



public interest
ADVOCACY CENTRE

Submission to IPART's Monitoring the Electricity Retail Market 2019-2020

27 October 2020

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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Introduction

PIAC welcomes the opportunity to respond to the Independent Pricing and Regulatory Tribunal's (IPART) Monitoring the Electricity Retail Market 2019-2020.

This regular review is a vital examination of the functioning of the electricity market and how it is working for NSW consumers. We are very pleased that this year's review provides even better insight and analysis than previous reviews.

PIAC agrees with IPART that people will experience more financial hardship in the current financial year. The extent of the hardship that started due to the extreme weather over the 2019-20 summer and was compounded by the impact of COVID-19 will not be fully seen until well into this financial year. PIAC commends IPART's plan for the next retail review to have a broader scope to capture consumer distress.

PIAC makes comment on specific components of the Review, as set out below.

2 Context for our review

2.1 The Impact of COVID -19 on the electricity market and 2.1.1 Impact on energy consumers

As articulated in the Review, more hardship is expected in the current financial year than in the previous financial year that this Review covers.

Evidence has shown that many households prioritise energy bill payments over other essentials. Households often do this through behaviours that may increase their financial vulnerability.

AER data showing a relatively small change in the use of payment plans, arrears and participation in hardship programs indicates people have likely been running down savings, drawing on superannuation, reducing other costs, incurring debts, and borrowing in order to pay their electricity bills. As these practices become less sustainable and more people find themselves in financial difficulties, the number of people impacted and needing to access retailer support will increase.

The debt and payment difficulty impacts currently being seen in market data are likely to represent the 'tip of the iceberg' of the impacts of COVID-19.

Payment difficulties are likely to continue for some time and the debt accumulation which lags it is likely to increase. For example, there are a large number of small businesses (particularly in hospitality, tourism and entertainment) that, even with current payment support, are insolvent and/or accumulating debt. There is likely to be significant increase in business failure, with flow-on impact to employment and incomes. Reductions in JobKeeper and JobSeeker payments will exacerbate this. The possibility of future waves of infection remain.

2.1.2 Retailers have been asked to take on additional responsibility and 2.1.3 Supporting the financial stability of the retail market

The measures taken by the energy industry to date to deal with the potential financial issues related to COVID-19 are mostly placeholders –such as the Australian Energy Regulator’s (AER) non-binding Statement of Expectations (SOE), the ‘network relief package’, and the Australian Energy Market Commission’s (AEMC) recommended changes to Retailer of Last Resort (ROLR) scheme. They do not offer significant new measures to address issues with debt accumulation and other problems relating to potential widespread inability to pay.

The July revision of the AER’s SOE allowed disconnection of consumers who were not in contact with their retailer. This places the burden on the consumer to be ‘in contact’, while allowing the retailer to determine the level and nature of contact required to avoid disconnection. This returns the system to a more ‘normal’ setting, people who have legitimate reasons not to contact their retailers may be disconnected or threatened with disconnection. These reasons can include:

- They have not experienced difficulty paying before and are not aware of supports available.
- They had previous negative experience with a retailer and do not expect to be assisted, or assisted in a meaningful way.
- They are too stressed about financial issues to discuss them with a retailer, as they believe they will be required to make a payment they cannot afford.
- They do not relate to terms such as ‘hardship’ used by retailers.

The NSW Government also stepped in and made changes to the Energy Accounts Payment Assistance (EAPA) vouchers, increasing the maximum number of vouchers which can be obtained per assessment to total \$400, up from \$300. This coincided with the implementation of already planned changes to EAPA that:

- Increase the amount of information required by community organisations from people in crisis, including the collection of potentially private information that must also be provided to the Department. This increases the burden on both community providers and people seeking assistance, presenting a potential practical barrier to receiving assistance.
- Require larger amounts of compliance work for people issuing the vouchers – many of whom are volunteers. This may have contributed to the reduction in organisations offering EAPA vouchers as part of their assistance.
- Re-introduced limiting the number of vouchers organisations can provide (which can result in voucher rationing), and significantly reduced the scope of providers to issue more vouchers to people in ‘exceptional circumstances’.

In addition, many of the EAPA volunteers are older and have withdrawn in response to public health messaging, which has further impacted providers ability to offer EAPA voucher services.

This is likely to have had an impact of the delivery of EAPA vouchers. The Government recognised this, implementing provision of EAPA through ServiceNSW. This rapid response was welcome. If it is not already being done, PIAC suggests Service NSW provide community organisation contact details to clients who are interested so that they can be offered the additional support these organisations can provide. In the longer term, use of ServiceNSW represents a significant departure from the structure and principle underpinning EAPAs provision

through community organisations. PIAC recommends the Government consult with PIAC, EWON and community providers to review the operation of EAPA by ServiceNSW.

As noted above, the measures taken to date have been welcome, but do not represent substantive responses to the extraordinary impacts of COVID. PIAC considers now an appropriate juncture to consider all options to assist households facing payment difficulty. This should include:

- Providing additional, targeted NSW Government supports such as broadening the eligibility of the Low Income Household Rebate to include people on the Low Income Health Care Card.
- Making rebates proportional, to provide more significant assistance now. Introducing this in conjunction with an energy efficiency program would help address household energy affordability, and help reduce the on-going costs of rebates.
- Creating targets in the Energy Security Safeguard for residential and low income household retrofits and expanding the list of eligible energy saving activities.
- Promoting and expanding activities under the Appliance Replacement Offer would also help households on low incomes reduce their energy bills.
- Creating a government backstop Retailer of Last Resort (ROLR) may also be a more effective mechanism for addressing debt accumulation impact. This could be combined with a scheme for government purchase of groups of indebted customers, or the operation of a low-non profit default retailer, either by the government or a commissioned entity

PIAC contends that measures for consumer and market support should be targeted at supporting consumers, not ensuring all retailers remain viable. It is a reality and risk of any effective market that some unsustainable businesses will fail. It is not the role of governments to prevent this, but to ensure consumers are not negatively impacted by the failure of a private company providing an essential service.

2.2.1 The default market offer commenced on 1 July 2019

PIAC disagrees with IPART's statement: 'It is possible the DMO will lead to reduced competition and higher prices in the long term.' This statement appears to be more opinion than an assessment of evidence.

There are many scenarios where a well-designed and efficiency-targeted DMO enables lower overall prices. An effective DMO helps strip unnecessary churn costs and opaque internal cross-subsidies from retailers' costs. In doing so, it helps focus retailers on efficiency and non-price competition. In a market for a largely homogenous essential service, this is a positive outcome and one noted by IPART in this report. PIAC notes the recent ACCC retail monitoring report¹ and evidence that overall prices, including both market and standing offers, have decreased by a margin greater than the decrease in constituent costs. Where the DMO has resulted in more affordable prices for a majority of consumers, and more competition on product and service innovation, this should be recognised as a consumer benefit.

PIAC highlights the fact that embedded network customers were explicitly excluded from default market offer (DMO) protections. PIAC considers this unacceptable as many people in land lease

¹ ACCC, [Inquiry into the national electricity market, September 2020 report](#), October 2020, pp 10-15

communities run as embedded networks are on low incomes and in vulnerable financial situations, exacerbated by being ineligible to access EAPA vouchers.

PIAC recommends that IPART direct greater focus to the experience of consumers in embedded networks in future monitoring.

2.2.3 Amendments to switching processes to incentivise competitive pricing

PIAC supports the process to restrict customer 'saves' as part of the Reducing customers' switching times rule change². 'Saves' have been shown to lead to below-cost offers to retain customers. It may also have allowed intentional retailer actions to 'strip' value of customers from future retailers, by ensuring that customers likely to 'churn' will become cost burdens for the next retailer. These practices are an unintended element of competition that are not sustainable or in the long term interests of consumers. PIAC considers saves a behaviour that provides temporary benefits a small group of 'active' consumers to the longer term detriment of the majority, and the market as a whole.

2.3 Improving the future electricity market

The move to a two-sided market offers a range of opportunities and risks for energy consumers. The benefits of more flexible demand and supply to the system can reduce costs for consumers, improve reliability, lower emissions and enable more consumer control of energy usage and bills. However, increased participation of demand in the wholesale market introduces new risks and costs, especially associated with increased communications and telemetry requirements and obligations associated with dispatch and scheduling. Importantly with increased consumer control and potential benefit, comes an increased obligation for engagement by consumers, which presents risks to the benefits being realised by all consumers.

PIAC considers the key problems a two-sided market needs to solve are:

- Some consumers want access to products and services that allow them more flexible demand, but have very limited opportunity due to a lack of offerings.
- Third parties are unable to access the wholesale market to offer products and services to consumers that want them.
- The wholesale energy market lacks efficient levels of demand flexibility.
- The market operator cannot transparently deploy the demand-side in the same way as generation.

Any reforms to determine the shape of new energy market must solve these problems at least-cost and most benefit to consumers and in a way that promotes the timely transition to a zero-emissions energy system.

2.3.1 Energy Security Board's review of post 2025 market design, 2.3.2 Better enabling customers to manage their electricity and 2.3.3 Consumer protections need to be strengthened

Market design and consumer protections are interdependent and must be considered concurrently. The Energy Security Board (ESB) does not specify any particular approach or

² AEMC, Reduced customer switching times (retail), final determination, December 2019.

options for consumer protections in the future market design, however, it does acknowledge their importance in delivering the post-2025 market and notes they are currently not fit for purpose. Appropriate consumer protections will be crucial to the success of the two-sided market and Distributed Energy Resources integration in particular.

The transformation of the energy system demands reform of the energy consumer protection framework so that protections can accommodate the broader range of services and technologies that constitute a person's essential energy supply.

PIAC advocates for a system where the protections offered to consumers, including Explicit Informed Consent obligations and dispute resolution procedures, are commensurate to the potential harm the consumer may face should something go wrong – the higher the potential harm, the stronger the protections offered to the customer. This reflects the nature of energy as an essential service and should not depend on the model of provision. Similarly, risk of less harm need only be met with proportionately lower protections. Caution must be exercised about how active we expect households to be in their energy decisions, both in terms of their interest and their capacity in a context of competing demands on time and resources. Both the structure of the new market, and its protections should be designed accordingly.

PIAC notes that the report by the Brattle Group, referred to in PowerShift and in IPART's review, was referring to energy service providers having 'an unfavourable culture and "can't do" attitude', rather than consumers.

Protection for consumers in embedded networks and Access to the NSW Social Program for Energy Code

There remains a range of issues related to embedded networks and progress on the AEMC framework is uncertain, with no guarantee it will address and remedy all major issues. PIAC recommends that IPART more closely examine the experience of consumers in embedded networks in future monitoring, with a particular focus on disconnections, access to protections and assistance measures, as well as relative prices paid.

PIAC highlights the outcome of the decision made in *Reckless v Silva Portfolios Pty Ltd t/as Ballina Waterfront & Tourist Park [2018] NSWCATAP 80*. This decision found the operator could not charge more for electricity than the rates that they paid themselves. An unintended consequence has been operators contracting with authorised retailers to provide electricity retail services to their residents. PIAC has heard from the Tenants Union of NSW that residents in several land lease communities have been approached by an authorised retailer who is now responsible for their connection, often without explicit consent.

PIAC is concerned consumers such as these, in vulnerable situations, do not have the fundamental right to exercise explicit informed consent. These consumers are being unreasonably threatened with disconnection, without any alternative but to agree to deals that are significantly more expensive than their previous arrangements.

PIAC is working with the Tenants Union of NSW to understand the scope of this issue in land lease communities, and the details of residents' experiences. PIAC urges IPART to investigate this issue as part of a more explicit focus on embedded networks.

Many consumer protection issues experienced by people in embedded networks, particularly land lease communities, are within the scope of the NSW Government to address and should be addressed as a matter of priority. This includes: eligibility for EAPA vouchers, accessing rebates, and connection security, metering and pricing regulation.

Expanding the role of EWON to support all energy consumers

PIAC supports IPART's draft recommendation 2, but recommends it be amended to include:

- The NSW Government work with EWON to undertake an audit of embedded networks in NSW. The audit should be used to find out how many embedded networks there are, where they are, how many consumers are in the embedded network and how they operate, including where embedded network retailers are involved. Understanding these issues and developing ways to incorporate them into regulatory frameworks will ensure all NSW households are protected equally.
- Predatory behaviour by embedded network retailers in land lease communities be investigated and the NSW Government to develop a fair pricing structure for operators to supply and charge electricity to residents.

3 Structure of the market – barriers to entry, expansion and exit

3.1.1 The number of active retailers increased in 2019-20

Although there has been an increase in retailers and brands in NSW in 2019-20, this is not necessarily a benefit for consumers. Increased competition can lead to higher retail charges with no product benefits, as explained in The Thwaites Review:

A number of retailers stated that competition had increased costs associated with marketing, customer acquisition and retention cost (CARC). The review panel was told by retailers it consulted with that winning new customers is a significant expense.³

And:

Other than increasing costs of competition to acquire and retain customers, the panel heard limited explanations from retailers to explain their increases in retail charges. Some retailers suggested that increased retail margins were needed to attract competition.⁴

And:

These additional costs of competition that consumers are paying for have not improved the reliability or accessibility of the product they are purchasing. Nor have the benefits of competition offset the additional costs incurred by consumers. As consumers cannot opt out of the energy market, the costs of competition increase prices for consumers. Without any strong mechanism to constrain prices for all consumers, the prices that Victorian consumers pay will likely remain high.⁵

³ Thwaites, John, *Independent Review into Electricity and Gas Markets in Victoria*, 23.

⁴ Ibid.

⁵ Ibid, 24.

PIAC disagrees with IPART that the DMO is a negative impactor on retail competition. If the number of retailers has increased while the DMO has been in place, and overall prices have decreased – at worst, the evidence suggests the DMO has had no impact upon this competition indicator.

3.2.2 Some observations on economies of scale

The economies of scale survey responses provide an important insight into the current efficiency of the market. Most retailers (71%) indicate that a market share in excess of 6% is needed to achieve economies of scale. Yet the market currently has only 4 retailers with more than 6% of the market, the remaining 29 retailers share just 11.1% of the market. This may indicate that having more retailers is not necessarily an indicator of a better functioning and more efficient market. Rather, it could be better to assess how efficient the retailers operating in the market are, and how consistently they are delivering better outcomes for all consumers.

4 Retailer behaviour and outcomes

A well-functioning competitive market should deliver products and services that best reflect consumer preferences, not necessarily a wider range of products.

PIAC supports the comment in the Review that the DMO has reduced the spread of prices in the market, while increasing non-price competition. In the provision of a largely homogenous base product, price competition can be regarded as a market failure. Therefore, a reduction in pure price competition, and a move to product enhancement and ‘innovation’ is positive and accords with PIAC’s view that a properly regulated price would drive innovation and better consumer outcomes.

4.1.1 Approach to assessing price changes

PIAC supports the inclusion of actual bill data into IPART’s assessment of price changes. Lower market offers available on Energy Made Easy do not indicate that consumers are actually benefiting from lower prices.

4.2.1 Bundling and product differentiation

Bundling and/or product differentiation is a legitimate way to attract or maintain customers. Offerings such as loyalty discounts and monthly billing can provide advantages for certain households. However, the energy component within these deals must remain clearly comparable to other market products. Bundling must not obscure the actual price of energy, particularly in relation to the reference price. In addition, it can be difficult for consumers to compare whether a deal which involves an annual membership fee and lower usage charges will or will not be cheaper than one with no membership fee but higher usage charges. These are important issues for IPART to monitor in its future retail electricity reviews.

4.3 A review of retail margins is not needed

PIAC is not convinced a review of retail margins is not needed. Considering the DMO is intentionally set above the price that represents the efficient cost (including retail margin), an assessment of retail margin is worthwhile and should be undertaken. There are a number of assumptions built into the DMO about the relative discipline of competition on the market and the

prices and margins of retailers. These assumptions are not a given, and monitoring should include an objective examination of actual margins. This is particularly important in assessment of the appropriate level of the DMO, and its success or otherwise, in enabling fairer prices for households.

5 Consumer behaviour and outcomes

5.1 Most customers are on market offers, 5.2 Switching has declined slightly and 5.2.1 Less reward for switching

PIAC offers some additional context for IPART's comments on switching and what it may mean for consumer outcomes.

As an essential service, households should be able to receive a reasonable, affordable energy deal without having to be 'engaged' in a way that requires ongoing monitoring of available deals, detailed understanding and comparison of complex deals, and regular switching. Even when significant financial penalty is involved, many consumers have consistently demonstrated a preference not to engage through ongoing market comparison and switching.

PIAC contends that a wider perspective of engagement, beyond comparison and switching, is required. Nicholls et al found that whilst many households are disinterested in the energy market, they are interested in energy⁶. This indicates the energy community should broaden its understanding that 'engaged' means more than switching retailers. They write:

Unengaged or deliberately disengaged does not mean householders are always disinterested – disengagement from energy market, tariff and energy businesses occurs alongside interest in other aspects of energy including:

- energy policy responses to address affordability, reliability and environmental impacts of energy
- ensuring health, comfort and productivity in the home
- improving the energy efficiency of Australia's housing
- adoption of new energy technologies (e.g. automation, demand response and distributed energy generation)⁷

The success of the DMO and its potential impact upon switching should be viewed from a more holistic perspective, where:

- The DMO has lowered prices overall, and narrowed the spread closer to efficient/fair prices.
- The DMO has ensured that those not switching are not required to in order to get a fairer offer.
- There is still a wide range of market players offering different products.
- Those that switch can express a preference by getting a different deal that suits their needs.

⁶ Nicholls L, Arcari P, Glover A, Martin R & Strengers Y. *Engaging households towards the Future Grid: experiences, expectations and emerging trends*, Centre for Urban Research, RMIT University, Melbourne, 2019, 4. Available at <https://cur.org.au/cms/wp-content/uploads/2019/03/future-grid-homes-household-report-final-1-1.pdf>

⁷ Ibid, 27.

Less switching can actually be seen as evidence of positive consumer outcomes, when viewed in conjunction with the efficiency of the prices being paid.

The report characterises a reduction in the price dispersion of available offers as 'Less reward for switching'. However, a reduction in dispersion and the availability of lower cost offers can also be understood as there being less internal retail cross-subsidy, where customers who 'churn' are effectively subsidised by more static customers paying higher prices. Having a small proportion of people unable to be on below-cost offers should not be regarded as a negative outcome.

5.2.2 Customers could be better off on time-of-use offers

Time-of-use tariffs have the potential to result in savings for households, but also have the potential to increase bills if a household cannot shift electricity usage or are unaware of when to shift or limit usage. Once signed up to a time-of-use tariff, it can be difficult to remember when the different rate periods occur and how they change over time (e.g. seasonally). To assist people to take advantage of time-of-use tariffs, bills should include reminders about when the time periods occur, the price of each period and information about any changes to the time periods and rates which will occur before the end of the next billing cycle. Bills should also include information about how electricity usage can be shifted to take advantage of different rates.

Retailers should be required to provide 'best offer' information on bills (which is already required on bills in Victoria) to show what savings could be made if a consumer was on a better offer. This could include whether a time-of-use tariff would be suitable for a consumer, based on actual usage data which ideally covers at least one year. It should be accompanied by information about how to take advantage of this type of offer by shifting usage and that discussing this option with a retailer would help them determine whether being on a time-of-use tariff would be right for their household.

5.2.3 Difficulty comparing offers may be constraining engagement, but work is in progress to address this

PIAC contends that the research results looking at consumer comprehension of reference prices cited by IPART supports our initial criticism of the formulation of the reference price mechanism. A reference price that does not refer to a meaningful anchor, such as an efficient cost or lowest cost, does not have great value as a comparison point. Consumer understanding of the reference, and their ability to use it for their benefit, would be better served by reform of both the formulation of the reference price and the means of its communication.

Continued engagement

PIAC would welcome the opportunity to meet with IPART and other stakeholders to discuss these issues in more depth.