

# Prohibiting Energy Market Misconduct

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## Submission — Senate Standing Committee on Economics February 2019

### Introduction

The Australian Chamber of Commerce and Industry (Australian Chamber) welcomes the opportunity to respond to the Senate Standing Committee on Economics' consultation on the *Treasury Laws Amendment (Prohibiting Energy Market Misconduct) Bill 2018 (the Bill)*.

Rising energy costs are a major impost on business, impacting on the day-to-day running costs and overall profitability. Higher electricity and gas prices are placing a major strain on many Australian businesses, affecting their international competitiveness, as well as their ability to simply pay the bills and stay in business.

### Treasury Laws Amendment Bill

The Australian Chamber supports action by the Federal Government to reduce energy costs.

We recognise that in the current draft of the *Treasury Laws Amendment (Prohibiting Energy Market Misconduct) Bill 2018*, the government has come some way in improving the integrity of the misconduct measures.

We welcome the greater detail in defining the prohibited conduct provisions, with three kinds of prohibited conduct relating to retail pricing, electricity financial contract market, and the wholesale electricity market. We also agree with the resolution to vest the decision-making with the ACCC. This will ensure that when prohibited conduct is detected it is followed by a considered response, based on sound evidence and follows a clear procedural process.

We also support the inclusion of a series of graduated remedies for the ACCC to deal with energy market misconduct, ranging from a public warning notice, to an infringement notice with orders for rectification, to the application to the court for an injunction or pecuniary penalties. This allows the ACCC to measure their response to the seriousness of the offence when dealing with energy market misconduct.

### Default market offer

The Bill includes a number of measures which reflect recommendations of the ACCC Retail Electricity Pricing Inquiry. The Australian Chamber supports the measures that aim to increase transparency and curb the abuse of market power by players in the energy market, including:

- expansion of the Australian Energy Regulator's (AER) compulsory information gathering powers,

- measures to ensure the costs to customers reflect the cost of procuring the electricity, such that any reduction in supply chain costs are reflected in the price charged to customers.

However, the Australian Chamber has some concerns over the default market offer provisions recommended by the ACCC and included in this Bill. We agree that the standing offer prices set by the retailer have proven to confuse customers and are often inflated to support price discounting, and recognise the need to address this market failure in the energy sector. However, the Australian Chamber questions the cost of this market intervention and its impact on long run prices.

As a matter of principle, our members have some concerns about placing a price ceiling on standing offers through the default market offer price. This appears to signal a move towards centralised price fixing by Governments. We consider this to be a retrograde step, particularly when our aim is to ensure adequate competition between retailers that will deliver firm electricity to end consumers.

Centralised price fixing carries with it a range of economic consequences from deadweight losses, due to the Government's inability to accurately pick the point at which the market naturally balances supply and demand. The information asymmetries faced by the regulator, limit its ability to make judgements about the efficient cost elements of a particular retailer, thus its ability to set the default market offer with any accuracy.

We consider a similar result can be achieved, without market intervention, by increasing the transparency of market prices. Expanding upon its price monitoring role, the AER could be tasked with collating and publishing on a regular basis, the full range of prices offered by all retail market participants. From this the AER should calculate and publish a median market offer price based on the discounted retail prices only, i.e. excluding standing offers. Energy retailers should be required to reference their standard offer and the price of any discounted or alternative products to this median market offer price.

## Divestment powers are a step too far

The Australian Chamber also has concerns with the proposed divestment powers of the Bill, considering it to be a step too far. Forced divestment is a very strong power and we are not convinced that it is the right way to go about lowering energy prices. While we recognise that the recent changes to the legislation now involve a more rigorous process before the divestment measures can be enacted, requiring the ACCC to make a recommendation to the Treasurer to apply to the Court for a divestment order, we still do not accept that the divestment measures are appropriate. We note that the ACCC Retail Electricity Pricing Inquiry considered the option of divestment measures, but did not include it in its final recommendation.

There is no doubt that lower prices will arise out of increasing the competition in the marketplace, and it is acknowledged that across the national electricity market there is insufficient competition. It is recommended that increased powers to, and focus of, the ACCC and government to act against anti-competitive behaviour should be the next step, and the proposed divestment power should be considered as a second step should all other action fail to address the lack of competition and rising power prices.

## NEG-plus remains the best option

Australian Chamber continues to support the National Energy Guarantee (NEG) as the best path to resolve Australia's energy issues. The NEG embraces the goals of lower energy costs and lower emissions, as well as increased reliability of our power supply. It aims for sustainable outcomes and is technology neutral.

Until all Australian governments can reach a bipartisan position on carbon emission reduction policy, it will continue to hamper private investment in generation and transmission assets, thereby restricting competition in the energy market and contributing to higher energy prices. The proposed Treasury Laws Amendment legislation fails to address the carbon emissions reduction element that is crucial to providing certainty for any investment in the energy sector.

The Australian Chamber supports most of recommendations of the ACCC Retail Electricity Pricing Inquiry, as the focus is to drive down the costs of electricity. The Australian Chamber agrees with the ACCC's concerns that the market concentration of electricity generation assets is contributing to a lack of market competition and therefore higher prices.

The current legislation adopts some of the recommendations proposed by the ACCC Inquiry and the Government is encouraged to continue roll out the implementation of the recommendations, particularly to:

- Require network operators to voluntarily write down network overinvestment, particularly that of state-owned networks in NSW, Queensland and Tasmania.
- Restructure of Queensland generators into three separately owned portfolios to improve competition.
- Require States to fund premium solar feed-in-tariff schemes from their own budgets and phase out the small scale renewable energy scheme.
- Provide support to make bankable new investment by new players in generation capacity to help commercial and industrial customers and drive competition.
- Limit the market power of the energy companies, with companies having 20 per cent or more market share in a state or region restricted from acquiring more generation capacity.
- Improve the transparency of over-the-counter contract trading by requiring reporting of these trades to a central registry.

## Conclusion

Overall, the Australian Chamber urges the Government to adopt the NEG, in conjunction with most of the recommendations of the ACCC electricity market review — in other words the NEG-plus option — recognising it as the best way to move forward on energy policy and provide the certainty the market needs.



## About the Australian Chamber

The Australian Chamber of Commerce and Industry speaks on behalf of Australian Businesses at home and abroad.

We represent more than 300,000 businesses of all sizes, across all industries and all parts of the country, making us Australia's most representative business organisation.

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