



19 September 2017

Committee Secretary
Senate Standing Committees on Environment and Communications
PO Box 6100
Parliament House
Canberra ACT 2600

Committee Inquiry - Competition and Consumer Amendment (Abolition of Limited Merits Review) Bill 2017

Dear Committee Secretary,

Energy Networks Australia welcomes this opportunity to respond to the call for submissions by the Senate Standing Committees on Environment and Communications on the *Competition and Consumer Amendment (Abolition of Limited Merits Review) Bill*.

Energy Networks Australia is the peak national body representing gas distribution and electricity transmission and distribution businesses throughout Australia.

Energy networks are the lower pressure gas pipes and low, medium and high voltage electricity lines that transmit and distribute gas and electricity from energy transmission systems directly to the doorsteps of energy customers. Twenty-five electricity and gas network companies are members of Energy Networks Australia, providing governments, policy-makers and the community with a single point of reference for major energy network issues in Australia.

With more than 13 million customer connections across the National Energy Market (NEM), Australia's energy networks provide critical infrastructure underpinning national economic activity through providing final step in the safe and reliable delivery of gas and electricity to households, businesses and industries.

Reformed merits review, not abolition, is in the long-term interest of consumers

Australia's energy regulatory regime, including limited merits review, exists to serve the long-term interests of consumers. The interests of consumers and energy networks are aligned in achieving a high-quality regulatory regime that ensures that consumers pay no more than necessary for the services that they value.

Limited merits review is an existing feature of the Australian regulatory regime because it contributes to the long-term interest of consumers. The COAG Energy Council noted in 2012 that it served the National Electricity Objective, including by:

"...maximising the conditions for the decision maker to make a correct initial decision by providing an accountability framework that drives continual improvement in its original decision making."

We believe consumers have a direct interest in a workable, efficient and timely merits review regime. It allows correction of material errors and supports the quality of regulatory decision-making. It directly reduces the most significant cost borne by network users, the cost of capital for long-life network infrastructure.

Consumers benefit from lower prices arising from low-cost financing made possible by investor confidence in the presence of 'checks and balances' within the regulatory framework. This is significant in a sector with over \$44 billion of existing private investment and annual debt financing requirements of over \$7 billion.

We remain concerned that the proposed abolition of limited merits review will be perceived by Australian and international investors as government 'legislating away' appeal rights on a political rather than a policy basis. This cannot have a positive influence on future financing costs.

Network businesses' limited merits review reform proposals

Network businesses have shared the COAG Energy Council's expressed view that retaining the status quo in the limited merits review regime is not appropriate and that reform options should be implemented to serve the long-term interests of consumers.

Energy Networks Australia proposed a range of reforms to achieve better outcomes by addressing the underlying factors that currently impact the regime while ensuring consumers retain the benefits of a robust regulatory framework. These were:

1. Introduction of a single, binding and reviewable rate of return determination;
2. A doubling of the financial thresholds for appeal, and these thresholds applying to each ground of review;
3. More investigative and collaborative operation of the AER determination process; and
4. Enhancement of the investigative powers of the Australian Competition Tribunal.

ENA worked intensively with COAG Energy Council through the early part of this year to develop and detail these alternative proposals, including in the context of a limited round of closed stakeholder consultations conducted by the COAG Energy Council Limited Merits Review Project Team.

Over-riding of national energy policy-making agreement and arrangements

On 20 June 2017, the Commonwealth government announced that it would be seeking to move unilaterally to remove access to limited merits review, and this Bill reflects that announcement.

The proposed Bill has been introduced by the Commonwealth without reference to or endorsement by agreed policy processes established by the COAG Energy Council. This is because it has been pursued outside of processes under the relevant intergovernmental agreement, the *Australian Energy Market Agreement* (AEMA). The objectives of this Agreement include to:

"...strengthen the quality, timeliness and national character of governance of the energy markets, to improve the climate of investment" and "to streamline and improve the quality of economic regulation facing investors, enhance regulatory certainty, and lower barriers to competition."

The Agreement, executed and renewed by first Ministers since 2004, states in Clause 6.7:



“A Party will not take any action that would limit, vary or alter the effect, scope or operation of the Australian Energy Market Legislation without the agreement of the MCE.”¹

Under this Agreement, the Bill which does materially alter Australian energy market legislation should have agreement of all parties to the Agreement, however, this was not obtained in this case.

The Commonwealth announcement and this draft Bill has had a profound impact on perceptions of policy and regulatory certainty, due to this fact. This impact has been reinforced given the announcement came just days after the public release of the *Independent Review into the Future Security of the National Electricity Market*. The Finkel Report explicitly recommends against Australian governments taking unilateral action without consulting other governments.

The risks of the Commonwealth action are independently verifiable. Debt ratings agencies have placed significant weight on the quality of the economic regulatory regime, including access to Limited Merits Review for correction of errors, when determining the risk premia attributable to regulated Australian businesses. For instance, Moody's has stated that access to limited merits review:

“...reinforces the transparency and predictability of the regulatory framework, a fundamental credit support for the networks.”²

Finally, we are also concerned with unintended consequences arising from the development of this Bill with no prior public consultation. An example of such a consequence is the apparent removal of merits review oversight on an entirely separate class of decisions regarding the scope of economic regulation to be applied to gas distribution networks. These decisions are relevant where the benefits of network pricing regulation may be heavily outweighed by the practical implementation costs to customers.

We would also welcome further opportunities to provide more information or discuss any of these issues in the next stages of the Committee's considerations of these issues.

If further information is sought on this matter, please contact Garth Crawford, Executive Director, Economic Regulation, on .

Yours sincerely,

Andrew Dillon

Interim Chief Executive Officer

¹ “MCE” is the Ministerial Council on Energy, now COAG Energy Council.

² *Australian Regulated Electricity and Gas Networks – 2017 Outlook*, Moody's, 14 June 2016

