SACOSS
South Australian Council of Social Service

Submission to the Australian Energy Regulator on the Review of Payment Difficulty Protections in the National Energy Customer Framework: Issues Paper

July 2024

Submission on the AER's Review of payment difficulty protections in the National Energy Customer Framework: Issues Paper. July 2024.

First published in June 2024 by the South Australian Council of Social Service

47 King William Road

Unley, SA, 5061 Australia

Ph (08) 8305 4222

Fax (08) 8272 9500

Email: sacoss@sacoss.org.au

Website: www.sacoss.org.au

Contents

Introduction 4
Summary of SACOSS' submissions 4
Background 5
Energy Affordability in South Australia 7
Responses to the AER's Issues Paper 14
Feedback on the AER's Proposed Approach to the Review 14
Other jurisdictional approaches to strengthening protections for consumers experiencing payment difficulty 18
Eligibility for payment difficulty protections under the current framework 21
Early identification of consumers experiencing payment difficulty 23
Supporting effective engagement with consumers experiencing payment difficulty 24
Tailored assistance for consumers experiencing payment difficulty 24
Disconnection as a last resort 25
Costs and benefits of changes to the NECF 26

Introduction

The South Australian Council of Social Service (SACOSS) is the peak non-government representative body for non-government 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, businesses, and communities for actions that disadvantage South Australians experiencing vulnerability.

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 disproportionately impacts people on low-incomes or experiencing disadvantage. SACOSS participates and engages in regulatory processes relating to the provision of essential services to promote better outcomes for South Australian households, and to ensure people's needs are met by affordable, clean, reliable and efficient energy and water systems.

SACOSS would like to thank the Australian Energy Regulator (AER) for the opportunity to comment on the *Review of payment difficulty protections in the National Energy Customer Framework: Issues Paper*[1] (the Issues Paper). SACOSS welcomes this long-awaited review and commends the AER for developing a comprehensive Paper that draws on extensive and meaningful direct consumer engagement and research. The Issues Paper reflects many of SACOSS' long-held concerns with the operation of the *National Energy Consumer Protection Framework* (NECF) in South Australia, and the failure of the Framework to adequately protect all consumers, but particularly low-income households, from energy debt and disconnection. SACOSS strongly supports the submission of Consumer Action Law Centre to this process, and is a signatory to the Justice and Equity Centre's (previously the Public Interest Advocacy Centre's) joint submission (the JEC Joint Submission). This submission will touch on some South Australian specific issues, and we refer to the JEC Joint Submission to reflect our broader feedback on the Issues Paper.

Summary of SACOSS' submissions

- SACOSS welcomes this long-awaited Review and urges the AER to support large-scale and meaningful reform of the structural legal framework underpinning the NECF.

[1] Australian Energy Regulator, *Review of payment difficulty protections in the National Energy Customer Framework: Issues Paper*, May 2024

- SACOSS strongly supports the development of a prescriptive framework with guiding principles, containing clear obligations on retailers and supported by robust monitoring, reporting, compliance and enforcement.
- SACOSS broadly supports alignment with the 'entitlement framework' contained in the Victorian Payment Difficulty Framework, as well as alignment with other pricing and contact protections contained in the Victorian Energy Retail Code.
- SACOSS is calling on the AER to expand the scope of this Review to encompass the strengthening and updating of all protections under the NECF (including pricing and contract protections), and to include the development of protections for households that are reliant on new technologies or non-traditional market arrangements for their energy supply.
- SACOSS is seeking grid consumption data reporting requirements for Distributors to inform policy development and the growing energy divide.
- In line with the Californian example, SACOSS supports the introduction of additional consumer protections associated with complex tariff design.
- In balancing the cost and benefits of large-scale consumer protection reform, SACOSS strongly considers the AER should accord greater weight to the importance of ensuring consumers are supported to access meaningful assistance to avoid the invidious impacts of energy debt and disconnection.
- SACOSS broadly supports alignment with the protections under the Victorian Energy Retail Code, which will reduce complexity for retailers and may lead to greater consistency in the application of supports across jurisdictions.
- SACOSS is seeking the AER consider the additional challenges and issues identified in this submission, as part of its Review.

Background

SACOSS has a long-standing interest in the operation and effectiveness of energy consumer protections under the *National Energy Consumer Protection Framework* (NECF), as evidenced by our previous extensive work in this area, including through the following Reports and submissions:

- SACOSS, Submission to the Essential Services Commission of South Australia on the Review of the NECF in South Australia, 13 May 2015
- SACOSS, Report on the Review of the Australian Energy Regulator's and Essential Services Commission of Victoria's Frameworks for Customers Facing Payment Difficulties, November 2016
- SACOSS, Report on the Effectiveness of Supports for Customers Experiencing payment difficulties: Strengthening protections for customers under the NECF, June 2018
- SACOSS, Submission to the AEMC's Consultation Paper on the National Energy Retail Amendment (Strengthening protections for customers in hardship) Rule 2018, 28 June 2018

- SACOSS, Submission to the AEMC Draft Rule determination: National Energy Retail Amendment (Strengthening Protections for Customers in Hardship) Rule 2018, 18 October 2018
- SACOSS, Submission on the AER's standardised statements for use in customer hardship policies, 7 December 2018
- SACOSS, Submission to the AER on the Hardship Guideline Issues Paper, 14 January 2019
- SACOSS, AER Review of Consumer Protections for Future Energy Services, 14 February 2023

Many of the issues raised in SACOSS' Reports on the NECF from 2016 and 2018 remain relevant to the current Review, and we are seeking the AER consider those Reports as part of the consultation on this Issues Paper. Our Report from 2018 details a growing energy affordability crisis in South Australia, and points to the limitations of the existing consumer protection framework which we argue has resulted in the failure of retailers to provide early and adequate supports for customers experiencing payment difficulty. As set out in the Issues Paper and the JEC Joint submission, the energy affordability crisis has worsened in the six years since that Report was prepared, the market has become even more complex, the AER's *Customer Hardship Policy Guideline*[2] has not improved the process of early identification or support for energy customers experiencing payment difficulty, and there is an urgent case for large-scale and meaningful reform of the structural legal framework underpinning the NECF.

Against the background of previous work on strengthening NECF consumer protections undertaken by the AER, the Australian Energy Market Commission (the AEMC), consumers and their advocates, SACOSS strongly submits this Review represents an unmissable opportunity to identify and recommend to Energy Ministers fundamental amendments to the *National Energy Retail Law* (NERL),[3] with supporting changes the *National Energy Retail Rules* (NERR).[4] Now is not the time for tinkering with Guidelines, the underlying structure and definitions contained in the NERL establish a framework that is failing to achieve its objective of supporting *all* customers experiencing payment difficulty to access appropriate assistance and avoid debt and disconnection. We are urging the AER to recommend significant changes to the Law, addressing the distinction between customers experiencing payment difficulty and hardship customers by removing the circuitous definition of 'hardship customer', and ensuring the implementation of an 'entitlement framework' where *all* residential energy customers are entitled to mandated forms of assistance, in line with

[2] AER, Customer Hardship Policy Guideline 2019. Throughout the consultation on the development of this Guideline, SACOSS repeatedly raised the exclusion of 'customers experiencing payment difficulty' from the scope of the Guideline.

[3] *National Energy Retail Law (South Australia) Act* 2011

[4] National Energy Retail Rules

the *Victorian Payment Difficulty Framework* (VPDF).[5] SACOSS strongly supports the development of a prescriptive framework with guiding principles, containing clear obligations on retailers and supported by robust monitoring, reporting, compliance and enforcement.

In addition, we are calling on the AER to expand the scope of this Review to encompass the strengthening and updating of all protections under the NECF, including pricing and contract protections, with a view to reducing or avoiding some of the drivers of payment difficulty. Importantly, the current energy consumer protections frameworks have not kept up with new technologies and increasing energy inequities created by the transition. To properly protect all consumers now and into the future, new protections are urgently needed to bring the frameworks into line with the rapidly changing energy environment. This includes additional protections on contracts and pricing (including price certainty), Explicit Informed Consent requirements, complex tariff changes, equitable pricing, smart meters and consumer data, remote disconnection, Virtual Power Plants and consumer energy resources.

We are also seeking the expansion of the reporting and monitoring frameworks to Distribution Network Service Providers (DNSPs), to allow for consumption data to be obtained that will better inform calculations of 'average' energy usage patterns (acknowledging there is no longer an 'average' customer), leading to a more meaningful analysis of energy affordability for different customer segments (including hardship customers, non-solar, solar, and solar with batteries). More accurate consumption data will also better inform Default Market Offer (DMO) determinations, our understanding of network cost distribution throughout the transition, and the development of equitable tariff design.

Energy Affordability in South Australia

South Australian energy consumers are continuing to experience a worsening energy affordability crisis. The AER's most recent retail performance data for Q3 2023/24 shows increasing numbers of South Australian energy customers are repaying energy debt, and have the highest average debt levels in the Nation. It is clear that energy is no longer affordable for many households in this State. The AER's data shows that:

- South Australia has the highest average energy debt in National Energy Market (NEM) jurisdictions. The average energy debt of (non-hardship) residential customers in SA is $1,379 (up from $1,227 12 months ago), $286 above the National average of $1093. Notably, SACOSS' 2018 Report on the effectiveness of the NECF[6]

[5] Essential Services Commission of Victoria, Energy Retail Code of Practice, Version 2, Part 6, 1 October 2022

[6] SACOSS, Report on the Effectiveness of Supports for Customers Experiencing payment difficulties: Strengthening protections for customers under the NECF, June 2018, pp. 9-10

argued that energy affordability issues had reached a crisis point in South Australia at that time (2017-18), when average debt levels were $919; those average debt levels have now increased by $460, or 50%.

- The number of customers repaying energy debt in South Australia has continued to increase from 22,331 in Q1 2022-23 to 29,862 in Q3 2023-24 (an increase of 33.7% in 18 months). This is in line with the 35% increase in the number of customers repaying energy debt seen Nationally from Q1 2022-23 to Q3 2022-23 (increasing from 154,300 to 208,380 in Q3 2023-24).

- There have been consecutive quarterly increases in the number of customers repaying energy debt over the last two quarters with 29,103 South Australian customers repaying energy debt in Q2 2023-24 (an increase of 12.6% from Q1 2023-24) and 29,862 in Q3 2023-24.

- The average debt on entry into hardship programs for SA customers in Q3 2023-24 was $1,668 (the highest after Tasmania), and $444 above the national average of $1,224. Average debt on entry into a hardship program in South Australia has increased by $193 from $1,475 in Q2 2023-24.

- The average debt of hardship customers in SA has decreased in the last 12months – from $2,534 in Q3 2022-23, to $2,160 in Q3 2023-24, but is still $480 above the National average of $1,680 (and is up $297 from pre-pandemic levels of $1,863 in 2018-19). Tasmania is the only state with higher average hardship debt – at $2,506.

- The percentage of residential customers in SA entitled to a concession is marginally down from 26.5% (213,706) in Q3 2022/23 to 23.75% (193,974) in Q3 2023/24.

- South Australia has the lowest percentage of hardship customers receiving a concession in the NEM. The number of hardship customers receiving concession in South Australia is 7,418 – or 37.49% of hardship customers. This is up from 6,536 hardship customers in Q3 2022/23, but is down on the previous percentage (40.38% in Q3 2022/23). Nationally, 53.11% of hardship customers are receiving a concession, with Tasmania having the highest percentage at 67.11%.

- In Q3 2023/24, 834 customers were disconnected in SA, compared to 798 during the same quarter 12 months ago. There has been a significant increase in the number of disconnections from the last quarter (Q2 2023/24), virtually doubling (up by 94%) from 428.

- The number of customers on payment plans in SA has decreased by 1,176 or 7% in three months, from 16,399 or 2.0% of customers in Q2 2023/24, to 15,223 or 1.9% of customers in Q3 2023/24, and is still well below pre-pandemic levels (down from 2.7% of customers in 2017/18).

- Hardship customer numbers in SA have increased by 22% in the past 12 months, up from 16,202 in Q3 2022-23 to 19,784 in Q3 2023/24 (or 2.42% of customers). This may be in response to the AER's Compliance and Enforcement priorities, and the industry guidance letter sent to retailers in January 2024 about identifying customers experiencing payment difficulty and hardship.

- Around 39% of ALL energy customers (or 298,175 customers) are currently on time of use (TOU) retail tariffs in South Australia, and SACOSS suggests most of these households do not know they are on a TOU, and even if they did know, cannot change energy usage patterns and are at risk of experiencing extreme bill shock.[7]
- 3.6% of SA smart meter customers were on a TOU retail tariff in 2020/21, and 83.8% of SA smart meter customers are now on a TOU retail tariff:
  - 90% of AGL's smart meter customers in SA are on a TOU retail tariff
  - 97.7% of Alinta's smart meter customers in SA are on a TOU retail tariff
  - 100% of Origin's smart meter customers in SA are on a TOU retail tariff

- The ACCC's recent analysis of TOU plans in South Australia found that in 2023-24, for three retailers (anonymised), between 85% and 100% of customers were paying tariffs that were **at or above the DMO**.[8] Remembering the DMO is not designed to be the cheapest offer in the market, but is a cap on standing offers and is there to protect 'disengaged' consumers from 'unjustifiably high' prices.

South Australian households also continue to pay the highest per unit electricity prices in the Nation, significantly contributing to the energy affordability crisis in this State. The ACCC's *Inquiry into the National Electricity Market Report*[9], published in June, shows the median effective price for electricity in South Australia continued to increase in the last two quarters of 2023/4 to reach nearly 40 c/kWh in Q3 2023/24, well above other States (see Graph, below):

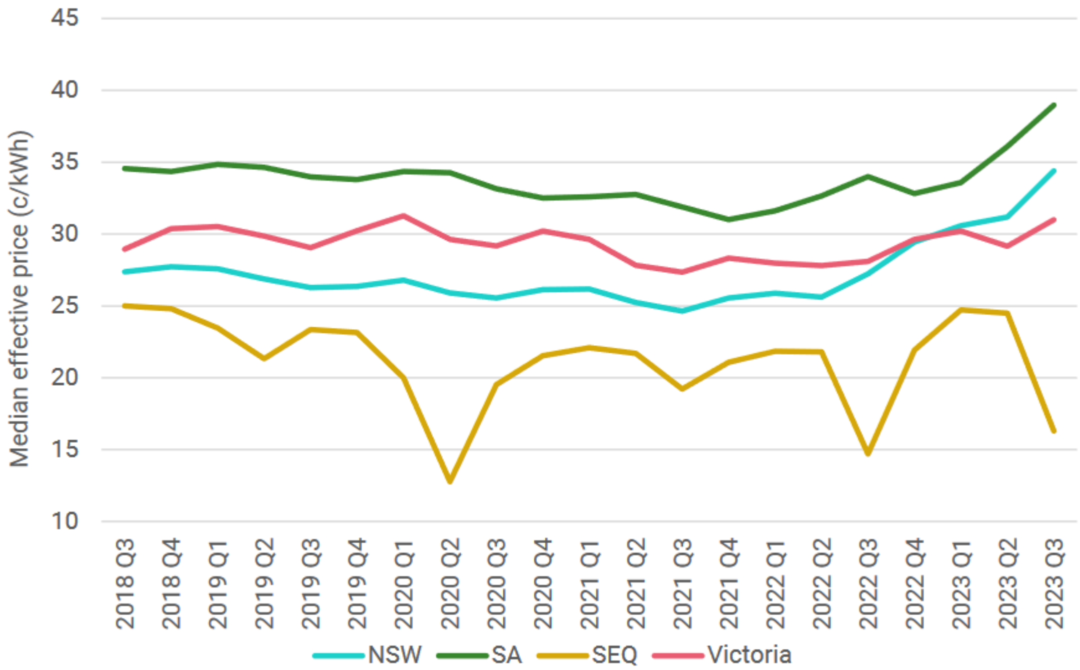
[7] SACOSS, Submission to the AEMC on the Draft Rule Determination: accelerated smart meter deployment, 3 June 2024

[8] ACCC, Inquiry into the National Electricity Market Report, December 2023, p. 56

[9] ACCC, Inquiry into the National Electricity Market Report, June 2024, p. 28

Figure 3.1: Residential customers paid higher effective prices in all regions except South East Queensland

Median effective prices paid by residential customers by region, all quarters, from quarter 3 of 2018 to quarter 3 of 2023



Source: ACCC analysis of retailer billing data. Nominal dollars, excluding GST.

Figure 1: Median effective residential price for electricity. Source: ACCC, June 2024

We know that from 1 July 2023, South Australians experienced dramatic energy price increases for both standing offer and market offer customers. The ACCC's June Report shows the sharp increases effective prices for South Australian households in Q3 2023, reaching as high as 49 c/kWh:

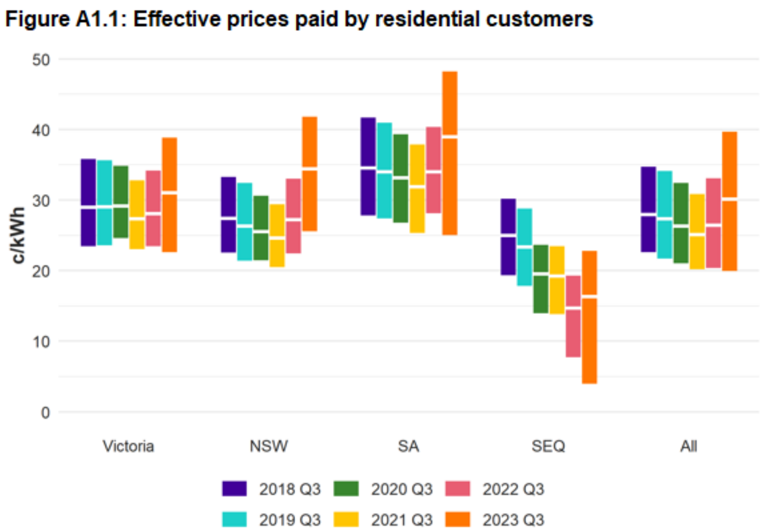


Figure 2: Effective Prices paid by residential customers. Source ACCC, June 2024[10]

Notably, SACOSS' Cost of Living Snapshot for the March Quarter 2024 shows the Annual Consumer Price Index (CPI) Increase for electricity in Adelaide was 13.5%, compared to a National increase of 2% (see Figure 2, below).[11] This represents a significant disparity between National price trends and the CPI for electricity in Adelaide over 2023-24. For the March Quarter 2024, the CPI for electricity continued to rise in Adelaide (by 1.1%), while it dropped across the country by -1.7%.

[10] ACCC, Inquiry into the National Electricity Market Report, June 2024, Appendix E

[11] SACOSS, Cost of Living Snapshot: Consumer Price Index – March Quarter 2024

Essential Commodities	March Quarter CPI Increase		Annual CPI Increase (March 2023 – Mar 2024)	
	Adelaide %	**Australia %**	**Adelaide %**	**Australia %**
Food	0.8	0.9	3.6	3.8
Fruit and Vegetables	2.2	2.5	0.7	-0.2
Housing	1.2	0.7	7.3	4.9
Rent	2.2	2.1	6.4	7.8
Utilities	0.9	-1.4	10.7	1.6
• Electricity	1.1	-1.7	13.5	2.0
• Water	0.0	0.0	3.9	5.7
• Gas	0.6	-1.5	4.9	-2.3
Health	1.9	2.8	4.1	4.1
Transport	0.0	0.5	3.8	3.6
• Petrol	-1.9	-1.0	5.2	5.2
CPI All Groups	**0.7**	**1.0**	**4.3**	**3.6**

Figure 3: Cost of Living Snapshot: March Quarter 2024. Source: SACOSS, 2024 [12]

The ACCC's December 2023 *Inquiry into the National Electricity Market Report*[13] supports the need for additional residential energy market pricing and contract protections. For the first time, the ACCC used its compulsory acquisition powers to look at the existing market retail energy contracts of over 5 million customers providing pricing information current up to August 2023. Previously, the ACCC had analysed retailers' 'acquisition offers' which are published on the Energy Made Easy website.

The ACCC found that approximately 70% of customers in 2023 are on Older Plans, compared to 30% of customers on Newer Plans, and 82% of residential customers were on calculated annual prices at or above the median offer on Energy Made Easy and Victorian Energy Compare, up from 43% in 2022. In all states, customers on Older Plans are paying higher average prices than those on Newer Plans.[14] Showing retailers are pricing existing customers differently to 'acquisition' offers, and customers need to continually re-engage in the market to obtain the 'benefits' of competition.

[12] SACOSS, Cost of Living Snapshot: Consumer Price Index – March Quarter 2024

[13] ACCC, Inquiry into the National Electricity Market Report, December 2023

[14] ACCC, Inquiry into the National Electricity Market Report, December 2023, p.68

Overall, the ACCC found that nearly half (47%) of all customers and 42% of concessions customers are paying equal to or above the DMO price, and that 79% of customers would be better off if they switched to competitive acquisition offer in Energy Made Easy.[15] In relation to South Australia, the ACCC found that 61% of South Australian energy customers on flat rate plans are paying at or above the DMO, with 9% of customers paying 25% or more above the DMO in 2023:[16]

Supplementary Table C9.6
State by state, 2023

	VIC	NSW	SA	SEQ
>25% below	7%	2%	2%	2%
20-25% below	8%	1%	2%	0%
15-20% below	4%	1%	11%	3%
10-15% below	9%	6%	2%	3%
5-10% below	14%	17%	10%	12%
1-5% below	17%	12%	13%	21%
Equal to DMO/VDO	22%	21%	17%	33%
1-5% above	3%	15%	10%	12%
5-10% above	1%	11%	14%	3%
10-15% above	2%	4%	5%	3%
15-20% above	3%	2%	4%	1%
20-25% above	1%	6%	2%	1%
>25% above	9%	2%	9%	6%

Figure 4: Customers on flat rate offers at or above the DMO by State. Source: ACCC, December 2023

In addition to the price of electricity, the calculation of 'average annual usage' is key to an analysis of energy affordability in this State. The AER's *Annual Retail Market Report* for 2022/23[17] found that despite having amongst the lowest average annual household electricity usage in the Nation (South Australia is 4,583 kWh and Victoria is 4,561 kWh due to high gas penetration), South Australia has amongst the most unaffordable energy in the NEM.

SACOSS considers there is no longer a meaningful 'average' annual electricity grid-consumption / usage amount for households in this State due to the significant and increasing per-capita penetration of rooftop solar. We have been calling for public reporting of solar, non-solar and solar with battery grid consumption data from distributors to gain a clearer picture of energy affordability, the inequitable distribution of network costs, and to address equity concerns throughout the transition. SACOSS submits that 'average energy usage' calculations used to measure energy affordability in South Australia do not adequately consider the impact of lower grid consumption due to roof-top solar penetration, or higher energy consumption patterns of hardship households, and this Review represents an opportunity to provide greater clarity.

---

[15] ACCC, Inquiry into the National Electricity Market Report, December 2023, p.68

[16] ACCC, Inquiry into the National Electricity Market Report, Appendix C Cost Stack Data and Charts in the NEM, December 2023

[17] AER, Annual Retail Market Report 2022-23, 30 November 2023

Notably, the AER did not report on hardship household energy usage in 2022-23. In its 2021-22 *Annual Retail Performance Report*, the AER estimated that hardship households in SA use 73% more energy than the average South Australian household (7,830 kWh average annual hardship household usage, compared to 4,526 kWh for average households),[18] which means energy is more unaffordable for hardship households in South Australia, at around 8% of disposable income. With energy affordability being the main driver of payment difficulty, SACOSS considers more needs to be done to:

- protect existing market contract customers from unreasonable price increases,
- protect customers from being transferred to complex tariffs without consent, and
- require data from DNSPs to gain a better understanding of energy usage and cost allocation to inform consumer protections and equitable tariff design.

Responses to the AER's Issues Paper

As outlined earlier, SACOSS is a signatory to the JEC Joint submission, and consequently we have provided limited feedback on the specific consultation questions, referring to the JEC Joint Submission to reflect our views on the Issues Paper.

Feedback on the AER's Proposed Approach to the Review

Question 1. Do you have any feedback on the proposed approach for the review?

In responding to this question, you might like to consider:

- the effectiveness of the proposed indicators for measuring the intended outcome
- the appropriateness of the proposed criteria for assessing options
- factors to consider in assessing the short-term and long-term impacts of potential changes, including other evidence-based scenarios that could be used to test potential future impacts
- other objectives, intended outcomes, indicators or criteria that we should consider
- the limitations of what payment difficulty protections may be able to achieve in the NECF.

SACOSS broadly supports the approach of the review as outlined in the Issues Paper. We support the case for change as put forward by the AER and emphasise that it is essential that there is a primary focus on consumer outcomes and experience.

However, the scope of the review could (and should) be expanded to ensure that it is not only future-focused but delivers on meaningful change to seriously address consumer needs when experiencing payment difficulty. All household energy consumers should be able to have their outcomes considered under this framework, regardless of their metering or billing arrangements. SACOSS shares the concerns outlined in the JEC submission that

[18] AER, [Annual Retail Markets Report 2021-22](), November, p. 129

consumers on embedded networks are not being considered as part of this review, and that there still lacks clear processes or opportunity for payment difficulty protections for consumers on prepayment meters.

Further, the AER needs to provide clarity on how consumer outcomes are 'weighted' against market/retailer costs and impacts. In considering the costs and benefits of potential changes, consumers must come first. The primary goal should be to enhance consumer protections and support mechanisms to ensure that no household is left struggling to meet their basic energy needs. This will be addressed further in our response to Question 8.

We also note that there are some areas of consideration that have not been elaborated upon sufficiently in the Issues Paper, and that deserve greater and more thorough consideration as part of the review. We have identified and described these issues in more detail below.

The need for a protection system that fits properly within wider systems and what is happening in the economy

It is essential for the protection system to be adaptable to changes in the economy and the evolving needs of consumers. For instance, during economic downturns, protections should be strengthened to support those facing financial hardship. Conversely, during periods of economic growth, the system should still maintain adequate protections to ensure continued support for vulnerable households. This dynamic approach would ensure that the framework remains relevant and effective. There also needs to be a greater recognition of the fact that often, consumers end up facing payment difficulty for structural reasons. The framework should recognize that payment difficulties often arise from systemic issues, such as the complexity of finding and staying on competitive retail offers and accessing support mechanisms. Addressing these structural problems requires simplifying the process of switching providers (and minimising the need for consumers to frequently switch retailers/engage in the retail market to avoid higher prices), ensuring transparency in pricing, and making support services more accessible - including requiring retailers to be more proactive in identifying and addressing payment difficulty.

Consideration of stigmatising language

The language used in the framework should be carefully considered to avoid stigmatizing those experiencing payment difficulties. Terms like "hardship" can carry negative connotations, while "payment difficulty" is more neutral and inclusive. Clear and consistent language should be used to ensure that all consumers understand the support available to them, and that they are entitled to it.

Future protections work is important as there is a widening gap between those who can safely reduce their usage and those who can't

There is a growing disparity between households that can afford to invest in energy-efficient technologies and those that cannot[19]. The framework must address this gap by providing targeted support to those unable to reduce their energy usage without compromising their health and well-being. This might include financial assistance for energy-efficient appliances or subsidies for renewable energy installations. We are also concerned by references to high usage households as this is not always helpful; some households cannot or should not meaningfully be reducing their energy use, or have already done so to a level that negatively affects their wellbeing. If, having reduced their consumption levels as much as is reasonable and/or safe households still cannot afford their energy use, other options and assistance need to be made available to them.

More needs to be done to reduce the occurrence of payment difficulty in the first place

Proactively reducing payment difficulties can lead to significant cost savings for the system and reduce the stress and negative impacts on individuals. Preventative measures could include providing better access to affordable energy, offering access to affordable energy efficiency upgrades, and implementing early intervention programs to assist those at risk of falling into debt.

Hidden payment difficulty needs to be addressed

Many households manage to pay their energy bills by sacrificing other essentials, borrowing from friends or family, or using credit products, which can exacerbate their financial situation and lead to other negative outcomes such as poor health[20]. The framework should include measures to identify and support these hidden cases of payment difficulty, ensuring that all consumers receive the help they need.

Lack of protections for people in debt who switch retailers

When consumers switch retailers, they lose access to payment difficulty supports, which can discourage them from finding better plans. The framework should include protections that ensure continuity of support when switching providers, allowing consumers to benefit from more competitive offers without losing necessary assistance.

[19] ECA and CSIRO, 2023, *Stepping Up: A smoother pathway to decarbonising homes*

[20] Willan, Torabi and Horne, 2023, *Recognition of justice in Australia: Hidden energy vulnerability through the experiences of intermediaries*

Recognise the impact of cost and quality of housing on subsequent energy affordability and use

Housing quality directly influences energy consumption and affordability. Poorly insulated homes require more energy to maintain comfortable temperatures, leading to higher energy bills[21]. Recognising this, the framework should advocate for improvements in housing standards and support initiatives that make energy efficiency upgrades more accessible to low-income households.

Energy protections should also factor in climate change

As climate change leads to more extreme weather conditions, energy protections must ensure that households can maintain safe and habitable living conditions. This includes avoiding disconnections during critical periods and ensuring that all homes have reliable access to energy to cope with climate extremes and natural disasters. There should be a uniform definition and approach to what constitutes as a climate extreme and/or natural disaster; at present, South Australia is the only jurisdiction that defines extreme weather in the context of preventing disconnections[22]. This is essential as evidence suggests that households tend to adapt to hot weather using energy-intensive means such as air conditioning. Resulting energy expenses can cause low-income households to have to choose between incurring insurmountable energy debt (potentially resulting in disconnection due to non-payment), or risking significant health impacts associated with extreme heat. Research suggests that for each additional day with a maximum temperature of or above 35°C causes electricity expenses to increase by 1.6% for that billing period, with the relative risk of disconnection increasing by 1.2%[23].

Costs of payment difficulty are shifted elsewhere

Unaddressed payment difficulties can lead to increased costs in other areas, such as the health system and community services[24]. By providing comprehensive support to households facing energy payment difficulties, the framework can help mitigate these broader social and economic costs.

Some people will never be able to afford the energy that they need

For individuals with long-term financial challenges, such as those with chronic mental health issues or inconsistent incomes, the framework should offer sustainable solutions. This could

[21] Chen and Feng, 2022, *Linking Housing Conditions and Energy Poverty: From a Perspective of Household Energy Self-Restriction*

[22] Regulation 8, *National Energy Retail Law (Local Provisions) Regulations 2013*

[23] Barreca, Park and Stainer, 2022, *High temperatures and electricity disconnections for low-income homes in California*

[24] Hernandez, 2016, *Understanding 'energy insecurity' and why it matters to health*

include providing ongoing financial assistance, improving access to rebates and concessions (this should be facilitated by the retailer), creating tailored payment plans that factor in income and affordability, access to energy efficient upgrades for their appliances, and ensuring that these individuals are not required to frequently switch providers to afford the energy they need.

Preventing the use of disconnection threats as a point of engagement
Retailers should not use the threat of disconnection as a means of engaging with households experiencing payment difficulties. This approach can cause undue stress and exacerbate financial hardship[25]. Retailers should be required to meaningfully engage households experiencing payment difficulty and offering assistance long before disconnection becomes a serious prospect. Further, the advent of smart meters and the risk of remote disconnection pose additional challenges, particularly where there is not a distributor involved. Initiatives such as "Knock to Stay Connected[26]" do not apply in these cases, necessitating alternative engagement strategies. The framework should ensure that retailers adopt supportive and proactive engagement practices, prioritising consumer well-being over punitive measures.

Other jurisdictional approaches to strengthening protections for consumers experiencing payment difficulty

Question 2. What can we learn from other approaches to strengthening protections for consumers experiencing payment difficulty?

In responding to this question, you might like to consider:

- other payment difficulty frameworks and protections, such as those in Victoria, New Zealand and the United Kingdom and those in other sectors or essential services
- the role of minimum standards in effective payment difficulty protections
- other examples and approaches, including industry practices and initiatives.

SACOSS supports the adoption of an entitlement framework and the creation of disconnection safeguards, in line with the VPDF. We strongly support the development of guiding principles together with a high level of prescription, including minimum mandated standards with associated monitoring and reporting, as well as robust compliance and enforcement. The evidence would suggest that retailers are driven by a risk and compliance approach when providing consumer protections, and a more robust and prescriptive framework based on the structure of the VPDF may arguably lead to earlier identification and better application of supports.

---

[25] CALC, 2024, Energy Assistance Report (4th Edition): Keeping the lights on

[26] The Energy Charter, 2023, *Knock to Stay Connected Customer Code*

As outlined in the JEC Joint Submission to this process, SACOSS agrees improvements could be made to the VPDF, and suggestions have been made within the Joint Submission based on feedback from financial counsellors and consumer organisations in Victoria. Particularly, the forms of mandated 'standard assistance' provided by retailers should include 'best offer' information, concessions and energy efficiency advice in addition to payment plans that are established having regard to a customer's capacity to pay. These should not be alternative requirements, but should all be provided as standard.

As noted earlier, the ACCC's December *Retail Pricing Inquiry Report* shows that 61% of South Australian energy customers on existing flat rate plans are paying at or above the DMO. It is not acceptable to expect customers to continually and repeatedly engage with their retailer to obtain a better offer or avoid ongoing price increases under an existing contract. SACOSS considers Explicit Informed Consent should be obtained prior to tariff or pricing changes, and retailers should have a positive obligation to proactively contact consumers and provide 'best offer' information to all residential energy consumers, as part of standard assistance obligations. It is worth noting that the consumer benefit of 'best offer' information on retailers' bills every 100 days (under the AER's Better Bills Guideline) is yet to be demonstrated, and relies on a consumer's capacity to engage.

SACOSS refers the AER to the 'price certainty' protections contained in the Essential Services Commission of Victoria's *Energy Retail Code of Practice*, which provide that price increases may only be made on a network tariff change date or annually after a fixed price period.[27] Under the NECF, retailers can change tariffs and charges with 5 days' notice.[28]

The 'repayment of arrears over not more than two years' under the Tailored Assistance Division of the VPDF should also be reviewed and removed, as the evidence suggests this mandated time period is leading to the establishment of unaffordable and unsustainable payment plans that are simply calculated on a 24-month basis, irrespective of whether the customer can afford the amounts or not, creating excessive financial stress and setting customers up to fail.

SACOSS is also concerned with addressing the drivers of payment difficulty, and we know from consumer feedback that being transferred to a TOU retail plan (without consent, advanced notification or the option to choose a flat rate plan) is leading to significant bill shock and energy stress for many households in South Australia. SACOSS has spoken to one customer whose $700 quarterly bill increased to a bill that was over $2,000 after the installation of a smart meter and reassignment to a TOU retail tariff. This customer works

[27] Essential Services Commission of Victoria, Energy Retail Code of Practice, Version 2, Clause 94

[28] National Energy Retail Rules, Rule 46

full-time, has two adult children living at home with disabilities who are with their carers during the day, lives in rental accommodation in regional South Australia and didn't know she had been moved to a TOU tariff. She has no capacity to change her energy usage to the middle of the day, does not have access to smart appliances (as she is renting) and is under devastating financial stress as a result of this significant energy bill shock. Her tariff had been increased to 77 c/kWh for a 14-hour peak period from 3pm-10am and 1am-10am. She is now experiencing energy payment difficulty and has been placed on a payment plan by her retailer, but is very concerned that she will not be able to afford her ongoing usage and to pay off arrears.

SACOSS does not support a continuation of the current approach by the AER to promote default network tariffs for smart meter customers, in circumstances where the customer impacts of mandatorily assigned TOU retail tariffs have not been adequately assessed. Any network modelling of consumer benefit that is based solely on the network tariff structure, is effectively meaningless in the absence of any visibility of actual retail TOU prices faced by customers.

South Australia and California are experiencing similar energy system challenges associated with the high penetration of roof-top solar. SACOSS refers the AER to a consideration of California's state-wide, residential opt-in time of use pricing pilot which was conducted to guide policy around default TOU pricing.[29] To our knowledge a pricing pilot was not directed by the AER or undertaken in South Australia prior to the decision to assign default TOU network tariffs to South Australian smart meter customers. It is worth noting the transition to TOU pricing for PG&E customers in California (with peak pricing from 4pm-9pm every day) was accompanied by rate plan comparison pages and bill protection for the first 12 months.[30] Neither a rate plan comparison,[31] nor bill protection[32] have been offered, or provided to South Australian smart meter customers, and SACOSS considers a rate plan comparison is absolutely essential for customers to understand if a TOU would increase or decrease their costs, and bill protection measures should be introduced for low-income households in line with the Californian example.

[29] Nexant, California Statewide opt-in Time-of-use Pricing Pilot, Final Report, 30 March 2018

[30] PG&E, Transition to time-of-use website

[31] PG&E Residential Rate Plan Pricing, including a personalised rate comparison.

[32] PG&E Bill Protection website with sample energy statement during bill protection period

SACOSS supports strengthened customer impact principles and a transition period following the installation of the smart meter during which time a Pricing Pilot Program[33] is established together with a compulsory 'data sampling period' including monitoring and evaluation.

Notably, California has also acknowledged the growing inequitable recovery of network costs and has introduced income-graduated fixed charges in an attempt to ensure that overall systemwide costs are equitably distributed.[34] Given the growing energy divide in South Australia, SACOSS is once again calling on the AER to consider pricing and contract protections as part of this Review, and notes the Essential Services Commission of Victoria's current Review into the Energy Retail Code includes a focus on these protections.[35]

Eligibility for payment difficulty protections under the current framework

Question 3. How adequate, effective and appropriate is the current eligibility framework for payment difficulty protections?

In responding to this question, you might like to consider:

- the effectiveness of existing definitions of hardship and payment difficulty in the NECF
- how the framework differentiates between consumers in different circumstances or who are experiencing different kinds of payment difficulty
- the appropriate balance between coverage and scope of payment difficulty protections, including implications for retailer costs and consumer outcomes
- potential benefits, limitations and risks of establishing minimum standards of assistance for all consumers, with additional rights for consumers who meet specific criteria.

We refer the AER to SACOSS's 2018 Report on the effectiveness of consumer protections under the NECF.[36] Our Report analysed the legislative framework and concluded the distinction between 'customers experiencing payment difficulties' and the definition of 'hardship customers' under the Retail Law represents a clear limitation within the framework, leading to a lack of consistency across retailers in the identification and application of supports, and undermining the principle that 'residential customers should have equitable access to hardship policies and that those policies should be transparent and applied consistently'.[37]

[33] See California State-wide Opt-in Time-of-use Pricing Pilot

[34] Energy Institute at HAAS, Reality checking California's Income-Graduated Fixed Charge, 13 May 2024

[35] Essential Services Commission of Victoria, Reviewing the Energy Retail Code of Practice, 6 June 2024

[36] SACOSS, Report on the Effectiveness of Supports for Customers Experiencing payment difficulties: Strengthening protections for customers under the NECF, June 2018, pp. 9-10

[37] National Energy Retail Law, Section 45(3)

The distinction between customers experiencing payment difficulties and hardship customers under the Retail Law, is further confused by the application of certain Retail Rules (notably Rules 33 and 111) to residential customers who have 'informed the retailer in writing or by telephone that the customer is experiencing payment difficulties,' in other words, customers who have 'self- identified' as experiencing payment difficulties. In line with the Issues Paper, SACOSS agrees that the current regulatory framework (confusingly) has three tiers of protections:

- Customers experiencing payment difficulties (identified by the retailer)
- Customers experiencing payment difficulties (who have self-identified)
- Customers experiencing payment difficulties due to hardship (as identified by the retailer in accordance with its hardship policy).

As outlined in our 2018 Report:[38]

> '*SACOSS believes the operation of the distinction between hardship customers and customers experiencing payment difficulties (and then the further distinction between those who have self-identified and those identified by the retailer) within the Regulatory Framework, creates a certain level of confusion for retailers around their obligations to customers, and without doubt creates confusion for customers and their support providers about their rights under the Retail Law and Retail Rules.*
>
> *The obligations placed on retailers under the Retail law and Retail Rules to provide supports to hardship customers are much more extensive than those placed on retailers to support the broader group of 'customers experiencing payment difficulties' (as outlined in further detail, below). For example, section 44 of the Retail Law outlines a series of minimum requirements which must be included in the retailer's hardship policy, these minimum requirements comprise the minimum protections for hardship customers.*[39] *Also, Rule 72 requires that payment plans offered to* ***hardship customers*** *must be established having regard to a customer's capacity to pay (amongst other things).*[40] *Interestingly, Rule 33(4) (as outlined below) provides that Rule 72 does apply to customers experiencing payment difficulties who have self-identified with the retailer (either by phone or in writing).*[41]
>
> *Overall, supporting and managing a hardship customer is much more labour intensive for retailers, and there is an incentive for retailers to act as 'gatekeepers', limiting the number of customers accessing the retailer's hardship program*.'

---

[38] SACOSS, Report on the Effectiveness of Supports for Customers Experiencing payment difficulties: Strengthening protections for customers under the NECF, June 2018, p. 15

[39] Noting section 44(i) of the Retail Law incorporates 'any other matters required by the Rules' which means the other protections contained in the Retail Rules are also 'minimum requirements'

[40] Rule 72 of the Retail Rules

[41] The AER's Sustainable Payment Plans Framework, if adopted by the retailer, applies to all payment plans, including those for small business. 17 retail businesses have currently signed up to the SPPF.

SACOSS is strongly supportive of an entitlement framework, where *all* residential energy customers are entitled to assistance from their retailer to avoid debt and disconnection. Different levels of support should not be dependent on retailer discretion. We do not consider the current legislative Framework is providing the necessary supports for energy customers, or consistency in the application of those supports. SACOSS strongly submits that legislative change is required, and this should be recommended to Energy Ministers as an outcome of this Review.

Retailers that operate in Victoria are already complying with the requirements under the VPDF, and alignment across jurisdictions should provide retailers with more clarity and consistency, potentially leading to a reduction in retailers' costs.

Early identification of consumers experiencing payment difficulty

Question 4. How could the framework better support early identification of consumers experiencing payment difficulty?

In responding to this question, you might like to consider:

- indicators currently used to identify consumers experiencing or at risk of payment difficulty, in energy or other sectors
- other specific circumstances or indicators that could be useful 'triggers' for identifying consumers experiencing or at risk of payment difficulty
- how customers on prepayment meter systems or prepaid billing arrangements could be better identified as experiencing payment difficulty
- potential benefits, limitations and risks of automation, predictive analytics and artificial intelligence for identifying consumers experiencing payment difficulty.

SACOSS strongly supports the use of objective triggers such as energy bill debt to identify customers experiencing or at risk of experiencing payment difficulty. Customers experiencing any level of debt should be proactively contacted by their retailer and offered assistance, including payment plans and 'best offer' information. Changes in a customer's tariffs, payment patterns, bill amounts and energy use should also operate as triggers for retailers to offer supports. SACOSS supports mandating objective triggers and limiting retailer discretion.

Supporting effective engagement with consumers experiencing payment difficulty

Question 5. How could the framework better support effective engagement with consumers experiencing payment difficulty?

In responding to this question, you might like to consider:

- approaches currently used to engage with consumers experiencing or at risk of payment difficulty, in energy or other sectors
- the appropriate purpose and role of a retailer's customer hardship policy
- the most effective and appropriate ways to communicate with consumers about the assistance available and how it can be accessed
- how the framework could support engagement practices that better meet consumer needs, including the needs of diverse consumers experiencing payment difficulty
- how the framework could ensure a more consistent standard of service for consumers
- potential benefits, limitations and risks of proactive and automated engagement processes.

SACOSS refers to the JEC Joint Submission.

Tailored assistance for consumers experiencing payment difficulty

Question 6. How could the framework better ensure that consumers experiencing payment difficulty are supported appropriately with assistance that is tailored to their individual circumstances?

In responding to this question, you might like to consider:

- forms of practical assistance that are available to consumers experiencing payment difficulty, including when they are provided, how they are accessed, and how effective they are
- forms of assistance that are effective for consumers in different circumstances, including consumers who are on prepayment meter systems or prepaid billing arrangements
- how the framework could ensure that payment plans are established with regard to a customer's capacity to pay, including opportunities to strengthen or improve protections around capacity to pay conversations
- other opportunities to improve the benefits of payment plans for consumers experiencing payment difficulty, including those who may not have access to other forms of assistance.

We refer to the JEC Joint Submission, and also highlight the need for retailers to proactively provide 'better offer' information, as well as the need for stronger Explicit Informed Consent requirements to address drivers of energy affordability. SACOSS is urging the AER to extend the scope of this Review to include pricing and contract protections.

Disconnection as a last resort

Question 7. How could the framework better ensure that disconnection is a last resort?

In responding to this question, you might like to consider:

- the effectiveness of the minimum disconnection amount in protecting consumers experiencing payment difficulty from disconnection, including how it operates in practice, the appropriateness of the current amount, and any unintended consequences
- the effectiveness of current protections related to debt recovery and disconnection, including the existing requirements for retailers to engage with and assist a customer before pursuing debt recovery or disconnection
- opportunities to support more effective engagement before disconnection, including by incentivising earlier engagement and better meeting consumer needs
- the effectiveness of current protections for consumers experiencing payment difficulty when it comes to connection and reconnection, including existing rules and practices relating to security deposits and connection fees.

SACOSS refers to the JEC Joint Submission. Speaking broadly, SACOSS strongly supports the disconnection safeguards established under the VPDF,[42] with evidence showing these safeguards have led to a reduction in disconnections for non-payment in Victoria. However, the Essential Services Commission of Victoria's Review of the VPDF also found that more than half of disconnected customers had not received assistance beforehand, pointing to a need for further reform.[43] We support placing the onus on retailers to prove they have undertaken each step set out in the Framework, prior to proceeding to disconnection, with strong compliance and enforcement action if retailers fail to provide sufficient evidence.

SACOSS is concerned that AGL has commenced remote disconnections for non-payment in South Australia, and considers additional protections will be required to avoid an increase in disconnections for non-payment in this State. Notably, AGL is not participating in the Knock to Stay Connected program in South Australia, which is aimed at providing a safety net for customers prior to disconnection. The success of the program relies on the participation of SA Power Networks and the willingness of the retailer. Unfortunately, the delivery of the program is at risk due to the introduction of remote disconnection by retailers, which removes the distributor from the disconnection process.

[42] Essential Services Commission Victoria, Payment Difficulty Framework Final Decision, 10 October 2017, p. 81

[43] Essential Services Commission of Victoria, Payment difficulty framework implementation review 2022, 31 May 2022, p. 9

SACOSS supports the introduction of reporting requirements relating to remote disconnections for non-payment.

Costs and benefits of changes to the NECF

Question 8. What are the costs and benefits of potential changes to the framework?

In responding to this question, you might like to consider:

- what kinds of changes could impact retailers' cost to serve, either positively or negatively
- potential benefits, limitations and risks of harmonising protections for consumers experiencing payment difficulty across jurisdictions, including specific protections or issues for which the benefits, limitations or risks of harmonisation are particularly high
- potential benefits, limitations and risks of prescriptive and principles-based requirements in strengthening protections for consumers experiencing payment difficulty
- opportunities to clarify or simplify the framework to reduce retailers' cost to serve, reduce the risk of compliance failure, support innovation, or support better and more consistent consumer experiences and outcomes.

SACOSS strongly supports the need for change of the current payment difficulty framework under the NECF. At present it fails to prevent payment difficulty, provides inadequate protections, and does not provide a satisfactory framework to assist consumers to overcome payment difficulty when it occurs – particularly when they are experiencing payment difficulty long-term.

As has been indicated in our response to Question 1, SACOSS is deeply concerned that from the outset there is no clear weighting or approach flagged in the Issues Paper that would indicate how the AER plans to assess the potential costs, benefits, limitations and risks for consumers versus retailers. SACOSS is firm in the belief that in a consumer protection framework – and particularly when addressing payment difficulty – the impacts (i.e. costs and benefits) on consumers must be the primary concern and focus of this review.

Currently, there is no incentive for retailers to exceed basic regulatory requirements, though we recognise that some do. Retailers often treat regulations as the ceiling of their obligations, rather than the floor. This approach is insufficient, as it fails to address the real needs of consumers. The new framework must be robust and enforceable, ensuring that retailers are held accountable not just for meeting the minimum standards but for genuinely supporting consumers in need. A reliance on the altruism or goodwill of retailers to protect consumers is unrealistic and places consumers at significant risk. It is essential that consumer protections are consistent across all retailers. The level of support and protection a consumer receives should not depend on which retailer they are with. Therefore, the new framework must include stringent compliance measures to ensure that all retailers adhere to the regulations. This includes regular audits, transparent reporting, and substantial penalties for non-compliance.

It is SACOSS' view that the potential costs incurred by retailers in association with increased consumer protections are reasonable, given the current and future nature of the energy market. Energy is an essential service, and households cannot opt out of purchasing energy unless they have significant resources to invest in alternative solutions such as solar panels and batteries. Therefore, the cost of implementing enhanced protections should be viewed as a necessary investment in consumer well-being.

If you have any queries in relation to this submission, please do not hesitate to contact Georgina Morris by email [redacted].