



public interest
ADVOCACY CENTRE

**PIAC submission to the AEMC Advance notice
of price change consultation paper**

25 May 2018

Introduction

The Public Interest Advocacy Centre

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

Our work addresses issues such as:

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

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

Energy and Water Consumers' Advocacy Program

The Energy 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 policy input to the program 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;
- Anglicare;
- Good Shepherd Microfinance;
- Financial Rights Legal Centre;
- Affiliated Residential Park Residents Association NSW;
- Tenants Union;
- The Sydney Alliance; and
- Mission Australia.

Summary of recommendations

Recommendation 1

PIAC recommends that the AEMC make a more preferable rule that requires ten business days' notice of price changes to be given to all consumers.

Recommendation 2

PIAC recommends that the AEMC consider that a more preferable rule, including providing ten days' notice of changes to all customers, promotes the NERO considering its impact on the assessment criteria proposed in the consultation paper.

Recommendation 3

PIAC recommends that the AEMC include ten business days' advance notice in their rule.

Recommendation 4

PIAC recommends that the AEMC extend ten business days' advance notice to standing offers in their rule.

Recommendation 5

PIAC recommends that the rule apply to both electricity and gas contracts.

Recommendation 6

PIAC recommends that the AEMC undertake further work with stakeholders to determine if it is desirable to extend ten business days' advance notice requirement to price decreases.

Recommendation 7

PIAC recommends that the rule specify that consumers should receive price change notices in a manner consistent with how they have chosen to receive other communications from their retailer.

Recommendation 8

PIAC recommends that price change notifications include adequate information for consumers to respond to price signals. In practice, this is likely to mean providing adequate information for consumers to effectively use Energy Made Easy to compare and switch retail offers.

Recommendation 9

PIAC recommends that price-regulated retailers not be exempt from the rule but that the AEMC consider whether an exemption based on existing notification by a regulator is appropriate.

Recommendation 10

PIAC recommends that the rule commence on 1 June 2018.

Advance notice of price changes rule change

PIAC welcomes the opportunity to respond to the consultation paper for the AEMC's Advance notice of price changes rule change.¹ PIAC supports the intent of the proposed rule to provide clear price signals to energy consumers ahead of price changes by retailers.

Contribution to the NERO and AEMC assessment framework

PIAC agrees that proposed rule is likely to promote the National Electricity Retail Objective (NERO). In particular, it will contribute to the long-term interests of consumers by supporting them when shopping around and thereby improve competition in the retail energy market. PIAC concurs with that AEMC that, in this case, better competition is likely to increase the efficiency with which energy services are provided to consumers.²

PIAC considers that the promotion of the NERO outweighs any minor costs on market participants against the four assessment criteria proposed by the AEMC:

- Transparency of information;
- Consumer engagement and participation;
- Competition between retailers; and
- Regulatory and administrative burden.

Transparency of information

For consumers to make effective decisions about the supply of energy services in the competitive retail market, they need to be fully informed about the price of their current contract.

As noted by the AEMC, this is currently not the case. Instead, retailers are required only to notify consumers of price increases by their next bill. While this may be relatively soon after a price change, it is entirely dependent on when a consumer's meter is read. Therefore, it may be up to three months after a price change has occurred before a consumer is aware their price has changed. This does not allow that consumer to respond to the price signal and seek a better retail energy offer.

Further, the current provisions do not prescribe the manner in which price change notices should be presented. As a result, IPART has noted that some retailers place relatively small, easily missed notices on bills rather than a clear communication.³ In developing their *Benefit Change Notice Guideline*, the AER has worked with the Behavioural Insights Team to research how the form and manner of notifications affects the response by Australian energy consumers. The initial results from this work suggest that notices need to be a clear, concise, call to action for consumers to respond to their content. Given that the stated purpose of price change notices is to encourage consumers to respond to price signals, the lack of form requirements under the current NERL and NERR provisions are not adequate.

¹ AEMC, [National Energy Retail Amendment \(Advance notice of price changes\) Rule 2018 – Consultation Paper](#), April 2018.

² Ibid, 11.

³ IPART, [Review of the performance and competitiveness of the retail electricity market in NSW](#), December 2017, 75.

In PIAC's view, the proposed rule addresses both issues by requiring retailers to notify consumers of price changes in advance of implementing the changes and by regulating the content of these price change notices.

However, PIAC is concerned the proposed rule includes a distinction between market offers and standing offers. Under the proposed rule, consumers with market offer contracts would be given ten business days notice of price changes, while those with standing offers would be notified only "in advance".⁴ Consumers on standing offers are likely to be paying considerably more for their energy services than those on market offers. Therefore, it is of even greater importance that they be made aware of when their price changes.

While the ten days notice does apply to public notification of standing offer price increases through newspapers and websites, PIAC does not consider this adequate. This assumes that standing offer customers are looking out for price changes on a regular basis, which is an unrealistic expectation. PIAC does not consider it fair that this onus is put on any energy customers.

Recommendation 1

PIAC recommends that the AEMC make a more preferable rule that requires ten business days' notice of price changes to be given to all consumers.

Consumer engagement and participation

In PIAC's view, consumers should not be penalised for an inability or unwillingness to actively participate in the retail energy market. Energy is an essential service and affordable access to it should not be dependent on spending a certain number of hours a quarter researching contracts on Energy Made Easy.

However, consumers who *choose* to actively engage with the retail energy market should be given every opportunity to do so. PIAC contends that the proposed rule will increase these opportunities. Providing consumers advance notice of price changes will allow consumers to proactively switch retailers if they are unhappy with the price change they are about to receive. For some consumers, the notification is likely to be the catalyst for active participation in the market through switching. Therefore, PIAC considers that the proposed rule will have a positive impact on consumer engagement and participation.

Competition between retailers

As noted above, PIAC considers transparent price signals underpin successful competition. By notifying consumers of price changes before they happen, some consumers are more likely to churn to a new retailer or a new offer. This increase in switching will place pressure on retailers to offer more competitive offers as they seek to gain or retain consumers.

⁴ The Hon. Josh Frydenberg MP and the Hon. Don Harwin MLC, [Joint Rule Change Proposal of the Australian and New South Wales Governments to the Australian Energy Market Commission – Advance price change notice](#), 2018, 7.

Regulatory and administrative burden

PIAC acknowledges that there will be some regulatory and administrative burden placed on retailers because of the proposed rule. This will largely be in the form of changes to their systems and the costs associated with providing notices of price changes to consumers.

However, we think this cost is outweighed by the benefits. PIAC agrees with rule change proponents that these costs are likely to be small because retailers already face a price change notification requirement in Queensland.⁵ Because most retailers operate in Queensland as well as other NEM regions, it is likely that they will already have developed the systems and the extra costs will be limited to applying these systems across all affected NEM regions.

Because the regulatory and administrative costs associated with the proposed rule are likely to be so small, PIAC contends that the benefits outlined above outweigh them and that the AEMC should consider a more preferable rule (consistent with amendments proposed above) to promote to NERO.

Recommendation 2

PIAC recommends that the AEMC consider that a more preferable rule, including providing ten days' notice of changes to all customers, promotes the NERO considering its impact on the assessment criteria proposed in the consultation paper.

Responses to consultation questions

Q1: What do you view as the primary purpose of the notice?

PIAC contends that the primary purpose of the price change notice is to provide a clear price signal for consumers to respond to. We consider consumers will generally respond in three ways:

- Budgeting for general expenses based on increased energy costs;
- Reduction in energy use to reduce energy costs; or
- Switching between energy contracts to reduce energy costs.

PIAC does not consider it appropriate for the AEMC, retailers or a benefit change notice to guess how consumers may respond. Instead, the notice should support consumers to respond to price signals in the way they see fit.

For consumers to be able to respond, a minimum level of information is required in the price change notice. Of the three likely responses, switching requires the most information on the notice. While budgeting and a reduction in usage require consumers to only be informed about the price change, switching requires extra information about potential energy contracts and how to transfer. Therefore, the price change notice should include adequate information for consumers to switch.

⁵ Ibid, 9.

Q2: Does the delay in notice of a price change negatively impact consumers? Why or why not?

Yes. If there is a delay, consumers are not given the opportunity to respond to price signals in advance. As a result, consumers may be faced with unexpectedly high bills when they are finally notified (up to three months after the change).

This is a concern for any consumer, but particularly for low income and disadvantaged consumers. For these consumers, energy makes up a large portion of household expenditure and often requires sacrifices of other essentials like food, school supplies and medical treatment to enable payment of their bills.⁶

Q3: Will advance notice of price changes lead to increased consumer engagement? Why or why not?

For some consumers, advance notice of price changes, if presented in an appropriate manner, will lead to increased consumer engagement in the retail energy market. While many consumers will opt to respond to the advance price signal either by budgeting or reducing energy use, some consumers may choose to actively engage in the market by switching contracts

Q4: Is there a significant benefit to consumers from ten business days' advance notice rather than just advance notice? Why or why not?

Yes. Given the complexity of the retail energy market, consumers need to be informed of price changes well in advance of their implementation to allow them to act on the price signal if they choose to. Therefore, PIAC agrees with the rule proponents that ten business days' advance notice is appropriate.

Recommendation 3

PIAC recommends that the AEMC include ten business days' advance notice in their rule.

Q5: Should the same period of advance notice also apply in the case of standing offers? If not, why not?

Yes – PIAC does not consider there should be any difference in the timing or content of notification between consumers on standing and market offers.

Consumers on standing offers are likely to be paying considerably more for their energy services than those on market offers. Therefore, it is of even greater importance that they be made aware of price changes.

The proposed rule does not reflect this. Under the proposed rule, consumers with market offer contracts would be given ten business days' notice of price changes, while those with standing offers would be notified only "in advance".⁷ While the ten days' notice does apply to public notification of standing offer price increases through newspapers and websites, PIAC does not consider this adequate. This assumes that standing offer customers are looking out for price changes on a regular basis, which is unlikely since standing offer customers are generally the

⁶ NCOSS, [Turning Off the Lights – The Cost of Living in NSW](#), June 2017, 15.

⁷ The Hon. Josh Frydenberg MP and the Hon. Don Harwin MLC, [Joint Rule Change Proposal of the Australian and New South Wales Governments to the Australian Energy Market Commission – Advance price change notice](#), 2018, 7.

least engaged in the energy market. PIAC does not consider it fair that this onus is put on any energy consumers.

Recommendation 4

PIAC recommends that the AEMC extend ten business days' advance notice to standing offers in their rule.

Q6: What options are available to limit issues that may arise in relation to the difference in timeframes between the timing for providing notice of price changes and the requirements when offers are available on Energy Made Easy?

PIAC has not formed a view on this matter.

Q7: Is there any reason why the proposed rule should not apply equally to both retail electricity and gas contracts?

No. Both electricity and gas consumers require the same level of price information to effectively engage with the retail energy market. Given that the NERL and the NERR generally apply equally to both electricity and gas, PIAC sees no practical barrier to this application.

Recommendation 5

PIAC recommends that the rule apply to both electricity and gas contracts.

Q8: Should ten business days' advance notice also be provided in the case of decreasing prices? If not, why?

In PIAC's submission to the AER's *Benefit Change Notice Guidelines* issues paper, we argued that:

the customer should be notified of any change in benefits, irrespective of whether it is beneficial or detrimental to the consumer. The benefit to consumer outcomes from this is two-fold. Firstly, it helps to keep consumers informed of their retail energy offer and may provide a useful prompt for consumers. Secondly, it removes the subjectivity of what a retailer considers to be 'beneficial' or 'detrimental' to the customer.⁸

In general, we consider this principle would apply to price changes as well as benefit changes.

However, PIAC acknowledges the AEMC's concern that requiring ten business days' notification may act as a disincentive for retailers to pass small reductions in costs on to consumers as price changes.⁹ Furthermore, consumer benefit and detriment is less subjective regarding price changes compared to benefit changes. Therefore, while consistency is generally desirable, PIAC considers that it is less a pressing issue in this context. It may, therefore, be appropriate to maintain the requirement for notification of price decreases with the next bill rather than with ten days' advance notice.

⁸ PIAC, [Submission to Benefit Change Notice Guidelines Issues Paper](#), March 2018, 1.

⁹ AEMC, [National Energy Retail Amendment \(Advance notice of price changes\) Rule 2018 – Consultation Paper](#), 14-15.

PIAC contends that the AEMC should work to understand how stakeholders will respond to the new price change requirements before making a final decision on this matter, noting that retailers should already have an incentive to notify their customers of any decreases in prices.

Recommendation 6

PIAC recommends that the AEMC undertake further work with stakeholders to determine if it is desirable to extend ten business days' advance notice requirement to price decreases.

Q9 and Q10: What methods, if any, should be specified in the rule (for example: letter, email, website or app) as sufficient for informing the customer of price changes?; and

Should the method of advance notification be specified in the rule or should the method of notice be left to the retailer?

Consumers should be informed of price changes in a manner that aligns with their preference. For example, if a consumer has chosen to receive other communications from their retailer via email, they should also receive price change notices via email. Further, the rule should ensure that where a consumer has explicitly nominated to receive notifications in a language other than English, the price change notice should also be in that language.

These considerations, rather than any particular method of communication, should be specified in the rule.

Recommendation 7

PIAC recommends that the rule specify that consumers should receive price change notices in a manner consistent with how they have chosen to receive other communications from their retailer.

Q11, Q12 and Q13: What information, as a minimum requirement, should be contained in the price variation notice? Why?;

Is this dependent on your view of the purpose of the notice, either as purely a notification of a price increase or a prompt to engagement?; and

Is there any other information not identified by the proponents that should be included in the notice? If so, what? What purpose should it serve?

As noted above, PIAC contends that the purpose of a price change notice is to allow consumers to respond to a transparent price signal in whichever way they choose. In general, we consider a combination of up to three responses to be likely:

- Budgeting for general expenses based on increased energy costs;
- Reduction in energy use to reduce energy costs; or
- Switching between energy contracts to reduce energy costs.

The notice should contain enough information to facilitate any of these responses. Of the three, switching requires the most information on the notice. While budgeting and a reduction in usage require consumers to only be informed about the price change, switching requires extra

information about potential energy contracts and how to transfer. To this end, price change notices should include:

- The current price;
- The new price;
- The retailers best offer;
- A link to Energy Made Easy; and
- Personalised data for use in Energy Made Easy.

PIAC does not consider this list exhaustive and requests that the AEMC work with stakeholders including the AER and the Behavioural Insights Team to ensure that the content of price change notices are as useful as possible for consumers.

Recommendation 8

PIAC recommends that price change notifications include adequate information for consumers to respond to price signals. In practice, this is likely to mean providing adequate information for consumers to effectively use Energy Made Easy to compare and switch retail offers.

Q14: Should businesses that have their prices set by the regulator be exempt from the proposed rule?

PIAC contends that consumers should always be notified of price changes, regardless of whether that price is regulated or not. Whether or not consumers have the ability to switch retailers as a result of price change notices, the notice still serves to assist consumers with budgeting and avoiding bill shock. Therefore, PIAC does not support an exemption for regulated retailers.

Instead, the AEMC could consider whether an exemption is justified for regulated retailers where the regulator notifies individual consumers about price changes independently of the retailer. While PIAC understands that this is currently not the case anywhere in the NEM, it would be inefficient for consumers to receive price change notices from both the regulator and retailer. The priority should be that the consumer is appropriately notified in advance of any price changes in a timely manner. It is of secondary concern whether this is by the retailer or regulator.

Recommendation 9

PIAC recommends that price-regulated retailers not be exempt from the rule but that the AEMC consider whether an exemption based on existing notification by a regulator is appropriate.

Q15 and Q16: Should a retailer be given an exemption if it acquires a customer that was informed of the future price increase at the time the customer switched to the retailer?; and

If this exemption is included in any rule made, what terms, conditions or restrictions should apply so it only captures consumers who have churned as a result of being provided a price change notice?

PIAC has not formed a view on these matters.

Q17 and Q18: How long from when a final rule is made, if found appropriate, would it take to make the required changes to implement the rule?; and

Besides billing systems changes, are there any other systems or processes that would need to be made before any final rule could be implemented?

PIAC agrees with the rule proponents that 1 June 2018 is an appropriate commencement date. This will ensure that the rule is in force by the 1 July 2018 price changes, allowing consumers to receive the benefits of the rule change immediately.

PIAC also agrees that the required system changes are likely to be small because retailers already comply with a price change notification requirement in Queensland.¹⁰ Because most retailers operate in Queensland as well as other NEM regions, we consider that they will already have developed the systems and the change will be limited to expanding the application of these systems. It is therefore our view that retailers should be able to complete these changes by 1 June 2018.

Recommendation 10

PIAC recommends that the rule commence on 1 June 2018.

Further engagement

PIAC would welcome the opportunity to discuss these issues in more depth. For any queries please contact: Tim Harrison, Policy Officer, Energy and water, at tharrison@piac.asn.au or on (02) 8898 6518.

¹⁰ The Hon. Josh Frydenberg MP and the Hon. Don Harwin MLC, [Joint Rule Change Proposal of the Australian and New South Wales Governments to the Australian Energy Market Commission – Advance price change notice](#), 2018, 9.