public interest
ADVOCACY CENTRE

Affordable and efficient, or overpriced and underwhelming 2.0?: Options for the future energy market

PIAC submission to ACCC Preliminary Report

17 November 2017

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Contents

Introduction

The Public Interest Advocacy Centre

The Public Interest Advocacy Centre (PIAC) is an independent, non-profit legal centre based in New South Wales. Established in 1982, PIAC tackles systemic issues that have a significant impact upon disadvantaged and marginalised people. We ensure basic rights are enjoyed across the community through litigation, public policy development, communication and training.

Our work addresses issues such as:

- access to affordable, sustainable energy and water services;
- homelessness;
- access for people with disability to basic services like public transport, education and online services;
- Indigenous disadvantage;
- discrimination against people with mental health conditions;
- the exercise of police power;
- the rights of people in detention, including the right to proper medical care; and
- government accountability, including freedom of information.

PIAC is funded from a variety of sources. Core funding is provided by the NSW Public Purpose Fund and the Commonwealth and State Community Legal Services Program. PIAC also receives funding from the NSW Government for its Energy and Water Consumers Advocacy Program and from private law firm Allens for its Indigenous Justice Program. PIAC also generates income from project and case grants, seminars, donations and recovery of costs in legal actions.

Energy and Water Consumers' Advocacy Program

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

- Council of Social Service of NSW (NCOSS)
- Combined Pensioners and Superannuants Association of NSW
- Ethnic Communities Council NSW
- Salvation Army
- Physical Disability Council NSW
- Anglicare
- Good Shepherd Microfinance
- Financial Rights Legal Centre
- Affiliated Residential Park Residents Association
- Tenants Union, and
- Mission Australia.

Summary of recommendations

Recommendation 1

PIAC recommends that the ACCC considers outcomes for consumers in relation to their engagement with the energy market in addition to their social advantage.

Recommendation 2

PIAC recommends that the ACCC does not propose increasing generation capacity through new incentives for generation capacity, instead proposing a comprehensive, system-wide, cost benefit analysis of proposed new reliability and security measures.

Recommendation 3

PIAC recommends that the ACCC support the urgent introduction of a demand response mechanism (DRM) that is independent from energy retail.

Recommendation 4

PIAC recommends that the ACCC promotes mechanisms to support the introduction of more large scale renewable energy projects to reduce prices and diversifying ownership.

Recommendation 5

PIAC recommends that the ACCC propose increasing network demand response as a cost-effective reliability and security measure.

Recommendation 6

PIAC recommends that the ACCC use the Inquiry to support network provision of off-grid supply as a cost-effective reliability and security measure.

Recommendation 7

PIAC recommends that appropriately ringfenced DNSPs should be allowed to offer some contestable products and services, as a provider of last resort, in limited cases where such offerings do not otherwise emerge from the contestable market.

Recommendation 8

PIAC recommends that the ACCC considers proposing compulsory asset write-downs where there has been overinvestment by a network service provider or where an asset is stranded.

Recommendation 9

PIAC recommends that the ACCC propose DNSPs implement either opt-out or mandatory cost reflective network tariffs to remove barriers to broad take-up of these tariffs.

Recommendation 10

PIAC recommends that the ACCC propose consumer impact be addressed by an incremental increase in the cost reflective component of mandatory and opt-out tariffs.

Recommendation 11

PIAC recommends that the ACCC not assume that the success of cost reflective network pricing relies on retailers always passing network tariff structures through to consumers.

Recommendation 12

PIAC recommends that the ACCC propose increased monitoring and enforcement powers for the AER to ensure that retailers pass savings associated with cost reflective network pricing on to consumers.

Recommendation 13

PIAC recommends that the ACCC not place undue emphasis on finding price savings through environmental schemes in the final report.

Recommendation 14

PIAC recommends that the ACCC propose improving the AER's powers to investigate possible breaches of energy regulation.

Recommendation 15

PIAC recommends that the ACCC propose additional resourcing for government price comparison tools to focus on providing information to consumers less able to engage directly or online

Recommendation 16

PIAC recommends that the ACCC propose jurisdictional concessions reviews and advocate for proportionate concessions.

Recommendation 17

PIAC recommends that the ACCC propose a regulatory limitation on pay on time discounting to ensure that consumers are not paying higher prices due to the conditionality of offers.

Recommendation 18

PIAC recommends that the ACCC engage with the Productivity Commission and Department of the Environment and Energy to ensure a consistent approach to access to electricity consumption data.

ACCC Retail Electricity Pricing Inquiry

PIAC thanks the ACCC for the developing a considered and informative Preliminary Report of the Retail Electricity Pricing Inquiry (the Inquiry).[1] and welcomes the opportunity to respond.

Our submission mainly addresses issues raised in Chapter 5 of the Preliminary Report, *Where to from here?*. PIAC addresses the current state of consumer cohorts and the need for greater demand response in the system, before commenting specifically on potential reforms. Like the ACCC, PIAC has broadly separated these comments into sections that relate to consumer outcomes and each segment of a retail electricity bill. Therefore, this submission is divided into the following sections:

- Contemporary consumer cohorts in Australia's energy markets;
- Demand response in the Australian energy system;
- Wholesale electricity markets;
- Electricity networks;
- Environmental schemes; and
- Retail electricity markets.

Understanding consumer impacts

Understanding how consumers engage in, and are impacted by, competitive energy markets is more complex than simply considering consumers as either advantaged or disadvantaged, and reforms to energy markets or policy must be considered in this light. For example, the impact of any reform designed to increase competition in the retail market is likely to vary considerably for different groups of consumers.

This section outlines PIAC's views on these cohorts.

Consumers and the changing energy market

Until the last decade, energy consumers across Australia could very broadly be categorised into 'haves' and 'have nots'; they could either afford energy, and the tools to limit their usage if they so desired, or they could not.

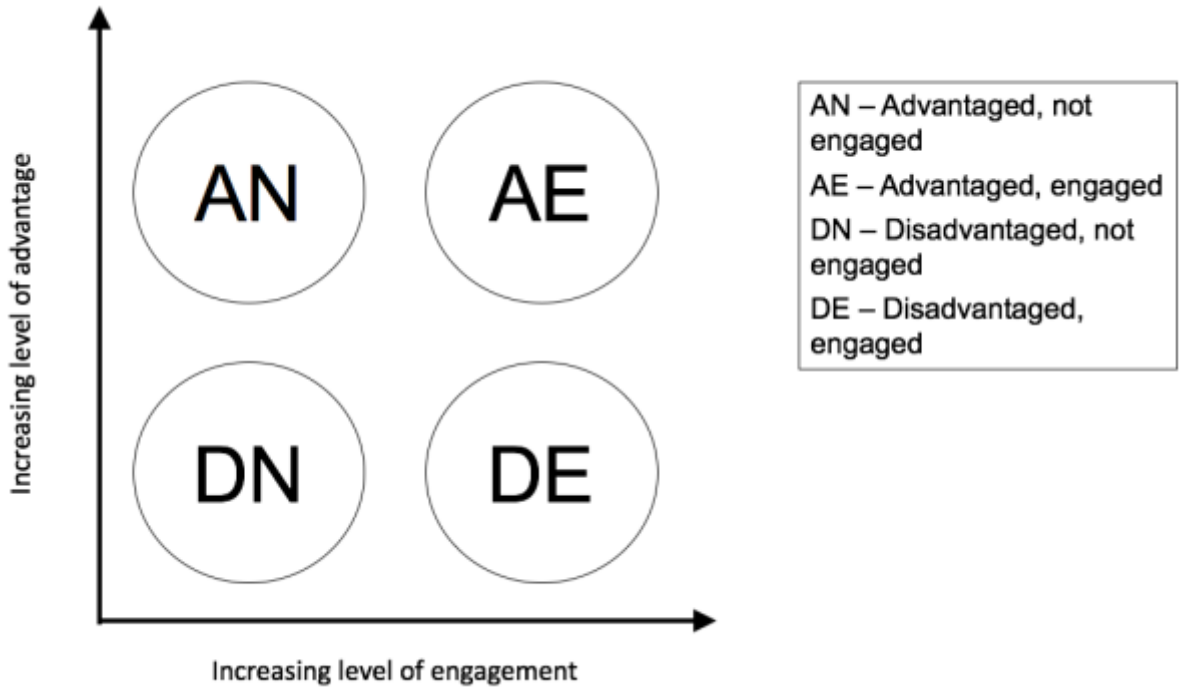
Since then, deregulation, emergence of competition, innovation (particularly in relation to behind-the-meter energy technology), and escalation of energy prices have created the need for consumers to be thought of differently to just these two groups: in addition to social advantage, a consumer's level of engagement with the energy market now has a material impact on their energy outcomes.

An engaged consumer may be able to minimise their energy bills through a combination of retail churn, behind-the-meter technologies, and ongoing engagement in the form of paying their bills on time to access discounts. Conversely, a consumer that is not engaged, or is financially disadvantaged, is likely to consume more energy from the grid, purchased from a retailer to whom they pay a higher price by not accessing the cheapest deals.

1 ACCC, Retail Electricity Pricing Inquiry, Preliminary Report, 22 September 2017.

Considering that levels of engagement and advantage are not mutually inclusive, PIAC considers that consumers should be thought of in four cohorts, for the purposes of consumer protections and promoting competition that works for all consumers.

Figure 1 Contemporary consumer cohorts



Advantaged/able, not engaged (AN)
This consumer cohort is disengaged from the energy market. While they do experience higher bills through suboptimal retail contracts and a lack of demand side participation, their relative social advantage means that they are usually able to withstand the financial detriment associated with these contracts. On the other hand, while these consumers are more able to withstand the detriment associated with their lack of engagement, they are still being punished with inefficiently high bills in a way their engaged counterparts are not. Many may be at risk of falling into the DN cohort if their circumstances change, and consumer protections need to cater to this risk.

Disadvantaged/vulnerable, not engaged (DN)
This consumer cohort is likely to have the worst outcomes. The combination of energy market disengagement and relative social disadvantage means that these consumers are unable or unlikely to take advantage of new energy technology or beneficial market contracts from energy retailers. They may use large volumes of high-priced energy that they are unable to afford. Competition frameworks should support them having the opportunity to benefit from engagement, but it is critical that supporting frameworks, including protections and concessions, should not require them to be engaged or assume that is an option for them. Hence the goal should be to move people from the DN cohort to the AN cohort, while giving them the opportunity to move to the AE cohort but not obliging them to do so.

Advantaged/able, engaged (AE)
This energy consumer cohort is the only one broadly getting good outcomes today. The combination of energy market engagement and relative social advantage means these consumers are likely to be on favourable retail energy contracts, and choose (and can afford) to be adopters of energy technology such as solar PV, energy storage and demand management systems. Competitive opportunities for these consumers should be encouraged, while recognising they are, by and large, least at risk of disadvantage.

Disadvantaged/vulnerable, engaged (DE)
While this cohort still requires similar support to the DN cohort, their willingness to engage means they are able to ameliorate some impacts of disadvantage through engagement with the energy market, if presented with the opportunity to do so. The goal for this group should be giving them the opportunities to benefit from competition in the same way that the AE cohort has, while affording them the protections available to the DN cohort.

Recommendation 1

PIAC recommends that the ACCC considers outcomes for consumers in relation to their engagement with the energy market in addition to their social advantage.

Relative energy literacy

Contributing to the distinction between consumers that are engaged and those who are not is what could be described as a decrease in relative energy literacy. This is related to the complexity of energy options in consumers' homes. Where there used to be a limited number of energy-based appliances types in homes, there are now more, and they work in more complicated ways; consider for example the recent advent off rooftop solar and the emerging markets for batteries and energy management tools.

The economics of energy use, have also changed and continue to do so. Home heating is a good example of this. Heating options and the related economic choices used to be relatively simple: gas heating was the most economical, then electric. This is no longer the case; for a number of reasons, the economics of appliance choice for home heating are now dependent on a variety of factors, and the most cost-effective option is electric split system air conditioners. However, gas remains the cheaper option for a subset of households who cannot install, or prefer not to heat with, split system air conditioners. There are pitfalls for all consumers in making the wrong decision as other less efficient electric options are still the most expensive to run.

This additional complexity makes it very difficult for consumers that are not highly engaged to make the optimal economic decision when it comes to heating their houses. Correspondingly, consumer decisions about energy have become more complex and, the level of knowledge required to be sufficiently energy literate to maximise their benefit has increased. Hence consumers, particularly those who are not engaged, have effectively become less energy literate relative to their needs.

Demand response in the Australian energy system

PIAC contends that no market can be considered truly efficient or effective if it does not have optimal levels of demand-side as well as supply-side participation, illustrated by the table below.

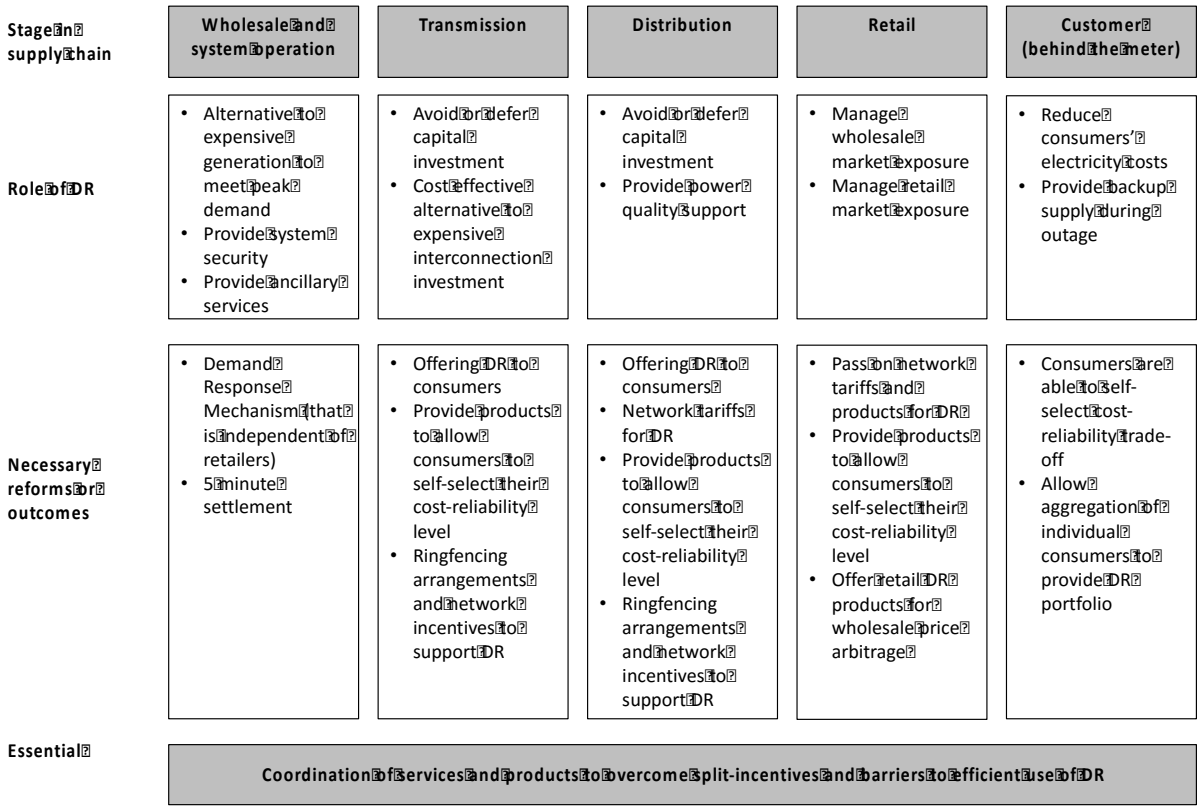


Figure 2 - The role of demand response in each part of the energy market and system

While demand response for the purpose of avoiding or deferring network upgrades has been the focus of reforms in recent years, PIAC strongly supports measures to encourage demand-side participation in energy markets. This includes the wholesale spot market (where currently participation is restricted), the various ancillary markets which already exist in the NEM, and new markets which will develop in the future, such as those anticipated to enhance system reliability and security.

PIAC will return to the concept of demand response and explore how it can be applied in various contexts later in this submission.

Will new reliability and security measures result in gold plated wholesale electricity markets?

PIAC concurs with the ACCC that wholesale markets are too concentrated. [2] Currently, the market is dominated by a small number of vertically integrated generators and retailers (gentailers). In the Preliminary Report, the ACCC notes a variety of potential solutions to market concentration and high wholesale prices. PIAC focusses on three of these:

2 Ibid, 151.

- Generation capacity;
- Large scale renewable projects; and
- Potential rule changes to mitigate lack of wholesale competition.

In addition to these issues, PIAC is deeply concerned that, if full regard to the cost impacts and consumer expectations is not given in developing new reliability and security measures, we will end up with a gold-plated wholesale market.

Generation capacity

PIAC concurs with the ACCC's finding that the market is too concentrated and that this is a barrier to efficient price outcomes, but challenges assumptions about the extent to which proposed new measures are required to bring about more generation capacity in the system for purposes of reliability and security.

While increasing capacity has competition benefits[3], PIAC contends, that new measures to incentivise capacity are unlikely to reflect consumers' willingness to pay. PIAC has recently addressed this issue in a submission to the AEMC's Reliability Frameworks Review:

> The following is taken from AEMO's submission to the Finkel review, with numbers derived from the AEMC extreme weather events review.

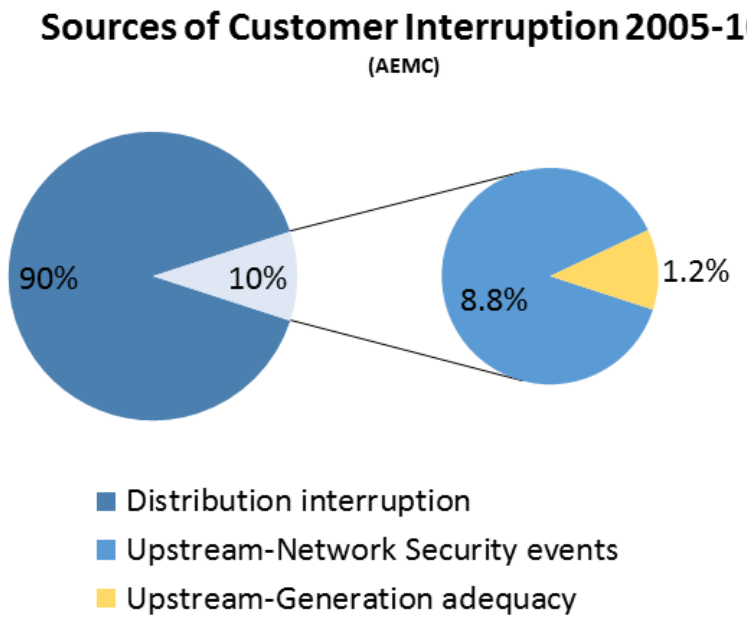


Figure 3 Sources of customer interruptions (Source: AEMO)

It illustrates that, historically, supply interruptions for distribution connected customers have mostly originated in their distribution network, with a smaller number in the transmission system, and a negligible portion as a result of generation shortfalls.

[3] Ibid, 151.

> Even a doubling of interruptions from the transmission system, or ten times the number of outages in the generation system, would only increase total outages experienced by these customers by around 10%.
>
> While maintaining system reliability and security is clearly important, this does suggest that even a significant increase in generator and transmission outages might have relatively little appreciable impact on these consumers. It also suggests that spending billions of dollars to improve reliability in generation and transmission may not bring commensurate benefits for these users.[4]

In the NEM, there is a Reliability Standard for supply which stipulates that the NEM should be planned so that up to 0.002% of demand each year could be unmet. It is important to note that this is a non-zero value as it reflects the fact that at some point the cost of increasing reliability outweighs the benefit consumers receive.

There exist numerous planning obligations and documents for the NEM which look at various aspects of meeting future demand in a reliable and cost-effective manner. These were created prior to the current transition that the NEM is undergoing.

The application of the reliability standard in these mechanisms has been, and remains, highly subjective. In PIAC's view, the approach of considering this standard as a value that should not be breached in any given year or jurisdiction is unlikely to be conducive to outcomes that reflect a price-reliability trade-off that consumers would choose. It would be more appropriate to consider taking action only where the standard is likely to be breached over a number of successive years, in the interest of avoiding investments that come with considerable cost while providing little appreciable long-term benefit.

By way of understanding consumer appetite for price/ reliability trade-offs: with respect to distribution outages that constitute the majority of supply interruptions, consumers throughout NSW are voicing that they are satisfied with their levels of reliability, are more concerned about affordability, and they are prepared to accept lower reliability as a way of controlling costs.

In PIAC's view, a comprehensive, system-wide, cost benefit analysis of proposed new reliability and security measures is required. It no longer makes sense to look at aspects of planning in isolation, and a more 'whole-of-system' perspective is required particularly as new technologies and preferences mean that there are a much broader range of alternatives available to address (real and perceived) reliability and security issues.

Recommendation 2

PIAC recommends that the ACCC does not propose increasing generation capacity through new incentives for generation capacity, instead proposing a comprehensive, system-wide, cost benefit analysis of proposed new reliability and security measures.

[4] PIAC, *But what's the USE?: Submission to AEMC Reliability Frameworks Review Issues Paper*, September 2017, 5-6, <http://www.aemc.gov.au/getattachment/62f49dd8-789c-4417-8241-9e1c7e99d5eb/Public-Interest-Advocacy-Centre.aspx>.

Accessing untapped demand response with a Demand Response Mechanism
Noting the risk and potential inefficiency of increasing capacity through incentives for extra generation, PIAC supports the urgent introduction of a demand response mechanism (DRM) that is independent from energy retail.

Demand Response is greatly underutilised in the NEM. A DRM will provide a more effective energy wholesale market by displacing new generation capacity with more cost effective voluntary load reductions, placing downward pressure on wholesale prices and reducing concentration, while improving options for cost effectively maintaining system security and reliability.

PIAC recently elaborated on these issues in a submission to the AEMC's Reliability Frameworks Review:

> …allowing demand reduction to bid into the wholesale market, independently of energy purchasing arrangements, is increasingly essential if that market is to deliver efficiency outcomes that are in the long-term interest of all consumers.
>
> Although retailers are able to engage in demand response if they choose to do so, the NEM remains a generation-only wholesale market. When compared to energy markets with effective mechanisms for demand response,[5] the amount of DR in the NEM is trivial.
>
> Hence, the introduction of a Demand Response Mechanism (DRM) was recommended by the AEMC in the 2012 Power of Choice review.[6] Subsequently AEMO developed a rule change proposal to this end. In response to pressure from incumbent gentailers[7] - who, as noted by the AEMC, face conflicting incentives with respect to DR and generation[8] - AEMO did not lodge a rule change proposal for the DRM with the AEMC, instead deferring to SCER.
>
> SCER opted to delay the reform by a year with (another) cost-benefit analysis. In 2014 when Ministers met again to consider a DRM, gentailers argued the reform would no longer be of benefit, due to declining demand and oversupply of generation capacity; a position proven short sighted by recent history.
>
> In 2015, this resulted in a modified rule change proposal by COAGEC, for a DRM that was, by design, ineffective in that it gave retailers the right to disallow consumers from participating.
>
> While AEMC could clearly not approve such a design, PIAC is disappointed to see the AEMC make this decision on the basis of analysis that was deeply flawed on a number of counts.
>
> For example, in considering that rule change, the AEMC came to the conclusion that "retailers themselves offer, or are willing to offer, a range of products and services intended to capture a customer's demand response", citing estimates of more than 2,000MW of DR already in the

5 For example, over 10% of the WA energy market's capacity is sourced from demand response.
6 And at other times in the previous decade since, and including, the Parer review in 2002.
7 Retailers have repeatedly claimed that DRM implementation costs exceed $100 million. These claims remain entirely unsubstantiated, have been questioned by independent experts and have not been subject to any meaningful due diligence, yet they have been treated seriously by the AEMC and others.
8 AEMC, *Reliability Frameworks Review Issues Paper,* 22 August 2017, 54.

> market and painting a picture of an emerging demand side market requiring no intervention along with abundant reliable generators that provide capacity when needed.
>
> In 2017 the reality paints a different picture. 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 100MW (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 in the wholesale market".[9]

The introduction of a DRM would also reduce concentration in the wholesale market. The relatively low capital cost associated with entering the market as a demand response participant would mean that it would be easier for new entrants, independent of incumbent generators, to provide capacity in the wholesale market.

Despite recommendations in the Parer review in 2002 and the AEMC ten years later, there is still no mechanism for offering demand response in the wholesale electricity market. Therefore, the huge potential for demand response to mitigate wholesale prices, which are driving consumer retail bills to the highest level ever, is still not being realised.

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

This has resulted in ongoing detriment to consumers who continue to incur the cost of demand response being underutilised through inefficient retail prices.

Recommendation 3

PIAC recommends that the ACCC support the urgent introduction of a demand response mechanism (DRM) that is independent from energy retail.

Large scale renewable projects

PIAC contends that increasing the penetration of renewable energy reduces wholesale electricity spot prices by pushing more expensive generation down the merit order. *The Economist* recently noted this phenomenon:

> Because wind and solar do not need to buy any fuel, their marginal costs are low. They thus push more expensive producers off the grid, lowering wholesale prices.[10]

9 PIAC, *But what's the USE?*, 5-6.

10 The Economist, *A world turned upside down,* February 2017, <https://www.economist.com/news/briefing/21717365-wind-and-solar-energy-are-disrupting-century-old-model-providing-electricity-what-will>.

While future changes to the energy market design may lessen the level to which this occurs through shifting incentives from energy to capacity, every new entrant to the market will place some downward pressure on prices.

Furthermore, PIAC concurs with the ACCC that large scale renewable energy projects are likely to enhance wholesale competition.[11] Because the capital costs associated with constructing new renewable generation is lower than for traditional generation sources,[12] it allows a more diverse range of entrants into generation, reducing the power of incumbents.

Recommendation 4

PIAC recommends that the ACCC promotes mechanisms to support the introduction of more large scale renewable energy projects to reduce prices and diversifying ownership.

Potential rule changes to mitigate the lack of wholesale competition

In the Preliminary Report, the ACCC raises the possibility of rule changes designed to mitigate the lack of wholesale competition and help facilitate new entry. As stated above, PIAC contends that the introduction a wholesale DRM that is independent from energy retail is the most cost-effective way to achieve this goal.

Electricity networks

PIAC concurs with the ACCC that bill increases between 2007-08 and 2015-16 were primarily driven by increasing network costs.[13] While the investment decisions that drove these increases are, to a large extent, locked in, PIAC contends that the ACCC could recommend a number of actions that would help alleviate the impact of these decisions on consumers

Response to questions

In the Preliminary Report, the ACCC raised two big picture questions about the future of network regulation.

Question 1 - Given the lessons of the past, how can we ensure that future reliability and security measures do not come at excessive cost?

A major cause of excessive cost for networks has been reliability standards and targets, typically set by state governments, that result in a 'ratcheting up' of reliability levels and, commensurately, costs.

In addition, even under revenue caps, network businesses are incentivised to build more assets seeking consumers support for doing so in the name of reliability expectations, and using demand forecasts that consistently exceed actual demand, as justification.

11 ACCC, Retail Electricity Pricing Inquiry, Preliminary Report, 152.
12 Bonnie McBain, "Renewables are getting cheaper all the time – here's why", *The Conversation*, September 2016, <https://theconversation.com/renewables-are-getting-cheaper-all-the-time-heres-why-64799>.
13 ACCC, Retail Electricity Pricing Inquiry, Preliminary Report, 6.

As noted previously, PIAC considers that a comprehensive, system-wide, cost benefit analysis of proposed new reliability and security measures is required. It no longer makes sense to look at aspects of planning in isolation.

Just as demand response presents an opportunity for a more efficient wholesale market, it can contribute to cost-effective reliability and security in networks though deferred capital investment in replacement or augmentation of network assets.

To avoid excessively costly reliability and security measures in electricity networks, PIAC contends that the ACCC should recommend increasing the use of non-network reliability and security measures such as demand response programs and allowing networks to operate off-grid supply solutions where it is a more efficient alternative to maintaining their grid supply. These measures can be considerably more cost effective than network augmentation and just as effective.

Recommendation 5

PIAC recommends that the ACCC propose increasing network demand response as a cost-effective reliability and security measure.

In addition to demand response, PIAC supports the proposed *Alternatives to grid-supplied network services* rule change currently before the AEMC. This rule change seeks to allow distribution network service providers (DNSPs) to provide off-grid electricity supply to consumers where that is the most cost-effective option. Instead of maintaining and/or replacing existing long, lightly-loaded power lines connecting remote customers to the national grid, DNSPs would be allowed to invest in stand-alone power systems to supply the customer and recover that investment through regulated revenue as a network asset. In doing so, the DNSP would not only be saving money for consumers by not investing in costly network augmentation, but often providing more reliable and secure systems to their remote customers than a long power line. PIAC suggests that the ACCC supports this potential rule change as a positive step towards ensuring that future network reliability and security measures do not come at an excessive cost.

Recommendation 6

PIAC recommends that the ACCC use the Inquiry to support network provision of off-grid supply as a cost-effective reliability and security measure.

Question 2: What role do networks have in contributing to the reliability of the grid? In particular, what can be done to ensure that storage or other demand management options are available? How would this sit with existing regulation and ring-fencing obligations, and how might regulation need to change?

In PIAC's view, networks will continue to have a key role in contributing to the reliability of the grid, and must do so in a way that reflects consumer preferences.

It is critical that the regulator is aware of the extent to which network businesses have sought to understand consumer preferences with respect to reliability and price trade-offs, and faithfully represented these in their investment decisions and revenue proposals.

In particular, they should have a role in ensuring that storage and demand management options are available, by enabling the grid to operate as a platform for these technologies and, in some cases, providing them.

For potential off-grid consumers, this relates to the *Alternatives to grid-supplied network services* rule change discussed above. By allowing DNSPs to provide regulated network services through off-grid systems, networks would efficiently contribute reliability of the grid in potentially vulnerable remote regions.

In some cases, PIAC also sees a possible role for networks in providing behind the meter distributed energy resources (DER) like storage for on-grid consumers. While it is generally appropriate for these resources to be provided through the competitive market, PIAC contends that this option will not always be viable. In particular, PIAC is concerned that competitive markets will not seek to serve low-density customer bases and consumers with relative social disadvantage. PIAC explored these issues in a recent submission to the AEMC:

> PIAC is concerned that there may be regional discrepancies in being able to access competitive energy services. While a competitive market is likely to develop in areas with a high concentration of potential customers, PIAC does not consider that this will be the case in smaller, regional communities. The low customer density in these communities means that potential providers may be less willing to invest in finding customers and installing behind the meter resources on their premises.
>
> This dynamic is already evident in the retail energy market. In PIAC's experience, retailers are reluctant to offer market contracts to small groups of consumers in regional areas. Given that this is the case when firms do not have to make the significant capital investment associated with behind the meter resources, PIAC considers it unlikely that firms in a contestable energy services market would offer to make this investment in small communities.
>
> At best, this may mean regional consumers have to wait longer than necessary to receive the full benefits of emerging DER markets and services. At worst, they may miss out altogether.[14]

PIAC relates these outcomes of DER access to the consumer cohorts described earlier in this submission:

> PIAC contends that the advantaged, engaged cohort will be first served by emerging markets for DER and hence will be the only ones to fully benefit from contestable energy services markets. The combination of energy market engagement and relative social advantage means these consumers will both want to adopt behind the meter resources and be able to afford to do so.
>
> For all other consumers, their lack of engagement, social disadvantage or combination of the two, will prevent them from benefitting fully from the competitive pressures of a contestable market. This is particularly true for the two disadvantaged cohorts. While advantaged, not engaged consumers may fairly easily become more engaged once they perceive the benefits

[14] PIAC, *Submission to the contestability of energy services draft determination*, October 2017, 3, <http://www.aemc.gov.au/getattachment/ff3d7305-ce03-4470-b2e8-18d8cfe5e2be/PIAC.aspx>.

> to outweigh the costs, disadvantaged consumers will most likely remain financially unable to purchase behind the meter resources in a competitive market. PIAC contends that it is unlikely that a contestable energy services market would facilitate access to behind the meter resources for these consumers.[15]

It is important to bear of mind that energy retailers repeatedly fail to deliver on their commitments to provide competitive products and services, at times appearing like a dog in a manger. By way of example; energy retailers convinced the AEMC earlier this decade that they would provide electricity meters more cheaply and readily than DNSPs. The commission subsequently made extensive changes to the rule, and the market operation developed new processes and procedures, in making arrangements to introduce contestable metering, with a national 'go live' date for contestable metering of 1 December 2017.

Two weeks before this date, many retailers are not on track have the systems in place to provide meters when needed, and one major retailer has just divested itself of its metering business, selling it to a network business.

While PIAC acknowledges that sufficient opportunity should be given for competitive markets to emerge, appropriately ringfenced DNSPs should be allowed to offer these resources, as a 'provider of last resort' where retailers and other competitors do not. In order for this to occur, the AEMC's *Contestability of energy services* rule change will need to allow networks to own and access behind the meter resources in these - and importantly, only these - specific circumstances.

Recommendation 7

PIAC recommends that appropriately ringfenced DNSPs should be allowed to offer some contestable products and services, as a provider of last resort, in limited cases where such offerings do not otherwise emerge from the contestable market.

Reducing existing network cost

PIAC discussed limiting network costs through measures such as more demand response earlier in this submission.

PIAC concurs with the Finkel Review's recommendation that consideration should be given to writing down network asset values.[16] Where a network service provider (NSP) has overinvested in the network or an asset would be considered stranded, it is appropriate to reduce the value of these assets at the expense of the owner. This would have the effect of reducing the regulated asset base of an NSP and result in savings in the network portion of consumers' bills.

In PIAC's view, it is unlikely that non-government-owned NSPs will write down their assets voluntarily. Therefore, the ACCC might propose compulsory write-downs where the circumstances are appropriate.

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15 Ibid, 4-5.

16 Dr Alan Finkel AO, *Independent Review into the Future Security of the National Electricity Market*, June 2017, 136.

Recommendation 8

PIAC recommends that the ACCC considers proposing compulsory asset write-downs where there has been overinvestment by a network service provider or where an asset is stranded.

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.

Opt-in cost reflective tariffs as a barrier to take-up

In the long term, the NER requires that all distribution network tariff structures will be cost reflective.[17] However, PIAC shares the ACCC's concern that opt-in cost reflective tariffs may be a barrier to widespread take-up in the short term.[18] To address this concern, 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 the transition should involve incremental increases in the cost reflective component of a tariff. 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.

Recommendation 9

PIAC recommends that the ACCC propose DNSPs implement either opt-out or mandatory cost reflective network tariffs to remove barriers to broad take-up of these tariffs.

Recommendation 10

PIAC recommends that the ACCC propose consumer impact be addressed by an incremental increase in the cost reflective component of mandatory and opt-out tariffs.

Retailers and cost reflective network tariffs

In the Preliminary Report, the ACCC also raised a commonly held concern that there needs to be an incentive for retailers to "use" cost reflective tariffs.[19]

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17 AEMC, National Electricity Amendment (Distribution Network Pricing Arrangements) Rule 2014, Rule Determination, November 2014, <http://www.aemc.gov.au/Rule-Changes/Distribution-Network-Pricing-Arrangements/Final/AEMC-Documents/Final-determination.aspx>.

18 ACCC, Retail Electricity Pricing Inquiry, Preliminary Report, 153.

19 Ibid.

PIAC strongly supports the uptake of cost reflective network pricing. However, PIAC stresses that the ACCC should not assume that the success of cost reflective network pricing is 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.

Based on discussions with retailers over a number of years in relation to network tariff price setting across the country, PIAC considers it likely that many retailers will not offer (or impose) cost reflective tariffs to (or on) their wider consumer when peak kilowatt demand tariffs are first introduced. Further, they are unlikely to do so until the underlying kilowatt demand (or other peak) charge exceeds a material portion of their overall network charges across the whole consumer base, such that the cost ,risk in smearing it across the customer base is higher than the perceived cost of customer attrition from customers seeking a better deal in the event of facing cost reflective pricing structures.

Even then, a retailer may choose to continue offering consumers a flat tariff and address their peak demand by providing a peak time rebate or energy efficiency improvements. 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.

By way of example, at the start of Jemena Gas Networks current regulatory period, JGN made deep cuts to their household gas network tariffs in an effort to mitigate the price impacts of rising gas wholesale prices and retain a competitive advantage for gas as a domestic fuel source. While this should have flowed through to lower gas prices for all NSW domestic gas users, PIAC is not aware of any energy retailer having passed on these lower network costs to their existing NSW customers.

PIAC proposes that the ACCC investigate how retailers respond to changes in network tariffs, and considers an increased monitoring and enforcement role for the AER to prevent similar instances from occurring.

Recommendation 11

PIAC recommends that the ACCC not assume that the success of cost reflective network pricing relies on retailers always passing network tariff structures through to consumers.

Recommendation 12

PIAC recommends that the ACCC propose increased monitoring and enforcement powers for the AER to ensure that retailers pass savings associated with cost reflective network pricing on to consumers.

Environmental schemes

PIAC contends that there are limited opportunities for improving electricity price outcomes for consumers through reform of environmental schemes. While PIAC supports the broad principle that "the costs created by environmental schemes are not disproportionate to the benefit they seek to achieve",[20] there are not currently large numbers of inefficient programs from which savings can be made.

In the past, generous subsidy programs like the NSW Solar Bonus Scheme[21] have had unintended distributional impacts. These programs have created cross-subsidies, where advantaged, engaged consumers installed rooftop solar PV and received generous feed-in tariffs at the expense of those who were disadvantaged and disengaged. While PIAC objects to these cross subsidies, these schemes have now largely expired, and none have been open to new entrants for a number of years.

Furthermore, PIAC contends that the ACCC should not consider policies to promote renewable generation to be incompatible with low prices. As noted in relation to large scale renewable energy in wholesale markets, there are price benefits associated with increasing renewable generation. Because capital costs associated with renewable infrastructure tend to be lower than those associated with traditional generation sources, these generators are able to bid into the wholesale market at lower prices. This reduces the overall price level of the market and benefits consumers through lower bills.

To this point, PIAC understands that the ACCC's analysis of the cost of environmental schemes only considers the gross costs, missing benefits such as avoided wholesale costs. In the interest of providing balanced information, PIAC recommends that the ACCC considers the net costs of environmental schemes.

Given that previous cross-subsidising environmental schemes have expired and, generally, increasing penetration of renewable generation will have a positive impact on competition, the ACCC should not focus on environmental schemes in the final report of the Inquiry.

Recommendation 13

PIAC recommends that the ACCC not place undue emphasis on finding price savings through environmental schemes in the final report.

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20 Ibid.

21 NSW Department of Planning and Energy, *Solar Bonus Scheme*, 2017, <http://www.resourcesandenergy.nsw.gov.au/energy-consumers/solar/solar-bonus-scheme>.

Retail electricity markets

Broadly stated, the argument for increasing retail competition is that when a variety of retailers are competing for the business of consumers, they will provide more efficient and innovative services to gain a competitive advantage, driving down prices to result in better consumer outcomes. In PIAC's view, this has not been the case in Australia. Instead, the retail electricity market is complex, expensive and difficult to engage with.

While PIAC broadly supports reforms designed to facilitate a better-functioning retail market, we remind the ACCC that the purpose of retail competition should always be better consumer outcomes. In other words: competition should not be considered a goal in itself.

Furthermore, the ACCC should consider all potential reforms in retail electricity markets with a view to the their impact on the range of consumer cohorts described above.

The Preliminary Report presents two sets of potential reforms to improve outcomes for small customers in retail markets: immediate fixes and issues for further consideration.

Immediate fixes

The immediate fixes proposed by the ACCC are:

- Improving the AER's investigative powers;
- Providing additional resourcing for government price comparison tools; and
- Jurisdictional concessions reviews.

Improving the AER's investigative powers

PIAC concurs with the ACCC that the AER should be given better powers to investigate possible breaches of energy regulation.[22]

In our submission to the Issues Paper, PIAC noted that ACCC's "information gathering powers affords an important and unique opportunity to fully investigate" electricity markets.[23] While PIAC continues to support the ACCC's use of these powers, it would be preferable if the Inquiry were not unique in this regard. The AER should be able to routinely use similar powers of discovery to require individuals to appear before it and give evidence when investigating possible regulatory breaches. This would not only act as a stronger deterrent for breaches to occur, but also reduce the need for reviews such as the Inquiry.

Recommendation 14

PIAC recommends that the ACCC propose improving the AER's powers to investigate possible breaches of energy regulation.

Providing additional resourcing for government price comparison tools

PIAC contends that well-resourced, impartial price comparison tools like Energy Made Easy and Victorian Energy Compare can play a crucial role in allowing consumers to find and switch to a

22 Ibid.
23 PIAC, *Overpriced and underwhelming*, 5.

better retail electricity offer. For this reason, PIAC agrees with the ACCC that additional funding should be made available to improve and promote these tools.

Ideally, any improvements to price comparison tools that arise from this funding increase should be implemented when the AER finalises its Customer Price Information review. PIAC considers this review to be vital in ensuring that consumers receive better information, not just more information.

Furthermore, the ACCC should be aware that no amount of investment will make online price comparison tools accessible for all consumers. For example, consumers from culturally and linguistically diverse communities, or consumers who are not digitally engaged, may never be able to engage with complex information, written in English, on a digital platform. PIAC contends that any investment in price comparison tools should look to support the needs of those consumers in the most efficacious manner. This may include, for example, ensuring that customer agents can have ready access to customer data and act on their behalf, with Explicit Informed Consent of the customer.

Recommendation 15

PIAC recommends that the ACCC propose additional resourcing for government price comparison tools to focus on providing information to consumers less able to engage directly or online

Jurisdictional concessions reviews

PIAC concurs with the ACCC that state and territory governments should review their concessions policies.[24]

In particular, PIAC supports the introduction of proportionate concessions frameworks. Currently, most states have flat payment concessions. Under this system, eligible consumers receive a set payment regardless of how much energy they consume. While this may be highly attractive for a low consumption household for whom the payment covers a larger proportion of their bill, many eligible households may be high consumers of electricity. For these consumers, the concession may only cover a small proportion of their total energy costs and be of limited help.

PIAC contends that a preferable system would give concessions to eligible consumers as a proportion of their energy bill. This would allow all eligible consumers to benefit equitably from the program designed to help them. The ACCC should suggest this reform as part of i recommending concessions reviews.

Recommendation 16

PIAC recommends that the ACCC propose jurisdictional concessions reviews and advocate for proportionate concessions.

Issues for further investigation

The ACCC also raised a number of issues which require further investigation through the Inquiry, including:

[24] ACCC, Retail Electricity Pricing Inquiry, Preliminary Report, 155.

- Information for consumers;
- Pay on time discounts; and
- Access to electricity consumption data.

Information for consumers
As mentioned above, PIAC considers the AER's Customer Price Information review to be the appropriate process through which the Australian Government can reform the retail electricity information provided to consumers. The goal for any reform of information provided to electricity consumers should be to provide better information, not just more information.

Pay on time discounts
The ACCC should recommend a limitation on pay on time discounts. PIAC commented on this issue in our submission to the Issues Paper:

> PIAC is concerned that the common practice of retailers, to provide discounts only when bills are paid by the due date has the effect of, essentially, an unjustifiably high late payment fee. Noting that consumers who consistently pay on time are much less likely to be the recipients of retailer support such as hardship plans, PIAC considers that pay-on-time discounts unfairly target low income and vulnerable consumers who may miss out on these discounts.
>
> PIAC seriously doubts that the difference between discounted price available to consumers who pay on time and the full price in the absence of a discount – which is often 20-30% of the consumption charge on a consumer's bill – accurately reflects the additional costs faced by the retailer as the result of a customer not paying on the due date of a bill.
>
> If the difference is not reflective of costs to retailers associated with late payment, this is not efficient, and, in PIAC's view, is highly unfair.
>
> If the difference is cost-reflective, the practice of pay on time discounts may in effect push the cost of hardship and support programs back onto the same cohort of consumers who most need that support.
>
> In either case, this may lock some consumers into financial stress, imposes a burden on the consumers who can least afford it, and acts as a penalty for those who are less engaged or simply have difficulty paying on time.[25]

Recommendation 17

PIAC recommends that the ACCC propose a regulatory limitation on pay on time discounting to ensure that consumers are not paying higher prices due to the conditionality of offers.

Access to electricity consumption data
PIAC supports increased access to electricity consumption data. The ACCC should monitor the outcomes of the Productivity Commission's report on data availability and the Department of the Environment and Energy's 'Improving Access to Consumer Energy Data' processes to ensure that there is a consistent approach to the availability of electricity consumption data in Australia.

[25] PIAC, *Overpriced and underwhelming*, 8.

Recommendation 18

PIAC recommends that the ACCC engage with the Productivity Commission and Department of the Environment and Energy to ensure a consistent approach to access to electricity consumption data.

Further engagement

PIAC would welcome the opportunity to discuss the issues considered herein in more depth. For any queries please contact either:

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