public interest
ADVOCACY CENTRE

Submission to IPART Monitoring the NSW electricity retail market 2020-21 Draft Report

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Level 5, 175 Liverpool Street, Sydney NSW 2000
Phone: 61 2 8898 6500 • Fax: 61 2 8898 6555 • www.piac.asn.au

About the Public Interest Advocacy Centre

The Public Interest Advocacy Centre (PIAC) is leading social justice law and policy centre. Established in 1982, we are an independent, non-profit organisation that works with people and communities who are marginalised and facing disadvantage.

PIAC builds a fairer, stronger society by helping to change laws, policies and practices that cause injustice and inequality. Our work combines:

- legal advice and representation, specialising in test cases and strategic casework;
- research, analysis and policy development; and
- advocacy for systems change and public interest outcomes.

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.

Contact

Thea Bray or Douglas McCloskey
Public Interest Advocacy Centre
Level 5, 175 Liverpool St
Sydney NSW 2000

[redacted]

Website: www.piac.asn.au

Public Interest Advocacy Centre

@PIACnews

The Public Interest Advocacy Centre office is located on the land of the Gadigal of the Eora Nation.

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1. Introduction

The Public Interest and Advocacy Centre (PIAC) welcomes the opportunity to respond to the Independent Pricing and Regulatory Tribunal's (IPART) Monitoring the NSW electricity retail market 2020-21 Draft Report ('the Draft Report').

IPART's monitoring the NSW electricity retail market provides an important assessment of the outcomes the electricity retail market delivers for NSW consumers. PIAC supports IPART's commitment to continue its analysis focused on NSW, particularly given the Australian Energy Market Commission (AEMC) does not intend to undertake their regular Retail Energy Competition review in 2021-2022.[1]

The purpose of retail electricity competition

In PIAC's view, the goal of IPART's monitoring should be to understand the outcomes and experiences the retail electricity market is delivering for all NSW consumers.

Competition in retail electricity is intended to efficiently deliver an essential service. Contestability in retail electricity services is not an end in itself, but is intended to drive quality customer service at lower cost to consumers. The essential nature of electricity, and its potential to impact on the health, wellbeing and financial sustainability of households means it is vital the retail market is delivering the intended outcomes.

IPART's Draft Report asserts that competition is inherently more efficient and intrinsically better at delivering service outcomes. This is outdated thinking and not supported by the experiences of consumers in the energy retail market that delivered price outcomes so 'unjustifiable'[2] price regulation had to be reintroduced.

Measures of competition should be assessed on how they are contributing (or not contributing) to these outcomes. Outmoded market metrics such as number of retailers or offers and dispersion of prices are indicators of negative consumer experience and outcomes – confusion, pressure, poor choices, inefficiency, and excessive prices – rather than positive ones.

The retail market

Selling an essential service means a retailer draws from a guaranteed pool of customers who must purchase. The number of new retailers entering the NSW market in 2020-2021 indicates businesses see opportunity to profit from selling electricity, even if their share of the market is very small.

The 'Big 3' retailers (Origin, AGL and Energy Australia) still dominate with 81% of the retail electricity market share. In Essential Energy's area, the legacy retailer, Origin, retains about 50% of the market share.[3] Only 19% of consumers voluntarily switched retailers,[4] which was a marginal increase from 18% in 2019-20. The majority of people are now on market offers. The

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1 AEMC, 'Strategic Plan 2021/22 – 2024/25',16.

2 Preventing unjustifiable standing offer prices is a stated objective of the DMO.

3 Mentioned by Essential Energy during a deliberative forum on 27 October 2021.

4 I.e., not including consumers who were forced to switch due to the acquisition of Amaysim/Click by AGL.

relatively small proportion of consumers switching retailers means many consumers who appear in the 'market offer' statistics would be on deals with expired benefits and are likely to be on terms equivalent to the standing offer. Outcomes for these consumers should be a priority consideration for IPART's monitoring.

Whilst Energy Made Easy can make comparing offers a little easier, the scope of differences between retailer bill formulations remains confusing. The range of different 'need to know' parameters for comparing offers are overwhelming for many.

The increase in energy retailers offering additional energy and non-energy related products has the potential to benefit consumers. However, without appropriate information and regulation it will make choosing an energy offer even more confusing.

Some households continue to able to manage their energy costs safely through Distributed Energy Resources (DER), energy efficiency and being on an appropriate retail offer that meets their needs. However, the majority of renters, households with low incomes and many others are still unable to do this. They rely on the outcomes delivered by the market and are often left to manage their costs through reducing their usage in unhealthy ways, accumulating debt and/or finding unsustainable ways to pay for this essential service, including through small credit contracts.

IPART's monitoring of the success of the retail electricity market must look at systemic outcomes for all consumers. It cannot rely on the potential for some consumers to get good outcomes, and should focus on those that are not. IPART's monitoring should also include assessing the effectiveness of retail assistance and supports, particularly the cost of failing to effectively assist people with payment difficulties and having this burden shifted to other parts of the economy and community (for instance the pay-advance and short-term credit industry).

The market is intended to serve consumers' interest, but PIAC sees little evidence that competition gives people what they want and overwhelming evidence to the contrary.

Where consumers are getting what they want in relation to energy, it is despite the energy market, not because of it, with tools like solar PV. And even in those cases the competitive market is more often a hindrance than a help: St Vincent De Paul's Society's latest NSW Tracking Report shows households with the highest feed-in tariffs for solar are, on balance, worse off than they would be on lower feed-in tariffs, due to higher consumption and fixed charges. Engaged consumers being worse off must be a marker of dysfunction in any competitive market.

Retail electricity trends

PIAC considers the main trends in the electricity retail market in the last year have been:

- Due to the effects of COVID-19 and the Australian Energy Regulator's (AER) Statement of Expectations (SoE), disconnection, debt collection and credit listings were greatly reduced in

2020-21. However, both the number of people in debt and the amount of debt held by these consumers increased.[5]

- The number of consumers on payment plans was 18% higher than in previous years (national figure). The percentage of people successfully exiting payment plans increased.[6] However, there is not a consistent definition of successful exit or an understanding of how many people who have exited return to support arrangements.
- The proportion of residential consumers in hardship programs decreased, whilst the average debt of consumers on entry to hardship programs increased and the amount of debt held by electricity consumers in hardship programs reached record levels.[7]
- The 'Big 3' retailers continued to dominate retail market share.
- A high number of new retailers entered the market at a time when many existing retailers are citing increased costs and debt issues as a profitability and viability risk.
- The majority of retailers are surviving with a tiny market share.
- Retailers increasingly offered additional products, some of which are energy related (such as rooftop solar) and other are not related to energy (such as insurance).
- There is an increase in retailers entering the market whose core business is not energy.
- There is an increase in the range of bundling options available, with no clear indication of how they must be advertised or priced.
- There have been protection and pricing benefits for consumers from the default market offer (DMO). However, the way it is constructed intentionally leaves consumers paying more than necessary. A DMO that reflects efficient costs would be more beneficial for consumers.
- There has been continuing uptake of rooftop solar, increased uptake of batteries, and slower uptake of electric vehicles, with a corresponding increase in offers and complexity of offers for consumers with DER.

2. Response to Draft findings and analysis

How retailers are competing

In the first few months of the COVID-19 pandemic retailers raised concerns regarding their viability as a result of economic impacts of the pandemic. These retailer concerns resulted in a review of the Retailer of Last Resort (RoLR) scheme and development of a mechanism to allow retailers to defer payment of network charges.

5 Australian Energy Regulator (AER), 'State of the Energy Market', 276.
6 Ibid 279.
7 Ibid 279-280.

However, in 2020-21, rather than retailers folding, there was one merger and eight new retailers entered the NSW electricity market, bringing the total to 40 retailers. As stated in the Draft Report,[8] there is heavy market concentration with 81% of consumers with the 'Big 3', a further 16% of consumers with the next seven largest retailers and the remaining 30 retailers with only 3% of the market. Despite the concentration of retailers with small market share, a significant number of new entrants indicates businesses calculate it is worthwhile entering the market. This is presumably because they consider a profit can be made. PIAC notes that this appears to contradict the contention of many existing retailers that the current circumstances threaten their viability and profitability.

The entry into the market of a significant number of new entrants may be a consequence of an inefficiently constructed DMO. Because the DMO is intentionally higher than the efficient cost to serve, a retailer, no matter how small its customer base, is guaranteed a greater margin.

Many established electricity retailers offer other energy services such as solar, batteries and electric vehicle related services, though this is not yet widespread. There is also a growing number offering non-energy related products offered alongside energy, such as insurance and telecommunications. In addition, there is an increase in retailers entering the market whose core business is not energy. For some of these retailers, their core business has been the supply or financing of DER, whilst there are plans for another retailer to enter the market whose core business is telecommunications.

How these businesses manage their delivery of energy as an essential service when their core business is providing non-essential products is an important issue for regulators to monitor. They must understand the responsibilities that come with providing energy services. It is crucial IPART monitor their performance in meeting requirements to inform, assist and protect consumers. IPART should monitor impacts on consumers with bundled DER services and assess whether they are able to easily switch and obtain any market benefits from more affordable offers, whilst maintaining their DER.

PIAC agrees with IPART that '[t]he continuous growth in the number of businesses indicates that it is relatively easy for businesses to set up in NSW' but strongly disagrees with IPART's assessment of the inherent benefits of competitive pressures in the retail electricity market.

IPART contends: 'This places pressure on all businesses to reduce costs, become more efficient, provide good customer service, and offer products that better meet customers' needs. If they do not, they will lose market share to those businesses that can provide more value. Inefficient retailers would drop out of the market over time.'

This ideological assumption has no basis in experience or evidence.

No significant retailer departures have occurred despite years of evidence that consumers are not being delivered the simple, affordable and dependable services they want and need. IPART's analysis of the retail market should not make broad and unfounded ideological assumptions of a relationship between the number of retailers and efficient outcomes in the interests of consumers.

8 IPART, 'Monitoring the NSW electricity retail market 2020-21 Draft Report', vii.

Having 40 retailers operating in NSW is not a consumer benefit if those retailers are not delivering better services and prices for all their consumers. More retailers in the market indicates businesses calculate there is a margin to be made, even in a market bloated with the overheads of 40 businesses selling, for the most part, exactly the same product.

How consumers are responding

'Innovative' energy offers and bundling with non-energy related products can have consumer benefits. However, it can make choosing the right energy offer and services even more confusing. This is exacerbated when a household does not have usage data or when their usage data is not relevant to their future use.[9] As noted above, it is important to monitor how businesses manage their delivery of energy as an essential service when their core business is not retail energy and how easy it is to switch retailers whilst maintaining a DER service.

The Energy and Water Ombudsman NSW (EWON) saw a reduction in complaints in 2020-21. This is likely due to the AER's SoE rather than improved customer service. The experience of South Australian and Queensland jurisdictions should be considered to assess this.

Switching: The 'confusopoly' continues

IPART reports that switching retailers marginally increased. While this is true, the trend is relatively stable and mirrors Victorian experience of switching rates which hover around 20%. There is no evidence to show that it is more than a small proportion of 'active' consumers making up the bulk of the switching figures.[10] It is likely that the same people who switched in 2019-20 switched again in 2020-21. For the majority of consumers (about 80%), switching retailers is not an activity they regularly take part in. Many consumers may have switched in the last few years and then remained on their current offer on the assumption it is a 'good offer'. Retail practices mean these consumers are likely to be on expired benefit offers or other defaults that are equivalent to a standing offer, even though they appear in the 'market offer' statistics. The AER has recognised this in their current review of the DMO,[11] though they have not sought to quantify the number of impacted consumers. This area should be a focus for IPART.

Many people are not aware they are expected to regularly check and update their energy offer in order to pay a fair price. For most who are, it is an unwelcome chore at best and at worst a frustrating and confusing exercise that can seem impossible. For some, it can induce fear that they will be disconnected, have a less reliable supply or pay higher costs.[12] The accumulated burden on people increases every year. More and more aspects of their lives require high levels of understanding and 'engagement'. Energy can often be left, not because they are happy with their arrangements, but because other issues take priority.

People who have not switched should not be considered 'disengaged'. For many, not switching is an expressed preference. It is a response to their perceptions about the role of energy and a means of prioritising and coping with the issues they must deal with. They may rightly assess that

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9 Similarly, the current proposed model of the Consumer Data Right might not provide much usage insight for consumers who switch retailers regularly.

10 Independent Review into the Electricity and Gas Retail Markets in Victoria (2017), 38.

11 Australian Energy Retailer, 'Default Market Offer prices: Options Paper on the methodology to be adopted for the 2022-23 determination (and subsequent years)' (2021), 11.

12 Nicholls, Larissa and Dahlgren, Kari, 'Consumer Experiences Following Energy Market Reforms in Victoria: Qualitative Research with community Support Workers, Final Report' (2021), 8.

any financial benefit gained from switching is often short lived and negated by the effort it takes to do successfully. Indeed, some market offers have less suitable conditions than standing offers,[13] leaving consumers worse off.

While the DMO has helped reduce prices, it may lead consumers to mistakenly believe that being on the DMO means they are on a 'fair' price, which of course it intentionally does not. For the many consumers in these circumstances, IPART's monitoring must consider if the retail market is delivering the reasonable outcomes for consumers at all.

Once a person has made a decision to switch, they need to know where to look and then how to choose the right offer for them. PIAC looked at Energy Made Easy and putting in some basic information[14] without a bill and found 758 available plans. From the top 10 least cost plans, PIAC found a dizzying number of options to navigate:

- Two had membership fees (one is for $77.94 for the first 6 months and the other is $80).
- Two offers are flat rates whilst the remaining offers have time of use rates, three of which have seasonal time changes. For some offers there are three different time of use rates, spread across five different times (peak, off-peak, shoulder, weekend peak and weekend off-peak).
- Move in/reconnection fees ranged from $0 to $87.25.
- Disconnection fee for moving out of premises ranged from $0 to $87.25, whilst one listed a different fee for disconnection for non-payment.
- Some also list reconnection fees separately, ranging from $42.68 to $73.92.
- Three offers had direct debit dishonor fees ranging from $7.50 to $11.00, whilst one offer had a cheque dishonor fee of $11.00.
- Four offers included late payment fees ranging from $12.00 to $16.00.
- Four list credit card payment fees, ranging from 0.36% to 1%.
- Two have payment processing fees. One 0.17% and 0.45% and the other is for 3%.
- One includes a 20% discount.
- One has NRMA membership listed as an inducement.

Most consumers would be at a loss to meaningfully interpret and navigate this complex information to confidently make the best choice for them.

13 Such as a financial penalty for missing a direct debit payment.
14 A four person household in Minto, NSW with a smart meter, current retailer unknown. Energy Made Easy accessed on 9/11/11.

Bundling

An increase in bundling of electricity with other services is one of the major electricity retail trends. To date, PIAC is aware of electricity being bundled with mobile phone plans, NBN, internet as well as home and car insurance. Sometimes these services are provided by a well-known brand, but other times are provided by a white label partnership.

It can appear to be a good option for certain consumers who are attracted to having a number of their services provided by a single company, especially if it is a company they are familiar with and trust. Many consumers would intuitively reason (and marketing may imply) bundling would mean a loyalty or bulk buy discount and they would have the convenience of a single bill to track usage and make payments. Nicholls and Dahlgren found 'Bundled services are attracting households regardless of whether the retailer and tariff are financially advantageous or otherwise suitable.'[15]

However, there are doubts and concerns regarding:

- How genuine the discounts are, for example, whether the discount on one service is based on an inflated price for the other(s).
- How easy it is to compare the different products which make up the bundle.
- How easy it is to separate components of the bundle if the consumer sees a better offer elsewhere.
- Whether there really is convenience, such as a single bill.
- How the responsibilities and protections required of energy businesses are delivered through bundled offers.

PIAC is yet to see clear evidence of bundling leading to a consistent consumer benefit.[16] This should be an ongoing focus of IPART monitoring.

Difficulty paying bills

As noted in the introduction of this submission, one of the clearest trends in the past year in retail electricity has been the amount of debt accumulated by electricity consumers.

Competition does not automatically lead to better customer service, particularly when a person has difficulty paying their bill. Community support workers report that when they seek assistance for a client, the help provided by retailers (both between retailers and within retailers) is inconsistent. Community support workers commonly resort to calling a retailer multiple times until they can speak with a customer service staff member who correctly applies the rules and helps their client.[17] Community support workers also report having to say the 'magic' words for payment difficulty to be recognised.[18] This is an unacceptable outcome for those consumers. Compliant retail assistance should not be contingent on who answers the call.

Despite the increase in electricity retail competition, PIAC has not seen evidence that retailers are improving their customer service standards and meeting their basic obligations when consumers

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15 Nicholls and Dahlgren (n 12), 8.

16 For example, this news article found no financial benefit: https://www.smh.com.au/money/planning-and-budgeting/cba-and-telstra-energy-coming-to-a-home-near-you-20210809-p58h97.html

17 Nicholls and Dahlgren (n 12), 4.

18 Ibid, 5 and 20-21.

experience payment difficulties. Meeting these obligations is a fundamental requirement and cost of business in selling an essential service. Retailers unable to meet these obligations have no place in providing such services. IPART's monitoring should consider whether a greater number of retailers unable to meet their obligations to consumers is a sign of effective retail competition.

Consumers seeking energy bill assistance through small credit contracts

IPART must consider how the operation of the retail energy market interacts with consumer credit issues. PIAC notes increasing evidence that the failure of retail providers to deliver affordable services and supports for people in difficulty is driving greater recourse to more dangerous short-term credit.

For example, Mob Strong Debt Help at the Financial Rights Legal Service briefed PIAC[19] about an issue they see often occurring for First Nations people who experience failure of the electricity market. A significant number of First Nations people who are unable to afford their electricity bill resort to paying their electricity bills by using payment advance providers and other small credit contracts. They are often not receiving assistance from their retailer or from Energy Accounts Payment Assistance (EAPA).

This may be because retailers are failing to offer support, that people do not know it is available and/or that people feel it is too difficult to access. Another issue is that when getting assistance from a retailer or through EAPA, a person must explain why they cannot afford to pay their energy bill. This creates shame for a lot of people, particularly for First Nations people who already experience a lot of shame. Language and cultural barriers (including lack of cultural competency from retailers and other service providers), fear of government services and a lack of personal connections can exacerbate this.

Meanwhile, there is an increasing number of small amount credit contracts (SACCs) products such as payday loan/wage advance as well as Buy Now Pay Later products available and it is increasingly easy access to them. The Stop the Debt Trap Alliance found that the SACCs industry is growing in Australia and that 'between April 2016 and July 2019, just over 4.7 million individual payday loans have been written, with approximately 310,913 households taking on payday loans since 2016.'[20] In NSW, the number of loans is increasing each year[21] as is the average value of new payday loans.[22]

The companies selling these financial products have few regulations inhibiting them from irresponsible lending practices. They don't require credit checks to access funds and they are built around business models which regularly encourage people to get further loans, sometimes even incentivising this. There is also growth of these loans obtained online.[23] Websites for payday lenders market their product/s as 'fast, simple, hassle-free or convenient, flexible, and borrowers may 'apply from anywhere'.'[24] These companies often present themselves as altruistic.[25]

19 In a meeting on 26 August 2021.
20 Stop the Debt Trap Alliance, 'The Debt Trap: How Payday lending is costing Australians' (2019), 8.
21 Ibid, 15.
22 Ibid, 16.
23 Ibid, 10.
24 Chen, Vivien, 'Online payday Lenders: Trusted Friends or Debt Traps?' 685
25 Ibid, 687.

Most often these loans do not help people in financial distress and instead escalate arrears and debt issues, including in energy. The high repayment amounts mean that people do not have enough to meet their other expenses and often take out a subsequent loan to pay off the first loan or to meet their living expenses,[26] leaving them to pay off even more interest and other fees. The Debt Trap Alliance found: 'over a five-year period around 15% of payday borrowers will fall into a debt spiral which can have serious consequences such as bankruptcy.'[27]

Energy retailers often have no visibility of the issues people are facing. They issue payment reminders and disconnection notices and only see that a payment is made in response. However, the interactions we have outlined mean that people are often incurring increasing risks in order to respond to electricity retail requirements. Proactive electricity retailer offers of assistance given without inconsistent 'gate-keeping' are key to addressing this.

PIAC is concerned the additional financial pressure that many households in NSW are under after 18 months of COVID-19 and two major lockdowns, could lead to more households to seek SACC products. While retailers have not undertaken much active debt recovery and disconnection recently because of the SoE, household financial stress is likely to become more apparent with the end of the SoE and government supports.

PIAC sees this personal debt issue as a failure of the electricity market to provide assistance to people who need it. It also indicates a failure of rebates and EAPA to stop harmful borrowing for an essential service. SACC product debt, and other debt such as credit card and personal loans that are used to cover living expenses including electricity bills, should be included in the amount of debt accrued in the electricity retail sector.

How the market structure is changing

Any initiatives to have more consistent regulation across the NEM must lead to improving protections and supports for consumers. It must not lead to a reduction in these consumer protections for the sake of consistency.

Impact of the default market offer (DMO)

PIAC supports the role of default pricing in improving outcomes for consumers. However, the current design of the DMO is not in the best interests of NSW consumers. PIAC advocates for alternative formulations of the DMO based upon efficiency. PIAC considers the experience of the DMO to date demonstrates a focus on efficiency would deliver better outcomes for consumers and the market.

The DMO has had positive outcomes for consumers as a whole and particularly for individual consumers on standing offers. Following the introduction of the DMO:

- Standing offers have remained at or below the level of the DMO, ensuring consumers on them are paying a fairer price for their electricity service.

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26 Stop the Debt Trap Alliance (n 20), 6 and 8.
27 Stop the Debt Trap Alliance (n 20), 6.

- Median market offer prices decreased across all distribution zones and customer types, representing an 'overall' improvement in market price outcomes for consumers.
- The spread of market prices decreased, indicating less 'subsidy' between consumers.
- The prevalence of conditional discounting has decreased, with increased competition that is not exclusively price-based.

These outcomes demonstrate the value of default pricing, however a DMO that reflects efficient costs would be still more beneficial for consumers.

A strong default would protect consumers on standing offers, as well as those on deals with expired benefits. It would indicate the fair price for energy, and ensure all consumers need pay no more than this for an essential energy service. In indicating the fair price, which would still provide a retailer with an acceptable margin, it would allow competition on quality of offer. Market offers could become 'premium' offers where retailers demonstrate extra value to consumers. This would provide positive incentive to retailers to understand consumers better and deliver them services and products they value above and beyond the 'fair and essential'. Crucially this leaves a real choice in the consumers hands, rather than requiring them to 'exercise choice' in the hope of paying a fair price for an essential service

Embedded networks

Many people in embedded networks are still unlikely to have the option to access their electricity from a market retailer. Despite changes to the Social Programs for Energy Code to expand the definition of 'on-supply customer' to improve access to NSW Government supports to people in embedded networks, it will take some time and work to have these protections extended to the people who need them and are eligible for them.

Many people in embedded networks, particularly residential parks, nursing and retirement homes and social housing developments, are likely to have lower incomes and be in vulnerable situations. The potential for harmful impacts is significantly higher for residents in embedded networks, both because of their personal circumstances and because their access to supports and protections are still to be implemented.

PIAC does not see compelling evidence of material consumer benefit for residents of most embedded networks. Any benefits which do exist are not consistent or significant enough to account for the consumer impacts and potential harms most embedded network consumers experience.

For some exempt entities providing energy in embedded networks, selling energy does not sit alongside other services they provide to residents, such as tenancy services, it is their core business. EWON has documented examples of businesses structured so they are classified as billing agents, not specialist external providers. This enables them to avoid AER authorisation or exemption. EWON found cases where there are billing issues, such as automatic payments occurring despite an account being closed, that demonstrate consumers in these situations can have little or no recourse to remedies.[28] Better regulation of this business model is required to ensure energy sellers cannot deliberately take advantage of the minimal consumer protections that should prevent billing agents providing unacceptable levels of service with minimal options for consumers when things go wrong.

Information about embedded networks in NSW

It can be difficult to understand what issues are affecting consumers in embedded networks. There could be a role for IPART to collect and monitor details about how many people are covered by network and retail exemptions in NSW and the types of business structures that are used. It is important to understand key indicators for protections for these consumers, such as disconnection and debt, and the availability of basic retail protections such as payment plans and access to government assistance.

Regulation of the energy used to chill and heat water in embedded networks

PIAC supports regulation of energy embedded in the provision of other unregulated services, such as that used to chill or heat water. PIAC is concerned about the numerous consumer issues with the sale of chilled and hot water in embedded networks. Loopholes should not allow some businesses to 'choose' their regulation and prevent people's access to appropriate consumer protections including billing and access to ombudsman services.

In 2021, at least 49,000 households in NSW received their hot water through an embedded network.[29] This is a significant – and growing – number of consumers who are not receiving the same consumer protections that other consumers receive. The current regulatory framework means that the embedded network operator can chose which regulatory framework they operate in and, understandably from a business perspective, choose the framework which has the least regulation and consumer protections.

Chilled water used for air conditioning can be extremely important for health, particularly in apartments which lack cross ventilation or other means to cool. It is also vital for people who have medical conditions which means they need to maintain room temperatures within a certain range. PIAC does not have access to the figures for the number of consumers in chilled water embedded networks, but some issues facing both chilled water and hot water embedded networks are similar. Consumers in these networks might not:

- Receive clear billing information which shows them how much they use and what they are being charged for.
- Have access to retail competition to enable them to look for a cheaper deal.
- Have a right to access payment plans or hardship assistance should they need it.
- Have certain disconnection protections.
- Have access to an ombudsman service should an issue arise.

Although hot water is usually sold in litres, not kWhs, heating water and having access to hot water is part of energy supply and is an essential service. For hot water embedded networks, EWON identified the following common complaints:

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28 Energy and Water Ombudsman NSW (EWON), 'Embedded networks – it's time for change', https://www.ewon.com.au/page/publications-and-submissions/reports/spotlight-on/embedded-networks

29 EWON, Spotlight On: 'Hot water embedded networks', https://www.ewon.com.au/page/publications-and-submissions/reports/spotlight-on/hot-water-embedded-networks

- high bill disputes;
- estimated bills;
- customer service issues;
- opening and closing accounts; and
- credit issues, including affordability.[30]

These sorts of complaints are likely to also apply to chilled water. It is unfair that consumers with these problems in embedded networks cannot get assistance from a jurisdictional ombudsman as consumers outside of these arrangements can.

Protections for hot and chilled water must be brought up to the standards that those outside of embedded networks receive. For hot water, this means not being able to operate outside of energy regulations, for example, not being able to charge for hot water in litres.

Impacts of COVID-19

COVID-19 has demonstrated to the community and governments that anyone can be vulnerable to job loss, lost income, severe illness and the resulting payment difficulties.

The AER's SoE resulted in a significant reduction in disconnections, debt collection and credit listings in 2020-21. However, a new problem emerged with the number of people in debt and the amount of debt held by these consumers both increasing.[31] The proportion of residential consumers in hardship programs decreased, whilst the average debt of consumers on entry to hardship programs increased and the amount of debt held by electricity consumers in hardship programs reached record levels.[32]

These trends indicate retailers have not been appropriately responsive to helping consumers who are experiencing payment difficulties and/or have not been proactive in assisting consumers experiencing payment difficulties. As we detailed earlier, this can have serious implications for the accumulation of other consumer debts which may return to further impact energy when retailers return to their normal debt collection practices.

On a more positive note, the number of consumers on payment plans was 18% higher than in previous years (national figure) and the percentage of people successfully exiting payment plan increasing,[33] indicating some consumers received the help they needed. However, further work is needed to understand what constitutes successful exit, and what are the experiences of these consumers after they have exited.

At the time of writing this submission, the AER's Standby SoE has lifted across NSW and we are anticipating that retailers will start issuing disconnection notices again. PIAC does not consider disconnection to be an appropriate response to payment difficulty. The Department of Planning, Industry and Environment indicated to PIAC that about 50% of people in receipt of rebates who get disconnected for non-payment switch to a new retailer. This indicates that for half of these

30 Ibid.
31 AER (n 4), 276.
32 AER (n 4), 279-280.
33 AER (n 4), 279.

particularly vulnerable consumers, disconnection merely shifted a household's payment difficulty to another retailer.

Reducing disconnections: disconnection pre-visits

EWCAP has continued to encourage ways to reduce instances of disconnecting households for non-payment, including through expanded and improved disconnection pre-visit programs. Disconnection pre-visits (also known as 'knock before disconnection') have been shown to avoid current and future disconnections.[34] Essential Energy had a successful trial of this intervention[35] and are now expanding it throughout their network as a business-as-usual practise. Endeavour has also had a successful pilot program[36] and also plan to roll the program out across their network. In addition, Ausgrid has indicated interest to pilot the program once the AER's Standby SoE ends and disconnections start again.[37]

EWCAP and several of our Reference Group members worked with Essential Energy to strengthen their disconnection pre-visit program and implement EWCAP's proposal that support information also be provided to households during pre-visits. The aim of the supports information is so households know where they can get help to address any broader problems they might have, and where they can access this assistance. It is hoped this information and the way it is presented and delivered will help some households break their payment difficulty cycle.

Essential Energy has printed out the supports information and will provide it as part of their disconnection pre-visit program. They will track how many of the same residences get subsequent disconnection notices to help determine whether the supports information helps reduce future disconnection notices. Endeavour Energy has also indicated they will provide the supports information as part of their disconnection pre-visit program and Ausgrid indicated they will provide this information as part of their disconnection pre-visit pilot.

The success of this initiative must not be undermined by allowing remote disconnection in circumstances of non-payment. For safety and compassionate reasons and as tool to reduce the number of future disconnections, disconnection pre-visit programs in conjunction with support information must continue.

3. Continued engagement

PIAC welcomes the opportunity to meet with IPART and other stakeholders to discuss these issues in more depth.

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34 For example, South Australia Power Networks had a 56% success rate during their pilot, i.e., 56% of disconnection notices were cancelled.
35 Essential Energy reported their trial resulted in 70% of disconnection notices being cancelled.
36 Endeavour Energy reported their trial resulted in 45-47% of disconnection notices being cancelled.
37 Indicated during a meeting with PIAC on 5 August 2021.