

Well Connected

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Some teeth for the Marketing Code?

Vulnerable consumers in the competitive energy market could have stronger protections with the recent announcement of sanctions taken against a particularly aggressive energy retailer in NSW.

The body charged with enforcing the *Energy Marketing Code of Conduct*, the Independent Pricing and Regulatory Tribunal, has announced the results of an investigation into the NSW marketing activities of Jackgreen. Potential penalties included fines and even the revocation of the retailer's licence to operate in this State. The Tribunal has, however, settled on a set of enforceable undertakings over Jackgreen. It also will conduct further checks on the retailer's marketing activities in the near future.

The move by the Tribunal followed a recent sharp rise in breaches of the Code related to actions by Jackgreen's marketers selling of 'market' or competitive energy contracts. These were brought to light by media reports and a doubling of complaints about Code breaches to the Energy and Water Ombudsman (EWON).

PIAC wrote to the Tribunal calling for a robust response to the rise in breaches and to the retailer identified as being responsible. We argued an assertive approach by the Tribunal would benefit both consumers and those retailers currently doing better in meeting their Code obligations.

In particular, we made the point that with the Code having been in force for some five years there simply is no excuse for any retailer being responsible for a large number of breaches such as those attributed to Jackgreen in this instance.

The Tribunal maintains that in general there is a low level of non-compliance with the Code in NSW. It argues this

supports its approach of encouraging retailers to develop an internal 'compliance culture'.

What is clear is that the level of breaches has not been decreasing. The compliance culture is not delivering improvements in the protection of vulnerable consumers. Anecdotal evidence reveals cases such as a man with an acquired brain injury being targeted for repeated door-knocking and a woman with poor English skills being signed up to a new contract with her primary school age daughter acting as an interpreter. In other cases door-knockers have confronted residents with claims that 'we are from the Government' and also that 'you need to sign this contract because your energy company is about to go out of business'.

PIAC believes many breaches of the Code are reported to the Tribunal, as is required. Yet, a significant number of breaches go undetected, because many households reject the attempt to have them sign a contract with another energy retailer and do not consider they have a place to report improper marketing behaviour.

The preference of the Tribunal for a 'compliance culture' has arguably provided little reassurance to consumers other than a promise by the retailer to do better. In most cases the retailers are happy to undertake corrective action – usually cancelling the contract with the individual customer. This is poor redress, however, after a customer may have suffered a serious breach of their rights and been caused considerable distress. In some cases the 'fix' appears to be to sack individual door-knockers.

Electricity and gas are essential services and some consumers are more vulnerable in these markets. This was the reason for the NSW Government introducing the *Energy Marketing Code of Conduct*. PIAC recognises the difficulties facing the Tribunal. Not least are weak powers



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of enforcement and sanction given to it by the relevant legislation. The current powers were introduced by the NSW Government without having consulted community groups such as PIAC. Clearly the time has arrived for the NSW Government to require a public review of the effectiveness of the licence enforcement powers. This is particularly important now that the Government is moving to extend these arrangements to a newly competitive water industry.

In the meantime, while the Tribunal has weak powers to impose sanctions directly onto retailers it does have other options. Most important should be an approach of public 'naming and shaming'. Currently the Tribunal publishes only very generic information about breaches of the Code. Instead PIAC proposed to the Tribunal that it commit to making public more details of individual breaches of the Code. For example, it should publish information about each breach including which retailer is responsible, which sections of the Code are involved and the details of corrective action or penalties it has imposed.

PIAC welcomes the decision of the Tribunal to publicise the outcome of its investigation and the actions taken against the errant retailer. Whether this alone results in an improved performance by the other retailers remains to be seen.

The details of the decision are available on the Tribunal website (www.ipart.nsw.gov.au). The undertakings require that Jackgreen:

- improve its compliance systems;
- undertake training and supervision of its marketing staff / contractors;
- enable consumers adversely affected by the conduct to transfer back to their original electricity supplier without cost; and
- apologise in writing to all affected customers.

Competing to supply your water services

Introducing competition into an essential service is a complicated business. The energy sector in NSW is still experiencing the growing pains of an immature competitive market, as evidenced by the recent spike in marketing complaints. Now the floodgates will soon be open for privately owned businesses to enter the water and wastewater retailing business – subject to strict consumer protections and public health obligations.

If a viable business model comes forward, it is the first time residential customers will be able to exercise choice in their supplier of water and wastewater services. The

new policy is a consequence of the National Competition Council's access declaration to Sydney's wastewater network, which was last year upheld by the Australian Competition Tribunal. The policy will also facilitate private businesses transferring water and wastewater via the network for non-residential use.

The NSW Government's policy framework for the access regime draws substantially from the Independent Pricing and Regulatory Tribunal's investigation into an appropriate industry structure. The policy framework establishes the principles for regulating prices and licencing providers of drinking water, recycled water and wastewater services.

Importantly, the framework secures regulated postage-stamp pricing for essential residential water and wastewater services and prioritises public health objectives, including the security of water supplies. PIAC had previously argued that postage stamp pricing ensures that services remain affordable and equitable for all consumers no matter where they live. Price regulation of this nature will continue to be important where supply is only available from a monopoly provider or competition intensity is ineffective to protect consumers' economic interests.

The framework also outlines the licencing content that will provide for consumer protection measures including dispute resolutions, retailer of last resort requirements and the protection of public health. Ensuring access to an essential service requires new retailers to have a high level of social responsibility for the customers they are servicing. A high priority for PIAC is to ensure retailers offer effective hardship programs to complement debt and disconnection procedures.

Underlying these reforms is an assumption that consumers will be better off with competition in this essential service. This relies on a new entrant firm being able to provide its service at a lower cost than Sydney Water or Hunter Water, or source cheaper water than the two to supply households. Moreover, it requires that the substantial costs of the reforms are outweighed by the benefit of lower cost water and wastewater supplies. It remains questionable whether a net benefit can be delivered to the public from these reforms.

Higher energy prices confirmed

As reported in the last issue of *Well Connected*, consumers can look forward to higher prices for electricity as a result of a NSW Government decision to increase the reliability standards for the State's electricity distributors.

It remains doubtful whether the improved reliability will be welcomed by consumers who now have to fund it by

higher bills. The then Minister for Utilities introduced the new standards without any consultation with the community. The Government has moved since to review the new standards, largely aimed at clarifying their wording. PIAC is yet to be consulted on this matter either.

The Independent Pricing and Regulatory Tribunal recently announced its approval for prices to rise to meet the extra costs. The Tribunal had little choice given the new standards are mandatory. It was disappointing, nonetheless, that the Tribunal did not release the independent report it commissioned prior to making its final decision. This made it difficult for PIAC and others to make their own assessment of the impact of the new reliability standards.

Some \$1.6 billion will be paid by consumers to enable the new standards to be met. No doubt the distribution businesses will welcome this increase in their revenue. However, PIAC believes that a decision involving this amount of money, funded through consumers' bills, should have been subjected to more scrutiny.

BASIX decision to cost the community

A recent decision by the NSW Government to weaken BASIX has both undermined its 'green' credentials and placed extra costs onto the State's consumers.

The Government's Building Sustainability Index (BASIX) was intended to improve the energy and water efficiency of housing in NSW by establishing benchmarks for new developments and redeveloped properties. Over time NSW households should use less energy and water to achieve the same levels of comfort and lifestyle. The costs of meeting these benchmarks is to be repaid over the life of each house as the occupants save on their utility bills. However, under pressure from property developers the Government now has twice eased the obligations for efficient housing. The latest decision will benefit the builders of high-rise apartment blocks.

Ironically, recently published data shows these buildings already are the least energy efficient form of housing stock. However, the decision on energy efficiency benchmarks, made by the Planning Minister, the Hon. Frank Sartor, is a backward step for more than this reason alone.

Gradual reductions in household use of energy and water should result in less need for costly infrastructure to supply these essential services. The cost of that infrastructure invariably is met by higher prices being charged to consumers. Weaker efficiency standards for new buildings will mean higher growth in demand and higher prices for NSW consumers.

The decision is surprising given the Government recently has acknowledged the extent of pressure on infrastructure in the energy and water industries among others. Robust benchmarks under BASIX could be an important tool in addressing that issue. Even more odd is the Minister's apparent aversion to using regulation to achieve environmental outcomes. After all, the most successful tool in reducing demand for another essential service, water, has been mandatory restrictions on outdoor use. It was Minister Sartor himself who, as then Minister for Utilities, introduced this regulation.

The future of debt

Years of big price hikes for water are faced by residents on the NSW Central Coast as their councils undertake costly infrastructure investment in new sources of supply.

With existing water storages falling below 20% capacity and permanent shifts in rainfall patterns, the councils' water businesses have little option but to invest in costly infrastructure. This reality is reflected in a recent price determination by the Independent Pricing and Regulatory Tribunal. That decision allocated \$180 million to the councils' capital expenditure program which will be funded by consumers in the form of higher prices.

However the price determination fails to reflect another reality – that the public is increasingly willing to use public debt to finance prudent investment in public infrastructure.

In the face of high infrastructure needs in New South Wales, the Government has acknowledged that greater public debt will now be used to finance necessary public infrastructure. The debt program, which will increase significantly in coming years, is not ringing alarm bells for financial analysts, economists or the voting public. On the contrary, there is good sense in and support for financing of public works through moderate debt programs.

Government remains in a unique position to fund infrastructure. It can borrow at levels well beyond private lending rates and have a stable income base from which to fund repayments. Public debt enables increases in future output to be funded jointly by today's ratepayer as well as the future generations that will most benefit.

Yet the Gosford/Wyong price determination has not exploited this advantage. The Tribunal's final determination noted that the councils have "extremely low levels of debt" and are "well-positioned to maintain their strong financial positions into the future" alongside their \$180 million capital program. Maintaining such low levels of debt translates into much higher prices for today's customer.

The 2006-2009 price determination for Gosford and Wyong Councils is bringing a 20% per annum increase to water consumption charges. With that comes a significant financial burden to pockets of the Central Coast community. Young, working families already struggling and pensioner households will be feeling many of these strains through higher water bills and lower relative levels of financial assistance.

A decision by the councils to rely less on the recovery of costs in the current price period would have substantially reduced the expected level of financial hardship. Likewise, more reasonable limits on price increases would also have triggered a more responsible use of debt.

The equitable investment in infrastructure requires more than a prudency test. It requires the consideration of inter-generational equity – the benefits that will flow to future consumers as a result of today's investment. Well managed and well-timed debt can provide for future citizens as well as today's customers.

A debt-averse public institution is not necessarily representing the best interests of its constituents. The Tribunal's price determination for water and wastewater charges on the Central Coast has placed a hefty burden on current consumers, to the substantial benefit of future generations in the region.

Sydney Water expands assistance

Sydney Water is to fund no interest loan schemes (NILS) at some 15 community and charity organisations across the wider Sydney area. This commitment has been developed to mitigate the impact on low income consumers of last year's price rises. It comes in addition to Sydney Water providing free retrofit kits of water saving devices to large households with low incomes, a free retrofit and plumbing service for pensioners and an expansion of its Payment Assistance Scheme (PAS).

NILS are based on a national scheme which targets assistance to people in financial difficulties to buy new appliances. Major appliances such as fridges and washing machines are expensive for these households to replace, yet older machines can be costly to run in terms of energy and water use. These schemes allow households to jump over short term financial hurdles, reduce their bills over the longer term and, of course, assist with energy and water conservation.

Sydney Water worked closely with the NILS providers to develop flexible criteria. It is hoped these agencies will be able to develop strong relationships with their local whitegoods retailers. A major target for Sydney Water is for

NILS to increase the number of low-income households using front-loader washing machines. NILS recipients are eligible for the same washing machine rebate as other consumers. The funding also can be used for other major, water related expenses such as urgent plumbing repairs. In addition to the loan capital Sydney Water also is working with the agencies to provide ongoing administrative support.

NILS programs generally have a very high rate of repayment which means the initial funding can be used to assist a large number of households. It is understood this has been the experience of EnergyAustralia, the other NSW utility which has taken the step of funding NILS providers.

The size of the 2005 price rises, approved by the Independent Pricing and Regulatory Tribunal had been of concern to PIAC. This initiative by Sydney Water is welcomed by PIAC as a response to those concerns and an important contribution to resolving deeper issues in the community.

Global Reporting Initiative

UCAP's Elissa Freeman has been appointed to represent household consumers on a multi-stakeholder working group developing international benchmarks for the energy industry around 'triple bottom line' reporting and corporate social responsibility generally. The working group is a project of Global Reporting Initiative (GRI), a partner in the United Nations Environment Program.

Elissa is the only member of the working party from Australia. Other members are drawn from environment groups, trade unions and think tanks in Europe and Japan. Alongside UCAP and its extensive work on energy issues PIAC has undertaken several other initiatives on corporate social responsibility and this appointment allows Elissa, and PIAC, to provide an important perspective to GRI.



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