AUSTRALIAN ENERGY MARKET COMMISSION

RULE

Consultation paper

National Energy Retail Amendment (Assisting hardship customers) Rule 2025

Proponent

The Hon. Chris Bowen MP, Minister for Climate Change and Energy, as Chair of the Energy and Climate Change Ministerial Council

28 November 2024

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About the AEMC

The AEMC reports to the energy ministers. We have two functions. We make and amend the national electricity, gas and energy retail rules and conduct independent reviews for the energy ministers.

Acknowledgement of Country

The AEMC acknowledges and shows respect for the traditional custodians of the many different lands across Australia on which we all live and work. We pay respect to all Elders past and present and the continuing connection of Aboriginal and Torres Strait Islander peoples to Country. The AEMC office is located on the land traditionally owned by the Gadigal people of the Eora nation.

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Summary

1 This consultation paper seeks stakeholder feedback on the rule change request to increase support for people experiencing hardship.

2 This rule change request is part of a broader package of consumer-related rule change requests from the Hon Chris Bowen MP, Minister for Climate Change and Energy, as Chair of the Energy and Climate Change Ministerial Council (ECMC), submitted on 12 and 28 August 2024. The package involves seven rule change requests that together seek to help households access cheaper energy deals, increase support for people experiencing hardship and deliver more protections for consumers.

3 The proposed rule change builds on the Australian Energy Regulator's (AER's) *Game changer* report and recommendation for an automated better offer. *Game changer* was part of the AER's broader *Towards energy equity* strategy. The AER's recommendation was to automatically move hardship customers onto a deemed better offer, but implementation options presented in their report involved amending existing explicit informed consent (EIC) provisions under the National Energy Retail Law (NERL).

Hardship customers may not be on the deemed better offer

4 The rule change request outlines hardship customers face many barriers to engaging in the market and with their retailer, such as lack of time, literacy or language barriers. They consider these barriers prevent hardship customers from getting the best retailer offer available to them, that is, the deemed better offer as determined under the Better Bills Guideline.

5 Retailers are not able to move consumers onto a deemed better offer without obtaining the customer's EIC under the NERL. In the proponent's view, EIC is widely recognised as an important consumer safeguard in ensuring consumers understand the contracts they enter with their retailer, and should be maintained. Given this, the ECMC proposed in the rule change request not to change EIC requirements. Rather, proposed and consider that a credit mechanism would serve consumer interests while remaining consistent with the NERL's EIC provisions.

6 The rule change request indicates that support for hardship customers could be improved beyond existing retailer obligations and processes under current arrangements as it states the proposed crediting mechanism would provide hardship customers further relief beyond existing AER Customer hardship policy guideline and the relevant rules.

The proposal is to provide hardship customers with a credit on their bill if they are not on the deemed better offer

7 The proponent proposes to require electricity retailers to provide their hardship customers with a credit on their bill if a deemed better offer is available. Under the proposed crediting approach, the credit would be equal to the value of the amount that the customer would have saved if they were on the deemed better offer. It would also be pro-rated when a hardship customer moves on or off a hardship program and/or when they change energy plans.

8 The rule change request states hardship customers should still be able to change energy plans if that were their preference, nor would the rule change lift retailers' obligation to engage with their hardship customers on whether their current plan is right for them.

9 The proponent expects that the proposed crediting approach would help hardship customers to:

- have more affordable bills while in a hardship program, reducing the risk of or time they are in debt
- experience the benefits of a lower-priced plan in terms of cost without needing to change energy plan
- reduce economic costs (transaction and opportunity costs) for hardship customers from reduced responsibility, burden and stress often associated with engaging with the energy market and moving onto a deemed better offer
- have further relief or support beyond existing Hardship Guideline and relevant rules.

10 In terms of cost, it expects these to be moderate for retailers as the proposed crediting approach leverages existing retailer obligations under the NERL, National Energy Retail Rules (NERR) and AER guidelines.

We are seeking your feedback on the issues and solution outlined in the rule change request

11 We are seeking your feedback on:

- the nature of the identified problem (ie, whether hardship customers face barriers to engage with the market and their retailer, the proportion of hardship customers who are not on the deemed better offer and factors which contribute to this)
- whether the proposed solution of a crediting mechanism would address the issues raised in the rule change request and considerations we need to assess
- if the proposed changes will best promote the long-term interests of consumers
- implementation considerations including the costs of any such changes.

We consider that there are four assessment criteria that are most relevant to these rule change requests

12 Considering the National Energy Retail Objective (NERO)[1] and the issues raised in the rule change request, the Commission proposes to assess the rule change request against four assessment criteria:

- **Outcomes for consumers**. We will consider whether an 'automated' bill credit would:
  - help hardship customers to better manage their bills and debt (ie. have more affordable bills, meet payment plans and/or manage or reduce energy usage debt)
  - promote consumers to benefit from the retailer's best offer (ie. deemed better offer) whilst also meeting their needs and preferences, including potentially non-monetary benefits from an offer
  - minimise economic costs (opportunity and transaction costs) that hardship customers incur from difficulty and time spent navigating the market
  - be compatible with or strengthen existing consumer protections and assistance for hardship customers under the National Energy Customer Framework (NECF), including the NERR and AER's guidelines (eg, Customer Hardship Policy Guideline).
- **Principles of market efficiency**. We will consider:
  - current processes of retailers to help ensure their customers are on the best offer and suit their customer's needs

1 Section 13 of the NERL.

    - current risk allocation between retailers and hardship customers on non-payments of energy bills
    - the impact of an 'automated' bill credit on competition, including how they package their generally available offers and their incentive to provide deemed better offers.
- **Implementation considerations**. We will consider the cost and complexity for retailers to leverage or build upon existing systems and processes to calculate and provide a bill credit to their customers. We will also consider complementary implementation required by the AER, for example updating existing guidelines (eg, Better Bills Guideline and Customer Hardship Policy guideline).
- **Principles of good regulatory practice**. We will consider:
    - whether the proposed approach for applying a bill credit if there is a deemed better offer is the best approach
    - how prescriptive the rules need to be, including considering a principle based approach
    - how this rule would interact with recommendations made under the AER's current *Review of payment difficulty protections in the NECF*.

Submissions are due by 16 January 2025 with other engagement opportunities to follow

13 There are multiple options to provide your feedback throughout the rule change process.

14 Written submissions responding to this consultation paper must be lodged with Commission **by 16 January 2025** via the Commission's website, www.aemc.gov.au.

15 There are other opportunities for you to engage with us, such as one-on-one discussions or industry briefing sessions. See the section of this paper about "How to engage with us" for further instructions and contact details for the project leader.

Question 1: Hardship customers may not be on the deemed better offer

- Do you agree that hardship customers may find it challenging engaging with their retailer and agree to be on the deemed better offer? If so, could you outline some reasons why consumers might not accept a better offer from their retailer while on a hardship plan?
- Do you consider existing retailer requirements and/or processes for hardship customers to be on the deemed better offer need to be improved?

Question 2: Provision of bill credit to hardship customers who are not on a deemed better offer

Do you agree with the proposed solution as outlined in the rule change request or are the existing arrangements to protect hardship customers sufficient (including EIC arrangements and existing AER guidelines)? If you agree with the proposal in the rule change request please outline your reasoning.

Question 3: Costs and benefits of the proposed solution

Are there other potential benefits or costs not identified or that we should have regard to?

Question 4: Implementation considerations

- What factors could be considered for a credit mechanism that would help to minimise the costs and maximise the benefits?
- Do you think the proposed rules-based approach is appropriate? Or should this obligation be required through AER guidelines (eg. Customer Hardship Policy Guideline) instead?
- What transitional provisions would help retailers and their customers?

Question 5: Assessment framework

Do you agree with the proposed assessment criteria? Are there additional criteria that the Commission should consider or criteria included here that are not relevant?

How to make a submission

We encourage you to make a submission

Stakeholders can help shape the solutions by participating in the rule change process. Engaging with stakeholders helps us understand the potential impacts of our decisions and, in so doing, contributes to well-informed, high quality rule changes.

We have included questions in each chapter to guide feedback, and the full list of questions is above. However, you are welcome to provide feedback on any additional matters that may assist the Commission in making its decision.

How to make a written submission

Due date: Written submissions responding to this consultation paper must be lodged with Commission by 16 January 2025.

How to make a submission: Go to the Commission's website, www.aemc.gov.au, find the "lodge a submission" function under the "Contact Us" tab, and select the project reference code RRC0060.[2]

You may, but are not required to, use the stakeholder submission form published with this consultation paper.

Tips for making submissions are available on our website.[3]

Publication: The Commission publishes submissions on its website. However, we will not publish parts of a submission that we agree are confidential, or that we consider inappropriate (for example offensive or defamatory content, or content that is likely to infringe intellectual property rights).[4]

For more information, you can contact us

Please contact the project leader with questions or feedback at any stage.

Project leader:	Lisa Fukuda
Email:	lisa.fukuda@aemc.gov.au
Telephone:	(02) 8296 0637

2 If you are not able to lodge a submission online, please contact us and we will provide instructions for alternative methods to lodge the submission.

3 See: https://www.aemc.gov.au/our-work/changing-energy-rules-unique-process/making-rule-change-request/submission-tips

4 Further information is available here: https://www.aemc.gov.au/contact-us/lodge-submission

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1 The context for this rule change request

This consultation paper seeks stakeholder feedback on a rule change request submitted by the Hon Chris Bowen MP, Minister for Climate Change and Energy, as Chair of the Energy and Climate Change Ministerial Council (ECMC) (the proponent) on 12 August 2024. The rule change request proposes to amend the National Energy Retail Rules (NERR) to require retailers to provide hardship customers with a credit on their bill if there is a deemed better offer for that customer, as determined under the AER's Better Bills Guideline.[5]

This chapter outlines:

- an overview of the broader consumer rule change package from energy ministers
- broader context related to the rule change request
- the rule change process and timeline we will follow to assess this rule change request.

1.1 This rule change request forms part of the broader ECMC consumer rule change package

On 12 and 28 August 2024, Minister Bowen, as Chair of the ECMC, submitted a package of consumer-related rule change requests.[6]

The package involves seven rule change requests that together seek to help households access cheaper energy deals, increase support for people experiencing hardship and deliver more protections for consumers. The specific rule change requests are:

1. *Ensuring energy plan benefits last the length of the contract*
2. *Preventing price increases for a fixed period under market retail contracts*
3. *Removing fees and charges*
4. *Removing unreasonable conditional discounts*
5. *Assisting hardship customers*
6. *Improving the ability to switch to a better offer*
7. *Improving the application of concessions to bills*.

This consultation paper seeks feedback on the rule change request on *Assisting hardship customers*.

A consultation paper on the first four rule changes listed above was published on 28 November 2024.

1.2 The rule change request builds on the AER's and AEMC's previous work

1.2.1 The request draws from the AER's *Game changer* recommendation for automated better offer

This rule change request to assist hardship customers is drawn from a recommendation in the Australian Energy Regulator (AER) *Game changer* report.[7] The report recommended that the AER's

5 A deemed better offer is the lowest cost generally available plan for a customer considering their annual usage history, AER, *Better bills guideline version 2*, 30 January 2030, p. 19. Generally available plans are those that are available to small customers, except where specific restrictions apply. AER, *AER Retail pricing information guidelines*, April 2018, p. 11.

6 See the broader package here: https://www.aemc.gov.au/rule-changes/assisting-hardship-customers.

7 AER, *Game changer*, November 2023.

Better Bills Guideline should be leveraged to support hardship customers by requiring retailers to automatically move them onto a deemed better offer, as identified through the Guideline.[8]

The AER found more customers are experiencing payment difficulty

In its *Game changer* report, the AER identified high levels of consumer debt and hardship, even more so with rising living costs and energy prices. It states these challenges remain despite efforts from the energy sector, including consumer protections in the regulatory framework, hardship and support programs from energy businesses and concessions and rebates from governments.[9]

The AER views consumer outcomes for those in financial hardship as needing improvement, and considers more intensive support should be provided for consumers who find it challenging to overcome their debt burden to break the cycle of energy debt.[10]

The AER recommended options to address these issues

As part of its *Game changer* work, the AER considered three implementation options for automatically switching customers to the deemed better offer. Each would require removing or changing explicit informed consent (EIC) provisions under the National Energy Retail Law (NERL).[11]

1. **Automated switch with post-switch reversal.** This involves the retailer notifying their customer that an 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.** The retailer would notify their 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 the future.** A customer provides consent for their 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.

The rule change request notes the options above from the AER *Game changer* report but proposes the alternative credit mechanism approach, which would not require a change to the NERL. ECMC considers that the existing EIC provisions are widely recognised as an important consumer safeguard in ensuring consumers understand the contracts they enter with their retailer.[12]

The rule change request outlines that the proposed solution would automatically provide hardship customers with the benefits of moving to a deemed better offer while remaining consistent with the NERL's EIC provision.

1.2.2 The Commission has previously made a rule and recommendations to help hardship customers with payment difficulties

Strengthening protections for customers in hardship **rule change**

In November 2018, the Australian Energy Market Commission (AEMC) made a rule that aims to strengthen retailers' hardship policies so customers can better understand their rights and get the help they need to pay their power bills.[13] It required the AER to develop binding Hardship

8 AER, Game changer, November 2023, p. 12.

9 AER, Game changer, November 2023, p.iii.

10 AER, Game changer, November 2023, p. 9.

11 AER, Game changer, November 2023, p. 22.

12 ECMC, Assisting hardship customers rule change request, p. 3.

13 AEMC,Strengthening protections for customers in hardship, final determination, 15 November 2018.

Guidelines that include specific and standardised statements that retailers must include in their hardship policies.[14]

Under AER's Customer Hardship Policy Guideline, retailers are required to communicate with the customer whether they are on the right retail offer or plan when they join a hardship program. This includes explaining to the hardship customer why the plan is better and asking them if they would like to transfer to the new plan for free.

To date, the Commission has not made a rule that directly impacts the bill amount of hardship customers or retailer offers or plans they access.

***Retail energy competition* review**

In June 2019, the Commission completed the sixth annual review of retail energy competition in the NEM. It looked at how retailers support customers facing payment difficulties, among other areas of competition in the retail energy market.[15]

From a review of retailer support programs, the Commission found that there are a range of measures and support options available. However, these vary significantly. Larger retailers have a suite of measures and tools available, while smaller retailers have more focused and targeted options. The delivery, application and accessibility of programs also vary across retailers. Generally, there is inconsistency in how each retailer responds to consumers who identify as having payment and financial difficulties.

The Commission noted that there is room for retailers to improve their approach and implementation of the support and assistance they offer to consumers experiencing payment and financial difficulty. The key areas for improvement included:

- awareness of protections and support available
- improving early identification programs
- reporting of indicators and measures.

The review also found retailers offer consumers a range of retailer programs that extend beyond their minimum requirements such as early identification measures; available payment options; understanding and managing energy use; and partnerships or collaboration with third parties.[16]

1.3 We have started the rule change process

This paper is the first stage of our consultation process.

We intend to consider this rule change request using the standard rule change process, with two rounds of consultation. The formal stages are outlined in the table below.

Table 1.1: Stages of the rule change process

Formal Stage	Date
Proponent submits rule change request	12 August 2024
Consultation paper is published and the rule change process is initiated	28 November 2024
Stakeholder submissions to the consultation paper due	16 January 2025

14 See AER's Customer Hardship Policy Guideline here: https://www.aer.gov.au/system/files/AER-Customer-Hardship-Policy-Guideline-March-2019.pdf.

15 AEMC, *2019 Retail energy competition review final report*, 28 June 2019.

16 AEMC, *2019 Retail energy competition review final report*, 28 June 2019, p. 207.

Formal Stage	Date
Draft rule determination and draft rule is published (if made)	27 March 2025
Stakeholder submissions on the draft rule determination and draft rule due	8 May 2025
Final determination and final rule published (if made)	19 June 2025

2 The problem raised in the rule change request

This chapter outlines the:

- existing arrangements under the National Energy Customer Framework (NECF) that protect and assist hardship customers
- recent trends for consumers in hardship programs
- key issues raised in the rule change request.

2.1 There are existing arrangements that protect and assist consumers experiencing payment difficulties and hardship

A suite of legal and regulatory instruments under the NECF aim to protect and assist consumers when they are experiencing payment difficulties with their energy bills or in financial difficulty due to hardship.[17]

Under the NERL, retailers are required to develop a hardship policy that meet a set of minimum requirements (see Box 1).[18] The hardship policy must be approved by the AER. If the AER forms a view that the retailer's policy requires review then the retailer must vary the policy in accordance with the AER's direction.[19]

The retailer must then publish the approved policy on its website, and maintain and implement the policy. The purpose of a retailer's hardship policy is to identify residential consumers who are experiencing payment difficulties due to hardship (referred to as hardship customers), and assist them to better manage their bills on an ongoing basis.[20]

Box 1: The minimum requirements that a hardship policy must contain under the NERL

These include:

- processes to identify residential customers experiencing payment difficulties due to hardship
- processes for how the retailer will respond early to customers who might be experiencing payment difficulties due to hardship
- flexible payment options (including a payment plan and Centrepay)
- processes to identify and notify hardship customers of appropriate government concession programs and appropriate financial counselling services
- an outline of a range of programs that the retailer may use to assist hardship customers
- processes to review the appropriateness of a hardship customer's market retail contract in accordance with the purpose of the customer hardship policy
- processes or programs to assist customers with strategies to improve their energy efficiency
- any other matters required by the Rules.

17 The NERL; the NERR; the National Energy Retail Regulations; AER's Customer Hardship Policy Guideline (2019) and AER's Sustainable Payment Plans Framework (2016). Note that these instruments do not apply in all jurisdictions - the NECF applies in the Australian Capital Territory, New South Wales, South Australia, Queensland and Tasmania.

18 Section 44 of the NERL.

19 Rule 43(3) of the NERL.

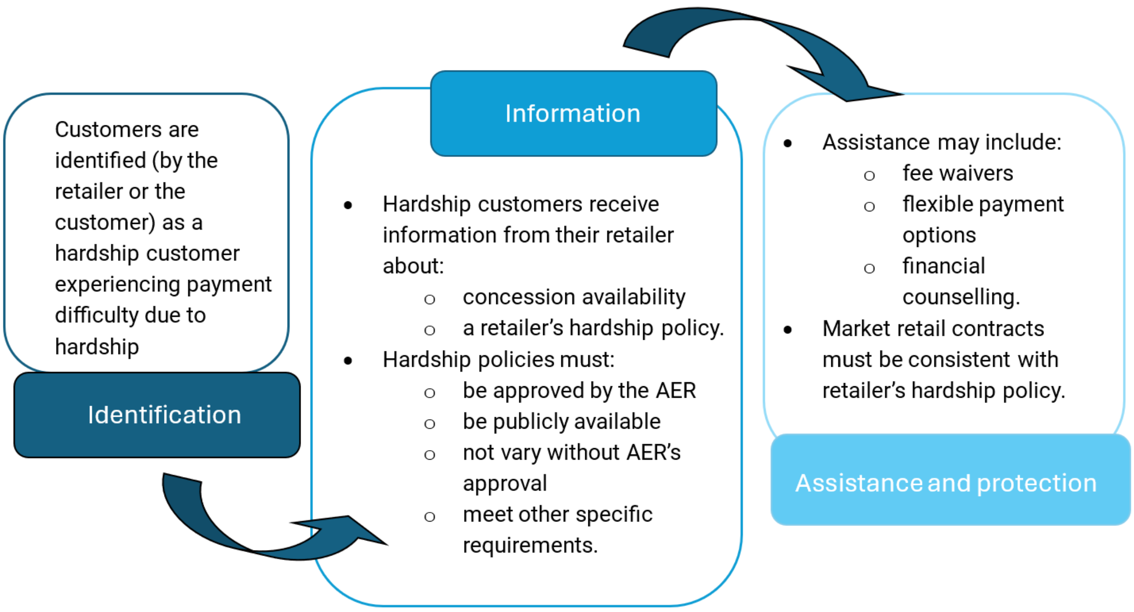
20 Rule 43 of the NERL.

The NERR details and strengthens the obligations of retailers in relation to hardship customers under the NERL, for example:[21]

- the obligation of retailers to provide the residential customer identified as a hardship customer a copy of the retailer's customer hardship policy on request and for free (rule 71)
- the way in which a payment plan for a customer must be established and communicated (rule 72) and how the retailer is to manage a request from a residential customer to use Centrepay as a payment option (rule 74)
- waivers of late payment fees for hardship customers (rule 73).

Figure 2 shows the customer journey of getting access to assistance and protection to manage and overcome payment difficulties under the NERL and NERR.

Figure 2.1: Customer journey to address payment difficulty under the NERL and NERR



Source: AEMC

AER's Review of payment difficulty protections in the NECF

The AER is currently undertaking a Review of the payment difficulty protections in the NECF and the review forms part of the AER's broader *Towards energy equity — a strategy for an inclusive energy market*.[22] The AER is considering whether changes to the NECF are required to ensure that consumers in hardship are proactively identified, engaged early and supported based on their individual circumstances. The review will consider the effectiveness of the current protections and identify opportunities to strengthen protections and improve outcomes for consumers experiencing payment difficulty. The AER expects to publish a report on its findings and recommended next steps in late 2024.[23]

Payment difficulty framework in Victoria

Victoria has its own payment difficulty framework and consumers in Victoria are protected under the Victorian Energy Retail Code of Practice, which is currently being reviewed by the Essential

21 Part 3 of the NERR.

22 AER, Towards energy equity - a strategy for an inclusive energy market, 20 October 2022.

23 AER, Review of payment difficulty protections in the National Energy Customer Framework, 14 May 2024.

Services Commission of Victoria (ESC Vic).[24] As part of this review, it consulted on some of the ECMC's package of consumer-related reforms, including the proposed change in this rule change request (A*utomatic best offer for consumers experiencing payment difficulty* in ESC Vic's discussion paper)[25]

In its Discussion Paper, the ESC Vic consulted on three initial options for moving consumers receiving assistance onto the best offer.[26]

- **Crediting the difference between the current plan and the best offer:** This would require retailers to credit eligible consumers the difference between the cost of their energy usage on their current plan and the cost of their energy usage on the retailer's deemed best offer.
- **Reducing tariffs to match the best offer.** This would require retailers to lower the tariffs of an existing customer's energy plan to align them with the tariffs of the retailer's deemed best offer. Other terms and conditions of the customer's plan would remain the same.
- **Automated switching to the best offer.** This would require retailers to switch eligible consumers to the deemed best offer. The deemed best offer is calculated as the cheapest generally available offer based on the customer's previous 12 months of energy usage.[27]

Unlike the NECF jurisdictions where EIC provisions are under the NERL (and cannot be changed by the rules), the ESC Vic can make changes to its Victorian Energy Retail Code of Practice to alter EIC provisions in Victoria.[28]

The ESC Vic expects to make a final decision on these reforms by June 2025. We are engaging with the ESC Vic as part of this rule change.

2.2 More consumers are participating in hardship programs with high levels of debt

2.2.1 Some consumers are paying equal to, or more than, the default market offer

The Australian Competition and Consumer Commission (ACCC) in its *Inquiry into the National Electricity Market December 2023 report* highlighted that more consumers on market contracts are paying electricity prices equal to or higher than the default market offer (DMO).[29]

The ACCC found that in 2023:

- 54% of residential consumers on flat rate market offers were paying equal to or above the DMO (ie. customers were on plans with a calculated annual cost at or higher than the DMO), assuming they did not achieve conditional discounts
- 47% of residential consumers on flat rate market offers were paying equal or above the DMO (ie. customers were on plans with a calculated annual cost at or higher than the DMO), even if it was assumed that consumers achieved conditional discounts.[30]

24 Essential Services Commission of Victoria, *Reviewing the energy retail code of practice*, 2024.

25 Submissions to ESC Victoria on 26 November 2024.

26 Essential Services Commission of Victoria, *Energy consumer reforms discussions paper*, 24 October 2024.

27 Essential Services Commission, *Energy consumer reforms Discussions paper*, 24 October 2024, p. 8.

28 The NERL applies to the Australian Capital Territory, New South Wales, South Australia, Queensland and Tasmania.

29 The DMO is the maximum price that retailers can charge consumers on standing offers to protect disengaged consumers from paying unjustifiably high prices. It applies to New South Wales, South East Queensland and South Australia. The AER sets the DMO each year and aims to protect consumers from high prices while also allowing retailers to recover their costs.

30 ACCC, *Inquiry into the National Electricity Market report* December 2023 report, 1 December 2023, p. 49.

In both cases, the proportion of these consumers that are hardship customers is unknown based on ACCC's latest *Inquiry into the National Electricity Market* reports.[31]

2.2.2 More consumers are on hardship arrangements

Across the retail electricity and gas markets, excluding Victoria, more consumers have been seeking assistance with payment difficulties from their retailers.[32]

In its quarterly retail performance report for January-March 2024, the AER highlighted the number of electricity hardship customers increased by 43 per cent compared to the same quarter in 2023. The number of gas hardship customers increased by 48 per cent in the same period. As of the first quarter of 2024, 1.9 per cent and 1.3 percent of residential electricity and gas consumers, respectively, were on hardship programs, noting that the number of consumers who are facing hardship, but are not enrolled in hardship programs, may be higher.[33]

Average debt of consumers in a hardship program is increasing

Between 2018 and 2023, the average debt of electricity and gas hardship customers, excluding those in Victoria, increased from $1,303 to $1,762 and from $678 to $854, respectively (a 35 per cent and 26 per cent increase, respectively, over a four-year period).[34]

Fewer consumers are exiting a hardship program

Between 2018 and 2023, the total number of electricity and gas customers exiting hardship programs, both from successfully completing the program or being excluded from the program for non-compliance, decreased from 112,874 to 69,889 and from 22,369 to 18,167, respectively (a 38 per cent and 19 per cent decrease, respectively).[35]

2.3 Hardship customers may not be on the deemed better offer

The proponent considers that hardship customers may not be on the best offers available to them. This is because these consumers face barriers to engaging and taking action to move onto a deemed better offer, despite retailer requirements to consider if they are on the deemed better offer. The rule change request notes that some barriers include:[36]

- reduced mental bandwidth due to stress
- literacy or language barriers
- lack of understanding of the market
- lack of time
- other pressures.

The proponent considers hardship customers may remain on less affordable plans, making it more difficult for them to tackle their debts and manage ongoing energy usage.[37]

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31 ACCC, *Inquiry into the National Electricity Market report December 2023 report*, 1 December 2023. ACCC, *Inquiry into the National Electricity Market June 2024 report*, 3 June 2024.

32 As mentioned in section 2.1, Victoria has its own payment difficulty framework set out by the Essential Services Commission and consumers in Victoria are protected under the Victorian Energy Retail Code.

33 AER, *Schedule 4 - Quarter 3 2023-24 retail performance data*, 21 June 2024. Australian Securities and Investments Commission, *New research shows many Australians in financial hardship are not asking their lenders for help*, 3 June 2024.

34 AER, *Schedule 4 - Quarter 3 2023-24 retail performance data*, 21 June 2024

35 AER, *Schedule 4 - Quarter 3 2023-24 retail performance data*, 21 June 2024. Under their hardship policy, we understand some retailers can exclude consumers from a hardship program if the customer does not engage or maintain contact with them, advise them if their contact details change or meet payment plans. Origin, *Our hardship policy - power on program (ACT, NSW, QLD, SA and NT)*, January 2024, p. 17. EnergyAustralia, *Financial hardship policy (ACT, NSW, QLD and SA)*, October 2023, p. 7. AGL, *AGL Hardship policy (NSW, SA and QLD)*, p. 11.

36 ECMC, *Assisting hardship customers rule change request*, p. 2.

37 ECMC, *Assisting hardship customers rule change request*, p. 3.

The AER, as part of its *Game changer* package, estimated that the cost to consumers for time spent navigating the retail market was $108 million or 15 per cent of the $643 million quantifiable annual cost of vulnerability.[38]

As outlined in chapter 1, the AER considered a number of options to assist hardship consumers being on the deemed better offer. This mainly related to an automated switch arrangement which required changes to existing EIC provisions in the NERL.

2.4 Retailers are not able to move consumers onto a deemed better offer without obtaining their explicit informed consent

Under the NERL, retailers must obtain a customer's EIC before they can move them onto a new contract, including a deemed better offer. The proponent states EIC is widely recognised as an important consumer safeguard in ensuring consumers understand the contracts they enter with their retailer.[39] Given this, and the barriers to engagement noted above, the ECMC proposed in the rule change request not to change EIC requirements. Rather, consider the credit mechanism which would serve consumer interests while remaining on the same contract and therefore not interacting with the NERL's EIC provisions.[40]

2.5 Existing retailer obligations and/or processes could be improved in getting hardship customers onto the deemed better offer

Under the AER's Customer Hardship Policy Guideline, retailers are required to communicate with their customer whether they are on the right retail offer or plan when they join a hardship program. This includes explaining to the hardship customer why a different plan would be better and asking them if they would like to transfer to the new plan.

The rule change request indicates that support for hardship customers could be improved beyond existing retailer obligations and processes under current arrangements. It considers that the proposed crediting mechanism would provide hardship customers further relief beyond the existing AER Customer hardship policy guideline and the relevant rules.[41]

Question 1: Hardship customers may not be on the deemed better offer

- Do you agree that hardship customers may find it challenging engaging with their retailer and agree to be on the deemed better offer? If so, could you outline some reasons why consumers might not accept a better offer from their retailer while on a hardship plan?
- Do you consider existing retailer requirements and/or processes for hardship customers to be on the deemed better offer need to be improved?

38 AER, *Game changer*, November 2023, p. 12.

39 ECMC, *Assisting hardship customers* rule change request, p. 3.

40 ECMC, *Assisting hardship customers* rule change request, p. 4.

41 ECMC, *Assisting hardship customers* rule change request, p. 4.

3 The proposed solution and implementation

This chapter outlines and seeks feedback on the:

- rule change proposal for retailers to provide a credit on hardship customers' bills if the customer is not on a deemed better offer
- costs and benefits of the proposed solution, including the impact of the proposed solution on:
  - outcomes for consumers and hardship customers' ability to reduce debt and exit hardship programs
  - retailers' incentives and how they provide offers, including for non-hardship customers
- implementation considerations, including requirements around circumstances and timing for providing a bill credit if there is a deemed better offer.

3.1 The proposal is to provide hardship customers with a credit on their bill if they are not on the deemed better offer

To address the problems identified in chapter 2, the rule change request proposes to require retailers to provide consumers that are on their hardship arrangements with a credit on their bill to match the amount they would pay if they were on a 'deemed better offer', as determined under the AER's Better Bills Guideline.

The rule change request sets out some considerations for how a retailer would apply a credit on hardship customers' bills, including:[42]

- **calculating the credit amount**. The credit would be calculated as the difference between the full amount of a customer's bill and what the customer would have been charged if they were on the deemed better offer under the AER's Better Bills Guideline. There would be no credit if the customer is already on the deemed better offer.
- **pro-rating the credit.** When a customer moves onto or off a hardship program, the bill credit would be pro-rated to the period during which they were on the hardship program. The credit could be similarly pro-rated if a customer changes energy plans.
- **no need to change energy plans.** Retailers should not be allowed to change a hardship customer's energy plan or tariff (unless the hardship customer chooses to do so, as below).
- **maintain customer choice.** Consumers should not be precluded from changing energy plans if that is their preference. Nor should the rule lift the existing obligations on retailers to engage with these consumers on whether their current plan is right for them.

Question 2: Provision of bill credit to hardship customers who are not on a deemed better offer

Do you agree with the proposed solution as outlined in the rule change request or are the existing arrangements to protect hardship customers sufficient (including EIC arrangements and existing AER guidelines)? If you agree with the proposal in the rule change request please outline your reasoning.

42 ECMC, *Assisting hardship customers* rule change request, p. 4

3.2 We will consider the benefits and costs of the proposed solution, including the impacts on consumer outcomes and retailers

The rule change request outlines that the implementation of a credit mechanism will deliver benefits for consumers facing hardship, and may have some impact on retailer incentives, which could affect retailer offers more broadly. We will consider these issues with potential costs to retailers and the extent of these costs.

3.2.1 The rule change proponent considers the proposed solution would further assist and support hardship customers

The rule change request indicates that ensuring hardship customers are charged as if they were on the deemed better offer via the proposed crediting approach would help hardship customers to:[43]

- have more affordable bills while in a hardship program, reducing the risk of or time they are in debt
- experience the benefits of a lower-priced plan in terms of cost without needing to change energy plan
- reduce economic costs (transaction and opportunity costs) for hardship customers from reduced responsibility, burden and stress often associated with engaging with the energy market and moving onto a deemed better offer
- have further relief or support beyond existing Hardship Guideline and relevant rules.

Potential outcomes for consumers on a hardship program

We will consider the likely extent and nature of consumer impacts, including the extent to which a consumer's debt is reduced, they are better able to manage energy bills and leave a hardship program. This could vary across hardship customers depending on their individual circumstances.

The effectiveness or impact of the proposed solution in reducing payment difficulty for a hardship customer could depend on:

- **the amount of their debt**. Hardship customers have differing levels of payment difficulty or debt, ranging from a few hundred dollars to thousands of dollars.[44]
- **the amount of the credit**. The larger the credit amount, the more likely hardship customers are to have more affordable bills, better manage their bills, overcome payment difficulty and/or potentially leave hardship programs.
- **a combination of the above**. The smaller the debt and greater the credit for a hardship customer, the crediting approach could potentially have a greater impact on reducing payment difficulties for that customer.

3.2.2 The proposed solution may impact retailers' costs and incentives

The rule change proponent expects some costs to retailers

The rule change request highlights that the costs to retailers are likely to be moderate as the proposed approach aims to build and leverage on existing systems as part of retailers' existing obligations under the NERL, the NERR and the AER's Better Bills Guideline.[45]

43 ECMC, *Assisting hardship customers* rule change request, pp. 4-5.

44 Based on the AER's retail performance data (quarter 3, 2023-24), the average debt of hardship program customers (electricity and gas) ranged from around $680 to $1700 between 2018 and 2023. AER, *Schedule 4 - Quarter 3 2023-24 retail performance data*, 21 June 2024.

45 ECMC, *Assisting hardship customers* rule change request, p. 5.

For some retailers, there may additional costs associated with new system and process builds and ongoing annual costs to subsidise hardship customers' bills. For example, to calculate and apply the credit amount if the customer prefers their current plan that is not a deemed better offer when this offer is available for the customer.

We are interested in further understanding the likely short-term (eg, system build-up and/or leveraging) and ongoing costs (i.e. annual costs) to retailers associated with applying a credit on hardship customers' bills that is equal to the value of the amount that the customer would have saved if they were on the deemed better offer.

There are several issues for consideration regarding the impact on retailer incentives

We will consider retailers' incentives and how they package their current and future retail energy offers. Such considerations may include but are not limited to:

- **risk and cost allocation.** Providing a bill credit where there is a deemed better offer may shift how risk and cost of non-payment is allocated between hardship customers and retailers. For example, it may shift this risk and cost away from hardship customers as they have more affordable bills and towards retailers who are better placed to manage them.
- **retailer incentives and offers**. Retailers may change how they:
  - package their existing or future generally available offers, for instance, to avoid their best offer being defined as 'generally available' under the AER's Better Bills Guideline and Retail Pricing Information Guideline.[46]
  - consider consumers for entry into a hardship program, such as keeping consumers on payment plans — noting that this is subject to AER guidelines to ensure appropriate protections are maintained
  - apply or strengthen specific eligibility restrictions for a customer to be able to access a deemed better offer.[47]

We are also interested in further understanding the potential impact of the proposed rule on competition between retailers to provide the lowest plan "generally available".

> **Question 3: Costs and benefits of the proposed solution**
>
> Are there other potential benefits or costs not identified or that we should have regard to?

3.3 What implementation issues might there be?

There are likely to be a range of implementation considerations for introducing a credit mechanism. These may include existing requirements under the regulatory framework (as outlined in the rule change request).[48] Other considerations include:

- should there some criteria (e.g. level of debt and frequency) for hardship customers to receive a bill credit if there is a deemed better offer? Regarding frequency, we note that customers with smart meters often have more frequent bills (eg, monthly) compared to those on legacy meters who are typically billed quarterly

46 ECMC, *Assisting hardship customers* rule change request, pp. 4-5

47 As classified in AER's Retail pricing information guidelines, generally available plans include all those plans available to small customers, except where specific restrictions apply. AER, *AER Retail pricing information guidelines*, April 2018, pp. 5 and 11.

48 ECMC, *Assisting hardship customers* rule change request, p. 5.

- how the credit would be calculated if hardship customers change retailers or retail offers part-way through a billing cycle, e.g, pro rating the credit to the period during which the customer was on the hardship program, if they exit
- whether the rule should be implemented using a principled or prescriptive approach
- changes required to AER guidelines.

Question 4: Implementation considerations

- What factors could be considered for a credit mechanism that would help to minimise the costs and maximise the benefits?
- Do you think the proposed rules-based approach is appropriate? Or should this obligation be required through AER guidelines (eg. Customer Hardship Policy Guideline) instead?
- What transitional provisions would help retailers and their customers?

4 Making our decision

When considering a rule change request, the Commission considers a range of factors.

This chapter outlines:

- issues the Commission must take into account
- the proposed assessment criteria and framework
- decisions the Commission can make.

We would like your feedback on the proposed assessment framework.

4.1 The Commission must act in the long-term interests of consumers

The Commission is bound by the NERL to only make a rule if it is satisfied that the rule will, or is likely to, contribute to the achievement of the national energy retail objective.[49]

The NERO is: [50]

> 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, 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 targets statement, available on the AEMC website, lists the emissions reduction targets to be considered, as a minimum, in having regard to the NERO.[51]

The Commission must also, where relevant, satisfy itself that the rule is "compatible with the development and application of consumer protections for small customers, including (but not limited to) protections relating to hardship customers" (the consumer protections test).[52] Where the consumer protections test is relevant in the making of a rule, the Commission must be satisfied that both the NERO test and the consumer protections test have been met.[53] If the Commission is satisfied that one test, but not the other, has been met, the rule cannot be made (noting that there may be some overlap in the application of the two tests).

4.2 We propose to assess the rule change using these four criteria

4.2.1 Our regulatory impact analysis methodology

Considering the NERO and the issues raised in the rule change request, the Commission proposes to assess this rule change request against the set of criteria outlined below. These assessment criteria reflect the key potential impacts — costs and benefits — of the rule change request. We consider these impacts within the framework of the NERO, including the consumer protections test.

49 Section 236 of the NERL.

50 Section 13 of the NERL.

51 Section 224A(5) of the NERL.

52 Section 236(2)(b) of the NERL.

53 That is, the legal tests set out in sections 236(1) and (2)(b) of the NERL.

The Commission's regulatory impact analysis may use qualitative and/or quantitative methodologies. The depth of analysis will be commensurate with the potential impacts of the proposed rule change. We may refine the regulatory impact analysis methodology as this rule change progresses, including in response to stakeholder submissions.

Consistent with good regulatory practice, we also assess other viable policy options - including not making the proposed rule (a business-as-usual scenario) and making a more preferable rule - using the same set of assessment criteria and impact analysis methodology where feasible.

4.2.2 Assessment criteria and rationale

The proposed assessment criteria and rationale for each is as follows:

- **Outcomes for consumers**. We will consider whether an 'automated' bill credit would:
  - help hardship customers to better manage their bills and debt (ie. have more affordable bills, meet payment plans and/or manage or reduce energy usage debt)
  - promote consumers to benefit from the retailer's best offer (i.e. deemed better offer) whilst also meeting their needs and preferences, including potentially non-monetary benefits from an offer
  - minimise economic costs (opportunity and transaction costs) that hardship customers incur from difficulty and time spent navigating the market
  - be compatible with or strengthen existing consumer protections and assistance for hardship customers under the NECF, including the NERR and AER's guidelines (eg, Customer Hardship Policy Guideline).
- **Principles of market efficiency**. We will consider:
  - current processes of retailers to help ensure their customers are on the best offer and suit their customer's needs
  - current risk allocation between retailers and hardship customers on non-payments of energy bills
  - the impact of an 'automated' bill credit on competition, including how they package their generally available offers and their incentive to provide deemed better offers.
- **Implementation considerations**. We will consider the cost and complexity for retailers to leverage or build upon existing systems and processes to calculate and provide a bill credit to their customers. We will also consider complementary implementation required by the AER, for example updating existing guidelines (eg, Better Bills Guideline and Customer Hardship Policy guideline).
- **Principles of good regulatory practice**. We will consider:
  - whether the proposed approach for applying a bill credit if there is a deemed better offer is the best approach
  - how prescriptive the rules need to be, including considering a principle based approach
  - how this rule would interact with recommendations made under the AER's current Review of payment difficulty protections in the NECF.

Question 5: Assessment framework

Do you agree with the proposed assessment criteria? Are there additional criteria that the Commission should consider or criteria included here that are not relevant?

4.3 We have three options when making our decision

After using the assessment framework to consider the rule change request, the Commission may decide:

- to make the rule as proposed by the proponent
- to make a rule that is different to the proposed rule (a more preferable rule), as discussed below, or
- not to make a rule.

The Commission may make a more preferable rule (which may be materially different to the proposed rule) if it is satisfied that, having regard to the issue or issues raised in the rule change request, the more preferable rule is likely to better contribute to the achievement of the NERO.[54]

54 Section 244 of the NERL.

Abbreviations and defined terms

AEMC	Australian Energy Market Commission
AEMO	Australian Energy Market Operator
AER	Australian Energy Regulator
Commission	See AEMC
DMO	Default market offer
ECMC	Energy and Climate Change Ministerial Council
EIC	Explicit informed consent
ESC Vic	Essential Services Commission of Victoria
NECF	National Energy Customer Framework
NEM	National Electricity Market
NERL	National Energy Retail Law
NERO	National Energy Retail Objective
NERR	National Energy Retail Rules
Proponent	The proponent of the rule change request