Joint Submission to AEMC Draft determination Streamlining payment difficulty protections

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About the Justice and Equity Centre

The Justice and Equity Centre stands for a society that is fair and free from discrimination and disadvantage. Established in 1982 as the Public Interest Advocacy Centre (PIAC), we use the law and policy advocacy to challenge injustice and inequality. We do this through:

- legal advice and representation, specialising in test cases and strategic casework;
- research, analysis and policy development; and
- advocacy for systems change to deliver social justice.

Energy and Water Justice

Our Energy and Water Justice work improves regulation and policy so all people can access the sustainable, dependable and affordable energy and water they need. We ensure consumer protections improve equity and limit disadvantage and support communities to play a meaningful role in decision-making. We help to accelerate a transition away from fossil fuels that also improves outcomes for people. We work collaboratively with community and consumer groups across the country, and our work receives input from a community-based reference group whose members include:

- Affiliated Residential Park Residents Association NSW;
- Anglicare;
- Combined Pensioners and Superannuants Association of NSW;
- Energy and Water Ombudsman NSW;
- Ethnic Communities Council NSW;
- Financial Counsellors Association of NSW;
- NSW Council of Social Service;
- Physical Disability Council of NSW;
- St Vincent de Paul Society of NSW;
- Salvation Army;
- Tenants Union NSW; and
- The Sydney Alliance.

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The Justice and Equity Centre acknowledges and pays respects to the Gadigal as the Traditional Owners of the land on which our office stands.

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Recommendation 8

That the proposed changes to rules 109 and 110 be strengthened so that reminder notices and disconnection warning notices must provide payment difficulty assistance information in a clear, friendly and support-focused way reflecting an intent for reminders and warnings to enable assistance. This should include providing practical next steps, reassurance that response can help the household stay connected, and referral pathways to independent or community-based support where appropriate.

Recommendation 9

That the proposed changes to rule 113 be made as part of a strengthened final rule which requires reminder and disconnection warning notices to include clear, accessible and practical payment difficulty assistance information before disconnection can proceed.

1. Introduction

The Justice and Equity Centre (JEC) and the South Australian Council of Social Service (SACOSS) welcome the opportunity to respond to the Australian Energy Market Commission's (AEMC) draft determination on *Streamlining payment difficulty protections*.

Our organisations support the draft determination's proposals as incremental but important progress towards more robust, fairer assistance for energy affordability. The proposed changes are practical, evidence-based and consistent with the long-standing principle that disconnection should be a last resort.

However, it is critical to recognise that the proposed reforms will allow too many people experiencing payment difficulty - including those in hidden energy payment difficulty and hardship – to be threatened and disconnected from the energy they need.

The JEC's *Powerless: Debt and disconnection* *("Powerless")* research shows that energy debt, disconnection and hidden energy hardship impact a large proportion of consumers. They increasingly affect low- and middle-income families with children, people with disability or mental illness, people experiencing family or domestic violence, and other households under broader cost-of-living pressure.

The final rule should seek to maximise impact for households – reflecting that energy is an essential service - while recognising more needs to be done to achieve the intended objectives. Payment difficulty should trigger stronger assistance and engagement obligations from retailers, not simply create a streamlined pathway to disconnection. Hardship or payment difficulty should not, of itself, be a sufficient reason to disconnect a household where reasonable assistance, affordability measures or support pathways remain available.

Stronger rules – including further changes to those proposed - are a reasonable and proportionate response to the essential nature of energy, and the potential for serious harms caused by disconnection. There is consistent evidence that earlier, clearer and more personal engagement can prevent avoidable harm while supporting better outcomes for consumers and retailers. The final rules should reflect this.

This submission strongly supports the draft proposals and recommends further changes to reflect the intent and better implement the AER's findings, improve outcomes for consumers, and protect people experiencing disadvantage or vulnerability.

2. Clarifying & strengthening disconnection protections (theme 1)

2.1 Clarifying the assumed moment disconnection is initiated

Our organisations support clarifying that a retailer is assumed to have arranged disconnection at the point it requests de-energisation from the distributor – and in other circumstances at the equivalent point.

Recommendation 1

That changes be made as proposed to rule 107(5).

2.2 Requiring at least two appropriate communication channels

Our organisations support the draft rule's focus on retailer obligations before disconnection, including the requirement to use at least two communication channels to contact consumers. We also support the AER's conclusion that disconnection processes could be improved through a flexible, tailored approach that does not rely on a single touchpoint engagement channel. However, a requirement to use two channels – as proposed - must be understood as a minimum procedural safeguard in line with a wider principle, not a sufficient standard for meaningful engagement with a household at risk of losing access to an essential service.

Even two channels of communication will often be insufficient to engage with a consumer about disconnection, particularly where the household is experiencing significant or multiple vulnerabilities. For instance:

- A letter may not be opened,
- a telephone call may be missed,
- and an electronic message may not be received or understood for valid reasons unrelated to avoidance.

There are many valid reasons why communications may be missed, for example a consumer may be in hospital, experiencing family violence, managing disability or mental ill-health, without reliable internet or phone access, or simply overwhelmed by debt and other pressures.

The rules should therefore require at least two appropriate communication forms as a minimum reflection of a requirement for retailers to demonstrate that their engagement was informed by the needs of the consumer, was reasonable, persistent and responsive to the household's circumstances.

Recommendation 2

That the proposed two-channel engagement requirement be strengthened with an overarching principle that beyond this requirement, retailers must otherwise demonstrate reasonable, persistent and responsive engagement informed by the households needs, before disconnection. This should include additional contact attempts or independent outreach where the household may be experiencing vulnerability or where earlier contact attempts have not resulted in meaningful engagement.

2.3 Minimum disconnection protections based on potential harm

Our organisations support applying the minimum disconnection amount to all customers, not only those who have agreed to repay debt. This change is consistent with the fact the risk of harm from disconnection does not depend on whether a consumer has successfully navigated a retailer process or formally entered a payment arrangement.

Recommendation 3

That disconnection protections are strengthened by consistently applying the minimum disconnection amount to all consumers, regardless of whether they have agreed to repay their debt.

Disconnection protections and the minimum disconnection amount should be shaped by the scope for potential harm to consumers, reflecting the purpose of the protection: preventing recourse to disconnection where the amount owing is not sufficiently serious to justify the harm caused by the threat and loss of supply.

The JEC has previously argued that a $500 threshold does not meet this principle and is incompatible with the intent to ensure disconnection is genuinely a last resort. The final determination should include recommending the AER reconsider the minimum disconnection (for example, aligned with the Victorian threshold of $1,000), adopting a harm-based principle for setting the amount. The AEMC should also recommend such review accounts for energy price changes, household size, seasonal usage (rather than average bills) and the disproportionate impact of disconnection on people experiencing disadvantages and vulnerabilities.

Recommendation 4

That the AEMC recommend the AER review the approach to disconnection protections to ensure they are genuinely harm-based and otherwise review the minimum disconnection amount to better reflect the purpose of the protection and the harms caused by disconnection.

Retailers should be required to demonstrate good outcomes

A stronger framework must enable retailer accountability. Retailers should be required to record key aspects of their interactions with consumer in payment difficulty and be able to report on:

- the steps taken before disconnection,
- the assistance offered,
- whether the consumer received concessions/rebates and crisis payments available to them,
- whether an affordable payment arrangement was offered,
- whether a cheaper tariff was available, and
- whether independent or in-person outreach occurred.

This would enable more effective ‘audit’ of assistance and monitoring of compliance with disconnection protections and help the AER assess whether the rules are achieving their intended purpose for disconnection to be used only as a genuinely last resort.

Recommendation 5

That retailers be required to record key aspects of their interactions with consumers and be able to report the actions taken prior to disconnection to demonstrate that all reasonable steps were taken and that disconnection has been used only as a genuine last resort.

3. Improving payment difficulty assistance information (theme 2)

3.1 Streamlining payment difficulty assistance eligibility categories

We agree with the AER's finding that "customers experiencing payment difficulty continue to face an assistance gap, in part due to the complexity of the current eligibility framework"

Our organisations support the draft rule's proposal to align the payment difficulty eligibility categories to prevent differing assistance obligations for retailers by aligning the NERR with the NERL. Consumers should receive assistance based on their circumstances and need, not on whether they use particular words, disclose hardship in any particular way (or not at all), or are identified through a retailer's internal processes at a particular time. We agree this will help support more consistent application of assistance across the eligibility categories.

Recommendation 6

That the proposed changes to rule 33 are made.

3.2 Offering clearer and more accessible information

Our organisations support the draft rule's requirement for clearer payment difficulty assistance information on retailer websites and in consumer communications.

Whilst we support this rule change proposal, it must be explicitly recognised that information alone is insufficient where it continues to place the burden on consumers to disclose their situation, understand a complex regulatory framework and proactively request assistance while under financial and other stress. Improved retailer websites and general hardship pages are necessary but not sufficient to address identified issues. Many households do not have reliable access to the internet, a suitable device, data, digital or general literacy or a safe opportunity to understand and search for support. Even where a consumer can access online information, the process of finding and applying for assistance imposes a significant time and administrative burden which excludes large proportions of the population.

While larger reforms are needed, the proposed changes should also be strengthened by requiring information to be prominent, accessible, translated where appropriate, and available through the same preferred channels consumers use to manage their account. In addition, the rule should seek to reduce, rather than reproduce, administrative burden by focusing on providing clear offers of help, practical next steps, and direct referral options to concessions, rebates, financial counselling and other supports.

Recommendation 7

That proposed changes to rule 56 be made, with additions at rule 56 that the information at subrule (1) must also be prominent, accessible, translated where appropriate, and available through the same preferred channels consumers use to manage their account. In addition, information should reduce administrative burden by providing clear offers of help, practical next *steps, and direct referral options to concessions, rebates, financial counselling and other supports.*

3.3 Providing assistance information more consistently

Our organisations support the proposal to improve the consistency and relevance of payment difficulty assistance information by requiring it on reminder notices and disconnection warning notices. However, these changes should be strengthened with a clear expression of the intent and further details regarding how this information is provided (rather than simply when it is provided). Without stronger obligations about the intent, content, tone, timing and accessibility of assistance information, the proposals risk making immaterial improvements and operating as a bare minimum, retaining the ease with which remote disconnection can proceed.

The JEC's research on in-person visits before disconnection shows that effective response from households at risk of disconnection is more likely when information is delivered in a clear, practical and reassuring way, rather than in a way that feels punitive, intimidating or primarily focused on debt recovery. The report found that households responded to approaches that were friendly, trusted and support-focused, including information provided by independent social or community service providers where possible. Reminder and disconnection warning notices should therefore do more than include technically accurate assistance information. They should clearly reassure consumers that contacting their retailer or a support service is intended to help them stay connected and get any help they may need. It should set out practical next steps, and use language that encourages engagement rather than elicits fear or provides incentive for avoidance.

Recommendation 8

That the proposed changes to rules 109 and 110 be strengthened so that reminder notices and disconnection warning notices must provide payment difficulty assistance information in a clear, friendly and support-focused way reflecting an intent for reminders and warnings to enable assistance. This should include providing practical next steps, reassurance that response can help the household stay connected, and referral pathways to independent or community-based support where appropriate.

Replicate wording at rule 113

Our organisations recommend replicating the wording changes from rule 109 to rule 113 so that reminder notices and disconnection warning notices more clearly direct consumers to payment difficulty assistance.

There can be many valid reasons (many of them not in the consumers control) why access to a meter was not provided. A failure to gain access should not be treated as evidence that a consumer is unwilling to engage and prejudice the outcomes for the consumer.

The JEC's *Powerless* research found that among other challenges, disconnected households often experience high levels of mental health issues (present in 39% of disconnected households), domestic violence in the home (present in 13% of disconnected households) and intellectual disability (present in 8% of disconnected households). These, and many other similar circumstances can make it harder for people to respond to notices, provide access or navigate retailer processes, and reinforce the need for clear, accessible and proactive assistance before disconnection is pursued.

Recommendation 9

That the proposed changes to rule 113 be made as part of a strengthened final rule which requires reminder and disconnection warning notices to include clear, accessible and practical payment difficulty assistance information before disconnection can proceed.