

12 September, 2024

Mr Drew Butterworth  
Director  
Australian Energy Market Commission

Submitted online

Dear Drew,

### **Directions Paper: Enhanced customer protections**

The Justice and Equity Centre (JEC – formerly PIAC) welcome this opportunity to respond to the Australian Energy Market Commission's (AEMC) Directions Paper on enhanced customer protections as part of the Accelerating smart meter deployment rule change (the Paper).

The JEC strongly support enhanced measures to protect consumers and affirm their right to informed consent and simple price offers that suit their needs. We commend the AEMC for recognising the importance of robust frameworks of explicit informed consent, and the need for ongoing access to simple, flat-price retail energy offers. Consumer choice and scope to pay for their essential energy services in a way that meets their needs, without imposing unreasonable costs, is a crucial aspect of our current energy system.

We welcome recognition in the Paper that the ACCC recommended, as part of its comprehensive inquiry into retail pricing, that retailers be required to offer flat-price products. This recommendation has not yet been fully delivered and we consider this process a crucial and timely opportunity to rectify this. The JEC would support a universal application of a requirement for flat price offers to be made available to consumers with smart metering, regardless of the retailer or the circumstances of the consumer (that is, regardless of how they came to have a smart meter, or when it was installed). If this process limits the application of a requirement to offer flat prices, we strongly recommend the AEMC consider further reforms as part of the upcoming consumer-focussed rule change proposals initiated by Ministers.

The JEC note the discussion in the Paper of potential impacts on retailers from the proposals and recommend the AEMC not give them undue consideration. We do not consider the issue of potential increased retailer costs and risks to be material, regardless of whether retailers can demonstrate they will face actual impacts of increased risks and costs from the proposed changes. We highlight the following in this context:

- Any increased costs and risks to a retailer associated with any individual customer, do not necessarily apply to all customers, as noted in the AEMC in the paper. In some cases, retailers will actually have scope to benefit from some customers remaining on flat tariff

options, with more cost reflective network tariffs applying.

- Retailers are the party best placed to manage any risks or costs involved with the proposals. Retailers have a range of tools at their disposal to both avoid, manage and mitigate any associated costs and risks arising from any of their customers. This means that any 'cost impact' would only be realised in full 'all other things being equal' (ie. if the retailer did nothing different). This is neither likely, nor 'reasonable' business practice. In addition to existing cost and risk mitigation tools already available to retailers, they can manage the potential impact of any changes through:
  - The general diversity of consumer contract pricing and conditions. That is, the scope to charge a range of mixes between fixed and usage charges for different consumers.
  - The diversity in mix between accumulation and smart-meter customers. Even with acceleration, at any point in time there is not likely to be a majority of consumers with a smart meter and a flat price offer – and in any case the transition is relatively steady, rather than a step-change, giving time for adjustment by retailers.
  - Diversity in profiles of consumers with smart meters and flat price offers. As noted, many consumers with smart meters and on flat price offers may actually have a profile which 'benefits' the retailer.
  - Scope to offer a reasonable 'premium' on some flat price offers. It is reasonable for some of the cost of risk to the retailer to be reflected in the level of the flat price to the consumer. However, we are concerned that the proposals in the Paper may result in a higher than reasonable premium on flat price offers, and we consider this an area where further measures are required, either through the rule changes proposed by Ministers, or through reforms to the DMO.
  - Scope to offer other products. Retailers can either demonstrate that more variable offers would be of benefit to consumers (as proposed in the Paper), or they can offer other direct incentives or assistance to particular consumers to reduce, or shift use from times incurring greatest cost to the retailer.

The AEMC should assert that retailers are the appropriate party to face these risks and costs and manage them, rather than individual consumers. Consumers have only one means of dealing with the costs and risk associated with pricing changes – either change their usage of the energy they need or pay the additional costs - either (or both) of which may be impossible for many consumers or result in an unreasonable impact on their ability to access the energy they need affordably.

We welcome the approach by the AEMC and support their assessment that retailers are best placed to deal with any costs or risks the proposed approach may introduce.

## Issues not addressed in the Paper

While we support the measures proposed in the Paper, we consider them to be insufficient to address the issues faced by consumers identified by consumer stakeholders (and well documented in recent media) as part of this process. We also note that the limitations in the proposals may also result in further issues which need to be addressed. We strongly encourage the AEMC to note any further reforms that may be necessary and consider them as part of the upcoming rule changes proposed by ministers, which address related issues of choice, consent and consumer protection.

In this context we note the following:

- The proposed approach may effectively introduce two tiers of 'rights' for consumers, and two tiers of explicit informed consent. For instance, a consumer who has a meter change will have their existing choice protected, including ongoing access to a flat-price offer. However, a resident moving into a new property, who is likely to have no knowledge of the meter type, may not have the same scope to exercise their choice to access a flat-price offer.
- The proposed Explicit informed Consent provisions are effectively time limited, allowing retailers to move a consumer, without their consent, after 3 years. We are concerned this undermines the principle of EIC and sets a potentially dangerous precedent by implying that consent is time limited in certain circumstances.

Retailers have consistently asserted that consumers on long expired offers which are demonstrably worse than other available offers, cannot be moved without violating EIC. A consistent approach must be taken. Either EIC applies until over-ridden, or it is time-limited with a consistent 'sunset' and consistent provisions for default protection when it expires (for instance, default to a regulated flat-price offer). If the AEMC does not consider it possible to address this issue of principle within this process, it should explicitly be prioritised for address in the series of rule changes proposed by ministers, which would appear to consider a number of relevant issues.

- Its not clear how widely or how long the flat-tariff provisions will apply, and whether all consumers will effectively be able to access and be protected by them. To be effective flat price offers must be widely available and comparable to all consumers. This will maintain competitive tension and help ensure retailers do not unreasonably inflate flat price offers beyond the level of a 'fair premium' reflecting increased risk and cost, in order to either:
  - Force consumers off flat tariffs.
  - Penalise customers who remain on flat price offers.

## Other issues raised in the paper

The JEC do not agree with the assertion in section 3.1.2 that the proposed new measures may 'slow the transition to cost reflective tariffs'. At worst, the proposed changes will have no impact at all on the transition. Cost reflective tariffs are network instruments designed to signal

more efficient costs to retailers. Arguably this transition is actually enabled by the measures proposed in the Paper, rather than impeded by them, as they help shield consumers from the immediate impacts of more complex network tariffs.

We agree with the AEMC's assessment of issues outlined in 3.3 of the Paper and support the decision not to proceed with a consumer 'opt-out', or changes to the transition of network tariffs.

We welcome the opportunity to meet with the AEMC and other stakeholders to discuss these issues in more depth. Please contact Jan Kucik-Riker at [jkuciriker@jec.org.au](mailto:jkuciriker@jec.org.au) regarding any further input.

Yours sincerely

**Douglas McCloskey**  
**Program Director, Energy and Water Justice**

+61 2 8898 6534  
[dmccloskey@jec.org.au](mailto:dmccloskey@jec.org.au)