



Mr John Pierce AO
Chairman
Australian Energy Market Commission
PO Box A2449
Sydney South NSW 1235

18 October 2018

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Dear Mr Pierce,

RE: AEMC Draft Rule Determination: National Energy Retail Amendment (Strengthening Protections for Customers in Hardship) Rule 2018

As the peak body for the health and community services sector in South Australia, the South Australian Council of Social Service (SACOSS) has an established history of interest, engagement and provision of proposed advice on the necessary market mechanisms and policy for essential services, including electricity. SACOSS would like to thank the Australian Energy Market Commission (AEMC) for providing us with the opportunity to comment on its Draft Rule Determination on the National Energy Retail Amendment (strengthening protections for customers in hardship) Rule 2018 (Draft Rule).

We refer to our previous submission to the AEMC on the AER's Hardship Rule Change Proposal,¹ and also to our June 2018 Report on the Effectiveness of Supports for Customers Experiencing Payment Difficulties under the NECF.² Both our submission and June 2018 Report supported the AER's rule change request to allow for the development of a binding customer hardship policy guideline. SACOSS commends the Australian Energy Regulator (AER) for initiating the rule change request and strongly supports the AEMC's

¹ SACOSS, Submission to the AEMC on the National Energy Retail Rules Amendment (Strengthening protections for customers in hardship) Rule 2018, 28 June 2018 see link:

https://www.sacoss.org.au/sites/default/files/public/documents/Submissions/Utilities%20Submissions/180628_SACOSS_Submission_AEMC_Hardship_Policy_Rule_Change.pdf

² SACOSS, Report on the effectiveness of supports for customers experiencing payment difficulties: strengthening protections for customers under the NECF, June 2018 see link:

https://www.sacoss.org.au/sites/default/files/public/documents/Reports/180629_SACOSS_Report_Effectiveness_Of_Supports_0.pdf

Draft Rule Determination and more preferable Draft Rule. We believe the Draft Rule proposed by the AEMC more completely addresses the issues identified by the AER, than the AER's proposed Draft Rule.

Whilst we strongly support the AEMC's Draft Rule Determination, we believe more work is needed to ensure retailers are complying with their consumer protection obligations under the *National Energy Retail Law (South Australia) Act 2011*³ (Retail Law) and the *National Energy Retail Rules Version 14*⁴ (Retail Rules) to all small customers, not just hardship customers.⁵ We acknowledge addressing this issue is beyond the scope of the AEMC's Draft Rule Determination, and we welcome the AEMC's forthcoming review into how retailers support the broader group of customers experiencing payment difficulties, and how those obligations operate with hardship obligations.

Assessment of the Draft Rule

SACOSS commends the AEMC on its Draft Rule Determination and strongly supports the AEMC's analysis of the following issues considered in the development of the Draft Rule:

- the rationale for the rule change
- the proposed approach
- hardship indicators
- the costs and benefits of the rule change
- enforceability and civil penalty provisions
- transitional arrangements.

SACOSS particularly supports the making of a more preferable rule to give effect to the (our emphasis):⁶

- **minimum requirements** set out in section 44 of the National Energy Retail Law (the Retail Law)
- **purpose** of the hardship policies outlined in section 43 of the Retail Law
- **principles** the AER must apply when approving hardship policies as set out in section 45 of the Retail Law.

As SACOSS has previously submitted, we believe both retailers and customers will benefit not only from hardship policies containing consistent and clearly articulated statements of the minimum requirements, but will also greatly benefit from clear statements outlining the *purpose* of the hardship policy, and the *principles* with which the policy must align under the Law.⁷ The evidence points to a failure amongst retailers to properly appreciate and comply with their consumer protection obligations at law. SACOSS considers a greater understanding of the purpose and principles underlying those obligations will result in improved compliance by retailers and more meaningful outcomes for consumers. In addition, educating and informing consumers about their rights to support, and the principles underpinning those rights, is expected to lead to greater customer awareness and empowerment. SACOSS further submits that clearly articulating the purpose and principles within the customer hardship policy guideline will also assist the AER with exercising its approval powers in accordance with its obligations under section 45 of the Retail Law. SACOSS therefore

³ See National Energy Retail Law (South Australia) Act 2011 at [https://www.legislation.sa.gov.au/LZ/C/A/NATIONAL%20ENERGY%20RETAIL%20LAW%20\(SOUTH%20AUSTRALIA\)%20ACT%202011.a](https://www.legislation.sa.gov.au/LZ/C/A/NATIONAL%20ENERGY%20RETAIL%20LAW%20(SOUTH%20AUSTRALIA)%20ACT%202011.a) [SDX](#)

⁴ See National Energy Retail Rules Version 14 at: <https://www.aemc.gov.au/regulation/energy-rules/national-energy-retail-rules/current>

⁵ Note section 205 of the Retail Law which requires the AER to perform its regulatory powers in a manner that is 'compatible with the development and application of **protections for small customers**, including (**but not limited to**) protections relating to hardship customers'.

⁶ AEMC, Draft Rule Determination: National Energy Retail Amendment (strengthening protections for customers in hardship) Rule 2018, 6 September 2018, p.i

⁷ SACOSS, Submission to the AEMC, 28 June 2018, pp. 8-10

strongly supports the AEMC's Draft Rule Determination to include standardised statements to 'provide guidance to customers on their rights, and retailer obligations, with respect to Part 2, Division 6 of the Law', as contained within Draft Rule 75A(1)(2)(b)(ii).

SACOSS also strongly supports the timeframes under the Draft Rule and the AEMC's recommended law change to the COAG Energy Council to 'require that a retailer must have an approved policy in place before it can receive retailer authorisation'.⁸ The AER must be provided with appropriate powers to ensure the timely and consistent implementation of retailers' hardship policies.

SACOSS has further comment in relation to the scope of the Draft Rule and the AEMC's discussion of the definition of 'hardship', outlined below.

Scope of Draft Rule 75A

In relation to the scope of the Draft Rule, SACOSS suggests the AEMC consider amending Draft Rule 75A(2)(b)(ii) to include '**and Part 2, Division 7**' after 'Part 2, Division 6'.

The AEMC's Draft Rule 75A provides as follows:

75A Customer hardship policy guideline

(1) The AER must, in accordance with the retail consultation procedure, develop, maintain and publish a customer hardship policy guideline.

(2) The customer hardship policy guideline must specify:

(a) processes, timeframes and requirements to be complied with by retailers in connection with the approval (or variation) of their customer hardship policies by the AER;

(b) standardised statements that retailers must include in their customer hardship policies to:

(i) give effect to the minimum requirements as set out in section 44 of the Law; and

(ii) provide guidance to customers on their rights, and retailer obligations, with respect to Part 2, Division 6 of the Law.

(3) The AER may, from time to time, amend the customer hardship policy guideline in accordance with the retail consultation procedure.

The AEMC's Draft Rule Determination confirms that 'the NERL has established a role for retailers in providing assistance to customers in hardship, and the Hardship Guidelines is just a mechanism that will assist retailers in meeting **the standards set by the NERL**'.⁹ The AEMC outlines the key features of the Draft Rule in section 2.1, including to 'provide guidance to customers on their rights, and retailer obligations regarding the hardship provisions under the NERL'.¹⁰ SACOSS considers that Part 2, Division 7 of the Retail Law contains provisions relating to hardship (hardship provisions) and essential legally required 'standards' which should be included in the Hardship Guideline, and therefore the Draft Rule. SACOSS believes that clarifying and stating **all** retailers' obligations to hardship customers under the Retail Law within the customer hardship policy guideline is of the utmost importance in ensuring consistency, customer awareness and equitable provision of hardship supports across retailers. We consider the impact of the customer hardship policy guideline may be weakened if important hardship customer rights and retailer obligations are omitted from the content of the guideline.

⁸ AEMC, Draft Rule Determination, p.34

⁹ AEMC, Draft Rule Determination, p.27

¹⁰ AEMC, Draft Rule Determination, p.5

SACOSS acknowledges that some of the payment plan and debt recovery obligations contained within Division 7 apply to the broader group of customers experiencing payment difficulties, but we believe the importance of the *hardship customer* obligations placed on retailers under Division 7 supports the inclusion of those relevant obligations within the guideline. SACOSS submits the relevant hardship customer obligations contained within Division 7 complement and reinforce the hardship obligations contained in Division 6 (particularly section 44(c)), and that Divisions 6 and 7 should therefore be read together, and both included in the Draft Rule. SACOSS has briefly outlined the hardship rights and obligations contained in Part 2, Division 7, below.

Obligation to offer and apply payment plans to hardship customers (section 50(1)(a))

Section 50(1)(a) provides that retailers **must offer and apply** payment plans for hardship customers. The minimum requirement under section 44(c) that a retailer's hardship policy must contain 'flexible payment options (including a payment plan and Centrepay) for the payment of energy bills by hardship customers',¹¹ is tied to the obligation under subsection 50(1)(a) in Part 2, Division 7 of the Law. This subsection is a civil penalty provision under the Law, confirming its importance within the regulatory framework.

Obligation to comply with the Rules relating to how payment plans are offered (section 50(2))

Subsection 50(2) in Division 7 of the Retail Law provides that (our emphasis):

'a retailer must comply with the applicable requirements of the Rules relating to payment plans, including how they are offered, but need not provide a payment plan in circumstances specified in the Rules'.

Rule 72 of the Retail Rules makes provision for how a payment plan must be established for a hardship customer,¹² and what information the retailer must provide to the hardship customer when offering a payment plan. This Rule is a civil penalty provision for the purposes of the Law.

SACOSS acknowledges that the requirements under Rule 72 (as well as other Rules relating to hardship customers) should be included in the Customer Hardship Policy Guideline by virtue of section 44(i) of the Retail Law, but we consider a standardised statement containing guidance on the overarching principle and obligation contained in section 50(2) would be useful for both retailers and customers.

Right to protection from debt recovery proceedings (section 51)

Section 51 of Part 2, Division 7 provides that a retailer is prohibited from commencing proceedings for the recovery of a debt if the customer continues to adhere to the terms of the payment plan, or the retailer has failed to comply with:

- the terms of its hardship policy in relation to that customer, or
- the Retail Law and Retail Rules relating to non-payment of bills, payment plans and assistance to hardship customers or customers facing payment difficulty.

SACOSS considers this very important consumer protection against debt recovery proceedings should be clearly articulated within the customer hardship policy guideline, providing customers with an understanding of their rights in this regard.

A statement could read:

¹¹ Section 44(c) of the Retail Law

¹² Including having regard to the customer's capacity to pay, any arrears owing by the customer and the customer's expected energy consumption for the following 12 month period.

*'If you are in debt to us for the sale and supply of energy, we will **not** commence debt recovery proceedings against you if:*

- *you are meeting your payment obligations in accordance with your payment plan or other agreed payment arrangement*
- *we have failed to comply with any obligations outlined in this hardship policy*
- *we have failed to comply with our obligations under the Law and Rules relating to non-payment of bills, payment plans and assistance to hardship customers.'*

In summary, we believe including standardised statements of retailer's obligations under Division 7 within the guideline is consistent with improving hardship protections, increasing transparency and achieving long-term benefits to consumers¹³ through:

- providing **hardship customers** with:
 - an awareness of their unequivocal legal right to be offered and provided with a payment plan (section 50(1)(a) of the Retail Law)
 - an understanding of the legal obligation on retailers to comply with the Retail Rules relating to *how* retailers must offer and apply payment plans for hardship customers¹⁴ (section 50(2) of the Retail Law)
 - an understanding of the circumstances where the hardship customer *no longer* has the right to be provided with a payment plan (as specified under the Retail Rules)¹⁵
 - an awareness of their right to be protected from debt recovery action where they are complying with a payment plan (section 51 of the Retail Law)
 - an awareness of their right to be protected from debt recovery action where the retailer has failed to comply with the requirements of its customer hardship policy or the Retail Law and Rules relating to non-payment of bills, payment plans and assistance to hardship customers (section 51 of the Retail Law)
- providing **retailers** with:
 - guidance on their mandatory obligation under the Law to offer and apply payment plans to hardship customers
 - clarity around their legal obligations to establish payment plans for hardship customers in accordance with the Rules, including the requirements under Rule 72 of the Retail Rules
 - clarity around the circumstances where retailers need provide a payment plan as specified in the Retail Rules
 - clarity around the circumstances where retailers can, and cannot, commence debt recovery proceedings against hardship customers
- supporting the AER in monitoring and enforcing breaches of retailers' obligations under section 50(1).

SACOSS is therefore recommending the AEMC consider amending the Draft Rule to include '**and Part 2, Division 7**' after 'Part 2, Division 6' in Draft Rule 75A(2)(b)(ii).

Scope of Draft Rule 75B

Draft Rule 75B provides as follows.

¹³ AEMC, Draft Rule Determination, p. 6

¹⁴ See Rule 72 of the Retail Rules

¹⁵ See Rule 33(2) and also relevantly Rule 111(2) of the Retail Rule which deals with disconnection of hardship customers who have failed to agree or comply with two payment plans in the previous 12 months.

75B Customer hardship policies

(1) A retailer's customer hardship policy (or variation) submitted to the AER must:

(a) comply with the customer hardship policy guideline; and

(b) contain clear and specific statements of the actions the retailer will take to meet the minimum requirements for a customer hardship policy in section 44 of the Law.

Note 1:

Section 44 of the Law sets out the minimum requirements for a customer hardship policy.

Note 2:

See section 44(i) of the Law.

[This provision is recommended to be a civil penalty provision].

SACOSS strongly supports the requirement in Draft Rule 75B(1)(b) that a retailer's customer hardship policy must contain 'clear and specific statements of the actions the retailer will take to meet the minimum requirements for a customer hardship policy under in section 44 of the Law'. SACOSS understands the purpose of Draft Rule 75B(1)(b) is to complement the 'standardised statements' contained in the hardship guideline (and therefore contained in the hardship policy), by requiring individual retailers to detail the actions they will take to meet the obligations contained in those statements. Retailers will have the flexibility to implement individual processes and programs to meet their hardship obligations, and clear action statements detailing those processes will provide certainty for customers about what supports they can expect to receive.

SACOSS also acknowledges 'Note 2' to Draft Rule 75B which highlights section 44(i) of the Retail Law. Section 44(i) provides for the inclusion of 'any other matter required by the Rules' into the minimum requirements. SACOSS considers that 'giving effect' to this minimum requirement will require including 'standardised statements' of *all* retailers' obligations to hardship customers under the Rules, into the customer hardship policy guideline (including the obligations under Part 2¹⁶, Part 3 and Part 6¹⁷ of the Retail Rules). Consequently, the 'clear and specific statements' of the actions the retailer will take to meet the minimum requirements, will include 'clear and specific statements' of actions it will take to meet its hardship obligations under the Rules. For example, Rule 72 provides for the establishment of payment plans for hardship customers, and SACOSS would expect retailers to include clear statements of actions it will take to meet the obligations contained in Rule 72.

SACOSS notes that Draft Rule 75B(1)(b) only refers to 'clear and specific statements of the actions' the retailer will take to meet the minimum requirements for a customer hardship policy under section 44, and not 'clear and specific statements of the actions' the retailer will take to meet their obligations under Part 2, Division 6 of the Law, noting that the 'standardised statements' will give effect to the minimum requirements in section 44 *as well as* provide guidance to customers on their rights, and retailer obligations, under Part 2 Division 6 of the Law.

Identification of hardship customers

SACOSS acknowledges the AEMC's statement that:

¹⁶ Specifically Rule 33 and Rule 40, both of which are civil penalty provisions.

¹⁷ Specifically Rule 111(2) which deals with de-energisation of premises for hardship customers.

'It is outside the scope of this rule change to broaden hardship support as the NERL distinguishes between customers facing payment difficulty and customers facing payment difficulty due to hardship. It is a matter for the AER to ensure retailers are meeting their obligations to support all customers facing payment difficulties. This may be addressed by the Hardship Guideline as part of the retailer's role in the early identification of hardship customers'.¹⁸

The definition of 'hardship customer' under the Retail Law is directly linked to the identification of the customer in accordance with the retailer's policy.¹⁹ A customer *identified* as 'experiencing payment difficulties due to hardship' in accordance with the policy, is by definition of the Retail Law, a 'hardship customer'. The development of standardised statements dealing with the process of retailer identification and self-identification²⁰ for inclusion within the customer hardship policy guideline (and therefore retailers' customer hardship policies) represents a significant opportunity to ensure retailers' processes are broad and inclusive, allowing for equitable access to hardship supports, in line with the principles under the Act.²¹ SACOSS believes the standardised statements around identification of customers experiencing payment difficulties due to hardship will be central to the success, or otherwise, of retailers' hardship programs. This view is supported by the AEMC's observation that 'it is the processes of identification and early response that create effective mechanisms to support hardship customers'.²²

SACOSS also agrees with the AEMC that in order to identify hardship customers, retailers need to ensure the initial step in the retailer-identification process is sufficiently broad.²³ Under the regulatory framework, customers facing payment difficulties due to hardship (or hardship customers) are a **sub-group** of the broader group of customers facing payment difficulties.²⁴ Therefore, in order to proactively identify the 'sub-group' of hardship customers,²⁵ retailers must **first** identify the overarching, broader group of customers experiencing payment difficulties. SACOSS will be strongly advocating for the AER to develop standardised statements containing clear retailer-identification²⁶ processes which, as an initial step, identify the broader group of customers experiencing payment difficulties (through a simple analysis of energy bill debt data), and then, using trained staff, proactively contact customers to discuss individual circumstances and offer equitable access to hardship supports, in line with their policy.

We thank you in advance for consideration of our comments. If you have any questions relating to the submission, please contact Jo De Silva via jo@sacoss.org.au or 08 8305 4211.

Yours sincerely,



Ross Womersley
Chief Executive Officer

¹⁸ AEMC, Draft Rule Determination, p.38

¹⁹ Section 2 of the Retail Law

²⁰ In line with section 44(a) of the Retail Law

²¹ Section 45(3)(d) of the Retail Law

²² AEMC, Draft Rule Determination, p. 21

²³ AEMC, Draft Rule Determination, p.21

²⁴ See discussions in SACOSS' June 2018 Report, p. 13 and p. 25

²⁵ In line with the purpose of the hardship policy as provided for in section 43 of the Retail Law and required by section 44(a) of the Retail Law

²⁶ Noting that hardship policies will also require processes for self-identification by a residential customer in line with section 44(a) of the Retail Law