



20<sup>th</sup> December 2019

COAG Energy Council Secretariat  
GPO Box 787  
Canberra ACT 2601  
Submitted electronically via:

energycouncil@environment.gov.au

### **AER National Energy Laws Enforcement and Penalties Framework - Consultation Package**

Alinta Energy welcomes the opportunity to provide a submission on the AER National Energy Laws Enforcement and Penalties Framework.

Alinta Energy is an active investor in energy markets across Australia with an owned and contracted generation portfolio of nearly 3,000MW and in excess of 1.2 million electricity and gas customers.

#### **No evidence has been presented that existing enforcement arrangements are ineffective**

In Alinta's view it is important to ensure appropriate enforcement mechanisms exist to support the long-term viability and robustness of the National Energy Market. Where there are clearly identified deficiencies in existing regulatory arrangements or evident market failures, Alinta is supportive of targeted reforms to address such problems.

The limited amount of breaches of the National Electricity Laws since market start suggests little to no evidence of systemic non-compliance with the laws or rules. As such, in terms of the issues open for consultation, Alinta Energy seeks to comment on the strategic direction of the *Enforcement and Penalties framework* as presented in the consultation paper and makes the following high-level points:

- The existing range of enforcement options available to the AER appear to be functioning adequately, with the infringement notice regime proving effective.
- There is no discernible or meaningful gap that currently hinders or prevents the AER in achieving it's set tasks and functions.
- To date, limited infringement notices have ever been issued for breaches of the National Electricity Laws, demonstrating the existing civil penalty regime operates effectively.

- Increasing the size of individual penalties to \$500,000 for individuals is unsubstantiated and punitive. This recommendation will not change the existing compliance structure for individuals and as such is not supported by Alinta Energy.
- Granting the AER the power to gather information under oath is invasive and constitutes a large extension of regulatory power that significantly departs from the AER's existing methods. In the absence of any evidence that existing measures are ineffective, implementing such an option is unwarranted and unjustified.
- No new evidence has been presented within the consultation paper that would indicate that higher civil penalties or additional enforcement measures would introduce a different compliance incentive structure or compliance outcomes than currently exist, for individuals or corporate entities.
- It is poor regulatory practise to base a reform agenda on an argument that comparable regimes have different approaches. Whilst informative for reference purposes, consideration should be given to where points of regulatory difference exist and the unique underlying localised market conditions underpinning those differences. Thus, caution should be exercised in drawing like for like conclusions with international jurisdictions and seeking to apply them to the NEM.

Given these points, any recommendation to increase the level of civil penalties and broaden the scope of the AER should not be supported by COAG.

### Conclusion

The existing market incentives which drive behaviour and compliance within the NEM are robust as evidenced by the limited number of breaches to date. In the limited circumstances where there have been breaches; existing enforcement powers have been more than adequate in ensuring appropriate enforcement of the National Energy Laws.

We look forward to participating in the ongoing consultation process and would encourage consideration of the points raised above.

If you have any queries in relation to this submission, please contact me via email on [REDACTED] or by phone [REDACTED]

Yours sincerely,

[Signed]

**Anders Sangkuhl**

Wholesale Regulation Manager