

19 August 2016

Hon. Kate Doust MLC
Chair
Uniform Legislation and Statutes Review
Parliament House
Perth WA 6000



Dear Ms Doust

Standing Committee on Uniform Legislation and Statutes Review consideration of National Energy Bills

The Chamber of Commerce and Industry of Western Australia (CCI) has consistently advocated for an open, transparent and competitive energy market to achieve the affordable and secure supply of energy in Western Australia (WA). In this respect, the National Energy Bills¹ ("Bills") provide the opportunity to further these goals.

CCI welcomes the Standing Committee on Uniform Legislation and Statutes Review ("the Committee") inquiry into these Bills, and the important role the Committee has in reviewing how proposed laws could impact upon the sovereignty and law making powers of the Parliament of Western Australia.

Having consulted with stakeholders, CCI agrees with the Public Utilities Office position that appropriate diligence was given to the impact on Parliamentary sovereignty when these Bills were drafted, and that the right balance has been reached between considerations under the Committees Terms of Reference, and necessary reform of the WA energy sector.

The Committee has raised concerns with purported "Henry 8th Clauses". Whilst CCI appreciates the objective of the Committee is to avoid the operation of such clauses, in this case, it is a necessary inclusion for the proper and intended operation of the Bills.

Such clauses are in place to deal with unique WA factors. Therefore they are only intended to be used if the National Electricity Law is altered so that it cannot operate in WA without amendment, or if a provision is changed making the operation of national laws in WA inoperable. In practice, it is unlikely that this limited power would be exercised, as proposed changes to National Electricity Laws are taken to the COAG Energy Council, where a WA Minister can review and prevent changes that have an adverse effect on WA.

CCI also notes that it remains in the WA Parliament's future discretion to withdraw from arrangements implemented by these Bills, and therefore Parliamentary sovereignty is not lost to re-establish a State-based scheme if so desired.

¹ Comprising three bills - *Energy Legislation Amendment and Repeal Bill 2016*, *National Electricity (Western Australia) Bill 2016*, *National Gas Access (WA) Amendment Bill 2016*



On balance, CCI's view is that the benefits of adopting these Bills far outweigh the risks being considered under the Committee's terms of reference. By not adopting national laws, there will be a missed opportunity to implement rules that have downward pressure on prices at a time where the WA economy is going through a significant transformation.

CCI is concerned that a failure to pass these bills would place the broader Electricity Market Review reform agenda at severe risk, including smart-metering, tariff reform, and full retail contestability. Moreover, if these Bills are not passed in this term of Parliament, there will not be another realistic opportunity to adopt national laws until 2022. With Western Power operating on a five-yearly regulatory cycle it would need to revert back to the State's ERA to provide certainty of operation.

Reverting back to the ERA would be unwelcome for a number of reasons:

- The ERA administers a State Access Code which ultimately facilitates an unconstrained market. By not providing incentive for competition in power generation, there remains upward pressure on electricity prices;
- The Australian Energy Market Operator (AEMO) has recently taken the role of operating WA's Wholesale Electricity Market. Whilst technically possible for AEMO to operate the market with ERA as regulator, CCI understands that AEMO is not comfortable operating the market without national laws. Therefore there is a strong possibility AEMO may seek to end its responsibilities, meaning a return to the State's Independent Market Operator (IMO). In the event AEMO does remain operator, the local market will sustain higher associated costs of this under a state regulator compared to a national regulator, and therefore would not be a welcome outcome.
- Maintaining the ERA is a lost opportunity to adopt the policy making expertise delivered by the national framework and the Australian Energy Regulator.

CCI recognises that Committee has received a number of different views regarding the operation of these Bills, and that stakeholder input will be considered against the Committee's terms of reference. CCI considers that three months is an appropriate length of time to consider the Bills, and looks forward to its report to the Legislative Council on 22 September.

Yours sincerely

Deidre Willmott
Chief Executive Officer