

19 April 2018

The Senior Committee of Officials
C/- The Secretariat,
COAG Energy Council
Canberra ACT

By email: energycouncil@environment.gov.au

ECA support for proposed *Statutes Amendment (National Energy Laws) (Binding Rate of Return Instrument) Bill 2018*.

Dear Senior Officials,

Energy Consumers Australia thanks the Senior Committee of Officials for the opportunity to comment on the draft *Statutes Amendment (National Energy Laws) (Binding Rate of Return Instrument) Bill 2018* (the Draft Bill).

At a time when households and small businesses are facing significant energy affordability challenges, it is critical that they do not pay a dollar more than is necessary for their network services. Making sure the regulatory framework – the laws and rules that determine how network services are specified and revenues set – works to deliver that outcome is a national policy priority of the highest order.

We support the proposition that the approach for determining the allowed rate of return for regulated businesses should be made in one common decision rather than separately as part of each individual network revenue proposal. We therefore support the introduction of a binding rate of return instrument in the form outlined in the Draft Bill and accompanying Bulletin.

In our submission to the COAG Energy Council's review of Limited Merits Review (LMR) in October 2016, we identified benefits that would accrue from making constituent decisions binding, not least of all by limiting scope for 'cascading appeals' by different networks on the same issue.¹ In our September 2017 submission to the Senate Environment and Communications Legislation Committee (the Committee) on the abolition of LMR we said:

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.²

¹ Review of Limited Merits Review; ECA submission to the COAG EC Consultation Paper, Oct 2016; p 11. Available at: <http://energyconsumersaustralia.com.au/publication/review-of-limited-merits-review-eca-submission-to-consultation-paper/>

² *Submission to the Senate Environment and Communications Legislation Committee Inquiry into the Competition and Consumer Amendment (Abolition of Limited Review) Bill 2017*, available at: <http://energyconsumersaustralia.com.au/publication/inquiry-competition-consumer-amendment-abolition-limited-merits-review-bill/>



This legislation is an important development in realising this objective, and represents an important reform for energy consumers.

We note that the approach in the Draft Bill and Bulletin gives the Australian Energy Regulator (AER) broad discretion as to how the instrument is developed. We endorse this approach, which gives the regulator the scope to arrive at a decision *as a whole* that best supports the long-term interests of energy consumers. We note that there might be some concern that there is a 'catch-all' exemption that allows the AER to make a binding instrument even if one or more of these process elements fail. We believe this risk can be managed.

From here, the priority for all stakeholders should be to develop a more collaborative and efficient up-front process to arrive at agreed understandings and interpretations of the RoR, thereby avoiding protracted and costly legal reviews after the regulatory process has run its course. The AER's process for the new RoR settings, and the collaborative 'NewReg' initiative, is demonstrating the value of a rules framework that supports flexible processes to deliver good outcomes for consumers.³

Energy Consumers Australia is confident that the approach of developing a common new binding RoR methodology through a robust AER process will deliver better price and service outcomes for households and small businesses.

If you would like to discuss anything related to this matter further, please contact Oliver Derum on 02 9220 5514 or oliver.derum@energyconsumersaustralia.com.au.

Yours sincerely,

Chris Alexander

Director, Advocacy and Communications
Energy Consumers Australia

³³ <http://energyconsumersaustralia.com.au/news/joint-media-statement-consultation-launched-new-approach-network-regulation/>