

3 October 2019

Senator Slade Brockman  
Chair, inquiry into Treasury Laws Amendment (Prohibiting Energy Market Misconduct) Bill 2019  
[Provisions]  
Senate Standing Committees on Economics  
Department of the Senate  
PO Box 6100  
Parliament House  
CANBERRA ACT 2600  
AUSTRALIA

## Energy Networks Australia submission to Treasury Laws Amendment (Prohibiting Energy Market Misconduct) Bill 2019

Dear Senator Brockman,

Energy Networks Australia welcomes the opportunity to provide a submission to the Committee's current review of the *Treasury Laws Amendment (Prohibiting Energy Market Misconduct) Bill 2019 [Provisions]* relating to the Australian Competition and Consumer Commission's monitoring of electricity supply in the National Electricity Market.

Energy Networks Australia is the national industry body representing businesses operating Australia's electricity transmission and distribution and gas distribution networks, with members providing more than 16 million electricity and gas connections to almost every home and business across Australia.

We made a submission to the Committee's previous Inquiry on the similar 2018 Energy Market Misconduct Bill. As the large majority of the previous 2018 bill and the current 2019 bill are identical, our submission to the previous Senate Standing Committee inquiry remains relevant and we ask that you refer to our submission to the 2018 Inquiry which captures our views on the original text of the bill. Our previous submission is attached to this submission.

While the 2019 Bill is preferable to the original formulation of the Bill, it has not addressed our fundamental concern that the bill imposes significant investment risk to the detriment of long-term consumer outcomes at a time when the energy sector has been compromised by policy uncertainty and regulatory interventions. It is not clear how the provisions in the Bill will assist in restoring a lack of investment confidence.

The power to require a service provider to provide a service on terms and conditions set by a Minister of the Crown is the most fundamental government intervention possible to make in any private market. This was not a recommendation from the ACCC's Retail Electricity Pricing Inquiry and is unlikely to be a successful measure to lower prices for customers.


The threat of forced asset divestment creates substantial policy and regulatory risk for the industry which will not make it more appealing to invest in the energy sector. Meanwhile the scale of investment required over the next 30 years is enormous. *The Energy Network Transformation Roadmap*, produced in partnership by Energy Networks Australia and the Commonwealth's own science agency CSIRO, found that Australia's electricity system will require expenditure of almost \$1000 billion (nominal) by current

service providers, new entrants and customers by 2050. For reference, Australia's 2018-19 GDP totalled \$1.85 trillion.

Energy Networks Australia is a strong advocate for a consistent approach to national energy policy and predictable, stable regulatory regimes because these deliver the best long-term outcomes for customers.

Please contact Garth Crawford, General Manager Regulation on 02 6272 1507 or [gscrawford@energynetworks.com.au](mailto:gscrawford@energynetworks.com.au) if you would like further information.

Yours sincerely,



**Tamatha Smith**  
A/CEO

## Attachment 1 - Energy Networks Australia submission to Treasury Laws Amendment (Prohibiting Energy Market Misconduct) Bill 2018

25 January 2019

Senator Jane Hume  
Chair, inquiry into Treasury Laws Amendment (Prohibiting Energy Market Misconduct) Bill 2018  
[Provisions]  
Senate Standing Committees on Economics  
Department of the Senate  
PO Box 6100  
Parliament House  
CANBERRA ACT 2600  
AUSTRALIA

Energy Networks Australia submission to Treasury Laws Amendment (Prohibiting Energy Market Misconduct) Bill 2018

Dear Senator Hume,

Energy Networks Australia welcomes the opportunity to provide a submission to the Committee's current review of the *Treasury Laws Amendment (Prohibiting Energy Market Misconduct) Bill 2018 [Provisions]* relating to the Australian Competition and Consumer Commission's monitoring of electricity supply in the National Electricity Market.

Energy Networks Australia is the national industry body representing businesses operating Australia's electricity transmission and distribution and gas distribution networks. Member businesses provide energy to almost every household and business in Australia.

We support a competitive energy marketplace underpinned by sound competition laws which give businesses the agency to make commercial decisions while rightfully preventing anti-competitive behaviour. We do not support forcing businesses to enter into involuntary contracts or the divestment provisions in the *Treasury Laws Amendment (Prohibiting Energy Market Misconduct) Bill 2018*. These provisions would create significant investment risk to the detriment of long-term consumer outcomes at a time when investor confidence in the energy sector has already been compromised by policy uncertainty and regulatory interventions<sup>1</sup>. A recent Baker McKenzie report found that Australia's attractiveness as a global investment destination slipped to 17<sup>th</sup> from 12<sup>th</sup> this time last year.

### **Involuntary contracts are detrimental**

Forcing businesses to enter into involuntary contracts will not increase contract liquidity or promote further wholesale generation capacity, but it is likely to lead to worse long-term outcomes for customers by increasing investment risk.

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<sup>1</sup> Baker McKenzie, *Global Transactions Forecast 2019, Dealing with the Uncertainty*

A more effective approach to increasing competition in the energy derivatives market would be to ensure all information relevant to decision making is made publicly available and other barriers to enter the energy derivatives market are eroded. This would allow the market to deliver better outcomes for customers without introducing unnecessary risks for businesses and investors.

Current competition laws are already sufficient to avoid engagement in coordinated anti-competitive behaviour, especially with the recent increase in the ACCC's penalty provisions where businesses can be fined the greater of 10 million dollars, three times the value of the benefit received or 10 per cent of annual turnover in the past 12 months.

### **Better outcomes through competition**

Threatening energy businesses with divestment creates sovereign risk and is likely to further unsettle investor confidence. 87 per cent of participants in the Australian Infrastructure Investment Report 2018 said the Australian energy sector is 'full of uncertainty' right now, with political and regulatory aspects of highest concern<sup>2</sup>. This uncertainty creates risk and means that investors will require a higher return on their investment if they are to invest in the market. The increased risk is not beneficial to the energy sector nor to customers.

Preventing wholesale price manipulation and lowering wholesale prices without the added cost of risk could more effectively be achieved via a stable national energy policy.

Investment in electricity generation is on the rise in response to an undersupply of electricity in the market despite the high level of uncertainty in national energy policy. Further investment would certainly follow if a stable national energy policy was implemented. More electricity generation would increase competition, lower wholesale prices and lead to more readily available hedge contracts.

The market did not foresee Hazelwood's closure and took some time for new generation capacity to come online and reduce wholesale prices. The ACCC recommended that generators give longer notice periods before closure to prevent this situation occurring again. Enforcing longer notice periods is another means of ensuring the market can respond and deliver competitive outcomes and carries negligible investment risk compared with the threat of forced contracts or divestment of assets.

Energy Networks Australia is a strong advocate for a consistent approach to national energy policy and predictable, stable regulatory regimes because these deliver the best long-term outcomes for customers.

The heavy handed market interventions proposed in the *Treasury Laws Amendment (Prohibiting Energy Market Misconduct) Bill 2018* do not foster competition, rather they risk increasing investment uncertainty and making businesses less efficient. In the long term, these factors risk power price increases for customers.

Please contact Garth Crawford, General Manager Regulation on 02 6272 1507 or [gscrawford@energynetworks.com.au](mailto:gscrawford@energynetworks.com.au) if you would like further information.

Yours sincerely,

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<sup>2</sup> Infrastructure Partnerships Australia, *Australian Infrastructure Investment Report 2018*

**Andrew Dillon**  
CEO