



AUSTRALIAN COMPETITION
& CONSUMER COMMISSION

Restoring electricity affordability and Australia's competitive advantage

Retail Electricity Pricing Inquiry—Final Report

June 2018

Executive summary

Australia is facing its most challenging time in electricity markets. High prices and bills have placed enormous strain on household budgets and business viability. The current situation is unacceptable and unsustainable.

The approach to policy, regulatory design and promotion of competition in this sector has not worked well for consumers. Indeed, the National Energy Market (NEM) needs to be reset, and this report sets out a plan for doing this.

The ACCC's package of recommendations is wide ranging, which also reflects the nature of the mandate given to it by the Inquiry's terms of reference. Some recommendations can be readily implemented within existing market, industry and policy structures. Others are more ambitious and their development and implementation may be challenging in the absence of a commitment by all participants—governments, industry, regulators, policy makers, consumer bodies and consumers themselves—to move away from existing modes of thinking and practices.

These challenges should not prevent, or unduly delay, what we consider are necessary measures to restore affordability and Australia's competitive advantage in electricity. The ACCC's final report from the Retail Electricity Pricing Inquiry examines the many causes of problems in the electricity market and sets out 56 recommendations that will bring down prices and restore consumer confidence and Australia's competitive advantage. These recommendations span the entire supply chain, focusing on four key areas:

1. Boosting competition in generation and retail
2. Lowering costs in networks, environmental schemes and retail
3. Enhancing consumer experiences and outcomes
4. Improving business outcomes.

Removing unnecessary costs for customers is a vital economic reform with at least two important economic benefits. First, it improves equity as low income households pay a much higher share of disposable income on electricity. They should not be paying more for electricity because of poor past decisions or inappropriate market behaviour. Second, our recommendations will boost our overall welfare as we avoid industries closing due to paying unnecessarily high electricity costs.

Significant gains can be made for consumers and businesses if these recommendations are adopted. The NEM¹ can be restored to an efficient, fair and competitive market that works in the interests of end users.

The following describes the key issues the ACCC has identified and, in summary form, sets out many of the core recommendations from this report. A full list of recommendations follows at page xix.

How did we get here?

There are many causes of the current problems in the electricity market. At all stages of the supply chain decisions have been made over many years by many governments that set the NEM on the wrong course.

In networks, the framework that governs regulation of monopoly infrastructure was loosened, leaving the regulator with limited ability to constrain excess spending by network owners. The limited merits review (LMR) regime allowed network owners to appeal regulatory decisions and recover billions of additional dollars from consumers. It led to significant increases in prices, has drawn out the length of time taken for revenue determinations, and has created significant uncertainty around network pricing. In addition, increased expenditure on networks was driven by reliability standards for some networks that were set too high, without due regard for consumers' willingness to pay for marginal increases in reliability.

¹ The National Energy Market comprises South Australia, Victoria, Tasmania, NSW, the ACT and Queensland.

In generation, against ACCC advice, the Queensland and New South Wales (NSW) governments made decisions regarding the operation and ownership of generation assets giving rise to concentrated markets. In Queensland, the government consolidated the generation assets of three businesses into two. In NSW, as one example, both generators owned by Macquarie Generation were sold to AGL, missing an opportunity to deliver a competitive market structure by selling them to separate buyers.

Most state governments put in place excessively generous solar feed-in tariff schemes with a view to encouraging consumers to install solar photovoltaic (PV) systems. Under these schemes, the subsidy paid to consumers for the energy produced by their systems outweighed, by many multiples, the value of that energy. Take up of the schemes exceeded all expectations, in part due to dramatic declines in solar PV installation costs. The substantial cost of the schemes continues to be spread across all electricity users.

The main enduring policy instrument for encouraging low-emissions electricity generation is the Renewable Energy Target. While it has been effective at encouraging wind and solar generation capacity installation, it has also distorted the investment that has occurred in the transition from higher carbon technologies to lower ones. The subsidies received for installing wind and solar made the business case for doing so compelling but did so in a way that was indifferent to the ability to provide energy to the market when demand requires it.

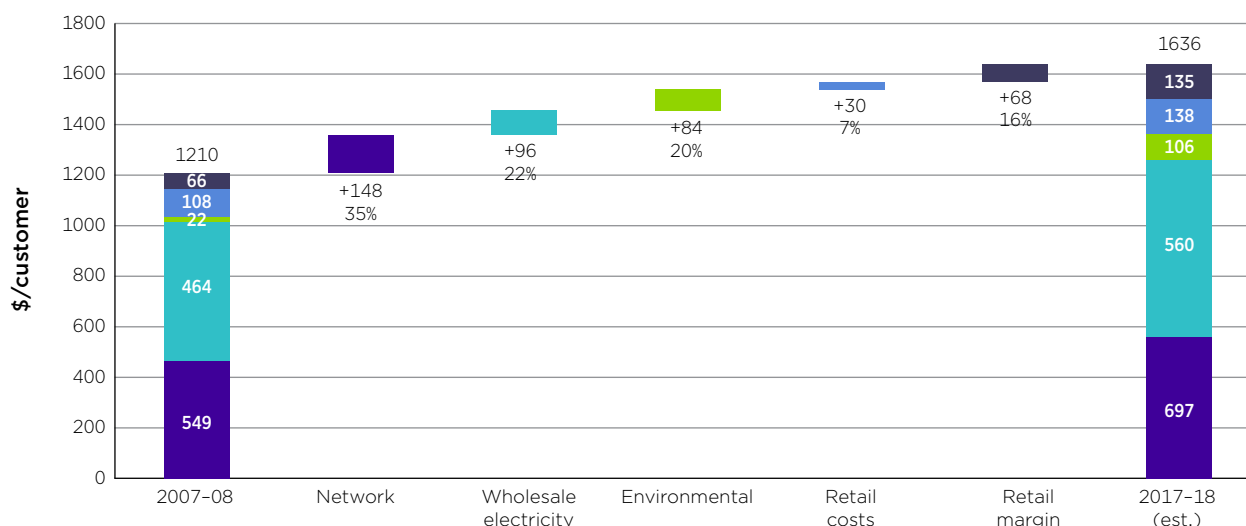
At a time when gas-powered generation has become more important with the exit of large coal-fired plants, the extent of LNG exports from the East Coast and government moratoria on on-shore gas exploration and development have stifled the availability of gas at a low price.

Electricity retailers have also played a major role in poor outcomes for consumers. Retailers have made pricing structures confusing and have developed a practice of discounting which is opaque and not comparable across the market. Standing offers are priced excessively to facilitate this practice, leaving inactive customers paying far more than they need to for electricity. Pay on time discounts, which have emerged as a response to attempts to constrain late payment fees, are excessive and punitive for those customers who fail to pay bills on time.

The impact on prices and bills

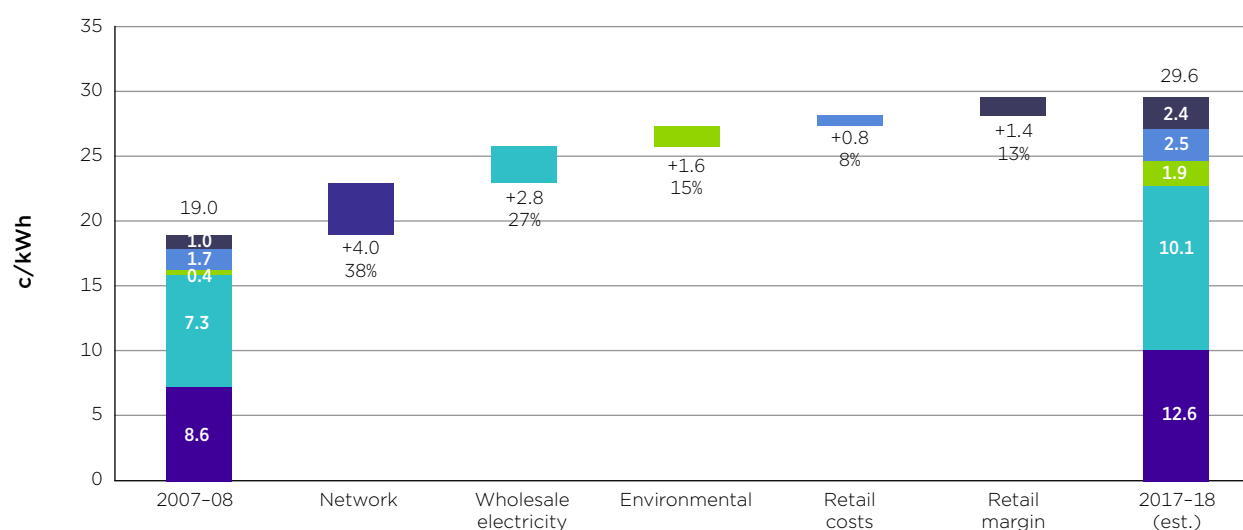
Residential consumers have faced a real increase of 35 per cent in their bills (figure A) and a price increase of around 56 per cent (figure B) in real terms over the period from 2007–08 to 2017–18.

Figure A: Change in average residential customer bill from 2007–08 to 2017–18, NEM-wide, real \$2016–17, excluding GST



Note: The percentages show each components' contribution to the total increase between 2007–08 and 2017–18.

Figure B: Change in average residential customer effective prices (c/kWh) from 2007-08 to 2017-18, NEM-wide, real \$2016-17, excluding GST



Note: The percentages show each components' contribution to the total increase between 2007-08 and 2017-18.

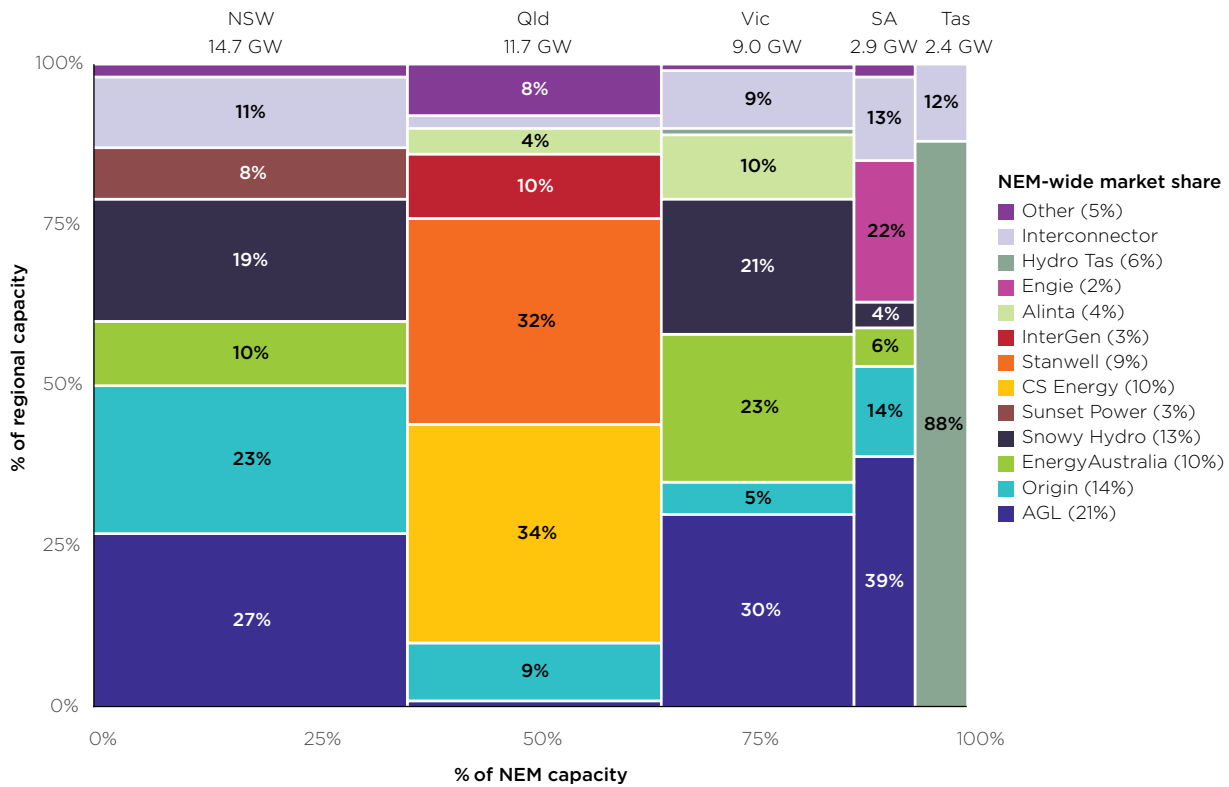
The difference between these two increases is due to a 13.3 per cent decrease in average electricity usage from 2007-08 to 2017-18. The decline in average usage is driven by various factors. The primary factor is the increase in the number of consumers with solar PV. The proportion of solar customers in the NEM was less than 0.2 per cent in 2007-08. This has increased to over 12 per cent in 2017-18. These consumers use less grid-sourced electricity than they otherwise would have.

Solar customers are paying, on average, \$538 per year less than non-solar customers, suggesting that affordability concerns are most acute for those customers who have not (and possibly cannot) install solar PV.

Competition in generation

Market concentration in the NEM has recently increased, through both acquisitions and closures of significant assets (figure C). The NEM is an energy only gross pool for the wholesale bidding and dispatch of electricity. These features of the market design mean that competition in bidding among rival generators is critical for driving efficient prices. Where markets are concentrated this can significantly affect bidding behaviour dramatically and lead to prices above efficient levels.

Figure C: Market share by generation capacity by region, January 2018



The current electricity market structure stems from government decisions made, commencing in the 1990s, to privatise many state-owned assets and open generation and retail markets to competition. This was accompanied by the formation of the NEM. The aim of these decisions was to drive efficiencies and to ultimately benefit electricity users through lower prices and better services. For a long period the NEM produced relatively low wholesale prices and affordable prices for end users. However, arguably, the market was over-supplied with generation, which was itself an unsustainable situation.

Competition in the wholesale market has also been driven by fundamental changes to the generation technology mix.

The tightening of supply and demand, brought about mainly by the exit of large coal-fired generators, has seen a general ‘lift’ in wholesale prices across the NEM in recent years. The ACCC has undertaken detailed work to examine whether this lift is as a result of market power concerns, including bidding behaviour by particular generators. The ACCC has found that elevated prices have generally been driven by high and entrenched levels of concentration in the market, combined with fuel source cost factors, rather than identifiable uses or abuses of market power (for example, conduct of particular generators to ‘spike’ the price). In that context, the market power mitigation measures that are in use in other parts of the world would not address these issues.

The NEM was designed such that higher prices would ordinarily be a signal for new investment. Until recently, however, this investment has not occurred for a number of reasons.

Policies associated with the objective of reducing carbon emissions have been problematic. Australia has committed, through international treaties, to reduce its carbon emissions. The electricity sector has, understandably, been a key focus for these efforts given the historically carbon-intensive nature of electricity generation. However, various policy failures here have hurt consumers.

As the Finkel review identified, there has been a failure to facilitate an orderly transition from carbon-intensive generation technologies to cleaner ones. This is highlighted by the relatively sudden decisions by the owners of the Northern and Hazelwood power stations to close those plants. The short notice of closure of these plants did not enable the market to respond to expected shortfalls in capacity with adequate and timely investment.

While many incumbents have pointed to the lack of an enduring and stable climate change policy as a cause of investment uncertainty and under-investment, at the same time, they have had little incentive to invest in new capacity when they are reaping the benefits of higher spot and futures prices.

The National Energy Guarantee seeks to more clearly link the introduction of lower emissions generation sources to the ability to call on generators to produce energy when it is most needed. To the extent that this policy can encourage investment in capacity from a diverse range of sources, diluting market concentration and promoting competition to supply retailers, the policy should assist in delivering electricity affordability.

It is crucial that the NEG includes safeguards to ensure that the new obligations on retailers do not deliver large incumbents advantages in complying with the scheme, such as those afforded to them through ownership of significant generation portfolios. The Energy Security Board has recognised this risk in the development of the NEG and has sought to address it through mechanisms that will be built into the design of the policy. The ACCC supports the incorporation of such safeguards to improve liquidity and encourage transparency.

Another major factor in wholesale prices has been the significant shortages in competitively priced gas at a time when gas-powered generation would often be the logical source of replacement for lost coal-fired capacity. Gas prices have doubled or tripled in recent years. We estimate that for every \$1/GJ rise in gas prices, the wholesale price of electricity rises by up to \$11/MWh, depending on regional differences in the NEM. Encouraging increased supply of competitively priced gas is crucial to moderating electricity prices. The ACCC's Gas Inquiry is continuing efforts to this end.

The ACCC is recommending a number of interventions to deal with concentration in generation markets:

- There should be a prohibition on acquisitions and other arrangements (other than investment in new capacity) that would limit market shares to 20 per cent in any NEM region and across the NEM as a whole to prevent further harmful concentration (recommendation 1).
- The Queensland Government should divide its generation assets into three generation portfolios to reduce market concentration in Queensland, with each portfolio separately owned and operated to drive competition in generation markets (recommendation 2).
- The AER should be given powers to address conduct which has the effect of manipulating the proper functioning of the wholesale market, together with the necessary investigative powers and appropriate remedies (recommendation 3).
- The Australian Government should operate a program under which it will enter into low fixed-price (for example, \$45-\$50/MWh) energy offtake agreements for the later years (say 6-15) of appropriate new generation projects which meet certain criteria. In doing so, project developers will be able to secure debt finance for projects where they do not have sufficient offtake commitments from C&I customers for later years of projects. This will encourage new entry, promote competition and enable commercial and industrial customers to access low-cost new generation (recommendation 4).
- A mechanism should be developed to enable third parties to offer demand response directly into the wholesale market, thereby providing an additional source of competition (recommendation 21).

As noted above, the ACCC also supports the development and implementation of the National Energy Guarantee, incorporating appropriate safeguards for competition in the contract market, as a way to achieve a settled policy framework under which new investment is encouraged in a way that reduces carbon emissions at low-cost while promoting investment in a manner that ensures demand for energy is met (recommendation 5).

Wholesale hedging contracts

The ACCC has also undertaken a detailed review of the hedging contract market. Apart from contracts traded on the Australian Securities Exchange (ASX), the contract market is generally opaque. In certain regions of the NEM, particularly South Australia, the level of liquidity and the advantages enjoyed by vertically integrated retailers make it difficult for new entrants and smaller retailers to compete effectively in the retail market. As noted above, the Energy Security Board is dealing with a related issue in the design of the National Energy Guarantee. However, the circumstances in which requirements will bind under the National Energy Guarantee will only be where reliability shortfalls are identified, which may be infrequent.

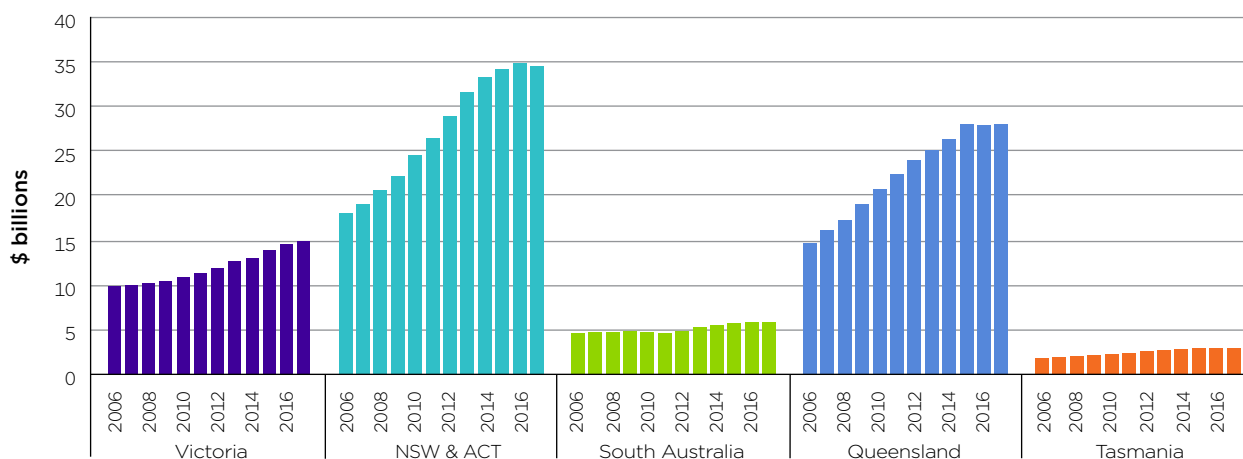
The ACCC has identified concerns with transparency of hedge contracting more generally. In particular, the over-the-counter (OTC) contracting market is opaque and this is a source of information asymmetry in the market. Unlike contracts traded on the ASX, there is limited public disclosure of OTC trading, which limits price discovery.

The ACCC is recommending changes to improve transparency and competition in the contract market. First, OTC trades should be reported to a repository administered by the AER and publicly disclosed in a de-identified format (recommendation 6). The requirement should be implemented to align with (or be eligible for) any OTC reporting requirements under the National Energy Guarantee. Second, the AEMC should implement a market making obligation in South Australia whereby generators must offer to buy and sell a certain amount of electricity contracts each day (recommendation 7).

Network costs

In NSW, Queensland and Tasmania there has been significant over-investment in state-owned networks, driven primarily by excessive reliability standards and a regulatory regime tilted in favour of network owners at the expense of electricity users (see figure D). This has enabled networks to recoup billions of dollars of extra revenue from consumers.

Figure D: Regulatory asset base from 2006 to 2017, by NEM region, real \$2016-17



Customers in those states continue to pay for over-investment in networks, estimated to amount to \$100–\$200 per residential customer per annum. Decisive action is needed to ensure that, despite declining demand, networks continue to efficiently deliver benefits to consumers. Reducing these costs has both efficiency and equity benefits.

The ACCC is recommending that the governments of Queensland, NSW and Tasmania should take immediate steps to remedy the over-investment of their network businesses in order to improve affordability for consumers (recommendation 11). With appropriate assistance from the Australian government, this can be done:

- in Queensland, Tasmania and for Essential Energy in NSW, through a voluntary government write-down of the regulatory asset base
- in NSW, where the assets have since been fully or partially privatised, through the use of rebates on network charges (paid to the distribution company to be passed on to consumers) that offset the impact of over-investment.

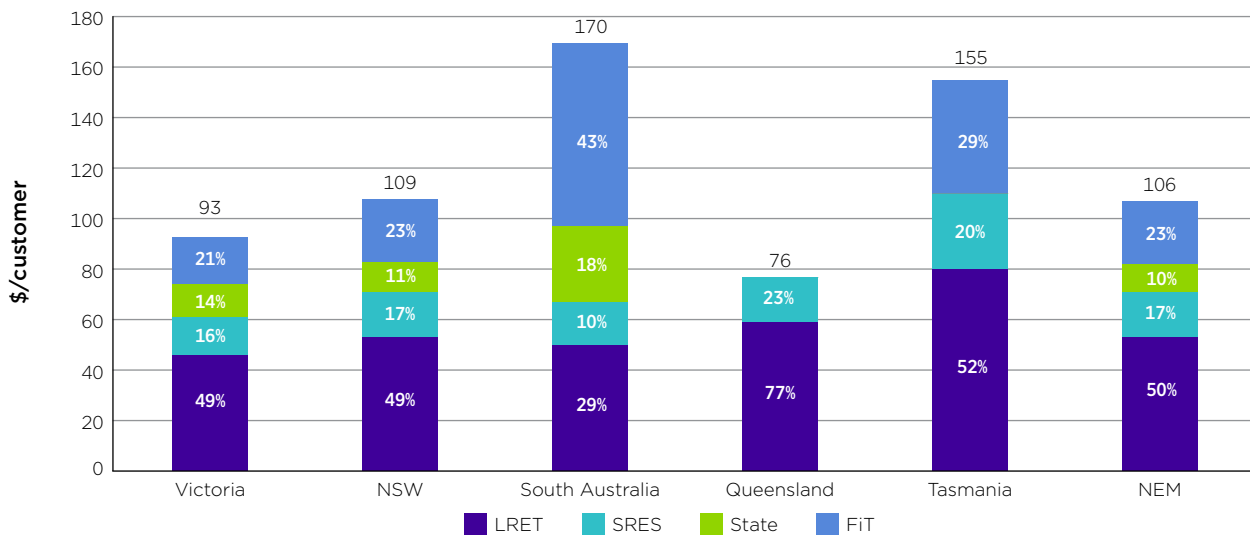
The amount of the write-downs and rebates should be made by reference to the estimates of over-investment by the Grattan Institute, and should result in at least \$100 a year in savings for average residential customers in those states.

The limited merits review regime, the appeals process that enabled networks to successfully challenge AER determinations on allowable network revenues, was removed in late 2017. This is a welcome step forward that will limit gaming of the regulatory system by network companies and the ACCC recommends limited merits review of AER decisions should not be reinstated in the future (recommendation 10).

Environmental costs

Significant take up of rooftop solar PV has seen both benefits and costs for consumers. State governments implemented very generous solar feed-in tariff schemes that paid consumers many multiples of the value of energy produced by their systems. Take up of the schemes was significantly in excess of expectations, in part due to dramatic declines in solar PV installation costs. The substantial cost of the schemes continues to be spread across all electricity users (figure E).

Figure E: Environmental costs in residential customer bills by state, 20017-18, real \$2016-17



Solar feed-in tariff schemes have also had distributional effects on energy affordability. Those households that have installed solar PV have benefited from the generous solar feed-in tariffs and also received subsidies for the installation of the system itself through the small scale renewable energy scheme (SRES). Solar households have reduced consumption of electricity from the grid significantly. Solar customers are paying, on average, \$538 per year less than non-solar customers. Meanwhile, non-solar households and businesses have faced the burden of the cost of premium solar feed-in tariff schemes and the SRES. While premium solar schemes are closed to new consumers, the costs of these schemes are enduring. Reducing these costs will have efficiency and equity benefits.

The ACCC is recommending that any costs remaining from premium solar feed-in schemes should be borne by state governments through their budgets, as Queensland has done, rather than being recovered through charges to electricity users (recommendation 25).

Further, the ACCC is recommending that the SRES should be wound down and abolished by 2021 to reduce its impact on retail prices paid by consumers (recommendation 24).

Consumer outcomes and experiences

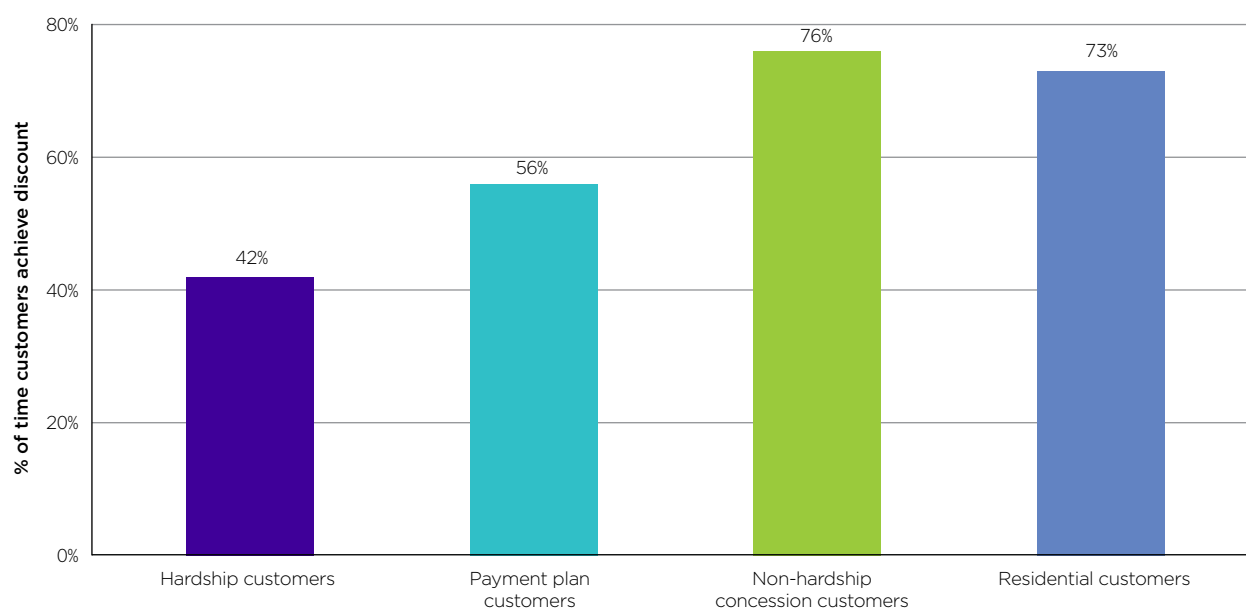
In retail markets, privatisation generally resulted in the transfer of a large customer base to each of a small number of retailers. This has had profound effects on the development of retail competition. Large retailers enjoy significant advantages of scale and their much smaller rivals must spend large sums to attract and acquire customers. Meanwhile, incumbents have benefited from large parts of their customer bases being inactive or disengaged from the competitive market, often remaining on high-priced standing offers. Incumbents are able to make very attractive offers to retain customers, effectively through cross-subsidies paid by their inactive customer cohort. This has enabled incumbents to compete only selectively, and with a disproportionate focus on efforts to retain profitable customers rather than to win new ones. In that environment, new entrants and smaller retailers are competing only for the 'active' part of the market which is price sensitive and often low-margin. This model of competition has not delivered a dynamic and competitive market in which many retailers compete vigorously, driving efficiencies and providing innovative products to attract and retain a broad range of customers.

Retail costs, particularly those associated with acquiring customers (such as marketing and commissions paid to third party comparators) are significant and have been growing since markets were opened to competition.

Those customers who have been active in the market, regularly reviewing options and switching between offers, have been the beneficiaries of competition. These customers are likely paying less than the average cost to retailers of supplying electricity. The full extent of costs associated with attracting and retaining customers are therefore borne by inactive or loyal customers and those unable to navigate the complexities of the market. The gap between the best and worst offers in the market has been widening, effectively acting as a tax on disengaged customers, whether a customer is disengaged by choice or because of the unnecessary complexity.

The dominant form of competition among retailers has been the advertisement of large headline 'discounts' which retailers have observed are an effective and simple way to connect with price conscious consumers. These discounts are highly problematic for several reasons. Each retailer sets its discounts with reference to its own independently set prices (usually standing offer prices) meaning that there is no easy way to compare the headline discount of one retailer to that of another. In many cases, consumers will be better off with offers that have lower discounts attached to them but which have a lower underlying tariff rate. A further problem with discounting is the common practice of the discount being conditional on the customer paying on time. These discounts are achieved only 56 per cent of the time for payment plan customers and only 42 per cent of the time for hardship customers (see figure F). Customers who do not pay on time are, in effect, paying very large late payment penalties, often amounting to hundreds of dollars per year.

Figure F: Proportion of time customer groups achieve conditional discounts, residential non-solar customers, 2016-17



These practices create significant confusion for consumers, causing some consumers to make decisions based on simple indicators (such as which headline discount is largest), to use third party comparator services (which add costs to the supply chain through the commissions they charge to retailers) or to disengage altogether.

Protections for vulnerable consumers are not as targeted and effective as they could be and there is more we can do to help these consumers.

The market has evolved in such a way that standing offers, which were originally intended as a default protection for consumers who were not engaged in the market, have been used by retailers as a high-priced benchmark from which their advertised market offers are derived. Many of the protections contained in the standing offer remain important for those consumers who need access to these, for example, customers with poor credit histories and customers who need to access certain billing and payment features.

Consumers facing particular hardship and socioeconomic barriers to effective engagement in the electricity market are unlikely to get all of the benefits that competition can offer in this market.

This is an important opportunity to empower consumers and businesses through greater access to their electricity usage data. Data currently available is of limited use to consumers and also any third party wanting to provide services to a consumer. The application of the Consumer Data Right to the electricity sector will see opportunities for electricity usage data to be made available to consumers and, importantly, agents of consumers where consent is provided. This will then enable consumers themselves to make better use of data and present opportunities for innovation by third parties providing services to consumers in finding the best electricity offer. It should also drive efficiencies in the market more generally as switching becomes more 'frictionless' and consumers are more readily able to identify and move to the best offers. This is a significant, albeit longer-term, opportunity to address the significant retail costs that exist in the market as retailers will find they do not get returns on their investments in acquiring customers through means other than competitive pricing and innovative product and service offerings.

Improving the powers and penalties of the AER will also help ensure better outcomes for consumers.

The ACCC is recommending a package of changes to improve retail outcomes and experiences for consumers:

- abolishing the standing offer and replacing it with a lower-priced 'default offer' which can be priced no higher than a level determined by the AER (recommendation 30)
- requiring any advertising of discounts by retailers to be unconditional and referenced to the default offer rate (recommendation 32)
- restricting conditional discounts to be no more than the reasonable savings to the retailer from the condition being met (recommendation 33)
- pursuing access to data for electricity users through the Consumer Data Right (recommendation 31)
- a prescribed mandatory code of conduct for third party intermediaries which includes an obligation that any recommended offer is in the best interests of the consumer (rather than on the basis of the intermediary's commercial relationships) (recommendation 34)
- clarifying explicit informed consent provisions to make clear that consumers can provide their consent to third party intermediaries to give explicit informed consent (EIC) on their behalf (recommendation 35)
- improving concession schemes including by applying a means test to ensure they are targeted at those most in need and instituting a hybrid approach to applying energy concessions that is consistent across the NEM, including a fixed dollar amount to offset daily supply charges and a percentage discount to offset variable usage charges (recommendation 37)
- additional government funding (to a value of \$5 per household in each NEM region, or \$43 million NEM-wide, per annum) for a grant scheme for consumer and community organisations to provide targeted support to assist vulnerable consumers to improve energy market literacy (recommendation 38)
- increases in penalties to all civil penalty provisions to the same levels as those to be introduced in the Australian Consumer Law (ACL) (\$10 million, three times the benefit gained or 10 per cent of turnover) (recommendation 42).

Business outcomes

In the small business sector, a large proportion of small businesses remain on standing offers. Small businesses face many of the same challenges as residential consumers, and the ACCC recommends improved and targeted business information for small business from governments and energy agencies, as well as ongoing price reporting of small business outcomes and the effect of progress of reforms on the small business market.

Larger businesses, faced with higher electricity costs, have been doing what they can to lower these costs through formation of buying groups and seeking to self-supply some of their load. There are some examples of these measures being effective, however it appears that more support for these arrangements could further reduce pressure on businesses' electricity costs.

For example, the investment case and ability to source funding for many new generation projects can be heavily reliant on having customer commitments to off take for up to 10–15 years. This is rarely possible for many businesses that can only commit to a shorter term of contract (for example, up to five years). It is likely that more projects could be undertaken, thereby providing additional sources of competition to existing wholesale competitors and directly helping businesses manage their electricity costs, if government support was provided for the 'back end' of suitable projects.

The ACCC is recommending a package of changes to help businesses through lower prices:

- Many of the recommendations to assist residential customers should be adopted for small businesses (changes to the standing offer and advertising of discounts) (recommendation 50).
- Governments should fund small business organisations (\$10 million over three years) to provide tailored retail electricity market advice (recommendation 52).

As noted above in relation to competition in the generation market, the Australian Government should operate a program under which it will enter into low fixed-price (for example, \$45–\$50/MWh) energy offtake agreements for the later years (6–15) of appropriate new generation projects which meet certain criteria. In doing so, project developers will be able to secure debt finance for projects where they do not have sufficient offtake commitments from C&I customers for later years of projects. This will encourage new entry, promote competition and enable commercial and industrial customers to access low-cost new generation (recommendation 4).

The future: lower prices, better consumer experiences and business competitiveness

The recommendations outlined above are a subset of the total package of recommendations the ACCC is making. The full list of recommendations is at page xix.

It is important to note there is already some positive progress in the market that is helping with affordability issues. This includes:

- there have been some small retail price decreases announced by retailers in June 2018
- network tariffs are generally flat or trending downward (albeit, in an historically low cost-of-capital environment)
- wholesale spot and futures prices are around 30 per cent lower than their 2017 peak
- significant work on demand management initiatives at the network, wholesale and retail levels is likely to put downward pressure on prices once implemented
- a variety of rule changes and guideline enhancements aim to improve the information provided to consumers and enhance competition.

These improvements are a step in the right direction, however much more needs to be done. The ACCC's recommendations, if implemented, should put downward pressure on electricity prices and go a significant way to resolving Australia's electricity affordability problem.

Figures G to I demonstrate the achievable savings for residential, small to medium enterprise and commercial and industrial customers by 2020–21 if the ACCC's recommendations are adopted. An explanation of the calculations for these savings is at appendix 5.

For example, if the ACCC's recommendations are adopted, an average residential customer in NSW² should be able to achieve savings of \$409 (24 per cent) of annual bills by 2020–21 (see figure G). For other NEM regions achievable savings are estimated to be between \$291 and \$489 (see table A).

Figure G: Achievable average residential bill savings in NSW by 2020–21

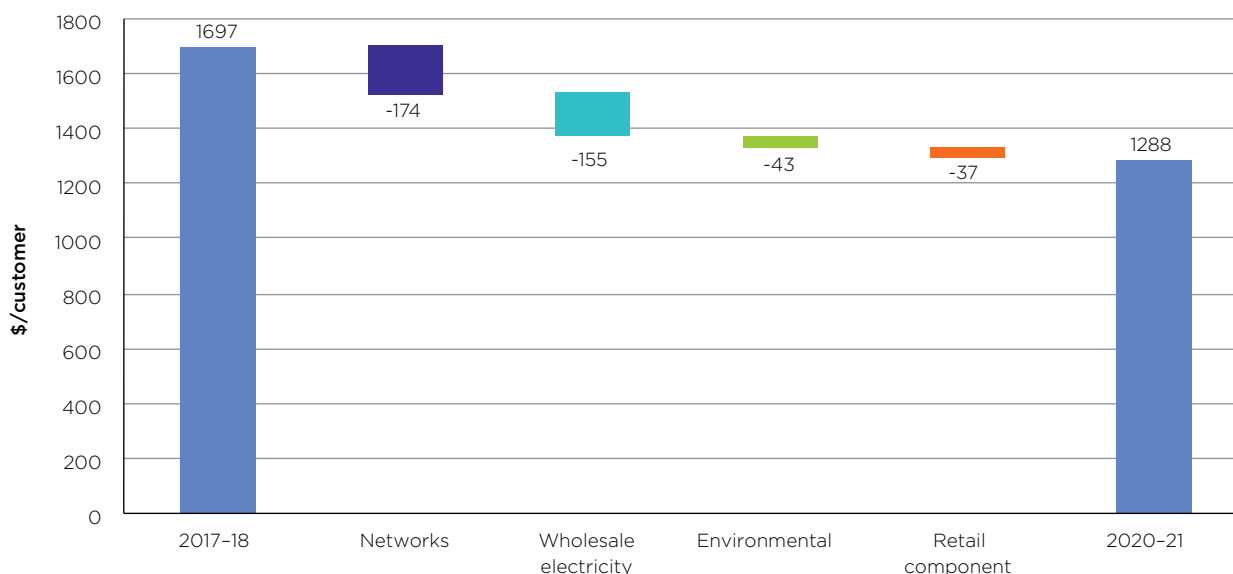


Table A: Achievable average annual residential bill savings by 2020–21

Region	Achievable savings (\$ per annum)						2020–21 Bill	% Reduction
	2017–18 Bill	Networks	Wholesale	Enviro	Retail	Reduction		
Victoria	1457	39	192	34	26	291	1166	20
NSW	1697	174	155	43	37	409	1288	24
South east Queensland	1703	147	192	18	62	419	1284	25
South Australia	1727	13	227	89	42	371	1356	21
Tasmania	1979	113	226	75	—	414	1490	21

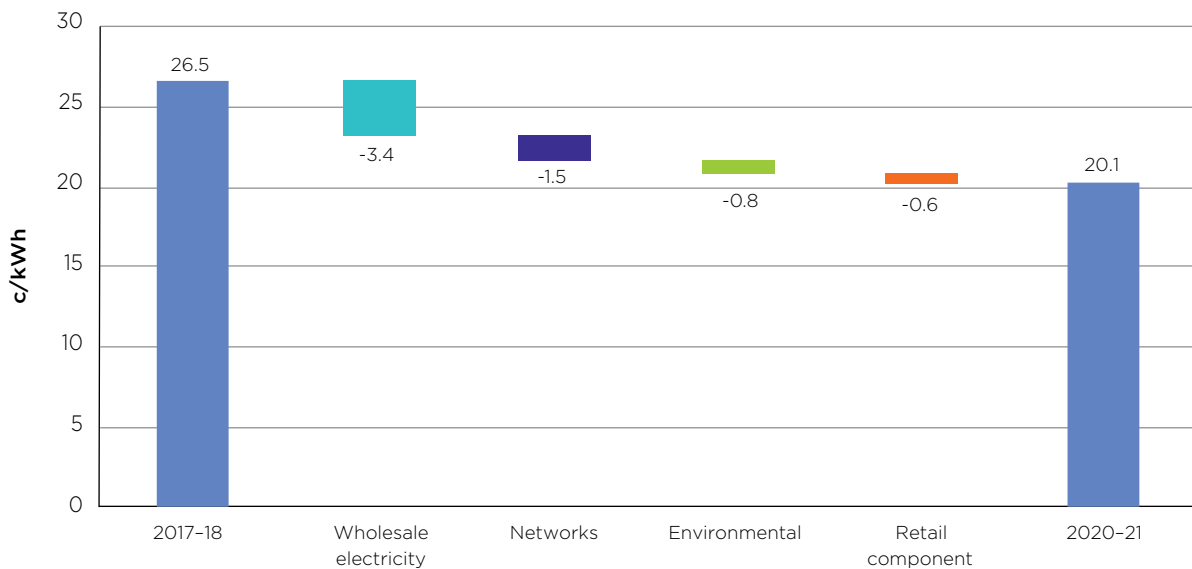
For small business customers, similar savings can be made. However, as a larger proportion of small businesses are on standing offers, the recommendation to abolish the standing offer and implement the lower-priced default tariff will have a proportionately greater benefit to small business customers.

The ACCC estimates that small businesses can achieve savings of 24 per cent on 2017–18 prices if ACCC recommendations are adopted (see figure H).³

² Note: These estimates include savings for standing offer customers that are spread across the entire market and savings for market offer customers getting better market offers also spread across the entire market. In reality, standing offer customers will make significantly greater savings off the retail component of their bill if the ACCC's recommendations are adopted, while those market offer customers already on low-priced offers will likely not achieve the full extent of savings in the retail component.

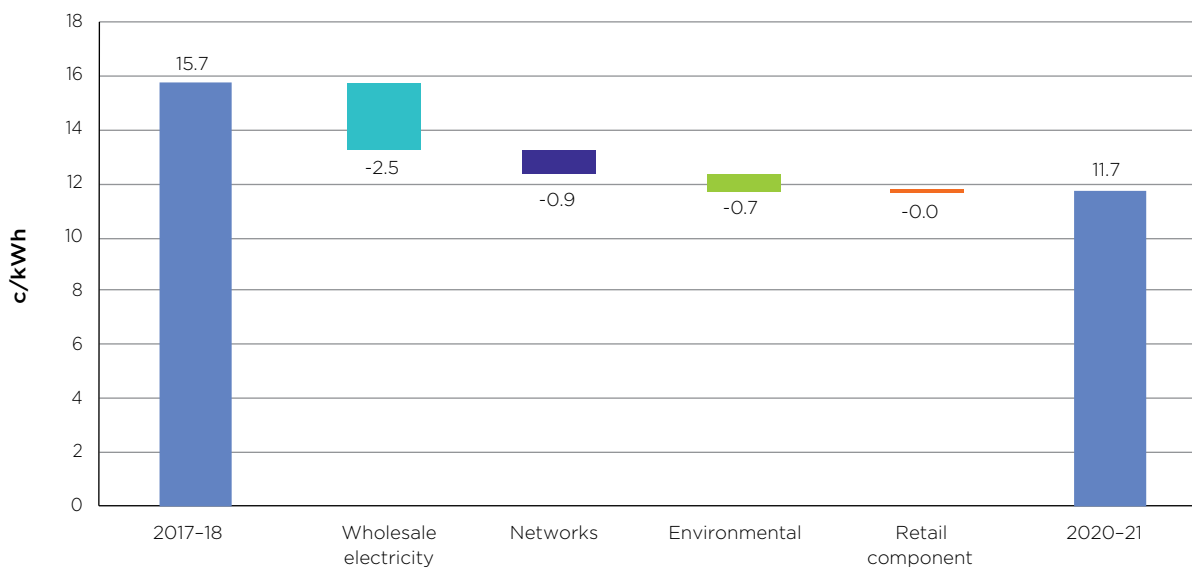
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Figure H: Achievable average SME savings (c/kWh) (NEM average) by 2020-21



The achievable savings for commercial and industrial customers are estimated to be 26 per cent (see figure I). This is because wholesale costs make up a proportionately larger share of their prices so the significant savings to the wholesale component have a bigger impact for these customers.

Figure I: Achievable average C&I savings (c/kWh) (NEM average) by 2020-21



As evidenced by table A and figures G to I, the ACCC is confident that there is much that can be done to boost competition, lower costs and improve consumer experiences in the electricity market. In doing so, we can 'reset' the NEM to return Australia's competitive advantage in electricity and restore consumer confidence.

Recommendations

This Final Report sets out the ACCC's recommendations for reducing retail electricity prices and improving consumers' ability to participate in the retail electricity market.

Boosting competition in generation and retail markets

Chapter 4

1. The NEL should be amended to prevent any acquisition or other arrangement (other than investment in new capacity) that would result in a market participant owning, or controlling dispatch of, more than 20 per cent of generation capacity in any NEM region or across the NEM as a whole.
The provision should be designed to prevent market participants circumventing the 20 per cent cap, including by way of ownership structure or contractual arrangements.
2. The Queensland Government should divide its generation assets into three generation portfolios to reduce market concentration in Queensland. The three portfolios should be of a similar size with a mix of generation assets to maximise competition in the wholesale market.
Once created, the Queensland Government should ensure that the three portfolios are separately owned and operated to maximise competition in the wholesale electricity market. The sale of any portfolios should be in line with recommendation 1.
3. The NEL should be amended to provide the AER with powers to address behaviour which has the effect of manipulating the proper functioning of the wholesale market, together with the necessary investigation powers and appropriate remedies.
The current market manipulation powers in respect of gas market supply hubs represent a good framework for equivalent powers in respect of the electricity market.
4. The Australian Government should operate a program under which it will enter into low fixed-price (for example, \$45–50/MWh) energy offtake agreements for the later years (say 6–15) of appropriate new generation projects which meet certain criteria. In doing so, project developers will be able to secure debt finance for projects where they do not have sufficient offtake commitments from C&I customers for later years of projects. This will encourage new entry, promote competition and to enable C&I customers to access low-cost new generation.
The program should operate for at least a four-year period, with support provided for qualifying projects. To qualify, a project proposal must:
 - have at least three customers who have committed to acquire energy from the project for at least the first five years of operation
 - not involve any existing retail or wholesale market participant with a significant market share (say a share of 10 per cent or more in any NEM region)
 - be of sufficient capacity to serve the needs of a number of large customers
 - be capable of providing a firm product so that it can meet the needs of C&I customers.
5. The National Energy Guarantee seeks to provide a settled policy framework under which new investment is incentivised in a way that enables achievement of the objective of reducing carbon emissions at low-cost while promoting investment in a manner that ensures demand for energy is met.
The ACCC agrees that this is an important policy objective and, with the policy incorporating appropriate safeguards for competition in the contract market, recommends that governments commit to develop and implement the National Energy Guarantee.

Chapter 5

6. The NEL should be amended so as to require the reporting of all over-the-counter (OTC) trades to a repository administered by the AER. Reported OTC trades should then be disclosed publicly in a de-identified format that facilitates the dissemination of important market information without unintentionally revealing the parties involved.

The requirement should be implemented to align with (or be eligible for) any OTC reporting requirements under the NEG.

The AER, AEMC and AEMO should have access to the underlying contract information, including the identity of trading partners.

7. The AEMC should introduce market making obligations in South Australia, which require large, vertically integrated retailers to make offers to buy and sell specified hedge contracts each day, in order to boost hedge market activity. The parameters of a market making obligation should have regard to:
 - the size of the South Australian market
 - the distribution of generation ownership in the region
 - the benefits to market liquidity and efficiency of regular trading activity
 - the burden of the requirements on obligated entities
 - any impact on the incentives of intermittent generators to invest in firming technology.

After an appropriate period of time (for example, after two years) the mechanism should be assessed for its effect on market activity, liquidity and risk to determine if it should be continued, amended or removed in South Australia and, potentially, extended to other NEM regions.

Chapter 6

8. AEMO amend its rules and procedures so that losing retailers are only given a loss notification on the actual date of transfer of financial responsibility for the customer to the new retailer. This will limit the opportunity of 'losing' retailers to conduct 'save' activity before a customer transfer has taken place.
9. The AEMC should make changes to speed up the customer transfer process, for example by enabling customers to use self-reads of their electricity meters. This will ensure that customers move to new offers quickly and will limit the time available for 'losing' retailers to conduct 'save' activity.

Lowering supply chain costs

Chapter 7

10. The ACCC supports the removal by the Australian Government of limited merits review of AER revenue decisions. Limited merits review of AER decisions should not be reinstated in the future.
11. The governments of Queensland, NSW and Tasmania should take immediate steps to remedy the past over-investment of their network businesses in order to improve affordability of the network. With appropriate assistance from the Australian Government, this can be done:
 - in Queensland, Tasmania and for Essential Energy in NSW, through a voluntary government write-down of the regulatory asset base
 - in NSW, where the assets have since been fully or partially privatised, through the use of rebates on network charges (paid to the distribution company to be passed on to consumers) that offset the impact of over-investment in those states.

Such write-downs would enhance economic efficiency by reducing current distorting price signals. The amount of the write-downs and rebates should be made by reference to the estimates of over-investment by the Grattan Institute, and should result in at least \$100 a year in savings for average residential customers in those states.

12. The AER should be given the power to monitor the effect of the write-downs and rebates on network charges effectively faced by retail customers.

13. The National Electricity Rules should explicitly allow for a process whereby network assets may be stranded and the costs of that stranding is shared between users and networks. The AEMC should determine the definition of ‘stranding’ and how the costs of ‘stranding’ can be shared.

14. The ACCC considers that steps should be taken to accelerate the take up of cost-reflective network pricing.

Governments should agree to mandatory assignment of cost-reflective network pricing on retailers, ending existing opt-in and opt-out arrangements.

Mandatory assignment of the network tariff should apply for all customers of a retailer that have metering capable of supporting cost-reflective tariffs (that is, a smart or interval meter).

Retailers should not be obligated to reflect the cost-reflective network tariff structure in their customers’ retail tariffs, but should be free to innovate in the packaging of the network tariff as part of their retail offer.

Given the potential for negative bill shock outcomes from any transition to cost-reflective network tariffs should retailers pass these network tariffs through to customers, governments should legislate to ensure transitional assistance is provided for residential and small business customers. This assistance should focus on maximising the benefits, and reducing the transitional risks, of the move to cost-reflective pricing structures. This includes:

- a compulsory ‘data sampling period’ for consumers following installation of a smart meter
- a requirement for retailers to provide a retail offer using a flat rate structure
- additional targeted assistance for vulnerable consumers.

Demand tariffs, which charge retailers based on their customers’ maximum demand during pre-determined typical system peak times, represent an appropriate structure for the initial mandatorily assigned network tariffs. This tariff structure provides a balance of the objectives of cost reflectivity, simplicity and price certainty.

We note that the extent to which cost-reflective tariffs can be introduced is limited to the extent that a retailer’s customers have smart (or interval) meters. We therefore note the importance of recommendation 15 in achieving outcomes in this area.

Governments should appropriately fund communication campaigns around the benefits of cost-reflective pricing and smart meters to build community acceptance and awareness of individual and community wide benefits, as well as customer awareness of their rights.

15. The ACCC considers that steps should be taken to support the take up of smart meters, and ensure customers receive the benefits of this technology. In particular:

- governments should regularly audit the rollout of smart meters to ensure:
 - the rollout continues at an acceptable pace
 - that no gaps emerge in respect of customers’ ability to access meters
 - that consumers do not experience problems with the smart meters that are installed.
- the AER should require retailers, as a part of their market performance reporting, to report on their smart meter community and customer engagement strategy to ensure retailers are delivering the expected customer benefits associated with smart meters, and meeting community expectations in how the rollout is undertaken.
- the AER should require retailers, as a part of their hardship program, to include policies on how they will support customers with smart meters in payment difficulty through targeted advice or services.
- jurisdictions should remove regulatory requirements that limit the benefits and full functionality of smart meters.

16. Responsibility for setting network reliability requirements should be placed on the AER or other NEM market body, based on a value of customer reliability (VCR) methodology. The responsible market body must ensure changes to requirements are in line with customer preferences on affordability.

17. The AEMC should:
- as part of its annual network regulatory framework review, examine areas which can reduce the complexity of the existing framework and the time needed to implement changes
 - in amending any rules, be required to minimise additional complexity in the overall rules framework.
18. To further assist with reducing the complexity of the rules and improving the timely adaptability of the framework, consideration should be given by the AEMC as part of its ongoing reviews of the NER to areas where the NER can be amended to make greater use of AER guidelines, rather than the codification of detailed regulatory assessment methodologies and processes within the NER. The AER should be able to initiate reviews of its guidelines to ensure they evolve with market developments and best regulatory practice.
- This additional flexibility will mean that regulatory proposal assessment methodologies are able to be kept up to date without always needing a rule change process. Guidelines could only be developed within the scope of the rules and in accordance with the processes set out in the rules.
- The AEMC could consider the impact on the overall framework of any changed or new guidelines as part of its annual network regulatory framework review.
19. Governments should remove jurisdictional specific costs (taxes) that do not relate to the provision of network services. For example, Victoria should remove the easement land tax included in AusNet Services' transmission network costs.
20. The NER should be amended to allow the AER more flexibility in undertaking the process of making regulatory determinations. This should allow for streamlined and more efficient assessment of network costs and allow the framework to adapt to the changing role of networks in providing electricity to consumers.
- Greater flexibility would allow the AER to better take into account any agreements between customers and networks, and use processes that are better aligned with the quality of the proposal, reducing regulatory burden on businesses and consumers. This in turn will incentivise networks to better engage with their consumers, improving engagement and consumer outcomes.

Chapter 8

21. In relation to wholesale demand response, a mechanism should be developed for third parties to offer demand response directly into the wholesale market. Design of the mechanism should commence immediately, building on work undertaken in the AEMC's Reliability Frameworks Review. The mechanism should:
- promote competition through allowing the widest range of businesses to directly offer demand response services
 - not allow retailers to limit the ability of their customers to engage a third party demand response provider (to the extent it is not inconsistent with the retail contract)
 - ensure load and generation response are valued appropriately based on the benefit they provide to the wholesale market
 - limit technical requirements placed on the customer that may inhibit take up or scope of these services (for example, requirements for multiple meters at the customer site).
22. In relation to network demand response:
- The AER, in undertaking the revenue determination process, should include a more explicit focus on assessing the efficient use of non-network expenditure. This should involve a robust assessment of a network business's actual and proposed non-network expenditure, including a comparison of the overall proportions of non-network expenditures against the network's capital expenditure, and benchmarking across businesses. Further, consultation by the AER and networks through the process should include engagement with third party demand response providers.
 - Distribution businesses should apply to the AER for early application of the new DMIS (ahead of their next regulatory determination) to bring forward incentives for greater use of demand response. The DMIS and DMIA should also be extended to transmission businesses.

- The AEMC should consider in its annual review of the electricity network economic regulatory framework whether network assets are being used efficiently to provide benefits in addition to distribution services (for example, as a substitute for generation in the wholesale, RERT or FCAS markets). This assessment should explore whether:
 - clarification is needed of what services can be provided directly by network businesses in contestable markets
 - there are any aspects of the existing framework or technical barriers that prevent network assets being used to provide efficient non-distribution services
 - the shared asset arrangements provide for a reasonable share of value extracted from the provision of non-distribution services flowing to customers
 - it is appropriate for some non-distribution services (such as voltage control) to be obtained from network assets under direction from AEMO rather than procured through competitive markets.
23. In relation to stand-alone systems, immediate work should be undertaken to identify and implement changes to the NEL and NER, and the NERL and NERR, to allow distributors to develop off-grid supply arrangements for existing customers or new connections where efficient. These arrangements should:
- subject customers under these arrangements to equivalent costs and protections as if they were connected to the grid, including in respect of the obligation to supply, reliability and security of supply
 - be adopted on a consistent basis across the NEM, replacing current state-based regulation of off-grid systems
 - be operated under a contestable framework, with distribution businesses restricted to operating them through ring-fenced entities.

Chapter 9

24. The small-scale renewable energy scheme should be wound down and abolished by 2021.
25. To reduce the costs associated with premium solar feed-in tariff schemes:
- any costs remaining from such schemes should be borne by state governments through their budgets, as Queensland has done for the next three years, rather than being recovered through charges to electricity users, and this should be done on a permanent basis
 - where a premium solar FiT scheme has finished, as is the case in NSW, the collection of charges previously used to pay FiTs through network premiums should also end
 - ongoing scheme eligibility rules should be reviewed and tightened to ensure that costs of these schemes are minimised.

Chapter 10

26. Victoria should join the National Energy Customer Framework (NECF) to streamline regulatory obligations on retailers in the NEM and reduce retailers' costs to serve.
In any interim period before joining the NECF, Victoria should take steps to harmonise its regulatory approach with the NECF.
27. Each NECF jurisdiction should review its derogations from the NECF and unwind any derogations that are not based on jurisdiction-specific characteristics or needs that cannot be met by NECF-wide rules.
28. Future derogations from the NECF should be limited to situations where there are jurisdiction-specific needs that cannot be addressed by a NECF-wide rule change.

Improving consumer experiences and outcomes

Chapter 11

29. The requirements for notices sent by retailers to customers prior to the end of a contract should be consistent with the new requirements for expired benefit notices.

Chapter 12

30. In non-price regulated jurisdictions, the standing offer and standard retail contract should be abolished and replaced with a default market offer at or below the price set by the AER.
- Designated retailers, as defined in the NERL, should be required to supply electricity to consumers under a default offer on request, or in circumstances where the consumer otherwise does not take up a market offer.
 - The default offer should contain simple pricing, minimum payment periods, and access to bill smoothing and paper bills.
 - The AER should be given the power to set the maximum price for the default offer in each jurisdiction. This price should be the efficient cost of operating in the region, including a reasonable margin as well as customer acquisition and retention costs.
 - The default offer should be used by retailers in all circumstances where a standing offer is currently used. This includes circumstances where a consumer has moved into a premises but has not contacted the retailer, where a consumer has not selected a market offer before the expiry of a market contract, and where a consumer is switched through a retailer of last resort event.

Chapter 13

31. The application of the consumer data right to the electricity sector should be pursued as a priority under the consumer data right framework regulated by the ACCC. Consumers and their authorised representatives should have access to at least historical consumption data, product data, meter data and customer data.
32. If a retailer chooses to advertise using a headline discount claim it must calculate the discount from the reference bill amount published by the AER.
- The AER should publish a reference bill amount for each distribution zone using AER bill benchmarks for medium (2–3 person) households and the price set by the AER for default offers (recommendation 30).
 - Retailers must calculate all discounts off the reference bill, including win-back and retention offers that have discounts attached to them
 - Headline discounts in advertising must only include guaranteed (unconditional) discounts.
33. Conditional discounts should be no higher than the reasonable savings that a retailer expects that it will make if a consumer satisfies the conditions attached to the discount. Retailers should bear the onus of substantiating that the conditional discount is reasonable.

Chapter 14

34. The Australian Government should prescribe a mandatory code of conduct for third party intermediaries, which addresses the issues discussed in chapter 14. For example, offers should be recommended based on price benefit to the consumer rather than the size of the commission received by the third party. The code should contain civil penalty provisions for any breaches.
35. Consumers should be able to provide their consent to third party intermediaries to give EIC on their behalf. The mandatory code (recommendation 34) should outline the process that third party intermediaries must undertake to ensure that they give EIC in a way that satisfies retailers' obligations under the NERL.

36. The Australian Government and Victorian Government should commit to ongoing funding to raise awareness of the government-run comparator websites similar to the approach taken in New Zealand with the ‘What’s My Number’ campaign.

Chapter 15

37. COAG should improve concession schemes across the NEM to ensure that, to the extent possible, there is a uniform, national approach to electricity concessions. Concession schemes should:
- be means tested to ensure that they are targeted at those most in need
 - include a fixed dollar amount to offset daily supply charges and a percentage discount to offset variable usage charges
 - only require consumers to reapply for concessions where this is necessary for the administration of the concession scheme.
38. In addition to existing funding, the Australian Government and the relevant state or territory government should fund (to a value of \$5 per household in each NEM region, or \$43 million NEM-wide, per annum) a grant scheme for consumer and community organisations to provide targeted support to assist vulnerable consumers to improve energy literacy. This grant scheme should be modelled on the approach taken by the Queensland Council of Social Services in administering the Switched on Communities program. This targeted support will assist vulnerable consumers to participate in the retail electricity market and choose an offer that suits their circumstances.
39. The hardship rule change, proposed by the AER, should be made. This would allow the AER to issue an enforceable hardship guideline that stipulates what retailers must include in hardship policies, and require retailers to amend their hardship policies to meet the guideline. This new rule should be a civil penalty provision.

Chapter 16

40. Retail price monitoring should be streamlined, strengthened and appropriately funded to ensure greater transparency in the market, reduced costs, and allow governments to more effectively respond to emerging market issues. This should be done by:
- COAG Energy Council agreeing to streamline price monitoring and reporting to the AER and the AER receiving all the necessary powers to obtain information from retailers
 - COAG Energy Council agreeing to extend price reporting for retail electricity services to small to medium business customers
 - state governments agreeing to close their own price reporting and monitoring schemes in favour of an expanded and strengthened NEM-wide regime
- A NEM-wide price reporting and monitoring framework be implemented which includes a combination of price monitoring with full EBITDA data (including standardised costs to serve, attract and retain consumers, and margins), and consumer expenditure surveys. This reporting should be done on a regular basis and include customer expenditure data, based on representative customer surveys and retailer billing and offer data, and be reflective of demographic information.
41. The AER’s wholesale market monitoring should be expanded and appropriately funded to include monitoring, analysing and reporting on the contract market. This should include analysing the data reported to the OTC repository (recommendation 6), ASX data and data gathered directly from generators and retailers (including through the use of compulsory information gathering powers).
42. The COAG Energy Council should adopt all the suggested increased penalties to all civil penalty provisions listed in the consultation paper as a matter of priority, but instead of increasing the amount to \$1 million as proposed, increases should be to the same levels as parliament is currently considering for the ACL (\$10 million, three times the benefit gained or 10 per cent of turnover). The civil penalties suggested for increase to the maximum level across the NEL, NER, NERL and NERR relate to provisions listed in the consultation paper, such as:
- information required for projected assessment of system adequacy
 - limitations on generators’ technical parameters—requirements only apply in certain circumstances

- key requirements that generators must meet, regardless of the circumstances of their plant
 - the requirement to advise AEMO if a situation changes, and keep AEMO continuously informed
 - obligations with respect to life support customers
 - wrongful disconnection by a retailer or network service provider
 - requirement to implement hardship policy
 - explicit informed consent requirements for certain transactions.
43. The rebidding rules that currently attract civil penalties of \$1 million should also be increased to the new higher level penalties, and that the wholesale provisions arising from the ACCC recommendations 1 and 3 associated with the conduct of participants under the NEL are increased to the same level as well and that these provisions also be subject to disgorgement (ill-gotten gain) penalties.
44. The COAG Energy Council should amend the energy laws in line with the current recommendations before the COAG Energy Council to allow the AER to seek community service orders, probation orders, and adverse publicity orders, as well as enabling the AER to seek that a third party is required to undertake a community service order.
45. The COAG Energy Council should provide the AER with the power to require individuals to give evidence before it.
46. The COAG Energy Council should amend the energy enforcement regime to:
- permit the AER to issue a new lower level infringement penalty (\$5000) for minor breaches of certain provisions for the NERL and NERR in addition to the current \$20 000 infringement penalty for current provisions. The COAG Energy Council should identify provisions most suited to lower levels of penalty or provisions directed at smaller market participants like exempt sellers
 - increase penalties for destroying evidence or providing false or misleading information to the AER under its information gathering powers to levels equivalent to the ACL.

Chapter 17

47. The COAG Energy Council should develop a set of ministerial principles that inform rule changes and ministerial decisions relating to consumer protection regulation, including requirements to:
- reduce regulatory complexity where appropriate and focus regulation on consumer outcomes
 - ensure consumers have access to necessary information and resources to make informed decisions
 - promote fair and reasonable treatment of consumers in day-to-day engagement with market participants
 - reduce the risk of inequity in outcome between consumers in the retail market
 - ensure regulatory flexibility to support technological and market innovation
 - understand the needs of vulnerable consumers and supporting their increased participation in the market.
48. The COAG Energy Council should undertake a review of the effectiveness of the NECF three years after the implementation of the Inquiry recommendations and no later than four years after the release of this report.

The business experience

Chapter 18

49. The ACCC's recommendation to abolish the standing offer and replace it with a 'default offer' at or below a price set by the AER (recommendation 30) should be extended to all generally available offers including offers for SME customers.
50. The ACCC's recommendation that all discounts must be calculated from a reference bill amount set by the AER (recommendation 32) should be extended to all generally available offers including offers for SME customers. The AER should develop a process for determining a benchmark for representative usage levels for an average SME customer. Similarly, restricting conditional discounts to the reasonable savings that a retailer expects to make if a consumer satisfies the conditions (recommendation 33) should also apply to offers for small business.
51. Governments and market bodies should develop specific electricity market awareness campaigns targeted at small business customers.

As part of these communication campaigns governments and market bodies should look at how it can channel marketing material through departments and agencies that service small business (such as small business representative groups) as well as existing channels of communication for energy.
52. State and territory governments should fund small business organisations to provide tailored retail electricity market advice. The fund should total \$10 million over three years and be awarded on a competitive basis to small business representative organisations providing information, tools and advice to small businesses on retail electricity choices. This program could support individualised bill checking services and development of tools to help small businesses make better energy choices.
53. After two years, the COAG Energy Council should review industry efforts to assist small businesses experiencing payment difficulties. The review should take into account metrics like customer satisfaction, disconnection levels and average debt levels for small businesses. The review should determine if industry-led improvements are effective or whether changes to the NERL are necessary to require retailers to have a hardship policy for small businesses.
54. The ACCC's recommendation in respect of improved and streamlined price reporting (recommendation 40) should include expanded reporting for small to medium business. Price reporting for businesses should be consistent with residential electricity price reporting and retailer cost reporting. The expanded and streamlined reporting process would also allow for disaggregated data on business customer switching trends, reporting on what SMEs are paying, and reporting on the kinds of offers they are on.
55. State and territory governments should provide resourcing toward promoting energy ombudsman schemes as a part of a broader marketing campaign to build small business engagement with retail electricity markets.
56. Governments should make available well targeted assistance programs including energy efficiency audits to assist the businesses most adversely impacted by the transition to more cost network reflective tariffs.