

27 September 2017

Christine McDonald
Secretary
Senate Environment and Communications Legislation Committee

Submitted online: www.aph.gov.au/Parliamentary_Business/Committees/OnlineSubmission

Submission to the Senate Environment and Communications Legislation Committee inquiry into the *Competition and Consumer Amendment (Abolition of Limited Merits Review) Bill 2017*

Dear Ms McDonald,

Energy Consumers Australia is the national voice for residential and small business energy consumers. Established by the Council of Australian Governments (COAG) in 2015, our objective is to promote the long-term interests of energy consumers with respect to price, quality, reliability and security of supply.

We welcome the opportunity to comment on the Senate Environment and Communications Legislation Committee's (Committee) Inquiry into *the Competition and Consumer Amendment (Abolition of Limited Merits Review) Bill 2017* (Inquiry).

We support the Bill and its timely passage. In the last ten years electricity prices have doubled,¹ with network costs being the single biggest contributor.² Given concerns that Australian households and small businesses are now facing further significant price increases, it is critical that the review framework is reformed to ensure that network costs are not higher than they need to be.

Energy Consumers Australia helped fund the Public Interests Advocacy Centre's (PIAC) appeal of the New South Wales Networks decision, and supported the South Australian Council of Social Services and the Consumer Utilities Advocacy Centre engagement in review processes. We also directly participated in the most recent round of appeals, giving evidence at the Australian Competition Tribunal's community consultations in Sydney, Adelaide and Melbourne in 2016.³

We are hopeful that the abolition of the Limited Merits Review Framework (LMR) will signal the end of a costly and counter-productive period in network regulation. The frequent, almost routine, appeals of network revenue determinations in recent years undermined the authority of the Australian Energy Regulator (AER).

The priority for the sector from here is to develop more collaborative and efficient *up-front* process to identify consumer needs and preferences and develop and agree network business strategies, avoiding protracted and costly legal reviews after the regulatory process has run its course.

¹ Department of the Environment and Energy, *Australian Energy Update 2017*, August 2017, p 20, <http://www.environment.gov.au/energy/publications/australian-energy-update-2017>

² Sims, R, *Shining a light on Australia's gas and electricity affordability problem*, Address to the National Press Club, 20 September 2017, <https://www.accc.gov.au/speech/shining-a-light-australia%E2%80%99s-gas-and-electricity-affordability-problem> .

³ See for example, p 54 of transcript of community consultation for SA Power Networks matter, <http://www.competitiontribunal.gov.au/documents/act2015/ACT11of2015-transcript.pdf>



Experience in other sectors and overseas suggests that utilities that engage with their customers and stakeholders in a rigorous and systematic way can develop strategy and regulatory agreements that deliver the services consumers need, at the right price, *and* earn an appropriate rate of return.⁴

The work that is underway to develop a binding rate-of-return guideline following the COAG Energy Council's decision in December 2016 is important in this regard.⁵ We are hopeful that an agreed, common methodology for determining the key financial settings across the various network businesses will reduce the scope for disagreements about specific parameters in individual revenue determinations – something we saw for example, in relation to the treatment of tax imputation credits or 'gamma' in a series of processes over a number of years.⁶

Energy Consumers Australia is also working with advocates, the AER and Energy Networks Australia on more collaborative and efficient ways to set revenues and align the interests of the businesses and the consumers. The three organisations intend to publish a discussion paper outlining options for an alternative, expedited regulatory process based on earlier and much deeper engagement between the businesses and consumers later this year with a view to conducting a trial in the next round of revenue determinations.⁷

These new approaches presume a new level of engagement by consumer groups in the process, consumer groups who have traditionally been at a major resourcing disadvantage to the networks. We note for instance that networks typically engage ten or more expert economic, financial and legal consultancies to contribute to the development of their revenue proposals – support that has been beyond the reach of the consumer groups.⁸ We understand that the COAG Energy Council will shortly be consulting on the adequacy of the current funding arrangements and we look forward to contributing to that important review.

While our focus is on developing a better up-front process, we are also conscious that the AER's decisions can be challenged in the Federal Court under the *Administrative Decisions (Judicial Review) Act*. As PIAC sets out in detail its submission to the Committee, the nature of this process means it can be difficult for consumer groups to establish standing or assume the risk of being subject to adverse cost orders. The AER also canvassed issues around consumer standing and costs in its submission to the COAG Energy Council's Review of the LMR Framework.⁹ The abolition of LMR provides the impetus to revisit the arrangements for consumers in these judicial review processes.

⁴ Energy Consumers Australia, *Negotiated Settlement and Consumer Engagement: UK experience and lessons for Australia*, May 2016, <http://energyconsumersaustralia.com.au/news/category/papers/>

⁵ Australian Energy Regulator, *Process for reviewing the rate of return guideline*, July 2017, <https://www.aer.gov.au/networks-pipelines/guidelines-schemes-models-reviews/review-of-rate-of-return-guideline>

⁶ See for example, the discussion about 'gamma' in the Australian Competition Tribunal's decision in *Application by SA Power Networks [2016] ACompT 11*, at paragraph 106 <http://www.judgments.fedcourt.gov.au/judgments/Judgments/Tribunals/acompt/2016/2016acompt0011>

⁷ See AER statement, *Working together to improve engagement on network revenue proposals*, 11 August 2017, <https://www.aer.gov.au/communication/working-together-to-improve-engagement-on-network-revenue-proposals>

⁸ See for example, list of appendices to Ausgrid Revised Revenue Proposal for 2014-19, <https://www.aer.gov.au/networks-pipelines/determinations-access-arrangements/ausgrid-determination-2014-19/revised-proposal>

⁹ AER, *Submission to COAG Energy Council Senior Committee of Officials Review of the Limited Merits Review Regime*, v, 22 and 25. Available at:



Thank you once again for the opportunity to provide comment to the Inquiry. If you require any further information, please do not hesitate to contact me or Chris Alexander, Director of Advocacy and Communications, on 02 9220 5506 or chris.alexander@energyconsumersaustralia.com.au.

Yours sincerely,

Rosemary Sinclair
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Energy Consumers Australia