



**SACOSS' Submission to the
Legislative Review Committee on the
*Electricity (General) (Payment Condition) Variation
Regulations 2021***

12 April 2022

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Introduction

The South Australian Council of Social Service is the peak non-government representative body for health and community services in South Australia, and has a vision of *Justice, Opportunity and Shared Wealth for all South Australians*. SACOSS does not accept poverty, inequity or injustice. Our mission is to be a powerful and representative voice that leads and supports our community to take actions that achieve our vision, and to hold to account governments, business, and communities for actions that disadvantage vulnerable South Australians.

SACOSS' purpose is to influence public policy in a way that promotes fair and just access to the goods and services required to live a decent life. We undertake policy and advocacy work in areas that specifically affect disadvantaged and low income consumers in South Australia. With a strong history of community advocacy, SACOSS and its members aim to improve the quality of life for people disadvantaged by the inequities in our society.

SACOSS has a long-standing interest in the delivery of essential services. Our research shows the cost of basic necessities like water and electricity impacts greatly and disproportionately on vulnerable and disadvantaged people.

SACOSS is requesting the Legislative Review Committee (**the Committee**) inquire into the *Electricity (General) (Payment Condition) Variation Regulations 2021* gazetted on 9 December 2021 (No. 80 p. 4331) (**Regulations**), in accordance with its functions under section 10A of the *Legislative Instruments Act 1978* (formerly the *Subordinate Legislation Act 1978*).

This submission will aim to address each of the principles for scrutiny set out in the Legislative Review Committee Information Guide,¹ which we believe are relevant to a review of the Regulations.

In addition to this submission, SACOSS is seeking the Committee have regard to the following previous SACOSS submissions:

- SACOSS, [Submission to ESCOSA on its Off-Grid Energy Consumer Protections Framework Review](#), 25 March 2022 (**attached**)
- SACOSS, [Submission to the Department for Energy and Mining on its consultation on proposed amendments to customer payment under the Remote Area Energy Supply \(RAES\) Scheme](#), 16 September 2021 (**attached**)
- SACOSS, [Submission to ESCOSA on the Prepayment Meter System Code Review](#), 11 May 2021

We also refer the Committee to the following stakeholder submissions provided to the Department for Energy and Mining (**the Department**) in response to its consultation on the

¹ Legislative Review Committee Information Guide (January 2022), access on Committee Information, [Legislative Review Committee](#) website.

proposed Regulations to make prepayment for electricity mandatory in Aboriginal communities supplied with electricity under the Remote Area Energy Supply (RAES) Scheme in South Australia (the affected communities):

- MoneyMob Talkabout, [Response to the Department for Energy and Mining's proposed amendments to customer payment under the Remote Area Energy Supply \(RAES\) Scheme](#), September 2021
- Consumer Action Koori Help, Mob Strong Debt Help, Financial Rights Legal Centre, [Submission on the Consultation on the proposed amendments to customer payment under Remote Area Energy Supply \(RAES\) Scheme Issues Paper](#), 21 September 2021
- Purple House, [Submission on proposed amendments to customer payment under RAES Scheme](#), July 2021
- Brad Riley, Dr Lee White, Dr Thomas Longden, Dr Simon Quilty (Australian National University), [Submission in response to the Consultation on proposed amendments to customer payment under the South Australian Remote Area Energy Supply \(RAES\) Scheme \(Issues Paper July 2021\)](#), 14 September 2021
- Uniting Communities, [Submission to the Department for Energy and Mining on its Consultation on proposed amendments to customer payment under the RAES Scheme: Issues Paper](#), September 2021

None of the above submissions supported the Department's proposal to make prepayment mandatory in the affected communities. The submissions highlighted the negative health, social and economic impacts associated with increased rates of disconnection, resulting from the requirement to prepay for an energy supply.

SACOSS is also seeking the Committee have regard to the response to those submissions by the Department, which was published on the Department's Consultation website after the Gazettal of the Regulations:

- Department for Energy and Mining, [Proposed amendments to customer payment under the RAES Scheme – Response to Stakeholder comments on Issues Paper](#), undated (published around 22 December 2021, being after the Gazettal of the Regulations on 9 December 2021).

It is worth noting that stakeholders were not provided with a draft of the Regulations for consideration, nor were stakeholders advised by the Department of the decision to proceed with Gazettal of the Regulations on 9 December. The submissions to the consultation, and the Department's response to the submissions were published on the Department's website on around 22 December 2021, after a written request from SACOSS, made on 15 December 2021.

Summary of Submissions

Disconnection from electricity is not merely an inconvenience, energy insecurity has real and significant impacts on health, well-being and the capacity of people and communities to live with dignity.

SACOSS considers the Regulations require Parliamentary scrutiny because:

- The effect of the Regulations will be to limit the access of people in the affected communities to the essential service of electricity, and the substantial health, social and economic impacts of these changes have not been sufficiently scrutinised.
- The Regulations may not be in accordance with the enabling Act and not compliant with legislative requirements, including:
 - inconsistent with the intent of the enabling Act, the *Electricity Act 1996*
 - inconsistent with the functions of ESCOSA under the *Essential Services Commission Act 2002*;
 - inconsistent with the *National Energy Retail Law 2011* and *National Energy Retail Rules* with which ESCOSA is required to promote consistency;
 - inconsistent with the *Racial Discrimination Act 1973 (Cth)* and South Australia's *Implementation Plan for the National Agreement on Closing the Gap*.
- The Regulations are more appropriate for parliamentary enactment, as the effect is to:
 - substantially alter the rights and obligations of people in the affected communities (as well as the electricity supplier)
 - inappropriately impinge on the life of people in the affected communities in terms of energy security, health, economic and social participation.
- The Regulations were made without sufficient consultation with the affected communities whose interests are affected.
- The Regulations will have substantial consequences for the affected communities which means the costs are likely to outweigh any benefits, and the problem could be addressed by alternative means which may not result in those adverse outcomes, including:
 - that prepayment be made *available but optional* for the affected communities – neither the DEM Issues Paper nor the Response to Stakeholders makes it clear why this option is unsuitable
 - that the decision to introduce the payment system *be deferred* from 1 July 2022, until at least the completion of ESCOSA's Off-Grid Energy Consumer Protection Framework Review, which includes a review of the Prepayment Meter Code, in late 2022 or early 2023

- that a post payment system is used with a range of requirements to address the needs and circumstances of RAES Aboriginal Communities, facilitated by smart meter capabilities
- that alternatives to the 'price signal' approach to addressing the problem of rising fuel costs and electricity consumption in the affected communities be implemented before or in combination with introducing a prepayment system (which is optional rather than mandatory), including:
 - addressing structural reasons for high electricity consumption such as poor-quality housing, inefficient appliances and overcrowding
 - supporting vulnerable households with energy efficiency upgrades
 - integrating community energy solutions including support for rooftop solar, stand-alone power systems and community owned energy schemes.

The Regulations for Review

SACOSS refers the Committee to the *Electricity (General) (Payment Condition) Variation Regulations 2021* gazetted on 9 December 2021 (No. 80 p. 4331). The Regulations are intended to take effect on 1 July 2022, making prepayment for electricity mandatory in remote Aboriginal communities in South Australia.

As outlined above, we request the Committee inquire into the Regulations in accordance with its functions under section 10A of the *Legislative Instruments Act 1978* (formerly the *Subordinate Legislation Act 1978*).

The operative Regulations are extracted below for reference:

Electricity (General) (Payment Condition) Variation Regulations 2021

4—Insertion of regulation 17A

After regulation 17 insert:

17A—Prescribed condition—use of prepayment meter system

- (1) In accordance with section 21(2) of the Act, the Commission is required to impose on the relevant licence the condition that the holder of the licence only sell electricity to prescribed customers using a prepayment meter system.
- (2) This regulation applies in relation to the relevant licence despite the fact that it was issued before the commencement of this regulation.
- (3) Despite subregulation (1), the Minister may grant the holder of the relevant licence an exemption from complying with the condition applying under that subregulation in relation to the supply of electricity to a specified prescribed customer, or a prescribed customer of a specified class.
- (4) An exemption under subregulation (3)—
 - (a) may be granted subject to specified conditions; and
 - (b) may be varied or revoked by the Minister.
- (5) In this regulation—

excluded customer means a small customer who is required under a contract for the sale of electricity in a prescribed area in force immediately before the commencement of the *Electricity (General) (Payment Condition) Variation Regulations 2021* to pay for electricity supplied under the contract;

prepayment meter system has the same meaning as in the *National Energy Retail Law*;

prescribed area means—

- (a) Trust Land within the meaning of the *Aboriginal Lands Trust Act 2013*; or

(b) "the lands" within the meaning of the Anangu Pitjantjatjara Yankunytjatjara Land Rights Act 1981; or

(c) "the lands" within the meaning of the Maralinga Tjarutja Land Rights Act 1984;

prescribed customer means a small customer supplied (or seeking the supply of) electricity in a prescribed area, other than an excluded customer;

relevant licence means the licence authorising the retailing of electricity under the Act to prescribed customers.

5—Insertion of regulation 21A

After regulation 21 insert:

21A—Variation of licences by Commission

In accordance with section 98(2)(e) of the Act, the Commission is, in varying the conditions of a licence for the purpose of complying with regulation 17A(1), exempt from the application of section 27(2) of the Act.

Background

The introduction of prepayment for electricity in remote and regional South Australia forms part of the state government's 'Future Sustainability Project'.² The 2019-20 State Government Budget provided for expenditure of \$5.6 million over five years to 'implement a package of measures aimed at improving service delivery and realising operational efficiencies across the entire Remote Area Energy Supply (RAES) scheme', which involves (SACOSS' emphasis):³

- *'The installation of **Smart Meters** to improve energy efficiency and service delivery.*
- *The introduction of **more flexible payment options, including the development of a customer pre-payment framework, to reduce the level of customer indebtedness.***
- *The **staged introduction of electricity charging** for residents in the Anangu Pitjantjatjara Yankunytjatjara (APY) Lands, Oak Valley and Yalata.'*

² See webpage:

https://www.energymining.sa.gov.au/energy_and_technical_regulation/energy_resources_and_supply/remote_area_energy_supply/future_sustainability

³ See webpage:

https://www.energymining.sa.gov.au/energy_and_technical_regulation/energy_resources_and_supply/remote_area_energy_supply/future_sustainability

The entire RAES Scheme includes communities supplied under the RAES State / Independent communities⁴ and RAES Aboriginal communities⁵ schemes. Under the RAES State / Independent communities Scheme, around 2,400 customers in the following 13 remote towns are provided with power subsidised by the state government:

- South Australian government owned infrastructure:
 - Blinman
 - Cockburn
 - Glendambo
 - Kingoonya
 - Manna Hill
 - Marla
 - Marree
 - Nundroo
 - Oodnadatta
 - Parachilna
- Independent owner-operators:
 - Andamooka
 - Coober Pedy
 - Yunta.

According to the State Government website, the RAES Aboriginal Communities Scheme applies in the following communities:⁶

- Amata
- Iwantja (Indulkana)
- Kaltjiti (Fregon)
- Mimili
- Pukatja (Ernabella)
- Umuwa
- homelands connected to the Central Power House grid, including Yunyarinyi and Watinuma.
- Power stations are also located within the following communities:
 - Pipalyatjara, also servicing Kalka (APY Lands)

⁴ See webpage:

https://www.energymining.sa.gov.au/energy_and_technical_regulation/energy_resources_and_supply/remote_area_energy_supply/raes_communities

⁵ See webpage:

https://www.energymining.sa.gov.au/energy_and_technical_regulation/energy_resources_and_supply/remote_area_energy_supply/raes_aboriginal_communities

⁶ Under the RAES Aboriginal Communities Scheme, Cowell Electric supplies 1,499 connections at the APY lands, MT lands, Yalata on ALT, Oodnadatta, Parachilna, Marla, Marree, Nundroo, Glendambo, Kingoonya, Mannahill, Blinman, and Cockburn: ESCOSA, [Off-Grid Energy Networks Performance Report 2019-20](#), p.2

- Murpatja, also servicing Kanpi and Nyapari (APY Lands)
- Yalata (ALT)
- Oak Valley (MT).

The installation of smart meters with prepayment capability for customers in all RAES communities has been completed. The state government has pointed to smart metering enabling ‘a range of flexible payment options to be considered, including pre-payment, which will assist customers to manage their electricity bills and consumption’, and has indicated it was working with the Essential Services Commission of South Australia (**ESCOSA**) on regulatory and licensing requirements.

The drafting and publication of the Regulations has been deemed necessary by the Department to avoid the application of the current consumer protections contained in ESCOSA’s Prepayment Meter System Code⁷ (**Prepayment Code**), for customers who reside in the affected communities. Under the current Prepayment Code,⁸ customers have the right to choose prepayment by providing their explicit informed consent, and must also have the option to revert to post payment where the customer is experiencing payment difficulties (including where three disconnections are experienced for longer than 240 minutes within a three-month period). The government has determined these choices and protections **should not apply** to households in RAES Aboriginal Communities, but **will continue to apply** to households in the RAES State / Independent communities.

The effect of the Regulations is to introduce a system for payment for electricity to consumers in the prescribed area (being remote Aboriginal communities where residents have previously not paid for electricity), by way of prepayment meters **as the only option for payment**. The Department’s consultation on proposed amendments to customer payment under RAES Scheme (**DEM Consultation**) Issues Paper explains the operation of the Regulations as follows:

“[the Regulations] will require ESCOSA to impose a licence condition on the retailer that customers of a prescribed class pay for electricity via a prepayment method. The licence condition will provide that the retailer, at their sole discretion, may provide an alternate payment method for a customer of the prescribed class.”

ESCOSA has no decision-making power in relation to the use of the prepayment meter system. There is an ability to grant an exemption to the requirement to use the prepayment meter system in respect of particular persons or a specified class of persons, but that is

⁷ The Prepayment Meter System Code is currently under [Review](#) to ensure the protections remain fit for purpose. The Review has now been incorporated into ESCOSA’s [broader review](#) of consumer protections for off-grid energy customers, and is not expected to be completed until late 2022, or early 2023. Despite this, the SA Government is proceeding with the introduction of charging and mandatory prepayment in the affected communities on 1 July 2022.

⁸ ESCOSA, [Prepayment Meter System Code](#), September 2013, clause 2.2 (consent) and clause (3.4) Payment Difficulties and Hardship.

subject to the Minister's discretion, and depends on the electricity supplier seeking such an exemption.

SACOSS, together with other interested parties which made submissions to the DEM Consultation, has significant concerns about the operation of the Regulations and the impacts these changes will have in the affected communities.

As outlined above, residents in the affected communities will not have the option to post-pay for electricity, and will not have access to the same consumer protections as other post-payment or prepayment customers, which is out of step with the experience of all other energy consumers in the South Australian community.

Parliamentary scrutiny of the Regulations

SACOSS believes the Regulations require Parliamentary scrutiny because they will limit the access of people in the affected communities to the essential service of electricity, and the substantial impact of the changes on those communities has not been sufficiently scrutinised. SACOSS has had regard to the principles for scrutiny set out in the Legislative Review Committee Information Guide, and this submission highlights where those principles are engaged. They are summarised briefly as follows:

- The Regulations may not be in accordance with its enabling Act and not compliant with legislative requirements, including:
 - a. inconsistent with the intent of the enabling Act, the *Electricity Act 1996*
 - b. inconsistent with the functions of ESCOSA under the *Essential Services Commission Act 2002*;
 - c. inconsistent with the National Electricity Retail Rules with which ESCOSA is required to promote consistency;
 - d. inconsistent with the Racial Discrimination Act 1973 (Cth) and South Australia's *Implementation Plan for the National Agreement on Closing the Gap*.
- The Regulations substantially alter the rights and obligations of people in the affected communities and the electricity supplier and inappropriately impinge on the life of people in the affected communities in terms of energy security, health, economic and social participation, such that they are more appropriate for parliamentary enactment.
- The Regulations were made without sufficient consultation with the affected communities whose interests are affected.
- The Regulations will have substantial consequences for the affected communities which means the costs are likely to outweigh any benefits, and the problem could be addressed by alternative means which may not result in those adverse outcomes.

Intent of the Electricity Act

We refer to scrutiny principle 3.2(a) regarding whether the Regulations are in accordance with the enabling Act and all legislative requirements. The enabling Act for the Regulations is the *Electricity Act 1996* (SA). Section 21(2) of the Act contemplates regulations requiring mandatory conditions on the issue of a licence, and section 98(1) of the Act confers a broad regulation making power.

However, in SACOSS' view, the Regulations are not in accordance with the intent of the Act. We refer, in particular, to the objects of the Act set out in Section 3, which include:

- (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.*

SACOSS' major concern, which is echoed in all the submissions to the Consultation, is that the effect of the Regulations will be to make involuntary disconnections from the essential service of electricity more likely in the affected communities. The system created by the Regulations reverses the principle that disconnection for customers experiencing hardship should only ever be a 'last resort'.⁹ Under the mandatory prepayment system proposed, evidence presented to the DEM Consultation indicates that involuntary disconnections from electricity are likely to become a frequent outcome for low-income customers.

We refer, in particular, to research recently conducted by ANU researchers and community based organisations in the Northern Territory, which showed that over 90% of 3,300 households utilising prepayment metering in the NT experienced disconnection from electricity at least once a year in 2018/19, with over 70% of homes disconnecting more than 10 times in a year.¹⁰ That study is consistent with other evidence, referred to in SACOSS' submission to the DEM Consultation, of high rates of disconnections in communities with prepayment metering systems – see pp 12-14.

Disconnection from electricity is not merely an inconvenience. Energy insecurity has real and significant impacts on health, well-being and the capacity of people and communities to

⁹ [National Energy Retail Law \(South Australia\) Act 2011](#), section 47 and section 45(3)(c)

¹⁰ Thomas Longden, Simon Quilty, Brad Riley, Lee V. White, Michael Klerck, Vanessa Napaltjari Davis and Norman Frank Jupurrula, 'Energy insecurity during temperature extremes in remote Australia' (2021) *Nature Energy* <https://doi.org/10.1038/s41560-021-00942-2> (Note this has been provided to the Committee by Brad Riley)

live with dignity. Some of those impacts are outlined in SACOSS' submission to the Consultation at page 13-14 and in other submissions to the Consultation, and include:

- Residents' capacity to keep fresh food becomes limited as residents cannot afford to run refrigerators and pass food storage costs to community stores. This has a dramatic impact on food security and healthy choices. (Purple House Submission at p1)
- Disconnection rates increase in weather extremes, leading to dwellings becoming either very hot or very cold, impacting directly on health and wellbeing, and contributing to over-crowding of dwellings that have not disconnected. Overcrowding then increases poor health and infectious diseases. (Purple House Submission at p1)
- Disconnections can mean that vital healthcare equipment no longer functions. This would impact oxygen concentrators, sleep apnoea machines, and other essential medical devices. (ANU Submission at p1)
- Organisations providing primary health, emergency relief and welfare services such as aged care, family support and domestic violence are likely to experience increased impacts (MoneyMob Talkabout Submission).

Such adverse health, economic and social outcomes are all the more likely in circumstances where the affected communities are facing ongoing disruptions to services arising from the COVID-19 pandemic,¹¹ as well as recovering from the impact of flooding in the region.¹²

This reversal of the disconnection as a last resort principle is inconsistent with the objects of the *Electricity Act*, in that it compromises the standards of safety, reliability and quality in the supply of electricity to the affected communities, and in that it does not protect the interests of these consumers of electricity.

ESCOSA and Consumer Protections

The Regulations are concerned with the issuing of a licence by ESCOSA, and the conditions that must be applied to a licence. Licensing is a function of ESCOSA under the *Essential Services Commission Act 2002*, section 5. ESCOSA must perform its functions, including licensing in accordance with the objectives in section 6 of the *Essential Services Commission Act*, which include:

¹¹ See APY Press Release, [Community Update – Entry to APY Lands](#), 25 February 2022, as well as ABC, [COVID-19 outbreak attributed to non-compliance stretched APY Lands community services](#), 4 March 2022

¹² ABC, [Flooded APY Lands remain cut off as evacuation flight considered for Coober Pedy](#), 2 February 2022, as well as Department for Energy and Mining, [Severe weather impacts on infrastructure – update for resources and energy sector](#), 6 February 2022

- (a) *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; and*
- (b) *at the same time, have regard to the need to—*
 - (i) *promote competitive and fair market conduct; and*
 - (ii) *prevent misuse of monopoly or market power; and*
 - (iii) *facilitate entry into relevant markets; and*
 - (iv) *promote economic efficiency; and*
 - (v) *ensure consumers benefit from competition and efficiency; and*
 - (vi) *facilitate maintenance of the financial viability of regulated industries and the incentive for long term investment; and*
 - (vii) *promote consistency in regulation with other jurisdictions.*

SACOSS suggests that the Regulations prevent ESCOSA from performing its functions in accordance with those objectives, for the same reasons as given above.

In addition to increasing the risk of disconnections, the regime created by the Regulations removes access to existing consumer protections for consumers in the affected communities. Although not made explicit in the Regulations, the DEM Consultation Issues Paper makes clear that the effect of their introduction will be to exempt the retailer from compliance with ESCOSA's Prepayment Code – this is outlined in SACOSS' submission to the Consultation at p 23-24. This includes the fundamental principle that prepayment arrangements be entered into with the **consent of the consumer**. Consumer choice and consent is removed by the Regulations.

The DEM Consultation Issues Paper proposes to introduce further consumer protections through the standard conditions applying between the residential customer and the retailer, however, these are not the subject of the Regulations and, in SACOSS' view, are not sufficient to mitigate the disconnection risks, nor the loss of access to consumer protections offered by the Prepayment Code. The removal of consumer protections limits the functions of ESCOSA and further prevents it from exercising its functions in accordance with the objectives of the *Essential Services Commission Act*.

In addition, the Regulations are inconsistent with the objects of promoting efficiency and competition in the electricity supply industry, which is an objective of both the *Electricity Act* and ESCOSA. There is no competitive energy market available to customers in the affected communities. Households on low-fixed incomes are supplied by a monopoly retailer with no option to access a range of market offers or tariffs. This means those households have limited options to respond to the 'price signal' imposed by the proposed tariffs and, on the other hand, the supplier has no incentive to improve efficiency, or to assist consumers to manage their usage and debt. Rather than encouraging efficiency from

the retailer, the mandatory prepayment system shifts all the burden of managing the costs to the consumer. This is particularly so in circumstances where the existing ESCOSA Prepayment Meter System Code will not apply to the supplier, and while an industry code for off-grid retailers has not yet been developed.

Inconsistency with National Energy Retail Laws and Rules

SACOSS also highlights the requirement under the *Electricity Act* (see sections 6A(4) and 24B) and the *Essential Services Commission Act* (see section 6(b)(vii)) to avoid inconsistency with the *National Electricity Rules* and *National Energy Retail Rules*. These provisions are discussed in more detail in SACOSS' submission to the DEM Consultation at pp34-36. SACOSS believes that, when imposing a condition on a licence, **ESCOSA must be satisfied that the licence condition is not inconsistent with regulatory requirements relating to prepayment meter systems under the National Energy Retail Laws and Rules.**¹³

SACOSS believes the Regulations are inconsistent with these requirements, which are set out in detail in SACOSS' submission to the Consultation at pp37-38. Importantly, the prepayment framework under the National Energy Laws and Rules is predicated on the basis of choice, and provides for a blanket prohibition on prepayment for life support customers, with no role for 'retailer discretion' in respect of those customers. In contrast, the system created by the Regulations removes customer choice in respect of payment and imposes prepayment on life support customers, unless the Minister exercises discretion to make a different arrangement for those customers.

Closing the Gap and Racial Discrimination Act

The effect of the Regulations will be to create a different payment system and consumer protection regime for the affected communities to that which applies to other consumers in South Australia. In circumstances where the communities affected are Aboriginal communities, and the proposed system is likely to impact on members of those communities negatively in the ways identified above, this is both discriminatory and inconsistent with commitments to the *National Agreement on Closing the Gap*.

South Australia's *Implementation Plan for the National Agreement on Closing the Gap*, in support of Outcome 9 of the National Agreement, Target 9b is that: 'By 2031, all Aboriginal and Torres Strait Islander households: (i) Within discrete Aboriginal and Torres Strait Islander communities receive essential services that meet or exceed the relevant jurisdictional standard'.¹⁴ SACOSS is concerned the Regulations will result in households in

¹³ Section 24B of the *Electricity Act 1996* provides: '**Despite the preceding provisions of this Part, the Commission is not to impose a condition on a licence** if the Commission 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*.'

¹⁴ *South Australia's Implementation Plan for Closing the Gap*, Appendix: Socio-economic Targets, p70. <https://www.dpc.sa.gov.au/responsibilities/aboriginal-affairs-and-reconciliation/closing-the-gap/south-australias-implementation-plan>

the affected communities receiving substandard essential services, and that insufficient consideration has been given to this likely outcome.

The differential treatment in the provision of essential services to the affected communities which the Regulations propose may also constitute unlawful discrimination in breach of the *Racial Discrimination Act 1975* (Cth). The DEM Response to Stakeholder comments on the Issues Paper indicates DEM has obtained legal advice on this possibility, but does not indicate it is satisfied there is no inconsistency.

More appropriate for Parliamentary enactment

SACOSS submits that much greater scrutiny of the regime created by the Regulations is required in respect of the differential treatment of consumers in the affected communities and consistency with the laws identified above.

Having regard to the substantial change to the system in operation, and the substantial impact on the lives of people in the affected communities, with reference to scrutiny principle 3.2(j), SACOSS submits the Regulation is more appropriate for parliamentary enactment, so that it may be subject to the proper scrutiny and debate that would involve.

SACOSS repeats its recommendation that the *Aboriginal Lands Parliamentary Standing Committee* should urgently inquire into the issue of mandatory prepayment, energy insecurity and its impacts on the health and welfare of residents in the RAES Aboriginal Communities scheme.

Consultation with affected communities

With reference to scrutiny principle 3.2(d), SACOSS believes the DEM Consultation conducted in September 2021 was inadequate in terms of the opportunity given to the communities directly affected by the Regulations to participate, because:

- The Consultation was inadequate and did not respond to the submissions made to it; and
- Direct representatives of the affected communities were not provided with sufficient opportunity to participate and were not provided with sufficient information to enable their participation.

Despite inviting submissions, the DEM Response to Stakeholder comments on the Issues Paper indicates little consideration has been given to the significant concerns raised consistently across the submissions regarding the unacceptably high risk of disconnections and the likely impacts on communities. Submissions consistently expressed concern about mandated prepayment and the high risk of frequent and extended disconnections, yet the response was to adopt the option preferred by the Department and introduce the Regulations without any attempt to address those concerns.

The DEM Consultation points to the engagement of MoneyMob Talkabout for the purpose of **community education** in the affected communities regarding the introduction of payment. MoneyMob Talkabout's submission to the DEM Consultation clearly states that it

'does not support the regulatory change to mandate prepayment as the only method of payment where other billing options are removed'.¹⁵ It identifies concerns, based upon experience and knowledge of the affected communities, about the risk of increased hardship, the number of people who will need access to consumer protections, and the ability of the retailer to respond. Despite the clear evidence from the community-based organisation engaged to work with the affected communities of the likely impacts of the mandatory prepayment system, and the inadequacy of the protections proposed, the Regulations have been introduced without further consultation.

SACOSS notes that Priority Reform One in South Australia's *Implementation Plan for Closing the Gap* is partnership and shared decision-making with Aboriginal and Torres Strait Islander people, which requires, among other things, that Aboriginal voices are heard and hold as much weight as governments, that decision-making is transparent and enough information and time given to people to understand decisions, and that self-determination is respected. On an issue with such potential significance for the health and wellbeing of the affected communities, the Consultation has not engaged in a shared decision-making process. As DEM makes clear, MoneyMob has been solely engaged to undertake education campaigns,¹⁶ it has not been engaged to consult with communities about their views on the options for the payment system.

SACOSS supports the concerns raised by the researchers from ANU, Tangentyere Council and Julalikari Aboriginal Corporation in their submission to the Consultation and to the Committee regarding the lack of informed consent from the affected communities, in circumstances where the range and likely impacts of prepayment upon disadvantaged consumers living remotely has not been well researched in respect of those communities, but where research from comparable jurisdictions and evidence from MoneyMob indicates serious impacts which have not been communicated to the affected communities.

Alternative options not considered

Referring the Committee to scrutiny principle 3.2(k), SACOSS has identified already the potential unforeseen consequences, and the high economic and social costs that may flow from the implementation of the Regulation in terms of high rates of disconnection and associated health, economic and social flow-on effects for the affected communities.

We also refer the Committee to several of the submissions made to the Consultation which point to alternatives to the mandatory prepayment system which would avoid some of the concerns identified. These include:

- That prepayment be made available but optional for the affected communities – neither the DEM Issues Paper nor the Response to Stakeholders makes it clear why this option is unsuitable.

¹⁵ MoneyMob Talkabout, Submission to the DEM Consultation, p3.

¹⁶ DEM Consultation Issues Paper, p21.

- That the decision to introduce the payment system be deferred until at least the completion of ESCOSA’s review of the Prepayment Meter Code in late 2022 or early 2023.
- That a post payment system is used with a range of requirements to address the needs and circumstances of RAES Aboriginal Communities, facilitated by smart meter capabilities.
- That alternatives to the ‘price signal’ approach to addressing the problem of rising fuel costs and electricity consumption in the affected communities be implemented before or in combination with introducing a prepayment system (which is optional rather than mandatory), including:
 - a. Addressing structural reasons for high electricity consumption such as poor quality housing, inefficient appliances and overcrowding
 - b. Supporting vulnerable households with energy efficiency upgrades
 - c. Integrating community energy solutions including support for rooftop solar, stand-alone power systems and community owned energy schemes.