Justice and Equity Centre

Submission to IPART Monitoring the Retail Electricity and Gas Markets in NSW

19 September 2024

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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.

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

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1. Introduction

The Justice and Equity Centre (JEC) welcomes the opportunity to respond to the Independent Pricing and Regulatory Tribunal's (IPART) consultation paper on Monitoring the Retail Electricity and Gas Markets in NSW (the consultation paper).

IPART's role in monitoring the retail electricity and gas markets provides an important opportunity to assess energy outcomes for NSW households. It is also an opportunity to identify and understand emerging issues and consider recommendations to inform NSW Government policy and improve outcomes for NSW households at a critical point in the energy transition, and amidst a time of cost-of-living crisis.

We encourage the NSW Government to enable IPART to seek any information they need to effectively assess outcomes for NSW households.

2. Consideration of prices, competitive dynamic and consumer participation

The JEC welcomes IPART's examination of prices, competitive dynamics, the participation of households in the electricity and gas markets, and the outcomes achieved by all households. However, there are some important qualifiers and considerations required in IPARTs assessment of available data and information in order to render it useful. For example:

- Comparison of numbers of consumers on standing and market offers is not meaningful. The Australian Competition and Consumer Commission (ACCC) found[1] that while standing offers should be no higher than the Default Market Offer (DMO), 47% of consumers were on an offer with an annual cost exceeding the DMO. Tracking standing offer numbers relative to market offers assumes an inherent difference, and the superiority of market offers. This is demonstrably not the case, due to a number of well-established factors relating to retail contracting practices and the lack of transparency of the 'actual' conditions of consumer contracts. In any case, there is a wide range of offer conditions experienced by households, and many recognised as on market offers have poor conditions and relatively high prices compared to consumers on standing offers

- An examination of publicly advertised offers on Energy Made Easy (EME) cannot indicate what offers NSW households are actually accessing, can actually access, or what they are actually paying. Assessment of offers on EME should be qualified by recognition that:
    - Many advertised offers are not actually available to some (or any) consumers – with no guarantee that advertised offers are actually accessible. There is no requirement for retailers to demonstrate that consumers are actually accessing and on advertised deals.
    - There is evidence of people identifying offers from EME and being placed on different deals on contact with the retailer. This includes being placed on completely different deals (ie with different names and conditions), or being placed on a deal with the same

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name but different terms (ie. different pricing structure). Even if a consumer does identify and access a deal, the conditions can rapidly vary. This includes rapid increases in prices and changes to the balance between daily and usage charges.

In a recent article, CHOICE documented a number of practices which demonstrate material issues with assuming EME offers meaningfully represent likely or possible outcomes for consumers.

- Switching rates are not a robust proxy for good consumer outcomes. Switching offers does not necessarily mean that a household secures a better (or even good) deal, or even that they are 'engaged'. Switching figures include when people move house even if they stay with the same retailer, but do not include where households seek a better offer with their existing retailer. In any case, switching rates do not track outcomes, and reports over a number of years have indicated issues with consumers successfully identifying better offers. As outlined above, there are also issues with retaining any good terms which can mean that consumers who have not re-assessed after as little as three months, are likely to be on a poorer deal than necessary.

- Number of retailers is not a good proxy for competitive dynamism where the market structure itself allows (and rewards) poor retailer practice. A lack of transparency of actual offers accessed by consumers, and the absence of robust defaults, results in a structural information and power imbalance between retailers and consumers which renders consumer choice less effective as a market discipline. In any case, a greater number of retailers does not equate to greater actual choice for consumers (particularly when most switching occurs between the 'Big 3' retailers). The entry or exit of retailers (who are usually small) makes little or no impact for most consumers.

- Averages of retail offers disguise cohorts of households who are on worse offers and those who are on better offers (which are cross subsidised by the households on worse offers). Again, averages also assume consumer outcomes are linked to available offers.

- Current indicators of payment difficulty such as debt, disconnection and being in a hardship program, do not capture the significant hidden payment difficulty NSW households are experiencing, such as:

    - Going without the energy needed for wellbeing in order to lower energy bills;
    - Going without other essentials such as food and medical needs in order to pay an energy bill on time; and
    - Shifting energy bill payment difficulty elsewhere such as by using credit products (eg Buy Now Pay Later) and/or borrowing money from friends or family to pay the bill.

- Navigating the energy retail market and choosing a better offer is more difficult for some households than other households. Having to switch regularly in order to get a fair deal has a particularly detrimental impact on people experiencing digital exclusion, and people who have limited English skills and people who are time poor. The Australian Energy Regulator's (AER) work on consumer vulnerability also indicated that 47% of the population have literacy and numeracy capability insufficient to navigate the energy market and successfully understand

and access deals which may be in their best interests.

- When analysing what households could save if they switched to one of the lowest offers, it is important to put this in context:

    - As noted, this assumes those advertised lower offers actually exist, are actually accessible to all consumers (particularly those on higher offers – in the case of those with previous debt or payment difficult issues, this is not likely to be the case), and will actually be provided to the consumer at sign up (rather than an alternatively structured or priced offer).
    - That retail practice is to change and/or rapidly escalate prices, often starting as soon as three months after sign-up. Assuming annual savings according to advertised prices is not likely to represent the reality of consumer experience, as offers seldom last unchanged for a year.
    - The nature of pricing in the retail market means that the lowest prices accessed by some are cross subsidised by the higher prices being paid by the majority. By definition it is not possible for all (or most) consumers to be on the lowest prices (or at least not for long) as these would change the balance of cost recovery for retailers, and result in retail price changes.

  Assuming 'potential savings' through a survey of available lower priced offers makes an unreasonable and unrealistic assumption that any (or all) consumers can actually access and retain the lower offer and achieve the assumed outcomes.

- Complaints data needs to be assessed in the context of its limitations. As IPART is aware, complaints data only helps understand issues experienced by the relatively small proportion of consumers who have the awareness, capacity and confidence to make a complaint.

- As pricing structures get more complicated, it will get even more difficult for households to determine what a good offer is, let alone get the offer.

We look forward to IPART's future analysis comparing bill data collected through the Social Program for Energy Code (SPEC) with current offers on EME, noting that there have been some delays in publishing the SPEC data which impacts its use in this Review.

However, as with the data issues outlined above, SPEC data must also be considered in the context of its limitations. Although the SPEC data is a large data set and is very valuable, it cannot provide a complete and accurate picture of actual bills being paid across the spectrum of NSW households. In particular, it should not be assumed that rebate recipients are a fully indicative 1-for-1 proxy for either consumers broadly, or low-income/vulnerable consumers. For example, the JEC found only 7% of respondents in the *Powerless* survey were on the Low Income Household Rebate (and even lower rates of the other rebates) indicating that there is a significant cohort of 'vulnerable' consumers who are not receiving or eligible for rebates.

It may also be the case that given retailers must report against rebate customers, and that retailers are expected to ensure rebate recipients are on the retailers' best offer, retailers may be more likely to put these households on better offers than would be indicative of those experienced more broadly. We do not highlight this to invalidate the use of SPEC data, merely to note it is necessary to consider that data in the correct context.

The JEC agrees with IPART's 2023-24 Retail Energy Monitoring Report that additional transparency regarding consumers experience, and outcomes are necessary to understand whether the market is functioning as intended, but, from the JEC's perspective, it is more important to know whether it is operating to deliver good outcomes for all NSW households.

There is a critical lack of data available for IPART and other regulators to have a clear understanding about what outcomes energy consumers are experiencing. The JEC recommends IPART collect data on:

- Offers actually available and accessed by consumers.
- More qualitative data, to understand experiences interacting with the retail energy system; and
- Data on the energy transformation, electrification, Consumer Energy Resources (CER) and green products.

More information can be found in our submission to the Australian Energy Regulator's (AER) (*Retail Law) Performance Reporting Procedures and Guidelines – Issues Paper* and our submission to the *Draft Guideline.*

3. Current and emerging consumer issues

In considering current and emerging consumer issues, the JEC highlights the need to assess those experiencing energy payment difficulty, accumulating debt and in danger of disconnection. We consider these to represent crucial 'market outcome indicators', particularly to the degree they are caused or exacerbated by poor retail practices, market and service inefficiencies or failures of market design.

The JEC recently published its research report, *Powerless*, examining debt and disconnection issues for NSW households. It found that the fear of disconnection, the threat of disconnection and the experience of disconnection creates and compounds issues for households, adding anxiety and additional expense to the stress and cost of the experience of payment difficulty. Disconnection (and threats of it) also impact the relationship with the retailer, undermining the trust crucial to effectively manage debt repayment and payment assistance.

The following insights are drawn from our research.

Energy affordability a significant issue

This review of retail energy markets comes at a time of increased pressure on household budgets as cost of living and housing costs have increased and savings diminished.

The research shows that households who go through a disconnection usually do not get assistance that improves their circumstances or helps them avoid future payment difficulty. Households who experience payment difficulty but do not get disconnected are still impacted by the stress and threat of disconnection and make worrying sacrifices to avoid a disconnection or notification.

Payment difficulty then impacts other essentials and results in sacrifices not visible to providers or regulators. It is often a compounding cycle.

Households impacted by payment difficulty

- Groups often associated with experience of particular structural disadvantage continue to experience higher rates of disconnection and risk of disconnection. This includes people with a disability, First Nations people and people on low incomes (including people in paid employment).

- Compared to previous rounds of research, we see higher rates of mental health issues disclosed, as well as higher rates of family violence. This has significant implications for how debt is recovered.

- People from higher income groups are increasingly represented in payment difficulty. More working families and people with middle incomes and mortgages are being impacted.
    - The main income for 72% of disconnected households came from a wage or salary (full time or part time). This is the highest this has been since we started this research in 2004.
    - There has been a rise in disconnection of households with mortgages: 31% of disconnected households had a mortgage compared with 18% in 2018.

- Disconnected households are likely to have children living in the home. 57% of households disconnected had at least one person under 18 years old. This is concerning given the impact lack of access to essential services can have on young people's health, wellbeing, and social and educational opportunities.

- Most survey respondents were middle aged, but there was an over-representation of young adults impacted by payment difficulty. This is not to say that older people are not experiencing payment difficulty and they may not have completed the survey for a number of reasons. However, it may indicate that housing affordability is impacting energy affordability since older people are more likely to own their homes outright.

Causes of payment difficulty

The research indicates there are a range of interacting, structural, circumstantial and personal issues that contribute to payment difficulty. Existing vulnerability places some households at greater risk of payment difficulty, but as outlined above, the experience of payment difficulty is not confined to those experiencing structural vulnerabilities. In considering payment difficulty, it is important to note:

- Energy is often part of wider household affordability issues.
- Cost of living pressures, including increased costs of housing, require some households to stretch every dollar and manage competing essential expenses according to 'urgency' of payment.

- The energy bills are often higher than expected. This includes through retail pricing changes, appliance failure, or other circumstances out of the control of the household.
- Households are juggling multiple competing expenses and unpredictable income.
- There are often ‘big events’ (such as relationship difficulties, illness, eviction, accidents, car or house damage, injury etc) which upset a delicate (or precarious) balance to tip households over the edge.
- Estimated bills make dealing with bills harder.

New developments arising in this round of research include:

- 37% of all the 2023 survey respondents reported they had been impacted by a natural disaster in the last two years. For those who had experienced disconnection the impact of natural disasters was even higher (43%). The numbers are surprisingly high and highlight the importance of more robust and long-lasting supports for people impacted by natural disasters, particularly as we expect more natural disasters as the climate continues to change.

- 17% of households indicated that unusual or extreme weather impacted on their energy use. This question helps understand the ‘day to day’ impact of weather on people’s lives, and potentially the impact of climate change on energy affordability. Uneven weather is likely to make energy bills higher and less predictable as people respond to hotter, colder and wetter weather with heating or cooling. Added to this is that 40% of respondents believed they have a home that is hard to heat and 38% of people believed they have a home that is hard to cool. Further, 53% of respondents rent their home which significantly limits their ability to make changes to their home to improve thermal performance and reduce energy bills

Inadequate assistance provided

Despite the apparent availability of supports, it is not actually that easy to get assistance or protections.

Issues with accessing government supports

- **Rebates**: There can be no assumptions that rebates are reaching the people who need them, or even the people who are eligible. The JEC’s research found that only 7% of households who were experiencing significant payment difficulty were accessing the main NSW energy rebate, the Low Income Household Rebate. The research found significant issues with awareness, access (including rebates ‘slipping off’ energy accounts) and major gaps in eligibility. There is an intimate relationship between housing and energy use. Few households who owned their own home outright appeared to qualify for the JEC’s research, yet rebates are more targeted at older people, who are more likely than younger people to own their own home outright and to live in households with smaller numbers of people, which makes managing energy usage easier.
- **Energy Accounts Payment Assistance (EAPA):** There can be no assumptions made that EAPA is reaching the households that need it. The JEC’s *Powerless* research found that only 3% of respondents who were experiencing significant payment difficulty accessed EAPA. (Noting that for the 3% that did access EAPA, it was generally not enough to avoid their payment difficulty).

Retailer assistance is also difficult to access

There is currently a distinction between people receiving hardship support (who may be on a payment plan) and those who are just on a payment plan. The conditions required of payment plan support are different between these circumstances, with wide retailer discretion. 'Non hardship' payment plans tend to be treated more as debt recovery tools than consumer supports.

The JEC does not consider the distinction appropriate or practical. people who cannot afford to pay their bills (which covers everyone in our research) should be considered as needing some form of hardship support, where retailers are required to 'have regard to the customer's capacity to pay'.[2] The research provides evidence that people are often put on unaffordable payment plans which exacerbates their payment difficulty in other areas of their life.

Retailer assistance beyond payment plans (even in hardship programs) appears to be rare and ad hoc. Retailer assistance seems to be designed more to address short term payment difficulty and have people 'successfully exit'. But our research shows people are often in circumstances which means their payment difficulty is long term or they are unlikely to be able to move onto a more sustainable footing in the short term (if ever).

Payment plan and hardship data should be seen in this context, rather than taken as pure indications of the number of people 'getting support'.

The current system fails households

The research revealed that 83% of respondents who experienced payment difficulty in the last two years are still grappling with ongoing payment difficulty.

Current indicators of payment difficulty are not effectively tracking the problem or informing regulatory or policy reform. Focussing only on debt and disconnection in indicators means that retailers and regulators are unaware of:

- Those habitually 'under consuming', or going without the energy needed to sustain health and wellbeing, and social and financial inclusion. The costs of this are 'externalised', shifted elsewhere, including to the health system.
- Those going without other essentials, such as food and healthcare. The costs of this are shifted elsewhere, including to the health system.
- Those utilising pay advance and other credit products, such as Buy Now Pay Later (BNPL) to defer payments and break up large bills into manageable amounts. This shifts debt outside the protection of the energy sector. Some retailers are actively promoting BNPL products as a way to pay their bill.[3] (The JEC considers that paying an energy bill by a BNPL product should trigger an outreach offering assistance by the retailer).
- People effectively deciding to give up an electricity connection because they cannot afford to have it.
- The numbers of people served by exempt sales and embedded networks and their experience of energy payment difficulty.

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2 Rule 72(1)(a)(i).

3 For example Tango Energy lists BNPL products Deferit and HelpPay on their website, alongside the more beneficial payment method Centrepay. See https://www.tangoenergy.com/make-payment (accessed 12/9/24)

- Payment difficulty with emerging energy service products and structures.

As a result, people suffer and the costs of not being able to afford energy are shifted elsewhere. In its Game Changer work, the AER commissioned consultants to estimate the impact of the cost of vulnerability to be in excess of $645 million annually.[4] This does not include government rebates and supports and does not include the substantial externalised costs such as those outlined above, which are likely to be much larger.

Retailers are not required to report to the AER about how many notifications of disconnection they issue (reporting of this is required in Victoria), only how many disconnections are completed. The *Powerless* research found that there is harm caused by notification of a disconnection, even if the disconnection is avoided. In fact, notified households reported experiencing even more stress than disconnected households. It appears that the stress comes not just from the experience of disconnection, but from the anticipation of it. We have evidence that threats of disconnection are actively employed by retailers as a means to ensure people agree to payment plans that are not affordable. That is, they are used as a threat to drive debt recovery.

Retailers consider disconnection threats to be a way to elicit a response from households (generally to make a payment), which comes with it the assumption that households can afford to pay their bills but choose not to. *Powerless* showed that in addition to the response of stress and cutting back on energy use, these households delay or miss other important payments; cut back on buying food/groceries or accessing a foodbank; and borrow money from friends/family.

Even if completed disconnection rates are low, this does not capture the harm that disconnection causes.

For detailed information about payment difficulty and where the NECF protections are failing, please refer to our *Powerless* research and our joint submission to the AER's *Review of payment difficulty in the National Energy Customer Framework.*

Ongoing problems with retail choice and consent

The JEC is concerned the current retail market presents widespread evidence of market design and market failure, with material impacts for many (if not most) consumers. In particular we are concerned about a range of issues we have characterised as a fundamental failure to deliver meaningful choice and consent for NSW households. In addition to issues already raised, this includes:

- Retail practices which undermine meaningful scope for consumers to identify an offer that suits their needs and effectively choose it. We noted earlier issues with public offers not actually being available, offers not being made publicly available, selected offers not actually being provided at the point of sign-up.

- Involuntary changes to prices after the point of sign-up, including raising prices after sign-up, changing price balance after sign-up to erode the benefit of consumer behaviour, and mismatching contract and 'benefit' periods allowing default to more expensive/poorer terms.

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Explicit informed consent is required to be put on a better offer but retailers have almost unlimited scope to leave consumers 'worse off' with little more than advance notice.

- Well established issues of retailers re-assigning consumers to different tariff structures (including time of use (ToU) and demand tariffs) with no/little notice. This violates the reasonable understanding of consumer choice or consent – often to significant consumer detriment.

- Ensuring a household is on a fair deal is a significant burden for many households, even where they have the skills and language capacity, since it is also a time-consuming activity.
    - The effect of the better offer requirement on bills will need to be monitored, especially for people on energy rebates now that retailers do not have to proactively contact them to ensure they are on their best offer.
    - Households with low digital and/or English language skills are less likely to access EME.
    - At Endeavour Energy community tariff awareness focus-group sessions, the JEC observed that most participants were not aware of EME. Of those who were aware, some found it confusing, others found it helpful. In particular, we also observed that young people in share houses are largely unaware of EME and tariff types. This is problematic given the payment difficulty that young adults are experiencing, as described above.

- Energy Consumers Australia (ECA) reported that most people do not consider switching retailers as a way to save money.[5] Given retail practices erode or eliminate benefits soon after sign-up, we consider this a rational conclusion.

- There have been reports of confusion around retailers having the same name for a retail offer, but having different pricing structures. We encourage IPART to investigate this issue further. Above we have noted the CHOICE research where cases of this were documented publicly.

As raised in our letter to IPART 9 November 2023, fees can significantly add to the actual cost of energy, particularly impacting households on lower incomes, who can least afford these. The ACCC found that conditional discounts offer little or no benefit for people who can make the conditions for payment but punish those who cannot with higher prices.[6] These are usually people on lower incomes who juggle expenses and cannot pay on time.

We look forward to IPART's further monitoring in this area, in particular analysis of which households are impacted (and how this effects their ability to afford the energy they need) as well as circumstances where multiple fees are applied to bills.

See below our response to household responses to changing tariff structures.

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Improvements to pricing protections, but more needs to be done

Positive changes were made this year as part of DMO 6 which will have a more material, positive impact on energy affordability at a critical time. However, the DMO is still intentionally set at an inefficient price in order to drive 'switching behaviour', and does not apply to the categories of consumers who would benefit from accessing it, including:

- All those who request it.
- All those whose offer (or the material conditions of their offer) has expired.
- All those moving into a new property.
- All those who have not otherwise selected an offer.
- All those who would be better off on a flat-price DMO.

More substantive changes to the purpose and implementation of the DMO will be required to benefit consumers in the long term. These are outlined in our submission to the AER on the DMO.

Problems understanding energy bills and energy use continues

Despite the implementation of the *Better Bills Guideline*, there continues to be confusion about billing and lack of transparency about pricing, with concern about high energy prices, distrust of retailers and a belief that prices only ever increase.[7]

At Endeavour Energy community tariff awareness sessions, the JEC heard that some households:

- Are taking advantage of the 'better offer' notification now required to be on bills.
- Found the average household energy use comparisons useful, even though this is no longer required to be on bills.
- Are confused by the lack of consistency of terms on bills between retailers, and several expressed not understanding why there were so many different retailers and so many different plans/products for essentially the same thing.

The JEC's *Powerless* research also found that there was also a lot of confusion around energy bills and a need for simple and trusted information about healthy ways to manage energy usage.[8]

We recommend bills be considered standard products and required to provide standardised information in standardised format.

Energy transition issues

Standards for new CER products and standards needed

Robust standards are needed for consumer confidence in new CER products and standards to ensure take up. The JEC recommends the NSW Government work to identify standards and

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[7] Energy Consumers Australia, *Energy Consumer Sentiment Survey*, June 2024; Energy and Water Ombudsman NSW, *Complaint Update Jan-Mar 2024*; The JEC observations at Endeavour Energy community tariff awareness sessions.

[8] See pages 29-30.

compliance issues in CER in NSW and taking a whole of government approach (in conjunction with NSW Distribution Network Service Providers and Accredited Service Providers) to implement a plan to raise standards and enforce robust compliance. More information about this can be found in our submission to the NSW Department of Climate Change, Energy, the Environment and Water's (DCCEEW) *Consumer Energy Strategy: Households.*

Delays and distrust with the smart meter roll out

It is crucial that we have a smart meter rollout that enables better usage of the energy system as we transition to a zero-carbon energy system. However, to date there has been confusion and distrust of smart meter roll-out. This is at least partly caused by involuntary tariff change, as discussed below. Other NSW consumer issues with the smart meter roll-out include:

- Lack of cost transparency for meter installation.
- Lack of transparency of cost recovery for metering services, and potential for cross-subsidy.
- Lack of visibility on associated remediation costs resulting from a meter change.
- Lack of visibility of the use of meter data and services by retailers and their metering agents.

Widening gap between advantaged and disadvantaged households continues

The energy transition continues to increase the gap between households who can reduce energy use in healthy ways and those who cannot.

The costs of the transition continue to be 'on bill' which disadvantages households (particularly large households) who cannot reduce their energy use (in healthy ways) by accessing thermally efficient housing, energy efficient appliances and CER, such as solar and batteries.

The NSW Government ended the Appliance Replacement Scheme but this has not been replaced with a similar scheme to help households on low incomes (or facing other disadvantages) to access more energy efficient appliances. Upfront cost requirements are likely to act as a barrier to participation in the NSW Energy Savings Scheme (ESS). This scheme has little options for renters to benefit from.

Low income and rented households risk being left on the gas network as more advantaged households switch to efficient electrification. Costs for the gas network will be spread across a smaller customer base, leaving disadvantaged households worse off. For households who can otherwise go electric, but are not on high incomes, large gas abolishment fees can be a deterrent to completing electrification.

We have provided commentary and recommendations to the NSW Government review of the ESS and Peak Demand Reduction Scheme (PDRS),[9] which may be relevant to expanded IPART monitoring.

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[9] This can be provided on request.

Rental reforms required

People living in rented homes are particularly vulnerable to missing out on being part of the energy transition with limited ability to access energy efficiency, CER and to electrify. Issues to consider include:

- Implementing bans on no grounds eviction is a good precursor for the introduction of minimum energy efficiency standards needed to ensure rented housing meets basic health needs and improving the management of energy use.

- Where renters do have solar, they may not be benefiting from the energy cost reductions/payments, and even where they are, are often not getting the most out of their systems as there is no education or handover process upon moving into the property.

- Whilst the NSW Government is trying to design a 'solar for renters' project, it seems to be largely stuck at 'solar for apartments' with no real mechanism for getting benefits to renters. Enrolment in the program is contingent on property owners collectively opting-in, typically through their strata committee. As such, renters are beholden to landlords enrolling in the program, and even where landlords are supportive, there is no guarantee benefits flow to renters. Where possible, we recommend that solar generation be linked to shared services (i.e. common areas, hot water, laundry) to ensure tenants receive maximum (predictable and monitorable) benefit.

- Despite reverse cycle air conditioning being the most efficient way to actively heat or cool homes, Better Renting found that 37% of NSW respondents reported that their rented home had no heating appliance and 33% said their home had no cooling appliances.[10] Better Renting also found that 79% of NSW household respondents reduce their heating/cooling due to the cost of energy.

- As above, renters face being left to pay the costs of a contracting gas network with no scope to refuse a gas connection in their property or convert services to improve overall energy affordability.

Current and emerging issues with embedded networks

The NSW Government work plan to address issues with embedded networks, including price protections, is forthcoming. In the meantime, few protections are in place. This leaves many consumers in embedded networks – including many vulnerable households – worse off.

JEC has flagged the likely need to plan for the exit of some embedded networks as a result of proposed reforms.

There is also an emerging issue of accessing CER in embedded networks, which limits some household's ability to benefit from this.

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The lack of data on embedded networks is causing issues for local governments (and likely other jurisdictions) in planning to electrify homes across the coming decade. We note JEC recommendations on improved data collection on embedded networks being included as an ongoing part of IPART monitoring.

JEC has heard from consumers in embedded networks[11] that they do not have sufficient information or understanding of how their energy is billed. Unless this issue is resolved as part of the package of forthcoming reforms, it is likely to only be further exacerbated as embedded network billing becomes even more complicated with the addition of CER.

Greenwashing fossil gases

Greenwashing continues to be of concern for NSW consumers, which threatens to undermine trust in genuine environmental initiatives required to address climate change.

One of the emerging issues is growth in misinformation and potential greenwashing in public communications on 'renewable gas' and 'renewable fuels', having a negative impact on consumer choices and understanding of the energy transition.

In particular, NSW household consumers should be supported to understand the impacts of fossil gases (such as methane), the costs and limitations of residential gas networks and the evidence-based considerations which mean widescale application of hydrogen and biomethane in residential networks is not efficient, effective at reducing emissions, nor viable in the medium term.

Renewable fuels and gases can only be regarded as zero-emissions or low emissions where they are used as 100% concentrations (ie. not blended); where their source genuinely removes high intensity emissions and replaces it with lower-intensity emissions which are offset; and where the source of the renewable gas (such as biomethane) is genuinely unable to be removed by any other means. These qualifiers are not presented to the public and important information is omitted or intentionally obfuscated. IPART should have some consideration of public information, such as that provided by the ACCC and Consumer Policy Research Centre, in determining how to track consumer outcomes related to greenwashing.

AI use by retailers

Retailers have reported using AI for some customer-centered services. This includes:

- To increase response time.
- Checking for mentions of life support and domestic and family violence in call and chat transcripts, and
- Using for translation.

The use of AI must be monitored carefully to ensure that it improves experiences and outcomes for consumers and does not result in rule or law breaches, such as not providing assistance to

11 At Endeavour Energy community tariff awareness sessions.

vulnerable people, or in unintended consequences. We consider it necessary to establish robust principles for the use of AI as a matter of urgency, for instance:

- That AI can only be deployed to confer a consumer benefit or otherwise leave them better off.
- That use of AI cannot violate or potentially violate consumers right to privacy.
- That any use of AI must be otherwise consistent with laws.
- That AI deployment is according to the precautionary principle where significant risk that any other principles will be violated should preclude the use of AI.

4. Consumer impact to changing pricing structures

As we have already noted, we consider it vital that consumer choice of retail offer is retained and strengthened. Consumers must be able to select offers which meet their needs in affordable, safe access to an essential service. This includes the ability to access simple, flat-price offers. Current experience is undermining this and placing unreasonable responsibility, risk and cost on consumers, by forcing them onto offers which send more dynamic price signals and require them to respond.

The JEC considers that, just as retailers manage the risk of wholesale prices by smoothing prices for consumers, it is retailers' fundamental role to manage costs and risk related to more cost reflective network pricing, while maintaining consumer choice of retail offer. Retailers are well-placed to undertake this role with a range of risk management tools, including consumer and tariff diversity.

Forcing households to respond to more dynamic pricing assumes they:

- Have the ability to shift their usage to other times;
- Have the information they need to shift their usage, for example they have access to an app or billing information;
- Have the time to consider and make decisions and changes;
- That the benefits (not necessarily just financial cost) are enough to encourage the shift; and
- That retailers will allow them to retain the benefit of any change (rather than alter their prices and price structures, as may currently be the case).

Below we raise our concerns about requiring more dynamic retail pricing and the impact on households when they are not given any alternative, or any other support to mitigate those impacts.

Concerns about involuntary retail price reassignment has been a prominent public issue recently (often related specifically to examples of ToU tariffs) with some retailers now forced to remove people from ToU offers and the Australian Energy Market Commissioner responding to place limits on how retailers can pass on cost reflective pricing from networks.

At a recent Endeavour Energy community tariff awareness session, JEC heard:

- People were unlikely to know if they were on a ToU (or demand) tariff. Those who knew they were on a ToU tariff were more likely to recognise the terms 'peak' and 'off-peak'.

- People reported finding it difficult to locate when their peak and off-peak times were included on their bills or on their retailer websites/apps etc.
- Concerns were expressed regarding the un/fairness of ToU (and demand) pricing and who can benefit and who is penalised. This was provided in the context of the impacts of cost-of-living increases and that there are many in the community 'doing it tough'.
- There was acknowledgment and understanding from participants that there will be some households who can shift their loads, and others who cannot - particularly working families.
- There was a perception that ToU (and demand) tariffs are the latest tactic by retailers to get more money out of consumers.

If a dwelling has poor thermal qualities, then shifting load by pre-heating or pre-cooling is impossible, as heat or cool is lost, and further heating and cooling at peak is still required. This places people who live in low energy efficient homes at a disadvantage – either they use their heating/cooling at peak times and suffer the higher bill consequences or they do not heat/cool during peak times and suffer the health and wellbeing consequences of uncomfortable or unhealthy temperatures.

A study comparing the impact of ToU tariffs on energy use and bills in low energy efficient homes and high energy efficient homes in the ACT, found that households with low energy efficient homes and reliant on electricity for heating, reduced their overall (rather than peak) energy usage in response to the tariff (in order to mitigate affordability impacts) whilst people living in high energy efficient homes made no changes to their energy use.

This study shows that 'compulsory' price signals are not a fair or effective means to encourage people to shift their energy load away from peak times. This study indicates that instead, the households who could more easily and comfortably shift their loads (ie those who live in high energy efficient homes) do not – they simply pay the extra cost - and those that cannot shift their load (because they live in low energy efficient housing), reduce their total usage rather than shifting their load.

This study raises concerns that a broader 'requirement' for all households to have more dynamic tariffs (such as ToU and demand tariffs) will further exacerbate inequality of energy use.

Another study found that when compulsorily assigned to a ToU tariff:

- People with disabilities were less able to shift their load away from peak times, compared to households without disabilities.
- People with disabilities and people who are elderly were not able to reduce their use of air conditioning as much when compared to other households.
- There appeared to be a widening in the difference in health outcomes between households on low incomes and/or with disability and other households, with households on low incomes and/or with disability faring even worse than they do on flat rates.

This study indicates that more dynamic tariffs, if 'mandatorily' or involuntarily applied across the community without consideration of the household situation are likely to exacerbate existing inequalities and lead to poor outcomes for some of the most vulnerable in our community. These findings strongly support the need to reassert the right to consumer choice, and ensure retailers are required to offer a range of products to consumers, to enable them to choose the one which best meets their needs. This must include fair, simple, flat price offers.

Issues related to solar

The JEC note ongoing consumer confusions related to solar, with key issues being:

- Consistent evidence (provided by Energy and Water Ombudsman NSW, LegalAid NSW and the Financial Rights Legal Centre, among others) that door-to-door and other high-pressure sales tactics are being used to target vulnerable consumers in the sale of solar panels (and other renewable technology), often in conjunction with BNPL and other credit products, and sometimes in conjunction with energy retail bundles. These practices often 'piggy-back' of NSW Government programs or rebates and present a serious risk to trust and social licence. These leave people in serious debt and confused and angry.

- Consumers not understanding how solar works and overestimating its benefit, and how easy that benefit is to realise. Consumers broadly purchase solar to reduce (or eliminate) their energy costs, but are not aware of the limitations to solar, or that its greatest benefit is derived through self-consumption (this includes many solar households having gas connections and retaining gas hot water alongside their solar). Consumers with solar assume the benefit is through feed-in-tariffs and often select retail offers on this basis, unaware that these retail offers often involve very high fixed or import charges that leave them substantially worse off. Recent consumer engagement we have observed shows significant consumer confusion and frustration resulting from this. Market regulators and decision-makers often assume consumers with solar are 'engaged and informed', where this is often not the case – often with poor outcomes.

- The introduction of two-way pricing has involved confused (and often misleading and alarmist) public narrative. Consumers and the public struggle to understand what two-way network pricing is, what it is trying to achieve, how it will work and how it will (or wont) impact them. This presents real risks. Further, there is little understanding of how retailers will deal with two-way prices, particularly where common retail practices often already involve eroding solar feed-in-tariff benefits through higher charges elsewhere.

Solar is broadly embraced in the community, for its sustainability and for its potential to improve energy affordability and 'independence'. While this presents great opportunities to utilise solar to support a fairer and faster energy transition, it also presents real risks. Poor retail practices and unscrupulous business models which arise around solar must be monitored closely and addressed, not only to protect consumers, but protect 'social licence' and consumer support for the transition. We encourage IPART retail monitoring to include consideration of:

- Rebate consumers with solar and gas connections, with a view to highlighting opportunities for improved benefit via electrification.
- Solar sales practices (particularly door-to-door) and bundling with retail or credit products.
- Retail practices relating to feed in tariffs and offers which seek to intentionally erode consumer benefit through higher fixed and import charges.
- Retail products involving two-way charges, and how these charges are being explained, bundled or otherwise impacting solar offers.

- Consumer understanding of solar, how to benefit from it, whether it is likely to work for them, and how to ensure it delivers expected benefits.
- Alternatives to expensive batteries for households with solar (such as electric hot water and other efficiency upgrades) to more accessibly derive more benefit from consumer solar.

5. Consumer benefits of virtual power plants

Virtual power plants can benefit all consumers through reducing maximum demand and the need for new generation. Households with CER may see additional benefits from participating in a virtual power plant through selling excess power back to the grid, reducing energy bills, and potentially earning additional income. These benefits however are contingent on consumer access to these services, robust competition amongst providers and good regulatory standards to ensure transparent terms and conditions.

While there are some examples of CER optimisation occurring in the market today, these offerings remain limited with further scope to make it easier and more attractive for consumers to engage in flexible energy use. This is because, under existing arrangements, retailers have little incentive to optimise behind-the-meter generation or demand management, given this comes at direct cost to the revenue from their primary service operation.

As such, we maintain consumers should be able to take up separate pricing contracts (through non-retail third parties)_for their flexible devices. This would improve CER's value proposition and provide more opportunity for it to be utilised efficiently for the benefit of the individual consumer and the energy system. Realising these benefits will require developing more open and fairer avenues for small generation aggregators (SGAs) to compete in the provision of these services.

6. Continued engagement

We welcome the opportunity to meet with IPART and other stakeholders to discuss these issues in more depth. Please contact Thea Bray at tbray@jec.org.au regarding any further follow up.

Appendices

JEC's submissions and reports:

- Submissions to the AER's Draft Retail *Performance Reporting Procedures and Guidelines*
    - Submission to the Issues Paper
    - Submission to the Draft
- *Powerless: Debt and disconnection*
- Joint community organisations submission to the AER's *Review of payment difficulty in the National Energy Customer Framework*
- Joint community organisations submission to the AER's *DMO 6 Draft determination*
- Submission to NSW DCCEEW's *Household Energy Strategy*

Other reports and articles:

- ACCC (2024), *Inquiry into the National Electricity Market*.

- ACCC (2023), *Greenwashing by businesses in Australia – findings of ACCC's internet sweep.*
- AER (2023), *Game Changer Report.*
- Better Renting (2024), *Joule Thieves: Renters' energy challenges in a cost of living crisis*.
- CHOICE (2024) *Are you paying more than other customers for the same energy plan?*
- CPRC (2022), *The consumer experience of green claims in Australia*.
- ECA (2024), *Energy Consumer Sentiment Survey*.
- White, L, Aisbett, E and Shen, C (2024), *Time-varying rates prompt different responses as a function of home energy efficiency.*
- White, L and Sintov, N (2020), *Health and financial impacts of demand-side response measures differ across sociodemographic groups*