

YES MINISTER - PROPOSED NEW POWERS TO DEROGATE FROM THE NER

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Legal Briefings - By **Peter Davis and Aditya Shivam**

The *National Electricity (Victoria) Amendment Bill 2020 (Bill)* introduced by the Victorian Government on 18 February seeks to make it easier for the Minister to derogate from the National Electricity Rules (**NER**). So how will the Minister use their proposed new powers?

The Bill has been introduced to accelerate the development of transmission system augmentations and the procurement of specific network and non-network services within the Victorian Declared Transmission Network. The Government believes the reform will provide a means of overcoming long assessment times and procedural hurdles that have, to date, slowed development and procurement within the Victorian Declared Transmission Network.

While reform is undoubtedly necessary, it would be unrealistic to think that the solution will be as simple as waving a Ministerial wand. Any Orders made will need to be carefully considered to ensure compatibility with the complex array of rules, regulations, determinations and guidelines that apply to transmission networks and interconnectors under the National Electricity Law (**NEL**) and the NER.

Investors in the renewable energy sector in particular will be hopeful that the Minister may utilise these Orders to break the impasse faced by many Victorian projects for whom protracted delays in the process of connecting to the Victorian Declared Transmission Network are imposing significant financial impacts. While the Bill seems to be a step in the right direction, and signals a statement of positive intent by the Victorian Government, the outcomes we can expect to be delivered remain to be seen.

The Bill enables the Minister (through Ministerial Orders issued pursuant to the *National Electricity (Victoria) Act 2005 (Vic)*) to:

1. “cherry-pick” provisions of the NEL and NER that will apply to:
 - a. specified augmentations of the Victorian Declared Transmission Network; and
 - b. network and non-network services that support those specified augmentations (and the Victorian Declared Transmission Network at large); and
2. direct the Essential Services Commission to amend conditions attaching to licences granted to a declared transmission system operator under the *Electricity Industry Act 2000 (Vic)*.

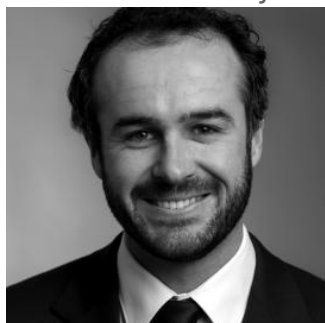
Under the proposed regime, the Minister will be empowered to, amongst other things:

1. identify an alternative test (and guidelines for such alternative test) to the Regulatory Investment Test for Transmission (**RIT-T**) for augmentations of the Victorian Declared Transmission Network;
2. dictate how costs related to any specified augmentation of the Victorian Declared Transmission Network may be recovered through charges or through the classification of such costs as “pass through costs” for the purposes of Chapter 6A of the NER;
3. require a declared transmission system operator or prospective declared transmission system operator to plan, carry out, operate or facilitate the planning, carrying out or operation of a specified augmentation of the Victorian Declared Transmission Network;
or
4. deem a specified service as an ancillary service, an inertia network service, a prescribed transmission service, a system strength service or any other service defined under the NEL and the NER.

The Bill passed a third reading in the Legislative Assembly on 5 March 2020 and will need to pass through the Legislative Council before it reaches Royal Assent. The Bill is slated to commence (if passed), on the day on which it receives the Royal Assent.

KEY CONTACTS

If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.



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