

20 February 2020

Owen Pascoe
Director
Australian Energy Market Commission
PO Box A2449
Sydney South NSW 1235



Dear Mr Pascoe,

Submission to AEMC regulatory sandboxes — rules consultation

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

PIAC supports the toolkit as a whole

PIAC supports the introduction of a set of regulatory sandbox tools that allow changes to the regulatory framework to be trialled in a manner that balances the potential to capture the benefits of transformation against the risks.

To be successful, regulatory sandboxes must be used to develop shared solutions to new and emerging challenges.

However, several foundational issues must be resolved for the sandbox toolkit to succeed. The first is the proposed definition of 'consumer organisation,' which is discussed below.

Others include the need for a framework for the AER to determine whether or not to provide waivers, the extent of any waivers, or the reporting and transparency obligations on any trial projects. These are outlined in our earlier submissions to the AEMC's consultation on regulatory sandboxes.¹ Many of these are better settled later, during more detailed design stages such as determining AER guidelines, and we look forward to engaging further in their development.

The definition of consumer organisation

For the purpose of providing standing to appeal to the AER for the early termination of a trial, the AEMC has proposed defining consumer organisation in the Rules as:

An association or body (whether incorporated or unincorporated) that:

- a) represents and promotes the interests of its members in relation to the provision of electricity services; or
- b) has, as an object or purpose representing and promoting the interests of persons (including retail customers) who acquire or intend to acquire electricity for consumption purposes.

¹ PIAC, [Submission to consultation paper on regulatory sandbox arrangements](#), February 2019 and PIAC, [Submission to draft report on regulatory sandbox arrangements](#), August 2019.

In the proposed drafting, PIAC considers that part a) of the definition would capture industry organisations like ENA, AEC or CEC, given that the clause refers to the **provision** of electricity services, which could be broad and include generation or transportation.

While we appreciate that industry associations may need standing to apply to have trials terminated early, we strongly feel that doing so under the definition of consumer organisation is entirely inappropriate.

At best it is poor practice. At worst, it may produce unintended consequences if later reforms use the definition of consumer organisation without realising that it has a broader scope than what the term may intuitively suggest.

PIAC considers that the AER should be able to hear claims and determine the merits of early termination if it is raised by:

- organisations that represent the interests of current and prospective end-users of energy products and services,
- coalitions of organisations representing the interests of current and prospective end-users of energy products and services, or
- a single consumer or group of consumers approaching the AER directly.

PIAC does not consider that a definition of consumer organisation in the Rules is the only way to achieve this. However, if a definition is required in the Rules, we would welcome further consideration of the exact drafting of this term.

PIAC suggests the following alternative: ‘consumer organisation – an association or body (whether incorporated or unincorporated) that has, as an object or purpose, representing and promoting the interests of current and prospective end-users of energy products and services, and does not themselves provide energy products and services.’

The same issue also exists for the definition of consumer organisation proposed to be included in the National Electricity Retail Rules and the National Gas Rules.

Continued engagement

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

Yours sincerely,

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