



**public interest**  
ADVOCACY CENTRE

**Submission to AER Draft Wholesale Electricity  
Market Performance Monitoring Statement of  
Approach and 2018 Focus**

2 February 2018



## **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.

### **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;
- St Vincent de Paul Society NSW;
- Physical Disability Council NSW;
- Anglicare;
- Good Shepherd Microfinance;
- Financial Rights Legal Centre;
- Affiliated Residential Park Residents Association;
- Tenants Union; and
- Mission Australia.

## **The AER's role in wholesale market monitoring**

In a dynamic and changing energy market, the AER's wholesale monitoring role is increasingly important for the efficient market required to ensure the long-term interests of consumers are met.

As noted in our earlier submission<sup>1</sup>, PIAC supports the AER being an 'expert' regulator rather than a 'legal' regulator. This entails the AER using its full discretion to give primacy to the National Electricity Objective, particularly as it relates to price impacts over the longer term, and seeking any changes to the rules that would help the AER to achieve that.

PIAC strongly supports both AER's Draft Statement of Approach and Draft 2018 Focus, with some suggested improvements noted below, and concurs with the points made by the EUAA in its submission.

## **Balancing consistency and responsiveness**

PIAC supports the AER's method of using a Statement of approach that remains largely fixed across years, while outlining the particular areas of focus for each report.

The consistency this approach brings is important for

- meaningful comparison and identification of trends;
- providing certainty and understanding of AER's role and remit; and
- helping to continue to build the AER's knowledge and systems.

Specific priorities for each report allows the AER to

- prioritise issues of more concern;
- monitor and respond appropriately to issues and industry behaviours as they emerge;
- tailor the metrics and data sources it uses; and
- reinforce confidence of consumers, governments and other stakeholders that AER is 'on the case'.

## **Comments of the draft statement of approach**

### **Markets**

In PIAC's view, AER should focus on the markets and drivers where there is greatest risk of harm, in terms of inefficient prices faced by consumers, over the short and long term. This has many elements in the markets involved and a variety of products and timeframes over which decisions are made and consequences arise, and geographies.

### **Products**

Noting the points made in our previous submission, PIAC strongly supports the AER's proposed approach to monitoring products in multiple markets (in addition to the spot market) that affect wholesale prices. PIAC also supports considering outcomes relating to the RET

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<sup>1</sup> <https://www.aer.gov.au/system/files/PIAC%20-%20Submission%20-%202020%20October%202017.pdf>

The AER's Statement of Approach should be robust enough to pre-empt and incorporate new markets as they are created, and respond to changes to the function or relative importance of existing markets and to potential impact of NEG on the derivatives market. This implies gathering information, for comparative purposes, on products and markets that have not yet identified as areas of concern.

### **Geographic**

PIAC supports monitoring at a regional level – most wholesale behaviours will be region-specific due to boundaries of markets while others, such as RET, may warrant NEM-wide focus

### **Temporal**

PIAC supports looking at 5-minute and longer time scales. Wholesale price impacts on consumers are affected by the 5-minute dispatch as well as decisions which have effects over much longer time frames, such as the effectiveness of investment/withdrawal signals.

Refer also to commentary in PIAC's previous submission.

### **Framework**

PIAC supports the AER's structure-conduct-performance approach, as well as using a range of metrics.

### **Structure**

PIAC supports the AER's focus on market concentration and vertical integration.

PIAC supports the AER monitoring barriers to entry, which is particularly relevant given the rate of change in the market with new technologies and business models pushing the limits of the current regulatory environment. PIAC suggests also considering barriers and disincentives that may affect efficient exit, particularly where this may distort wholesale market outcomes.

### **Performance**

PIAC supports the AER comparing prices against a benchmark to identify sustained prices above (or below) the theoretically efficient level. This is more appropriate than only looking for individual instances where the price appears to be outside of this range.

PIAC questions whether LCOE is the best metric for this comparison, given inherent limitations and common misuse or misinterpretation of LCOE values, and suggests that the AER considers other metrics.

PIAC supports identifying productive, allocative and dynamic efficiencies, and in particular whether issues adversely impacting these are transient or sustained.

### **Information**

PIAC strongly supports the AER using its powers to acquire non-public information, and stresses that the AER should not have regard to unsubstantiated suggestions from industry that it is overly onerous to provide such information.

# Comments on the draft 2018 focus

## Markets

PIAC supports the AER monitoring

- spot and derivatives markets, the as primary drivers of wholesale prices;
- FCAS, given tightening of supply (with withdrawal of potential providers) and increased need (with increase in intermittent generation);
- At a regional level, noting that most wholesale behaviours will be region-specific due to boundaries of markets while some may warrant NEM-wide focus (eg: RET);
- At 5-minute, and longer, time scales; and
- The level and nature of use of demand response.

## Framework

PIAC supports

- Adopting a structure-conduct-performance approach; and
- Using a suite of tools, as no single metric paints a full picture of the level of efficiency of the wholesale markets in the NEM.

## Structure

PIAC supports the AER's proposed metrics.

Noting the AER's comment "*we will consider the extent to which we can publish information on demand response and how this affects the wholesale market*" (pg. 7), PIAC would appreciate the opportunity to discuss matters relating to the monitoring of demand response with the AER as it makes these considerations.

## Performance

As noted in relation to the draft statement of approach, PIAC supports the AER comparing prices against a benchmark to identify sustained prices above (or below) the theoretically efficient level, but questions whether LCOE is the best metric for this comparison, given inherent limitations and common misuse or misinterpretation of LCOE values. PIAC suggests that the AER considers other metrics.

PIAC supports the AER qualitative approach to identifying productive, allocative and dynamic efficiencies - and in particular whether issues adversely impacting these are transient or sustained - and expects that the AER will look to also develop a quantitative approach to these in future reports.

## Further engagement

PIAC thanks the department for the opportunity to respond to the discussion paper, and would welcome the opportunity to discuss the issues raised in more depth. Please contact:

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