

COAG Energy Council Secretariat
GPO Box 787
CANBERRA ACT 2601

28th September 2017

Submitted via e-mail to: energycouncil@environment.gov.au

Dear Sir/Madam,

**Ministerial Power to make Rules
Statutes Amendment (National Energy Laws) (Rules) Bill 2017**

The Australian Energy Council (the “**Energy Council**”) welcomes the opportunity to make a submission in response to the Draft *Statutes Amendment (National Energy Laws) (Rules) Bill 2017* (“**the Draft Bill**”).

The Energy Council is the industry body representing 21 electricity and downstream natural gas businesses operating in the competitive wholesale and retail energy markets. These businesses collectively generate the overwhelming majority of electricity in Australia and sell gas and electricity to over ten million homes and businesses.

Introduction

The Energy Council supports the 50 recommendations of the *Finkel Review*¹, including Recommendation 7.2 (the establishment of the Energy Security Board (“**ESB**”)), however the Energy Council notes that the draft Terms of Reference include very limited reference to consulting with industry on any of the ESB’s proposed actions, and this is reflected in the drafting of the proposed Bill.

Discussion

The Draft Bill provides the ESB with similar powers to the Australian Energy Market Operator and the Reliability Panel to submit rule changes. By providing the ESB with the direct ability to initiate rule changes, it will have the same access as other stakeholders to seek improvements to the security and operation of the power system, and will be able to act on its findings from its regular reports. In addition, the requirement that a Rule can only be made by the Minister after receiving a recommendation from both the ESB and the Ministerial Council on Energy (“**MCE**”) means that there is sufficient governmental review before its implementation.

Once the proposed Rule is incorporated into the National Electricity Rules, the Energy Council is satisfied that the Rule as made will be indistinguishable from other rules and therefore subject to the same rule review processes as all others.

However the Energy Council has concerns regarding the proposed Section 90F Clause (4)(c), which states that the only consultation on such ESB-proposed rules must be “in accordance with any requirements determined by the MCE”. As the requirements have yet to be published, and once they are, they can be changed very easily, the Energy Council therefore does not believe this clause affords industry sufficient comfort that rules will not be amended by the ESB without adequate consultation with market participants.

While there is a case to be made that some urgent, uncontroversial changes can be made without consultation, there is difficulty in setting out assessment criteria which provide this latitude, while ensuring that inappropriate changes are not made without seeking feedback from those who may be affected by the change. To this end, the Energy Council suggests that Clause (4)(c) be amended to provide for the AEMC to conduct consultation using processes which mirror those of Part 7 Division 3².

¹ *Independent Review into the Future Security of the National Electricity Market: Blueprint for the Future*, Commonwealth of Australia 2017

² Procedure for the making of a Rule by the AEMC

The Energy Council believes that this will provide sufficient comfort that inadequately considered rule changes are not introduced without the ESB receiving advice from industry and other interested parties.

In addition, the Energy Council notes that there is no requirement that the ESB be unanimous in its recommendation to make a proposed rule, which suggests that rules could be recommended which are not supported by either the Chair, the Deputy Chair or one of the market bodies. The Energy Council recommends that all members of the ESB agree that a rule change should be made.

The Energy Council also notes that under the proposed Section 28YA, the Australian Energy Regulator (“AER”) is authorised to disclose to the ESB information provided to it in confidence. As the powers and obligations of the ESB have yet to be specified, the Energy Council suggests to the Secretariat that confidentiality obligations similar to those imposed on the AER under Part 3 Division 6³ of the *National Electricity Law* be imposed upon the ESB.

The Energy Council has similar concerns about rule changes made without consultation (the proposed Section 238B(3)(c)) and inadequate confidentiality obligations (Section 210A) in the amendments proposed for the *National Energy Retail Law*. The concerns are also mirrored in the *National Gas Law* (Sections 294G(3)(c) and 326A). It is recommended that the Secretariat make corresponding changes to the drafting in these Laws also.


Conclusion

In conclusion, the Energy Council is supportive of the Draft Bill, subject to:

- (a) it being amended to include mandatory industry consultation before being sent to the MCE for endorsement;
- (b) all rule change recommendations being unanimously approved by the ESB; and
- (c) confidentiality obligations being extended to the operations of the ESB.

Any questions about this submission should be addressed to the writer, by e-mail to Duncan.MacKinnon@energycouncil.com.au or by telephone on (03) 9205 3103.

Yours sincerely,



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³ Disclosure of confidential information held by AER