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Independent Chair
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C/o COAG Energy Council Secretariat
Department of the Environment and Energy
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Lodged online to: info@esb.org.au

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Dear Dr Schott,

RE: SACOSS Response to OTC Transparency in the NEM Consultation Paper

Thank you for the opportunity to provide a response to the Energy Security Board's (ESB's) consultation paper *OTC Transparency in the NEM*.

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 for and regulation of essential services. Our research shows that the cost of basic necessities like electricity impacts greatly and disproportionately on vulnerable people. Our advocacy is informed by our members and direct consultations with consumers and other consumer organisations: organisations and individuals who witness and experience these impacts in our community.

SACOSS has been an active participant in the ESB's Technical Working Group consultation process on the National Energy Guarantee (NEG) design and have encouraged the ESB to consider how the reliability component of the guarantee can best be designed to ensure a workable and competitive wholesale electricity market in the NEM, with a particular focus on the unique market factors in South Australia. Market concentration in South Australia and its effect on inhibiting the formation of a competitive and liquid wholesale trading market is of particular concern to SACOSS. Additional measures are required to be introduced to deal specifically with this issue.

SACOSS supports the introduction of mandatory reporting of OTC trades mechanisms to enhance the transparency of trading activity to better inform electricity market participants, reduce uncertainty, and aid in price discovery.

The comparative lack of transparency of OTC markets relative to information available on derivatives traded on the ASX contributes to market uncertainty, which is exacerbated in South Australia where wholesale electricity trading is already illiquid on both OTC and ASX platforms. Market participants not directly involved in an OTC trade will never actually know that a trade took place, and never know the traded volume or price of such trades. Having access to ASX futures information only does not enable participants to form a complete view what is happening in or driving wholesale electricity market outcomes. Aggregate OTC data collected by the Australian Financial Markets Association (AFMA) and reported on an annual basis from voluntary survey respondents is of little value to market participants in informing their trading decision making.

It is noted in the consultation paper that OTC trading activity in South Australia is greater than ASX futures (though volumes traded on both platforms as a proportion of regional demand is low). This contrasts with all other mainland NEM regions where ASX futures trading is the dominant platform.

SACOSS is supportive of additional information being provided to market participants to ensure trading on all available platforms is encouraged in the South Australian region.

In our submission to the ESB on the ACCC's recommendation to implement a permanent market making arrangement in South Australia (recommendation 7)¹ SACOSS expressed support for such a measure to be introduced across both OTC and centrally cleared exchange platforms. The introduction of mandatory reporting of OTC trades would assist in the implementation and regulation of market making obligations into both OTC and ASX futures markets.

We note the consultation paper's discussion on whether to develop a new, industry specific trade repository, or leverage off existing ASIC-endorsed trade repositories. SACOSS is supportive of either approach and believes the option selected should be based on minimising compliance cost and burden for participants.

An on-line reporting database, like that which is in operation in the New Zealand electricity market would be a workable arrangement for market participants to report their OTC trades. This process would not create onerous reporting requirements or procedures for reporting parties, nor would it cause an unreasonable cost burden to administer.

SACOSS endorses the ACCC recommendation that the trade repository be administered by the AER. The functions required of the AER in administering and overseeing the repository are well within its responsibilities in monitoring wholesale electricity markets, and is consistent with the proposed role the AER would have in administering the contracts register and compliance under the NEG's reliability obligation. In the event that the trade repository is implemented under changes to Corporations Law (to capture trades made by physical and financial market participants), then ASIC would be a more appropriate regulator for repository operation and compliance.

In relation to reporting of trades, SACOSS believes all OTC trades should be reported on an individual basis. A large proportion of reportable OTC trades would be standard swap or cap contracts, and enable direct comparison with ASX futures products. Non-standard or structured contracts should also be reported, and it would be up to individual market participants to determine how the reported information is interpreted and considered in forming market views. Knowing the existence of such trades, and guidance on volumes and price, regardless of any specific contract features and built-in optionality would still provide a more transparent picture of contract trading activity and market price outcomes in a region.

SACOSS does not believe the trade-to-trade reporting and publication of standard OTC transactions compromises the confidentiality of trade counterparties. We would caution against excluding non-standard OTC transactions from being reported on the basis that counterparties may be identifiable as this concession may encourage the introduction of small variations in contract form or terms by counterparties to avoid reporting obligations. Where confidentiality concerns are unable to be remedied, then SACOSS would consider the aggregation of non-standard trades be reported weekly or monthly, but this should be based on a defined set of guidelines established and monitored by the repository regulator.

If an on-line trade repository is introduced, SACOSS would expect standard trades to be reported following the close of a trading day. An end of day reporting requirement would not be onerous and would fit in with the normal trade reporting and documentation activities of a participant's front, middle, and back-office departments. From the data set compiled by the ACCC in investigating OTC market activities as part of the Retail Electricity Pricing Enquiry, the number of unique OTC swap and

¹ ACCC Retail Electricity Pricing Inquiry – Final Report, June 2018

cap trades from the 17 major electricity retailers surveyed over a 2½ year period from July 2015 to early 2018 totalled 6,200. Though the data set is acknowledged by the ACCC as not including all market participants and under representing the actual level of trading activity, it provides a reasonable estimate of OTC market trading activity and indicates that the average number of OTC trades per retailer per year was around 150. The reporting of OTC trades would not be a particularly burdensome task, even for the larger retailers, particularly given the potential for reporting to be automated.

Non-standard trades may take additional effort to compile into a suitable reporting format so should be allowed an additional three days grace before reporting must be made to the trade repository. The public reporting of OTC trading activities should be made by the AER on a weekly basis, which is consistent with information reported by the ASX on energy futures trading via its ASX Energy Market Wrap publication².

To ensure completeness of OTC trade information reported, SACOSS believes that all trades should be registered in the trade repository, even those between non-physical (or financial) market participants. Though the implementation of the trade repository would be simplest through changes to the NEL (as proposed by the ACCC), financial market participants would not be obligated to report their trades so not all trading activity would be captured in the trade repository. The ACCC enquiry has shown that financial traders are active OTC market participants so it is important that their trades are captured. The best way to achieve this may instead be via changes to the Corporations Law, with the repository ultimately implemented and administered by ASIC.

We thank you in advance for consideration of our submission. If you have any questions relating to the above, please contact SACOSS Senior Policy Officer, Jo De Silva on (08) 8305 4211 or via jo@sacoss.org.au.

Yours sincerely,



Ross Womersley, Chief Executive Officer

² www.asxenergy.com.au