



Supporting innovation in consumers' interests:

Submission in response to Energy Market Reform Working Group paper 'New Products and Services in the Electricity Market'

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**Dr Gabrielle Kuiper, Senior Policy Officer,
Energy + Water Consumers' Advocacy Program**

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 (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 Trade and Investment, Regional Infrastructure and Services NSW for its work on energy and water, and from Allens 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.

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;
- Ethnic Communities Council NSW;
- Salvation Army;
- St Vincent de Paul Society;
- Physical Disability Council NSW; and
- Tenants Union.

1. The current state of consumer protections

The Public Interest Advocacy Centre Ltd (PIAC) is pleased to have the opportunity to respond to the Energy Market Reform Working Group's consultation paper 'New Products and Services in the Electricity Market'. This paper begins an important discussion about the overall question as to:

Whether the regulatory frameworks that govern the NEM are appropriate in the context of new products and services being offered to small electricity customers.

There are no easy answers to this question. However, there is ample evidence that the current customer protections are failing, for example:

- Very high levels of debt (\$8,000-\$10,000) are not uncommon (according to Energy Ombudsmannen)
- Only 20% of customers are successfully completing hardship plans every year¹
- Complaints to the Energy and Water Ombudsman of NSW (EWON) have doubled over the last five years.²

While these examples are in part related to the significant price rises of the last five years, they suggest that consumer protections are currently inadequate, without even taking into account new products and services.

PIAC was pleased, therefore, to learn that a review of the National Energy Consumer Framework (NECF) is being planned for later in 2015.

PIAC suggests that in the NECF review, consideration be given to developing an enforceable energy-related code to complement the Australian Consumer Law (ACL), rather than amending the NECF. If such an approach were taken, the new code would need to include dispute resolution provisions, as the ACL does not provide these.

Recommendation 1

That in the review of the NECF, the COAG Energy Council considers an energy-related code (including dispute resolution provisions) to complement the Australian Consumer Law, rather than amending the NECF.

1.1 A vulnerability-based approach

PIAC suggests the consumer protections in the energy market should be developed using an inclusive understanding of consumer vulnerability. Citizens Advice in the UK considers that the essential factors in inclusive services are:

- Choice of access method for service users and customers.
- A preventative approach.
- Proactive approach to identifying vulnerability.
- Appropriate support targeted to the user's needs.
- An enabling approach to service users and customers.

¹ AER, 'State of the Energy Market 2014', (Report, Australian Energy Regulator, 2015), p 139.

² EWON, 'Annual Report 2013/14' (Report, Energy and Water Ombudsman NSW, 2014).

- Willingness to help resolve problems.
- Accurate recording of personal information, establishing follow-up procedures and early investigation of non-compliance.
- Respect for and trust in intermediaries/advocates.
- Appropriate data-sharing to improve customer service.
- Engaging one agency to coordinate access for very vulnerable people.³

European legislation includes a Directive designed to fill current and future gaps in consumer protection law and provides specific requirements for the protection of vulnerable consumers.

Recommendation 2

That the COAG Energy Council takes a vulnerability-based approach to improving consumer protections in the review of the NECF.

1.2 The importance of innovation

At the same time, it is important that consumer protections do not create barriers to innovation as new products and services can support greater consumer choice and engagement and reduce costs. There are already multiple barriers to innovation in the energy market such as:

- increases to fixed charges (which penalise prosumers – consumers who generate their own electricity)
- the lack of solar feed-in tariffs that reflect the true benefits of rooftop solar electricity
- the lack of a Demand Response Mechanism in the wholesale market
- the low level of demand management being undertaken by network businesses
- the relatively low take up of smart grid technologies by networks
- the lack of smart meters (except in Victoria)
- the inability to export from storage and automatic approval for PV systems under 30kW that are unable to export to the grid in Queensland⁴
- consumers in Victoria being told either that they cannot install systems, or will have to downsize the number of modules. There is anecdotal evidence this is also happening in other states⁵
- no mechanism for consumers to buy and sell excess distributed generation without a retail licence (i.e. no ‘virtual net metering’ or equivalent provision)
- no clear regulation of networks investment in or use of PV and storage.

It is in consumers’ interest that these and other barriers to innovation and deployment of new products and services are removed. PIAC urges the COAG Energy Council to prioritise support for innovative products and services that can reduce costs for consumers, for example, by ensuring the Demand Response Mechanism is extended to household consumers over time.

³ Lizzie Iron and Christie Silk, ‘Access for all: The importance of inclusive services’ (Report, Citizens Advice, 2011)

⁴ In 1 July 2014, a new connection standard for Small Scale Parallel Inverter Energy Systems (IES) up to 30kVA was introduced. Any rooftop solar system under 30kW will gain automatic approval from the networks, as long as it has equipment installed that can prevent it from exporting electricity back into the grid.
<https://www.energex.com.au/contractors-and-service-providers/solar-pv-installers/new-inverter-energy-systems-ies-connection-standard>

⁵ <http://reneweconomy.com.au/2013/australian-utilities-erect-barricades-in-bid-to-halt-solar-storm-91715>

2. Which products and services

The consultation paper discusses supply services, demand management services and energy information as three ‘markets’ of new products and services.

In PIAC’s view, the distinction between NEM grid-connected and AER-relevant contracts and ‘behind the meter’ technologies is the key principle for defining difference and regulating differentiated responsibilities.

Supply behind the meter (including from storage) and demand management have the equivalent impact of reducing supply from the grid. The ‘primary’ source of energy, in the sense of the largest proportion of energy supply to a customer, may or may not be via the NEM network. The retail NEM-related contract is, nonetheless, the primary contract because it enables the NEM connection and, as such, the provision of an essential service and associated consumer protections.

As the AER paper on *Regulating innovative energy selling business models under the National Energy Retail Law*⁶ makes clear a ‘key difference is the impact disconnection of energy services would have on a customer’.

PIAC is not convinced that ‘energy information’ needs to be defined as a separate service to ‘behind the meter’ or any other information provision service.

There is also an additional market of off-grid services that should be differentiated for the purpose of regulation, including consumer protection legislation and regulation.

Recommendation 3

That the categories of energy services (new and emerging) be defined as grid-connected, behind the meter or off-grid.

3. Principles for inclusion in the NEL or NER

PIAC is not convinced that the principles proposed in the consultation paper:

1. it affects the operation of or confidence in the wholesale electricity market;
2. it is a monopoly activity; or
3. it affects power system quality, safety, reliability and security (referred to as ‘power system operations’ in the rest of this paper⁷).

are the optimal way to identify whether a product or service should be drawn into the NEL or NER, especially as only the last of these principles focuses on the consequences for consumers. PIAC recommends that further consideration be given to the most appropriate principles, and suggests they could be based on the concept of grid-connectivity (which could include micro-grids). Grid-connectivity means that a facility interacts with other electricity generating or consuming facilities and so there are ‘system’ consequences; perhaps this should be the principle

⁶ AER, ‘Regulating innovative energy selling business models under the *National Energy Retail Law*’ (Issues Paper, Australian Energy Regulator, 20154).

⁷ ‘Power system security’ has a specific meaning in the NER, and we are interested in a wider range of issues in this paper.

for inclusion in the NEL or NER. This could be further explored in the review of the NECF later in the year.

4. Consumer protections

4.1 Principles

The principle proposed in the consultation paper for inclusion in the NECF:

Energy-specific consumer protections are required when a product or service impacts on a customer's access to a reliable, safe and high-quality supply of energy on fair and reasonable terms.

is reasonable. However, it is insufficient as it does not take into account vulnerability. PIAC suggests that a further principle related to vulnerability is required. PIAC suggests a principle such as:

Energy-specific consumer protections should protect and empower customers in vulnerable situations in the energy market and to ensure equality of access to market benefits.

which is based on the objective of Ofgem's consumer vulnerability strategy⁸. The definition of vulnerability used by Ofgem is:

vulnerability is when a consumer's personal circumstances and characteristics combine with aspects of the market to create situations where he or she is:

- Significantly less able than a typical consumer to protect or represent his or her interests in the energy market; and/or
- Significantly more likely than a typical consumer to suffer detriment, or that detriment is likely to be more substantial.

4.2 Alternative sellers

PIAC supports the view expressed in the consultation paper that:

we do not consider that fundamental changes to the National Electricity Law and Rules are needed to support the entry of most new products and services in the electricity supply market

especially given the importance of innovative products and services to empowering consumers to be more active participants in the energy system.

PIAC's view is that there should be differentiated consumer protections, depending on whether the energy service is grid-connected, behind the meter or off-grid – as set out in our attached submission to the AER's issues paper 'Regulating innovative energy selling business models under the *National Energy Retail Law*'.

⁸ Ofgem, 'Consumer Vulnerability Strategy' (Strategy, Ofgem, 2013), available: <https://www.ofgem.gov.uk/ofgem-publications/75550/consumer-vulnerability-strategy.pdf>

4.3 Off-grid customers

Different considerations and in some cases different protections will be required for off-grid customers. PIAC supports the ATA's view that particular attention should be given to performance guarantees and that additional information requirements should be developed to ensure consumers are fully informed about the risks and benefits of living with a stand alone power system⁹.

4.4 Demand management

It seems unlikely that demand management will result in significant consumer protection issues for residential consumers, given the way in which energy efficiency and demand management work in commercial and industrial contexts. Informed consent obligations should be similar to those required of retailers and distributors.

4.5 Energy information and privacy

PIAC shares the Consumer Action Law Centre's concerns¹⁰ that the Australian Privacy Principles (APPs) enshrined in the *Privacy Act 1998 (Cth)* may not apply to emerging energy or energy information businesses. PIAC recommends the COAG Energy Council investigate how the APPs could be brought to bear on the use of metering data by third parties.

Recommendation 4

That the COAG Energy Council investigate how the Australian Privacy Principles apply to the use of metering data by third parties.

⁹ Craig Memery, ATA, Presentation to the Innovative Products and Services workshop, Melbourne, 12 March.
¹⁰ Set out in CALC, 'Smart Moves for a Smart Market' (Report, Consumer Action Law Centre, 2014).