THE HON CHRIS BOWEN MP
MINISTER FOR CLIMATE CHANGE AND ENERGY

MS24-001246

Ms Anna Collyer
Chair
Level 15
60 Castlereagh Street
SYDNEY NSW 2000

Anna.collyer@aemc.gov.au

Dear ~~Chair~~ Anna

Please find attached a package of rule change proposals to amend the National Energy Retail Rules to help households access cheaper energy deals, increase support for people experiencing hardship, and deliver more protections for consumers.

These necessary changes are recommended by the Energy and Climate Change Ministerial Council (ECMC) which on 19 July agreed that I submit the attached package to the Australian Energy Market Commission (AEMC) in my capacity as Chair of ECMC. This package was developed in response to findings presented to Energy Ministers in March 2024 by the Australian Competition and Consumer Commission (ACCC), the Australian Energy Regulator (AER) and Energy Consumers Australia (ECA) that there are aspects of the east coast regulatory framework that could be strengthened to better serve the interests of electricity consumers.

I endorse these rule change requests and ask that the AEMC urgently progress with their initiation, prioritising those proposals which are most urgent and have the highest expected impact, as agreed by Energy Ministers. These are: 'improving the ability to switch to a better offer,' 'ensuring energy plan benefits last the length of the contract,' 'preventing price increases for a fixed period under negotiated market retail contracts,' and 'assisting hardship customers.'

As the Commonwealth Minister for Climate Change and Energy, I also request withdrawal of the pending rule change request 'long-term standing offer notice', as it is now superseded by the attached package of rule change requests.

Yours sincerely

CHRIS BOWEN

Assisting hardship customers
Request to make a rule

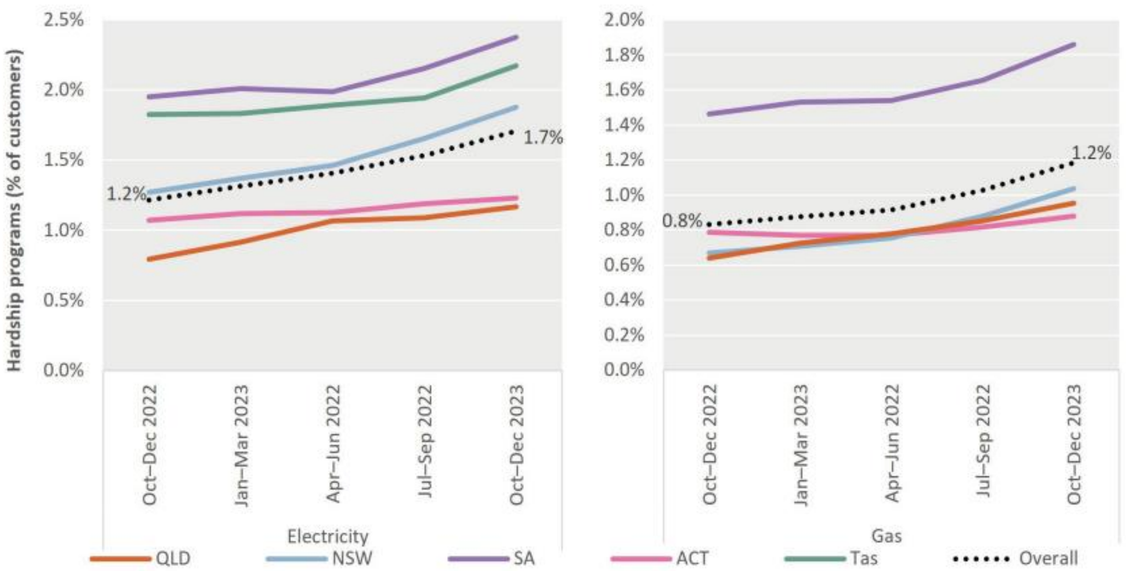
Name and address of the person making the request

The Honourable Chris Bowen MP
Minister for Climate Change and Energy
Parliament House
Canberra ACT 2600

Statement of issue

Consumers experiencing vulnerability or hardship face many barriers when engaging in the energy market. This represents a failure of the market to facilitate equitable outcomes across the diversity of customers. These barriers can include lack of time, literacy or language barriers, lack of understanding of the market, reduced mental bandwidth due to stress or other pressures, and information asymmetries. Such barriers may prevent hardship customers and others experiencing financial vulnerabilities from getting the best offer available to them. There are also opportunity and transaction costs to consumers for time spent navigating the energy market. The Australian Energy Regulator's (AER) study on Consumer Vulnerability found that the cost to consumers was estimated at $108 million in quantifiable annual cost of such barriers.

Data also shows increased numbers of customers accessing hardship programs. The AER's quarterly retail performance report from October-December 2023 identified a 41.4% increase since the same period in 2022 in residential electricity customers participating in hardship programs, which is now 1.7% of customers (see figure 1). This indicates that more customers are identifying themselves as experiencing payment difficulty and hardship.



Source: AER, Schedule 4 – Retail Performance Data Q2 2023–24, Sheet: 'Hardship Numbers' Schedule 2 – Retail Performance Data Q2 2023–24, Sheet: 'Res Elec Cust#s & Mkt Contr'.

Figure 1: Graph showing increased customers accessing hardship programs in the AER's Quarterly Retail Performance report October- December 2023

On September 2023, the Better Bills Guideline v2 (BBG) came into effect requiring retailers to regularly assess whether each customer could be on a better offer and publish this on their bills. Where a better offer is identified, the onus is on consumers to move themselves onto the deemed better offer. This is also the case for hardship customers.

While the National Energy Retail Law (NERL), under section 44, requires retailers to have processes in place to review a hardship customer's market retail contract, retailers are prevented from moving customers on to a new plan without their explicit informed consent, this includes to any deemed better offer. Additionally, hardship consumers face significant barriers to engagement and moving themselves. This means hardship customers may remain on less affordable plans making it more difficult for them to tackle their debts and ongoing usage, and ultimately leave hardship.

The proposed rule change responds to this issue by requiring retailers to provide hardship customers with the benefits of a deemed better offer through a crediting mechanism on a hardship customers bill.

Background

The AER's Game Changer Report, released in November 2023 suggests that the BBG should be leveraged to support hardship customers by requiring retailers to automatically move hardship customers onto a deemed better offer. Where a deemed better offer is available, placing hardship customers on a deemed better offer will help hardship customers better manage their ongoing usage, while tackling existing debt, by reducing the underlying tariffs contributing to more unaffordable bills.

This rule change request builds on this recommendation, proposing an approach that does not conflict with existing explicit informed consent protections under the NERL. Explicit informed consent is widely recognised as an important consumer safeguard in ensuring consumers understand the contracts they enter. The AER's Game Changer report highlights the importance of maintaining genuine customer agency and trust through clear opt-out options available when contacted by the retailer. It includes three potential avenues to be considered:

1. **Automated switch with post-switch reversal**: Retailer notifies customer that automated switch has taken place and the customer can choose to reverse the switch during the existing 10-day cooling-off period.
2. **Automated switch with pre-switch opt-out and post switch reversal:** Retailer notifies the customer of an upcoming automated switch and the customer can choose to opt out beforehand or reverse the switch during the cooling-off period.
3. **General consent for automated switch in future:** Customer provides consent for retailer to automatically switch them to a deemed better offer in the future. Customers can choose to reverse the switch during the cooling-off period.

Under a rule change process, Avenues 1 and 2 are not possible as a rule allowing or requiring retailers to move customers onto a different market contract without their explicit informed consent would contravene existing explicit informed consent requirements under the NERL. Avenue 3 is a possible avenue. Although, there is concern that the time elapsed between when general consent may be provided (at the time of contracting) and when the automated switch would occur may be considerable for some hardship customers. This means they may have forgotten, or no longer aware of their consent to an automated switch.

Existing rules around when a customer enters into a hardship program, however, may offer some protection to customers by providing a trigger for when hardship customers are engaged and can be subsequently switched by their retailer onto a deemed better offer. Engagement rules require retailers to communicate their hardship policy, and review the appropriateness of a customer's retail market contract. Nevertheless, Avenue 3 may not be most preferable where an alternate pathway is available.

The proposed rule change has drawn from the AER's Game Changer findings. It seeks to achieve the Game Changer's objective of helping hardship customers lower their bills and implements a degree of 'automation' to better serve a customer's interests while in hardship, while remaining consistent with the NERL's explicit informed consent provisions.

Description of the proposed rule change

The proposed model is to implement a rule which will require retailers to provide a credit on the bill of hardship customers. This credit would be calculated as the difference between the full amount of a customer bill and what the customer would have been charged under the deemed better offer, as determined under the AER's BBG.

This proposed rule change builds on the AER's recommendation, by providing a crediting mechanism for hardship customers to benefit from the deemed better offer under the BBG, while maintaining existing explicit informed consent requirements under the NERL.

In instances where a customer is not already on the deemed better offer, a customer would benefit from a more affordable total bill. Where a customer is already on the deemed better offer they would not be provided with credit. When a customer moves onto or off a hardship program, bill credit would be pro-rated to the period during which they were on the hardship program. This bill credit could be similarly pro-rated in the case where a customer changes energy plans.

The proposed rule should not preclude customers from changing energy plans if that were the customer's preference, nor would it lift the obligation on energy retailers to engage with their hardship customers on whether their current plan is right for them. It may be the case that the terms or conditions of an alternative plan which do not relate to pricing would still be more beneficial than a customer's current plan.

This model aims to maintain explicit informed consent protections as they currently exist and is not intended to allow retailers to change a customer's energy plan or tariff. Hardship customers would experience the benefits of a lower priced plan in terms of cost, without needing to change energy plan.

How the proposed rule change will address the issue.

The proposed rule change will address the issue by ensuring that customers in hardship pay no more than the best available tariff for their consumption profile and are not at a disadvantage due to being less able to engage with the market (due to a lack of time, effort, understanding or agency). It will extend on the relief provided to the customer by the existing Hardship Guideline and relevant Rules, and reduce the stress and anxiety that consumers, particularly those experiencing vulnerability, often associate with navigating the energy market and comparing plans. The proposed rule would ensure that no customer is made worse off by this change.

How the proposed rule change will or is likely to contribute to the achievement of the National Electricity Objective

The National Energy Retail Objective (NERO), set out in the *National Energy Retail Law*, is:

"to promote efficient investment in, and efficient operation and use of, energy services for the long term interests of consumers of energy with respect to:

a. price, quality, safety, reliability and security of supply of energy; and
b. the achievement of targets set by a participating jurisdiction—
   i. for reducing Australia's greenhouse gas emissions; or
   ii. that are likely to contribute to reducing Australia's greenhouse gas emissions."

The relevant aspect of the NERO for this request is the price of energy services in the long-term interests of consumers of energy. The proposed rule change advances the NERO by ensuring that hardship customers will automatically be provided with price reduction aligned with the best available offer from their retailer. This reform will ensure that the long-term interests of vulnerable consumers are at the forefront of retailers' objectives.

Expected costs, benefits and impacts

Expected benefits

Often, customers experiencing hardship do not necessarily have the capacity to fully engage, so this rule change will reduce the responsibility, burden and stress often associated with engaging with the energy market by applying a credit on the bill of hardship customers in line with what the customer would have paid had they been on a deemed better offer as determined under the AER's Better Bills Guideline. As noted above, the proposed option will not preclude customers from changing energy plans if that were the customer's preference, nor would it lift the current obligation on energy retailers to engage with hardship customers on whether their current plan is right for them. It may be the case that the terms or conditions of an alternative plan which do not relate to pricing would still be more beneficial than a customer's current plan.

Expected costs

Retailers are expected to incur costs in implementing the rule change. Further work is required to determine the extent of these costs, and if overall cost will be significant to retailers. As the proposed approach uses existing systems already in place within retailers, implementation costs are likely to be more moderate, when compared to alternative approaches which may require systems built from the ground up.

Under section 44 of the NERL, retailers are required to review the appropriateness of a hardship customer's market retail contract, in accordance with the purpose of their customer hardship policy to identify if there is a better offer available. It is expected that retailers are already identifying and recommending alternative plans, which could include the deemed better offer, for hardship customers. They should also already have internal processes in place to facilitate a switch for hardship customers, where customers have consented to move onto an identified plan.

Under part 4 of the AER's BBG, retailers are required to check if there is a deemed better offer available for all their small customers. This check requires retailers to calculate the difference between the annual total cost of a customer's current plan and the annual total cost of a deemed better offer. This existing calculation could be used to form the basis of the crediting mechanism proposed.

Under rule 31 of the NERR, retailers are required to apply credit to a customer's bill in instances where a customer has been charged above the overcharge threshold. Because of this, retailers already have billing systems in place which can readily provide a credit on a customer's bill.

The proposed rule change has sought to moderate and minimise costs for retailers by suggesting an approach which uses these existing systems and processes, that retailers are already required to have in place for all small customers and hardship customers.

Expected impacts

Primary impacted stakeholders are retailers and their hardship customers.

Overall, ensuring that hardship customers of receive a credit on their bills in line with their retailer's deemed better offer should act to reduce energy costs incurred during participation in a hardship program, reduce the risk of customers going into debt and/or reduce the amount of time a customer is indebted, and minimise the transaction and opportunity costs associated with a customer engaging with their retailer in determining the best offer while in a hardship program.

There is a risk that retailers may be incentivised to adjust the way they structure their offerings to avoid their best offer being defined as 'generally available' under the BBG and the Retail Pricing Information Guideline which would limit the benefits of the reform for customers.

Further impacts would depend on the form of implementation of this rule change and how it interacts with the BBG. This would include how often the credit is included on a customer's bill considering the BBG states that the better offer must be included on a customer's bills:

a) at least once every 100 days; or
b) where the retailer and customer have agreed to a different billing cycle under rule 24(2) of the Retail Rules and the billing cycle is greater than 100 days, a deemed better offer message issued in alignment with that billing cycle.