-term (or even short-term) exposure to wireless smart meter radiation is safe. This means that all Victorians are effectively participating in an experiment, without having provided full and informed consent.

Although Victorian AMI emissions have been shown to be a fraction of the radiofrequency limits set down by the Australian Radiation Protection and Nuclear Safety Agency (ARPANSA), this offers little comfort in view of the fact that 40% of the world enjoys significantly better protection. Radiofrequency exposure guidelines in place elsewhere are ten to thousands of times more rigorous than the ARPANSA standard, which is based on 1998 ICNIRP guidelines (Jamieson 2014, p. 4).

Australia's radiofrequency standard is aimed at guarding against gross thermal effects as a result of an increase in the temperature of body tissue. It does not give protection against the many, and varied, biological effects – as shown in thousands of studies – which occur prior to acute effects.

The U.S.A. Naval Medical Research Institute listed over 2000 studies in a report dated as early as 1972 giving evidence of adverse biological effects as a result of radiofrequency (RF) radiation (Glaser 1972).

The right to freedom of movement (section 12)

A number of individuals with severe EHS in Victoria have been forced to vacate their homes due to smart meter emissions, or are only able to access a portion of their home. Many individuals are also no longer able to access public places which have high RF levels.

The right to privacy and reputation (section 13)

The amendment to the Bill requires a relevant entity to keep confidential specified customer information, including historical electricity usage, billing and metering data relating to the consumption of electricity metered through advanced metering infrastructure and associated services and systems.

The collection of customer AMI data provides unprecedented opportunities for information to be gathered about consumers. As a result of the granularity of the data, near real-time surveillance can occur, determining sleeping patterns, when a home is unoccupied, and what appliances are being used.

Although this data is of potential financial benefit to distributors, as interested parties such as marketers and law enforcers may be interested in acquiring it for data mining purposes, AMI also exposes consumers to a major security risk.

It was reported in The Age on 25th September 2012 that "*detailed information about electricity customers' power usage, which gives insights into when a house is occupied, is*

being shared with third parties including mail houses, debt collectors, data processing analysts and government agencies" (Chadwick et al. 2012).

The right to protection of families and children (section 17)

Children are particularly at risk from the effects of radiation: "When electrical properties are considered, a child's head's absorption can be over two times greater, and absorption of the skull's bone marrow can be ten times greater than adults" (Gandhi et al. 2012, Abstract).

Exposure to electromagnetic fields may also lead to cellular DNA-damage which can carry down generations (Johansson, 2011).

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