

Submission in response to the Department for Energy and Mining's Review of South Australia's National Energy Retail Law (Local Provisions) Regulations 2013: Consultation Paper

Submission date: 27 September 2024

Sent by email: <dem.consultation@sa.gov.au>

Submission by:

Sally Wilson, PhD Candidate at the Australian National University's Crawford School of Public Policy

Brad Riley, Research Fellow at the Australian National University's Centre for Indigenous Policy Research

Introduction

We acknowledge the Department for Energy and Mining (**DEM**) for this opportunity to contribute to the review of South Australia's National Energy Retail Law (Local Provisions) Regulations 2013 (**Regulations**). The Regulations establish local conditions for the operation of the National Energy Customer Framework (**NECF**) in interconnected parts of South Australia and are scheduled to expire on 1 September 2025. As indicated in DEM's consultation paper (**consultation paper**), the purpose of this review is to determine the form and content of superseding regulations, i.e. "which regulations should be re-made (and how), and which (if any) can be allowed to expire".

Our submission addresses the following aspects of the review:

- Regulation 8 — Extreme weather events; and
- Regulation 11 — Use of prepayment meter systems.

Regulation 8 — Extreme weather events

In the consultation paper, DEM proposes to retain regulation 8 and we support this approach.

This regulation contains a definition of 'extreme weather event' – the effect of which is to enliven National Energy Retail Rule (**NERR**) 116(1)(h) to provide South Australian households and small business customers in interconnected regions with protections from disconnection for non-payment of a bill during heat wave conditions. 'Extreme weather event' is defined as:

any day where the forecast for the Adelaide Metropolitan area issued by the Bureau of Meteorology at 4 p.m. CST indicates that the following day is the third day in a sequence of 3 days (which may occur on a rolling basis) where the average of the minimum and maximum temperature for each day equals or exceeds 28° Celsius.

Protections from disconnection during extreme weather represent an increasingly important part of responsible policymaking for household consumer protections.

Households are likely to be more reliant on electricity for thermal comfort when it is very hot (or very cold) – with the result that energy costs may be greater due to increased consumption. Increased energy costs contribute to amplified household energy burdens and the need for appropriate protections from disconnection.

In supporting the continuance of this regulation, we make two observations:

- The protection from disconnection during extreme weather events relates to non-payment of a bill under NERR 111 and as such it is a protection directed towards post-payment customers. In this regard, we note DEM’s intention to retain prepayment as a permitted payment type (see below) and observe that the extreme weather protection would foreseeably not apply to such customers because they do not receive a bill. In the interests of consistency, equivalent protections should be extended to prepayment customers by prohibiting so-called self-disconnections during extreme weather events.
- Households who post-pay for their electricity services in South Australia’s small-scale networks are provided similar protections from disconnection under the Small-scale Electricity Networks Code. Clause 5.3.3 of the Code provides that:

When determining whether to disconnect a residential customer (on any particular day) in accordance with clause 5.2.2 the licensee must consider any extreme weather conditions impacting the residential customer’s supply address and whether disconnecting supply would in any way immediately endanger the health or safety of any person residing at the residential customer’s supply address.

The term ‘extreme weather conditions’ is not defined, meaning there is the scope for the relevant licensee to consider factors other than heat wave conditions in the exercise of their discretion. This might include, for example, very cold days, high bushfire risk days and other weather extremes.

Regulation 11 — Use of prepayment meter systems

In the consultation paper, DEM proposes retaining regulation 11, which permits the use of prepayment meter systems where the NECF applies in South Australia.

We observe that this approach preserves the policy position which has prevailed in South Australia since the commencement of the Prepayment Meter System Code (**PMSC**) in 2005, prior to the implementation of the NECF.

In this section, our submissions are primarily focused on providing better context for how and where prepayment is used in Australia, which may be useful to inform the policy decisions being considered by DEM.

Use of prepayment In Australia

While it is not made explicit in the consultation paper, residential electricity prepayment has long been targeted towards low-income First Nations households and communities

where it is used in Australian jurisdictions.¹ This is the case in the Northern Territory, Western Australia, Queensland and South Australia. Currently in South Australia prepayment is exclusively in use in remote Aboriginal communities² in the far north and west of the state where it has been used to facilitate the introduction of a ‘user pays’ model for household electricity services in the Anangu Pitjantjatjara Yankunytjatjara (APY) Lands, Yalata and Maralinga Tjarutja (Oak Valley).³

A map showing where prepayment is permitted in Australia is provided below.

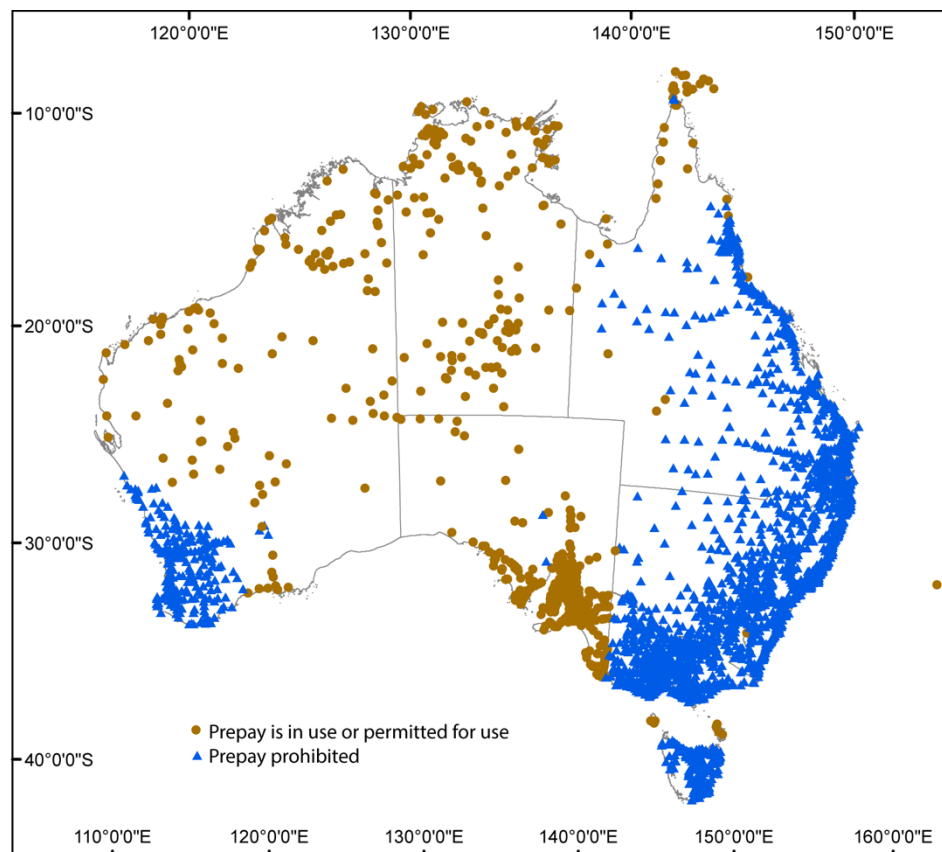


Fig. 1 | Locations where prepay is in use or permitted for use in Australia. Prepay is in use or permitted for use only in specific locations in Australia. Across discrete Indigenous communities in Qld, SA, NT and WA prepay is the mandatory or default payment system, while in other locations prepay is theoretically permitted but not currently in use (e.g., interconnected and off-grid SA, ACT, regional WA). In Qld separately defined but functionally equivalent ‘card-operated meters’ are exclusively used in Aboriginal and Torres Strait Islander communities, some of which are grid-connected but in most cases reliant upon isolated networks. This map was produced by Dr Lee V. White based on data collected, analysed and coded for the purpose of a project undertaken by White, LV, Riley, BR, Wilson, S, Markham, F, O’Neill, L, Klerck, M and Davis, VN (2023) with funding from Energy Consumers Australia.

¹ White, L.V., Riley, B., Wilson, S. *et al.* Geographies of regulatory disparity underlying Australia’s energy transition. *Nat Energy* **9**, 92–105 (2024). <https://doi.org/10.1038/s41560-023-01422-5>

² We are not aware of any retailers approved to offer prepayment in small-scale networks under the PMSC and there are currently no prepayment customers in interconnected parts of South Australia.

³ Grealy, L. (2022) Enforced commensuration and the bureaucratic invention of household energy insecurity, *Australian Geographer*, 1-18.

As recently observed by the AER, there are effectively no prepayment customers – as that term is defined in the National Energy Retail Law – within the NEM.⁴ The exception to this is the separately regulated but functionally equivalent ‘card-operated meters’ which are used in several grid-connected Aboriginal communities in Queensland. Card-operated meters are also used in remote Aboriginal and Torres Strait Islander communities which rely on isolated networks in the far north of the state.

In interconnected South Australia, there has been very limited household use of prepayment despite it being a permitted payment type. Historically, only one retailer, Aurora Energy, has offered prepayment in interconnected locations (from 2007 – 2012) and during that time there was limited uptake by households. Since the commencement of the NECF, no retailers have offered prepayment to interconnected households in the state.

Further:

- While prepayment is permitted in the ACT, it has never been offered by retailers or used by households in that jurisdiction
- Prepayment is no longer permitted in Tasmania. Instead, the regulatory opt-in provisions for prepayment have been allowed to expire following state-based policy changes. Specifically, regulations permitting prepayment previously included in Part 2 of the [National Energy Retail Law \(Tasmania\) Regulations 2012](#) were not retained in the superseding [National Energy Retail Law \(Tasmania\) Regulations 2022](#). The result is that prepayment has been prohibited in interconnected parts of Tasmania since 29 June 2022, reflecting the state-owned retailer Aurora Energy’s decision to discontinue this payment type. As stated in the Tasmanian Economic Regulator’s Energy in Tasmania Report 2022-23:

The Aurora Energy’s Pay As You Go (APAYG) products were decommissioned over 2019-20 and APAYG customers were required to switch to other Aurora Energy tariffs or to tariffs offered by other retailers. Aurora Energy reported that, as of 30 September 2023, all APAYG customers have successfully moved to another tariff.⁵

Prepayment is a choice for some, but mandatory for other South Australian households

As a matter of policy, prepayment has consistently been presented as a consumer choice for South Australia’s interconnected households.⁶ This choice is reflected in the consumer protection framework enlivened by the regulations and set out in the NECF –

⁴ AER, (Retail Law) Performance Reporting Procedures and Guidelines: Issues paper, p. 12, available at <https://www.aer.gov.au/system/files/AER%20%28Retail%20Law%29%20Performance%20Reporting%20Procedures%20and%20Guidelines%20Review%20-%20Issues%20Paper.pdf>.

⁵ Tasmanian Economic Regulator, Energy in Tasmania Report 2022-23, p. 31, available at <https://www.economicregulator.tas.gov.au/Documents/24%20580%20%20Energy%20in%20Tasmania%20Report%202022-23%20-%20Final.PDF>.

⁶ Recognising that a prerequisite to the exercise of that choice is the decision by retailer(s) to offer prepayment, which has rarely been the case in interconnected South Australia.

and extends to households in off-grid (or small-scale) networks where the separate regulatory framework of the PMSC applies.

However, the same policy approach does not extend to households in remote Aboriginal Lands in South Australia. State Government regulations made in 2021 introduced ‘user pays’ policy based upon mandatory prepayment for ‘prescribed customers’, that is, Aboriginal residents of public housing in the APY Lands, Yalata and Maralinga Tjarutja (Oak Valley).⁷ This mandatory prepayment regime commenced incrementally across affected communities from July 2022.⁸

Effectively, while prepayment is a choice for interconnected households it is a compulsory payment system for remote Aboriginal households in South Australia. This situation reflects a policy-based disparity with significant impacts for First Nations households. Prepayment is associated with known risks of disconnection – with consequential adverse impacts for social, health and wellbeing outcomes.⁹ Public reporting by the Essential Services Commission of South Australia (**ESCOSA**) shows that during the first year of mandatory prepayment use in South Australia, remote Aboriginal households disconnected from electricity on average 13.1 times and approximately 60% of household disconnections lasted between 3 – 24 hours.¹⁰ Disconnections of any length disrupt the safe and healthy functioning of homes, meaning that fridges, air-conditioning and other appliances stop working and lights go out. These circumstances reflect a disproportionate energy burden being experienced by remote Aboriginal households, who are likely to be on low incomes¹¹ and have limited capacity to change their energy use while facing significant barriers to accessing the benefits of solar energy in remote public housing.

Whether or not DEM elects to retain the ‘opt-in’ prepayment regulation, there remain fundamental issues for energy equity and access in remote Aboriginal households across the state. These must be addressed in partnership with communities themselves.

We would be pleased to discuss any aspect of this submission.

⁷ South Australian Government Gazette, South Australia Electricity (General) (Payment Condition) Variation Regulations 2021 under the Electricity Act 1996, 9 December 2021, No. 80 pp. 4331-4332.

⁸ ESCOSA, Cowell Electric Supply Pty Ltd - Prepayment metering data analysis, available at <<https://www.escosa.sa.gov.au/industry/electricity/regulatory-performance/small-scale-electricity-networks/cowell-electric>>.

⁹ Longden, T., Quilty, S., Riley, B. et al. Energy insecurity during temperature extremes in remote Australia. *Nat Energy* 7, 43–54 (2022). <https://doi.org/10.1038/s41560-021-00942-2>

¹⁰ See footnote 8.

¹¹ As reported by MoneyMob Talkabout in its submission to DEM’s Consultation on proposed amendments to customer payment under the South Australian Remote Area Energy Supply (RAES) Scheme (Issues Paper July 2021), p. 6: “The median weekly personal income for people aged 15 years and over in the APY Lands is \$283. The South Australian average is \$600 per week and the Australian average is \$626. The poverty line in Australia for a single person is \$471.20 per week. For the financial years 2020-2021 and 2021-2022 to date, we have seen 108 clients with matters pertaining to debt totalling approximately \$294,000, with the smallest debt being \$123 and the largest \$28,047. The average personal debt is \$2,721. Running out of power and not having the necessary funds to top up the meter is likely to be a common occurrence”.