

## NATIONAL ENERGY RETAIL LAW

Undertaking to the Australian Energy Regulator given for the purposes of section 288 of the National Energy Retail Law

by

Red Energy Pty Limited (ACN 107 479 372)

### Persons giving this Undertaking

1. This undertaking is given to the Australian Energy Regulator (**AER**) by Red Energy Pty Limited (ACN 107 479 372) of Lot 3, Pier 8/9, 23 Hickson Road, Millers Point, NSW, 2000 (**Red Energy**) pursuant to section 288 of the *National Energy Retail Law* set out in the Schedule to the *National Energy Retail Law (South Australia) Act 2011 (NERL) (Undertaking)*.
2. Red Energy is an authorised electricity and gas retailer in Queensland, New South Wales, the Australian Capital Territory and South Australia under the *National Energy Retail Regulations* under the NERL.
3. Red Energy is a wholly owned subsidiary of Snowy Hydro Limited, whose sole shareholder is the Commonwealth Government.
4. As of June 2024, Red Energy had 465,301 residential electricity customers representing a 6.8% market share and 133,221 residential gas customers representing a 5.7% market share of households in New South Wales, the Australian Capital Territory, Queensland, South Australia and Tasmania.

### Background

5. As an authorised retailer, Red Energy has obligations under the NERL and *National Energy Retail Rules (NERR)* to identify customers experiencing payment difficulties due to hardship and assist those customers in managing their energy bills.
6. Relevantly,
  - a) section 43(2)(c) of the NERL requires that a retailer must maintain and implement a hardship policy; and
  - b) section 50(1) of the NERL requires that a retailer must offer and apply a payment plan to hardship customers and other customers experiencing payment difficulties, including where a retailer believes the customer is experiencing repeated difficulties in paying their bill or requires payment assistance.
7. Improving outcomes for customers experiencing vulnerability, including by improving access to retailer hardship and payment plan protections, is an AER compliance and enforcement priority for 2024-2025.

### Conduct of concern

8. From at least September 2019 until March 2023, Red Energy undertook the following process when a hardship customer moved premises but remained a Red Energy customer:
  - a) Red Energy removed the customer from its hardship program after the final bill was issued in relation to the initial premises<sup>1</sup>;

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<sup>1</sup> Initial premises is the address at which a customer was first a hardship customer in the period from at least September 2019 until March 2023.

- b) if, under the terms of the customer's payment plan, the debt for the initial premises could not be paid off in full within six months from the issue date for the final bill for the initial premises, Red Energy cancelled the payment plan;
  - c) in some cases, customers were referred to debt collection in respect of debt accrued at the customer's initial premises;
  - d) the customer's hardship status and existing debt was not carried across to the account at their new premises<sup>2</sup> and there were insufficient internal processes to actively identify whether the customer may still be experiencing hardship immediately after the change of premises; and
  - e) in some cases, because the customer's account at their new premises had a nil opening balance, the customer was not offered a payment plan at their new premises as soon as practicable after moving and / or a replacement payment plan for debt accrued at their old premises.
9. There were as many as 371 hardship customers impacted by some or all of the process aspects set out in paragraph 8 (**affected customers**).
10. The AER considers that, by engaging in the conduct outlined in paragraph 8, Red Energy is likely to have contravened the NERL by:
- a) failing to offer and apply payment plans for affected customers as required by section 50(1)(a) of the NERL. Red Energy's failure was in not applying the terms of the payment plan for affected customers in respect of debts accrued at their initial premises by unilaterally cancelling it if the remaining debt balance would not be repaid within 6 months of the final bill being issued (i.e. the time remaining on the payment plan was greater than 6 months);
  - b) failing to maintain and implement its hardship policy as required by section 43(2)(c) by:

<b>Red Energy hardship policy</b>	<b>Conduct</b>
<i>In providing assistance to you, we will have regard to your circumstances that we are aware of (page 8)</i>	Red Energy failed to have regard to affected customers' circumstances that it was aware of, by removing affected customers from its hardship program after the final bill was issued for their initial premises in circumstances where the customers had been identified by Red Energy as experiencing hardship.
	Red Energy failed to have regard to affected customers' circumstances that it was aware of by cancelling customers' payment plans if the debt balance for the account at their initial premises would not be paid within 6 months of the final bill being issued (i.e. the time remaining on the payment plan was greater than 6 months).
<i>If you have joined our hardship program, we will not: ...</i> <ul style="list-style-type: none"> <li>• <i>make changes to your plan without your agreement. For example,</i></li> </ul>	Red Energy made changes to affected customers' payment plan without the customers' agreement by cancelling the payment plans if the debt balance for the account at their initial premises would not be repaid within 6 months of the final bill being issued

<sup>2</sup> New premises is the address that the customer moved to after the initial premises.

<i>we will not put you on a shortened collection cycle unless you agree first.</i> (page 13)	(i.e. the time remaining on the payment plan was greater than 6 months).
<i>Red Energy actively identifies customers who may be vulnerable and experiencing financial hardship to ensure they are offered a range of options to assist them in managing their energy bills</i> (page 7).	Red Energy failed to actively identify customers who may have been vulnerable and experiencing financial hardship. Red Energy failed to ensure the affected customers were offered a range of options to assist them in managing their energy bills by not considering whether to add those customers to Red Energy's hardship program in respect of the account at their new premises as soon as practicable, when Red Energy had identified that the affected customer was experiencing hardship immediately prior to moving to their new premises.

11. Red Energy's conduct resulted in harm to affected customers as these customers were:

- a) removed from the hardship program;
- b) not offered support in the form of payment plans;
- c) not afforded the protection from potential disconnection at their new premises for non-payment as a result of being removed from the hardship program; and
- d) subjected to debt collection in respect of debts accrued on the account for their initial premises, including credit default listings in some cases.

#### **Admissions and resolution**

12. Since the AER raised its concerns, Red Energy has cooperated fully with the AER and taken various steps in response, including:

- a) ensuring that all of the customers captured within the field of the AER's investigation no longer have outstanding debt related to their initial account, including wiping around \$65,000 in debt;
- b) enhancing its systems to improve the experience of hardship customers moving premises;
- c) enhancing communications for hardship customers when they move from their initial premises; and
- d) increasing the number of contacts made to hardship customers moving premises.

13. Following discussions with the AER in relation to its concerns about Red Energy's conduct, Red Energy:

- a) admits that it contravened sections 43(2)(c) and 50(1) of the NERL;
- b) offers this Undertaking to the AER; and
- c) has agreed to pay seven Infringement Notices issued by the AER totalling \$474,600, for alleged contraventions of sections 43(2)(c) and 50(1) of the NERL.

#### **Commencement and term of the Undertaking**

14. This Undertaking comes into effect when:

- a) the Undertaking is executed by Red Energy; and
- b) the AER accepts the Undertaking so executed (**Commencement Date**).

15. This Undertaking has effect for 3 years from the Commencement Date (**Term**).
16. Upon the commencement of this Undertaking, Red Energy undertakes to assume the obligations set out in paragraphs 19 to 25 of this Undertaking for the purposes of section 288 of the NERL.
17. Red Energy may apply to withdraw or vary the Undertaking at any time, but this Undertaking will only be taken to be withdrawn or varied on the date on which the AER consents to such withdrawal or variation.
18. The AER may, if requested by Red Energy, expressly waive in writing any of the obligations contained in the Undertaking or extend the date by which any such obligation is to be satisfied.

## **Undertaking**

### ***Cease conduct and desist from engaging in future conduct***

19. Red Energy undertakes that, for the Term of this Undertaking, it will not, in response to a request from a hardship customer to move premises but remain a Red Energy customer:
  - a) remove the customer from its hardship program;
  - b) unilaterally cancel the customer's payment plan; or
  - c) refer the customer to debt collection in respect of debts accrued on the account for their initial premises.
20. Red Energy undertakes that, for the Term of this Undertaking, for a hardship customer who moves premises but remains a Red Energy customer, it will actively assess whether the customer:
  - a) is experiencing hardship as soon as practicable after their change of premises; and
  - b) should be offered a new payment plan that takes into account their capacity to pay, arrears in relation to the customer's initial premises and expected energy consumption at their new premises.

### ***Hardship Compliance Program***

21. Red Energy undertakes that it will:
  - a) establish and implement a hardship compliance program (**Compliance Program**) at its own expense in accordance with the requirements set out in "Annexure A", being a program designed to minimise Red Energy's risk of future contraventions of section 43(2)(c) and 50(1) of the NERL and to ensure its awareness of the responsibilities and obligations towards hardship customers in the NERR and NERL (**Hardship Obligations**);
  - b) maintain and implement the Compliance Program for the Term of this Undertaking; and
  - c) provide, at its own expense, a copy of any documents required by the AER in accordance with Annexure A.

### ***Revised hardship policy***

22. Red Energy undertakes to review its customer hardship policy to address any deficiencies identified in the Risk Assessment Report referred to in Annexure A and comply with the requirements of the NERL and the AER's Customer Hardship Policy Guideline.

23. Red Energy undertakes that it will, no later than 2 months following the receipt of the Risk Assessment Report, submit a revised customer hardship policy to the AER for approval.

#### **AER enquiries**

24. For the purpose of monitoring compliance with this Undertaking, the AER may make reasonable enquiries with Red Energy. Red Energy undertakes that it will respond to such enquiries at its own expense and within a reasonable time.

#### **Costs**

25. Red Energy must pay all of its own costs in relation to complying with the Undertaking.

#### **Notification**

26. Any notice or communication to the AER pursuant to this Undertaking must be sent via email or post to:

Name: General Manager Compliance & Enforcement

Address: Australian Energy Regulator

GPO Box 520

Melbourne VIC 3001

Email: Attn: GM Compliance & Enforcement [AERCompliance@aer.gov.au](mailto:AERCompliance@aer.gov.au)

27. Any notice or communication to Red Energy pursuant to this Undertaking must be sent via email or post to:

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

28. Red Energy must notify the AER of a change to its contact details within 5 business days.

#### **Acknowledgements**

29. Red Energy acknowledges that, and to the extent relevant, consents to, the following actions and matters:

- i. the AER may authorise a member of the AER or a member of the AER staff, to exercise decision-making functions under this Undertaking on its behalf and that authorisation may be subject to any conditions the AER may impose;
- ii. the AER will make this Undertaking publicly available including by publishing it on the AER's website;
- iii. the AER will, from time to time, make public reference to the Undertaking in news media statements and in AER publications;
- iv. the AER reserves its rights and remedies (including to institute legal proceedings against Red Energy seeking penalties and other relief) in relation to any

contraventions of the NERL and NERR, except in respect of the conduct described in this Undertaking;

- v. notwithstanding (iv), the AER reserves its rights and remedies in the event Red Energy does not fully implement and / or perform its obligations under this Undertaking; and
- vi. this Undertaking in no way derogates from the rights and remedies available to any other persons arising from the conduct described in the Undertaking.

### **Interpretation**

30. In the interpretation of this Undertaking, the following provisions apply unless the context otherwise requires:

- (a) a reference to this Undertaking includes all of the provisions of this document including its annexures;
- (b) headings are inserted for convenience only and do not affect the interpretation of this Undertaking;
- (c) if the day on which any act, matter or thing is to be under this Undertaking is not a business day, the act, matter or thing must be done on the next business day;
- (d) a reference in this Undertaking to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision;
- (e) a reference in this Undertaking to any company includes a company over which that company is in a position to exercise control within the meaning of section 50AA of the *Corporations Act 2001*;
- (f) a reference in this Undertaking to any agreement or document is to that agreement or document as amended, novated, supplemented or replaced;
- (g) a reference to a paragraph or annexure is a reference to a paragraph or annexure of or to this Undertaking;
- (h) an expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or government agency;
- (i) where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning;
- (j) a word which denotes the singular also denotes the plural, a word which denotes the plural also denotes the singular, and a reference to any gender also denotes other genders;
- (k) a reference to the words 'such as', 'including', 'particularly' and similar expressions can be construed without limitation;
- (l) a construction that would promote the purpose or object of this Undertaking (whether expressly stated or not) will be preferred to a construction that does not promote that purpose or object.

- (m) a reference to:
  - (i) a thing (including but not limited to, a chose in action or other right) includes part of that thing; and
  - (ii) a party includes its successors and permitted assigns.

Signed for **Red Energy Pty. Limited** (ACN  
107 479 372) by its authorised representatives  
in accordance with section 127 of the  
*Corporations Act 2001* (Cth):

Signed by:  
  
3976EF3CB6984A8...

Authorised Representative Signature  
Dennis Barnes

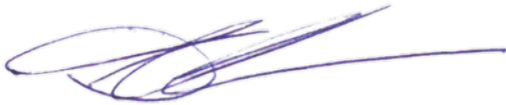
Print Name  
Director  
Position

DocuSigned by:  
  
125680CA58C6422...

Authorised Representative Signature  
Suzannah Fletcher

Print Name  
Company Secretary  
Position

ACCEPTED BY THE AUSTRALIAN ENERGY REGULATOR PURSUANT TO SECTION  
288 OF THE *NATIONAL ENERGY RETAIL LAW*.



Justin Oliver, Deputy Chair

Date 28 March 2025



## **Annexure A**

### **HARDSHIP COMPLIANCE PROGRAM**

Red Energy Pty Limited (ACN 107 479 372) (**Red Energy**) will establish a hardship compliance program (**Compliance Program**) that complies with each of the following requirements:

#### **Appointments**

1. Within 1 month of the Commencement Date, Red Energy will appoint a senior manager with suitable qualifications and experience in corporate compliance to be responsible for ensuring the Compliance Program is effectively designed, implemented and maintained (**Compliance Officer**).
2. Within 2 months of the Commencement Date, Red Energy will appoint a suitably qualified, external compliance professional (**Compliance Advisor**) with expertise in:
  - 2.1. obligations towards hardship customers under the NERR and the NERL (**Hardship Obligations**); and
  - 2.2. systems and processes used to comply with the Hardship Obligations.

#### **Risk Assessment by Compliance Advisor**

3. Red Energy will instruct the Compliance Advisor to conduct a Hardship Obligations risk assessment (**Risk Assessment**) and provide a written report outlining their findings (**Risk Assessment Report**) to Red Energy within 6 months of the Commencement Date.
4. Red Energy will carry out a customer satisfaction survey of hardship customers who have moved premises (**Survey**) to better understand and tailor customers' experience of Red Energy's hardship policy and related types of assistance. Red Energy will provide a copy of the results of the Survey to the Compliance Advisor.
5. Red Energy will use its best endeavours to ensure that the Risk Assessment Report:
  - 5.1. has regard to the results of the Survey;
  - 5.2. identifies the areas where Red Energy is at risk of contravening its Hardship Obligations in the areas which are the subject of the AER's concerns set out in the Undertaking;
  - 5.3. assesses the likelihood of these risks occurring;
  - 5.4. identifies where there may be gaps in Red Energy's existing procedures for managing these risks; and
  - 5.5. provides recommendations for any action to be taken by Red Energy based on the Risk Assessment, including any updates to Red Energy's AER-approved customer hardship policy.

#### **Hardship Compliance Policy**

6. Red Energy will, within 3 months of the Commencement Date, issue an internal policy statement outlining Red Energy's commitment to compliance with the Hardship Obligations (**Hardship Compliance Policy**).
7. Red Energy will ensure the Hardship Compliance Policy:
  - 7.1. contains a statement of commitment to compliance with the Hardship Obligations;
  - 7.2. contains an outline of how commitment to compliance with the Hardship Obligations will be realised within Red Energy; and

- 7.3. contains a requirement for all staff to report any Hardship Obligations compliance concerns to the Compliance Officer.

### **Staff Training and Induction**

8. Red Energy will ensure that the Compliance Program includes a requirement for Hardship Obligations compliance training at least once a year, which may be delivered via an electronic learning module (**Staff Training**) for all officers, employees, representatives and agents of Red Energy, whose duties could result in them being concerned with conduct that may contravene the Hardship Obligations.
9. Red Energy will ensure that the Staff Training forms part of the induction (**Induction**) provided to all new officers, employees, representatives and agents of Red Energy whose duties could result in them being concerned with conduct that may contravene the Hardship Obligations.
10. Red Energy will ensure that the Staff Training and Induction is reviewed and approved by a suitably qualified compliance professional and/or legal practitioner with expertise in the Hardship Obligations.

### **Reports to Directors**

11. Red Energy will ensure that the Compliance Officer reports to Red Energy's directors every 4 months on the continuing effectiveness of the Compliance Program.

### **Independent Compliance Review**

12. Red Energy will, at its own expense, carry out an annual review of the Compliance Program (**Review**) in accordance with each of the following requirements:
  - 12.1. **Scope of Review** – the Review should be broad and rigorous in scope to enable Red Energy to provide the AER with:
    - 12.1.1. verification that Red Energy has in place a Compliance Program that complies with each of the requirements detailed in paragraphs 1 to 10 of this Annexure; and
    - 12.1.2. the Compliance Reports detailed at paragraph 11 of this Annexure.
  - 12.2. **Independence of Review** – Red Energy will ensure that each Review is carried out by a suitably qualified, independent compliance professional with expertise relating to the Hardship Obligations (**Reviewer**). The Reviewer will qualify as independent on the basis that they:
    - 12.2.1. did not design or implement the Compliance Program;
    - 12.2.2. is not a present or past staff member or director of Red Energy;
    - 12.2.3. has not acted and does not act for, and does not consult and has not consulted to, Red Energy in any matters relating to the Hardship Obligations, other than performing Reviews; and
    - 12.2.4. has no significant shareholding or other interests in Red Energy.
  - 12.3. **Evidence** – Red Energy will use its best endeavours to ensure that each Review is conducted on the basis that the Reviewer has access to all relevant sources of information in Red Energy's possession or control, including without limitation:

- 12.3.1. the ability to make enquiries of any officers, employees, representatives and agents of Red Energy;
- 12.3.2. documents relating to the Risk Assessment, including the Risk Assessment Report;
- 12.3.3. documents relating to Red Energy's Compliance Program, including documents relevant to Red Energy's Compliance Policy, Complaints Handling System, and Staff Training and Induction; and
- 12.3.4. any reports made by the Compliance Officer to Red Energy's governing body regarding Red Energy's Compliance Program.

12.4. Red Energy will ensure that a Review is completed:

- 12.4.1. by the first anniversary of the Commencement Date;
- 12.4.2. by the second anniversary of the Commencement Date; and
- 12.4.3. in sufficient time to allow for the Compliance Report to be provided to the AER under paragraph 16 before the expiry of the Term.

### **Annual Compliance Report**

13. Red Energy will use its best endeavours to ensure that within 30 days of the completion of a Review, the Reviewer includes the following findings of the Review in a report to the Compliance Officer (**Compliance Report**):

- 13.1. whether the Compliance Program of Red Energy includes all the elements detailed in paragraphs 1 to 10 of this Annexure, and if not, what elements need to be included or, if included, requires further development;
- 13.2. whether the Compliance Program adequately covers areas identified in the Risk Assessment, and if not, what areas need to be included or further addressed ;
- 13.3. whether the Staff Training and Induction covers the relevant material in a clear way, conducive to learning and retention, and if not, what aspects need to be further developed;
- 13.4. whether there are any material deficiencies in Red Energy's Compliance Program, or whether there are or have been instances of material non-compliance with the Compliance Program (**Material Failure**)<sup>3</sup>, and if so, recommendations for rectifying the Material Failure.

### **Red Energy's Response to Compliance Report**

14. Red Energy will ensure that the Compliance Officer, within 14 days of receiving the Compliance Report:

- 14.1. provides the Compliance Report to Red Energy's governing body; and
- 14.2. where a Material Failure has been identified by the Reviewer in the Compliance Report, provides a report to Red Energy's governing body identifying how Red Energy can implement any recommendations made by the Reviewer in the Compliance Report to rectify the Material Failure.

15. Red Energy will promptly and fully implement any recommendations made by the Reviewer in the Compliance Report to address a Material Failure.

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<sup>3</sup> Material Failures are intended to include non-trivial failures that are ongoing or continue for a significant period of time to:

- incorporate a requirement of the Undertaking in the design of the Compliance Program; or
- comply with a fundamental obligation in the implementation of the Compliance Program.

## **Reporting to the AER**

### **16. Red Energy will:**

- 16.1. provide a copy of the Compliance Report to the AER within 30 days of Red Energy's governing body receiving the Compliance Report; and
- 16.2. where a Material Failure is identified by the Reviewer in the Compliance Report:
  - 16.2.1. inform the AER of any steps that have been taken by Red Energy to implement the recommendations made by the Reviewer in the Compliance Report; or
  - 16.2.2. otherwise outline the steps that Red Energy proposes to take to implement the recommendations and inform the AER once those steps have been implemented.
- 16.3. notify the AER in writing within 5 business days of any failure to comply with the dates identified within this Undertaking.

## **Provision of Compliance Program Documents to the AER after the Term**

- 17. Red Energy will maintain copies of all documents relating to and constituting the Compliance Program for a period not less than 2 years following the end of the Term of the Undertaking.
- 18. If requested by the AER during the period of 2 years following the end of the Term of the Undertaking, Red Energy will, at its own expense, cause to be produced and provided to the AER copies of all documents constituting the Compliance Program, including:
  - 18.1. the Hardship Compliance Policy;
  - 18.2. the Risk Assessment Report;
  - 18.3. an outline of the Complaints Handling System;
  - 18.4. Staff Training and Induction materials;
  - 18.5. the Compliance Report(s) that has been completed at the time of the request; and
  - 18.6. copies of the reports to Red Energy's governing body referred to in this Annexure.

## **AER Recommendations**

- 19. Red Energy will promptly and fully implement any recommendations that the AER considers reasonably necessary to ensure that Red Energy maintains and continues to implement the Compliance Program in accordance with the requirements of this Undertaking.