

16 July 2009

The Secretary
Senate Standing Committee on Environment, Communications and the Arts
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Parliament House
CANBERRA ACT 2600

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**INQUIRY INTO THE TELECOMMUNICATIONS LEGISLATION AMENDMENT (NATIONAL
BROADBAND NETWORK MEASURES NO 1) BILL 2009**

Dear Secretary

The Energy Networks Association (ENA) welcomes the opportunity to provide a submission to the Senate Standing Committee on Environment, Communications and the Arts' Inquiry into the *Telecommunications Legislation Amendment (National Broadband Network Measures No 1) Bill 2009*.

The Energy Networks Association (ENA) is the peak national body for Australia's energy networks which provide the vital link between gas and electricity producers and consumers. ENA represents gas distribution and electricity network businesses on economic, technical and safety regulation and national energy policy issues.

Energy network businesses deliver electricity and gas to over 13.5 million customers, employ more than 40,000 people and contribute approximately 1.25 per cent to Australia's gross domestic product. Energy is delivered across Australia through approximately 48,000 km of transmission lines, 800,000 kilometres of electricity distribution lines and 81,000 kilometres of gas distribution pipelines. Energy network businesses are valued at more than \$48 billion and annually undertake investment of more than \$25 billion in network operations, reinforcement, expansions and greenfields extensions.

ENA supports the Government's plans for a National Broadband Network (NBN) and, in particular, the efficient use of infrastructure assets and services. The energy industry has extensive infrastructure assets and capacity, which may be useful in assisting with the rollout of the NBN. Some electricity network businesses also have significant experience in the commercial rollout and installation of cable television infrastructure and fibre using electricity assets.

However, ENA has a number of key concerns regarding the *Telecommunications Legislation Amendment (National Broadband Network Measures No 1) Bill 2009*. ENA believes that the timeframes allowed for energy network businesses to provide information to Government, the costs of providing this information and the security measures surrounding the disclosure of commercially sensitive information, are all issues that the Government needs to address.

ENA considers the proposed 5 day consultation period for companies to respond to the draft instrument to be particularly onerous on energy networks businesses. While ENA appreciates that this Amendment Bill is designed to act as a safety-net in the event that commercial and cooperative processes cannot be achieved, there is no mention of the proposed timeframes allowed for these commercially cooperative processes to take place.

Without knowing the specific type of detailed information that may be requested, it is difficult for energy network businesses to assess the availability and suitability of current information. Some energy network businesses may not have the information readily available and considerable effort and/or IT system changes may be required to source and capture the data. For an entity that does not have appropriate processes in place, meeting these timeframes could prove problematic and carries the risk of being issued a substantial civil penalty.

Given the implementation timeframe, it is likely that information requests will be issued in the near future. ENA believes that energy network businesses need to be involved in consultations with the Department of Broadband, Communications and the Digital Economy in order to mitigate the risk of being required to provide unavailable or onerous information requests.

ENA notes that the Explanatory Memorandum suggests that any costs incurred in providing information will be outweighed by the expected economic benefits. ENA believes that until the level of detail and type of information is made available, energy network businesses would not be able to ascertain the cost of providing information, particularly within the timeframes for commencement and information turnaround. In the event that IT system changes are required, then the cost of implementing data capture and reporting processes could be significant, however there is no discussion on the ability for an entity to recover or be reimbursed for these costs.

ENA also has concerns relating to the control procedures for the release of information. Without knowing the details of the control procedures, it is difficult to ascertain the risk associated with the release of information to other parties.

As ENA understands it, information provided voluntarily by an energy network business will not automatically be treated as "protected network information", until the authorized information officer has reviewed the information and given a written undertaking. ENA believes that from a practical perspective it would be prudent for all information provided by a utility to be automatically treated as "protected network information". This protection would also promote a freer flow of information in responding to requests for network information.

The Explanatory Memorandum states that it is intended that, if the Minister were to make an instrument that applies to energy network businesses, then the Minister would provide a copy of that instrument to the relevant portfolio Minister for information. Section 531C provides for the instrument to be published online; however what is not clear on the face of Section 531C, is whether the Minister would provide a copy directly to the energy network business. Given the timing requirements for a response to the instrument, it would seem appropriate for a copy to be provided directly to the energy network business affected.

ENA also notes that the Bill amends the definition of 'entrusted company officer' to provide that an entrusted company officer of the NBN Company includes an employee or director of a company that is an equipment vendor to the NBN Company. This broadening of the definition carries with it infrastructure security and commercial implications, as well as possible risks, for businesses providing this type of information to such a potential range of entities. This is also exacerbated by the fact that businesses appear to have no control over whom the authorized information officer chooses to give the information to. ENA believes that the Government needs to ensure that appropriate control procedures are in place to ensure that any risks relating to infrastructure security and competitive neutrality are minimised.

Electricity network businesses are able to assist the Government in optimising the benefits of the NBN rollout on fair and reasonable terms. ENA and its members would bring valuable experience and expertise to the consultation process, particularly in the commercial rollout of fibre networks.

It is important to recognise that electricity network businesses have a business critical need to maintain their management and control of the communications infrastructure that enables the delivery of essential services. This is primarily for the purposes of security, continuity of supply, operational control and safety. It is important that this need is reflected in any outcomes arising from optimising the available synergies between the NBN and energy networks. This heightened awareness and management of high availability issues and security of supply would support the electricity network business participation in the design, implementation and ongoing management of the network. It would also seem prudent to have both the NBN and electricity network strategic projects aligned to ensure that the utilisation of Government investment, both state and Federal, is maximised.

ENA and its members are able to work closely with the Government in developing the arrangements governing the access to electricity networks infrastructure from a technical, compliance and service standards perspective. ENA members have experience with the technical issues and risks associated with the deployment of certain types of fibre infrastructure and are able to assist in Government consultation.

ENA is also eager to continue actively contributing and participating in the regulatory reform process resulting from the rollout of the NBN, as well as maintaining involvement in all the planning consultation and construction stages of the NBN rollout.

Should you wish to discuss the issues raised in our submission please contact Mr Simon Bourke of ENA on 02 6272 1513 or sbourke@ena.asn.au.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'ABlyth', with a large circular flourish at the bottom left.

Andrew Blyth
Chief Executive