



public interest
ADVOCACY CENTRE LTD

**Improving the response to customer hardship:
submission to Industry & Investment NSW
customer hardship regulatory amendments**

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Mark Ludbrooke, Senior Policy Officer

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 Law Foundation of New South Wales, with support from the 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 utilities, 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

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 whose members 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 inquiry

The Public Interest Advocacy Centre welcomes the opportunity to comment on the draft Electricity Supply (General) Amendment (Customer Hardship) Regulation 2009 and draft Gas Supply (Natural Gas Retail Competition) Amendment Regulation 2009 (the draft regulation amendments). These two draft instruments will, if promulgated, amend the *Electricity Supply (General) Regulation 2001* (NSW) and the *Gas Supply (Natural Gas Retail Competition) Regulation 2001* (NSW) (together the Electricity and Gas Regulations).

The draft regulation amendments propose that retailers be required to develop, implement and publish a customer hardship charter and offer customers experiencing hardship two payment plans in writing prior to disconnection. The proposals stem from the Customer Assistance Policy announced as part of the NSW energy reform process and brought forward in response to the 20 per cent electricity price increase from July 2009. They have been developed with an eye to consistency with the First Exposure Draft of the National Energy Customer Framework (NECF).¹

PIAC considers the draft regulation amendments enhance the consumer protection framework available to NSW energy consumers and offers broad support for the proposals.

However, PIAC contends that the draft regulation amendments do not represent the optimal response to customer hardship and takes this opportunity to seek further amendments to ensure that NSW regulations best serve residential energy consumers and provide impetus for Industry & Investment NSW to advocate for best-practice protections as part of the NECF.

The enhancements proposed below largely mirror comments made by consumer advocacy organisations, including PIAC, in submissions to the first exposure draft of the NECF.²

3. Definition of hardship customer

The draft regulation amendments include a definition of 'hardship customer'. PIAC joins other consumer advocacy organisations in opposing the use of this term because it implies membership of a class of consumer rather than someone who is experiencing hardship at a particular moment in time.³ Defining someone as a 'hardship customer' is analogous to employing distasteful and discredited terms such as 'disabled person' and 'disadvantaged person'. Consistent with the use of more appropriate terms such as 'people with disability' and 'people experiencing disadvantage', PIAC submits the amended NSW regulations should define and refer to a 'customer experiencing hardship' rather than a 'hardship customer'.

Recommendation

1. *That the draft amendments to the Electricity Supply (General) Regulation 2001 (NSW) and the Gas Supply (Natural Gas Retail Competition) Regulation 2001 (NSW) be changed to define and refer to 'customers experiencing hardship' rather than 'hardship customers'.*

¹ Industry & Investment NSW, *Customer hardship regulatory amendments* (2009) Industry & Investment NSW, <www.industry.nsw.gov.au/energy/customers/protection/hardship-regulatory-amendments> at 3 December 2009.

² Joel Pringle, *PIAC Submission to the First Exposure Draft Legislation of the National Energy Customer Framework* (2009) Public Interest Advocacy Centre <<http://piac.asn.au/publications/pubs/subjectindex.html#utilities>> at 3 December 2009.

³ *Ibid* 5.

4. Customer hardship charter

PIAC welcomes the proposal to require retailers to develop, implement and publish a customer hardship charter. This goes some way to realising one of the recommendations from *Cut Off II*, a report into the experience of disconnections commissioned by PIAC in 2008.⁴ However, PIAC contends that additional changes are required to secure improved outcomes for residential energy consumers experiencing hardship.

4.1 Purpose of the customer hardship charter

The draft regulation amendments identify that the purpose of the customer hardship charter is to assist customers experiencing hardship to better manage their energy bills on an ongoing basis.⁵ PIAC recognises the importance of energy bill management but contends that the stated objective of the charter must be strengthened to minimise the most adverse outcome of energy hardship. Recent reports by the Independent Pricing and Regulatory Tribunal of New South Wales (IPART) indicated that over 37,500 households were disconnected from electricity and gas due to non-payment of energy bills during 2007–08.⁶ *Cut Off II* revealed that disconnections led many householders to experience anxiety and isolation, to have trouble caring for infants, to run out of clean clothes, and to have to throw out food that perished.⁷ PIAC is concerned that recent and proposed electricity and gas price increases will lead more households to experience the distressing impacts of utility disconnection. With this in mind, PIAC advocates that the purpose of the customer hardship charter be amended to ensure that customers experiencing hardship are not disconnected due to an inability to pay.

Recommendation

2. *That the draft amendments to the Electricity Supply (General) Regulation 2001 (NSW) and the Gas Supply (Natural Gas Retail Competition) Regulation 2001 (NSW) be changed to expressly state that the purpose of a customer hardship charter is to ensure customers experiencing hardship are not disconnected due to an inability to pay.*

4.2 Charter content

The draft regulation amendments stipulate that a customer hardship charter must contain certain elements.⁸ PIAC supports the inclusion of specific obligations but has concerns that the phrase 'must contain' may inadvertently limit the scope of hardship charters. To clarify that suppliers may develop and implement hardship charters with protections above and beyond those mandated by regulation, PIAC advocates this clause be redrafted to indicate the prescribed elements are minimum requirements.

⁴ Public Interest Advocacy Centre, *Media Release: Energy and water disconnections on the rise in mortgage belt* (2009) <www.piac.asn.au/news/media/20090130_cutoffll.html> at 3 December 2009.

⁵ Draft Electricity Supply (General) Amendment (Customer Hardship) Regulation 2009 (NSW); draft Gas Supply (Natural Gas Retail Competition) Amendment Regulation 2009 (NSW).

⁶ Independent Pricing and Regulatory Tribunal of New South Wales, *Electricity retail businesses' performance against customer service indicators in NSW for the period 1 July 2003 to 30 June 2008* (2009) <http://www.ipart.nsw.gov.au/electricity/licensing_further_information_8.asp> at 3 December 2009; Independent Pricing and Regulatory Tribunal of New South Wales, *Gas retail businesses' performance against customer service indicators in NSW for the period 1 July 2005 to 30 June 2008* (2009) <http://www.ipart.nsw.gov.au/electricity/licensing_further_information_8.asp> at 3 December 2009.

⁷ Jessie Connell and Wesley Hill, *Cut Off II: The Experience of Utility Disconnections* (2009) 30-31.

⁸ Draft Electricity Supply (General) Amendment (Customer Hardship) Regulation 2009 (NSW) cl 13AA(3); draft Gas Supply (Natural Gas Retail Competition) Amendment Regulation 2009 (NSW) cl 13AA(3).

Beyond encouraging suppliers to improve their responses to hardship, PIAC has identified the need for specific regulatory changes to improve customer hardship charter provisions. Clause 13AA(3)(a) of the regulations will, if promulgated in its current form, provide that hardship may be identified by either the energy supplier or customer.⁹ Acknowledging the experience that health and community agencies have working with people experiencing hardship, PIAC contends that this clause of the regulations must be augmented to also allow identification by appropriate social services.

Clause 13AA(3)(d) will, if promulgated in its current form, oblige suppliers to notify customers experiencing hardship of appropriate government concession programs and financial counselling services.¹⁰ Whilst this will go some way to ensuring customers are aware of the existence of support services, PIAC notes that it won't necessarily translate into access to these services. The report commissioned by PIAC on the experience of people who experienced disconnection, *Cut Off II*, revealed that 43 per cent of households did not seek assistance before being disconnected because they were embarrassed and 17 per cent were afraid to do so. Twenty seven per cent identified a lack of phone or phone credit as the barrier to accessing support.¹¹ PIAC contends that customers experiencing hardship would be better served if the draft regulation amendments were strengthened to oblige suppliers to offer to refer customers experiencing hardship to appropriate programs and services.

To assist customers to avoid hardship in future, PIAC also recommends that amendments to the Electricity and Gas Regulations require hardship charters to oblige suppliers to provide advice and offer household audits on energy efficiency. The inclusion of this provision is particularly important in light of significant increases forecasted for electricity and gas prices.

PIAC also submits that hardship charter provisions must compel suppliers to include information about their internal and external complaints resolution processes and schemes.

Recommendations

3. *That clause 13AA(3) of the draft amendments to the Electricity Supply (General) Regulation 2001 (NSW) and the Gas Supply (Natural Gas Retail Competition) Regulation 2001 (NSW) be changed to expressly state that the prescribed contents of customer hardship charters are minimum requirements.*
4. *That clause 13AA(3)(a) of the draft amendments to the Electricity Supply (General) Regulation 2001 (NSW) and the Gas Supply (Natural Gas Retail Competition) Regulation 2001 (NSW) be changed to specify that community and health services can identify that a customer is experiencing hardship.*
5. *That clause 13AA (3)(d) of the draft amendments to the Electricity Supply (General) Regulation 2001 (NSW) and the Gas Supply (Natural Gas Retail Competition) Regulation 2001 (NSW) be changed to oblige suppliers to offer to refer customers experiencing hardship to appropriate programs and services.*
6. *That clause 13AA(3) of the draft amendments to the Electricity Supply (General) Regulation 2001 (NSW) and the Gas Supply (Natural Gas Retail Competition) Regulation 2001 (NSW) be changed to oblige suppliers to provide advice and offer household audits on energy efficiency.*
7. *That clause 13AA(3) of the draft amendments to the Electricity Supply (General) Regulation 2001 (NSW) and the Gas Supply (Natural Gas Retail Competition) Regulation 2001 (NSW) be changed to oblige customer hardship charters to contain information about internal and external complaints resolution processes and schemes.*

⁹ Draft Electricity Supply (General) Amendment (Customer Hardship) Regulation 2009 (NSW) cl 13AA(3); draft Gas Supply (Natural Gas Retail Competition) Amendment Regulation 2009 (NSW) cl 13AA(3).

¹⁰ Draft Electricity Supply (General) Amendment (Customer Hardship) Regulation 2009 (NSW) cl 13AA(3); draft Gas Supply (Natural Gas Retail Competition) Amendment Regulation 2009 (NSW) cl 13AA(3).

¹¹ Connell and Hill, above n 7, 26.

4.3 Late payment fees

PIAC notes that NSW customers may be charged late fees for not paying their bills by the due date. Though many retailers have indicated to PIAC that they waive the late fee for customers experiencing difficulties paying their bills, *Cut Off II* suggests that this is far from universal: almost 30 per cent of customers who were disconnected reported that they had to pay a late fee.¹² PIAC submits that this is an unfair impost on customers already experiencing financial hardship and advocates that the Electricity and Gas Regulations be amended so that customers identified as experiencing hardship do not have to pay late fees. PIAC notes that clause 303 of the Second Exposure Draft of the National Energy Retail Rules includes a waiver of late payment fees for customers experiencing hardship.¹³

Recommendation

8. *That the draft amendments to the Electricity Supply (General) Regulation 2001 (NSW) and the Gas Supply (Natural Gas Retail Competition) Regulation 2001 (NSW) be changed to stipulate that suppliers cannot charge late payment fees to customers experiencing hardship.*

4.4 Access to Centrepay

The Second Exposure Draft of the NECF requires that retailers permit customers experiencing hardship to make payments using Centrepay upon request.¹⁴ PIAC regards Centrepay as an important component in the suite of options to assist customers experiencing hardship and urges Industry & Investment NSW to adopt a similar provision in the NSW regulations.

Recommendation

9. *That the draft amendments to the Electricity Supply (General) Regulation 2001 (NSW) and the Gas Supply (Natural Gas Retail Competition) Regulation 2001 (NSW) be changed to oblige suppliers to allow customers experiencing hardship to make payments using Centrepay.*

4.5 Publication of customer hardship charters

The draft regulation amendments propose to mandate that suppliers publish their customer hardship charter on their website and also inform and provide a copy to customers identified as customers experiencing hardship.¹⁵ To ensure equity of access to support for customers experiencing hardship, PIAC submits that suppliers must be obliged to ensure customer hardship charters are available in a range of community languages. Merely expecting that suppliers will publish policies in community languages, as is noted in the *Consumer Assistance Policy Consultation Paper*¹⁶, fails to secure this outcome.

Recommendation

10. *That clause 13AA(1) of the draft amendments to the Electricity Supply (General) Regulation 2001 (NSW) and the Gas Supply (Natural Gas Retail Competition) Regulation 2001 (NSW) be changed to oblige suppliers to ensure customer hardship charters are available in a range of community languages.*

¹² Ibid 38.

¹³ National Energy Retail Rules Second Exposure Draft 2009 (Cth) cl 303.

¹⁴ Ibid cl 304.

¹⁵ Draft Electricity Supply (General) Amendment (Customer Hardship) Regulation 2009 (NSW) cl 13AA(1); draft Gas Supply (Natural Gas Retail Competition) Amendment Regulation 2009 (NSW) cl 13AA(1).

¹⁶ Industry & Investment NSW, *Consumer Assistance Policy Consultation Paper* (2009) <<http://www.industry.nsw.gov.au/energy/customers/protection/assistance>> at 3 December 2009.

4.6 Approval of hardship charters

PIAC supports the inclusion of a safeguard to ensure that customer hardship charters comply with the letter and spirit of the regulations governing their development and implementation. It is noted that the Second Exposure Draft of the NECF proposes that customer hardship policies be subject to the approval of the Australian Energy Regulator (AER).¹⁷ PIAC submits that the NSW Electricity and Gas Regulations must require that hardship charters be approved by either the NSW Minister for Energy or IPART.

Recommendation

11. *That the draft amendments to the Electricity Supply (General) Regulation 2001 (NSW) and the Gas Supply (Natural Gas Retail Competition) Regulation 2001 (NSW) be changed to require customer hardship charters to be approved by either the NSW Minister for Energy or the Independent Pricing and Regulatory Tribunal of New South Wales.*

4.7 Support for customers upon reconnection

Although PIAC advocates that no customer should be disconnected due to an inability to pay, it is recognised that, at present, many customers experience this distressing fate. PIAC also understands that many of these customers are still likely to be experiencing hardship at the time of reconnection. To assist in ensuring they do not go through the distress of disconnection again, PIAC proposes that the Electricity and Gas Regulations be amended to expressly require suppliers to identify whether customers being reconnected following disconnection due to inability to pay are experiencing hardship. It is noted that IPART reports that about 10 per cent of customers were disconnected more than once in 2007–08.¹⁸

Recommendation

12. *That the draft amendments to the Electricity Supply (General) Regulation 2001 (NSW) and the Gas Supply (Natural Gas Retail Competition) Regulation 2001 (NSW) be changed to require suppliers to identify whether customers being reconnected following disconnection due to inability to pay are experiencing hardship.*

5. Payment plans

The draft regulation amendments require retailers to offer two payment plans per year before disconnection for non-payment is permitted.¹⁹ PIAC supports this proposal but offers the following suggestions to improve payment plans provisions.

5.1 Payment plan offers

Industry & Investment NSW states that the draft regulation amendments to payment plans are designed to strengthen the existing payment plan framework.²⁰ PIAC welcomes the intent of this proposal but questions whether many customers will receive any material benefit from this new obligation. Namely, PIAC is concerned that retailer obligations could be met by simply mentioning the availability of a payment plan on a reminder notice and then on a disconnection notice. To be effective, PIAC contends that the Electricity and Gas Regulations must require that payment plan offers invite the customer to enter into a payment

¹⁷ National Energy Retail Law Second Exposure Draft 2009 (Cth) cl 227.

¹⁸ Independent Pricing and Regulatory Tribunal of New South Wales, *Electricity retail businesses' performance against customer service indicators in NSW for the period 1 July 2003 to 30 June 2008* (2009) [1] <http://www.ipart.nsw.gov.au/electricity/licensing_further_information_8.asp> at 3 December 2009.

¹⁹ Draft Electricity Supply (General) Amendment (Customer Hardship) Regulation 2009 (NSW) cl 13A(2A); draft Gas Supply (Natural Gas Retail Competition) Amendment Regulation 2009 (NSW) cl 13A(2A).

²⁰ Industry & Investment NSW, above n 1.

plan, explain that the payment plan will provide the opportunity for the customer to make smaller payments on a regular basis, inform the customer that payments will be based in part on the customer's capacity to pay, and clearly state that the customer cannot be disconnected whilst abiding by the terms of the payment plan.

Recommendation

13. *That the draft amendments to the Electricity Supply (General) Regulation 2001 (NSW) and the Gas Supply (Natural Gas Retail Competition) Regulation 2001 (NSW) be changed to require that payment plan offers include an invitation to the customer to enter into a payment plan, an explanation that the payment plan will be based, in part, on the customer's capacity to pay, and clearly state that the customer cannot be disconnected whilst abiding by the terms of the payment plan.*

5.2 Notification of terms

The existing Electricity and Gas Regulations provide that customers must be informed of the details of their payment plan including the amount of each instalment, the periods of the payment plan, and the frequency of instalments.²¹ Recognising that financial, health, employment and other circumstances can change and impact on the capacity to adhere to a payment plan, PIAC proposes that the Electricity and Gas Regulations be strengthened to inform customers that they have the right to renegotiate the terms of their payment plan if they experience a demonstrable change in circumstances. PIAC also advocates that suppliers be obliged to give customers details about when payment plans shall be deemed to have been breached and cancelled.

Recommendation

14. *That the draft amendments to the Electricity Supply (General) Regulation 2001 (NSW) and the Gas Supply (Natural Gas Retail Competition) Regulation 2001 (NSW) be changed to require suppliers to inform customers that they have the right to renegotiate the terms of their payment plans if they experience a demonstrable change in circumstances.*
15. *That the draft amendments to the Electricity Supply (General) Regulation 2001 (NSW) and the Gas Supply (Natural Gas Retail Competition) Regulation 2001 (NSW) be changed to oblige suppliers to inform customers of the circumstances in which payment plans shall be deemed to have been breached and cancelled.*

5.3 Support for customers upon reconnection

As noted, PIAC understands that many customers who have been disconnected due to an inability to pay are still likely to be experiencing hardship at the point of reconnection. To minimise the possibility of multiple disconnections, PIAC recommends that the Electricity and Gas Regulations be amended to expressly require suppliers to offer a payment plan to customers seeking reconnection following disconnection due to inability to pay.

Recommendation

16. *That the draft amendments to the Electricity Supply (General) Regulation 2001 (NSW) and the Gas Supply (Natural Gas Retail Competition) Regulation 2001 (NSW) be changed to require suppliers to offer a payment plan to customers seeking reconnection following disconnection due to an inability to pay.*

²¹ Electricity Supply (General) Regulation 2001 (NSW) cl 24.

6. Customer councils

PIAC recognises customer consultative groups or councils as valuable forums for customers to learn and provide feedback about utility supplier policies, programs and procedures. Currently, only standard retail suppliers are obliged to establish a customer consultative group in NSW.²² PIAC submits there would be value in amending the NSW legislative framework to oblige each NSW supplier to form a customer council, to identify the consumer groups to be represented on the council, and to require the preparation of a charter outlining the roles of the council and information on how the council is to operate.

Recommendation

17. That the draft amendments to the Electricity Supply (General) Regulation 2001 (NSW) and the Gas Supply (Natural Gas Retail Competition) Regulation 2001 (NSW) be changed oblige each electricity and gas supplier to form a customer council, to identify the consumer groups to be represented on the council, and to prepare a charter outlining the roles of the council and information on how the council is to operate.

7. Conclusion

PIAC thanks Industry & Investment NSW for the opportunity to provide comments on the draft Electricity Supply (General) Amendment (Customer Hardship) Regulation 2009 and Gas Supply (Natural Gas Retail Competition) Amendment Regulation 2009.

PIAC agrees that there is a need to amend the existing regulatory framework to ensure energy customers experiencing hardship are adequately protected from adverse impacts of the NSW energy reform process and electricity and gas price increases. As such, PIAC welcomes the draft regulation amendments that mandate that suppliers must develop, implement and publish a customer hardship charter and offer customers experiencing hardship two payment plans in writing prior to disconnection. However, PIAC submits that additional amendments must be made to improve the purpose, content and publication of the customer hardship charter and to facilitate access to appropriate payment plans.

PIAC urges Industry & Investment NSW to incorporate its recommendations in amendments to the NSW Electricity and Gas Regulations and also advocate these positions in negotiations with jurisdictional counterparts in the development of the NECF.

²² *Electricity Supply Act 1995 (NSW) s 89.*