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Senate Environment and Communications Legislation Committee
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Inquiry into the Clean Energy Legislation (Carbon Tax Repeal) Bill 2013 and related bills

The Energy Supply Association of Australia (esaa), the Energy Retailers Association of Australia (ERAA), the Energy Networks Association (ENA) and the Australian Pipeline Industry Association (APIA) welcome the opportunity to make a submission to the Senate Environment and Communications Legislation Committee's Inquiry into the Clean Energy Legislation (Carbon Tax Repeal) Bill 2013 and related bills.

Together, we represent the positions of Australia's electricity generators, gas transmission companies, electricity and gas networks and retailers. Australia's energy industry owns and operates some $120 billion in assets, employs more than 51,000 people and contributes $16.5 billion directly to the nation's Gross Domestic Product.

As an industry, we welcome the opportunity to work with the Government to ensure an orderly process for the repeal of the carbon tax. There has been no substantive change to the legislation that has been introduced into the House of Representatives compared to the exposure draft legislation. As such, this submission is based on the industry's submission to the Department of the Environment's consultation on the exposure draft bills. It outlines the industry's concerns about the powers proposed to be given to the Australian Competition and Consumer Commission (ACCC) to monitor prices following the repeal of the carbon taxes. These powers could interfere with otherwise efficient energy markets. They also duplicate existing state government powers to monitor and regulate retail energy prices.

Summary

- Early passage of the repeal bills will facilitate an orderly transition.
- The possibility of retrospective repeal, even for a short period, would add further complexity.
- The proposed ACCC powers may duplicate existing regulatory arrangements and interfere with otherwise efficient energy markets and their scope should be narrowed.
- The esaa, ERAA, ENA and APIA will work constructively with the Government to facilitate the repeal process.

ACCC provisions

The energy industry is concerned with the drafting of several sections of the *Clean Energy Legislation (Carbon Tax Repeal) Bill 2013*. These relate to the powers given to the ACCC to investigate prices after the repeal of the carbon tax. We consider that some of these provisions are vaguely worded and could result in unintended consequences.

The NEM is a highly competitive market that has achieved record low real prices for wholesale electricity. Any changes to government regulation that lower the costs to industry will be passed onto consumers efficiently through current market arrangements. Arrangements are similar in Western Australia's Wholesale Energy Market (WEM).

There is no basis for additional regulatory or prudential oversight of the interaction of commercial entities within the wholesale electricity and gas markets.

Within retail energy markets, contracts with commercial and industrial customers pass through the impact of the carbon tax in a range of ways. These are specific to each contract. This legislation appears to assert that prices should drop by a 'defined' amount; this is of concern to the energy industry.

The proposed ACCC powers could also create complexity arising from existing carbon messages required to be displayed on power bills in some states. For example, in Queensland retailers are required to display a message which states that the carbon tax and RET add about $259 a year to a typical household bill. Some customers may therefore expect electricity bills to fall by $259 upon repeal. Insufficient information has been provided to indicate how the ACCC will enforce its new powers in this circumstance.

Section 60C

Section 60C of the *Clean Energy Legislation (Carbon Tax Repeal) Bill 2013* gives the ACCC the ability to counter "price exploitation" in the electricity and gas industries. The energy industry has several concerns with the legislation as it is currently drafted. We consider the legislation to be vague, leaving the industry uncertain as to how it would be applied. We also consider it duplicates existing state and territory powers in respect of retail energy prices. Prices for small customers are subject either to regulation or to a monitoring regime by a state government or an independent regulator. Giving similar powers to a Commonwealth regulator is

unnecessary and conflicts with the Government's stated desire to reduce red tape. If the government intends to award such powers to the ACCC, we recommend the following changes to the draft legislation.

Scope of application

In the Department of the Environment's consultation paper on the exposure draft legislation, it stated that the Government:

> *will not make transitional arrangements to deal with specific commercial arrangements, including contracts. Any renegotiation of commercial arrangements is a matter for the parties involved. This is in keeping with the approach adopted on introduction of the carbon tax.*[1]

It follows from this statement that the Government does not intend for ACCC oversight to apply to contractual arrangements for the wholesale supply of electricity or gas to large customers or energy retailers. As drafted, it is not clear that the legislation does not apply to wholesale electricity markets. Supplier behaviour in these markets is already heavily regulated and monitored; further regulation would add to cost and complexity, for no public benefit.

Definition of "unreasonably high"

The absence of a definition for the subjective term "unreasonably high" fails to consider the specificities of the energy industry. In a competitive energy market, prices will vary by supplier. Businesses that charge high prices will lose market share to those offering a more affordable service. Different businesses will have different cost structures and offer different products, and so prices will vary.

Furthermore, as outlined above, electricity and gas customers may be on market or standing offers, which vary in price. Market offers typically give a discount in exchange for meeting certain conditions, such as a contract length, or if bills are paid on time.

Given this variation, the energy industry does not see how the ACCC would be able to establish what an "unreasonably high" charge for electricity could be.

We understand that this section of the bill is based on the provisions granted to the ACCC following the introduction of the GST. We are concerned that the approach could be based on the 'Dollar Margin Rule' that was applied when the GST was implemented. This rule implied that "if costs fall, prices should at least fall by the same dollar amount."[2]

The GST and carbon tax operate very differently. The GST flows transparently through the supply chain as a fixed percentage of the price at each stage; it could be almost instantly unwound on repeal. The carbon tax, on the other hand, varies from participant to participant. It is more like a payroll tax, in that it has a definite impact on

[1] Australian Government (2013), Repeal of the Carbon Tax: Exposure Draft Legislation and Consultation Paper, p. 11

[2] Australian Competition and Consumer Commission (1999), ACCC Price Exploitation and the New Tax System Guidelines, p. 11.

underlying costs that flow through to consumer prices, but its exact impact on prices is difficult to quantify. If payroll tax was repealed, it would take some time for the impact to flow through the supply chain to consumer prices. The exact impact on final prices would be difficult to predict as the cost would vary by supplier depending on their staffing arrangements.

For example, the introduction of the carbon tax meant that low- or zero-emissions generators received increased margins while highly emissive generators faced lower margins. One would expect this process to reverse once the carbon tax is repealed. The likely net effect would be that margins would return to the same level they were before the carbon tax was implemented. Yet, under these provisions it is possible the ACCC could take action. This is a highly inappropriate consequence and may increase risks for energy businesses.

As drafted, section 60C(2)(c) also requires the ACCC to consider the supplier's costs, supply and demand conditions, and any other matter. The retail price of electricity is dependent on a raft of factors too complex to be considered under a catch-all term such as "any other relevant matter". The industry considers the legislation should specify the factors that influence electricity and gas prices, such as forward contracting arrangements and network price determinations. A revised section 60C(2)(c) could therefore read:

(i) the supplier's costs;
(ii) supply and demand conditions;
(iii) wholesale energy costs;
(iv) network price determinations;
(v) compliance with other state and federal legislation;
(vi) regulated prices for electricity and gas;
(vii) the overall risk profile of the business, including any impacts from legislative and regulatory changes;
(viii) any other relevant matter.

Revising section 60C(2)(c) would also require a change to section 60B of the legislation as introduced into the House of Representatives. Section 60B defines the industries that will be assessed for price exploitation. The electricity and gas industries are included alongside synthetic greenhouse gases (SGG) and SGG equipment. As outlined in this submission, there are very specific factors that affect electricity and gas prices that go far beyond the factors listed under section 60C(2)(c). As such, the industry considers that the electricity and gas industries should be treated separately to SGG, SGG equipment and other supplies.

Section 60E

The energy industry also has concerns with section 60E(2)(c) of the Bill. This sets out that the ACCC can send out notices to prevent price exploitation. The paragraph states that as part of the notice, the ACCC must "specify a maximum price that…may be charged".

Some states use price regulation to set an effective maximum price for electricity and/or gas for certain customer classes. In Western Australia and the Northern Territory, the government sets electricity prices. Victoria and South Australia have

moved to full retail price deregulation, so there is no maximum as such. Competition between retailers establishes an effective 'cap'. In both cases there are effective mechanisms in place.

In addition, regulators spend months determining electricity prices alongside public consultation periods; there are a range of competing influences that influence energy prices. It is uncertain whether the ACCC will have the time and resources to determine a "maximum price". This Bill should not cause the ACCC to become a *de facto* price-setting authority for electricity and gas supply. On the contrary, states are moving away from setting electricity and gas prices. There is no justification for requiring the ACCC to set a maximum price for electricity or gas. The ACCC provisions should be redrafted to reflect the conditions relevant to the electricity and gas industries. The industry also contends that the ACCC is not the appropriate authority to have the power to effectively set maximum energy prices.

Retrospective repeal

The above analysis of the *Clean Energy Legislation (Carbon Tax Repeal) Bill 2013* is predicated on the assumption that Parliament will secure repeal well before 30 June 2014. As was the case when the carbon tax was introduced, early assent will facilitate an orderly transition.

The Government has stated that the carbon tax will end on 30 June 2014 regardless of when the legislation is passed. This stated intention to backdate repeal to 30 June 2014 does not mean that businesses can ignore the carbon tax while it remains law. All businesses, including those in the electricity and gas industries, must comply with the *Clean Energy Act* and associated legislation until it is repealed.

The possibility of retrospective repeal, even for a short period, will create risk for all participants in the market and complicate the repeal process. If repeal cannot be secured well in advance of 30 June 2014, the industry is eager to work with the Government to find ways to address the challenges this will create.

Other issues

If the repeal bill is passed by Parliament and the Climate Change Authority is abolished, it is appropriate that the review of the RET, required under the *Climate Change Authority Act (2011)* before the end of 2014, be referred to another agency.

Conclusion

The esaa, ERAA, ENA and APIA all welcome the opportunity to comment on the carbon tax repeal legislation to the Senate Environment and Communications Legislation Committee. We look forward to continuing to work constructively with the Government to ensure that any unintended consequences are identified and rectified at the earliest opportunity.

Yours sincerely

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