

The Standing Council on Energy and Resources (SCER) welcomes the final report from the Expert Panel's Review of the Limited Merits Review Regime. SCER agrees with the Panel's finding that the policy intention of the regime remains appropriate, with some clarification, but that this intention may be better delivered by addressing specific issues identified by the Panel.

In light of the Panel's recommendation that SCER provide a clear statement of policy about the merits review regime, SCER:

- **Affirms** that, in interpreting the National Electricity Objective and the National Gas Objective, the long-term interests of consumers (with respect to price, quality, safety, reliability and security of supply) are paramount in the regulation of the energy industry.
- **Affirms** that the objective of the review framework, in common with the objectives of the laws, is to ensure that relevant decisions promote efficient investment, operation, and use of energy infrastructure, and are consistent with the revenue and pricing principles of the National Electricity Law and National Gas Law, in ways that best serve the long-term interests of consumers.
- **Considers** that, consistent with the Australian Administrative Law Policy Guide, achieving the most preferable decision in the pursuit of this objective should be the aim of both regulator and review body alike.
- **Considers** furthermore that the long-term interests of consumers should be the sole criterion for determining the preferable decision, both at the initial decision-making stage and at merits review.
- **Considers** that the review process should promote an accountable and high performing regulator such that material error is minimised and notes that the focus on the correction of selected errors is not equivalent to – and may not in itself lead to – the achievement of the most preferable overall decision in the long term interests of consumers.
- **Considers** that a well designed limited merits review process can achieve the policy objectives outlined above.

Further SCER confirms and clarifies that the limited merits review regime should deliver the above principles through:

- providing a balanced outcome between competing interests and protect the property rights of all stakeholders by:
 - ensuring that all stakeholders’ interests are taken into account, including those of network service providers, and consumers; and
 - recognising efforts of stakeholders to manage competing expectations through early and continued consultation during the decision making process;
- maximising accountability by:
 - allowing parties affected by decisions appropriate recourse to have decisions reviewed.
- maximising regulatory certainty by:
 - providing due process to network service providers, consumers and other stakeholders; and
 - providing a robust review mechanism that encourages increased stakeholder confidence in the regulatory framework
- maximising the conditions for the decision-maker to make a correct initial decision by:
 - providing an accountability framework that drives continual improvement in initial decision making;
- achieving the best decisions possible by:
 - ensuring that the review process reaches justifiable overall decisions against the energy objectives;
- minimising the risk of “gaming” through:
 - balancing the incentives to initiate reviews with the objective of ensuring regulatory decisions are in the long term interests of consumers; and
- minimising time delays and cost by:
 - placing limitations on the review process that avoid or reduce unwarranted costs and minimise the risk of time delays for reaching the final review decision.

With regards to the barriers to delivering this objective that were identified by the Panel, SCER considers it imperative that these problems be addressed and, consequently, will test a number of different approaches for reform through the Council of Australian Governments’ Regulation Impact Statement process.