



public interest
ADVOCACY CENTRE LTD

**More information please: response to the
*Position Paper: AER Retail Pricing Information
Guideline***

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**Carolyn Hodge, Policy Officer, Energy + Water Consumers'
Advocacy Program**

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 required to publish several guidelines, including a Retail Pricing Information Guideline. Specifically,

these responsibilities are likely to be outlined in the National Energy Retail Law (NERL) and National Energy Retail Rules (NERR), once this package has been finalised and has commenced.¹

PIAC welcomes the opportunity to comment on the *Position Paper: AER Retail Pricing Information Guideline*. PIAC's previous submission to the *AER Issues Paper: AER Retail Pricing Information Guidelines* outlined pricing information principles to facilitate equitable access to effective information for consumers as they make choices about energy retail offers. These principles were:

1. Pricing information should allow comparison between market offers.
2. Pricing information should be presented in a clear and precise format.
3. Pricing information should be understandable to all consumers who are expected to take part in the market.
4. Pricing information should be available at the time of decision-making.
5. Pricing information should be accurate and current.²

The recommendations outlined in this submission aim to put these principles into practice as the Retail Pricing Information Guideline is further developed by the AER.

3. Scope of the Guideline

3.1 Marketing

3.1.1 Availability of Disclosure Statements

PIAC supports the AER's proposal to give customers disclosure statements when contacted by door-to-door marketers.³ However, this information will only allow a comparison of the customer's current offer with the offer being made by the face-to-face marketer. PIAC asserts that for a real comparison to occur, a customer must understand that they can access price disclosure statements from all energy retailers. For this reason, PIAC recommends that telephone and door-to-door marketers and internet marketing materials should be obliged to inform customers that all energy retailers must supply a standard disclosure statement for the purpose of comparison.

3.1.2 Referrals to the internet for further information

PIAC is concerned that strategies utilising the internet as a primary information source will disadvantage low-income households and households in rural and remote areas, as these households have lower than average rates of internet access nationally.⁴ The AER's position paper notes that door to door marketers 'should also be required to advise customers that further information is available on the retailer's website'.⁵

¹ Australian Energy Regulator, *Issues paper: AER Retail Pricing Information Guidelines* (2010) [iv] <<http://www.aer.gov.au/content/index.phtml/itemId/734869>> at 29 April 2010.

² Public Interest Advocacy Centre, *Transparent pricing: submission in response to the Issues paper: AER Retail Pricing Information Guidelines* (2010) 3.

³ Australian Energy Regulator, *Position paper: AER Retail Pricing Information Guidelines* (2010) [15] <<http://www.aer.gov.au/content/item.phtml?itemId=739921&nodeId=6bf7b7b5c1f780563152db35e4811302&fn=Position%20paper%20and%20draft%20guideline.pdf>> at 18 October 2010.

⁴ Australian Bureau of Statistics, *ABS Household Use of Information Technology 8146.0 2008-09* (2009) [9] <[http://www.ausstats.abs.gov.au/ausstats/subscriber.nsf/0/9B44779BD8AF6A9CCA25768D0021EEC3/\\$File/81460_2008-09.pdf](http://www.ausstats.abs.gov.au/ausstats/subscriber.nsf/0/9B44779BD8AF6A9CCA25768D0021EEC3/$File/81460_2008-09.pdf)> at 25 October 2010.

⁵ Australian Energy Regulator, above n 2, 15.

It is important to avoid a situation where a consumer's ability to make an informed decision about an energy offer is directly related to access to the internet and/or computer skills. PIAC recommends that wherever consumers are directed to the internet for further information, an alternative non-web based source of that information also be given. This information should be free of charge and available within a timeframe stipulated by the *AER Retail Pricing Information Guideline*. PIAC notes that a timeframe of five working days would be consistent with the time allowed for the delivery of an Energy Price Fact Sheet in the Consultation Draft of the *AER Retail Pricing Information Guideline* (the Guideline).⁶

3.2 Changes in tariffs

PIAC submits that consumers should be presented with a disclosure statement at the time any change is made to their retail offer. In order to give a consumer the opportunity to modify their consumption or research alternative offers, PIAC recommends that information on tariff changes should be provided at least thirty days prior to price rises becoming effective.

4. Presentation of Retail Offer Information

PIAC reiterates its view that retail pricing information should include a standardised unit price and an estimate of annual costs. Standardised unit prices allow consumers to make a clear comparison of prices on offer with prices as they appear on energy bills. Annual cost estimates are a useful guide to facilitate another method of comparison. PIAC recommends that standardised unit pricing, supplied in both GST inclusive and exclusive formats, should be the primary source of pricing information contained in Energy Price Fact Sheets, with annual cost estimates forming a supplementary guide.

To facilitate transparency, PIAC recommends that all inputs used to calculate annual estimates are clearly shown, for example, based on usage of X kilowatt-hours per year for a two-person household. PIAC also considers that state-based annual estimates should be developed on the basis of climatic regions. For example, this would enable annual estimates of cold climate regions to be separated from warmer regions within each state—providing another layer of information consumers could use to assess how relevant annual estimates were to their individual circumstances.

5. Energy Price Fact Sheets

5.1 Fact sheet template

PIAC welcomes the AER's proposal to standardise Energy Price Fact Sheets through the use of a template. PIAC supports the view that a template would best facilitate easy comparison of offers on a like for like basis.

5.2 Information included in an Energy Price Fact Sheet

The AER has stated that among other items, the Energy Price Fact Sheet should cover 'fees, rebates and other elements'.⁷ To avoid the omission of any costs a consumer may be liable for, where these costs are not

⁶ Ibid, Appendix B 2.

⁷ Australian Energy Regulator, above n 3, 18.

deemed to be fees, PIAC recommends that this section of the template should also include information on any other costs.

PIAC supports the use of tables as a clear and transparent model for providing information on price. It is important that information housed in the table is not truncated or shrunk to fit into small sections. PIAC acknowledges that the Guideline stipulates 'font size in tables is of a sufficient size that is easy to read'. However, PIAC contends that 'easy to read' is too subjective and not capable of setting a consistent benchmark for font size that assures consumers do not struggle to read the information. PIAC recommends that a minimum font size for various aspects of the Energy Price Fact Sheet be established to overcome this issue and promote consistency.

Vision Australia's *Guidelines for Producing Readable Text*⁸ may assist the AER to determine an acceptable minimum font size. The Vision Australia document also provides very useful information on the importance of suitable colour contrast, fonts and printing stock when developing accessible texts.

5.3 Title of the Price Fact Sheet

PIAC welcomes the commitment of the AER to undertake further consumer research on the title of Energy Price Fact Sheets. Options for appropriate titles for Energy Price Fact Sheets outlined by the AER include:

- Energy Price Fact Sheet
- Electricity Price Fact Sheet
- Gas Price Fact Sheet
- Electricity and Gas Price Fact Sheet.⁹

The use of a generic title, such as 'Energy Price Fact Sheet', would allow for streamlined branding as consumers are educated further on the availability and content of these resources. While energy is a term used often by advocates and retailers, the average consumer may gain a clearer understanding of Energy Price Fact Sheets if the title refers specifically to the utility being described by the content. PIAC therefore recommends that the fact sheets be categorised using a sub heading, for example, 'Energy Price Fact Sheet: Electricity' or 'Energy Price Fact Sheet: Gas and Electricity Combined'.

6. Draft AER Retail Pricing Information Guideline

6.1 Telemarketing and telephone queries

Section 2.4 of the Guideline discusses the obligations of retailers when engaged in telemarketing activities. Given that agents of retailers at times undertake telemarketing, PIAC suggests that the AER revise this section with the aim of clarifying the responsibilities of retailer's agents under the Guideline. The Guideline currently states:

A retailer must advise each small customer that Energy Price Fact Sheets are available on the retailer's website or upon request. Where a small customer requests an Energy Price Fact Sheet,

⁸ Vision Australia, *Guidelines for producing readable text* (2010)
<<http://www.visionaustralia.org.au/info.aspx?page=1845>> at 25 October 2010.

⁹ Australian Energy Regulator, above n 3, 19.

the *retailer* must supply (either by post or email) the *Energy Price Fact Sheet* to the *small customer* within five *business days*.¹⁰

PIAC takes the view that a consumer should be able to request an Energy Price Fact Sheet from the person who is marketing to the consumer whether this person is the retailer or the retailer's agent. There is a lack of clarity in the above paragraph that could be used to argue that where a consumer is contacted by a retailer's agent, it is the consumer's responsibility to request an Energy Price Fact Sheet directly from the retailer. In order to avoid this ambiguity, PIAC recommends that the AER oblige the telemarketer to advise the customer of their right to request an Energy Price Fact Sheet during the telemarketing session.

PIAC welcomes the inclusion of a five working day period to supply a consumer with an Energy Price Fact Sheet. Where a consumer has made a request for an Energy Price Fact Sheet to be sent to them, PIAC recommends that the cooling off period for a contract entered into during telemarketing activity should begin five business days from that date. This will ensure that cooling off periods, and consequently the time a customer has to compare energy offers, is not eroded by the time taken to provide relevant information.

6.2 Mass media

As noted above, PIAC takes the view that where consumers are referred to websites for more information, a non-web based option for accessing that information should also be offered. Therefore, PIAC recommends that the statement included in advertisements and other mass media publications should be adjusted to read:

An Energy Price Fact Sheet is available at [insert retailer website] and by telephoning [insert retailer's free call telephone number]
or
Energy Price Fact Sheets are available at [insert retailer website] and by telephoning [insert retailer's free call telephone number].¹¹

6.3 Other Information Requirements

6.3.1 Fees

The AER proposes that Energy Price Fact Sheets include information on 'key fees applicable to a contract offer'.¹² Referral to information about fees not considered to be key must also be included.¹³ PIAC is concerned that the separation of key fees and non-key fees renders the Energy Price Fact Sheet an incomplete account of all costs related to a retail offer. In order to arm the consumer with the knowledge to make an informed decision, PIAC recommends that the fee section of the template should include information on all fees and any other costs associated with an energy offer.

PIAC understands that having a two-page limit on the length of the Energy Price Fact Sheets may mean some information cannot be included. If the AER determines that non-key fees cannot be listed on the Energy Price Fact Sheets, it is vitally important that a consumer education campaign accompanies the release of Energy

¹⁰ Australian Energy Regulator, above n 3, Appendix B 2.

¹¹ Ibid.

¹² Ibid Appendix B 3.

¹³ Ibid Appendix B 4.

Price Fact Sheets so consumers are aware that other sources of information will be needed to assess the full range of costs related with retail offers.

6.3.2 Information about how a retailer can vary the tariffs that apply to a contract offer

PIAC supports the inclusion of information about the ability of a retailer to change tariffs during the term of the contract. As this information is essential to understanding the cost of a contract offer, PIAC recommends that 'Price Subject to Change' information should immediately follow the pricing table.

6.3.3 Format

PIAC takes the view that an Energy Price Fact Sheet is most valuable when it is used to facilitate a comparison of offers available in the energy market. For this reason, PIAC contends that consumers should be aware that all retailers must provide fact sheets in a standard format. PIAC recommends that a permanent footer be added to the Energy Price Fact Sheet template to alert consumers to the fact that all energy retailers provide Energy Price Fact Sheets in a standard format to assist consumers to compare prices and conditions.

6.3.4 Referral to price comparator service

PIAC acknowledges that AER has noted the likelihood of the development of a price comparator service that States and Territories can join on an opt-in basis, and that further consultation regarding any need to update the Guideline will take place as the price comparator is developed.¹⁴ PIAC submits that, in the interim, information about current state-based independent price comparator services should be included in Energy Price Fact Sheets.

The Independent Pricing and Regulatory Tribunal has responsibility for an energy price comparator service in NSW.¹⁵ The service currently offers consumers the opportunity to compare energy offers via the *Myenergy offers* website or via information provided by telephone. Using Energy Price Fact Sheets to promote state based independent comparator services would provide energy consumers with guidance on how they could compare energy offers available to them. PIAC recommends that Energy Price Fact Sheets should contain information about the availability of independent price comparator services that are currently operating.

7. Accessibility

PIAC's submission to the AER's *Issues Paper: AER Retail Pricing Information Guidelines*¹⁶ highlighted the importance of accessible information. The submission noted:

To ensure that the information is accessible, it must be:

- clearly presented;
- simple enough to be understood;
- available to consumers with basic financial literacy and numeracy;
- available to consumers at the time they are weighing up their options: and
- understandable to members of the community with low levels of English literacy, including those from non-English speaking backgrounds.¹⁷

¹⁴ Ibid 6.

¹⁵ Independent Pricing and Regulatory Tribunal, *My energy offers* 2010 <http://www.myenergyoffers.nsw.gov.au/?utm_source=ipart&utm_medium=banner&utm_campaign=launch> at 28 October 2010.

¹⁶ Public Interest Advocacy Centre, above n 2, 3.

¹⁷ Ibid 3-4.

PIAC is concerned that the AER's current Position Paper only briefly touches on accessibility through a discussion of font size, and makes no reference to the provision of Energy Price Fact Sheets in other languages or formats. In recognition of the diversity of Australian consumers, PIAC recommends that the AER use the Retail Pricing Information Guideline to support the production of Energy Price Fact Sheets in other languages, as well as formats suitable for people with physical disability and those with low literacy levels.

8. Conclusion

PIAC acknowledges the work the AER is undertaking in developing the Guideline. A best case scenario outcome would see the Guideline empower a diverse range of consumers to make informed choices about energy offers that best suit their individual needs. While much of the work in developing the Guideline will contribute to this scenario, more needs to be done to ensure information is accessible and presented in formats that recognise the diversity of Australia's energy market consumers. PIAC looks forward to working with the AER to assist in the development of a Guideline that will facilitate optimum information provision for a broad range of energy consumers.