Electricity Network Regulation Review Package 1 consultation paper

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About the Justice and Equity Centre

The Justice and Equity Centre stands for a society that is fair and free from discrimination and disadvantage. Established in 1982 as the Public Interest Advocacy Centre (PIAC), we use the law and policy advocacy to challenge injustice and inequality. We do this 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 acknowledges and pays respects to the Gadigal as the Traditional Owners of the land on which our office stands.

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1. Introduction

The Justice and Equity Centre welcomes the opportunity to respond to the Australian Energy Market Commission's (AEMC) Electricity Network Regulation Review Package 1 consultation paper (the Review).

This part of the review – package 1 - comes at a critical time for the electricity sector, as networks play an increasingly important role in supporting electrification, integrating distributed energy resources, enabling consumer participation, and facilitating an efficient energy transition. It is timely to consider how we should shape the role of networks and ensure it is best contributing to the promotion of energy consumers' interests.

The Review raises critical questions about what the network regulatory framework is ultimately trying to achieve. What are the appropriate boundaries between regulated and contestable services that most efficiently achieve those outcomes? This is not a question of 'choice' between regulation or competition, but one of how to shape the interaction of regulation and competition to best deliver efficient outcomes for consumers. As such, the Review must focus on the conditions under which different forms of service provision are most likely to deliver efficient and equitable outcomes in the long-term interests of consumers.

The purpose of the regulatory framework should be to secure the outcomes consumers value, including affordability, reliability, equity, and an orderly, efficient energy transition. Frameworks and decisions regarding service classification, ring-fencing, and cost allocation should therefore be able to be assessed according to how effectively and durably they advance these outcomes, rather than whether they favour competitive or regulated service provision as a matter of principle.

The Review should adopt an explicitly outcomes-focused and principles-based approach to how the extent and nature of networks roles are determined and shaped. Such an approach should put consumer outcomes at the centre of regulatory decision making, with robust comparative assessments of the capacity to deliver genuine efficiency and equity for consumers.

The complementary role of competition and regulation should be recognised, with greater consideration given to who benefits from network services and investments when determining how services should be classified and how costs should be allocated.

This submission sets out broad directions for this part of the review and asserts key objectives and principles which should guide further consideration of the role of networks, including those questions raised in the rule-changes under consideration in parallel to this part of the review.

2. Focus on consumer outcomes

Competition is not inherently beneficial in all circumstances

Experience over decades has provided ample evidence refuting the assumption that competition is inherently superior, and that it can be assumed to deliver more efficient outcomes in all circumstances and should be introduced and relied upon in any circumstance where it theoretically possible. Power of choice reforms which made metering and data services competitive – rather than provided as a regulated monopoly service – provide a stark and relevant example of practical limitations of this assumption. Since this change, the rollout of metering has been fraught with delays, complications, escalating costs and expensive attempts at reform to make the resulting 'market' work. This is not an isolated example and should contribute to relevant experience this review can draw on in deriving a more nuanced approach to determining the relative role and mix of purely regulated and more competitive network service provision.

A more nuanced focus on outcomes and principles is needed

Competition is one of several tools available to deliver efficient outcomes in the long-term interests of consumers. It can, in the right circumstances – and with the appropriate guidance - deliver the most efficient outcomes for consumers. Competition should be encouraged where it will demonstrably improve efficiency, service quality, or affordability without compromising equity. Equally, regulation of monopoly services should be preferred where it is more likely to produce these outcomes under the expected 'real world' conditions.

The relevant policy question is therefore not whether a service should be delivered through a (regulated) competitive market or through regulated monopoly provision. Instead, the question should be how do we determine which mix of arrangements is most likely to achieve efficient service outcomes in the long-term interest of consumers?

This distinction is particularly important for essential services such as electricity. There is a social as well as economic aspect to consider, with services needing to be equitably accessible and costed as well as efficient. The services consumers ultimately value depend not only on competitive pressures but also on coordinated planning, long-term investment certainty, and equitable, universal service provision. In many circumstances these objectives cannot be achieved through competition alone.

An outcome-focused framework would provide a more robust and nuanced basis for these decisions than one centred primarily on theoretical assessments of contestability or the detrimental exercise of market power. While these considerations remain important, they should be subordinate to a broader assessment of whether a particular regulatory arrangement will advance key outcomes in the long-term interests of consumers.

Importantly, the Review should be careful not to frame consumers as agents who are consistently rational and narrowly self-interested, and who pursue their subjectively defined ends optimally. Such models have little grounding in observations and do not reflect broader public objectives, including an efficient and just energy transition. Assessments of contestability and regulation should reflect a broader understanding of consumer welfare.

3. Assess services by the outcomes they deliver

Correctly framing the central question or problem

In our view, the Review should be concerned with answering a simple question:

What regulatory arrangements are most likely to deliver the most efficient and equitable outcomes in the long-term interests of consumers?

This framing aligns more closely with the intent of the National Electricity Objective than debates that focus primarily on whether services possess monopoly characteristics or whether competition may theoretically emerge (and actually be beneficial to consumers) in the future.

Deriving a framework for assessing consumer outcomes

The existing framework often begins with questions of service classification and contestability. While these questions are important, they risk becoming ends in themselves. A stronger approach would be to first identify the desired consumer outcomes and derive a means of robustly assessing which combination of regulatory oversight, market incentives, and competitive provision is most likely to achieve those outcomes. Importantly, this assessment must not rely on implied or assumed outcomes but be grounded in evidence and shaped by consistent principles.

This matters because there is no universal relationship between competition and efficiency. Markets can produce highly efficient outcomes under some conditions and highly inefficient outcomes under others. They may also produce unacceptably inequitable outcomes, regardless of efficiency.

The effectiveness and appropriateness of competition therefore depends on the specific characteristics of the service and the consumer outcomes being prioritised. It also depends on the availability of information, barriers to efficient entry, transaction costs, realistic consumer capabilities, and the potential for market power (whether in a competitive market or otherwise) to result in actual detriment to consumers.

For many network-related services, good consumer outcomes may depend less on the relative existence of competition than on transparency, robust accountability, consistent and equitable access, and appropriate regulatory safeguards. In any case, these should always be priorities.

For example, in some contexts greater visibility of network charges and regulation of service costs may improve competitive outcomes without requiring wholesale deregulation.

Similarly, certain services may remain most efficiently provided by regulated entities while still being subject to strong accountability mechanisms that protect consumers.

In other cases, the incentives of monopoly networks are inherently misaligned with the most efficient outcomes for consumers and competitive service provision provides scope for greater efficiency and the desired outcomes.

Key aspects of a framework focussed on outcomes

The Review should establish a framework that allows regulators to systematically evaluate:

- the *energy* consumer outcomes sought;
- the costs and benefits associated with alternative delivery models;
- the distribution of those costs and benefits across different energy consumer groups;

- the potential for market power under alternative arrangements to result in actual energy consumer harm;
- the implications for equity, access, and energy consumer protections; and
- the *likely* long-term impacts on efficiency and investment.

This approach would improve regulatory consistency while maintaining sufficient flexibility to respond to technological and market developments.

The Review should also pay greater attention to distributional impacts. Reforms may increase overall economic efficiency while simultaneously disadvantaging particular consumer groups. This is especially relevant in the context of electrification, consumer energy resources, and emerging network services, where benefits can accrue unevenly across the community.

A framework focused solely on aggregate efficiency risks overlooking these outcomes. Consideration should therefore also be given to who benefits, who bears costs, and whether vulnerable consumers receive an appropriate share of the value created by network investments and services.

4. Adopt a beneficiary-pays approach

The JEC broadly supports the economic principles underlying the existing service classification framework. But as part of implementing a more outcome-focussed framework, there is scope to build on these principles and improve how they are applied.

In particular, the Review should embed a more explicit beneficiary-pays framework in network regulatory decisions, the classification of direct control services and the handling of shared assets.

Current approaches often focus heavily on the extent to which costs can be attributed to specific users or activities. While cost causation remains important, an exclusive focus on identifying cost causers risks obscuring the underlying purpose of network investment and making accurate assessment of the relative benefits of particular decisions less effective. Many investments do not simply resolve a problem created by a particular participant. Rather, they generate benefits that are shared across multiple consumers, market participants, or the broader electricity system. The magnitude and the apportionment of those benefits are both critical questions for effective regulatory decision-making.

A beneficiary-pays framework would require decision-makers to first identify the value created by a service and then examine who receives that value and how it is distributed. This provides a clearer basis for determining both whether a service should proceed and how its costs should be recovered.

This approach offers several advantages:

- It encourages greater transparency regarding the benefits that network investments and services are expected to deliver. Explicitly linking costs to benefits improves accountability and enables more rigorous assessment of whether a service is genuinely in consumers' interests. This also helps assess the durability or speculative nature of prospective benefits under different possible regulatory arrangements.

- It helps ensure that cost recovery arrangements are proportionate to the value received by beneficiaries. This can reduce the risk of inappropriate cross-subsidies while recognising that some degree of cost sharing may be justified where benefits are broad-based. In any case it enables any ongoing cross subsidies to be transparent and intentional – subject to the preferences of consumers and the community – rather than opaque or concealed as they often are under the current framework.

- It provides a more consistent framework for evaluating emerging services and technologies. As electricity networks increasingly support distributed energy resources, electric vehicle infrastructure, flexible exports and other new services, the distribution of benefits may become more complex. A beneficiary-pays approach offers a principled basis for assessing these arrangements under different arrangements.

This distinction is particularly important in relation to shared assets. Many network assets generate benefits extending beyond an individual customer or user. In such circumstances, relying solely on cost causation principles may fail to recognise the broader value created by the asset and may lead to inefficient classification outcomes.

The Review should therefore consider how to more robustly embed a beneficiary pays principle within the framework, and how beneficiary analysis could be elevated within the service classification framework alongside existing considerations relating to the impact market power, contestability, and cost attribution.

Doing so would help ensure that decisions about service classification are grounded in a consistent and more meaningful evaluation of the outcomes that network services are intended to deliver and the consumers they are intended to benefit. Such an approach would better support efficient investment, improve transparency, and strengthen alignment with the long-term interests of consumers.

5. Response to consultation questions

Question 1: Do you have any feedback on our approach to the Review, including the proposed prioritisation framework?

We broadly support the proposed approach to the Review, including the proposed prioritisation framework. However, we encourage the AEMC to place more explicit emphasis on the consumer outcomes the framework is intended to achieve and the principles which should shape them, rather than focusing primarily on the boundary between regulated and contestable services.

The Review should be guided by a consistent principles-based approach which assesses how the mix of regulation and competition should be determined to deliver efficient and equitable outcomes in the long-term interests of consumers. Service classification, ring-fencing, connection arrangements and cost allocation are closely interconnected and should be considered through this common lens, with this unifying purpose.

Question 2: What network services should be subject to economic regulation and are changes to the service classification framework required?

Services should be economically regulated where competition cannot reliably deliver equitable and efficient outcomes in the long-term interests of consumers. The existence of network assets, economies of scale or incumbent advantages should not, in themselves, justify a preference for regulated provision – but should be subject to assessment according to key principles and their scope to contribute to efficient outcomes.

The Review should strengthen the service classification framework by adopting a more explicit beneficiary-pays approach. Decisions should consider not only who causes costs, but who receives benefits and whether those benefits justify cost recovery from consumers. This would support more transparent and consistent service classification decisions, particularly for emerging technologies and shared assets.

We recommend the AEMC consider the criteria outlined in section 3 in evaluating reforms to the regulatory framework for network service classification.

Question 3: Are changes required to the ring-fencing arrangements?

We support changes to the ring-fencing arrangements to ensure they contribute more effectively to better consumer outcomes.

Ring-fencing remains an important safeguard for maintaining genuine competitive neutrality and protecting consumers where network businesses operate in or adjacent to contestable markets.

The Review should strengthen confidence that ring-fencing arrangements are robust, transparent, and being consistently applied and enforced.

Ring-fencing waivers should be exceptional and time-limited. They should be justified by a defined purpose and subject to clear demonstration that they are in consumers' long-term interests, or otherwise necessary to determine or demonstrate a means of delivering more equitable or efficient outcomes in the interests of consumers.

Waivers should not be an exercise in simply demonstrating that a network ‘can’ do something. And they must not become a ‘backdoor’ mechanism for expanding monopoly provision into services without evidence that NSP participation produces materially better outcomes for consumers than alternatives.

Question 4: Are changes required to the connection and/or facility access arrangements?

We support changes to the connection and facility access arrangements.

Effective competition and efficient outcomes for consumers depend on fair and timely access to the network. Information asymmetries, opaque, inefficient and inconsistent connection processes or facility access arrangements create barriers to entry and undermine the scope efficient competitive outcomes.

The appropriate response is to reform those arrangements to the greatest degree possible, before considering the market to have 'failed' and that it is necessary to expand regulated service provision.

The AEMC should consider measures to improve transparency regarding network capacity and utilisation, transparency of connection requirements, efficiency and fairness of connection costs, and access timeframes. More standardised access arrangements and timely dispute resolution processes would also support more efficient outcomes and consumer benefits.

Question 5: Are changes required to the cost allocation and/or shared asset arrangements?

We support changes to the cost allocation and shared asset arrangements.

The increasing prevalence of shared and multi-purpose assets highlights the need for a robust and transparent cost allocation framework grounded in consistent principles.

Cost allocation arrangements should ensure energy consumers only pay for services from which they benefit and should minimise risks of inappropriate cross-subsidisation. The Review should consider cost allocation, service classification and ring-fencing together, recognising that these frameworks operate as an integrated system for protecting consumers and promoting efficient investment.

Question 6: Nexa rule change request - Do the ring-fencing arrangements in the NER need to be strengthened?

We consider there is merit in strengthening ring-fencing arrangements to ensure they are more robust, and provide greater clarity, consistency, and transparency.

Consumers must be confident that monopoly advantages are not being used in ways that distort or prevent competition from delivering good outcomes or expose consumers to unnecessary costs and risks.

Reforms should reinforce the core purpose of ring-fencing: protecting consumers while maintaining confidence in effectively competitive markets which can demonstrate they deliver better outcomes.

Question 7: Nexa rule change request - Would Nexa's proposed solution address the identified problem?

We support elements of Nexa's proposal that strengthen transparency, accountability, and competitive neutrality.

In particular, there is merit in providing clearer guidance regarding the purpose of ring-fencing, the limited circumstances in which waivers may be granted and for what reasons they may be granted, and the protections and regulations which should apply where network businesses participate in contestable activities.

The effectiveness of any specific measures should ultimately be assessed against whether they deliver the most efficient and equitable consumer outcomes and best promotes the long-term interests of consumers.

Question 8: Nexa rule change request - What are the costs and benefits of Nexa's proposed solution?

The principal benefit of Nexa's proposal is greater confidence that consumers are protected from cross-subsidisation, discrimination, and the potential misuse of monopoly advantages. More transparent and consistent ring-fencing arrangements may also support investment and innovation by reducing uncertainty for market participants.

The costs are primarily likely to relate to additional compliance, reporting and governance requirements. However, these costs are likely to be proportionate if they improve transparency and reduce the risk of long-term consumer harm arising from weakened competitive neutrality.

Question 9: ENA rule change request - Do you agree with ENA that there is a problem with the roll out of EVCI?

We do not support the ENA rule change request.

There are genuine issues impacting the timely rollout of sufficient EV charging infrastructure to encourage the equitable take-up of EVs. This includes opaque, expensive and inefficient connection processes and access arrangements, information asymmetries and uncertainty regarding network capacity. These issues do not relate to a 'market failure' that may justify expanding regulated involvement in the provision of charging infrastructure.

The Review must carefully distinguish between barriers to deployment and substantial evidence that competitive provision is unable to deliver efficient outcomes.

After that, the review must also determine what is the appropriate role regulated network businesses may have in overcoming any identified issues with EVCI deployment, and how to ensure that role is consistent with key principles – such as beneficiary pays – which help ensure equitable and efficient outcomes in the interests of energy consumers.

Question 10: ENA rule change request - Would the ENA's proposed solution address the identified problem?

We strongly disagree with ENAs proposal and do not agree that expanding DNSP ownership of EV charging infrastructure is the most effective response to the issues identified.

Where barriers arise from network-controlled processes or information, reforms should focus first on improving access, transparency and connection arrangements. The existence of such barriers should not, on its own, be taken as evidence that network businesses should provide the downstream service.

As noted in answer to question 9 – even where a role for networks is considered to be appropriate, it is necessary for that role to be determined consistent with the key regulatory principles ensuring efficient and equitable outcomes in the interests of energy consumers.

Question 11: ENA rule change request - What are the costs and benefits of ENA's proposed solution?

There are serious potential costs to energy consumers should the ENA proposal proceed. The direct cost to energy consumers includes subsidising the rollout and operation of infrastructure they do not benefit from.

Where the long-term utility of curb side EVCI is not certain, there is also a further risk to energy consumers that the infrastructure they cross-subsidise will be underutilised or redundant. Such risks are reasonable for competitive businesses to take, but it is not in the interests of energy consumers to assume them.

The ENA proposal also risks reducing the scope for effective competition in EVCI, crowding out of private investment, and the transfer of reasonable commercial risks from market participants to consumers.

This proposal must be considered in relation to the interests of energy consumers – rather than transport users – and assessed according to consistent principles (such as beneficiary pays).

Question 12: Do you agree with the assessment criteria?

We consider the National Electricity Objective should remain the primary assessment framework for both the Review and associated rule change requests.

Assessment criteria should support, rather than displace, consideration of the long-term interests of consumers. In applying any criteria, the AEMC should consider not only overall efficiency outcomes but also equity – through the distribution of costs and benefits - alignment with beneficiary pays principles, impacts on vulnerable consumers, and the extent to which proposals support equitable access to essential energy services.

6. Further engagement

We welcome the opportunity to meet with the AEMC project team and other stakeholders to discuss these issues in more depth. Please contact Jan Kucic-Riker at jkucicriker@jec.org.au regarding any further inquiries.