

28 August 2019

Alisa Toomey
Senior Advisor
Australian Energy Market Commission
PO Box A2449
Sydney South NSW 1235



Dear Ms Toomey,

Submission to Review of the Regulatory Frameworks for Stand-Alone Power Systems – Priority 2 Draft Determination

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 AEMC's draft report.

The AEMC's draft determination

PIAC considers that Stand-Alone Power Systems (SAPS) will play a greater role in the future of energy delivery in the NEM. It is, therefore, important that they are appropriately incorporated into regulatory and consumer protections frameworks.

While we are generally supportive of regulatory frameworks that retain flexibility to be fit-for-purpose, we are concerned that the tiered framework proposed by the AEMC may lead to:

- unnecessary confusion regarding the protections available to consumers and the obligations placed on providers;
- the potential for forum-shopping by providers to minimise the cost of their regulatory obligations to the detriment of consumers; and
- unequal outcomes for consumers in terms of the availability of SAPS and the protections they receive to continue to access their essential energy services.

Instead, we recommend the AEMC adopt a framework for consumer protections informed by a harm-based approach as discussed below.

We recommend further consultation to provide an opportunity to develop the detail of the proposed framework.

Principle of harm-based consumer protections in general

Where a consumer cannot afford the electricity they need, they do not have the option not to purchase (a choice that is normally an intrinsic tool of competitive market discipline). Energy is a requirement for a basic, acceptable and healthy standard of living and is needed in order to access a minimum acceptable range of social and economic opportunities.

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This is a crucial, foundational fact that not only determines that electricity is an essential service, but also highlights that the importance of it being provided affordably at a 'fair' value.

Following on from this fundamental principle, PIAC supports a system where the protection offered to consumers is commensurate to the potential harm to the consumer should they lose that energy product or service. In other words, the higher the potential harm, the stronger the protections offered to the customer.

PIAC highlights the report produced by the Alternative Technology Association (ATA, Now Renew) assessing consumer protections in emerging energy markets.¹ In this report, ATA produced a list of fundamental protections, stating that all consumers should be confident that:

- They will be able to connect to an energy supply;
- Their energy supply will meet minimum reliability, quality, and safety standards and they will be compensated if it doesn't;
- Sufficient notice will be given for any planned interruptions to supply, and special consideration given to people reliant on life-support systems;
- They will be given clear information about the service they are purchasing, a cooling-off period for any contract they sign (for more novel supply arrangements), a limited right to exit a contract and revert to their previous contract;
- The basis of all energy supply charges is clear and subject to regulatory oversight;
- They have access to historical billing data;
- They have access to rebates on their energy costs if they are eligible for concessions;
- If they come into payment difficulties, they will be given support and flexibility and only disconnected as a last resort and according to a regulated process;
- They have access to an external dispute resolution service if they are unable to resolve a dispute with their energy supplier;
- During billing disputes, they can stay on supply and not have to pay the disputed amount; and
- If their supplier ceases trading, their supply is uninterrupted.²

Principle of harm-based consumer protections for SAPS in particular

The risks for consumers who are supplied via a stand-alone power system (SAPS) are different to those who retain a grid connection and specific consumer protections are required to reflect these.

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 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, where a customer has gone completely off-grid and foregone their connection to the interconnected network, the consequences of the SAPS failing are considerably more severe. If there is no backup generator as part of the SAPS, it may mean losing access to essential electricity services for a week or more while awaiting repair or replacement. Even if there is a backup generator that will allow for some electricity services to be provided, it can involve hundreds of dollars in fuel costs per week and may be limited in operation by the capacity of the generator or its noisy and polluting nature.

¹ ATA, [Empowering the future – Appropriate regulation and consumer protections in emerging energy markets](#), 2016.

² Ibid, 8.

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

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 Australian Consumer Law (ACL), which has no energy specific consumer protections.

PIAC considers that SAPS systems, where they are purchased outright or leased by the consumer to replace an existing grid connection, should include a number of specific protections which are outlined below.

Consumer protections for SAPS replacing an existing grid connection

Specifically, PIAC considers that SAPS systems, where they are purchased outright or leased by the consumer to replace an existing grid connection, should include a number of specific protections including:

- 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 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.

Consumer protections for SAPS not replacing an existing grid connection

The additional consumer protections listed above are required where a customer forgoes an existing grid connection. However, the full suite of additional protections is beyond what would be necessary for the more traditional SAPS applications such as remote installations where a grid connection has not existed and is unlikely to ever be an economically viable option.

Consumer protections for procuring a service rather than the assets of a SAPS

Some business models for the provision of SAPS may involve the consumer contracting with a provider for the provision of an electricity supply service rather than purchasing the physical assets which make up a SAPS.³

³ This is similar to the current provision of electricity services to a grid-connected customer by a regulated network business in the NEM where the DNSP is obliged to provide a particular quality and reliability of supply to the consumer as set out by regulations and the connection agreement.

In this case, the provider – not the consumer – is responsible for the correct sizing, installation and maintenance of the physical assets in order to provide the consumer with the agreed level of supply.

This therefore reduces some of the potential harms to the consumer from any non- or under-performance of the SAPS. However, it is important to note that this does not entirely remove these harms from the consumer – after all, if the SAPS ceases to work, the consumer is still without their essential energy supply. Instead, it merely transfers responsibility to prevent and/or rectify to the service provider and opens up an additional avenue of compensation for consumers should the agreed level of service not be met.

Further, in such a supply model, it is important that the agreement between the consumer and the service provider is fair and reasonable to both parties.

Additional considerations for microgrids

The types of consumer protections necessary for consumers in a microgrid may differ from those necessary for consumers supplied by an IPS. This is due to interaction between the outcomes with respect to the microgrid as a whole and the outcomes with respect to the individual premises which are part of the microgrid.

In particular, these protections would need to include consideration of:

- what proportion of affected consumers must consent to entering a microgrid and, if a microgrid is established, what provisions are in place for those who did not initially consent;⁴
- what provisions are necessary for a consumer to leave the microgrid;
- what provisions are necessary to share costs for the future refurbishment of the microgrid infrastructure; and
- what provisions are necessary to allocate costs for new consumers to connect to an established microgrid.

Continued engagement

PIAC looks forward to working further with the AEMC and other stakeholders in examining these issues and developing appropriate consumer protections.

Yours sincerely,

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⁴ We note that similar provisions exist for embedded networks and may form a useful starting point.