Submission to the AEMC's Review of the Retailer of Last Resort Scheme Consultation Paper

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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;
- St Vincent de Paul NSW;
- Good Shepherd Microfinance;
- Affiliated Residential Park Residents Association NSW;
- Tenants Union;
- Solar Citizens; and
- The Sydney Alliance.

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Contents

Summary of recommendations

Recommendation 1

Fees should not be imposed on the consumers of failed or withdrawn retailers.

Recommendation 2

Failed retailers should be required to provide detailed customer and service information to that consumer's Retailer of Last Resort.

Recommendation 3

A government-owned Retailer of Last Resort should be created and be made the default Retailer of Last Resort for all consumers.

Introduction

PIAC welcomes the opportunity to respond to the Australian Energy Market Commission's (AEMC) Review of the Retailer of Last Resort (RoLR) Scheme Consultation Paper. We comment on specific issues raised in the Consultation Paper and outline ways in which the RoLR scheme could work more effectively to protect and benefit consumers.

Consumer and market support measures must be targeted at supporting consumers, not ensuring all retailers remain viable. It is a reality and risk of any contestable market that unsustainable businesses will exit the market, some of these in an unplanned manner. It should not be the role of governments or market institutions to prevent this, but to ensure consumers of an essential service are not negatively impacted by the failure of their service provider.

Consider the experience of a failed retailer from a consumer's perspective:

1. As encouraged to do so by all market bodies, a consumer shops around, doing their best to choose the right retailer and offer for their household. In doing this, consumers have access to a minimum level of information about different energy plans such as fee structures, discounts and contract lengths. They do not have ready access to information about various electricity retailers' business practices or financial position, and should not be expected to assess the solvency of a retailer in any case. They might set up a direct debit arrangement, and/or choose a retailer who can provide them with monthly billing or another arrangement which helps them manage their household budgeting, and set up any rebates they are entitled to.

2. Through no fault of their own, their retailer fails. They then have to pay an upfront fee, in what may feel like a punishment for choosing the wrong retailer.

3. They are moved to another retailer and put on its standard contract. This is the most expensive offer and likely to be much higher than their previous deal.

4. They might need to set up new payment arrangements with the RoLR (assuming the RoLR offers the services they want) or switch to a different plan with the RoLR, or decide to shop around again and find a new retailer. They may have to ensure they get their rebates again.

PIAC considers this process is unfair to consumers, placing costs on them for risks they are unable and should not be expected to manage. PIAC sees no net benefits for consumers in this arrangement and very little consideration of their experience or the associated expense.

It is inappropriate and unfair to charge consumers a RoLR fee. This fee acts as a penalty to consumers for obtaining an essential service through an uneconomic or unscrupulous retailer, which they could not reasonably have foreseen. Avoiding the fee requires consumers to have better foresight than the regulator and/or market operator into the solvency of retailers. This means consumers bear the costs and risk associated with potential retail failure, when those costs and risks are not within the power of the consumer to manage or mitigate. The responsibility for managing these risks, and the associated costs, should sit with retailers themselves.

RoLR events place consumers at disadvantage in a number of ways. A fee on top of these inconveniences may make it more difficult to pay for other essential items, especially in the case of people on low incomes or experiencing other hardships.

Recommendation 1

Fees should not be imposed on the consumers of failed or withdrawn retailers.

An onus should be placed on a failed retailer to provide all relevant information regarding the transferred consumer's rebate and concession entitlement, preferred payment arrangements and so on to a RoLR. Acknowledging provisions may need to be put in the contract to overcome privacy concerns, it would make it much more effective for consumers to have continuity of products and services in their supply of electricity

Recommendation 2

Failed retailers should be required to provide detailed customer and service information to that consumer's Retailer of Last Resort.

Creating a government RoLR is more appropriate than the current market-based arrangements. A government RoLR could ensure minimal disruption to consumers, have minimal distorting impacts upon the retail market and minimise the need for handouts and other cross-subsidised measures[1] to support unviable businesses.

This government RoLR could be an existing retailer, such as a state government retailer, as already operate in some jurisdictions, the Australian Government owned Red/Lumo Energy, or a new government backed entity/ies. Consumers moved from failed retailers to a government owned retailer should be guaranteed a deal at the lowest possible cost to minimise consumer detriment as a result of business failure.

Such an arrangement could also involve a mechanism where, after a defined time period, market retailers have the opportunity to bid to take on RoLR consumers, moving them on to their best offer.

There is also merit in considering the potential role of a government retailer in taking customers with entrenched accumulated debt or hardship and offering them a social energy tariff.

Recommendation 3

A government-owned Retailer of Last Resort should be created and be made the default Retailer of Last Resort for all consumers.

PIAC agrees with the AEMC's 2015 recommendation that there should be special provisions for when there is a failure of 'systemically important market participants' (SIMP), including decision making at a government level.[2]

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1 Such as the retail network tariff relief arrangements put in place under Covid-19

2 AEMC, NEM Financial Market Resilience, Final Report, March 2015, 78.

Another option is requiring all retailers to contribute a set dollar amount per consumer to an industry-wide fund, which would then be accessible to RoLRs to cover the costs involved in transferring consumers. Access to the fund could be by AER discretion.

As noted for our first recommendation, irrespective of the method of cost recovery, PIAC urges the AEMC to dispense with requiring consumers of failed businesses to pay any fee as a result of a RoLR event, as it is inconsistent with the principle of placing risk with the party best placed to manage it.

Response to consultation questions

Question 1: retail contracts for RoLR customers

a. **Do you agree that removing the requirement for RoLR customers to be placed on standard retail contracts would improve RoLR scheme customer outcomes?**
b. **Are there any consequential changes to the RoLR scheme that should be made if this change is made?**

As noted in the introduction to this submission, RoLR events impose costs on and inconvenience consumers in a number of ways. In addition to paying a fee, consumers may:

- have to pay more for their energy deal than they had been with the failed retailer;
- have to set up new payment arrangements;
- lose or have interrupted access to assistance or support measures;
- have to renew rebate or life support eligibility;
- be subject to a new billing cycle which can cause budgetary complications; and
- have to spend more time and effort shopping around for a new offer and/or retailer.

Consumers of failed retailers should be moved to a government-owned RoLR and charged no more than an efficient cost to serve. PIAC notes the example of superannuation, where people are defaulted to a low-cost fund that must meet certain parameters to ensure consumers are paying no more than required while receiving all necessary protections. Consumers should continue to receive any assistance measures or equivalent payment arrangements they were previously receiving.

Consumers taken on by the government RoLR should continue to be served for a defined time period, after which market retailers have an opportunity to bid to take them on if the consumer does not switch or choose themselves. The government backstop retailer may be allowed to bid for the consumer, with an offer that includes a benchmark retail margin over and above the efficient cost to serve.

Until a government RoLR is implemented, consumers of failed retailers should be put on the RoLR's best offer. This best offer must:

- have a duration of at least 6 months without variation;
- not have exit fees;
- not have direct debit or pay on time conditionality; and

- allow the continuation of payment plan arrangements.

The RoLR must ascertain any support requirements or rebate eligibility of these consumers.

Question 2: RoLR cost recovery arrangements

a. **Do you agree that the proposed changes would improve certainty for retailers around ROLR cost recovery arrangements?**
b. **Do you agree that increased certainty over cost recovery would provide an incentive for an increased number of retailers to volunteer to become RoLRs?**

Charging consumers for being transferred to a RoLR due to their retailer withdrawing from the market is an unfair impost. Failed retailers should not be able to shift the responsibility and cost of providing an essential service to consumers. As detailed in the introduction to this submission, governments' role in this process should be as a last resort retailer to protect consumers and not as an industry support. Alternatively, the cost of maintaining supply should either be carried by the failed retailer or shared across the industry, but not borne by consumers of that retailer.

The Consultation Paper does not provide evidence of the costs involved in a RoLR event. PIAC recognises some of the costs incurred in RoLR events may not be calculable in advance because of the particular circumstances in which they occur. However, when RoLR events occur, RoLRs acquire consumers without outlaying the usual acquisition costs. Customer acquisition and retention costs (CARC) are a substantial cost to retailers. In making its recommendations the AEMC should clearly set out how the benefit of acquiring consumers through RoLR mechanisms has been weighed up against the cost of administering a RoLR consumer transfer. The costs involved need to be based on reliable evidence rather than unsubstantiated assertions by retailers.

Question 3: Framework for RoLR designation

a. **Do you agree that it would be beneficial to delay RoLR designation?**

PIAC agrees there are benefits to delaying the RoLR designation, including that consumers of a failed retailer could be spread across different retailers, rather than a single RoLR.

b. **If so, in implementing the recommendation to delay designation of the RoLR, what is the best approach and timing of the AER's notices to communicate the RoLR event and designated RoLR to market participants and consumers?**

There should be clear and timely communication to the consumers of failed retailers that they will not have their power cut and will be assigned a new retailer, but have no obligation to stay with the new retailer.

Question 4: AEMO credit support requirements

a. **Do you agree that the current AEMO credit support requirements heighten the risk of financial contagion occurring through operation of the RoLR scheme?**
b. **Do you agree that AEMO's credit support requirements should be, as proposed, amended through a rule change request to address this issue**?

Any RoLR arrangement that requires retailers to step in where another retailer has failed carries risk of financial contagion. Having a government retailer take on the consumers of failed retailers would ensure financial contagion among private businesses does not occur when a retailer fails. Such an arrangement would also reduce the risk that unviable retail business models impact unreasonably upon the market and consumers.

Question 5: RoLR plan requirements

a. **Do stakeholders agree that this minor amendment would provide the AER with appropriate flexibility?**

Care must be taken when moving from 'prescription' to 'flexibility' that consumer protections are not compromised.

Question 6: Appointment of administrator as a trigger for a RoLR event

a. **Is the appointment of an administrator an appropriate trigger for a RoLR event?**
b. **Would the appointment of an administrator be more appropriate to trigger a monitoring process by the AER? If so:**
- **What type of reporting from the administrator to the AER would be appropriate?**
- **What are some alternative triggers for a RoLR event following the appointment of an administrator?**

Retailers should not be operating if they are not viable, and the AER's priority must be to protect consumers, not retailers. However, given the inconvenience and cost for consumers who are moved to a RoLR, if insolvency of the retailer can be avoided, it may be appropriate to monitor a retailer that has a high chance of continuing to honour its contracts with its customers. Particular consideration should be given to:

- maintaining the connection to electricity as an essential service;
- ensuring continuous access to assistance and supports such as payment plans, hardship protections and rebates; and
- maintaining the continuity of contract arrangements agreed by the consumer, for the duration of the agreed term.

Where retailer solvency or viability impacts materially upon the ability of the retailer to fulfil these obligations, the AER may consider a RoLR trigger appropriate.

Question 7: RoLR arrangements for embedded networks

a. **Should embedded networks have some form of RoLR arrangements?**

All consumers have a right to equal protections and should not be disadvantaged according to where they live and the business model of their energy supplier.

Arrangements for consumers in embedded networks must have equivalent protections to those outside of embedded networks. Residents of embedded networks may have restricted choice of retailer as a result of the particular configuration of their embedded network. This makes strong RoLR arrangements for residents in embedded networks crucial.

b. **If yes, what solution is appropriate to provide embedded network customers with RoLR arrangements?**

A government retailer should take on the consumers of failed embedded networks.

Many residential parks, community housing developments and aged care villages, as well as large housing developments, are run as embedded networks. Embedded networks include a high proportion of people on low incomes and in vulnerable financial situations. Residents of embedded networks may be unable to exercise unrestricted choice of retailer as a result of the particular configuration of their embedded network. In many cases embedded network residents have inconsistent access to protections and assistance measures available to other consumers (such as access to emergency assistance payments and rebates). Special care must be taken to ensure RoLR provisions are put in place that would not create further disadvantage should a provider fail or withdraw.

If a government retailer arrangement is not considered, PIAC supports the designated RoLR of the area surrounding the embedded network being required to offer embedded network customers the lowest cost or otherwise best offer available. In embedded networks with access to a contestable retailer, the terms of this offer should continue for at least 6 months without variation, unless or until the resident undertakes a switch or change of deal. The offer must not have exit fees, not have direct debit or pay-on-time conditionality and must allow the continuation of payment plan arrangements.

Question 8: Other issues

a. **Would it be beneficial to include elements of the RoLR scheme in the NERR?**

PIAC agrees having the RoLR provision in the NERR instead of the NERL would better enable the provisions to remain fit for purpose.

b. **What other issues are there with the RoLR scheme and how could they be addressed?**
c. **Are there other changes, outside of those included in this review, that would reduce barriers for retailers to volunteer as RoLRs?**
d. **Are there other changes, outside of those included in this review, that would improve the effectiveness of the RoLR scheme?**

Comments in the introduction of this submission address these questions.

Continued engagement

PIAC would welcome the opportunity to meet with AEMC and other stakeholders to discuss these issues in more depth.