



## **Where to and how?**

**PIAC submission to the AEMC's Draft Report:  
*Review of competition in retail electricity and  
Natural gas markets in NSW***

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**Energy + Water Consumers' Advocacy Program**



# Introduction

## 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; and
- 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 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 the Trade and Investment, Regional Infrastructure and Services NSW for its work on energy and water, and from Allens 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.

## Energy + Water Consumers' Advocacy Program

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 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;
- Park and Village Service;
- Ethnic Communities Council NSW;
- Rural and remote consumers;
- Retirement Villages Residents Association;
- Physical Disability Council NSW; and
- Affiliated Residential Park Residents Association.

# 1. The current review

PIAC thanks the Australian Energy Market Commission (AEMC) for the opportunity to provide comment on its draft report, *Review of Competition in the Retail Electricity and Natural Gas Markets in New South Wales* (the Draft Report). The Draft Report outlines the AEMC's finding that 'competition in the electricity and natural gas markets for small customers is delivering benefits to customers'.<sup>1</sup> Under the Australian Energy Market Agreement, all Australian jurisdictions agree to phase out retail price regulation 'where effective retail competition can be demonstrated'.<sup>2</sup> The Draft Report's finding, therefore, creates the necessary precondition for the removal of price regulation.

In light of the findings in the Draft Report, PIAC takes the view that retail energy price regulation is likely to be removed in NSW in the short to medium-term. This will represent a very significant overhaul in the structure of NSW retail energy markets. It is extremely important that this transition is accompanied by measures that maximise the benefit to residential consumers in NSW and minimise the risk of any negative impacts. To that end, PIAC makes a number of recommendations in this submission related to the transition to deregulated prices and measures that should accompany the transition.

PIAC made a detailed submission in response to the AEMC's Issues Paper for this review (the Issues Paper). In its initial submission, PIAC raised concerns about the existence of effective competition in both the rural and regional electricity markets (the area covered by the Essential Energy network) and retail Natural Gas markets and in rural and regional areas. PIAC continues to hold such concerns, and does not agree with the AEMC's decision to classify residential gas customers as participating in a dual fuel, rather than a gas, market.

## 2. Price deregulation

### 2.1 The path to electricity price deregulation

PIAC's comments relating to the path to deregulation are related to electricity only. PIAC does not believe retail gas prices for small customers should be deregulated (see below).

As part of its Terms of Reference for this report, the AEMC has been asked to consider how price deregulation could be removed, if the NSW Government so chose. The Draft Report discusses a number of possible approaches to price deregulation, including:

- removing price regulation for all consumers at the same time;
- rolling back price regulation by consumption threshold;
- rolling back price regulation by customer type; and
- an 'opt-in' model of price regulation, as proposed by the NSW Independent Pricing and Regulatory Tribunal (IPART).<sup>3</sup>

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<sup>1</sup> AEMC, *Review of Competition in the Retail Electricity and Natural Gas Markets in New South Wales – Draft report*, 2013, i.

<sup>2</sup> Council of Australian Governments, *Australian Energy Market Agreement* (as amended), 2004, cl 14.11.

<sup>3</sup> AEMC, above n 1, 101-108.

Of these options, PIAC agrees with the AEMC's draft recommendation that 'removing price caps for all consumers at the same time is the most appropriate approach'.<sup>4</sup>

As noted in the Draft Report, PIAC expressed concerns in its initial submission about the staged removal of price regulation based on consumption threshold.<sup>5</sup> The consumption of a particular consumer is not static, nor is it pre-determined. In addition, PIAC argued that this approach carries a risk that retailers will target their best offers at high-consumption households, leaving less-competitive offers (with, for example, high fixed charges) for lower-use groups. This risk would also exist if prices were deregulated based on consumer groups (better offers targeted at small business with its higher consumption).

PIAC also submits that the option of an opt-in regulated price involves continuing price regulation for a group of customers and is, therefore, very similar to the current arrangements in NSW. This possibility was first proposed by IPART in December 2012, as part of its process to set regulated retail electricity prices in NSW.<sup>6</sup> PIAC strongly opposed the proposal at that time, on the basis that consumers who have chosen to remain on the regulated Standard Contract should not be forced off it and then made to take action to continue with the offer they are currently signed up to.<sup>7</sup> In addition, the proposal lacked detail on how this would happen, which retail consumers would be placed on market contracts with and who would benefit from such an initiative. In the context of this review, PIAC submits that taking this approach would not involve removing price regulation from the market, as the regulated price would still be available. If the NSW Government wishes to continue price regulation, this could be done by maintaining current arrangements. If prices are to be deregulated, this should be done for all small retail consumers at the same time.

## **Recommendation 1**

*PIAC recommends that if the NSW Government chooses to remove electricity price regulation, this should happen for all small retail consumers at the same time.*

## **2.2 Gas price deregulation**

### **2.2.1 Classification of the dual fuel market**

PIAC does not agree with the AEMC's decision to classify residential gas customers as being part of a dual fuel, rather than a gas, market. PIAC takes this position for two reasons. Firstly, the costs associated with switching appliances from gas to electricity severely undermine the extent to which electricity can be substituted for gas, particularly for consumers in rental properties. Secondly, as noted in the Draft Report, customers with both fuels can choose to purchase 'their electricity and gas from the same retailer or from different retailers'<sup>8</sup> and in some cases cannot access a market offer for gas.

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<sup>4</sup> Ibid, 108

<sup>5</sup> Derum, O & Johnston, M, *Marking the market – PIAC submission to the AEMC Issues paper: Review of competition in retail electricity and gas markets in NSW*, 2013, 28. Available at: [www.piac.asn.au/publication/2013/03/markings-market](http://www.piac.asn.au/publication/2013/03/markings-market)

<sup>6</sup> IPART, *Review of regulated electricity prices and charges for electricity 2013 to 2016 – Issues paper*, 2012, 33.

<sup>7</sup> Derum, O, *Charting the affordable course – PIAC submission to IPART's Issues Paper, Review of regulated electricity prices and charges for electricity 2013 to 2016*, 2012, 3. Available at: [www.piac.asn.au/publication/2013/01/charting-affordable-course](http://www.piac.asn.au/publication/2013/01/charting-affordable-course)

<sup>8</sup> AEMC, above n 1, 14.

Gas is primarily used for space heating, hot water and cooking, tasks for which electrical appliances can also be used. However, PIAC submits that the costs associated with making this substitution can be extremely high—potentially running to thousands of dollars. This puts such a decision out of reach for many consumers, especially those on low incomes. This means that the threat of product substitution exerts no pressure on the competitive market for these customers. In addition, consumers living in rental properties must simply use the fixed appliances that are in their property. Given that stoves and water heaters are non-discretionary items, PIAC argues that such consumers are very much part of a market for retail gas supply.

Secondly, PIAC does not support the AEMC's classification of all gas consumers as part of a dual fuel market. As the Draft Report notes, approximately one in three gas customers receive their supply from a different retailer to their electricity supply.<sup>9</sup> PIAC argues that where these customers are not buying a dual fuel product, they cannot be considered part of the dual fuel market. PIAC also notes that in most cases, customers who purchase their gas and electricity from the same retailer generally receive a separate bill for each fuel and may not receive a discount. In such cases, PIAC argues that they are simply purchasing two products from the same supplier.

PIAC recently examined the offers available to gas customers in Cooma, Henty, Gundagai, Tamworth, Goulburn, Queanbeyan and Albury (as published on IPART's My Energy Offers website).<sup>10</sup> Only customers in Goulburn and Albury could access an offer from a retailer other than their standard retailer, and in each case only four market offers were available. Customers in Queanbeyan and Tamworth could access one market offer from their standard retailer in addition to the standard contract, while consumers in Cooma, Henty and Gundagai only had access to a standard contract. Based on these results, PIAC submits that it cannot be argued that there is effective competition in the gas market, which as stated above, exists for around one in three gas consumers.

Finally, PIAC submits that there is currently considerable uncertainty about the future of retail gas prices in NSW, due to factors including the impact of Australia's increasing Natural Gas export capacity, which will bring wholesale gas prices more in line with international levels. In its recent gas price determination, IPART chose not to make a determination for price changes from 1 July 2014 and 1 July 2015, because 'there are too many uncertainties to reach agreement on these price changes now'.<sup>11</sup>

In light of these uncertainties, PIAC argues that regulatory oversight has an important role to play in ensuring consumers pay reasonable prices and do not face increases beyond efficient levels. This is especially true where competition is low or non-existent, as PIAC argued in its initial submission.<sup>12</sup> PIAC, therefore, repeats its recommendation that gas prices not be deregulated until this level of competition has improved.

## ***Recommendation 2***

*PIAC recommends that the NSW Government not deregulate retail gas prices.*

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<sup>9</sup> Ibid 18.

<sup>10</sup> This research was undertaken on 25-26 June 2013.

<sup>11</sup> IPART, *Review of regulated retail prices and charges for gas from 1 July 2013 to 30 June 2016 – Final report*, 2013, 4.

<sup>12</sup> Derum, O & Johnston, M, above n 5, 22.

### 3. Features of the market post deregulation

As previously noted, the Draft Report's finding about the effectiveness of competition paves the way for the removal of retail energy price caps. Assuming this change in policy is to be implemented, PIAC makes a number of recommendations about other regulatory measures that should be introduced at the same time as this change to help protect consumers from any potential adverse impacts.

#### 3.1 Standing offers

PIAC submits that it is important that an enhanced system of standing offers is introduced if price regulation is removed. Currently, the standard contracts offered by the Standard Retailers in NSW play an important role in the market. Firstly, they ensure that all customers are able to access a supply contract, including those to whom retailers may not want to offer a market contract, due to their credit history or past payment difficulty. Given energy is an essential service, it is extremely important that arrangements are put in place to ensure that supply is accessible to all customers.

Secondly, many consumers also find the simpler, legislated contract terms to be an attractive option and have chosen to remain on Standard Contracts—despite the other options offered in the competitive market. This is evidenced by the fact that, according to IPART, around 40% of households are currently on Standard Contracts.<sup>13</sup> At the same time, the survey conducted by Roy Morgan Research for the AEMC as part of this review found that 90–92% of NSW consumers are aware that they have a choice of electricity retailer.<sup>14</sup> This suggests that at least 30–32% of those on a Standard Contract know they can enter into a market contract but have exercised their choice not to do so. Similarly, a report published recently by the Essential Services Commission of Victoria showed that even in what is considered on some measures to be the most competitive electricity market in the world,<sup>15</sup> around 30% of consumers are on a Standing Offer at any one time.<sup>16</sup>

In addition, as noted in the Draft Report, there is a concern that 'the removal of regulated prices would leave customers without price benchmarks against which market offers could be compared'.<sup>17</sup> The absence of such a benchmark would potentially have a negative impact on the market, as consumers would be forced to assess market offers without knowing an approximate upper range of the cost of the service.

Given the size of the consumer group who are likely to choose to take up standing offers, and the important benchmarking effect they have on the market, PIAC recommends that all retailers be required to have standing offers available to all retail customers. This would go beyond the current NSW arrangements, where three retailers offer standard contracts, one in each network area. Under the National Energy Customer Framework (NECF), which came into effect in NSW

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<sup>13</sup> IPART, *Review of regulated retail prices for electricity, 2013 to 2016 – Draft report*, 2013, 6.

<sup>14</sup> Roy Morgan Research, *Survey of residential customers of electricity and natural gas in NSW: Effectiveness of retail competition*, 2013, 9. Available at: [www.aemc.gov.au/Market-Reviews/Open/nsw-retail-competition-review.html](http://www.aemc.gov.au/Market-Reviews/Open/nsw-retail-competition-review.html), as at 15 May 2013.

<sup>15</sup> AEMC, above n 1, ii.

<sup>16</sup> Essential Services Commission of Victoria, *Energy retailers comparative performance report – Pricing, 2011-12*, iii.

<sup>17</sup> AEMC, above n 1, 119.

on 1 July 2013, such retailers are known as ‘designated retailers’.<sup>18</sup> If retailers were designated retailers for all customers, they would be able to compete on both their standing offers and market offers.

### **Recommendation 3**

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*PIAC recommends that if the NSW Government chooses to deregulate energy prices, all retailers be required to offer consumers standing offer contracts.*

In addition, as PIAC noted in its submission to the Issues Paper for this review, it is important that NSW learn the lessons of the Victorian experience with regard to standing offers.<sup>19</sup>

In particular, PIAC’s previous submission highlighted that in Victoria, retailers often wait to publish their standing offers (in the Government Gazette) until their competitors have done so.<sup>20</sup> Under the NECF, retailers are not allowed to increase their Standing Offer prices more frequently than every six months.<sup>21</sup> PIAC, therefore, recommends that retailers be required to publish their standing offers in the NSW Government Gazette, and on their websites, on the last Friday before 1 December and 1 June each year, with the increases to take effect on 1 January and 1 July, respectively. If retailers fail to Gazette an offer at that time, they should lose the opportunity to increase their Standing Offer prices until six months later.

PIAC submits that these arrangements would benefit consumers, and strengthen the market, for two main reasons. Firstly, they would provide certainty to consumers about when prices will increase and allow consumers to assess their options for finding a different supplier before the price increase takes effect. Consumers will, therefore, be better equipped to participate in—and benefit from—the competitive market. Secondly, retailers would not be able to see their competitors’ price increases before setting their own. Without this knowledge, retailers are more likely to set their standing offers at a rate that is closer to their efficient cost of delivering supply to consumers, rather than at a level that merely undercuts their competitors, as happens in Victoria.<sup>22</sup>

### **Recommendation 4**

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*PIAC recommends that all retailers should be required to publish any increase to their Standing Offer prices in the NSW Government Gazette, and on their websites, on the last Friday before 1 December and 1 June each year, with the increases to take effect from 1 January and 1 July, respectively. If a retailer does not Gazette a price increase on the appropriate date, it should not be able to increase prices until the process is repeated six months later.*

## **3.2 On-going market monitoring and triggers for re-regulation**

If energy prices in NSW are de-regulated, it is important that arrangements are put in place that allow for on-going monitoring of the market’s development following deregulation, including triggers for a re-examination of the effectiveness of competition in the future. Provision should also be made to re-regulate prices, if such a review finds that a

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<sup>18</sup> *National Electricity Retail Rules*, part 2, cl 16(2).

<sup>19</sup> Derum, O & Johnston, M, above n 5, 30.

<sup>20</sup> *Ibid.*

<sup>21</sup> *National Energy Retail Rules*, sch 1, cl 8.2(b).

<sup>22</sup> Derum, O & Johnston, M, above n 5, 30.

deregulated market is not, or is no longer, producing positive outcomes for consumers in terms of price, product differentiation and innovation. It is important that the NSW Government retains such power because, as the Draft Report acknowledges, 'it is uncertain how the market would develop following price deregulation'.<sup>23</sup>

### **3.2.1 Benefits of a system of triggers**

The possibility of price re-regulation would provide retailers with an incentive to conduct themselves in the market in line with community expectations—and to avoid the need for a return of certain government control related to their activities. As the Draft Report notes, 'retailers generally prefer deregulated prices'.<sup>24</sup> If the regulatory framework is adjusted so that it reflects this preference, PIAC submits that retailers must proactively dedicate the necessary resources to ensure compliance with all remaining consumer protections. Similarly, any regulator charged with monitoring retailer compliance with consumer protection responsibilities or developments in price/competition must be empowered to take action where market dynamics start to work in a way that disadvantages consumers.

### **3.2.2 Designing a framework**

The design of a framework for monitoring the effectiveness of competition in a newly deregulated market will be a crucial element of its success. The Draft Report states that 'to provide certainty for retailers and investors, it would be preferable that certain criteria or triggers be set in advance for when the power to re-regulate could occur'.<sup>25</sup> In light of this comment, PIAC submits that the AEMC has the necessary expertise to develop such a framework. The AEMC should consult with relevant stakeholders, including consumers, regulators and retailers, in developing the framework.

### **Recommendation 5**

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*PIAC recommends that if the NSW Government chooses to deregulate energy prices, the AEMC should be tasked with developing a comprehensive framework for monitoring the on-going effectiveness of the competitive market. The AEMC should consult with relevant stakeholders in developing this framework. The framework should include a system of triggers for the re-introduction of price regulation if the deregulated market is found not to be producing positive outcomes for consumers.*

### **3.2.3 Characteristics of the framework**

While PIAC would endeavour to provide input into the development of such a framework in the future, it also takes the opportunity of this submission to provide some suggestions about the characteristics the framework should have and examples of possible triggers.

Firstly, PIAC submits that the framework for on-going monitoring of the competitive market should be put in place from the introduction of price deregulation. This would provide a more complete picture of market development following this significant change. It would also avoid the situation that has occurred in Victoria, where recent concerns about increases in the retail component of customer bills have prompted a specific review of retail

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<sup>23</sup> AEMC, above n 1, 112.

<sup>24</sup> Ibid.

<sup>25</sup> Ibid 113.

margins by the Essential Services Commission (ESC).<sup>26</sup> PIAC understands that this examination could only take place on an ad-hoc basis, due to the lack of an existing monitoring framework and data that was not collected systematically over time.

Secondly, PIAC submits that a system of progressive triggers should be put in place, with monitoring increasing as initial triggers are activated. PIAC notes that under NECF, the AER will monitor and report on retail market performance.<sup>27</sup> A system could, therefore, be put in place that involves triggers based on this monitoring (or other specific measures put in place as part of the system recommended by the AEMC). The activation of triggers based on this information could then lead to a re-examination of the effectiveness of competition, which would assess the need for the re-introduction of price regulation. A system of progressive monitoring, such as this, is discussed in the Draft Report.<sup>28</sup>

Finally, PIAC submits that if the proposed system of triggers and increasing monitoring leads to a need for a full re-evaluation of the effectiveness of competition, the terms of reference for that review should be the subject of public consultation. Before this stage is reached, stakeholders are likely to be aware of the issues that have seen the need for a new review arise, and would therefore be well placed to make a constructive contribution to shaping the review's terms of reference.

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#### **Recommendation 6**

*PIAC recommends that if the NSW Government chooses to deregulate energy prices, a comprehensive framework should be put in place to monitor the conduct and evolution of the competitive market from the time deregulation occurs.*

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#### **Recommendation 7**

*PIAC recommends that if the NSW Government chooses to deregulate energy prices, the framework that is put in place to monitor the competitive market should include a system of progressive triggers, which when activated would lead to increased monitoring, followed by a full review of the effectiveness of competition and the possible re-introduction of price regulation.*

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#### **Recommendation 8**

*PIAC recommends that if the NSW Government chooses to deregulate energy prices, and the market monitoring framework put in place triggers a re-evaluation of the effectiveness of competition, the terms of reference for that review should be the subject of public consultation.*

### **3.2.4 Examples of triggers for monitoring and re-regulation**

PIAC argues that customer churn rates, which are often presented as a proxy for the level of competition in the market are not the most appropriate trigger for determining whether re-regulation is necessary. It is not simply the volume of competition (as measured through the number of customers changing supplier) that benefits consumers, but the quality of competition.

PIAC has a number of suggestions for possible triggers that could be used instead of churn rate. As previously stated, PIAC believes that the AEMC should develop a framework for monitoring

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<sup>26</sup> ESC, *Retailer Margins in Victoria's Electricity Market*, 2013.

<sup>27</sup> *National Electricity Retail Rules*, part 10, cl 166-167.

<sup>28</sup> AEMC, above n 1, 113.

and evaluating the de-regulated market, in consultation with relevant stakeholders. PIAC would seek to bring these suggestions as part of any such consultation, but also wished to take this opportunity to submit them to the AEMC.

### **On-going access trigger**

Under the NECF, the Australian Energy Regulator (AER) will produce annual assessments of energy affordability and customer hardship. PIAC suggests that one of these triggers should provide an indication of whether energy affordability is becoming increasingly challenging. For example, if the number of residential disconnections due to non-payment of bills increases by more than 10% in two consecutive years, or by more than 25% over three consecutive years, this could trigger increased monitoring and, in turn, the re-examination of the effectiveness of competition.

### **Retail profit margins trigger**

The second trigger for a re-examination of the effectiveness of competition and possible price-regulation could be based on price increases and retail profit margins. Currently in NSW, the regulated price includes a retail profit margin of 5.7%.<sup>29</sup> PIAC accepts that a dynamic retail market requires viable participants. According to economic theory, where firms increase efficiency, competition will compel them to pass these benefits on to consumers, through lower prices, in order to attract new customers or avoid losing existing customers. It follows that where this is not occurring, competition is ineffective.

PIAC also accepts that retailers may earn profits above that level from time to time, and it takes time for retailers to design new product offerings that include a discount funded by the extra headroom they have been able to achieve. Nonetheless, PIAC submits if retailers holding more than 18% of the NSW customer base earn more than 5.7% profit in three consecutive years, the profit margin trigger could be activated. (The 18% figure means that a profit at that level from any of the 'big three' retailers will activate the provision in a given year.<sup>30</sup>) This would ensure that retailers pass on their efficiencies to consumers in the form of lower prices.

PIAC notes that it is not advocating for the amount of retailer profit to be capped, as firms will be able to increase their earnings through growing their customer base (to a level that does not hamper competition – see below).

### **Market concentration trigger**

The third possible trigger for a re-examination of the effectiveness of competition could be based on retailer market concentration. According to the latest publicly available figures, three large retailers dominate the retail electricity market in NSW. Of the 2.91 million residential accounts in NSW, Origin Energy holds 42.1% of the market, Energy Australia 33.6% and AGL 18.6%. Together, these three retailers account for 94.3% of the market.

The Draft Report states that there are no barriers to retailers entering the market and small retailers are winning market share.<sup>31</sup> If competition is effective, PIAC submits that second-tier retailers should continue to win customers. PIAC, therefore, recommends that if the market share

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<sup>29</sup> IPART, *Review of regulated retail prices for electricity, 2013 to 2016 – Final report*, 2013, 118.

<sup>30</sup> IPART, *Customer service performance of electricity retail suppliers 1 July 2007 – 30 June 2012*, 2012, 29.

<sup>31</sup> AEMC, above n 1, 29.

of second-tier retailers declines in a number of successive years (for example, two or three), this could trigger a re-examination of the effectiveness of competition. PIAC notes that this trigger would not stop the growth of any of the big three retailers necessarily, because the Draft Report states that ‘competition appears to be intense between the three biggest retailers’.<sup>32</sup> Such a trigger would, nonetheless, provide consumers with some protection against the prospect of an oligopoly developing in the retail energy market.

### **Assessment by network area**

In its earlier submission, PIAC noted its concerns about the effectiveness of competition in the Essential Energy network area of NSW, and recommended a separate examination of the effectiveness of competition in that area.<sup>33</sup> This assessment was informed by research PIAC conducted that found consumers in five regional centres had experienced lower levels of competition than their counterparts in greater Sydney.<sup>34</sup>

The AEMC disagreed with position, stating in the *Draft Report* that:

the costs and conditions of operating a retail business are sufficiently similar across the three distribution areas that they do not constitute separate markets for the purposes of assessing the effectiveness of competition.<sup>35</sup>

Nonetheless, PIAC submits that, given residents in the Essential Energy network area face the highest prices in the National Energy Market (NEM),<sup>36</sup> this area of NSW should be the subject of on-going monitoring of the effectiveness of competition.

Specifically, part of the AER’s monitoring of retail market performance could be an assessment of the ability of consumers in each network area to access a discount from the average Standing Offer price for that network area. An assessment of such relative prices would take account of the different network prices and reveal if customers in one area are less able to access discounts in the competitive market. For example, if the average discount offered in any network area was found to be below 80% of the combined average for the other two network areas, this could trigger a re-examination of the effectiveness of competition in that network area.

While the trigger should be put in place in a way that could apply to any of the three network areas, it is most likely that it would be applied to that of Essential Energy. PIAC also notes that consideration would need to be given for what exactly constitutes a discount (for example, large pay on time discounts with very short payment periods may not qualify).

## **3.3 Contract fees**

In its submission in response to the Issues Paper for this review, PIAC argued that fees on retail supply contracts, such as late payment fees and early termination fees, have a negative impact on the competitive market.<sup>37</sup>

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<sup>32</sup> Ibid

<sup>33</sup> Derum, O & Johnston, M, above n 5, 7.

<sup>34</sup> Schetzer, L, *Choice? What Choice?*, 2011, Sydney: PIAC.

<sup>35</sup> AEMC, above n 1, 14.

<sup>36</sup> AER, *State of the energy market 2012*, 2012, Melbourne: AER, 129.

<sup>37</sup> Derum, O & Johnston, M, above n 5, 15.

### 3.3.1 Late payment fees

In its initial submission, PIAC recommended that the AEMC investigate the impact of early-termination fees on the competitive market.<sup>38</sup> The Draft Report states that late payment creates ‘additional costs for retailers, which they should be able to recover from the customers that have caused the cost’.<sup>39</sup> The Draft Report also notes that under NECF, retailers will no longer be permitted to impose late fees on hardship customers.<sup>40</sup> Finally, the AEMC argues that consumers who are worried about their ability to pay on time should seek out a competitive offer that does not include late fees.<sup>41</sup>

However, PIAC notes that while there are currently market offers available in NSW that do not include late-payment fees, there are equally offers that impose late payment fees of up to \$14.85.<sup>42</sup> This is 199% of the \$7.50 that IPART allowed retailers to charge on standard contracts between 1 July 2010 and 30 June 2013<sup>43</sup> and illustrates PIAC’s concern that retailers are increasingly using non-energy charges, such as fees, to boost their income.

PIAC would not like a transition to price deregulation that sees retailers benefit through the increased freedom of the removal of price caps and through greater discretion to derive income from fees and charges. PIAC, therefore, believes that the NSW Government should follow the lead of the Victorian Government in banning late payment fees on Standing Offers. This would put pressure on retailers at least to keep such fees as low as possible, if not to avoid charging them at all. PIAC notes that the Victorian market has evolved to a highly-competitive state with this provision in place and its introduction in NSW would promote consistency between the two jurisdictions.

### **Recommendation 9**

*PIAC recommends that if the NSW Government chooses to deregulate energy prices, it should ban retailers from imposing late payment fees on Standing Offers.*

### 3.3.2 Early termination fees

The NSW Government has previously indicated it plans to ban early contract termination fees for customers where contract terms, including price, have changed.<sup>44</sup> The Draft Report notes that this is consistent with a requirement in the NECF and that if retailers wished to increase the price during a contract term, they would need to specify the price path as part of the contract terms.<sup>45</sup>

In its submission to the Issues Paper, PIAC argued that early termination fees were anti-competitive and should be banned on all supply contracts.<sup>46</sup> The Draft Report states that the AEMC does not agree with PIAC’s position and that such fees recover costs, including ‘costs over which retailers have no control’.<sup>47</sup> PIAC understands that retailers put in place sophisticated

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Ibid.

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AEMC, above n 1, 117.

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Ibid.

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Ibid.

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Offer from QEnergy, as listen on: IPART, *My Energy Offers*, [www.myenergyoffers.nsw.gov.au](http://www.myenergyoffers.nsw.gov.au), as at 11 June 2013.

43

IPART, above n 29, 160.

44

NSW Department of Trade and Investment, Division of Resources and Energy, *National Energy Customer Framework NSW Regulations – Policy document*, 2012, 2-3.

45

AEMC, above n 1, 118.

46

Derum, O & Johnston, M, above n 5, 19.

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AEMC, above n 1, 118.

hedging arrangements to cover fluctuations in demand from their customer base. However, PIAC takes the view that these arrangements should be capable of withstanding the loss of individual customers who move from retailer to retailer. Removing a disincentive for consumers to shop around for the best offer will increase the level of competition in the market, which in turn would be beneficial to all participants. PIAC, therefore, recommends that if the NSW Government chooses to deregulate energy prices, it should ban the charging of early termination fees.

The one exception to this position is where retailers have offered gifts, such as tickets to sporting events, as part of an inducement for signing up to an offer. In such circumstances, the cost of the inducement should be recovered from the individual who benefited, rather than the customer base as a whole. PIAC, therefore, recommends that where an inducement is offered, customers should be clearly informed of the value of the inducement and that it will be recovered from customers at a constant rate over the life of the contract. If a customer chooses to leave the contract early, they would then be charged an exit fee equivalent to the proportion of the cost of the inducement that has not been recovered.

#### ***Recommendation 10***

*PIAC recommends that if the NSW Government chooses to deregulate energy prices, it should ban retailers from imposing early termination fees, except where retailers have offered non-energy inducements.*

*Where retailers offer such inducements, they should be required to clearly inform customers of the value of the relevant inducement and that this amount will be recovered through the customer's bill over the life of the contract at a constant rate. Retailers would then be allowed to charge an early termination fee equivalent to the un-recovered value of the inducement.*

## **4. Consumer information and awareness**

If the NSW Government chooses to de-regulate energy prices, clear and effectively targeted information has an important role to play in both the transition to the new arrangements and in aiding consumer participation in the new market.

### **4.1 Communicating the transition to price deregulation**

The move to price deregulation in NSW is extremely significant. The loss of what is often described as the 'safety net' of the regulated price has the potential to cause considerable concern for some residential consumers, particularly those who have, for whatever reason, decided against participating in the competitive market. An effective information campaign will be required to help to allay these concerns.

The information campaign will need to have a number of distinct elements. Firstly, prior to deregulation, it should explain what the change means and how the process will be undertaken. Secondly, the campaign should educate consumers about how to participate effectively in the competitive market and find the deal that best suits their circumstances. Helping consumers to understand their rights when choosing, or entering into, a supply arrangement will be vital in maximising positive consumer outcomes from any market change process. The Draft Report also

discusses the importance of this second stage to build consumer capacity to 'better compare energy offers and make effective decisions on their energy tariffs'.<sup>48</sup>

PIAC recommended in its submission to the Issues Paper that a public information campaign should be undertaken by the NSW Government, in collaboration with retailers and community organisations. If the NSW Government leads the campaign, it is more likely to be seen as independent. As the Draft Report acknowledges, 'customers do not always trust the information provided by retailers or even third party comparator services'.<sup>49</sup> Where retailers are involved, it is also easy for the line between public information and marketing to become blurred. At the same time, there will be a part for retailers to play, including the possible distribution of information through bill inserts. Nonetheless, PIAC repeats its recommendation, in agreement with the AEMC, that the NSW Government should lead the public information campaign.

It is also extremely important that the information campaign contain elements that target a range of consumer groups including; those without access to the internet and those from culturally and linguistically diverse backgrounds. To achieve this end, the campaign should use a variety of media sources, including radio/print advertisements in community languages.

Material should also be distributed through community organisations working with specific groups, such as disability organisations and neighbourhood centres. Such organisations are generally highly regarded by their members and clients. PIAC, therefore, welcomes and supports the AEMC's position that the campaign should 'draw on the expertise and networks of consumer and welfare groups [that can also] provide on-going support to customers'.<sup>50</sup> The participation of such organisations should be facilitated through a program of grants from the NSW Government.

### **Recommendation 11**

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*PIAC recommends that the public information campaign that precedes any move to deregulate energy prices should be led by the NSW Government, with input and assistance from retailers and community/consumer organisations. The NSW Government should offer grants to community organisations to deliver part of the campaign.*

#### **4.1.1 The effectiveness of the public education campaign**

PIAC wishes to repeat the recommendation it made in its Issues Paper, that deregulation should not occur until the public education campaign has been independently assessed as effective.<sup>51</sup> PIAC submits that such a safeguard is appropriate, given the importance of the campaign to public acceptance of price deregulation. An effective education campaign is also a key safeguard against any consumers who enter the competitive market for the first time being disadvantaged by choosing an offer that is not the best for them.

Finally, such a provision will create an incentive for all parties involved in developing and implementing the campaign to ensure that it meets its goals at the first attempt. This assessment should be undertaken by an independent party, such as the AEMC.

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<sup>48</sup> Ibid 121.

<sup>49</sup> Ibid 126.

<sup>50</sup> Ibid.

<sup>51</sup> Derum, O & Johnston, M, above n 5, 31.

### **Recommendation 12**

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*PIAC recommends that if the NSW Government chooses to deregulate energy prices, this should not occur until the preceding public information campaign has been independently assessed as having been effective.*

## **4.2 Better equipping consumers to participate in the competitive market**

PIAC agrees with the AEMC that in order for consumers to effectively participate in the competitive market (i.e. for competition to be effective), they will need to 'have the tools and skills to compare different offers'.<sup>52</sup> Consumers are currently able to do this through IPART's My Energy Offers website and from 1 July, they will be directed to the AER's Energy Made Easy website. In addition, under NECF, retailers are required to produce an Energy Price Fact Sheet, which sets out the prices, charges and conditions related to a particular offer.<sup>53</sup> Beyond these measures, the Draft Report proposes that Tariff Information Labels, such as those put forward by the United Kingdom's Office of Gas and Energy Markets (Ofgem) could assist consumers.<sup>54</sup>

PIAC supports this proposal, provided the new Tariff Information Labels can work in collaboration with Energy Price Fact Sheets and not simply provide another layer of complexity for consumers. For example, the use of consistent terminology between the two instruments will assist consumers make easy comparisons. In particular, PIAC supports the Ofgem proposal for Tariff Information Labels to be provided as part of an Annual Statement to consumers that allows them to make a like-for-like comparison between their offer and any others. Such information would be useful to consumers in comparing their current offer to others available. PIAC also notes that the Tariff Information Label provides some additional useful information, such as the comparison rate per KWh at different consumption levels and when a fixed term contract is coming to an end.

PIAC would also welcome the introduction in NSW of Ofgem's proposal that retailers be required to publish information on the first page of each bill about their cheapest tariff available, as well as clearly highlighting the information customers need to compare offers. Providing this information would ensure that competitive pressure is exerted on suppliers and that the market works better for consumers. PIAC believes this will reduce the number of consumers on uncompetitive offers. PIAC also believes that providing this extra information would not overload the amount of information consumers receive on their bills. Competitive businesses should not fear making information for comparison clearly available – they have just as much to gain by acquiring customers from other businesses as they do from losing them.

### **Recommendation 13**

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*PIAC recommends that if the NSW Government chooses to deregulate energy prices, retailers be required to provide customers with a Tariff Information Label as part of an annual electricity price statement. The Tariff Information Label should complement the AER's Energy Price Fact sheets and supply details of a consumers current offer, including a comparison tariff rate for use when examining competing offers.*

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<sup>52</sup> AEMC, above n 1, 128.

<sup>53</sup> AER, *AER retail pricing information guideline*, 2012, 4. Available at: [www.aer.gov.au/node/11620](http://www.aer.gov.au/node/11620)

<sup>54</sup> AEMC, above n 1, 129.

## 5. Cost impact of energy policy initiatives

From time to time, new government policy initiatives impact on the cost of supplying energy; for example, green schemes and the carbon tax. PIAC submits that there must be independent monitoring of the price impacts of such initiatives, to ensure that retailers only pass through genuine cost increases to customers and do not increase prices further under the cover of requirements from Governments. PIAC notes, for example, that at an IPART public forum in 2012, Australian Power and Gas argued that the carbon tax had increased its costs in supplying customers by more than IPART had allowed.<sup>55</sup> PIAC is keen to avoid a situation where retailers have scope to make unilateral and opaque decisions that cannot be cross referenced with rigorous and transparent calculations from independent sources.

PIAC notes that increasing prices above the impact of a new government policy, and claiming that that policy is responsible for the whole rise, would violate the Australian Consumer Law and could be investigated by the Australian Competition and Consumer Commission (ACCC). However, that process can be extremely lengthy and there are other regulators with specific energy expertise. PIAC, therefore, submits that IPART should be tasked with independently setting, and publishing, a benchmark range for the impact of new policies, as it currently does for the value of solar feed-in tariffs.

### ***Recommendation 14***

*PIAC recommends that if the NSW Government chooses to deregulate energy prices, IPART should be tasked with setting, and publishing, a benchmark range for the price impact of new energy policy initiatives.*

## 6. Review of customer assistance measures

PIAC has repeatedly called for a review of customer assistance measures in NSW and strongly endorses the recommendation in the Draft Report that such a review be undertaken 'where removing price caps is being considered'.<sup>56</sup> As noted by the St Vincent de Paul Society, concessions in NSW average around 10% of electricity bills, compared to 16% in Victoria.<sup>57</sup> This situation is highly inequitable and makes essential services less accessible to low-income and vulnerable consumers in NSW than in Victoria.

As previously stated, PIAC anticipates that the removal of retail price caps could be accompanied by significant public concern about the flow-on impact of prices. If the NSW Government has undertaken a review of customer assistance, and was preparing to implement its findings when prices are deregulated, this would go some way to alleviating this concern and making the change more palatable to consumers.

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<sup>55</sup> Merrill Corporation, *IPART public forum on changes in regulated retail electricity prices from 1 July 2012*, 30 April 2012, 7. Available at: [www.ipart.nsw.gov.au/Home/Industries/Electricity/Reviews/Retail\\_Pricing/Changes\\_in\\_regulated\\_electricity\\_retail\\_prices\\_from\\_1\\_July\\_2012/30\\_Apr\\_2012\\_-\\_Transcript\\_of\\_Public\\_Forum/Transcript\\_-\\_Electricity\\_and\\_Gas\\_public\\_forum\\_-\\_30\\_April\\_2012](http://www.ipart.nsw.gov.au/Home/Industries/Electricity/Reviews/Retail_Pricing/Changes_in_regulated_electricity_retail_prices_from_1_July_2012/30_Apr_2012_-_Transcript_of_Public_Forum/Transcript_-_Electricity_and_Gas_public_forum_-_30_April_2012)

<sup>56</sup> AEMC, above n 1, 115.

<sup>57</sup> Ibid 89.

### **Recommendation 15**

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*PIAC recommends that the NSW Government undertake a review of all energy customer assistance measures, and move to implement the recommendations of that review, before prices are deregulated.*

PIAC also welcomes the Draft Report's consideration of low-income and vulnerable consumers. PIAC has long argued that energy is an essential service and policy makers must consider the impact of any new initiatives on the ability of such groups to retain access. While PIAC does not believe that price deregulation will solve the issue of energy affordability, the AEMC is to be commended for considering the issues faced by groups who are struggling to stay connected.

## **7. Conclusion**

If the NSW Government chooses to deregulate energy prices, this will represent one of the biggest changes to the retail electricity market in recent years. PIAC believes that retail electricity markets are ready for this to occur. However, PIAC rejects the notion that consumers purchase gas through the dual fuel market and argue that more work is needed to promote competition in the retail gas market before effective competition will exist. PIAC takes the view that if electricity prices are deregulated, this should take place for all small retail customers at the same time.

The success of price deregulation will depend in large part on the arrangements that are put in place as part of the broader deregulation process. PIAC argues that all retailers should be required to make Standing Offers, which they Gazette one month before they come into effect on 1 July and 1 December each year. A system of triggers should also be put in place for a re-examination of the effectiveness of competition and possible re-introduction of price regulation. The AEMC should be charged with developing a market monitoring framework, in consultation with relevant stakeholders, including triggers for a re-examination of the effectiveness of competition and the re-introduction of price regulation. This framework should be in place before price regulation is removed. PIAC also recommends that early-termination and late-payment fees should be banned under price deregulation (except where retailers have offered a non-energy inducement as part of a market contract).

A comprehensive consumer information campaign should both precede and accompany price deregulation. The campaign should explain to consumers the change that is taking place and equip them to be more capable participants in the competitive market. The NSW Government should deliver the campaign with help from retailers and community organisations. The latter should be able to access government grants to fund their work in this area.

These measures will go some way towards an outcome where price deregulation not only increases the amount of competition, but also the quality of competition in the NSW retail electricity market. If this can be achieved, it will be to the benefit of NSW consumers.