



public interest
ADVOCACY CENTRE LTD

**Focusing on the community: Response to the
National Framework for Energy Community
Service Obligations**

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The Public Interest Advocacy Centre (PIAC) is an independent, non-profit law and policy organisation that identifies public interest issues and works co-operatively with other organisations to advocate for individuals and groups affected.

PIAC seeks to promote a just and democratic society by making strategic interventions on public interest issues in order to:

- expose unjust or unsafe practices, deficient laws or policies;
- promote accountable, transparent and responsive government;
- encourage, influence and inform public debate;
- promote the development of law—both statutory and common—that reflects the public interest; and
- develop community organisations to pursue the interests of the communities they represent.

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 the Program from a community-based reference group.

Introduction

PIAC welcomes the opportunity to provide recommendations to the Ministerial Council on Energy (MCE) on its proposed principles to guide the future development and implementation of energy community service obligations (CSOs). PIAC takes this opportunity to provide one general comment, as well as to provide responses to the nine proposed principles.

The MCE must abide by the *Australian Energy Market Agreement* (AEMA). As clause 2.1(a) of the AEMA describes, the overarching purpose of establishing a framework for the energy market is for:

... the promotion of the long term interests of consumers with regard to the price, quality and reliability of electricity and gas services.

PIAC's fundamental concern is that the principles proposed by the MCE deviate from the AEMA by ignoring the need to promote the interests of consumers. Although the MCE's paper introducing the principles acknowledges the social policy reasons why CSOs are important, the principles themselves do not recognise the importance of CSOs in promoting equity and public interest issues in an essential service industry. They do not acknowledge CSOs as being an important tool used in advancing the interests of consumers or as a necessary aspect of protecting consumers from market failures.

Given that CSOs play this role in the market, it is disappointing that the first principle provided by the MCE paints a negative picture of CSOs as an inconvenience to business. Other principles imply that CSOs create barriers to competition (principle 6) or should be implemented as cheaply as possible (principle 5).

To affirm the fundamental value of CSOs and avoid concentrating on the burdens they impose, PIAC recommends the inclusion of the following overarching principle:

Consumer service obligations are an important means of assisting low-income and other disadvantaged households to meet the cost of their energy supply. Best practice CSOs are those that empower consumers to enjoy a safe, affordable, reliable and sustainable supply of energy.

Proposed principles

1. *Energy CSOs should only be used if the service would not be in the commercial interests of an energy business to provide, or if it would only be provided commercially at higher prices than would be consistent with government social welfare policies.*

PIAC agrees that CSOs are often applied to services that do not provide commercial benefit to businesses. However, the principle above is an overly prescriptive qualification of a CSO, suggesting that a CSO must be a burden and can never provide any benefit to energy businesses. PIAC's experience is that CSOs can be in the commercial interest of an energy business. For instance, Country Energy CSO program *Country Support*, has helped Country Energy reduce the instances of debt owed to it by its customers, and contributed to the retention of its customer base.

PIAC recommends that CSOs be defined not in terms of how an energy business views them, but rather as an obligation that the Government and community considers an essential aspect of the operation of the energy market, irrespective of its commercial merits.

2. *The obligation to provide the community service should be clearly specified by Government in legislation or other publicly available documents such as a shareholder minister's directions to companies.*

PIAC is uncertain whether this principle recommends that the obligation to provide CSOs should be placed in legislation as opposed to specific CSOs being placed in legislation. Although PIAC supports the principle that CSOs be clearly specified in publicly available documents, it notes that there are benefits and detriments in having CSOs rooted in legislation. A benefit of legislation is that a CSO would be more protected from arbitrary amendment and such amendment would be subject to the scrutiny of the legislature. Conversely, entrenchment in legislation makes it difficult for a CSO to be amended if after its implementation flaws in the framework are revealed. However, it is hoped that the legislature would be amenable to making amendments where the evidence indicated that the CSO was not being effective because of a flaw in the legislation.

3. *Energy CSOs should be delivered transparently.*

PIAC supports this principle as it enables better identification of discriminatory practices, and helps inform consumers of their rights and who is responsible for delivering a CSO.

4. *Wherever possible energy CSOs should be directly funded by Government from consolidated revenue.*

PIAC generally supports this principle but notes that there are efficiency and incentive benefits available when a CSO is funded through an energy business's regulated revenue. As discussed above, Country Energy's *Country Support* has attempted to deliver a CSO in a fashion that gives it a competitive edge.

However, PIAC believes that the primary objective of this principle should be ensuring that the funding model produce favourable outcomes to consumers rather than determining who funds the CSO.

5. CSOs should be designed to achieve their social policy objectives at the least possible cost.

PIAC objects to the emphasis placed on providing CSOs at the 'least possible cost'. The purpose of a CSO is to allow consumers an equitable standard of access to an essential service. To achieve this end, a balanced approach should be taken that maximises the benefits and minimises the costs associated with delivering the benefits, rather than encouraging a CSO to be implemented as cheaply as possible.

PIAC stresses that delivering optimal CSOs at costs higher than 'least possible cost' may reduce future expenses in other markets. For instance, Victoria's MS (Multiple Sclerosis) Summer Concession reduces the pressure placed on the public health system to treat people with anhidrosis.

PIAC recommends that this principle be reworded to place an emphasis on CSOs being delivered on a cost/outcome efficient basis.

6. An energy CSO should not be delivered by a mechanism employing cross-subsidies from one set of consumers to another.

PIAC believes that this principle misunderstands the purpose of CSOs, which is to redistribute resources to support disadvantaged consumers. Furthermore, cross-subsidies commonly occur in the energy market and can be an effective tool in addressing market failure. For example, inclining block tariffs are designed so that higher-volume consumers subsidise lower-volume consumers.

Although there is a danger of reinforcing differences between classes of consumers through cross-subsidisation, PIAC believes the merits of a cross-subsidising CSO should be individually judged on the cost versus the benefit that the particular CSO delivers to the community. Attention should also be given as to which consumers are subsidising others, with consideration of the public interest purpose it serves.

7. CSOs should not materially impede competition, particularly in upstream (generation and gas production) and downstream (including retailing and demand side response) markets.

PIAC agrees with this principle and advises that CSOs can help stimulate competition in the market. For example, pensioner energy rebates assist a class of consumers accessing premium market contracts, such as green energy contracts, effectively removing a barrier for pensioners to participate in the market.

PIAC stresses that whilst CSOs are generally delivered by commercial entities, their purpose remains to facilitate the efficient provision of an essential service.

8. Energy CSOs should be designed to minimise their effect on consumption patterns.

The purpose of many CSOs is to make average consumption affordable for disadvantaged consumers. Generally this increases a consumer's capacity to use more energy and in some instances the effect of a CSO, such as life support rebates, is to increase a consumer's use of energy. Therefore, principle 8 appears to be inconsistent with the practical purpose and application of CSOs.

However, PIAC supports this principle on the proviso that it means consumers are offered ways to reduce their discretionary consumption in conjunction with CSOs. The most obvious example of this would be offering rebates to consumers who purchase more energy-efficient appliances.

9. *Governments should conduct regular, transparent reviews of the performance of the provision of energy CSOs and of the continued need for individual CSOs.*

PIAC supports this principle as it has seen CSOs that do not have embedded review mechanisms become increasingly redundant over time. Once established, the benefits derived from CSOs are difficult to redirect. The exclusion of residential park tenants from accessing Energy Accounts Payment Assistance (EAPA) scheme in NSW is a good illustration of this problem.

However, reviewing the performance of CSOs is inefficient if it is overly difficult to amend the way in which CSOs are framed. PIAC recommends that principle 9 be considered in conjunction with the application of principles 2 and 3.