



Beauty and the beast: Consumer protections in the complex world of behind the meter systems

**Submission in response to the COAG Energy Council's
Consultation on Consumer Protections for Behind the Meter
electricity supply**

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Introduction

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 NSW Trade and Investment 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 and Water Consumers' Advocacy Program

The Energy + Water Consumers' Advocacy Program (EWCAP) represents the interests of low-income and other residential consumers of electricity, gas and water in New South Wales. 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 of NSW;
- The Salvation Army;
- Physical Disability Council NSW;
- Good Shepherd Microfinance;
- Affiliated Residential Park Residents Association;
- Financial Rights Legal Centre; and
- Tenants Union of NSW.

Consumer Protections for Behind the Meter electricity supply

PIAC welcomes the opportunity to comment on the COAG Energy Council's consultation paper: *Consumer Protections for Behind the Meter electricity supply*. The purpose of the consultation paper is to identify the consumer protections that should apply to behind the meter products and services. This consultation presents a timely and much-needed opportunity to revisit consumer protections at a time when new products and services are emerging that are not covered by the energy-specific protections under the *National Energy Customer Framework* (NECF).

Electricity is indispensable to consumers' health and wellbeing, and enables them to fully participate in modern day society. As the price of new technology drops and increasing numbers of consumers adopt cheaper means of generating and/or storing electricity supply behind the meter, a critical issue is whether they will have access to adequate consumer protections for their energy supply.

In a market that is evolving towards distributed generation, it is essential that regulation facilitates consumer access to the benefits of new technology while providing adequate consumer protections. Consumers are more likely to engage with new products and services if they are afforded the certainty of effective consumer protections, and understand the benefits and risks of the product offering. Given the complexity of new products and the increased risks borne by consumers, there is great potential for consumer detriment to occur if an appropriate safety net of fundamental, energy-specific consumer protections is not in place.

In this submission, PIAC argues that these protections should include explicit informed consent, strong information disclosure and provision requirements, access to free and independent external dispute resolution, and the right to access the grid.

PIAC's response to the consultation paper is based on two key principles. First, energy-specific consumer protections and regulation are needed for new energy products and services. Secondly, a 'one size fits all' regulatory approach is burdensome in an evolving market of differentiated products and services. Rather, it would be more effective to take a flexible and differentiated regulatory approach that delivers an appropriate level of consumer protections for each class of product or service. The level of regulation should be linked to the nature of the commercial relationship between the consumer and owner of the behind the meter system, the role or functionality of the system, and the level of dependence on the system for continuous supply. This ensures that the level of regulation remains proportional to the level of risk assumed by the consumer, and that the right level of regulatory obligation to deliver consumer protections is imposed on the appropriate party.

We have also used the recommendations from the Consumer Action Law Centre's recent *Power Transformed* report as a reference point. The report proposed three main principles to guide market reform:

- It should be easy for people to engage and make effective decisions
- Appropriate consumer protections should be applied to all energy products and services
- The benefits of a transforming market should be shared across the whole community.¹

¹ Consumer Action Law Centre, 'Power transformed: Unlocking effective competition and trust in the transforming energy market', July 2015, 8.

Objectives

What objectives, beyond the Energy Council's general objective, should be held in mind in addressing regulatory arrangements for behind the meter electricity systems?

The Australian Energy Market Agreement states that the Energy Council's overarching objective is to promote 'the long-term interests of consumers with regard to the price, quality and reliability of electricity and gas services'.

PIAC agrees with the Energy Council that energy consumers include consumers who are served by the grid as well as those served by behind the meter systems.² This is an inclusive approach and as more consumers adopt new technology and vary their reliance on grid-supplied electricity, it is crucial that their interests are included and considered in policy and regulatory decision-making. The issues of price, quality and reliability of supply are equally as pertinent to these consumers as those in traditional grid supply arrangements.

However, as PIAC has previously argued³, key energy market institutions such as the Australian Energy Market Commission have interpreted the 'long-term interests of consumers' with an economic bias that primarily focuses on the economic efficiency of the energy market. It is argued that an efficient energy market is one that is in the long-term interests of consumers. PIAC considers that this is a narrow interpretation that strips social and environmental considerations from consumers' interests, such as affordability, energy efficiency, renewable energy and climate change.

Renewables and battery storage will be significant drivers of ecological sustainability and demand-side management, and will provide consumers with an increasing array of sustainable energy supply options. Equally, consumers must be provided with affordable and cost-effective access to innovative technology if the energy market is to incentivise mass uptake of this technology. It is therefore entirely appropriate for the Energy Council to broaden its policy remit and consider social and environmental, in addition to economic, objectives when making decisions that promote the long-term interests of consumers.

Recommendation 1

PIAC recommends that the Energy Council adopt a broader interpretation of 'long-term interests of consumers' in this consultation, and include social and environmental objectives when considering the needs of consumers in a market transformed by behind the meter systems.

Definition of behind the meter electricity system

Is the behind the meter electricity system definition appropriate for our purposes?

The consultation paper defines a behind the meter electricity system as 'a product that can provide electricity at the site for on-site use in a home or other building' that is located 'literally

² COAG Energy Council, 'Consumer Protections for Behind the Meter electricity supply: Consultation on regulatory implications', 19 August 2016, 6.

³ Public Interest Advocacy Centre, [*From complex fragments to competitive consumer-focused markets*](#), 7 May 2015, 32-36.

“behind the meter”, on the owner’s property’.⁴ The paper envisages that this would include a wide range of products used by both large and small electricity customers, including a solar PV system, battery storage unit, co-generation plant and small-scale generators.

PIAC considers that this definition is too restrictive and needs to be broadened to include products *and* services. Batteries can be classified as either a supply product or demand management service. Additionally, energy management services such as load control enable a third party to interfere with supply within the home, such as the ability to remotely turn off a smart air conditioner during critical peak demand. This has the potential to impact on household usage needs and the level of supply available behind the meter. We recommend that the Energy Council broaden the proposed definition and we suggest the following revised wording: ‘a product behind the meter that can provide electricity at the site for on-site use in a home or other building, or a service behind the meter that can impact supply’.

In PIAC’s view, a broad definition is key to developing an inclusive regulatory framework that allows all new products and services to fall within its remit as the market evolves. This ensures that appropriate consumer protections apply to new products and services as they emerge, so that consumers are not signing up to offerings in a regulatory vacuum and consumer detriment is prevented before it occurs.

PIAC also notes that the consultation paper suggests the proposed definition ‘may capture electricity supply to more than one consumer located on one site, for example a number of consumers on a single site such as in a high rise building’.⁵ If the paper is alluding to embedded networks, we note that the AER *Retail Exempt Selling Guideline* already provides a set of core consumer protections that largely reflects NECF protections. PIAC considers that the critical gaps in the regulatory framework for exempt sellers and networks are access to free and independent external dispute resolution, and access to retail competition. We understand these are priority issues that are the subject of current consultations, such as the AER review of the *Network Service Provider Registration Exemption Guideline*. As the issue of consumer protections in exempt selling arrangements has largely been or is currently being addressed in separate consultations, PIAC will not focus on this area in our submission.

In defining a behind the meter system, is it important to consider other factors about the system such as:

- a) the ownership model**
- b) the role of the system**
- c) the number of customers supplied**

PIAC considers that these factors are more useful in determining the level of protection needed for the range of behind the meter systems, rather than the definition.

⁴ COAG Energy Council, above n 2, 6.

⁵ Ibid 6.

Is it important to consider behind the meter electricity systems for small and large customers for our purposes?

PIAC considers that large electricity customers are generally in a much stronger position to negotiate the terms and conditions of their supply arrangement and have the financial means to resolve contractual disputes. This is reflected in the NECF, which provides protections only for residential and small business customers, as well as the ACL, which focuses on consumers spending less than \$40,000. In this vein, we believe that this consultation should focus on delivering appropriate consumer protections for residential and small business customers.

Recommendation 2

PIAC recommends that the Energy Council broaden the proposed definition of a behind the meter system to include services that can impact supply.

Recommendation 3

PIAC recommends that the Energy Council focus on residential and small business customers for the purposes of identifying appropriate consumer protections for behind the meter electricity systems.

Deployment scenarios and ownership models

Are there any unique regulatory challenges that are presented by the different deployment scenarios?

Are there any unique regulatory challenges or consumer protection issues that are presented by the different ownership models?

In PIAC's view, the key regulatory challenge in delivering fit-for-purpose regulation is to ensure that there is an appropriate level of consumer protection suited to each type of supply arrangement, having regard to:

- the purpose of the behind the meter system
- the nature of the commercial relationship between the consumer and the owner of the system
- the consumer's level of dependence on the system for continuous supply.

PIAC contends that 'one size fits all' regulation is ineffective for a highly differentiated market. A consumer using a small-scale generator for temporary back-up supply will most likely not need regulation beyond the ACL with regard to consumer protections. Conversely, more stringent regulatory requirements are needed where consumers are solely or primarily dependent on their behind the meter system for supply, or where they did not have an alternative supply arrangement to choose from (for example, tenants moving into a property that is off-grid). In these scenarios, it is critical that the key consumer protections, including access to the grid, reliability of supply and explicit informed consent are as close to the NECF protections as possible, and that information provision requirements are sufficiently robust (this is discussed later).

Recommendation 4

PIAC recommends that the Energy Council adopt a differentiated regulatory approach to consumer protections, where supply arrangements that involve a higher risk of consumer detriment reflect the need for stronger consumer protections and regulation.

Competition

What are the issues for behind the meter electricity systems and competitive neutrality?

PIAC considers that strong and effective consumer protections for behind the meter systems are needed to prevent consumer detriment and build consumer confidence in emerging products and services. We consider a thorough consumer protections regime is necessary in light of the:

- complexity of energy technologies and contractual arrangements
- inequalities in bargaining power between suppliers and small consumers
- limited dispute resolution avenues outside of the NECF
- lack of consumer understanding of the risks associated with moving away from grid supply and the suite of protections available under the NECF.

PIAC agrees with the Energy Council that this needs to be balanced with the principle that consumer protections do not create barriers to innovation and hinder the development of effective competition in behind the meter products. New products and services can facilitate greater consumer choice and help consumers reduce energy costs in the long run. However, the energy market only provides effective outcomes for consumers when they understand the choices they have and the decisions they make are appropriate for their energy needs. Hence, it is imperative that regulation facilitates availability of new products and services while providing sufficient consumer protections.

Could different regulatory environments for consumer protections associated with electricity supply products and services be justified based on:

- a) the service provided?
- b) the ownership model?
- c) other?

It is critical that new products and services are developed in conjunction with energy-specific consumer protections. PIAC's view is that different levels of regulation are needed for a market that is differentiated by the service provided and ownership model. We consider it may be effective to build on a single energy-specific framework that enables different levels of regulation in proportion to:

- the nature of the commercial relationship between the consumer and owner of the behind the meter system
- the role or functionality of the system, and
- the consumer's level of dependence on the system for continuous supply.

Such a differentiated approach is not new; for example, the AER *Retail Exempt Selling Guideline* is built around the delivery of varying levels of core consumer protections for different types of exempt supply arrangements, plus supplementary and more tailored conditions for certain exempt selling models. This approach provides flexibility and allows regulation to remain fit-for-purpose for new products and services, while ensuring that consumers have an appropriate level of protection, depending on their supply arrangement.

Are there particular consumer protections that need to be consistent for competition or to protect a consumer [from] harm that has the potential to arise in all circumstances, for example dispute resolution?

Electricity is an essential service that enables consumers to participate in society and is central to their health and wellbeing. As the energy market becomes more consumer-centric and consumers are increasingly making choices about the nature of their electricity supply, consumers need to be able to make informed decisions about the risks and the value proposition of new technology. In PIAC's view, this demands a core set of energy-specific consumer protections that go beyond the general protections afforded in the ACL. It is critical that these protections apply to all energy consumers irrespective of their supply arrangement, and cannot be traded away. These fundamental protections include:

- Explicit informed consent is obtained from the customer prior to sign up
- Strong information provision requirements, including plain language and standardised critical information summaries
- Access to free, independent and timely external dispute resolution
- The right to access the grid for consumers in off-grid supply arrangements.

We will elaborate on these protections in our responses to more targeted consultation questions below.

How can we ensure that regulatory requirements to provide consumer protections are imposed on the appropriate party?

PIAC agrees with the Energy Council's concern that consistent protections across all the different behind the meter scenarios could present a barrier to competition and innovation.⁶ In lieu of a 'one size fits all' approach, PIAC considers that the level of regulation and consumer protection should differ for each type of supply arrangement (discussed above). We expect that this differentiated approach should assist in determining the appropriate level of obligation to be applied to each party.

A strong enforcement regime is necessary to ensure that businesses meet their requirements to deliver consumer protections to consumers. PIAC recommends that the Energy Council consider enforcement options as a strong consumer protections framework can be rendered ineffective by weak enforcement.

⁶ Ibid 8.

Recommendation 5

PIAC recommends that explicit informed consent, information provision, access to free and independent external dispute resolution, and the right to access the grid are fundamental consumer protections that should apply to all energy consumers.

Recommendation 6

PIAC recommends that a differentiated regulatory approach to consumer protections would assist in determining the appropriate level of obligation to be applied to each party.

Recommendation 7

PIAC recommends that the Energy Council consider options for an appropriate enforcement regime to ensure that consumer protections are delivered to consumers.

Asymmetric information

Do you agree that risks of this nature may exist to consumers of behind the meter electricity systems?

Do you believe consumers would receive sufficient information to enable them to make considered decisions regarding behind the meter electricity systems? Or are consumer protections required regarding information provision?

What information should be provided to consumers regarding the nature of behind the meter electricity systems, before signing up to them? Does this level of information change as product offerings become more complex?

Do you consider that consumers of all behind the meter supply electricity systems should be given clear information about the implications of their supply choice, including clearly demarcating the protections available under the NECF for grid supply?

Should there be further information provided to consumers if they are only reducing their reliance on the network (considering this did not happen for solar customers)? Should this be different if the electricity system completely removes the consumer from the grid?

PIAC agrees with the risks outlined in the consultation paper.⁷ The asymmetry in information held by businesses and consumers about energy products and services leaves consumers in a weaker bargaining position, with little or no means of understanding the full details of the product offering. The imbalance exposes consumers to significant disadvantage if businesses engage in poor marketing practices or provide insufficient or irrelevant information. When this happens, it is generally unlikely that consumers will receive the information they need to make effective decisions.

These risks are likely to exacerbate as products and services become more complex and new types of contractual arrangements appear. These contractual arrangements are often difficult for

⁷ Ibid.

consumers to understand, due to the number of contracted or subcontracted parties involved. Contractual obligations are not always transparent or comprehensible to the average lay person. For example, there are already solar agreements that depend on sub-contracted parties to provide important services such as delivery, installation and maintenance. Additional contracts providing third party finance are also available to consumers to fund the (often high) capital cost of acquiring new technology. These contracts can often be long-term and binding on the consumer for one or two decades. It is therefore crucial that consumers understand the financial and legal risks involved in servicing long-term contracts, including additional charges payable when circumstances change. PIAC considers that businesses must disclose information about fees and charges associated with move-outs or system relocation, as well as the legal consequences of the consumer selling their property including the system, or the supplier exiting the market.

Moreover, consumers may purchase different parts of a behind the meter system from different suppliers. The average consumer may not understand the technicalities of these parts and their compatibility. Without adequate information, there is a risk that consumers spend significant amounts of money in putting together a system that does not work, is sub-optimal or fails to meet their energy needs.

Consumers therefore rely on clear, reliable and easily accessible information in order to make an informed decision about the value proposition and suitability of these systems. It is unreasonable to expect consumers, who are often time-poor, to request specific information that they are unlikely to know they need. The onus of information provision must therefore rest with businesses. Given that continuous supply is essential to the health and wellbeing of all consumers, it is important that adequate and high-quality information is provided so that they understand the full benefits, costs and risks of a product offering, and can make informed decisions that suit their needs.

PIAC, therefore, submits that robust information provision requirements for behind the meter systems are needed to protect the interests of consumers. We consider the following requirements provide a core set of protections with regard to information provision:

- Information must be provided upfront and explicit informed consent obtained before a customer signs up
- Information must be clear and in plain language, easy to understand, relevant and accurate
- Critical information summaries must be provided before a customer signs up and must disclose information about key contractual terms and conditions, supply reliability and quality, and key fees and charges.

As we have argued throughout in this submission, the level of consumer protection needs to be linked to the type of supply arrangement. We consider that disclosure of additional information is needed for more complex supply arrangements, above and beyond the core protections suggested above. In the case of solar panels, consumers would benefit from information about how to maximise the value of the panels such as optimal panel position. In the case of solar panels plus batteries, additional information about safety and reliability is essential.

For consumers who are purchasing a system for the purpose of going off-grid, it would be appropriate to require the supplier to provide a warning about foregoing access to retail

competition, energy rebates and key NECF protections (such as distributor obligations around life support, supply reliability, access to an energy ombudsman, and access to retailer payment plans and hardship programs). Consumers would be in a better position to understand the full risks of going off-grid if they are informed of NECF protections. Without such a warning, consumers could be signing up to these products without understanding what protections they are giving up. Some consumers may not be in a position to go without the full suite of protections under the NECF, such as life support customers or those experiencing financial disadvantage. For these consumers, the consequences of making a wrong or suboptimal decision about going off-grid could be severe, particularly if it binds them to a long-term commercial arrangement.

Critical information summaries allow for the provision of key information in a structured way across the same or similar criteria, therefore facilitating product comparability. PIAC recommends like-for-like comparisons wherever possible, which provides consumers with the information they need in order to make effective decisions and participate meaningfully in the market.

Additional comments

In addition to consumers making wrong or suboptimal decisions due to misleading information, it is worth noting that poor decisions can be made as a result of omitted information. The result of both scenarios is that a consumer is likely to have made an entirely different decision had they received all necessary information. PIAC notes that the ACL only protects consumers from misleading information, but not the omission of information that is material to their decision-making. We consider that this is a critical gap in current consumer protections.

The impact of omitted information can have adverse consequences for energy consumers, particularly if it results in consumers going off-grid or investing in expensive technology when it is not in their best interests to do so, or where they agree to a long-term contract with terms and conditions that place them in an unviable financial position. For example, consumers may be persuaded to purchase solar panels after being advised that it will significantly reduce their electricity bills. Some consumers are only at home in the evenings and therefore use most of their electricity at night. If they are not told that most of the anticipated bill savings would only occur if they use electricity when it is generated (i.e. during the day), then their decision to invest in solar panels is misaligned with the outcome they desire.

In the absence of an amendment to the ACL, PIAC strongly recommends that the Energy Council explore the possibility of prohibiting the omission of material information as an energy-specific protection, or at least require suppliers of behind the meter systems to provide all material information to consumers.

Does the business model under which the behind the meter system was acquired impact on the information provided to the customer?

PIAC considers that there is a likelihood that consumers may be provided with limited information about an existing behind the meter system where, for example, the system comes with the purchase or lease of a property. As far as PIAC is aware, there is currently no legislative requirement on the seller or landlord to disclose information about electricity supply arrangements (such as whether the property off-grid), beyond the usual practice of, for example, specifying

solar panels as a fixture in the sale contract. This places these customers in a precarious situation of not knowing the risks of their system and the implications for energy usage.

It is important that consumers in this situation benefit from the same level of information disclosure as other energy consumers who have similar behind the meter systems. Where choice of supply arrangement is lacking, information disclosure about existing supply arrangements, supply reliability, grid access and back-up options should be as stringent as possible.

Do stakeholders believe consumers could be provided with a behind the meter electricity system without their consent?

In recent years, some energy retailers engaged in poor energy marketing practices that adversely affected CALD, elderly, low income and low literacy consumers, particularly in door-to-door sales. PIAC believes explicit informed consent significantly assists in the prevention of poor marketing practices, and is a crucial protection as new products and services become increasingly available to residential consumers. The increasing complexity of emerging energy products and the increased risks borne by consumers regarding supply reliability, quality and price means that there is an urgent need to safeguard against the opportunity for significant consumer detriment to occur.

In this light, the application of a consent requirement that is less than the current NECF standard would be a step backwards for consumer protection. It is important that consumers clearly understand the product offering, its key terms and conditions and the consequences of entering into a contract, before they sign up. Explicit informed consent, together with robust information provision requirements, is vital to the consumer decision-making process. PIAC recommends the extension of the explicit informed consent requirement to behind the meter systems.

Recommendation 8

PIAC strongly recommends the adoption of strong information provision requirements for behind the meter systems, including core protections such as the use of clear and plain language, upfront provision of information prior to obtaining explicit informed consent, and the provision of critical information summaries.

Recommendation 9

PIAC recommends that additional information requirements, over and above the core protections, are required where supply arrangements are more complex or where consumers do not have the choice of an alternative supply arrangement.

Recommendation 10

PIAC strongly supports a requirement to provide a warning about the key protections (NECF, access to retail competition and energy rebates) that a consumer may forego in choosing to go off-grid.

Recommendation 11

PIAC strongly recommends that the Energy Council explore the possibility of prohibiting the omission of material information as part of delivering a core suite of energy-specific protections,

or at least require suppliers of behind the meter systems to provide all material information to consumers.

Availability and reliability

Is the right to access the interconnected electricity system a sufficient consumer protection to ensure consumers have access to electricity supply?

PIAC considers that the right to access the grid is a necessary consumer protection to ensure consumers have access to electricity supply. This protection provides an indispensable safety net for consumers when their behind the meter system fails or their energy needs change, or if they have made a sub-optimal decision in choosing to install a system based on inadequate or incorrect information.

Moreover, the lack of an option to return to the grid may act as a disincentive for consumers seeking to adopt a behind the meter system as the harms of going without supply can far exceed the benefits of going off-grid. This may inhibit the development of a competitive market that delivers the benefits of new technology to consumers.

Where a customer has chosen to disconnect from the interconnected electricity system, which party should bear the costs associated with the customer reconnecting to the interconnected electricity system?

In PIAC's view, the question of who bears the costs associated with reconnecting to the grid depends on whether the customer had a choice in going off-grid. A customer who has chosen to disconnect from the grid should in most circumstances bear the cost of reconnection. Conversely, a customer who had no choice but to accept an off-grid arrangement should not have to bear the full cost of reconnection. Examples include landlords installing a behind the meter system that disconnects their tenant from the grid or a tenant could move into a property that is already disconnected.

Do you consider that determining the level of redundancy incorporated in a behind the meter electricity system is a matter to be determined by the consumer?

PIAC considers that it is up to the consumer to determine the level of redundancy incorporated in their behind the meter system. However, there will likely be consumers who are not in a position to choose their supply arrangements and are therefore unlikely to be able to choose a back-up supply arrangement, such as a tenant who purchases electricity from their landlord. We are of the view that a protection to guarantee access to grid supply is needed in situations where consumer choice is lacking and the consumer is solely dependent on the system for supply.

What, if any, consumer protections should apply in relation to the availability and reliability of behind the meter products and services?

The consultation paper argues that the availability and reliability of supply for behind the meter systems is primarily a contractual matter between the supplier and the consumer, supported by

ACL protections.⁸ PIAC agrees with this, but as we have argued throughout this submission, we also contend that the level of regulation required for availability and reliability of supply should be linked to the consumer's level of dependence on the system for continuous supply of electricity. Hence, considering the adverse consequences of poor quality or unreliable supply, consumers who are off-grid should have the right to access the grid. Moreover, life support customers who rely primarily or solely on a behind the meter system for continuous supply should be protected by more onerous obligations that are on par with the current obligations on distribution businesses. For example, they would benefit from information about the anticipated frequency and duration of system outages, as well as the circumstances in which these may occur. As noted above, we also consider that stronger information requirements are needed for systems that take consumers off-grid so that they are fully informed of the benefits and risks of disconnecting from the grid.

Recommendation 12

PIAC strongly supports the right to access the grid as it provides an important safety net for consumers when their behind the meter system fails or their energy needs change, or if they have made a sub-optimal decision in choosing to install a system based on poor marketing conduct, or the consumer has no choice but to depend on the system for supply.

Recommendation 13

PIAC recommends that life support customers who rely primarily on a behind the meter system for continuous supply should be protected by more onerous obligations that are on par with the current obligations on distribution businesses.

Vulnerable consumers

Are there classes of vulnerable consumers in relation to behind the meter electricity systems? What do these classes of vulnerable consumers look like? At what point does a consumer become vulnerable?

Ofgem's definition of vulnerability⁹ is a useful tool for understanding when vulnerability occurs and which consumers are most likely to vulnerable in the context of behind the meter systems. According to Ofgem:

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.

Applying this definition, PIAC considers there are four classes of vulnerable consumers in relation to behind the meter systems:

⁸ Ibid 9.

⁹ Ofgem, *Consumer Vulnerability Strategy* (2013), 12, <<https://www.ofgem.gov.uk/ofgem-publications/75550/consumer-vulnerability-strategy.pdf>>

- consumers who are in a long-term contract with ongoing payments, or who are likely to have supply restricted or cut off for non-payment
- consumers who have little choice about their supply arrangement or are not in a position to opt out of using a behind the meter system (for example, a tenant)
- consumers who decide to go off-grid based on misinformation or insufficient information
- consumers whose health, wellbeing or safety are at increased risk of harm when electricity supply is interrupted.

What consumer protections are needed for these identified classes of vulnerable consumers?

We have discussed the consumer protection requirements in the sections of this submission that are relevant to each class of vulnerable consumers identified above. We offer a summary of our views here.

PIAC's preference is to take a differentiated approach to regulation and consumer protection. A higher level of consumer protection should reflect the higher level of risk assumed by consumers. In circumstances where the supply arrangement is complex or the customer is solely or primarily dependent on the behind the meter system for continuous energy supply, consumer protections should be as close to the relevant NECF protections as possible, alongside the right to access the grid and rigorous information provision requirements.

We are also mindful that it would be impractical to expect small businesses to provide the same level of consumer protections as that required of authorised retailers. For example, a landlord or a small solar PV business is unlikely to have the financial scale to provide hardship programs or payment plans to all of their customers. However, in considering the impracticalities of imposing a high regulatory burden, it is also essential to understand that vulnerable consumers are often not in a position to negotiate and represent their best interests or have the choice of a better alternative. Hence, the design of regulation must consider the potential impact of payment difficulty and hardship in each type of supply arrangement. Where the requirement for a payment plan or hardship program is impractical or untenable, other requirements such as full disclosure of product risks can assist in minimising consumer detriment and ensuring that consumers do not make decisions that are not in their best interests.

Dispute resolution

Should consumers with behind the meter electricity systems have access to an independent dispute resolution scheme?

PIAC believes that access to a free, independent, impartial and timely external dispute resolution (EDR) is a basic consumer right for all energy consumers, irrespective of their supply arrangements.

There is currently a two-tier system where customers of authorised retailers can resolve their dispute via an energy ombudsman, and customers of alternative sellers only have access to a variety of other options including consumer affairs agencies and tribunals. These options are generally legalistic, more costly and less timely. Customers with alternative supply arrangements

should not be disadvantaged simply because they are not customers of authorised retailers, particularly as new products and services have the potential to supplant traditional ‘poles and wires’ supply as the primary mode of energy provision.

We are strongly supportive of the current push to require exempt sellers and networks to become members of jurisdictional ombudsman schemes. We note that unlike other jurisdictions, customers of alternative sellers in NSW have access to the Energy & Water Ombudsman NSW (EWON) yet outcomes are not binding on sellers who are not members of EWON. If energy ombudsman schemes are to be effective dispute resolution forums for all energy consumers, it is crucial that all businesses involved in the sale of energy products and services are required to join the jurisdictional ombudsman scheme. This would ensure that all consumers benefit from not just access to free and independent EDR, but also finality in the outcome of the dispute. This also ensures that all energy consumers have equitable access to EDR. For example, whether the outcome of a disconnection complaint is binding should not depend on whether the customer’s provider is a retailer or alternative seller.

Where an energy ombudsman has jurisdiction, regulation should place a strict obligation on the seller or provider to refer consumers to the ombudsman in the event of a dispute. Inconsistent or a lack of referrals should not become a barrier to consumers accessing EDR.

Are there benefits in a consistent dispute resolution scheme (i.e. an Ombudsman scheme) applying across grid connected and behind the meter arrangements?

PIAC supports a consistent Ombudsman scheme applying across grid connected and behind the meter arrangements. This is likely to reduce the potential for buck-passing and blame-shifting between the different providers. Without this consistency, consumers would need to contact two different EDR mechanisms to resolve a dispute. This creates inefficiencies and may lead to uneven outcomes. We agree with the Energy Council that a consistent EDR scheme would deliver a consistent approach to resolving disputes, irrespective of supply arrangements.¹⁰

A consistent EDR scheme would provide significant benefits to consumers, including access to a dispute resolution service that has subject matter expertise and therefore the ability to understand the complex nature of both grid and off-grid supply arrangements.

Recommendation 14

PIAC strongly supports the provision of energy Ombudsman services to all energy consumers, as well as a requirement for all energy businesses that are involved in the sale of energy products and services to become members of an Ombudsman scheme.

Recommendation 15

PIAC recommends that there should be a requirement on energy businesses to refer their customers to an energy Ombudsman scheme where a dispute arises and remains unresolved.

¹⁰ COAG Energy Council, above n 2,11.

Recommendation 16

PIAC supports a consistent Ombudsman scheme applying across grid connected and behind the meter arrangements.

Transaction costs

Should a regulated service be provided to small consumers to enable them to compare prices for similar behind the meter electricity systems?

While a regulated comparator service would be valuable to consumers, PIAC queries how this would work in practice. Given the potentially large number of businesses covered, it may be impractical to source pricing information and key contractual terms from every supplier of behind the meter systems. We consider that a more effective alternative would be to require standardised critical information summaries so that consumers can meaningfully compare information for similar systems and make informed decisions.

Should all similar behind the meter products have standard contracts in place?

PIAC considers that a standard contract would be necessary in lieu of a regulatory framework that delivers consumer protections for behind the meter products. In other words, if the Energy Council decides that behind the meter products should be subject to light regulation, or that consumer protections are a purely contractual matter to be negotiated between buyer and seller, then a standard contract containing a minimum standard of protections would provide a safety net for consumers.

On the other hand, if a regulatory framework is developed that safeguards key consumer protections for behind the meter products, then a standard contract is not required.

Recommendation 17

PIAC recommends that strong information provision requirements, including critical information summaries that provide standardised information, are a more practical and effective alternative to a comparator service.

Other comments

PIAC notes the Energy Council's view that the question of how regulatory models (NECF, ACL etc.) are applied is a matter for future consultation.¹¹ We are currently progressing a project to identify and examine regulatory and legal options for a framework that delivers the suite of consumer protections required for traditional, behind the meter and off-grid (including micro grid) supply arrangements. We would be pleased to work with the Energy Council and the Department of Environment and Energy in the near future to progress policy development in this area.

¹¹ COAG Energy Council, 'Consumer Protections for Behind the Meter electricity supply: Consultation on regulatory implications', 19 August 2016, p. 4.

Recommendation 18

PIAC recommends that the Energy Council undertake a review of the current regulatory and legal architecture to identify what is needed to deliver the suite of consumer protections for traditional, behind the meter and off-grid supply arrangements.