

Draft National Energy Equity Framework

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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 6500

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

- 1. Introduction and Summary2**
- 2. Equity in/through policy.....3**
- 3. Direct Response to Draft Framework3**
 - 3.1 Content and framing 3
 - 3.2 Better practice principles for more equitable policy 5
 - 3.3 Establishing common objectives, language, concepts 9
 - 3.4 Measuring inequity and impact of vulnerability 10
 - 3.5 Categorising response..... 10
 - 3.6 Community of practice 11
- 4. Appendix11**

1. Introduction and Summary

The Justice and Equity Centre (The JEC) welcomes the opportunity to provide input on the Draft National Energy Equity Framework ('the Draft Framework'). The JEC supports the intent to create a consistent, robust framework to drive more equitable policy and outcomes in energy. In addition to issues and recommendations raised in this submission, we support the ACOSS submission and its recommendations. In particular, the JEC strongly supports the recommendation for a more extensive, inclusive and transparent public process consulting with consumer and community stakeholders to develop of a robust energy equity framework.

Consumer and community advocates understand the essential nature of energy means the energy system often exacerbates existing inequities in our community. The market structure of our energy system and the technological transition it is undergoing also creates many new inequities in outcomes experienced by people. Engagement with decision-makers, policymakers, regulators and businesses, and an increasing body of evidence of the experience of people over the last decade, has helped develop a shared understanding of the increasingly crucial role of energy, and its impact on the experience of vulnerability, disadvantage and inequitable outcomes.

Developing a robust National Energy Equity Framework is crucial to improving outcomes in energy and ensuring decision-makers build an energy system which promotes the interests of all people in Australia. It must be seen as an opportunity to eradicate energy inequity and use the energy transition – and outcomes in energy – to improve social equity more broadly.

The current draft is not fit for this purpose. We have concerns regarding the process of its development and the lack of robust, transparent consultation with stakeholders. The resulting Draft lacks the required substance and ambition to fulfill its purpose, and we are concerned its current form risks perpetuating previous approaches or even leading to poorer policy outcomes.

In many areas the Draft contains approaches which are over-simplified, and appears to overlook the data and analysis provided in the course of the project which led to its development. We are concerned the Draft is unnecessarily narrow in its focus on the transition of the energy system and on 'hardship' (which itself is ill-defined). A more robust and objective conceptualisation of energy equity is required to achieve meaningful reform.

Consumer and community advocates are well placed to inform such work, having made considerable progress defining, identifying and understanding inequity, and developing robust recommendations for reform. Initiatives such as ourPower¹ and publications such as Powerless² provide a wealth of insights to understand inequity, as well as recommendations to address it. We have provided an appendix of resources embodying robust objectives, principles and approaches to implementing equity *in* and *through* energy policies to demonstrate what is required.

Our submission highlights the critical difference between equity *in* energy and equity *through* energy – both of which are crucial yet only the former is covered by the Draft Framework. We

¹ OurPower <https://ourpower.org.au/the-solution/>

² The Justice and Equity Centre <https://jec.org.au/resources/powerless-debt-and-disconnection/>

then comment directly on the Draft and highlight areas where ongoing consultation should focus on developing a more robust and effective framework.

2. Equity in/through policy

As an essential service which both embodies and creates inequities in outcomes for households, energy policy has a crucial role not only in directly influencing outcomes in energy, but also in using improvements in energy outcomes to address existing socio-economic inequities in the community. Consideration of equity can – and should – encompass both equity *in* energy policy and equity *through* energy policy.

Equity *in* energy seeks to ensure energy and transition policy is equitable. That is, that it does not itself embody or exacerbate any inequity. It is focussed on ensuring direct outcomes in energy are equitable and may specifically seek to address inequities *in* energy. For example, funding renewable energy schemes progressively through general revenue rather than through energy bills. Or by providing those with ongoing energy affordability issues with access to subsidised solar, or providing energy concessions or rebates on a proportional basis to ensure support is provided according to ‘energy need’.

Equity *through* energy is where energy policy is used to actively address or overcome existing inequities in the community. For example, targeting home energy upgrade supports and programs at cohorts experiencing disadvantage that is not necessarily directly related to energy. These are cohorts whose health, wellbeing and social and economic inclusion would be positively impacted by interventions in energy policy – for instance by upgrading the energy performance of their housing and appliances or providing ‘energy independence’ through participation in VPP schemes that may remove them from the retail energy market.

Both equity *in* and *through* energy policy and energy transition policy are relevant considerations for policy. The Draft Framework is limited in focusing more narrowly only on equity *in* energy. The JEC strongly recommends using development of the Framework as an opportunity to be ambitious in encompassing both considerations of equity.

3. Direct Response to Draft Framework

3.1 Content and framing

The JEC is concerned with some of the key content and poor framing in the Draft Framework, which could undermine scope for improved policy outcomes and may increase the risk of unintended consequences if the Draft were to be put into practice in its current form. We reiterate our recommendation for further consultation to address key aspects of the structure of the framework highlighted in this section.

Lack of vision or objective

The Draft Framework currently lacks an appropriately robust vision for energy equity and an overarching objective for the framework (and any policy which would be informed by it). As it stands the framework does not clearly establish what equity in outcomes looks like, and risks

contributing to poorly focussed policy. We recommend more robust concepts of equity, as outlined in section 3.3 of this submission. We have also provided an appendix with examples of how to design robust governance infrastructure including vision, objectives and guiding principles.

Inadequate principles

We do not consider the ‘better practice principles’ robust principles capable of adequately directing and informing energy policy, nor achieving energy equity. We are concerned these are overly vague and general principles of ‘good policy’ rather than specific, robust principles aimed at improving energy equity. We comment further on this in section 3.2 of this submission.

Inappropriate ‘common language’

The ‘common language’ outlined and the language used throughout the Draft includes terms which stakeholders have consistently highlighted as problematic, pejorative and contributing to poor policy outcomes. This includes:

- The term ‘hardship’. In the context of energy this term is subjective, often pejorative or even prejudicial and is already a substantial contributor to poor policy outcomes. Any language used to understand inequitable energy outcomes must be objective and able to serve as a consistent basis for action related to the objective of achieving energy equity – we highlight our submission in response to the review of payment difficulty protections provided in the appendix as an example. In any case appropriate language is a critical foundation for effective policy.
- Referring to being ‘at risk of vulnerability’. This fundamentally misunderstands that all people are vulnerable. An effective framework is about identifying and responding to the drivers and impacts of the **experience** of vulnerability. All people are vulnerable, the experience and impact of that vulnerability at any point in time may change according to structural, circumstantial or individual factors. This nuance is critical in ensuring the scope of policy is sufficiently broad to mitigate drivers of structural and circumstantial vulnerability, and address and overcome the impacts.

Narrow definition of energy inequity and equity

Building on our comments in relation to insufficient statement of objective and understanding of energy equity, we are concerned the definition of energy inequity/equity in the Draft is inadequate to serve as a basis for identification and measurement of success. A robust and objective definition and understanding of equity/inequity is crucial to the development of effective indicators and metrics of an inability to afford the energy required to sustain household health, wellbeing and social/economic inclusion. As we note throughout this submission (and demonstrate in appended material) concepts of energy equity/inequity must be grounded in affordability of energy required to support household health, wellbeing and inclusion.

Utility of models

In its current form, it is unclear how the models included in the Draft Framework could be meaningfully utilised to shape measures to substantively address energy inequity. We are

concerned the focus on ‘categorisation’ of interventions could end up being a largely academic exercise. If the purpose of this categorisation is to give a basis for setting objectives for policy and determining impact measures, then this should be more clearly explained.

Implementation of the community of better practice

The JEC supports the aim to build a ‘community of better practice’, which we understand to mean that good policy and practice is more consistently implemented to deliver more equitable outcomes. However, without some more concrete measures to set standards and requirements, and build robust systems to audit and implement policies, or means to ensure key aspects are developed and enacted, this risks being a motherhood statement without concrete impact.

3.2 Better practice principles for more equitable policy

The JEC considers these draft principles to be inadequate guiding principles for achieving energy equity. We are concerned that they appear to be vague, generalised principles of ‘good policy’ rather than anything capable of meaningfully shaping more equitable policy responses. We recommend the Department review the resources included in the Appendix for further insights into how best to design principles for energy equity – with particular reference to OurPower and our submission to the NSW Government Consumer Energy Strategy.

While we do not consider the draft principles appropriate to guide an effective framework, some of the contents of the draft principles could inform the implementation of a ‘community of better practice’. We provide direct feedback on each of the draft principles below.

Draft Framework Principle	JEC comment
<p>1. The driver or state of energy hardship to be addressed should be clearly defined.</p>	<p>While understanding the diversity of drivers of energy inequity is crucial to understanding its scope, it is not necessarily important to the design of effective energy policy aimed at improving energy equity. The drivers of energy inequity and experience of hardship are often complex, multi-faceted and include aspects outside of the energy system. It is unclear what the purpose of defining a particular driver or state of hardship seeks to achieve. It is often neither necessary nor helpful to focus on the driver of hardship, particularly where this may not be related directly to energy or may involve complex circumstantial and individual characteristics (that the person is a victim-survivor of domestic violence, suffers from mental illness and/or a range of other intersecting issues.) The JEC is concerned this principle may drive policy design that is both inappropriate and unnecessary – for instance, may encourage complex requirements to</p>

	<p>provide ‘evidence’ of particular hardship drivers (such as family violence, mental health issues).</p> <p>The qualifier to these comments would be circumstances where the intent of energy policy is to address or overcome the impacts of other socio-economic inequities. In this case understanding the driver of hardship could help identify opportunities where energy policy could contribute to better outcomes more broadly (for instance – using energy policy to improve outcomes for first nations communities, social housing residents or people with disability)</p>
<p>2. Policies and programs should be designed for scalability.</p>	<p>This principle does not relate to equity and would appear to be a principle of good policy broadly.</p> <p>While we agree that in general a policy should be sufficiently scoped to address the problem it has identified, we do not regard this as a particularly useful principle to improve equity. This principle may more suitably inform the ‘community of better practice’ rather than the guiding principles for the Framework.</p>
<p>3. Costs and benefits should be considered more broadly than the energy sector.</p>	<p>The JEC agrees that ‘equity <i>through</i> energy policy’ will require consideration of circumstances, benefits and outcomes outside of energy (such as health, housing – tenure, quality and affordability – social inclusion, First Nations justice, etc.) and the potential for improved energy policy to improve outcomes in these areas.</p> <p>However, we are concerned that considering broader ‘costs’ as a default may have the unintentional effect of complicating or even limiting policy action where the ‘external’ costs of a policy to improve energy equity are considered. That is, that energy policy measures would be curtailed, blocked or otherwise limited due to consideration of the potential to impose or increase ‘non-energy costs’.</p> <p>The cited example of household energy efficiency improvement policy - if the policy is deemed to potentially increase costs for builders, property owners, property managers, or even retailers/generators (through reduced income) and these costs are considered in full, and with equal</p>

	<p>weight, there is a real danger this will involve unnecessary complexity and lead to poorer energy policy and less equitable outcomes. More nuance is needed to ensure this principle is appropriately targeted at a wider consideration of the benefits of equity-improving energy policy. This may include limiting consideration of costs to those which are directly impacted, and ensuring an appropriate weighting in the consideration of costs, relative to benefits.</p>
<p>4. Friction and burden should be reduced as much as possible for target households</p>	<p>The JEC supports the concept that policy should be designed according to robust principles and criteria aimed at optimising the impact and effectiveness of policy. However, we are concerned that the criteria cited are not robust, not comprehensive and in some cases may actually work against good policy. The eligibility criteria and focus on ‘identified need’ according to the models presented in the Draft are overly complicated, sometimes contradictory, and may result in policy that is more restricted or narrowly focused than is practical or desirable.</p> <p>For example, whilst we support easy access to programs or initiatives, ‘auto-enrolment’ is only suitable in certain circumstances and risks disempowering households (e.g. recent issues with automatic transfers onto time-of-use tariffs).</p> <p>Reduced friction and measures for automation must come with robust consumer benefit requirements. That is, these measures can only be used to confer a benefit or leave people better off (where the demonstration of benefit must not be contingent on particular consumer behaviour).</p>
<p>5. Inclusive framing should be used in all policy and program communications</p>	<p>The JEC agrees that framing and language should be inclusive, non-discriminatory, non-normative and as unbiased (and unbiasing) as possible. We note that the framework itself utilises language and framing which we would regard as inappropriate and which fails on this principle.</p> <p>As discussed in section 3.1, referring to ‘hardship’ has been demonstrated to be problematic, not only because it is a subjective term, but also because it has been demonstrated to be a term which people (even those in need) do not self-identify with, and</p>

	<p>which undermines an inclusive identification of those in need by both energy businesses and decision-makers. Language and framing should seek to be as 'neutral' and objective (and linked to the actual experience of the person) as possible.</p> <p>Language that is intended for policy purposes should prioritise accuracy, objectivity and effectiveness over principles of 'simplicity' which may be more relevant for public facing documents.</p>
<p>6. The strategic context should be considered</p>	<p>The JEC agrees with the principle that strategic context should be considered, and that policy should seek to optimise alignment with other social, economic and environmental priorities which are relevant.</p> <p>Our submission to the NSW Consumer Energy Strategy (included in the appendix) provides detailed examples of how this can be considered and achieved.</p> <p>This principle should be strengthened to more clearly and robustly direct policy-makers beyond 'consideration' of strategic context, to ensuring consistency and strategic coherence. This could include a principle that policy must demonstrate alignment and consistency.</p>
<p>7. Evaluation approach should be incorporated into the design of the policy or program from the outset</p>	<p>The JEC supports the principle that clear targets and indicators should be set and incorporated into policy and programs from the outset, and that these indicators should be meaningfully connected to the objective of the policy. This highlights how critical it is to ensure definitions and objectives are capable of providing the robust foundation required. More importantly, targets and indicators should focus on outcomes for people as opposed to other aspects which may be achieved without meaningful impact on energy equity.</p> <p>For example, regulators' current practice of energy retail monitoring focuses on monitoring plan switching and the number of active retailers as measures of market health (and assumes outcome result), rather than focusing on people's actual energy bills and what outcomes are being achieved</p>

	through switching and the availability of retailer choice.
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3.3 Establishing common objectives, language, concepts

3.3.1 What is energy equity?

The conceptualisation of energy equity in the Draft is fundamentally inappropriate and inadequate to be an effective basis for the framework. Equity cannot be regarded as a ‘benefit’ and the definition of equity cannot be framed such that determining its existence can involve subjective assessment. Equity is an outcome, and the definition of equity (as an outcome) must be grounded in the purpose energy serves for people. It must be structured so that it is capable of being objectively assessed and is able to inform the measures to achieve it. This also allows it to be a robust means for consistently assessing inequity in energy outcomes. The JEC recommends a more objective and robust conceptualisation of energy equity and vision for the Framework is:

Energy equity exists where all people can affordably and dependably access the energy they need to sustain household health, wellbeing and financial and social inclusion without impacting their ability to afford other essential supports to household health, wellbeing and inclusion.

As discussed in section 2 of this submission, the scope of energy equity in the Draft (“energy equity exists where all consumers can fairly access and benefit from the energy system”) only includes equity *in* energy policy, not equity *through* energy policy. By adopting a more robust conceptualisation of energy equity, as suggested by the JEC, the Framework will better facilitate equity outcomes in and through energy policy by more effectively highlighting the health, wellbeing and inclusion outcomes energy could be used to influence.

3.3.2 The ABATE model

The JEC is not convinced of the utility of the ABATE model, beyond building a broad understanding that ‘hardship’ does not present in a single consistent way, and that a range of circumstances people experience should be regarded as ‘hardship’. We are concerned that reference to ‘Hardship states’ may encourage a focus on circumstances and cohorts of people rather than the outcomes they experience and risks creating a hierarchy of worthy/unworthy people or building in high bars for evidence and proof of circumstances that would be both concerning and ineffective.

The hierarchy has an academic utility but the ‘hardship states’ are arguably artificially separated. These are only useful to the point that they provide an explanation that experience of hardship is wider and more diverse than may otherwise be assumed by decision-makers, but we caution against an assumption that people are (or can be) discretely categorised into these states as targets for policy.

The categorisation of ‘states of vulnerability’ is also somewhat academic, and likely to be most useful in demonstrating that vulnerability is experienced by a much wider population than may be assumed. When designing policies and programs that will alleviate or eradicate energy inequities,

it is more important to recognise that all people are vulnerable to some extent and that at any point in time there are a range of factors (structural, circumstantial and personal) which determine how much anyone experiences the impacts of their vulnerability. We again caution against any use of these ‘vulnerability states’ as a practical tool to categorise potential recipients, particularly where it may narrow the focus of policy. For instance, using the states to prioritise could lead policy makers to focus more narrowly on those with most acute vulnerability, rather than address broader market design issues which may be drivers of vulnerability across the population at large. Both are required.

Finally, there are broader equity considerations beyond ‘hardship’, and the model does not appear to canvass actual indicators of disadvantage.

3.4 Measuring inequity and impact of vulnerability

The JEC supports the Framework measuring the full scope of inequity and the impact of vulnerability throughout the community. As with the ABATE model, we are not convinced of the adequacy of the DIO model in its current form to perform its stated function. While the current model goes some way towards categorising some aspects of ‘hardship’, it is another example of the Draft Framework too narrowly focusing on one aspect of equity in policy, rather than the more holistic and effective encapsulation of equity in and through energy policy.

If the DIO model is revised and retained in the next version of the Framework, we recommend that macro, meso & micro drivers of hardship/vulnerability be replaced with structural, circumstantial and individual contributors to inequity, with the understanding built in that these are not clearly separate or distinct. The value of thinking about ‘drivers’ or contributors to inequity in the outcomes people experience in and through energy policy is not to assign cause (or even worse, request evidence) but to identify which drivers may impact a larger cohort versus those which may be more individual.

3.5 Categorising response

The JEC supports the Framework including prevention, support and relief strategies for household experience of energy inequity. Effective strategies for minimising or eradicating energy inequities will likely require a combination of preventing, supporting and relieving. However, unnecessarily delineating between the three could result in less than optimal outcomes.

Additionally, this model narrowly focuses on ‘hardship’, which does not encompass the full scope of inequity present in energy. Without revision there is a danger that it encourages responses to address (preventing, supporting or relieving) a much narrower experience than should be envisaged by a framework intended to support energy equity.

The current PSR model draws upon a flawed understanding of ‘vulnerability’ in energy, as discussed in section 3.1. All people are vulnerable, it is the experience of the impact of vulnerability or disadvantage that is a more useful framing than someone ‘facing’ or ‘becoming’ vulnerable.

The JEC recommends the PSR model be reconsidered when revising the next version of the Draft Framework.

3.6 Community of practice

As discussed in section 3.1 of this submission, the JEC supports the aim of a ‘community of better practice’, however the Draft Framework does not provide sufficient detail on how this will be implemented. It is not clear if the appended material – particularly the better practice guide to energy equity – is intended as this detailed element. This should be clarified in any further work. Additionally, we consider some of the content in the ‘Better practice principles’ could be more appropriately located and more usefully inform this section of the Framework.

4. Appendix

This appendix includes references to material we consider relevant to consideration of policy equity and the development of a consistent policy framework. We have provided a short description of the key relevant material for each.

Powerless

This overview report of our regular research into energy and water payment difficulty, debt and disconnection provides important evidence and explanation for the scope of equity issues faced by people, and demonstration of where and why existing policy approaches may be failing – along with recommendations for more effective policy. Of particular relevance are the importance of measures to avoid the experience of the impacts of vulnerability, avoiding the dangers of relying on ‘evidence’, the need for overlapping layers of support, and the interconnection of energy equity issues with wider socio-economic issues (such as housing affordability, income, and mental health)

<https://jec.org.au/resources/powerless-debt-and-disconnection/>

Joint submission on protections for future energy services

This joint submission discusses the essentiality of energy and the implications of essentiality for protections, policy and regulation. The submission also contains detailed recommendations on vision, objectives and principles for assessing and designing protections and assistance measures intended to mitigate and address energy inequities.

<https://jec.org.au/wp-content/uploads/2023/02/23.02.15-Joint-submission-to-the-AERs-Review-of-consumer-protections-for-future-energy-services-13-Feb-current.pdf>

Joint Submission to AER review of payment difficulty protections in the NECF

This joint submission contains relevant work in defining the ‘problem’ of inequity and payment difficulty in energy in a way that is objective and based on outcomes for people. This is relevant to the question of how energy inequity/equity must be defined in order to be an effective and robust basis for a policy framework.

<https://jec.org.au/wp-content/uploads/2024/07/24-07-05-Joint-submission-to-AER-review-opf-payment-difficulty-protections.pdf>

Submission to NSW DCCEEW on Consumer Energy Strategy

This submission provides an example of a comprehensive approach to setting objectives and principles which embed equity (both in and through policy) and demonstrate how those principles should translate to the formulation of policy. It outlines how structural, circumstantial and individual factors relate to this and how policy should respond. We consider this a demonstration of the issues and concerns we have raised with the draft framework.

<https://jec.org.au/wp-content/uploads/2024/03/24-03-01-Submission-to-NSW-Consumer-Energy-Strategy-for-households-consultation.pdf>

OurPower framework for decision making

This is a comprehensive community-derived framework for considering equity in energy policy decision-making. It demonstrates all aspects of the objective and principles based approach to decision making centered on equity in and through energy policy and the transition. We cite this as an example of existing community stakeholder work in this space and demonstration of why a more robust, public consultation on an equity framework is required.

<https://ourpower.org.au/the-solution/>