



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

Friday, 25 January 2019

Treasury Laws Amendment (Prohibiting Energy Market Misconduct) Bill 2018

ENGIE in Australia & New Zealand (ENGIE) welcomes the opportunity to share its concerns with the Senate Standing Committee on Economics (the Committee) on the Treasury Laws (Prohibiting Energy Market Misconduct) Bill 2018 (the Bill).

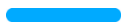
ENGIE operates across the energy supply chain in Australia, providing retail solutions to household consumers as well as large commercial customers, developing renewable energy assets, operating several gas-fired generators, actively trading in the derivatives market, providing power purchase agreements and hedges, and implementing behind the meter energy and services solutions for our customers.

ENGIE is a significant investor in the Australian market employing 1600 staff and currently serves over 650,000 mass market customers through its Simply Energy brand and 1000's of business through our services brands. ENGIE continues to look for opportunities to further develop its business footprint in Australia including actively competing against larger retailers by offering competitive retail pricing and investing in upgrading and building assets. ENGIE is also looking at launching a wider range of products to better serve customers' needs including its Virtual Power Plant offering, now available to households, and an extensive range of services to the business sector.

This appetite for investment and growth is undermined by the ongoing policy and regulatory uncertainty in the energy sector. The Bill is the latest policy challenge during a decade in which energy policy has been poorly managed in Australia.

In this instance, the consultation process has not been sufficient to fully explore the many matters in the Bill, and therefore, ENGIE is concerned the interventions proposed could have numerous and potentially significant unintended consequences which will work directly against the interests of consumers.

While ENGIE supports the Government's intentions to lower energy prices, there is nothing in the Bill or explanatory memorandum that would convince informed observers that the path to sustainable long term lower prices for Australian households and businesses is via more intervention.





Contrary to arguments in support of the Bill, the explanation of prohibited conduct remains uncertain enough that it is likely to concern all market participants and not serve customers' interests.

ENGIE notes that legitimate concerns about customers who are unable to engage with the market on terms that meet their needs, energy poverty for some vulnerable Australians, and bills for those on standing offers not reflecting best value, will not be resolved by the Bill, nor will the Bill improve the circumstances of those at risks customers.

On this basis, ENGIE makes the following observations regarding the Bill.

- The Bill does not provide retailers with a definitive position on what is and is not prohibited conduct for the purposes of retail pricing. The explanatory memorandum has multiple examples of potential prohibited conduct which gives rise to a view that there is likely to be significant subjectivity.
- Leaving aside the details in the Bill, ENGIE is not aware of any detailed arguments or evidence made that granting of these powers would have resulted in better outcomes in the retail energy market in previous years or that this power is necessary going forward.
- The Bill's subjectivity may impede management of wholesale pricing risk and volatility by retailers who may currently delay price rises and absorb volatility to improve their competitive position but will be strongly disincentivised to continue do so should the Bill be passed.
- The Bill creates additional obligations on generators regarding offering electricity contracts that appears unnecessary and a duplication of existing laws. Should the Treasurer choose to exercise powers flowing from a failure to meet these obligations it would likely cause damage to affected participants, if not the market more broadly.
- The low standard of evidence needed in relation to prohibited conduct, notably regarding electricity contracts, creates a concern that it may be misapplied. The electricity contracts market is a very complicated and dynamic environment and the presumption that the regulator forming a "reasonable belief" is grounds for action and that that action will be well conceived should be further investigated.
- Prohibitions in relation to the spot market seem to imply that legitimate operational and commercial decisions may be inadvertently deemed inappropriate under the Bill as drafted. Given these matters are covered in great detail in the market rules, and those market rules have been the subject of in depth consideration by Government, industry, and stakeholders over an extended period of time, the case for inclusion of these matters in the Bill is not strong.
- The use of divestment powers in the proposed fashion is not the type of regulatory regime parties have come to expect in the Australian jurisdiction. The potential consequences for investment of such action could be stark and further consideration of these measures is warranted.
- The additional powers conferred on the Australian Energy Regulator have been developed without due consultation and are not supported. There is great risk in conferring such wide-ranging powers on a regulatory body without sufficient oversight. It is well known that a poorly structured market price cap



would not be in the interests of consumers. Thus, the implementation of damaging default offers, against the views of jurisdictions and market participants, however structured, could be possible pursuant to schedule 2 of the Bill.

- The regulatory burden faced by energy companies is already significant with little attention given to the cost benefit trade off that the ever-growing list of obligations creates for consumers in the form of transferred compliance costs. This Bill is likely to further add to this significant compliance burden for an unclear benefit to consumers.

ENGIE strongly believes that the Bill will increase investor uncertainty, will increase the regulatory burden for market participants, will increase compliance costs, and will impact new entrants into the retail market. None of these impacts are in the long-term interests of energy consumers, who rely on a well-resourced industry to actively compete in accordance with well-crafted and effective policy parameters.

I trust this submission will assist the Committee in its consideration of the Bill.

Should you wish to discuss any aspects of this submission, please do not hesitate to contact me on, telephone, ■■■■■

Yours sincerely,

Jamie Lowe
Head of Regulation