



Consultation paper

Delivering more protections for energy consumers: changes to retail energy contracts

National Energy Retail Rule Amendments 2025

Proponent

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

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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 On 12 and 28 August 2024, the Hon Chris Bowen MP, Minister for Climate Change and Energy, as Chair of the Energy and Climate Change Ministerial Council (ECMC) (the proponent) submitted a package of 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 energy consumers.
- 2 The purpose of this consultation paper is to seek stakeholder feedback on four rule change requests submitted by the proponent about changes to retail energy contracts.
- 3 The package of rule change requests stem from findings presented to the ECMC from the Australian Competition and Consumer Commission (ACCC), Australian Energy Regulator (AER) and Energy Consumers Australia (ECA). They found that there are aspects of the regulatory framework that could be strengthened to better serve the interests of energy consumers. Specifically, the ACCC's June and December 2023 *Inquiry into the National Electricity Market (NEM)* reports showed that:
 - consumers who do not actively engage in the retail energy market experience higher prices, particularly those on legacy plans with large conditional discounts or expired benefit periods
 - energy plans need to be more transparent about the frequency of price changes and the underlying fees and charges included.

The proposals seek to improve consumer outcomes by amending the functions of retail energy contracts

- 4 In this paper, we are consulting on four rule change requests that seek to address these issues by amending the provisions in the National Energy Retail Rules (NERR) that relate to the design and functions of retail energy contracts. These are:
 - [Ensuring energy plan benefits last the length of the contract](#)
 - [Removing unreasonable conditional discounts](#)
 - [Preventing price increases for a fixed period under market retail contracts](#)
 - [Removing fees and charges.](#)
- 5 Following the order set out above, the proposed solutions are to:
 - require any benefit provided under a contract to extend for the duration of the contract
 - remove the grandfathering arrangement in the Australian Energy Market Commission's (AEMC) *Regulating conditional discounting* final rule in 2020 to ensure that any conditional fees or discounts are limited to reasonable costs for those contracts in force prior to 1 July 2020.¹
 - not allow any increase to tariffs or charges payable by consumers for a specified fixed period following commencement of an energy plan
 - remove specific fees and charges that retailers typically levy in relation to establishing and maintaining contracts.
- 6 We are seeking your feedback on the issues and solutions identified in the rule change requests, including:
 - the scale of the problems identified by the proponent

¹ AEMC, [Regulating conditional discounting](#), final determination, February 2020, p. 9.

- whether the proposed solutions best address the issues raised in the rule change requests
- the key issues and considerations we need to assess for each rule change request
- if the proposed changes will best promote the long-term interests of consumers
- implementation considerations including the costs of any such changes.

7 We will progress these rule change requests concurrently and will consider whether any of the rule change requests should be consolidated.

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

8 Considering the national energy retail objective (NERO)² and the issues raised in the rule change requests, the Commission proposes to assess the rule change requests against four assessment criteria:

- **Outcomes for consumers.** We will consider the impact of these rule changes on incentives provided to consumers from retailers. We will also consider interactions with existing consumer protections and any additional costs to consumers.
- **Principles of market efficiency.** We will consider the impact of changes to retail contracts on retail competition, allocation of risks and costs between retailers and consumers and transparency of market offers.
- **Implementation considerations.** We will consider costs to relevant parties, any interactions with other processes and whether there are any impacts on market bodies, jurisdictions or across different groups of consumers.
- **Principles of good regulatory practice.** We will consider whether principle-based approaches are more appropriate than prescriptive approaches, and any interactions with other work, such as reviews by the AEMC or other bodies.

9 We are interested in your feedback on our proposal to assess the rule change requests against these criteria.

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

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

11 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.

12 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.

Full list of consultation questions

Question 1: What are the interactions between the four rule change requests that we should consider?

² Section 13 of the NERL.

Question 2: 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?

Question 3: Ensuring energy plan benefits last the length of the contract:

1. How material do you consider the proposed issue to be?
 - Do you have any information you can provide us on how many consumers are on contracts with expired or expiring benefit periods?
 - How many of these consumers are vulnerable or receiving concessions?
 - Are there differences in the extent or nature of the problem between retail electricity and gas contracts?
2. Will the proposed solution address the issue raised in the rule change request?
 - Does the proposed solution address issues of consent by including a standard term for end of contract arrangements?
 - Is there an alternative solution that would better address the underlying issues?
 - What transitional provisions would help retailers implement this rule at least cost?
 - Are there any other considerations we should assess in the rule change?
3. Would this proposed rule change impact the variety of tariff structures available in the retail market?
4. Is there any information we should consider based on the experience of the similar rule in Victoria?

Question 4: Removing unreasonable conditional discounts

1. What is the materiality of the problem raised in the rule change request?
 - Do you have any information you can provide about the impact of large conditional fees and discounts on vulnerable customers?
2. Will the proposed solution address the issue raised in the rule change request?
 - Is there any information we should consider based on the application of the current rules relating to conditional discounting?
 - Are there alternative options we should consider to best achieve the long term interests of energy consumers.?
3. What would be the cost of the proposed solution, if implemented, to both consumers and retailers?
4. Are there any issues with implementation we need to consider?
 - What transitional provisions could address those issues?

Question 5: Preventing price increases for a fixed period

1. What is the materiality of the problem raised in the rule change request?
 - Do you have any data on how often retail energy prices change per year?
 - Do electricity and gas consumers experience the same issues?
2. Which of the proposed solutions would best address the issue raised in the rule change request? Are there other options we should consider?
3. What are the costs and benefits of each approach?
4. What are your views on the appropriate fixed period for prices (if any)?
5. Are there any implementation issues we need to consider?

Question 6: Removing fees and charges

1. What is the materiality of the problem in this rule change request?
2. Will the proposed solution address the issues raised in the rule change request?
 - Are there any alternative solutions we should consider?
 - Is a rule change the best approach to solving this problem? If not, what approach would be better?
3. What fees and charges should be prohibited in the NERR, if any?
 - What are the benefits of removing these fees and charges?
4. Will a change to the NERR (in lieu of jurisdictional derogations) help provide consistency for retailers?
5. Besides existing jurisdictional derogations, are there any other implementation issues we should consider (eg, timing, costs)?

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 codes RRC0058³

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.⁴

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).⁵

For more information, you can contact us

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

Project leader: Milo Letho
Email: milo.letho@aemc.gov.au
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³ We will accept submissions using the other project codes RRC0059, RRC0061 and RRC0065, however our preference is for stakeholders to use the code RRC0058. 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.

⁴ See: <https://www.aemc.gov.au/our-work/changing-energy-rules-unique-process/making-rule-change-request/submission-tips>

⁵ Further information is available here: <https://www.aemc.gov.au/contact-us/lodge-submission>

Contents

| | | |
|------------|--|-----------|
| 1 | Context for these rule changes | 1 |
| 1.1 | These rule change requests are part of a broader package of consumer-related rule change requests from energy ministers | 1 |
| 1.2 | The proposed changes to retail energy contracts are based on recommendations from the ACCC | 1 |
| 1.3 | We have started the rule change process | 3 |
| 2 | Making our decision | 4 |
| 2.1 | The Commission must act in the long-term interests of consumers | 4 |
| 2.2 | We propose to assess the rule changes using these four criteria | 4 |
| 2.3 | We have three options when making our decision | 6 |
| 3 | Ensuring energy plan benefits last the length of the contract | 7 |
| 3.1 | Some consumers are exposed to high energy prices when their contract's benefits expire | 7 |
| 3.2 | The proponent suggests aligning the benefit period with contract length | 7 |
| 4 | Removing unreasonable conditional discounts | 10 |
| 4.1 | The proponent suggests grandfathered contracts with unreasonable conditional fees and discounts may be causing consumer harm | 10 |
| 4.2 | The proponent proposes ending unreasonable conditional fees and discounts in pre-2020 contracts | 10 |
| 5 | Preventing price increases for a fixed period under market retail contracts | 13 |
| 5.1 | The proponent suggests frequent price increases may be harming consumers | 13 |
| 5.2 | The proponent recommends preventing price increases for a fixed period | 13 |
| 6 | Removing fees and charges | 16 |
| 6.1 | The proponent suggests fees and charges are often not transparent | 16 |
| 6.2 | The proponent proposes prohibiting certain fees being charged to retailer's customers | 16 |
| | Abbreviations and defined terms | 20 |
| | Tables | |
| Table 1.1: | Expected timeline for all four rule changes | 3 |
| Table 6.1: | Jurisdictional derogations that limit fees and charges | 17 |

1 Context for these rule changes

This consultation paper seeks stakeholder feedback on four rule change requests 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 and 28 August 2024. The rule change requests seek to amend the National Energy Retail Rules (NERR) to make changes to retail energy market contracts. The four rule changes that are covered in this consultation paper are:

- Ensuring energy plan benefits last the length of the contract (chapter 3)
- Removing unreasonable conditional discounts (chapter 4)
- Preventing price increases for a fixed period under market retail contracts (chapter 5)
- Removing fees and charges (chapter 6).

This chapter sets out:

- an overview of the broader consumer rule change package from energy ministers
- broader context for the four rule change requests in this consultation paper
- the rule change process and timeline we will follow for the four rule change requests.

1.1 These rule change requests are part of a broader package of consumer-related rule change requests from energy ministers

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 four of the seven rule changes that relate specifically to retail energy contracts - that is rule change requests one, two, three and four listed above.

A consultation paper on Assisting hardship customers, listed as rule change five above, was also published on 28 November 2024.⁷

1.2 The proposed changes to retail energy contracts are based on recommendations from the ACCC

The ECMC developed these four rule change requests in response to findings presented to energy ministers in March 2024 by the Australian Competition and Consumer Commission (ACCC). The ACCC is tasked with reporting on the prices, profits and margins of energy retailers in the National

⁶ See the broader package [here](#).

⁷ See the consultation paper for Assisting hardship customers [here](#)

Electricity Market (NEM) every six months from 2018 to 2025.⁸ The ACCC's December 2023 *Inquiry into the NEM* report recommended that policy makers investigate:⁹

- how to reduce the number of customers on legacy plans with large conditional discounts
- the impact of evergreen or ongoing contracts on consumer behaviour
- whether current rules around price changes reduce price certainty and contribute to switching burden.

The ACCC found that consumers who do not regularly engage in the retail energy market experience higher prices.¹⁰ This is the case for a significant number of consumers who remain on legacy plans with large conditional discounts and high underlying prices.¹¹ For many consumers, choosing an energy plan is a 'set and forget' task.¹² However, the ACCC suggested retailers are recouping their costs over a customer's lifetime by setting attractively low acquisition offers and making subsequent unilateral price increases over time.¹³

The accrual of price increases over time may explain why many consumers are on plans at or above the default offers,¹⁴ especially if consumers face barriers to engaging in the market (for instance, literacy or language barriers).¹⁵ When consumers do engage with the market, it was noted that it was not uncommon for their prices to increase not long after they sign up to a new plan.¹⁶ This type of conduct increases switching costs, limits transparency of contracts and may reduce consumer confidence in the market.¹⁷

Further, in its June 2023 *Inquiry into the NEM report* the ACCC raised the potential impacts of fees and charges. The ACCC noted that "for most customers, fees and charges have a minimal impact on the overall cost of electricity. However, customers should consider the amount of fees and charges and the frequency at which they are likely to incur any fees or charges when choosing an energy plan".¹⁸

1.2.1 The Commission has previously made a rule to cap the level of conditional fees and discounts to reasonable costs

On 27 February 2020, the Australian Energy Market Commission (AEMC) made a final rule that protects consumers from large penalties when they miss pay-on-time conditions by capping the level of conditional discounts and fees to retailers' reasonable costs.¹⁹ The final rule came into effect on 1 July 2020 and applies to energy contracts entered into on or after this date.

This rule was based on previous ACCC findings that large conditional fees/discounts cause significant harm to a material group of consumers.²⁰ The Commission restricted the level of conditional discounts and fees that can be charged to the reasonable costs likely to be incurred by the retailer when a consumer fails to satisfy a payment condition.²¹

⁸ See the ACCC's Terms of Reference for its inquiry [here](#).

⁹ ACCC, *Inquiry into the NEM*, December 2023, p. 9.

¹⁰ Ibid p. 9.

¹¹ Ibid pp. 5-6.

¹² Ibid p. 9.

¹³ Ibid p. 9.

¹⁴ The default offers are the Default Market Offer (DMO) for consumers outside of Victoria and the Victorian Default Offer (VDO). These are regulated prices for electricity for consumers on default plans, known as standing offers, if they do not or are not able to regularly engage in the market.

¹⁵ ACCC, *Inquiry into the NEM*, December 2023, p. 5.

¹⁶ Ibid p. 9.

¹⁷ Ibid p. 9.

¹⁸ ACCC, *Inquiry into the NEM*, June 2023, p. 26.

¹⁹ AEMC, [Regulating conditional discounting](#), final determination, February 2020, p. 9.

²⁰ ACCC, *Retail Electricity Pricing Inquiry*, final report, June 2018, p. 268.

1.3 We have started the rule change process

This paper is the first stage of our consultation process.

We are progressing these rule change requests concurrently. We are considering whether any of the rule change requests should be consolidated. The key milestones are outlined in Table 1.1 below.

Table 1.1: Expected timeline for all four rule changes

| Milestone | Date |
|--|------------------|
| Rule change initiation (consultation paper) | 28 November 2024 |
| Submissions to consultation paper due | 16 January 2025 |
| Publish draft determination and draft rule (if made) | 27 March 2025 |
| Submissions to draft determination due | 8 May 2025 |
| Publish final determination and final rule (if made) | 19 June 2025 |

Question 1: What are the interactions between the four rule change requests that we should consider?

21 AEMC, [Regulating conditional discounting](#), final determination, February 2020, p. 9.

2 Making our decision

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

This chapter outlines:

- issues the Commission must take into account
- the proposed assessment criteria and framework for assessing these rule change requests
- the options we have when making a decision about the rule change requests.

We would like your feedback on the proposed assessment criteria for these rule change requests.

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

The Commission is bound by the National Energy Retail Law (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 (NERO).²²

The NERO is:²³

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.²⁴

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).²⁵ The consumer protections test is relevant for the rule changes covered in this paper. Therefore, the Commission must be satisfied that both the NERO test and the consumer protections test have been met, in relation to each proposed rule change.²⁶ If, for a particular rule change, 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).

2.2 We propose to assess the rule changes using these four criteria

2.2.1 Our regulatory impact analysis methodology

Considering the NERO and the issues raised in the rule change requests, the Commission proposes to assess these rule change requests against the set of criteria outlined below. These

²² Section 236 of the NERL.

²³ Section 13 of the NERL.

²⁴ Section 224A(5) of the NERL.

²⁵ Section 236(2)(b) of the NERL.

²⁶ That is, the legal tests set out in sections 236(1) and (2)(b) of the NERL.

assessment criteria reflect the key potential impacts – costs and benefits – of the rule change requests. We consider these impacts within the framework of the NERO.

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 these rule changes progress, 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.

2.2.2 Assessment criteria and rationale

The proposed assessment criteria for the four rule change requests being considered are as follows:

1. **Outcomes for consumers** - We will consider the impact of fixing prices and benefits, removing legacy conditional discounts and removing fees and charges in retail contracts on outcomes to consumers including the impact on:
 - incentives provided to consumers from retailers
 - existing consumer protections
 - costs to consumers.
2. **Principles of market efficiency** - We will consider the impact of changes to retail contracts on market efficiency, including the impact on:
 - retail competition
 - allocation of risks and costs between retailers and consumers
 - transparency of market offers and how information is shared with or received by consumers.
3. **Implementation considerations** - We will consider key implementation considerations of the rule changes, including:
 - costs of the proposed solutions to retailers, market bodies, jurisdictions and consumers
 - the interaction with other processes
 - the impact on market bodies or jurisdictions and across different groups of consumers.
4. **Principles of good regulatory practice** - We will consider principles of good regulatory practice including whether:
 - prescriptive or principles-based provisions in the NERR on retail contracts are in the long term interests of consumers
 - there are any interactions with other reforms underway, for example, action one of the Commonwealth’s National Consumer Energy Resources (CER) roadmap to extend consumer protections for CER.²⁷

Question 2: 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?

²⁷ See page 14 of the Commonwealth’s National CER roadmap [here](#).

2.3 We have three options when making our decision

After using the assessment framework to consider the rule change requests, the Commission may decide, for each of the four requests:

- to make the rule as proposed by the proponent²⁸
- 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.²⁹

²⁸ See Chapters 3, 4, 5, 6 for the proposed changes in the four rule changes relevant to this consultation paper.

²⁹ Section 244 of the NERL.

3 Ensuring energy plan benefits last the length of the contract

This chapter outlines and seeks feedback on the:

- problem raised in the ensuring energy plan benefits last the length of the contract rule change request
- proposed rule solution to align contract and benefit periods.

3.1 Some consumers are exposed to high energy prices when their contract's benefits expire

Some retail energy contracts have benefits that expire before the end of the contract. The proponent considers that these contracts have the potential to leave non-engaged consumers exposed to high prices after the benefit period ends.³⁰ The ACCC suggests in its December 2023 *Inquiry into the NEM* report that for many consumers, choosing an energy plan is a 'set and forget' task – meaning retailers need to compete at the point of acquisition, and are not incentivised to keep prices competitive for existing customers.³¹ The ACCC notes retailers recoup their costs over a customer's lifetime, by setting attractively low acquisition offers and making subsequent unilateral price increases for their existing customer base over time.³²

This means that following the expiration of the benefit period, some consumers may be on plans at or above the DMO if they do not or are not able to regularly engage in the market.³³

3.2 The proponent suggests aligning the benefit period with contract length

This rule change request proposes changes to the NERR to require retailers to provide any benefits under a contract (in terms of price or other offers) for the duration of the contract, rather than just for an introductory period.³⁴ The proponent recommends amending the rules to require retail energy contracts to end when a benefit period ends. The proponent considers that consumers should not remain on a contract if the benefit period has ended.³⁵ Consumers that do not choose a new market offer would be placed onto the local standing offer.³⁶

To achieve this, the proponent suggests changes to Part 2, Division 7 of the NERR. The proposed changes would require retail contracts to end when the discount period or other benefit ends for fixed term contracts. For ongoing contracts, the discount must apply continually.³⁷

This rule change request follows a similar rule introduced in Victoria.

30 ECMC, *Ensuring energy plan benefits last the length of the contract*, rule change request, p. 2.

31 ACCC, *Inquiry into the NEM*, December 2023, p. 9.

32 Ibid p. 9.

33 ECMC, *Ensuring energy plan benefits last the length of the contract*, rule change request, p. 2.

34 Ibid p. 3.

35 Ibid p. 3

36 Ibid p. 3

37 Ibid p. 4.

Box 1: Current arrangements in Victoria regarding benefit periods.

Victoria has enacted a rule to prevent retailers offering new contracts with benefits that end part-way through a contract, and introduced provisions that require retailers to roll consumers onto the Victorian Default Offer (VDO) if the consumer does give explicit informed consent to move to another offer. This rule took effect from 1 July 2020.

Source: Essential Services Commission, *Ensuring contracts are clear and fair*, February 2020, p. 46.

The proponent notes that the proposal does not aim to limit the ability of retailers to change underlying prices.³⁸ However, there may be an interaction with the preventing price increases for a fixed period under market retail contracts rule change request discussed in chapter 5.

The rule change request also proposes to amend the rules to require retailers to provide consumers with:³⁹

- reasonable notice ahead of the end date of the customer’s benefit period and contract
- information on the options available to the customer at the end of the benefit period, suggesting this should include, at a minimum:
 - the retailer’s deemed better offer available for that customer (following the Better Bills Guideline requirements)
 - the change that will occur if no action is taken by the customer, e.g. the customer being moved by default to the local standing offer after their current contract ends.

The proponent also proposes changes to address the need for explicit informed consent from inactive customers, to move to a new contract. It suggests that the rules for market retail contract minimum requirements could be amended to include a standard term such that consent is given in the terms and conditions for the end-of-contract arrangement.⁴⁰

We will consider the materiality of the issue and costs and benefits of the proposed solution

While the proposed change may benefit some consumers, the precise scale, impact, and distribution of the problem is not readily known. This makes the exact costs and benefits of the rule change request difficult to estimate, especially for vulnerable consumers. AEMC analysis found that about 17 per cent of residential and small business electricity offers available on Energy Made Easy in October 2024 contained benefit periods that were shorter than the length of the contract.⁴¹

The proponent suggests that, if implemented, the proposed rule change would benefit consumers by ensuring they do not face an unfair price penalty if they cannot, or do not, actively engage with the retail energy market when a benefit under their retail market contract comes to an end. It considers the change would reduce the ability of retailers to increase prices for disengaged consumers above the Default Market Offer (the DMO), and would adjust the onus for consumer engagement more towards the retailer.⁴²

It also notes the following costs:⁴³

38 ECMC, *Ensuring energy plan benefits last the length of the contract*, rule change request, p 4.

39 Ibid p. 4.

40 Ibid p. 4

41 Energy Made Easy accessed 16 October 2024.

42 ECMC, *Ensuring energy plan benefits last the length of the contract*, rule change request, p. 5.

43 Ibid p.6.

- For retailers, there may be costs in moving away from energy plan pricing models that change over the course of the contract. These costs could be spread over their customer base.
- The transaction cost for some consumers to move onto their next contract could be brought forward by this rule taking effect.
- Consumers on market offers below the DMO at contract expiry could be moved to the DMO, and these consumers could pay more if they choose not to take up another offer.
 - The St Vincent de Paul South Australian Tariff Tracker suggests the DMO remains higher than many market offers⁴⁴, meaning at least some inactive consumers may be worse off if moved to the DMO at the end of their contract.
 - The DMO does not apply to consumers on dynamic tariff structures, such as demand tariffs, that may become more common as the smart meter roll out continues.

The proposed rule change could also impact the spread of retail offers, if implemented. The proponent notes retailers would no longer be able to automatically roll consumers over to higher prices when a benefit period under a market retail contract expires. This can be expected to impact the prevalent dynamic of retailers offering attractive ‘acquisition’ offers designed to encourage switching, while planning to make a profit in the longer term as the consumer moves off the benefit period and/or experiences tariff increases.⁴⁵

Question 3: Ensuring energy plan benefits last the length of the contract:

1. How material do you consider the proposed issue to be?
 - Do you have any information you can provide us on how many consumers are on contracts with expired or expiring benefit periods?
 - How many of these consumers are vulnerable or receiving concessions?
 - Are there differences in the extent or nature of the problem between retail electricity and gas contracts?
2. Will the proposed solution address the issue raised in the rule change request?
 - Does the proposed solution address issues of consent by including a standard term for end of contract arrangements?
 - Is there an alternative solution that would better address the underlying issues?
 - What transitional provisions would help retailers implement this rule at least cost?
 - Are there any other considerations we should assess in the rule change?
3. Would this proposed rule change impact the variety of tariff structures available in the retail market?
4. Is there any information we should consider based on the experience of the similar rule in Victoria?

⁴⁴ St Vincent de Paul, South Australian Energy Price, July 2024, Section 2.1, p.11.

⁴⁵ ECMC, *Ensuring energy plan benefits last the length of the contract*, rule change request, p. 6.

4 Removing unreasonable conditional discounts

This chapter outlines and seeks feedback on the:

- problem raised in the removing unreasonable conditional discounts rule change request
- proposed solution to remove unreasonable conditional discounts on grandfathered energy contracts.

4.1 The proponent suggests grandfathered contracts with unreasonable conditional fees and discounts may be causing consumer harm

Energy customers on contracts with conditional fees or discounts, that were entered into before mid-2020, may be facing high costs if they fail to meet the contractual conditions to receive the discount or avoid the fee.⁴⁶ These conditions could include that the customer must pay on time and via a certain method, typically direct debit, to receive the discount.

The AEMC made a rule in 2020 to limit conditional discounts and fees on new contracts to the costs reasonably faced by the retailer when a consumer fails to satisfy a payment condition.⁴⁷ This rule change only applies to contracts entered into on or after 1 July 2020.

Some customers remain on contracts that predate this change with high-priced energy plans and large conditional fees or discounts. These consumers may be subject to large costs in the form of high fees, or high underlying energy prices, if they do not meet the conditions attached to their fee or discount.

4.2 The proponent proposes ending unreasonable conditional fees and discounts in pre-2020 contracts

This rule change request seeks to remove the grandfathering arrangement that was included in the AEMC's final rule in 2020 to ensure that any conditional fees and discounts are limited to reasonable costs, including for contracts entered into prior to 1 July 2020.⁴⁸

Under the proposed rule change, retailers will still be allowed to offer conditional discounts and charge conditional fees, but the amount of the discount or fee will be limited by reference to the reasonable costs to the retailer of a customer's failure to meet the relevant conditions.⁴⁹ The proponent states that the intent of the rule change is to ensure all consumers are not paying more than the price they would pay if they met the conditions of their contract.⁵⁰

The proponent suggests options to consider when determining the way to achieve this outcome, and provided examples such rules giving retailers the choice to:⁵¹

- move customers onto a plan made available after commencement of the AEMC's final determination ([Regulating conditional discounting](#)) where the new conditional price is equal to or better than their existing conditional price, or

46 ECMC, *Removing unreasonable conditional discounts*, rule change request, p 2.

47 AEMC, *Regulating conditional discounting*, final determination, 27 February 2020; See NERR, Rules 46C & 52B.

48 ECMC, *Removing unreasonable conditional discounts*, rule change request, p. 4.

49 Ibid p, 7.

50 Ibid p. 5.

51 Ibid p. 5.

- keep customers on their existing plans but reduce the conditional discount value (and high underlying energy prices) such that the conditional price and all other elements of plan remain the same.

The proponent notes that retailers will need to engage with consumers to obtain their explicit informed consent if they are being moved to a new plan or to provide notice if there are changes to the conditional discount value and underlying tariff.⁵²

We will consider the materiality of the issue and costs and benefits of the proposed options

The ACCC indicates approximately 90 per cent of residential customers are meeting the conditions to receive their conditional discounts.⁵³ However, it notes vulnerable customers are likely disproportionately impacted by not meeting the discount conditions.⁵⁴

The proponent suggests that, if implemented, this rule change will benefit consumers by removing unreasonable costs if they do not meet the conditions of their energy plans, giving them greater certainty over the costs they pay, and reducing risk of shock from high underlying prices.⁵⁵

The proponent suggests the proposed rule would also impose the following costs:⁵⁶

- For retailers:
 - removing conditional discounts could result in a revenue loss which could potentially be passed on to retailers' broader customer base
 - providing evidence to the AER regarding the value of the conditional price discount (though the request does not provide a rationale for the requirement to provide this evidence).
- For consumers:
 - those on pre-2020 contracts who were meeting the conditions to receive their conditional discounts would lose access to a plan that they were benefiting from.

The proponent also highlights there is a risk that removing large conditional discounts may reduce consumer engagement in the short term.⁵⁷

Question 4: Removing unreasonable conditional discounts

1. What is the materiality of the problem raised in the rule change request?
 - Do you have any information you can provide about the impact of large conditional fees and discounts on vulnerable customers?
2. Will the proposed solution address the issue raised in the rule change request?
 - Is there any information we should consider based on the application of the current rules relating to conditional discounting?
 - Are there alternative options we should consider to best achieve the long term interests of energy consumers.?
3. What would be the cost of the proposed solution, if implemented, to both consumers and retailers?

52 ECMC, *Removing unreasonable conditional discounts*, rule change request, p. 5.

53 ACCC, *Inquiry into the NEM*, 3 June 2024, p. 63.

54 Ibid p. 65.

55 ECMC, *Removing unreasonable conditional discounts*, rule change request p. 6.

56 Ibid p. 6.

57 Ibid p. 7.

4. Are there any issues with implementation we need to consider?
 - What transitional provisions could address those issues?

5 Preventing price increases for a fixed period under market retail contracts

This chapter outlines and seeks feedback on the:

- problem raised in the preventing price increases for a fixed period rule change request
- proposed solution to prohibit retailers increasing prices within a certain period after the start of the market retail contract.

5.1 The proponent suggests frequent price increases may be harming consumers

The proponent notes that retailers' pricing strategies are not always clear to consumers and there is no easy way for consumers to know when and by how much their energy price will increase.⁵⁸ It expressed concern that month to month, consumers do not necessarily know if the price they are paying for energy will change.⁵⁹

The ACCC found in its December 2023 *Inquiry into the NEM* report that consumers who do not regularly engage in the energy market experience higher prices as retailers recoup their costs by setting attractively low acquisition offers and make subsequent price increases over time.⁶⁰ It found that 47 per cent of residential customers were paying an annual cost equal or higher than the DMO, with 79 per cent of residential customers able to achieve a better offer by switching.⁶¹ It also found that when consumers do engage and sign up for a new plan it is not uncommon for their prices to increase soon after.⁶² The ACCC recommended policy makers investigate whether current rules around price changes reduce price certainty and contribute to switching burden.⁶³

Under the NERR, retailers are able to offer ongoing market retail contracts and increase prices at any time with at least 5 business days' notice.⁶⁴ Queensland customers must receive 10 business days' notice.⁶⁵

The proponent notes the information asymmetry between retailers and consumers, and the lack of transparency around price increases does not balance risks between retailers and consumers.⁶⁶ It increases switching costs for consumers seeking to remain on competitive offers and may reduce consumer confidence in the market.⁶⁷

5.2 The proponent recommends preventing price increases for a fixed period

To address the problem described in the previous section, the proponent recommends preventing any increase to tariffs or charges payable by the customer under a market retail contract for a

58 ECMC, *Preventing price increases for a fixed period under market retail contracts*, rule change request, p. 2.

59 Ibid p. 3.

60 ACCC, *Inquiry into the NEM*, December 2023, p. 9.

61 Ibid p. 5.

62 Ibid p. 9.

63 Ibid p. 9.

64 See NERR rule 46(4)(a).

65 See rule 46(4) and clause 8.2 of Schedule 1 of the National Energy Retail Law (Queensland) Regulation 2014.

66 ECMC, *Preventing price increases for a fixed period under market retail contracts*, rule change request, p. 2.

67 Ibid p. 2.

specified fixed period following commencement of an energy plan.⁶⁸ The proponent considers this change would provide consumers with greater certainty and predictability over energy bills.⁶⁹

Three potential options were identified by the proponent:⁷⁰

1. To prevent price increases for the first 100 days, so consumers would not have price increases until after their first bill (if billed quarterly, in line with the current billing frequency required for customers on standard retail contracts).⁷¹
2. Allow price increases only once a year, similar to arrangements in Victoria (see Box 2 below).
3. Empower the AER to collect data from energy retailers on the number of price changes made to market retail contracts, and the level of those price changes, as part of its regular performance reporting.⁷²

These options would require changes to Division 7 of the NERR, potentially to rule 46. The proponent suggests that we should consider exempting innovative products from any new price change requirements.⁷³

Box 2: Current arrangements in Victoria on fixed periods

Victoria introduced rules around price increases to reduce bill shock and provide certainty to consumers in July 2020.

Under Victoria's Energy Retail Code of Practice retailers can only increase prices once a year, either for:

- fixed term contracts, at least 12 months after signing up to the contract.
- evergreen contracts, on the day that is one month after network tariff price changes (typically on 1 August).

Source: See the 2020 Essential Service Commission of Victoria (ESC Vic) decision on 'clear and fair contracts' [here](#) and see clause 94 of the Victorian Energy Retail Code of Practice.

A consideration for this rule change request is whether market retail contracts should also have a minimum fixed period if there is a fixed price period (such that the minimum period of the contract is at least as long as the fixed price period).⁷⁴ Another consideration is whether there should be an exemption framework for innovative products, noting engaged consumers may benefit from entering contracts with innovative pricing structures.⁷⁵

We will consider the materiality of the issue and the costs and benefits of the proposed options

There is limited publicly available data on the frequency of price increases and the scale of the problem is currently unclear. However, research by Energy Consumers Australia (ECA) shows that consumers are concerned about their ability to pay energy bills, with price increases being the most common reason for this concern.⁷⁶

68 ECMC, *Preventing price increases for a fixed period under market retail contracts*, rule change request, p. 2.

69 Ibid p. 5.

70 Ibid pp. 3-4.

71 See rule 24 of the NERR.

72 The AER could report this information publicly to help consumers better understand retailer behaviour.

73 ECMC, *Preventing price increases for a fixed period under market retail contracts*, rule change request, p. 4.

74 Ibid p. 4.

75 In its decision, ESC Vic set up an exemptions framework with two components: a standing exemption for specific categories of products that are automatically exempt (such as tariffs that continually vary in relation to the spot price of electricity), and a Commission granted exemption where retailers apply to have their product exempted. For details see page 43 of the 2020 ESC Vic decision [here](#).

76 ECA, *Consumer sentiment survey*, June 2024.

The proponent outlines that the benefits of limiting price increases are to reduce bill shock and provide greater certainty for energy consumers.⁷⁷ The costs would predominantly fall on retailers as they would carry any risk associated with increased wholesale prices during the fixed period, along with costs to update retailers' billing systems.⁷⁸ These costs could be passed through to their customers over the longer term.

The proponent notes that limiting price increases may result in retailers building price premiums into their plans, or could increase the risk of larger increases when prices are allowed to be increased.⁷⁹ However, the extent and size of price premiums will depend on the length of the fixed period, if introduced.

We will have regard to broader implications of the timing of network tariff increases and changes to the DMO when assessing the issues raised in the rule change request and potential solutions. Network tariff changes and changes to the DMO are critical inputs for retailers to manage costs and structure their offers.

We will consider implementation issues, including how any changes may affect the responsibilities of the AER, and whether there are transitional arrangements that would reduce retailer implementation costs.

Question 5: Preventing price increases for a fixed period

1. What is the materiality of the problem raised in the rule change request?
 - Do you have any data on how often retail energy prices change per year?
 - Do electricity and gas consumers experience the same issues?
2. Which of the proposed solutions would best address the issue raised in the rule change request? Are there other options we should consider?
3. What are the costs and benefits of each approach?
4. What are your views on the appropriate fixed period for prices (if any)?
5. Are there any implementation issues we need to consider?

⁷⁷ ECMC, *Preventing price increases for a fixed period under market retail contracts*, rule change request, p. 6.

⁷⁸ *Ibid* p 6.

⁷⁹ *Ibid* pp. 4-5.

6 Removing fees and charges

This chapter outlines and seeks feedback on the:

- problem raised in the removing fees and charges rule change request
- proposed solution to prohibit certain fees and charges.

6.1 The proponent suggests fees and charges are often not transparent

The proponent considers that the fees and charges retailers are currently able to charge consumers under the NERR are often not transparent to consumers when they are making a decision about entering into a retail energy contract.⁸⁰

The NERR allows retailers to charge consumers tariffs and additional fees such as account establishment fees and early termination fees.⁸¹

The proponent states these costs are typically incurred by consumers in the usual business of entering into and maintaining a retail energy contract. However, consumers are unlikely to add up all potential fees and charges, and the likelihood of incurring them, when considering and comparing contract costs.⁸² The proponent suggests this is due to the costs not being easily visible when the customer enters into a contract.⁸³

The proponent suggests that a consequential problem with contract fees and charges is that these additional costs are not directly exposed to competition in the same way if the costs were included in overall tariffs.⁸⁴

6.2 The proponent proposes prohibiting certain fees being charged to retailer's customers

The proposed rule change would require retailers to remove certain fees and charges for all small energy customers. The proponent considers this would help ensure the advertised price is as close as possible to the price the customer would pay.⁸⁵

The proponent seeks to amend the NERR (potentially Part 2, Divisions 7 and 7A) to prevent retailers charging these types of fees, unless State or Territory legislation authorises them being charged.⁸⁶

- account establishment fees
- special meter read fees (move-in and move-out reads)
- credit card payment fees⁸⁷
- late payment fees⁸⁸
- early termination fees
- over the counter fees at Australia Post, and

80 ECMC, *Removing fees and charges*, rule change request, p. 1.

81 The NERR does however contain provisions governing certain fees, for example early termination charges and conditional fees (rules 49A and 52B).

82 ECMC, *Removing fees and charges*, rule change request, p. 2.

83 *Ibid* p. 2.

84 *Ibid* p. 2.

85 *Ibid* p. 2.

86 *Ibid* p. 4.

87 Except if they reflect reasonable costs.

88 Except if they reflect reasonable costs.

- paper bill fees.

The proponent intends that retailers would have the option to recover these costs through tariffs, which would help to ensure these costs face competitive pressures.⁸⁹ Under the proposed rule, retailers would retain the ability to charge fees arising due to a customer-initiated specific arrangement, where the customer is informed of the costs.⁹⁰

The proponent notes that prohibiting certain fees and charges may result in other (equivalent) charging structures being imposed.⁹¹ As an alternative to the ‘blacklisting’ approach outlined above, another approach proposed in the rule change request is ‘white-listing’, where only prescribed fees and charges can be imposed on consumers.⁹² If a retailer wanted to include a new type of fee in the list of approved fees, it could submit a rule change request to the AEMC and make the case for including that fee on the list.

It is noted in the rule change request that states and territories have already implemented limitations on particular fees and charges, as outlined in Table 6.1 below.

Table 6.1: Jurisdictional derogations that limit fees and charges

| Jurisdiction | Legislation |
|--------------|--|
| NSW | <p>National Energy Retail Law (Adoption) Act 2012 modifying the NERR:</p> <ul style="list-style-type: none"> • Additional rule 35A: prohibits charges for paper bills or paying bills at an Australia Post outlet • Modification of rule 49A: prohibits early termination charges other than in prescribed circumstances • Modification of rule 73: requires waiving of late payment fees in certain circumstances. • Additional rule 73A: requires waiving of early termination charges for certain customers. |
| QLD | <p>National Energy Retail Law (Queensland)</p> <ul style="list-style-type: none"> • Derogation New Section 22A – prevents new fees and charges being applied to standing offers* • Derogation to Rule 49A(1)(b) & (2)(7) NERR – caps early termination fees to \$20 • Derogation Rule 49B NERR – retailers to have one market retail contract that does not include an early termination charge clause. <p>* Acceptable fees include: providing historical billing data that is more than two years old, dishonoured payments, and financial institution fees for a dishonoured payment (Queensland Government Gazette Extraordinary Vol. 366, No. 62, p. 565, 18 July 2014).</p> |
| SA | <ul style="list-style-type: none"> • Electricity (General) Regulations 2012, regulation 44C prohibits early termination fees other than in prescribed circumstances. • |

89 ECMC, *Removing fees and charges*, rule change request, p. 2.

90 For example, disabling remote communications’ capability of a smart meter that requires a special meter read.

91 ECMC, *Removing fees and charges*, rule change request, p. 4.

92 Ibid p. 4.

| Jurisdiction | Legislation |
|--------------|---|
| | <ul style="list-style-type: none"> Section 24 of the <i>National Energy Retail Law (South Australia) Act 2011</i> allows for late payment fees subject to certain conditions. |
| TAS | <ul style="list-style-type: none"> <i>National Energy Retail Law (Tasmania) Act 2012</i> s 19 requires retailers to waive late payment fees or charges for certain types of customers. |
| VIC | <ul style="list-style-type: none"> Electricity Industry (Victoria) Act 2000 sections 40C and 40D (and equivalent provisions in the <i>Gas Industry (Victoria) Act 2001</i>) prohibit charging of fees for late payment and exit fees, respectively, in specific circumstances. |

Source: ECMC, *Removing fees and charges*, rule change request, p. 3.

The proponent notes that if the AEMC were to make the proposed rule or a more preferable rule, it may make some of these existing state and territory derogations from the NERR unnecessary, resulting in a more consistent standard across jurisdictions.⁹³ If we make a rule, we will consider how it would interact with existing derogations.

The proponent outlines that we will need to consider:⁹⁴

- the circumstances that apply to specific fees and charges, the case for prohibiting them, and if it's appropriate for the costs to be spread across a retailer's customer base, as part of the rule change request process
- whether the proposed solution should apply to all or a select group of consumers, for example customers receiving concessions and rebates or hardship customers
- the Commonwealth's 2018 decision on paper billing fees.⁹⁵

We will also consider whether a rule change is the best approach, or whether jurisdictional measures or stronger guidance in the AER's *Retail Pricing Information Guidelines* or *Better Bills Guideline* would be a better way to address the objective of the rule change.⁹⁶

We will consider the materiality of the issue and the costs and benefits of the proposed solution

The ACCC noted in its June 2023 *Inquiry into the NEM* report that while the overall costs of these fees and charges are small, consumers should consider the cost and frequency of fees and charges when choosing an energy plan.⁹⁷

The proponent outlines that it expects costs to retailers would be small, with retailers required to amend how they charge their customers, which may require a change of process and calculations.⁹⁸ However, we will need to consider the impacts of these changes on small and large retailers, for example whether removing certain fees and charges would impact retailers in differentiating their retail offerings.

The proponent anticipates that in aggregate, shifting the recovery of retailers' business costs away from fees and charges and into tariffs exposed to competition would drive efficiency, rewarding retailers who can efficiently manage risk and maintain the lowest possible tariff

⁹³ ECMC, *Removing fees and charges*, rule change request, p. 4.

⁹⁴ *Ibid* p. 2.

⁹⁵ The Commonwealth found that the most effective and least cost approach to limit harm to vulnerable consumers, with regard to paper billing fees, is for businesses to expand their fee exemption programs through an education campaign. For details see the Commonwealth 2018 decision regulation impact statement for paper billing fees, available [here](#)

⁹⁶ See the AER's [Retail Pricing Information](#) Guideline and [Better Bills Guideline](#).

⁹⁷ ACCC, *Inquiry into the NEM*, June 2023, p. 26.

⁹⁸ ECMC, *Removing fees and charges*, rule change request, p. 5.

offerings.⁹⁹ It also considers that removing certain fees and charges would benefit consumers by simplifying the structure of energy bills and reducing shock caused by additional fees.¹⁰⁰

Question 6: Removing fees and charges

1. What is the materiality of the problem in this rule change request?
2. Will the proposed solution address the issues raised in the rule change request?
 - Are there any alternative solutions we should consider?
 - Is a rule change the best approach to solving this problem? If not, what approach would be better?
3. What fees and charges should be prohibited in the NERR, if any?
 - What are the benefits of removing these fees and charges?
4. Will a change to the NERR (in lieu of jurisdictional derogations) help provide consistency for retailers?
5. Besides existing jurisdictional derogations, are there any other implementation issues we should consider (eg, timing, costs)?

⁹⁹ ECMC, *Removing fees and charges*, rule change request, p. 4.

¹⁰⁰ *Ibid* p. 5.

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 |
| ESC Vic | Essential Services Commission of Victoria |
| NEL | National Electricity Law |
| NEM | National Electricity Market |
| NEO | National Electricity Objective |
| NER | National Electricity Rules |
| NERL | National Energy Retail Law |
| NERO | National Energy Retail Objective |
| NERR | National Energy Retail Rules |
| NGL | National Gas Law |
| NGO | National Gas Objective |
| NGR | National Gas Rules |
| VDO | Victorian Default Offer |