

# **Submission to IPART Draft Terms of Reference: The future of embedded networks in NSW**

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## About the Public Interest Advocacy Centre

The Public Interest Advocacy Centre (PIAC) is leading social justice law and policy centre. Established in 1982, we are an independent, non-profit organisation that works with people and communities who are marginalised and facing disadvantage.

PIAC builds a fairer, stronger society by helping to change laws, policies and practices that cause injustice and inequality. Our work combines:

- legal advice and representation, specialising in test cases and strategic casework;
- research, analysis and policy development; and
- advocacy for systems change and public interest outcomes.

## Energy and Water Consumers' Advocacy Program

The Energy and Water Consumers' Advocacy Program works for better regulatory and policy outcomes so people's needs are met by clean, resilient and efficient energy and water systems. We ensure consumer protections and assistance limit disadvantage, and people can make meaningful choices in effective markets without experiencing detriment if they cannot participate. PIAC receives input from a community-based reference group whose members include:

- Affiliated Residential Park Residents Association NSW;
- Anglicare;
- Combined Pensioners and Superannuants Association of NSW;
- Energy and Water Ombudsman NSW;
- Ethnic Communities Council NSW;
- Financial Counsellors Association of NSW;
- NSW Council of Social Service;
- Physical Disability Council of NSW;
- St Vincent de Paul Society of NSW;
- Salvation Army;
- Tenants Union NSW; and
- The Sydney Alliance.

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Public Interest Advocacy Centre



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The Public Interest Advocacy Centre office is located on the land of the Gadigal of the Eora Nation.

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**Recommendation 1**

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*Add additional term of reference: Consider the future of gas embedded networks in the context of household energy efficiency and electrification.*

**Recommendation 2**

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*Add additional term of reference: Consider the future role of electricity embedded networks in NSW and if/how they can be reformed to deliver actual consumer benefit.*

**Recommendation 3**

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*IPART consider the lived experience of people in embedded networks and the wider context of embedded networks, including that most have been set up to deliberately circumvent the more comprehensive rules and protections provided for consumers in standard supply arrangements to deliver additional revenue (or reduced costs) to proponents.*

**Recommendation 4**

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*Consider the actual experiences and outcomes for people in embedded networks, including some people's effective lack of options but to reside or remain in an embedded network.*

**Recommendation 5**

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*The primary consideration is the equal right for all NSW consumers to access affordable, dependable, sustainable energy.*

**Recommendation 6**

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*Prioritise consideration of outcomes for NSW consumers in embedded networks over limitations of the existing framework.*

**Recommendation 7**

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*Change consideration e) to: the financial impacts on consumers.*

**Recommendation 8**

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*Change consideration f) to: effectiveness, practicality, benefits and costs associated with compliance and enforcement options, including cost recovery options, and the financial, emotional, potential safety and time costs for consumers if there is ineffective compliance and enforcement.*

**Recommendation 9**

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*IPART include consideration of consumers' actual access to supports and protections, and how this impacts affordability.*

**Recommendation 10**

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*IPART include consideration of the power imbalances which can occur in embedded networks and how this impacts consumers' access to fair prices, supports and protections, including access to EWON.*

**Recommendation 11**

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*IPART's investigation must be undertaken within the context of significant cost of living pressures.*

**Recommendation 12**

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*IPART give consideration to removing future opportunities for providers to find alternative ways to circumvent the energy protections framework.*

**Recommendation 13**

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*As part of IPART's process to investigate and report on embedded network issues in NSW, IPART should survey and interview people who live in embedded networks.*

# 1. Introduction

The Public Interest and Advocacy Centre (PIAC) welcomes the opportunity to respond to the Independent Pricing and Regulatory Tribunal's (IPART) draft terms of reference from the NSW Government on the future of embedded networks in NSW.

## **People should have equivalent protections and supports regardless of where they live**

All NSW households should have equivalent expectations in their access to the energy they need, and equivalent supports and protections for that access, regardless of where they live. PIAC supports the NSW Government commitment 'to bring outcomes for embedded network customers in-line with those in traditional energy supply arrangements'<sup>1</sup> and 'to provide more equitable consumer and price protections for embedded network customers.'<sup>2</sup>

Appropriately regulated embedded networks may help enable better consumer outcomes, such as where they are structured to support household benefit from renewable energy and storage. However, the onus must be on the proponent of an embedded network to demonstrate that tangible beneficial consumer outcomes will be realised as a result. Approval on the basis of 'potential for benefit' is not acceptable. There must also be robust, consistently applied, fit-for-purpose consumer protections in any embedded network arrangements that are approved.

With very few exceptions, outcomes for consumers in embedded networks are often inconsistent and detrimental. Any potential consumer benefits are seldom realised (being absorbed by the operators in the form of reduced costs or increased revenue), or insufficient to outweigh the potential (and actual) harms and other impacts consumers experience as a result of being served through an embedded network.

For the most part, PIAC is supportive of the draft terms of reference but recommend that the future of gas embedded networks and electricity embedded networks also be considered, and urge that IPART's primary considerations be the consumers living in embedded networks, rather than the service providers and their business models. In this submission we respond to each of the five tasks assigned to IPART and comment on the nine relevant considerations listed, as well as including our additional recommended considerations.

## 2. Draft terms of reference

### Hot and Chilled Water

- 1. An appropriate methodology or methodologies for IPART to use in setting maximum prices for hot and chilled water supplied through embedded networks.**

PIAC supports this term of reference.

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<sup>1</sup> Office of Energy and Climate Change, NSW Treasury (2023) 'Embedded Network Action Plan – Improving outcomes for customers of embedded networks.'

<sup>2</sup> Ibid.

Consumers in embedded networks should be provided with more robust price protection. People in embedded networks generally have no alternative service option and currently have less protections and transparency than standard supply consumers. Any methodology for calculating price protection in embedded networks must be based on an efficient cost to serve and reflect the inability consumers have to seek alternative providers.

**2. Whether new embedded networks for hot and chilled water should be prohibited in NSW.**

PIAC supports this term of reference.

Consumer experiences and outcomes must be central to IPART's investigation.

Consideration of whether new embedded networks for hot and chilled water should be prohibited in NSW should include broader issues such as how current allowable building density rules may mean that in some circumstances it is only feasible to have hot or chilled embedded networks (because there is not enough space for individual water heaters/coolers) and whether this is appropriate.

**Gas**

**3. An appropriate methodology or methodologies for IPART to use in setting maximum prices for gas supplied through embedded networks.**

PIAC supports this term of reference.

Consumers in embedded networks should be provided with more robust price protection. People in embedded networks generally have no alternative service option and currently have less protections and transparency than standard supply consumers,. Any methodology for calculating price protection in embedded networks should be based on an efficient cost to serve and reflect the inability consumers have to seek alternative providers.

Serious consideration must also be given to whether gas embedded networks should be abolished. Gas embedded networks have the potential to lock consumers into a fuel supply that has not kept pace with efficiency, cannot be de-carbonised and locks consumers into expensive, inequitable, and complicated processes to electrify later. PIAC recommends that as part of its investigation into gas embedded networks, IPART investigate whether new gas embedded networks should be prohibited in NSW.

***Recommendation 1***

*Add additional term of reference: Consider the future of gas embedded networks in the context of household energy efficiency and electrification.*



## Electricity

- 4. Whether the Commonwealth Government's Default Market Offer is the appropriate maximum price for electricity embedded networks, or whether a different method should be used to determine the maximum price for electricity embedded networks.**

PIAC supports this term of reference.

Consumers in embedded networks should be provided with more robust price protection than is currently offered by the DMO. People in embedded networks generally have no alternative service option and currently have less protections and transparency than standard supply consumers. Any methodology for calculating price protection in embedded networks should be based on an efficient cost to serve and reflect the inability consumers have to seek alternative providers.

Serious consideration must also be given to whether electricity embedded networks which give no material consumer benefits (such as access to the benefits of renewable energy) should be abolished. With very few exceptions, outcomes for consumers in electricity embedded networks are often inconsistent and detrimental. Any potential consumer benefits – such as from bulk purchasing of energy - are seldom realised (being absorbed by the operators in the form of reduced costs or increased revenue), or insufficient to outweigh the potential (and actual) harms and other impacts consumers experience as a result of being served through an embedded network.

PIAC recommends that as part of its investigation into electricity embedded networks, IPART should investigate under what circumstances electricity embedded networks should continue to be approved. For example, this could include where proponents can demonstrate that tangible benefits from solar and/or other distributed energy resources will result in material benefits for consumers and how the potential negatives of embedded networks such as lack of access to assistance, supports and transparency would be addressed.

### ***Recommendation 2***

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*Add additional term of reference: Consider the future role of electricity embedded networks in NSW and if/how they can be reformed to deliver actual consumer benefit.*

## Compliance and enforcement

- 5. The compliance and enforcement framework for any new price protections.**

PIAC supports this term of reference.

A crucial first step in achieving effective compliance and enforcement is for the NSW Government to collect data on embedded networks including how many embedded networks there are, what business structures are in operation and how many people live within these arrangements.

Appropriately robust compliance and enforcement will require adequate reporting requirements, monitoring and education, including ensuring that consumers in embedded networks know what their rights are, what expectations they should have and how they can seek enforcement.

The Committee on Law and Safety's Inquiry into embedded networks in NSW raised the serious concerns about the limitations to compliance and monitoring of embedded networks. Efforts to improve outcomes for people in embedded networks will not be successful without effective compliance and monitoring, undertaken within the context of complex embedded network business arrangements and the power imbalances that exist in some embedded networks (particularly Residential Land Lease Communities (RLLCs), retirement villages and social housing) between operators and residents.

### **3. Relevant considerations**

PIAC supports IPART making recommendations they consider best contribute to the national energy objectives. However, it is also important to consider the wider context and lived experience of being in embedded networks. Most embedded networks have been set up to deliberately circumvent the more comprehensive rules and protections provided in standard supply arrangements and deliver additional revenue (or reduced costs) to proponents.

#### ***Recommendation 3***

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*IPART consider the lived experiences of people in embedded networks and the wider context of embedded networks, including that most have been set up to deliberately circumvent the more comprehensive rules and protections provided for consumers in standard supply arrangements to deliver additional revenue (or reduced costs) to proponents.*

IPART should also consider the actual experiences and outcomes for people in embedded networks, including some people's effective lack of options but to reside or remain in an embedded network.

#### ***Recommendation 4***

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*Consider the actual experiences and outcomes for people in embedded networks, including some people's effective lack of options but to reside or remain in an embedded network.*

**In undertaking this task, the Tribunal should, where relevant, take account of:**

**a. the efficient and competitive costs of providing the relevant services**

PIAC does not support this being a primary consideration. In delivering an essential service, the primary consideration is the rights of consumers, not service providers and their business models or profitability. Regulation and protection of the standard of access to energy services should be based on whether any aspect of the service provision delivers an outcome impacting on people's dependable access to the energy. Consumers' access to affordable, dependable, sustainable energy should be the primary consideration. Businesses who cannot provide essential energy services to the required standard cost-effectively should not be allowed to continue to provide that service.

### ***Recommendation 5***

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*The primary consideration is the equal right for all NSW consumers to access affordable, dependable, sustainable energy.*

#### **b. statutory and legal obligations, including conditions imposed by the Australian Energy Regulator (AER) when issuing registration exemptions**

The primary aim should be to ‘to bring outcomes for embedded network customers in-line with those in traditional energy supply arrangements’<sup>3</sup>. This may require derogation from the AER’s *Retail Exempt Selling Guideline* to improve the outcomes for NSW consumers in embedded networks. Importantly this would not represent a material departure from national consistency as it would involve bringing more consumers into the standard national energy market consumer framework.

The existing exemption framework fails to deliver on its intent (better outcomes for consumers) and application of the framework should be limited to circumstances where good outcomes can be demonstrated and ensured. There should be no differentiation between aspects of energy that are regulated and those that are not, based on the business model or size of the provider. People served by small operators do not have lesser needs or rights than those served by larger operators.

### ***Recommendation 6***

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*Prioritise consideration of outcomes for NSW consumers in embedded networks over limitations of the existing framework.*

#### **c. the short and long term outcomes for customers in embedded networks, including how they compare to other electricity and gas customers (with a direct parent connection point to the grid)**

PIAC supports this consideration.

This consideration should include key consumer outcomes including price and bills; transparency; access to supports and protections; disconnections; opportunities for compliance and enforcement; access to information; and power asymmetries. This should be based on actual experiences of people in a range of embedded network circumstances.

#### **d. the benefits available to customers in embedded networks, including opportunities or limitations for embedded networks to support innovation and sustainable technologies**

PIAC supports this consideration, however, it must be based on actual benefits realised, not potential or theoretical opportunities. It should include examination of why benefits are not always achieved, and models and/or circumstances where benefits are realised. The intent of this consideration should be designing criteria to ensure embedded networks are only utilised where they enable an actual, demonstrated consumer benefit.

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<sup>3</sup> Ibid.

#### **e. the financial impacts on customers and existing embedded network providers**

PIAC does not support that consideration of existing embedded network providers be equated with the financial impacts on consumers. PIAC strongly supports the Australian Energy Market Commission's (AEMC) approach 'that consumer protections should be driven by the needs of customers and not the business model of suppliers'.<sup>4</sup> We consider that this should be the fundamental consideration for IPART.

The consideration of the financial impact on consumers should include actual financial costs across a range of different embedded network circumstances. This process should recognise that in some embedded networks, energy costs are recovered through means other than the energy bill. For example, PIAC has heard from ARPRA (who represent people living in land lease communities) of instances where a matter has escalated through the Energy and Water Ombudsman NSW (EWON) and resulted in a fee for the exempt entity, and that the exempt entity has sought to recoup this fee by increasing the resident's site fees. Site fees are not transparent and a resident cannot challenge operating costs in a RLLC in the NSW Civil and Administrative Tribunal (NCAT).

#### ***Recommendation 7***

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*Change consideration e) to: the financial impacts on consumers.*

#### **f. effectiveness, practicality, benefits and costs associated with compliance and enforcement options, including cost recovery considerations**

As well as making these considerations, IPART should consider the consequences (and potential and likely harms) of not providing for adequate compliance and enforcement such as the financial, emotional, potential safety and time costs for consumers.

#### ***Recommendation 8***

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*Change consideration f) to: effectiveness, practicality, benefits and costs associated with compliance and enforcement options, including cost recovery options, and the financial, emotional, potential safety and time costs for consumers if there is ineffective compliance and enforcement.*

#### **g. recent reviews of embedded networks**

PIAC supports this consideration.

#### **h. transitional issues as a result of IPART's recommendations**

PIAC supports this consideration, but caution against considering transitional issues as an impediment. Even if it involves overcoming complexity, ways must be found to improve outcomes for people in embedded networks, who are often excluded from energy reform processes.

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<sup>4</sup> AEMC, *Updating the Regulatory Frameworks for Embedded Networks, Final Report* (2019) i.

**i. any other matter the Tribunal considers relevant.**

Other matters IPART should consider include:

**a. Access to supports and protections**

IPART should also consider the (actual) access to supports and protections available to people in embedded networks. Previously such assessments have simply relied upon assumptions that supports and protections are delivered as written when this is not supported by case study evidence.

Consumers in standard supply arrangements have a higher standards of protections. This includes:

- Proactive identification of payment difficulties;
- More robust disconnections protections – including a principle that disconnection is a last resort and that a minimum debt amount be applied;
- A requirement to accept Centrepay; and
- Access to family violence protections.

Consumer protections in embedded networks will need to keep pace with our changing understanding of vulnerability through mechanisms such as the AER's *Towards Energy Equity Strategy* and recognise the particular issues inherent in some embedded networks such as information and power imbalances; lack of reporting requirements and transparency; and possible inability to effectively seek help (for example consumers in certain embedded network structures may be afraid to ask for help for their energy bill knowing that the operator will then be aware that they may not be able to make their rent and/or other payments).

Although the NSW Government has been working to ensure access to rebates for people in embedded networks and has committed to improve access to Energy Accounts Payment Assistance (EAPA), IPART should investigate how easy it is for people in embedded networks to access these supports, compared to people who received their energy through standard supply arrangements. For example, PIAC is aware that some people in embedded networks cannot access EAPA easily because they have insufficient bill information.

***Recommendation 9***

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*IPART include consideration of consumers' actual access to supports and protections, and how this impacts affordability.*

**b. Power imbalances which occur in embedded networks**

PIAC has heard concerns expressed by financial counsellors and ARPRA of a lack of transparency, and power and information imbalances in embedded networks, as well as inconsistent or non-existent provision of supports, assistance and protections measures (despite requirements to provide these).

## **Recommendation 10**

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*IPART include consideration of the power imbalances which can occur in embedded networks and how this impacts consumers' access to fair prices, supports and protections, including access to EWON.*

### **c. Going without and shifting debt elsewhere**

Price and affordability of energy must be seen in a wider context of the cost of living. Research undertaken by PIAC<sup>5</sup> shows:

- Energy consumers prioritise paying their energy bills above most other expenses and many respondents explained the careful and detailed ways they manage their income so they can pay their bills.
- 65% of people reported going without social activities in order to afford telecommunications or energy bills, whilst others report going without essentials, including 39% going without groceries or food, for example:

“I go without food. I've got things coming up, so we'll buy a 10 packet of 2-minute noodles for the week. Similar for energy bills.” – Young & Precariously Employed, Female, 18-24 years, VIC.

- Some people also cut back on the energy they need for their health and wellbeing to keep their energy bill low, for example:

“My family always complain to me how cold my place is. And one time my mum offered to pay to use the heater because I won't use the heater during winter [to save money].” – Low Income, Female, 40-44 years, NSW.

- Despite this prioritisation, budgeting and cutting back, 38% of energy consumers find it difficult to pay their utility bills on time. Because energy bill amounts are usually a large, variable and for many, an unpredictable amount each quarter, they can be hard to manage and can exceed the amount that people have in emergency savings,<sup>6</sup> leading some people to resort to credit products, for example:

“BNPL [Buy Now Pay Later] for energy would be good.” – CALD, Female, 35-39 years, QLD

- Many energy consumers who have used credit products for ongoing expenses expressed that the product helped them at the time but made the problem bigger in the long run, for example:

“It just got me further behind in the end, so it really wasn't worth it. It became an extra bill which I couldn't afford!!”

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<sup>5</sup> More information about this soon to be published research can be obtained from PIAC.

<sup>6</sup> Being unable to raise money in an emergency is an indicator of financial stress. For example, the Australian Bureau of Statistics tracks household inability to raise \$2,000 for something important as an indicator of financial stress as part of its General Social Survey. [A survey by NSW Council of Social Service](#) found 35% of households could not afford up to \$500 in emergency savings.

- People in embedded network also cannot access alternative fuels such as solar (due to network constraints and/or not owning their roof) or LPG (due to space constraints) to help them manage their electricity costs.

### ***Recommendation 11***

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*IPART's investigation must be undertaken within the context of significant cost of living pressures.*

#### **d. Opportunities for future embedded networks which attempt to circumvent laws and consumer protections**

As part of this process, IPART should consider how to restrict and protect against future opportunities for providers to find new ways to circumvent the intent of the energy protections framework.

### ***Recommendation 12***

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*IPART give consideration to removing future opportunities for providers to find alternative ways to circumvent the energy protections framework.*

## **4. The process**

In order to understand the lived experience of people in embedded networks, PIAC recommends IPART survey and interview people in embedded networks. This will help IPART understand actual barriers to fair prices, supports and assistance for people who live in embedded networks.

### ***Recommendation 13***

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*As part of IPART's process to investigate and report on embedded network issues in NSW, IPART should survey and interview people who live in embedded networks.*

## **5. Continued engagement**

PIAC welcomes the opportunity to meet with IPART and other stakeholders to discuss these issues in more depth.