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Dear Ms Crossley,

Australian Energy and Water Ombudsman's Schemes and Utilities Disputes Ltd (NZ) 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 people who are marginalised and facing disadvantage. We ensure basic rights are enjoyed across the community through litigation, public policy development, communication and training. The Energy and Water Consumers' Advocacy Program represents the interests of low-income and other residential consumers, developing policy and advocating in energy and water markets.

PIAC welcomes the opportunity to respond to the Australian Energy and Water Ombudsman's Schemes and Utilities Disputes Ltd (NZ) (the 'Schemes') Issues Paper on how the Schemes will have to change to remain 'fit for purpose' into the future in the context of the changing energy and water markets.

The energy system is undergoing a period of transformation and we welcome the Schemes' interest in understanding how they can best prepare for and operate in this changing environment.

PIAC's feedback to the issues paper recognises that, increasingly, energy and water consumption and services are comprised of both essential and more discretionary components. While both energy and water have come to be regarded as 'essential services', PIAC's view is that not all usage or services related to energy and water are wholly 'essential'. With the increasing implementation of energy and water related technologies, a varying degree of usage and services can be regarded as 'discretionary'. PIAC considers essential energy and water consumption and services to be the component that if absent or lacking, has the potential to cause harm and negatively impact health and quality of life. We contend that Ombudsman schemes should also reflect this, and adopt a primary focus on ensuring that essential energy and water services are appropriately protected into the future.

We recommend that if this approach is taken, stakeholders should be invited to provide input concerning the boundary between essential and discretionary energy and water services.

Our comments and recommendations on the questions in the issues paper are detailed below. In particular, we focus on jurisdictional issues and operating models and consider ways in which

the Schemes should be designed to ensure the affordable provision, and appropriate protection of essential household energy and water services.

PIAC requests that relevant elements of the discussion between Craig Memery and Penelope Crossley at the Victorian Energy and Water Ombudsman offices in Melbourne on 26 July 2019 be considered part of this submission.

1. What do stakeholders consider to be the overriding purpose/s of the Schemes?

The overriding purpose of the Schemes is to provide protection for and confidence to household customers and small businesses so that energy and water markets are able to function fairly and efficiently, at low cost to participants. To do this, the Schemes should have a range of functions including dispute resolution, provision of advice on how to access assistance, and monitoring and reporting.

2. Should jurisdiction continue to follow regulation/licensing? How should the Schemes deal with entities that have sought regulatory exemptions or who are not subject to licensing regimes despite providing energy or water services?

Under the current arrangements, protections are largely delivered based on transactions involving meters. This approach has worked in the past, however, as the energy system changes, it increasingly leaves customers using new technologies and services without energy and water specific protections. To address this, we recommend the Schemes move from being transaction based to harm-focussed. A harm-focussed Scheme would cover all energy and water services that, if inadequately or unfairly provided, can result in harm that impacts health, safety and quality of life of consumers – such as disconnections and alterations to heating, cooking, bathing and cooling. As the potential for material harm stems from the essentiality of energy and water services, the incorporation of an entity into the Scheme should depend on whether it is providing energy or water services that have an essential component.

Customers of entities that sit outside the jurisdiction but which provide services that have the potential to cause harm, should have access to the same services as the Scheme provides, even if the entity is not subject to the Schemes.

Opt-in methods place the onus on customers to understand which entities are voluntary participants. This rewards customers that are engaged, informed and in other ways have more ability to choose between service providers, and penalises those that are not. Given jurisdiction should be based on the essential nature of services being provided and the potential for harm, regulation/licensing is the preferred method for inclusion in Schemes.

3. Can the consumer protections and external dispute resolution options available to the customers of existing Members operating within the jurisdiction of the Schemes be made more widely available to ensure coherence for customers of new and existing market (and non-market) participants offering energy and water services and technologies that are currently outside of jurisdiction?

The expansion of the Ombudsman's protections and dispute resolution services to entities currently outside the Schemes is a matter of funding and jurisdiction. It is important that the essential component of energy and water consumption receives adequate protections and dispute resolution, however, expanding these services to customers of entities that are not member of the Schemes, and therefore do not pay fees to the Schemes, will dilute service levels and place additional costs on customers of participating entities. Many of the new energy and water services currently sitting outside jurisdiction may be supplying services and consumption that may be partly or wholly regarded as discretionary. Where this is the case, we

recommend that a beneficiary-/causer-pays framework should be employed when considering whether to expand services to those currently outside the Schemes.

4. In what circumstances should the Schemes' jurisdiction be expanded? Are there appropriate trigger points such as number of customers or turnover that can be identified?

The jurisdiction of Schemes should be based on the material harm that could be caused by a service to a consumer and should reflect the essentiality of a service. We consider the number of customers or turnover to be inappropriate trigger points given their impact on consumers. Both of these measures have the potential to be gamed by entities wishing to avoid regulation, licenses and/or fees and as such could leave large numbers of otherwise eligible consumers without the Schemes' services. Instead we recommend expansion of the jurisdiction should be based on the level of potential harm to any individual consumer, the provision (or non-provision) of a service could cause.

5. Given the current practice of referring out of jurisdiction issues to the most appropriate contact within the relevant provider, is an expansion of jurisdiction needed? How should these referrals be funded given that they impose a cost on the Schemes?

Expansion of the jurisdiction should depend on the number of referrals back to providers and the nature of the services of providers to which issues are being referred. As mentioned earlier, the Schemes should ensure the provision of the essential component of energy and water consumption (which, for many residential users, effectively may be the totality of consumption). Issues which do not concern essential energy services should not be dealt with by the Schemes and the jurisdiction should not be expanded for them.

For issues that do not concern essential energy services, the Schemes should look for ways to guide out of jurisdiction customers to their providers at least cost. Methods for doing this could include better information on Ombudsmen websites and automated call handling.

We consider out of jurisdiction issues will always present a cost for the Schemes and the reflex should not be to expand the jurisdiction to accommodate them but to think of ways to limit/manage their impact.

6. In the event that jurisdiction is expanded to incorporate new market participants (including, but not limited to: neo retailers, third party aggregators, peer to peer traders), what are the benefits and incentives for them to voluntarily join a Scheme?

Benefits of participation in the Schemes include a licence to operate, consistent and efficient provision of scheme oversight and services, more consumer confidence, and low cost, independent dispute resolution.

7. Should expansion of jurisdiction be based on voluntary engagement or mandated by a regulator such as the Australian Energy Regulator or the Essential Services Commission?

As noted earlier, voluntary or opt-in engagement can place an unfair burden on vulnerable consumers to understand the protections and services they are entitled to. Given the Schemes focus on essential energy and water services, we recommend jurisdiction should be mandated by a regulator or other such body.

8. Should the Schemes have an additional ‘own motion’ role? That is, should the Schemes, even in the absence of a specific complaint by a consumer, be able to suggest or even impose preventative measures so as to address a given systemic issue?

PIAC considers it is appropriate for Schemes to be able to advocate for rule changes or motions where they see fit. We understand Australian Schemes are currently able to do this by lodging rule change requests with the Australian Energy Market Commission. Making and changing rules is not the primary purpose of a Scheme and any moves to expand Schemes’ capacity to act in this capacity should be carefully considered.

Operating models

1. How should the Schemes resolve disputes for bundled services? Are there particular issues that might arise for bundled services, which are not currently an issue given the existing products and services available in the market?

We are unable to provide comment on how Schemes should deal with bundled services, however, we highlight that bundled services may contain both essential and non-essential components and this should be reflected in how they are costed and funded. However, where bundled services include an essential component, PIAC regards it as appropriate that the entire suite of related services be subject to Ombudsman schemes to ensure that there is not an unintended incentive for providers to bundle essential services with ‘discretionary’ ones in order to avoid oversight or protection by a scheme.

3. Should the mode of engagement change to meet changing consumer demand? (i.e. should complaints by fax and email be ceased and greater adoption of a central website complaints form be introduced, with the consumer self-completing basic demographic information)?

We consider the Schemes’ modes of engagement should keep pace with changing consumer demands, however, privacy and access for vulnerable consumers should be key concerns in doing so. We welcome measures that increase the ease and lower the cost of engaging with the Schemes but highlight that new digital modes of engagement may present privacy issues and discourage some types of consumers, particularly the elderly and culturally and linguistically diverse communities, which may prefer and/or rely on conventional styles of engagement. Adoption of new modes of engagement should not assume that a single platform can meet the needs of all consumers, and should ensure that the variety of engagement methods do not effectively exclude or disadvantage already vulnerable customers.

Continued engagement

PIAC would welcome the opportunity to provide further input or discuss these issues in more depth.

Yours sincerely

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