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By email: AERInquiry@aer.gov.au

Dear Ms Proudfoot

Exempt customer dispute resolution issues paper

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. The Energy + Water Consumers' Advocacy Program represents the interests of low-income and other residential consumers, developing policy and advocating in their interests in the NSW energy and water markets.

PIAC supports the proposal for exempt customers to be provided access to binding dispute resolution services through ombudsman schemes. PIAC supports this being extended to both exempt sellers and exempt network service providers, as appropriate, noting that some customers in embedded networks may have access to on-market retail offers from a retailer.¹

Alternatives to the traditional supply of electricity already exist and as the electricity sector continues to transform and adopt new technologies, these alternatives will become more varied and prevalent. The AER itself has noted "the significant growth of embedded networks, alternative selling models and other forms of exempt sales" in its Issues Paper.²

The arrangements for exempt customers often involve an inherently higher level of risk compared to customers who are directly engaged in the market, which is made worse by the absence of equivalent protections. For example, in PIAC's recent submission to the AEMC's *Review of regulatory arrangements for embedded networks*, we identified that consumers in exempt selling arrangements are:

- Unable to access binding dispute resolution through energy ombudsmen;
- Unable to access hardship programs that retailers are required by law to offer; and
- Often not provided with adequate billing information to manage their electricity consumption and therefore costs.³

The issues which these customers currently face may indicate issues that will affect a broader range of customers as the electricity industry transforms and new business models, such as energy storage systems and stand-alone power supplies, emerge.

¹ This submissions refers to exempt sellers and exempt networks collectively as 'exempt entities,' consistent with the AER's Issues Paper.

² AER, Issues Paper: Access to dispute resolution services for exempt customers, 2017, pg. 4

³ PIAC, Embedded network regulation: a consumer view, 2017, <<http://www.aemc.gov.au/getattachment/b45c91b7-617d-4714-8ba1-4500e35cb36a/Public-Interest-Advocacy-Centre.aspx>>.

Fit-for-purpose, energy consumer protections are needed

PIAC considers consumer protection frameworks are in need of significant changes, to reflect that access to energy is essential in a modern society while acknowledging that not all energy services are inherently essential.

With this in mind, PIAC recommends moving to a harm-cognizant, impact-based approach to consumer protections, where the level of protection for a given service is commensurate with the potential impact to the consumer from something going wrong, and is irrespective of the method and technology involved in delivering the service.

The current arrangements for energy consumer protections, including dispute resolution, do not meet these criteria. For example, if a consumer has a problem with a solar system purchased as part of an energy retail contract from a licenced retailer, they can access an ombudsman scheme, if needed. If they purchase the same system from another party, the only means of redress will be through negotiation with the supplier and ultimately the court system.

The AER's approach to considering exempt customer access to ombudsman schemes

PIAC agrees with the AER's proposed approach that:

- There should be uniform access to ombudsman schemes for exempt and non-exempt customers as far as practicable;
- Small and residential customers require a level of protection that is not required for large, commercial customers.

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

The scale of exemptions

Many consumers, both exempt and non-exempt customers, are not aware of the protections available to them. This, along with the lack of accessible, free avenues to make formal complaints and other barriers that prevent exempt consumers seeking redress, suggest that complaint numbers may not capture the full extent of the problems faced by consumers – there may be consumers who are in distress but are not actively seeking assistance.

Furthermore, there may be considerable impact on consumers if they are unable to access appropriate consumer protections. For instance, in many embedded networks, energy services are bundled with other services such as rent and water. Issues with one service can have significant impact for the consumer in the provision of other essential services (discussed in further detail in the following section).

PIAC's view is it is vital that accessible, free and independent dispute resolution, be available for consumers for most energy related services. Even where it is not utilised as a means of

recourse, the existence of consumer protections add value by providing a safety net for consumers and by providing a disincentive against unfair practices.

The nature of energy disputes experienced by exempt customers

PIAC agrees with the AER that exempt entities, in particular embedded network operators, may have more complex relationships with their customers due to the range of services they provide, which may include landlord, gas, water, internet and property services. While integrated energy issues may be difficult to consider in isolation, PIAC contends that trying to isolate the issue may be missing the point.

PIAC is concerned that the service provider for energy and these other essential services may be the same entity. Hence, consumers may be reluctant to make a complaint for fear – whether real or imagined – that it may put their tenancy or other services at risk. Providing access to binding dispute resolution for consumers through an ombudsman will be an important step to addressing this.

Additional considerations

As noted earlier in this submission, PIAC recommends that access to binding dispute resolution services through ombudsman schemes be extended for customers with both exempt sellers and exempt network service providers, as appropriate. The AER correctly identifies that some embedded network customers are able to access on-market retail offers from an authorised retailer.

However, there may still be a need for dispute resolution and other consumer protections for these customers. For instance, disputes may arise around the quality of supply to a customer within an embedded network, such as a residential or caravan park, where the issue is regarding the network infrastructure within the embedded network. In this case, the responsibility would be for the exempt network service provider rather than the retailer.

The AER has highlighted that there may be concerns around the ability for consumers to ‘forum shop’ in seeking a suitable resolution to their complaint. PIAC agrees with the AER that this is a low risk given that the ombudsman’s decisions are not binding if the customer does not accept the decision.

Continued engagement

PIAC would welcome the opportunity to meet with the AER and other stakeholders to discuss these issues in more depth.

Yours sincerely

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