

17 October 2018



Mr Michael Bradley
Director
Australian Energy Market Commission
PO Box A2449
Sydney South NSW 1235
Submitted via email
24 September 2018

Dear Mr Bradley,

Strengthening protections for customers in hardship draft rule 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 on 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 welcomes the opportunity to respond to the AEMC strengthening protections for customers in hardship draft rule determination. PIAC broadly supports the intent of the draft rule, which will provide the Australian Energy Regulator (AER) with greater scope to ensure that retailers more consistently meet their obligations to assist customers experiencing payment difficulty due to hardship.

However, PIAC considers that the current rule change is insufficient and that much more comprehensive reform is required to address long-standing, structural flaws in the way that the National Energy Retail Law (NERL) provides for protection and assistance for consumers experiencing payment difficulty.

Implementation of the rule change must be undertaken as soon as possible

PIAC notes the Australian Competition and Consumer Commission recommendation that the draft rule be implemented, and contends that the impact of retail responses to households experiencing payment difficulty warrants implementation as soon as possible.

Accordingly, PIAC supports the implementation and transition proposals contained in the draft rule determination, specifically:

- that the AER publish new guidelines by 1 April 2019.
- that retailers with a currently approved policy be required to submit and update hardship policy compliant with new AER guidelines, no later than 1 June 2019
- that new retailers must submit a compliant hardship policy within 3 months of being granted retail authorisation

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The current NERL protections for consumers facing payment difficulty are not effective

While PIAC supports the draft rule as an important means of ensuring better and more consistent application of retail hardship policies in the short term, we contend the current framework is unfit for purpose, and unable to deliver intended consumer support outcomes. The current framework relies upon a concept of hardship that is at once ill-defined and a source of significant consumer stigma.

Further, PIAC contends that the artificial differentiation in the NERL, between consumers experiencing payment difficulty and those experiencing payment difficulty due to hardship, undermines the impact of retail assistance policies.

In a recent survey of consumers experiencing disconnection, PIAC noted the following evidence¹ that the current framework is fundamentally failing consumers in need of assistance:

- 74% of respondents who had been disconnected had been in contact with their retailer immediately prior to disconnection, but had not received support or assistance in the lead up, or at the time, that helped them to avoid being disconnected.
- 90-97% of those worried about, notified or actually disconnected, had been in contact with their retailer and been offered some form of assistance. However, of those:
 - Only 13% discussed hardship support, despite nearly 50% being disconnected or notified of disconnection, and hence easily identifiable as in hardship.
 - The forms of assistance most commonly discussed, even among those who were disconnected, were payment plans (30%) and bill extensions (27%), which are least likely to assist consumers to address crucial issues such as their energy usage, financial capability, or accumulated debt.
 - None of the range of more tailored assistance measures (such as access to emergency vouchers, access to financial counselling, advice on lowering bills, energy efficiency and even switching to a more affordable plan) received scores of more than 15%, regardless of whether respondents were actually disconnected, notified of disconnection or simply concerned about it.

These responses demonstrate the flaw in the NERLs reliance upon 'hardship' to differentiate customers in need of specific assistance, showing that it is not a basis for ensuring that the most effective early assistance and support measures are provided to people experiencing payment difficulty.

Both the AER rule change proposal and the draft determination identify early assistance as fundamental to better consumer outcomes. PIAC contends that the current framework's differentiation between payment difficulty and payment difficulty due to hardship fails consumers by creating barriers to their access to the most effective early support and assistance measures.

Recommendations for more fundamental reform of the NERL

More fundamental reform is needed to address the current flaws in the NERL. Accordingly, PIAC recommends that the AEMC make a recommendation to the COAG Energy Council that the Council commence a comprehensive process of reform of the elements of the NERL relating to hardship and payment difficulty.

In previous submissions to this process PIAC has highlighted the extensive consultation process involved in the development and implementation of the Victorian Essential Services Commission (ESC) Payment Difficulty Framework. PIAC strongly recommends that the AEMC

¹ PIAC & UMR, 'Close to the Edge: a qualitative and quantitative study of essential service disconnection', pp 9-90 (yet to be published)

make specific reference to the Victorian Payment Difficulty Framework, and the benefits of reform to the NERL that would provide for a similar framework of consumer entitlements to support.

Continued engagement

PIAC would welcome the opportunity to meet with the AEMC and other stakeholders to discuss these issues in more depth, or provide further information in support of our recommendations. Please do not hesitate to contact Douglas McCloskey on (02) 8898 6534 or dmccloskey@piac.asn.au

Yours sincerely,

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