



Erosion of integrity?

**Response to the Industry & Investment NSW Policy Paper
on the Implementation of the National Energy Customer
Framework in NSW**

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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; and
- 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 (then) 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 the Industry and Investment NSW for its work on energy and water, 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.

PIAC's work on energy issues

PIAC has, as a key area of work, energy and water policy. The Energy + Water Consumers' Advocacy 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.

1. Introduction

The National Energy Customer Framework (NECF) is part of the national energy reform process endorsed by the Council of Australian Governments (COAG) and progressed by the Ministerial Council on Energy (MCE). The NECF reforms cover key energy retail and network functions and consumer protections such as billing, contracts, and disconnections. PIAC has been an active participant in the development of the NECF, through formal consultations with the MCE and advocacy to government ministers and departmental staff.

PIAC understands that the final iteration of the NECF, incorporating the new National Energy Retail Law (NERL) and National Energy Retail Rules (NERR), will be introduced to the South Australian Parliament in October 2010. Thereafter, NSW will adopt the NECF via local implementation instruments.

To facilitate stakeholder engagement, Industry & Investment NSW has released the *NSW Implementation of the National Energy Customer Framework – Policy Paper for Consultation*. PIAC thanks Industry & Investment NSW for the opportunity to comment on the local implementation of the NECF. PIAC also notes that it is difficult to comment on the adequacy of the NSW Government plan without first having seen the final version of the NECF.

PIAC welcomes the NSW Government's stated commitment to ensure there is no erosion of the integrity of existing NSW consumer protection arrangements in the transition to the NECF¹ and submits that this undertaking should be central to considerations about the adoption of each component of the NECF in NSW. That is, where the implementation of a particular section of the NECF would undermine existing protections for NSW consumers, PIAC contends that the NSW Government should derogate from the NECF.

To promote energy reforms that best serve the interests of NSW consumers, PIAC offers the following comments about the proposed transitional arrangements, maintenance of best practice consumer protections, opt-in arrangements, and the marketing code of conduct.

Recommendations

1. *That there be no erosion of the integrity of existing NSW consumer protections in the transition to the National Energy Customer Framework.*

2. Proposed NSW Transitional Arrangements

2.1 Retail price regulation

PIAC commends Industry & Investment NSW for considering the financial impact of the implementation of the NECF on NSW energy consumers. NSW households were recently subjected to significant energy price rises and further tariff increases are planned for this determination period. Prices are also projected to increase thereafter. PIAC understands that many households are experiencing difficulty coping with these price increases. As such, PIAC agrees that the transition to a new consumer protection framework – one that does not erode existing protections – should seek to minimise the impact on energy customer bills.

¹ NSW Government, *NSW Government Response to the Unsworth Consultative Reference Committee's Impact Statement*, 10 April 2008, 14.

2.2 Small customer threshold

Whilst EWCAP represents the interests of residential rather than business consumers, more broadly, as noted, PIAC works to promote the development of law that reflects the public interest. With this public interest test in mind, PIAC is concerned that the application of the NECF threshold on small business operators will diminish the consumer protections available to some business owners.

PIAC recommends that Industry & Investment NSW maintains the existing NSW requirements until 2013, as proposed, and then retains this threshold into the future.

2.3 Financially responsible retailer model

PIAC agrees that the Industry & Investment NSW proposal to maintain the obligation to supply on geographically based standard retailers during the current price determination is an appropriate approach.

2.4 Regulated retail fees and charges

Industry & Investment NSW has indicated that a key consideration in its comparison of the existing NSW framework and the NECF, is the NSW Government's intention to provide certainty to customers and standard retailers by avoiding any inconsistency between the NECF and IPART pricing decisions. PIAC contends that the NSW Government's abovementioned commitment to ensure there is no erosion of the integrity of existing NSW consumer protection arrangements in the transition to the NECF must also be applied when considering the application of sections of the NECF that relate to regulated retail fees and charges, including late fees, dishonoured payments, and account establishment fees.

2.4.1 Late fees

Acknowledging that late payment fees are not regulated under the NECF, PIAC concurs with the Industry & Investment NSW proposal to maintain the regulated late fees for customers of standard retailers as per the IPART pricing decisions until 2013. PIAC also strongly urges the NSW Government to commit to continue to protect NSW consumers from unrestricted late fees into the future. The application of uncapped late fees from 2013 would represent a marked deterioration of existing consumer protections in NSW and would thus be contrary to the NSW commitment to safeguard these protections.

PIAC does not agree with the Industry & Investment NSW contention that the NECF provisions regarding late payment fee waivers are equivalent to existing NSW arrangements.

As Industry & Investment NSW notes, whilst the NECF introduces a late fee waiver for customers experiencing financial hardship, IPART has determined that NSW customers of standard electricity retailers are exempt from paying late payment fees when they are in receipt of the Energy Rebate; have paid a bill using an energy voucher; have an outstanding complaint with the energy ombudsman; are paying their account under an installment plan; or where the retailer is aware the customer has sought assistance from a community welfare organisation.

PIAC's research into and report on energy disconnections in NSW in 2009, *Cut Off II: The experience of utility disconnections*, reveals that many customers who are disconnected from their energy supply because they can not afford to pay their energy bills are not identified as experiencing financial hardship by their retailer prior to being disconnected. The lack of identification of hardship is in part because many customers are too

embarrassed or afraid to contact their retailer² – as Industry & Investment NSW itself noted in its *Customer Assistance Policy Consultation Draft*³ – or because they do not consider that their retailer has made contact with them in the period prior to disconnection⁴. PIAC submits that the difficulty identifying and contacting customers experiencing financial hardship means that the application of the NECF late payment fee waiver is alone unlikely to represent as strong a protection as is currently available under the existing NSW framework.

In addition, as Industry & Investment NSW notes, customers who have unresolved complaints with EWON will not necessarily be experiencing financial hardship at that time so would no longer be eligible for the late fee waiver available under the NSW framework if the NSW Government chose to adopt this aspect of the NECF.

In light of the abovementioned concerns, PIAC strongly advocates for the application of late payment fee waivers akin to those currently available to NSW consumers, now and into the future. PIAC notes that it would support the application of the NECF provision regarding late fee waivers if it was applied in addition to the existing IPART determined waiver.

PIAC has no issue with the application of the NECF late fee waiver provision for customers on market contracts as it appears that this enhances, rather than erodes, the available protections for NSW consumers with market contracts.

2.4.2 Dishonoured payments

PIAC supports the Industry & Investment proposal to continue the current prohibition on charging a fee for dishonoured non-cheque payments during the existing price determination period but does not support the introduction of such a fee thereafter. PIAC acknowledges that IPART has recommended that the NSW Government amend the *Electricity Supply Act 1995* to permit retailers to charge a dishonour fee for non-cheque payments but notes that the NSW Government has not taken up this recommendation. As such, PIAC urges the NSW Government to adhere to its commitment not to erode the integrity of the *existing* NSW consumer protections and determine not to adopt this NECF provision.

2.4.3 Account establishment fees

Industry & Investment NSW proposes the continuation of existing NSW arrangements, until the end of June 2013, that prohibit standard electricity retailers from charging customers account establishment fees and permit standard gas retailers to only charge gas customers the regulated account establishment fee. PIAC agrees with these proposals. However, PIAC does not support the application of the NECF thereafter. Industry & Investment NSW notes that the NECF does not include explicit provisions regarding account establishment fees. PIAC is concerned that this lack of regulation is likely to see NSW electricity consumers who are currently protected by the regulated charge for gas and regulated lack-of-charge for electricity, worse off. PIAC again notes that this is contrary to the NSW Government commitment not to erode existing NSW consumer protections.

² Connell, J., Hill, W., *Cut-off II: The experience of utility disconnections* (2009) [26] <<http://www.piac.asn.au/publication/2009/02/cut-ii-january-2009>> at 08 October 2010.

³ Department of Water & Energy, *Customer Assistance Policy – Consultation Draft* (2009) [1] <www.industry.nsw.gov.au/energy/files/info_protection_customer_assistance_policy.pdf> at 8 October 2010.

⁴ Connell, above n 2.

2.5 Proscribed payment method

PIAC supports the maintenance of existing provisions that prohibit charging standard customers for proscribed payment methods – including in person, by post, telephone, or direct debit – until 2013. PIAC also supports the continuation of this protection thereafter, as opposed to the application of fees for proscribed payment methods, as made possible under the NECF. PIAC is concerned that low-income earners who are more likely to be without ready access to the Internet are more likely to employ non-electronic transactions that will be more expensive for retailers and in turn attract the largest payment fees.

PIAC acknowledges that the costs incurred by retailers from processing different payment methods are currently borne by all consumers. If the NSW Government determines to apply the NECF provision in question after 2013, PIAC seeks a commitment from the NSW Government to ensure that consumers experience an appropriate reduction in their bills upon the removal of this cost from retailer operational costs in the price determination process. PIAC also submits that, if this aspect of the NECF is adopted, the NSW Government must mandate that retailers disclose the fees applicable for the use of different payment methods.

2.6 Maximum charges for residential customers of exempt sellers

PIAC approves of the Industry & Investment NSW proposal for NSW to retain the requirement for exempt sellers of electricity not to charge small residential customers more than the applicable regulated price until the end of the current electricity price determination period.

PIAC notes that Industry & Investment NSW proposes that NSW implement any non-price related regulation of exempt selling contained in the NECF. PIAC opposes this very broad commitment without a detailed assessment of whether customers of exempt sellers will be better or worse off under the NECF. As noted, the NSW Government has committed to uphold the integrity of existing NSW consumer protections. Particularly given residential park residents represent some of the most marginalised and disadvantaged residents of NSW – as PIAC has repeatedly informed Industry & Investment NSW – PIAC contends that the NSW Government must maintain their existing consumer protections wherever the NECF affords lesser protections.

Recommendations

2. *That, in the transition to the National Energy Customer Framework that does not erode existing protections, the NSW Government seeks to minimise the impact on energy customer bills.*
3. *That, in the transition to the National Energy Customer Framework, the NSW Government maintains the existing NSW small customer threshold requirements until 2013 and beyond.*
4. *That, in the transition to the National Energy Customer Framework, the NSW Government maintains the obligation to supply for geographically based standard retailers during the current price determination period.*
5. *That, in the transition to the National Energy Customer Framework, the NSW Government maintains the regulation of late payment fees until 2013 and beyond.*
6. *That, in the transition to the National Energy Customer Framework, the NSW Government maintains existing late payment fee waivers until 2013 and beyond.*
7. *That, in the transition to the National Energy Customer Framework, the NSW Government maintains the prohibition on charging a fee for dishonoured non-cheque payments until 2013 and beyond.*
8. *That, in the transition to the National Energy Customer Framework, the NSW Government maintains the prohibition on standard electricity retailers charging customers account establishment fees and retains the regulated account establishment fee for customers of standard gas retailers until 2013 and beyond.*

9. *That, in the transition to the National Energy Customer Framework, the NSW Government maintains the prohibition on charging standard customers for prescribed payment methods until 2013 and beyond.*

3. Maintaining best practice consumer protection

3.1 Obligation to offer supply

PIAC agrees with the Industry & Investment NSW assessment that the NECF secures the obligation to supply for NSW gas consumers as well as the existing NSW framework but that the NSW framework secures the obligation to supply for more electricity customers than the NECF. PIAC welcomes the Industry & Investment NSW proposal to retain the existing obligation on standard electricity retailers to offer supply to any connected electricity customer, regardless of the consumption.

3.2 Streamlined disconnection notification

The NECF provides for the introduction of shortened collection cycles. That is, where customers have been late paying their bills on successive occasions, retailers will be able to reduce the number of written disconnection warnings before commencing disconnection proceedings. Currently, there are no such provisions in NSW; households that are unable to pay their bill by the due date always receive two written notices before being disconnected from their energy supply. PIAC is concerned that the introduction of shortened collection cycles will increase the incidence of energy disconnections for NSW households that cannot afford to pay their bills on time.

Industry & Investment NSW has indicated it is unaware of any evidence of the impact of the shortened collection cycle provisions on customers experiencing payment difficulties or on the number of disconnections in two states – Victoria and South Australia – where shortened collection cycles are currently enforced. PIAC submits that the absence of awareness of the existence of evidence in two states that have different shortened collection provisions than proposed under the NECF is not evidence that the application of shortened collection cycles in NSW won't erode the NSW consumer protection framework.

Irrespective of the impact on disconnection numbers, PIAC submits that the advent of shortened collection cycles gives NSW consumers experiencing financial hardship less time to seek and secure the funds necessary to pay their energy bills. As PIAC's research into the experience of disconnections reveals, difficulty paying energy bills does not occur in isolation from other issues; it is often accompanied by ill-health, family breakdown, a loss of employment, and difficulty meeting other financial commitments including rent or mortgage and credit card repayments.⁵ PIAC contends that shortening the period of notification before disconnection is likely to generate additional pressure and hardship for many households already experiencing disadvantage.

PIAC supports the Industry & Investment NSW proposal not to implement shortened collection cycles during the current NSW energy pricing period but contends that this position must be extended beyond 2013.

PIAC acknowledges the proposal to review the impact of the shortened collection cycle on small customers and the rate of disconnection for non-payment to determine whether the shortened collection cycle should be implemented in NSW from July 2013. In the event the NSW Government determines to undertake this review, PIAC advocates for Industry & Investment NSW to convene a working party that includes energy consumer

⁵ Connell, above n 2, 20.

advocates, including PIAC, to determine the terms of reference and methodology for the review. PIAC also advocates that Industry & Investment NSW publicly consults with energy advocates, as part of the review, thereafter.

3.3 Requirement to issue a notice to a customer after disconnection

PIAC rejects the Industry & Investment NSW proposal to discontinue the requirement for retailers to give customers a notice after their premises have been disconnected. As noted above, PIAC's research reveals that the lack of capacity to afford to pay energy bills is often accompanied by other hardship and disadvantage.⁶ Anecdotal evidence from the community sector also indicates that households experiencing such circumstances often do not have the wherewithal to contend with 'windowed envelopes' reminding them of moneys owed and can respond by discarding this information. PIAC contends that the post-disconnection notice currently available in NSW provides valuable information to assist households to respond to disconnection immediately after it has occurred.

PIAC also submits that the requirement to issue a notice to a customer after disconnection should ensure that customers who have been the subject of an incorrect transfer receive information about the disconnection that they would not have received prior to this accidental event.

PIAC notes that, at present, the physical disconnection of a property requires an energy business representative to visit the premises in question and submits that it is unlikely to be prohibitively costly to take this opportunity to deliver a notice to customers upon disconnection.

PIAC expresses a strong preference for the maintenance of the existing obligation on retailers. If the NSW Government is unwilling to accept this position, PIAC posits that, at the very least, Industry & Investment NSW must review the impact of the removal of this consumer protection on NSW households. Moreover, PIAC submits that consumer advocates must be afforded the opportunity to participate in this review.

3.4 Advance notification of variation of prices under market retail contracts

Industry & Investment NSW proposes to abandon the NSW provision that obliges energy retailers to notify customers of upcoming price variations via newspapers and their websites, in the case of customers on standards contracts, and via individual notification in writing, in the case of customers on market contracts. Instead, under the NECF, retailers would be able to comply with obligations to notify customers about tariff changes via a term in the customer contract. PIAC does not support this change.

Industry & Investment NSW states one of the justifications for this proposal is that the maintenance of the existing NSW protection would leave NSW inconsistent with all other NECF jurisdictions. PIAC understands that this is not the case. In mid 2010 the Queensland Competition Authority issued its Final Decision on Amendments to the Electricity Industry Code requiring prior notice for price changes.⁷ This decision recommended that Queensland energy retailers be obliged to give prior notice of price changes via newspaper advertisements or individual written communication. Thereafter, the Queensland Minister for Energy approved these amendments and they came into effect in July 2010.⁸ That is to say, whilst PIAC understands that retailers in

⁶ Ibid.

⁷ Queensland Competition Authority, *Amendments to the Electricity Industry Code* <www.qca.org.au/electricity-retail/industry-code/CodeChanges.php> at 8 October 2010.

⁸ Ibid.

Victoria and South Australia are not required to give prior notification of price changes via newspapers or individual communication, both NSW and Queensland retailers are currently required to do so.

Industry & Investment NSW posits that the current NSW requirement was introduced when customers were not familiar with the competitive retail energy market but that customers now have a greater understanding of energy pricing under market contracts. In response, PIAC notes that the recent IPART price determination concluded that, whilst most customers are aware that they can choose their retailer, evidence suggests many are confused about the relationship between regulated tariffs and negotiated prices.⁹ IPART also noted that customers may enter into a negotiated contract and end up paying more than they would on the regulated tariff and that it is not clear that competition is leading to uniformly better outcomes for consumers. Moreover, PIAC contends that, if customers do have greater understanding of energy pricing, it is in part in response to the requirement to openly notify them of price increases in advance. PIAC submits that the application of the NECF provision may serve to diminish any understanding of energy prices.

PIAC takes this opportunity to note that it is currently undertaking primary research into the experience of rural and regional consumers in the energy market. PIAC requests that Industry & Investment NSW consider the results of this research – to be released early next year – before committing to this NECF provision.

3.5 Termination of a standard retail contract

Industry & Investment NSW proposes that NSW implement the NECF provision that customers have their retail contracts terminated 10 days after being disconnected if they haven't met the requirements for re-connection. Under the existing NSW framework there is no such automatic termination.

PIAC submits that 10 days is an inadequate period for customers who have been disconnected to arrange for assistance to facilitate reconnection. Community sector resource constraints mean that some customers experiencing financial hardship must wait weeks to secure appointments to access community support services such as energy vouchers and financial counselling. PIAC is also concerned that some customers who experience disconnection and cannot arrange reconnection within 10 days but do establish a new account thereafter, may experience unanticipated difficulty with payment arrangements including access to rebates, direct debits and Centrepay because they have a new account number.

PIAC advocates for NSW to maintain the existing state-based arrangement now and into the future.

3.6 Consumer consultative groups

The Industry & Investment NSW policy proposal is to discard the requirement for standard retailers to have a consumer consultative group. PIAC does not support this position.

Consumer consultative groups or customer councils represent a valuable opportunity for consumer advocates to better understand issues relating to the provision of energy services and, as the NSW framework informs, to propose changes to retailer operations for the benefit of residential consumers. PIAC is currently a member of two utility customer councils and has used this role to, amongst other things, successfully advocate for improvements in hardship policies and procedures and the delivery of hardship programs. PIAC has sought similar improvements from other utilities, outside of the customer council framework, but has not been as

⁹ Independent Pricing and Regulatory Tribunal, *Review of regulated retail tariffs and charges for electricity 2010-2013 Final Report* [48] <http://www.ipart.nsw.gov.au/investigation_content.asp?industry=2§or=3&inquiry=196> at 8 October 2010.

successful, in part due to the lack of provision of detailed information accessible to customer council members on account of the protection afforded to retailers through customer council terms of reference.

Industry & Investment NSW notes that maintaining the existing consumer consultative group requirement in NSW would be inconsistent with the national character of the retail energy market. PIAC notes that the obligation in NSW – and perhaps in other states too, noting that other jurisdictions may make this a local requirement – could be realised by retailers adopting a national customer council, including representatives of different jurisdictions, and that this would be entirely consistent with the national character of the market. In the event that NSW was the only jurisdiction to mandate that standard retailers have a customer council, PIAC submits that resourcing and convening a quarterly council meeting would not impose significant additional costs on retailers.

Industry & Investment NSW observes that discontinuing the requirement for a standard retailer to appoint a customer consultative group or council would not prevent retailers from doing so on a voluntary basis. PIAC acknowledges this point but contends that whilst some retailers will choose to convene a consumer consultative group without the obligation to do so, others will be inclined not to do so on the grounds that the regulatory framework did not deem it necessary.

PIAC submits that the adoption of this NECF provision would erode the existing NSW consumer protection arrangement. As such, PIAC urges the NSW Government to support the retention of the existing NSW framework that obliges standard retailers to convene consumer consultative groups.

3.7 Notice requirements – availability of interpreter services

PIAC supports the existing NSW requirement that mandates that retailers include information in community languages about the availability of interpreter services and telephone numbers for these services in certain notices to customers. PIAC thanks Industry & Investment NSW for proposing to retain this obligation.

3.8 Apportionment of bill payments

PIAC views the NECF provision relating to the apportionment of bill payments as an improvement on the NSW approach. PIAC supports the discontinuation of the NSW requirement.

3.9 Interest on overcharged amounts

The existing NSW arrangement obliges retailers to pay interest to customers when payments are made based on bills that overcharge customers by \$25 or more. This contrasts with the NECF that does not require the payment of interest. Industry & Investment NSW posits that, because the interest payable on overcharged amounts in NSW is minimal, the NECF framework is sufficient to avoid overcharging. PIAC suggests that interest payments may be minimal at present precisely because this provision incentivises retailers not to overcharge customers and to work to correct billing problems promptly.

PIAC supports the retention of the existing NSW requirement.

3.10 Estimated meter reads

PIAC notes that the Second Exposure Draft of the NECF provides that energy companies must only read customer energy usage meters once every 12 months. That is, each year, three out of four quarterly energy bills received by customers could be based on an estimation of the energy consumed rather than the actual energy used during the period. By contrast, PIAC understands that the NSW regulations oblige energy companies to physically read meters at least every six months.

PIAC is concerned that the NECF provision will mean some customers will receive consecutive bills based on an underestimation of usage followed by a higher than anticipated bill, to offset the underestimations, once the meter has actually been read. In some cases, customers will experience difficulty paying these unexpectedly larger bills. To minimise the likelihood of such adverse outcomes for NSW consumers, PIAC advocates for NSW to continue to regulate that meters be read at least every six months.

3.11 Licencing

PIAC notes that, under the NECF, retailers may apply to the Australian Energy Regulator (AER) for a transfer of retailer authorisation. The AER must not grant authorisation unless it is satisfied that the transferee satisfies the entry criteria and arrangements relating to the transfer will appropriately manage any issues concerning the customers of the transferor. PIAC understands that the AER is not required to publish a notice setting out a copy of the application and stating that written submission about the application may be made to the AER.

This contrasts with the current NSW arrangements which require that, before determining an application for a retail licence or for the transfer of a licence, the Minister must cause notice of the application to be published in the Government Gazette; must indicate where submissions regarding the application should be lodged; and must give due consideration to matters arising from any submissions.

PIAC contends that NSW consumers are better served when afforded the opportunity to engage in the licencing transfer process and objects to the loss of this consumer protection in the transfer to the NECF.

Recommendations

10. *That, in the transition to the National Energy Customer Framework, the NSW Government retains the existing obligation on standard electricity retailers to offer supply to any connected electricity customer, regardless of consumption, until 2013 and beyond.*
11. *That, in the transition to the National Energy Customer Framework, the NSW Government does not implement shortened collection cycles before or after 2013.*
12. *That, if the NSW Government decides to undertake a review of the impact of shortened collection cycles as part of the transition to the National Energy Customer Framework, Industry & Investment NSW convenes a working party that includes energy consumer advocates, including PIAC, to determine the terms of reference and methodology for the review and consults with energy advocates thereafter.*
13. *That, in the transition to the National Energy Customer Framework, the NSW Government maintains the existing obligation on retailers to give customers a notice after their premises have been disconnected, until 2013 and beyond.*
14. *That, in the transition to the National Energy Customer Framework, the NSW Government maintains the existing obligation on retailers to notify customers of upcoming price variations via newspapers and their websites, in the case of customers on standards contracts, and via individual notification in writing, in the case of customers on market contracts, until 2013 and beyond.*
15. *That, in the transition to the National Energy Customer Framework, the NSW Government maintains the existing regulatory arrangement that does not terminate a standard retail contract 10 days after disconnection, until 2013 and beyond.*
16. *That, in the transition to the National Energy Customer Framework, the NSW Government maintains the obligation on standards retailers to convene customer consultative groups, until 2013 and beyond.*

17. *That, in the transition to the National Energy Customer Framework, the NSW Government maintains the existing requirement for retailers to include information in community languages about the availability of interpreter services and telephone numbers for these services in certain notices to customers, until 2013 and beyond.*
18. *That, in the transition to the National Energy Customer Framework, the NSW Government adopts the NECF provision regarding apportionment of bill payments.*
19. *That, in the transition to the National Energy Customer Framework, the NSW Government maintains the existing obligation for retailers to pay interest to customers when payments are made based on bills that overcharge customers by \$25 or more, until 2013 and beyond.*
20. *That, in the transition to the National Energy Customer Framework, the NSW Government maintains the existing requirement for energy meters to be physically read at least every six months, until 2013 and beyond.*
21. *That, in the transition to the National Energy Customer Framework, the NSW Government maintains the existing requirement that stakeholders have the opportunity to make submissions on applications for licence transfers, until 2013 and beyond.*

4. NSW opt in arrangements under the NECF

4.1 Price comparison service

In response to a recommendation from the IPART electricity price determination, the NSW Government committed to develop an online price comparator service and the *myenergyoffers* website was launched in October of this year. Whilst the NECF also includes provisions for the development of a price comparator service, the AER is yet to develop retail pricing information guidelines or a price comparison service.

PIAC agrees with Industry & Investment NSW that, as it is not possible to compare the NECF and NSW requirements, NSW should retain the existing provisions relating to the price comparator service at least until such time as the Ministerial review of the NSW service is undertaken. PIAC takes this opportunity to express its interest in participating in this review.

4.2 Small compensation claims regime and consumer guarantees

The NECF includes a small compensation claims regime that allows customers of jurisdictions that opt-in to the scheme to claim compensation from distributors following a claimable incident. Industry & Investment NSW proposes that there is no need for NSW to opt-in to the scheme as the existing NSW arrangements are similar to those under the new Australian Consumer Law that will apply from 2011.

Given Victoria is the only jurisdiction with a small compensations claims regime, PIAC sought feedback from Victorian consumer advocates about the value of adopting such a regime in NSW. PIAC was informed that the introduction of the Victorian Electricity Industry Guideline No. 11 Voltage Variation Compensation served to markedly reduce disputes about compensation. PIAC also understands that accessing the scheme is likely to be simpler and cheaper than making a claim through the Consumer, Trader and Tenancy Tribunal.

PIAC favours the adoption of the small compensation claims regime for NSW and urges the NSW Government to opt-in to this part of the NECF.

4.3 Prepayment meter systems

PIAC opposes the introduction of prepayment utility meters because they deny consumers access to essential consumer protections and financial assistance, including the availability of payment plans, deferred payments, and disconnection notification requirements. PIAC is also concerned about the prospect of vulnerable and disadvantaged consumers being coerced into using prepayment meters as a debt management tool and that disconnection from prepayment meters due to lack of capacity to pay is likely to be concealed and go unreported.

PIAC agrees with the Industry & Investment NSW proposal not to opt-in to the NECF provisions that provide a regulatory framework for the introduction of prepayment meter systems.

Recommendations

22. *That, in the transition to the National Energy Customer Framework, the NSW Government determines not to opt-in to the Australian Energy Regulator price comparator framework, at least until such time as the Ministerial review of the NSW service has been undertaken.*
23. *That, in the transition to the National Energy Customer Framework, the NSW Governments determines to opt-in to the small compensation claims regime.*
24. *That, in the transition to the National Energy Customer Framework, the NSW Government determines not to opt-in to the regulatory framework for the introduction of prepayment meter systems.*

5. NSW Energy Marketing Code of Conduct

PIAC supports the proposed amendments to the NSW Energy Marketing Code of Conduct as outlined in the Industry & Investment NSW policy paper but for the removal of the requirement for marketers to ‘cease marketing’ if a customer indicates they do not wish to proceed. Whilst the proposed code refers to the need for marketers to not contact consumers for marketing purposes for at least 30 days upon being informed that the customer does not wish to proceed, PIAC is concerned that the absence of direct reference to desisting from marketing at that time – which is part of the current marketing code – could leave consumers vulnerable to coercive behaviour by marketers to secure agreement before they are obliged not to return for 30 days.

PIAC contends that it is essential that consumer protections relating to marketing of energy services are not undermined, particularly given, as IPART notes in its current electricity price determination, low-income households and pensioners are proportionately more likely to be offered and accept negotiated contracts.¹⁰ Acknowledging this, together with the fact that the final iteration of the NECF is yet to be publicly available, PIAC recommends that Industry & Investment NSW undertakes a detailed and public review of the NSW and final NECF marketing provisions before determining whether NSW will discontinue the NSW specific code. In the event that the NECF provisions are found to erode the marketing consumer protections available to NSW consumers, PIAC advocates for the retention of the NSW provisions.

Recommendations

25. *That, in the transition to the National Energy Customer Framework, the NSW Government adopts the amended NSW Marketing Code of Conduct, with the additional obligation on marketers to cease marketing where customers indicate they do not wish to proceed, before 2013.*

¹⁰ Ibid.

26. *That, in the transition to the National Energy Customer Framework, the NSW Government undertakes a comparison of the final NECF and NSW marketing provisions, and only adopts the NECF provisions if they are found not to erode the provisions in the existing NSW framework.*

6. Conclusion

PIAC thanks Industry & Investment NSW for the opportunity to comment on the *NSW Implementation of the National Energy Customer Framework – Policy Paper for Consultation*.

PIAC acknowledges that, in some instances, the NECF affords consumers the same or better protection than is currently available in NSW. However, PIAC also recognises that there are notable provisions that would, if adopted, undermine existing protections and lead NSW consumers to be worse off than they would be if they remained protected by the existing local framework.

PIAC is concerned to learn that Industry & Investment NSW proposes to adopt some of these lesser protections and strongly urges the NSW Government to comply with its public commitment not to erode the integrity of the existing NSW consumer protection framework in the transition to the NECF.

PIAC takes this opportunity to note that participation in this consultation has been hampered by the lack of access to the final iteration of the NECF and also that the consultation paper did not contend with all aspects of the proposed national framework. Acknowledging that the final version of the NECF will be released later this month and that NSW is not proposing to adopt the bulk of the NECF until at least July 2011, in the interests of transparency PIAC requests that Industry & Investment NSW undertakes and releases a subsequent, clause by clause comparison of the final NECF and NSW frameworks, and provides stakeholders with another opportunity to provide comment on concerns about aspects of any part of the NECF that is deemed to erode the NSW consumer protection arrangements.