



**Electrical Trades Union of Australia**

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**SUBMISSION**

**COAG Energy Council**

**Review of the Limited Merits Review Regime  
Consultation Paper**

**October 2016**



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The Electrical Trades Union (ETU) is the Electrical, Energy and Services Division of the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia (CEPU). The ETU represents approximately 65,000 workers electrical and electronics workers around the country and the CEPU as a whole represents approximately 100,000 workers nationally, making us one of the largest trade unions in Australia.

We welcome the opportunity to submit to the Council of Australian Governments (COAG) Energy Council in relation to the current review of the Limited Merits Review (LMR) regime.

The consultation paper reveals that since 2013, twelve of the AER's twenty decisions on electricity network revenue and gas access arrangements have been subject to applications by network businesses for review by the Tribunal seeking a \$7 billion cumulative revenue increase over five years.

This obviously represents a huge potential additional cost to consumers. It also means increased uncertainty for consumers, businesses, employees and regulators alike as reviews typically can take over two years.

The fact that 60 percent of AER determinations have been taken to review since 2013 can be indicative of a number of factors, such as:

- That the AER determinations are not being made correctly;
- That there are gaps in the regulatory framework;
- That the LMR framework inherently encourages litigation;
- That the 2013 LMR Review outcomes have been ineffective; and
- That the network businesses are well resourced enough to seek a merits review as part of business as usual.



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It likely that a confluence of these factors, rather than any single one, is the basis for the high percentage of determinations that are taken to review and some of this will be evident from Tribunal determinations.

What is undeniable is that the review process is vitally important and should be maintained.

We only need to look at the recent experience with the most recent New South Wales distribution Australian Energy Regulator (AER) determinations.

The initial AER determinations unsustainably slashed the money spent on maintaining, repairing and operating the network which simply leads to inadequate infrastructure that may spark bushfires, fail in periods of extreme weather, or result in a growing number of blackouts and service disruptions. Thousands of proposed job cuts were pursued by Essential Energy, Ausgrid and Endeavour Energy based on the flawed AER determinations. The appeal process afforded by the LMR was critical to providing a mechanism that saved jobs and reliability and safety standards.

The Australian Competition Tribunal ruled in February 2016 there were flaws in the modelling and assumptions used to set NSW power prices required the process to be conducted again, directing that a better balance be struck between affordability, reliability and safety. As the union which represent the workers that maintain and operate the state's electricity network, we feel the decision vindicated our argument that massive cuts imposed by the AER determinations were wrong and would negatively impact on service delivery and network reliability.

With regards to the judicial review brought by the AER in relation to the Tribunal's decision to set aside recent NSW electricity and gas determinations, we strongly believe that this limited merits review consultation process should occur after the outcome of the federal court action is known given it goes to the heart of the matters under consideration – particularly given the decision is expected in mere weeks. To



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prevent stakeholders being able to provide feedback that incorporates the federal court decision is a significant barrier in itself.

In relation to the options set out in the consultation paper:

## Option 1 – Status Quo

We do not believe that this is a viable option given the high incidence of reviews that have been experienced in recent years. While an appeals mechanism must be maintained, the current arrangements are not efficient and accessible to all stakeholders, therefore, retaining the Tribunal as the review body without legislative amendments is not appropriate in our view.

## Option 2 - Retain the Tribunal as the review body with legislative amendments

We believe this option is worthy of more detailed consideration and consultation.

## Option 3: Replace the role of the Tribunal with a new investigatory body

We believe this option is worthy of more detailed consideration and consultation.

## Option 4: Remove access to LMR

This option should be rejected entirely.