ENERGY CONSUMERS AUSTRALIA

AEMC – Consumer reform rule change consultation

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

Submitted by: Melissa McAuliffe

DATE: 24/01/2024

Introduction

Energy Consumers Australia appreciates the opportunity to comment on the Australian Energy Market Commission's consultation paper for the 'Consumer reform' rule changes. As the independent national voice for residential and small business energy consumers, we want to see an energy system that is fair, affordable, reliable and meets the needs of everyone. For this to exist, we need an energy system that recognises the diversity of needs but understands the critical importance of simplicity in consumers' busy lives.

The unnecessarily complex contract terms and plan details prevalent in today's energy market represent market failures. Low levels of engagement by consumers does not indicate low levels of interest, nor an unwillingness to look for better outcomes. Consumers are desperately worried about their energy bills. Just under 90% of households tell us they'd like clear information to help them compare energy plans, but too many lack confidence in their ability to make sound decisions about energy products and services, a challenge that is even greater for those experiencing financial pressure.[1]

These proposed rule changes are responding to the findings and recommendations from the Australian Competition and Consumer Commission (ACCC)[2], and reflect extensive consultation through the Australian Energy Regulator's (AER) Game Changer reform[3], and other similar reviews, including the Victorian Thwaites Review[4].

The Energy and Climate Change Ministerial Council[5] recognised the harmful effects of contracting and pricing practices, and their role in contributing to market complexity and consumer distrust. Minister Bowen accordingly prioritised these reforms to address issues that are longstanding and clearly unresolved through competition.

The ACCC National Electricity Market (NEM) Inquiry in 2023 revealed that nearly half of residential consumers and 42% of concession consumers were on offers that were equivalent to or higher than the regulated default offer.[6] The ACCC's 2024 NEM Inquiry[7] found similar and staggering results (referred to throughout this submission).

Furthermore, in the AER *Towards Energy Equity Strategy* it found the outcomes for consumers, particularly those more vulnerable is 'highly variable' across the market, an indicator of a market failing to deliver equitable, competitive outcomes for all.[8] This reinforces the urgent need for reform to ensure the market better serves consumers.

Given this comprehensive evidence base, the consultation paper's questions about the "materiality" of these issues are somewhat perplexing.

[1] ECA Household Energy Consumer Information Research 2023 https://energyconsumersaustralia.com.au/publications/household-energy-consumer-information-research
[2] ACCC has produced 12 National Electricity Market Report Inquiries https://www.accc.gov.au/about-us/publications
[3] AER's Game Change reform final report November 2023 https://www.aer.gov.au/system/files/2023-11/Game%20Changer%20Report%20-%20November%202023.pdf
[4] Victorian Thwaites Review Final report – August 2017 https://www.energy.vic.gov.au/__data/assets/pdf_file/0031/673951/Thwaites-Review-Final-Report.pdf
[5] Energy and Climate Change Ministerial Council – package of consumer reform rule change proposals – https://www.aemc.gov.au/rule-changes/improving-ability-switch-better-offer
[6] Inquiry into the National Electricity Market report - December 2023 | ACCC
[7] Inquiry into the National Electricity Market report - December 2024 | ACCC
[8] AER Towards Energy Equity a strategy for an inclusive energy market https://www.aer.gov.au/industry/registers/resources/reviews/towards-energy-equity-strategy-inclusive-energy-market

This submission strongly supports the four rule change requests:

- **Aligning Benefit Periods with Contract Length -** benefit periods must match the full length of an energy contract. This ensures consumers can easily compare products and services, make informed decisions that serve their best interests, and avoid loyalty penalties that disproportionately disadvantage long-term customers.
- **Ending unreasonable conditional discounts -** unreasonable conditional discounts must be prohibited. All consumers should be provided with the same level of protections afforded to customers who signed a contract after 1 July 2020. This will help close regulatory gaps and ensure equitable treatment and pricing protections for all consumers, regardless of contract start dates.
- **Introduce a Fixed Price Period –** Energy retailers should be required to have prices that are fixed for at least one year aligning with existing Victorian regulations. Consumers should have price certainty and confidence in choosing a plan with prices that remain stable for a clearly defined period.
- **Eliminate Hidden Fees and Charges –** All inherent fees and charges that obscure true energy costs must be removed from market offers. This reform will reduce market complexity, enhance price transparency, and empower consumers to confidently compare and select plans on their true value.

ECA has consistently supported the intent of these reforms, recognizing them as important adjustments to the existing regulatory framework. While not a complete solution, they represent meaningful steps toward addressing longstanding issues in the energy market, particularly those impacting vulnerable consumers. For each rule change response, we provide further detail and support for our recommendations including where relevant alternative options and necessary considerations.

Response to the discussion paper

Q1. What are the interactions between the four rule change requests that we should consider?

Consumers are entitled to easily understandable energy offers that don’t contain negative surprises. These reforms will work better if passed as a package.

These rule change proposals aim to address longstanding market failures that have consistently resulted in poor outcomes for consumers. While each proposal can be considered independently and approved on its own merit, each will require retailers to review and potentially amend their contracts, structure or their plans and associated marketing, and pricing practices to ensure compliance with the reform.

As the AEMC proposes, it seems reasonable to consider them together to facilitate and reduce the costs of implementing the changes.

The Essential Services Commission (ESC) grouped related issues—such as price changes during market contracts, benefit periods shorter than contract lengths, and large conditional discounts—under the banner of "Ensuring energy contracts are clear and fair."[9] Clear messaging from the market bodies will also support communications with consumers about the reforms.

These overdue reforms are vital to improving retailers' contracting, pricing, and marketing practices. Delivered together and supported by strong enforcement and compliance messages from the regulators, they should incentivise cultural change within retailers, hopefully strengthening a commitment to best practices and reinforcing their duty to consumers as providers of an essential service.

Making our decision

Recommendation: That the AEMC place greatest weight on the consumer outcomes criterion.

2. *Do you agree with the proposed assessment criteria? Is there anything additional the Commission should consider?*

The AEMC must place greater weight on the assessment criterion on consumer outcomes.

Out of the four proposed assessment criteria, only one is based on consumer outcomes. This is despite the purpose of this proposal being to better protect consumers from poor contracting practices and current market failures.

This rule change has been proposed precisely because of real harm being caused by unreasonably high energy bills in the community, and the failure of a competitive retail market to deliver for too many Australians.

Weighting should reflect the essentiality of energy services and therefore the AEMC should prioritise the criterion ‘Outcomes for consumers’.

3- Ensuring energy plan benefits last the length of the contract

Recommendation: That the AEMC approve the rule change, which will deliver improved outcomes for consumers and improve market efficiency.

Q3.1 What is the materiality of the problem raised in the rule change request?

Too many people are paying unnecessarily high energy bills. And consumers who cannot easily engage are penalised by higher prices—the 'poverty premium’.

[9] ESC Ensuring energy contracts are clear and fair Final decision 2020 https://www.esc.vic.gov.au/sites/default/files/documents/clear-and-fair-contracts-final-decision-20200228.pdf

Around 1.9 million households in the NEM are on older offers and are paying more for their energy than they need to.[10] *Nearly two million households* – and the greater number of people that live in them – are paying too much for energy.

The ACCC NEM Inquiry 2024 recently reported that customers on older offers were paying 11.7% more (up from 11% in 2023) than customers on new offers on a flat rate offer. This percentage increases again to 11.8% if the customer is on a time of use price structure.[11]

In addition, many consumers do not have the ability, motivation or opportunity to engage in the market and - rather than being supported - are penalised by higher prices. Our most recent Consumer Energy Report Card found that just over half of households want a "basic" relationship with the energy system, where electricity is a basic service and all the customer wants is: a good price for the electricity they use (or export if they have solar); a reliable electricity supply; and good customer service from their supplier.

It's unclear how much that preference for a basic relationship might derive from people's actual experience in the market, and whether the market's failure to deliver certainty, clarity and simplicity has effectively 'disenfranchised' consumers. But it has no doubt been a major factor in undermining consumer trust and confidence, further eroding any willingness to actively engage.

That disengagement has effectively been used by retailers to implement marketing and customer acquisition strategies that offer low prices on acquisition, knowing that they can recoup those costs by increasing the price once the customer's signed on. In energy, it's more iniquitous because of the delay between that price increase and a likely bill – an apt analogy was that it's like getting a speeding ticket on a road with no signs three months after the event and when it's too late to slow down.

The NSW Energy and Water Ombudsman (EWON) reported a case in 2022[12] where the "energy retailer had increased prices three times in as many months. The price rises equated to an 80% increase to the price of peak electricity consumption, and a 100% increase to the price of off-peak electricity consumption. The customer advised EWON that his next quarterly energy bill had doubled despite including around $160 in discounts."

The harm caused by high energy bills is substantial. Cost of living pressures are already seeing people cut back significantly on budgets[13] but people can have limited capacity to reduce their energy bills through consuming less – e.g. if they don't have the ability to invest in solar or batteries or live in rental accommodation - or don't know what the most impactful actions they can take to minimise their bills.

Our most recent Consumer Energy Report Card found that 81% of people were extremely or quite worried about the cost of electricity. Just over 34% of people said they were experiencing financial difficulty, and 40% of people told us they had found it very or somewhat difficult to pay their energy bills in the last 6 months.[14]

For households experiencing energy stress or hardship, this adds to the mental, emotional, and financial burden they may already be experiencing. That harm is compounded by the difficulties of engaging in this market. When consumers do try to participate, a significant number lack confidence in their ability to

[10] ACCC NEM Inquiry December 2024 https://www.accc.gov.au/about-us/publications/serial-publications/inquiry-into-the-national-electricity-market-2018-25-reports/inquiry-into-the-national-electricity-market-report-december-2024 47

[11] Ibid

[12] https://www.ewon.com.au/page/publications-and-submissions/reports/EWON-Insights/ewon-insights-oct-dec-2022/energy-complaints-and-case-studies

[13] NAB Consumer Stress Index, see https://business.nab.com.au/wp-content/uploads/2024/01/NAB-Consumer-Sentiment-Survey-Q4-2023.pdf

[14] ECA Consumer Energy Report Card December 2024 https://energyconsumersaustralia.com.au/publications/consumer-energy-report-card

make the right decision about energy products and services. This confidence gap is even more pronounced among those experiencing financial pressure—51% compared to 75% of financially comfortable consumers—and those who feel they have sufficient information—43% versus 65% of their financially stable counterparts.[15] In its submission to the Energy Retail Code of Practice review, the Council on the Ageing and Seniors Rights Victoria highlight that "older individuals harbor fears about the potential risks of changing plans... and express a strong preference for clear, factual information to guide their decisions."[16] Such concerns reflect a well-founded caution among consumers, reinforcing a reluctance to engage with a market that remains complex and difficult to navigate.

Currently, at the end of a benefit period, consumers are either left to navigate (again) the plethora of offers with perhaps concern for choosing another 'bad' offer, or they stay on the plan without the benefit, and potentially end up paying a higher price than they should. And higher than what they thought they chose. Consumers should, if they choose to, be able to compare products and services easily and make an informed choice in their best interests, and equally should not be penalised if they don't.

Q2. Will the proposed solution address the issue raised in the rule change request?

Aligning benefit periods with contract terms will help eliminate the loyalty tax, protecting consumers who are unable or unwilling to engage with market complexity.

Historically, the regulatory and policy response to consumers' perceived unwillingness or inability to actively participate in the market has been to focus on measures that facilitate engagement and/or aim to improve consumers' energy literacy. The ACCC's electricity inquiries over the last few years have now made very clear that these responses have had little to no effect. 81% of consumers could be on a cheaper offer if they switched.[17] Retailers have also not been successful in inducing customers to engage actively - and in fact have adapted to low consumer engagement by actively pursuing a business model that relies on offering a lower price at acquisition and recovering the cost-to-serve over the life of the contract. As the rule change request notes, 'consumers should not be subject to persistently high costs if they do not regularly engage with the market, particularly those who are experiencing hardship or face other barriers to engagement'.

Introducing measures that will ensure consumers are not penalised for their loyalty is consistent with other jurisdictions. In 2022 as a 'temporary market stabilisation measure' Ofgem in the UK placed a ban on acquisition pricing, a practice which saw retailers offering potentially unsustainably discounted rates exclusively to new customers. In June, Ofgem extended the ban until at least March 2025 while also signalling their intention for a further extension until 2026.[18] Consumer groups and some energy suppliers have supported the ban.[19] Citizen's Advice in their response to the decision to extend to 31 March 2025 noted this was the right move and meant 'customers who stay with their supplier won't be punished for their loyalty... (and in an energy market) that is increasingly complex this decision will

[15] ECA Energy Consumer Sentiment Survey Dune 2024 - https://energyconsumersaustralia.com.au/wp-content/uploads/ecss-jun24-topline-results-report.pdf

[16] See submission here https://www.esc.vic.gov.au/sites/default/files/documents/Council%20of%20the%20Ageing%20Victoria%20-%20Submission_Redacted.pdf

[17] Dec 2024 report figure 2.22 https://www.accc.gov.au/system/files/accc-national-electricity-market-december-2024-report.pdf

[18] https://www.ofgem.gov.uk/consultation/future-ban-acquisition-only-tariffs-bat-after-march-2025

[19] E.ON Media Release 'Reforming the retail energy market will help deliver the clean power mission' July 2024 Energy https://www.eon-uk.news/news/reforming-the-retail-energy-market-will-help-deliver-the-clean-power-mission

provide some certainty to the millions of customers worried about their energy bills.'[20] And consumers agree, with 93% of surveyed customers responding they would like the ban to stay in place.[21]

Ensuring a benefit lasts the length of the contract will give consumers more certainty in what they are signing up to and help build trust in the market. Having energy plans available that could change part way does nothing to help support consumer agency and empower consumers to engage. The AER's *Vulnerability in Energy* study found that consumers' mistrust stems from a perceived lack of transparency and a belief that retailers prioritise acquiring new customers over meeting the needs of existing ones.'[22]

Ongoing contracts

We agree with the proposal that for ongoing contracts the benefit must apply for as long as the customer is on that contract. Product design and the marketing of these products should clearly reflect this.

As part of ECA's submission to the *Assisting Hardship* customers consultation, we recommended a review of the Retail Pricing Information Guidelines (RPIG) and would see merit in testing current terminology and the language retailers use to describe plans, benefits, incentives, contracts etc to ensure that the intent of this rule change is being adhered to.

End of contract and benefit period

Currently if a customer is on a fixed term contract which ends, they are placed on a 'deemed arrangement' i.e. a standard contract with DMO prices. We think that this is an appropriate form of protection if accompanied by a proper notice (this could be an amended benefit change notice, or price change notice or something different entirely). It ensures consumers are not left paying inflated prices while being informed of the change and what it means for them.

Alternatively, we do see value in exploring whether customers could automatically roll over onto a retailer's "best market offer" at the end of a fixed-term contract. However, we recognise several complexities that would require extensive consultation.[23] For example, what constitutes the "best offer" for one person may not suit another—such as if the best offer requires direct debit or uses a time-of-use pricing structure. If the "best offer" were made too broad or universal, it might resemble the Default Market Offer (DMO), and not worth opening amendments to the explicit informed consent protections.

Benefit change notice guidelines

We recommend that, in alignment with these changes and the draft proposal, the Benefit Change Notice Guideline be reviewed to determine the most effective type of notice for consumers in this context. Following this review, if modifications to the benefit change notice or an alternative notice are deemed necessary, co-design and consumer testing should be conducted, including on the following:

Notice requirement considerations:

- Incorporating a "better offer" message and reviewing its interaction with the current "do nothing premium," ensuring the messaging is as clear and simple as possible.

[20] https://www.citizensadvice.org.uk/about-us/media-centre/press-releases/citizens-advice-responds-to-ofgems-decision-to-retain-the-ban-on-acquisition/ July 2024
[21] E.ON Energy, commissioned research conducted by YouGov May 2024 https://www.eonenergy.com/newsroom/consumers-agree-that-energy-companies-must-not-restrict-deals-to-new-customers.html
[22] AER towards energy equity strategy – vulnerability report
[23] We also raise similar issues in our submission to the Consumer reform - Assisting Hardship consultation

- Including an SMS notification alongside the notice, delivered via the customer's preferred communication method.
- If required reviewing Table 1 of the benefit change notice—particularly whether the length and format of the information effectively guide customers to use Energy Made Easy.
- Consideration of notice length and what information will be the most useful/least overwhelming to a consumer in these circumstances. We note there is a significant difference, for instance, in the approach taken to the benefit change notice and the price change notice.[24]
- The notice should be designed with inclusivity in mind. For example, does it include phone or translation/interpreter information or services?[25]

Q3.3. Would this proposed rule change impact the variety of tariff structures available in the retail market?

We see minimal evidence to suggest that this proposed rule change will impact the variety of tariff structures available to consumers.

Note, in the adjoining rule change proposal 'price increases to be a fixed period' the proponent states that 'altering the types of market retail contracts that can be offered would not affect the variety of tariff structures that retailers can offer.'

4 – Removing unreasonable conditional discounts

Recommendation: That the AEMC approve option two in the rule change, which will deliver improved outcomes for consumers and improve market efficiency.

Q4.1.What is the materiality of the problem raised in the rule change request?

Consumers experiencing vulnerability are disproportionately impacted by plans with conditional discounts.

The June 2024 ACCC NEM Inquiry[26] revealed that 10% of residential customers and 14% of small businesses did not achieve their conditional discounts. When these conditional discounts are not achieved consumers pay higher prices than DMO prices (the safety net).

Billing data analysis further shows that even if customers met their conditions and receive the discount, they often pay similar or higher effective prices compared to those on plans without a discount. This can be attributed to higher-priced plans being more likely to have conditional discounts. The ACCC NEM Inquiry Dec 2024 revealed that 81% of customers with unconditional calculated annual prices of 25% or more above the DMO were on plans with conditional discounts. [27] These plans on average were offered at a seemingly attractive 27% discount, however, failing to meet the conditions can see increases on an annual bill of up to $537.

[24] Noting this was one of the reasons for the much shorter Price Change Notification in comparison to the required notice in Victoria. Link to final price change notice determination

[25] Consumer Engagement Toolkit, Fair by Design principles – links

[26] ACCC National Electricity Inquiry June 2024 https://www.accc.gov.au/about-us/publications/serial-publications/inquiry-into-the-national-electricity-market-2018-25-reports/inquiry-into-the-national-electricity-market-report-june-2024

[27] https://www.accc.gov.au/about-us/publications/serial-publications/inquiry-into-the-national-electricity-market-2018-25-reports/inquiry-into-the-national-electricity-market-report-december-2024 33

[27] Ibid

In July 2020 the AEMC recognised the potential consumer harm of these plans by limiting conditional discounts and fees, however, this rule only applied to new customers. The ACCC's inquiry revealed there remain consumers on legacy plans with potentially high conditional discounts. It is unfair and unreasonable to not provide these customers with the same level of protections afforded to consumers who signed a contract after 1 July 2020.

Conditional discounts are far less likely to be achieved by consumers on low fixed incomes, have seasonal financial insecurity or work casually, have lower financial or technical language literacy, or are experiencing life events that have placed them in financial stress. EWON reported on a case demonstrating the detriment to consumers unable to meet the conditional discounts:[28]

> *A customer who is living with a disability and experiencing payment difficulty sought help from a community worker as his electricity account balance was $11,000. Upon investigation, amongst other things it was found that the customer had been on a pay-on-time-discount for over two years, and while he had provided payment on his bill consistently, the payments were not regular and therefore had missed all the pay on time discounts – a total of $1500.*

This is not a unique case study, with a number of examples provided in the Energy and Water Ombudsman Victoria's submission to the ESCs consultation on this reform.[29]

The AEMC's 2020 decision[30] assumed that competition would address grandfathered arrangements, and that the market would provide sufficient incentives to consumers to move to more advantageous plans. That confidence was clearly misplaced as indicated consistently by the ACCC's inquiries. Intervention is required and was a priority recommendation of the ACCC in their December 2023 NEM Inquiry, recognising that these plans in effect penalise customers who do not achieve the conditions to realise the discounts.[31]

Q4.2. Will the proposed solution address the issue raised in the rule change request?

All consumers should be protected from unreasonably high conditional discounts that have the potential to leave them paying well above the DMO safety net.

The proposal puts forward two options to end unreasonable conditional discounts pre-2020 contracts.

We recommend option two – keep customers on their existing plans but reduce the conditional discount value and high underlying price, keeping all other elements of the plan the same.

The first option - moving customers onto a plan where the new conditional price is equal to or better than their existing conditional price, will require explicit informed consent (EIC). Obtaining EIC may delay the consumer realising the benefits of these reforms and relies on consumers agreeing to engage with their retailer to choose an alternative. Older Australians for example, may be more likely to stay on their existing plan even if it does mean higher base prices as they often hold grave concern for losing existing benefits – this is particularly so for customers on legacy contracts.[32]

[28] EWON Insights Report April-June 2023 'Energy complaints and case studies' https://www.ewon.com.au/page/publications-and-submissions/reports/EWON-Insights/ewon-insights-apr-jun-2023/energy-complaints-and-case-studies

[29] Energy and Water Ombudsman Victoria - Submission_Redacted.pdf

[30] AEMC Regulating Conditional Discounts – Final 2020 https://www.aemc.gov.au/sites/default/files/documents/regulating_conditional_discounting_-_rrc0028_-_final_determination.pdf

[31] https://www.accc.gov.au/system/files/accc-inquiry-national-electricity-market-december-2023-report_0.pdf

[32] https://www.esc.vic.gov.au/sites/default/files/documents/Council%20of%20the%20Ageing%20Victoria%20-%20Submission_Redacted.pdf

Option two requires no action by the customer, and means that that the plan they originally chose is maintained.

Q4.3. What would be the cost of the proposed solution, if implemented, to both consumers and retailers?

No consumer should be worse off from this reform

The proposal states that retailers may suffer a loss of revenue and consumers who may have been meeting their discount may lose their benefit.

It has been recently reported that retailer margins have increased for both residential and small business customers. Consideration given to loss of revenue, that is gained by pricing practices that prey on the vulnerabilities of consumers, should not be given weight in this decision.[33]

The ACCC's inquiry has also found that consumers on these legacy plans were often not on a competitive price even if they met their conditions[34]. Therefore any benefit they may be achieving is likely small and disproportionate to the risk they face if they do not meet their conditions.

5 - Preventing price increases for a fixed period under a Market Retail Contract

Recommendation: That the AEMC approve the rule change with a fixed period of 12 months.

Q5.1. What is the materiality of the problem raised in the rule change request?

This has been a problem for consumers for too long - in 2012 Consumer Action Law Centre wrote to the Essential Services Commission, calling for electricity prices to be fixed for the term of that contract, stating 'shopping around for the best deal could be a waste of time if the retailer then goes and alters its price. It means it is harder for households to budget for their electricity because they can't predict the price with any certainty, and further reducing the promise of savings provided by switching sites (such as Energy Made Easy).'[35]

This position is no less valid today. Consumers outside of Victoria still have very little certainty about the price they will pay, and, for how long. The ACCC December 2024 NEM Inquiry notes that more than 80% of Australian households could be on a cheaper plan if they 'shopped around.'[36] However, consumers who take the time to engage in the market have no way of knowing if the prices they choose today will be the same next month.

[33] ACCC Inquiry into the National Electricity Market December 2024 Report https://www.accc.gov.au/about-us/publications/serial-publications/inquiry-into-the-national-electricity-market-2018-25-reports/inquiry-into-the-national-electricity-market-report-december-2024 p59
[34] ACCC, Inquiry into the National Electricity Market, December 2023, https://www.accc.gov.au/about-us/publications/serial-publications/inquiry-into-the-national-electricity-market-2018-25-reports/inquiry-into-the-national-electricity-market-report-december-2023 p6.
[35] Consumers in the dark on fixed term electricity contracts - Consumers' Federation of Australia November 2012
[36] link

The Independent Pricing and Regulatory Tribunal recently reported that NSW customers are more concerned about their electricity bill than mortgage/rent costs or groceries, due likely to a bill's variability and the potential for bill shock.[37]

Yet concerningly 36% of consumers tell us they are unable to locate the information they need on energy plans and pricing[38] and around a quarter of consumers who considered shopping around for a new offer said it was too complex, confusing or time-consuming[39]. Intervention is required into how energy plans are priced and offered if consumers are going to see the market as anything more than "smoke and mirrors."[40]

Q5.2. Which of the proposed solutions would best address the issue raised in the rule change request? Are there any other options we should consider?

A price increase should be permitted no more than once a year.

We support a fixed price period being set that aligns with the Victorian rule of one per year. Customers value certainty but are currently not afforded that protection.

In response to the recommendations made in the Victorian Thwaites review, the ESC implemented fixed market contract prices, with customers rolling onto the Victorian Default Offer once a contract has expired. Under this rule, retailers are only allowed to change a customer's price once per year or on the anniversary of their fixed price period expiring. Consumer advocates supported this position throughout the consultation process, equally with some support from retailers. The ESC found that alternative options such as 'maintaining the status quo, or retailers offering just one fixed-price product would not deliver on the objective to give consumers more certainty and build confidence in the energy market'.[41]

Alternatives

The proposal put forward alternatives for consideration, however we do not consider these will deliver the intended outcomes for consumers.

- **Introducing a fixed price period of 100 days:** A 100 days of 'price certainty' for some consumers will only cover one bill cycle, and does not mitigate the potential onus on consumers to continually engage should they not want to pay higher prices**.**
- **Placing onus on the AER to monitor the market, in the absence of a fixed period window.** We are long past this as a viable option for consumers or regulators. The ESC concluded in its 'Ensuring energy contracts are clear and fair' review that maintaining the status quo would fail to deliver the intended consumer outcomes.[42] We agree that this is not an acceptable alternative or likely to engender the results that are intended by energy ministers in their desire to make this rule change.

[37] Independent Pricing and Regulatory Tribunal 'Monitoring NSW electricity market, Annual Report Dec 2024 - Annual-Report-Monitoring-the-NSW-retail-electricity-market-2023-24-November-2024.PDF

[38] ECA, Consumer Energy Report Card, December 2024.

[39] ECA, Energy Consumer Sentiment Survey, June 2024.

[40] Ian Murphy - Consumer submission to the ESC's consumer reform consultation: *"..It is like smoke and mirrors when you are looking for the best option from the providers... and it is not just us oldies that are finding it hard and confusing."* https://www.esc.vic.gov.au/sites/default/files/documents/Ian%20Murphy%20-%20Submission_Redacted.pdf

[41] ESC Ensuring energy contracts are clear and fair

[42] Essential Services Commision Ensuring energy contracts are clear and fair – Final Decision 2020

Q5.3. What are the costs and benefits of each approach?

Aligning with the Victorian rule - at a minimum - is the best option to meet consumer needs.

Our view is that aligning with Victoria should minimise implementation costs for most retailers. It should also keep their marketing and communication costs down by working on consistent messaging, and reducing the costs associated with a price change (for example the cost to notify via post).

We also would echo the rationale outlined in the ESC 'Ensuring energy contracts are clear and fair' final decision, where the regulator considered potential retailer costs and a 'price premium' being applied and determined that it's a retailer's responsibility (and in its interest) to appropriately manage wholesale price risks for consumers and provide a level of price certainty for consumers. Therefore, there is already an inherent price risk premium factored into the retail price that consumers pay.[43] This logic equally applies in these circumstances.

The benefits of this approach are significant, as we have outlined above.

Q5.4. What are your views on the appropriate fixed period for prices (if any)?

As outlined above, we consider aligning with Victoria and the 12-month fixed period at a minimum as a reasonable and efficient fixed price period.

6 – Removing fees and charges

Recommendation: That the AEMC approve the rule change with prohibited fees, including paper bill fees, which will deliver improved outcomes for consumers and improve market efficiency.

Q6.1. What is the materiality of the problem raised in the rule change request?

Fees and charges add to bill complexity, uncertainty of bills and poor consumer outcomes

Consumers are already struggling to keep up with the details of energy plans. Only 18% of consumers tell us they know what tariff they are on, 45% say they have 'some idea', and 37% simply do not know. The percentage of vulnerable consumers who know their tariff is even lower.[44] Fees and charges add to the complexity of billing and plan information. These additional costs are not easy for consumers to find or understand and make it difficult to compare offers as they are not always presented in the same way.

Consumers want information on how they can reduce their bills, delivered in a way that makes sense to them. Unfortunately, many consumers, particularly those who may be experiencing financial constraints say they cannot find the tools or information they need.[45] Confusing fees and charges that differ per retailer and state all adds to complexity, distrust, and disengagement.

The ACCC's response to their findings that disengaged consumers were facing a loyalty tax was for "Australians to take some time this holiday period to have a look on the Energy Made Easy or Victoria

[43] Ibid at p35
[44] ECA Consumer Energy Report Card December 2024 Residential Topline data https://energyconsumersaustralia.com.au/publications/consumer-energy-report-card
[45] Ibid

Energy Compare websites to see if there is a better plan"[46]. However, confusing fees and charges that differ between retailer and state make this task significantly more complex than it is seems and add to the distrust and disengagement many consumers have from energy markets.

While we appreciate and acknowledge the rules that are already in place in some jurisdictions with regards to prohibiting fees and charges, they are not consistent and do not apply to everyone.

For example:

In NSW early termination and late payment fees are to be waived in certain circumstances. Circumstances include:

- if the contract is a contract for electricity or a dual fuel contract and the customer receives the Low-Income Household Rebate or the Medical Energy Rebate.
- if that bill, or another bill given to the customer under the contract, is the subject of a matter being considered by the energy ombudsman.
- if the bill is subject to an arrangement to pay by instalments under a payment plan.
- if any part of the bill is paid by a voucher issued under the Energy Accounts Payment Assistance Scheme.
- if the retailer is aware that the customer has sought assistance to pay the bill from a participating community welfare organisation that issues vouchers under the Energy Accounts Payment Assistance Scheme.[47]

On EME for one postcode search we found, out of 67 electricity plans, 36 plans are listed without a late payment fee. For those plans left, the price of that late payment varies and does not state any exemptions, for example these are two different retailers Basic Plan Information Documents (BPID) on EME:

Late payment fee **$16.00**

Charged when full payment has not been received by the invoice due date. This charge is not subject to GST.

Other fees

Late payment fee **$12.00**

A fee of $12.00 (GST exempt) may apply if your bill is not paid by the due date.

It is important to note that only "key fees" must be listed on a BPID as part of the plan requirements of EME. Key fees are defined as those that apply to all or a significant portion of consumers.[48] All other fees can be referenced in a separate fee schedule available on the retailer's website. While these additional fees may not be relevant to most consumers, the need to visit a different website to understand their details creates an additional barrier and potential drop-off point for consumers seeking to compare plans effectively.

Comparing multiple energy offers across different windows is challenging when some fees are included, others are omitted, or certain fees—such as paper billing fees or post office payment fees in NSW—are prohibited. Given the existing distrust in the market and inconsistencies in plan information, consumers may be sceptical about whether these fees truly don't apply. Additionally, the way retailers present fees

[46] ACCC, No reward for being loyal: Australians urged to shop around for a better value electricity plan, Media Release, 30 December 2024, available: https://www.accc.gov.au/media-release/no-reward-for-being-loyal-australians-urged-to-shop-around-for-a-better-value-electricity-plan
[47] *National Energy Retail Law (Adoption) Regulation* 2020 [NSW] Part 3 Modifications to National Energy Retail Rules, Clause 15 https://legislation.nsw.gov.au/view/pdf/asmade/sl-2020-511
[48] Retail Pricing Information Guideline

and charges on their websites can create further confusion. For example, a statement like “we don’t charge an exit fee” may seem helpful but adds complexity from a comparison perspective (especially if, for instance, it's because its prohibited)[49], making it harder for consumers to navigate and evaluate competing offers effectively.

Q6.2: Will the proposed solution address the issues raised in rule change?

Removing certain fees and charges for all small customers will mitigate some of the complexity and opacity of plan information, making it easier for consumers to engage and compare offers in the market.

As highlighted in response to question one, EME and regulated BPIDs do not clearly indicate what charges a customer will or won’t incur. Instead, inconsistencies between plans and jurisdictional requirements create confusion—fuelling doubt about the market, the offers themselves and the actual charges customers will see on their bills.

Broader considerations

As the proposal notes, the AEMC will need to consider what fees are prohibited and what fees can be charged in individual circumstances – this should include consideration of the types of fees and charges that may be applicable with new energy services.

We also see fees and charges and how they are recovered forming part of the broader tariff and pricing review and pricing principles.

Q6.3. What fees and charges should be prohibited in the NERR, if any?

Any fees or charges that adversely impact all or a large portion of consumers (or in particular consumers who may be in hardship) should be prohibited.

The proposed list of prohibited fees in the rule change proposal provides a good foundation. We would also support the inclusion of paper bill fees on this list.

We also note that many businesses do not charge a number of these fees, including paper bills, to consumers that they have identified as potentially vulnerable, such as participating in a hardship program, concession card holder, or experiencing family violence. Codifying permissible fees and charges will help ensure consistency for consumers.

We also urge the AEMC to draft the rules with flexibility to accommodate future additions to the prohibited fees list as new fees or charges emerge.

Finally, alongside clear expectations, ongoing monitoring is essential to identify and mitigate any unintended consequences. This will help ensure that prohibited fees are not simply recouped through other pricing mechanisms, which could unfairly increase costs for consumers—particularly those experiencing financial stress.

[49] *National Energy Retail Law (Adoption) Regulation* 2020 [NSW] Part 3 Modifications to National Energy Retail Rules, 14) 49A – worth noting the exceptions to this rule are in reference to consumer energy resources. https://legislation.nsw.gov.au/view/pdf/asmade/sl-2020-511

Q6.4. Will a change to the NERR help provide consistency for retailers? (in lieu of jurisdictional derogations)

Yes, consistency and clarity across all jurisdictions should help streamline retailer processes and have the potential to reduce operational costs. Any reduction in operational costs should help to also balance the overall cost to consumers.

In addition, we would also expect this approach would apply pressure on retailers to minimise these costs in order for their offers to appear more appealing in the market.

Q6.5 Besides existing jurisdictional derogations, are there any other implementation issues we should consider (eg, timing, costs?)

We consider this rule change to be easy to implement, particularly as some jurisdictions already have extensive prohibitions on what fees a consumer can be charged.

The AEMC may wish to recommend that the AER review potential changes to EME and BPID templates to enhance simplicity and clarity. For instance, the BPID template could be revised to feature an open-text "Fees" section, allowing retailers to include a general description of fees that are not charged, along with a designated space to highlight any specific fees associated with the plan—such as a "membership fee."

Conclusion

Consumers must have access to a fair price for energy regardless of if they engage in the electricity retail market or not. The ACCC's findings demonstrate that there too many consumers, and often those experiencing vulnerability or financial hardship, who are not actively engaged in energy markets and are paying unreasonably high prices as a result.

Existing complexity in the retail market limits the capability of many consumers to access the benefits of engaging. We must first get the fundamentals right before we tell consumers to shop around to save money: offers must be clear and easy to understand, comparing plans must be simple and transparent, signing up should be straightforward and information and support should be easily accessible, inclusive and non-judgemental.

However, we also know that there will continue to be a cohort of consumers who always face barriers to engaging. As an essential service, these consumers must be assured they too will have access to a fair price for electricity.

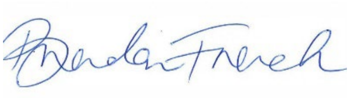
The proposed rule changes represent an important step toward addressing these deficiencies and delivering tangible benefits, particularly for those most affected by rising energy prices. But the work is far from complete. We look forward to collaborating with the AEMC and the sector on further reforms that deliver long-term, consumer-centred solutions. Examples include:

- The automatic application of concessions for eligible concession cardholders.

- The introduction of an overarching consumer duty requiring retailers to act honestly, fairly, and to design and deliver products and services with the consumer's best interests at the core.

We thank the AEMC for their work in ensuring a swift consultation process on these important rule change proposals. If you have any questions regarding this submission, please contact Melissa McAuliffe at melissa.m@energyconsumersaustralia.com.au

Yours sincerely



Dr Brendan French
Chief Executive Officer

The national voice for residential and small business energy consumers

ENERGY CONSUMERS AUSTRALIA

PO Box A989,
Sydney South NSW 1235
T 02 9220 5500

energyconsumersaustralia.com.au