

public interest
ADVOCACY CENTRE

**Protecting Consumers in a Changing Energy
World: PIAC response to discussion paper**

19 December 2017

The Public Interest Advocacy Centre

The 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.

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, developing policy and advocating in 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 NSW;
- Physical Disability Council NSW;
- Anglicare;
- Good Shepherd Microfinance;
- Financial Rights Legal Centre;
- Affiliated Residential Park Residents Association;
- Tenants Union; and
- Mission Australia.

The current energy consumer protections

The National Energy Customer Framework (NECF) is intended to work in conjunction with the Australian Consumer Law (ACL) with respect to consumer protections. However, the NECF itself only provides for the energy-specific regulation where there is a sale of electricity or gas to a customer connected to the grid. As a result, the requirements in the National Energy Rules for retail authorisation and exempt selling arrangements apply only where there is a financial transaction relating to the volumes of energy and has generally revolved around the existence of a metered connection.

This means that providers of many energy related services, with similar potential consumer harms to those where energy is transacted, do not currently have to comply with any energy-specific regulation under the NECF. Instead, they are only bound to more general consumer protections under the ACL.

In the past, this approach may have been suitable given the nature of most energy services required metered transactions. But now, with emerging technologies and business models, it has become clear that this approach does provides insufficient protections to consumers and must evolve.

Limiting regulations only to where energy is metered and traded runs the risk of creating loopholes, whereby the provider of the product or service can today avoid complying with some consumer protections, that apply under NECF's retail exemption arrangements, simply by not selling energy on a per kWh basis and so avoiding the need for an exemption.

An example is the leasing of rooftop solar, commonly accessed by many consumers. Under a typical solar leasing arrangement, a consumer makes a regular payment for a solar array that remains the property of the provider until fully paid for. As the repayments on the system are decoupled from metered energy volumes, the lessor is not bound by obligations in the NECF. In this case the consumer takes on markedly more risk than they do under a solar Power Purchase Agreement (PPA), as they carry the volume risk, which relates to the production of energy over the life of the system.

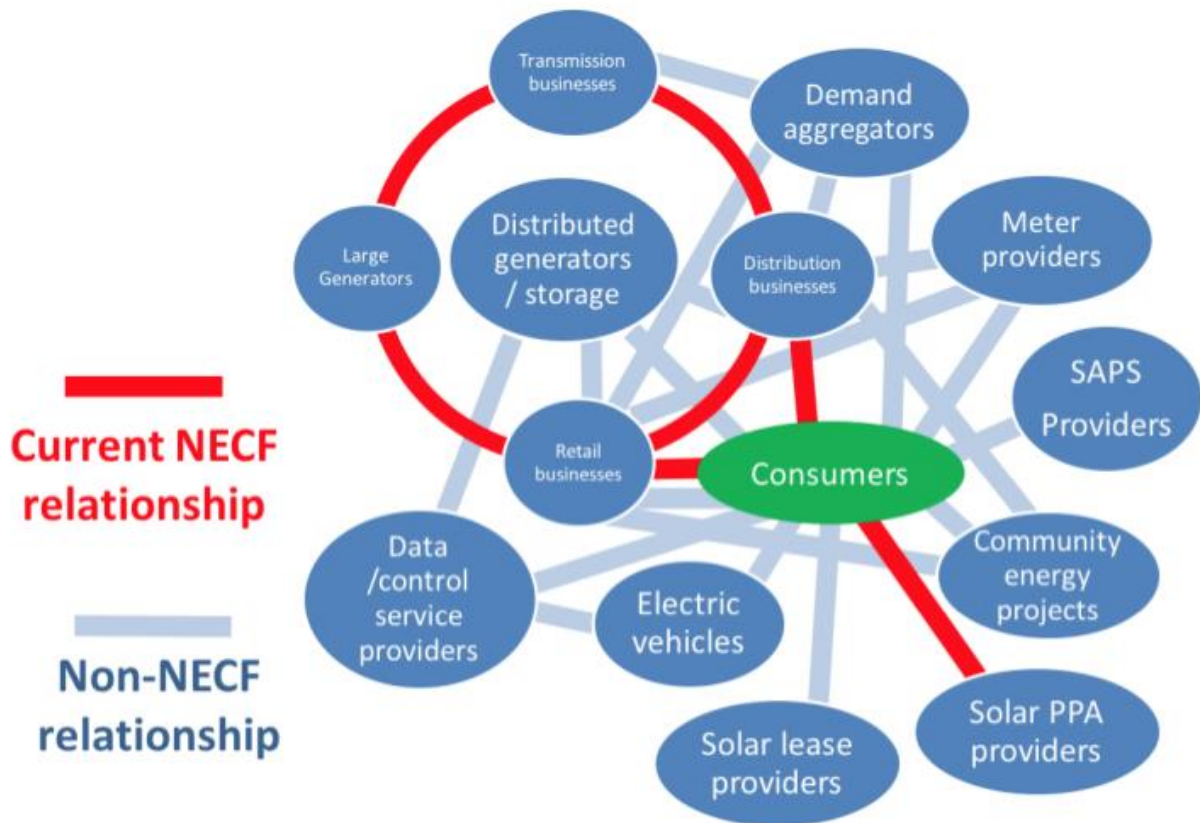
A solar array may generate substantially less energy than the provider predicted at the time of sale, due to the impact of many factors including component performance, breakdown, and shading. Under a leasing arrangement, the repayment amounts are usually fixed, regardless of system output. In the event of underperformance, the consumer continues to pay the same repayment amount but receives less benefit from offsetting their grid consumption.

By contrast, under an PPA where payments are based on the metered output of the system, the provider carries this volume risk as the repayment amount decreases in line with increased grid consumption.

Perversely, consumers are afforded lower levels of protection by ACL under the (higher risk) solar leasing arrangement than they are by NECF under the (lower risk) PPA arrangement.

The below diagram illustrates possible new relationships and services in the energy market. Most of the new services and relationships noted currently sit outside of current NECF arrangements and therefore largely outside of any energy specific regulations.

Figure 1 - Relationships and obligations for current and emerging energy products and services¹



Alternative arrangements for energy supply

There are a wide range of potential models for providing energy services. Broadly speaking, these can be differentiated in terms of a) the customer's reliance on it to meet their energy needs and b) the arrangement by which they pay (or are paid) for their energy.

In terms of a customer's reliance on alternative supply models, a customer may:

- rely entirely on their grid connection for electricity supply and not have any alternative products or services.
- rely primarily on their grid connection for electricity supply, supplemented by alternative products and services – for example, a customer with a solar PV system who exports excess generation and imports energy from the grid when needed.

¹ ATA, *Submission to COAG Energy Council Consumer Protections for Behind the Meter electricity supply consultation paper*, 2016, p. 2.

- rely primarily on alternative supply products and services for electricity supply which are supplemented by their grid connection – for example, a single customer or microgrid with sufficient generation and storage to meet onsite demand most of the time but still relies on a grid connection for backup (and to export surplus energy) in event of a breakdown or exceptionally high demand.
- rely entirely on their alternative supply products and services for electricity supply and not have a grid connection – for example, where a customer may be supplied by a Stand Alone Power System (SAPS).

In terms of the financial arrangements, a customer may:

- purchase alternative products and services outright and manage any ongoing maintenance themselves,
- purchase alternative products and services outright and enter into an ongoing maintenance contract with the same or another provider,
- purchase alternative products and services outright and engage contractors to perform maintenance on an ad hoc basis,
- contract with a demand response aggregator or other service provider who is not involved with the supply or maintenance of any products
- be part of a community energy project,
- lease the physical assets separately from the provision of energy services, or
- enter into an arrangement such as a solar Power Purchase Agreement (PPA) for alternative products and services.

The examples above are by no means exhaustive or discreet and, as the industry continues to evolve, the range of potential provision models will grow. Therefore, PIAC supports providing consumer protections which are agnostic with regard to technology, location, the existence of a meter and the ownership/financial arrangements.

Harm-based energy consumer protections

PIAC supports a system where the protections offered to consumers is commensurate to the potential harm to the consumer should they lose that energy product or service – the higher the potential harm, the stronger the protections offered to the customer. This reflects the nature of energy as an essential service and should not depend on the model of provision.

If a customer has behind the meter generation and storage on their premises but has retained their grid-connection, the consequences of a failure of their system or its provider will not involve losing access to essential electricity services. It will likely involve higher electricity bills for a

period as a greater portion of their energy usage is supplied through their network connection rather than from their behind the meter system.

By contrast, in the case where a customer has gone completely off-grid and foregone their connection to the broader network, the consequences of their system failing are considerably more severe. If there is a breakdown and no backup generator as part of the SAPS, it may mean losing access to essential electricity services for some days while awaiting repair or replacement. This wait may be longer if the customer cannot organise or cannot afford the cost of the repair immediately. When there is a backup generator, as is standard with a SAPS system, electricity will be provided during the breakdown, but running costs can exceed \$100 per week and availability may be limited in operation by fuel availability, the capacity of the generator or its noisy and polluting nature.

In either case, the failure of the SAPS may result in a significant impact to the customer through the loss of an essential service. This may result in the customer losing heating and cooling in remote areas which with more extreme weather or losing refrigeration of food and medicine. Of greatest concern would be if it meant losing power supply to life support services.

A customer who has forgone an existing grid connection in favour of a SAPS as the sole source of their energy services should be afforded commensurately greater protections than the first, as the potential harms they would experience in the event of an outage or other problem may be greater².

Consumers and the changing energy market

Until this decade, energy consumers could very broadly be categorised into ‘haves’ and ‘have nots.’ They could either afford energy, and the tools to limit their usage if they so desired, or they couldn’t.

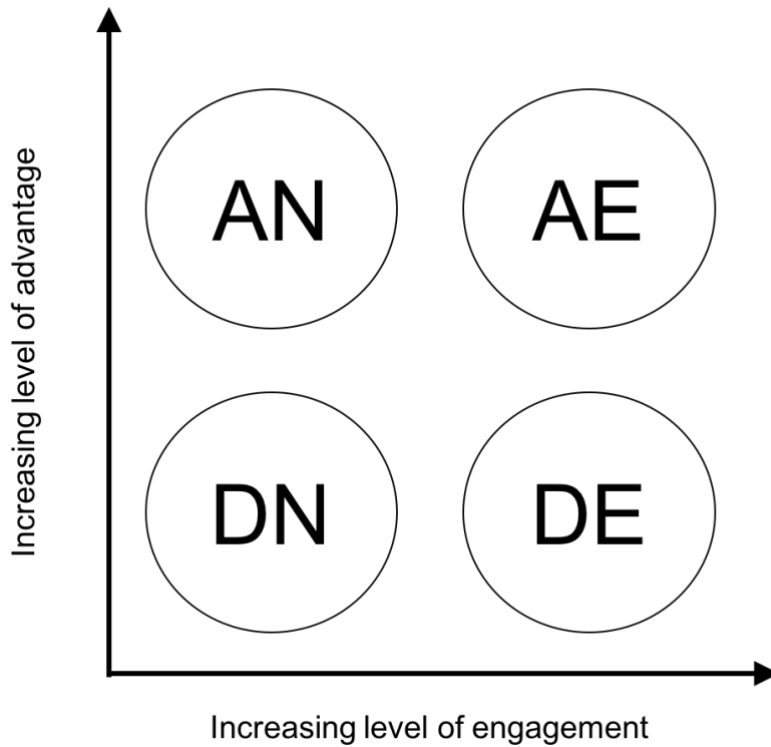
Since then, deregulation, the emergence of competition, innovation (particularly in relation to behind-the-meter energy technology) and the escalation of energy prices have created the need for consumers to be thought of differently to just these two cohorts. In addition to social advantage, a consumer’s level of engagement with the energy market now has a material impact on their energy outcomes.

An engaged consumer may be able to minimise their energy bills through a combination of retail churn, behind-the-meter technologies, and ongoing engagement in the form of paying their bills on time to access discounts. Conversely, a consumer that is not engaged, or is financially disadvantaged, is likely to consume more energy from the grid, purchased from a retailer to whom they pay a higher price by not accessing the cheapest deals.

Considering that the levels of engagement and advantage are not mutually inclusive, PIAC considers that consumers should be thought of in four cohorts, for the purposes of consumer protections and promoting competition that works for all consumers.

² In PIAC’s view, this applies where a customer forgoes an existing grid connection, or a new service similar to a grid connected service. However, the higher level of protection is more than is needed for traditional SAPS applications such as remote applications where grid connection has not existed.

Figure 2 – Current consumer cohorts



Advantaged/able, not engaged (AN)

This consumer cohort is disengaged from the energy market. While they do experience the detriment of disengagement through suboptimal retail contracts, their relative social advantage means that they are usually able to absorb the financial detriment associated with these contracts. On the other hand, while these consumers are more able to absorb the detriment associated with their lack of engagement, they are still being punished with inefficiently high bills in a way their engaged counterparts are not. Many are also at risk of falling into the DN cohort if their circumstances change, and consumer protections need to cater to this risk.

For this cohort, protections should not require these consumers to become highly engaged on issues such as complicated sales, billing or dispute resolution.

Disadvantaged/vulnerable, not engaged (DN)

This consumer cohort is likely to have the worst energy outcomes. The combination of energy market disengagement and relative social disadvantage means that these consumers are unable or unlikely to take advantage of new energy technology or beneficial market contracts from energy retailers. They may use large volumes of high-priced energy that they are unable to afford. Competition frameworks should support them having the opportunity to benefit from engagement, but it is critical that supporting frameworks, including protections and concessions, should not require them to be engaged or assume that is an option for them. The goal should be to move people from the DN cohort to the AN cohort, while giving them the opportunity to move to the AE cohort but not obliging them to do so.

As for the previous cohort, protections must not require these consumers to become engaged on issues such as complicated sales, billing or dispute resolution. In addition, there should also be some form of price protection along with adequate support mechanisms such as concessions and hardship programs.

Advantaged/able, engaged (AE)

This energy consumer cohort is the only one broadly getting good outcomes today. The combination of energy market engagement and relative social advantage means these consumers choose, and can afford, to be adopters of energy technology such as solar PV, energy storage and demand management systems. Furthermore, their engagement with the energy means they are likely to be on retail energy market contracts that enable them to most effectively use this technology. Competitive opportunities for these consumers should be encouraged, while recognising they are, by and large, least at risk of disadvantage.

For this cohort, protections should focus on giving these consumers the opportunity to use alternative energy products and services.

Disadvantaged/vulnerable, engaged (DE)

While this cohort still requires similar support to the DN cohort, their willingness to engage means they are able to ameliorate some impacts of social disadvantage through engagement with the energy market. The goal for this group should be giving them the same opportunities to benefit from competition in the same way that the AE cohort have, while affording them the protections available to the DN cohort.

For this cohort, protections should also focus on giving these consumers the opportunity to use alternative energy services. However, given their disadvantaged status, this will also require some form of price protection, along with adequate support mechanisms such as concessions and hardship programs.

Relative energy literacy and Explicit Informed Consent

Contributing to the distinction between consumers that are engaged and those who are not is what could be described as a decrease in relative energy literacy. This is related to the complexity of energy options in consumers' homes. Where there used to be a limited number of energy-based appliances types in homes, there are now more, and they work in more complicated ways; consider for example the recent advent of rooftop solar and the emerging markets for batteries and energy management tools.

This additional complexity makes it very difficult for consumers that are not highly engaged to make the optimal economic decisions. Correspondingly, consumer decisions about energy have become more complex and the level of knowledge required to become sufficiently energy literate has increased. Hence consumers, particularly those who are not engaged, have effectively become less energy literate relative to their needs.

The outcome of this is reduction in relative energy literacy extends beyond economically efficient decision making and has implications for Explicit Informed Consent (EIC). In principle, EIC should

ensure that customers are given sufficient information and understand their rights, obligations and conditions when entering into any agreement with an energy product or service provider.

Given the increasing complexity of energy offers and decreasing relative energy literacy make it difficult to ensure that consumers are fully aware of their rights, obligations and conditions. In order for this to occur, the consumer must be provided with accurate, standardised and understandable information about the product or service that is on offer, and the anticipated risks and benefits that may arise, before they sign up.

Due to the limited reach of the NECF, under many innovative energy service models there is insufficient obligation for the provider to obtain the EIC of the customer. These situations are likely to become increasingly common and the risk of consumer harm may grow unless these are also subject to appropriate EIC requirements.

Innovation isn't benefitting everyone

While retail innovation is occurring in some offers, PIAC is not convinced it is as widespread as it could be and it is not benefitting all consumers. In addition to the lack of transparency that makes it difficult for consumers to make informed choices in the retail electricity market, consumers are punished for a lack of engagement. Given the AEMC estimates that half of all consumers have not changed their electricity deal in five years,³ it appears that large parts of the community fall into this category.

Consumers who do not engage in the competitive retail market are at risk of paying more than they need to for essential energy services. On top of this, retailers invest more on marketing, research and providing discounts to gain customers than to retaining existing customers who have not attempted to seek out a better retail deal because they are loyal or less engaged. These costs are then borne by the less engaged customers.

These factors disproportionately impact disadvantaged and vulnerable consumers. These consumers are often least able to effectively engage with the complexities of the competitive retail market and also experience the greatest impact from unnecessarily high prices for essential energy services.⁴

Retailers themselves have identified these issues, with AGL chief executive noting that "We reward disloyalty... The bulk of my customers that are not disloyal never hear from me... and are totally uninformed about what's in their own best interests."⁵

Relying on the emergence of a competitive retail market for energy services alone is insufficient, and additional consumer protections are required to ensure consumers are able to receive essential energy services in a fair and reasonable price.

³ AEMC, *2016 Retail Competition Review*, 2016, pg. 65.

⁴ AEMC, *2016 Retail Competition Review*, 2016, pg. 29.

⁵ Andy Vesey quoted in: Ben Potter, "Big Power neglects best customers, AGL boss says", *Australian Financial Review*, 2016, <<http://www.afr.com/news/big-power-neglects-best-customers-agl-boss-says-20160823-gqzbgq>>.

Guiding considerations for the consultation

PIAC supports the guiding considerations outlined in the discussion paper.

PIAC is concerned by undue emphasis on increased consumer engagement as the solution to consumer protections. It is inappropriate to seek solutions to an energy consumer protection issue that are predicated entirely on consumers being better engaged. Deregulation, and the transformation of the electricity industry, has required consumers to be more engaged in the electricity market that they should have to just to receive a fair and reasonable price for the essential service of the supply of electricity.

PIAC supports allowing engaged consumers to make full use of competitive market offers and new technologies to derive the most benefit for their electricity services. Indeed, there are many consumers who are willing and able to do this and PIAC supports making it easier for them. However, this must not be a pre-requisite to receive a fair and reasonable offer. There are many consumers who are unable to effectively engage and participate in this way and must not be penalised for this by missing out on fair and reasonable offers or being exposed to unnecessary costs and risks.

Responses to consultation questions

Question 1 – What changes may be required to ensure that all consumers receive safe and reliable electricity supply irrespective of the energy supply model.

PIAC supports providing consumer protections which are agnostic with regard to technology, location, the existence of a meter and the ownership/financial arrangements. The protections should not be based on the energy supply model, but rather should be commensurate to the potential harm to the consumer should they lose that energy product or service – the higher the potential harm, the stronger the protections offered to the customer. This reflects the essential service nature of energy and should not depend on the model for providing that energy service.

This would include changes to the obligations around:

- Explicit Informed Consent to ensure that consumers are appropriately informed of the obligations and responsibilities they face – under current frameworks in NSW, the National Energy Retail Regulations is restricted to grid supply. Therefore, the Explicit Informed Consent of the customer is not required for off-grid or behind the meter supply even where these are the primary method of energy supply to the consumer. The requirements to prove Explicit Informed Consent will be particularly important for a customer who is moving from grid supply to an off-grid supply,
- system performance,
- access to independent dispute resolution processes such as through the energy Ombudsman – to ensure that consumers who are supplied other than through an authorised retailer or network business are still able to access independent dispute resolution processes (see response to Question 12),

- access to concessions and rebates – to ensure that all energy consumers are able to access the relevant concessions and rebates regardless of their model of energy supply (see response to Question 13), and
- access to hardship and payment support plans – to ensure that energy consumers are able to access concessions and rebates regardless of their model of energy supply (see response to Question 13).

Question 2 – Who should be responsible for ensuring safe and reliable electricity for alternative energy supply models if no licensed retailer or distributor is involved?

This depends on the model in question.

Safety and reliability are the responsibility of the DNSP in a conventional grid supply model.

Similarly, under an embedded network or microgrid type model, the party holding a network license exemption would be expected to have this responsibility.

Under a SAPS or microgrid model where one party is both the owner and operator of a system, and the consumer has a contract with them, that party clearly should have responsibility for safety and reliability.

Under models where these roles are not aggregated, the answer is less clear. Any party providing energy products or services could be responsible for the safety and reliability of the product or service it provides. There are several potential providers and any individual party may perform a number of these roles:

- retailers and resellers of alternative products and services,
- manufacturers and importers, whose current liability includes warranties,
- installers and designers,
- system owners,
- system operators, and
- contractors who do maintenance and repairs.

Irrespective of who is responsible, the level of protections and the responsible party (or parties) should not be based on the energy supply model, but rather should be commensurate to the potential harm to the consumer should they lose that energy product or service – the higher the potential harm, the stronger the protections offered to the customer.

Question 3 – Should individual consumers (or groups of people in a local community) be able to elect to go off-grid and if so, what are the implications for their (existing) rights to supply by the local distributor?

PIAC supports allowing consumers, who have been appropriately informed of the implications of their choice, to elect to go off-grid of their own volition.

PIAC also expects that, in the future, distribution businesses should be allowed to provide certain customers with off-grid supply as a regulated service where it is a more cost-effective solution than maintaining a traditional grid connection. This is the subject of a rule change proposal considered by the Australian Energy Market Commission.⁶ In this case where the distributor has elected to supply the same level of network services to a customer through an off-grid of microgrid system, the customer should still be considered as part of the NEM and hence enjoy to the same rights and protections. In other words, any differences in terms of billing and customer protections should be “behind the scenes” for the customer in that they should see as little change in their relationships and experience as possible. In this case, the implications of rights to supply should remain unaffected.

In our submission on the rule change, PIAC put forward several different configurations for providing off-grid supply to customers.⁷ Importantly, models are possible which, from the customer’s perspective, retain many aspects of their grid-supply arrangements, including a role for a conventional retailer with the use of a revenue meter as a line of demarcation between the customer’s premises and the distribution business owned and operated SAPS. This has the benefit of retaining the traditional market model and customer experience, while clearly apportioning responsibility for the ownership, maintenance and repair of assets between the customer and other parties.

Question 4 – How do we ensure that there is adequate information provision for customers who are considering going off-grid?

Given the specific risks for customers who to own or lease a SAPS of their own volition, particularly where they are be used to the nature of supply from the grid, additional consumer protections are needed above those received by consumers who remain grid-connected.

PIAC considers that SAPS systems, where they are purchased outright or leased by the consumer to replace an existing grid connection, should include:

- Performance guarantees regarding the frequency and duration of system outages,
- Educating the customer about the differences between living with a grid connection and living with a SAPS,
- Clearly demonstrating the Explicit Informed Consent of the customer, with particular emphasis on the customer’s understanding of the differences between living with a grid connection and living with a SAPS,
- Clear and fair contract terms with a cooling off period,
- A transition period for customers where the premises is electrically isolated but not yet physically disconnected from the grid. This will allow the customer to trial the SAPS for a

⁶ Alternatives to grid-supplied network services rule change request < <http://aemc.gov.au/Rule-Changes/Alternatives-to-grid-supplied-network-services> >

⁷ PIAC, *Submission to AEMC Alternatives to grid-supplied network services rule change consultation paper*, 2017, pp. 6-8, <<http://www.aemc.gov.au/getattachment/926a457e-f7b0-4eda-ba61-0875776306ba/Public-Interest-Advocacy-Centre.aspx>>

period and, if they opt out of using the SAPS and instead decide to retain the grid connection, the customer will not need to establish new grid connection infrastructure from scratch,

- Full disclosure of detailed product information to allow for straightforward repairs and identification of the correct replacement parts,
- Independent dispute resolution and recording and reporting of disputes to the AER, and
- A prudential fund or insurance against the failure of the system.

Question 5 – What if some individuals within a community do not wish to be disconnected from the national grid?

Question 6 – What consumer rights apply to both the supporters and the opponents of an off-grid proposal?

There are different conceivable situations where one or more individuals in a community may not want to be disconnected from the national grid. In PIAC's view, the consideration of appropriate 'rights' may in part be dependent on the model of a specific proposal and the impact of the proposal, both on individuals and the broader community.

A dissenting party (or 'opponent') may be validly concerned about perceived risks of an off-grid proposal, such as the risk of:

- Future insolvency of the business that owns and/or operates the system,
- The impact of unexpected failure of equipment (particularly if pre-commercial, experimental or highly bespoke equipment is deployed),
- Growth in customer numbers, or other factors, raising demand above levels that the system can cost effectively and reliably supply (Noting that in systems that are expandable or modular, sustained increases in demand can improve the business case of an off-grid system), or
- Risk of lower customer numbers, or other reductions in demand, such that the system becomes uneconomic and fixed costs are recovered from a smaller customer base.

A dissenting party may simply, and quite validly, be a passive and disengaged user of energy who wants to remain so and perceives the proposal as a compromise of these preferences.

On the other hand, there could be cases where

- the community as a whole, and each member of it (including the dissenting party) would demonstrably benefit in the long term from adopting an off-grid proposal through lower energy costs and/or higher reliability. For some remote communities, replacing an unreliable or vulnerable grid connection with a more reliable stand-alone system may have significant economic and quality-of-life benefits,

- the concerns of the dissenting party have been sufficiently addressed by the proposal, or
- the dissenting party may not be better off as a result of the project, but the benefit to other consumers might be material. For example, the dissenting party may have a battery system or generator that already provides them with backup supply in the event of an outage, and not benefit from the same reliability improvements that others do.

It is important to also consider the status of the grid connection, and the associated risk and potential outcomes. Some proposals may not involve outright disconnection from the grid, instead establishing an embedded network type arrangement that retains some grid connection. These do not come with the same risks of a complete disconnection from the grid. In other cases, the concerns of a dissenting party may be dealt with in other ways.

In PIAC's view, a proposal should ideally proceed where most of the community is willing, **and**

- there is a demonstrable net benefit for a community,
- no consumer is materially financially disadvantaged,
- no consumer is unwillingly required to become highly engaged, and
- no consumer is required to take unreasonable risks with respect to reliability.

This may entail that in some cases a project would proceed despite objections from a small part of the community. In PIAC's view, this question gives rise to vexed and complex issues that need to be explored in more depth. PIAC suggests that:

- Legal advice is sought, considering precedents (and outcomes with respect to 'holdouts' in property cases), and
- A stakeholder workshop is held to explore these issues in more depth.

Question 7 – What are the obligations of a local distributor where a community decides to go off-grid?

As noted before, PIAC considers it is appropriate to have a transition period for customers where the premises (or community) is electrically isolated but not yet physically disconnected from the grid.

If the consumer or community is taken off-grid by the distributor as a regulated service, as described in Question 3, the customer could still be considered as part of the NEM and should have the same rights and protections. In this case, the distributor would have, at least, the same obligations as while the consumers were still grid-connected.

Question 8 – What reforms may be needed to ensure that electricity consumers within stand-alone microgrids or other emerging energy supply models pay a fair price for their electricity where there may be a lack of competitive tension?

There are basic ways that fair customer price outcomes can be assured. One is linking the maximum price to the paid by consumers to the best market offers available. Another is not proceeding with projects that appear unlikely to support that price outcome.

Alternately, where price savings are not expected from the project, but other benefits (like higher reliability or lower emissions) are, the requirement for Explicit Informed Consent should consider the trade-offs made by consumers.

While PIAC has many concerns about the effectiveness of retail competition for consumers in the current retail market, retail competition has the potential to provide benefit, at least for engaged consumers.⁸ As noted in PIAC's submission to the AEMC's Alternatives to grid supplied network services rule change, there are opportunities for off-grid supply to be arranged in a way that retains the current customer interfaces with their retailer and distributor.⁹

In these arrangements, the customer has the benefit of continuity of experience where they continue to pay their bills to a retailer, potential to access competitive retail offers and have access to the same consumer protections. These include access to retailer hardship programs, access to rebates and vouchers, strict limitations on disconnection of supply, stringent protections for customers with life support equipment and access to binding dispute resolution processes.

This would also retain the obligation for Explicit Informed Consent (EIC) which ensures customers are provided with detailed, accurate, standardised and easy to understand information including the anticipated risks and benefits.

Obligations around EIC are essential to ensure that customers are given sufficient information and understand their rights, obligations and terms of energy service contracts they enter into. However, PIAC holds broader concerns around shortcomings of the current information obligations to this end. For instance, they do not address the need to disclose information in plain English and to ensure it is provided by someone competent to do so.

PIAC also considers that EIC should apply to all contracts, whether short or long term, but understand that the implications will be different depending on the nature of the service.

As discussed by ATA and CUAC:

consumers should be able to readily change energy retailers to access better priced energy from the grid, or break a contract when their circumstances change, with little or no penalty. However, some innovative products and services for consumers inherently require a longer term contractual commitment, as material up-front investment is made in providing and installing equipment.

In these cases, a consumer should not be restricted from accessing innovative products and services by protections that are intended to preserve access to competition in the retail

⁸ PIAC, *Overpriced and underwhelming: a retail market that has failed consumers – submission to the ACCC Inquiry into electricity supply*, 2017, < <https://www.piac.asn.au/2017/07/11/overpriced-and-underwhelming> >.

⁹ PIAC, *Submission to AEMC Alternatives to grid-supplied network services rule change consultation paper*, 2017, p. 7, < <http://www.aemc.gov.au/getattachment/926a457e-f7b0-4eda-ba61-0875776306ba/Public-Interest-Advocacy-Centre.aspx> >

market, however, a service provider must be able to demonstrate EIC such that the consumer is made aware that:

- They may be foregoing access to competition for some or all of their energy needs for some period of time ...
- They may be subject to some sort of additional charge to recoup some of a provider's cost outlay if their circumstances change - for example, if they move house and equipment has to be removed or relocated.¹⁰

Therefore, consumer protection arrangements should seek to retain as many aspects as possible of a grid-connected customer's relationships, interactions and protections for customers whose supply is changing from grid-connected to SAPS.

Question 9 – What consumer protections should apply to NSW consumers who are supplied their electricity via alternative energy supply models where the NECF may not apply?

See response to other Questions herein, including 2, 4 and 8.

Question 10 – Should consumers be given a choice as to which consumer protections they wish to receive, perhaps in return for reduced charges?

Certain consumer protections must be considered as unalienable and cannot be traded. For example, compliance with safety regulations, access to independent dispute resolution processes, compliance with minimum warranty obligations and access to support for consumers experiencing financial hardship should be non-negotiable. This is not a definitive list of protections which should not be traded away.

PIAC supports some other protections being negotiable, such as reliability and quality of supply provided to the consumer. However, in any such negotiations, it is essential that the consumers are fully aware of the implications of any rights and protections they forgo. Therefore, it is imperative, if any consumer protections are to be negotiated, that the provider obtain the Explicit Informed Consent of their customer.

This would not preclude offering higher levels of protections or quality of service – for instance through a higher level of warranty coverage or reliability, which could allow providers to differentiate their product or service from competitors by providing a “premium” service or to meet the needs or preferences of particular consumers.

Question 11 – Does a general consumer protection regime such as the ACL provide adequate protections for electricity consumers? Would this be adequate for a consumer within a stand-alone microgrid?

Given the specific risks for customers who to own or lease a SAPS of their own volition, particularly where they are be used to the nature of supply from the grid, additional consumer protections are needed above those received by consumers who remain grid-connected.

¹⁰ ATA and CUAC, *Submission to COAG Energy Council Energy Market Reform Working Group on New Products and Services in the Electricity Market Consultation Paper*, 2015, pp. 3-4.

It is important to remember that, currently, SAPS are typically provided by small businesses (often sole traders) who, because they are not selling energy, have no obligations to comply with retail licencing or exemption arrangements or any other aspects of the National Electricity Rules. The only redress consumers have with SAPS providers is under ACL which has no energy specific consumer protections. Work undertaken by PIAC suggests that the warranties for many residential batteries, which are integral to any SAPS, may not fully comply with the ACL.¹¹

Question 12 – What are the key reform issues for the Energy and Water Ombudsman NSW to ensure that it can meet the needs of electricity consumers for free and accessible dispute resolution under a variety of energy supply and retail models with a broader group of service providers?

Energy consumer should have uniform access to independent dispute resolution processes where for essential energy services. Therefore, PIAC supports reforms which extend the dispute resolution processes currently available to customers supplied by authorised retailers and networks to customers who receive their primary supply from alternative energy service providers. This is consistent with PIAC’s position on providing a framework of energy consumer protections which are dependent on the potential harm to the consumer rather than the particular model for providing energy services.

To enable this, PIAC recommends these providers be required to be members of EWON. There will need to be a review of EWON’s current funding model to ensure it is appropriately funded to perform any additional roles and also ensure that its members are not unfairly burdened. This is important to ensure that, while providing appropriate consumer protections, smaller entrants are not unnecessarily burdened with large financial obligations which may prevent or discourage their entry into the market.

PIAC understands there is currently work underway with the AER and the Australia and New Zealand Energy and Water Ombudsman Network (ANZEWO) to consider the changes required to current ombudsman membership schemes and the AER’s exemption frameworks.¹² In PIAC’s submission to the AER consultation, we noted the need to balance consumer protections against the potential burden on providers:

PIAC supports, in part, the AER’s view that obligations on exempt entities should scale with their size, with the caveat that a minimum level of a harm-cognizant, impact-based protection is required, irrespective of the scale of provider.

PIAC understands that some exempt entities operate multiple networks, potentially across different jurisdictions. While each network may have only a small number of customers, the exempt entity may collectively provide energy services to a considerable number of customers – indeed, some may have a similar number of customers as a small non-exempt retailer.

¹¹ Dr Penelope Crossley for PIAC, *Ensuring Consumer Protections for Purchasers of Residential Battery Storage Systems*, 2017, < <https://www.piac.asn.au/2017/10/12/battery-warranties-leave-consumers-in-the-dark-report> >.

¹² AER, *Access to dispute resolution services for exempt customers*, 2017.

Therefore, in determining the size of an exempt entity, the AER should consider all of its networks and jurisdictions.¹³

Question 13 – How do we ensure that social policy obligations for energy such as energy rebates are delivered for all NSW consumers, regardless of the energy delivery model or the service provider?

Access to energy rebates and support mechanisms such as the Energy Accounts Payment Assistance (EAPA) scheme form an important part of consumer protections framework and help consumers experiencing financial hardship to access essential energy services. Of particular concern to PIAC is that many of the current rebates and support mechanisms are only available to customers supplied through a registered network and retailer (i.e.: the ‘traditional’ energy supply model) and hence are not available to those in embedded networks, in microgrids or off-grid.

Therefore, PIAC recommends that energy rebates and similar support mechanisms be available to all consumers experiencing financial hardship. This is consistent with PIAC’s position on providing a framework of energy consumer protections which are dependent on the potential harm to the consumer rather than the particular model for providing energy services.

Question 14 – How do we ensure that life support protections are delivered for all customers, regardless of their location, energy supply model or the particular service provider?

There are a number of tools available to support consumer access to critical energy supply. SAPS and microgrids often provide inherently more reliable supply than many remote grids, but may be owned and operated by smaller businesses that are less able to respond as quickly to remediate an outage.

In PIAC’s view, this question gives rise to vexed and complex issues that need to be explored in more depth. PIAC suggests that:

- Legal advice is sought, and
- A stakeholder workshop is held to explore these issues in more depth.

Further engagement

PIAC thanks the department for the opportunity to respond to the discussion paper, and would welcome the opportunity to discuss the issues raised in more depth. Please contact:

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- Craig Memery, Policy Team Leader, Energy and Water, at cmemery@piac.asn.au or on (02) 8898 6522.

¹³ PIAC, *Submission to Exempt customer dispute resolution issues paper*, 2017, p. 2, < <https://www.piac.asn.au/2017/07/18/exempt-customer-dispute-resolution-issues-paper> >.