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President Gerardine (Ged) Kearney  
Secretary Sally McManus

19 September 2017

Secretary  
Senate Environment and Communications Legislation Committee  
Parliament House  
CANBERRA ACT 2601

Via Email: [ec.sen@aph.gov.au](mailto:ec.sen@aph.gov.au)

Dear Secretary

**Submission in relation to the *Competition and Consumer Amendment (Abolition of Limited Merits Review) Bill 2017***

The ACTU is the peak body for Australian unions who represent working Australians and their families all over the country. We thank the Committee for the opportunity to make a submission in relation to the *Competition and Consumer Amendment (Abolition of Limited Merits Review) Bill 2017* (the Bill).

At the outset we wish to support and endorse submissions of our affiliates, particularly those who represent workers in the electrical industry that will be directly impacted by the Bill should it be passed. We are aware that the Electrical Trades Union have made a separate submission.

Australian Unions have concerns with the Bill in its current form that there may be unintended consequences on large numbers of workers in electricity transmissions and distribution businesses.

As the Committee will be aware, the effect of the Bill, should it be passed, is that electricity transmission and distribution businesses will no longer have the ability to seek a Limited Merits Review (LMR) from the Australian Competition Tribunal or Australian Energy Regulator (AER) regulatory determinations.

The reason the government cites for bringing the Bill forward is that the existing LMR regime is failing to meet its policy intent with the consequence of higher prices for consumers. A lofty ideal that, on the face of it, is worthy of support. But as is so often the case with the legislative reforms of this government, the devil is in the detail.

There is no question that high energy prices are a first order issue for households and businesses across Australia. Most recently on 1 July 2017, energy prices have increased by between 10 to 20 percent nationally.

We believe that the government can, and should, be doing much more to bring down energy prices. There are a myriad of actions, based on the considered advice of industry regulators and experts that the government could or should have taken to date to address rising electricity costs.

An Australian Electricity Market Commission analysis provided to the government in 2016 found that an Intensity Emissions Scheme would save

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households and businesses up to \$15 billion in electricity bills over a decade.<sup>1</sup> The Independent Review into the Future Security of the National Electricity (more colloquially known as the Finkel Review) review cites the market commission, Australian Energy Market Operator and Climate Change Authority as all having found an emissions intensity scheme would have lower costs compared to other policies and ultimately recommended the adoption of a Clean Energy Target.

Yet, the government has ruled out an emission intensity scheme and has not committed to a Clean Energy Target.

The retail sector of the energy industry is broken. Competition and privatisation in electricity retailing hasn't delivered the promised benefits of lower prices through increased competition, in fact the opposite has occurred. Retailers are making excessive profits that have led industry experts to conclude that the industry is 'on notice' and if we do not see fairer power prices governments will need to re-regulate.<sup>2</sup> Again though, we see no firm action from the government.

Similarly the government will not act to activate export controls on gas to increase domestic supply which in turn will put downward pressure on wholesale gas prices.

Therefore it seems unusual the government has seen fit to move immediately to abolish LMR, particularly given that out of the 36 stakeholder submissions made to the COAG Energy Council consultation process on this issue, only five expressed any clear support for the option of abolishing the LMR regime and one of those, the AER's, was heavily conditional on other reforms occurring first – none of which have happened. Abolishing LMR in the manner put forward in this Bill is clearly not supported by consumer advocacy groups, workers and their Unions, institutional investors or independent energy industry experts.

On the issue of LMR review options the COAG Energy Council stated 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"<sup>3</sup> and decided to develop proposed reforms which would:

- Tighten and clarify the grounds for review;
- Apply higher financial thresholds for leave which apply to individual grounds for review
- Allow reviews to be conducted on the papers, rather than through expensive and adversarial oral hearings;
- Stipulate reviews to be conducted within a strict timeframe;
- Introduce requirements 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;
- Allow more flexible arrangements for consumer participation in reviews;
- Introduce 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;
- Provide that costs of reviews, including those of the AER, to be borne by network businesses.

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<sup>1</sup> <http://www.smh.com.au/federal-politics/political-news/government-killed-emissions-scheme-despite-knowing-it-could-shave-15-billion-off-electricity-bills-20161208-gt6v48.html>

<sup>2</sup> Wood, Blowers. 'Price Shock – Is the retail electricity market failing consumers?', Grattan Institute, March 2017.

<sup>3</sup> COAG Energy Council Communique 14 December 2016.

From this is clear that the COAG Energy Council thought it prudent to examine a range of review options. None of which have been explored as the government has decided to unilaterally bring forward the current Bill.

We are concerned about the potential for unintended impacts on employees in the event this Bill is passed in its current due to the simplistic 'blunt instrument' approach taken by the government that does not adequately take into consideration worker impacts.

The submission from the Electrical Trades Union outlines how an estimated 2,000 electricity maintenance jobs in NSW were hanging in the balance as part of an LMR review of AER determinations in 2015. It importantly points out that without a Limited Merits Review process, Unions and other stakeholders would have had no standing to participate in decisions which may result in thousands of jobs being placed under threat.

Should the LMR be abolished, rather than legislatively improved, workers, consumers, businesses and other stakeholders will be completely locked out of these processes.

We believe that the most sensible and practical course of action from this point is for the COAG Energy Council be given time to finalise its position in relation to reform of the Limited Merits Review regime after properly taking into consideration the feedback received during its consultations. This advice should then be provided to parliament. This would be consistent not only with the decision of the December 2016 Energy Council meeting but with the principles of due process and proper reform.

There needs to be an outcome that reduces or eliminates the ability for network businesses to game the system and drive up power prices whilst protecting the workforce from being collateral damage in the regulatory crossfire.

In the meantime, to address rising power prices the government need only act on the chorus of advice from stakeholders, experts and regulators to provide the policy and regulatory certainty required to bring down prices for businesses and consumers and stimulate the investment that will deliver new jobs.

Yours sincerely,

Ged Kearney  
ACTU President