



**Submission to the COAG Energy Council
Senior Committee of Officials (SCO)**

**Review of the Appeal Process under the National Energy Law (NEL)
and the National Gas Law (NGL)**

The Energy Policy Institute of Australia submits that, as a matter of policy principle, the option of a merits review by the Australian Competition Tribunal of regulatory decisions under the NEL and NGL should be retained, with such amendments as may be considered necessary to better deliver the aims of the SCER 2012 Statement of Policy Intent.

The Institute has three main reasons for wishing to emphasise this policy principle:

1. Risk minimisation is essential to attract investment capital into energy infrastructure and to do so on the best terms. Investors in Australian energy infrastructure assets, especially foreign investors, have relied, and should be entitled to continue to rely, on a stable, independent regulatory regime to minimize their investment risk.
2. A critical element of a stable, independent regulatory regime is a well-understood, well-settled accountability framework that provides for robust review – with minimal delay and cost and without being over-legalistic. This is especially critical wherever the regulator has discretionary powers. It applies to both electricity and gas infrastructure assets. It is perhaps more obvious in the gas pipeline sector where, in addition to revenue and pricing issues, issues such as coverage and ring-fencing arise.
3. Merits review as an appeal process is much to be preferred to judicial review which, we understand, is why merits review was introduced.

Respectfully submitted.

Robert Pritchard
Executive Director
Energy Policy Institute of Australia

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The Energy Policy Institute of Australia is an independent, apolitical, technology-neutral energy policy body. The Institute advocates a secure investment climate to ensure that Australia remains internationally competitive.