public interest
ADVOCACY CENTRE

National Energy Consumer Framework Review Issues Paper 1: New Energy Products and Services

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About the Public Interest Advocacy Centre

The Public Interest Advocacy Centre (PIAC) is an independent, non-profit legal centre based in Sydney.

Established in 1982, PIAC tackles barriers to justice and fairness experienced by people who are vulnerable or facing disadvantage. We ensure basic rights are enjoyed across the community through legal assistance and strategic litigation, public policy development, communication and training.

Energy and Water Consumers' Advocacy Program

The Energy and Water Consumers' Advocacy Program (EWCAP) represents the interests of low-income and other residential consumers of electricity, gas and water in New South Wales. The program develops policy and advocates in the interests of low-income and other residential consumers in the NSW energy and water markets. PIAC receives input from a community-based reference group whose members include:

- NSW Council of Social Service;
- Combined Pensioners and Superannuants Association of NSW;
- Ethnic Communities Council NSW;
- Salvation Army;
- Physical Disability Council NSW;
- Anglicare;
- Good Shepherd Microfinance;
- Financial Rights Legal Centre;
- Affiliated Residential Park Residents Association NSW;
- Tenants Union;
- The Sydney Alliance; and
- Mission Australia.

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Introduction

The National Energy Consumer Framework (NECF) was designed and implemented in recognition of the important role that energy plays in our society and for individuals who rely on it. Without energy, people's health and safety is at risk, but so too is their ability to participate in their communities and society more broadly.

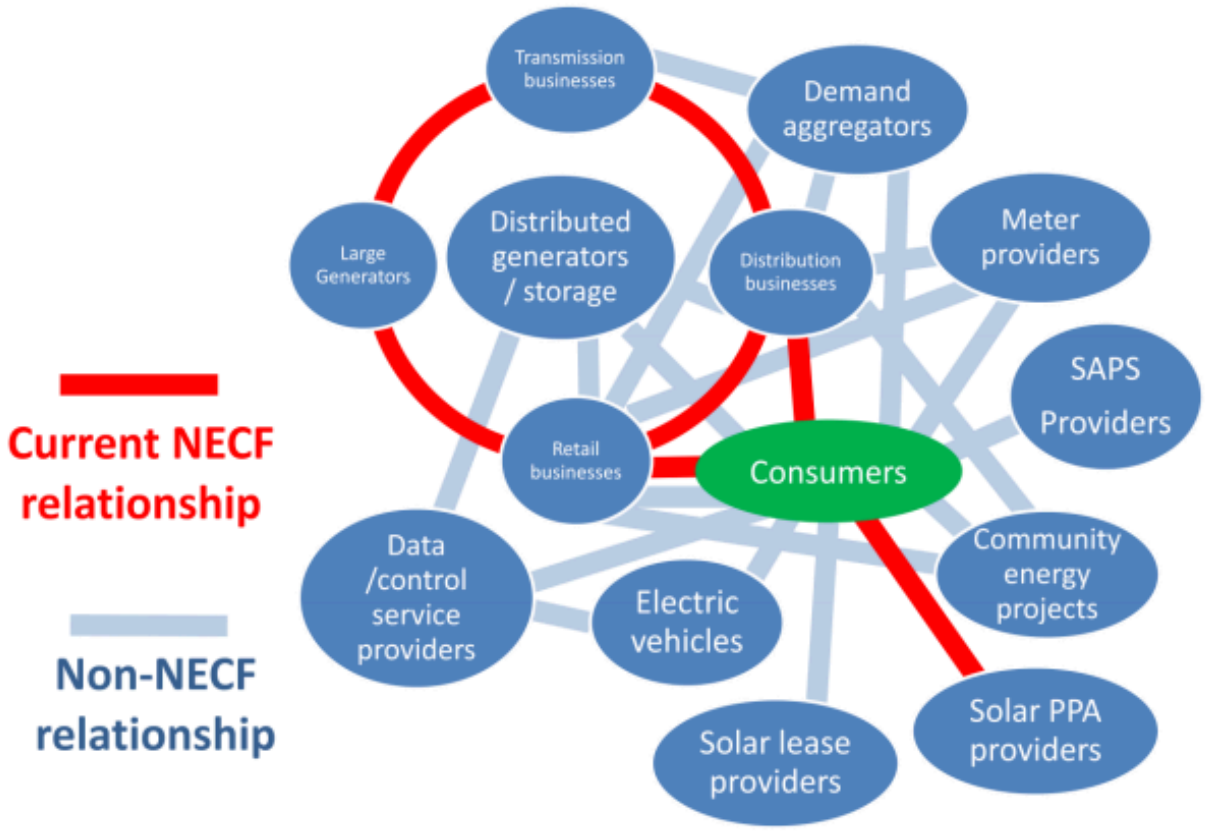
Current protections framework

The NECF is intended to work in conjunction with the Australian Consumer Law (ACL) with respect to consumer protections. However, the NECF itself only provides for energy-specific regulation where there is a sale of electricity or gas to a customer connected to the grid. As a result, the requirements in the National Energy Rules (NER) for retail authorisation and exempt selling arrangements apply only where there is a financial transaction relating to the volume of energy and has generally revolved around the existence of a metered connection.

This means that providers of many energy related services, with similar degrees of potential consumer harms to those where energy is transacted, currently do not have to comply with any energy-specific regulation under the NECF. Instead, they are bound to the more general consumer protections under the ACL.

In the past, this approach may have been acceptable because most energy services required metered transactions. Now, with emerging technologies and business models, it is clear that this approach provides insufficient protections for some consumers (see Figure 1).

Figure 1: current and potential future energy relationships



Limiting protections only to where energy is metered and traded runs the risk of creating loopholes. For example, the provider of a product or service can avoid complying with consumer protections that apply under NECF's retail exemption arrangements by not selling energy on a per kWh basis and so avoiding the need for an exemption.

Harm-based protections

PIAC supports a system where the protections offered to consumers are commensurate to the potential harm the consumer may face should something go wrong – the higher the potential harm, the stronger the protections offered to the customer. This should not depend on the model of provision and reflects the nature of energy as an essential service. Similarly, risks of lower harm need only be met with proportionately lower protections.

Potential harms from household wholesale demand response

As an example, household demand response (DR) can be used to demonstrate how harm-based protections could be applied. The potential harm to households from any particular demand response (DR) event depends on a number of factors including:

- The type of energy use being affected by the DR event (e.g. whether it is heating/cooling load or battery storage) and its duration.

- Characteristics of the household itself, such as whether there are medical conditions that impact its energy usage

- The context of when and where the DR event occurs, such as whether it is on an extreme weather day.

Very broadly, these could be categorised as either:

- Financial harms; in terms of choosing an appropriate offer, payment conditions or warranty terms. For instance, if there is information asymmetry between potential DR providers and households regarding the value of the DR load, households may not be well-placed to properly compare competing offers and judge which is most suitable for them.

- Inconvenience; from the unavailability of some appliances during a DR event. For instance, there may be potential impacts to the household's amenity from temporary loss of controlled load hot water.

- Harms to health and wellbeing; from the unavailability of some appliances during a DR event. For instance, there may be potential impacts to an individual's health from losing full access to heating or cooling devices during extreme weather events.

The potential financial harms from DR may be comparable to the potential harms that currently exist for households through their own investment in behind the meter technologies such as rooftop PV. In this regard, many of the existing customer protection frameworks provide adequate protections for some DR.

By contrast the potential harms to health and wellbeing from DR are fundamentally different to those that currently exist, including for traditional grid supply of energy. In the case of an unplanned outage of the traditional grid supply, the harm is from the loss of all (or at least a significant portion) of the energy supply to their home for an indefinite time until the outage is resolved. In the case of DR for households, the harm is from the loss of full usage of one or several specific appliances within a home for a relatively well-defined period until the DR event ends.

There are several important differences here to highlight in the case of DR: it is inherently controllable; it is only for specific loads not the entire home's supply; it is not necessarily the full loss of supply of those loads; it is for a finite time; can have an optional override function; may avoid wider load shedding which has a higher impact and does not discriminate between essential and flexible loads.

Types of energy usage

Household energy usage sits on a spectrum from flexible/discretionary loads, which have no impact to the household's health and wellbeing, to inflexible or essential loads, which have the potential to impact the household's health and wellbeing (see Table 1).

Table 1: Types of loads and harms

	Flexible loads		**Inflexible loads**
	Increasing degree of potential harm to household →		
	Increasing need for consumer protections →		
Examples	• Home battery • Pool pump	• Electric hot water systems • Smart appliances • AC on day 1 of a heatwave for typical household • EVs – from, say, 100% to 50% of state of charge	• AC on day 4 of a heatwave for typical household • AC for temperature-sensitive consumers • EVs – last 10% of charge • Lights and refrigeration
Potential harms	• No impact on health or wellbeing from deferring this energy use • Potential for financial harm	• Inconvenience to household from deferring this energy use but little or no potential impact to their health and wellbeing • Potential for financial harm	• Potential material impact to health and wellbeing from deferring this energy use • Potential for financial harm

It is worth noting from Table 1 that air-conditioning (AC) can sit at various points on the spectrum from flexible to inflexible loads. This depends on a range of factors governing the context of its use including the type of household that is potentially offering it and the time at which it is offered.

For instance, the impact to a household's health and wellbeing from reducing their AC load for an hour may be negligible on the first day of a heatwave, especially if the house has good thermal insulation and is well sealed, meaning there is only a small and potentially unnoticeable change in indoor temperature during the DR event. However, this may not be the case if it is the fourth day of a heatwave or the house has poor thermal insulation. The potential impact on the health and wellbeing can be high at any time if anyone in the household is particularly temperature sensitive, such as those suffering from thermos-regulatory illness, the elderly or young children.

One potential way to address this may be to establish temperature ranges outside of which the indoor temperature is not allowed to deviate for households during a DR event through their AC. In this case, a typical household without thermal sensitivity may have a relatively wide temperature range (for example 15-28°C) within which the impact to their health and wellbeing is minimal. The automated AC can cycle down during a DR event while the indoor temperature remains within this range. During this cycling, if the temperature deviates from this range, the AC will cycle on again to maintain the household's wellbeing. By contrast, the temperature range for households that are temperature sensitive would be much narrower, for example, to a range of just 3-5 degrees. In both cases, the automatic maintenance of temperature within appropriate ranges can be supplemented with an override option for the household to opt-out in the lead-up to or during a planned DR event, for whatever reason.

Consumer frameworks, particularly protections, should be developed with these different loads and harms in mind.

Consumers and the changing energy market

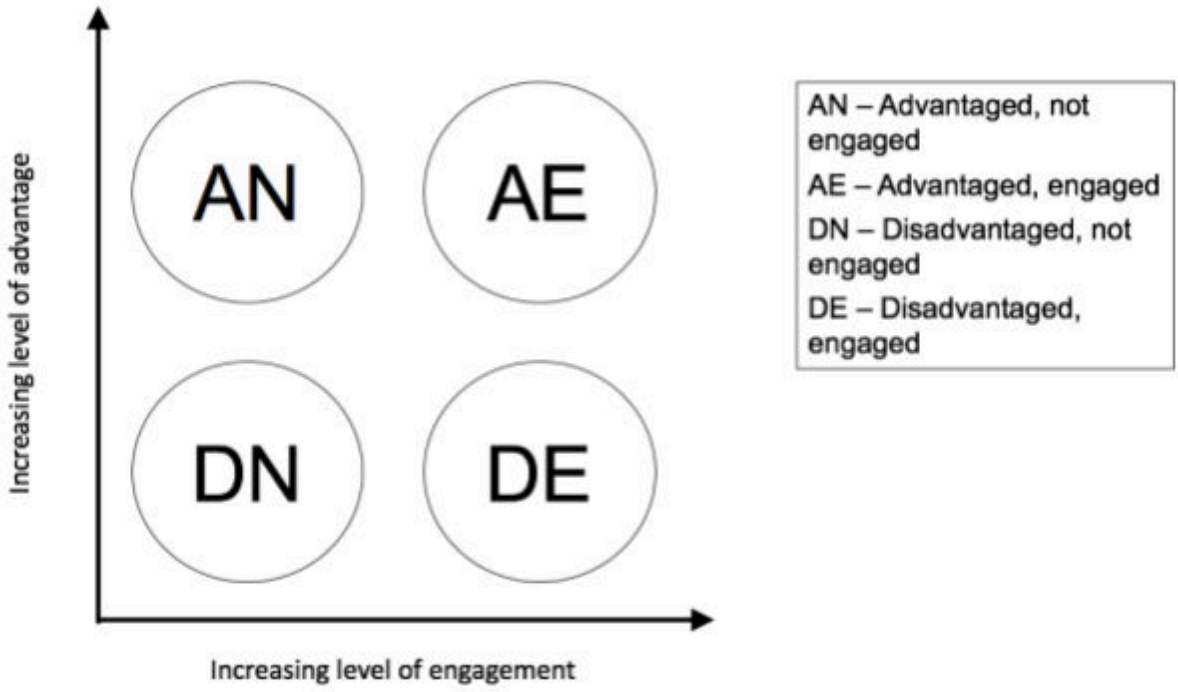
Until the last decade, energy consumers across Australia could very broadly be categorised into 'haves' and 'have nots': they could either afford energy, and the tools to limit their usage if they so desired, or they could not.

Since then, deregulation, emergence of competition, innovation (particularly in relation to behind-the-meter energy technology), and escalation of energy prices have created the need for consumers to be thought of differently to just these two groups: in addition to social advantage, a consumer's level of engagement with the energy market now has a material impact on their energy outcomes.

An engaged consumer may be able to minimise their energy bills through a combination of retail churn, behind-the-meter technologies, and ongoing engagement in the form of paying their bills on time to access discounts. Conversely, a consumer that is not engaged, or is financially disadvantaged, is likely to consume more energy from the grid, purchased from a retailer to whom they pay a higher price by not accessing the cheapest deals.

Considering that levels of engagement and advantage are not mutually inclusive, PIAC considers that consumer outcomes should be thought of in four categories, for the purposes of consumer protections and promoting competition that works for all consumers (see Figure 2).

Figure 2: Contemporary consumer cohorts



Advantaged/able, not engaged (AN)

This group is disengaged from the energy market. While they do experience higher bills through suboptimal retail contracts and a lack of demand side participation, their relative social advantage means that they are usually able to withstand the financial detriment associated with these contracts. On the other hand, while these consumers are more able to withstand the detriment associated with their lack of engagement, they still experience inefficiently high bills in a way their engaged counterparts do not. Many are at risk of falling into the DN group if their circumstances change, and consumer protections need to cater to this risk.

Disadvantaged/vulnerable, not engaged (DN)

This group is likely to have the worst outcomes. The combination of energy market disengagement and relative social disadvantage means that these consumers are unable or unlikely to take advantage of new energy technology or beneficial market contracts from energy retailers. They may use large volumes of high-priced energy that they are unable to afford. Competition frameworks should support them having the opportunity to benefit from engagement, but it is critical that supporting frameworks, including protections and concessions, should not require them to be engaged or assume that is an option for them. The goal should be to move people from the DN cohort to the AN cohort, while giving them the opportunity to move to the AE cohort but not obliging them to do so.

Advantaged/able, engaged (AE)

This group is the only one broadly getting good outcomes today. The combination of energy market engagement and relative social advantage means these consumers are likely to be on favourable retail energy contracts, and choose (and can afford) to be adopters of energy technology such as solar PV, energy storage and demand management systems. Competitive opportunities for these consumers should be encouraged, while recognising they are, by and large, least at risk of disadvantage.

Disadvantaged/vulnerable, engaged (DE)

While this group still requires similar support to the DN cohort, their willingness to engage means they are able to ameliorate some impacts of disadvantage through engagement with the energy market, if presented with the opportunity to do so. The goal for this group should be giving them the opportunities to benefit from competition in the same way that the AE cohort has, while affording them the protections available to the DN cohort.

We recommend the Commission consider outcomes for consumers in relation to their engagement with the energy market in addition to their social advantage.

Explicit Informed Consent

We note that this issues paper does not include a discussion of Explicit Informed Consent (EIC). PIAC considers EIC an important consumer protection that helps ensure customers' decisions, often regarding complex products, are in their own interests. Customers should be provided with appropriately detailed, accurate, standardised and easy to understand information about the product or service that is on offer, and the anticipated risks and benefits that may arise from their use before they sign up to the product/service. Like other consumer protections, EIC

requirements should be fit for purpose and commensurate with the potential for harm from the loss of a particular product or service.

Proposed approach to consumer protections for new energy technologies

PIAC proposes a tiered approach to consumer protections, including EIC, commensurate to the potential harm from **category of load** being offered.

Category 1 – flexible loads with negligible potential harm

These correspond to the flexible loads described in Table 1Figure 2, such as pool pumps and household batteries. For these loads there is no material risk to people's health and wellbeing – in fact most households will not even notice the loss of these loads for a short period of time.

The potential harm, if any, from the loss of these types of loads is limited to relatively minor financial impacts. As such, these types of loads can generally be adequately covered by existing, non-energy specific protections such as the ACL along with voluntary codes.

Category 2 – potential inconvenience

These correspond to loads in the middle of the spectrum described in Table 1 such as hot water systems and smart appliances such as washing machines and clothes dryers.

The loss of these loads for short periods may cause inconvenience to households but will not cause material risk of harm to health or wellbeing. As such, these may benefit from basic protections, beyond those offered in the ACL but not as prescriptive as those offered in energy-specific regulations. Products and services with the potential to cause inconvenience may receive adequate protections through voluntary codes such as the New Energy Tech Consumer Code (NETCC), but only where these codes are adopted.

Category 3 – higher potential harm

Inflexible loads such as heating or cooling by air-conditioning, and EV charging, have a higher risk of causing harm to a household's health and wellbeing if lost. These loads should be subject to energy-specific consumer protections above and beyond the ACL and voluntary codes.

A harm-based protections framework, that considers flexible and inflexible loads ensures consumers are protected for essential energy use, while at the same time encouraging new business models to enter the market to the benefit of consumers.

We address specific questions from Issues Paper 1 below.

Questions for consultation

Question 1:

Are there any other key market developments the Commission should consider when assessing consumer protections for new energy products and services?

PIAC considers there are a number of other market developments the Commission should consider.

The energy market has been confusing for the majority of consumers for some time. A small portion of consumers are actively and effectively engaging in the energy system, but the majority of people, including many vulnerable and disadvantaged people, are not.

As new energy products and services become available the energy system is becoming more complex. New energy technologies may be hard to understand for an average consumer, can have long lifetimes and payoff periods, and be offered alongside non-traditional financial products. Consumers may also have their energy supply and access split between a number of different providers and services.

The expansion of roles and responsibilities and increased complexity in the energy market means that energy products and services may be meeting loads that are more or less flexible. With this in mind, and given the need to ensure no consumer is left worse off, protections should be less restrictive for more flexible loads and more restrictive for inflexible or discretionary loads.

Question 2:

Are there other business models the Commission should consider in its analysis of new energy products and services?

As the Commission committed in its draft decision on wholesale demand response, it should consider protections in relation to demand response providers in this review.

PIAC does not consider competition to be a goal in itself, but where it produces positive outcomes for consumers it should be encouraged. Increased competition in the energy retail market from new market participants providing new energy technologies and services may improve outcomes for many consumers.

In this respect, consumer protections and regulations should not work to uphold incumbent market participants' dominance by subjecting new entrants to unnecessarily onerous regulatory requirements.

PIAC also recognises that new and innovative businesses should provide consumer benefits, limit consumer harm and maintain equivalent standards of safety. Striking a balance between protecting consumers and encouraging new products and services into the market should be a priority. This can be done by administering protections based on the potential for harm and the flexibility/inflexibility of a load. Products and services providing essential loads should receive stronger protections than those providing flexible loads.

To ensure regulations are striking the right balance, market bodies should monitor the impact regulations and requirements are having on new market entrants and consumers' ability to access specific products and services.

Question 3

Are there other energy products and services the Commission should consider in its analysis of new energy products and services?

We refer to our discussion of the role of innovation and competition in relation to regulation in Q2 and our discussion of demand response and SAPS in the introduction.

Question 4

Which regulatory provisions may be preventing value creation through the adoption of new technology?

Many regulations serve to prevent consumer harm and thus allow markets to function effectively and generate value. There are currently a number of regulatory issues that prevent the full value of certain new technologies and services from being realised. These include:

- the absence of a wholesale demand response mechanism that would allow consumers to access demand response through a third-party market participant of their choosing rather than through their retailer
- an inappropriate regulatory framework for the provision of Stand-Alone Power Systems
- an inappropriate regulatory framework that fails to provide equal protections for consumers in embedded networks
- the lack of progress of network pricing reform
- the delayed implementation of the New Energy Technology Consumer Code
- the ineffective roll-out of smart meters, contributing to a limited capacity for the majority of consumers to benefit from DER and DR
- the lack of emissions policy in relation to the energy system
- jurisdictional inconsistencies.

Addressing these issues alongside the development of fit-for-purpose protections would allow more consumers to access the benefits of some new energy technologies.

Question 5

What are the elements that define the supply of energy as an essential service?

Refer to our discussion of different types of energy uses, consumer groups and harms in the introduction of this submission.

The essentiality of an energy supply can be defined by the harm that would result from the loss of access to that service. Inflexible loads – such as that required for basic necessities like refrigeration of food, and lighting – can cause significant harm if lost and, therefore, are essential. Flexible loads like pool pumps and batteries[1] have the potential to cause minimal harm aside from financial and so are less essential.

Hot water, heating and cooling can be essential or flexible depending on context. Refer to our discussion of types of energy use in the introduction of this submission.

[1] Other than batteries used for uninterruptible power supply purposes

PIAC supports a system where the protections offered to consumers are commensurate to the potential harm the consumer may face should something go wrong – the higher the potential harm, the stronger the protections offered to the customer. This should not depend on the model of provision and reflects the nature of energy as an essential service.

Question 6

Has the essential nature of the sale of energy changed with the market's evolution?

The essential nature of energy remains unchanged, however in recent years as different energy products and services become available, consumers' energy supply may come from a variety of sources, of which the traditional sale of energy – from retailer to consumer – may be just one. These different components of energy supply may not all provide essential energy. Referring to our response to Question 5, PIAC considers the degree to which a technology or service is providing essential energy depends on the level of potential harm a consumer may face should something go wrong.

Question 7

If the answer to Question 6 is yes, what are the implications for the NECF as the energy specific consumer framework?

The NECF should reflect that consumers' energy supply may consist of a number of different sources and not all of these sources may provide essential energy. The NECF should therefore provide proportionate protections that are commensurate with the potential for harm, regardless of how that essential service is delivered. This will likely require its expansion to better cover providers of some non-traditional energy businesses.

Question 8

For the supply of new energy products and services, is there any risk of consumer detriment that needs to be considered to have additional consumer protections (industry-specific regulation) beyond the voluntary framework? Please explain.

Refer to our discussion of different types of energy uses, consumer groups and harms in the introduction of this submission and to the discussion of SAPS in question 12.

The existing voluntary frameworks – the New Energy Tech Consumer Code (NETCC) and Clean Energy Council Code (CEC Code) – lack a dispute resolution function, provide little means for enforcement and compliance, and, being voluntary, do not require all product and service providers to adhere. For example, existing arrangements provide almost no protection for consumer-owned SAPS (see Question 12 for more information on SAPS). PIAC considers voluntary codes should not be used to protect from serious consumer harm, rather they should serve to encourage signatories to improve beyond minimum standards.

PIAC questions the Commission's assertions that voluntary codes are more flexible than government regulation and that widespread support from industry reflects a voluntary code's effectiveness. Experience from the development of the NETCC is counter to both of these claims. Requested by COAG Energy Council in 2017, the NETCC is yet to be implemented and is now being delayed due to objections from a narrow section of industry. In this instance, the voluntary

code is neither particularly flexible nor effective at preventing the potentially harmful behaviour of industry participants, particularly those who are not signatories.

Question 9

Which elements of the energy market are useful to define the scope of the energy specific consumer framework?

The most important feature of the energy market in defining the scope of an energy specific consumer framework is the essentiality or flexibility of loads for a given consumer. As the energy market changes, the framework needs to be updated to ensure all consumers' energy needs receive fit-for-purpose consumer protections regardless of how they are delivered. This would allow less-essential services to be subject to fewer protections. As such, defining essentiality and the potential for consumer harm should be a key concern in determining the scope of the energy specific consumer framework. PIAC suggests that services potentially subject to less protections should be assessed by positively demonstrating the limited potential for consumer harm.

Question 10

Do you agree with the objectives identified by the Productivity Commission? Are there other objectives the AEMC should consider?

PIAC supports the Productivity Commission's objective that consumers should be well informed. This is increasingly important as the energy market becomes more complex. A key tool for ensuring consumers are well-informed is EIC, which we consider should be a requirement for all new energy products and services that have the potential to cause harm to a consumer.

PIAC does not support the Productivity Commission's suggestion that the onus should be on consumers to be well informed in order to benefit from a market for an essential service. All consumers, but particularly vulnerable and disadvantaged consumers should be able to access affordable and reliable energy regardless of how informed they are. Furthermore, we consider that competition is not functioning effectively if consumers must be highly informed to benefit from it. We recommend the Commission prioritise creating an energy supply system that produces good outcomes for all consumers regardless of how well-informed they are.

Question 11

How can the three consumer frameworks be better integrated to make it easier for energy customers and businesses in terms of information requirements? Please give specific examples.

Protections for essential energy supplies should be consistent regardless of the product or service through which it is accessed. Flexible, or non-essential supplies can have varying protections and information requirements that are commensurate to the level of harm they may cause. To achieve this, where it is appropriate to mitigate harm, ombudsmen schemes should be expanded to include new energy technologies, and regulations, and the consumer outcomes they seek, should be made explicit to market participants.

Question 12

Are there additional risks to consumers that should be considered and are not already addressed by the NECF, ACL and the voluntary codes?

The coverage provided by the existing mix of voluntary codes and mandatory regulations leaves consumers of new energy technologies at risk. In particular, consumers of new energy technologies do not have access to independent and affordable dispute resolution; certainty about the standards of products and services they are receiving; or confidence that the financing and marketing practices for new energy technologies are undertaken responsibly and in good faith; and there is an increased risk of business insolvency leaving consumers with unexpected and unreasonable cost. These risks are exacerbated by the complex nature and long life of many new energy technologies. PIAC recommends addressing them by expanding ombudsmen schemes and mandatory regulations to cover all essential energy supplies.

Stand-Alone Power Systems are an example of where existing regulations and codes do not adequately address risks to consumers. Our submission to the AEMC review of SAPS issues paper illustrates the risks of SAPS.[2]

> The risks for off-grid consumers are different to those who retain a grid connection and specific consumer protections are required which 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, in the case where a customer has gone completely off-grid and foregone their connection to the 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 which 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.
>
> In either case, the failure of the SAPS results in a significant impact to the customer through the loss of an essential service. This may result in the customer losing heating and cooling in remote areas which with more extreme weather or losing refrigeration of food and medicine. Of greatest concern would be if it meant losing power supply to life support services.
>
> There is also potential for the customer's load to change in excess of the off-grid system's capacity to provide. This may be due to growth in demand and/or energy, changes in the time of usage or changes in the required level of security and/or reliability of supply such as the need for life support. Upgrading an off-grid system to meet this higher load requirement may require considerable capital investment, unlike the case if the same customer were to have

[2] Public Interest Advocacy Centre, 2018. *Submission to review of the regulatory frameworks for stand-alone power systems issues paper.* https://piac.asn.au/wp-content/uploads/2018/10/18.10.12-PIAC-sub-to-AEMC-review-of-SAPS-issues-paper-with-ATTACHMENTS.pdf.

retained their grid-connection. Therefore, it is important that customers who are transitioned to off-grid supply are made aware of such implications so they are able to make a fully-informed choice or are appropriately protected from these costs.

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. Research undertaken for PIAC suggests that the warranties for many residential batteries, which form a crucial part of any SAPS, may not fully comply with the ACL.

In a consumer-led transition to off-grid supply, PIAC considers that the SAPS systems should include:

- 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.

SAPS present an extreme case where the existing protections need to expanded and amended to address risks of harm. Conversely, some new products and services – such as smart appliances like washing machines and dishwashers – need fewer protections.

Question 13

For new energy services and products, what characteristics of a vulnerable consumer should be considered under the energy-specific regulatory framework different to any other industry? Why?

PIAC highlights that all consumers are potentially vulnerable, the nature of some new energy products and services may exacerbate vulnerability, and protections frameworks should be designed with this in mind.

PIAC's report into the circumstances that lead to disconnection, the threat of disconnection and concern about being disconnected from energy, *Close to the Edge IV*, shows how vulnerability can affect a range of households.[3] The report showed that while disconnection/threat of disconnection was most common among disadvantaged groups and renters, it was also a problem for those seemingly well equipped to afford their energy. Disconnection/the threat of disconnections was an issue for households with mortgages and, to a lesser extent, those who have paid off their homes, and 71% to 61% across the categories indicated no unemployment in their household prior to disconnection.

The report also showed those who are disconnected were facing multiple, diverse pressures, including medical problems, disability, relationship breakdowns, and being victims of crime such as domestic violence. These stresses and their complexity may mean not only that is energy difficult to afford, but that paying bills may fall between the cracks.

The report also found many consumers were unaware of assistance options available, which could indicate that a complicated system of new technology remedies would be extremely difficult to navigate for vulnerable people living complex lives.

Overall, these findings show how people in pressured circumstances are vulnerable to complex markets, and may have limited ability to deal with faulty products and services.

Furthermore, historically high energy prices and the complexity of new energy products and services can increase vulnerability as consumers facing unaffordable energy may look to new energy technologies they have little understanding of to lower their bills. As most of these products and services are not subject to mandatory energy specific protections, already vulnerable consumers may find themselves in poor quality deals or with faulty products that cause their overall energy costs to increase, without access to redress.

Question 14

For new energy services and products, are there additional risks to vulnerable consumers that should be considered and are not already addressed by the ACL and the voluntary codes?

As above in response to Question 13, the complexity of new energy products and services presents additional risks for consumers. PIAC does not consider the existing voluntary codes adequate to mitigate these risks.

Question 15

What are the risks of extending the obligation of having policies that identify and protect consumers under vulnerable circumstances to new energy services and products suppliers?

As noted in response to Question 2, extending obligations places a burden on businesses and could prevent new market entrants and bolster the dominance of incumbents. Nonetheless, businesses should not be operating if they are actually causing material harm to consumers.

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[3] Public Interest Advocacy Centre, 2018. Close to the Edge – A Qualitative and Quantitative Study. https://piac.asn.au/wp-content/uploads/2018/11/PIAC-CTTE-Consolidated-Report-FINAL.pdf

Question 16

Do new energy products and services have specific characteristics that require additional protections to prevent unfair practices or conduct against good faith that should go beyond the ACL? Please explain.

New energy technologies are often complex and have long useful lives or contract periods. As they are contributing to the provision of an essential service, these factors mean some new energy technologies have the potential to cause significant, long-lasting harm to consumers and exacerbate vulnerability.

SAPS are an example of an energy product or service that, due to complexity, cost and potential to cause harm, require additional protections to prevent unfair practices. Where a customer is purchasing a SAPS and disconnecting from the grid, even if they are purchasing a SAPS outright, the SAPS provider should be required to provide energy-specific consumer protections. These should include:

- 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.

See Question 12 for more details on SAPS.

PIAC recommends the Commission consider a provision prohibiting unfair trading. Such a provision may improve the ability of ombudsmen, regulators and consumers to eliminate practices that cause harm as they emerge in new energy products and services.

Question 17

Does the nature of the market (new energy services and products) require an industry specific system/scheme to handle consumer complaints? Please explain.

Ombudsmen schemes are receiving an increasingly large number of out-of-jurisdiction complaints regarding new energy technologies and services. A 2019 report from the Australian and New Zealand Energy and Water Ombudsmen Network (ANZEWON) showed over 75% of the out of jurisdictional complaints received by EWOV in Victoria in 2018/2019 related to non-

members, up from 43.5% in 2017/2018. In particular, 28% of EWOV's 706 out of jurisdictional matters in 2017/2018 related to the conduct of solar installers who were not members of EWOV, while out of jurisdiction complaints about third party providers doubled. This suggests there is a growing need for independent dispute resolution for new energy technologies, and that consumers regard the ombudsmen service as covering all energy related complaints, not just those concerning the current energy suppliers.

In light of this, PIAC considers an industry specific scheme that covers all essential energy needs is the best means of providing independent dispute resolution and recommends the expansion of the existing ombudsmen schemes to cover new energy technologies. This should be done based on the potential for a product or service, or its loss, to cause harm, with those with the potential to cause material harm subject to ombudsmen schemes.

Question 18

What are the risks of having different redress mechanisms under different consumer frameworks? Please explain.

Consumers do not necessarily understand the different components of their energy supply, for example many consumers remain unaware of the difference between their retailer and distributor. Even more engaged consumers are often unaware of their rights when entering into contracts with innovative service providers.

Given this, having different redress mechanisms under different, voluntary and mandatory consumer frameworks, may result in poor outcomes for consumers. It may create unequal access, where some consumers have access to better protections than others because of how their energy is supplied. It could also lead to businesses seeking to avoid regulatory burden on the basis they are not technically providing certain products or services. This has already been observed in major energy retailers obtaining retail exemptions for their solar businesses, while maintaining the same brand. This avoidance could lead to confusion and gaps in coverage for consumers. It may also lead to issues not being resolved holistically as different components of the energy supply may need to be addressed individually rather than as a whole.

PIAC recommends the Commission aim for consistency of protections and redress mechanisms across different products and services, while also upholding the harm-based principle.

Question 19

Is there a better way to provide access to effective and strong redress mechanisms for consumers of new energy products and services?

PIAC does not consider voluntary codes are effective in providing strong redress mechanisms and consistent and effective protections for consumers. Consumers may not even be aware of the existence of voluntary schemes and whether the company they purchased from is a signatory. The existing voluntary schemes lack strong enforcement mechanisms and penalties for signatories who break the rules.

Furthermore, as the requests for ombudsmen assistance for out-of-jurisdiction new energy products and services shows, it is not obvious to consumers where or how to access redress under voluntary codes.

We recommend expanding compulsory ombudsmen schemes to include new energy products and services. This would need to be implemented with appropriate resourcing to ensure an acceptable level of service provision and consideration of whether a product or service has the potential to cause material harm in the generation or loss thereof.

Question 20

How could the enforcement tools and actions under the voluntary framework be better integrated with the ACL and the NECF? Please explain.

PIAC considers voluntary frameworks should not be relied upon to provide key protections where there are gaps in the ACL and NECF. We do not consider voluntary frameworks to provide appropriate protections against harm and ensure the affordable and sustainable supply of essential energy. Where there are gaps in coverage and the potential for material harm exists, we recommend expanding the jurisdiction of mandatory regulations and ombudsmen schemes and ensuring state and federal regulators are well-resourced to undertake compliance and enforcement activities.

Question 21

Are there any other principles the Commission should consider?

PIAC reiterates that protections for consumers of a product or service should reflect the level of potential harm that could arise from loss of access to that product or service.

We stress protections should be developed with the consumer experience in mind. Energy products and services are becoming more complex, leading to a reduction in relative energy literacy. Where there used to be a limited number of energy-based appliances types in homes, there are now more, and they work in more complicated ways; consider for example the advent off rooftop solar and the emerging markets for batteries and energy management tools.

Correspondingly, consumer decisions about energy have become more complex and, the level of knowledge required to be sufficiently energy literate to maximise their benefit has increased. As a result consumers, particularly those who are not engaged, have effectively become less energy literate relative to their needs.