



13 February, 2019

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

Dear Senate Standing Committees on Economics

PROHIBITING ENERGY MARKET MISCONDUCT - QUESTIONS ON NOTICE

On 6th February 2019 Treasury appeared before an Economics Legislation Committee hearing regarding the Treasury Laws Amendment (Prohibiting Energy Market Misconduct) Bill 2018. During this hearing Treasury, took three questions on notice. The answers to these questions are attached.

Yours sincerely

Hamish McDonald
First Assistant Secretary, Treasury

QUESTION 1

CHAIR: So, this 'ambiguous wording', according to the witnesses, is something that in fact they should be familiar with, because it has been in operation in the gas market for—how long?

Mr McDonald : I'd have to take on notice how long it's been in operation for, but it's section 542 of the gas rules—that's the gas rules, not the electricity rules; not all participants are in both sectors, and markets are different.

Answer:

Rule 542 of the National Gas Rules contains a prohibition against gas trading exchange members acting 'fraudulently, dishonestly or in bad faith' or engaging in conduct 'with the intent of distorting or manipulating prices (including reported prices)'. Rule 542 was added to the National Gas Rules by the *National Gas (Gas Trading Exchanges) Rule 2013*, and commenced operation on 1 January 2014.

QUESTION 2

Senator KETTER: I want to turn to section 153ZC, which goes to that issue of constitutionality. I think you were all here when the Law Council witness was discussing that matter. Is it normal for such a provision to be included in legislation like this? I might start with you, Mr McDonald.

Mr McDonald : I'd echo the comments of the Law Council member who noted that these terms appear in other legislation, so—

Senator KETTER: Can you give us an example?

Mr McDonald : I don't have an example to hand, but I can take that on notice.

Answer:

Examples of provisions similar to Section 153ZC of the draft legislation can be found in Commonwealth legislation as follows:

- *Competition and Consumer Act 2010*, Schedule 2, s290A
- *ASIC Act* s301(4)
- *Superannuation Industry (Supervision) Act 1993*, s117(3A) and s349B
- *Safety, Rehabilitation and Compensation Act 1988*, s97DB
- *Interactive Gambling Act 2001*, s15F
- *Fair Work Act 2009*, s39

QUESTION 3

Senator KETTER: I want to go back to the time line for consultation which has been a matter of great concern from key stakeholders. I'm interested in key dates when Ministers Frydenberg and Taylor met face to face with key stakeholders in the energy industry to talk about the policies that are included in this legislation.

Mr McDonald : I would have to take on notice the dates that ministers had meetings. I don't have those dates in front of me, but I can say that between 23 October and 7 November there was the public consultation process on the consultation paper and then between 16 and 21 November there was a targeted consultation process. Both of those elicited written responses from a number of market participants and sometimes from market regulatory bodies, and Treasury itself, through the process between October and November, had a number of different meetings both with bodies such as the ACCC, the AER the AEMC, the ESB and the department of energy and environment. We also had conversations with the BCA, AGL and EnergyAustralia.

Senator KETTER: I would appreciate it if you provide on notice more detail and dates when those meetings actually occurred.

Mr McDonald : Yes, absolutely.

Answer:

As part of the development of the legislation, Treasury held teleconferences or meetings with a range of government and industry stakeholders as follows:

- 5 October – ACCC.
- 11 October – AER, ACCC, DEE, PM&C.
- 16 October – AEMC.
- 17 October – Energy Security Board.
- 22 October – Australian Energy Market Commission (AEMC).
- 2 November – AER, ACCC, DEE, PM&C.
- 7 November – AER.
- 12 November – PM&C.
- 21 November – Business Council of Australia.
- 22 November – AGL.
- 23 November – Energy Australia.
- 28 November – Australian Energy Regulator (AER), Australian Competition and Consumer Commission (ACCC), Department of the Environment and Energy (DEE), Department of the Prime Minister and Cabinet.

During the process, Treasury consulted the ACCC extensively in addition to the formal meetings listed above. The ACCC was also involved in a number of meetings with the Office of Parliamentary Counsel to discuss the drafting of the legislation.

The Treasurer and Energy Minister meet with a range of electricity market stakeholders on a regular basis.