



The Honourable Mark Bailey MP
Minister for Main Roads, Road Safety and Ports
Minister for Energy, Biofuels and Water Supply

Our Reference: CTS 25717/17

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Senator Jonathon Duniam
Chair
The Senate
Environment and Communications Legislation Committee
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Dear Senator Duniam

Re: Inquiry into the Competition and Consumer Amendment (Abolition of Limited Merits Review) Bill 2017

Thank you for your letter of 7 September 2017, inviting a written submission to the Senate Committee inquiry into the above Bill.

I understand the Bill relates to the Australian Government's unilateral decision to remove the Limited Merits Review (LMR) regime under the national energy laws.

I will not be making a formal submission but I can provide some background to the issue.

The August 2016 COAG Energy Council (Council) meeting discussed commencing a review into the effectiveness of LMR to be completed by December 2016.

The 14 December 2016 Council meeting considered the outcomes of the review into LMR. Importantly the Council noted at that meeting that there was no consensus around the need for the LMR regime to be abolished. However there was in-principle agreement among Ministers to significant and immediate reform of LMR arrangements.

The Ministers at that meeting called on a working group to quickly develop proposed legislative amendments which would address the following areas of LMR;

- Tighten and clarify the grounds for review.
- Higher financial thresholds for leave which apply to individual grounds for review.
- Reviews to be conducted on the papers, rather than through expensive and adversarial oral hearings.
- Reviews to be conducted within a strict timeframe.
- A strengthened requirement for review appellants to demonstrate that overturning the regulator's decision would not be to the serious detriment of the long-term interests of consumers.
- More flexible arrangements for consumer participation in reviews.
- Introduction of a binding rate-of-return guideline, with relevant elements of the regulator's decision not subject to merits review.
- Remove opportunities for gaming by limiting the timeframes in which material can be submitted to the regulator.
- Costs of reviews, including those of the AER, to be borne by network businesses.

All of the areas identified by the Ministers addressed the concerns raised in nearly all submissions received during the 2016 LMR consultation.

The 17 February 2017 Council meeting considered an update on the drafting of the above legislative amendment and again at the 10 April 2017 meeting where it was noted that the Council intended to finalise the proposed amendments at the July meeting.

A major deviation from the above program occurred when the Prime Minister announced on 20 June 2017 that the Australian Government had determined to unilaterally abolish LMR through legislative change.

As shown above, the Australian Government announcement came about after a significant period of debate by Council on the best approach to address concerns that, despite reforms in 2013, the LMR regime was continuing to contribute to increased network prices and poor price outcomes for consumers.

I note the Honourable Josh Frydenberg MP, Minister for the Environment and Energy has suggested that states, which own their electricity network businesses have supported retention of merits review because they have a vested interest. However, it was the Palaszczuk Government's ownership of the network businesses, that allowed it to direct the Queensland electricity distributors not to pursue merits review of the regulator's decision in 2015 and provide greater price stability for Queensland consumers.

On 14 July 2017, the Council agreed to pursue two issues that were originally raised during the 2016 LMR Review but relate to improving the regulator's primary decision process. These were enacting a binding rate of return guideline and a review of consumer resourcing to participate in the regulator's processes.

A key focus for Queensland will be to ensure the binding guideline development process embeds strong accountability to ensure high quality regulator decisions into the future. Queensland strongly advocated for the use of an independent expert panel to support the development of the guideline and is pleased that it is now included in the policy proposals.

Queensland has also stressed the importance of ensuring early and ongoing consumer engagement in the revenue determination processes. It is not just a matter of ensuring adequate resourcing. The process needs to educate and help consumer groups understand the critical issues, in particular why changes in costs have occurred and how these support consumers. Queensland considers the current Bill as drafted will provide the necessary enhancements to the LMR framework to allow consumer interests to be served more fully.

Yours sincerely

Mark Bailey MP
**Minister for Main Roads, Road Safety and Ports and
Minister for Energy, Biofuels and Water Supply**