

Submission in response to:

Small-scale energy networks consumer protection framework review: Draft Decision

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1. Introduction

Thank you for the opportunity to respond to the Essential Services Commission's (**Commission**) *Small-scale energy networks consumer protection framework review: Draft Decision (Draft Decision)*.

Our research team based at the Australian National University (**ANU**) previously made submissions to the Commission's *Off-grid energy consumer protection framework review* and *Prepayment meter system code update paper*, which the Draft Decision is directed towards. We refer to our previous submissions.

In this submission, we address questions posed by the Commission (in italics below) that relate to our research focus on energy insecurity associated with household use of prepayment meters and regulatory disparities in electricity services and access across Australia.

2. Consumer protections

Do stakeholders have any questions or feedback on the proposed amendments to improve the strength and consistency of consumer protections for small-scale energy customers?

Do stakeholders have any further feedback, comments or questions on the proposed hardship and/or disconnection protections for small-scale energy customers?

2.1 Definition of life support

As ESCOSA acknowledges in the Draft Decision, the definition of “life support system” in the proposed Small-scale Electricity Networks Code (**proposed Code**) is narrower than the definition of “life support equipment” in the National Energy Customer Framework (**NECF**) and National Energy Retail Rules (**NERR**). Our view is that limiting the definition in the proposed Code unnecessarily weakens consumer protections for small-scale energy network customers.

The main difference between the definition in the proposed Code and that in the NERR (Rule 3) is the inclusion in the NERR definition of “any other equipment that a registered medical practitioner certifies is required for a person residing at the customer’s premises for life support”. This is an important inclusion because it enables health professionals to assess patients’ needs for life support equipment based on their medical knowledge and expertise. We note the Commission’s explanation that “The life support definition applying to small-scale energy retailers has been updated to reflect chronic health issues in remote South Australian communities” (p. 16). Health professionals are best placed to decide what life support needs are relevant and a broad definition enables flexibility into the future, whereas the restrictive approach proposed reacts to rather than proactively accommodates energy consumers’ health and medical needs. We submit that the interests of South Australian small-scale energy network customers are best served by bringing the definition of “life support system” in the proposed Code into alignment with the NECF. Further, such changes should be incorporated in the draft PMSC and the Cowell Electric Licence conditions (Schedule 2) to strengthen protections for those prescribed customers utilising mandatory prepayment metering in the APY Lands, Yalata, and Maralinga Tjarutja/Oak Valley.

2.2 Disconnection as a last resort

At the consultation workshop held by the Commission on 14 September 2022, South Australian Council of Social Service (**SACOSS**) recommended including in the proposed Code a statement of intent that electricity supply should only be disconnected ‘as a last resort’, to reflect a principle widely accepted as reflected in the NECF and Victorian electricity laws. We support that proposal by SACOSS, to better protect the interests of small-network energy consumers and for greater consistency with the approach taken in the NECF and Victorian framework.

In the context of the NECF, section 47 of the National Energy Retail Law (**NERL**) states that “[a] retailer must give effect to the general principle that de-energisation (or disconnection) of premises of a hardship customer due to inability to pay energy bills should be a last resort option.” In Victoria, section 40SC of the *Electricity Industry Act 2000* (Vic) recognises:

- the essential nature of the supply of electricity,
- community expectations that ongoing access to electricity will be available,
- community expectations that supply of electricity to premises will not be disconnected solely because of a customer’s inability to pay for the electricity supply, and
- the principle that the supply of electricity to premises should only be disconnected as a last resort.

A statement to this effect in the Preliminary section of the proposed Code would improve the strength and consistency of consumer protections for small-scale energy network customers in South Australia. In the case of prepayment meter systems regulated by the draft PMSC, involuntary self-disconnection occurs when a household runs out of credit outside of protected periods (clause 4.4, ‘Disconnection times and protected periods’) and can reasonably be expected to be frequent for households of limited means. This is also the case under the Cowell Electric Licence conditions for those prescribed customers utilising mandatory prepayment metering in the APY Lands, Yalata, and Maralinga Tjarutja/Oak Valley, where involuntary self-disconnection is permitted during so-called ‘default disconnection times’ (Schedule 2, clause 2.4.1). It is evident that the principle of ‘disconnection as a last resort’ does not apply equally between customers across small-scale networks in the Remote Area Energy Supply (RAES) scheme as currently structured. Under the scheme, the known risks of energy insecurity indicated by involuntary self-disconnection associated with prepayment will foreseeably and disproportionately impact Aboriginal communities.

2.3 Definition of financial hardship

The definition of ‘financial hardship’ in clause 1.7 of the proposed Code adopts the definition in the District Council of Coober Pedy’s hardship policy.¹ The definition applies only to customers “experiencing a lack of financial means, which may be either ongoing or temporary” and excludes “circumstances where a person chooses not to meet a liability for an unpaid debt”. In our view, this definition has the potential to weaken consumer protections because it overlooks customers anticipating financial difficulties, or those who choose not to pay a bill due, for example, to anticipated financial difficulties. Additionally, the prescriptive approach taken in the proposed Code is inconsistent with the approach in the NECF and Victorian framework.

In the NECF and Victorian contexts, ‘financial hardship’ is not defined, and the respective customer protection frameworks seek to enable assistance for residential customers encountering payment

¹ DCCP. Hardship Policy for Residential Electricity, Water and Sewerage Service Customers, clause 6. 2019; available at: https://www.cooberpedy.sa.gov.au/__data/assets/pdf_file/0017/850220/20190220-DCCP-Hardship-Policy-for-Residential-Customers.pdf.

difficulties and hardship. The Victorian Energy Retail Code of Practice explicitly outlines minimum standards of assistance which residential customers anticipating or facing payment difficulties are entitled, to support early identification of payment issues and disconnection as a measure of last resort. The NECF requires payment plans to be available to customers experiencing payment difficulties and additional supports for hardship customers.² The narrow definition of ‘financial hardship’ in the proposed Code will overlook consumers who are anticipating payment difficulties and fails to support early detection of customers encountering payment difficulties and hardship. The importance of adequate and proactive retailer supports for consumers was made visible in the context of the COVID-19 pandemic, when the AER made clear its expectations that energy businesses protect energy consumers by offering all residential consumers “who indicate they may be in financial stress a payment plan or hardship arrangement”.³

We submit that the payment difficulties and hardship framework under the proposed Code should be premised upon (a) supporting early identification of customers anticipating or facing payment difficulties, and (b) inclusive provision of assistance and support for such customers.

2.4 Minimum requirements for customer hardship policy

Minimum requirements for customer hardship policies are provided in clause 4.14 of the proposed Code. We note these requirements are inconsistent with hardship policy requirements in the NECF (including the AER’s Customer Hardship Policy Guideline) and the Victorian Energy Retail Code of Practice. In particular, the proposed Code does not require the hardship policy to be approved by the Commission, as is the case for retailers under the NECF and Victorian Energy Retail Code of Practice.⁴ Additionally, the proposed Code does not directly address requirements for retailers to have a hardship program, steps used to identify customers experiencing payment difficulties due to hardship, the rights of customers who have entered the hardship program, minimum supports available to customers who may have payment difficulties, payment options available, and standardised statements that retailers must include in their hardship policies. The hardship policy is a key part of how the licensee represents and communicates the rights of small-scale energy customers, and any minimum requirements should be clearly structured and made consistent with those provided for grid-connected customers in the state.

² NERL, sections 44 and 50 and NERR Rule 33 and Part 3.

³ AER. Statement of Expectations of energy businesses: Protecting customers and the market during COVID-19. 2020; available from: <https://www.aer.gov.au/publications/corporate-documents/statement-of-expectations-of-energy-businesses-protecting-customers-and-the-energy-market-during-covid-19>.

⁴ NERL, section 43(2)(c) and NERR Rule 75B; *Electricity Industry Act 2000* (Vic), section 43(1) and Energy Retail Code of Practice, clause 136.

2.5 Reporting requirements

There are no explicit reporting requirements contained in the proposed Code, draft Prepayment Meter System Code (**draft PMSC**), or the model Electricity Generation, Distribution and Retail Licence (**model licence**). There are general information requirements in clause 8.1(b) of the model licence however they do not guarantee that information provided to the Commission will be made publicly available. Public reporting requirements should be referred to specifically in the proposed Code and likewise in the draft PMSC to support transparency and data visibility, which is currently lacking in small-scale networks in South Australia.

Current reporting requirements for licensees operating in small-scale networks (i.e., those to be regulated by the proposed Code) are contained in Guideline No. 5 – Regulatory Reporting Requirements for Small-scale Networks (**Guideline**). The Guideline establishes annual reporting requirements relating to electricity customers and customer protections as follows:

- Connection and customer numbers
- Number of customers on flexible payment arrangements
- Number of customers receiving a concession toward their energy bill
- Number of customers registered as life support customers
- Information on all licensee compliance breaches in the preceding 12 months
- Information on all licensee material service issues in the preceding 12 months.

Significantly, there are no reporting requirements for numbers of customer disconnections in the Guideline. This gap needs to be addressed with the addition of metrics for total number of residential customer disconnections for non-payment. Additionally, we submit that the Commission implement reporting metrics in relation to:

- Numbers of residential customers (i.e., distinct from total customer numbers which includes business customers)
- Total number of residential customers issued a bill outside the maximum quarterly timeframe
- Number of residential customers granted additional time to pay a bill
- Number of residential customers on an instalment plan
- Number of residential customers using Centrepay
- Number of residential customer disconnections involving customers on an instalment plan

- Number of residential customer disconnections involving customers receiving a concession toward their energy bill
- Total number of residential customer reconnections requested by the retailer after requesting the customer be disconnected
- Total number of residential customer reconnections requested by the retailer within 7 business days after requesting the customer be disconnected.

We also support greater clarity around the public disclosure requirements for reporting information. The guideline requires licensees to report to the Commission but doesn't articulate that the information will be publicly available. By way of example, data reported to the Economic Regulatory Authority (ERA) WA is made publicly available on an annual basis, as well as in the form of a narrative report prepared by the authority.⁵ We encourage the Commission adopting similar procedures to support transparency and data visibility in the small-scale networks.

3. Additional comments

Do stakeholders have any comments on additional consumer protections the Commission should consider?

3.1 Extreme weather event protection

We draw the Commission's attention to NERR Rule 120 which prevents disconnection of premises for non-payment during an 'extreme weather event'. This rule provides on-grid customers in South Australia the benefit of protection from disconnection for non-payment during an extreme weather event. This protection is not currently extended to electricity customers in small-scale networks. We submit the Commission should consider this additional protection for consistency between on- and off-grid consumer protections in the state and in view of increasing extreme weather particularly heat extremes due to climate change.

'Extreme weather event' is defined section 8 of the *National Energy Retail Law (Local Provisions) Regulations 2013* (SA). Effectively, disconnection for non-payment is prohibited on days where the temperature average is 28°C (or more) and has been for the previous two days.

We submit that an extreme weather event protection is a suitable addition in the proposed Code at clause 4.22 ('When the licensee may not disconnect') and in the draft PMSC at clause 4.4 ('Disconnection times and protected periods'). Such changes should also be reflected in the Cowell

⁵ ERA WA. Energy Data Reports – Annual data, Energy Retailers 2020/21. 2021; available at: <https://www.erawa.com.au/energyreports>.

Electric Licence conditions (Schedule 2) relevant to prescribed customers utilising mandatory prepayment metering in the APY Lands, Yalata, and Maralinga Tjarutja/Oak Valley.

3.2 Distributed energy resources

There are currently no provisions for the connection of distributed energy resources (e.g., customer-owned rooftop solar) (**DER**) in the proposed Code or draft PMSC. This gap must be addressed so that small-scale network customers have commensurate clarity and access to information about connection of DER as grid-connected electricity customers in the state. Such changes should also be reflected in the Cowell Electric Licence conditions (Schedule 2) relevant to those prescribed customers utilising mandatory prepayment metering in the APY Lands, Yalata, and Maralinga Tjarutja/Oak Valley.

4. Draft PMSC

Do stakeholders have any further feedback on the proposed consumer protections contained in the Prepayment Meter System Code?

In addition to our proposals in relation to the draft PMSC above, we make the following additional submissions:

4.1 Customer choice – prepayment metering (Clause 5)

We commend changes to the draft PMSC enabling customers who have elected to use prepayment metering to switch to post-payment billing at any time and at no cost to them, as outlined in clause 5.1 ('Reversion and transfer'). This supports customer choice and aligns with the intent of Part 8 of the NERR.

While we support this change, we draw attention to the exceptional circumstance where the option to choose between prepay and post-pay metering is not available to prescribed customers in remote Aboriginal communities in South Australia. The flexible framework in the draft PMSC emphasises the disparities impacting residents in APY Lands, Yalata, and Maralinga Tjarutja/Oak Valley for whom use of prepayment meter systems is mandatory—indeed, a system which the Commission observes is “associated with an increased risk of disconnection than a post-payment arrangement” (Draft Decision, p. 19).

4.2 Explicit informed consent (Clause 2.2)

The higher risks of disconnection associated with prepayment meter systems have been demonstrated in prior research provided in our previous submissions. We support the requirement

for explicit informed consent in the draft PMSC at clause 2.2, including customer acknowledgment that use of a prepayment meter system is associated with an “increased risk that the supply address will not maintain a continuous energy supply, due to self-disconnection, than the use of a post-payment arrangement” (clause 2.2.6(h)).

However, the explicit informed consent requirement again emphasises the exceptional situation affecting residents of remote Aboriginal communities, for whom prepayment metering is mandatory – a situation evidently antithetical to meaningful informed consent. We note that the Written Disclosure Statement⁶ for prepay customers in the APY Lands, Yalata, and Maralinga Tjarutja/Oak Valley fails to inform customers of the generally higher risk of self-disconnection associated with the payment option they are explicitly required to use by force of regulatory instrument.

4.3 Retailer public reporting requirements

As stated in section 2.5 above, retailer public reporting requirements are not contained in the draft PMSC. Currently, the Commission proposes to include retailer public reporting requirements in the Guideline. Our view is that this approach is insufficient to support transparency of key indicators relating to consumer rights in small-scale networks. There is no requirement for the Commission to publish the data reported by licensees under the Guideline. The absence of explicit public reporting requirements makes it challenging for customers and policymakers alike to understand whether the regulatory frameworks for small-scale networks are serving the best interests of customers. We submit that there must be an explicit requirement in the draft PMSC (and the proposed Code) establishing retailer reporting requirements, and public disclosure of data, as a way of strengthening transparency and consumer protections within the small-scale networks.

Additionally, we note that in the Draft Decision, it states “new reporting metrics on life support customer numbers are proposed to improve monitoring and transparency over [life support] customers” (pg. 18). However, life support metrics have been omitted from the list of reporting requirements specified in the Draft Decision (pg. 19). Two additional life support metrics should be included, consistent with the reporting requirements that apply to Cowell Electric in respect of prescribed customers using mandatory prepayment metering. These are ‘number of life support customers notified’ and ‘number of life support customers registered’.

⁶ Cowell Electric and Government of South Australia. Community Pre-Pay Customer (CPC) – Written Disclosure Statement. 2022; available at: <https://www.cowellelectric.com.au/wp-content/uploads/2022/07/20220705-Community-Pre-pay-WDS-Final-ESCOSA-Approved.pdf>.

There are other differences between the public reporting requirements applying to Cowell Electric and those proposed in the draft PMSC. The differences are summarised in **Table 1** below. In addition to the addition of life support metrics, we submit that reporting on ‘Number of customers on payment splitting arrangements’ and ‘Number of times friendly credit was accessed’ should be included in the draft PMSC framework. These metrics are related to customer hardship and should be consistent across the reporting requirements for small-scale networks in the jurisdiction.

Table 1: Comparison of retailer public reporting requirements in small-scale electricity networks. Reporting metrics that are present in the context of the Cowell Electric Licence Variation but do not appear in the draft Decision are highlighted in **bold and italics**.

Cowell Electric Licence Variation: Final Decision	Small-scale Energy Networks Consumer Protection Framework Review: Draft Decision
<ol style="list-style-type: none"> 1. Prescribed customer numbers 2. <i>Number of prescribed customers on payment splitting arrangements</i> 3. Number of times emergency credit was accessed 4. <i>Number of times friendly credit was accessed</i> 5. Number of self-disconnections 6. Average duration of self-disconnection 7. Number of times the minimum requirement for follow-up under clause 2.8 (three or more times in any three-month period for longer than 240 minutes on each occasion) of this schedule were met 8. The reason for self- disconnection in those instances where follow-up under clause 2.8 (three or more times in any three-month period for longer than 240 minutes on each occasion) of this schedule was undertaken 9. <i>Number of life support customers notified to Cowell Electric (This metric will reflect the number of prescribed customers who have notified Cowell Electric that they are a life support customer)</i> 10. <i>Number of life support customers registered (This metric will reflect the number of prescribed customers who have provided Cowell Electric with the necessary medical confirmation)</i> 	<ol style="list-style-type: none"> 1. Total number of prepayment customers 2. Number of times emergency credit was accessed 3. Number and duration of self-disconnections 4. Number of times the minimum requirements for retailer follow-up were met 5. Where follow-up is undertaken, the reasons for any disconnection 6. Number of prepayment customers reverted to post pay

4.4 Customer consultation (Clause 4.1)

The Commission should consider technical requirements for hosting consultation groups in the draft PMSC, clause 4.1 (‘Customer consultation’). Problems have been experienced within the Prepayment Meter Customer Consultation group hosted by Department for Mining and Energy (DEM) on behalf of Cowell Electric in meeting its obligations under the Cowell Electric Licence

Variation (Schedule 2, clause 2.1). In that case, Microsoft Teams is used by DEM for hosting the group and there have been issues with guests being removed from the platform inadvertently, which is not ideal for the purposes of consultation.

4.5 Right to connect DER

As observed in section 3.2 above, there are no provisions relating to connection of DER (e.g., customer-owned rooftop solar) in the draft PMSC and no information about connecting DER specifically addressed to prepay customers. This gap should be addressed. DER will be an increasingly important part of energy solutions for consumers, and it is crucial that consumers have information about connecting DER where prepayment meter systems are utilised. Residents utilising prepayment meters in other jurisdictions which lack clear regulatory frameworks for connection of DER have faced substantial barriers to installing rooftop solar.⁷ This situation can be avoided by proactive inclusion of necessary information in the relevant code. As stated in our previous submission, removing regulatory and technical barriers to rooftop solar will offer opportunities for customers in small-scale electricity networks, particularly in a jurisdiction where residential rooftop solar uptake is driving down household energy costs for many grid-connected consumers. Procedural clarity about how prepay customers connect DER is essential given that prepayment has been implemented on a mandatory basis in remote Aboriginal communities (i.e., affected households have no ability to revert to post-pay, but may wish to connect DER) and as the prepay option becomes a choice available to other small-scale energy network customers in the state.

We thank you for considering our submissions to this policy issue. We would be pleased to discuss any questions ESCOSA has in relation to the matters covered.

⁷ Jonscher, S. Finally, dangerous power cuts are in the past for NT's first public housing tenant with rooftop solar. ABC News. 2021; available at: <https://www.abc.net.au/news/2021-12-19/tenant-creek-rooftop-solar-nt-public-housing-norman-frank/100710698>.