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**Submission to the Standing Committee of  
Officials of the Ministerial Council on  
Energy**

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**APIA response to the  
Consultation of MCE Review on Decision-Making in  
the Gas and Electricity Regulatory Framework**

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## Executive Summary

Merits review is a standard and essential feature of the Australian legal landscape. It is generally available where administrative decision making directly impacts on an individual's or company's interests.

Merits appeal provides consistency, certainty, transparency and better reasoned decision making. There is nothing peculiar to energy infrastructure regulation that means merits appeals and these associated benefits should not apply.

The existing appeals framework is an integral part of the Gas Access Regime. Its inclusion in the Regime recognises the size of investment at risk for investors, the interests of users and the fact that regulators have broad discretionary powers which impact upon a service provider's rights, financial position and future investment.

It is significant interference with property and other rights to impose regulation on an asset owner and to regulate the prices the owner can charge users of their asset. At the same time, these decisions involve significant amounts of information, the exercise of broad discretions and uncertainty about future events (eg volumes, interest rates, inflation, depreciation charges). The combination of these factors presents a compelling case for proper review of decision making.

The Gas Access Regime does not allow for full merits review. It is limited to a specific number of decisions and further limitations have been placed on the grounds of review for access arrangements. The existing framework was designed to balance the interests of all parties and address concerns about possible time delays or regulatory gaming. Experience to date demonstrates that the framework is achieving the intended goals.

The two models put forward in the discussion paper, in essence, offer a choice between substantively limiting existing rights to merits review or excluding merits review altogether.

The underlying sentiment in the discussion paper is that merits review is potentially time consuming and costly and therefore undesirable. However, the primary argument that the existence of the right to merits review will result in many appeals and lead to time delay is not borne out by the history of merits review in energy access. In fact, while there have been in excess of 30 access arrangement decisions on gas transmission and distribution made by regulators, there have been only four applications for merits review<sup>1</sup>. Of the 19 applications made in relation to coverage/revocation<sup>2</sup>, there have been only three applications for merits review.

APIA submits that the discussion paper provides no evidence or justification to warrant removing or limiting existing rights. There is nothing to suggest that the

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<sup>1</sup> Ministerial Council on Energy Standing Committee of Officials, *Review of Decision-Making in the Gas and Electricity Regulatory Frameworks*, Discussion Paper, 10 October 2005, p 61.

<sup>2</sup> [www.ncc.gov.au](http://www.ncc.gov.au)

reasons which led to the development of the current framework in the Gas Access Regime are not valid or compelling today.

In any event, the discussion paper's approach to evaluating merits review is simplistic as it overlooks the real benefits of obtaining the best decision possible, protecting legitimate interests and increased confidence in the regulatory process.

## **Merits review and judicial review**

There is an important distinction between merits reviews and judicial review that is fundamental to consideration of the discussion paper. Judicial review is limited to reviewing whether there was an error of law, not the 'merits' of the decision. In contrast, merits review is designed to ensure that the correct and preferable decision is made.

An applicant for judicial review cannot challenge the decision for an error of fact or want of logic:

*Thus, at common law, according to Australian authorities want of logic is not synonymous with error of law. So long as there is some basis for an inference - in other words, the particular inference is reasonably open - even if that inference appears to have been drawn as a result of illogical reasoning, there is no place for judicial review because no error of law has taken place.<sup>3</sup>*

## **Merits review – an essential feature of our legal system**

Merits review is an accepted and standard feature of government decision making in Australia. The right to merits review is not viewed as a privilege. Merits review is generally available where administrative decision making is likely to directly impact on an individual or company's interests. Merits review promotes transparency, accountability and well-reasoned decision making.

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<sup>3</sup> *Australian Broadcasting Tribunal v Bond* (1990) 170 CLR 321 at 356.

*As a matter of principle, the Council believes that an administrative decision that will, or is likely to, affect the interests of a person should be subject to merits review. ...If a more restrictive approach is adopted, there is a risk of denying an opportunity for review to someone whose interests have been adversely affected by a decision. Further, there is a risk of losing the broader and beneficial effects that merits review is intended to have on the overall quality of government decision making.<sup>4</sup>*

*Administrative review is now an integral part of the framework of government accountability together with the other elements of the administrative law system... In the report *Accountability in the Commonwealth Public Sector*, accountability is described in the following terms:*

*Accountability is fundamental to good governance in modern, open societies. Australians rightly see a high level of accountability of public officials as one of the essential guarantees and underpinning, not just of the kinds of civic freedoms they enjoy, but of efficient, impartial and ethical public administration. Indeed, public acceptance of government and the roles of officials depends upon trust and confidence founded upon the administration being held accountable for its actions.*

*...Moreover, administrative law remedies improve the whole system of government decision making by increasing its openness and transparency and providing feedback on its performance. Confident executive government should welcome this kind of audit.<sup>5</sup>*

Merits review is a feature of the national access regime, with full merits review for declaration decisions, decisions about the 'effectiveness' of State/Territory access regimes, and for arbitration determinations. This is consistent with the decisions for which appeal rights exist under the Gas Access Regime. However, unlike the Gas Access Regime review framework, there are no restrictions on the grounds of review. The *Trade Practices Amendment (National Access Regime) Bill 2005*, also proposes for complete merits review of decisions regarding access undertakings and access codes.

Merits review is also available on an enormous range of government and regulatory decisions other than access. APIA is unaware of any reason why energy infrastructure regulation should not include merits review of decisions that have a significant impact on the property and other rights of owners. As the Productivity Commission stated in its Review of the Gas Access Regime:

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<sup>4</sup> Administrative Review Council, *What decisions should be subject to merit review?*, paragraph 2.1 - 2.5.

<sup>5</sup> Justice Deirdre O'Connor, *Lessons from the Past / Challenges for the Future: Merits Review in the New Millennium*, paper presented at the 2000 National Administrative Law Forum – Sunrise or Sunset? Administrative Law in the New Millennium, June 2000, p 2.

*The Hilmer Committee (1993, p.242) noted that these are fundamental established rights in our legal system and are not to be disturbed lightly. It recognised that the protection of these rights was an important concern:*

*The Committee is conscious of the need to carefully limit the circumstances in which one business is required by law to make its facilities available to another. Failure to provide appropriate protection to owners of such facilities has the potential to undermine incentives for investment. (Hilmer Committee 1993, p.248)<sup>6</sup>*

## **Merits review in energy markets**

The Gas Code currently provides for merits review of decisions on coverage, additional ring fencing obligations, contracts between service providers and affiliates, and imposition of an access arrangement by the Regulator.

The right to merits review is an integral part of the Gas Access Regime and its inclusion recognises the potential for the regulator's broad and discretionary powers to profoundly impact upon a service provider's rights and financial position as well as future investment.

*The Gas Access Regime creates legislative decision making powers for Ministers and regulators. Good administrative law practice sees benefits in having a merits review available whenever a legislative enactment creates a decision making power, especially where decision making bodies have discretionary power (as is the case under the Gas Access Regime)(O'Connor 2000).<sup>7</sup>*

The issue of the regulator's extensive and discretionary powers was subject to considerable debate during the public consultation process preceding the National Competition Council's (NCC) assessment of the effectiveness of Gas Access Regime. It was widely argued and accepted that the regulator's extensive powers under the National Gas Access Regime necessitated an independent accountability mechanism – in the form of a right to merits appeal – to ensure confidence in regulatory outcomes.

The NCC found:

*The Council's view is that a merits-based appeals mechanism on a regulator's decision to impose an access arrangement would be in accord with principles of natural justice, due process and accountability, given the potential for the regulator's powers in this matter to influence a service provider's property rights and financial position. However, the Council is also mindful of the potential risks of introducing a merits appeal mechanism – in particular, the potential for gaming behaviour and delays in the provision of access. As such,*

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<sup>6</sup> Productivity Commission, *Review of the Gas Access Regime*, 2004, p 488-9.

<sup>7</sup> Ibid at p 488.

*the Council believes a **limited** appeals mechanism is an appropriate means of balancing the right of service providers and access seekers.<sup>8</sup>*

In recognition of the concerns identified by the Council, the current Gas Access Regime does not allow for full merits review. It is limited to specific decisions and further limitations exist to ensure that an appeal does not cause delays or gaming. For example, limitations exist in respect of:

- in the case of all reviewable decisions – who can apply, timeframes for decision making (90 days) and the powers of the appeal body
- in the case of access arrangements – applications can be made on only three grounds, applications cannot raise matter that were not considered by the initial decision maker, and the access arrangement imposed by the regulator takes effect notwithstanding the lodging of the appeal.

The current merits review provisions in the Gas Access Regime represent a compromise position and adequately address concerns raised in relation to opportunities for the process to be misused.

No case has been made that circumstances have changed to warrant the removal or limitation of merits review in the Gas Access Regime. In fact, the outcomes of the most comprehensive and consultative review of the Gas Access Regime re-affirms the need for merits review and in part calls for those rights to be strengthened. The Productivity Commission in considering the appropriateness of including a right to merits review found:

*There is a need for a merits review under the Gas Access Regime. In the Commission's view, appropriate protection for property rights and natural justice are key considerations. While the appeal process might take considerable time and expend considerable resources, the regulatory bodies and Ministers have powers to make decisions that have an impact on fundamental rights of service providers. The prospect of exposure to imperfect regulatory instruments means there is a strong case for a merits review.<sup>9</sup>*

## **The benefits of merits review**

The benefits of merits review are widely accepted and include:

- improved quality and accountability of decision making
- correction of a greater range of regulatory errors
- confidence in the regulatory process
- transparency of regulatory process
- establishing precedents which improves certainty of process
- fostering acceptance and commitment of outcomes by all parties

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<sup>8</sup> National Competition Council, *National Gas Access Regime – Recommendation to Gas Reform Implementation Group on the National Third Part Access Regime for Natural Gas Pipeline Systems*, 1997, p 26.

<sup>9</sup> Productivity Commission, *Review of the Gas Access Regime*, 2004, p 498.

The case history of appeals to the Australian Competition Tribunal under the Gas Access Regime illustrates the benefits and importance of merits review in supporting the legitimate interests of industry participants.

Duke Eastern Gas Pipeline<sup>10</sup>

Duke applied to the Australian Competition Tribunal (the Tribunal) for review of a decision by the Minister to cover its pipeline. The Tribunal determined that the Minister had erred in concluding that coverage of the pipeline would promote competition.

Epic Energy South Australia Pty Ltd<sup>11</sup>

Epic Energy applied to the Tribunal for review of the decision of the regulator to draft and approve an access arrangement for the Moomba-Adelaide Pipeline System. The Tribunal found that the ACCC's approach of relying on the lowest cost estimate for line pipe to establish the initial capital base was not reasonable and 'in taking the approach it did, the ACCC exposed Epic to an asymmetric risk whereby the likelihood of underestimating the true actual line pipe cost was much greater than that of overestimating it.'<sup>12</sup>

GasNet Australia<sup>13</sup>

GasNet applied to the Tribunal for review of the regulator's decision to draft and approve its own access arrangement. The grounds for review related to the determination of appropriate rate of return, including the appropriate bond rate, the treatment of forecast inflation and, the appropriate allowance for non-capital costs.

The Tribunal clarified the interpretation of the Code, confirming that it is beyond it's the Regulator's power not to approve an Access Arrangement that is consistent with the Reference Tariff principles because the Regulator prefers a different Access Arrangement.<sup>14</sup>

The Tribunal noted the impact on GasNet's revenue caused by the rejection by the ACCC of GasNet's estimations of the CAPM parameters and of the non-capital costs. The Tribunal concluded that 'in the present case the errors impact upon revenues to cover actual costs incurred, or to be incurred, and thus require variation to the determination under review to allow for such recovery.'<sup>15</sup> The Tribunal upheld the ACCC's decision in relation to the treatment of forecast inflation.

<sup>10</sup> *Duke Eastern Gas Pipeline Pty Ltd* [2001] A CompT 2 (4 May 2001)

<sup>11</sup> *Application by Epic Energy South Australia Pty Ltd* [2003] A CompT 5 (10 December 2003)

<sup>12</sup> *Ibid* at paragraph 94.

<sup>13</sup> *Application by GasNet Australia (Operations) Pty Ltd* [2003] ACompT 6 (23 December 2003)

<sup>14</sup> *Ibid* at paragraph 29

<sup>15</sup> *Ibid* at paragraph 63

East Australian Pipeline Limited<sup>16</sup>

EAPL applied to the Tribunal for review of the regulator's decision to draft and approve its own access arrangement for the Moomba to Sydney Pipeline. At issue was the valuation methodology to calculate the asset base, exclusion of contingencies from the optimised replacement cost and determination of the appropriate credit rating.

The Tribunal found that the ACCC was wrong and unreasonable in finding that the contingency included in EAPL's estimate of ORC should be excluded 'in toto'. The Tribunal allowed a contingency calculated at 7.5% (EAPL had proposed 10%).<sup>17</sup> The Tribunal determined that the ACCC's approach to determining the credit rate was flawed stating 'there is no logic or reason to that approach and there is no material to suggest it has any support in the theory or practices of statistics.'<sup>18</sup> The Tribunal also rejected the asset value determined by the ACCC and substituted a different valuation methodology which was consistent with submissions by EAPL and previous regulatory statements.

The above cases, and cases involving reviews of decisions under the Gas Access Regime by the Western Australian Regulator, illustrate that the right to merit review has played a crucial role in correcting errors in regulatory decisions, and thereby protecting the legitimate interests of service providers.

That is not to say, however, that merits review always results in favourable decisions for service providers. The Australian Competition Tribunal has also affirmed the decisions of the Regulator.<sup>19</sup>

In the context of gas regulation, the powers to affect a service provider's financial position are extensive and the consequence of an error occurring in the exercise of those powers is potentially profound - both in dollar terms and in its ability to affect the commercial operations of the business. Investments in gas transmission are often very large (totalling hundreds of millions or even billions of dollars) and mechanisms that result in correct and accountable regulatory decision making are critical.

The framework for merits review that currently exists in the Gas Access Regime provides a reasonable mechanism to ensure accountability in the exercise of the regulator's broad and discretionary decision making powers. No case has been made as to how the interests of owners, users, operators and consumers are served by reducing the accountability of regulatory decision making.

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<sup>16</sup> *Application by East Australian Pipeline* [2004] ACompT 8

<sup>17</sup> *Ibid* at paragraph 51

<sup>18</sup> *Ibid* at paragraph 66.

<sup>19</sup> For example, *DEI Queensland Pipeline Pty Ltd v Australian Competition and Consumer Commission* [2002] ACompT 2 (10 May 2002)

## Model A or Model B?

APIA submits that offering Model A and Model B as alternatives fundamentally misunderstands the differences between merits review and judicial review. As outlined above, merits review and judicial review are not substitutes – they are complementary:

*The Council does not consider that a decision is inappropriate for merits review merely because that decision may also be the subject of judicial review. The Council's view follows from the fact that the judicial review powers vested in the Federal Court are complementary to, but distinct from, merits review powers. Judicial review involves the exercise of the Commonwealth's judicial power and results in findings in law. Merits review involves the exercise of administrative powers and results in a correct and preferable decision. The different realms of operation of the two forms of review mean that they can, and often do, co-exist.<sup>20</sup>*

Given the impact that regulators' decisions can have on a service provider's business, merits review is required in addition to judicial review to ensure that the correct and preferable decision is reached not just the appropriate processes are followed. Recourse to judicial review alone is not sufficient to protect the legitimate interests of industry participants as observance of the correct process can still result in an erroneous decision:

*A decision made under the Gas Access Regime involves both procedural and judgmental elements. That is, when the correct procedures and processes are followed, the decision maker still exercises an element of judgment. There is a risk that an error will be made.<sup>21</sup>*

APIA notes that in the appeals in which errors by regulators have been corrected (see above), the errors have not simply been a result of an incorrect process. Rather, they have arisen from an incorrect or unreasonable exercise of discretion.

The discussion paper argues that by clarifying and introducing into legislation the processes the Regulator must undertake in making a decision, the need for merits review would disappear. This is incorrect as it will not provide a remedy for persons adversely affected by an incorrect or unreasonable exercise of discretion.

APIA submits that the removal of existing rights is not justified in respect of Model A or Model B.

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<sup>20</sup> Administrative Review Council, *What decisions should be subject to merit review?*, 1999, paragraph 5.30 – 5.31.

<sup>21</sup> Productivity Commission, *Review of the Gas Access Regime*, 2004, p 488.

## Justification for Model A

Model A provides for a more limited form of merits review of the ‘economic regulatory decisions’ of the AER and of relevant Ministers in the case of coverage of gas pipelines than is currently available under the Gas Pipelines Access Law.

The proposal limits the grounds for review to grounds that ‘are related to traditional judicial review grounds’. The model removes one ground of appeal currently available to gas industry participants in respect of access arrangements and it substantively changes the rights available in respect of review of decisions under section 38 of the Gas Pipelines Access Law.

The proposal is inconsistent with the National Access Regime which currently provides for full merits review of key decisions, as outlined above. It also runs counter to the Productivity Commission’s recommendations from its Review of the Gas Access Regime. The Productivity Commission undertook a comprehensive and consultative review of the Gas Access Regime and considered in substantial detail the appeals framework. In contrast to the proposal, the Productivity Commission recommended that the current limitations on the grounds of appeal of the Gas Pipelines Access Law should be removed<sup>22</sup>.

The discussion paper outlines a number of benefits of merits review generally including accountability, review by a specialist tribunal and correction of a greater range of regulatory error. The discussion paper, however, fails to give these benefits any real weight and does not justify why a significantly more limited form of merits review is preferable to the existing framework under the Gas Pipelines Access Law.

The discussion paper argues that Model A lessens incentives of regulated entities to ‘game’ the process and balances competing interests. Some have argued that merits appeal encourages parties to ‘game’ the process by withholding information from the primary decision-maker. Appeals, regardless of their nature, involve time and money. It is in the interests of the service provider to provide all relevant information to get the best decision, first time. In any event, this concern was recognised and addressed in the development of the Gas Access Regime. The discussion paper does not suggest that the model in the Gas Access Regime has not successfully addressed this possible ‘gaming’.

The claim that Model A balances competing interests denies the history of the Gas Access Regime. The current Gas Access Regime does not allow for full merits review as a compromise between competing interests. It is limited to a specific number of decisions and for appeals on access arrangements further limitations are placed on the grounds of application, the information that can be included and the matters to which the appeal body can refer.

The discussion paper fails to put forward any robust justification in favour of Model A over the existing framework in the Gas Access Regime.

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<sup>22</sup> The Productivity Commission’s recommendation restricting the material that can be introduced on coverage appeals is not significant in considering the issue of merits versus judicial review.

## Justification for Model B

APIA submits that the arguments presented in the discussion paper in support of Model B are weak. On analysis the vast majority of Model B's claimed benefits either apply equally to merits review or arise from removing rights to merits review, they are not inherent benefits of the model:

### *Avoiding multiple actions in respect of the same matter*

This claimed benefit is a consequence of limiting the scope of regulatory error subject to appeal not as a result of the Federal Court being able to adjudicate on both the procedural and discretionary elements of the decision. Further, the size of this 'benefit' would be small as experience has demonstrated that multiple actions in respect of the same matter in energy regulation are rare.

### *Minimising cost and time delays – maximising regulatory certainty*

This benefit also relies on limiting the scope of regulatory error subject to appeal – it is not an inherent benefit from judicial review. The discussion paper claims that all parties would be able to appeal to one forum where all their issues concerning the decision could be raised. In the context of comparing a system of merits review and judicial review against judicial review alone, this claim is inaccurate as it limits the scope of issues that can be raised.

The discussion paper also raises the concern that the costs of conducting merits reviews are substantial and can delay the decision making process. In terms of costs, no evidence has been provided in respect of the costs of conducting merits review let alone that the level of those costs outweighs the clear public benefits arising from the availability of merits appeals. In terms of delay, there is similarly no evidence that the existence of rights of appeal, or the making of an appeal, has delayed implementation of the Gas Code or the availability of access to third parties. Further, there is no proper consideration of the fact that court-based judicial reviews are equally (if not more) complex and costly.

Further, judicial review requires the matter to be remitted to the original decision maker if an error is found. Accordingly, the judicial review process is generally going to be inherently more costly and time consuming.

Arguments have also been raised that the threat of appeal causes regulatory authorities to adopt a more conservative approach leading to extended timeframes for decision making. There is no evidence of this and, in any event, assumes that speed of a decision, rather than a correct and preferable decision, is the primary objective. This is incorrect.

### *Higher accountability for the AER*

It is claimed that under Model B the Australian Energy Regulator (AER) will be subject to the discipline of specific requirements on how it must exercise its functions leading to higher accountability. However, clarification or detailing of the decision-making process does not, of itself, make the decision maker accountable. It also

provides no remedy if, despite following the correct process, the AER reaches an unreasonable or incorrect conclusion in the exercise of the broad discretion given to regulators in energy regulation.

It is also claimed that if the AER knows that the appeal body will not substitute its decision and it will be required to remake the decision, this creates an incentive to make a correct initial decision. No evidence has been provided to support this claim.

*There is no advantage by a specialist tribunal*

The paper argues that the Federal Court has dealt competently with complex economic issues in the energy sector and therefore there is no benefit in maintaining a specialist tribunal. Again this claimed benefit ignores the fact that the Tribunal and the Federal Court examine separate and distinct aspects of a decision.

These arguments fail to recognise the reasons which led to the establishment of the Australian Competition Tribunal, and the fact that the Tribunal has been addressing complex economic and competition issues for many years. The Tribunal's members are experts and it is presided over by a Federal Court judge. With the Gas Access Regime, the Tribunal has already demonstrated its competency in dealing with regulatory decisions. Under the current Gas Access Regime framework, the Tribunal has access to information and evidence before the decision maker. The Tribunal may also require the relevant regulator to give information and other assistance, and to make reports.

The discussion paper also argues that access to merits review of complex regulatory decisions will increase the risk of regulatory error if the review body is not resourced with expertise at least equal to the regulator. This argument fails to recognise the expertise of the Tribunal. Taken to its logical conclusion this argument would also mean that the decisions of 'expert' decision maker in any regime would never be subject to review. This is clearly not the case with many regulatory and administrative decisions subject to merits review. The Administrative Review Council has explicitly stated that the fact that the decision-maker is an expert, or requires specialised expertise does not justify excluding merits review.

It is also proposed under Model B that judicial review will apply to Ministerial decisions that are currently subject to review under section 38 of the Gas Pipelines Access Law. This is on the basis that such decisions are essentially policy decisions and therefore merits review by an administrative tribunal is not appropriate.

This argument is unpersuasive. It is incorrect to conclude from the separation of the decision to regulate from the Regulator, that the Minister, in recommending coverage, is making a policy decision rather than applying the established criteria in the Code to the facts of the case.

Moreover, the Administrative Review Council states that only policy decisions that involve consideration of issues of the highest consequence to Government are likely

to be considered inappropriate for merits review.<sup>23</sup> The examples provided by the Administrative Review Council regarding decisions affecting the Australian economy include determining interest rates; floating the dollar; and setting foreign exchange rates. It is inappropriate to equate a decision on whether a pipeline meets statutory criteria for coverage with such decisions.

## Conclusion

The two models put forward in the discussion paper, in essence, offer a choice between limiting existing rights to merits review or excluding merits review altogether.

Merits review plays a crucial role in protecting the legitimate interests of investors and users in the gas industry. As a consequence of the scale of investment in energy infrastructure and the level of discretion conferred on regulators, an error in a regulatory decision in the energy sector can have major commercial implications.

A right to address errors, not only in process and procedure, but in the exercise of judgement or regulatory discretion, is fundamental in obtaining the best decision possible and thereby maintaining investor confidence and providing the right environment for ongoing investment.

A merits review framework is likely to result in a decreased risk of regulatory error, to the overall benefit of the process, as accepted by most parties, including the ACCC:

*The scope for regulatory error is reduced by provision for judicial and merits review of regulatory decisions. Not only does this give service providers an avenue to correct any potential regulatory error, but it provides clarification of the intent and meaning of the Code.*<sup>24</sup>

The arguments presented in the discussion paper in support for Model A and Model B fail to provide adequate justification to remove the existing rights under the Gas Access Regime. The underlying sentiment in the discussion paper is that merits review is potentially time consuming and costly. This argument applies equally to judicial review. Further, reducing the argument against merits review to cost and time overlooks its very real benefits including:

- protection of legitimate interests
- administrative justice for individuals
- openness and transparency in decision making
- confidence in the regulatory process
- improved regulatory accountability and decision making.

A regime which incorporates a comprehensive review mechanism will lead to better decision making, improved outcomes, increased regulatory certainty and an environment conducive to ongoing investment.

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<sup>23</sup> Administrative Review Council, *What decisions should be subject to merit review?*, 1999, paragraph 4.22.

<sup>24</sup> Australian Competition and Consumer Commission, *ACCC submission on Draft Report: Review of Gas Access Regime*, 17 March 2004, p 19.