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Second Exposure Draft of the National Energy Customer Framework

The Energy Supply Association of Australia (esaa) welcomes the opportunity to comment on the Ministerial Council on Energy's (MCE) Standing Committee of Officials' (SCO) second exposure draft of the National Energy Customer Framework (NECF).

esaa is the peak industry body for the stationary energy sector in Australia and represents the policy positions of the chief executives of over 40 electricity and downstream natural gas businesses. These businesses own and operate more than \$120 billion in assets, employ 52,000 people and contribute \$16 billion directly to the Nation's Gross Domestic Product.

esaa supports the development and implementation of a single national framework for the regulation of the retail supply of gas and electricity, as committed by the Commonwealth and state and territory governments in the Australian Energy Market Agreement (AEMA). The NECF is an important component of national energy market reform and its implementation will be welcomed by the stationary energy sector. The Association notes that the NECF is overdue and is disappointed with the most recent statement by energy ministers that delays implementation timeframes and provides no certainty of commitment by jurisdictions to adopt the reform package¹.

The NECF is intended to promote the efficient regulation of the energy supply sector by completing the transfer of distribution network regulation to the national framework and implementing a national framework for the regulation of the retail sale of energy. However, it appears that this is being compromised by efforts to incorporate the delivery of governments' social objectives into the national reform package. In particular, section 113(2) of the exposure draft National Energy Retail Law (NERL) qualifies the long term efficiency objective currently applying in national energy law with a caveat that appears to make certain that governments' social objectives can continue to be pursued through national energy regulation.

¹ The Communiqué of the 4 December 2009 meeting of the Ministerial Council on Energy states that Ministers agreed that applicable jurisdictions will introduce the NECF progressively between July 2011 and July 2013.

The objective of national energy law, as applied in section 113(1) of the NERL, is “to promote efficient investment in, and efficient operation and use of, energy services for the long term interests of consumers of energy with respect to price, quality, safety, reliability and security of supply of energy”. Section 113(2) qualifies this, stating that: “the national energy retail objective should not be taken to prevent or restrict the development and application of consumer protections for hardship customers and other small customers, including the development, approval and application of customer hardship policies”.

esaa does not agree that the inclusion of section 113(2) is required in order for governments to be able to ensure adequate protection for energy customers. Further, esaa is concerned that governments may construe this section as a justification for policies, such as below-cost retail price tariffs, that distort the efficient operation of energy markets, and which exemplify the underlying contradiction in the current approach to national energy reform. The Association considers that governments already have a set of tools available to them that can be used to deliver their social objectives without distorting the energy market, including general consumer protection laws and direct support programs, funded on-budget and administered by government agencies that target vulnerable members of the community, such as low-income residents, the elderly and the chronically sick. Governments, rather than energy companies, are best-placed to identify vulnerable individuals and provide them with the assistance they need. By doing so through identifiable budgeted programs, the cost of this support can be transparently measured and assessed as adequate, or otherwise, by the community as a whole.

By contrast, seeking to address such issues through the auspices of energy businesses typically results in hidden costs, both in terms of the direct subsidy provided by other customers or by energy businesses themselves and in the indirect costs of sub-optimal market outcomes. The latter impinges directly on Australia’s ability to meet its climate change targets, which will be most effectively and efficiently delivered where customers face the full costs of their energy use, including an appropriate carbon price.

esaa’s members acknowledge that as energy businesses, they are providers of an important service and have a responsibility to carry on their business in good faith and respond appropriately and with discretion to the needs of energy customers, which includes consideration of the particular needs of vulnerable customers. Importantly, the Association notes that a number of other goods and services typically considered essential to life in Australia (such as food, shelter, private transport and fuel) are largely or entirely provided by the private sector. Typically, the delivery of these goods and services are not subject to the kind of intervention-sanctioning law represented by section 113(2).

esaa does not accept that the regulation of energy businesses is an appropriate vehicle through which governments’ social objectives should be delivered, particularly where obligations can impair the viability of commercial operations. National energy reform has delivered vibrant competition to Australia’s energy market, while new and growing private sector participation has featured. This has and will continue to improve efficiency in the supply of energy services and serve the long term interest of energy consumers. The Association considers that section

113(2) risks undermining these objectives and achievements and accordingly recommends its removal from the NERL.

Finally, esaa remains concerned about the intention to enable an expanded set of enforcement powers to apply to the Australian Energy Regulator. Consistent with the objectives of the NECF, this reform process should, in the first instance, seek to streamline existing approaches to compliance and enforcement. Where a need for enhanced enforcement measures can be subsequently demonstrated, an expanded set of enforcement powers could be developed in consultation with affected entities and should be restricted in application to the minimum set of market participants needed to achieve the aims of an enhanced enforcement framework.

esaa notes that the second exposure draft of the NECF contains significant detail on the regulation of the responsibilities of retail market participants and the relationships between participants, including in contingency circumstances. The Association has not commented in detail on these proposals as the substantive issues contained in them are thoroughly considered in submissions made by the Energy Retailers Association of Australia and the Energy Networks Association. esaa considers that the issues raised in those two submissions should be given the SCO's full and close consideration.

If any further information is required in regards to this submission please contact Kieran Donoghue, Policy Development Manager – kieran.donoghue@esaa.com.au or 03 9670 0188.

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