

25 August 2022

Energy Ministers Secretariat
Department of Climate Change, Energy, the Environment and Water

Submitted electronically

Dear Energy Ministers,

PIAC response to Amending the Australian Energy Regulator Wholesale Market Monitoring and Reporting Framework – Consultation Paper

The Public Interest Advocacy Centre (PIAC) welcomes the opportunity to respond to Amending the Australian Energy Regulator Wholesale Market Monitoring and Reporting Framework (WMMRF) – Consultation Paper (the Paper). PIAC supports efforts to improve market transparency and give the Australian Energy Regulator (AER) the visibility it needs across both electricity and gas sectors.

The WMMRF makes the AER responsible for monitoring wholesale electricity markets in the NEM, to ensure effective competition and outcomes beneficial outcomes for consumers. However, the existing scope of powers is not sufficient for this purpose and should be updated and expanded.

The Paper outlines a range of limitations that undermine the AER's ability to effectively carry out its duties under section 18C of the National Electricity Law (NEL), which requires the AER to identify and analyse whether there:

- is 'effective competition' within wholesale markets across the NEM;
- are features of the market that may be detrimental to effective competition within the market; and
- are features of the market that may be impacting detrimentally on the efficient functioning of the market and the achievement of the national electricity objective.

PIAC agrees the AER's monitoring and reporting powers are unreasonably constrained by section 18D, which requires the AER to:

- Use publicly available information to identify any relevant matter referred to in section 18C, meaning that the AER must have first identified a potential issue through publicly available

information, before it can use its compulsory information gathering powers to request information directly from market participants.

- Not use confidential supplier information for any purpose other than the performance of the AER wholesale market monitoring (WMM) functions. This includes use of information for any enforcement purposes.
- Not disclose confidential supplier information unless it is for the purposes of the AER WMM functions, and it has been arranged to not reveal confidential aspects or identify the wholesale supplier.

Reliance on publicly available data prevents the AER from identifying issues until well after they have occurred and potentially had material detrimental impacts. This provides no opportunity for a timely response. PIAC supports proposals to remove limitations on the AER and improve visibility of relevant information in order to enable the AER to proactively anticipate and respond to such issues in a timely manner.

Addressing WMM limitations in the electricity market

Do stakeholders have any comments on the proposal to repeal section 18D of the NEL?

PIAC supports the proposal to repeal NEL section 18D entirely. We note that this would involve retaining the broad WMM function but would remove the additional constraints on the AER's general information gathering powers.

We consider the repeal essential to enabling the AER to obtain the information and documents required for the performance of its WMM function without first relying on publicly available information to identify a problem.

Do stakeholders have any additional comments on the regulatory approach to WMM information gathering in the context of the proposed approach to expand the WMM framework to encompass electricity contract markets and gas wholesale and contract markets?

PIAC supports the proposed approach to expand the scope of the WMM framework to encompass electricity contract markets and gas wholesale and contract markets.

Do stakeholders have any concerns with the subsequent use of collected WMM information by the AER, including, for example, in enforcement action?

PIAC support measures enabling the AER to use WMM collected information for other purposes, particularly those related to enforcement action. For the proposed framework to meaningfully contribute to identifying and addressing market issues, the AER must be able to fully exercise its information gathering power and intervene to enforce better market outcomes where necessary. It would be appropriate for the AER to have a minimum requirement for analysis and reporting that is additional to its broad reporting requirements under the NEL.

Expanding WMM function to electricity contract markets

Do stakeholders have any comments on extending the WMM framework to electricity contract markets?

PIAC supports expanding the AER's existing monitoring function to electricity contract markets. Any legislative provisions to enable this need to ensure that the AER could obtain at least the following:

- Contracts or arrangements for the supply of electricity, or a contract for the reduction in consumption of electricity.
- Contracts relating to generation fuel inputs.
- Derivatives relating to the distribution and transmission of electricity, including network services.
- Contracts which manage the financial risk of fluctuations in the spot price including electricity related financial derivatives (futures contracts, swaps and options), and electricity generator insurance, relating to weather and outages.

For the AER to effectively carry out its WMM function it should have access to all contracts directly related to the purchase or sale of energy and their associated costs, as well as contracts such as ASX, OTC and others that are designed to manage revenue risk and have a material, if indirect, impact on the effective operation of the wholesale market.

Removing restrictions contained in section 18D is critical to the effectiveness of any expanded WMM framework encompassing contracts and contract markets. Appropriate amendments should also allow the AER to incorporate findings from its WMM information gathering efforts into other key reports, such as the State of the Energy Market report.

PIAC considers these changes to be in the long-term interests of consumers, bringing greater transparency to the market and encouraging more efficient and competitive market outcomes.

Do stakeholders have any views on specific contractual instruments that should or should not come within scope of this function?

N/A

Expanding the NEL WMM function to gas markets

Do stakeholders have any general comments on the extension of an AER WMM and reporting function to gas markets?

PIAC supports the extension of an AER WMM and reporting function to gas markets. We note that extending the existing NEL function to the National Gas Law (NGL) would:

- provide information critical to assessing effectiveness of competition and efficiency in wholesale gas markets.
- to the extent of the interactions between gas and electricity markets, strengthen the AER's ability to undertake the existing NEL WMM function.
- allow the AER to monitor and report on the impact of a wide range of gas market reforms.

The lack of such a function limits the AER's capacity to monitor, analyse and report on the effective operation of gas wholesale and contract markets, and undermines the AER's ability to properly monitor and report on electricity markets given the role of gas in electricity generation.

PIAC supports the implementation of an effective NGL WMM function to enable the AER to better understand expectations of future gas prices, to better inform analysis of high price events occurring in wholesale gas and electricity markets, and to assist the AER to fulfil its reporting requirements under the national energy rules.

Do stakeholders have any comments on the potential scope of application of a WMM gas function to the 'regulated' markets and the related market participants who would be required to comply with the information disclosure obligations?

PIAC does not have any concerns or comments regarding the potential scope of application of a WMM gas function.

Do stakeholders have any comments on the contractual instruments that should or should not come within scope of the WMM function?

PIAC is not aware of any contractual instruments which should not come within scope of the WMM function and recommends that all instruments be in scope unless a particular material reason justifies their exclusion and outweighs the benefit of their inclusion.

Continued engagement

PIAC welcomes the opportunity to discuss these matters further with the Energy Ministers Secretariat and other stakeholders.

Yours sincerely

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