

16 April 2010

Department of the Senate  
PO Box 6100  
Parliament House  
CANBERRA ACT 2600  
AUSTRALIA



By email: [economics.sen@aph.gov.au](mailto:economics.sen@aph.gov.au)

Dear Sir / Madam

**Response to the Trade Practices Amendment (Australian Consumer Law) Bill (No 2) 2010**

ENERGEX Limited is an electricity distributor which provides network services and infrastructure to distribute electricity into the homes and businesses of about 2.8 million people in South East Queensland.

ENERGEX wishes to make a submission on two specific issues arising out of the *Trade Practices Amendment (Australian Consumer Law) Bill (No 2) 2010* (Bill).

**Issue 1: Unfair contract terms (Part 2-3 of the Bill)**

1. The Bill regulates unfair contract terms contained in consumer contracts (Part 2-3).
2. ENEREX provides connection services to consumers pursuant to the Standard Connection Contract. The Standard Connection Contract is deemed to apply if a customer or their retail entity has applied for customer connection services under section 40 of the *Electricity Act 1994 (Qld)*.
3. The Standard Connection Contract is prescribed by and set out in the Queensland Electricity Industry Code (**Code**). The Code was made under the Electricity Act by the Regulator under that Act (s64FA). (...)
4. ENEREX must comply with the Code as a condition of its distribution authority (clause 1.4 of the Code). (...)
5. Given that the Standard Connection Contract is prescribed by the Code and deemed to apply to ENEREX and its customers, ENEREX submits that the Bill should be amended to provide that the unfair contracts provisions set out in the Bill do not apply to any deemed contracts under Regulations, such as the Standard Connection Contract. (...)

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**Issue 2: Customer Guarantees (Division 1 of Part 3-2 of the Bill)**

1. The Bill provides for the provision of consumer guarantees relating to the supply of goods and services (Division 1 of Part 3-2).
2. Relevantly, this Division does not apply to a supply if the supply is of a kind specified in the Regulations and is a supply of a gas, electricity or telecommunications service (s65). The Regulations have not been issued. As such, the extent to which the Division will apply to supplies of electricity is unclear and should be clarified.
3. Special considerations apply to supplies of electricity. Given the unique nature of electricity and manner in which it is supplied, in the event of a failure, it is difficult to determine the cause of the failure. In many cases, the failure is due to circumstances beyond the reasonable control of the distributor. As such, the proposed regime is likely to impose unreasonable imposts on the suppliers of electricity services for events that, in practice, are beyond their control.
4. Electricity specific laws at both a national and state level make adequate provision for consumer protection. The electricity specific laws include the following:
  - Electricity Act 1994 (Qld) and Electricity Regulations 2006;
  - Electrical Safety Act and Regulations (Qld);
  - National Electricity Law;
  - Queensland Electricity Industry Code; and
  - National Electricity Rules.
5. In particular, ENERGEX is required to meet the minimum service standards and make guaranteed service levels payments to customers as set out in the Electricity Industry Code.
6. Also, under the proposed National Energy Customer Framework, the second exposure draft has proposed that a small compensation claims regime be established to enable small customers to make claims from distributors who provide customer connection services to their premises.
7. It is submitted that the existing and proposed customer protection regimes for electricity will make adequate provision for consumer protection. If the Bill does apply, it may result in overlapping and potentially conflicting legislative regimes leading to unnecessary regulatory compliance burden.
8. For these reasons, we recommend that the Bill be amended to make it clear that the consumer guarantee provisions do not apply with respect to the supply of electricity or electricity connection services.

Please don't hesitate to contact me should you wish to discuss any of the above matters further.

Yours sincerely

(...)

Michael Russell  
Executive General Manager  
Corporate Governance