

21 February 2022

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Dear Ms Knights,

**RE: Review of Electricity Licensing in South Australia**

The South Australian Council of Social Service (SACOSS) is the peak body for non-government health and community services in South Australia with a mission to advocate for the interests of vulnerable and disadvantaged people across the state. We thank the Department for Energy and Mining (the Department) for the opportunity to comment on its *Consultation Paper on Review of the South Australian Electricity Licensing Framework*<sup>1</sup>, dated 16 December 2021 (the Consultation Paper).

The purpose of the Consultation Paper is to seek stakeholder feedback on the current electricity licensing framework in SA. This submission will focus on the need for the South Australian government to adopt a clear consumer-centric objective and principles to guide the Review, as a matter of priority.

The Consultation Paper states:

*‘The licensing framework must balance the need for technical and safety oversight against the administrative and financial implications for industry.’*

And goes on to state:

*‘A well-functioning electricity regulatory framework is crucial to ensure industry participants generate and deliver electricity, as an essential service, sustainably, safely, and reliably to South Australian consumers.’*

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<sup>1</sup> Department for Energy and Mining, [Review of the South Australian Electricity Licensing Framework Consultation Paper](#), 16 December 2021 and [Supplementary Paper – existing operating and approval requirements for electricity entities](#)

SACOSS is strongly urging the South Australian Government to adopt a meaningful objective to guide this review, which recognises the essential nature of energy and the need for regulatory arrangements to be focused on ensuring **the long-term interests of consumers** are protected.

As noted by the Australian Energy Regulator in its Draft Consumer Vulnerability Strategy:<sup>2</sup>

*Energy is an essential service. It is essential to people's daily lives, economic participation, and health and wellbeing. Unlike most other commodities, we generally cannot choose not to consume energy. Therefore, it is important that the energy market is inclusive of all consumers, does not create or compound harms and barriers to participation, and that energy is fairly priced.*

*Market characteristics – such as complex market structures, pricing, and information and information asymmetries – create barriers to consumer engagement, increasing the risk of harm or disadvantage. **Consumers can experience harm where information and services are unnecessarily complex, and where regulatory arrangements and businesses are not consumer-centric or informed by modern insights.***

SACOSS considers the Consultation Paper does not adequately focus on the overarching objective of the South Australian Electricity regulatory framework which operates to protect the interests of **consumers of electricity**. The regulatory framework for electricity in South Australia is contained in the *Electricity Act 1996* and the *Essential Services Commission Act 2002*, together with relevant subordinate legislation and codes made pursuant to those governing Acts.

The Objects of the *Electricity Act 1996* are:<sup>3</sup>

- (a) to promote efficiency and competition in the electricity supply industry; and*
- (b) to promote the establishment and maintenance of a safe and efficient system of electricity generation, transmission, distribution and supply; and*
- (c) to establish and enforce proper standards of safety, reliability and quality in the electricity supply industry; and*
- (d) to establish and enforce proper safety and technical standards for electrical installations (including such standards relating to the design of electrical installations); and*
- (e) to protect the interests of consumers of electricity.***

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<sup>2</sup> AER, [Draft Consumer Vulnerability Strategy](#), p. 9 see also ACCC, [Restoring Electricity Affordability and Australia's Competitive Advantage: Retail Electricity Pricing Inquiry](#) – Final Report, July 2018 (REPI); Australian Council of Social Services, [ACOSS Submission to ACCC Retail Pricing Inquiry: Preliminary report](#), December 2017, p. 4

<sup>3</sup> [Electricity Act 1996](#), section 3

The objectives of the *Essential Services Commission Act* are set out in section 6 of that Act. The Consultation paper lists several of the secondary objectives in the Consultation Paper, but omits to mention the overarching or primary objective, established under section 6(1) of the Act, that in performing its functions the Commission **must**:<sup>4</sup>

***‘have as its primary objective protection of the long term interests of South Australian consumers with respect to the price, quality and reliability of essential services’***

The ‘broader factors’ listed in the Consultation Paper and set out in section 6(b) of the *Essential Services Commission Act*, whilst important objectives, are secondary, and must be viewed in the context of **the primary objective** to protect the long term interests of ‘South Australian consumers with respect to the price, quality and reliability of essential services’.

SACOSS submits the primary objective of the Review of the Licensing framework in South Australia must necessarily be focused on the protection of the long-term interests of South Australian energy consumers. We repeat our call for the State Government to expressly adopt an appropriate objective to guide this Review in line with the objectives stated in the relevant state legislation, and consistent with the practices of the national rule maker.

At a National Energy Market level, all rule changes, reviews and advice to government undertaken by the Australian Energy Market Commission (AEMC), are guided by the National Electricity Objective (NEO) and the National Energy Retail Objective (NERO). The NEO is contained in the *National Electricity Act 1996*, and is:<sup>5</sup>

*‘to promote efficient investment in, and efficient operation and use of, electricity services for the long term interests of consumers of electricity with respect to:*

- price, quality, safety and reliability and security of supply of electricity*
- the reliability, safety and security of the national electricity system.’*

The NERO is contained in the *National Energy Retail Law 2011*, and is:<sup>6</sup>

*‘to promote efficient investment in, and efficient operation and use of, energy services for the long term interests of consumers of energy with respect to price, quality, safety, reliability and security of supply of energy’*

The AEMC only makes a rule or recommendation if it will, or is likely to contribute to the achievement of the energy objectives.

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<sup>4</sup> [Essential Services Commission Act 2002](#), section 6

<sup>5</sup> [National Electricity Act 1996](#), section 7

<sup>6</sup> [National Energy Retail Law Act 2011](#), section 13

In the context of the rapidly changing energy system and the need for regulatory change to reflect this, the Consultation paper refers to ‘South Australia’s Energy Solution’<sup>7</sup>, stating:<sup>8</sup>

*South Australia’s Energy Solution announced in June 2020 highlights an orderly transition to cleaner, and more affordable and reliable power underpinned by the four key energy pillars of Project EnergyConnect, the Grid Scale Storage Fund, support for the roll-out of home batteries, and the better integration into the power system of distributed energy such as rooftop solar and household appliances.*

Whilst the South Australian government’s Energy Solution stated it was ‘committed to putting consumers at the heart of the energy system’, SACOSS considers without an express consumer-centric objective guiding the government’s decision making, the Energy Solution and consequent smarter homes regulations arguably failed to adequately consider whether *all* of the changes were in the long term interests of *all* energy consumers (including consumers who are unable to access solar / new appliances, or change their energy consumption patterns), thereby having a potential negative impact on consumer vulnerability.

For example, as part of the Smarter Homes regulations, Regulation 6A of the *National Energy Retail Law (Local Provisions) Regulations*<sup>9</sup> had the effect of mandating time of use retail tariffs for smart meter customers in South Australia, potentially leading to negative bill shock outcomes for smart meter customers and contributing to consumer vulnerability. This decision to mandate time of use retail tariffs was made by the South Australian government in direct contrast to Recommendation 14 of the ACCC’s Retail electricity Pricing Inquiry Report which states (SACOSS’ emphasis):<sup>10</sup>

***Retailers should not be obligated to reflect the cost-reflective network tariff structure in their customers’ retail tariffs, but should be free to innovate in the packaging of the network tariff as part of their retail offer.***

*Given the potential for negative bill shock outcomes from any transition to cost-reflective network tariffs should retailers pass these network tariffs through to customers, governments should legislate to ensure transitional assistance is provided for residential and small business customers. This assistance should focus on maximising the benefits, and reducing the transitional risks, of the move to cost-reflective pricing structures. This includes:*

- ***a compulsory ‘data sampling period’ for consumers following installation of a smart meter***
- ***a requirement for retailers to provide a retail offer using a flat rate structure***

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<sup>7</sup> [South Australia’s Energy Solution: a secure transition to affordable renewable energy](#), June 2020

<sup>8</sup> Department for Energy and Mining, [Review of the South Australian Electricity Licensing Framework Consultation Paper](#), 16 December 2021, p. 9

<sup>9</sup> See: Section 22(1a) of the [National Energy Retail Law 2011](#) (NERL) and Regulation 6A [National Energy Retail Law \(Local Provisions\) Regulations](#)

<sup>10</sup> ACCC, Retail Electricity Pricing Inquiry – Final Report, June 2018, p.xix

- ***additional targeted assistance for vulnerable consumers.***

SACOSS considers adopting a clear objective to guide government decision-making around essential services that expressly includes considerations of equity is vital to ensuring vulnerable consumers are not disadvantaged or excluded from the benefits of the energy transition. When dealing with a service that is essential to life, considerations must necessarily go beyond simply addressing the needs of ‘the system’ or the financial implications for industry. These matters are only important in so far as they impact the interests of consumers.

It goes without saying that the outcomes of this far-reaching review of the licensing framework could have significant impacts on consumer vulnerability in this state. All consumer protections for off-grid energy customers are currently contained in retail licences issued by the Essential Services Commission of South Australia. Changes to the retail licensing regime could impact those consumer protections, including access to the South Australian Energy and Water Ombudsman schemes.

Relevantly, when the AEMC assesses rule change applications that relate to the National Energy Retail Rules and small customers,<sup>11</sup> it must only make an energy retail rule if it is satisfied that the rule will or is likely to contribute to the achievement of the national energy retail objective **and must also** be satisfied that the rule is:

*‘compatible with the development and application of consumer protections for small customers, including (but not limited to) protections relating to hardship customers’.*<sup>12</sup>

This additional test is known as the consumer protection test, and requires the AEMC to consider whether a proposed rule or recommendation is compatible with the application or development of consumer protections. If the AEMC find the proposed rule is not compatible, then it **‘cannot make the recommendation or rule, regardless of whether it would promote efficiency’.**<sup>13</sup>

SACOSS submits this demonstrates the legislature’s intention of ensuring the overarching priority of protecting the interests of consumers, particularly consumers in vulnerable circumstances, over competing priorities, including efficiency. SACOSS considers the objectives in the *Electricity Act* and the *Essential Services Commission Act* outlined above, support a similar interpretation of the legislature’s intention in jurisdictional frameworks. SACOSS considers the state government must align its approach with that of the AEMC, and carefully consider implications for small customers of changes to the licensing framework for energy in South Australia, including implications for consumer protections under retail licences.

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<sup>11</sup> Small customers include residential customers and small business customers and exclude larger industrial commercial energy uses.

<sup>12</sup> National Energy Retail Law, section 236(2)(b)

<sup>13</sup> AEMC, [Applying the Energy Market Objectives](#), p.9

SACOSS understands the need for regulatory reviews in a rapidly changing energy environment, but we strongly caution against hastily made law changes that could negatively impact south Australian energy consumers into the future. Careful examination of equity considerations, impacts on consumer protections, robust and meaningful engagement, together with extensive monitoring of impacts and public education is required to maximise benefits for consumers. SACOSS is therefore seeking the South Australian government:

- Define clear consumer-centric objectives and principles **to guide reform**:
  - Adopt a clear overarching objective for the Review of the Licensing framework for electricity in South Australia that ensures the Review ***protects the long term interests of South Australian consumers with respect to the price, quality, reliability and equitable provision of essential services.***
  - Develop strong consumer focussed principles to guide the outcomes of the Review, including that consumers should benefit from the proposed changes and not be disadvantaged.
  
- Be satisfied that any recommended changes to the legislative framework are compatible with the development and application of consumer protections for small customers, including (but not limited to) protections relating to hardship customers.
  
- Introduce vulnerability impact assessments for all recommended legislative changes, ensuring consideration of the potential impacts of those changes on consumers experiencing vulnerability, and to ensure the changes do not cause or create new vulnerabilities (in line with recommendations by the Australian Energy Regulator).<sup>14</sup>
  
- Undertake meaningful engagement on legislative changes, consulting effectively with affected key stakeholders at all stages of the regulatory cycle.
  
- Undertake a Regulatory Impact Statement, in accordance with the Better Regulation Handbook.<sup>15</sup>
  
- Carefully monitor the impact of all changes and ensure the independence and role of the Essential Services Commission is not undermined.
  
- Commit to an extensive and inclusive information and public education campaign on the changes.
  
- Have particular regard to alignment with National Laws and Rules, bearing in mind the following legislative requirements:

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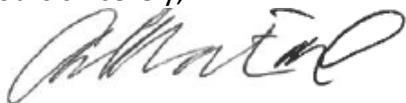
<sup>14</sup> Australian Energy Regulator, [Consumer Vulnerability Strategy, Draft for Consultation](#), December 2021, p.48

<sup>15</sup> Government of South Australia, [How to design and review regulation, and prepare a Regulatory Impact Statement](#), January 2011

- The Essential Services Commission is **not to impose a condition on a licence** if it 'is satisfied that the condition would duplicate, or be inconsistent with, regulatory requirements under the *National Electricity (South Australia) Act 1996, National Electricity Rules, National Energy Retail Law (South Australia) or National Energy Retail Rules*.'<sup>16</sup>
- 'In performing functions under this Act, the Commission must (in addition to having regard to factors specified in this Act or the *Essential Services Commission Act 2002*) have regard to the provisions of the National Electricity Rules and National Energy Retail Rules and **the need to avoid duplication of, or inconsistency with, regulatory requirements under those Rules**'.<sup>17</sup>

If you have any questions in relation to this submission, please contact Georgina Morris by email [georgina@sacoss.org.au](mailto:georgina@sacoss.org.au) or phone 8305 4214.

Yours sincerely,



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<sup>16</sup> Electricity Act 1996, section 24B

<sup>17</sup> Electricity Act 1996, section 6A(4)