

16 October 2018

Emma Watts
Project Director
The Energy Charter



By email to: emma.watts@theenergycharter.com.au

Dear Ms Watts,

The Energy Charter – Draft for Consultation

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 people who are marginalised and facing disadvantage. The Energy + Water Consumers' Advocacy Program represents the interests of low-income and other residential consumers, developing policy and advocating in energy and water markets.

PIAC welcomes the opportunity to comment on the draft Energy Charter (the Charter). This submission builds on comments provided as part of the End User Consultative Group through the development of the draft Charter.

PIAC supports the intent of the Charter to 'progress the culture and solutions required to deliver a more affordable, reliable and sustainable energy system for all Australians'.¹

Further, we support the principles contained in the Charter. Adopting these principles is an important first step by the energy industry in rebuilding the trust of the community, government and other stakeholders.

While an important first step, the Charter must be followed by sustained improvements in the behaviour of the energy industry as a whole. To achieve this, PIAC contends that the Charter must have a broad base of signatories that are internally accountable, consistent in reporting and subject to robust external assessment.

The Charter must have a broad signatory base

To be successful, the Charter will require as many signatories as possible from across the breadth of the energy industry. Firstly, this will ensure that the Charter principles are implemented as broadly as possible. Secondly, it will give the community confidence that the Charter has the support of the industry as a whole, something critical to rebuilding trust.

To this end, PIAC welcomes the broad representation of initial participants in the Charter process; including all segments of the energy supply chain and both electricity and gas businesses.

PIAC encourages energy businesses that are not currently signatories to the Charter to become so in coming months.

¹ The Energy Charter, [Draft for Consultation](#), September 2018 1.

The Charter must drive internal accountability

PIAC particularly welcomes the focus of Principle 1 on placing responsibility for embedding a culture of alignment with Charter principles on signatories' board and management.

As outlined in our work on consumer engagement by energy networks, PIAC considers culture to be driven from the top of an organisation.² Therefore, for the Charter to be successful, the boards and management of signatories will need to take this responsibility seriously and play an ongoing role in driving improvement against all five Charter principles.

To this end, it is critical that boards hold management accountable for this improvement and ensure that ongoing and lasting culture change is driven throughout the business.

The Charter must have reporting consistency

PIAC acknowledges that the first reporting cycle of the Charter will operate as a 'learn by doing' exercise,³ and we support signatories having the flexibility to determine appropriate reporting metrics. As a general principle, we consider that this flexibility should be used to ensure that the reporting structure is subject to continuous improvement.

PIAC supports the industry aligning their reporting based on the lessons and insights from the initial cycle. For reporting to be meaningful, it should be as consistent as is practicable. This will allow signatories, the Independent Panel and other stakeholders to easily track progress against the charter principles.

In the context of the Charter, consistency can be considered in two ways:

- **Vertical consistency** – signatories should maintain year-on-year consistency in reporting. If signatories wish to change the definition of their metrics from one year to another, they should be required to justify the change, similar to the 'if not, why not' approach built into the Charter's reporting structure. This will allow the businesses to track their progress, as well as facilitate comparison over time by the Independent Panel and other stakeholders.

Further, PIAC contends that signatories should ensure that reporting metrics remain comparable even as they evolve through the continuous improvement process noted above. This means that, where reporting metrics are changed, signatories should apply the updated metrics to previous years to maintain a comparable time series; and

- **Horizontal consistency** – consistency between signatories. To track the performance of the energy industry as a whole against the Charter principles, it will be necessary for businesses to report using broadly consistent metrics.

While PIAC acknowledges that it is unlikely to be practical for a network business and a retailer to use exactly the same metrics, we contend that they should be as consistent as is possible. Further, businesses within a single segment of the energy supply chain (all retailers, for example) should maintain consistency.

The Charter must have robust external assessment

In addition to self-reporting, the Charter includes an Independent Panel to evaluate signatories' progress in meeting their Charter commitments. In PIAC's view, this is a critical feature of the

² PIAC, [Evaluation of Consumer Engagement by NSW DNSPs 2017-18](#), August 2018, 9.

³ The Energy Charter, [Draft for Consultation](#), 19.

Charter design. It will facilitate ongoing feedback and ensure that signatories are held accountable.

In order to maintain community and stakeholder confidence in the Charter, the Independent Panel's evaluations should be made through a robust process. The Independent Panel's terms of reference should outline an expectation for the Panel to challenge businesses who are not achieving the expected standards. These standards should not remain static. Instead, they should evolve in line with consumer expectations, to drive continuous improvement from all signatories.

PIAC understands that the Independent Panel will be predisposed to accept the truth of signatories' reports. Given its limited capacity and that it is not an investigative body, PIAC considers this is appropriate.

However, we draw a distinction between accepting reports of fact and accepting characterisations of those facts. Consider, for example, a regulated business that reports it has run a certain number of customer forums and, in doing so, had embedded its customers at the centre of its business planning. The Independent Panel should accept as fact that the forums had taken place, but not be predisposed to accept the characterisation that this was sufficient to place customers at the centre of business planning.

PIAC also considers it vital that the Independent Panel should be transparent about how it makes its assessments. To this end, the Independent Panel should provide clear, public guidance about what it will or will not consider meeting signatories commitments under the Charter. While PIAC acknowledges that many of these judgements will be subjective, the Independent Panel should clearly communicate its expectations in advance of each reporting period.

Further, the Independent Panel should ensure that signatories and other stakeholders have a common understanding, developed through consultation with stakeholders, of the terminology used in the Charter and its evaluations. For example, there are often differing views about what constitutes a vulnerable customer. Given that vulnerability is central to Principle 5, it will be necessary to define this term for a transparent evaluation of a signatory's performance against that principle.

Further engagement

PIAC would welcome the opportunity for further engagement with stakeholders to discuss these issues in more depth.

Yours sincerely,

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