



EnergyAustralia

LIGHT THE WAY

20 February 2019

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

EnergyAustralia Pty Ltd
ABN 99 086 014 968

Level 33
385 Bourke Street
Melbourne Victoria 3000

Phone +61 3 8628 1000
Facsimile +61 3 8628 1050

enq@energyaustralia.com.au
energyaustralia.com.au

Dear Sir / Madam

EnergyAustralia answers to questions taken on notice at the 6 February 2019 public hearing - *Inquiry into the Treasury Laws Amendment (Prohibiting Energy Market Misconduct) Bill 2018 [Provisions]*

1. Provide the Committee with a breakdown of the ACCC recommendations of achievable annual residential bill savings.

The savings available to customers through the implementation of recommendations of the Australian Competition and Consumer Commission (ACCC) *Retail Electricity Pricing Inquiry* are outlined at Appendix 5 page 366-369¹. The below table is an extract from the report which provides a breakdown of the savings available in each part of the electricity supply chain, that makes up a typical retail electricity bill.

Table A: Achievable average annual residential bill savings by 2020-21

Region	Achievable savings (\$ per annum)						2020-21 Bill	% Reduction
	2017-18 Bill	Networks	Wholesale	Enviro	Retail	Reduction		
Victoria	1457	39	192	34	26	291	1166	20
NSW	1697	174	155	43	37	409	1288	24
South east Queensland	1703	147	192	18	62	419	1284	25
South Australia	1727	13	227	89	42	371	1356	21
Tasmania	1979	113	226	75	—	414	1490	21

¹https://www.accc.gov.au/system/files/Retail%20Electricity%20Pricing%20Inquiry%E2%80%94Final%20Report%20June%202018_Exec%20summary.pdf

The table below provides a breakdown of savings available to government that have not been committed to from the ACCC report.

Additional savings that could be made from the ACCC report that government hasn't committed to			
Category	Recommendations	Implementation pathway	Av annual savings per household
Small Scale Renewable Energy Scheme (SRES)	The SRES should be wound down and abolished by 2021	Cwth Energy Minister decision, does not need to pass parliament	\$30-50* <small>*EA actual 2018 costs, ACCC report outdated</small>
Feed in Tariffs (FiTs) on budget by states	The cost of State-initiated FiT schemes should be borne by State Government budgets (rec 25)	State decision that Cwth could negotiate with states to adopt	\$5-20
Rebates for network write-downs	State and Federal governments rebate the write-down of publicly-owned network asset	ACCC recommends Cwth assist funding rebates with states	\$110-164
Removal of transmission easement tax	Vic Govt should remove the transmission easement tax used (in part) to subsidise aluminium smelters in the State (rec 19)	Vic govt decision that Cwth could negotiate with Vic to adopt	\$17 (VIC only)
National Energy Customer Framework (NECF)	Victoria should join the NECF to streamline retail regulatory obligations (rec 26)	Vic govt decision that Cwth could negotiate with Vic to adopt	\$11 (Vic only)
National Concessions Framework	Commonwealth works with states and territories to harmonise concessions	COAG Energy Council Agreement	\$10* <small>*EA estimate</small>
	TOTAL:	Varies by state	\$150-250

Source: ACCC report or EnergyAustralia (EA) analysis.

Amongst the recommendations there is a mixture of responsibilities between the Commonwealth and State governments, but importantly where the Commonwealth is not directly responsible it does have the capacity to commit to these recommendations, advocate, negotiate or even provide financial incentives to State Governments to see these recommendations implemented. This occurred under Hilmer's National Competition Policy spanning 1995-2005 where the Commonwealth provided National Competition Policy payments to State Governments who adopted competition reforms.

National Competition Policy initiated under the Keating Government, but was carried out and led by the Howard Government and is widely recognised as "a significant contributor to Australia's welfare", which "delivered substantial benefits to the Australian community which, overall, have greatly outweighed the costs."² The same opportunities exist through the Commonwealth taking a cooperative and leading role as chair of the Council of Australian Governments Energy Council to progress the outstanding ACCC recommendations.

2. Are there grounds for challenging the validity of the bill or orders based on a conflict of interest?

A conflict of interest is a situation in which a person or organisation is involved in multiple interests, financial or otherwise, and serving one interest could involve working against another or create the impression of such a conflict.

² <http://ncp.ncc.gov.au/>

Given the Federal Government is the sole shareholder of Snowy Hydro there is a possible conflict of interest for the Treasurer in issuing a contracting order (or seeking a divestiture order) against a competitor to (or directly against) Snowy Hydro. Any contracting order may directly or indirectly benefit/impair Snowy Hydro so it would be inappropriate for the Treasurer to have such power.

To remove this conflict, the Parliament could amend the Bill to expressly require the relevant decision-making powers of the Treasurer to be exercised by a court (or another independent authority).

3. If "reasonable belief" is too low a threshold, what is the appropriate threshold?

EnergyAustralia's submission outlined in some detail our concerns in relation to the low threshold of "reasonable belief".

Our position remains that given the unprecedented and significant penalties available in the Bill for prohibited misconduct, the power to determine whether that conduct has occurred and make the appropriate orders should only be exercised by an independent court, on the balance of probabilities and based on due process and normal rules of evidence.

However, if Parliament maintains the approach currently adopted in the Bill to allow these extraordinary powers to be exercised by the Treasurer of the day, it is our view that there should at least be both an objective and subjective requirement in the standard of proof as follows:

"The ACCC/Treasurer must be satisfied, based on reasonable grounds, that [...]"

In our view, this more objective standard depends upon the "objectively formed state of mind" of a reasonable person in the position of the decision-maker – and requires a more proper and fact-based approach before the decision maker can be "satisfied".