

# **Independent expert review into transmission planning in NSW**

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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 expert review into transmission planning in NSW (the Review).

The JEC supports the intent of the Review, as outlined in recommendation of the NSW Electricity Supply and Reliability Check Up (the O'Reilly Review). We regard this as a critical opportunity to ensure the Roadmap delivers on its promise to enable a rapid and efficient energy transition for NSW.

In this submission we focus on two broad areas.

## **Ensuring fair and efficient cost recovery**

While we appreciate the need for focused terms of reference, we contend that critical issues are currently excluded. We urge the Panel to reconsider including the issues of cost recovery insofar as it extends to who contributes to Roadmap costs, the fairness of cost allocation and the consistency of cost recovery frameworks between the NSW and National Energy Market (NEM). Failure to resolve these cost recovery issues will raise serious social license risks and may incentivise jurisdiction shopping by transmission network service providers (TNSPs), generators and large customers.

## **Updating the key framework elements**

The NSW transmission planning framework contains several elements which are legacies of prevailing conditions at various stages of its development, but which may no longer be appropriate. Key among these are the form of the NSW reliability standard and the independence of the NSW Roadmap from the NEM-level augmentation plan, the latter being intentionally created to manage the risk of slow progress at the national level. The continued appropriateness of both of these design features going forward (and their potential impact on costs for consumers) should be considered.

Particular attention should be paid to ensuring the jurisdictional framework complements the NEM-level planning framework. It is important that the two frameworks reinforce the legitimacy of each other, rather than the opposite. This should not be taken to mean that they must always agree with one another. Rather, they must provide substantive scrutiny and rigour to one another. This can be expected to result in disagreements, and these should be taken as an intended outcome, not a concern to the degree that this process helps ensure the most efficient outcomes for NSW consumers.

# 2. Cost recovery

We appreciate cost recovery is formally out of scope for the Review. However, we urge the Panel to reconsider this, at least on a partial basis, for two reasons.

## **Equity of cost recovery**

Equity and fairness of cost recovery is a critical determinant of social licence for the transition as a whole. Inequitable cost recovery for transmission investments can critically undermine the

fundamental claim that they return more in benefits (through reduced wholesale energy costs) than they cost NSW consumers.

The JEC has a well-developed cost recovery framework for Renewable Energy Zones (REZ) based on the principles of beneficiary/causer pays. The key point to note is that REZ transmission infrastructure has a different beneficiary allocation to 'traditional' transmission. For REZ assets generators themselves accrue benefits through 'access to market' and, in the case of the Roadmap, the additional benefit of mitigated risk.

Carve-outs from Roadmap cost recovery for transmission-connected users and other nominated parties further undermine equitable cost recovery from all beneficiaries. This arrangement raises costs carried by NSW household consumers and, again, raises the risk the costs they pay for the Roadmap are not outweighed by the benefits they receive.

If planning is predicated on a net-benefits claim (as it should be), genuine causes for doubt, as outlined above, contribute to the erosion of social licence for the investments and provide a kernel of truth on which bad-faith criticisms of the Roadmap may be founded.

### **Regulatory arbitrage**

Issues of cost recovery may also impact the possibility of effective planning. If there is a possibility of regulatory arbitrage, regulated and market actors may respond to planning signals or incentives in ways based on this, rather than responding in a linear way to incentives.

In the case of NSW transmission planning, there are opportunities for regulatory arbitrage for

- TNSPs, who face different regulatory conditions under the National Energy Rules (NER) and *Electricity Infrastructure Investment Act 2020*.
- Generation and storage investors, who face different cost recovery arrangements in different jurisdictions; and
- Large customers, who face different cost recovery arrangements in different jurisdictions.

This is a matter that should be included within the scope of the Review.

## **3. NSW and federal transmission planning**

The interaction between the transmission planning frameworks that exist at the NSW and NEM levels need to be carefully considered. Most importantly, the two systems must act as complementary checks and balances on one another, rather than reinforcing weaknesses in either system.

In particular, neither the inputs nor the outputs of the ISP should be adopted uncritically for use in NSW transmission planning. Doing so will miss the opportunity to add a much needed layer of rigour to the ISP. More importantly, it will also confer an unearned assumption of rigour in the eyes of non-expert stakeholders, who assume – reasonably enough – that the assumptions, inputs, and merits of planning and policymaking decisions are meaningfully tested and verified by independent experts.

To date, there has been reticence to allow market bodies to ‘check each others’ homework’. This soft policy should be recognised, and counteracted where possible, adding substantive rigour to planning and regulatory operations, and allowing constructive disagreement between market bodies or planners and regulators operating in different jurisdictions. This will help improve stakeholders’ confidence in the efficacy of these systems, not the opposite.

NSW transmission planners should not be prescribed from exploring or considering future scenarios which may better promote the interests of NSW consumers simply due to their not being considered in the ISP.

### **Inputs to planning**

We acknowledge that co-optimising the augmentation of transmission (and the supply side more generally) with consumer energy resources (CER) and distributed energy resources (DER) is unlikely in the near term.

In lieu of this, forecast CER and DER should be inputs into the identification of NSW transmission augmentation needs.

The possible and probable uses of hydrogen in the future Australian economy should be considered afresh and recalibrated from the ISP scenarios in line with more recent and more plausible industry expectations.

## **4. Position of Transgrid**

Careful consideration should be given to the position of Transgrid as a Roadmap organisation.

In particular, instances where there is no other provider of a given service should be identified ahead of time, and work should be done to reduce Transgrid’s capacity to leverage such situations to the detriment of NSW consumers.

Consideration should be given to substantially expanding what is contestable in the transmission space, including breaking down projects into component parts of Investment, Building, Owning, and Operating, and making parts of a given project contestable, while leaving the parts that should not be made contestable in the responsibility of the monopoly transmission service provider.

## **5. Consumer engagement in planning**

To date, the use of consumer representatives and experts in informing the Roadmap planning operations has not reflected good practice. This has largely been due to a need for speed in establishing the key planning bodies. However, from this point on the balance should tip back from speediness towards rigour and effectiveness in planning operations and the transparent and consistent engagement of consumers and stakeholders.

The best practice structures of consumer representative and expert engagement demonstrated at the NEM level should serve as a model for a process of ongoing evolution and improvement of engagement practices.

## 6. Reliability

Consideration should be given to whether overlapping reliability standards for NSW and the NEM is still appropriate and serving the interests of NSW consumers.

The Energy Security Target Monitor defined in the *Electricity and Infrastructure Investment Act 2020* triggers when the level of firm capacity falls short of the energy security target. The target, in turn, is defined as the sum of the maximum demand and the ‘reserve margin’ – the capacity of the two largest generating units in NSW. The significance of the largest units lessens as the energy transition continues. The appropriateness of this  $n-2$  formulation is likely to decline as a result. It may be preferable to harmonise the NSW standard with the NEM one.

More broadly, the review should consider the impact of overlapping reliability tools operating simultaneously to ensure reliability standards are met. We contend the current overlap of various tools accreted over time risks NSW consumers paying more for reliability than they would choose, or are willing to pay.

## 7. Cost estimates

The review should consider more robust guidelines and other measures to constrain the formulation and communication of the estimated costs of transmission projects at different stages of their development. The dynamic of over-promising and under-delivering in terms of time and cost constitutes a substantial social licence risk to the Roadmap and energy transition, particularly where it has a material impact on the balance of costs and benefits actually delivered by projects.

## 8. Continued engagement

We welcome the opportunity to meet with the Review Panel and any other stakeholders to discuss these issues in more depth. Please contact Michael Lynch at [mlynch@jec.org.au](mailto:mlynch@jec.org.au) regarding any further follow up.