Justice and Equity Centre

Electricity network regulation review – Package 2

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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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1. Introduction and context

The JEC welcomes the opportunity to respond to the Australian Energy Market Commissions (AEMC) *Electricity Network Regulation Review Package 2 Consultation Paper* (the paper).

This review comes at an opportune time. We have a more evolved understanding of regulatory performance and the consideration of consumer interests and outcomes. And we have deep experience with the operation of the current framework with a substantial evidence base regarding the outcomes it does – and does not - deliver for consumers.

We are also amidst rapid technological change which enables a wider range of service and regulatory possibilities and are well-placed to consider new approaches to ensure network regulation is fit to best promote the interests of all consumers.

This context is important and should shape the approach to the review. It necessitates:

- Establishing a more nuanced understanding of the purpose of energy network regulation,
- undertaking a robust assessment of the consumer outcomes being delivered by the current framework,
- challenging the assumptions of the existing approach,
- considering the performance and impact of the regulatory framework as a whole, against key measures of consumer outcomes, and
- considering alternative approaches which may be better aligned with key consumer outcomes or operate better in practice under expected future conditions.

A consumer-focused understanding of regulatory purpose

The broad purpose of network regulation set out in the Paper – to be effective in delivering outcomes which would occur under a workably competitive environment – is increasingly obsolete and out of step with a contemporary understanding of outcomes-focused regulation. We consider this understanding inadequate. It is concerned with comparison to a mechanism – competition – rather than an outcome.

This review must commence from a more practical and explicit statement of what the network regulatory framework is trying to achieve for consumers. We contend this must go beyond the simple explanation of its 'mechanical function' – to operate in place of competition – to describe how regulation should be linked to consumers interests. We recommend:

In promoting the NEO, the purpose of energy network regulation is to ensure network services meet consumer needs in a way which best promotes their interests and is aligned with their values and preferences.

Such a statement of purposes provides a platform to consider a hierarchy of consumer outcomes – which we discuss in the next section. It also establishes a foundation for considering how consumer engagement can be integrated more fundamentally into network regulation, indicating the central role of consumer and stakeholder engagement. We engage with this in more detail in section 2 of this submission.

Establishing consumer outcomes

While being guided by the National Energy Objectives (NEO), even if only as a tool to guide its own considerations, the review should establish a set of key consumer outcomes. These can help frame more fundamental considerations of efficiency and the effectiveness of the regulatory framework. They could include:

- affordable electricity services;
- reliable and resilient supply;
- efficient and timely connection to the energy system;
- efficient utilisation of energy network capacity;
- rapid and least-cost energy decarbonisation;
- enabled benefits of the deployment of distributed energy resources;
- protection from unnecessary investment and network expenditure;
- equitable allocation and management of costs and benefits;
- network decisions grounded in and shaped by meaningful consumer engagement.

While these outcomes are not formally recognised in the NEO they can still constitute an assessment framework and be considerations for what effective network regulation should be framed to enable.

Evidence-based assessment of framework performance

It is critical that this review involve a robust and evidence-based assessment of the performance of the existing regulatory framework and the outcomes it delivers for consumers.

We strongly recommend against relying on assumptions about the appropriateness or effectiveness of the current framework, or any premature narrowing of the scope of review. For example, the Paper correctly asserts that the existing framework embeds a principle that risk should sit with the party best place to manage it. However, it does not assess the extent to which this principle is delivered in practice. We contend that too often it is consumers who carry the bulk of risks they are neither responsible for, nor capable of managing.

We recommend subsequent stages of the review do more to test the assumed operation of the existing framework as part of considering changes which may more effectively deliver on the intent. This is particularly relevant in assessing the appropriateness of a largely ‘ex ante’ approach to regulation.

Prioritisation framework

The JEC broadly agree with the prioritisation framework, but we reiterate the need for a robust assessment of the actual outcomes being delivered for consumers both now, and under expected future conditions.

We caution against assuming that matters already under consideration in other processes should be excluded from consideration in this review. Consideration elsewhere is often subject to constraints or exclusions which dont enable the holistic consideration required. We encourage

the AEMC to retain the widest scope for this review, including incorporation of matters which may be being considered in other processes.

In the remainder of this submission, we address broad issues outlined in the Paper, as well as providing a range of references to material relevant to the issues under consideration.

2. Effective revenue determination processes

Establishing a clear purpose for determination processes

Effective network regulation – and the determination processes which implement it – requires a clear statement of purpose which is focussed on consumers and grounded in consideration of outcomes for them. We recommend:

In promoting the NEO, the purpose of energy network regulation is to ensure network services meet consumer needs in a way which best promotes their interests and is aligned with their values and preferences.

An appropriate revenue determination process should be capable of:

- identifying consumer needs, interests and values/preferences
- updating understanding of how those needs, interests and values/preferences relate to key network decisions,
- engaging with stakeholders and consumers to understand how trade-offs amongst those needs, interests and values/preferences should be made to inform *prudent* business decision-making,
- demonstrating that network proposals most efficiently meet consumer needs, promote their interests and align with/are informed by consumer values and preferences,
- assess and confirm the most efficient means of implementing decisions which meet consumer needs, promote their interests and align with/ are informed by consumer values and preferences.

Robust and effective rather than efficient

It is critical that network regulation and the determination process which helps implement it, is effective and capable of robustly delivering on its intent. But we caution against a disproportionate focus on 'efficiency' in assessing the determination process itself. While it should be administratively efficient, this is secondary to ensuring processes which can reliably and transparently promote consumers best interests.

The Paper discusses regulatory costs and flags consideration of the resources and time committed to the regulatory process, particularly stakeholder and consumer engagement. The resources committed to engagement should be reasonable – and we caution against an equivalence between cost and value – but the assessment of consumer and stakeholder engagement must not be seen only through the lense of cost and 'efficiency'.

We highlight the essentiality of energy and the significant value of energy network infrastructure and services they provide to consumers and the economy more broadly. Further, the material dollar value of network assets and the significance of the revenue required to maintain and operate them warrants a significant investment in processes which shape decisions regarding them, and how best to ensure they deliver outcomes in the interests of the consumers who pay for them.

It is also worth noting that engagement is, in part, in place of practices – often involving substantial resource investment – undertaken by competitive businesses. Competitive businesses expend significant resources to research consumers, develop competitive products, market to consumers and compete for their businesses. With robust measures to ensure efficiency, it is reasonable for monopoly networks to make ongoing commitments to ensure their own investments and operations are meaningfully shaped by consumers and stakeholders, and meet their needs.

We recommend the review focus on considering 'value' rather than cost in assessing the regulatory process, and the appropriate commitment to consumer engagement.

The role of engagement in network regulation

Notwithstanding the increasing focus on engagement over recent years, a clear, shared understanding of the role of stakeholder and consumer engagement in network regulation has not yet been established,.

A number of recent decisions have provided clear evidence that some networks assume engagement to be platform for justifying or validating investment decisions – and expenditure - which may go beyond the AER's assessment of prudence and efficiency. Some have assumed consumer engagement even renders AER assessments redundant. This is not the purpose and function of consumer engagement and should not be how it is regarded.

The JEC view of consumer and stakeholder engagement

We see the role of stakeholder and consumer engagement as clearly linked to the fundamental purpose of network regulation as we have outlined it. Namely, it is the tool for establishing, updating, and applying consumer needs, interests, values and preferences to network regulatory, revenue and pricing decisions.

As part of demonstrating prudent decision making in formulating their proposals, businesses must be able to show that their decisions are aligned with consumer and community values, meaningfully shaped by their preferences, meet their needs and promote their interests accordingly. Meaningful stakeholder and consumer engagement is the means by which they should be required to do this.

We expand on this perspective in our responses to recent NSW network regulatory processes, with general commentary on engagement as well as specific examples of how it can be incorporated, demonstrated and assessed.

NSW DNSP revenue determination 2024-2029: issues paper

We establish the general context for consumer engagement and its evolution, before commenting on the approach taken by each network with some assessment of the value of the approach, and the scope for it to provide meaningful direction to the business. We also then link specific issues back to the consumer values and preferences expressed, which serves as examples of the scope of issues which can be shaped meaningfully by consumers, with commentary on what does and does not work in our view.

NSW DNSP revenue determination 2024-2029: draft determination

In pages 1-5 we comment extensively on the roles and structure of engagement, with our observations of what is required to more consistently deliver on its intent. This is particularly relevant to this review. In the remainder of the submission, we discuss particular areas under consideration, where relevant linking decisions to the engagement undertaken and our assessment of the scope to consider them as meaningful reflections of consumer values and preferences.

Jemena Gas Access Arrangement 2025-2030: Issue paper – pp 3-13

We discuss the structure and quality of engagement, our observations on the role engagement plays in general, what it must be able to demonstrate and how it should be used and evidenced by network businesses. We also discuss examples in detail where relevant to illustrate the importance of engagement in establishing consumer values and preferences and enabling them to meaningfully shape decisions

Jemena Gas Access Arrangement 2025-2030: Draft Decision

We discuss specific issues in the draft and how they may relate to the engagement undertaken by Jemena, with an assessment of the degree to which the engagement undertaken is capable of meaningfully underpinning the proposals they make.

Stronger incentives for meaningful engagement and consumer -focussed decisions

Our conception of engagement considers it as fundamental – or non-negotiable – to demonstrating a prudent business proposal, rather than merely 'beneficial'. This means networks unable to demonstrate decision-making sufficiently grounded in consumer values and preferences - and shaped by engagement – should risk having their allowed revenue reduced below what would otherwise be regarded as efficient. This appropriately places the risk of poor engagement or poorly evidenced consumer focus on networks themselves, in the form of revenue risk.

We strongly recommend this review explore such an approach as a means of addressing the increasingly apparent risk that networks see little real penalty in poor engagement.

Engagement in historical context

In considering how – and why – to embed consumer engagement in the regulatory framework, it is critical to note the history and evolution of regulatory processes. Most important is recognising that the turn to regulatory processes centred on engagement came after the removal of limited merits review and an intent to move away from the conflictual, legalistic approach to regulation it

embodied. It was recognised that centring network regulation on the interests, values and preferences of consumers was a critical evolution, improving capacity to promote the NEO.

We unequivocally support this evolution and strongly recommend this review be considered as a means by which to continue to progress that evolution by strengthening and clarifying the role and centrality of consumer and stakeholder engagement.

Re-assessing the role of the Framework and Approach

The Paper notes the Framework and Approach (F&A) has taken on a role which was neither intended nor anticipated. We agree and support this process considering the impact of this. We would also support consideration of reform to ensure the F&A does not become a platform for speculative change or a 'backdoor' for decisions which should more appropriately be dealt with as part of the determination process itself.

Potential to undermine the central role of consumers and engagement

Where the F&A occurs in the cycle – particularly in relation to the substantive consumer and stakeholder engagement undertaken by networks – has the potential effect of enabling changes in areas of critical consumer interest without the robust engagement required to deal with them appropriately. While the Paper notes that F&As are largely non-binding, the areas where this is not the case are the very areas of most concern.

Form of control and service classification are areas where critical trade-offs of consumer interest, values and preferences are set. This includes how risk is handled (and by whom), and how issues of social cost versus sectional benefit are determined – for example in service classification. These are fundamental areas where decisions must be meaningfully shaped by consumer preferences.

Where networks propose material changes to these aspects of the F&A – as is the current case with NSW DNSPs – before undertaking the necessary deep engagement with stakeholders and consumers, this risks undermining the scope for network decisions to be meaningfully shaped by consumers or properly reflect their values. This is unacceptable in our view and undermines the wider intent of the regulatory framework.

We support this issue must being a priority focus area in this review process, with a focus on ensuring the F&A does not undermine the wider intent of network regulation.

3. Incentive arrangements that apply to NSPs

The review must assess network 'incentives' holistically, rather than focus narrowly on incentive mechanisms in isolation. The purpose should be to consider the degree to which networks have a consistent incentive to promote consumer's interests and optimise desired outcomes for them.

Are networks incentivised to improve outcomes for consumers?

Notwithstanding explicit incentives, network costs are broadly increasing with an enduring and substantial bias towards capital expenditure. This is broadly inconsistent with the promotion of

efficient investment in the interests of consumers, particularly where the development of technology and increasing decentralisation offers a wider range of potential solutions to the issues networks face.

Do incentive schemes optimise value for consumers?

The Paper itself provides clear evidence that revenue from incentive schemes themselves is steadily escalating. It is not sufficient to assume this represents success. This review must consider what 'value' incentive schemes are delivering for consumers relative to the costs incurred, with a frank assessment of whether they are optimising value for consumers.

We note the most recent review of incentives undertaken by the AER and highlight the report by the Consumer Challenge Panel, which asked a number of questions regarding the value of incentive schemes and considered options for more outcomes-based measures to align network incentives with consumer interests. We strongly encourage this review to engage with these questions.

Utilisation

Utilisation is rightly identified as a key consideration for this review and a key determinant of consumer value as the energy transition progresses. More effective means of measuring, monitoring and incentivising efficient network utilisation should be a central focus for the review.

A number of recent processes have engaged with the question of network utilisation, considering alternative measures for assessing utilisation and benchmarking it. The JEC highlights our own submissions to these processes[1] [2] and encourages the AEMC to ensure this process draws on work undertaken as part of these, and other relevant processes in considering how to more effectively link network performance and incentives to consumer outcomes.

4. Risk allocation and compensation

Risk allocation

The Paper rightly asserts the intent of the framework is for risks to be carried by the party best placed to manage and mitigate them (in consumers interests). The JEC agrees this principle should be a foundation of the regulatory framework.

However, we question whether this intent is consistently delivered in practice and strongly recommend the Review focus on assessing the degree to which practice is actually seeing consumers carrying risks which they are not responsible for and have little capacity to manage. This is not just a question of what services networks provide – as we discussed in our response to the package 1 consultation[3] - but a question of whether the assumptions and intent of the

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1 JEC submission to AER network performance reporting for regulated networks 2025
2 JEC submission to AER annual benchmarking reports 2025
3 JEC submission to AEMC energy network regulation review package 1 consultation, 2026

structure of regulation are being realised in practice in a framework where all costs are ultimately borne by consumers.

Risk compensation

The Paper also sets out an intent to assess the degree to which those carrying risks are being appropriately compensated. We agree this must be a priority for the Review and note increasing concern that the current framework results in networks being materially overcompensated for the risks they actually face.[4] [5] Our own responses to the current review of the Rate of Return Instrument[6] notes some key issues, including the need to shift the focus of fair return to the minimum rate required to induce efficient investment.

We recommend the review engage with this work, including undertaking an evidence-based investigation of network returns over recent years relative to risks they have actually faced under the regulatory framework as it operates.

The cumulative effect of the regulatory framework

Any review of risk and compensation in the regulatory framework must holistically consider the operation of the framework.

The rate of return process is intended to make assumptions and allowances regarding risks carried by network businesses. This is reasonable, but cost pass throughs, contingent projects, reopeners and other mechanisms are increasingly common, mitigating the actual impact of risk on networks. It is reasonable to question whether the evolution of these mechanisms and their increasing use is resulting in consumers assuming more of the risk networks are being compensated for.

Preparatory works and anticipatory investment

Preparatory and advanced works

The JEC welcomes closer scrutiny of the increasingly common use of preparatory or advanced works, ostensibly employed to mitigate risk. This consideration should include:

- What risks are advanced works being used to mitigate?
- How are the risks being demonstrated, assessed and advanced works approved?
- Is it possible to assess the risk reduction impact of advanced works in advance, and are they successfully delivering material/quantifiable mitigation for consumers?
- What mechanisms may enable advanced works to be undertaken with greater confidence they are not having the effect of undermining the robustness of the regulatory approval process?

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4 IEEFA: An assessment of the economic regulation of Australia's Energy Networks, 2022

5 Electricity Market Advisory Services: Report for ECA's submission to the AER's review of the rate of return instrument, 2025

6 JEC Submission to draft rate of return discussion paper 2025

Over a number of years, we have observed increasing deployment of 'preparatory' or advanced works – particularly in Transmission – ostensibly to reduce supply chain, finance and other risks which may delay projects and escalate costs. We are extremely concerned there is little evidence these works have had any impact for consumers, with projects consistently escalating in cost regardless. In some notable cases, cost escalations have been so substantial as to result in reopener requests, transferring yet more risk to consumers. We are concerned the practice is not operating to reduce project risks for consumers and may actually be locking in costs and inefficiencies for consumers.

It is difficult to assess the actual mitigatory impact of advanced works where the comparison point is a hypothetical circumstance, and where the network business itself possesses most of the relevant information. This review should draw on evidence to assess the actual impact of such practices on consumers as part of larger assessments of how the framework is performing relative to its intent to handle risk fairly and effectively.

Anticipatory investment

The JEC is concerned anticipatory investment undermines fundamental principles of fair risk apportionment and involves businesses effectively making 'trade-off' decisions which should be the exclusive purview of consumers. That is, in deciding that early investment – and the incurring of costs now – is preferable to the risk of proportionately larger costs or foregone 'benefits' later they are making a trade-off that only consumers should be able to make.

Such cases suffer from similar issues as preparatory works with the benefits of anticipatory investments being compared to an assumed or 'hypothetical' case, but with costs which are concrete, immediate and ongoing. We are concerned that such practices undermine scope for decisions to be grounded in consumer preferences and have the effect of providing an incentive to businesses to 'bring forward' more speculative investments.

This review should consider the wider impact of such practices and whether they are consistent with the intent for fair risk apportionment and business decisions founded in meaningfully expressed consumer preferences.

5. 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.