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Justice and
Equity Centre



COUNCIL on
the AGEING NSW

NSW retail electricity tariff reforms

2 February 2026

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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.

Council on the Ageing NSW

Council on the Ageing (COTA) NSW is the leading not-for-profit organisation representing the rights and interests of people over 50 in NSW. We're an independent, consumer-based, non-government organisation. We are determined to ensure that older people's contributions to society are valued and that they have access to the opportunities other members of the community take for granted.

St Vincent de Paul Society NSW

The St Vincent de Paul Society NSW is a lay catholic organisation whose vision is to create a more just and compassionate society. It provides a range of services designed to respond to urgent and complex need. It's assistance spans cost-of-living and emergency relief, programs for people experiencing or at risk of homelessness (including crisis accommodation), Family and Domestic Violence services, Alcohol and Other Drugs support, and assistance for social housing tenants.

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Recommendations

Recommendation 1

That the NSW Government prohibit retailers from changing a customer's price structure without explicit, informed consent, and ensures this prohibition is ongoing and applies to all forms of reassignment.

Recommendation 2

That the NSW Government require all retailers to offer an ongoing flat rate price to residential customers, irrespective of their meter type.

1. Introduction

The Justice and Equity Centre (JEC), Council on the Ageing (COTA) NSW, and St Vincent de Paul Society NSW (Vinnies NSW) welcome the opportunity to respond to the NSW Department of Climate Change, Energy, the Environment and Water' (DCCEEW) Retail electricity tariff reforms consultation paper.

Our organisations welcome the NSW Government's commitment to "boosting consumer rights and protections" through its Consumer Energy Strategy. We consider retail electricity tariff and pricing reform a key part of this agenda.

We strongly support measures to protect consumers and affirm their right to meaningfully informed consent and the scope to choose simple price offers that suit their needs. Reforms to accelerate the deployment of smart meters across the NEM must include robust frameworks protecting explicit, informed consent. They must also provide ongoing access to simple, flat rate¹ retail energy offers.

We support implementing more cost-reflective network tariffs. But we contend they should be regarded as an efficient signal to retailers—not NSW household consumers. Forcing households onto complex, time-variant or demand-based retail offers undermines informed consent, unfairly impacts those already facing disadvantage, and restricts equitable access to affordable energy.

Ensuring consistent application of explicit, informed consent obligations

The NSW Government should prohibit retailers from changing a customer's price structure without their explicit, informed consent. This principle is foundational to consumer law and is particularly important in essential service markets where consumers face information asymmetries and limited capacity to actively monitor complex pricing arrangements.

Requiring explicit, informed consent ensures consumers retain agency over the price structures they are placed on, rather than being passively reassigned to arrangements that may increase costs or expose them to new risks.

It also reinforces appropriate accountability by placing the onus on retailers to clearly explain proposed changes and their implications. Without this protection, consumers may be moved onto price structures they do not understand, did not choose, and would not reasonably consent to if properly informed. Protecting explicit, informed consent is critical to maintaining trust, fairness, and legitimacy in the retail electricity market.

Ensuring meaningful choice in retail electricity offers

NSW household consumers must also retain access to the option of a simple, flat rate retail offer. Accelerating smart meter deployment must be paired with robust consent frameworks and an ongoing requirement for all retailers to offer flat rate prices.

¹ For clarity, we use 'flat rate' to refer to a pricing structure where a consumer pays a single, fixed price per unit of electricity regardless of the time of day, season, or their usage level.

Without this, the proposed protections risk doing little more than delaying the unfair impact of the involuntary introduction of the complex offers they seek to safeguard against.

Taken together, these measures will preserve choice, improve transparency, and ensure reforms deliver fair and efficient outcomes for NSW households and the energy system.

Distinguishing between network tariffs and retail prices

Throughout this submission, we depart from the common practice of referring to both network and retail charges as “tariffs”. Instead, we refer to network *tariffs* in relation to the regulated charges set by network businesses and faced by retailers as an input cost. We refer to retail *prices* in relation to the prices and offers consumers ultimately see and respond to.

This distinction is intentional and important: these are wholly distinct costs which respond to distinct needs. They serve different functions and operate at different points in the value chain. There is no requirement for them to be linked, mirror each other, or be varied in a coordinated fashion.

Treating them as interchangeable (including at the level of terminology used) has contributed to ongoing confusion in policy and regulatory debates and has impeded reforms which could ensure network tariffs and retail prices are best fulfilling their individual purposes for NSW households and the energy system.

2. Why network tariffs and retail tariffs must be treated separately

The purpose of network tariffs—and their interaction with retail prices—is consistently misunderstood, with significant and ongoing impacts on NSW households and the energy costs they face. While substantial, network tariffs are only one input, among many², into the retail price consumers pay.

Cost reflective network tariffs do not necessitate retail offers of the same structure

More cost-reflective network tariffs are designed to signal the cost of using the network at a specific connection point to the retailer responsible for that connection. This helps ensure the costs retailers face for that connection are as efficient and accurate as possible.

Retailers should then take these network costs, along with wholesale energy costs and other inputs, and bundle them into a range of retail offers. These offers can vary widely; some may more closely mirror network tariffs, others track wholesale prices, while others are flat rate, include demand-response rebates, offer unlimited use, or encourage solar consumption.

The intent is to present meaningful choice to consumers and enable them to choose offers which best suit their needs. For instance, some consumers may have less control over the timing of their usage and so value the stability and predictability of simpler ‘flat’ offers.

² These include wholesale costs, jurisdictional schemes, and retail costs.

There is no need—and we contend, no justification—for retailers to require consumers to adopt retail offers that replicate network tariff structures. In fact, we contend that doing so undermines the fundamental purpose of retailers and the retail market, and unreasonably restricts the consumer choice framework that underpins the National Electricity Market (NEM).

Ensuring retailers undertake their role for consumers and the energy system

Retailers are intended to create value for consumers by offering choice and managing price and volume risk; when retail practices remove choice they effectively shift risk onto households undermining their core market function at the expense of consumers.

In our previous example, denying access to a flat price effectively transfers demand-shifting risk from the retailer to the consumer, despite the retailer being better placed to manage that risk through portfolio diversification and product design.

More cost-reflective network tariffs are a core component of the risk-management role of retailers. These tariffs signal network cost and so enable efficient network use, reduce the need for new investment, and allocate costs more equitably. They do so by providing indications of where value and opportunity exist to enable the development of products and services which manage or mitigate network costs on behalf of consumers.

Retailers have a range of tools available to manage the risks associated with time-variant and demand-based network tariffs³, only one of which involves passing those risks directly through to consumers via more cost-reflective retail offers. Consumers, by contrast, have far fewer options. In practice, their choices are limited to attempting to adjust their energy use or absorbing higher costs. For many households—particularly those experiencing vulnerability or disadvantage—meaningful load-shifting is not feasible. As a result, exposure to these tariffs can undermine energy affordability and place disproportionate financial pressure on those least able to respond.

Requiring retailers to face cost-reflective network tariffs creates opportunity, and an incentive to design a range of offers that meet their customers' needs⁴. For more cost-reflective retail offers, meaningful choice ensures consumers opt into these products because they deliver value, not because alternative price structures have been removed.

The retail market exists precisely to convert complex, efficient signals into diverse, comprehensible price structures that support meaningful consumer choice in an essential service market.

Critically, cost-reflective network tariffs do not need to be reflected (and responded to) in retail offers to be effective. Even in retail offers which do not to pass these signals through, the tariffs still promote a fairer allocation of costs under the “causer pays” principle.

³ For a more detailed (though not exhaustive) overview of these tools, see [JEC submission to AEMC Enhanced consumer protections for smart meter deployment directions paper](#), p. 2

⁴ This is not to say consumers should be prevented from choosing more cost-reflective retail products if they desire. It simply means these tariffs should target retailers in the first instance, while consumers are protected from being exposed to them by default.

Our organisations strongly recommend this process clearly distinguish the purpose of retail prices and network tariffs and implement measures which best enable NSW households to retain the choices which best suit their needs, while incentivising retailers to more effectively fulfil their role in the market.

3. Prohibit unilateral price/offer reassignment

The NSW Government should prohibit retailers from changing a customer’s price structure⁵ without the customers explicit, informed consent. This prohibition should be ongoing and apply to all forms of reassignment—not just moves to demand tariffs. This protection should apply irrespective of meter replacement.

Explicit, informed consent must be protected as a key aspect of market choice

Explicit, informed consent is a fundamental aspect of consumer choice, particularly in relation to an essential service such as energy. Consumers cannot be made ‘better off’ through unilateral changes to the conditions of their offer, largely because such changes would violate EIC requirements.

It is (or should be) unacceptable for retailers to make unilateral changes to the terms of an offer their customers have consented to. Accordingly, it is (or should be) unacceptable that retailers are permitted to unilaterally reassign customers to different price structures—including plans which will materially increase their bills—without explicit, informed consent.

In no functioning market are sellers permitted to unilaterally alter a customer’s pricing structure without obtaining explicit, informed consent. Australian Consumer Law makes clear that unilateral changes of this kind can constitute unfair contract terms, as they erode consumer autonomy and may mislead or disadvantage people. If this standard applies to discretionary services, it must apply even more rigorously to essential services such as electricity.

We support the proposal to prohibit retailers from seeking to change a customer’s price structure after they receive a meter upgrade. We contend this prohibition should be perpetual. However, at minimum, it should extend for a set period of one year. This would ensure consumers at least have sufficient metering data to make an informed choice about the price structure most appropriate for them after the prohibition ends.

This prohibition must be paired with a requirement for retailers to offer a flat rate price. Without such a coordinated measure, the protection risks amounting to little more than a delay before consumers face the complex tariffs these reforms seek to safeguard against.

⁵ This protection should prohibit retailers from changing key aspects of their offer and may be linked to the AEMC’s proposed recommendation that consumers be charged the same price for the same offer with price discrimination limited to offers that are “meaningfully different”. See [AEMC Pricing review draft report](#) p. 29.

Recommendation 1

That the NSW Government prohibit retailers from changing a customer's price structure without explicit, informed consent, and ensures this prohibition is ongoing and applies to all forms of reassignment.

4. Require retailers to offer flat rate price structures

The NSW Government should strengthen the AEMC's national requirement to improve access to flat rate offers for customers with smart meters. This means extending the obligation from designated retailers⁶ to all retailers.

Limiting the requirement to designated retailers leaves significant gaps in consumer protections. For example, a customer who wants a flat rate would lose that option after switching from the retailer that installed their smart meter. This problem is likely to be more acute in regional and remote areas, where retail choice is more limited.

Limiting the requirement is also more likely to create unintended consequences which may undermine the effectiveness of the measure or distort competition between retailers.

We strongly recommend implementing an ongoing requirement for all retailers to offer a flat rate price option to residential customers, irrespective of their meter type. This would increase consumer choice, support fairer outcomes, and protect households that cannot meaningfully shift their usage from being penalised under time-variant or demand-based pricing.

Introducing a retail requirement to offer a flat rate price would also simplify plan comparisons, as current settings allow retailers to limit access to certain tariffs based on the customer's meter type. This change would enhance the effectiveness of tools such as the AER's Energy Made Easy and ensure the Default Market Offer provides more comprehensive and meaningful support and protection for consumers.

We do not consider it necessary or appropriate for these arrangements to be time-limited. A core purpose of the retail market is to provide meaningful consumer choice. Where that choice is artificially constrained or rendered trivial⁷, regulatory intervention is warranted.

As with prohibitions on retailer-led reassignment, there is a risk these reforms will be ineffectual if only applied on a temporary basis. Accordingly, we recommend implementing an ongoing requirement.

Recommendation 2

That the NSW Government require all retailers to offer an ongoing flat rate price to residential customers, irrespective of their meter type.

⁶ Defined as the current retailer for customers with an existing electricity connection, or the local area retailer for customers establishing a new connection.

⁷ See [ACCC to investigate energy plans that potentially mislead consumers about savings](#).

5. Continued engagement

We welcome the opportunity to meet with the DCCEEW 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.