



public interest
ADVOCACY CENTRE

**Submission to the Digital Metering: Improving
Service Delivery in NSW – public consultation
paper**

12 September 2019

About the Public Interest Advocacy Centre

The Public Interest Advocacy Centre (PIAC) is an independent, non-profit legal centre based in Sydney.

Established in 1982, PIAC tackles barriers to justice and fairness experienced by people who are vulnerable or facing disadvantage. We ensure basic rights are enjoyed across the community through legal assistance and strategic litigation, public policy development, communication and training.

Energy and Water Consumers' Advocacy Program

The Energy and 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 interests of low-income and other residential consumers in the NSW energy and water markets. PIAC receives input from a community-based reference group whose members include:

- NSW Council of Social Service;
- Combined Pensioners and Superannuants Association of NSW;
- Ethnic Communities Council NSW;
- Salvation Army;
- Physical Disability Council NSW;
- St Vincent de Paul NSW;
- Good Shepherd Microfinance;
- Affiliated Residential Park Residents Association NSW;
- Tenants Union;
- Solar Citizens; and
- The Sydney Alliance.

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Introduction

PIAC welcomes the opportunity to respond to the *'Digital metering: Improving Service Delivery in NSW'* Public Consultation Paper (the Paper), and strongly supports this process seeking stakeholder input on such a crucial issue for NSW households.

The paper asks that stakeholder feedback is sought in the context of contribution to the NSW Government priorities to:

- Reduce unnecessary red tape
- Ensure consumers are adequately protected
- Maintain appropriate safety measures, and
- Ensure consistency with approaches in other jurisdictions where appropriate.

PIAC broadly agrees that in combination these priorities provide an appropriate framing for assessing the future scope for the utilisation of smart metering technology.

PIAC supports the current NSW Government moratorium on remote de-energisation and re-energisation (de-en/re-en). The market-lead rollout of smart metering has no direct Australian precedent, and so brings with it a range of significant uncertainties and potential consumer detriment. Due to the essential nature of household electricity connections, a 'harm-based' framework for assessment of any changes to policy regarding electricity metering and connections is required.

PIAC contends the following steps must be part of assessing the potential for consumer harm and system benefits resulting from allowing remote de-energisation and re-energisations:

- Separating consideration of voluntary de-energisation (at a consumers request) from involuntary de-energisation (de-energisation undertaken in response to an inability to pay);
- Assessing the nature and vulnerability of households de-energised due to inability to pay;
- Assessing the total household impact and potential for harm resulting from de-energisation as result of inability to pay;
- Assessing the practical interaction of retail payment assistance regulations and de-energisation as a result of inability to pay;
- Assessing the practical impact of remote de-energisation on the frequency of de-energisation as a result of inability to pay;
- Assessing the practical impact of remote de-energisation on the increased potential harm to households de-energised as result of inability to pay, in particular the likelihood of increased vulnerability;

- Assessing the relative ‘actual’ costs to retailers to undertake various de-en/re-en services, differentiating between voluntary and involuntary;
- Assessing the likelihood of consumer benefit from any cost savings associated with remote re-en/de-en;
- Demonstrating that any potential economic or efficiency benefits are significant and likely to be fully or substantively realised; and
- Prioritising consideration of potential consumer harm, over potential market or business benefit or saving, and determining a response that reflects this balance appropriately.

In this submission PIAC will address issues relating to these steps, divided broadly into 3 areas: consumer harm, economic benefit, and determining an appropriately balanced response, taking into account the NSW Government priorities identified in the paper.

Assessing the potential for consumer harm

The paper specifically requests feedback regarding the need for additional measures to protect ‘vulnerable’ households with smart meters, in relation to remote de-en/re-en. As outlined above, key to this consideration is to determine the potential for consumer harm stemming from de-energisation, the impact of that harm on households, and the potential for remote de-energisation to increase the likelihood or likely impact of that harm.

Categories of de-energisation and re-energisation

The Paper references the gross number of potential instances of de-en/re-en, by highlighting the number of NSW residents who move house annually. While this provides relevant context, it does not accurately identify the gross number of de-en/re-en instances, nor divide them into relevant categories for further analysis. The first step of this assessment should be to separate instances of de-energisation into those that are voluntary (responding to a consumer request), and those that are involuntary (those initiated by a retailer as a result of a household’s debt or inability to pay).

PIAC considers that involuntary de-energisations present the greater potential for material consumer harm, and so should be the priority category for analysis.

Recommendation 1

PIAC recommends that instances be split between voluntary de-en/re-en and involuntary de-en/re-en and that changes relating to each category be considered separately.

Vulnerability of households de-energised due to inability to pay

Accumulated research into household disconnections (de-energisation) due to an inability to pay highlights there is no simple framework for determining vulnerability to disconnection. While assessments of vulnerability to debt and disconnection often assume that this is restricted to households with low and fixed incomes, the sustained high cost of energy, combined with rising

costs of living, mean that increasingly middle and even higher income households are struggling to pay for their essential energy needs and facing disconnection¹.

PIAC's recent research into residential disconnections in NSW highlighted the wide range of often overlapping and interacting factors that can result in a household being unable to pay their bills, accumulate debt and end up disconnected². These factors include disability, previous homelessness, fixed income, domestic abuse or unemployment, which may be regarded as indicators or vulnerability. Other factors also include illness or accident, employment disruption, family breakdown, and other circumstances that are not restricted to those on low incomes that are more commonly regarded as being 'vulnerable'.

Due to the variability, complexity and overlapping nature of vulnerabilities that can contribute to a household facing de-energisation due to inability to pay their bills, PIAC considers it appropriate to consider all households facing disconnection due to inability to pay, as 'vulnerable'. PIAC contends that all households facing 'involuntary' disconnection initiated by the retailer should be subject to an assessment of the potential for increased harm as a result of allowing remote de-energisation.

Recommendation 2

PIAC recommends that in relation to assessment of remote de-energisation or re-energisation, the 'vulnerable households' category should include all households facing the possibility of de-energisation due to debt or an inability to pay.

Impact of de-energisation due to inability to pay

Research into the experience of households facing or experiencing disconnection due to an inability to pay shows the extremes to which households will go to afford essential energy and the significant, escalating and ongoing impact that disconnection has upon the vulnerability of the household³.

In a survey of over 1,000 consumers disconnected or at immediate risk of being disconnected due to an inability to pay, PIAC found that the significant harmful impact of disconnection on a household includes:

- The inability to heat/cool, light, bathe, and keep and prepare food. If a household is forced to remain without a connection for an extended period, this is an immediate risk to the health of the household members, as well as increasing their vulnerability to compounded health, mental health, unemployment, social dislocation and other harmful impacts.
- The flow-on costs related to disconnection, including those related to lost food and eating out, bathing or washing externally, temporary accommodation or sourcing necessary energy related services elsewhere. More than 80 per cent of responses to our research indicated that this cost amounted to between \$100-\$500 plus⁴.

¹ Choice, [Consumer Pulse: Australians' Attitudes to Cost of Living 2015-2016](#), 2016. 8.

² PIAC & UMR, ['Close to the Edge: a qualitative and quantitative study of essential service disconnection'](#), 9-10, 21 November 2018.

³ Consumer Action Law Centre, ['Heat or Eat: households should not be forced to decide whether they heat or eat'](#). August 2015.

⁴ Above, n 2.

- The significant and varied costs related to restoring their connection, including fees related to disconnection, bonds, reconnection and 'required' payments and contributions towards accumulated debt. These amounts compound the circumstances that lead to the initial inability to pay, and may force households into unsafe debt such as payday loans, or going without food, medical, and rent or mortgage payments, which can seriously impact health and in some cases cause homelessness. 30 per cent of responses to our research indicated that these costs amounted to between \$100 and more than \$200, with a further 30 per cent paying up to \$100⁵.

These factors increase the likelihood of experiencing difficulty paying in the future and the risk of being disconnected again. The impact of disconnection on increasing likelihood of future disconnection is a key consideration in relation to this process, and one which will be explored further.

Interaction between de-energisation due to inability to pay, and retail practices

The Paper notes that the National Energy Retail Rules provide a framework of obligations and directions to retailers regarding what assistance they should provide to customers experiencing payment difficulty and when they should attempt to provide this assistance. However, these protections remain imperfect, and are often not delivered as intended.

PIAC contends it is not appropriate to rely on these regulations to deliver equivalent outcomes between manual and remote de-energisation for vulnerable consumers. Remote de-energisation removes both practical steps and available time between initiating and completing disconnection. Remote de-energisation has a material effect on the time available for consumers experiencing payment difficulty to be identified and assisted by their retailer. This reduction limits the effectiveness of consumer protections that are intended to avoid disconnection (de-energisation).

In our '*Close to the Edge*' report, PIAC found retailers were not always fulfilling their obligation to pursue disconnection only as a last resort, subsequent to offering a range of minimum assistance measures. In particular we highlight evidence that:

- At least 26 per cent of those disconnected, owed less than \$300 prior to disconnection. According to National Energy Law & Rules, retailers are not permitted to initiate disconnection warnings or procedures until a consumer has more than \$300 in accumulated arrears.
- 59 per cent of those who were disconnected, and 53 per cent of those issued with a notice of disconnection but not disconnected were receiving no assistance from their retailer despite it being a requirement that such assistance be provided prior to initiating disconnection proceedings.
- 74 per cent of people disconnected had been in contact with their retailer immediately prior to disconnection without this contact resulting in assistance or action which prevented disconnection.

⁵ Ibid.

These figures support consistent anecdotal evidence from financial counsellors, debt-help line workers and other front-line community service providers, that people experiencing payment difficulty are often threatened with disconnection or disconnected without prior offers of assistance or information which retailers are obliged to provide.

PIAC considers that this may be a result of the competing demands of standard retail business structures and regulatory requirements. Of particular concern is retailers' provision of insufficiently trained staff (often external contractors) who have limited understanding of the wider framework of regulatory requirements for retailer provision of assistance. As a result retailer staff may treat customer contact as an opportunity for payment and debt recovery rather than payment assistance. This approach is particularly harmful as a response to the often complicated lives of people facing payment difficulty and can result in breakdown in communication between retailer and customer.

While PIAC understands this process is not intended to supercede or expand protections conferred by the national rules, we contend it is crucial to consider the actual experience of households facing payment difficulties and involuntary de-energisation. It illustrates how practical changes to the process of de-energisation may impact upon the effectiveness of existing consumer protections for those experiencing payment difficulty.

By removing steps and reducing timeframes between initiating and completing de-energisation, remote de-energisation reduces the opportunities for a positive outcome for both retailer and consumer. Remote de-energisation removes 'invisible' protections, such as metering staff electing not to follow through with a disconnection, that currently make a material contribution the success of current consumer protections.

The impact of this will be explored further, through examining the impact of remote de-energisation in Victoria.

Recommendation 3

PIAC recommends this process consider the interaction of consumer protections regulations and retail service practices in determining the potential impact of remote de-energisation on the actual level of consumer protections for those experiencing payment difficulty.

Impact of remote de-energisation on instances of de-energisation

The Paper asks for input regarding the potential need for 'additional measures' to protect vulnerable consumers in the event that remote de-energisation is allowed. PIAC considers that the requirement to manually undertake the process of de-energisation acts as a practical element in the delivery of the existing framework of consumer protections. Accordingly, whether to allow remote de-energisation is a question of ensuring existing consumer protections for vulnerable households experiencing difficulty paying their bills are provided.

PIAC highlights evidence from the 'Households in the dark' research by St Vincent de Paul Society, which shows remote de-energisation of households who are unable to pay has resulted in a material increase in completed de-energisations, and an increase in those de-energised multiple times. Specifically, PIAC highlights:

- Between 2012-2015 the report found the average rate of completed de-energisations was much higher in Victoria (61 per cent) than in other jurisdictions, ⁶. During this time, Victoria was the only jurisdiction allowing remote disconnection.
- More than half of Victoria's uncompleted disconnections occurred in the first year (2012-13) prior to completion of the smart meter rollout, reducing to 20 per cent in 2014-15⁷, after rollout was completed. The increasing rate of completed disconnections over the course of the 3 year period further suggests a causal link between remote de-energisation and the number of households de-energised when they cannot pay.
- Of the 21 postcodes containing the highest proportions of people disconnected 3 times, 4 of them are western Sydney and regional NSW areas with high levels of household vulnerability. 17 of them are in Victoria⁸. Without any evidence of other demographic causes (such as vastly higher rates of household vulnerability in Victoria), this is further evidence that remote de-energisation makes recourse to disconnection easier and more likely to be undertaken multiple times.
- Of the 12 postcodes where a high proportion of people were disconnected 4 times, only one was in NSW, with the other 11 all in Victorian.⁹ Again, this indicates recourse to de-energisation is significantly higher when it is possible to do so remotely.

While all households facing de-energisation due to an inability to pay are vulnerable, those who have previously been disconnected are particularly vulnerable, both to immediate health, quality of life and financial impacts, and to being disconnected again in the future.

In light of this, PIAC considers the time and practical steps required to complete de-energisation manually are important practical elements of ensuring existing consumer protections are delivered. Accordingly, allowing remote de-energisation in response to an inability to pay reduces the consumer protections available to vulnerable consumers. Where existing protections still consistently result in 30,000 NSW households being disconnected each year, any alterations to the existing framework are likely to materially increase the scope and impact of harm to NSW households. PIAC does not consider it appropriate to allow households facing disconnection as a result of inability to pay to be disconnected remotely.

Recommendation 4

PIAC recommends that remote de-energisation not be allowed in response to a household's inability to pay (involuntary de-energisation). Further, this process should consider additional requirements for protection of households who have already been de-energised previously in a 12 month period.

⁶ St Vincent de Paul Society VIC & Alvis Consulting, '[Households in the dark: mapping electricity disconnections in SA, Victoria, NSW and SE Queensland](#)'. Pp-36-48. May 2016

⁷ Ibid.

⁸ Ibid.

⁹ Ibid.

Assessing the potential benefits

PIAC understands there are a range of circumstances where the ability to use the capabilities of smart meters could provide efficiency benefits to retailers and metering co-ordinators, and by extension households and the system as a whole. PIAC supports further examination of the scope of this benefit, and the appropriate utilisation of smart metering capabilities.

In order to assess the potential benefits of allowing remote de-energisation and re-energisation across the range of potential circumstances, PIAC considers the following steps necessary:

- Determine time and efficiency savings possible as a result of allowing remote re-energisation under all circumstances.
- Subject to appropriate procedures regarding household safety, the ability to use the capabilities of smart meters to restore a household connection to an essential service as quickly and cheaply as possible should be the first priority. Quantifying the potential benefit of allowing remote re-energisation involves:
 - Determine an average time saving from remote re-en based on the average time taken to manually re-energise a household de-energised due to inability to pay, compared with the average time to do so remotely. PIAC research indicates 99 per cent of households took between 1 and 7 days to be re-energised after being de-energised as a result of inability to pay. The remainder were not able to secure re-energisation at all¹⁰. Time without a connection to essential electricity services has a significant financial and quality of life impact and any ability to mitigate this should be a priority. This process should also identify factors that may lead to re-energisation taking longer than intended.
 - Determine an average time saving from voluntary remote re-en based on the average time taken to manually re-energise a household previously de-energised voluntarily, compared with the average time to do so remotely. In doing so, determine the upper and lower limits taken to manually re-energise a household voluntarily de-energised, and the range of factors affecting this timeframe, and their likely occurrence.
 - Determine the number of callouts related to manual re-energisation annually, and the staff hours and costs associated with these.
 - Assess how many staff hours will be required to undertake a similar number of re-energisations remotely. This should include recognition of call centre and other service staff, and contingency for potential inability to complete all re-energisations remotely.
- Determine the likely annual staff hours and costs savings both per re-energisation, per household and for the system as a whole. Importantly, consideration should be made as to whether these savings are likely to be passed through to the household.

¹⁰ PIAC & UMR, [‘Close to the Edge: a qualitative and quantitative study of essential service disconnection’](#), pp 42-45, 21 November 2018

- Determine the potential time and efficiency savings possible from allowing consumer-requested remote de-energisation (voluntary de-energisation).

Instances of voluntary de-energisation include when a consumer is moving house. This assessment process should ensure that any request for de-energisation is valid, is being made by the occupant and with the permission of all those named on the bill, and that if the request impacts a life-support customer, that this is dealt with appropriately. It should also accommodate assessment of circumstances of domestic and household abuse, in which de-energisation can be used as a means to abuse a partner. This process should then include:

- Determining exact figures for how many voluntary de-energisations are requested annually, and further, how many of these could appropriately be undertaken remotely (assuming 100 per cent smart-meter penetration).
- Determine the cost to retailers to receive, process and complete a voluntary de-energisation request manually.
- Determine the costs to retailers to receive, process and complete a voluntary de-energisation remotely.
- Determine and allow for any factors likely to interfere with or prevent fulfilment of a voluntary request to de-energise a consumer, including issues with communication and with technology. This should inform a downward adjustment of the number of voluntary de-energisations that are likely to be undertaken.
- Determine likely cost saving per consumer of remotely responding to voluntary de-energisation requests.
- Determine the overall system 'efficiency' savings as a result of allowing retailers to respond to consumers de-energisation requests remotely (being the overall cost savings, less adjustments), and accounting for the materiality of the benefit and the likelihood of these savings being fully passed through. This should also provide an indication of the number of voluntary de-energisations likely to be impossible to complete remotely.

While there is potential for smart metering technology to deliver systemic benefits to NSW households, it is necessary to determine how material those savings are, how likely they are to be wholly or significantly delivered, and what potential they have to deliver positive impact for NSW households.

Determining a balanced approach

In determining an appropriate response that maintains strong consumer protections for NSW households, while delivering potential benefits, PIAC makes the following observations related to the NSW Government priorities:

Jurisdictional consistency

As the Paper outlines, there is not currently any established approach across other states in relation to the employment of remote de-energisation. As the first jurisdiction with smart-metering, Victoria is the only state that allows remote voluntary and involuntary de-energisation.

PIAC considers remote de-energisation may have materially reduced the practical effect of consumer protections in Victoria and, as such, considers consistency with the Victorian approach is not warranted at this time. Further, as the Victorian Government rolls out reforms to its Payment Difficulty Framework, it is increasingly focussing on the need to improve protections for vulnerable consumers and prevent disconnections. In this context it is likely that future measures may limit recourse to remote de-energisation in response to inability to pay.

As other jurisdictions roll-out smart metering, it is likely that they will look to the Victorian experience and seek to maintain measures that reinforce consumer protections. PIAC highlights the case of Queensland, where remote de-energisation is explicitly prohibited, and the experience of South Australia and the ACT, where remote de-energisation is avoided by convention with the assumption it is unlikely to be allowed in an unrestricted form in the future.

Efficiency

While the NSW Government has a priority to 'reduce unnecessary red tape', in this case it is more appropriate to frame consideration of implementing remote de-energisation and re-energisation in terms of its potential to achieve service and system efficiencies. In many cases the processes and time involved in receiving and acting on a de-energisation or re-energisation contribute to ensuring safe, protected access to essential electricity needs. Therefore, de-energisation and re-energisation processes must ensure:

- That all regulatory requirements in relation to offers of information, support and assistance have been appropriately fulfilled;
- That the retailer is responding to a properly formatted request from the household account holder;
- That the actions of the retailer appropriately account for circumstances of domestic abuse in assessing requests for de-energisation;
- That de-energisation will not endanger the health of the household (in circumstances where the household is on the life support register, or in receipt of a life support or medical energy rebate);
- That de-energisation and re-energisation is undertaken safely, by appropriately qualified and monitored contractors; and
- That the essential nature of electricity connections is recognised in processes that prioritise initiating and maintaining energisation.

Accordingly, PIAC contends that subject to determining the extent of potential benefits as outlined earlier, improved efficiency is a priority consideration for completing re-energisation under all circumstances.

Where a consumer has requested de-energisation, subject to processes meeting the parameters above, there are arguments for allowing remote de-energisation in response to a consumer request.

However, PIAC cannot see any efficiency argument in favour of extending remote de-energisations to 'involuntary' processes in response to a consumer's inability to pay.

Ensuring adequate protection

PIAC reiterates the primary importance of consumer protection in assessing the potential to employ remote de-energisation and re-energisation. The assessment process must ensure that adequate safety procedures are put in place and adhered to, and that any employment of remote de-energisation and re-energisation does not reduce the practical impact of protections available to NSW households. PIAC suggests that, particularly in respect of 'involuntary de-energisations', it is not appropriate to request evidence of potential consumer detriment. This assessment process, in weighing potential benefits against likely harms, should preference consumer protection, and only act where it can be demonstrated that any changes will not reduce protections available to consumers.

Accordingly, PIAC reiterates our recommendation that if this process determines a material benefit can be gained through allowing remote de-energisation and re-energisation that this be done within the following parameters:

- Remote de-energisation only be allowed in response to a direct request from the household;
- Appropriate processes are in place to determine a household request for de-energisation is genuine and not subject to health, safety or domestic abuse risks;
- That the prohibition on remote de-energisation in response to a consumer's inability to pay remain in place permanently;
- That remote re-energisation, subject to appropriate safety procedures, be allowed under all circumstances.

Continued engagement

PIAC looks forward to continued constructive engagement to explore the most appropriate and efficient employment of smart-metering. We view this as a valuable opportunity to ensure that NSW households benefit from the new capabilities offered by smart-metering technology while ensuring their essential access to electricity services is protected.