Review of the Limited Merits Review Regime

Submission to the Consultation Paper

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Key points

- There are improvements that can be made to the Limited Merits Review (LMR) regime for access arrangement decisions under the National Gas Law that ensure it better meets the long-term interests of consumers.
- However, fundamental and ad hoc changes to the regime significantly risk undermining the incentives for investment in pipeline infrastructure, particularly changes which:
    - Remove appropriate checks and balances in the overall third party access regime of the National Gas Law (NGL);
    - Do not consider the interrelationship between the LMR framework and the other key features of the NGL (such as the coverage criteria and form of regulation); or
    - Are made without any review process having been completed following the 2012 amendments to the National Gas Rules (NGR), and the 2013 amendments to the LMR regime.
- Effective reform is best achieved through both refinements to the LMR regime and to the original access arrangement decision-making processes under the NGL (and NEL). The number of reviews being undertaken are largely a direct result of stakeholders' confidence (or lack thereof) in the original decision making process. Accordingly, refinements need to be considered to for these original decision making processes.
- No case has been made to remove the LMR framework in its entirety and certainly not in relation to other reviewable decisions in the NGL and NGR such as coverage determinations, form of regulation to be applied, and ring-fencing decisions.
- The importance of a review mechanism is heightened during periods of regulatory change, as we have seen through multiple changes to the pricing frameworks for electricity and gas around the same time as the 2013 LMR reforms, and as is contemplated for the gas sector now (through the review of the coverage criteria and Parts 8-12 of the NGR).
- The gas transmission sector has large, sophisticated customers that have actively participated in reviews under the current (and former) LMR regime and also initiated their own review applications. This experience suggests improvements that better include and resource consumers would be beneficial.
- The existing materiality thresholds already effectively constrain the grounds for appeal in the gas transmission sector.
- Removal of the LMR regime presents immediate risks to service providers but does not offer immediate benefit to consumers. Moreover, having judicial review become

the sole avenue to address errors in the regulator's decision regime will not be in the consumers' long term interests for a number of reasons:

  - This would undermine investment incentives because it is a substantive change to the current framework that would not provide an adequate check and balance against the significant discretion afforded to the regulator in the original decision making process.
  - The abolition of LMR is likely to lead to more legalistic appeals by the review body and a more costly process for participants.
  - Judicial review does not require the application of the materially preferable NGO decision test.
  - Consumers will have less certainty of having standing in any judicial review application compared with the current LMR mechanism.
  - Judicial review processes are extended (can take in excess of two years), can only result in remittals back to the regulator (extending the appeal timeframe further) and, as a result, can expose consumers to significant pricing uncertainty.

- A common ground of review in recent appeals has been a regulator's failure to apply precedent already set by the Australian Competition Tribunal (ACT).
- There has been little, if any, examination of the LMR regime's application in Western Australia – this jurisdiction has a different judicial review framework and had unique experiences with the application of LMR to the regulator's decisions.
- APGA supports Option 2 and proposes refinements to the existing LMR regime – but only in so far as it relates to review of access arrangement decisions by the regulator under the NGL - to address:
  - The ACT's process being too legalistic and/or adversarial.
  - The review process continuing to have insufficient consumer representation, leading to inadequate consideration of consumer issues.
  - The materially preferable test and how it might be further clarified
  - The timeliness of the process.
- In addition, APGA strongly supports a parallel process be undertaken to refine aspects of the original decision making process (in the case of the NGL – the access arrangement approvals process), such as:
  - Multiple review processes considering the same or similar issues, particularly around single rate of return issues.
  - Requiring service providers and the regulator to better explain how their proposals and decisions (as the case may be) best promote the NGO and have taken into account the revenue and pricing principles.

1. Introduction

The Australian Pipelines and Gas Association welcomes the opportunity to respond to the CoAG Energy Council's Review of the Limited Merits Review Regime Consultation Paper.

APGA is the peak industry body representing Australia's gas transmission sector and our membership is predominantly involved in high-pressure gas transmission. APIA's members include contractors, owners, operators, advisers and engineering companies and suppliers of products and services who build, invest in, operate and support Australia's gas transmission infrastructure.

In making this submission, APGA is putting forward the agreed view of the owners of gas transmission infrastructure in Australia.

In the case of the gas access regime, merits review has been a feature since its introduction in 1998 as part of the Gas Pipelines Access Law (GPAL) and the National Gas Code[1]. That LMR regime was maintained, rather than introduced, when the National Gas Law (NGL) and Rules were established on 1 July 2008.

The Review itself is primarily focussed on the application of the Limited Merits Review (LMR) regime for pricing decisions. APGA considers there are suitable refinements that can be pursued through Option 2 in the Consultation Paper to ensure the primacy of the National Electricity Objective and National Gas Objective (NGO) in both the regulator's and appeal body's decision making process.

However, it is important to note that whilst the Limited Merits Review (LMR) regime to date has been used to appeal aspects of pricing determinations, the LMR regime also provides for the right of review of other regulatory decisions under the National Gas Law. The perceived problems that have been identified in the consultation paper do not relate to reviews of these other decisions. No case has therefore been made to modify the LMR regime in this regard. APGA has a particular interest in retaining the ability to challenge primary decision makers' errors in these other matters in the NGL. This is even more important in circumstances where there is also on foot a separate review of the coverage criteria under the NGL. It would be inappropriate (and no case has been made) to change the LMR regime in so far as it relates to these decisions.

2. Reviewable decisions in the National Gas Law

A merits based review regime is an integral part of the third party access regime for energy infrastructure and has been the case (in varying forms) since its inception in the late 1990s.

[1] The Gas Code is shorthand for the National Third Party Access Code for Natural Gas Pipelines. The Gas Code and the Gas Pipelines Access Law were enacted as cooperative legislation in all States and Territories under COAG agreement.

In the case of the NGL and its preceding regime, the role LMR plays is intrinsically linked to a variety of key features under the NGL where discretion and judgement must be exercised. These features of the NGL are:

- The application of the criteria to determine whether a pipeline is a covered pipeline or not or whether coverage should be revoked;
- The form of regulation that should apply, should a pipeline be covered – ie light regulation or full regulation;
- Whether to approve an access arrangement proposal for a covered pipeline (the pricing decision that is the primary focus of this Review); and
- Ring fencing determinations.

APGA is concerned that, with the overwhelming focus on the use of the LMR regime to review pricing decisions under the National Electricity Law (NEL) and NGL, the importance of the LMR regime to the other key features of the NGL may be overlooked.

The LMR regime has not been used extensively in recent years to seek reviews of decisions made under these other features in the NGL, primarily due to the relatively low frequency of decisions being made under these other features, and the continuity of the test that has applied. This does not reduce the importance of maintaining appropriate checks and balances in respect of these other features.

The importance of the LMR for these other features is further heightened at the current time as there are other reviews, one being progressed and the other announced, that are directly considering reform to some of these other features. These reviews are:

- An independent review by Dr Michael Vertigan of the coverage regime for gas pipelines under the NGL – relevant to the first two features above; and
- A review by the Gas Market Project Implementation Team and the Australian Energy Market Commission (AEMC) of the Parts 8-12 of the National Gas Rules (NGR) – relevant to the third feature above i.e. go directly to potential changes to the underlying rules that govern gas access arrangement decisions (amongst other things).

It is important that the impact of changes to the LMR regime are considered together with any other changes being considered as part of these other reviews. Changes to the LMR regime that are made separately from a consideration of changes to these other features risks significantly altering the appropriate checks and balances in regulatory regimes that investors have consistently indicated are critical to ensuring appropriate incentives exist to invest in energy infrastructure. For example:

- The criteria for determining whether a pipeline is covered or what type of regulation applies. If the coverage criteria are modified to lower the threshold for coverage or to make it harder to revoke coverage in a circumstance where the right to LMR has

already been removed, this creates significant investor uncertainty for those pipelines that have been constructed and funded on the basis of whether regulation applies or not.

- Possible changes to Parts 8 – 12 of the NGR. If changes are made to Part 8 of the NGR to give the Regulator greater discretion after changes are made to the LMR framework, this could significantly shift the balance between the regulator and stakeholders, not to mention make any review regime practically redundant. The risk to investors' incentives to invest as a result of removing appropriate checks and balances has been made on numerous occasions (including by the Expert Panel in 2012 and most recently by debt financiers at the workshop held on 21 September 2016) and must be avoided in order to not harm the long term interests of consumers.

The NGL is a single package of interdependent features - any change to one feature has the potential to impact other features of the NGL. Given there is potential for major change to three of the four areas where discretion and judgement in regulatory decision is required in the NGL, it is vital that the LMR regime remains in place, and caution is taken if any major reforms of the process are being considered. LMR is the appropriate mechanism, and is likely to be called upon, to determine the boundaries and application of new regulatory discretion in these areas.

Given the interdependent features within both the NGL and the NEL, APGA considers it appropriate to contemplate refinements for both the LMR regime and the original decision making processes themselves when investigating ways to improve long term outcomes for consumers.

3. LMR serves to test recent changes to the original decision making framework

APGA considers that the number of appeals that have occurred since the 2013 LMR reforms are not a sign that the appeals framework is broken or intrinsically flawed. Rather, they are an expected testing of some of the other features of the NGL and NEL that have themselves gone through fundamental changes over the last four years. These changes include:

- The new rate of return regime for gas and electricity;
- The new capex and opex framework for electricity; and
- An approvals framework that affords significant discretion to the regulator but no meaningful guidance on how that discretion is to be exercised in a way that achieves the relevant national energy objectives.

It should not be surprising that, with such significant change in a regime that affects billions of dollars of invested capital, the LMR regime is playing a vital role in confirming the appropriate interpretation and application of the revised rules.

4. Customers of gas transmission pipelines use the LMR regime and would be worse off under a judicial review framework

Customers of gas transmission pipelines tend to be large, sophisticated entities and have direct contractual relationships with gas transmission service providers. As a result, they have played an active role in the regulatory processes –in terms of coverage applications, access arrangements and in the LMR reviews – to the extent they have initiated appeals through the LMR regime themselves.

If the LMR regime were to be removed and replaced solely with a judicial review framework, then APGA's view is that this would not be in the long-term interests of consumers. This is for a number of reasons, including:

- It would undermine investment incentives because it amounts to a substantive change to the current framework that does not provide an adequate check and balance against the significant discretion afforded to a regulator in the original decision making process.
- The abolition of LMR is likely to lead to more legalistic appeals by the review body and a more costly process for participants.
- Judicial review does not require the application of the materially preferable NGO decision test.
- Consumers will have less certainty of having standing in any judicial review application compared with the current LMR mechanism.
- Judicial review processes are extended (can take in excess of two years) and can only result in remittals back to the regulator (further extending the appeal timeframe) and This can create greater uncertainty for customers' regulated pricing arrangements because, where judicial reviews find for the appellant, the original decision will be made void at law, potentially leading to pricing arrangements having to be unwound for in excess of two years.

Further, there will no longer be one single review body to make consistent decisions – as is currently the case with LMR regime and the Australian Competition Tribunal (ACT).

In the case of WA, for so long the ERA remains the regulator and the State retains a common law judicial review regime, there will be different review body.

This creates a risk that the NEL and NGL may be interpreted differently over time.

The experience of the gas transmission industry suggests that LMR can be an equally effective tool for customers and leads APGA to propose the consideration be given to provide opportunity and resourcing for consumers to better engage in LMR processes generally.

5. LMR is not a routine part of the access arrangement revision process

One question posed by the Consultation Paper is whether reviews were generally considered a routine part of the price and revenue determination process.

APGA submits that they are not a routine part of the price and revenue determination process. This is so for the following reasons.

For transmission pipelines, of the six covered transmission pipelines, only one access arrangement determination has initiated a LMR review since the 2013 LMR reforms were implemented and for that pipeline (the Dampier to Bunbury Natural Gas Pipeline), one of the grounds of review was as a result of the regulator failing to accept the precedent set by the ACT in relation to the issue of gamma.

The current materiality threshold under section 249 of the NGL is a significant and effective "check and balance" to prevent not only routine appeals but also the inclusion of a "laundry list" of appeal items.

As an example, for the current materiality threshold to be reached in the case of the Dampier to Bunbury Natural Gas Pipeline, the regulator would have had to have rejected more than 50% of the service provider's forecast stay in business capital expenditure over the five year access arrangement period before the service provider would be able to be given leave to appeal.

It follows therefore that APGA considers the current materiality thresholds for financial impact in the current regime are performing effectively in limiting not only the number of LMR reviews that are commenced for gas transmission pipelines but also the grounds for review included in any LMR application of gas transmission service providers.

It also follows that increasing the materiality threshold creates a significant risk that service providers don't recover their efficient costs. Not only would this be inconsistent with the revenue and pricing principles, it would not be in the long term interests of consumers.

6. The new LMR regime has not been fully tested

The effectiveness of the LMR regime introduced in 2013 (in particular its ability to achieve the objectives set out by the Energy Council at the time) has not yet had the opportunity to be fully tested for covered gas transmission pipelines. The full round of transmission pipeline pricing reviews hasn't been completed since the 2013 LMR changes were implemented. In fact, at this time, only three have been completed, being the Dampier to Bunbury Pipeline (DBNGP), the Goldfields Gas Pipeline (GGP) and the Amadeus Gas Pipeline (AGP).

Of these three pipelines that have had access arrangements reviewed, as stated above in section 5, there has only been one pipeline that has commenced a LMR review. For this pipeline, the DBNGP, the review has only just been initiated and includes a ground of review that the regulator failed to adhere to the precedent set by the ACT in relation to gamma.

7. Removal of LMR presents immediate risk to service provider

APGA considers that significant and ad hoc change to the LMR regime is unlikely to deliver benefits to consumers but does present a significant risk that could adversely impact the investment incentives for service providers and those providing funding (both debt and equity funding) to service providers.

To the extent that change is warranted, immediately changing the LMR regime will not result in changes to pricing for regulated services until 2019 or beyond because the next price reviews are not until 2018 at the earliest.

Furthermore, in the case of transmission pipelines, most pipeline capacity is contracted on a negotiated basis with the prospect of regulatory tariffs not applying to a majority of capacity for a number of years.

Despite this, the removal of LMR contemplated in Option 4 in the Consultation is likely to impact service providers' viability immediately. Debt financiers will at least price in the adverse impact of any change to the LMR regime immediately. But of greater concern is the point, as made by debt financiers at the forum held in Melbourne on 21 September 2016, that for overseas debt financiers, changes to the regime that remove appropriate checks and balances may well make their decision to provide debt funding to the industry a binary decision.

This is because one of the key considerations to a financier's pricing and tenor proposal is their ability to be repaid the principal and interest. If LMR is removed and the changed regime is considered adverse to service providers, financiers could either shorten the tenor of their loan and/or increase the cost of debt.

In circumstances where regulated infrastructure is regularly refinancing their debt and hundreds of millions of dollars are required to be refinanced each year to support long-term investments in critical infrastructure, the consequences of either shorter term loans or higher cost of debt are high.

More importantly though, if overseas lenders decide not to invest, there would be inadequate capacity in the domestic debt market to "step in the shoes" of the overseas lenders and provide the additional financing. In the case of at least one regulated transmission pipeline, if overseas lenders decided not to invest, this would result in a need to find funding from another market for in excess of $1.3billion.

Credit analysts are already cautioning about the adverse impact of reforms to the LMR regime.

8. Regulators have failed to follow precedents set by ACT

A common ground in the most recent round of LMR reviews has been as a result of the regulators' failure to follow the precedent set by the ACT from prior reviews in relation to methodology for estimating and the value of gamma

In the case of the Economic Regulatory Authority (ERA) in Western Australia, the ERA conceded in the LMR process for the ATCO access arrangement that it was not in the public interest for it to continue with its position on gamma after the outcome of the east coast ACT gamma decisions[2]. It accepted it had made an error in applying a gamma of 0.4 to ATCO and proposed to apply a gamma of 0.25.

Subsequently, during the access arrangement processes for the DBNGP and the GGP, the ERA appeared to have had a change of position without introducing any substantive new supporting evidence and without explaining why it was now in the public interest to not follow the ACT precedent. The ERA applied a gamma of 0.4 to the DBNGP and GGP access arrangement decisions[3], despite its admission less than three months earlier this was a mistake in the ATCO access arrangement decision.

DBNGP has now been forced to use the LMR regime to attempt to have the ERA follow its own precedent from the ATCO LMR review. In the case of the GGP however, no LMR review has been commenced because the error on gamma of itself was small.

APGA considers this a critical example of not only the crucial role the current LMR regime plays in holding regulators accountable for their decisions but also how the current financial threshold for leave to apply for LMR review is an appropriate threshold.

[2] ERA Submissions on Gamma, 18/04/16, http://www.competitiontribunal.gov.au/documents/act2015/ACT10-15-38.pdf
[3] Final Decision on the DBNGP Access Arrangement, 30/06/16 p223

9. The Regime's application in Western Australia

The changes that are being considered during the Review are partly in response to reviews that have been exclusively focused on behaviours in the east coast energy markets. However, given the national application of the NGL, any changes that result from this review will have a direct impact on the Western Australian market and service providers.

To the extent that changes are being considered as a result of perceived problems with the LMR regime, there has been no analysis of whether there are any problems with its operation in relation to WA pipelines or whether any proposed solutions will be effective in achieving the Energy Council's stated objectives.

In particular, the implementation of Option 4 as a solution will have added risks for WA that are not likely to manifest themselves in other jurisdictions. This is because WA only has a common law judicial review regime rather than a statutory regime. This has a number of added risks to service providers, investors, customers and even regulators, such as:

- There will be no ability to legislate to ensure that if there is error by the regulator, that a replacement decision can be made only if it is a "materially preferable NGO decision". This is not in the long term interest of consumers
- This will become even more of a problem should the WA Government's proposal (currently before the WA parliament) to transition to the AER from the ERA be enacted. If the AER becomes the regulator of WA transmission pipelines, it could well be placed in a position of re-making a decision on a WA pipeline in relation to one matter that is different to the re-making of a decision on a non WA pipeline in relation to that same matter because the latter is required to be a materially preferable NGO decision whereas the former does not have to comply with that requirement.
- Not only will this lead to administrative confusion for the regulator but it will significantly put at risk one of the fundamental requirements that investors require of a regulatory regime before deciding to invest – predictability and transparency in the application of the regime by regulators.

10. Considering the Options

In order to maintain investor confidence to invest in gas pipelines investors demand a regulatory regime that exhibits the following key characteristics:

- The regulatory agencies remain independent of Government (and so it enables them to pursue the long term interests of consumers rather than being forced to consider short term political objectives);
- The regulator doesn't become a consumer advocate;
- The regulator doesn't get 'captured' by the service providers;

- The regulator remains accountable for 'mistakes' and inappropriate use of discretion; and
- The regime is transparent and stable with minimal opportunities for significant change or to the extent that there is change, that there is a thorough, transparent and consultative process to consider all points of view before making any such change.

In light of this, combined with the issues raised earlier with judicial review frameworks, we believe this can rule out Option 4 outlined in the Consultation Paper - Remove access to LMR.

There are however, opportunities to refine the LMR framework for pricing decisions (ie access arrangement decisions under the NGR). However, in making this suggestion, APGA submits that:

- there is no case made out for change to the current LMR regime for coverage/revocation decisions, form of regulation decisions or ring fencing determinations. In relation to the framework for review of these decisions, APGA advocates for Option 1.
- a parallel process be undertaken to refine aspects of the original decision making process (in the case of the NGL – the access arrangement approvals process) to help reduce and improve review applications.,

APGA considers that, in the interest of refining the existing regime with a view to maintaining stability and certainty (and therefore not risk undermining investor confidence in the sector), it is highly preferable to first consider Option 2, Retaining the Tribunal, as the review body with appropriate legislative amendments around this to promote better outcomes for consumers. APGA believes pursuing Option 2 can deliver an outcome that is acceptable to all stakeholders.

Consideration of Option 3, Replace the role of the tribunal with a new investigative review body, can only occur if further detail is provided for discussion and material benefits over Option 2 are established.

To the extent that refinements should be made to the review of pricing decisions, reference should be firstly had to those recommendations made by the 2012 Expert Panel but which were not adopted by SCO in the 2013 LMR reforms. This is because:

- The objectives of the Expert Panel were very similar to the objectives that are still current for the Energy Council; and
- The expert panel's review process was consultative and thorough.

With this is mind, and in consultation with the Energy Networks Association (ENA), APGA has contemplated appropriate refinements to the current LMR regime. There are points of

difference with the ENA position, but APGA considers at a high level there is considerable alignment.

11. Refinements to improve the LMR regime

As flagged above, give the interconnected nature of many aspects of the NGL and NGR, APGA considers there are refinements that can be made to both the LMR regime itself and the original decision making process to help achieve the outcomes of fewer appeals and decisions that better focus on the NEO and NGO.

Some of the refinements to the original decision making process (being the Access Arrangement Decision in the case of the NGL) may be relatively easy to implement through the rule change process without requiring legislative change.

The table below presents perceived problems with the existing LMR regime and potential refinements to each of the LMR regime and the original decision making framework to address these perceived problems. The solutions are presented as options that deserve detailed exploration during the Review.

Potential Problem to Solve	Potential solutions to evaluate in the original decision change (ie changes to the AA approvals process)	Potential solution to evaluate in the LMR regime
Multiple review processes considering the same or similar issues, particularly around single rate of return issues	• Binding reviewable WACC guideline methodology set for NGR and NER. These would be developed by the **AER**, informed by expert advice where necessary, with a broad based consultation phase, before being finalised. Focus of the guideline will be on the methodology for determining each of the "elements" used to determine a WACC value, rather than on the values for each of the elements. • The methodology set by the AER (or as amended by the ACT) for the WACC and for each of the elements that are used to calculate the WACC would bind all parties in revenue determinations (eg AA approvals process for the NGR) during that period • The methodology would need to be accompanied by a worked example that generates a WACC point estimate, based on prevailing conditions in the market for funds	• Impacted parties may initiate limited merits review within a defined period from date of publication of revised WACC guidelines – as per status quo for review of pricing decisions • Removing WACC issues from individual pricing decisions raises the relative value of the current financial materiality threshold. Most appeals currently meeting the materiality threshold (the lower of $5million or 2% of revenue) through challenging components of the WACC decision. The proposed solution limits the need to appeal WACC matters at each decision, leading to the existing threshold setting a relatively higher bar than currently.
The ACT processes are too legalistic and/or adversarial		• To enhance the timeliness and accessibility of any LMR of the WACC methodology**, the process could use a panel of experts paid for by the applicant(s)**[4]– with three experts, one

[4] Costs would not be able to be passed through into network charges.

Potential Problem to Solve	Potential solutions to evaluate in the original decision change (ie changes to the AA approvals process)	Potential solution to evaluate in the LMR regime
		appointed by the network(s), AER and consumer representatives– to help frame the questions for the ACT to consider (rather than relying on legal processes and argument, and to limit the volume of submissions). • This panel of experts would also be charged with being able to undertake investigations on specific matters directed by the review body, exercising existing powers of the ACT under the current LMR regime • Consider appointing a lay person as the presiding member, rather than the Federal Court judge. The objective of this would be to encourage a less legalistic process • **The resourcing of the review body could be enhanced.** Additional resources could help the review body conduct its processes in a more investigative and less legalistic manner. One option to consider is the AEMC supplying resources to be temporarily seconded to assist with the review, and provide ongoing secretariat and administrative support services. The AEMC could also be available to provide technical assistance to the review body

Potential Problem to Solve	Potential solutions to evaluate in the original decision change (ie changes to the AA approvals process)	Potential solution to evaluate in the LMR regime
		where requested. This picks up on some of the recommendations from the 2012 Expert Panel.
The appeals process continues to have insufficient consumer representation, leading to inadequate consideration of consumer issues	**Consumers would be given a central role in the process.** A single process for WACC issues will enable consumer bodies to more effectively participate – increased access to training and other support[5] for consumer groups to understand and participate in individual revenue determination decisions and processes; and – increased funding to ensure that at least one consumer group is appropriately resourced to enable it to participate in any merits review of any individual determinations.	For distribution businesses, the ECA would also appoint one of the experts to the panel that framed the ACT's approach to any LMR of the WACC methodology. For reviews relating to gas transmission pipelines, a customer representing all customers would appoint an expert (this recognises the more active role that direct users/major customers play in merits reviews). To the extent that any other individual reviews still occurred, an industry process and levy would be established to resource consumer activity.
The materially preferable test is unclear in its operation and may not have led to the intended policy outcomes.	• **Better guidance to be prescribed in the NGL/NGR as to when the NGO/NEO is achieved.** Criteria could be included in the NGL/NGR as to when the NGO/NEO will be achieved. Not only will this lead to more transparent decision making and therefore fewer appeals, it will also assist the review body in deciding what is a materially preferable NGO/NEO decision. • **Require all parties at each stage of the decision process to better describe the inter-relationships between aspects of an access arrangement or pricing decision.** Greater onus	

[5] For example, allowing ECA to access via "secondment" regulatory staff with sufficient expertise from businesses to support them in their regulatory proposal assessment (matched to an unrelated business).

Potential Problem to Solve	Potential solutions to evaluate in the original decision change (ie changes to the AA approvals process)	Potential solution to evaluate in the LMR regime
	should be placed on service providers, regulators and the ACT to better describe relationships that exist between various aspects of an access arrangement proposal or decision. This will allow the ACT to better determine if a materially preferable decision exists and to better explain how the decisions it makes are materially preferable.	
Timeliness of the entire process	• Impose a binding timetable for the AER to complete its assessment process.	• Impose a binding timetable for the ACT to make its decision • Enhance previous guidance regarding when the ACT can remit matters back to the AER, promoting confidence in the ACT to make the materially preferable decision where appropriate.