public interest
ADVOCACY CENTRE

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About the Public Interest Advocacy Centre

The Public Interest Advocacy Centre (PIAC) is an independent, non-profit legal centre based in Sydney.

Established in 1982, PIAC tackles barriers to justice and fairness experienced by people who are vulnerable or facing disadvantage. We ensure basic rights are enjoyed across the community through legal assistance and strategic litigation, public policy development, communication and training.

Energy and Water Consumers' Advocacy Program

The Energy and Water Consumers' Advocacy Program (EWCAP) represents the interests of low-income and other residential consumers of electricity, gas and water in New South Wales. The program develops policy and advocates in the interests of low-income and other residential consumers in the NSW energy and water markets. PIAC receives input from a community-based reference group whose members include:

- NSW Council of Social Service;
- Combined Pensioners and Superannuants Association of NSW;
- Ethnic Communities Council NSW;
- Salvation Army;
- Physical Disability Council NSW;
- St Vincent de Paul NSW;
- Good Shepherd Microfinance;
- Affiliated Residential Park Residents Association NSW;
- Tenants Union;
- Solar Citizens; and
- The Sydney Alliance.

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Contents

Executive Summary **1**

1. The potential for empowering consumers and delivering lower energy costs **3**

1.1 The option not to engage: markets don't treat energy as an essential service 3
1.2 The role of demand response across the supply chain 5
1.3 Cutting the cost of network investment 7

2. The changing role of retailers **7**

2.1 Increasing consumer engagement is not universal 7
2.2 Protections must reflect the new options for receiving energy 8

3. Regulatory reforms to empower energy consumers **9**

3.1 Improving the use of demand response 10
3.2 Introducing default market offers 11
3.3 Accelerating the use of cost-reflective network pricing 12
3.4 Protecting low-income and vulnerable households 13
Percentage-based energy concessions 13
EAPA vouchers 13
Hardship programs 14

Continued engagement **15**

Executive Summary

The energy sector is currently in the middle of a major transformation in terms of technology, economics, business models, and consumers' willingness and ability to take a more active role in their energy supply. This transformation can deliver more efficient energy services, but at the same time, presents new risks to consumers.

Retail price competition and deregulation has resulted in a market that requires consumers to become, and remain, highly engaged in the electricity market in order to pay a reasonable price for their electricity. PIAC supports allowing engaged consumers to make full use of competitive market offers and new technologies to derive the most benefit.

However, many consumers are unable to engage with the retail energy markets, due to low energy literary and/or technological barriers, or other priorities and issues that relate to their personal circumstance. In the current market, these consumers pay more than they should for the same electricity supply and can exacerbate cases of financial stress.

Energy policy and regulatory frameworks must balance appropriate levels of protections so consumers continue to enjoy energy supply now while enabling the innovation and investment needed for the future. To this end, PIAC has a number of priorities for reforms.

Improve the use of demand response

Demand Response (DR), in addition to reducing bills for participating customers, can reduce the total system costs, which leads to cost savings for all consumers. DR solutions can be implemented more quickly than other generation (or network) investments, can defer—or avoid altogether—the need for investment in infrastructure, and comes with lower investment risk. Yet, when compared to energy markets with effective mechanisms for demand response,[1] the amount of demand response in the NEM is trivial.

PIAC strongly supports measures to encourage demand-side participation in markets and in any new markets which develop in the future.

To this end, PIAC, along with the Total Environment Centre and The Australia Institute have lodged a rule change proposal to realise an optimal level of wholesale demand response.

Introduce default market offers

PIAC supports introducing default retail pricing given the retail electricity market does not currently operate in the interests of consumers. The introduction of a Default Market Offer (DMO) mechanism is an opportunity to reshape the market to support better and more equitable outcomes for consumers in delivering an essential service.

Getting a fair deal in the current energy market relies upon a high degree of consumer understanding and engagement. The failures of the market are well documented, with most consumers are paying above the lowest price for energy and many are paying above an efficient price.

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1 For example, over 10% of the WA energy market's capacity is sourced from demand response.

A strong default mechanism creates an incentive to innovate in a manner that will better serve customers though differentiation in service, rather than just price. PIAC fundamentally rejects the notion that a strong default mechanism designed to constrain consumer bills to a relatively efficient price is somehow anathema to market competition and innovation.

Accelerate the take-up of cost-reflective network pricing

Cost reflective network pricing represents a positive way for consumers to respond to price signals by strategically managing their electricity use, generation and storage in a manner that benefits them. Furthermore, cost reflective pricing is likely to reduce network expenditure and therefore average consumer bills in the long term.

To ensure that consumers with high peak electricity usage have time to adjust to cost reflective tariffs, a transition path that involves incremental increases in the cost reflective component of a tariff is needed.

While we support the uptake of cost reflective network pricing, its success is not necessarily dependent on retailers passing the shape of network tariffs on to consumers. It is, however, important that retailers pass on some cost savings associated with reductions in network tariff costs.

Improve support for low-income and vulnerable households

The first choice an energy consumer is entitled to make is: whether they wish to become engaged with the supply of their essential energy services at all. It must be possible for consumers to remain disengaged from their energy options and still receive a fair and affordable energy supply.

Consistent with this, there must be effective safeguards and protections in place to ensure that those consumers who do not wish to, or are not able to, engage with the electricity market continue to receive fair and affordable energy supply. This includes:

- Shifting towards a percentage-based primary concession to simplify the application processes and provide greater clarity. The current flat concession rates do not match a household's energy use, particularly as household sizes vary. For example, larger families with lower income, or those living in regional areas with higher network costs, are not assessed based on their living circumstances;
- Ensuring supporting frameworks to address energy affordability are targeted correctly. Whilst certain groups in the community are aware of available vouchers and are comfortable contacting community service providers, with the rising cost of energy, increasing numbers of households are undergoing energy stress and poverty who may be less aware of the assistance available to them; and
- Improving the hardship programs offered by retailers including by removing the requirement for consumers to identify as 'being in hardship' and convincing retail staff that their circumstances qualify them for the support available.

1. The potential for empowering consumers and delivering lower energy costs

a. The potential for empowering energy consumers to play a more important role in the National Electricity Market, through providing diverse services in:

i. energy generation,

ii. demand response and energy efficiency,

iii. grid stability and reliability services,

iv. alternatives to conventional network investment, and

v. peer-to-peer trading between households and businesses

b. the potential for these services to deliver lower energy costs and increased energy reliability

1.1 The option not to engage: markets don't treat energy as an essential service

Retail price competition and deregulation has resulted in a market that requires consumers to become, and remain, highly engaged in the electricity market in order to pay a reasonable price for their electricity.

PIAC supports allowing engaged consumers to make full use of competitive market offers and new technologies to derive the most benefit for their electricity services. There are many consumers who are willing and able to do this, and PIAC supports making it easier for them to do so.

However, many consumers are unable to engage with the retail energy markets, due to low energy literary and/or technological barriers, or other priorities and issues that relate to their personal circumstance such as physical disability, mental illness or being of a culturally and linguistically diverse (CALD) background. In the current market, these consumers pay more than they should, for the same electricity supply. This causes financial stress on top of extant disadvantage – an outcome that isn't acceptable for an essential service.

Engagement must not be a pre-requisite to receive a fair and reasonable offer.

Recently, PIAC conducted research that found that the NSW consumers disconnected from energy supply for non-payment of bills were likely to have multiple characteristics associated with social vulnerability, including unemployment, medical conditions and disability.[2] Two out of three households had at least one member experiencing physical or mental health or disability at the time of disconnection. If these consumers are unable to pay their bills to remain connected to energy, it is unlikely that they will be able to effectively engage with the complex energy market to get a better deal.

The recent Thwaites review presented a guiding principle which should frame any considerations of the shape and structure of the retail electricity market:

[2] PIAC and UMR Research, *Close to the Edge – a Qualitative & Quantitative Study*, November 2018.

> Energy is an essential service and underpins our health and wellbeing, and our economic participation. As an essential service, consumers must purchase energy and must participate in the retail market even if they are not interested in the product and regardless of continued price rises. Energy must be accessible, affordable and reliable for all.
>
> Consumers are entitled to obtain easily understandable energy offers and enter into energy contracts that provide value for money and don't contain negative surprises. [3]

A choice an energy consumer is entitled to make is: whether they wish to become engaged with the supply of their essential energy services at all. Consumers who remain disengaged from competitive energy options should still receive a fair and reasonably-priced energy supply.

Yet, today, this is not the case.

Getting a fair deal in the current energy market today relies upon a high degree of consumer understanding and engagement. Consumers are required to remain informed about the available choices in the market, regularly assess those choices and 'switch' within or between retailers on a regular basis.

The failures of this market outcome are well documented, with most consumers paying above the lowest available price for energy and, concerningly, many paying above an efficient price.

In its 2018 Retail Energy Competition Review, the Australian Energy Market Commission (AEMC) found that "while competition in the retail energy market continues to evolve, it is currently not delivering the expected benefits to consumers."[4] In particular, the AEMC characterised retail markets as: having complex and confusing tariff structures; having increasing price dispersion which is driven by discounting rather than effective segmentation; and structured in a way such that these discounts are difficult to compare as often they are subject to a number of eligibility conditions. Such insights are also supported by the Australian Competition and Consumer Commission's (ACCC) Retail Electricity Pricing Inquiry final report which noted, amongst many other issues, that:

> Incumbents have benefitted 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. [5]

The onus should not be on consumers, especially those who are already experiencing disadvantage, to remain informed about the available choices in the market, regularly assess

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3 Thwaites, *Independent review into electricity and gas markets in Victoria*, August 2017, 51.
4 AEMC, *2018 Retail Energy Competition Review*, June 2018, i.
5 ACCC, *Retail Electricity Pricing Inquiry, Final Report*, July 2018, xi.

those choices and 'switch' within or between retailers on a regular basis. Those who are the least likely to effectively engage with the complexities of the competitive retail market are those for whom higher energy costs have the most consequence. As the NSW Council of Social Services found in their report:

> In order to get and retain the best deals it is necessary to compare offers every 3-6 months, and contact your retailer in order to switch, change or renew the best offer for you. Our research shows that this is not how people on low-incomes are engaging in the market, suggesting they are more likely to be on a more expensive 'standing offer', more likely to be on a more expensive market offer, and more likely not to realise that the conditions of their contract may have lapsed, leaving them worse off.[6]

1.2 The role of demand response across the supply chain

In PIAC's view, the National Energy Market (NEM) can only be considered truly efficient and effective, and therefore to be promoting the long-term interest of consumers, if it has optimal levels of demand response (DR) in every part of the energy supply chain as illustrated below.

Stage in supply chain	Wholesale and system operation	Transmission	Distribution	Retail	Customer (behind the meter)
Role of DR	• Alternative to expensive generation to meet peak demand • Provide system security • Provide ancillary services	• Avoid or defer capital investment • Cost effective alternative to expensive interconnection investment	• Avoid or defer capital investment • Provide power quality support	• Manage wholesale market exposure • Manage retail market exposure	• Reduce consumers' electricity costs • Provide backup supply during outage
Necessary reforms or outcomes	• Demand Response Mechanism (that is independent of retailers) • 5 minute settlement	• Offering DR to consumers • Provide products to allow consumers to self-select their cost-reliability level • Ringfencing arrangements and network incentives to support DR	• Offering DR to consumers • Network tariffs for DR • Provide products to allow consumers to self-select their cost-reliability level • Ringfencing arrangements and network incentives to support DR	• Pass on network tariffs and products for DR • Provide products to allow consumers to self-select their cost-reliability level • Offer retail DR products for wholesale price arbitrage	• Consumers are able to self-select cost-reliability trade-off • Allow aggregation of individual consumers to provide DR portfolio
Essential	Coordination of services and products to overcome split-incentives and barriers to efficient use of DR				

Figure 1 - The role of demand response (DR) in each part of the energy market and system

Currently, consumers are generally not able to access competitive offers from retailers to undertake demand response. It is also very difficult for consumers to access competitive demand response offers from third parties.

6 NCOSS, *Turning off The Lights: The Cost of Living in NSW*, June 2017, 29.

Under the current regulatory framework, third-parties are unable to make demand response offers directly to consumers. The AEMC acknowledged this is problem in its *Reliability Frameworks Review*, stating that:

> …there are challenges for third parties looking to provide wholesale demand response. Third parties can only do so currently by either being a retailer themselves, or having a commercial relationship with a retailer.[7]

These requirements have prevented third parties from approaching consumers and mean consumers are unable to access competitive demand response offers from third-parties.

The adoption of a demand response mechanism would provide third parties with effective opportunities to offer demand response in the wholesale market, which is expected to drive competition to provide this service and, potentially, spur retailers to offer demand response products to their customers.

To this end, PIAC, along with the Total Environment Centre and The Australia Institute have lodged a rule change proposal to realise an optimal level of wholesale demand response. This is described in more detail in Section 3.1.

Due to the lack of wholesale demand response undertaken by retailers and generators, and the absence of a means for consumers to undertake it without a retailer, DR remains greatly underutilised in the wholesale market. Hence, the potential for demand response to mitigate wholesale prices, which are driving consumer retail bills to the highest level ever, is still not being realised.

In the NEM's ancillary service markets, on the other hand, demand response aggregators are able to provide services independently of retailers. There, the growing use of demand response has been shown to bring down the costs of ancillary services dramatically, particularly in more concentrated markets such as South Australia.

A wholesale demand response mechanism would provide a more effective and efficient energy wholesale market, by displacing more costly generation capacity and dispatch with more cost-effective voluntary load reductions. This will in turn place downward pressure on wholesale prices and reduce concentration, while improving options for cost effectively maintaining system security and reliability.

Generators and retailers are threatened by competition from a wholesale demand response mechanism, and have lobbied strongly against one being implemented. Though much credible analysis has shown such a mechanism to be in the long-term interest of consumers, gentailers themselves have consistently failed to tap into the material amount of demand response that is available to them, and they have so far been successful in their lobbying.

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7 AEMC, *Reliability Frameworks Review Final Report*, 2018, 53.

This has resulted in ongoing detriment to consumers who continue to incur the cost of inefficient retail prices as DR remains underutilised. This is an unacceptable outcome, and a wholesale demand response mechanism is required to ensure that it does not remain the case.

1.3 Cutting the cost of network investment

One of the primary drivers of high energy prices has been the significant expenditure made in the electricity networks in the past decade.

While network spending has come down somewhat since its peak, the problems caused by the surge in investment remain due to the ongoing returns provided by the current regulatory framework through returns on the Regulated Asset Base (RAB).

To address the problem of past excess investment, and to ensure improved affordability in the future, PIAC is looking for clear evidence that significant efforts have been made to reduce network spending and reign in the RAB growth through the proposals.

Key to achieving this is the use of alternatives to conventional network investment. A range of options are available including using:

- DR to avoid the need for new investment – by better coordinating new load and using local generation, networks can reduce the reliance on the centralised network to supply loads and avoid expensive upgrades to the network;
- DR to defer the time when new network investment is needed – this is particularly useful in the case where there is uncertainty around the exact quantum and timing of new load;
- DR to defer the need for replacement expenditure – this is particularly important given that in recent years, replacement expenditure has made up an increasing portion of total network expenditure; and
- Stand-Alone Power Systems (SAPS) as an alternative to supply existing remote customers – in cases where customers are currently supplied by very long and expensive to maintain lines, it may be cheaper (and often more reliable) to supply them with a SAPS instead. This has been the subject of a recent rule change and current review by the AEMC.[8]

2. The changing role of retailers

c. the changing role of retailers in the National Electricity Market in light of the growing empowerment of consumers

2.1 Increasing consumer engagement is not universal

While some consumers in the NEM are choosing to become more empowered, this is by no means universal.

The current, largely deregulated market framework operates upon the assumption that any negative consumer outcomes can be improved by facilitating greater consumer information and engagement. However, the independent review of electricity and gas in Victoria presented an

[8] PIAC, *Submission to review of the regulatory frameworks for stand-alone power systems issues paper*, October 2018.

alternative perspective, which reflects PIAC's own consumer framework, and suggests that the essential service nature of electricity requires another approach:

> 'the lack of consumer engagement in energy markets can be viewed as consumers simply acting as if energy was still a monopoly product. It is possible the essential service nature of energy is responsible for this: consumers cannot exit the energy market, they need to use energy, and the amount of energy they purchase stays the same no matter which retailer they are with.'[9]

As noted earlier, empowering consumers must restore the choice not to choose. PIAC supports allowing engaged consumers to make full use of competitive market offers and new technologies to derive the most benefit from their electricity services. However, this must not be a pre-requisite to receive a fair and reasonable offer. It must be entirely possible for consumers to remain disengaged from their energy options and still receive a fair and affordable energy supply.

2.2 Protections must reflect the new options for receiving energy

In the early days of the electricity market, there was not much in the way of choice for how a consumer could receive their energy services – through the centralised network via a retailer. Now, through new technologies and business models, there are a wide range of options available that some (but not all) consumers are taking up. These options also involve parties other than the 'traditional' retailer – indeed many of these options involve multiple parties. As a result of this market transformation, focussing solely on the changing role of the traditional retailer has the potential to leave positive reforms untapped and expose consumers to unnecessary risks.

Broadly speaking, these options can be differentiated in terms of a) the level of the customer's reliance on them to meet their energy needs and b) the arrangement by which they pay (or are paid) for their energy.

In terms of a customer's reliance on alternative supply models, a customer may:

- rely entirely on their grid connection for electricity supply and not have any alternative products or services;
- rely primarily on their grid connection for electricity supply, supplemented by alternative products and services – for example, a customer with a solar PV system who exports excess generation and imports energy from the grid when needed;
- rely primarily on alternative supply products and services for electricity supply that are supplemented by their grid connection – for example, a single customer or microgrid with sufficient generation and storage to meet onsite demand most of the time but still relies on a grid connection for backup (and to export surplus energy) in event of a breakdown or exceptionally high demand; or
- rely entirely on their alternative supply products and services for electricity supply and not have a grid connection – for example, where a customer may be supplied by a Stand Alone Power System (SAPS).

In terms of the financial arrangements, a customer may:

9 Thwaites, *Independent review into electricity and gas markets in Victoria*, August 2017, 38.

- purchase alternative products and services outright and manage any ongoing maintenance themselves;
- purchase alternative products and services outright and enter into an ongoing maintenance contract with the same or another provider;
- purchase alternative products and services outright and engage contractors to perform maintenance on an ad hoc basis;
- contract with a demand response aggregator or other service provider who is not involved with the supply or maintenance of any products;
- be part of a community energy project;
- lease the physical assets separately from the provision of energy services; or
- enter into an arrangement such as a solar Power Purchase Agreement (PPA) for alternative products and services.

The examples above are by no means exhaustive or discreet and, as the industry continues to evolve, the range of potential models will grow. Therefore, PIAC supports providing consumer protections which are agnostic with regard to technology, location, the existence of a meter and the ownership/financial arrangements.

The National Energy Customer Framework (NECF) is intended to work in conjunction with the Australian Consumer Law (ACL) with respect to consumer protections. However, the NECF itself only provides for the energy-specific regulation where there is a sale of electricity or gas to a customer connected to the grid. As a result, the requirements in the National Energy Rules for retail authorisation and exempt selling arrangements apply only where there is a financial transaction relating to the volumes of energy and has generally revolved around the existence of a metered connection.

This means that providers of many energy related services, with similar potential consumer harms to those where energy is transacted, do not currently have to comply with any energy-specific requirements under the NECF. Instead, they are only bound to more general consumer protections under the ACL.

In the past, this approach may have been suitable, given most energy services required metered transactions. But now, with emerging technologies and business models, it has become clear that this approach provides insufficient protections to consumers and must evolve.

3. Regulatory reforms to empower energy consumers

e. regulatory reforms which would empower energy consumers, including the following key groups:

i. households, including low income households and renters,

ii. farms,

iii. small businesses, and

iv. major energy users

3.1 Improving the use of demand response

Demand Response (DR), in addition to reducing the electricity bill component of participating customers, can reduce the total system costs of the NEM, which leads to cost savings for all consumers.

DR for the purpose of avoiding or deferring network upgrades has been the focus of reforms in recent years, yet there remains a dearth of demand-side participation in energy markets. Despite recommendations in the Parer review in 2002, and by the AEMC ten (and again, 16) years later, there is still no mechanism for offering demand response in the wholesale electricity market.

In wholesale markets, DR can offer a far more cost-effective, flexible and scalable alternative to large, centralised generation or network investments. DR solutions can be implemented more quickly than other generation (or network) investments, can defer—or avoid altogether—the need for investment in infrastructure, and comes with lower investment risk.

Yet, when compared to energy markets with effective mechanisms for demand response,[10] the amount of demand response in the NEM is trivial. The involuntary load curtailment that blacked out some South Australian households in summer 16/17, made necessary by generator failures on the day, could have been avoided if just 100 MW (3% of the South Australian load) was voluntarily turned off. By comparison, more than 10% of Western Australia's wholesale market capacity comes from demand response, as it is allowed to participate directly in the wholesale market.

NSW Minster for Energy and Utilities, the Hon Don Harwin MLC, highlighted the role of DR in meeting electricity demand:

> 'our old paradigm was based upon a notion of a baseload of energy demand being supplied by large thermal generators, and then a peak. Over the coming decades, this will change. This new paradigm is about better forecasting demand, factoring in intermittent sources, and then balancing the rest though dispatch and demand management.'[11]

PIAC strongly supports measures to encourage demand-side participation in markets —this includes not only the wholesale spot market, but also the various ancillary markets which already exist in the NEM—and ensuring they are able to participate in any new markets which develop in the future.

To this end, PIAC, along with the Total Environment Centre and The Australia Institute have lodged a rule change proposal to realise an optimal level of wholesale demand response. It proposes the introduction of a mechanism that:

- allows any consumers to undertake wholesale demand response with a provider of their choosing;
- levels the playing field between generation and demand response;

10 For example, over 10% of the WA energy market's capacity is sourced from demand response.

11 Don Harwin, "Securing a reliable and responsive energy market" CEDA's Energy Series Lunch, 29 June 2017 < http://energyconsumersaustralia.com.au/wp-content/uploads/Minister-Harwin-Securing-a-reliable-and-responsive-energy-market.pdf >

- improves the visibility of existing and future demand response;
- is robust yet adaptable and continually improved as the energy market goes through complex transitions;
- allows DR providers and participating consumers to determine how to best manage any risks associated with their participation; and
- improves the efficiency of emergency reliability arrangements.

3.2 Introducing default market offers

PIAC strongly supports the need for significant reform to default retail pricing given the retail electricity market does not operate in the interests of consumers. The introduction of a Default Market Offer (DMO) mechanism represents an opportunity to reshape the operation of the market to support better and more equitable outcomes for consumers in the delivery of an essential service.

As noted earlier in Section 0, getting a fair deal in the current energy market relies upon a high degree of consumer understanding and engagement. Consumers are required to remain informed about the available choices in the market, regularly assess those choices and 'switch' within or between retailers on a regular basis. The failures of the market are well documented, with most consumers are paying above the lowest price for energy and many are paying above an efficient price.

The current, largely deregulated market framework operates upon the assumption that any negative consumer outcomes can be improved by facilitating greater consumer information and engagement. As noted earlier, the independent review of electricity and gas in Victoria presented an alternative perspective, which reflects PIAC's own consumer framework, and suggests that the essential service nature of electricity requires another approach:

> 'the lack of consumer engagement in energy markets can be viewed as consumers simply acting as if energy was still a monopoly product. It is possible the essential service nature of energy is responsible for this: consumers cannot exit the energy market, they need to use energy, and the amount of energy they purchase stays the same no matter which retailer they are with.'[12]

This is fundamental to the consideration of a DMO, its intended role and the most suitable and efficient structure to fulfil that role. The key considerations in determining the role and objective of the DMO are that:

- electricity is an essential service, which all consumers have a right to access equitably and, for a fair price,
- overall benefit to consumers as a whole, must be weighed against potential impacts for particularly consumer cohorts,
- competition is a mechanism intended to deliver consumer benefits, not an end in itself or an intrinsic good in and of itself,

[12] Thwaites, *Independent review into electricity and gas markets in Victoria*, August 2017, 38.

- competition of any kind must be evaluated 'qualitatively' as well as quantitatively, and that a more effective competitive market may involve a smaller number of competitors, with the scope to compete on a range of service aspects instead of (and in addition to) price, and
- the 'choice to choose or not to choose', should be a fundamental right for consumers in an essential service market, such as electricity. Active participation should not be required to ensure a fair price.

PIAC accepts that any DMO that achieves these objectives will limit the ability of some retailers to continue with current business models, in particular those business models that today provide little or no discernible value for their customers. PIAC fundamentally rejects the notion that establishing a strong default mechanism that is designed to constrain consumer bills to a relatively efficient price is somehow anathema to market competition and innovation; to the contrary, a strong default mechanism creates an incentive to innovate in a manner that will better serve customers though differentiation in service, rather than just price.

3.3 Accelerating the use of cost-reflective network pricing

In PIAC's view, cost reflective network pricing represents a positive way for consumers to respond to price signals by strategically managing their electricity use, generation and storage in a manner that benefits them, without negative impacts on other consumers. Furthermore, cost reflective pricing is likely to reduce network expenditure and therefore average consumer bills in the long term, and in the absence of a response to price signals still has the benefit of effectively allocating costs between consumers on a more 'causer pays' basis.

In the long term, the NER requires that all distribution network tariff structures will be cost reflective.[13] However, to help ensure its effective uptake in the short term, PIAC advocates for a transition path based on default cost reflective network tariffs. By making cost reflective tariffs the default pricing structure, the barrier presented by consumer (or retailer) inertia would be removed.

To ensure that consumers with high peak electricity usage have time to adjust to cost reflective tariffs, PIAC contends that a transition path that involves incremental increases in the cost reflective component of a tariff is needed. For example, a DNSP with a kilowatt demand tariff that charges based on peak usage within a specified time period could initially set the demand component to account for only a small proportion of the total network charge to a connection. Over a number of years, this proportion could be incrementally increased so that more of the network cost is recovered through the demand charge, and commensurately less through volumetric and fixed charges. If this tariff was default, the incremental increase in cost reflective charge would give consumers time to adapt to the pricing structure while removing the barrier to take-up presented by opt-in cost reflective tariffs.

While PIAC strongly supports the uptake of cost reflective network pricing, we stress that the success of cost reflective network pricing is not necessarily dependent on retailers passing the shape of network tariffs on to consumers. If, for example, a retailer chose to pass on volumetric charges for consumers while themselves being exposed to cost reflective network charges, that is innovation that is catering to consumer preferences.

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13 AEMC, *National Electricity Amendment (Distribution Network Pricing Arrangements) Rule 2014, Rule Determination*, November 2014.

In doing so, the retailer would be responding to the network price signal as intended without passing the cost reflective network tariff through to consumers, and the retailer would have an incentive to help the customer use less energy during peak time – to the benefit of all consumers.

While the success of cost reflective pricing is not dependent on retailers passing through the exact network tariff structure to consumers, PIAC contends that it is important that retailers pass on some cost savings associated with reductions in network tariff costs. In PIAC's experience, retailers respond to changes in underlying network tariffs in a way that is similar to banks responding to official interest rates. If the underlying rate goes up, they tend to pass it through to consumers as a higher price. If, however, the underlying rate decreases, they are less likely to pass through the saving and may pocket the windfall as higher margins.

3.4 Protecting low-income and vulnerable households

As noted earlier in Section 1.1, empowering consumers must restore the choice not to choose. The first choice an energy consumer is entitled to make is: whether they wish to become engaged with the supply of their essential energy services at all. It must be possible for consumers to remain disengaged from their energy options and still receive a fair and affordable energy supply.

Consistent with this, there must be effective safeguards and protections in place to ensure that those consumers who do not wish to, or are not able to, engage with the electricity market continue to receive fair and affordable energy supply. Some aspects of this are discussed below.

Percentage-based energy concessions

Energy concessions play a crucial role in supporting low-income households. However, the current flat concession rates do not match a household's energy use, particularly as household sizes vary. For example, larger families with lower income, or those living in regional areas with higher network costs, are not assessed based on their living circumstances.

PIAC recommends a shift towards a percentage-based primary concession to simplify application processes and provide greater clarity for customers. Greater promotion of available support by all sectors is also needed.

EAPA vouchers

In NSW, the Energy Account Payment Assistance (EAPA) vouchers provide an important safety net to consumers who experience one-off or occasional hardship and assist with the avoidance of a build-up of debt. However, not all consumers are aware of the availability of EAPA vouchers and they require contact with a community service provider to deem the person eligible and provide them with the voucher.

Whilst certain groups in the community are aware of EAPA vouchers and are comfortable contacting community service providers, with the increasing cost of energy, increasing numbers of households are undergoing energy stress and poverty and these consumers may be less aware of the availability of EAPA vouchers to assist them through periods of hardship.

PIAC urges analysis of changing trends in energy hardship to ensure supporting frameworks to address energy affordability are targeted correctly. This includes promoting the existence of

support to people with mental illness, the working poor and people undergoing rent and mortgage stress.

Hardship programs

Consumers experience a range of difficulties, both financial and otherwise, which can lead them to struggle to pay their energy bills on time, and accumulate arrears and energy related debt as a result. Accordingly, the NERR (National Energy Retail Rules) and NERL (National Energy Retail Law) include provisions protecting consumers, requiring retailers to provide them with a range of supports and assistance to facilitate their continued access to energy during a period of payment difficulty.

Households who are experiencing hardship benefit from active retailer engagement where both parties develop solutions to address and minimise consumer debt.

Retailer hardship programs provide an important protection for consumers, as long as the repayment plans agreed to are affordable and realistic for the household in need, and that the consumer can sustain the repayments, without forgoing other essential needs.

However, the current structure differentiates between consumers experiencing payment difficulty and those experiencing payment difficulty due to hardship, without making any clear and consistent definition of how the term hardship should apply. PIAC considers both the differentiation between hardship and non-hardship consumers, and the lack of objective definition of hardship as a practical principle, to be fundamental flaws in the current implementation of supports and protections for consumers in payment difficulty.

Indicators of consistently high levels of customer arrears, debt accumulation and disconnection due to debt, are evidence that the current application of retail hardship policies is fundamentally failing to achieve the purposes as stated in the NERL[14], to assist customers experiencing payment difficulty due to hardship to better manage their energy bills on an ongoing basis.

Consumers can experience payment difficulty for many reasons, with circumstances that do not conform to a definable notion of 'hardship'. PIAC's most recent research on residential disconnections[15] shows a range of overlapping issues that impact upon consumers ability to pay their bills at any particular point in time. The research also shows that most of those who were threatened with disconnection, even when in direct contact with their retailer, were not offered hardship program support.

The current structure of support for people experiencing payment difficulty requires consumers to understand their entitlement to support, identify themselves as 'being in hardship' and convince retail staff (both credit staff and then hardship and assistance staff) that their circumstances qualify them. This fundamentally disadvantages consumers who are likely to be in need of support, such as people who speak a language other than English at home, people with a mental or cognitive disability, and people with limited literacy among others. PIAC considers this situation to be inappropriate and a fundamental flaw in the effective application of consumer protections.

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14 *National Energy Retail Law: Act 2011, Division 6 – 43 (1)*. 54

15 PIAC & UMR, *Close to the Edge: A qualitative and quantitative study*, November 2018.

Continued engagement

PIAC thanks the Select Committee for the opportunity to lodge a submission to this inquiry and look forward to further engagement. We would also welcome the opportunity to provide additional information to assist the Select Committee.