

Draft terms of reference

Electricity pricing for a consumer-driven future

23 August

Justice and Equity Centre
ABN 77 002 773 524
www.jec.org.au

Gadigal Country
Level 5, 175 iverpool St
Sydney NSW 2000
Phone + 61 2 8898 6500
Email contact@jec.org.au



About the Justice and Equity Centre

The Justice and Equity Centre is a leading, independent law and policy centre. Established in 1982 as the Public Interest Advocacy Centre (PIAC), we work with people and communities who are marginalised and facing disadvantage.

The Centre tackles injustice and inequality through:

- legal advice and representation, specialising in test cases and strategic casework;
- research, analysis and policy development; and
- advocacy for systems change to deliver social justice.

Energy and Water Justice

Our Energy and Water Justice work improves regulation and policy so all people can access the sustainable, dependable and affordable energy and water they need. We ensure consumer protections improve equity and limit disadvantage and support communities to play a meaningful role in decision-making. We help to accelerate a transition away from fossil fuels that also improves outcomes for people. We work collaboratively with community and consumer groups across the country, and our work receives input from a community-based reference group whose members include:

- Affiliated Residential Park Residents Association NSW;
- Anglicare;
- Combined Pensioners and Superannuants Association of NSW;
- Energy and Water Ombudsman NSW;
- Ethnic Communities Council NSW;
- Financial Counsellors Association of NSW;
- NSW Council of Social Service;
- Physical Disability Council of NSW;
- St Vincent de Paul Society of NSW;
- Salvation Army;
- Tenants Union NSW; and
- The Sydney Alliance.

Contact

Douglas McCloskey
The Justice and Equity Centre
Level 5, 175 Liverpool St
Sydney NSW 2000

T: +61 2 8898 6534

E: dmcloskey@jec.org.au

Website: www.jec.org.au

The Justice and Equity Centre office is located on the land of the Gadigal of the Eora Nation.

Contents

- Summary2**
 - Purpose 2
- Comments on the draft3**
 - Reframing the adoption of CER 3
 - The need for a more explicit focus on equity 3
 - A more fundamental challenge 4
 - Examining regulation of retailers and networks 5
 - Ensuring consumer needs, values and preferences are central 5
 - Ensuring the scope is not unduly narrowed 5

Summary

The Justice and Equity Centre (JEC – formerly PIAC) welcomes the opportunity to respond to the Australian Energy Market Commission’s (AEMC) draft terms of reference for its ‘electricity pricing for a consumer-driven future’ review (the Draft). The JEC strongly supports this review and sees it as an incredibly timely opportunity to re-evaluate the nature of pricing and regulation in energy and ensure it meets consumer’s needs and expectations and supports equitable outcomes in energy services beyond the energy transition.

We welcome the AEMC narrative, in both the Draft and the public forum, that this review is intended to be ambitious, wide ranging and squarely centred on ensuring pricing and regulation meets the needs and values of consumers. However, we do note with some concern that this intended ambition is not as apparent in the substance of the Draft, which has a much narrower apparent focus on the integration and utilisation of Consumer Energy Resources (CER). While this is an important consideration for pricing and regulation, the scope for this review must be much wider and address the fundamentals of what pricing and regulation must do to promote the interests of all consumers.

This review comes at a critical juncture for energy pricing. We have decades of experience of the current energy system, its regulation and pricing, and a substantial body of evidence of the poor outcomes that system has delivered for many consumers. We have a good understanding of the technological changes which our energy system is undergoing, and we have a more evolved understanding of the nature of essential services and how the way they are delivered can impact on the vulnerability of consumers¹.

We consider this a crucial moment to fundamentally re-examine the way energy, as an essential service, is provided, priced and regulated, and how important mechanisms (such as network tariffs and cost recovery) operate to support efficiency in the long-term interests of all consumers. The JEC strongly encourages the AEMC to be bold, ambitious and grasp this opportunity by setting terms of reference which can provide the platform for the comprehensive re-examination that is needed.

Purpose

The Draft seeks to set out the purpose for this review. While we agree a clear statement of purpose is necessary, the ambition and scope of purpose outlined in the Draft does not appear to set out a scope sufficient to meet the AEMC’s stated intent to be ambitious and focussed on the needs and values of consumers.

The purpose of this review must recognise the role of energy as an essential service increasingly fundamental to every aspect of people’s lives, and increasingly foundational to their health, wellbeing, prosperity and social participation. The purpose must be to examine what this essential role means for the way energy services are priced and regulated, and how the systems

¹ CPRC report for the Australian Energy Regulator: <https://cprc.org.au/wp-content/uploads/2021/12/Exploring-regulatory-approaches-to-consumer-vulnerability-A-CPRC-report-for-the-AER.pdf>

which underpin that role (such as network tariffs and cost sharing) should be structured to contribute to efficiently promoting the long-term interests of all consumers.

In order to fulfil this purpose, the terms of reference for this review must include an examination of the values and assumptions which have shaped and underpinned energy pricing, markets and regulation to date. It must be recognised that our current system of pricing and regulation was created intentionally through competition and regulatory reforms founded on assumptions about what they would deliver for energy consumers. This examination should consider whether those assumptions have been delivered, whether they still hold true, and how our experience has supported or contradicted those assumptions.

It must be recognised that the system we have now is not a given. The review should examine its successes and failures, consider the lessons of our experiences, and the opportunities afforded by new technology. The review should then assess what is required to ensure energy equitably supports the needs and expectations of all consumers, and design pricing and regulatory systems which can enable that. We don't consider the Draft adequately conveys this scope of purpose, and we recommend the draft terms of reference for this review be expanded and strengthened.

While we agree that efficient integration of CER should be a key consideration for this review, we are particularly concerned that the Draft appears to place excessive (exclusive) focus on this, rather than a more holistic, outcomes-focussed consideration of the role pricing should play in reflecting the values of the community and promoting the interests of all consumers in the equitable and efficient delivery of an essential service.

Comments on the draft

Reframing the adoption of CER

We agree with statements in the draft asserting the importance of consumer adoption of CER. However, we contend the context for this adoption and what it says about pricing is more important to consider. Consumer adoption of CER is an outworking of technological availability and a desire for cheaper and 'easier' access to a sustainable essential energy service. It is important to recognise this context. CER is a means to an end for both consumers and the system as a whole. That is, it is an enabler of more efficient, affordable and sustainable energy when integrated, regulated and utilised appropriately, not an end or objective itself. This is particularly important when considering that CER comes with potential impacts on equity, and important questions of the fair balance to be struck between individual and collective cost and benefit.

The need for a more explicit focus on equity

The framing of 'benefits' to consumers with and without CER in the Draft does not sufficiently scope the equity challenges to be addressed in determining the role of CER as part of a pricing and regulatory system that equitably meets the needs of all consumers.

It is possible for CER to be successfully integrated without 'benefiting all consumers' and delivering equitable outcomes in line with the needs and values of consumers. The Draft implies

that equity is delivered because consumers without CER will 'benefit' from a more efficient and cheaper energy system. While this is an objective of successful CER integration, it cannot be regarded as the major dimension of benefit delivering equity for consumers without CER, because:

- It is a 'benefit' compared against a hypothetical which cannot be measured. That is, consumers will only be able to be told what 'Would have happened' and how much more energy 'would have cost' had CER integration and pricing been less successful.
- Even if delivered, this is a 'benefit' experienced by all consumers (including those with CER) and, potentially one which can still involve unfairly inequitable outcomes being experienced by consumers without CER.

Enabling CER to make an optimum contribution to efficient and affordably energy for all consumers should be a key consideration for this review, but it cannot be regarded as the only outcome objective for consumers without CER.

We are further concerned that the characterisation of 'benefits' for those without CER are heavily dependent upon assumptions of consumer flexibility and behaviour change which are unlikely and unreasonable. Consumers without CER are already disadvantaged by inability to access CER. They are also most likely to be those facing other contributors to their vulnerability, such as their income, their housing and their health and wellbeing. Assuming 'flexibility' will deliver savings on bills for these people unreasonable assumes this is likely or possible without making them more vulnerable.

We content this perpetuates flawed assumptions which underpin the current energy pricing and regulatory framework. For instance, that it is consumers role to change behaviour to accommodate the 'needs of the system' and change in order to derive good outcomes for themselves. This review should be examining and challenging this assumption.

A more fundamental challenge

The Draft narrative frames the challenge as one of 'product offering'. This unreasonably narrows the scope of the review. The fundamental challenge should involve designing end consumer pricing and regulation which drives equity of outcomes for all consumers and reflects the essential role of energy. Part of this challenge is how to equitably resolve the balance between individual rights and benefits, collective costs, and equitable outcomes for all consumers.

At numerous points the Draft assumes that it is possible, appropriate and desirable for consumers to be incentivised or required to adjust their energy use. But how does this interact with the essential nature of energy and our experience and understanding of vulnerability? How much responsibility (and risk of cost and harm) should be placed on consumers by requiring or 'incentivising' them to attempt to change their usage in order to deliver fair outcomes for themselves and 'social benefits' through a more efficient system? How likely is this? And what are the equity implications of this assumption, particularly where it exacerbates the disadvantage and harm impacts experienced by those with neither CER assets, nor the ability to change their use?

The challenge for this review, which must be captured by the terms of reference, is to examine what responsibility consumers can and should have in ensuring good outcomes in their own access of an essential service, and what responsibility all consumers should have in ensuring efficient, equitable outcomes for all consumers. How can this be reflected and supported through pricing and regulation? And how should the tariff and cost sharing frameworks enable and support this efficiently?

Examining regulation of retailers and networks

The JEC agrees that an important aspect of this review should be to examine the regulatory frameworks governing and defining the roles of retailers and networks, and the assumptions which underpin that framework, as key aspects of the contribution pricing and regulation makes to consumer outcomes.

The current framework and arrangements were conceived on the assumption the most effective way of delivering efficient energy services to consumers was through a competitive retail market, disaggregated from networks which would be regulated as a proxy for effective market competition. These assumptions should be examined and considered. Have they delivered as expected? What issues has our experience indicated and what does that tell us about how pricing and regulation could work more equitably in meeting consumer needs and expectations?

Ensuring consumer needs, values and preferences are central

We welcome the AEMC's intent to put the needs, values and preferences of consumers and the community at the centre of this review. We strongly support engaging directly with consumers through robust deliberative engagement processes to augment the existing scope of data on consumer preferences and values. The JEC has significant experience with successful employment of deliberative processes, particularly in relation to energy consumers, and would welcome the opportunity to contribute to stakeholder oversight of a direct engagement program as part of this review.

In addition, we encourage the AEMC to draw on actual consumer experience over decades of the operation of the existing framework of energy pricing and regulation. The review should draw on evidence of inequity in actual consumer outcomes. It should also examine consumers 'revealed preferences', demonstrated consistently over years in their interaction with the energy system. The review should seek to examine what consumer behaviour tells us about the way consumers want the energy system to work for them, and how they expect it to be priced and regulated. The JEC recommend the terms of reference have the scope to examine consumer behaviour and outcomes as part of a consideration of their needs and interests, augmented by robust engagement to gain insight into their values and preferences.

Ensuring the scope is not unduly narrowed

Like other stakeholders we are concerned that the Draft sets out some intentions which would unduly limit the scope of the review and curtail its ability to deliver on the ambition required.

The JEC considers it necessary to be able to consider transmission as a key part of the network tariff and enabling architecture of the pricing and regulatory framework. Transmission is a

significant and growing contributor to the cost of energy for consumers and a growing contributor to inequity under the current pricing and regulatory system.

The Draft implies that issues being considered in processes currently under way will be excluded from the scope of this review. We disagree, and recommend the review be able to holistically consider all relevant parts of the pricing and regulatory system impacting outcomes for consumers. The review should not limit its scope or recommendations because they are being considered elsewhere, or to allow time to 'see what their impact is'. This review should consider all areas of relevance and make recommendations which may cut across (or potentially overturn) those arising from other processes.

We encourage the review to be bold in the scope of its recommendations. Unlike recent reviews, such as that undertaken in relation to metering, we encourage the review to question and consider all the assumptions underpinning the current approach to pricing and regulation of energy. It should be guided by the robust principles and objectives of the review, and make recommendations for the range of reforms which can ensure pricing and regulation of the energy system better delivers equitable outcomes for all consumers.

The JEC welcomes this review and commends the AEMC for initiating it. We look forward to working with the AEMC and other stakeholders to deliver on the ambitious intent for this review.