



public interest
ADVOCACY CENTRE LTD

Keeping Connected: PIAC Submission on the Customer Assistance Policy

31 July 2009

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1. Introduction

1.1 The Public Interest Advocacy Centre

The Public Interest Advocacy Centre (PIAC) is an independent, non-profit law and policy organisation that works for a fair, just and democratic society, empowering citizens, consumers and communities by taking strategic action on public interest issues.

PIAC identifies public interest issues and, where possible and appropriate, works co-operatively with other organisations to advocate for individuals and groups affected. PIAC seeks to:

- expose and redress unjust or unsafe practices, deficient laws or policies;
- promote accountable, transparent and responsive government;
- encourage, influence and inform public debate on issues affecting legal and democratic rights;
- promote the development of law that reflects the public interest;
- develop and assist community organisations with a public interest focus to pursue the interests of the communities they represent;
- develop models to respond to unmet legal need; and
- maintain an effective and sustainable organisation.

Established in July 1982 as an initiative of the Law Foundation of New South Wales, with support from the NSW Legal Aid Commission, PIAC was the first, and remains the only broadly based public interest legal centre in Australia. Financial support for PIAC comes primarily from the NSW Public Purpose Fund and the Commonwealth and State Community Legal Services Program. PIAC also receives funding from the NSW Government Department of Water and Energy for its work on utilities, and from Allens Arthur Robinson for its Indigenous Justice Program. PIAC also generates income from project and case grants, seminars, consultancy fees, donations and recovery of costs in legal actions.

1.2 Energy + Water Consumer Advocacy Program (EWCAP)

This Program was established at PIAC as the Utilities Consumers' Advocacy Program in 1998 with NSW Government funding. The aim of the Program is to develop policy and advocate in the interests of low-income and other residential consumers in the NSW energy and water markets. PIAC receives policy input to the Program from a community-based reference group whose members include:

- Council of Social Service of NSW (NCOSS);
- Combined Pensioners and Superannuants Association of NSW (CPSA);
- Park and Village Service;
- Ethnic Communities Council NSW;
- Rural and remote consumers;
- Institute of Sustainable Futures (ISF), University of Technology (UTS);
- Indigenous consumer representative; and
- Western Sydney Community Forum (WSCF).

2. General comment

The Public Interest Advocacy Centre (PIAC) welcomes the opportunity to comment on the NSW Government's Consumer Assistance Policy (CAP) Consultation Draft.

On the recommendation of the Independent Pricing and Regulatory Tribunal (IPART), the NSW Government has announced that it will bring forward measures from the \$272.5 million package of initiatives to assist consumers to deal with the substantial 1 July 2009 electricity price increases. Recognising that energy price rises have a direct impact on utility disconnections¹, PIAC endorses this decision. However, PIAC believes that this package alone will be insufficient to ensure that the rate of electricity disconnections in 2009-10 is no higher than in 2008-09 and urges the Government and energy retailers to commit to ensuring that there is no increase in the rate of disconnections.

This package of protections was originally developed to compensate NSW households for the privatisation and semi-privatisation of state-owned energy retailers and other assets, and PIAC will be seeking Government commitment to further measures of protection to supplement these if and when the privatisation goes ahead.

PIAC welcomes the extra funding available for consumer protection, and generally supports the approach outlined in the CAP. PIAC commends the Government for its willingness to consider innovative solutions to energy hardship. However, PIAC has concerns about some of the particular initiatives, which are outlined below.

PIAC was disappointed to see one measure missing entirely from this document. Along with other community organisations, PIAC has repeatedly called for the expansion of eligibility for the Energy Rebate to include all Commonwealth Health Care Card holders as an appropriate response to energy hardship amongst low-income households that are not currently eligible. The Unsworth Committee² and IPART³ have also indicated support for this measure.

According to Anglicare Diocese of Sydney, only 7% of Energy Accounts Payment Assistance Scheme (EAPA) recipients from the EAPA distributors sampled in 2008 were eligible for the Pensioner Rebate.⁴ This indicates that an expansion of the Energy Rebate eligibility criteria as outlined above is likely to greatly assist a portion of the community that frequently faces energy hardship and reduce reliance on crisis support.

PIAC looks forward to seeing the cost allocations for the programs included in the package so that further comment can be made on how the Government is prioritising each of the initiatives. Not until the allocation of resources is clear can comment be made on the likely effectiveness of the programs.

3. Financial counselling

The CAP Consultation Draft proposes increased spending on financial counselling services and increasing the ability of financial counsellors to assist with energy-specific matters.

PIAC supports the provision of additional funding towards financial counselling as a measure that would assist people to manage energy and other debts and avoid energy disconnection. PIAC's commissioned research

¹ Jessie Connell and Wesley Hill, *Cut-off II: The experience of utility disconnections*, report prepared by Urbis for the Public Interest Advocacy Centre (2009) [20] <http://www.piac.asn.au/publications/pubs/cutoffII_20090130.html> at 18 February 2009.

² Unsworth Consultative Reference Committee, *Report provided to the NSW Government* (2008) 9.

³ Independent Pricing and Regulatory Tribunal (IPART), *Market-based electricity purchase cost allowance – 2009 review* (2009) [19] <http://www.ipart.nsw.gov.au/investigation_content.asp?industry=2§or=3&inquiry=185> at 29 July 2009.

⁴ S Babbington and S King, *Helping with the cost of energy* (2008) [13] <<http://www.anglicare.org.au/news-research-events/latest-news/helping-with-the-cost-of-energy>> at 29 July 2009.

into the experience of utility disconnections, *Cut-off II*, indicates that households that are disconnected from electricity are likely to be facing multiple forms of financial hardship.⁵

Whilst supportive of measures to ensure that new and existing financial counsellors are familiar with issues of energy hardship and the range of protections and supports available, PIAC believes that the bulk of funding for this measure should be directed towards increased hours of financial counselling through increases to existing programs and the establishment of new services in areas with no or limited access to such services.

PIAC maintains that before making a decision on the need for training or the most cost-effective way of delivering this information, the NSW Government should consult directly with the Financial Counsellors' Association of NSW. If the provision of fact-sheets or other low-cost options is adequate, these should be considered in place of training.

PIAC is highly supportive of the linking of financial counselling services with Customer Hardship Charters and the Energy Accounts Payment Assistance Scheme (EAPA), as suggested in the consultation draft.

In identifying areas of need for access to financial counselling, PIAC was surprised that the Government nominated certain sections of the community for assistance to the exclusion of others. Whilst accepting the need for increased access to services in regional communities, for the elderly, people with disability and those from a non-English speaking background, PIAC believes that this nomination misses large areas of need such as the unemployed and Aboriginal communities in both remote and urban areas. By instead nominating communities generally facing socio-economic disadvantage and targeting regional areas currently under-served by financial counselling, the Government could better meet the needs of the community. This may not always correspond with the Government's intention to build on existing services, though PIAC is supportive of this where possible, and there may therefore need to be a degree of flexibility in delivering new services.

Given the rising rates of unemployment and underemployment due to the current economic downturn, and the associated increase expected in demand for financial counselling, PIAC sees the earliest possible introduction of this part of the CAP to be of great benefit.

Recommendations:

1. *That the majority of funding available for financial counselling under the Consumer Assistance Policy be directed towards increased hours of service provision.*
2. *That the funding for financial counselling be targeted towards areas of socio-economic disadvantage where access to existing financial counselling services is most limited.*

4. Targeted financial assistance

The CAP Consultation Draft proposes three measures to provide financial assistance to households facing financial disadvantage. PIAC has concerns about the likely effectiveness of one of the measures; these concerns are outlined below.

4.1 Energy Grants Scheme

The CAP Consultation Draft proposes an Energy Grants Scheme to assist low-income households to replace energy inefficient appliances and thus reduce energy use.

⁵ Connell and Hill, above n 1.

PIAC strongly supports the inclusion of this program in the final CAP. A number of recent reports have indicated the benefit of appliance replacement for sections of the community facing financial constraints, such as those with low-incomes⁶ and specific medical needs.⁷ PIAC notes that many households at risk of disconnection are already in debt or incurring debt to maintain or re-establish connection and are thus not eligible to access the No Interest Loans Schemes (NILS).

PIAC notes that the Energy Grants Scheme will be available to renters and to people living in residential parks, two groups that often miss out on consumer protections and may miss out on other aspects of the CAP, such as the expansion of EAPA, the Medical Cooling Rebate, Service Availability Charge Rebate and the strengthened framework for Customer Hardship Charters.

PIAC recommends that the eligibility of the scheme be amended to include those who are not currently in a retailer hardship program, as the intention of the CAP should be to prevent households from falling into hardship.

The CAP Consultation Draft proposes that the Energy Grants Scheme be administered by the NSW Government. PIAC considers that it would be more effective to deliver the Energy Grants Scheme through NILS agencies, reflecting the ability of this scheme to compliment NILS. This would require some administration funding to be made available to NILS providers.

PIAC notes that not all NSW communities have the opportunity to benefit from NILS schemes, with a lack of service in the centre of Sydney and in the NSW Far West. On anecdotal information, PIAC understands this could be partly explained by the backlog in the accreditation of NILS agencies. NSW NILS agencies are currently assessed for accreditation by Good Shepherd Youth and Family Services in Victoria. PIAC recommends that the lack of access to NILS in some areas of NSW be addressed by the NSW Government providing resources and funding to Good Shepherd to clear the accreditation backlog for NSW NILS providers.

4.2 Medical Cooling Rebate

The CAP Consultation Draft proposes the introduction of a Medical Cooling Rebate to assist those who have a medical condition that inhibits their ability to cope with hot temperatures.

PIAC has previously recommended the introduction of a rebate to assist those whose medical conditions are worsened by extremes of either heat or cold. PIAC supports this rebate, but submits that the Government should expand eligibility to include those whose medical condition is adversely affected by cold temperatures.

4.3 Service Availability Charge Rebate

The CAP Consultation Draft proposes a Service Availability Charge Rebate that would refund the cost of fixed-service availability charges incurred by low-income households in special circumstances.

PIAC is concerned that this program appears to replicate both the eligibility and the outcomes of the EAPA scheme. PIAC believes that funds allocated to the Service Availability Charge Rebate would better assist NSW consumers by either further increasing the cap on EAPA vouchers or by expanding the eligibility for the Energy Rebate to include all holders of the Commonwealth Health Care Card.

⁶ Australian Council of Social Services, Australian Conservation Foundation and CHOICE, *Energy and Equity, Preparing households for climate change: efficiency, equity, immediacy* (2007) [16]
<<http://www.acoss.org.au/Publications.aspx?displayID=1&subjectID=11>> at 5 April 2009.

⁷ MS Australia, *Keeping Cool Survey: Air conditioner Use by Australians with MS* (2009) [20]
<<http://www.msra.org.au/research/ms-life-study.php#cool>> at 29 July 2009.

Recommendations

3. *That the Energy Grants Scheme be administered through No Interest Loans Scheme (NILS) providers and include an administration funding component.*
4. *That the Energy Grants Scheme eligibility be expanded to include households at risk of requiring entry into a hardship program.*
5. *That the NSW Government extend the Medical Cooling Rebate to people with medically induced cold intolerance.*
6. *That the Service Availability Charge Rebate not be included in the final Consumer Assistance Policy, with the funding instead used to increase the cap on Energy Accounts Payment Assistance Scheme (EAPA) vouchers or to expand the eligibility for the Energy Rebate to all holders of Commonwealth Health Care Cards.*

5. Reform of the EAPA Scheme

The CAP Consultation Draft proposes an increase in the funding for the EAPA scheme, changes to the face value and maximum usage of EAPA vouchers, a broader distribution network for EAPA and a review of the EAPA Guidelines.

PIAC strongly supports the interim change to the EAPA scheme as timely whilst the extensive changes to the scheme are being finalised.

In settling on the final reforms, PIAC submits that the cap on EAPA vouchers for each bill should be set at an amount approximating an entire above-average quarterly bill. This cap should then be indexed to changes in the size of average bills.

PIAC tentatively supports the expansion of EAPA vouchers as outlined in the CAP Consultation Draft. Whilst the availability of EAPA more than twice in a twelve month period would certainly be of assistance to consumers facing ongoing crisis such as extended hospitalisation, without strict criteria this could become a de facto affordability measure for households that are constantly facing crisis due to the ever-rising energy prices.

PIAC strongly believes that households should be able to access an adequate supply of energy in a dignified manner. Therefore it is necessary to reduce the ongoing need of crisis support measures for households that continually have difficulty meeting energy costs. These households would be better served by an extension of eligibility of the Energy Rebate. Similarly, there would be overlap with the Service Availability Charge Rebate if that were to be implemented.

The *Cut-off II* report showed that lack of access was a contributing factor to households not taking up the EAPA scheme.⁸ In response to this, PIAC supports an expansion of the retailer delivery program on the condition of strict criteria and monitoring to avoid abuse of the program. PIAC believes that the Country Energy EAPA distribution trial as outlined in the CAP Consultation Draft serves as a good model for this expansion, with the addition of retailer performance against Delivery Plans being made publicly available.

Cut-off II also showed that households that had experienced disconnection had in some cases been told that they were ineligible to receive support in the form of EAPA vouchers.⁹ PIAC is concerned that in some cases this may have occurred through either some EAPA distributors selectively applying the EAPA guidelines, or through

⁸ Connell and Hill, above n 1, 27.

⁹ Ibid.

a lack of understanding about the EAPA Guidelines. PIAC looks forward to contributing to the development of new EAPA Guidelines and new compliance arrangements.

In addition, PIAC recommends that the NSW Government consider encouraging EAPA distribution through agencies that provide community care to community members who might not otherwise access general welfare services, such as people with a disability, the chronically ill and people living with a mental illness. Parkinson's NSW and the Cancer Council are two examples of alternative EAPA distribution agencies.

PIAC recommends that one or two positions be allocated within the Department of Water and Energy (DWE) to act as EAPA outreach officers, with the responsibility for training CWO and retailer staff distributing EAPA vouchers and improving community awareness of the program. These positions would take the place of the proposed Energy Liaison Officers.

Recommendations

7. *That the ceiling on Energy Accounts Payment Assistance Scheme usage be further increased to meet the full expense of an above-average energy bill.*
8. *That Energy Accounts Payment Assistance Scheme voucher distribution be expanded to retailers that meet strict accountability conditions.*
9. *That Energy Accounts Payment Assistance Scheme voucher distribution be expanded to a greater range of not-for-profit welfare service providers.*
10. *That the Department of Water and Energy undertake an Energy Accounts Payment Assistance Scheme outreach function.*

6. Better information and communication for customers and the community

The CAP Consultation Draft proposes a series of measures to increase customer awareness of the electricity industry and support available, including a single point of referral website and the creation of Energy Liaison Officers.

Whilst it is important for participants in the energy market to have some understanding of the energy sector, in reality most consumers do not place a high importance on where they get their energy from as long as it works and they pay an affordable price. This approach could potentially undermine the effectiveness of the Government's energy website.

PIAC does not believe that this part of the program belongs in a policy focused on the needs of low-income and other disadvantaged households.

PIAC does however support the provision of a single point of reference for energy information online, and notes that the NSW Government website, www.dwe.nsw.gov.au/energy, provides a less than comprehensive base for this project. PIAC also notes the excellent precedent set by the Victorian Government www.yourchoice.vic.gov.au website, but believes however that the most appropriate way to provide this website would be to work collaboratively with other states and territories in the National Electricity Market (NEM) to develop a national website. A proliferation of state- and territory-based websites would be likely to confuse consumers rather than simplify the provision of information. PIAC also questions whether households in tight financial circumstances and facing crisis are likely to gain much benefit from online information provision.

PIAC does not support the funding and training of Energy Liaison Officers, as this is not seen as a low-cost way of providing assistance to vulnerable and disadvantaged households. PIAC does not believe that the CAP should fund inter-Departmental and inter-Governmental liaison; this should be a core function of the Departments. As outlined above, PIAC believes that these funds would be better spent on EPEA outreach roles.

Recommendations

11. *That the NSW Government work collaboratively with appropriate authorities in other states and territories to produce a national website providing information on energy consumer issues.*
12. *That better information and communication on the energy industry not be funded as part of the Consumer Assistance Policy.*
13. *That the Energy Liaison Officer positions not be included in the final Consumer Assistance Policy.*

7. A strengthened framework for Customer Hardship Charters

The NSW Government proposes that retailers will be required to implement Mandatory Customer Hardship Policies, with regulations stipulating minimum criteria based on the proposed National Energy Customer Framework (NECF).

In response to the NECF First Exposure Draft Legislation, PIAC submitted that the minimum criteria as proposed was inadequate and, together with other community organisations, highlighted that aspects of the proposal would reduce the level of protections currently available in some jurisdictions.¹⁰

A number of the relevant Ministers, including the NSW Energy Minister, have stated that the NECF would not be implemented if it resulted in a reduction of protections in their jurisdiction. PIAC therefore recommends that the NSW Government consult with the Council of Australian Governments (COAG) Ministerial Council on Energy (MCE) Retail Policy Working Group (RPWG) before determining the minimum set of protection to be regulated for this section of the CAP.

One point strongly advocated by consumer representatives in response to the NECF and relevant to the CAP is the requirement for the new mandatory customer hardship charters to be approved by the AER to ensure that they are compliant. Under the CAP, this could be replicated by approval by IPART or the Minister.

PIAC also recommends that the NSW Government consult with the RPWG to establish which other items in the NECF package are not likely to change, do not conflict with current NSW energy regulation and would improve the level of protection provided to NSW energy consumers. PIAC strongly supports the early implementation of such provisions.

Recommendations

14. *That the NSW Government consult with the Retail Policy Working Group on the current position of Hardship Policies in the National Energy Customer Framework.*
15. *That new Mandatory Customer Hardship Charters require Ministerial or regulator approval.*

¹⁰ Joel Pringle, *First Exposure Draft legislation of the National Energy Customer Framework* (2009) [15] <http://piac.asn.au/publications/pubs/sub2009061_20090612.html> at 29 July 2009.

8. Conclusion

PIAC supports the NSW Government's Consumer Assistance Policy as a measure to assist households facing the strain of rising energy bills, the possibility of household debt and, ultimately, disconnection from supply. However, PIAC warns that this package, on its own, is not likely to be enough to prevent an increase in disconnection rates in the subsequent reporting period.

As such, PIAC strongly recommends that the NSW Government also implement the recommendation of the Unsworth Committee, IPART and numerous community organisations to increase the eligibility of the existing Energy Rebate to include all Commonwealth Health Care Card holders.

PIAC supports many of the measures proposed under the Consumer Assistance Policy, and the above recommendations highlight the areas that PIAC believes will be most successful in assisting vulnerable consumers.

It has been difficult, however, for PIAC to assess the likely success of the Consumer Assistance Policy without indicative cost allocations for each program.

PIAC also notes that although the Consumer Assistance Policy is a five-year program, some of its components would be appropriate as ongoing measures. PIAC would like to see plans for the ongoing funding of these initiatives, depending, in part, on the evaluation and reporting measures developed for the Consumer Assistance Policy. PIAC looks forward to seeing more details of how the success or otherwise of the Consumer Assistance Policy will be measured.