

Electricity pricing for a consumer-driven future: Consultation paper

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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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Contents

- 1. Introduction.....2**
- 2. Supporting the interests of consumers into the future2**
- 3. Taking a future-focused approach to the review.....3**
 - 3.1 The future consumer energy experience should focus on what consumers need and want from energy services 4
 - 3.2 Consumer preference principles and archetypes should dispense with the notion that engagement is necessary and intrinsically good 5
- 4. Future products, services, and pricing structures.....6**
 - 4.1 Network tariffs should act as an efficient signal of the costs of network usage 6
- 5. Responses to questions7**

1. Introduction

The Justice and Equity Centre (JEC) welcomes the opportunity to respond to the Australian Energy Market Commission's (AEMC) Electricity pricing for a consumer-driven future consultation paper (the Paper).

This review is a crucial moment and opportunity to fundamentally re-examine the way energy, as an essential service, is provided, priced and regulated, and how key mechanisms (such as network tariffs, retail prices, and cost recovery) operate to support efficiency and equity in the long-term interests of all consumers.

The review should start from the premise that energy, as an essential service, is central to every aspect of people's lives, and increasingly foundational to their health, wellbeing, prosperity, and social participation. It should examine what this essential role means for the way energy services are priced and regulated, and how the systems which underpin that role should be structured to promote the long-term interests of all consumers.

The system we have now is not a given and should not be regarded as the foundation on which we build a future approach. The review should bear in mind the successes and failures of the existing system, consider the lessons of our experiences, and assess the opportunities afforded by new technology. It should examine what is required to ensure energy equitably supports the needs and expectations of all consumers, and design pricing and regulatory frameworks that help realise these outcomes.

We encourage the AEMC to maintain a wide scope and clear sense of purpose for the review. To this end, recommendations on reforms to tariffs, pricing, and regulations should aim to improve outcomes for all consumers and set a foundation for a future energy system that works better for everyone.

2. Supporting the interests of consumers into the future

The rapid uptake of CER and technological developments in smart meters, internet of things, and artificial intelligence are driving changes to the way that electricity is produced and delivered. We acknowledge these changes broaden possibilities in energy through the promise of new product, service, and price offerings. However, we are concerned that adopting a frame centring on integrating and facilitating technology will produce outcomes that cater to the needs of some consumers at the expense of others.

Technology should work as part of the system to deliver better outcomes for all consumers rather than function merely as an 'opportunity' for the consumers with access to it. The latter framing is likely to perpetuate and worsen inequities and potentially drive approaches which unfairly disadvantage consumers without access to such technology.

This concern extends to pricing arrangements for CER and related technologies. Framing these arrangements and technologies as an opportunity for consumers to 'save money on bills' is problematic. This framing sets the existing state as the starting point and fails to examine the

fundamental assumptions about the way the current system works, and what alternatives may exist.

For example, current arrangements assume consumers have a responsibility to support an efficient system by changing their behaviour and that the role of pricing is to support, enable, and encourage (and reward) such behaviour. In our view, this is neither given nor necessarily desirable when considering equity and the essentiality of energy.

However, the proposition that CER and related technologies should primarily confer savings on their owners – and benefit others only to the extent that they contribute to a more efficient system – preserves many of the assumptions that underpin existing arrangements. The review should provide sufficient scope not only to discuss but to challenge and depart from such underlying assumptions.

Ensuring a diverse set of consumers benefit from the efficient integration of CER and related technologies will require discussions on how to balance private and public benefit and provide adequate support to the wider system. The review should consider the extent to which a framework premised on maximising scope for individual benefit is compatible with good, equitable outcomes and system-wide benefits. In other words, the review should consider how the benefits of CER and related technologies could be fairly distributed to produce better outcomes for all consumers, not just those that own these assets.

We also advise against relying on assumptions that behavioural change necessarily drives bill savings and that pricing incentives are the best (or most appropriate) driver for said behavioural change. We are concerned that arrangements designed to reflect this assumption may undermine the essential role of energy and the long-term interest of consumers by consigning a large proportion of consumers to poorer outcomes. Such arrangements implicitly suggest that consumers must adapt their behaviour to suit the requirements of the energy system rather than ensuring the energy system is, in the first instance, designed to meet their needs, and serve their interests.

3. Taking a future-focused approach to the review

The review should adopt clear and unambiguous language to differentiate tariffs from prices. Put simply, distribution tariffs are charged to retailers/connection points in contrast to retail prices which are charged to end-consumers. Making clear this distinction and employing consistent language is critical to ensuring all stakeholders work from a point of common understanding.

We agree with summary of the role of retailers and distribution networks presented in the Paper. We especially welcome comments acknowledging that retailers have a key role to play in ‘measuring and managing financial risk, including market and credit risks’. We contend that retailers are well-equipped to manage these risks not only as they relate to wholesale prices but network tariffs. When retailers refuse to manage these risks, they do not simply disappear but are shifted onto end-consumers which makes them responsible for managing these risks either through changing behaviour or accepting worse outcomes.

Given these risks must be managed, the review should assess not only which party is best placed to manage them but the tools they have to do so and their respective obligations and

responsibilities. In our view, more active management of these risks by retailers is in the long-term interests of consumers. Retailers are well-positioned to do so as they are already responsible for bundling costs throughout the supply chain.

3.1 The future consumer energy experience should focus on what consumers need and want from energy services

Regarding the possible future consumer energy experience, we are concerned the review remains wedded to the rules, structures, and assumptions of the current energy system. While the provided vignettes offer a vision of a more consumer-centred system (in that they assume better outcomes through more diverse options) they do not fundamentally challenge the existing rules, structures, and assumptions that underpin it. The vignettes fail to speak to the underlying (and constant) motivation for consumer action – namely, that they have the energy they need and can afford it. It is possible to view the behaviour of consumers (such as those who purchase solar or home energy management services) as an expression of a desire to ‘disengage’ from energy (by being more independent from active concern about it), rather than an assertion of intrinsic interest. In any case, we contend the assumption must be more deeply challenged.

A common theme across the vignettes is automatic switching and assignment to the ‘best’ retail offer. While this may go some way toward improving outcomes for consumers that are disinterested or unable to engage with the market, we question whether switching of this kind will (or should) remain beneficial (or even possible) for all consumers in the future. The vignettes do not consider the costs associated with switching services and the potential costs associated with churn that would be shifted onto all consumers, particularly those not using such services.

Furthermore, we are concerned this vision for a future state perpetuates existing problems with the retail market. Namely, that switching is necessary and that only consumers experiencing vulnerability or disadvantage cannot or should not have to navigate the market in this way.

The proposed approach to considering the future in this review is, in our view, overly focused on considerations of ‘products’ to fit assumed consumer behaviour based on what consumers are ‘forced’ to do now, rather than examining the aspects of what consumers need and want from energy services. As such, we are concerned the review does not adequately consider and clarify fundamental aspects of consumer needs. In short, the vignettes provide a vision of a future where the symptoms of the current failed market arrangements are treated, while the underlying cause is ignored.

We broadly support the approach of the review and the stated intent to centre consumers but recommend more attention be paid to assessing what energy is, what consumers need from it, and how those needs could be better met for all. Put differently, the review should carefully consider the consumer interest in energy rather than extrapolating this interest from assumptions drawn from responses to the existing market. We recommend that the review be guided by the only consistently demonstrated fact, that consumers want to be able to use the energy they need, when they need it, at a price they can afford.

3.2 Consumer preference principles and archetypes should dispense with the notion that engagement is necessary and intrinsically good

To be practical the consumer preference principles need to be consistent, outcome-focused, and flexibly applicable to all potential circumstances. To this end, the consumer preference principles should guide the design of tariff and pricing regulatory arrangements – not the design of products and services as such. We provide feedback on each of the proposed consumer preference principles in our responses to the consultation questions below.

We are concerned the proposed consumer archetypes are based on a range of scenarios describing consumer actions and responses to the current market and its dynamics, rather than describing enduring circumstances which must be accommodated. The description of what these archetypes are ascribes a level of agency to consumers which is not necessarily reasonable, or helpful for a process designed to consider future arrangements.

Much like the outline for a future consumer energy experience, these archetypes risk producing a framework for tariffs and pricing that recreates the flaws of the current system. In framing scenarios according to peoples 'resources' and 'interest to engage' in the current energy market there is a danger of ascribing agency or choice to actions where these factors are not a key determinant or motivation.

That is, the archetypes are incapable of distinguishing between a consumer engaging in an action because it is reflective of their preferences and one that stems from their desire to use the energy they need at reasonable cost. CER purchases may in this sense represent a desire to disengage from the energy market rather than the traditional view of these consumers as 'embracers' who do so through their intrinsic interest. We do not consider the archetypes fit-for-purpose because they are grounded in the current market (and its failings).

To facilitate a truly consumer-centric review, consumer archetypes should focus on fundamentals of consumer circumstance – e.g. income, housing type, housing tenure, with/without CER. Any other 'subjective' judgements about consumer preferences or psychology are not robust or likely to be useful in imagining a future system.

A consumer's interest to engage is unlikely to be understandable in any meaningful or consistent way and so is not the relevant factor around which pricing and tariff reform should be organised. Engagement is not the primary axis for differentiation among energy consumers, and even if this is the case under current arrangements, it should not be, given this is now well-recognised as a key driver of inequity. Put differently, one consumer's willingness and ability to engage to secure a better outcome is contingent on another's disinterest or inability to do so.

Future pricing and tariff arrangements should seek to eliminate this inequity, not by attempting to 'treat' it, but eliminate the basis for it.

A substantial proportion of people either cannot 'engage' in a range of ways or cannot consistently secure good outcomes when they do. The proposed archetypes embed a normative judgement that engagement is not only necessary but intrinsically good – we strongly disagree

with this premise and do not support using it as the foundation for future state tariff and pricing arrangements.

4. Future products, services, and pricing structures

A consumer-centric approach to future products, services, and pricing structures should seek to develop market arrangements that, in the first instance, meet consumer needs and preferences. This contrasts with the present state in which pricing and tariff structures aim to elicit behaviour that aligns with the demands of what is assumed to be an effective market.

We interpret this as designing frameworks for most people who cannot or will not ‘engage’. Future products, services, and pricing structures should ensure these consumers secure good outcomes while retaining opportunities for those who can engage to do so, in ways that optimise the beneficial impact for all – i.e. without simply producing unrestrained benefits for themselves. In other words, the review should place optimised collective outcomes above the focus on maximising the scope for individual benefit.

The focus on ‘imagining’ future products is not necessarily the most productive exercise as it limits the scope of a future state. While there is value in a ‘strawperson’ examination of future-state requirements, the focus of such an exercise should be on the types of pricing outcomes that *must* (as opposed to *could*) be delivered to equitably meet the needs of all consumers.

The objective of the review should not be to accommodate all possible service and pricing possibilities but to derive the common needs and preferences of all consumers. The review should start by solving for the significant set of consumers who do not wish to or cannot ‘engage’ in the range of ways which are currently associated with getting fair/good outcomes in energy. Only once such outcomes are secured should we turn our attention to the secondary problem of how to ensure that opportunity still exists to integrate more dynamic arrangements to optimise their contribution to an efficient energy system.

4.1 Network tariffs should act as an efficient signal of the costs of network usage

Network tariffs are signals to retailers and service providers – not consumers themselves. They should provide indications of where value and opportunity exist to enable the development of products and services that realise that value and opportunity and manage or mitigate costs on behalf of consumers.

The paper suggests that one purpose of network tariffs is to provide direct signals to consumers to which they can respond. We strongly disagree with this interpretation. Network tariffs, like wholesale prices, should merely provide the foundation upon which retail and other service providers can create products and services that cater to consumer preferences and provide scope for dynamic management of flexible assets.

Network tariffs need not change consumer behaviour themselves. Even in the absence of a response to price signals, cost-reflective network tariffs still have the benefit of more equitably allocating costs between connections (and usage) on a ‘causer pays’ basis.

Simplicity is not (and need not) be a primary consideration for network tariff design if the role of network tariffs is clarified in this way. It may be that complexity offers the diversity which helps ensure retailers and other service providers have scope for innovation and to cater to different consumer segments they may serve.

It would be unacceptable for the transition to cost-reflective network tariffs to be further delayed because retailers prefer 'simple price structures' or are unwilling to manage the risk associated with time-of-use and demand-based pricing. Retailers are well positioned to manage these risks given they are already required to do so in the wholesale market and can optimise their total network bill for a collection of customers in a portfolio setting.

While retailers have a direct relationship with end-consumers they are not necessarily best placed to understand their preferences. Retailers do not engage with consumers or ask them their preferences. Even where retailers have a clear view of consumer preferences, they do not have a strong incentive to respond due to their relatively privileged position in the retail market as it is currently structured.

That is, retailers have wide scope to create and potentially manipulate offers with significant discretion, in order to mitigate risk to themselves. In many cases, the retail market is a seller's market as consumers must buy regardless of whether they can afford the product or whether they have had the chance to examine the terms of their offer (and alternatives) and determine it is in their interest.

To this end, the review should dispense with the assumption that retailers necessarily sell products consumers want simply because consumers purchase them, or that competition, on its own, is sufficient to ensure retailers meaningfully respond to consumer preferences.

We are concerned at the Paper's attempt to find other parties to mitigate risks for retailers and other third-party service providers. Other than introducing greater competition from third parties to aspects of retailers current business, we do not support spreading the retail risk-management responsibility across multiple parties in the supply chain (such as network businesses) as doing so would be inefficient. Put differently, it is more efficient to have parties at the end of the supply chain aggregate and manage costs and risks than attempting to do so across multiple parties with limited visibility of said costs and risks.

If retailers and other service providers in similar roles are unable to effectively manage these costs and risks, then regulatory and market frameworks should consider what is required to enable them to do so.

5. Responses to questions

1. Do you consider that we should make any changes to our proposed approach to this review?

We broadly support the intent and structure of the review. However, we are concerned by the focus on attempting to predict or 'design' products. Consumer archetypes should reflect the intrinsic circumstances, needs, and preferences of consumers in order to avoid a future that recreates the requirements (and failures) of the present system.

2. What are your views on our proposed consumer preference principles?

- Are you aware of additional existing research that could help us refine the CPPs?**
- How might the CPPs help us in assessing whether our decisions will lead to good consumer outcomes?**

We do not consider 'value for money' a preference principle but a requirement. Consumers should expect energy services that are priced fairly and efficiently, and which support affordability for all.

The principle of availability does not adequately reflect the essential nature of energy or that choices about energy use should be based on need, rather than affordability. That is, consumers want to make energy usage decisions based on what they need to do with that energy and how and when they need to do it.

The principle of meaningful options should reflect that consumers do not inherently want options in energy and most often would prefer not to have to choose. Where there is choice in energy products, consumers want that choice to be meaningful rather than a matter of attempting to select between 'fair' and 'unfair' offerings.

The principle of simple engagement does not adequately express the enduring preference of consumers for decoupling good outcomes from particular forms of engagement with retail energy. Preference principles should reflect outcomes for consumers rather than mechanisms assumed to achieve those outcomes (such as engagement).

The principle of appropriate protections suggests that the prospect of adverse outcomes would persist in a future system. We recommend reframing this principle in terms of preventing consumer harms to reflect that protections should be applied according to the scope for harm and apply to all potential harms.

3. What are your views on our proposed consumer archetypes?

- Do the archetypes capture the diversity of future energy consumers?**
- Do you agree that engagement is the primary axis of differentiation among energy customers?**

Our overarching concern with the proposed consumer archetypes is that they are founded on assumptions that stem from current market arrangements. As such, they are liable to recreate the flaws of the existing system. We are concerned that using 'engagement' as the primary axis of differentiation among energy consumers is likely to entrench inequities and hinder reforms to dispense with 'engagement' as a precursor to securing decent outcomes in the retail market. All previous reviews have assumed the solution is aiding better or more frequent consumer engagement. The record of failure for this approach should be taken by this review as a direction to examine alternatives.

4. We want stakeholders to help us imagine the widest range of possible future products, services, and pricing structures. How might they look in the future?

The focus on 'imagining' future products, services, and pricing structures is not necessarily the most productive exercise as it limits the scope of a future state. Rather than attempting to

accommodate all possible service and pricing possibilities, we recommend developing a framework focused on deriving the common needs and preferences of all consumers. Creating and testing 'strawperson' product options should be focused on testing how models which will be required to better meet the needs of disengaged and potentially disadvantaged consumers, can be accommodated and what will be required to do so.

5. How could electricity products, services and pricing structures be presented to serve future consumers?

Ensure products, services, and pricing structures lead to simple and affordable outcomes that are minimally (if at all) dependent on the circumstances and capabilities of the consumer. In other words, keep innovation and complexity 'behind' the curtain and develop a system that works for the consumer – as opposed to the consumer being required to 'work to make the system work'.

6. How could consumer protections be balanced to enable further innovation in a future retail electricity market?

We support a system where the protections offered to consumers are commensurate to the potential harm the consumer may face should they lose that energy product or service or not have it delivered within expected parameters – the higher the potential harm, the stronger the protections offered to the customer. This should not depend on the model of provision and reflects the nature of energy as an essential service. We have elaborated on this approach to consumer protections elsewhere¹.

7. What barriers will need to be addressed to deliver future consumers a meaningful and beneficial range of products, services and pricing structures? How might we consider addressing those barriers?

- Consider the changes that are happening in the system now – what barriers might either endure or emerge post 2035?

The key barrier to delivering future consumers a meaningful and beneficial range of products, services, and pricing structures is the lack of clarity around which parties are responsible for measuring and managing financial risk, including market and credit risks. As we outline above, we consider retailers and other new energy service providers best placed to measure and manage these risks.

8. What should network tariffs look like in the future?

- What are the key choices and trade-offs we should consider when answering this question?

Network tariffs should act as an efficient signal of the costs of network usage. Retailers (and other new energy service providers) should be the primary target for network tariffs rather than consumers themselves. Except for some very large customers, the tariffs consumers see are those charged by the retailer, which cover wholesale, network and retail costs. Therefore, it is

¹ For more detail see [JEC Submission to AEMC Wholesale Demand Response Mechanism draft determination](#), pp. 3-6.

retailers who respond to network tariffs in the first instance. Simplicity is not (and need not) be a primary consideration for network tariffs if the role of network tariffs is clarified.

9. How should the role of energy supply businesses evolve to meet customer and energy system needs in the future?

Energy supply business should be subject to a positive obligation to act in the best interest of good outcomes for the consumer. Such an obligation would ensure that consumers and the system see the greatest possible benefit from consumer energy resources and related technologies.

10. What changes might be required in the future to the interfaces between different energy supply businesses?

Consumers are currently limited to having one provider manage all their electricity generation and load, including rooftop solar, batteries, and electric vehicles (EVs). Providing more open and fairer avenues for energy supply businesses (such as small generation aggregators) to compete would incentivise retailers to develop products and services that optimise benefit for consumers and contribute more meaningfully to the efficient operation of the electricity system. As such, we recommend pursuing reforms to enable small consumers to enter contracts with different (and additional) energy service providers².

11. Do you have any feedback on our proposed assessment criteria?

With regard to the ‘outcomes for consumers’ criterion, we note that ‘improved price signals, incentives, and opportunities’ are not consumer outcomes. These are mechanisms which are only beneficial to the degree we assume that consumers are (and should be) responsible for responding to them and making the system operate efficiently. We do not share this view and strongly disagree that this assessment criterion is appropriately framed. Outcomes for all consumers should be the priority assessment criteria and should be framed as such. That is, the policy recommendations should provide scope to enable fair and affordable outcomes for all consumers regardless of their response to price signals, incentives, or other engagement with the market.

With regard to the ‘innovation and flexibility’ criterion, we agree recommendations should be flexible but not infinitely so. It is neither appropriate nor desirable to require the review to accommodate all possible service and product permutations. It is more appropriate to assess options against how well they provide clear signals for innovation that is framed to deliver better consumer outcomes.

² For more detail see [JEC Submission to AEMC Unlocking CER benefits through flexible trading arrangements draft determination](#).