

all: in fact, it probably has been advantageous. There is political stability. It certainly does not detract from minor parties. I think the Greens probably started their advances in Germany more than in any other country, and they still have a significant influence, I assume, today. It also does not detract from the major parties still maintaining their major party status and being significant forces within the community. I am pleased that the member for Stuart has brought this legislation back before the house. I do not see a problem in supporting it. I think it will lead to better decision making here in South Australia. I support the bill.

[Sitting suspended from 6 to 7.30 p.m.]

**Mr MEIER:** I think that enough has been said. I welcome the members who have shown such great interest straight after the tea break. It is wonderful to see their enthusiasm for and interest in this bill. I think that it shows that it is of great concern to each of us, and I trust that all members here will weigh it up carefully and, hopefully, see their way clear to supporting this bill, as is their democratic right.

**Mrs GERAGHTY** secured the adjournment of the debate.

#### NATIONAL ELECTRICITY (SOUTH AUSTRALIA) (NEW NATIONAL ELECTRICITY LAW) AMENDMENT BILL

**The Hon. J.D. Hill**, for the **Hon. P.F. CONLON** (Minister for Energy), obtained leave and introduced a bill for an act to amend the National Electricity (South Australia) Act 1996. Read a first time.

**The Hon. J.D. HILL:** I move:

That this bill be now read a second time.

I seek leave to have the second reading explanation inserted in *Hansard* without my reading it.

Leave granted.

#### Introduction

The Government is again delivering on a key energy commitment through new legislation to significantly improve the governance arrangements for the national electricity market, for the benefit of South Australians and all Australians.

The *National Electricity (South Australia) (New National Electricity Law) Amendment Bill 2005* will make important governance reforms to the national electricity market, through separating high level policy direction, rule making and market development, and economic regulation and rule enforcement. A further major reform is the streamlined rule change process, now embodied in the new National Electricity Law. As a result of these reforms, the rules that govern the national electricity market, and which are currently embodied in the National Electricity Code, will be remade as statutory rules under the National Electricity Law. These initial National Electricity Rules will be made by Ministerial Notice but will then be subject to change in accordance with the statutory Rule change process.

In short, this Bill will strengthen and improve the quality, timeliness and national character of the governance and economic regulation of the national electricity market. In turn, this should lower the cost and complexity of regulation facing investors, enhance regulatory certainty and lower barriers to competition.

#### Background

As Honourable Members will be aware, South Australia is the lead legislator for the National Electricity Law at present and retains this important role under the reforms proposed.

The existing co-operative scheme for electricity market regulation came into operation in December 1998. The lead legislation is the *National Electricity (South Australia) Act 1996*. The current National Electricity Law is a schedule to this Act, and that Law, together with the Regulations made under the *National Electricity (South Australia) Act 1996* are applied by each of the other national electricity market jurisdictions, that is, New South

Wales, Victoria, Queensland and the Australian Capital Territory, by way of Application Acts in each of those jurisdictions. The initial rules for the national electricity market, contained in the National Electricity Code, were approved by the relevant Ministers in accordance with the current National Electricity Law.

Under the proposed reforms, the new National Electricity Law, the Regulations made under the *National Electricity (South Australia) Act 1996* and, now, the National Electricity Rules, will be applied in each of the other national electricity market jurisdictions by virtue of their Application Acts. In addition, this new regulatory scheme will now be applied as a law of the Commonwealth in the offshore adjacent area of each State and Territory, similar to the approach used for the gas pipelines access regime. Tasmania is scheduled to join the national electricity market on 29 May 2005, and apply this new regulatory scheme.

As Honourable Members will be aware, South Australia is participating in the reform of the regulatory framework of Australia's energy markets in response to the Council of Australian Government's Energy Market Review 2002, also known as the Parer Review.

In December 2003, the Ministerial Council on Energy responded to the Parer Review by announcing a comprehensive and sweeping set of policy decisions for its major energy market reform program. These policy decisions were publicly released as the Ministerial Council's Report to the Council of Australian Governments on "Reform of Energy Markets". All first Ministers endorsed the Ministerial Council's Report.

In June 2004, the *Australian Energy Market Agreement* was signed by all first Ministers, committing the Commonwealth, State and Territory Governments to establish and maintain the new national energy market framework. An important objective of the *Australian Energy Market Agreement* was the promotion of the long term interests of energy consumers. This new objective is reflected in the National Electricity Law as the key objective for the national electricity market.

#### New regulatory arrangements

This Bill reforms the national electricity market governance arrangements by conferring functions and powers on two new bodies, the Australian Energy Market Commission, which was established under the *South Australian Australian Energy Market Commission Establishment Act 2004*, and the Australian Energy Regulator, established under the *Commonwealth Trade Practices Act 1974*. Importantly, the Bill also enshrines the policy-making role of the Ministerial Council on Energy in the context of the national electricity market.

The two new statutory bodies are initially to be responsible for electricity wholesale and transmission regulation in the national electricity market jurisdictions. Under the *Australian Energy Market Agreement*, the Australian Energy Regulator's role is to be extended this year, subject to separate legislation, to include the economic regulation of gas transmission for all jurisdictions other than Western Australia. Also, subject to separate legislation, the Australian Energy Market Commission's role is to be extended at the same time to include access rule-making for gas transmission and distribution for all jurisdictions. It is also proposed that a national framework for the regulation of electricity and gas distribution and retail (other than retail pricing) will be implemented during 2006 subject to jurisdictional agreement on that framework.

Under the new regulatory arrangements, the Ministerial Council on Energy will have a high level policy oversight role for the national electricity market. This will ensure that the relevant governments are able to set the key policy directions for the national electricity market and thereby pursue the objectives in the *Australian Energy Market Agreement*. Conversely, it is not intended that the Ministerial Council on Energy will become involved in the day-to-day operational activities of the Australian Energy Regulator or the Australian Energy Market Commission, or in the detail of the operation and development of the national electricity market within the set policy framework.

The functions of the National Electricity Market Management Company, which is responsible for the operation of the wholesale exchange and power system security, are retained under the new National Electricity Law.

As a result of these new regulatory arrangements, the National Electricity Code Administrator is to be abolished and its functions assumed by the Australian Energy Market Commission and the Australian Energy Regulator. The National Electricity Code Administrator is currently being wound down as part of a transition management process to the new regulatory framework. Its market

monitoring function will be retained in Adelaide as part of the Australian Energy Regulator, and its market development functions will be transferred to the Australian Energy Market Commission, which is to be located in Sydney. The National Electricity Tribunal is also being abolished through the repeal of Part 3 of the *National Electricity (South Australia) Act 1996*.

While a number of provisions of the current National Electricity Law have been retained as part of the new National Electricity Law, albeit with some amendments, the new regulatory arrangements have necessitated the inclusion of a range of additional provisions.

#### Consultation

All of these reforms have been the result of a public consultation process with industry participants and other stakeholders that began with consultation as part of the Parer Review during 2002. The Ministerial Council on Energy provided a substantial response to the Parer Review and other matters in its report "Reform of Energy Markets" on 11 December 2003. Further consultation has been undertaken on the implementation of the recommendations contained in the "Reform of Energy Markets" report such as the regulatory arrangements that will provide for cooperation between the Australian Energy Regulator, the Australian Energy Market Commission and the Australian Competition and Consumer Commission. Consultation has also occurred on the reforms proposed to date to the legislative and regulatory framework of the Australian energy market, the streamlined rule change process, and the proposal to convert the provisions of the current National Electricity Code into rules made under the new National Electricity Law.

Consultation on this Bill included an opportunity to provide initial written submissions on an exposure draft of the Bill, followed by final written submissions, and interested parties have also been given an opportunity to provide written submissions on an exposure draft of the National Electricity Rules. In addition, those who chose to make submissions have been given the opportunity to make an in-person verbal presentation, to senior officials administering the reform program, on the exposure drafts of both the Bill and the Rules. In total, 32 written submissions on the draft version of this Bill were received, and 15 in-person verbal presentations were made. I take this opportunity to thank all parties who made submissions for their valuable contribution to these important reforms. As you have heard, however, many of the constituent parts of the overall reform program, including important elements of this Bill, have also been subject to previous consultation processes.

#### National electricity market objective

An important feature of the new National Electricity Law is that it defines the scope of the national electricity market which is regulated under the new National Electricity Law and Rules, and provides a single clear national electricity market objective.

Under the new National Electricity Law, the national electricity market is comprised of the wholesale exchange that is operated and administered by the National Electricity Market Management Company under the Law and the Rules, as well as the national electricity system, that is, the interconnected electricity transmission and distribution system, together with connected generating systems, facilities and loads.

The national electricity market objective in the new National Electricity Law is to promote efficient investment in, and efficient use of, electricity services for the long term interests of consumers of electricity with respect to price, quality, reliability and security of supply of electricity, and the safety, reliability and security of the national electricity system.

The market objective is an economic concept and should be interpreted as such. For example, investment in and use of electricity services will be efficient when services are supplied in the long run at least cost, resources including infrastructure are used to deliver the greatest possible benefit and there is innovation and investment in response to changes in consumer needs and productive opportunities.

The long term interest of consumers of electricity requires the economic welfare of consumers, over the long term, to be maximised. If the National Electricity Market is efficient in an economic sense the long term economic interests of consumers in respect of price, quality, reliability, safety and security of electricity services will be maximised.

The single national electricity market objective replaces and subsumes the more specific list of "Market objectives" and "Code objectives" under the current Code. A significant catalyst for making this change was the policy position agreed to by governments in the *Australian Energy Market Agreement*. This policy position was that the Australian Energy Market Commission will be required to

consider the "long term interests of consumers" in making any Rule change decisions. The single objective has the benefit of being clear and avoiding the potential conflict that may arise where a list of separate, and sometimes disparate, objectives is specified.

It is important to note that all participating jurisdictions remain committed to the goals expressed in the current market objectives set out in the old Code, even though they are not expressly referred to in the new single market objective. Applying an objective of economic efficiency recognises that, in a general sense, the national electricity market should be competitive, that any person wishing to enter the market should not be treated more nor less favourably than persons already participating in the market, and that particular energy sources or technologies should not be treated more nor less favourably than other energy sources or technologies. It is the intention of the Ministerial Council on Energy to issue a statement of policy principles under the National Electricity Law which will clarify these matters. The Australian Energy Market Commission, in performing its rule-making functions, is to have regard to this policy guidance.

#### Ministerial Council on Energy

The new National Electricity Law and Rules have been drafted to reflect the agreed position in the *Australian Energy Market Agreement* that the Ministerial Council on Energy will not be engaged directly in the day-to-day operation of the energy market or the conduct of regulators. The function of the Council will be to give high level policy direction to the Australian Energy Market Commission in relation to the national energy market.

The means by which the Ministerial Council on Energy will perform this role under the new National Electricity Law and Rules is, first, through its ability to direct the Australian Energy Market Commission to carry out a review and report to the Ministerial Council on Energy. Such a review may result in the Australian Energy Market Commission making recommendations to the Ministerial Council on Energy in relation to any relevant changes to the Rules that it considers are required. Secondly, the Ministerial Council on Energy may initiate a Rule change proposal including in response to a review or advice carried out or provided by the Australian Energy Market Commission as a result of a request by the Ministerial Council on Energy. A Ministerial Council on Energy initiated Rule change proposal will, of course, be subject to the ordinary Rule change process set out in the National Electricity Law. Thirdly, the Ministerial Council on Energy may publish statements of policy principles in relation to any matters that are relevant to the exercise by the Australian Energy Market Commission of its functions under the new National Electricity Law, or the Rules.

Ministerial Council on Energy statements of policy principles must be consistent with the national electricity market objective. The Council will be required to give a copy of such statements to the Commission which must then publish the statement in the South Australian Government Gazette and on the Commission's website.

#### Australian Energy Market Commission

The Australian Energy Market Commission has been established as a statutory commission. Under the new National Electricity Law and Rules, the Australian Energy Market Commission is responsible for Rule making and market development. Market development will occur as a result of the Rule review function.

In so far as its Rule making function is concerned, the Australian Energy Market Commission itself will generally not be empowered to initiate any change to the Rules other than where the proposed change seeks to correct a minor error or is non-material. Instead, its role is to manage the Rule change process and to consult and decide on Rule changes that are proposed by others, including the Ministerial Council on Energy, the Reliability Panel, industry participants and electricity users.

In so far as its market development function is concerned, the Australian Energy Market Commission must conduct such reviews into any matter related to the national electricity market or the Rules as are directed by the Ministerial Council on Energy. The Australian Energy Market Commission may also, of its own volition, conduct reviews into the operation and effectiveness of the Rules or any matter relating to them. These reviews may result in the Australian Energy Market Commission recommending changes to the Rules, in which case the Ministerial Council on Energy, or any other person, can then decide to initiate a Rule change proposal based on these recommendations through the Rule change process.

In performing its functions under the new National Electricity Law and Rules, the Australian Energy Market Commission will be required to have regard to the national electricity market objective. Further, the Australian Energy Market Commission must have regard

legislation aim to ensure consistent national economic regulation of electricity and gas networks.

Also subject to separate legislation is the establishment of a national framework for the non-price regulation of electricity and gas distribution and retail, which is expected to be implemented during 2008 subject to jurisdictional agreement on that framework.

While a number of provisions of the National Electricity Law have been retained, albeit with some amendments, the new regulatory arrangements have required the inclusion of a range of amendments and additional provisions which I will outline. In addition, the National Electricity Rules will also be amended to provide for a national framework for electricity distribution revenue and pricing regulation.

#### **South Australian arrangements**

This Bill contains provisions that preserve important elements of the current South Australian regulatory scheme.

There are a suite of pricing arrangements which together serve to preserve the scheme of state-wide pricing for distribution services for all small customers. These provisions are currently located in the South Australian legislation and will be continued to ensure that this important principle continues to operate under the national framework.

The national framework also maintains existing obligations arising from the South Australian Electricity Pricing Order. These obligations formed part of the foundation for the privatisation of the electricity distribution network in South Australia. The recognition of these arrangements ensures that, in accordance with the terms of the Electricity Pricing Order, the regulatory guidance established as part of the privatisation process is continued.

The amendments to the National Electricity Rules include appropriate transitional provisions to manage the transfer from the South Australian jurisdictional arrangements to the national framework. I will outline these matters below.

#### **Consultation**

The Amendments to the National Electricity Law in this Bill have been subject to extensive consultation with industry participants and other stakeholders that began with the Expert Report in 2005. As part of the preparation of their report, the Expert Panel encouraged stakeholder participation in its review. To this end, the opportunity was provided for stakeholders to make written submissions on matters arising from the Panel's terms of reference. Stakeholders also had the opportunity to make written submissions on the Panel's Draft Report and to meet individually with the Panel after the second round of submissions had been considered.

Further consultation has been undertaken on the implementation of the recommendations contained in the Expert Panel Report. Two exposure drafts of the National Electricity Law were made available to the public in January and August of 2007 and an exposure draft of amendments to the National Electricity Rules was consulted on in April 2007.

The first exposure draft of the National Electricity Law was released for a six week stakeholder consultation period. A public forum on the exposure draft was also conducted. This forum explained the response to the Expert Panel recommendations, provided information on the content of the National Electricity Law, and provided stakeholders with an opportunity to comment and seek clarification on the key aspects of the legislation. Written stakeholder submissions were also invited on the exposure draft of the National Electricity Law. In total, 29 submissions were received in response to the exposure draft.

The second round of consultation on the National Electricity Law involved round table discussion with stakeholders on matters of workability. We take this opportunity to thank all parties for their valuable contributions to these important reforms. Stakeholder comments on the exposure drafts were a valuable contribution towards ensuring the effectiveness of this Bill.

#### **National Electricity Objective**

This Bill incorporates an amended version of the National Electricity Market Objective from the existing National Electricity Law. It is now known as the National Electricity Objective and will be mirrored in the National Gas Law.

The alignment between the objectives of the gas and electricity regime is an important foundation for the regime. A single consistent objective across gas and electricity will increase the prospect that the regimes remain closely aligned over the long term, even in light of the capacity in both regimes for interested parties to make applications to changes rules through the Australian Energy Market Commission. For this reason, the objectives clause is drafted as an objective of the law, rather than an objective of the market.

The National Electricity Objective is to promote efficient investment in, and the efficient use of, electricity services for the long term interests of consumers of electricity with respect to price, quality, reliability and security of supply of electricity, and the safety, reliability and security of the national electricity system.

Just as the Australian Energy Market Commission must test changes against the objective of the law when making rules, the Australian Energy Regulator must perform its functions in a manner that will or is likely to contribute to achieving the objective of the law.

It is important to note that the National Electricity Objective does not extend to broader social and environmental objectives. The purpose of the National Electricity Law is to establish a framework to ensure the efficient operation of the National Electricity Market, efficient investment, and the effective regulation of electricity networks. As previously noted, the National Electricity Objective also guides the Australian Energy Market Commission and the Australian Energy Regulator in performing their functions. This should be guided by an objective of efficiency that is in the long term interest of consumers. Environmental and social objectives are better dealt with in other legislative instruments and policies which sit outside the National Electricity Law.

#### **Form of Regulation Factors**

Determining what services are to be regulated requires an assessment of the potential for market power to be exploited by a service provider.

In order to ensure that the appropriate regulatory framework is applied, this Bill creates new provisions for the recognition of two available forms of regulation: direct controlled network services and negotiated network services. Where electricity network services are neither classified by the Australian Energy Regulator as direct controlled network services or negotiated network services, the network service is not subject to economic regulation.

A direct controlled network service is a service for which the price is fixed by the Australian Energy Regulator in a revenue or network pricing determination. The National Electricity Law will provide the framework for either allowing the National Electricity Rules, via the Australian Energy Market Commission rule change process, to specify particular services as controlled by a price control mechanism, or allow the Australian Energy Regulator to determine the classification of services in a regulatory determination. Both decision makers are guided by the form of regulation factors.

Negotiated network services are those transmission and distribution services regulated under a negotiate/arbitrate regime. These services are not subject to upfront price control, but a binding arbitration mechanism is provided for the resolution of disputes about price and non-price aspects of access between the relevant parties.

The 'form of regulation factors' guide the assessment of the form of regulation to apply to the electricity network service (that is, whether it is appropriately classified as a direct controlled network service, or a negotiated network service). This framework effectively implements the Expert Panel recommendations.

The first of these form of regulation factors assesses the presence and extent of any barriers to entry in a market for electricity network services. Many of the services provided by electricity networks can be characterised as natural monopolies and need to be regulated to ensure that consumers' interests are met.

Another factor that predisposes electricity networks towards natural monopoly status is the interdependent nature of network services. This means that it is usually more efficient to have one service provider provide an electricity network service to a given geographical area. Additionally it may be more efficient to have the same company provide other network services to the same geographical area.

The second and third form of regulation factors require that the Australian Energy Market Commission and the Australian Energy Regulator identify these interdependencies and network externalities as potential sources of market power.

The fourth form of regulation factor looks to consider the extent to which market power possessed by the owner, operator or controller of a transmission or distribution network by which services to be subject to regulation are provided is likely to be mitigated by countervailing market power possessed by the users of those services. This factor allows the Australian Energy Regulator or Australian Energy Market Commission to apply a lighter form of regulation to a network that is subject to this type of countervailing market power from a major user.

Energy Ministers agreed to retain the Australian Competition Tribunal as the review body for the regime and to maintain the limited nature of the merits review process subject to a further review in 2016 of the role of the Australian Competition Tribunal under the new regime.

However, Energy Ministers agreed legislative amendments were required to address a number of the issues raised by the panel; in particular to ensure that the limited merits review only results in changes to decisions under review where the Australian Competition Tribunal concludes that there is a materially preferable decision in the long term interests of consumers.

Energy Ministers also identified a need to amend Commonwealth legislation to allow the Australian Competition Tribunal to act in a more informal and investigative manner when undertaking reviews.

A number of amendments to both the National Electricity Law and the National Gas Law were identified to give effect to this important reform, including ensuring that the limited merits review regime delivers materially preferable decisions in the long term interest of consumers, and specifying the matters that are to be taken into account in decision making by both the Australian Energy Regulator and the Australian Competition Tribunal.

The national electricity objective and national gas objective explicitly target economically efficient outcomes that are in the long term interests of consumers, but the nature of decisions in the energy sector are such that there may be several possible economically efficient decisions, with different implications for the long term interests of consumers.

Consequently, the Bill requires that the Australian Energy Regulator, in making a reviewable regulatory decision, if there are two or more possible decisions that will or are likely to contribute to the achievement of the national electricity objective or the national gas objective, make the preferable reviewable regulatory decision; that is the decision that it considers will, or is likely to, contribute to the achievement of the national electricity objective or national gas objective to the greatest degree.

The Australian Energy Regulator will also be required to give reasons in its decision as to the basis on which it is satisfied that the decision is the preferable reviewable regulatory decision.

This will provide a greater degree of transparency about the Australian Energy Regulator's decision-making process, with the Australian Energy Regulator's explanation also assisting the Australian Competition Tribunal and other parties if the decision is subject to review.

As noted previously, revenue determinations are complex, requiring the Australian Energy Regulator to make a range of decisions. Some of these decisions directly relate to each other, while others entail balancing between different outcomes, and others are wholly independent of other constituent decisions.

Consequently, this Bill will require the Australian Energy Regulator to specify in its decision the manner in which the constituent components of that decision relate to each other and how it took these interrelationships into account in making the decision.

This is intended to provide the Australian Competition Tribunal, and interested stakeholders, guidance on how the Australian Energy Regulator had regard to a range of elements, and any interrelationships between them, in coming to the final, overall decision.

This Bill will also impose a clear obligation on the Australian Energy Regulator to develop a record of its regulatory process, which will be the key reference point for the Australian Competition Tribunal in conducting a review of a reviewable regulatory decision.

The Bill will extend the scope of parties who can apply for review of a decision to include parties that made a submission or comment to the Australian Energy Regulator during the regulatory process subject to the review. This would extend to users, consumer interest groups or a Minister of a participating jurisdiction, as long as they participated in the regulatory decision-making process.

This Bill will make no change to the four existing grounds for review but imposes an additional requirement on applicants, with the effect of raising the threshold to obtain leave to review. Applicants will be required to establish two matters:

- (a) that there is a serious issue to be heard and determined as to whether there was an error of fact, incorrect exercise of discretion or unreasonableness in the original decision, as under the current framework; and
- (b) a prima facie case that addressing the matter alleged in the ground for review will or is likely to result in a decision that is materially preferable to the original decision in the long term interests of consumers as set out in the national electricity objective or the national gas objective.

The most significant amendments in this Bill relate to the role of the Australian Competition Tribunal in conducting a review of a reviewable regulatory decision. The Bill will ensure the Australian Competition Tribunal can only set aside, vary or remit a decision if it is satisfied that to do so will, or is likely to, result in a materially preferable decision, otherwise the decision under review will be affirmed.

Importantly, the Bill will clarify that a materially preferable decision is a decision that is materially preferable to the reviewable regulatory decision in making a contribution to the achievement of the national electricity objective or the national gas objective.

The long-term interests of consumers must be the Australian Competition Tribunal's paramount consideration in determining that a materially preferable decision exists.

In considering what constitutes a materially preferable decision, the Bill also requires the Australian Competition Tribunal to consider how the constituent components of the reviewable regulatory decision interrelate with the matters raised as a ground for review and each other, to consider the revenue and pricing principles in the same manner as the Australian Energy Regulator does in its decision, and to consider the decision as a whole in terms of the achievement of the objective.

The Bill will also clarify that neither the establishment of a ground for review, nor the consequence for, or impact on, the average annual regulated revenue of the regulated network service provider, nor that the amount that is specified or derived from the reviewable regulatory decision exceeds the monetary threshold for the grant of leave to review the decision, is in itself determinative of whether a materially preferable decision exists.

Instead, the Bill will require the Australian Competition Tribunal to undertake an holistic assessment of whether the setting aside or varying of the reviewable regulatory decision, or remission of the matter back to the original decision maker, will or is likely to deliver a materially preferable outcome in the long term interests of consumers, as set out in the national electricity objective and the national gas objective.

The Bill will clarify that the Australian Competition Tribunal is required to remit the matter to the Australian Energy Regulator in circumstances where the Tribunal considers there is likely to be a materially preferable decision, but where establishing this would require a complex assessment in which the entire, or a significant proportion of, the original decision-making process needs to be repeated.

The Bill will ensure that the Australian Competition Tribunal will primarily be limited to considering the material that was before the Australian Energy Regulator when making the original decision, including its final determination.

However, the Australian Competition Tribunal will be allowed to consider new information or material if it would assist it in making its determination and such information was not unreasonably withheld from the Australian Energy Regulator or was publicly available or known to be available to the Australian Energy Regulator when it was making the reviewable regulatory decision.

In both cases, the information or material must be information or material that the Australian Competition Tribunal considers the Australian Energy Regulator would reasonably have been expected to have considered when it was making the original decision.

The Bill will make it clear this opportunity for new information or material to be introduced is only available if the Australian Competition Tribunal is of the view that a ground for review has been established.

The Bill will also clarify the Australian Competition Tribunal's continuing capacity to seek assistance, information, materials and evidence from experts on its own motion where it considers a ground for review has been established and such information would assist it to determine whether a materially preferable decision exists. Experts assisting the Australian Competition Tribunal will be limited to considering the material that was before the Australian Energy Regulator when making the original decision, including its final determination.

The Bill will clarify what matters the Australian Energy Regulator, the applicant and other parties, may or may not raise in a review and will include a prohibition on network service providers raising an issue that was resolved or not maintained in the regulatory process when establishing a ground of review.

The Bill addresses current barriers to user and consumer participation in the limited merits review process, while maintaining incentives to discourage trivial or vexatious claims.

First, the Bill will introduce a general requirement on the Australian Competition Tribunal to engage with consumers in its review process.

Second, for the purposes of symmetry, the Bill will make it explicit that the Australian Energy Regulator must consult with consumers as part of its decision making process. This is in addition to the existing legislated requirement to consult the relevant regulated network service provider and other relevant parties affected by the decision.

Third, the Bill will reduce the risk to consumer groups of participation in the review process, by removing the provision that small users and consumers may have costs awarded against them on the basis that they conducted their case without due regard to submissions or arguments made to the Australian Competition Tribunal by another party and by limiting the costs orders that can be made against them to administrative costs.

Finally, the Bill precludes a network business from passing costs of a review through to consumers, either prospectively or following a review.

In establishing the national electricity objective and the national gas objective, it was recognised that the long term interests of consumers are not delivered by any one of its factors in isolation, but rather require a balancing of the range of factors.

The Australian Energy Regulator therefore determines what is in the long term interests of consumers by delivering an effective balance between these factors.

The Australian Competition Tribunal likewise will consider the contribution of the regulatory decision to achieving the objective by considering and balancing the combination of factors in the objective, and arriving at the decision that best serves the long-term interests of consumers.