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25 January 2019

Committee Secretary
Senate Standing Committees on Economics
PO Box 6100
Parliament House
Canberra ACT 2600

To the Senate Standing Committees on Economics

Treasury Laws Amendment (Prohibiting Energy Market Misconduct) Bill 2018

Meridian Energy Australia Pty Ltd and Powershop Australia Pty Ltd (the **MEA Group**) thank the Senate Standing Committees on Economics (**the Committee**) for the opportunity to provide comments in relation to the Treasury Laws Amendment (Prohibiting Energy Market Misconduct) Bill 2018 (the Bill).

Meridian Energy Australia is an investor in generation owning the Mt Mercer and Mt Millar wind farms as well as three newly acquired hydro assets, the Hume, Burrinjuck and Keepit hydro power stations. The MEA Group also recently entered into a number of power purchase agreements supporting the development of new renewable generation in the NEM. In addition to our investments in wind and hydro power, the MEA Group is actively assessing opportunities for investment in dispatchable generation including, but not limited to, pumped hydro and batteries. In addition to our generation activities, Powershop Australia is a relatively new entrant and innovative energy retailer. Our retail customers have access to affordable, competitive prices, a user-friendly app and the opportunity to participate in market leading demand response programs, most recently activated in Victoria on 24 and 25 January. Our energy generation and wholesale market activities are assisting in Australia's energy transition and in identifying new mechanisms to enhance reliability and security of energy supply.

The MEA Group supports the attention currently being paid to customer price outcomes and ensuring that the Australian energy market delivers affordable, reliable and sustainable energy to all Australians so as to enable Australia's economic prosperity to be maintained, while meeting our community obligations and environmental commitments. To this end, we consider that the existing market based framework with strong rules and supervision, along with a number of recently proposed and ongoing reforms, is best placed to deliver these outcomes.

The proposed Bill, though well intentioned, is likely to produce counterproductive outcomes, placing at risk both the affordability and reliability of the Australian energy market. As a new entrant retail competitor that has driven significant innovation (e.g. an app that allows customers to monitor energy usage in close to real time, the provision of detailed solar insights, small scale peer to peer energy trading pilot program, community energy initiative which allows customers to support the development of local community renewable energy projects and opening up access to solar energy for renters) and price competition, the MEA Group understands the value to customers that competition and open markets can deliver and indeed have already delivered.

While we anticipate that you will receive many submissions setting out perceived flaws in the proposed Bill (for example, the Australian Energy Council submission, which we as a member have seen), we would like to draw your attention to a few practical issues with the proposal and their likely impact on small competitive retailers,

and investors in new generation, like ourselves.

Forced Divestment is unprecedented and will increase sovereign risk

The Bill proposes to grant unprecedented powers for forced divestiture which on their face, will apply to all market participants and not just those with substantial market power. While we are confident that neither the current government nor any near term government would abuse this power, we cannot be certain that this power will not be abused by some future government over the 30 – 40 year lifespan of most of our investment considerations.

As Australia has a requirement for significant investment in generation, network and retail systems, a substantial proportion of this investment is currently, and will in the future need to be, sourced from overseas investors. These investors, including our ASX/NZX listed parent company Meridian Energy Limited, have even less understanding and experience of Australia's political and economic culture and are likely to 'mark down' investment in Australia compared to other alternatives due to this perceived increase in risk. It is likely that potential investors will add a risk premium to WACC calculations for future investments in the Australian energy market. This risk premium will end up on customer bills over time.

This can only lead to either, a shortage of investment necessary to deliver positive customer outcomes or higher required returns which will increase costs and delay investments. Already the mere threat of this legislation has made us question, whether we should hold back on, or require greater returns from, investments which we are currently contemplating to increase reliability and security of supply.

Complexity and uncertainty is likely to lead to lower investment

Although the Bill's explanatory memorandum makes the claim that the proposed legislation is clear, the reality is that notwithstanding, or indeed because of, the 19 examples of what does or does not constitute prohibited conduct we have no clear guidance as to which of our current market practices would be permitted and which would be prohibited. By way of example the explanatory memorandum contains an explicit statement at Cl.2.94:

"Given the complexity of the market, it is not possible to exhaustively prescribe the conduct which will have the purpose of distorting (or) manipulating prices. This depends on the specific facts of the case."

Anyone undertaking an energy investment must consider the possibility that any action it takes in this complex market may be determined by the ACCC, the Treasurer and/or a court to constitute prohibited conduct with the potential consequence of forced divestment or other regulatory action. These consequences could occur notwithstanding, the investor acted in good faith on their own interpretation of this complex situation. The only prudent response that an investor can take to this increased uncertainty is to increase the required return from any such investment with this leading to higher prices and or delayed investment, placing reliability at risk.

The MEA Group must regularly make decisions about pricing both in the retail and wholesale market. Having reviewed all of the information available about the proposed Bill we have no understanding of how we could comply with the proposed legislation.

In the wholesale market, it appears the proposed legislation may be breached in the event that offer prices or quantities were changed or not changed, or offers were made or not made. This is totally unworkable. Our business makes decisions everyday on bids and at least each month in relation to retail pricing. In such circumstances, especially when there is clear uncertainty in which behaviour is prohibited, it is impossible for us to make a decision which will protect us from a potential breach of this legislation. This is accentuated by the fact that each retailer has different market exposures and actions that are reasonable for one set of circumstances and may be deemed unreasonable for another retailer.

Alternative Approach

As stated above, the MEA Group supports the current focus on customer price outcomes. There is currently a significant amount of activity taking place in this area due to the leadership provided by the COAG Energy Council. This is being translated into new rules and procedures by the Energy Security Board, the AEMC and the AER. On this basis, and based on our concerns noted above, we consider that the Committee should

recommend that the Bill should not proceed.

In addition, there are a number of other changes that the Committee could support that are likely to lead to improved customer outcomes especially in the area of price. This includes:

- ensuring that customers are given clearer and simpler information which enables comparison between retailers;
- providing customers with access to greater tools to understand their own energy use and to minimise unnecessary consumption;
- encouraging greater adoption of energy efficiency; and
- encouraging greater customer participation in demand management to avoid unnecessary network and generation investment.

If you have any inquiries regarding this submission, please feel free to contact me.

Yours sincerely

Ed McManus

Chief Executive Officer

Meridian Energy Australia & Powershop Australia