

public interest
ADVOCACY CENTRE

Submission to the Senior Committee of Officials

Consultation on the Statutes Amendment (National Energy Laws) (Rules) Bill 2017

29 September 2017

1. Introduction

The Public Interest Advocacy Centre (PIAC) welcomes the opportunity to respond to the draft Statutes Amendment (National Energy Laws) (Rules) Bill 2017.

PIAC supports many of the individual recommendations made in the Finkel Review, and welcomes the agreement by COAG Leaders and Energy Ministers to implement them as a package of reforms under the guidance of the Energy Security Board (ESB).

We note that many elements of the Finkel Review's recommendations remain open to interpretation, and that many decisions are still to be made regarding their ultimate design and implementation. Notwithstanding that some of the costs of these decisions will be recovered through other means, by and large consumers will pay for the outcomes of these decisions. Consumers must, therefore, be effectively represented in the decision process.

PIAC stresses the need for robust stakeholder engagement and strong consumer representation in all the considerations of the ESB. As there is direct consumer representation on the ESB, PIAC recommends open and accessible public consultation on all matters and prospective rule changes considered by the ESB.

2. Public Interest Advocacy Centre

PIAC is an independent, non-profit legal centre based in New South Wales. Established in 1982, PIAC tackles systemic issues that have a significant impact upon disadvantaged and marginalised people. We ensure basic rights are enjoyed across the community through litigation, public policy development, communication and training.

PIAC's 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 program develops policy and advocates in the NSW energy and water markets. PIAC receives policy input to the program from a community-based reference group.

3. Consumer preferences must inform the development of any changes to rules

The National Electricity Market (NEM) is undergoing unprecedented change and evolution. In the absence of appropriate response from policy and regulation, this may have serious impact on system security and the reliability of supply.

PIAC supports many of the individual recommendations made in the Finkel review, and welcomes the agreement by COAG Leaders and Energy Ministers to implement them as a package of reforms.

Issues of system security and reliability, and measures to address these issues, can be obscure and arcane subjects for the average consumer and may seem far removed from their everyday experience. Given this, and the critical nature of some of the work that the ESB has been tasked

with, PIAC stresses the need for strong consumer representation in the considerations of the ESB. Noting the disappointing absence of direct consumer representation on the ESB, this entails having open and accessible public consultation on all matters and prospective changes considered by the ESB.

The risk of a gold-plated wholesale market

The following chart is taken from AEMO's submission to the Finkel review, with numbers derived from the AEMC extreme weather events review.

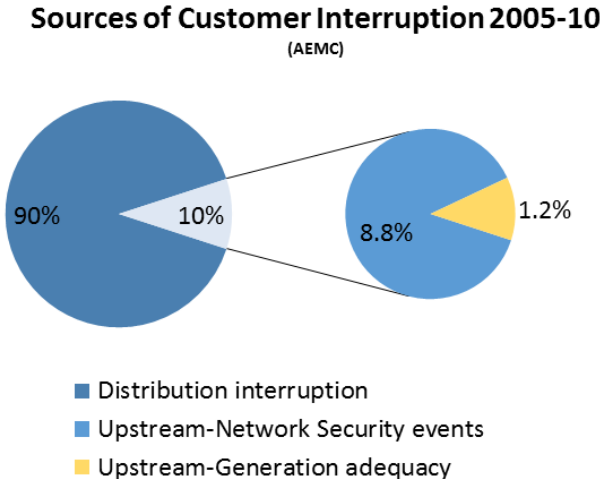


Figure 1: Sources of customer interruptions (Source: AEMO)

It illustrates that, historically, supply interruptions for distribution connected customers have mostly originated in their distribution network, with a smaller number in the transmission system, and a negligible portion as a result of generation shortfalls.

While maintaining system reliability is clearly important, and maintaining security in operating the system is not optional, this does suggest that even a significant increase in generator and transmission outages might have relatively little appreciable impact on the overall reliability experienced by these consumers. It also suggests that spending billions of dollars to improve reliability in generation and transmission may not bring commensurate benefits for energy users.

With respect to distribution outages, the majority of consumers in regional NSW are telling their DNSP that they are satisfied with their levels of reliability, are in fact more concerned about affordability, and they are prepared to accept lower reliability as part of controlling energy costs.

PIAC is deeply concerned that, if consumer expectations do not receive full regard in developing new reliability measures, we may well end up with a gold-plated wholesale market.

It is essential that, in implementing any of the ESB's recommendations, the incremental costs of any new measures to maintain system security and improve reliability are well understood, are weighed against the incremental benefits to consumers, and reflect the actual value that consumers place on reliability.

4. Responses to consultation questions

Question 1 and 3 – timely implementation of ESB recommendations and robustness of the process

PIAC appreciates concerns that the speed of change and innovation in the NEM may outstrip the ability of regulations to keep pace. However, addressing this issue must not come at the expense of stakeholder engagement – particularly informed consumer engagement.

Therefore, the timely implementation of the ESB's recommendations must be balanced against the need for transparency and stakeholder input.

The lack of any firm obligation for public stakeholder consultation means that there may be a missed opportunity for stakeholders to help the ESB to ensure that the decisions and recommendations they make are the most effective means to achieve its objectives. Noting our earlier comments, PIAC is concerned that, in the absence of this, we may well end up with a gold-plated wholesale market with outcomes that are divorced from consumers' willingness to pay.

PIAC notes that there are already well-defined processes available to make changes to the Rules and understands that the mandatory consultation periods for a full rule change process may, in some cases, hinder timely changes to the Rules. To address this there are already options to shorten the process where it is warranted: the expedited rule change process for matters which are non-controversial and/or urgent¹ and fast track rules for matters which have had prior public consultation.²

Recommendation 1

PIAC recommends that, Rules should only be allowed to be made under these powers if it is clear that existing rule change processes available are insufficient to meet the urgency of the matter at hand.

Question 3 – rules made under this process

PIAC is of the view that, whatever exceptional arrangements are made with respect to the ESB, the AEMC should retain jurisdiction over all of the Rules to ensure that all stakeholders can still propose changes under a well-defined and public consultation processes. While PIAC does not comment on whether the draft Bill achieves this, it recommends that any changes to the Law retains this.

Recommendation 2

PIAC recommends that, if any change to the Law is made, that the AEMC retains jurisdiction over all aspects of the Rules to ensure stakeholders can propose changes.

Question 4 – application of a rule making test

PIAC support the ESB using the National Electricity Objective, National Energy Retail Objective and National Gas Objective in assessing any potential changes to the Rules.

¹ NEL 96

² NEL 96A

However, as noted previously, a lack of an obligation for public stakeholder consultation means that there may be a missed opportunity for stakeholders to help the ESB to ensure that the decisions and recommendations it makes are the most effective means to achieve these Objectives.

5. Further engagement

PIAC thanks the Officials for the opportunity to provide a submission to this draft Bill. PIAC would welcome the opportunity to speak with Officials about this submission and our consumer priorities in further detail. Please contact Craig Memery at cmemery@piac.asn.au or on (02) 8898 6522.