Australian Energy Market Commission – Energy Consumer Reform Consultation paper

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Introduction

Energy Consumers Australia welcomes the opportunity to comment on the AEMC Consumer reform rule change consultation – Assisting hardship customers. As the independent national voice for residential and small business energy consumers, we want to see an energy system that is fair, affordable and reliable for every Australian.

For over two decades, market policy has leaned heavily—if not entirely—on consumer effort to create a dynamic energy market. Consumers are expected to navigate complex tariffs and pricing structures, compare offers without access to their own real-time consumption data, and continually switch providers to avoid paying a 'loyalty tax.' Our most recent consumer survey showed - *again* - that a significant proportion of households don't find it easy to understand their energy bills, and don't feel people experiencing energy hardship receive appropriate support.[1] While it is reasonable for proactive consumers to benefit from engaging with the market, the energy sector's barriers to participation disproportionately affect those already grappling with significant, entrenched disadvantages.

Numerous reports and their recommendations have called out these challenges. In its 2018 *Retail Electricity Pricing Inquiry – Final Report*,[2] the ACCC warned that high prices were placing intolerable strain on households and businesses, calling the situation "unacceptable and unsustainable." Among its 56 recommendations was a critical goal: ensuring that low-income households do not pay more for electricity due to past decisions or harmful market behaviour.

In 2022, Chair of the Australian Energy Regulator (AER) Clare Savage noted that 'while our understanding of consumers experiencing vulnerability has increased – outcomes have failed to improve with poor key indicators being locked at levels that have become the 'industry norms.'[3]

Despite this, the market continues to show that it is not delivering for consumers, particularly those who may be more vulnerable.

As the energy system undergoes a transformative shift—that is and will impose costs on consumers through higher bills, home upgrades, and the push to change consumption behaviour—it is imperative to have robust, fit-for-purpose consumer protections that are strictly adhered to.

We strongly support this rule change proposal, to provide more immediate support to consumers experiencing payment difficulty to ensure they are paying as little as possible for their energy.

We acknowledge that this rule change will be at best an interim solution, and other more enduring remedies need to be found. We would also like to see consideration of how small businesses experiencing energy stress could be assisted.

But we would also strongly oppose any delay in implementing this reform, or the others outlined in the consumer reform package submitted by Energy Ministers. People need help now.

The following provides a more detailed response to the questions asked in the discussion paper.

[1] Consumer Energy Report Card December 2024 https://energyconsumersaustralia.com.au/publications/consumer-energy-report-card
[2] https://www.accc.gov.au/retail-electricity-pricing-inquiry-final-report
[3] Australian Energy Regulator – Chair Claire Savage, Towards energy equity – a strategy for inclusive energy market, 2022

Response to the discussion paper

Question 1a: Do you agree that hardship customers may find it challenging engaging with their retailer and agree to be on the deemed better offer? If so, could you outline some reasons why customers might not accept a better offer from their retailer while on a hardship plan?

There is a substantial evidence base in Australia pointing to the significant barriers faced by consumers when engaging with their retailer, as well as their low levels of trust and confidence in the energy market.

ECA's consumer research has consistently revealed low levels of trust and confidence consumers have in the energy industry.

- Over a third (36%) of consumers told us they find it difficult to find information about their energy plans.[4]
- People don't believe that retailers are acting in their best interests – 42% of electricity consumers and 30% of gas consumers have a negative view of the energy industry, citing cost and perceived price gouging.[5]
- Many consumers feel they lack the right information or tools to make energy choices in their best interest.[6]
- And when people do take action, they find it difficult to follow through, citing complicated processes, confusing options, or minimal perceived savings as key reasons.[7]

Those barriers get higher when you're in financial stress. GEER's energy equity research[8] for the National Energy Equity Framework found that people in energy hardship faced the following barriers to accessing support:

- shame: including embarrassment, guilt or protecting a "self-sufficiency" identity
- eligibility criteria that limit access to those who need support
- lack of awareness of the support available, coupled with complex processes
- unhelpful staff who work in a support role in retailers and government agencies
- poor awareness on how to find and access assistance.

The AER's *Vulnerability in Energy* study reinforced just how obstructive those barriers can be, finding 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.'[9]

It's therefore not surprising that consumers can be reluctant to engage with their retailer, or the market more broadly, even when there are savings to be made.

[4] ECA Consumer Energy Report Card December 2024 https://energyconsumersaustralia.com.au/publications/consumer-energy-report-card
[5] ibid
[6] ECA Energy Consumer Sentiment Surveys June 2024 https://energyconsumersaustralia.com.au/publications/surveys-energy-consumer-sentiment-behaviour
[7] Ibid
[8] See https://storage.googleapis.com/files-au-climate/climate-au/p/prj309f4a1f17cf47e4c5835/page/Phase_2_Summary_Report.pdf
[9] AER 'Vulnerability in Energy Community Final Report, July 2022 https://www.aer.gov.au/system/files/Bastion%20Insights%20-%20Vulnerability%20in%20energy%20study%20report%20-%20July%202022.pdf

The structural barriers experienced by people in energy stress or energy poverty can be huge – programs and products to assist them must be designed to make it as easy as possible.

There are high levels of concern about energy bills in the community. Our most recent Consumer Energy Report Card survey found that:

- 81% of people were extremely or quite worried about the cost of electricity, and
- 64% of people thought the cost of electricity was unfair and unreasonable.

Households on lower incomes continue to pay a much higher proportion of their income on energy costs and are far more likely to live in homes that are energy inefficient, leaking cool air in summer and hot air in winter, and driving energy bills higher again.

We have a good understanding of which households are more likely to be in energy hardship. The Brotherhood of St Laurence's 2022 research identified which households were more likely to be experiencing financial stress, and struggling with high energy bills – it detected energy stress in:

- 41% of people in the lowest 20% of incomes
- 35% of people renting public or community housing
- 24% of people in private rental
- 27% of households where at least one member has a long-term health condition or disability
- 43% of households relying on JobSeeker payments[10].

And we know those households have limited remedies available to reduce their energy bills – they won't easily be able to replace energy inefficient appliances or improve the energy performance of their homes, and they're unlikely to be able to invest in rooftop solar or batteries without help.

People living in energy stress encounter additional barriers to engaging in the market. There is an emerging evidence base making clear the significant cognitive burden experienced by households in poverty to simply get by each day, affecting people's decision-making and ability to undertake complex new tasks [11]such as switching energy retailers.

Research commissioned for the Commonwealth's National Energy Equity Framework identified the kinds of assistance consumers experiencing energy hardship wanted. These supports are reflected in the recommendations made throughout this submission and should be considered by the AEMC throughout its consideration of the rule change.

[10] See https://www.bsl.org.au/research/publications/power-pain/
[11] See, for example, https://www.fuelpovertyresearch.net/wp-content/uploads/2022/10/EPEC-Project-Report-Florian-Hanke.pdf, https://www.theguardian.com/science/2013/aug/29/poverty-mental-capacity-complex-tasks

Household Suggestions for Future Support

Participants were very clear in describing what *would* have helped them, based on "what was missing" from the array of assistance they had already received. Their ideas form solid solutions to address energy hardship in the future. Without knowing it, they described many of the drivers well documented in previous studies and in this series of research.[2] Participants provided several **suggestions that would improve their circumstances**:

- **tangible items** to improve the home's energy efficiency: mainly upgraded heating/cooling systems
- **lower bills**: preferably ones that are fixed and affordable
- **financial assistance**: which should be sufficient to alleviate suffering
- **people**: when providing support, staff need to be helpful, listen to the consumer, be trustworthy and provide fair outcomes
- **design**: when designing support, it should be clear what is available, in one place, and via processes that are simple or automated, where possible. Solutions should be able to be tailored to people's unique circumstances.

Energy Equity Work Program: Research to inform a National Energy Equity Framework Phase 2 Summary Report, GEER Australia,

June 2023

Q1b: Do you consider existing retailer requirements and/or processes for hardship customers to be on the deemed better offer need to be improved?

Existing retailer requirements and process for hardship customers are demonstrably inadequate in helping the majority of consumers in financial stress.

The AER's *Gamechanger Report* was built on a process that included retailers, advocates and market body representatives and noted there are "misaligned incentives across the supply chain to address consumer vulnerability, information and capability gaps, an overreliance on disconnection (or the threat of it) to manage consumer debt, and significant inefficiencies."[12]

The AER *Annual Retail Market Report 2023-24*[13] reported that only a quarter of customers successfully exited a hardship program in 2023/24 – a data point of significant concern as it indicates that retailers aren't providing effective help to those customers that they know are in need of additional help.

The ACCC December 2024 *Inquiry into the National Electricity Market* report revealed that 2.1 million customers remain on flat-rate offers that are at least two years old, with annual prices averaging $317 higher than those on newer plans.[14]

ECA's most recent consumer research highlighted another troubling reality: 1 in 4 consumers experiencing financial difficulty say they have investigated switching plans very infrequently or never.[15]

[12] AER Gamechanger report 2023, p.iii. see https://www.aer.gov.au/system/files/2023-11/Game%20Changer%20Report%20-%20November%202023.pdf

[13] https://www.aer.gov.au/system/files/2024-12/Annual%20Retail%20Market%20Report%202023%E2%80%9324%20-%2030%20November%202024.pdf

[14] See 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

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

And 41% of consumers reporting financial difficulty do not feel confident they are on a competitively priced plan.[16]

- This suggests consumers facing hardship are likely to be paying a 'loyalty penalty' and incurring higher energy costs than consumers who are not experiencing hardship.

Consumer Action Law Centre's (CALC) Energy Assistance Report found that 10% of their energy contacts recorded an unaffordable payment plan, with people reporting they'd felt pressured to agree to the payment plan or face disconnection. This report also underlined the shortcomings of existing processes noting that:

- "Of all energy contacts, 76% disclosed have one or more vulnerabilities, directly or indirectly contributing to their financial hardship. Our data shows that people with compounded vulnerabilities were more likely to experience their retailer fail to identify their vulnerable circumstances. We found that women experiencing family violence (12% of energy contacts) were more likely to face aggressive debt collection practices, and significantly higher energy debts than those not experiencing family violence."[17]

Victorian Council of Social Services' submission to the Essential Services Commission's consideration of similar reforms noted that "Frontline community services providing energy assistance consistently tell us that retailers do not do enough to get customers who are struggling onto their best available offer."[18]

Consumers enrolled in a retailer's hardship program represent a small proportion of households who may be in financial stress. There may be many more who are managing to pay their energy bills, but only by rationing other essentials. GEER's 2021 research[19] supporting the development of the National Energy Equity Framework noted that the true extent of energy hardship is hard to estimate, but likely to be much higher.

Q2: Do you agree with the proposed solution as outlined in the rule change request, or are the existing arrangements to protect hardship customers sufficient (including EIC arrangements and existing AER guidelines)? If you agree, outline your reasoning.

We strongly support measures that ensure that customers experiencing energy hardship are paying the lowest possible bill. Existing arrangements are not adequate to protect consumers.

As outlined above, existing arrangements are demonstrably inadequate in protecting consumers in hardship from paying unnecessarily high bills.

Success should be defined by consumer outcomes, not the mechanism to deliver them. We acknowledge that none of the options on the table offer a perfect solution – both carry advantages and risks.

The crediting option minimises risk for those consumers who do not want to or are unable to easily engage with their retailer and it may reduce the risk of adverse consumer outcomes. It ensures those customers will still pay less but does not require them to take any other action. It enables the consumer

[16] ECA Consumer Energy Report Card December 2024 Topline data https://energyconsumersaustralia.com.au/publications/consumer-energy-report-card
[17] Consumer Action Law Centre 'Energy Assistance Report 2024 CALC-Energy-Assistance-Report-2024-FINAL_WEB.pdf p7
[18] https://www.esc.vic.gov.au/sites/default/files/documents/Victorian%20Council%20of%20Social%20Service%20-%20Submission_Redacted.pdf p3
[19] See https://storage.googleapis.com/files-au-climate/climate-au/p/prj309f4a1f17cf47e4c5835/page/Phase_1_Research_Report.pdf

to stay on their preferred energy plan, rather than require them to understand a new plan that might have different terms and conditions around time of use, payment arrangements, billing frequency, etc. It does not require people to actively engage with their retailer, complicating what can already be a distressing experience for a consumer in payment difficulty. And it does not remove a customer's agency: research by Uniting[20] for the Game Changer made clear that some consumers choose an energy plan for reasons other than price. That choice should be respected.

But the crediting option does carry a real risk that a customer exiting from a hardship program will revert to a higher tariff and be thrown back into energy hardship.

The other option - automating a switch to a deemed better offer – minimises that risk but will require the retailer to facilitate an informed discussion with the consumer on entry to a hardship program to ensure they understand the plan they've been moved to. This option may inadvertently create barriers to entering a hardship program if a customer must provide consent to automated switching. Given the low levels of trust, it's not hard to envisage a scenario where a consumer could be suspicious of how their retailer is defining a 'better offer', and resist being switched. It is noteworthy that the banking examples referenced in the Discussion Paper resulted in a small handful of enquiries and even fewer complaints.

We would be open to considering a hybrid or alternative approach if it provides greater certainty of delivering the intended result – that consumers in energy hardship are paying the lowest possible bill.

Recommendation 1: that the AEMC make a change to the rules to enable hardship customers to pay less for their energy bills, through the crediting mechanism, automated switch or a hybrid arrangement.

To successfully deliver the intended outcomes, there should be clear guidance to retailers, through the Rules or a binding guideline on:

- **How to define a "best offer".** The NECF (and Victorian Energy Retail Code of Practice) methodology for assessing a deemed better offer is already used by retailers. We would support the use of that methodology, including that it is calculated on the basis of the customer's usage history (where available) and tariff, and excludes any one-off gifts or sign-on credits. Using that methodology should also help reduce retailers' implementation and administration costs, as it is an existing obligation. However as noted above, it needs to be made clear which offers are to be included in an assessment, and the need to amend the Retail Pricing Information Guideline (RPIG) accordingly.
- **How often a retailer must review a customer's energy plan to make sure that they are still on the best offer.** Retailers are currently obliged to review a customer's plan every 100 days to identify whether a better offer exists. Recognising that cost-of-living pressures are unlikely to abate anytime soon, there will be consumers who will be on a hardship program and/or receive tailored assistance for a prolonged period. We recommend this to be by periodic review as determined in the Hardship Guidelines and conveyed in a retailer's Hardship Policy (as discussed under Q1).

[20] Uniting, Game Changer Consumer Exploration Workshop, August 2023

Recommendation 2: that the rule change provide clear guidance that the NECF methodology must be used to define a best offer and is reviewed regularly, at minimum not more than every 100 days.

Action must be taken to provide immediate relief to households in energy hardship.

We see this reform as an important interim solution, delivering relief to consumers who are experiencing real harm.

While there are other complementary reforms under consideration (e.g. the AER's consideration of the Payment Difficulty Framework or the AEMC pricing review), we would strongly oppose any decision to delay these reforms.

Recommendation 3: That the AEMC make this rule change immediately and not defer providing relief to people in hardship to other regulatory and policy processes underway.

Q3: Are there other potential benefits or costs not identified or that we should have regard to?

The best way to reduce the cost to serve for energy hardship customers is to help them out of hardship. Fewer households in energy stress reduces retailer costs and the cost to serve and level of debt.

The *AER Game Changer* report estimated that the energy sector spends up to $600 million annually on servicing hardship customers.[21] The AER reported in June 2024 that hardship and debt collection costs increased by 31% in 2023-24[22] and that 41% of electricity residential customers in energy hardship programs are not meeting their usage costs (and 34.3% for Gas).[23]

By definition, a hardship program with lower gross impairment results in a smaller, more cost-effective program. But too often retailers have acted to save costs by throwing up barriers to a hardship program, pursuing aggressive debt collection practices, or reducing the level of assistance and services provided through a program.

It's important that this and the other rule changes set the right incentives for retailers to adopt processes and activities that look to lift people out of energy hardship and not simply reduce access to a hardship program.

There will be other complementary benefits. As noted in the AER's *Game Changer* report and its *Customer Engagement Toolkit,* solutions like this could significantly improve retailer-consumer relationships[24] and help address the existing trust deficit.

[21] AER Game Changer 'A package of reforms to improve outcomes for consumers in energy hardship' Nov 2023 https://www.aer.gov.au/system/files/2023-11/Game%20Changer%20Report%20-%20November%202023.pdf
[22] AER Quarterly retail performance report: January – March 2024, June 2024 Retail energy market performance update for Quarter 3, 2023–24 | Australian Energy Regulator (AER)
[23] AER Annual retail markets report 2023 – 24 https://www.aer.gov.au/publications/reports/performance/annual-retail-markets-report-2023-24 p64
[24] Australian Energy Regulator submission to the Essential Services Commission – Consumer Reform consultation paper https://www.esc.vic.gov.au/sites/default/files/documents/Australian%20Energy%20Regulator%20-%20Submission_Redacted.pdf

Enforcement and compliance

Stronger penalties for non-compliance are needed to achieve the intended outcome of the rule change.

Coupled with that review should be a strengthened civil penalties regime, and active monitoring by the AER of consumer outcomes.

Any noncompliance with the Hardship Policy Guidelines needs to be addressed and penalised, with any potential 'loopholes' in language being addressed through (at a minimum) a guidance note.

The introduction of the Wrongful Disconnection Payment (WDP) process in Victoria provides a useful example of the value of a clear signal to energy companies on the risk of non-compliance. The introduction of the WDP prompted all retailers to pause disconnections while they undertook an active and comprehensive review of the adequacy of their hardship program policies and procedures.

Recommendation 4: That the AEMC make the rule change and recommend stronger civil penalties to help drive retailer compliance.

Better Billing Guideline

We see potential to improve consumer outcomes through refining and improving consumer communications channels mandated through the Better Billing Guideline.

The introduction of the Better Billing Guideline and the requirement to include a 'better offer message' on electricity bills was a positive step forward, evidenced by a similar requirement set five years earlier in Victoria.[25] However, it still places the burden on consumers to notice and act on the better offer information, which may limit its effectiveness.

The Essential Services Commission (ESC), in its Consumer Reform consultation,[26] highlighted limitations with their best offer message, a key one being that many consumers may never even open their bill to see the best offer message.

That can be due to a range of factors. People may not expect to understand their bill and so focus simply on the due date and amount due. For people with low literacy or where English isn't their first language, reading and understanding bills is difficult. And for those in energy stress, anxiety and cognitive overload can actively mitigate against closely reading an energy bill. People experiencing mental health challenges are twice as likely as those who are not to also be experiencing financial challenges, with 'unpaid bills' just one financial indicator.[27] Research for Beyond Blue last year found that 46% of respondents named financial pressure as a key factor in their distress.[28]

[25] ACCC Inquiry into the National Electricity Market 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

[26] Please see our submission for recommendations on how this could be addressed. https://energyconsumersaustralia.com.au/publications/submission-essential-services-commission-energy-consumer-reform-consultation-paper

[27] Beyond Blue 'Money and mental health' Social research report 2022 https://edge.sitecorecloud.io/beyondblue1-beyondblueltd-p69c-fe1e/media/Project/Sites/beyondblue/PDF/Learn-about-mental-health/Financial-wellbeing/beyond-blue_financial-wellbeing-research_executive-summary.pdf

[28] ANU Social Research Centre on behalf of Beyond Blue 'Australia's 2024 Mental Health and Wellbeing Check https://www.beyondblue.org.au/about/media/media-releases/beyond-blue-data-reveals-distress

That is supported by international research which found that even tailored, one-to-one energy advice can be limited by structural factors – including the assumption that individuals have the capacity to easily absorb information and make choices that will reduce their vulnerability to energy poverty.[29]

With 90% of consumers telling us they are concerned about costs of living pressures,[30] it is critical to consider multiple and diverse ways of communicating with consumers if these measures are to be successful and reach those who may need the assistance the most.

The transaction costs of switching also remain high. People reasonably and rightly assume that acting on the message will take too many steps and not be worth the effort. Our June 2024 Energy Consumer Sentiment Survey found around a quarter of households who had considered switching but ultimately decided not to, said this was because it was too complicated, confusing or time consuming.

We see value in expanding how the best offer message and/or switching information is communicated to consumers, including through SMS/text messages and QR codes on the bill and in emails. Our submission to the Essential Services Commission - Energy Consumer Reform consultation paper[31] provides more detail.

Recommendation 5: That the AEMC direct the AER to review the Better Billing Guideline to review and expand the channels and mechanisms to communicate better offers.

Retail Pricing Information Guideline (RPIG)

To ensure consumers experiencing energy stress are paying the least possible amount for their energy, reform is required on how retailers describe 'best offer' through a review of the Retail Pricing Information Guideline.

The Retail Pricing Information Guideline (RPIG) helps to 'empower consumers to engage in the retail energy market and make more informed and efficient decisions.'[32] The 2018 amendments included the classification of generally available and restricted offers. This classification widened the definition of what is to be considered a generally available market offer and restricting what could be considered a below the line non-market offer.

There are currently hundreds of market offers on Energy Made Easy, which the ACCC reports has risen substantially since 2022.[33] However, it is unclear whether the breadth of offers has helped or hindered the consumer experience.

These classifications are particularly relevant when using 'better offer' benchmarking. This is regardless of whether it is used to calculate a credit or automatically rolling a customer onto an offer. What is currently considered a retailer's best market offer may not actually be their best offer available. The consultation paper highlights the possibility of the proposal impacting how retailers package their existing or future generally available offers, to avoid their best offer being defined as 'generally available.' This

[29] Simcock and Bouzarovski (2023) A cure-all for energy poverty? Thinking critically about energy advice.

[30] ECA Consumer Energy Report Card Dec 2024 Topline data https://energyconsumersaustralia.com.au/publications/consumer-energy-report-card-consumer-perspectives-australias-energy-transition

[31] https://energyconsumersaustralia.com.au/wp-content/uploads/submission-doc-essential-services-commission-consumer-reform-consultation-paper.pdf page 8

[32] Retail Pricing Information Guideline https://www.aer.gov.au/industry/registers/resources/guidelines/retail-pricing-information-guidelines

[33] ACCC Inquiry into the National Electricity Market December 2024 report - https://www.accc.gov.au/system/files/accc-national-electricity-market-december-2024-report.pdf p50

means that both the credit amount may be lower than it could have been, and that we may start to see much cheaper offers below the line and not being offered to customers in hardship.

We note that there is an open RPIG review that was initiated in 2019. We see this as an ideal opportunity to revisit the guidelines so to reflect the evolving market environment. While restricted offers may serve a role, if future reforms increasingly rely on 'best available offers' to achieve good consumer outcomes, it is critical to ensure that existing guidelines remain clear, relevant, and fit for purpose.

Recommendation 6: That the AEMC direct the AER to review the RPIG, with a specific focus on clarifying the use and distinction between generally available and restricted offers.

Data collection and reporting

Regulators should actively track consumer outcomes to ensure that the intended outcomes are being delivered to consumers and that they are paying the lowest possible energy bill.

This lack of (accessible) data makes it difficult to adequately quantify the issue and comment on the best path forward for consumers – who ultimately bear the costs of any regulatory intervention. This is particularly relevant given the ACCC's powers to collect this data are due to conclude this year.

Recommendation 7: That the AEMC direct the AER to collect and publish as part of its retail market performance reporting how many hardship customers are on offers:

- That are below the default offer (and by what percentage)
- That are above the default offer (and by what percentage, and whether this includes conditions such as direct debit)
- The proportion on restricted and generally available offers
- With incentives or features, such as carbon neutral or green power

Q4: What factors could be considered for a credit mechanism that would help to minimise the costs and maximise the benefits?

The AEMC should articulate the consumer outcomes that must be delivered through the reform package, to ensure that retailers receive clear direction, and it is easy to monitor and track success.

Minister Bowen's rule change proposal outlines the expected impacts of the rule change, including

- Customers in a hardship program should be paying lower costs (compared to their previous plan)
    - If the crediting mechanism is used, the bill should reflect the credit through a clear line item and description of the deduction.
- Lower levels of debt and/or reducing the time there is a debt.

We see value in the AEMC decision making very clear the expected outcomes of the rule change in order to provide guidance and clarity to consumers and outline what the AER and retailers should be tracking and reporting on.

We would also anticipate seeing the following outcomes in the market as a result of the rule change:

- No reduction in the numbers of customers entering retailers' hardship programs
- More people successfully exiting a hardship program with no debt

    - And no off-boarding of customers in hardship via one-off incentives. Various state Energy & Water Ombudsman schemes have noted multiple instances of certain retailers offering to waive part (or, in some instances, all) of a customer's debt – but only if that customer moves to a new retailer. This is a terrible practice and undermines the foundational purpose of regulated hardship assistance. The proposed rule change could amplify this response from some retailers, so we consider it very important for the rule change to explicitly stop this practice.
- Increased levels of customer satisfaction with their retailer on exiting a hardship program
- No reduction in the availability of market plans, in order to game what is considered a deemed best offer.

Recommendation 8: That the AEMC rule change proposal clearly articulate the consumer outcomes to be delivered to provide guidance to retailers and to the AER on what to monitor and track.

Q4: Do you think the proposed rules-based approach is appropriate? Or should this obligation be required through AER Guidelines (eg Customer Hardship Policy Guideline) instead?

ECA supports the proposed rules-based approach.

Retailers have reported increases in their margins for both residential and small business customers[34] as debt for residential and small businesses and hardship participation rises.[35] A prescriptive approach is critical to ensuring consumers receive the support they need, while also reinforcing the obligation on retailers to act in the best interests of their customers, especially those facing financial difficulty.

We support the proposed rules-based approach outlined in the proposal. It provides clear direction for retailers, as well as providing a level playing field across the sector. The UK experience provides a great example on how the sector can respond more constructively to energy hardship, which is not an area where retailers compete for consumers. The energy industry's vulnerability commitment[36] provides a platform for retailers to share successful approaches. Ofgem publishes reports on good practice.[37]

Guidance materials can provide clarity on compliance and outline better practice examples and should be developed after fully considering how the new rule will impact and necessitate changes to existing guidelines, such as the Hardship Policy Guidelines.

We recommend that the AER's Hardship Guidelines should be reformed to ensure the retailer is providing appropriate support to consumers experiencing energy hardship.

The purpose of the hardship policy is to *"Identify residential customers experiencing payment difficulties due to hardship and to assist those customers to better manage their energy bills on an on-going basis"*[38].

[34] ACCC Inquiry into the National Electricity Market December 2024 https://www.accc.gov.au/system/files/accc-national-electricity-market-december-2024-report.pdf p79
[35] AER Annual Retail Markets report 2023-2024, Nov 2024 https://www.aer.gov.au/publications/reports/performance/annual-retail-markets-report-2023-24 p64-72
[36] See https://www.energy-uk.org.uk/our-work/vulnerability-commitment/
[37] See https://www.ofgem.gov.uk/sites/default/files/2022-09/Good%20practice%20for%20supporting%20customers.pdf

[38] *National Energy Retail Law* (SA) Act 2011 Div 6 – Customer hardship 43(1) https://www.legislation.sa.gov.au/__legislation/lz/c/a/national%20energy%20retail%20law%20(south%20australia)%20act%202011/current/2011.6.auth.pdf

As noted above, retailers' hardship programs are still not providing adequate assistance.

After a customer is accepted into a hardship program, a retailer is obliged to tell the customer whether they are on the right energy plan, or if there is a better plan for them.[39] However, as discussed above, there are likely a number of customers in a hardship program paying prices that are higher than the DMO or include large conditional discounts that the customer may not meet. And – as noted above – the AER's retail performance reporting indicates that retailers' support for those in a hardship program is not working well.

The Justice and Equity Centre's (JEC) research into the impact of debt and disconnections found that "For those who were receiving support from their provider to help with the energy/water bills (24%), 57% were already on a payment plan they thought could afford. This was slightly higher for those who were worried (62%). 28% were on a payment plan they could not afford. This was higher for those who had experienced a disconnection (42%) and for those who had been notified (30%), and significantly lower for worried households (15%). This may indicate that payment plan unaffordability is a key contributor to debt".[40]

Currently retailers outside Victoria are not required to proactively offer hardship support[41] and this proposed rule may further reduce their inclination to do so. This risks tighter entry criteria for hardship programs, with retailers instead offering minimal supports such as payment plans that may be unaffordable or no support at all.

JEC's research found consumers being pressured into agreeing to unaffordable payment plans that caused them more harm, to be a consistent theme with most respondents reporting to not have received any type of support at the time of being disconnected, notified or worried about their energy bills.[42] Without proper consideration and appropriate safeguards in place, barriers to enter a hardship program and receive appropriate and timely support may intensify. Working with the AER and their review of the NECF/Payment Difficulty Framework is paramount here.

We recommend a review of the Guidelines to ensure that a retailer's hardship program procedures and call centre resources are able to provide appropriate support, information and advice to consumers to understand and navigate any changes to their plan, as well as to link them to other forms of assistance to reduce debt.

Recommendation 9: That the AEMC decision request the AER to review is Hardship Guidelines to ensure they are providing clear guidance to retailers about appropriate levels of support, information and advice.

Q4: What transitional provisions would help retailers and their customers?

There are risks from implementing this option, but we believe those can be mitigated through stronger and clearer directions to retailers, including through the actions outlined above.

[39] AER Customer Hardship Policy Guidelines – Standard Statement https://www.aer.gov.au/industry/registers/resources/guidelines/customer-hardship-policy-guideline

[40] https://jec.org.au/wp-content/uploads/2024/07/24.06.28-Powerless_Debt-and-disconnection_Overview-report-1.pdf

[41] Acknowledging the consultation process underway that considers the changes to the NECF, based on the Payment Difficulty Framework (which requires retailers to offer proactive support to both customers that may look at risk of hardship or are $55 or over in debt.)

[42] Justice and Equity Centre 'Powerless: Debt and disconnect Overview Report' June 2024 - https://jec.org.au/wp-content/uploads/2024/06/24.06.28-Powerless_Debt-and-disconnection_Overview-report.pdf p30-32

Question 5: 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?

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'.

Recommendation 10: That in its assessment of the benefits and costs of the proposed rule change, that the AEMC place greatest weight on the consumer outcomes criterion.

We thank the ESC for the opportunity to provide comment on these important reforms. If you have any questions, please reach out to Melissa McAuliffe on melissa.m@energyconsumersaustralia.com.au

Yours sincerely

Dr Brendan French
Chief Executive Officer

The national voice for residential and small business energy consumers