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22 October 2020

Dear Mr Barr,

**RE: AEMC – National Energy Retail Amendment (Bill contents and Billing requirements) Rule - Consultation Paper Ref: RRC0036**

The South Australian Council of Social Services (SACOSS) is the peak body for the community services sector in South Australia, with an interest in the efficient delivery of essential services to communities across the state. We thank the Australian Energy Market Commission (AEMC) for the opportunity to provide feedback on the *Bill Contents and Billing Requirements Rule Change Request* made by the Hon Angus Taylor MP, on 24 September 2020 (the Rule Change) and the AEMC's *Bill contents and Billing Requirements Consultation Paper*, 24 September 2020 (the Consultation Paper).

SACOSS welcomes the proposed Rule Change. We have long received feedback from member organisations and individuals expressing concern about the complexity and inconsistency of energy bills, leading to customer confusion and disengagement. In our experience customers are particularly concerned with the different terms used for energy charges and the dense presentation of information contained in bills, making them extremely difficult to decipher. These concerns are reflected in the Rule Change Request.<sup>1</sup>

SACOSS also supports the solution proposed in the Rule Change request to replace Rule 25 (and Rule 170), to require the development of a mandatory and enforceable guideline by the Australian Energy Regulator (AER). We do not support a non-rules based regulatory approach.

Importantly, we strongly urge the AEMC to consider making a more preferable rule that amends the proposed Rule 25(3)(a) to include an additional Supporting Principle to the Better Bills Guideline Objective to ensure small customers can easily understand supports are available if they are having trouble paying their bill, and how to access those supports. We submit this amendment is 'compatible with the development and

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<sup>1</sup>The Hon Angus Taylor MP, Minister for Energy and Emissions Reduction, Better Bills AEMC Rule Change Request, September 2020, p. 4 [https://www.aemc.gov.au/sites/default/files/documents/rrc0036\\_rule\\_change\\_request\\_pending.pdf](https://www.aemc.gov.au/sites/default/files/documents/rrc0036_rule_change_request_pending.pdf)  
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application of consumer protections for small customers, including (but not limited to) protections relating to hardship customers'.<sup>2</sup>

### Non-rules based approach

The Consultation Paper is seeking feedback on the solution proposed in the Rule Change Request, and alternative solutions, including a non-rules based approach. In relation to the 'non-rules based approach', the Consultation Paper states:<sup>3</sup>

'The significant increase in financial hardship due to COVID-19 has reemphasised to the industry the need to help customers meet their financial commitments. This has delivered new, industry-driven responses to consumers' need for assistance, such as fact-sheets and outreach programs, and signalled the potential for non-rules based approaches to improve the consumer experience of the energy sector as a whole.'

SACOSS welcomed the industry-driven responses to raise awareness of the supports available for customers who were struggling to pay their bills during the pandemic, but we were disappointed it took a global pandemic to provide the impetus for this awareness-raising campaign. We also note the information provided about available supports to customers by industry during the pandemic did not extend beyond what is ordinarily required of retailers to support customers under the existing regulatory framework.<sup>4</sup> Retailers could have undertaken a similar industry campaign at any point since the introduction of the NECF, but (to the best of our knowledge) in the absence of a requirement to do so, have not.

Under the *National Energy Retail Law* (Retail Law) and *National Energy Retail Rules* (Retail Rules), retailers are legally obliged to provide all customers who are experiencing payment difficulty, and customers experiencing payment difficulty due to hardship, the following supports:

- Customers experiencing payment difficulties must be offered / provided with:
  - Payment plan (Section 50(1) and Rule 72, Rule 33(1) and Rule 33(4))
  - Information on concessions, energy rebate and relief schemes (Rule 33(3))
  - Protection from shortened collection cycle (Rule 34(2)(a))
  - Protection from debt recovery (section 51)
  - Protection from disconnection (Part 6, Division 2 of the Retail Rules)
  
- Customers identified as a customer experiencing payment difficulties due to hardship (Hardship Customer) must be provided with ongoing supports outlined in the retailer's hardship policy (Part 2 Division 6 of the Retail Law, and Part 3 of the Retail Rules), including at a **minimum**:
  - Flexible payment options (payment plan and Centrepay)
  - Identify government concessions and financial counselling services and notify customers
  - Range of programs to assist hardship customers
  - Review of market retail contract
  - Processes and programs to assist customers with strategies to improve energy efficiency
  - Protection from shortened collection cycle (Rule 34(2)(a))
  - Protection from debt recovery (section 51)
  - Protection from disconnection (Part 6, Division 2 of the Retail Rules)

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<sup>2</sup> The consumer protections test contained in section section 236(2)(b) of the National Energy Retail Law (NERL) [https://www.legislation.sa.gov.au/LZ/C/A/NATIONAL%20ENERGY%20RETAIL%20LAW%20\(SOUTH%20AUSTRALIA\)%20ACT%202011/CURRENT/2011.6.AUTH.PDF](https://www.legislation.sa.gov.au/LZ/C/A/NATIONAL%20ENERGY%20RETAIL%20LAW%20(SOUTH%20AUSTRALIA)%20ACT%202011/CURRENT/2011.6.AUTH.PDF)

<sup>3</sup> Australian Energy Market Commission, Bill Contents and billing requirements Consultation paper, 24 September 2020, p. 23

<sup>4</sup> See for example, the Energy Council of Australia's fact sheet: <https://www.energycouncil.com.au/media/19055/final-aec028-helping-you-stay-on-track-factsheet.pdf>

Apart from the obligation under section 46 of the Retail Law for retailers to ‘inform a residential customer of the retailer's customer hardship policy where it appears to the retailer that non-payment of an energy bill is due to the customer experiencing payment difficulties due to hardship’, there is no requirements for **direct communication**<sup>5</sup> with small customers about retailers’ obligations to provide the supports outlined above to customers experiencing payment difficulty, including hardship customers.

Currently, under Rule 25, the only particulars retailers must include in an energy bill that might arguably provide a customer experiencing payment difficulty with some helpful information are:

- details of the available payment methods (*it is unclear whether this extends to include details about the availability of payment plans*)
- reference to the availability of government funded energy charge rebate, concession or relief schemes
- a telephone number for account enquiries.
- a telephone number for complaints (which may be the same as that for account enquiries)

There is no requirement for retailers to provide a telephone number for customers to access supports if they are having trouble paying their bill.

Similarly, Reminder Notices and Disconnection Notices only require the retailer to include details of the retailer's telephone number for complaints and disputes (Rules 109 and 110) with the additional obligation in the disconnection notice to include details of the existence and operation of the energy ombudsman, including contact details (Rule 110(2)(f)).

SACOSS’ research clearly indicates many customers who are struggling to pay their energy bills are not aware of their rights to supports and how to access supports.<sup>6</sup> This leads to a lack of confidence to engage with their retailer, debt accumulation and the invidious outcome of disconnection from a service that is essential to life. Information provision and early intervention by the retailer is key to avoiding debt and disconnection. To build customer confidence and promote engagement, SACOSS submits customers need to be directly informed by their retailer of their rights to support, and the most direct and regular form of communication is the bill.

Notably, in the development of the Customer Hardship Policy Guideline, consumer organisations called for information about hardship supports to be directly communicated to customers, including through bills:

*‘Plain English terminology information about the existence of support measures, including direct contact information for hardship specialist support, to be made available or inserted with regular billing communications, provided by email (where appropriate), and made available to community and emergency support organisations, financial counsellors and other assistance providers.’<sup>7</sup>*

In response to PIAC’s submission, the AER stated that ‘providing information about (retailers’) hardship policy **within billing communications**, and to third parties such as financial counsellors, would be considered

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<sup>5</sup> Noting that retailers must publish their Hardship Policy on their website in accordance with section 43(3)(b)(iii) of the Retail Law

<sup>6</sup> SACOSS, Working to make ends meet: Low income workers and energy bill stress, November 2019 [https://www.sacoss.org.au/sites/default/files/public/191120\\_SACOSS%20Waged%20Poor%20Full%20Report\\_FINALv2.pdf](https://www.sacoss.org.au/sites/default/files/public/191120_SACOSS%20Waged%20Poor%20Full%20Report_FINALv2.pdf)

<sup>7</sup>See summary of PIAC’s submission on the Draft Customer Hardship Policy Guideline contained in the AER’s Notice of Final Instrument, March 2019 p.33 <https://www.aer.gov.au/system/files/AER-Customer-Hardship-Policy-Guideline-March-2019-Notice.pdf>

good practice’.<sup>8</sup> Similarly, under the Victorian Payment Difficulty Framework (PDF) retailers are expected to be proactive in communicating information about the assistance available under the PDF to **all residential customers**. The PDF *Energy Compliance and Enforcement Policy Guidance Note* states ‘information about how to access assistance must be provided clearly and appropriately having regard to its nature, in plain language and legibly, as required by clauses 76(1), 86 and 87 of the Code’,<sup>9</sup> examples of compliant conduct for proactive communication methods include:

*‘contract terms and conditions (welcome packs), **bills, bill inserts and notices**. Information about the assistance and how to access it should also be available from easily accessible locations on retailer websites and via retailer contact centres when customers ask for payment assistance before the pay-by date of their bill has passed.’<sup>10</sup>*

The evidence suggests that in the absence of a direct regulatory obligation, NEM retailers have not adopted the AER’s ‘good practice’ billing communication methods for hardship support information. We therefore submit a non-rules based approach to bill content and billing requirements would not necessarily lead to better outcomes for customers, and we support the solution proposed in the Rule Change Request.

### **The additional consumer protections test**

The proposed new Rule 25 contained in the Rule Change Request provides:

#### **25 Better Bills Guideline**

*(1) The AER must, in accordance with the retail consultation procedure, develop, maintain and publish the Better Bills Guideline (the **Guideline**).*

*(2) The objective of the Guideline (the **Better Bills Objective**) is to improve the experience of small customers in relation to billing for retail supply of energy.*

*(3) The supporting principles of the Better Bills Objective (the **Supporting Principles**) are:*

*(a) ensure small customers can:*

*(i) easily identify key information;*

*(ii) easily verify that the bill conforms to their retail contract;*

*(iii) easily verify how much energy they consume and how their bill is calculated;*

*(iv) confidently query or dispute bills; and*

*(v) confidently navigate the market and seek the best offer.*

*(4) In making the Guideline, the AER must have regard to the Better Bills Objective and the Supporting Principles.*

*(5) The Guideline may specify:*

*(a) requirements as to the content and form of retail energy bills;*

*(b) requirements as to the manner of issue or delivery of a retail energy bill to a small customer; and*

*(c) any other requirements that the AER considers necessary to give effect to the Better Bills Objective and Supporting Principles.*

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<sup>8</sup>AER, Final Notice: Customer Hardship Policy Guideline, March 2019, p.33 <https://www.aer.gov.au/system/files/AER-Customer-Hardship-Policy-Guideline-March-2019-Notice.pdf>

<sup>9</sup> ESC Vic, Payment Difficulty Framework Energy Compliance and Enforcement Policy Guidance Note, 2017, p.12 [https://www.esc.vic.gov.au/sites/default/files/documents/payment-difficulty-framework-energy-compliance-and-enforcement-policy-guidance-note-20171222\\_v2.pdf](https://www.esc.vic.gov.au/sites/default/files/documents/payment-difficulty-framework-energy-compliance-and-enforcement-policy-guidance-note-20171222_v2.pdf)

<sup>10</sup> [https://www.esc.vic.gov.au/sites/default/files/documents/payment-difficulty-framework-energy-compliance-and-enforcement-policy-guidance-note-20171222\\_v2.pdf](https://www.esc.vic.gov.au/sites/default/files/documents/payment-difficulty-framework-energy-compliance-and-enforcement-policy-guidance-note-20171222_v2.pdf) p.12

- (6) *The Guideline may specify requirements that vary, including by reference to:*
- (a) *the type or types of customer;*
  - (b) *the type of energy supplied to a customer;* (c) *the regulatory requirements that apply in a given jurisdiction;*
- (7) *The AER may publish on its website:*
- (a) *a sample bill (or bills); and/or*
  - (b) *an explanation of the key terminology in a retail energy bill.*
- (8) *The AER may, from time to time, amend the Guideline in accordance with the retail consultation procedure.*
- (9) *In issuing a bill to a small customer, a retailer must comply with the Guideline.*
- (10) *This rule applies in relation to standard retail and market retail contracts.*

As noted by the AEMC:<sup>11</sup>

*When assessing a rule change that relates to the NERR, and therefore the NERO, the NERL sets out that the AEMC may 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. However, where relevant (i.e. when the review or rule change relates to small customers), the AEMC must also satisfy itself 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" (section 236(2)(b) of the Retail Law).*

In the Consultation Paper, the AEMC proposed the following criteria to guide its assessment in determining whether the proposed Rule will contribute to the achievement of the NERO and is compatible with the consumer protections test:<sup>12</sup>

- **Transparency of information** — *a well-functioning retail market requires customers to have adequate, clear and timely information about the service they are buying and the price they are paying for that service. The Commission will consider the extent to which the rule change is likely to improve, through better information provision, consumers' understanding of their energy bills, which in turn may help them better manage their energy costs.*
- **Consumer engagement, choice and participation** — *all consumers should have the opportunity to make informed decisions and choices about electricity, gas or retail services. The Commission will consider the benefits of the rule in promoting consumer engagement, choice and participation in the market; immediately and into the long-term. These will include the benefits of fostering efficient investment and operational decisions over time.*
- **Regulatory and administrative burden** — *altering what retailers must put on energy bills, and introducing new requirements (e.g. particular delivery modes), may impose immediate and ongoing costs on retailers (e.g. changes to their billing systems and/or paper bill delivery costs). Also, requiring the AER to develop, monitor and keep up to date a mandatory guideline would impose new*

<sup>11</sup> AEMC, Applying the Energy Market Objectives, 8 July 2020, p.9 [https://www.aemc.gov.au/sites/default/files/2019-07/Applying%20the%20energy%20market%20objectives\\_4.pdf](https://www.aemc.gov.au/sites/default/files/2019-07/Applying%20the%20energy%20market%20objectives_4.pdf)

<sup>12</sup> <sup>12</sup> Australian Energy Market Commission, Bill Contents and billing requirements Consultation paper, 24 September 2020, p. 26

*costs on the AER. The Commission will consider the regulatory and administrative benefits and costs associated with the rule change proposal.*

SACOSS submits the inclusion of information in energy bills about supports available for customers struggling to pay their bills, and how to access those supports is an essential component of the 'transparency of information' and 'consumer engagement, choice and participation' criteria. Access to knowledge of the supports available (including information on concessions, energy rebate and relief schemes, Centrepay and energy efficiency) will enable customers to better manage their energy costs, and customers who are more informed of their rights to support are more likely to have the confidence to engage with their retailer around paying their energy debt.

The robust operation of the consumer protections contained in the Retail Law and Retail Rules is essential to promoting consumer confidence and trust in the energy market. As stated by the AEMC, 'where consumers have confidence in a market, they are more likely to engage in that market, which promotes efficient outcomes'<sup>13</sup>. Broad customer awareness of the consumer protections under the NECF is central to the operation of those protections. Customers who are informed of their rights are more likely to feel empowered and willing to engage with their retailer. SACOSS' research suggests customers often don't seek help because they are ashamed or feel stigmatised, and we believe a greater awareness of the universal application of these consumer protections would work to reduce that stigma. Informed customers are also potentially more likely to persist with seeking help if they encounter a negative experience on first contacting their retailer (which we understand is the case for many customers). The more customers who are assisted with accessing available supports through their retailer (as outlined above), will lead to reduced debt and disconnection, and the avoidance of the associated social impacts. Relevantly, customers who are informed of supports from retailers will also be less likely to pay for their energy bills by borrowing from pay-day lenders, which can lead to significant long-term impacts on customers' credit ratings.

#### **More Preferable Rule**

SACOSS is seeking the AEMC make a more preferable rule that amends proposed Rule 25(3)(a) by including an additional supporting principle 25(3)(a)(vi) to: **ensure small customers can easily understand supports are available if they are having trouble paying their bill, and how to access those supports** (this is SACOSS' preferred approach). Alternatively, SACOSS is seeking the '**key information**' referenced in Rule 23(3)(a)(i) be defined within the Rules to include: information communicating supports available to customers experiencing payment difficulties (including hardship customers) and how to access those supports (direct and dedicated phone number, website links).

A more preferable Rule can only be made if the AEMC is satisfied it will, or is likely to, better contribute to the relevant energy objective than the rule proposed in the rule change request, and if the subject of the preferable rule is consistent with the scope of the issue identified in the rule change request.<sup>14</sup>

SACOSS considers the proposed amendment will better contribute to the NERO and the consumer protections test than the proposed Rule, for the reasons outlined above. The proposed Rule doesn't specifically consider the 'development or application of consumer protections for small customers', and SACOSS considers it would be a significant lost opportunity to fail to include the proposed amendment in a new rule relating to bill contents and billing requirements.

The Rule Change request contains a statement of issues, including (our emphasis):

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<sup>13</sup> AEMC, Applying the Energy Market Objectives, 8 July 2020, p.9 [https://www.aemc.gov.au/sites/default/files/2019-07/Applying%20the%20energy%20market%20objectives\\_4.pdf](https://www.aemc.gov.au/sites/default/files/2019-07/Applying%20the%20energy%20market%20objectives_4.pdf)

<sup>14</sup> AEMC, Applying the Energy Market Objectives, 8 July 2020, p.10 [https://www.aemc.gov.au/sites/default/files/2019-07/Applying%20the%20energy%20market%20objectives\\_4.pdf](https://www.aemc.gov.au/sites/default/files/2019-07/Applying%20the%20energy%20market%20objectives_4.pdf)

### **A missed opportunity**

*The current rule also fails to acknowledge the full potential of bills to improve consumer confidence when navigating the energy market. For example, bills **represent an opportunity to raise awareness of key tools and services available** and could benefit from prominent links to ombudsman schemes and the Australian Government's energy price comparison website, Energy Made Easy. Greater awareness of these services would assist customers in understanding their rights and navigating available offers.*<sup>15</sup>

SACOSS agrees that bills do represent a unique opportunity to directly communicate information to customers. We support raising awareness of Ombudsman schemes and EME, but this is only part of the picture. More importantly, customer awareness needs to be raised of the consumer protections contained in the Retail Law and Retail Rules. SACOSS argues that awareness of consumer protections would greatly assist customers with understanding their rights, promote engagement, allow customers to better manage their energy costs, and would lead to reduced energy debt and disconnection. We strongly urge the AEMC to consider making a more preferable rule by including a requirement that retailers include information on supports available for customers who are having trouble paying their bill, and how to access those supports.

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

Yours sincerely,



Ross Womersley  
Chief Executive Officer

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<sup>15</sup> The Hon Angus Taylor MP, Minister for Energy and Emissions Reduction, Better Bills AEMC Rule Change Request, September 2020, p.4 [https://www.aemc.gov.au/sites/default/files/documents/rrc0036\\_rule\\_change\\_request\\_pending.pdf](https://www.aemc.gov.au/sites/default/files/documents/rrc0036_rule_change_request_pending.pdf)