

ON 19 DECEMBER 2013, AMENDMENTS TO THE LIMITED MERITS REVIEW REGIME APPLYING TO REGULATORY DECISIONS IN THE ELECTRICITY AND GAS SECTORS WERE PROCLAIMED AND COMMENCED OPERATION. THE AMENDMENTS GIVE EFFECT TO THE POLICY POSITION AGREED BY THE STANDING COUNCIL ON ENERGY AND RESOURCES AND FULFIL THE COUNCIL OF AUSTRALIAN GOVERNMENTS' COMMITMENT TO HAVE AMENDMENTS TO THE REGIME FINALISED IN TIME TO APPLY TO THE NEXT ROUND OF REGULATORY DETERMINATIONS, COMMENCING IN MID-2014.

On 5 December 2013 the South Australian Parliament (as lead legislator for the National Electricity Law, the National Gas Law and the National Energy Retail Law) passed a bill to amend the limited merits review regime applying to regulatory decisions in the electricity and gas sectors. These amendments give effect to the Standing Council on Energy and Resources' agreed policy intention to:

- a. clearly link the intent of the original decision and review processes, to ensure a common focus on outcomes that are in the long term interests of consumers - consistent with the National Electricity Objective (NEO) and the National Gas Objective (NGO) and the revenue and pricing principles;
- b. reform the manner in which the Australian Energy Regulator performs its economic regulatory functions or powers to provide greater transparency of its determination process;
- c. raise the threshold for leave to apply for review of a decision by adding a requirement for the applicant to establish a prima facie case that a materially preferable decision exists, with regard to the NEO or the NGO;
- d. require the Australian Competition Tribunal (the Tribunal) to routinely consult relevant users and consumers and to consider interlinked matters;
- e. clarify the matters that may be raised by parties to a review, including allowing raising of inter-linked matters to the extent they are relevant to whether a materially preferable decision exists;
- f. remove the risk of prohibitively high costs being awarded against users and consumers in a review;
- g. prevent costs associated with reviews being passed through into regulated revenues; and
- h. require a review of the performance of the Tribunal under the reformed regime to commence in 2016 to assess the effectiveness of the above changes on the way limited merits reviews are performed.

These reforms are a key component of the energy market reform agenda that is aimed at ensuring consumers pay no more than necessary for a reliable and secure supply of energy.

The Energy Market Reform Working Group would like to thank all the stakeholders that contributed to the process for amending the limited merits review framework.

Further details on the legislation and policy may be found at:

The Statutes Amendment (National Electricity and Gas Laws - Limited Merits Review) Act (Commencement) Proclamation 2013 and the Statutes Amendment (National Electricity and Gas Laws - Limited Merits Review) Act 2013:  
[www.legislation.sa.gov.au](http://www.legislation.sa.gov.au)

SCER's policy: <http://www.scer.gov.au/files/2013/09/LMR-Decision-RIS-June-2013.pdf>

SCER's Statement of Policy Intent:  
<https://scer.govspace.gov.au/files/2012/12/LMR-Statement-of-Policy-Intent-December-2012.pdf>

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