

25 January 2019

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

Our ref: (KS – C&C)

By email: economics.sen@aph.gov.au

Dear Committee

**Treasury Laws Amendment (Prohibiting Energy Market Misconduct) Bill 2018
[Provisions]**

Thank you for the opportunity to provide comments on the Treasury Laws Amendment (Prohibiting Energy Market Misconduct) Bill 2018 [Provisions] (**the bill**).

This response has been compiled with the assistance of the Competition and Consumer Law Committee who have substantial expertise in this area.

The Queensland Law Society (QLS) is the peak professional body for the State's legal practitioners. We represent and promote over 13,000 legal professionals, increase community understanding of the law, help protect the rights of individuals and advise the community about the many benefits solicitors can provide. The QLS also assists the public by advising government on improvements to laws affecting Queenslanders and working to improve their access to the law.

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In advocating for good law, QLS supports the creation of laws which are evidence based and subject to scrutiny by relevant stakeholders. In this regard, we have concerns that the closing date for submissions on the bill was revised by the Committee from 11 February 2019 to 25 January 2019, thereby reducing the consultation period by more than two weeks.

In light of the reduced consultation time, we have limited our comments to specific aspects of the Bill. By omitting to comment on the full scope of provisions in the Bill, QLS does not express its endorsement of these.

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1. Definition of 'Prohibited conduct'

Division 2—Prohibited conduct

153E Prohibited conduct—retail pricing

A corporation contravenes this section if:

- (a) the corporation offers to supply electricity, or supplies electricity, to small customers; and*
- (b) the corporation fails to make reasonable adjustments to the price of those offers, or to the price of those supplies, to reflect sustained and substantial reductions in its underlying cost of procuring electricity.*

Firstly, we have concerns regarding a lack of clarity surrounding the definition of 'Prohibited conduct' in proposed section 153E (b). This is an issue for corporations seeking to ensure compliance with the proposed provisions. Further, where a court is required to make a determination with respect to the 'Prohibited conduct', there is no clarity as to the factors to be considered by a judge, who may have little experience in the electricity industry, as to what 'reasonable adjustments to the price of those offers' might entail.

2. The 'public interest' test

In relation to **Division 3 – Commission responses, Subdivision A – Public warning notices**, and specifically proposed sections 153L(1) and 153M(2), although the test appears to be whether '*it is in the public interest to issue the notice*', this is not consistent with the current wording of proposed subsections 153L(1)(b) and 153M2(b).

It would seem that the wording '*one or more persons has suffered, or is likely to suffer*', should read, 'one or more members of the public has suffered, or is likely to suffer'.

3. 153J Prohibited conduct – purpose

- (2) A corporation may be taken to have done something:*
 - (a) for the purpose of substantially lessening competition in an electricity market; or*
 - (b) for the purpose of distorting or manipulating prices in an electricity spot market; even though, after all the evidence has been considered, the existence of that purpose is ascertainable only by inference from the conduct of the corporation or of any other person or from other relevant circumstances.*

We are concerned that the wording of this proposed section is not consistent with principles of procedural fairness particularly with respect to requirements for probative evidence and clarity about the case a party is required to meet. Proposals which seek to alter legal or evidentiary threshold tests require significant and evidence based consideration and stakeholder consultation.

4. 153X Treasurer may make contracting order

- (1) The Treasurer may, in writing, order the body corporate to make offers to enter into electricity financial contracts.*

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(4) The order may specify the kind of offers that the body corporate must make in any of the following ways:

(b) the price or range of prices in respect of electricity under the electricity financial contracts that must be offered, or a method or methods of working out that price or that range...

Finally, QLS is concerned about the implication of the purported power in proposed section 153X. That is, where the Government seeks to empower itself to make orders about 'the price or range of prices in respect of electricity under the electricity financial contracts'. We are also concerned about an apparent lack of review and/or appeal of these decisions.

It is expected that responsible corporate citizens will provide infrastructure to enable it to provide services to the community, but the ability of the Government to empower one of its ministers or a body it sets up to determine a price or range of prices in respect of electricity, in the absence of an extensive evidence based consultation process, should be discouraged.

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Policy Solicitor, Kerryn Sampson by phone [REDACTED]

Yours faithfully

Bill Potts
President