



Power/knowledge:

PIAC response to the AER's Issues Paper: Approach to compliance with the National Energy Retail Law, Rules and Regulations

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1. Introduction

1.1 The Public Interest Advocacy Centre

The Public Interest Advocacy Centre (PIAC) is an independent, non-profit law and policy organisation that works for a fair, just and democratic society, empowering citizens, consumers and communities by taking strategic action on public interest issues.

PIAC identifies public interest issues and, where possible and appropriate, works co-operatively with other organisations to advocate for individuals and groups affected. PIAC seeks to:

- expose and redress unjust or unsafe practices, deficient laws or policies;
- promote accountable, transparent and responsive government;
- encourage, influence and inform public debate on issues affecting legal and democratic rights;
- promote the development of law that reflects the public interest;
- develop and assist community organisations with a public interest focus to pursue the interests of the communities they represent;
- develop models to respond to unmet legal need; and
- maintain an effective and sustainable organisation.

Established in July 1982 as an initiative of the (then) Law Foundation of New South Wales, with support from the (then) NSW Legal Aid Commission, PIAC was the first, and remains the only broadly based, public interest legal centre in Australia. Financial support for PIAC comes primarily from the NSW Public Purpose Fund and the Commonwealth and State Community Legal Services Program. PIAC also receives funding from Industry and Investment NSW for its work on energy and water, and from Allens Arthur Robinson for its Indigenous Justice Program. PIAC also generates income from project and case grants, seminars, consultancy fees, donations and recovery of costs in legal actions.

1.2 Energy + Water Consumers' Advocacy Program (EWCAP)

This Program was established at PIAC as the Utilities Consumers' Advocacy Program in 1998 with NSW Government funding. The aim of the Program is to develop policy and advocate in the interests of low-income and other residential consumers in the NSW energy and water markets. PIAC receives policy input to EWCAP from a community-based reference group the members of which include:

- Council of Social Service of NSW (NCOSS);
- Combined Pensioners and Superannuants Association of NSW (CPSA);
- Park and Village Service;
- Ethnic Communities Council NSW;
- rural and remote consumers;
- Institute of Sustainable Futures (ISF), University of Technology (UTS);
- Western Sydney Community Forum (WSCF); and
- National Seniors.

2. The current review

Under the proposed National Energy Customer Framework (NECF) the Australian Energy Regulator (AER) is likely to be responsible for compliance with the National Energy Retail Law (NERL) and National Energy Retail Rules (NERR).

PIAC welcomes the opportunity to comment on the *Issues Paper: Approach to compliance with the National Energy Retail Law, Rules and Regulations* (the *Issues Paper*). PIAC notes that this consultation has commenced before the formal prescribed consultation timeline proposed in the NERL, and that the extra time for consultation is greatly appreciated.

This submission will focus on the areas of the *Issues Paper* that PIAC believe of most important to energy consumers. Generally, PIAC is supportive of the approach taken by the AER in this *Issues Paper* and this response seeks to support the AER in maintaining this approach through to decision-making.

3. Openness and transparency

The *Issues Paper* states that the AER's primary objective on compliance 'is to foster a positive compliance culture and to work cooperatively with regulated entities for continued improvement in compliance practice'.

Through the influence of corporate reputation, public awareness of retailer compliance is an important pressure in ensuring a culture of positive compliance. It is therefore important that the AER establish a successful communications strategy as part of its approach to compliance.

PIAC has experience using published compliance reports to advocate for better outcomes for consumers. PIAC has found that it is important that these reports provide the public with plain English analysis rather than simply provide data that is likely to be unfamiliar to most consumers and many of those advocating on their behalf. In addition, PIAC has found targeted presentations and one-on-one discussions to be useful in those cases where the regulator finds emerging trends or issues that may require a more sophisticated understanding.

Further, PIAC believes that relevance plays an important role in fostering interest amongst the public and the media in compliance and other regulatory reports. As such, PIAC strongly supports the proposal for quarterly reporting. This will be further discussed below.

4. Market intelligence and information

The *Issues Paper* proposes the following sources of market intelligence and information:

- Energy Ombudsman Schemes;
- AER's Customer Consultative Group;
- ACC/AER Infocentre;

- Australian Energy Market Operator (AEMO);
- Information and documents submitted to the AER; and
- Public Information

PIAC supports all of these measures, however it believes that there are other sources of market intelligence that the AER would find useful in monitoring compliance with the NECF including those listed below.

4.1 Internal Dispute Resolution Schemes

Under the NECF, retailers and distributors are likely to be required to develop small customer dispute resolution policies and procedures, and publish these on their website. These policies would be gathered under the 'Public Information' channel above. However, data about the number and nature of complaints dealt with through internal dispute resolution would be of immense value to the AER in monitoring compliance. PIAC recommends that the AER work with retailers to make this data available for use to monitor compliance with the NECF, and, where possible, to make the data publicly available. This information would be highly useful to those organisations monitoring the impact of economic factors and other variants on vulnerable households.

4.2 Jurisdictional Regulators

Whilst the NECF will result in the AER taking much of the responsibility of energy retail compliance from state regulators, many of the state regulators will still have an interest in energy. For example, the Independent Pricing and Regulatory Tribunal of NSW (IPART) will continue to regulate retail tariffs for small customers in NSW. As such, the state regulators are likely to continue to gather data about the energy retail market, and this is likely to be useful to the AER in monitoring compliance with the NECF. PIAC recommends that the AER monitors reports and other information published by state regulators for this purpose.

4.3 Community Sector research:

The community sector has an interest in monitoring the impact of energy policy and pricing on low-income and other households, and generates occasional research papers for this purpose. PIAC recommends that the AER actively monitors this research for the purpose of monitoring compliance with the NECF.

5. Compliance reporting

PIAC has a history of using compliance reports published by IPART to inform its work. PIAC, through its Energy + Water Consumers' Advocacy Program, works closely with energy retailers and distribution businesses in NSW to improve the experience of consumers dealing with these entities. The compliance reports published by IPART have provided PIAC with a clearer picture of the approach of regulated entities with regard to compliance, and have therefore enabled PIAC to better leverage its relationship with retailers to facilitate improved experiences for consumers.

The data available in IPART compliance reports has also assisted PIAC in highlighting the risks of adverse outcomes faced by vulnerable households, through the use of media and other advocacy activities.

One shortfall of the IPART reports is the once-a-year publishing cycle. By the time the data is collected, analysed and published by IPART, much of the information is over a year old and therefore of limited use in identifying emerging trends. The *Issues Paper* proposes that the AER to publish compliance reports quarterly. PIAC strongly supports this proposal.

The *Issues Paper* asks whether it is appropriate to combine compliance and hardship performance audits. PIAC sees no reason to exclude this from occurring.

6. Conclusion

The effectiveness of the NECF will rely, in part, on the pressure applied to the regulated entities to comply. The ability of the AER or, indeed, consumers, to apply this pressure relies on access to information about the level of compliance.

The success or otherwise of the AER's approach to its compliance and enforcement functions will therefore rely on the quality and comprehensiveness of the information received by the AER and the information available to the public.

PIAC welcomes the AER's proposed approach to compliance but asks that consideration also be given to the matters raised above.