



**Energy Supply Association  
of Australia Limited**

Level 2  
451 Little Bourke St  
Melbourne  
VIC 3000

GPO Box 1823  
Melbourne  
Vic 3001

Tel: 61(0)3 9670 0188 ABN 98 052 416 083  
Fax: 61(0)3 9670 1069 www.esaa.com.au  
Email: info@esaa.com.au

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The Secretary  
Senate Economics Legislation Committee  
Suite SG.64  
Parliament House  
CANBERRA ACT 2600

Dear Mr Hallahan

**Inquiry into the Trade Practices Amendment (National Access Regime) Bill 2005**

Thank you for your letter of 4 July 2005 seeking comment from the Energy Supply Association of Australia (esaa) on the Trade Practices Amendment (National Access Regime) Bill 2005 (the bill).

The energy industry is characterised by significant network infrastructure that is subject to industry-specific access regimes. The existing Gas Access Regime has been certified as effective under s44M of the *Trade Practices Act 1974* (TPA). Existing electricity network service providers have approved access undertakings under s44ZZA of the TPA that are in accordance with the National Electricity Rules, which are an approved industry access code for the purposes of s44ZZAA. The energy industry should therefore be free from the risk of declaration and some of the proposed changes contained within the bill will not greatly impact on the energy industry.

**Effective access regimes**

However, the Commonwealth, State and Territory governments have given their support for a certified national energy access regime (under s44M of the TPA) to cover both gas and electricity. This will mean that, at the very least, an application for certification of the electricity access arrangements will be made and that, going forward, there may be the need to “re-certify” the energy regime from time-to-time. To the extent that the bill provides regulatory transparency and increases the incentives for timely decision-making by the National Competition Council (the Council), the Commonwealth Minister and the Tribunal, this is viewed as a positive development.

esaa notes that the bill explicitly prevents the Australian Competition and Consumer Commission (the Commission) from accepting access undertakings or access codes where a decision is in force that a State or Territory access regime is an effective access regime. The esaa has had concerns about the potential for “double regulation” and welcomes the recognition within the Explanatory Memorandum that this amendment is intended to support the use of effective access regimes.

## **Objects clause and pricing principles**

The bill will require the Council and the Commonwealth Minister to have regard to the new objects clause when making a recommendation or decision on the effectiveness of an access regime. The inclusion of the words “to promote the economically efficient operation of, use of and **investment** in the infrastructure by which the services are provided...” is a timely acknowledgement that access regimes must encourage investment in infrastructure if service and reliability is to be maintained and demand growth is to be met.

The bill also introduces statutory pricing principles to “provide guidance for pricing decisions and to contribute to consistent and transparent regulatory outcomes over time as well as certainty for investors and access seekers.” While the bill will not require that the Council nor the Commonwealth Minister have regard to these principles in making a recommendation or decision on the effectiveness of an access regime, the Explanatory Memorandum is clear that the Commonwealth will work with participating jurisdictions to include the same pricing principles in Clause 6 of the Competition Principles Agreement for the purposes of assessing certification applications.

It is of significant concern to the esaa that the bill enables these pricing principles to be determined by the Commonwealth Minister. The principles, as recommended by the Productivity Commission in its Review of the National Access Regime, were accepted in the Government's response with only minor amendment. The Productivity Commission then reinforced its support for these amended principles in its Review of the Gas Access Regime. To provide certainty for investors and access seekers these principles should be enshrined in the legislation and not left to Ministerial discretion.

## **Merits review**

The extension of the right to merits review for decisions by the Commission on access undertakings and access codes is particularly welcome. While the electricity industry will only be subject to access undertakings and an industry access code in the interim, it is a welcome recognition of the importance of merits review where there are discretionary decisions on access. esaa considers that a robust merit-based appeals process should be provided for all economic decisions on access arrangements for regulated gas and electricity infrastructure.

Once again, I thank you for the opportunity to comment and look forward to learning of the results of the Committee's work.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Brad Page', with a stylized flourish at the end.

**Brad Page**  
Chief Executive Officer