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23 May 2016

Dear stakeholders

## **AER approval of minimum amount owing for disconnection, r. 116 of the National Energy Retail Rules**

### ***Summary***

The National Energy Retail Rules (Retail Rules) provides protections for customer by prescribing when retailer can arrange for the disconnection of a small customer's premises. In particular, a retailer cannot disconnect a customer's premises for non-payment of a bill, where the amount outstanding is less than an amount approved by the AER.

The current approved amount is \$300 (GST inclusive) for both gas and electricity. This has been the minimum disconnection amount since the commencement of the National Energy Retail Law (Retail Law) and Retail Rules on 1 July 2012. The figure was approved after consultation with stakeholders.<sup>1</sup> We agreed to review the minimum disconnection amount after it had been in effect for a period of time.<sup>2</sup>

This letter sets out the key factors the AER has had regard to when reviewing the minimum disconnection amount and our proposed approach to maintain the current amount of \$300 (GST inclusive) for both gas and electricity across all jurisdictions that have commenced the Retail Law and Rules.

We are seeking stakeholder comment on these factors and views on our proposed approach.

### ***Background***

Part 6 of the Retail Rules sets out the circumstances under which a retailer can arrange for the disconnection of a small customer's premises. Such circumstances include:

- Where a customer has failed to pay a bill or security deposit;
- Where a customer denies access to the meter;
- Where a customer has illegally used energy.

<sup>1</sup> <https://www.aer.gov.au/retail-markets/retail-guidelines/minimum-disconnection-amounts>

<sup>2</sup> We proposed to undertake the review after the amount had been in effect for 18-24 months. The Retail Law and Rules commenced in Tasmania (electricity only) and the ACT on 1 July 2012, South Australia on 1 February 2013, New South Wales on 1 July 2013 and Queensland on 1 July 2015. Although the amount has not been in effect across all these jurisdictions for 18-24 months, we consider that enough data on its operation is now available to inform our review.

In particular, r. 116 (1) of the Retail Rules states that:

Despite any other provisions of this Division but subject to sub rules (2), (3) and (4), a retailer must not arrange for the de-energisation of a customer's premises to occur:

.....

(g) for non-payment of a bill where **the amount outstanding is less than an amount approved by the AER** and the customer has agreed with the retailer to repay that amount;

(emphasis added)

While this applies to both gas and electricity, r. 117 of the Retail Rules provides that where the customer has a dual fuel contract and the retailer wishes to arrange de-energisation, the retailer must first de-energise the customer's gas supply, rather than electricity (or both simultaneously). The retailer can only de-energise the customer's electricity supply 15 business days after de-energisation of the gas supply.

The minimum disconnection amount is only one of a suite of consumer protections provided in the Retail Law and Rules to assist customers struggling to pay their energy bills. Other such protections include the requirement for retailers to offer payment plans and to offer hardship assistance to those who identify (or who are identified by the retailer or other third party) as experiencing payment difficulties or financial hardship. Retailers are required to offer these customers assistance irrespective of any minimum disconnection amount approved by the AER.

Furthermore, customers adhering to a payment plan or participating in a retailer's hardship program are protected from disconnection, regardless of the amount they owe. The minimum disconnection amount operates in conjunction with these other protections prescribed in the Retail Law and Rules and is the focus of this consultation process.

### **Factors considered in reviewing the minimum disconnection amount**

A number of factors were taken into account when we initially approved the current minimum disconnection amount of \$300 (GST inclusive) including:

- The levels of existing minimum disconnection amounts in each of the states and territories, how these amounts were determined, whether these amounts were published and variations between electricity and gas bills
- The costs incurred by retailers for disconnecting and reconnecting customers, including the cost to retailers of servicing larger amounts of uncollected revenue
- The level of arrears that a customer is likely to owe at the time they are disconnected, given that this will exceed the threshold amount (in addition to the original debt for which they were disconnected, customers will also have to pay any disconnection and reconnection fees charged, any further bills that become payable, as well as manage their ongoing energy bills)
- Critically, the need to avoid exacerbating hardship issues for customers experiencing payment or financial difficulty
- That, in principle, customers should not be disconnected from an essential service for relatively small amounts or for being one quarterly bill behind, nor should they be disconnected solely due to an inability to pay
- Striking an appropriate balance between the interests of customers and retailers, and

- The benefits of a simple, single, transparent national approach.

Our view is that these factors are still pertinent and we have taken these into account when reviewing the minimum disconnection amount.

**Question 1: What other factors (if any) should the AER consider when reviewing and approving the minimum amount owing for disconnection?**

## **Reviewing the minimum disconnection amount**

In reviewing the amount, we have sought to understand how current the arrangements are operating in practice, given that they have been in place in a number of jurisdictions for some time. We have assessed the data available to the AER for the period in which the minimum disconnection amount has been in operation. This has included:

- changes in estimated annual energy bills since the minimum disconnection amount has been in effect<sup>3</sup>
- rates of disconnection<sup>4</sup>
- complaint information about disconnections including published data from energy ombudsmen schemes as well as customers and their representatives who contact the AER directly, and
- retailers' levels of compliance with the minimum disconnection amount.

There is no definitive measure by which to assess the operation of the minimum disconnection amount. Our view is that the above data sources can act as indicators to highlight whether the amount is set at an appropriate level, whether it is affording customers an appropriate level of protection and striking the right balance between the interests of retailers and customers.

## **Average energy bills**

When originally approving the minimum disconnection amount we supported the principle that customers should not be disconnected from an essential service for relatively small amounts or for being one quarterly bill behind. We also recognised that in some states and territories, the previous minimum disconnection amounts that had been in operation had been determined having regard to the value of quarterly electricity and gas bills.

Whilst the AER did not support proposals to adjust or index the amount annually, we did recognise that it is important that the level of protection afforded by the approved minimum disconnection amount is not eroded over time by increases in energy prices and the bills received by customers.

We have reviewed the amount of average electricity and gas bills for low income households (without concessions) using data from the AER's Annual Report on the Performance of the Retail Energy Market.<sup>5</sup> For most jurisdictions, this data shows that electricity bills are lower now than when the minimum disconnection amount was introduced and that quarterly gas bills, although increasing, are still less than the minimum disconnection amount.

<sup>3</sup> Based on data collected for the AER Annual Report on the Performance of the Retail Energy Market. Statements about low income households are based on benchmark low income household average electricity (4,100 kWh) and gas (100,000 MJ) without concession.

<sup>4</sup> Based on data collected for the AER Annual Report on the Performance of the Retail Energy Market. Disconnection data is for residential customers only.

<sup>5</sup> We have used data for market offers for jurisdictions where these offers are available. Otherwise, averages are for regulated or standing offers.

Average electricity bills for low income households across all participating jurisdictions were lower for the last financial year (2014-15) compared to the year the minimum disconnection amount was first introduced (2012-13).<sup>6</sup> This is true for both the monetary amount and as expenditure as a proportion of income.<sup>7</sup> This highlights that if the current minimum disconnection amount is retained, the level of protection it provides to electricity customers has not been eroded over time and can still be considered appropriate in light of the factors set out above. The data for gas bills shows a current increase when compared to gas bill prices for 2012-13. However, average quarterly gas bills remain lower than the current minimum disconnection amount of \$300 (GST inclusive) across all jurisdictions other than the ACT (\$383). Therefore, the current minimum disconnection amount still aligns with the general principle that customers should not be disconnected for being in arrears by one quarterly gas bill.

### **Disconnection rates**

The minimum disconnection amount is one of a number of important customer protections set out in the Retail Law and Rules to assist customers experiencing difficulty with paying their energy bills. These protections support the principle that energy is an essential service and that disconnections can have significant impacts on households. Decreasing or relatively stable rates of disconnection *may* indicate that the current suite of protections in place, including the minimum disconnection amount, is operating effectively. However, changes in disconnection rates can result from numerous contributing factors and it is difficult to draw any firm conclusions on the effective operation of the minimum disconnection rate based solely on changes in the rates of disconnection.

Electricity disconnection rates for non-payment decreased across all participating jurisdictions except the ACT over the last financial year (2014-15). Furthermore, despite the increase in the ACT, electricity disconnection rates remain comparatively low in that jurisdiction (0.21 disconnections per 100 customers when compared to 0.45 in Tasmania, 1.06 in New South Wales and 1.36 in South Australia).<sup>8</sup> Conversely, gas disconnection rates in 2014-15 across all jurisdictions were higher than those recorded for the year previous.

Changes in the rates of customers being disconnected vary across jurisdictions and fuel types, with increases in some states and territories in the past reporting period, particularly for gas, and decreases for electricity in most. Recent increases in gas prices may be a major factor in the increase in gas disconnection rates. Reductions in the rates of disconnection for electricity across all jurisdictions (except the ACT) coincide with increased customer assistance through payment plans and hardship programs.

Given the mixed data on disconnection rates, it is difficult to draw any firm conclusion about the effectiveness of the operation of the minimum disconnection amount. Despite this, we expect retailers to continue to focus on assisting customers with difficulty paying their energy bills. This is especially so in light of the AER's recent project to work collaboratively with retailers and consumer representatives to develop guidance to achieve improved and sustainable payment plans.<sup>9</sup>

The ongoing focus by retailers on providing assistance to customers with payment difficulties through hardship programs and sustainable payment plans, along with the minimum

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<sup>6</sup> NSW annual bill down \$33; SA annual bill down \$8; TA bill down \$239; ACT bill down \$156.

<sup>7</sup> Expenditure as a proportion of income: NSW down 0.4%; SA down 0.3%; TA down 1.3%; ACT down 0.6%.

<sup>8</sup> Disconnection rates for Queensland are not considered here. As Queensland adopted the Retail Law and Rules in July 2015, annual disconnection data is not yet available for the period during which the Retail Rules have been in force in that jurisdiction.

<sup>9</sup> <https://www.aer.gov.au/retail-markets/retail-guidelines/aer-sustainable-payment-plans-framework>

disconnection amount and suite of other Retail Law and Rules obligations, provides an appropriate framework of consumer protection.

### **Disconnection complaints**

Energy ombudsman schemes generally publish the numbers of complaints received about disconnections due to non-payment in their annual reports.<sup>10</sup> This shows a decrease in these complaints for the last financial year in New South Wales and numbers in other jurisdictions remaining similar to the previous year.

In addition to considering the disconnection complaint data published by energy ombudsman schemes, we also reviewed the contacts we have had directly from consumers and their representatives about disconnections and the minimum disconnection amount. This review showed that these topics have not been a significant source of complaint or concern over the period. In particular, concerns with the operation of the minimum disconnection amount have not been raised with us by consumer representatives through our regular forums, such as our Customer Consultative Group (CCG).

Complaints to ombudsmen about disconnections due to non-payment are decreasing or remaining stable and the AER has received little to no contact about the issue through our consumer forums and other channels for consumer enquires. This may indicate that the minimum disconnection amount and the protections afforded to customers under the Retail Law and Rules are operating effectively.

### **Retailer compliance with the minimum disconnection amount**

In reviewing the operation of the minimum disconnection amount in practice, we looked at levels of retailer compliance with this obligation. Retailers are required to report to the AER on the number and nature of breaches of a range of obligations under the Retail Law and Rules.

Retailers reported few breaches of r. 116(1)(g) with only two instances reported in the last financial year and one instance in the current financial year. This demonstrates that retailers are mostly meeting the requirements of the current rule.

**Question 2: What other data (if any) should the AER consider when reviewing and approving the minimum amount owing for disconnection?**

**Question 3: What are stakeholders' experiences of the operation of the minimum disconnection amount to date?**

### **Proposal to retain the current minimum disconnection amount**

The AER proposes that the minimum disconnection amount of \$300 (GST inclusive) be retained.

Our review of the data above indicates that the current minimum disconnection amount appears to be set at an appropriate level and affording suitable protection for customers.

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<sup>10</sup> Energy and Water Ombudsman NSW (EWON); Energy and Water Ombudsman SA (EWOSA); Energy Ombudsman TAS. Energy and Water Ombudsman QLD (EWOQ) also publishes this data but because the National Energy Law and Rules commenced in Queensland 1 July 2015, there is no data yet for the period during which the minimum disconnection amount has been in operation.



We continue to consider a single, nationally consistent amount for electricity and gas to be the most appropriate approach. The single amount minimises confusion and makes it easier for customers to understand their rights. It is also simpler for retailers who operate across multiple jurisdictions to implement and operate.

Critically, our key consideration is not to exacerbate payment or financial difficulties for consumers by increasing the amount and having customers incur more debt before seeking assistance. Where the prospect of disconnection can prompt customers to approach a retailer for assistance, an increase in the minimum disconnection amount may lead to customers having higher levels of debt before taking action or seeking help from their retailer. Furthermore, it is important to acknowledge that ultimate level of arrears incurred by a customer disconnected for non-payment will be significantly greater than \$300 when other costs such as reconnection and disconnection fees, and ongoing consumption costs are considered.

Therefore, as the available data suggests that the disconnection amount is as effective at present as it was when initially introduced, we propose that the current amount be retained as it appears to provide an appropriate balance between the level of debt that most customers can afford to repay, and the acknowledgement that energy is an essential service and customers should not be disconnected solely due to an inability to pay.

**Question 4: Do stakeholders consider retaining a minimum disconnection amount of \$300 (GST inclusive) to be appropriate? Why / why not?**

**Question 5: If stakeholders do not favour retaining the current minimum disconnection amount, should it be:**

- a. increased? Why and to what amount (inclusive of GST)?**
- b. decreased? Why and to what amount (inclusive of GST)?**

### **Next review of the minimum disconnection amount**

The AER proposes to conduct a further review of the minimum disconnection amount in five years with the option to initiate a review earlier should developments in the market warrant it.

As part of the initial consultation to implement the first minimum disconnection amount, we considered the utility of conducting annual reviews or the indexation of the amount but concluded that a simple, stable amount fixed over a longer period of time would be more beneficial to customers and retailers in terms of understanding their rights and obligations. This approach is consistent with our decision that the amount be the same across all participating jurisdictions and fuel types.

We continue to be of the view that a simple, single, stable amount is essential to ensure high levels of compliance by retailers and greater awareness of the consumer protections among customers. Regular revisions to the amount would require additional effort to educate consumers and consumer groups about the change and may increase confusion. A simple, single, stable amount is much easier to understand, communicate and implement. This is also the case for retailers who, would incur greater training and systems costs should the minimum disconnection amount be regularly updated.

We consider it is necessary to conduct periodic reviews to ensure that the minimum disconnection amount is set at a level that remains appropriate and affords customers a suitable level of protection. At the close of the last minimum disconnection amount consultation we committed to reviewing the amount after it had been in operation for 18-24 months to allow for the accumulation of a reasonable level of data over this initial period. The minimum disconnection amount has been in effect for some time and appears to still be operating as effectively as when it was introduced on 1 July 2012. We are proposing to

conduct another review in five years and seek stakeholder feedback on this proposal. We also note that we will have the ability to initiate an earlier review should circumstances warrant it.

**Question 6: When should the AER next review the minimum disconnection amount?**

The AER is seeking submissions to the above questions, and also any other general comments from stakeholders in relation to the minimum disconnection amount. Written comments are invited by **20 June 2016**.

Submissions should be sent to [AERInquiry@aer.gov.au](mailto:AERInquiry@aer.gov.au) with the subject line 'AER's minimum disconnection amount' or by mail to:

Ms Sarah Proudfoot  
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The AER intends to make a final decision in July 2016 for commencement one month after to provide stakeholders with adequate time to prepare should the amount be revised.

If you wish to discuss this matter further, please contact Tom Stevens-Downie on (03) 9290 6984.

Yours sincerely



Sarah Proudfoot  
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