

Mr John Pierce  
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Ref code: RRC0028

Dear Mr Pierce,

**RE: Submission on the AEMC’s Consultation paper – Regulating Conditional Discounting Rule Change Request**

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 advice on the necessary market mechanisms and policy for essential services, including electricity. It has been well documented by SACOSS and others that the cost and supply of basic necessities like energy have significant and disproportionately greater impacts on low income and vulnerable people. SACOSS’ 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 would like to thank the Australian Energy Market Commission (AEMC) for providing us with the opportunity to comment on the Minister for Energy & Emissions Reduction’s rule change request to regulate conditional discounting practices by energy retailers (Rule Change request).

SACOSS supports the intent of the Rule Change request to “remove the excessive penalties on customers (particularly vulnerable customers) who pay after the due date, which are effectively resulting in those customers paying the highest prices in the market.”<sup>1</sup> We also support greater transparency, where any penalties associated with not meeting conditional discounts should only reflect costs borne by the retailer for customers not satisfying the terms and conditions of the discount.

**Offer Comparability**

While we note that there has been a shift away from conditional discounting in the retail market following the introduction of the Default Market Offer (DMO) under the *Competition and Consumer (Industry Code—*

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<sup>1</sup> [https://www.aemc.gov.au/sites/default/files/2019-08/Regulating%20Conditional%20Discounting%20-%20Final%20Consultation%20paper\\_0.pdf](https://www.aemc.gov.au/sites/default/files/2019-08/Regulating%20Conditional%20Discounting%20-%20Final%20Consultation%20paper_0.pdf)

*Electricity Retail) Regulations 2019 (Code)*<sup>2</sup>, we caution that it may still be too early to fully understand the impact of the DMO. Given the DMO does not apply to gas contracts and jurisdictions with price regulation (i.e. in ACT, Tasmania and regional Queensland) we consider the proposed Rule Change request is material despite the introduction of the Code. Specifically, the current rule change proposal presents an opportunity to place limitations on conditional discounts to both gas and electricity offers.

We understand that the move away from large pay-on-time discounts has coincided with the emergence of energy deals with sign-up incentives (e.g. energy credits, Qantas Points, gift cards for signing up online) and bundling of services (e.g. with mobile phone / broadband services or battery and behind the meter technology) and note that such energy switching deals and promotions may make offer comparability more difficult. While we support retail market innovation insofar that it delivers better outcomes for consumers, we also note that pay-on-time discounts themselves came into prominence largely in response to attempts to constrain late payment fees.<sup>3</sup> We therefore support the application of this rule change to cover all types of conditional discounts where penalties or fees are applied for not meeting the terms and conditions of the contract.<sup>4</sup> Further, we urge the AEMC to consider how restrictions on conditional discounting may give rise to other unintended consequences in retail markets.

### **Excessive Penalties**

SACOSS agrees with the characterisation of conditional discounts as “late payment fees in disguise”. SACOSS’ previous work on “poverty premiums” has pointed to the additional cost burdens for those on low incomes (or with limited resources) compared to those who can buy their way out of, avoid or minimise.<sup>5</sup> In the case of pay-on-time discounts, we calculated that households in South Australia could be paying a poverty premium of up to \$687 or 28% of the annual bill for missing their pay-on-time discount and incurring late fees.<sup>6</sup> The proponent’s rule change request points to the fact that only 41 per cent of customers on a hardship program meet conditional discounts, compared to 76 per cent of non-hardship customers.<sup>7</sup> The consultation paper notes that these hardship customers make up 1.4 per cent of residential customers and questions the significance of this group. SACOSS considers it erroneous to suggest that the customer groups most at risk of failing to realise conditional discounts are insignificant given hardship customers represent a small proportion of the energy customer base. Rather, we consider the issue of excessive penalties to be material *because* those hardship customers are among the most vulnerable, not because of the size of the customer group at risk.

It should also be noted that another class of customers who may be limited in their ability to anticipate their energy plan costs and ability to pay are the so-called “working poor”. SACOSS’ yet to be published ‘Working Poor’ Project found that those on low-incomes and irregular incomes (due to variable work hours, casualised work and lack of workplace entitlements) were particularly disadvantaged by pay-on-time discounts.<sup>8</sup> Our study found that not only did pay-on-time discounts act as a financial penalty; they prevented households from seeking supports from retailers, fearing they might accrue late fees or lose the discount. Some

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<sup>2</sup> The Code is prescribed as a mandatory industry code under the *Competition and Consumer Act 2010* (Cth) which came into force on 1 July 2019 see <https://www.accc.gov.au/media-release/savings-for-those-on-default-electricity-contracts-but-more-needs-to-be-done>

<sup>3</sup> ACCC, Retail electricity pricing inquiry – Final report, June 2018, [https://www.accc.gov.au/system/files/Retail%20Electricity%20Pricing%20Inquiry%E2%80%94Final%20Report%20June%202018\\_0.pdf](https://www.accc.gov.au/system/files/Retail%20Electricity%20Pricing%20Inquiry%E2%80%94Final%20Report%20June%202018_0.pdf), p. 259

<sup>4</sup> Noting the main types of conditional price discounting raised by the proponent are pay on time and direct debit

<sup>5</sup> SACOSS, SACOSS Anti-Poverty Statement 2017, October 2017, [https://www.sacoss.org.au/sites/default/files/public/documents/Reports/APW%20Statements/APW\\_Fact\\_Sheet\\_A4\\_FINAL.pdf](https://www.sacoss.org.au/sites/default/files/public/documents/Reports/APW%20Statements/APW_Fact_Sheet_A4_FINAL.pdf), p. 6

<sup>6</sup> Based on 2017 data

<sup>7</sup> [https://www.aemc.gov.au/sites/default/files/2019-02/Rule%20change%20request\\_0.pdf](https://www.aemc.gov.au/sites/default/files/2019-02/Rule%20change%20request_0.pdf), p. 6

<sup>8</sup> SACOSS, Working to make ends meet: Low-income workers and energy bill stress, not yet published

participants we spoke to for our study would default on other payments and bills to avail the discount on the energy bill, while others paid their energy bill off with the credit card to get the pay-on-time discount. This speaks not only to the pervasiveness of pay-on-time discounts in changing consumer behaviour, but the detrimental outcomes, particularly for the most vulnerable.

### **Preferred Approach**

We support the approach proposed by the AEMC where conditional discounts are limited to the “reasonable costs” incurred by retailers, where reasonable costs are enshrined in the rules at the principle level, and extending reasonable cost restrictions to conditional fees (e.g. late payment fees).

We thank you in advance for consideration of our comments. If you have any questions in relation to this submission, please contact Rebecca Law on [rebecca@sacoss.org.au](mailto:rebecca@sacoss.org.au) or 08 8305 4212.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Ross Womersley', enclosed in a light grey rectangular box.

Ross Womersley  
Chief Executive Officer