Transmission Planning and Investment Review – Stage 3 Draft Report

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About the Public Interest Advocacy Centre

The Public Interest Advocacy Centre (PIAC) is leading social justice law and policy centre. Established in 1982, we are an independent, non-profit organisation that works with people and communities who are marginalised and facing disadvantage.

PIAC builds a fairer, stronger society by helping to change laws, policies and practices that cause injustice and inequality. Our work combines:

- legal advice and representation, specialising in test cases and strategic casework;
- research, analysis and policy development; and
- advocacy for systems change and public interest outcomes.

Energy and Water Consumers' Advocacy Program

The Energy and Water Consumers' Advocacy Program works for better regulatory and policy outcomes so people's needs are met by clean, resilient and efficient energy and water systems. We ensure consumer protections and assistance limit disadvantage, and people can make meaningful choices in effective markets without experiencing detriment if they cannot participate. PIAC receives input from a community-based reference group whose members include:

- Affiliated Residential Park Residents Association NSW;
- Anglicare;
- Combined Pensioners and Superannuants Association of NSW;
- Energy and Water Ombudsman NSW;
- Ethnic Communities Council NSW;
- Financial Counsellors Association of NSW;
- NSW Council of Social Service;
- Physical Disability Council of NSW;
- St Vincent de Paul Society of NSW;
- Salvation Army;
- Tenants Union NSW; and
- The Sydney Alliance.

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Public Interest Advocacy Centre

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The Public Interest Advocacy Centre office is located on the land of the Gadigal of the Eora Nation.

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1. Introduction

PIAC welcomes the opportunity to respond to the Transmission Planning and Investment Review – Stage 3 Draft Report (the Draft Report).

PIAC considers a fast and orderly transition of the energy system is in the long-term interests of consumers. As transmission has an important role in facilitating this transition, we welcome this review.

Over coming decades tens of billions of dollars in new network investment will be undertaken to bring about the transition. It is critical this investment is subject to a robust, transparent and fit-for-purpose regulatory regime that ensures investment is in the consumer interest and does not burden people with costs they do not benefit from and risks they cannot manage.

The current regulatory framework is designed to deliver efficiency of incremental investment to an established centralised generation and transmission system. The energy system transition involves a step-change in new investment and major expansion of the transmission system. This is largely to serve new generation rather than demand and often involves inter-regional projects such as interconnectors, with benefits distributed disproportionately to costs.

This shift means the existing arrangements no longer recover costs of investment from all relevant beneficiaries and do not allow risk to sit with those best-placed to manage it. All costs are still recovered from consumers and are mostly apportioned between jurisdictions according to where the infrastructure is located rather than where the benefits accrue.

These arrangements do not support sustainably building transmission infrastructure ahead of new generation. It is disconcerting that generators, the primary beneficiaries of the new investment, are not required to carry any costs. PIAC has developed an approach to cost and risk sharing that aims to ensure the costs of shared transmission infrastructure are recovered from the beneficiaries. The details of this approach can be found in our submission to the Post-2025 Market Design Consultation Paper[1] and submissions to the AEMC's COGATI consultation[2].

Current arrangements also do not support efficient NEM-wide investment as costs for interregional transmission cannot be fully allocated to all beneficiaries. This slows the deployment of renewables and results in inefficient transmission investment where some consumers are left with unfair and unmanageable costs and risks.

PIAC and other key consumer representatives have consistently raised the issue of cost-recovery of new transmission infrastructure with the AEMC, ESB, transmission businesses, and others. Stakeholders, particularly consumer advocates, continue to call for market bodies to address the lack of provisions requiring generators to contribute to the costs of new shared transmission[3]. We

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1 PIAC submission to Post-2025 Market Design Consultation Paper. https://piac.asn.au/wp-content/uploads/2020/10/20.10.30-PIAC-sub-to-P2025-Market-Design-Consultation-Paper-updated.pdf

2 PIAC submission to Coordination of Generation and Transmission Investment consultation paper. https://piac.asn.au/wp-content/uploads/2019/04/19.04.30-PIAC-sub-to-COGATI-consultation-paper.pdf

3 Submissions to Transmission Planning and Investment Review, Consultation paper: ECA, p. 8; EUAA p. 1; MEU, 2-3;

have repeatedly highlighted[4][5] the need to address the issue of transmission cost and risk-sharing arrangements as part of this review and again strongly recommend that the AEMC identify where it will consider this issue, as a matter of urgency.

2. Encouraging efficient and timely investment through the economic assessment process

The Commission notes 'that given the scale of potential future investment in the transmission system and the benefits for consumers, it is important to ensure these investments are realised in a timely manner'.

PIAC appreciates the need for timely delivery of transmission. However, we do not agree that improvements to the economic assessment process should focus solely on facilitating the timely delivery. The economic assessment process must encourage efficient *and* timely investment where it is needed. This focus better contributes to the Draft Report's aim of supporting the timely delivery of transmission investment as, rather than starting from the objective of minimising project delivery times, it seeks to ensure that the right transmission is built in the first instance.

Projects unable to demonstrate net market benefits are not prudent and efficient investments in the long-term interests of consumers. These projects may still promote the wider community interest, particularly if they hasten the decarbonisation of the energy system or deliver social or economic benefits in areas of need. In these cases governments should contribute to their capital from consolidated revenue to make up the difference, and consumers should not bear these ineffcent costs.

The Commission notes that, 'the [economic assessment] process should be transparent and build on high quality information regarding the assessment of costs and benefits, underpinning key decisions in the process'[6]. We agree on this point and submit that expenditure must be subject to strong, transparent, and accessible economic assessment and governance arrangements.

PIAC accepts that earlier transmission investment can help unlock cheaper sources of renewable energy and that delays may potentially lead to consumers paying for more expensive capacity. The Commission indicates that an improved economic assessment process for major transmission projects should 'support the timely delivey of major transmission investments by reducing the time between when an identified need is defined to the start of construction of the solution to meet that need'[7].

We are concerned that without a commensurate emphasis on efficient investment, the proposed focus on achieving a material reduction in time will lead to an increase in overall project costs.

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4 PIAC submission to Transmission Planning Investment Review, Consultation paper. https://piac.asn.au/wp-content/uploads/2021/10/21.10.05-PIAC-sub-to-AEMC-transmission-planning-and-investment-review-redacted.pdf
5 PIAC submission to Transmission Planning Investment Review – Stage 2 Draft Report. https://piac.asn.au/wp-content/uploads/2022/09/22-07-13-Sub-to-AEMC-Transmission-Planning-and-Investment-Review-Stage-2-Draft-Report.pdf
6 Australian Energy Market Commission (AEMC), Transmission Planning and Investment Review – Stage 3 Draft Report, p. 10
7 Ibid

Accordingly, streamlining efforts should not come at the expense of rigour so that consumers do not bear the cost of inefficient investments.

2.1 Developing a consistent framework to assess net benefits

Should the Commission choose to pursue one of the streamlined options presented in the Draft Report, PIAC considers Strawperson Model 2 (SM2) most likely to deliver net benefits to consumers.

If implemented correctly, SM2 could help address issues arising from the responsibility of a TNSP to identify the credible option that maximises the present value of net economic benefits to all those who produce, consume and transport electricity. This responsibility conflicts with the long-term interest of consumers and may contribute to an incentive to invest inefficiently.

Transferring responsibility for estimating the net benefits of actionable ISP projects to AEMO removes the need for TNSPs to undertake complex modelling and enables more detailed investigation of alternative solutions. By freeing TNSPs from evaluating net benefits when developing their RIT-T, they could dedicate more time to detailed design, route planning, and other social licence issues that have a material effect on the timely delivery of major transmission projects.

The Commission notes that SM2 could reduce rigour, 'to the extent that variations in the benefits provided by different options to meet an ISP identified need are not captured in the RIT-T process'[8]. While adapting the RIT-T to focus on exploring least-cost solutions may result in a failure to quantify (or identify) variations in benefits, these concerns could be mitigated by drawing on TNSP modelling and analysis, where appropriate, to support the ISP through joint planning arrangements.

In our view, centralising the assessment of net benefits in the ISP process could enhance rigour by improving the transparency of the economic assessment process and introducing greater consistency to benefits modelling across the Project Assessment Draft Report (PADR) and Project Assessment Conclusions Report (PACR) stages of assessment. As part of this approach, AEMO should be required to publish and consult on a NEM-wide methodology for assessing net benefits.

3. Strengthening transparency in concessional finance

PIAC shares the Commission's view that, given the National Electricity Rules (NER) do not explicitly recognise the treatment of concessional finance, additional guidance is required to clarify the treatment of benefits (both to the consumer and/or the TNSP) from concessional finance. This includes how the benefits can be recognised in the ISP as well as in the RIT-T where appropriate.

We support the proposal requiring TNSPs to inform the AER of the existence of a concessional finance arrangement. As part of this arrangement, the TNSP should, at minimum, be required to provide:

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8 Ibid, p. 52

- The name of the government funding body that provided the concessional finance and contact details for that body.
- A description of the amount and type of concessional finance provided and the capital expenditure to which it relates.
- A copy of the funding agreement.
- A statement as to whether the government funding body intended some or all of the
- concessional finance to benefit consumers.

PIAC considers it appropriate for the AER to exercise its power to obtain further information about the concessional finance arrangement from the TNSP if it deems the provided information deficient.

To appropriately treat the benefits from concessional finance, the regulatory framework should also enable the AER to consult with the government funding body with the purpose of determining:

- Whether the intention was for consumers and/or the TNSP to benefit from some or all of the concessional finance, and
- If so, what proportion of the concessional finance was intended to benefit each party?

The AER should not rely solely on the information provided by the TNSP to establish the financier's intent. In circumstances where the financier's intent remains unclear after consultation with relevant funding bodies, the AER should take direction from the National Electricity Objective and treat some or all of the concessional finance as intended for the benefit of consumers.

When deciding whether to treat some or all the concessional finance as a benefit to consumers and/or TNSPs, the AER should have discretion in deciding where the intended benefit of the finance should flow and determining the value of the benefit to consumers and/or TNSPs. We support efforts to clarify the regulatory framework to this end.

PIAC understands there are a number of ways to treat benefits from concessional finance intended to flow to consumers. These benefits (typically a reduction in network charges) may flow from a capital contribution with a corresponding adjustment to the RAB, an adjustment to the Maximum Allowed Revenue (MAR), or another mechanism. We share the Commission's view that,

> In determining which mechanism to use, regard needs to be given to both providing certainty to consumers of their benefits from the concessional finance, where appropriate, as well as to the TNSP and financier of the project's treatment in the RAB.

PIAC recommends the Commission adopt a ex-post assessment framework to promote transparency and ensure that TNSPs have passed on the benefits of concessional finance appropriately. Where TNSPs are required to demonstrate how concessional finance has reduced costs for consumers, causal links should be well-established and evidence beyond what wholesale prices reveal provided.

4. Ensuring timely delivery of transmission investment through changes to cost-recovery arrangements

PIAC does not share the Commission's view that a new incentive mechanism is a suitable reponse to managing investment decision and delivery risk associated with a TNSP's exclusive right and no corresponding obligation to invest. The Commission reasons that strategic projects may not proceed in a timely manner because TNSPs have an exclusive right to build, own, and operate transmission solutions in the NEM but no corresponding obligation to deliver transmission projects under the national regulatory framework.

As we outlined in our submission to the contestability stream[9], we consider the monopoly granted TNSPs by some jurisdictions should not, and need not, grant them the exclusive right to build and own all types of new transmission projects. Rather, incumbent TNSPs should have priority access to the right to invest in, build and own transmission projects. Where they are unwilling to fund a project at the regulated rate of return and under the prevailing cost recovery regime, other entities should be allowed the opportunity to do so. If other entities are not willing to invest at the regulated rate of return, then the project should be made fully contestable, with the key criterion for choosing an investor being the lowest rate of return they will accept to invest in a project.

Given the Commission does not consider national contestability a proportionate solution to the exclusive right issue, we outline two alternatives that address concerns around the late or non-delivery of major strategic projects and provide a more proportionate and rapidly implementable response.

PIACs preferred approach to ensuring the timely delivery of transmission investment is to restrict TNSPs from recovering costs from projects they have not completed. Requiring TNSPs to deliver specific milestones before they are eligible to recover costs would encourage them to make investment decisions and deliver projects as early as practicable, while avoiding inappropriately rewarding them for work they are already incentivised to undertake. Put simply, we consider the inherent incentive for TNSPs to grow their RAB sufficient to mitigate the risk that strategic projects may not proceed in a timely manner.

In the absence of alignment between cost recovery and project completion, a mechanism that penalises TNSPs for cost and time overruns may be appropriate. This may be achieved through the use of a pre-determined revenue cap for the project set by the AER. Any expenditure above this cap would be excluded from the RAB. We do not consider a mechanism based on timeliness alone appropriate given this violates the efficiency principle discussed as part of the proposed amendments to the economic assessment process in Section 2.

5. Managing cost risk and uncertainty through an ex-post review process and additional CPA stages

PIAC accepts that large scale greenfield transmission projects have greater cost risk and/or cost uncertainty relative to business-as-usual investments. This is due to challenges with route

9 PIAC submission to Transmission Planning Investment Review – Contestability Options paper. https://piac.asn.au/wp-content/uploads/2022/08/22-08-17-Sub-to-AEMC-consultation-on-Draft-report-Transmission-Planning-and-Investment-Contestability.pdf

selection, supply chain pressures, and a lack of comparable project information that the AER and TNSP can rely on to accurately forecast efficient delivery costs.

While we acknowledge the existing regulatory framework provides mechanisms to manage both cost risk and uncertainty associated with major transmission projects, we support the proposal to improve the accuracy of forecast costs through:

- a targeted ex-post review process by the AER that examines specific ISP projects; and
- allowing the CPA process to be split into more than two stages to further assist TNSPs with managing uncertainty in project delivery

An ex-post review provides a safeguard against inefficient expenditure in project delivery by requiring the AER to produce a statement on the efficiency and prudency of all capex that is to be rolled into the RAB. If total capex incurred by the TNSP over the regulatory period exceeds its total capex allowance, the AER may decide to exclude certain types of capex from being included in the roll forward of the RAB.

PIAC supports separating the CPA process into additional stages in order to better promote the outcomes of the ISP and address concerns around ensuring investments remain net beneficial. Given additional CPA staging could result in duplication of activities and/or scope creep, TNSPs should be required to justify that further stages are needed on grounds that they will reduce the likelihood of cost overruns.

6. Further engagement

PIAC welcomes the opportunity to discuss these matters further with the Commission and other stakeholders.