



**EMBARGOED: 21 October 2016, 12am**

**Stakeholders reject abolition of merits review of regulatory decisions**

Stakeholders have overwhelmingly rejected a proposal to abolish important accountability measures in energy regulation.

Thirty-five stakeholders made public submissions to a COAG Energy Council review of the Limited Merits Review (LMR) regime including consumer groups, policy experts, industry participants, investors and regulators.

Energy Networks Association (ENA) Chief Executive Officer John Bradley said the majority of stakeholder submissions had supported reforms to the current process and rejected an option to abolish the regime.

“Among the 35 submissions, there was widespread support for reform of the current regime and widespread rejection of proposals to abolish the appeal rights of customers and networks,” Mr Bradley said.

“Even excluding network businesses, over 80% of submissions rejected the abolition of the appeals process, which plays a vital role in ensuring high quality regulatory decisions in the interest of customers.

“Only four organisations, including the Australian Energy Regulator, supported abolition of merits-based review and reliance on judicial review alone.”

Mr Bradley said that, by law, the Australian Competition Tribunal could not overturn the decision of the regulator unless satisfied it would be better for customers.

“The most eminent regulators and governance experts in Australia have opposed the abolition of this important accountability on the energy regulator including Professor Graeme Samuel AC, Professor Allan Fels AO, Dr Mike Vertigan AC and Dr John Tamblyn.

“The current process does take too long and regulatory timetables can be fixed to avoid the need for multiple appeals by multiple parties.

“It would be an alarming move to sack an independent Tribunal, which has administered the law, identified material errors by the regulator and asked for them to be corrected.

“Many stakeholders expressed concern that the review was being conducted prematurely before the final outcomes of the remitted AER determinations were made or that the timetable for the review was too brief.”

The submission by Professor Graeme Samuel AC and others states:

*There is no apparent evidentiary basis for making further substantial changes to the LMR framework at this time. Rather, we urge the Energy Council to allow the current LMR regime to drive better regulatory decision-making, in line with the framework established in the rules, for the long term benefit of consumers.*

**-Ends-**

## About the Limited Merits Review regime

The Limited Merits Review regime is a process that allows energy network businesses and stakeholders, such as consumer groups, to appeal networks' regulatory revenue determinations made by the Australian Energy Regulator (AER) to the Australian Competition Tribunal.

The Competition Tribunal is only able to set aside, vary or remit an AER decision, where it is satisfied that to do so would result in a "materially preferable" outcome that better contributes to the long-term interests of consumers.

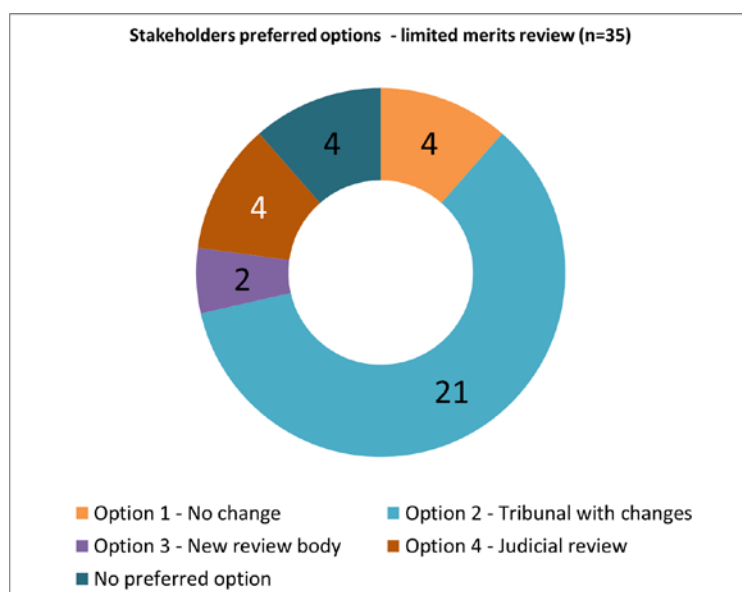
The COAG Energy Council initiated a review of the Limited Merits Review regime, after its 19 August 2016 meeting, and provided stakeholders with four weeks to respond to four potential options:

1. No change
2. Reform of the current process administered by the Australian Competition Tribunal
3. A new review process administered by a new body
4. Abolition of Limited Merits Review and reliance on judicial review only.

## About submissions to the COAG Energy Council review of Limited Merits Review

Approximately 35 stakeholders including consumer groups, policy experts, industry participants, investors and regulators made public submissions to the COAG Energy Council review of the Limited Merits Review regime. Their preferred options are summarised in Figure 1 below.

Figure 1



Of the 31 parties who expressed a preference, **more than eighty percent** support the retention of Limited Merits Review, with over two-thirds in favour of targeted reforms to the current review process administered by the Australian Competition Tribunal. (See Figure 2.)

If the submissions of ten energy network businesses and their representatives are excluded, the picture does not change significantly. There is more support among non-network stakeholders for "Option 2" (reform of the current regime), than all of the other options combined. (See Figure 3.)

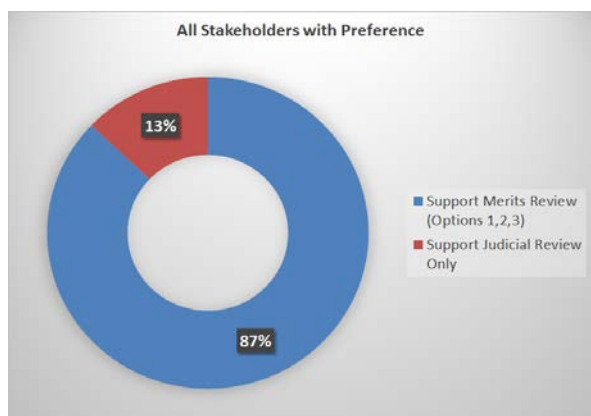


Figure 2

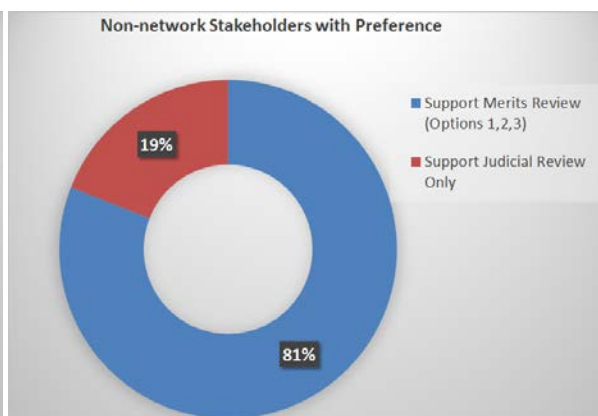


Figure 3

The common thread in perspectives voiced in submissions to the review has been the need to make careful, evidence-based decisions. This is emphasised by the combined opinion of experts and independent review processes that currently no case has been made for removal of Limited Merits Review or actions beyond targeted reforms. (See Information Box.)

**Information Box – Experts and independent review processes supporting role of limited merits review in energy**

- Allan Fels, former ACCC Chair
- Graeme Samuel, former Chair of ACCC and National Competition Council
- Geoff Swier, former AER Commissioner
- Professor George Yarrow, Chair of UK Regulatory Policy Institute, Emeritus Fellow, Oxford
- Dr John Tamblyn, former Chair of Australian Energy Market Commission, and Victorian Essential Service Commission
- Greg Houston, Member, Ministerial Council on Energy Expert Panel on Energy Access Pricing (2006)
- Energy Council Review of Energy Market Governance (2015)
- Productivity Commission Review of Electricity Network Regulation (2013)
- 2012 Standing Council on Energy and Resources Review of Limited Merits Review
- 2006 Ministerial Council on Energy Review of Limited Merits Review
- 2004 Review of Gas Access Regime

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The Energy Networks Association is the peak national body representing Australia’s electricity transmission and distribution networks and gas distribution networks on economic, technical, environmental and safety regulation, and national energy policy issues. ENA members provide energy to virtually every household and business in Australia.