

## Draft rule determination

# National Energy Retail Amendment (Improving consumer confidence in retail energy plans) Rule 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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**Reference: RRC0058**

## 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 The Commission has made a more preferable draft retail rule (draft rule) in response to 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) that seek to amend the National Energy Retail Rules (NERR) to make changes to energy market contracts.
- 2 The four rule changes 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.*
- 3 We have consolidated these four rule change requests into one rule change process—*Improving consumer confidence in retail energy plans*.
- 4 The four rule change requests form part of the broader ECMC consumer rule change package submitted on 12 and 28 August 2024. The package involves seven rule change requests that together seek to help households access cheaper energy deals, increase support for people experiencing hardship and deliver more protections for consumers. The three other rule change requests are *Assisting hardship customers*, *Improving the ability to switch to a better offer* and *Improving the application of concessions to bills*. The Commission has commenced separate rule change processes for these requests.
- 5 We have made a draft determination and draft rules that would improve consumer protections for small customers (predominantly households) on retail energy contracts, increase the certainty and transparency of the prices they will pay and improve confidence in the retail energy market.
- 6 The draft rule seeks to inform, empower and protect consumers through resolving specific systemic issues relating to retail energy contracts and would:
  - protect customers on contracts with benefits that change or expire from paying more than the standing offer once the benefits end
  - extend protections for customers on existing contracts with unreasonable conditional discounts by requiring the retailer to remove the conditionality of the discount and apply the discount in full
  - protect customers on deemed customer retail arrangements from disconnection if they are paying their bills
  - restrict retailers from increasing prices in market retail contracts more than once in 12 months
  - prohibit fees and charges for vulnerable consumers and limit fees and charges to reasonable costs for all other consumers
  - require retailers to inform their customers about these changes
  - provide retailers with just over 12 months to comply with the rule.
- 7 We have carefully assessed the draft rule against our statutory objectives, leading us to make more preferable solutions in several areas. We have sought to balance consumer protections and market efficiency to deliver enforceable policies to drive outcomes that best serve Australian energy consumers in the long term.
- 8 The Commission considers that the draft rule contributes to our strategic vision for [A consumer-focused net zero energy system](#) and our [AEMC strategic priorities](#) to inform, empower and protect

consumers individually and as a collective. The draft rule improves the provision of information to consumers which helps empower them to make informed decisions about their energy contracts and seeks to improve consumer protections.

9 We are seeking feedback on our draft determination and rule by **8 May 2025**.

## The draft rule seeks to address the loyalty penalty and lack of certainty around prices when benefits end

- 10 The Commission has made a draft rule to improve consumer confidence and bolster protections for customers on contracts where the benefits do not last the length of the contract. This would also address the 'loyalty penalty'- the differences in prices that customers on old offers pay compared to those on new offers. Around 17 per cent of offers on Energy Made Easy include a discount that does not last the length of the contract.
- 11 The draft rule would introduce a consumer protection for these customers that requires new and existing customers not to be charged more than the standing offer price after their energy plan's benefits change or expire. There are no exemptions for specific plans or benefits included in the draft rule. This aims to improve certainty for consumers and allow customers to compare offers more easily.
- 12 The draft rule also improves protections for customers on deemed customer retail arrangements, ensuring they can not be disconnected if they are paying their bills. This addresses an issue raised by a stakeholder in submissions to the consultation paper.
- 13 The AER would be required to update its *Benefit change notice guidelines* to reflect the final rule (if made). This would improve certainty for retailers and consumers.
- 14 The draft rule is a more preferable rule as it allows customers to remain on a contract after the expiry of benefits with an additional consumer protection to limit their ongoing prices to no more than the standing offer. This provides improved outcomes for consumers compared to the rule change proposal which suggested contracts should end when a benefit ends. The improvements in protections for carryover customers are also additional to the rule change proposal.

## The draft rule would remove unreasonably high penalties for not paying bills on time

- 15 The Commission has made a draft rule to improve outcomes for consumers on contracts that contain high conditional fees or discounts. Some contracts contain conditional fees or discounts - where the customer has to pay more if they do not pay their bill on time, or use a certain payment method. In 2020, the Commission made a rule requiring conditional fees and discounts in new contracts to be no higher than the retailer's reasonable costs. This rule did not apply to contracts on foot at that time - those contracts were grandfathered. Some of these contracts with high fees or discounts are still on foot.
- 16 For those contracts, the draft rule would require the high fees to be reduced to reasonable levels (applying the 2020 rule), and would require the high discounts to be applied in full, whether or not the customer met the condition relating to that discount. We consider this to be an important equity consideration, as issues relating to the conditional nature of these discounts disproportionately affects vulnerable consumers who may not be able to meet payment conditions due to financial constraints.
- 17 The draft rule differs from the proposed solution in the rule change request of removing

grandfathering for discounts as well as fees, as we considered that this would not achieve the proponent's intent of ensuring these consumers are no worse off. The draft rule achieves the intent of the rule change, but with an alternative solution that better protects consumers.

## The draft rule seeks to improve certainty for customers by restricting price rises

- 18 The Commission has made a draft rule that aims to provide more certainty to consumers around when their electricity and gas prices may increase. It does this by reducing the number of price increases that they face over the length of the contract.
- 19 The draft rule would only allow retailers to increase prices once every 12 months, if required, for all existing and new market retail contracts. This would mean prices may increase either:
- once within the month of July each year (the majority of customers) or
  - at least 12 months after a customer enters the contract and then no sooner than 12 months from the previous price increase. (This applies only if the contract specifies that prices won't increase for a certain period of time after the contract start date).
- 20 The draft rule also seeks to improve information provision and comparison of offers from retailers by requiring retailers to inform customers when prices may change under the contract prior to the customer entering a contract. It additionally increases the notification requirements around a price rise event, requiring retailers to provide customers 20 business days' notice before the customer's new tariffs will apply.
- 21 The draft rule does not restrict network tariff reassignments and associated price changes (noting the existing restrictions relating to the roll out of smart meters would remain). Network tariff reassignments result from a distributor making a decision based on an individual customer's circumstances changing or from a customer choice and we consider this to be different from retailer-led price increases. The draft rule also allows changes to the prices a customer would pay where the customer has signed up for a contract that provides that a tariff or charge varies in relation to the prevailing spot price of energy.
- 22 The draft rule largely aligns with one of the options suggested in the rule change request and the existing requirements in Victoria. The more preferable aspect of the draft rule, compared to the rule change request, is the upfront notification requirement of when prices may increase and increased notification timeframe around price rise events.

## The draft rule seeks to improve certainty around bills by restricting fees and charges

- 23 The Commission has made a draft rule that aims to provide consumers experiencing vulnerability more certainty about their bills and increase transparency of fees and charges for all consumers.
- 24 The draft rule would prohibit retailers charging any ancillary fees and charges to hardship customers, customers on payment plans, customers experiencing family violence and customers receiving a concession. This would mean these customers only have to pay the energy rates associated with their retail offer.
- 25 The draft rule would restrict all ancillary fees and charges to reflect the reasonable costs incurred by the retailer, for all other customers, as well as prohibit account establishment fees and special meter read fees for move-in/out, for all customers.
- 26 Retailers would also be required to provide at least one free payment method that is commonly

used and easily accessible for their customers under the draft rule.

- 27 The draft rule aligns with the intent of the rule change request that proposed prohibiting specific fees and charges. The approach taken in the draft rule is more preferable as it recognises equity issues and that vulnerable consumers are likely most impacted by fees and charges. Restricting fees and charges for all other consumers to reasonable costs allows for price signals whilst restricting retailers from profiting from these largely third-party charges. The drafting protects consumers from excessive future fees and charges being levied by applying to all ancillary fees and charges.

## The Commission has considered stakeholder feedback in making its decision

- 28 Stakeholder input and feedback helped shape our draft determination. We considered feedback to our consultation paper obtained via written submissions and held multiple bilateral and multilateral discussions with a range of stakeholders. Feedback helped shape our decision to consolidate these rule changes with stakeholders noting the interrelated nature of the rule changes.
- 29 Overarching feedback across the rule changes from consumer groups was that overly complex contract terms and plan details can lead to market failures and do not meet consumer expectations. Consumer groups also provided feedback that consumers must have access to a fair price and be able to have clear expectations for fundamentals of energy contracts, whether they engage or not. We have taken this feedback into account and our draft rules seek to improve the transparency and certainty of market retail contracts and reduce the loyalty penalty of higher prices for those consumers who do not wish to engage.
- 30 Retailers and other stakeholders noted the costs of specific solutions to issues raised in the rule change request, and provided suggestions for alternatives. One such alternative was to allow contracts to continue at prices no higher than the standing offer price after benefits end, rather than requiring the contract to end. We adopted this in the draft rule as we consider this alternative improves consumer protections.

## The draft rule promotes the NERO and advances equity by informing, empowering and protecting consumers

- 31 The Commission has considered the National Energy Retail Objective (NERO),<sup>1</sup> the consumer protections test and the issues raised in the rule change request by applying the assessment criteria that we outlined in the consultation paper. For this draft determination, we also had regard to promoting equitable energy outcomes. This complements the new guidance we have developed to ensure issues of equity are consistently and transparently addressed in a structured way when we are making rule changes and delivering recommendations. That is putting a consistent focus on:
- the diversity of consumer needs, experiences and preferences
  - removing structural barriers to participation
  - avoiding creating or exacerbating vulnerability.
- 32 The more preferable draft rule would contribute to achieving the NERO in these ways:
- **Outcomes for consumers:** The draft rule would help improve outcomes for consumers by strengthening consumer protections relating to benefits and price certainty, particularly for

1 Section 13 of the NERL.

consumers that do not regularly switch their energy retailers. We consider this is compatible with consumers' wants and needs. It advances equity by providing additional protections for vulnerable consumers where we consider this is necessary and appropriate.

- **Principles of market efficiency:** The draft rule would allocate risks between consumers and retailers to those parties best suited to manage risk. We consider that a key role of retailers is to manage risks for consumers. The draft rule would promote equity by removing structural barriers to enable consumers to access benefits relating to energy and by improving transparency and clarity for consumers around what prices they would pay. The draft rule would also promote the efficiency of the retail energy market by reducing some barriers to switching retailers, which may improve the competitiveness of the market.
- **Implementation considerations:** The draft rule seeks to minimise implementation costs and provides retailers with some flexibility to consider and implement different approaches that may be lower in cost for their billing operations and/or systems. It interacts positively with other reforms underway and seeks to address current systemic issues. The implementation timeframe of 12 months provides adequate time for retailers to update their contracts and for the AER to update its guidelines.
- **Principles of good regulatory practice:** The draft rule appropriately balances principles and prescription. For example, it applies prescription in relation to vulnerable consumers by prohibiting fees and charges and applies principles by using the principle of reasonable costs to fees and charges for other consumers. The draft also rule aims to promote simplicity and transparency for stakeholders. It clearly identifies what retailers are required to do in each scenario and improves transparency for consumers in understanding their rights and what they should be paying.

## The draft rule would come into effect on 1 July 2026

- 33 The draft rule would come into effect on 1 July 2026. This applies across all components of the draft rule which encompasses all four consolidated rule change requests.
- 34 The Commission considers a 12-month implementation timeframe is appropriate. It will enable retailers to update their contracts and for the AER to update its guidelines.
- 35 We have considered enforcement and compliance when developing the draft rule. There are clear requirements that can be checked for compliance by the AER and energy ombudsmen relatively simply compared to alternatives.
- 36 We are proposing to recommend that five of the requirements under the draft rule should be tier 2 civil penalty provisions, consistent with similar rules within the NERR.

## How to make a submission

### We encourage you to make a submission

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

### How to make a written submission

**Due date:** Written submissions responding to this draft determination and rule must be lodged with Commission by **8 May 2025**

**How to make a submission:** Go to the Commission’s website, [www.aemc.gov.au](http://www.aemc.gov.au), find the “lodge a submission” function under the “Contact Us” tab, and select the project reference code **RRC0058**.<sup>2</sup>

Tips for making submissions on rule change requests are available on our website.<sup>3</sup>

**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).<sup>4</sup>



You can also request the Commission to hold a public hearing in relation to this draft rule determination.<sup>5</sup>

**Due date:** Requests for a hearing must be lodged with the Commission by **3 April 2025**.

**How to request a hearing:** Go to the Commission’s website, [www.aemc.gov.au](http://www.aemc.gov.au), find the “lodge a submission” function under the “Contact Us” tab, and select the project reference code **RRC0058**. Specify in the comment field that you are requesting a hearing rather than making a submission.<sup>6</sup>

### For more information, you can contact us

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

Email: [submissions@aemc.gov.au](mailto:submissions@aemc.gov.au)  
Telephone: 02 8296 7800

<sup>2</sup> 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

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

<sup>4</sup> Further information about publication of submissions and our privacy policy can be found here: <https://www.aemc.gov.au/contact-us/lodge-submission>

<sup>5</sup> Section 258(2) of the NERL.

<sup>6</sup> If you are not able to lodge a request online, please contact us and we will provide instructions for alternative methods to lodge the request.



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# 1 The Commission has made a draft determination

This draft determination makes a draft more preferable retail rule (draft rule) in response to 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). The rule change requests seek to amend the National Energy Retail Rules (NERR) to make changes to retail energy contracts.<sup>7</sup> The four rule changes are:

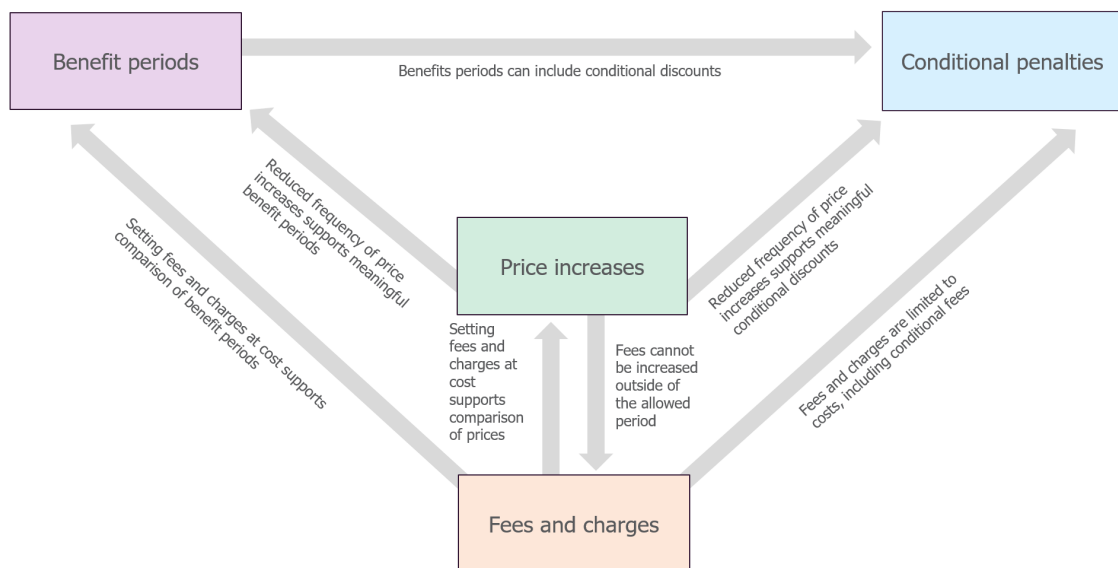
- Ensuring energy plan benefits last the length of the contract
- Removing unreasonable conditional discounts
- Preventing price increases for a fixed period under market retail contracts
- Removing fees and charges.

These rule change requests form part of the broader ECMC consumer rule change package submitted on 12 and 28 August 2024. The package involves seven rule change requests that together seek to help households access cheaper energy deals, increase support for people experiencing hardship and deliver more protections for consumers.<sup>8</sup>

Our draft rule improves the provision of information to consumers which helps empower them to make informed decisions about their energy contracts and seeks to improve consumer protections.

We have consolidated the four rule change requests into one rule change process— [Improving consumer confidence in retail energy plans](#). The Commission found that there are many interactions between the rule changes that have become clear through stakeholder submissions and our own analysis. Specifically, they work together to address interrelated issues around the clarity and fairness of market retail contracts. See Figure 1.1 below.

**Figure 1.1: Interrelations between the four rule changes**



<sup>7</sup> See the consultation paper [here](#).

<sup>8</sup> The package of consumer related rule change requests include: [Ensuring energy plan benefits last the length of the contract](#); [Preventing price increases for a fixed period under market retail contract](#); [Removing fees and charges](#); [Removing unreasonable conditional discounts](#); [Assisting hardship customers](#); [Improving the ability to switch to a better offer](#) and [Improving the application of concessions to bills](#).

We are seeking feedback on our draft determination and the draft rule by **8 May 2025**.

This draft determination has the following sections:

- Chapter one provides an overview of what our draft rule seeks to introduce and the inputs we have considered, including stakeholder feedback and how the draft determination relates to the Australian Energy Market Commission’s (AEMC or Commission) [strategic priorities](#) and other broader reforms.
- Chapter 2 sets out our assessment framework and summarises how the Commission considers the draft preferable rule would contribute to achieving the National Energy Retail Objective (NERO).
- Chapters three to six outline how our draft rule would work in terms of obligations on retailers, how it seeks to improve outcomes for consumers and provides supporting reasoning for the draft rule:
  - Chapter 3 outlines our draft rule on improving protections for customers on contracts with benefits that expire or change
  - Chapter 4 outlines our draft rule on removing unreasonable conditional penalties
  - Chapter 5 outlines our draft rule on restricting price increases under market retail contracts
  - Chapter 6 outlines our draft rule on restricting fees and charges.
- Appendix A sets out the rule making process.
- Appendix B sets out the relevant legal tests and requirements, and notes our proposed civil penalty recommendations.

## 1.1 Our draft rule aims to improve energy consumers’ confidence with their energy plans

The draft determination seeks to improve consumer protections for small customers (predominantly households) on retail energy contracts, and increase the certainty and transparency of the prices they will pay. It seeks to resolve specific systemic issues relating to these contracts across four key policy positions.

The draft rule would make these changes, for both new and existing contracts:

- Improves protections for customers on contracts with benefits that expire or change by:
  - limiting the prices a customer would pay to the standing offer price if their benefits change or expire
  - removing the ability for retailers to de-energise carryover customers on deemed customer retail arrangements if they are paying their bill.
- Removes unreasonable conditional penalties by:
  - requiring unreasonable conditional discounts relating to payment timing or payment method, including those found in existing contracts, to be applied in full regardless of whether the customer met the condition.
- Restricts price increases under market retail contracts by:
  - only allowing retailers to increase prices once every 12 months either:
    - once within the month of July each year, or

- at least 12 months after a customer enters the contract and then a minimum of 12 months after the previous price increase. (This applies only if the contract specifies that prices won't increase for a certain period of time after the contract start date).
- Restricts fees and charges by:
  - prohibiting all ancillary fees and charges for vulnerable consumers<sup>9</sup>
  - for all other consumers:
    - restricting all ancillary fees and charges to the reasonable cost incurred by the retailer
    - prohibiting account establishment and special meter read fees for move-in/out.

The draft rule includes a 12-month transition period for retailers to comply with the final rule. The draft rule (if made as a final rule) would take effect on 1 July 2026.

## 1.2 Stakeholder feedback has shaped our draft determination

Stakeholder input and feedback helped shape the Commission's considerations and draft determination. We considered feedback to our consultation paper obtained via written submissions and held multiple bilateral and multilateral discussions with a range of stakeholders that brought further depth to our understanding of the issues relating to the four rule change requests.

Stakeholder feedback informed our decision to consolidate these rule changes. This included feedback from Energy Consumers Australia (ECA) and the Justice and Equity Centre (JEC) that the rule changes work together to address interrelated issues around the clarity and fairness of retail contracts, and from retailers that the four rule changes are closely interrelated and together would affect how retailers manage their costs.<sup>10</sup>

The overarching feedback from consumer groups is that complex contract terms and plan details contribute to market failures that may harm consumers.<sup>11</sup> Consumer groups also noted that consumers must have access to a fair price and be able to have clear expectations for the fundamentals of energy contracts, whether they engage or not.<sup>12</sup>

We have taken this feedback into account and our draft rule seeks to improve the transparency and certainty of market retail contracts and reduce the 'loyalty penalty' for those consumers who do not wish to or are unable to engage.<sup>13</sup>

### 1.2.1 Most stakeholders were supportive of extending protections for consumers with expiring benefits

Consumer groups, energy ombudsmen, and some retailers were supportive of extending extra protections for consumers with expiring benefits.<sup>14</sup> The Australian Energy Council (AEC) and some retailers considered the issue to be minor, however the energy ombudsmen considered these contracts create material risks to consumers, particularly vulnerable consumers.<sup>15</sup> Our draft rule provides additional protections for these consumers.

9 The draft rule would apply to hardship customers, customers on payment plans, customers affected by family violence and customers receiving a concession.

10 Submissions to the consultation paper: AGL, p. 2; ECA, p. 2; Engie, p. 2; JEC, p. 10; Red & Lumo Energy p. 1.

11 Submissions to the consultation paper: Consumer groups summary of feedback provided on 16 December 2024, p. 2; ECA, p.p. 2-4; JEC, p. 4; South Australian Council of Social Service (SACOSS), p. 3.

12 Submissions to the consultation paper: Consumer groups, p. 2; ECA, p.p. 2-4; JEC, p. 4; SACOSS, p. 3.

13 The 'loyalty penalty' is the differences in prices that customers on old offers pay compared to new offers.

14 Submissions to the consultation paper: Consumer groups, p. 2; ECA, p. 6; EnergyAustralia, p. 6; JEC, p. 9; Origin, p. 1; SACOSS, p. 9.

15 Submissions to the consultation paper: AEC, p. 1; Alinta, p. 3; Energy Locals, p. 3; Energy and Water Ombudsman NSW (EWON), Energy and Water Ombudsman Queensland (EWOQ), Energy and Water Ombudsman South Australia (EWOSA), p. 2.

Engie highlighted that at the end of a fixed-term retail contract, a disengaged customer who does not enter into a new contract would become a ‘carry-over’ customer, noting that steps for de-energisation of these customers are more streamlined for retailers than for other contracts.<sup>16</sup> This feedback helped shape the Commission’s draft decision to reduce the risk of de-energisation for these consumers in the draft rule.

### 1.2.2 There were mixed views on the magnitude of the problem relating to contracts with conditional penalties

Most contracts with high conditional penalties relating to payment timing or method have been in place since prior to 1 July 2020, when the AEMC’s *Regulating conditional discounting rule change* prevented them from being included in new offers. The Australian Competition and Consumer Commission (ACCC) has noted vulnerable consumers are at most risk from these contract types.<sup>17</sup> A range of stakeholders agreed the rule change proposal would support consumers on contracts with high conditional penalties.<sup>18</sup>

Most retailers also broadly supported extending protections to customers with conditional penalties. While some raised concerns regarding the proportionality and appropriateness of the response, only Engie strongly opposed the proposed change.<sup>19</sup>

The energy ombudsmen did not consider the remaining contracts with high conditional penalties to be a material concern, but provided an example of consumer harm arising from failing to meet a payment condition.<sup>20</sup>

We balanced this feedback in making our determination and have extended protections for consumers in a comparatively low cost solution that would achieve the intent of the rule change request.

### 1.2.3 Stakeholders had mixed views on the appropriate period to restrict price increases

Consumer groups and energy ombudsmen agreed that consumers outside of Victoria have very little certainty about the price they will pay and for how long.<sup>21</sup> Some retailers do not consider price increases to be an issue that needs to be addressed.<sup>22</sup>

Consumer groups and Origin support limiting price increases to once every 12 months because it ensures simplicity and clarity for consumers.<sup>23</sup> They also suggested that aligning with the Victorian rule (as the draft rule largely does) would be the simplest option that meets the needs of both consumers and retailers.<sup>24</sup> Consumer groups did not consider a 100-day restriction on price increases to be an appropriate way to protect consumers and provide certainty, noting that this would only be one billing period.<sup>25</sup> In contrast, most retailers did not support limiting price increases to once every 12 months, preferring a shorter-term restriction.<sup>26</sup>

16 Engie, submission to the consultation paper, p. 3.

17 ACCC, *Inquiry into the NEM*, June 2024, p. 65.

18 Submissions to the consultation paper: SACOSS, p. 10; EWON, EWOQ, EWOSA, p. 3; ECA, p. 8; EnergyAustralia, p. 2; AEC, p.2.

19 Submissions to the consultation paper: Powershop, p. 2; AGL, p. 1; Engie, p. 4; Red & Lumo, p. 4; AEC, p. 2; EnergyAustralia, p. 2; Origin, p. 4; Alinta, p. 4.

20 EWON, EWOQ, EWOSA, submission to the consultation paper, p. 3.

21 Submissions to the consultation paper: Consumer groups verbal feedback, p. 3; ECA, pp. 10-11; EWON, EWOQ, EWOSA, p. 3; JEC, p. 12; SACOSS, p. 9.

22 Submissions to the consultation paper: AEC, p. 2; AGL, p. 7; EnergyAustralia, p. 10.

23 Submissions to the consultation paper: Consumer groups verbal feedback, p. 4; ECA, p. 10; JEC, p. 12; Origin, p. 2; SACOSS, p. 9.

24 Submissions to the consultation paper: Consumer groups verbal feedback, p. 3; ECA, p. 12; Origin, p. 2.

25 Submissions to the consultation paper: Consumer groups, p. 3; ECA, p. 11; SACOSS, p. 9.

26 Submissions to the consultation paper: AEC, p. 2; AGL, p. 1; Alinta Energy, p. 4; Compliance Quarter, p. 3; EnergyAustralia, p. 2; Red & Lumo Energy, p. 4; Powershop, p. 2.

The draft rule provides certainty for consumers and aligns with stakeholder feedback, as the Commission agrees a 100-day period (or shorter) does not provide sufficient certainty for consumers.

#### 1.2.4 Stakeholders agreed that fees and charges disproportionately affect vulnerable consumers

Stakeholders agreed that fees and charges can disproportionately affect consumers experiencing vulnerability, particularly if they have difficulty engaging.<sup>27</sup> Some stakeholders noted that retailers typically restrict certain fees and charges for vulnerable consumers, either due to business practice or existing jurisdictional derogations.<sup>28</sup> The draft rule prohibits fees and charges for vulnerable consumers, which aligns with stakeholders' general support for additional protections for these consumers.

Some retailers did not consider that fees and charges are a material concern for all consumers, they considered that fees and charges provide important price signals.<sup>29</sup> Prohibiting fees and charges for all customers may reduce the transparency of these fees as retailers may be forced to embed costs in overall bills.<sup>30</sup>

The draft rule allows retailers to charge fees to non-vulnerable consumers but restricts any fees and charges to reasonable costs. This allows retailers to provide price signals, whilst restricting retailers from profiting from these largely third-party charges.

### 1.3 The draft determination aligns with our strategic direction

The draft determination aligns with our consumer area of focus under our strategic vision for *A consumer-focused net-zero energy system* and our strategic priorities.<sup>31</sup> This area of focus is how we inform, empower and protect consumers. The draft rule improves the provision of information to consumers which helps empower them to make informed decisions about their retail energy contracts. The draft rule seeks to improve consumer protections by reducing or banning additional fees and charges, reducing the number of price increases permitted in a 12-month period and providing improved certainty around the payment of contract benefits.

We considered consumer behaviours and preferences in developing our policy positions for the draft determination and draft rule. Providing ways for consumers to benefit without active market engagement - in line with our consumer facing goal - was a key consideration as was equitable energy outcomes across households.<sup>32</sup> We are considering equity factors as per our assessment framework for this rule change package; see chapter 2 for further details.

### 1.4 There are broader reforms that intersect with the rule change

Our draft determination complements other work being carried out in this space, including broader reforms.

27 Submissions to the consultation paper: AEC, p. 3; Council on the Ageing, p. 4; ECA, pp. 11-14; Engie, p. 7; EWON, EWOO, EWOSA, pp. 4-5; JEC, pp. 14-15.

28 Submissions to the consultation paper: AGL, p. 6; Council on the Ageing, p. 4.

29 Submissions to the consultation paper: AEC, p. 3; AGL, p. 5; Alinta Energy, p. 5; Aurora Energy, p. 2; Compliance Quarter, p. 3; Energy Locals, p. 7; EnergyAustralia, p. 13; Engie, p. 6; Origin, p. 4; Powershop, p. 3; Red & Lumo Energy p. 4.

30 Submissions to the consultation paper: AEC, p. 3; AGL, p. 5; Alinta Energy, p. 5; Aurora Energy, p. 2; Compliance Quarter, p. 3; Energy Locals, p. 7; EnergyAustralia, pp. 13-14; Powershop, p. 3; Red & Lumo Energy, pp. 4-5.

31 See the AEMC's *A consumer-focused net-zero energy system* [here](#).

32 AEMC, *A consumer-focused net-zero energy system*, October 2024, p. 15.



#### 1.4.1 Australian Energy Regulator's (AER's) review of payment difficulty protections in the National Energy Customer Framework (NECF)

The AER is currently undertaking a *review of the payment difficulty protections in the NECF* and the review forms part of the AER's broader Towards energy equity – a strategy for an inclusive energy market.<sup>33</sup>

The review is considering the effectiveness of the current protections and seeks to identify opportunities to strengthen protections and improve outcomes for consumers experiencing payment difficulty. The AER is also considering whether changes to the NECF are required to ensure that consumers in hardship are proactively identified, engaged early and supported based on their individual circumstances.<sup>34</sup>

#### 1.4.2 The Victorian ESC is also conducting a review on related consumer package reforms as part of its review of the Energy Retail Code of Practice

The Essential Services Commission Victoria (ESC VIC) is also considering the same package of consumer reforms from the proponent.<sup>35</sup> Some issues identified in the rule change requests have been addressed or partly addressed in the ESC VIC's 2020 'Ensuring energy contracts are clear and fair' final decision.<sup>36</sup>

This review is working to address the relevant consumer package rule changes, as well as clarify or update obligations identified as unclear or inconsistent.

The ESC may make recommendations that align with or extend beyond our draft rule. We note the Victorian Retail Code provides more flexibility to address issues raised in the rule change requests as the Explicit Informed Consent (EIC) provisions are in the Retail Code. In contrast, the NECF EIC requirements are set out in the National Energy Retail Law (NERL), so any changes to the NECF EIC would require a change to the Law.

#### 1.4.3 Our pricing review will examine retail market arrangements and the role of retailers

Our [pricing review](#) will examine, among other things, the broader future operation of the retail electricity market, such as

- ensuring the market arrangements provide for pricing structures that meet consumer expectations
- the role of the retailer in packaging and pricing electricity products.

The draft [Improving consumer confidence in retail energy plans](#) rule is seeking to address systemic issues with the current arrangements. It intersects with the pricing review through:

- changes to fixed price periods and any potential impacts on innovative products and services
- how retailers provide incentives through contract benefits.

33 AER, [Towards energy equity - a strategy for an inclusive energy market](#), 20 October 2022

34 AER, [Review of payment difficulty protections in the National Energy Customer Framework](#), 14 May 2024.

35 See the ESC's website for its current review of the Energy Retail Code and energy consumer reforms [here](#).

36 See the ESC's 2020 decisions on 'clear and fair contracts' [here](#).



## 2 The draft rule would contribute to the energy objectives

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

The Commission can only make a rule if it is satisfied that the rule would or is likely to contribute to the achievement of the relevant energy objectives.<sup>37</sup>

For this rule change, the relevant energy objective is the NERO.

The NERO is:<sup>38</sup>

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.<sup>39</sup>

### 2.2 We must also take these factors into account

#### 2.2.1 We have considered whether to make a more preferable rule

The Commission may make a rule that is different, including materially different, to a proposed rule (a more preferable 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.<sup>40</sup>

For these rule changes, the Commission has made a more preferable draft rule and is satisfied that it achieves the NERO. The reasons why the draft rule is more preferable are set out in chapters 3-6.

#### 2.2.2 We have considered the consumer protections test for this rule change

In addition to applying the NERO, the Commission must, 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).<sup>41</sup>

Where the consumer protections test is relevant in making a rule, the Commission must be satisfied that both the NERO test and the consumer protections test have been met.<sup>42</sup> If the

37 Section 236(1) of the NERL.

38 Section 13 of the NERL.

39 Section 224A(5) of the NERL.

40 Section 244 of the NERL.

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

42 Sections 236(1) and (2)(b) of the NERL.

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).

The Commission is satisfied that the draft rule meets the consumer protections test for the reasons set out in section 2.3 below.

## 2.3 How we have applied the legal framework to our decision

The Commission has considered the NERO, the consumer protections test and the issues raised in the rule change requests, and has assessed the draft more preferable rule against the four assessment criteria outlined in the consultation paper.

We identified the following criteria to assess whether the rule changes proposed by the proponent, no change to the rules (business-as-usual), or other viable, rule-based options are likely to better contribute to achieving the NERO. The Commission also considered equity and the impacts on and barriers to participation for vulnerable consumers as part of the assessment criteria on consumer outcomes.

The AEMC has developed new guidance to ensure issues of equity are consistently and transparently addressed in a structured way when we are making rule changes and delivering recommendations – putting a consistent focus on accounting for the diversity of consumer needs, experiences and preferences; removing structural barriers to participation; and avoiding creating or exacerbating vulnerability. The ECA consumer package is the first time the Commission is applying the equity framework and considerations explicitly in our assessment criteria and decisions.<sup>43</sup>

The four assessment criteria are:

- **Outcomes for consumers.** We considered the impact of the draft rule on consumer protections and opportunities and costs for consumers, including for different consumer types. We also considered whether the draft rule would be compatible with consumer wants and needs.
- **Principles of market efficiency.** We considered the impact of changes to retail contracts on retail competition, allocation of risks and costs between retailers and consumers and transparency of energy plans.
- **Implementation considerations.** We considered 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. This includes removing barriers to enabling all consumers to access benefits relating to energy.
- **Principles of good regulatory practice.** We considered whether principle-based approaches are more appropriate than prescriptive approaches, whether the draft rule would promote simplicity and transparency for all stakeholders and any interactions with other work underway.

In the consultation paper, we asked stakeholders for feedback on our proposed assessment framework. Stakeholders broadly supported the proposed assessment framework.<sup>44</sup> The ECA considered that the Commission should place greater weight on the ‘outcomes for consumers’ criteria as the purpose of the rule change requests is to better protect consumers.<sup>45</sup> Energy Locals noted that prioritising ‘outcomes for consumers’ above other criteria may impose serious costs on

43 See AEMC guidance on “How the national energy objectives shape our decisions”.

44 Submissions to the consultation paper: Alinta, p. 3; ECA, p. 4; Energy Locals, p. 2; EnergyAustralia, p. 3; SACOSS, p. 3.

45 ECA, submission to the consultation paper, p. 4.

retailers.<sup>46</sup> The Commission has considered this feedback and will continue to consider each of the four assessment criteria throughout the rule change process and balance them as appropriate.

The draft rule would contribute to achieving the NERO and would meet the consumer protections test based on each area of the assessment framework, as outlined below.

### 2.3.1 **The draft rule seeks to improve outcomes for consumers by making retail energy contracts more transparent and protecting consumers who can not engage**

The draft rule seeks to improve outcomes for consumers by resolving specific systemic issues relating to retail contracts. Resolving these issues would improve consumer protections for customers on retail energy contracts, increase the certainty and transparency of the prices they will pay and provide greater confidence in the retail energy market. The draft rule would also extend and establish protections for consumers who do not regularly switch retailers.

We considered the impact of the draft rule on consumer protections and opportunities and costs for consumers, including for different consumer types. We also considered whether the rule changes are compatible with consumer wants and needs.

The draft rule would strengthen and enhance protections for consumers on market and standard contracts by ensuring:

- customers do not pay more than the standing offer price when their contract's benefit period changes or expires
- carryover customers on deemed customer retail arrangements are protected from de-energisation if they have not engaged with their retailer
- unreasonable conditional penalties for not paying on time or in a certain way are removed
- customers on grandfathered contracts with high conditional discounts receive their discount regardless of whether they meet their payment condition
- consumers have certainty about how long their prices would last and when prices may change
- fees and charges are removed for vulnerable consumers and limited to a retailer's reasonable costs for all other consumers.

The draft rule also considered equity in relation to certain segments of consumers, including disengaged and vulnerable consumers, who would be provided extra protections.

It would do this by improving transparency and clarity for consumers when they sign up around what prices they would actually pay, including when their contract contains benefits. It would also ensure vulnerable consumers are not burdened by fees they cannot respond to and it would lessen the 'loyalty penalty' faced by disengaged and vulnerable consumers that do not regularly switch plans.<sup>47</sup>

### 2.3.2 **The draft rule is likely to promote market efficiency by balancing risks between retailers and consumers**

The draft rule would likely maintain or promote market efficiency by promoting retail competition on price and quality, by establishing norms around benefits and price increases, and removing fees associated with the costs of doing business. This would increase consumer confidence in

<sup>46</sup> Energy Locals, submission to the consultation paper, p. 2.

<sup>47</sup> ACCC, *Inquiry into the NEM*, December 2023, p. 9.

the products they are purchasing when they engage in the market, make it easier for consumers to compare plans and less costly for them to switch.

We considered the impact of changes to retail contracts on retail competition, allocation of risks and costs between retailers and consumers and transparency of market offers.

We consider that the draft rule allocates risks and costs appropriately between retailers and consumers by making sure consumers do not bear the risk of frequent price increases and/or high underlying prices if benefit periods end. Restricting fees and charges to reasonable costs for non-vulnerable consumers also ensures that costs are transparent.

The draft rule would also promote the efficiency of the retail energy market by reducing some barriers to switching retailers, which may improve the competitiveness of the market.

### 2.3.3 The draft rule aims to minimise implementation costs and complexity

The draft rule seeks to minimise implementation costs as it provides retailers with some flexibility to consider and implement different approaches that may be lower in cost for their billing operations and/or systems. We consider it would minimise costs and complexity for retailers and consumers by:

- Applying grandfathered conditional discounts unconditionally, meaning retailers can simplify calculations to ensure consumers are no worse off and lowering costs to consumers.
- Allowing contracts to continue once a benefit period ends at a price no higher than the standing offer price - this would allow leeway for retailers to offer a competitive price.
- Setting July as the month in which prices can increase, as this aligns with the timing of changes to standing offers and network price changes. This would allow retailers to more easily manage risks and to take advantage of economies of scale, and will improve certainty for consumers as they will not be subject to multiple price rises within a year.

### 2.3.4 The draft rule aims to provide an appropriate balance of principles and prescription

The draft rule seeks to provide a mix of flexible and prescriptive regulatory approaches.

The draft rule affords retailers:

- flexibility to increase their prices any time in July, rather than setting a specific date on which prices can increase
- leeway in determining ongoing prices for consumers with expiring or changing benefits, while still creating a backstop for prices in these plans
- a principle of reasonableness to allow them to charge a range of fees and charges to non-vulnerable consumers.

The draft rule also applies prescriptive regulation where transparency and consumer harms are to be mitigated, including:

- prohibiting all fees and charges for vulnerable consumers
- limiting price rises to once every 12 months
- requiring retailers to charge no more than the standing price for customers whose benefits have ended but the contract continues.

### 3 Improving protections for customers on contracts with benefits that expire or change

The Commission has made a draft rule that seeks to improve consumer confidence and bolster protections for customers on contracts where the benefits do not last the length of the contract. This is to reduce the loyalty penalty potentially faced by these customers in the form of higher prices compared to if they regularly switch to a new offer.

The draft rule would do this by:

- limiting the price a customer would pay to the standing offer price if their benefits change or expire, including contracts with benefits that have expired, from 1 July 2026
- restricting retailers from de-energising customers on deemed standing offers for failing to engage with the retailer
- applying the rule to all contracts where benefits do not last the length of the contract without exemptions for specific plans or incentives
- requiring the AER to update its *Benefits change notice guideline* to reflect the final rule (if made)
- requiring retailers to notify customers affected by the new rules by 1 July 2026.

#### 3.1 Contracts would be limited to the standing offer price when benefits change or expire

**Box 1: Draft determination - contracts with expired or changing benefits would be limited to the standing offer price**

The draft rule would introduce a consumer protection that retailers would be required to limit the prices that customers pay to the standing offer prices (or less) if the customer is on a contract where the benefits expire or change before the contract ends.

The draft rule would apply to both existing and new contracts with benefit periods, and would apply in the following way:

- For new contracts, retailers must ensure that the price does not exceed the standing offer price when a benefit period ends (or specify that benefits continue for the life of the contract).
- For existing contracts where the benefit period ends before the rule takes effect (mid-2026), the retailer must charge the customer no more than the standing offer prices from the effective date of the rule, and must notify the customer of the change.
- For existing contracts where the benefit period ends after the rule takes effect, the retailer must charge the customer no more than the standing offer prices from the end of the benefit period, and must notify the customer under the benefit change notice provisions.
- In all cases, if the post-benefit prices under the contract are already lower than or equal to the standing offer prices, there is no change.

### 3.1.1 The draft rule seeks to improve protections for customers if their contracts contain time-limited benefits

The draft rule would introduce a requirement for retailers to restrict the prices that customers pay if they are on a contract where the benefits expire or change before the contract ends. The draft rule would apply to both existing and new contracts and would apply in the following way:<sup>48</sup>

- For new contracts, retailers must ensure that the price does not exceed the standing offer price when a benefit period ends (or specify that benefits continue for the life of the contract).
- For existing contracts where the benefit period ends before the rule takes effect (mid-2026), the retailer must charge the customer no more than the standing offer prices from the effective date of the rule, and must notify the customer of the change.
- For existing contracts where the benefit period ends after the rule takes effect, the retailer must charge the customer no more than the standing offer prices from the end of the benefit period, and must notify the customer under the benefit change notice provisions.
- In all cases, if the post-benefit prices under the contract are already lower than or equal to the standing offer prices, there is no change.

The draft rule addresses the issue raised in the rule change request, namely that retail energy contracts with benefits that expire before the end of the contract have the potential to leave non-engaged consumers exposed to high prices after the benefit period ends.<sup>49</sup> The Australian Competition and Consumer Commission (ACCC) suggested in its December 2023 *Inquiry into the NEM* report that for many consumers, choosing an energy plan is a ‘set and forget’ task. This means retailers only need to compete at the point of acquisition, and are not incentivised to keep prices competitive for existing customers.<sup>50</sup>

The Commission considers customers on market contracts with benefits that expire should be protected from experiencing high prices once their benefit ends, and have clarity around their contract’s potential outcomes. This aligns with the rule change request and feedback from a range of stakeholders, including consumer groups, energy ombudsmen, and some large and small retailers that were supportive of extending extra protections for consumers with expiring benefits.<sup>51</sup> While the AEC and some retailers considered the issue to be minor, energy ombudsmen considered these contracts create material risks to consumers, particularly vulnerable consumers.<sup>52</sup>

The proponent recommended that contracts should end when a benefit period ends, with consumers that do not choose a new market offer placed on to a standing offer.<sup>53</sup> The intent was to protect consumers by ensuring they do not face an unfair price penalty if they do not actively engage with their retailer when a benefit in their contract expires. The proponent suggested this would structurally adjust the onus for engagement towards the retailer, and would lead to lower transaction costs, more engagement, and increased demand side competition, placing downward pressure on prices.<sup>54</sup>

Consumer groups and some retailers suggested the proposed change would benefit consumers, including by:

48 See draft rule 48C and draft rule 7 of Part 20, Schedule 3 of the NERR.

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

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

51 Submissions to the consultation paper: Consumer groups, p. 9; ECA, p. 6; EnergyAustralia, p. 6; JEC, p. 9; Origin, p. 1; SACOSS, p. 9.

52 Submissions to the consultation paper: AEC, p. 1; Alinta, p. 3; Energy Locals, p. 3; EWON, EWOQ, EWOSA, p. 2.

53 ECMC, *Ensuring energy plan benefits last the length of the contract*, rule change request, p. 3.

54 ECMC, *Ensuring energy plan benefits last the length of the contract*, rule change request, p. 3.

- Providing greater clarity, simplicity, and consistency in market retail contracts and reduced risk of bill shock.<sup>55</sup>
- Providing consumers certainty that they would receive benefits offered by their retailer for their full duration.<sup>56</sup>
- Help in eliminating loyalty penalty, protecting consumers who are unable or unwilling to engage with market complexity.<sup>57</sup>

In contrast, Energy Locals expressed the view that further obligations should not be imposed on retailers to protect disengaged consumers, and rather consumer independence should be fostered.<sup>58</sup> The Commission considers that managing risks on behalf of consumers is a key role for retailers.

Origin noted that retailers currently have the ability to charge a customer who is on an ongoing contract a price below the default market offer (the DMO), which provides a backstop on the standing offer price.<sup>59</sup> Standing offer prices are the prices customers pay if they are on standard retail contracts or deemed customer retail arrangements. Consumers may find themselves on these contracts when they have not actively switched to a new plan. Origin suggested requiring retailers to charge a price no higher than the DMO in the event the customer does not engage at the end of their benefit period.<sup>60</sup>

The Commission investigated current offers on Energy Made Easy to better understand the magnitude of the problem. We note that this provides information on current offers only. It does not provide details on the number of customers who are on offers with benefits that do not last the length of the contract, or those who remain on contracts with expired benefits. We found that offers with limited-time benefits are relatively common. See Box 2 below for more detail.

**Box 2: Contracts with benefits that expire are relatively common on Energy Made Easy**

We analysed Energy Made Easy to determine how many retailers are offering defined benefit periods in contracts, and found:

- Offers with benefit periods are relatively common on Energy Made Easy, mostly from tier 1 retailers
- About 17 per cent of residential and small business offers available on Energy Made Easy in October 2024 contained a benefit period that was shorter than the length of the contract.

This draft rule achieves the intent of the rule change by providing protections to disengaged consumers. It does this by limiting the magnitude of the unilateral price increases a retailer could make to the standing offer price, matching or exceeding the level of protection suggested in the rule change request. The Commission considers this would give customers confidence that they will receive their full benefit, and they will not be penalised with unreasonably high prices if they do not engage at the point of renewal.

Limiting prices to the standing offer when a benefit ends improves consumer outcomes by giving retailers leeway to offer consumers prices below the standing offer price if they wish without

55 Submissions to the consultation paper: ECA, p. 6; EnergyAustralia, p. 2; JEC, p. 9; SACOSS, p. 9.

56 Origin, submission to the consultation paper, p. 1.

57 ECA, submission to the consultation paper, p. 6.

58 Energy Locals, submission to the consultation paper, p. 3.

59 Submission to the consultation paper, Origin, p. 1. Details on the DMO can be found at <https://www.dceew.gov.au/energy/programs/price-safety-net>.

60 Submissions to the consultation paper, Origin, p. 1



requiring the customer to give their EIC.<sup>61</sup> Such an offer could potentially be to the level of a deemed better offer.<sup>62</sup> The draft rule could also increase the onus for engagement on the retailer and, therefore, provides positive effects on competition.

The approach would avoid a potentially large number of customers becoming carry-over customers on deemed customer retail arrangements. See section 3.2 for more details.

The Commission proposes to recommend that the requirement that the retailer must not charge the small customer an energy rate higher than the retailer's standing offer price when the customer's contract's benefits expires or changes should be a tier 2 civil penalty provision. See appendix B.4 for further details on the proposed civil penalty provisions.

### 3.1.2 We do not anticipate that the draft rule would have a large impact on retail offers.

The draft rule may impact some acquisition offers by disincentivising retailers from making some offers with fixed-term benefit periods. However, it would not affect the ability of efficient retailers to offer competitively priced contracts to customers. It may push acquisition offers to more closely reflect the cost to serve customers longer term. The Commission expects impacts to acquisition offers would be largely offset by increased consumer protections and consumer confidence in the energy market.

The draft rule would not:

- prevent retailers from making offers with benefits, either ongoing or time-limited
- change the prices a customer pays if they are on a contract with expired benefits, if the prices the customer is paying are already under the standing offer price
- impact the underlying rates of plans with benefits that continue for the length of the contract.

The proponent expected their rule change request to mainly impact retailers offering attractive 'acquisition' offers designed to encourage switching, but noted that acquisition pricing in and of itself does not accurately reflect the cost to serve a customer over a longer period.<sup>63</sup>

Some retailers claimed requiring benefits to last the length of a contract would impact or reduce the number of tariffs available, and could result in contracts more narrowly focused on price, with more conservative benefits, or retailers not offering third party benefits.<sup>64</sup> Engie and Energy Locals also noted the rule change could hinder smaller retailers' ability to compete as some differentiate using benefits and offers.<sup>65</sup> ECA did not agree - stating there was minimal evidence to suggest that the rule change proposal would impact the variety of tariff structures available to consumers.<sup>66</sup> The Commission considers that the draft rule would likely only have a small impact on the types of offers retailers make. A closer focus on price, rather than discounts could improve the transparency of offers.

AGL and Origin stated that removing the ability for retailers to balance their margin at the end of a benefit period puts greater pressure on the annual price change to achieve this objective, and the methodology for setting the DMO.<sup>67</sup> The Commission considers only a subset of disengaged

61 EIC is required if the customer moves to a new contract, and in certain other circumstances as specified in the NERL

62 A "deemed better offer" refers to an alternative energy plan identified by a retailer that would be more cost-effective for a customer based on their usage patterns.

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

64 Submissions to the consultation paper: Alinta, p. 3; Engie, p. 3; Energy Locals, p. 3; Origin, p. 1; Red & Lumo, p. 2-3.

65 Submissions to the consultation paper: Engie, p. 3; Energy Locals, p. 3.

66 ECA, submission to the consultation paper, p. 8.

67 Submissions to the consultation paper: AGL, p. 3; Origin, p. 1.



consumers would be impacted by the draft rule and that the draft rule would not add substantial pressure to the setting of the DMO.

The draft rule would only apply where a consumer does not choose a new market contract at the end of the benefit period. It would also provide retailers some flexibility as noted above. The Commission considers it would be unlikely to have a large negative impact on retailers or their offerings.

### 3.1.3 The draft rule applies to existing contracts as well as new contracts

The draft rule would apply to new and existing contracts. Some retailers proposed that the rule change should only apply to contracts commencing after the rule change is implemented.<sup>68</sup>

The Commission considered that all consumers should be afforded the same protections under the rules, noting that loyalty penalties accrue particularly to consumers who are disengaged, which would include those on contracts with benefits that have previously expired. Applying the draft rule to existing contracts may add costs to retailers as they will be required to notify those customers and (if necessary) amend rates to the standing offer price.<sup>69</sup> However, the Commission considers only applying the rule to new contracts would not protect disengaged consumers on existing contracts.

### 3.1.4 Terminating all contracts when benefits end could lead to some consumers paying more

Our draft rule would not require contracts to end when benefits end as proposed in the rule change request. Instead, it limits the ongoing rate a customer faces once benefits end to the standing offer price. This provides leeway to retailers to offer prices lower than the standing offer if they so choose, which would benefit some consumers. The draft rule also reduces the number of customers that would end up as carry-over customers on a deemed customer retail arrangement, compared to the proposed solution in the rule change request.

The proponent suggested requiring that the benefit period must be aligned with contract length, and that a contract should end if a benefit ends.<sup>70</sup> The proponent suggested that consumers that do not choose a new market offer would be placed on the standing offer price.<sup>71</sup>

However, the proponent listed some further issues it recommended the Commission explore relating to its proposed approach, namely:<sup>72</sup>

- Those customers on market offers below the DMO at contract expiry would be moved to a deemed customer retail arrangement on standing offer prices which are capped at the DMO (although they would be notified about this).
- The outcomes for customers would vary as consumption varies around the DMO consumption levels. Unlike the Victorian Default Offer (VDO), the DMO does not provide for a price structure which allows for a diversity of pricing of standing offers above and below the DMO.
- The DMO does not apply to customers on complex tariff structures such as demand tariffs, which may become increasingly prevalent as the smart meter roll out accelerates.

68 Submissions to the consultation paper: AGL, p. 3; Engie, p. 3; EnergyAustralia, p. 6-7.

69 Alternatively, retailers could modify their contracts to provide that the benefit continues (or is reinstated) for the length of the contract, in which case the new rule would not apply.

70 ECMC, *Ensuring energy plan benefits last the length of the contract*, rule change request, p. 3.

71 ECMC, *Ensuring energy plan benefits last the length of the contract*, rule change request, p. 3.

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

All consumer groups supported the proposal for further protections when customers' benefit periods end.<sup>73</sup> ECA considered rolling customers onto a standing offer was an appropriate form of protection, but preferred customers be moved to the retailer's "deemed better offer", noting that this would require EIC.<sup>74</sup> Several retailers said that customers on existing products with a fixed benefit period should not be forced to rollover to a standard retail contract at the end of that benefit period, as they are often priced higher than market retail contracts.<sup>75</sup> Consumer groups suggested any reform should not prevent prices coming down for consumers.<sup>76</sup> Origin suggested this could be addressed by allowing the contract to continue, but requiring the retailer to charge a price no higher than the standing offer in the event the customer does not engage at the end of their benefit period.<sup>77</sup>

Moving customers onto a deemed customer retail arrangement if they do not provide EIC would provide a safety net for those customers whose prices under their market retail contract after the benefit ends would exceed the standing offer price.<sup>78</sup> However, this could disadvantage customers who were paying below the standing offer price once their benefits ended. These customers would then be required to pay more than they were paying under their existing contracts and may lose other terms and conditions they enjoyed under their existing contracts, such as more frequent billing.

There are also some differences in protections for carry-over customers on deemed customer retail arrangements, compared to customers on formal contracts. These are discussed further in section 3.2 section 3.2 below.

### 3.1.5 We considered other options for the draft rule

As part of our analysis, the Commission considered:

- requiring that benefits must align with the contract length, with disengaged consumers being moved to the standing offer when the benefits and therefore the contract expires, if they do not give EIC for a new contract (as proposed in the rule change request)
- allowing contracts to continue when a benefit ends or changes, but at rates no higher than the standing offer price.

The following scenarios in Box 3 below highlight potential consumer outcomes based on the draft rule, compared to the rule change proposal. All these scenarios involve consumers that are disengaged, and do not choose a new market offer when their benefit expires.

#### Box 3: Consumer outcomes from potential alternative policies

1. **Elina's existing contract** - Elina joined a plan two years ago, which offered a benefit for the first year. That benefit has now expired, but the price she pays remains below the standing offer price.

73 Submissions to the consultation paper: SACOSS, p. 9; EWON, EWOQ, EWOSA, p. 2; Consumer Groups, p. 2; ECA, p. 4-5; JEC, p. 9.

74 ECA, submission to the consultation paper, pp. 2, 7.

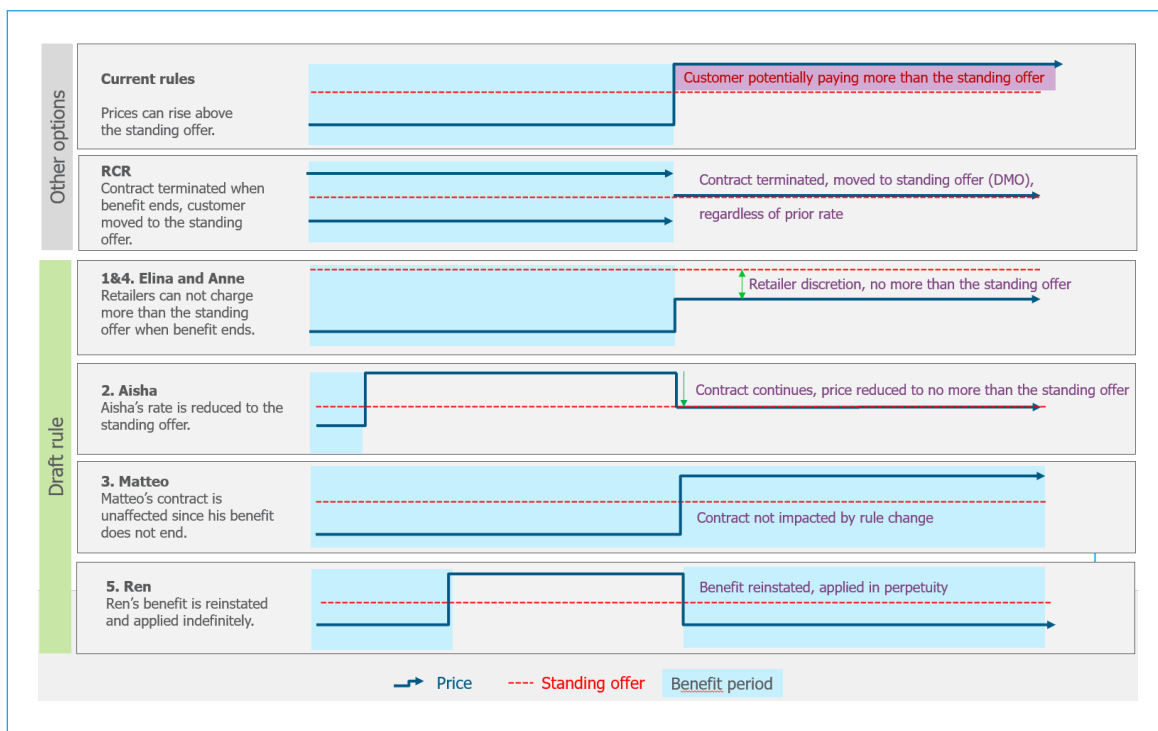
75 Submissions to the consultation paper: Red & Lumo, p2-3: AGL, p. 3; EnergyAustralia, p. 7; Origin, p. 1.

76 Consumer groups, submission to the consultation paper, p. 2.

77 Origin, submission to the consultation paper, p. 1.

78 Retailers must obtain a customer's consent before transferring them from another retailer or entering into a market retail contract with them. When obtaining a customer's consent, the National Energy Retail Law requires it must be both explicit and informed. Sections 38 to 42 of the National Energy Retail Law detail the requirements for EIC. Further information is available here: AER, Compliance check, EIC, available at <https://www.aer.gov.au/system/files/Compliance%20Check%20-%20entering%20into%20retail%20contracts,%20explicit%20informed%20consent%20-%20November%202015.docx>

- a. Under the rule change proposal, as Elina's benefit has expired she would be moved to a deemed customer retail arrangement (with a maximum price at the DMO) if she does not take up a new offer and provide EIC. This would mean Elina would pay more than she is now under her existing contract.
  - b. The draft rule allows Elina's retailer to maintain her contract at the price she is paying, and protects her from any future move above the standing offer price.
2. **Aisha's existing contract** - Aisha is on a plan with expired benefits, but the price she pays is now above the standing offer price (ie, the DMO).
  - a. Under the rule change proposal, Aisha's plan would be terminated. She would be moved to a deemed customer retail arrangement (capped at the DMO) if she does not give EIC for a new offer. She would be better off.
  - b. The draft rule would allow Aisha's contract to continue, but her retailer would have to adjust the price to no higher than the standing offer. She would be better off overall, and no worse off than the rule change proposal.
3. **Matteo's existing contract** - Matteo joined a plan in 2016, which offered 20 per cent off his bill for the life of the contract. Despite the large discount, Matteo pays more than the DMO due to a high underlying price.
  - a. Under the rule change proposal, Matteo's plan would not be impacted, since his benefit continues indefinitely.
  - b. The draft rule would not impact Matteo's plan, since his benefit continues indefinitely.
4. **Anne's new contract** - Anne joins a new plan with no end date that includes a 2-year discount; the underlying rate is below the standing offer price.
  - a. Under the rule change proposal Anne's plan would end in 2 years when the benefit period ends. She would be moved to a deemed customer retail arrangement if she does not give EIC for a new offer, and may be worse off.
  - b. The draft rule allows Anne's plan to continue once her benefit expires, but at a rate no higher than the standing offer. As her current undiscounted rate is below the standing offer price, her current terms and conditions can continue.
5. **Ren's existing contract** - Ren is on a plan with expired benefits. In response to the draft rule her retailer reinstates her benefits and applies them for the remaining life of the contract. While we consider this outcome to be unlikely, under both the rule change proposal and the draft rule, Ren would be better off.



JEC considered the rules should be simplified and strengthened to refer to 'contract terms' or 'material contract terms' rather than 'benefits'. They suggested consumers should have a reasonable expectation that all material aspects of an energy plan they agree to would endure for the life of the contract they entered into.<sup>79</sup> We note this would likely result in most customers being placed on fixed-term agreements which would require customers to provide EIC for a new contract or they would become a carry-over customer on a deemed customer retail arrangement. This provides some level of protection for disengaged customers. However, it is meant to be a backstop consumer protection and does not necessarily represent the best outcomes for individual consumers, for example, a retailer's 'deemed better offer'. While the draft rule does not expand the proposal in the way suggested, when combined with the rule changes on restricting price increases, outlined in chapter 5, consumers would be provided more confidence in the terms of the contract they are offered.

### 3.1.6 Changing rules around explicit informed consent is unnecessary under the draft rule

By requiring retailers to amend contract terms to comply with the draft rule, retailers would be able to achieve the intent of the rule change within the existing parameters for EIC in the NERL.

To address the need for EIC, the proponent suggested the rules for market retail contract minimum requirements could be amended to include a standard term in the terms and conditions for the end-of-contract arrangement, such that consent is given to move to a new contract.<sup>80</sup> Alinta expressed concerns with how this would align with the EIC principles in the National Energy Retail Law.<sup>81</sup> Energy Locals and EnergyAustralia supported the recommendation in the rule change proposal.<sup>82</sup>

79 JEC, submissions to the consultation paper, p. 9.

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

81 Submissions to the consultation paper: Alinta, p. 3

82 Submissions to the consultation paper: Energy Locals, p. 3; EnergyAustralia, p. 9.

We consider that any provisions in a contract that aim to ensure the customer gives their EIC upfront to switch to a new contract at a point in the future would need to provide full information on the terms and conditions of the new contract. This is unlikely to be practicable. Instead, our draft rule meets the intent of the rule change request without raising issues with EIC.

ECA suggested an alternative to automatically roll over onto a retailer’s “best market offer” at the end of a contract, noting this would require the customer’s consent and so could not be fully automated.<sup>83</sup> The Commission notes the draft rule would allow retailers to offer competitive prices below the standing offer price for these consumers once the initial benefit period ends.

### 3.2 The draft rule addresses a gap in protections for customers on deemed customer retail arrangements

#### **Box 4: Draft determination - the draft rule improves protections from disconnection for customers on deemed customer retail arrangements**

The draft rule would restrict retailers from de-energising customers on deemed customer retail arrangements where they do not engage with the retailer.

The draft rule amends the NERR so that a customer on a deemed customer retail arrangement cannot be de-energised for failing to engage with their retailer.<sup>84</sup> They can still be de-energised for non-payment or if they commit other breaches that can result in de-energisation under the rules.<sup>85</sup> This aligns protections for these customers and other customers. It is important to address this gap in regulatory protection.

This issue was raised by Engie, who highlighted that at the end of a fixed-term retail contract, a disengaged customer who does not enter into a standard or market retail contract would become a ‘carry-over’ customer on a deemed customer retail arrangement. Engie noted that steps for de-energisation of these customers are more streamlined for retailers than the steps for de-energisation under other provisions of the NERR.<sup>86</sup>

The Commission considers that disengaged customers should not face a higher risk of de-energisation. The Commission considers there is no compelling reason customers on deemed customer retail arrangements should be treated differently to other customers on standing offers with regard to de-energisation. This draft rule improves consumer protections for this group of customers.

### 3.3 The draft rule does not include exemptions for specific plans or incentives

The draft rule requirement to limit post-benefit prices to standing offer prices does not include any exemptions for specific benefit types or types of contracts. However, the types of contract changes that are “excluded changes” under the AER’s *Benefit Change Notice Guidelines* would

83 Submission to the consultation paper, ECA, p. 7

84 NERL section 54(6) requires carry-over customers and move-in customers to “contact a retailer and take appropriate steps to enter into a customer retail contract as soon as practicable”. Currently, NERR rule 115 allows retailers to de-energise customers who do not do this. The draft rule would delete rule 115.

85 See NERR Part 6.

86 Submissions to the consultation paper, Engie, p. 3.

continue to be excluded from the draft rule.<sup>87</sup> We consider this approach, combined with the flexibility of the draft rule in allowing contracts to continue at rates below the standing offer price, makes further exemptions unnecessary. The Commission considers limiting protections for some benefit types may add confusion and risk for some groups of consumers and that benefits should extend as widely as possible to address the loyalty penalty issue raised by the proponent.

The proponent did not suggest any exemptions in its request. However, some retailers and consumer groups suggested several energy products should be exempt, particularly where these plans cater to specific customer needs. Suggestions included:<sup>88</sup>

- innovative products
- non-financial benefits like loyalty schemes, tangible gifts, subscriptions, value-adds/bolt-ons
- upfront incentives
- offers restricted to customers experiencing vulnerability
- legacy plans that have been reactivated following a transfer in error.

JEC suggested a key part of the rule change should be defining what material aspects of energy contracts this rule should apply to, and how communication of any other terms or benefits should interact with them. They provided the example of ensuring that communication of one-off sign-up bonuses does not imply the material terms of the contract are better than they are.<sup>89</sup> Energy ombudsmen noted the AER's *Benefit Change Notice Guidelines* have the power to be more specific about the kinds of benefits that are excluded from requiring retailer notice.<sup>90</sup> We encourage the AER to consider if any further exemptions, or changes to existing exemptions, are required under the *Benefit Change Notice Guidelines* to meet the intent of the draft rule in protecting disengaged consumers, as further discussed in section 3.4 below.

### 3.4 The AER would need to update its Benefit Change Notice Guidelines

**Box 5: Draft determination - The AER would be required to update its benefit change notice guidelines.**

The draft rule requires the AER's *Benefit Change Notice Guidelines* to specify information retailers must include in benefit change notices so small customers understand the tariffs and charges they will pay after their benefits end.

Accordingly, the draft rule requires the AER to review its *Benefit Change Notice Guidelines* and make any changes required to reflect the final rule.

The AER would have approximately 12 months from the final rule (if made) to make any changes.

In light of the draft rule requirement for post-benefit tariffs to be no higher than standing offer prices, the draft rule requires the AER's *Benefit Change Notice Guidelines* to specify information retailers must include in benefit change notices so small customers understand the tariffs and charges they will pay after their benefits end (if they do not move to a new contract).<sup>91</sup>

87 AER, *Benefit Change Notice Guidelines*, 2018, Section 2.2-2.3, p. 7-8. In the draft rule, new rule 48C uses the term "benefit change" which is defined in rule 45A to exclude "excluded changes" as defined in the AER's guidelines.

88 Submissions to the consultation paper: AGL, p. 4; Engie, p. 3; JEC, p. 10.

89 JEC, submission to the consultation paper, p. 10.

90 EWON, EWQQ, EWOSA, submission to the consultation paper, p. 2.

91 Draft rule, amendments to rule 48B(2)(c).

The AER would be required to update its *Benefit Change Notice Guidelines* to reflect the final rule (if made).

As the rule change proposal suggested disengaged customers' contracts would be terminated when their benefit ended, some retailers and energy ombudsman reinforced the importance of customers being provided with information prior to the change or expiry of their benefit period. They outlined the impact of the expiry and the options available, or suggested the *Benefit Change Notice Guidelines* be amended or removed if no longer necessary.<sup>92</sup> Energy Locals sought flexibility on notice requirements.<sup>93</sup>

As our draft rule allows contracts to continue when benefits change or expire, the *Benefit Change Notice Guidelines* would still be required. The AER would be required to implement any changes to the guideline by 1 July 2026.

### 3.5 Retailers would have 12 months to prepare to comply with the rule

**Box 6: Draft determination- retailers would have 12 months to prepare for the new rule**

Retailers would have 12 months, until 1 July 2026, before the new provision limiting post-benefit tariffs would apply to their contracts (new and existing). This will give them time to update their contracts to comply with the final rule (if made).

Any new contracts would be required to comply with the new requirements from 1 July 2026.

The draft rule includes a transition period. Retailers must comply with the final rule (if made) by 1 July 2026, for both new and existing contracts. This applies across all components of the draft rule which encompasses all four consolidated rule change requests.

AGL suggested a transition period of 24 months to allow existing contracts to expire.<sup>94</sup> The Commission considers a 24-month transition to be too long to introduce additional consumer protections and mitigate the loyalty penalty for these consumers. We consider a 12-month transition period provides adequate time for retailers to implement changes to comply with the final rule (if made), noting that contracts would not be affected until any benefit period changed or expired.

92 Submissions to the consultation paper: Alinta, p. 3; EnergyAustralia, pp. 8-9; EWON, EWOQ, EWOSA, p. 2; Powershop, p. 1.

93 Energy Locals, submission to the consultation paper, p. 3.

94 ALG, submissions to the consultation paper, p. 3.



## 4 Removing unreasonable conditional penalties

The Commission has made a draft rule that would improve protections for customers on contracts which require them to pay much higher rates if they do not meet certain payment conditions (paying on time and using a certain payment method). This will help reduce the loyalty penalty for these consumers.

The draft rule would mean that:

- customers with high discounts linked to payment conditions would receive the discount whether or not they meet the payment condition
- customers with high fees linked to payment conditions would have their fees reduced to reasonable levels (as discussed in chapter 6).

The rule would come into effect on 1 July 2026.

### 4.1 The draft rule would remove unreasonably high penalties linked to payment conditions

#### **Box 7: Draft determination - Customers on contracts with high discounts linked to a payment condition would receive the discount even if they do not meet the condition**

Under some market retail contracts, customers receive large discounts on their bills if they pay on time or by using a certain method (conditional discounts). The draft rule requires retailers to apply these high discounts even if the customer does not meet the payment condition.

Discounts that would be captured under the draft rule are those that exceed the reasonable costs that retailers would face if the payment condition is not met, for example, the cost the retailer would face if the customer paid their bill late.

These high conditional discounts were prohibited for all contracts entered into after mid-2020, but still exist in older contracts.

Customers with high fees linked to payment conditions would also have their fees reduced to reasonable levels as discussed further in chapter 6.

The draft rule addresses an ongoing issue relating to unreasonable conditional penalties in older contracts. Some contracts contain conditional fees or discounts - where the customer has to pay more if they do not pay their bill on time, or use a certain payment method (such as direct debit). In 2020, the Commission made a rule requiring conditional fees and discounts in new contracts to be no higher than the retailer's reasonable costs. This rule did not apply to contracts on foot at that time.<sup>95</sup> Some of these contracts with high fees or discounts are still on foot.

For contracts with high conditional discounts, the draft rule would require the discounts to be applied in full, whether or not the customer met the condition relating to that discount.<sup>96</sup> This aligns with the principle in the rule change request that if the conditional penalty is unreasonable then the customer should not be penalised and bear the cost.<sup>97</sup> The draft rule applies to new contracts, contracts entered into since 1 July 2020 that are ongoing, and those contracts that

<sup>95</sup> This group is defined in NERR schedule 3, Part 12B, rule 2. The rule change request referred to these contracts as being 'grandfathered'.

<sup>96</sup> See draft rule, amendment to rule 46C(2). The draft rule relies on the existing definitions of "payment condition" and "conditional discount", which are set out in rule 45A. The concept of unreasonably high discounts is defined in rule 46C(1).

<sup>97</sup> ECMC, *Removing unreasonable conditional discounts*, rule change request, p. 5.



customers entered into prior to 1 July 2020. However, in practice only contracts entered into prior to 1 July 2020 would have high conditional discounts.

Retailers and energy ombudsmen suggested there may be relatively few contracts remaining with high conditional discounts.<sup>98</sup> However, a range of stakeholders agreed the rule change proposal would support consumers on these contracts, including by:<sup>99</sup>

- providing fairer energy pricing
- protecting consumers experiencing vulnerability and those facing excessive costs providing greater certainty over costs
- removing the onus on the consumer and reducing the risk of bill shock through higher underlying prices.

Most retailers also broadly supported extending protections to customers on pre 1 July 2020 contracts with conditional discounts. Some raised concerns regarding the proportionality and appropriateness of the response, with only Engie strongly opposing the proposed change.<sup>100</sup>

Retailers would use the tests in NERR rule 46C(1) (put in place in the *Regulating conditional discounting* final rule) to determine if a conditional discount is unreasonable. Detail on the relationship between the 2020 rule and the draft rule is outlined in section 4.1.1

The draft rule also addresses an issue with the current rules. The existing rule 46C(2) makes excessive conditional discounts void, leaving the customer to pay the full price if the discount is found to be too high.<sup>101</sup> The draft rule would change this so the conditional discount still applies rather than being voided. To comply, retailers would charge consumers only the discounted rate on these contracts. This means the customer gets the benefit of the discount and it is no longer conditional on payment time or method.

The draft rule would provide consumers with certainty over the price they pay, and remove the risk of bill shock from not meeting a payment condition. The draft rule improves protections for customers who do not choose a new market offer, particularly vulnerable consumers, whom the ACCC noted were particularly at risk from these penalties.<sup>102</sup> It is important that those vulnerable consumers are not penalised.

Under the draft rule the retailer would bear the cost when it has imposed an unreasonable penalty on consumers. By ensuring that retailers face the cost of any unreasonable conditional penalties relating to discounts, they may be incentivised to offer new contracts to consumers on these older contracts.

We consider that the draft rule addresses the underlying risk associated with unreasonable conditional discounts, while creating minimal impact to customers, and no additional impact to retailers compared to the rule change proposal.

#### 4.1.1 The relationship between the draft rule and the 2020 rule

The AEMC's 2020 *Regulating conditional discounting* rule sought to protect consumers from large penalties when they miss payment conditions.<sup>103</sup> It capped the level of conditional discounts and

98 Submissions to the consultation paper: EWON, EWOQ, EWOSA, p.3; Energy Locals, p.4; AGL, p. 4; Red & Lumo, p. 3; EnergyAustralia, p. 45; AEC, p. 2.

99 Submissions to the consultation paper: SACOSS, p. 10; EWON, EWOQ, EWOSA, p. 3; ECA, p. 8, EnergyAustralia, p. 2; AEC, p.2.

100 Submissions to the consultation paper: Powershop, p. 2; AGL, p. 1; Engie, p. 4; Red & Lumo, p. 4; AEC, p. 2; EnergyAustralia, p. 2; Origin, p. 4; Alinta, p. 4.

101 NERR, Rule 46C(2).

102 ACCC, *Inquiry into the NEM*, June 2024, p. 65.

103 AEMC, *Regulating conditional discounting*, Rule determination, 27 February 2020, p. ii.

fees to reasonable costs likely to be incurred by the retailer when a consumer fails to satisfy a payment condition.<sup>104</sup>

The draft rule retains some aspects of this rule and makes some changes, as outlined in Table 4.1 below.

**Table 4.1: Comparison of 2020 rule and draft rule**

Feature of 2020 rule	Change made by draft rule
Only applied to new retail contracts entered into after 1 July 2020, and not to contracts with conditional fees and discounts on foot at that time, including conditional fees and discounts that would be considered unreasonable under the 2020 rule (NERR schedule 3, Part 12B). The Commission considered that consumers with ongoing experience with conditional fees and discounts were in a better position to assess their suitability for these types of offers compared to customers entering new contracts (AEMC, Regulating conditional discounting, Rule determination, 27 February 2020, p. iii).	The changes below apply to all contracts, whether entered into before or after 1 July 2020.
voids conditional fees if they are found to be unreasonable (leaving customers to pay no fee) (NERR rule 52B(2)).	No change
voids conditional discounts if they are found to be unreasonable (leaving customers to pay the undiscounted price) (NERR rule 26C(2)).	Retailer must apply the full discount regardless of whether the customer has met the payment condition, if the conditional discount is found to be unreasonable.
Only applies to conditional discounts and fees related to payment timing or method (e.g. direct debit) – the scope is quite narrow (“Payment condition” is defined in rule 45A as “a provision of a customer retail contract that relates to the timing or method of payment of a bill.” The draft rule would not change this definition).	No change
Allows retailers to include conditional discounts up to a reasonable estimate of the costs the retailer would incur if the customer fails to satisfy the payment condition, for post-2020 contracts (NERR rules 46C(1)).	No change
Allows retailers to include conditional fees up to a reasonable estimate of the costs the retailer would incur if the customer fails to satisfy the payment condition, for post-2020 contracts (NERR rules 46C(1) and 52B(1))	See chapter 6 - all fees and charges are limited to reasonable levels, for new and existing contracts
Did not set a specific level for or define “reasonable estimate of retailer costs”, as the concept of reasonable	No change

104 See NERR rules 46C and 52B.

Feature of 2020 rule	Change made by draft rule
costs is widely understood and used in a range of different industries, including energy (AEMC, <i>Regulating conditional discounting</i> , Rule determination, 27 February 2020, p. ii). This principle-based approach allows the AER to make compliance assessments on a case-by-case basis, with regard to information provided by the retailer.	

Source: NERR and draft amending rule.

#### 4.1.2 For customers with high discounts, reducing their discounts to reasonable levels could make them worse off

The draft rule would improve protections for customers on contracts with high conditional discounts entered into before 1 July 2020 and permitted to continue under the AEMC’s *Regulating conditional discounting* final rule. The draft rule require retailers to apply relevant discounts unconditionally for these contracts. This achieves the intent of the rule change, which is to ensure these consumers are not paying more than the price they would pay if they met the conditions of their contract.<sup>105</sup>

The rule change request proposed to align protections for all customers that receive conditional discounts by limiting any conditional discounts and fees to reasonable costs for all customers (on new and old contracts).<sup>106</sup>

Consumer groups and most retailers supported this proposed change, with AGL suggesting the simplest, least-cost solution to fulfil the intent of the proponent’s rule change should be pursued.<sup>107</sup> However, some retailers oppose this proposed change.<sup>108</sup> Energy and water ombudsman did not consider the remaining pre 1 July 2020 contracts to be a material concern, but noted a case of consumer harm attributable to one of these old contracts.<sup>109</sup> Separately, the AEC expressed caution for any approach that applies new rules to existing contracts.<sup>110</sup>

Our analysis found applying all the rules relating to the treatment of high conditional discounts could leave consumers worse off.

The rule change request suggested the rule could be implemented by:<sup>111</sup>

- Moving a customer to a plan made available after the commencement of the AEMC’s *Regulating conditional discounting* final rule where the new conditional price is equal to or better than their existing conditional price.
  - Our analysis found this would require that such a plan exist, and would also require the customer’s EIC under the NERL, which may make this option impracticable. The AEC preferred this option, suggesting retailers could work with customers to obtain EIC.<sup>112</sup>

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

106 ECMC, *Removing unreasonable conditional discounts*, rule change request, p. 4. This would entail removing the grandfathering arrangements from the 2020 rule.

107 Submissions to the consultation paper: ECA, p.9, Powershop, p. 2, AGL, p. 1, Origin, p. 4.

108 Submissions to the consultation paper: Engie, p. 4, Alinta, p.4

109 EWON, EWQO, EWOSA, submission to the consultation paper, p. 3.

110 AEC, submission to the consultation paper, p. 2.

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

112 AEC, submission to the consultation paper, p. 2.

- Requiring retailers to reduce the conditional discount value to a reasonable level and adjust the underlying energy prices, so that the customer is no worse off if they achieve their contract’s conditions.
  - ECA and EnergyAustralia preferred this approach, however, the Commission identified that this would be difficult to both implement and enforce.<sup>113</sup>

Applying the existing rules relating to unreasonable conditional discounts in full without a “no worse off” type of arrangement would enable retailers to comply in several ways, some of which could result in consumer harm. Of most concern was the potential for retailers to reduce the size of the discount to a reasonable level to comply with the conditional discounting rules without adjusting the underlying rate. This would leave customers worse off if they regularly meet their payment condition. Given the ACCC indicates approximately 90 per cent of residential customers are meeting the conditions to receive their conditional discounts, this could result in the majority of consumers on old contracts with high conditional discounts paying more.<sup>114</sup>

To address these concerns and meet the intent of the rule change request in ensuring the risk of missing a payment condition is mitigated, and that consumers are not worse off following the rule change, high conditional discounts in those older contracts would instead be applied unconditionally, which would leave no consumers worse off. Box 8 below compares expected consumer outcomes based on the current, proposed, and draft rules.

**Box 8: The draft rule removes the risk consumers on contracts with conditional discounts or fees will pay more**

Scenario	Contract with unreasonable conditional fee (tariff \$80, fee \$20)	Contract with unreasonable conditional discount (tariff \$100, discount \$20)	Outcomes
<b>Current rules</b> Amount customer pays if achieves condition	\$80	\$80	Same outcomes for both fee & discount cases
<b>Current rules</b> Amount customer pays if it does not achieve condition	\$100	\$100	Same outcomes for both fee & discount cases
<b>Proposed rule</b> Amount customer pays if discount reduced to a reasonable level – achieves condition	\$80	\$98 (assuming reasonable discount is \$2)	This scenario illustrates differences between fee & discount cases – problem with proposed rule
<b>Proposed rule</b> Amount customer pays if fees reduced to a reasonable level – does not achieve condition	\$82 (assuming reasonable fee is \$2)	\$100	This scenario illustrates differences between fee & discount cases – problem with proposed rule
<b>Draft rule</b> Amount customer pays if they achieve condition	\$80	\$80	Better outcome for customers than proposed rule
<b>Draft rule</b> Amount customer pays if they do not achieve condition	\$82 (assuming reasonable fee is \$2)	\$80 (discount applied unconditionally)	Better outcome for customers than proposed rule

The draft rule would also provide benefits to consumers outlined by stakeholders in submissions including that:<sup>115</sup>

- conditional discounts, such as pay-on-time discounts, are often beneficial to consumers, or perceived to be

113 Submissions to the consultation paper: EnergyAustralia, p. 2; ECA, p 2.

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

115 Submissions to the consultation paper, SACOSS, p. 10, Red & Lumo, p. 4, Alinta, p. 4

- ending certain older contracts may be confusing for some consumers
- consumers may find their overall energy costs increasing once they move away from their current offer.

The draft rule would enable these older contracts to continue, providing minimum disruption to consumers, and removing or reducing the potential adverse outcomes outlined above.

#### 4.1.3 The draft rule minimises additional costs to retailers

While many retailers noted only a small proportion of customers remain on pre 1 July 2020 contracts with a high conditional discount, applying discounts unconditionally under the draft rule would result in retailers incurring some costs.<sup>116</sup>

Alinta and Energy Locals suggested these costs could include a loss of revenue and administration/implementation costs.<sup>117</sup> The draft rule does not require retailers to terminate these contracts, or apply complex calculations to amend terms and conditions to ensure the customer is not worse off. Due to this, we consider the cost of compliance and enforcement will be reduced for both retailers and the AER, compared to the proposed rule. As noted above, only around 10 per cent of consumers do not regularly achieve their contract's payment conditions, so we expect the overall impact on retailers to be low.

#### 4.1.4 The reasonable costs test is provided under the current rules

The draft rule applies the same "reasonable costs" test as introduced by the 2020 *Regulating conditional discounting* rule and applied since then. The 2020 *Regulating conditional discounting* final rule did not specifically define retailers' "reasonable costs" as the Commission considered the term to be a widely understood concept that has been utilised in a range of different industries, including energy.<sup>118</sup>

Stakeholders, including SACOSS and JEC, noted the importance of clarity around what is unreasonable, with Alinta suggesting there would be costs related to establishing the reasonable value of a conditional discount.<sup>119</sup> The Commission considers that by using the established definition of "reasonable costs" and applying grandfathered discounts unconditionally, these concerns are reduced or removed.

#### 4.1.5 Conditional fees are covered by the fees and charges rule change

As discussed in detail in chapter 6, the draft rule would ensure all fees are limited to reasonable costs, and vulnerable customers would not be charged fees. This will include any unreasonable fees in older contracts that were not covered by the *Regulating conditional discounting* final rule.<sup>120</sup> This would benefit consumers on these older contracts, particularly those that are vulnerable, by ensuring they are not exposed to unreasonable costs if they miss a payment condition.

#### 4.1.6 Consumers will be notified of the change in their contract

The draft rule would require retailers to notify their customers of the change to their conditional discounts (i.e. that they will apply unconditionally whether the customer meets the payment

116 Submissions to the consultation paper: EWON, EWOQ, EWOSA, p.3; Energy Locals, p.4; AGL, p. 4; Red & Lumo, p. 3; EnergyAustralia, p. 4, 5; AEC, p. 2.

117 Submissions to the consultation paper: Energy Local, p. 5, Alinta, p. 4.

118 AEMC, *Regulating conditional discounting*, Final determination, 27 February 2020, p. ii.

119 Submissions to the consultation paper: SACOSS, p. 10; JEC, p. 5; Alinta, p. 4.

120 See NERR schedule 3, Part 12B rule 2, and the draft rule, inserting rule 8 into Part 20 of NERR schedule 3.

condition or not).<sup>121</sup> SACOSS highlighted that consumers should be informed of the changes to their contracts.<sup>122</sup> Under the draft rule, this notification would occur well in advance of the change occurring, must include a description of the impact of the change on the customer, and must otherwise comply with the requirements in the AER's benefit change notice guidelines, where relevant.<sup>123</sup> The Commission considers this notification may act as another prompt for these customers to opt to take up a new plan.

## 4.2 Retailers would have 12 months to update contracts and apply the discount unconditionally

### **Box 9: Draft determination- retailers would have 12 months to comply with the rule changes**

The draft rule would come into effect on 1 July 2026.

Retailers would need to apply conditional discounts regardless of whether the customer meets the payment condition for any unreasonably high discounts that remain on 1 July 2026. Retailers would also need to reduce any high conditional fees to reasonable fees.

The draft rule would come into effect on 1 July 2026. This applies across all components of the draft rule which encompasses all four consolidated rule change requests.

This aligns with the 12 months suggested as an appropriate time frame by retailers.<sup>124</sup> Retailers could reach out to customers during this period to offer new contracts, which consumers may choose to take up. Energy Locals supported allowing these customers to be offered an opt-out from these plans as opposed to a complete closure of the grandfathered plans.<sup>125</sup>

The Commission considers a 12-month implementation time frame is appropriate.

<sup>121</sup> Draft rule, inserting rule 7 into Part 20 of NERR schedule 3.

<sup>122</sup> SACOSS, submission to the consultation paper, p. 10.

<sup>123</sup> Draft rule, inserting rule 7 into Part 20 of NERR schedule 3. Relevant provisions in the AER's guidelines include providing information to the customer on using Energy Made Easy to look for new contracts, noting the AER's Benefit Change Notice Guidelines would not yet have been amended by the AER before the draft rule would come into effect.

<sup>124</sup> Submissions to the consultation paper: Alinta, p. 4; AEC, p. 2

<sup>125</sup> Energy Locals, submissions to the consultation paper, p. 5.

## 5 Restricting price increases under market retail contracts

The Commission has made a draft rule that seeks to provide more certainty to customers around when their electricity and gas prices may increase. It also reduces the number of price increases that customers would face over the length of the contract.

The draft rule does this by:

- Only allowing retailers to increase prices once every 12 months for all existing and new market retail contracts.
- Requiring retailers to inform customers when prices may change under the contract prior to the customer entering a contract. For example, customers would need to be informed that prices could increase in July each year.
- Requiring retailers to provide customers 20 business days' notice before the customer's new tariffs will apply.
- Providing limited exceptions to the 12-month rule, which are:
  - a network tariff reassignment due to a change made by the customer or distributor
  - where the contract provides that a tariff or charge varies in relation to the prevailing spot price of energy.

Our draft rule would take effect for all existing and new market retail contracts from 1 July 2026.

### 5.1 Price increases would be limited to once every 12 months

#### **Box 10: Draft determination - Price increases would be limited to once every 12 months for existing and new market retail contracts**

Our draft rule would only allow retailers to increase prices in market retail contracts once every 12 months. Under the draft rule prices could only increase either:

- once within the month of July each year (this will apply to most contracts), or
- at least 12 months after a customer enters the contract and then a minimum of 12 months since the previous price increase. (This applies only if the contract specifies that prices won't increase for a certain period of time after the contract start date.)

The draft rule would apply to all market retail contracts, both those that customers are on at the time the rule commences (if made) and any new contracts from the rule commencement date. (Customers paying standard offer prices under standard retail contracts would continue to have a maximum of two price increases per year, under NERL section 23(5).)

The Commission has made a draft rule that would limit price increases to a maximum of once every 12 months for all existing and new market retail contracts.<sup>126</sup> The draft rule would prohibit retailers from increasing prices except once a year. For most contracts, the increase (if any) must be in July each year. Some contracts specify that prices are fixed for a number of months starting on the contract start date. This type of contract is allowed under the draft rule, however for these

<sup>126</sup> See rule 46AA in the draft rule. Price increases refer to increases in the underlying energy rate of a retail offer, rather than a tariff reassignment. See section 4.3 for further details on network tariff reassignments.



contracts prices could only increase at least 12 months after the the contract start date, and then at least 12 months after the previous price rise.<sup>127</sup> This would provide consumers on market retail contracts with greater certainty about the prices they pay, reduce incidents of bill shock and increase consumer trust in the energy market.

The draft rule addresses the issue outlined in the rule change request 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.<sup>128</sup>

The ACCC has found that when consumers sign up for a new energy plan, it is not uncommon for their prices to increase soon after.<sup>129</sup>

Some retailers do not consider this to be an issue that should be addressed.<sup>130</sup> However, consumer groups and energy ombudsmen agreed that consumers outside of Victoria have very little certainty about the price they will pay.<sup>131</sup> They stated that consumers have no way of knowing if the prices they choose today will be the same next month. They consider this:<sup>132</sup>

- reduces price certainty and increases likelihood of bill shock,
- increases the burden on consumers to switch more frequently, and
- reduces consumer confidence and trust in the energy market.

The proponent identified three potential options to address this problem, which centred around preventing any increase to tariffs or charges payable by the customer under a market retail contract for a specified fixed period:<sup>133</sup>

1. 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).<sup>134</sup>
2. Allow price increases only once a year, similar to arrangements in Victoria (see Box 11).
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.<sup>135</sup>

#### **Box 11: Current arrangements in Victoria for contracts with and without fixed price 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:

- contracts with a fixed price period, at least 12 months after signing up to the contract

127 AEMC analysis of available electricity and gas offers on Energy Made Easy (in January 2025) indicates that currently, approximately 2% of contracts being offered are contracts where a price is fixed for a period of time from the contract start date. While these fixed price periods may currently be less than 12 months, the effect of the draft rule would be to make all fixed price periods a minimum of 12 months - see draft rule 46AA(2).

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

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

130 Submissions to the consultation paper: AEC, p. 2; AGL, p. 7; EnergyAustralia, p. 10.

131 Submissions to the consultation paper: Consumer groups, p. 3; ECA, pp. 10-11; EWON, EWOQ, EWOSA, p. 3; JEC, p. 12; SACOSS, p. 9.

132 Submissions to the consultation paper: Consumer groups, p. 3; ECA, pp. 10-11; EWON, EWOQ, EWOSA, p. 3; JEC p. 12; SACOSS, p. 9.

133 ECMC, *Preventing price increases for a fixed period under market retail contracts*, rule change request, pp. 3-4.

134 See rule 24 of the NERR.

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



- all other contracts, on the day that is one month after network tariff 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.

The Commission considers restricting price increases to July, should retailers choose to increase prices, provides consumers certainty and aligns with key cost changes faced by retailers, incentivising retailers to manage these costs for their customers. Our draft rule enables customers to compare offers from retailers with confidence, as all retailers would only be able to increase their prices in July (unless the customer signs up for a contract under which the prices are fixed for 12 months or more from the contract commencement date)..

The draft rule would go some way to reduce the information asymmetry between retailers and consumers. It would improve transparency around price increases, which improves the balance of risks between retailers and consumers. The draft rule would also reduce switching costs for consumers by providing certainty of prices and may improve consumer confidence in the market.

The Commission notes that an additional benefit of the approach in the draft rule is that it would be relatively simple to check compliance. Requiring retailers to disclose to customers that their prices will change in July, and standardising price increases to July (excluding fixed price period contracts)<sup>136</sup> increases transparency and certainty and makes it relatively easy for the AER and energy ombudsmen to confirm if retailers are complying with the rules. Price changes that occur outside of July would be easily captured by energy ombudsmen through complaints and by the AER.

The Commission proposes to recommend that the requirement to limit price increases to July or to the anniversary of the fixed price period contract should be a tier 2 civil penalty provision. See appendix B.4 for further details on the proposed civil penalty provisions.

### 5.1.1 The draft rule would restrict any price increases to once in July for most contracts

#### Consumers would have confidence that their prices would last a meaningful length of time

The draft rule would not allow retailers to increase prices for customers on market retail contracts, except once in the month of July. We consider that restricting price increases to once in the month of July would improve outcomes for consumers by:

- creating a regular touch-point for price changes that consumers understand, similar to other changes in the economy
- giving consumers confidence about how long their prices will be guaranteed for
- increasing transparency and comparability of offers if the majority of price increases are at the same time
- reducing the cognitive burden associated with switching
- encouraging switching behaviour if given a sufficient signal.

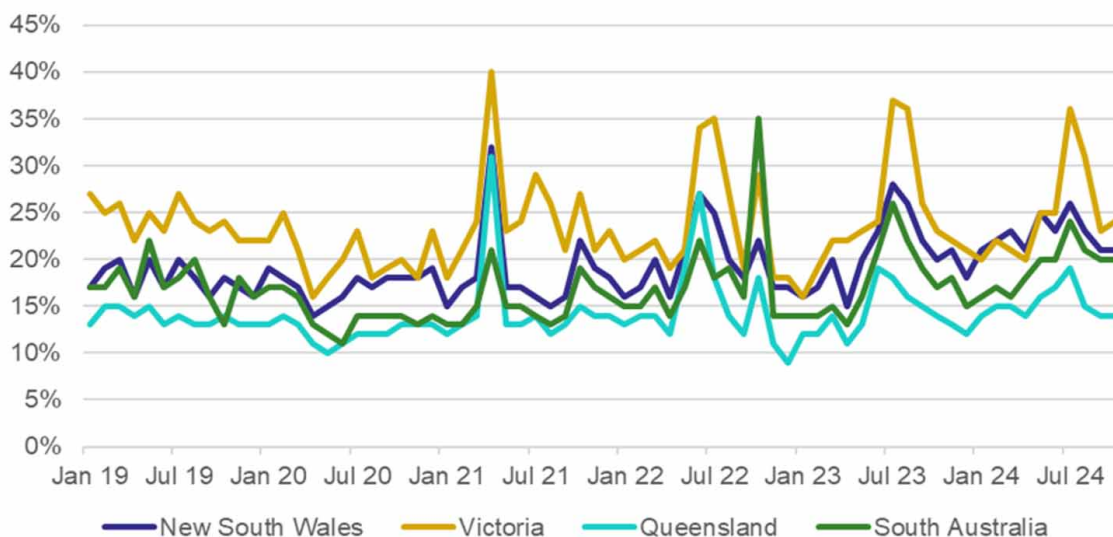
We consider that in practice, most market retail contracts would have price increases, if required, in July.

The ACCC's December 2024 *Inquiry into the NEM* report shows that following the Essential Services Commission's Victoria (ESC) 'Ensuring energy contracts are clear and fair' final decision,

<sup>136</sup> See draft rule, definition of "fixed price period contract" in rule 45A.

more Victorian customers are switching in the months of July and August (see Figure 5.1). This suggests that the switching signal was improved at these times.

**Figure 5.1: Annualised switching rate, residential and small business customers combined**



Source: ACCC, *Inquiry into the NEM* report, December 2024.

Note: The 1-month annualised transfer rates in the above figure are calculated by projecting the previous months transfer volumes over the full year, and calculating the percentage churn that would occur if the transfer rate was maintained over the year, rounded to the nearest percentage

Consumer groups and Origin support limiting price increases to once every 12 months. This is because it improves simplicity and clarity for consumers that the terms they agree to will be delivered for a reasonable period.<sup>137</sup> These stakeholders also suggested that aligning with the Victorian rule (as the draft rule largely does) would be the simplest option that meets the needs of both consumers and retailers.<sup>138</sup>

Most retailers did not support limiting price increases to once every 12 months.<sup>139</sup> Some proposed limiting price increases to once every 60 days as an alternative.<sup>140</sup> See section 5.1.4 for further discussion of this option.

**Box 12: Customer scenario outlining how the draft rule limiting price increases to July would work**

Sofia joins retailer X in March, and is notified prior to joining that the retailer’s prices can increase in July. Retailer X decides to increase its prices on 10 July and in June provides Sofia 20 business days notice about the magnitude of those changes including details of the rates she will pay from 10 July.

Sofia does not like the new prices and decides to compare offers. She decides to switch to retailer Y in September. Retailer Y informs her that it can increase prices in July next year, prior to her

137 Submissions to the consultation paper: Consumer groups, p. 4; ECA, p. 10; JEC, p. 12; Origin, p. 12; SACOSS, p. 9.

138 Submissions to the consultation paper: Consumer groups, p. 3; ECA, p. 12; Origin, p. 3.

139 Submissions to the consultation paper: AEC, p. 2; AGL, p. 1; Alinta Energy, p. 4; Compliance Quarter, p. 3; EnergyAustralia, p. 2; Red & Lumo Energy, p. 4; Powershop, p. 2.

140 Submissions to the consultation paper: AEC, p. 2; AGL, p. 7, Powershop, p. 2.

joining. Sofia has confidence that the new prices she has signed up to will last until the following July.

### The draft rule balances risks between retailers and consumers

The Commission considers the draft rule appropriately balances risks between retailers and consumers, and that aligning any price increases with increases to network tariffs and changes to the DMO improves the ability of retailers to manage key risks.

Retailers largely did not support any of the proposals limiting price increases because they considered that:

- limiting price increases is not proportionate as the rule change request is solving for problematic outlier behaviour<sup>141</sup>
- a fixed period of no price increases will limit retailers' ability to manage risk in a high risk environment.<sup>142</sup>

Retailers suggest without flexibility to manage market volatility there may be a risk premium included in customers' plans and reduced market competitiveness. It was also suggested that this may disproportionately affect smaller retailers.<sup>143</sup>

AGL and EnergyAustralia noted that replicating the Victorian approach (which the draft rule largely aligns with) would force retailers to absorb more of the financial impact of market volatility and regulatory changes, which may lead to less competitive acquisition offers.<sup>144</sup> EnergyAustralia stated "the cascading Retailer of Last Resort (ROLR) events in 2022 demonstrated the consequences of insufficient flexibility in managing risks during periods of high market stress. A similar regulatory constraint, as proposed in this rule change in options a) and b), could exacerbate risks in times of volatility."<sup>145</sup>

We acknowledge that there may be a risk of price premiums being included into offers. However, analysis of price change data immediately following the ESC's decision that came into effect in July 2020 reveals that there has been little to no effect on prices in Victoria (see Figure 5.2). We consider there is no compelling evidence that restricting price increases to a maximum of once every 12 months would have an adverse impact on prices in other jurisdictions.

141 Submissions to the consultation paper: AEC, p. 2; AGL, p. 7; EnergyAustralia, p. 10.

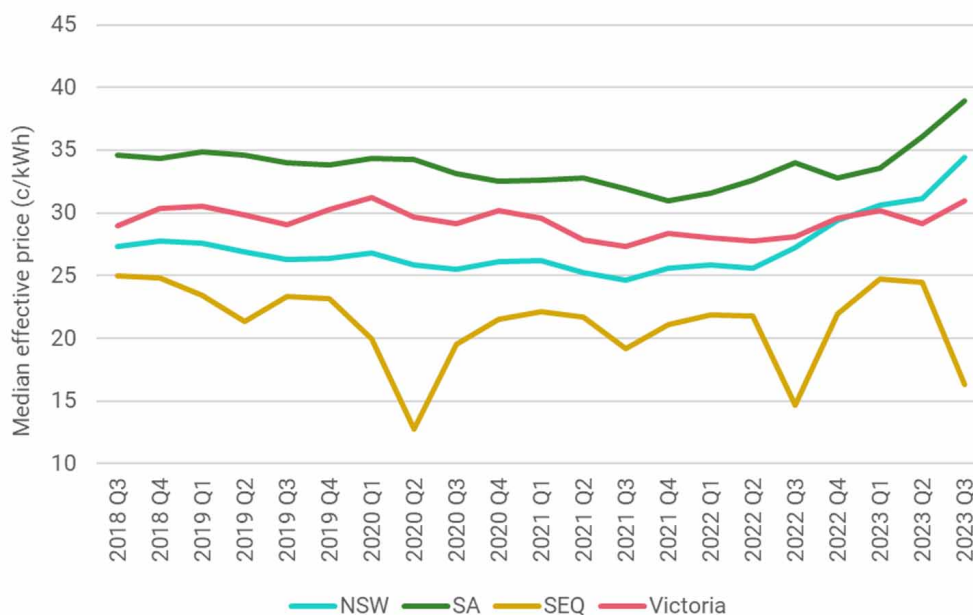
142 Submissions to the consultation paper: AEC, p. 2; AGL, p. 7; Alinta Energy, p. 4; Compliance Quarter, p. 2; EnergyAustralia, p. 2; Energy Locals, p. 6; Powershop, p. 2; Red & Lumo Energy, p. 4; Tesla, p. 2.

143 Submissions to the consultation paper: AEC, p. 2; Compliance Quarter, p. 3; EnergyAustralia, p. 10; Engie, p. 5; Red & Lumo Energy, p. 4; Tesla, p. 2.

144 Submissions to the consultation paper: AGL, p. 8; EnergyAustralia, pp. 10-11.

145 EnergyAustralia, submission to the consultation paper, p. 10.

**Figure 5.2: Median effective prices paid by residential customers by region**



Source: ACCC, *Inquiry into the NEM* report, June 2024.

Note: ACCC analysis of retailer billing data. Nominal dollars, excluding GST.

**Managing risk is a key retailer role and they are better placed to manage risk than customers**

The Commission agrees with JEC’s submission that the key responsibility of the retailer is to appropriately manage wholesale price volatility,<sup>146</sup> the cost of providing electricity through the distribution network and the costs of doing business into a long-term, predictable financial product that meets consumer expectations.<sup>147</sup> Allowing retailers to increase prices throughout the year in response to changes in the wholesale market pushes the responsibility of managing that risk onto consumers, who may be less able to bear that cost.

To manage their financial risks and have more certainty over wholesale energy costs, retailers generally enter into various wholesale hedging contracts. These contracts fix the wholesale price retailers pay for electricity over the course of a year, or several years. It allows retailers to offer their customers stable retail prices, which typically change only once a year.<sup>148</sup>

Allowing retailers to update their prices, if necessary, within the month of July will provide retailers flexibility to update their prices in response to network and regulatory changes, while providing certainty for consumers. This approach would incentivise retailers to better manage their key cost inputs for the year.<sup>149</sup> This may increase competitiveness of offers if customers are better incentivised to switch, as appears to be happening in Victoria in July and August (see Figure 5.15 Figure 5.1 above).

146 Including for major market events.

147 JEC, submission to the consultation paper, p. 12.

148 ACCC, *Inquiry into the NEM*, December 2023, p. 78; AEMC, Retail Energy Competition Review, July 2017, pp. 19-20.

149 Network prices and changes to the DMO typically occur in late May and take effect on 1 July. We understand that wholesale hedging contracts usually cover retailers year to year or for multiple years.

We are interested in stakeholder feedback on whether there are any additional costs and benefits of the draft rule, or other possible approaches that should be considered.

### 5.1.2 Providing retailers a month to increase prices balances timing and implementation costs

The draft rule seeks to reduce implementation costs for retailers by enabling retailers to access efficiencies of scale, without requiring a price rise for all consumers on the same day. This aims to balance stakeholder feedback that only allowing price increases on a single day could be costly to retailers.

Some retailers noted that if a fixed period was introduced it should align with network tariff increases and changes to the DMO to reduce retailers' administrative burden of managing multiple contracts exposed to varying costs.<sup>150</sup> Engie and Energy Locals expressed that they already limit price increases to once per year to align with regulatory changes in July and to reduce the administrative burden of implementing various price increases.<sup>151</sup> Information about network price changes and changes to the DMO are typically made available to retailers in mid to late May, which then must take effect on 1 July.<sup>152</sup>

The ECA and Origin note that limiting price increases to July minimises implementation costs for most retailers, including their marketing and communication costs.<sup>153</sup> Retailers noted that repricing events are a large task that strains resources, particularly if set to a specific day.<sup>154</sup>

The Commission acknowledges the challenges retailers would face by restricting price increases to a single day. Allowing retailers to increase their prices (if increases are necessary) at any point in the month of July provides retailers sufficient flexibility to incorporate changes in network prices and DMO changes and potentially stagger price changes across the month.

### 5.1.3 Price increases for fixed price period contracts would also be limited to once per year

The draft rule would also allow retailers to offer contracts which provide that price increases occur outside July, but would require the prices to be fixed for at least 12 months after the contract commencement date. Prices may be increased no sooner than the anniversary of when a customer commenced that contract, and then no more frequently than every 12 months.<sup>155</sup> While these contracts are currently not common, this approach would retain the flexibility for retailers to offer these types of contracts while still aligning with the intent of the draft rule.

Our draft rule provides retailers the flexibility to offer contracts with prices fixed for more than 12 months.

#### Box 13: Customer scenario indicating how the rule relating to fixed price period contracts would operate

Jing joins retailer A's fixed price plan in March 2027. The earliest that prices can increase is the 12-month anniversary, ie, in March 2028. Retailer A decides not to increase prices in March 2028 and instead decides to increase prices in May 2028. Jing's prices are then fixed until May 2029.

150 Submissions to the consultation paper: AGL, p. 8; Aurora Energy, p. 1; Engie, p. 5; Origin, pp. 1-2.

151 Submissions to the consultation paper: Energy Locals, p. 5; Engie, p. 5.

152 AGL, submission to the consultation paper, p. 7; *Competition and Consumer (Industry Code—Electricity Retail) Regulations 2019*, s 17.

153 Submissions to the consultation paper: ECA, p. 11; Origin, p. 3.

154 Submissions to the consultation paper: AGL, p. 7; Energy Locals, p. 5; EnergyAustralia, p. 11; Engie, p. 5.

155 Draft rule 46AA(2).

#### 5.1.4 We considered other options to prevent price increases

##### **Option 1: A 100-day fixed price period would not provide customers certainty about when prices will change after signing a new plan**

The Commission considers that option one in the rule change request - that price increases be prohibited for 100 days from when the customer's contract commences - does not provide consumers sufficient certainty about how long their prices will last. For example, if a customer signs up in January, their prices could change in mid-April, following the first energy bill. The price could then increase again in August. We agree with stakeholder feedback that this approach:

- is confusing for customers<sup>156</sup>
- would reduce consumer confidence and increase switching costs, and<sup>157</sup>
- would be administratively burdensome and costly for retailers.<sup>158</sup>

Some retailers preferred this approach rather than a 12-month period, but went further to propose a 60-day fixed period to provide retailers further flexibility.<sup>159</sup> The Commission concludes that similar issues will occur for both retailers and customers and a 60 day period provides even less certainty for consumers.

##### **Option 2: Limiting price increases to the anniversary of signing a contract provides the highest level of certainty to consumers but may be administratively burdensome**

The Commission considered whether price increases should be limited to no sooner than 12 months after the contract commences for all contracts. For example, if a customer signs-up to a plan in April, the earliest prices may change for that plan is the following April.

JEC recommended the Commission consider this as an option for all contracts as it would provide consumers with certainty and allow retailers to offer longer-term contracts which may utilise contract length to manage risk.<sup>160</sup>

The Commission notes that this approach would be simple from the customer's perspective because in practice prices may increase at the earliest on the anniversary of joining the contract. However, the Commission considers that applying this approach to all contracts may incentivise retailers to provide more competitive offers in July-August when network prices increase. For all other customer cohorts who join outside that period, it may leave the retailer more exposed to different network prices. This may cause retailers to price those customer cohorts higher, which may be an unfair outcome.

This would also introduce a greater administrative burden on retailers compared to the draft rule as retailers would be required to track and undertake price rise activities across the year for all contracts. We understand this is a large undertaking for retailers and grouping price rises for most contracts would allow for scales of efficiency which may reduce costs, which would ultimately be borne by consumers.

While it may be simple for energy ombudsmen to check compliance following a complaint, it would be more difficult for the AER to check compliance and identify if there is a systemic issue as the AER would need individual offer details.

The draft rule does allow retailers to still offer these types of contracts.

<sup>156</sup> Origin, submission to the consultation paper, p. 3.

<sup>157</sup> Submissions to the consultation paper: Consumer groups, p. 3; ECA, p. 11; Origin, pp. 1-2; SACOSS, p. 9.

<sup>158</sup> Submissions to the consultation paper: AEC, p. 2; AGL, p. 7; Compliance Quarter, p. 3; EnergyAustralia, pp. 11-12; Engie, p. 5; Origin, p. 3.

<sup>159</sup> Submissions to the consultation paper; AEC, p. 2; AGL, p. 7; Powershop, p. 2.

<sup>160</sup> JEC, submission to the consultation paper, p. 12.

### Collection of billing data should be explored in the Billing Data Transparency review

The proponent recommended the Commission explore empowering 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. There was broad stakeholder support for this as an option.<sup>161</sup> Some stakeholders did not support this or noted the additional costs to retailers to provide this data.<sup>162</sup> The Commission is examining the broader data collection arrangements in the [Billing Data Transparency](#) review.<sup>163</sup> The Commission proposes to explore this issue holistically as part of that review.

## 5.2 Stronger notice requirements around price increases would provide greater transparency

### Box 14: Draft determination - Retailers would be required to provide customers further notice of potential price changes

The draft rule requires retailers to inform customers prior to entering a contract when prices may change under the contract. For example, the retailer must tell the customer that prices may increase in July each year.

Our draft rule would also require retailers to provide customers 20 business days' notice prior to price increases, including details of the customer's new prices and when the customer's new prices will apply.

We note that consumers who sign up for a contract in the months before July may experience a frustrating outcome by having their prices increase shortly after the start of the contract. To mitigate this issue, the draft rule improves notice requirements. This improves transparency and certainty for consumers, so they will not be surprised by price increases.

### 5.2.1 Retailers would be required to inform customers when prices may increase before entering a contract

Before a customer signs up for an offer, retailers would be required to notify the customer when prices may change.<sup>164</sup> If the extent of the price change is known at the time (eg, because the customer signs up shortly before July) then the retailer should also disclose this to help the customer make an informed choice.

This means the retailer would be required to inform the customer, when the customer is considering the contract, that prices may increase in July of each year, or on the one-year anniversary of the contract commencing (depending on what type of contract the customer is considering). Providing consumers clarity about when prices may be updated before a customer enters into an agreement will mitigate the risk of shock to consumers who join a retailer before July, and also helps customers compare offers.

<sup>161</sup> Submissions to the consultation paper: Consumer groups, p. 3; Energy Locals, p. 5; EnergyAustralia, p. 2; EWON, EWOQ, EWOSA, p. 4; SACOSS, p. 4.

<sup>162</sup> Submissions to the consultation paper: AEC, p. 2; Powershop, p. 2.

<sup>163</sup> The former Energy Security Board (ESB) (now Energy Advisory Panel) has considered and consulted on the current approach to collection and use of billing data, as well as potential alternative approaches that could improve transparency of electricity billing data. This project forms part of the broader ESB Data Strategy. The strategy identified that it is increasingly important to understand what drives consumer behaviour, what consumers pay for electricity, and how different services impact bills and choices. This work will now be taken forward by the AEMC.

<sup>164</sup> Draft rule, amendments to rule 64(1)(a).



### 5.2.2 The notice requirements for price increases would be increased to 20 business days in advance

Under the draft rule retailers would be required to provide notice of any price changes to their customers at least 20 business days before the change takes effect.<sup>165</sup> This notice would include specific details of the extent of the price change.

Currently under the NERR, retailers are able to increase prices at any time with at least five business days' notice.<sup>166</sup> Queensland customers must receive 10 business days' notice.<sup>167</sup>

The Commission considers that increasing the notice requirement would provide further clarity for consumers and reduce bill shock. We note that the draft notice requirement aligns with the notice requirements for the end of fixed-term contracts and the end of a benefit period.<sup>168</sup>

The Commission considers that 20 business days' notice is sufficient time for retailers to update their prices, if necessary, following network tariff and DMO updates, particularly if they are not limited to 1 July for price increases.

## 5.3 The draft rule has two exceptions where other price increases are allowed

### Box 15: Draft determination - the 12-month limitation would not apply to network tariff reassignments and rates that vary in relation to the spot price

The draft rule would allow retailers to increase prices outside of the 12-month restrictions under the following circumstances:

- in the event of a network tariff reassignment
- where the contract provides that a tariff or charge varies in relation to the prevailing spot price of energy.

The draft rule includes the following carve-outs to the rule, where retailers would be allowed to increase prices outside the once every 12-month requirements. The two exceptions are as follows:

1. if there is a network tariff reassignment<sup>169</sup>
2. where the contract provides that a tariff or charge varies in relation to the prevailing spot price of energy.<sup>170</sup>

### 5.3.1 Network tariff reassignments are different to price increases

We consider that network tariff reassignments are different from retailer-led price increases. Network tariff reassignments result from a distributor making a decision based on an individual customer's circumstances changing or from a customer's choice. For example, premises may change from business use to residential use or the customer installs solar and takes up a solar export tariff. Retailers are often unaware ahead of time when a reassignment occurs. These are not price increases of the kind captured by the draft rule.<sup>171</sup>

165 Draft rule, amendment to rule 46(4)(a).

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

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

168 See NERR rules 48(3) and 48A(2)(b).

169 See draft rule 46AA(3)(a). Note that the *Accelerating smart meter deployment* rule change transitional protections would still apply, and would not be affected by our draft rule.

170 See draft rule 46AA(3)(b).

171 See draft rule 46AA(3)(a). Note that specific notice provisions apply in this case - see NERR rule 46(4C).

We note that restrictions on price increases relating to network tariff reassignment due to a change in metering were introduced for a period of time under the AEMC's *Accelerating smart meter deployment rule 2024* transitional protections.<sup>172</sup> This will not be affected by our draft rule.

### 5.3.2 Prices that vary with the wholesale spot price would be allowed

The Commission considers that ensuring engaged consumers can still benefit from entering contracts with innovative pricing structures is important. In particular, the Commission considers it appropriate to allow exemptions from the 12-month restriction for rates that vary in relation to the spot price.

The draft rule would allow consumers to access innovative offers, such offers that provide access to the real-time changing wholesale price of energy. Engie noted that innovative offerings such as Virtual Power Plant (VPP) products and solar curtailment solutions often rely on market price signals or distribution network controls that may vary frequently.<sup>173</sup> The draft rule does not exempt price changes that arise from distribution network controls. This is something the Commission will examine under item M.3 of the Commonwealth's CER roadmap.<sup>174</sup>

We note that other non-variable parts of the offer, eg. flat monthly payments, would remain subject to the draft 12-month rule on price changes.

### 5.3.3 We considered but did not adopt a number of other exemptions

Retailers supported a number of additional carve-outs to this rule, specifically for:<sup>175</sup>

- ancillary fees
- price decreases
- multi-site agreements
- network tariff reassignments
- misquotes<sup>176</sup>
- greenpower
- changes to solar feed-in tariffs
- changes to government concessions.

The Commission notes that nothing in the draft rules prevents retailers from lowering their prices at any time. On the remaining exemptions proposed by retailers we note changes to government concessions are not price rises. Any changes to concessions would apply in accordance with that state's or territory's scheme requirements and would not be impacted by the draft rule.

The Commission considers that ancillary fees, greenpower offers, and solar feed-in tariffs are integral parts of the contract that retailers should guarantee for their customers. Misquotes are circumstances that retailers should manage within their offers or by reaching out to their customers in accordance with the terms and conditions of the customer's contract and with the NERL and NERR.

172 Retailers must still comply with the two-year explicit informed consent period for any retail tariff structure variations following a smart meter upgrade and must provide at least 30 business days' notice when transitioning customers to a different pricing structure during the Legacy Meter Replacement Period as a result of a smart meter upgrade. For further details see section 3.3 of the *Accelerating smart meter deployment* final determination.

173 Engie, submission to the consultation paper, p. 6.

174 Item M.3 will examine the roles and responsibilities of distribution level market operations to better integrate CER, including Distribution System Operators (DSO). See more [here](#).

175 Submissions to the consultation paper: AGL, pp. 8-9; Engie, p. 6; Tesla, p. 2.

176 Refers to a situation where the retailer needs to correct the original offer made to the customer following receipt of updated or revised market information (eg. residential vs. business, meter type, solar, etc.) which is different from original quote assumptions

Multi-site agreements are typically bespoke arrangements negotiated between the retailer and a business. These arrangements are typically contracted with large customers and are not intended to be captured under this draft rule.<sup>177</sup> We also note that many of these arrangements are fixed-price arrangements which would be allowed under the rules.

We considered a prescriptive exemptions framework, similar to the arrangements in Victoria. However, we concluded these may be administratively burdensome for retailers and the AER and could add to complexity for consumers.<sup>178</sup> We have not included any additional exemptions or carve out in the draft rules.

## 5.4 Retailers would have 12 months to implement the rule change

### **Box 16: Draft determination - retailers would have 12 months to implement the rule changes**

The draft rule provides retailers with 12 months to implement the final rule (if made). Retailers would be required to comply with the rules by 1 July 2026.

The draft rule would take effect on 1 July 2026. This applies across all components of the draft rule which encompasses all four consolidated rule change requests. AGL noted that if the Commission were to implement a rule, that it should occur after July 2025 to provide retailers time to adjust prices in response to network and DMO changes.<sup>179</sup> Having the rule apply from 1 July 2026 is appropriate because:

- it aligns with the key period where prices can change
- retailers will have sufficient time to adjust their customer and hedging contracts, if necessary
- it will allow the AER and retailers time to adjust retail costs for the 2026-27 DMO.

177 Draft rule 46AA applies only to market retail contracts, which are contracts with small customers under NERL section 33.

178 In its decision, ESC Victoria 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 an ESC granted exemption where retailers apply to have their product exempted. For details see page 43 of the 2020 ESC Victoria decision [here](#).

179 AGL, p. 8, submission to the consultation paper.

## 6 Restricting fees and charges

The Commission has made a draft rule that would provide consumers experiencing vulnerability more certainty about their bills and increase transparency of fees and charges for all consumers.

The draft rule does this by:

- prohibiting retailers charging any ancillary fees and charges to:
  - hardship customers
  - customers on payment plans
  - customers experiencing family violence
  - customers receiving a concession
- restricting all ancillary fees and charges to reflect the reasonable costs incurred by the retailer, for all customers
- prohibiting account establishment fees and special meter read fees for move-in/out, for all customers
- requiring retailers to provide at least one free payment method that is commonly used and easily accessible for their customers.

Our draft rule would take effect for all existing and new market and standard retail contracts from 1 July 2026.

### 6.1 All ancillary fees and charges would be prohibited for consumers experiencing vulnerability

**Box 17: Draft determination - All ancillary fees and charges would be prohibited for vulnerable consumers**

The draft rule would prohibit retailers from charging any ancillary fees and charges to hardship customers, customers on a payment plan, customers receiving a concession and customers affected by family violence.

The Commission has made a draft rule to protect consumers experiencing vulnerability from unexpected costs by prohibiting all ancillary fees and charges for customers of these kinds:<sup>180</sup>

- hardship customers and other residential customers experiencing payment difficulties
- customers on payment plans
- customers who may be affected by family violence, and
- customers receiving a concession.

The draft rule would ensure that the costs these consumers would face are limited to their energy rates. Therefore, vulnerable consumers would have greater certainty about their bills and incidents of bill shock associated with unexpected fees would be reduced. Prohibiting fees and charges to vulnerable consumers is the most equitable approach to addressing the issue outlined in the rule change request. It maximises the benefits to consumers who most need it, at low cost to retailers and other consumers.

<sup>180</sup> Draft rule 52A(2).

The transparency of fees and charges when entering a retail energy contract was a concern raised by the proponent in the rule change request.<sup>181</sup> The proponent expressed concern that consumers are unlikely to add up all potential fees and charges, and the likelihood of incurring them, when considering and comparing contract costs.<sup>182</sup> The proponent questioned the validity of some fees and charges that typically represent costs incurred by consumers in the usual business of entering into and maintaining a retail energy contract.<sup>183</sup>

The proponent proposed amending the NERR to prevent retailers charging the following fees, unless State or Territory legislation authorises them being charged:<sup>184</sup>

- account establishment fees
- special meter read fees (move-in and move-out reads)
- credit card payment fees<sup>185</sup>
- late payment fees<sup>186</sup>
- early termination fees
- over the counter fees at Australia Post
- paper bill fees.

The proponent outlined that the Commission should consider:

- the circumstances that apply to specific fees and charges
- the case for prohibiting them
- if it is appropriate for the costs to be spread across a retailer's customer base.<sup>187</sup>

Similarly, whether the proposed solution should apply to all or a select group of consumers.<sup>188</sup>

Many stakeholders supported a more targeted approach to vulnerable consumers, rather than prohibiting fees and charges to all consumers.<sup>189</sup> Stakeholders agreed that fees and charges can add to bill complexity for consumers experiencing vulnerability as they may have difficulty engaging.<sup>190</sup> Some stakeholders also noted that retailers typically do not charge certain fees and charges for vulnerable consumers, either due to business practice or existing jurisdictional derogations.<sup>191</sup>

Some retailers did not consider fees and charges to be a material concern for all consumers.<sup>192</sup> Retailers expressed that prohibiting fees and charges for all consumers risks reducing transparency as retailers may be forced to embed costs in overall bills, distorting price signals and creating cross-subsidisation, which may harm consumers.<sup>193</sup>

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

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

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

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

185 Except if they reflect reasonable costs.

186 Except if they reflect reasonable costs.

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

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

189 Submissions to the draft determination: AEC, p. 3; ECA, p. 14; Engie, p. 7; JEC, pp. 15-16.

190 Submissions to the consultation paper: AEC, p. 3; Council on the Ageing, p. 4; ECA, pp. 11-14; Engie, p. 7; EWON, EWOQ, EWOSA, pp. 4-5; JEC, pp. 14-15.

191 Submissions to the consultation paper: AGL, p. 6; Council on the Ageing, p. 4.

192 Submissions to the consultation paper: Alinta Energy, p. 5; Energy Locals, p. 7; Engie p. 7; EnergyAustralia, p. 13; Powershop, p. 3.

193 Submissions to the consultation paper: AEC, p. 3; AGL, p. 5; Alinta Energy, p. 5; Aurora Energy, p. 2; Compliance Quarter, p. 3; Energy Locals, p. 7; EnergyAustralia, pp. 13-14; Powershop, p. 3; Red & Lumo Energy, pp. 4-5.

The Commission agrees with stakeholder feedback that vulnerable consumers are most impacted by fees and charges.<sup>194</sup> The Commission considers that prohibiting all ancillary fees and charges for vulnerable consumers provides certainty over their bills and mitigates against the risk of new fees and charges being developed in the future. Our draft rule improves the ability to compare offers and budget for bills.

The Commission considers it would be relatively simple to check compliance with the draft rule because the obligations on retailers are clear. Requiring retailers to not charge any vulnerable consumer any ancillary fee would make it relatively easy for the AER and ombudsmen to confirm compliance through complaints.

The Commission proposes to recommend that the requirement not to charge vulnerable consumers ancillary fees and charges should be a tier 2 civil penalty provision. See appendix B.4 for further details on the proposed civil penalty provisions.

### 6.1.1 The draft rule would provide vulnerable consumers greater predictability over bills

#### Vulnerable consumers would have greater certainty about their bills

The draft rule would not allow retailers to charge any ancillary fees and charges to vulnerable consumers on existing and new retail energy contracts. In effect, these consumers would only pay the underlying energy rates of their retail plan. We consider the draft rule would improve outcomes for vulnerable consumers by:

- removing barriers to engaging with the market
- providing greater predictability over bills
- reducing incidents of bill shock due to unexpected fees.

This aligns with feedback from stakeholders that vulnerable consumers are impacted more by fees and charges because they have difficulties engaging with the market.<sup>195</sup>

Energy ombudsmen highlighted that complaints about fees and charges indicate that consumers at risk or experiencing vulnerability are particularly impacted by fees and charges. This may be due to their:<sup>196</sup>

- limited capacity to deal with unexpected additional costs
- limited capacity to engage and are therefore at greater risk of incurring additional fees and charges, such as late payment fees
- individual circumstances not being taken into account.

#### The draft rule is an equitable approach

The draft rule provides a more equitable solution to the issue the proponent raised by targeting the solution to consumers who are most affected by fees and charges. Vulnerable consumers are less able to understand and respond to the signals that fees and charges are designed to send, therefore they are often at greater risk of incurring these fees, while also having less adaptive capacity to pay them.

Stakeholders noted the complexity that a potential 'black-listing' or 'white-listing' approach for certain fees and charges would create because:

194 Submissions to the consultation paper: AEC, p. 3; Council on the Ageing, p. 4; ECA, pp. 11-14; Engie, p. 7; EWON, EWOQ, EWOSA, pp. 4-5; JEC, pp. 14-15.

195 Submissions to the consultation paper: AEC, p. 3; Council on the Ageing, p. 4; ECA, pp. 11-14; Engie, p. 7; EWON, EWOQ, EWOSA, pp. 4-5; JEC, pp. 14-15.

196 EWON, EWOQ, EWOSA, submission to the consultation paper, p. 4.

- a black-listing approach where a list of prohibited fees and charges can not be levied on consumers may result in equivalent charging structures being imposed on consumers later.<sup>197</sup>
- a white-listing approach where only prescribed fees and charges can be imposed on consumers could be complex given some jurisdictions take a 'black-listing' approach to fees and charges.<sup>198</sup>

Prohibiting fees and charges for all consumers in either approach may create unintended consequences such as reducing the fairness and transparency of prices if costs specific to actions of individual consumers are spread across all consumers.<sup>199</sup>

Vulnerable consumers are less able to respond to the signals fees and charges are designed to send, therefore they are often at greater risk of incurring these fees.<sup>200</sup> The draft rule provides vulnerable consumers greater predictability about their bills, at a lower cost to retailers and other consumers than prohibiting fees and charges to all consumers. The draft rule provides a simple approach for retailers by avoiding any categorisation of fees and charges.

### 6.1.2 The Commission considers the costs to retailers and consumers would be limited

#### This provision of the draft rule would only apply to a small group of consumers

The Commission considers that the draft rule prohibiting fees for vulnerable consumers would only impose minor costs on retailers and all consumers. As stakeholders and the proponent have expressed, for any fees that are prohibited retailers would recover costs by including these in the overall prices for all consumers.<sup>201</sup>

The Commission anticipates that the costs of this provision of the draft rule would be small because the amount of consumers it would affect is limited. Using the AER's latest retail performance data, around 25 per cent of consumers would potentially be covered by the draft rule (see Figure 6.1 below).<sup>202</sup> The AER's data in Figure 6.1 refers to customers entitled to a concession, however the draft rule would only apply to customers receiving a concession as the retailer does not know if a customer is eligible for a concession until the customer informs the retailer. We note the number of customers identified as customers who may be affected by family violence is not publicly reported. Based on currently available information, at most the draft rule would apply to around a quarter of consumers.

The Commission also notes that the draft rule may impose costs to retailers to update their billing systems for these consumers. We do not expect these costs to be material because some jurisdictions (see Table 6.2) and the AER's hardship guideline already restrict fees for some these consumers, therefore changes to billing systems should be manageable.<sup>203</sup>

197 ECMC, *Removing fees and charges*, rule change request, p. 1; submissions to the consultation paper: Consumer groups verbal feedback, p. 4; EnergyAustralia, pp. 13-14; JEC, p. 13.

198 Submissions to the consultation paper: EnergyAustralia, pp. 13-14; EWON, EWOQ, EWOSA, p. 5.

199 Submissions to the consultation paper: AEC, p. 3; AGL, p. 5; Alinta Energy, p. 5; Aurora Energy, p. 2; Compliance Quarter, p. 3; Energy Locals, p. 7; EnergyAustralia, pp. 13-14; Powershop, p. 3; Red & Lumo Energy, pp. 4-5.

200 Submissions to the consultation paper: EWON, EWOQ, EWOSA, p. 4; JEC, pp. 14-15.

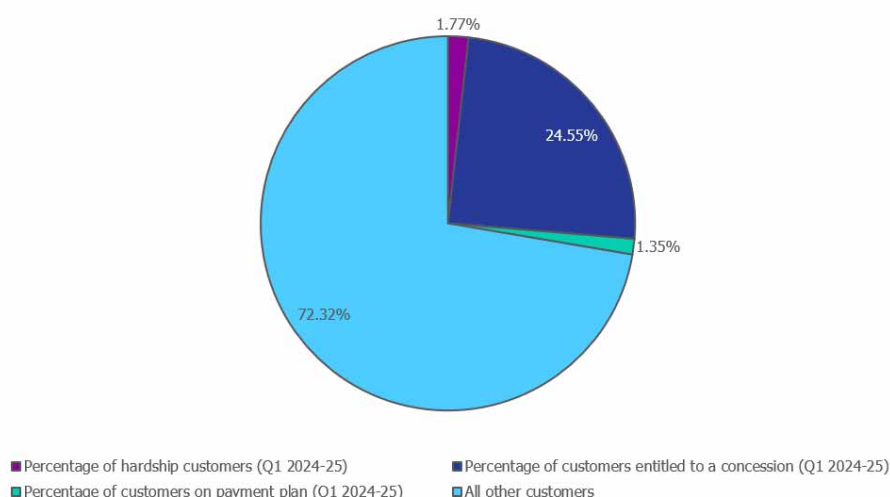
201 ECMC, *Removing fees and charges*, rule change request, p. 2; submissions to the consultation paper: AEC, p. 3; Alinta Energy, p. 5; Aurora Energy, p. 2; Compliance Quarter, p. 3; Energy Locals, p. 7; EnergyAustralia, p. 13; Powershop, p. 3; Red & Lumo Energy, p. 4.

202 We note there is overlap in these groups with some hardship and payment plan customers entitled to receive a concession and many hardship customers on payment plans.

203 Under the AER's *Customer Hardship Policy Guideline*, retailer prohibited from charging hardship customers late payment fees. See more [here](#).



**Figure 6.1: Percentage of customers on hardship programs, payment plans and entitled to a concession.**



Source: AER, *Retail energy market performance update* for Quarter 1, 2024-25, December 2024.

### The average costs of fees and charges are relatively low and tied to specific actions

The Commission also considers the costs of the draft rule would be low because fees and charges are not levied frequently and their costs are typically small. As stakeholders note, some fees and charges are used as signals to promote or discourage certain behaviours.<sup>204</sup> For example, paper bill fees are only incurred by consumers who choose to receive their bill in paper form, which would typically only occur every billing cycle and cost on average \$1.90 (see Table 6.1 below).<sup>205</sup>

Table 6.1 shows the most common fees and charges levied on residential electricity consumers. The most commonly levied fees and charges are payment processing fees, however they would only be incurred every billing cycle and represent 0.5 percent of a total payment. Other fees and charges are more specific to customer actions.

The Commission notes that spreading these to all consumers would impact all consumers' overall prices, however the total cost across all consumers under the draft rule would be small given the costs are:

- drawn from a small consumer cohort
- reflect specific fees that are not incurred very often
- rolled into prices which face competitive pressure.

204 Submissions to the consultation paper: AEC, p. 3; AGL, p. 5; Alinta Energy, p. 5; Aurora Energy, p. 2; Compliance Quarter, p. 3; Energy Locals, p. 7; EnergyAustralia, pp. 13-14; Powershop, p. 3; Red & Lumo Energy, pp. 4-5.

205 AGL, submission to the consultation paper, p.5.

**Table 6.1: Fees and charges typically levied on residential electricity consumers**

Fee	Description	Percentage of contracts with given fee	Average price
Account establishment fee	Establishment fee payable upon transfer from one retailer to another	0.56	\$22
Credit card payment processing fee	Fee charged for payments made by a credit card	63.16	0.55% of payment
Cheque dishonour payment fee	Retailers' administration fee for a dishonoured cheque payment	2.97	\$16.01
Connection fee	Fee charged by distributor when connecting power to a property, passed through by the provider	79.27	\$54.20
Direct debit dishonour payment fee	Charge when a direct debit payment has been dishonoured or reversed	18.08	\$6.78
Disconnection fee	Charge when a property is disconnected	73.35	\$62.50
Special meter read fee (can include move in/ move out)	Charge for receiving a meter read from the Metering Coordinator (MC)	21.57	\$46.40
Disconnection fee for non-payment	Fee charged when disconnecting a meter due to non-payment	6.98	\$81.39
Late payment fee	Fee charged when full payment has not been received by the due date	55.7	\$12.78
Reconnection fee	Fee charged by distributor when reconnecting power to a property, passed through by the provider	30.62	\$73.77
Paper billing fee	Charge applied for providing paper bills	18.88	\$1.92
Payment processing fee	Charged for payments by where the provider incurs a merchant services fee	23.48	0.42% of payment
Other fees – including Aus post fees	Over the counter fees for Australia Post	25.99	\$18.70

Source: Energy Made Easy, January 2025.

### Retailers would be able to manage the change in cost-recovery

The Commission considers that retailers would be able to manage the change in cost-recovery as these fees can likely be rolled into energy rates. Some retailers highlighted that removing fees and charges would impact how costs are recovered from standard retail contract customers.<sup>206</sup> AGL highlighted that these costs should be factored into the AER's DMO calculations, otherwise retailers would not have the opportunity to recover these costs.<sup>207</sup>

Given that the draft rule would not take effect until 1 July 2026, it would provide the AER sufficient time to include these changes in the next DMO calculations, if it is determined to be necessary and appropriate.

### Fees and charges are generally prohibited for vulnerable consumers as standard practice

The Commission considers that the draft rule would reduce the burden of managing different jurisdictional arrangements. Currently, states and territories have already implemented limitations on particular fees and charges, as outlined in Table 6.2 below. These derogations typically relate to prohibiting or limiting fees and charges to vulnerable consumers. As a result retailers typically restrict certain fees and charges for vulnerable consumers already, either due to business practice or existing jurisdictional derogations.<sup>208</sup>

**Table 6.2: Jurisdictional derogations that limit fees and charges**

Jurisdiction	Legislation
NSW	<p><a href="#">National Energy Retail Law (Adoption) Act 2012</a> modifying the NERR:</p> <ul style="list-style-type: none"> <li>• Additional rule 35A: prohibits charges for paper bills or paying bills at an Australia Post outlet</li> <li>• Modification of rule 49A: prohibits early termination charges other than in prescribed circumstances</li> <li>• Modification of rule 73: requires waiving of late payment fees in certain circumstances.</li> <li>• Additional rule 73A: requires waiving of early termination charges for certain customers.</li> </ul>
QLD	<p><a href="#">National Energy Retail Law (Queensland)</a></p> <ul style="list-style-type: none"> <li>• Derogation New Section 22A – prevents new fees and charges being applied to standing offers*</li> <li>• Derogation to Rule 49A(1)(b) &amp; (2)(7) NERR – caps early termination fees to \$20</li> <li>• Derogation Rule 49B NERR – retailers to have one market retail contract that does not include an early termination charge clause.</li> </ul> <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>

206 Submissions to the consultation paper: AEC, p. 3; AGL, p. 7; Alinta Energy, p. 6; Energy Locals, p. 7; Red & Lumo Energy, pp. 4-5.

207 AGL, submission to the consultation paper, p. 7.

208 Submissions to the consultation paper: AGL, p. 6; Council on the Ageing, p. 4.

Jurisdiction	Legislation
SA	<ul style="list-style-type: none"> <li>• <a href="#">Electricity (General) Regulations 2012, regulation 44C</a> prohibits early termination fees other than in prescribed circumstances.</li> <li>• Section 24 of the <i>National Energy Retail Law (South Australia) Act 2011</i> allows for late payment fees subject to certain conditions.</li> </ul>
TAS	<ul style="list-style-type: none"> <li>• <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.</li> </ul>
VIC	<ul style="list-style-type: none"> <li>• <a href="#">Electricity Industry (Victoria) Act 2000</a> 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.</li> </ul>

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

Stakeholders also raised that existing jurisdictional derogations can be administratively burdensome for retailers to comply with and any opportunity to align derogations would be preferred.<sup>209</sup> Energy ombudsmen noted that “consistency with existing regulatory requirements will reduce confusion for customers, simplify compliance for retailers and help reduce complaints”.<sup>210</sup> The draft rule is likely to assist with this.

## 6.2 Fees and charges would be restricted to reasonable costs for all other consumers

### Box 18: Draft determination - For consumers not experiencing vulnerability, fees and charges would reflect the reasonable costs incurred by the retailer

The draft rule would require retailers to limit all fees and charges to the reasonable costs incurred by the retailer in providing their customers the relevant service for all customers other than vulnerable customers.

The draft rule would require that all fees and charges reflect the reasonable costs incurred by the retailer in providing the service to which the fee or charge relates.<sup>211</sup> This is a proportionate approach that improves the transparency of fees and charges to consumers, minimising costs to consumers and enabling important pricing signals to remain. The Commission agrees that many fees and charges represent legitimate costs that retailers incur as a result of consumers making certain choices (eg paying their bills by telephone). However, fees and charges should not include a cost mark-up and should be restricted to the reasonable costs incurred by the retailer.

Retailers noted that fees and charges serve legitimate business purposes by reflecting costs incurred by retailers by third parties or consumers, as well as sending signals to consumers to avoid costs.<sup>212</sup> Retailers did not consider that fees and charges negatively impacted all consumers and noted that blanket prohibitions may have unintended consequences.<sup>213</sup>

209 Submissions to the consultation paper: AGL, p. 5; Alinta Energy, p. 6; Compliance Quarter, p. 4; Energy Locals, p. 8; Engie, p. 6; EWON, EWOQ, EWOSA, p. 5.

210 EWON, EWOQ, EWOSA, submission to the consultation paper, p. 5.

211 Draft rule 52A(1).

212 Submissions to the consultation paper: AEC, p. 3; AGL, p. 5; Alinta Energy, p. 5; Aurora Energy, p. 2; Compliance Quarter, p. 3; Energy Locals, p. 7; EnergyAustralia, p. 13; Engie, p. 6; Origin, p. 4; Powershop, p. 3; Red & Lumo Energy p. 4.

213 Submissions to the consultation paper: Alinta Energy, p. 5; Energy Locals, p. 7; Engie p. 7; EnergyAustralia, p. 13; Powershop, p. 3.

The AEC noted that a “wholesale removal of all these fees and charges would diminish retailers’ ability to selectively manage their risk, leading to these costs being spread across their entire customer base”.<sup>214</sup> Stakeholders noted that this could disproportionately affect smaller retailers.<sup>215</sup> Stakeholders and the proponent also highlighted that prohibiting fees and charges may result in other (equivalent) charging structures being imposed.<sup>216</sup>

Many stakeholders agree that fees and charges should reflect the reasonable costs incurred by the retailer.<sup>217</sup> It was noted that some fees and charges are already required to be cost-reflective due to existing regulations, such as regulated distribution network service provider (DNSP) or MC special meter read fees.<sup>218</sup>

The draft rule would address the issue raised in the rule change request that fees and charges are often not transparent by requiring the costs of fees and charges to reflect reasonable costs.<sup>219</sup> Requiring all fees and charges to reflect reasonable costs would allow the AER to check compliance through its DMO calculations which examine the costs associated with retailers’ businesses.

The Commission proposes to recommend that the requirement to limit fees to the retailer’s reasonable costs should be a tier 2 civil penalty provision. See appendix B.4 for further details on the proposed civil penalty provisions.

### 6.2.1 The AER would need to update the *Retail Pricing Information Guidelines*

#### **Box 19: Draft determination - The AER must update the *Retail Pricing Information Guidelines* if necessary**

To further improve the transparency of fees and charges, the AER must if necessary, update the *Retail Pricing Information Guidelines* to comply with the draft rule.

We recommend that the AER update the guidelines to require retailers to include the following in energy plan documents and information on Energy Made Easy:

- a description of the key fees and charges
- the circumstances in which key fee and charges will be charged
- paper bill fees as a key charge, either within payment processing fees in section 47(i) or as a separate line item.

The draft rule also requires retail marketers to provide information on the circumstances in which prices and charges are payable, when a consumer is considering entering into a market retail contract.

The Commission considers that the transparency of fees and charges could be improved if further information is provided to consumers. Retailers are currently required to include ‘key fees’ applicable to a plan on Energy Made Easy, however no description of what the key fee is or how it may be incurred is required.

214 AEC, submission to the consultation paper, p. 3.

215 Submissions to the consultation paper: Compliance Quarter, p. 4; Engie, p. 6.

216 ECMC, *Removing fees and charges*, rule change request, p. 1; submissions to the consultation paper: Consumer groups verbal feedback; EnergyAustralia, pp. 13-14; p. 4, JEC, p. 13.

217 Submissions to the consultation paper: AGL, p. 1; EnergyAustralia, p. 14; JEC, p. 13; Origin, pp. 4-5.

218 Submissions to the consultation paper: AEC, p. 3; AGL, p. 1; Alinta Energy, p. 5; EnergyAustralia, p. 13; Engie, p. 6; Red & Lumo Energy, p. 4.

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

The ECA and Origin were supportive of increasing the transparency of key fees through mechanisms on Energy Made Easy and energy plan documents.<sup>220</sup> For example, either by:

- revising the Basic Plan Information Document template 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<sup>221</sup>
- requiring fees and charges to be presented alongside tariff information. For example, displaying these details on the summary page of the Energy Made Easy website, where estimated annual costs are shown.<sup>222</sup>

These are valid options that the AER should consider. The Commission’s recommended changes to the *Retail Pricing Information Guidelines* may address concerns from the proponent by ensuring consumers are making informed decisions when entering into a retail energy contract.<sup>223</sup>

As a further step to increase transparency of fees and charges under market retail contracts, the draft rule adds to the information retail marketers are required to provide to consumers at or before the time they enter into a market retail contract. The additional requirement is information on the circumstances in which prices and charges are payable under the contract.<sup>224</sup>

### 6.3 Account establishment fees and move-in/out fees would be prohibited for all consumers

**Box 20: Draft determination - Account establishment fees and move-in/out fees would be prohibited for all customers**

The draft rule specifically prohibits retailers from charging any customers account establishment fees or move-in/out fees.

The draft rule would prohibit retailers from charging account establishment fees and move-in/out fees for all consumers.<sup>225</sup> The Commission considers these fees as essential aspects of the retailer/customer relationship and a cost of doing business that should be included within prices. The Commission also considers that these fees may act as a barrier to switching to a new retailer and reduce the efficiency of moving-in/out of a property.

The proponent asked the Commission to consider which fees are incurred by consumers in the usual business of entering into and maintaining a retail energy contract and whether they should be prohibited in the rule change request.<sup>226</sup>

The Commission considers that account establishment fees and special meter read fees for move-in and move out are costs of doing business and should be prohibited. The Commission proposes to recommend that this prohibition would be a civil penalty provision.

Charging account establishment fees and move-in/out fees would be easily captured by ombudsmen through complaints and the AER.

220 Submissions to the consultation paper: ECA, p. 15; Origin, pp. 4-5.

221 ECA, submission to the consultation paper, p. 15.

222 Origin, submission to the consultation paper, pp. 4-5.

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

224 Draft rule, amendments to rule 64(1)(a).

225 Draft rules 52A(3) and (4).

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

### 6.3.1 Account establishment fees reflect an essential aspect of being a retailer

Prohibiting account establishment fees would remove a potential switching barrier for consumers at minimal cost to retailers and all other consumers. Account establishment fees are levied on customers upon transfer from one retailer to another. The Commission considers this to be a fundamental aspect of being a retailer and charging an additional fee to fulfil this function could act as a barrier to consumers switching. Prohibiting this fee would also aid in consumers comparing offers transparently.

Analysis of plans from Energy Made Easy shows that less than 1 per cent of residential electricity contracts have account establishment fees, with the average charge being around \$22 (see Table 6.1). AGL noted in its submission that it does not charge these fees, with other stakeholders supporting prohibiting account establishment fees.<sup>227</sup>

Prohibiting account establishment fees may reduce transparency of this cost as it would instead be recovered in energy rates. However, the Commission considers that the impact to consumers would be minimal as not many contracts charge this fee.

### 6.3.2 Prohibiting move-in/out fees would increase the efficiency of moving for customers

Prohibiting special meter read fees for move-in/out would improve outcomes for consumers by reducing the upfront cost of moving. These fees cover the cost of the MC or distributor reading an accumulation meter when moving in or out of a property to ensure billing is accurate. We consider that these are costs of doing business and fundamental to the function of the retailer over the life cycle of the contract.

Consumers should not be charged to ensure they can have accurate bills. We acknowledge that these costs are set by the distributor or MC, rather than by the retailer. They apply only to gas meters and, for electricity, accumulation meters, not to smart meters which can be read remotely. Costs for a meter read are around \$45 on average (see Table 6.1). These fees are already regulated by the AER and as the smart meter rollout will achieve universal uptake of smart meters for electricity by 2030, we consider this to be a diminishing cost for electricity customers.<sup>228</sup>

Prohibiting these fees would be a cost the retailer would have to recover through energy rates for all consumers. We note that smaller retailers may be more affected by prohibiting these fees as they may be less able to absorb these costs, however these fees would not be incurred frequently. We also note that some retailers may consider that move-out fees are not a cost of doing business as the retailer may be losing a customer if that customer switches at the same time. However, we consider that move out is part of the contract and a cost of doing business.

We note that the prohibition on meter read fees would not apply where an additional meter read is required to attend a property outside of moving in or out, for accumulation meters and gas meters.

The Commission notes that removing these fees may improve the efficiency of moving and provide fairer outcomes to consumers by reducing a cost barrier. In particular, these fees disproportionately affect renters who may move more often than other consumers.

### 6.3.3 The Commission considered other fees that could be considered the cost of doing business

The Commission considered whether other fees should be prohibited, including payment processing fees and paper bill fees, but has not included these as prohibitions in the draft rule.

<sup>227</sup> Submissions to the consultation paper: AGL, p. 5; Energy Locals, p. 7; JEC, p. 15.

<sup>228</sup> See the AEMC's final rule on *Accelerating smart meter deployment*, November 2024.



### Payment processing fees

The Commission considered that prohibiting payment processing fees for all consumers would be costly. These are fees charged for payments made by a credit card or debit card. JEC highlighted that these fees are a standard cost of doing business in any energy retail business.<sup>229</sup> The draft determination does not prohibit these fees for all customers as these fees:

- are already required to be cost-reflective<sup>230</sup>
- are subject to an external review - the AEC noted that the Reserve Bank of Australia (RBA) is currently conducting a review of card payment costs and surcharging<sup>231</sup>
- represent a small percentage of a customer's total payment, and are costs associated with the method individuals choose to pay their bills.

While we consider the costs of prohibiting these fees for vulnerable consumers to be small and do not outweigh the benefits, prohibiting these fees for all consumers would have a greater impact. However, see section 6.4 below on the draft rule requiring retailers to provide one free payment method.

### Paper bill fees

The Commission considered that prohibiting paper bill fees for all consumers would be unnecessary. These are a charge applied for providing paper bills and may be avoidable for most consumers. Prohibiting these fees would remove a price signal for consumers to opt for a cheaper and more sustainable way to receive their bill.

JEC submitted that consumers with poor or no access to the internet or digital literacy issues disproportionately pay these fees.<sup>232</sup> The Commission considers that prohibiting these fees for vulnerable consumers (see section 6.1 above) may address this issue for most of those consumers.

## 6.4 Consumers would be entitled to a free way to pay their bill

**Box 21: Draft determination - Retailers would be required to provide at least one free payment method that is commonly used and easily accessible for their customers.**

The draft rule would require retailers to offer their customers at least one free payment method that is commonly used and easily accessible - for example, this could be direct debit.<sup>233</sup> Under rule 32(1) of the NERR, retailers must accept payment for a bill by small customers on standard retail contracts in any of the following ways:

- in person
- by telephone
- by mail
- by direct debit
- by electronic funds transfer.

229 JEC, submission to the consultation paper, p. 15.

230 See *Competition and Consumer Amendment (Payment Surcharges) Act 2016* (Cth).

231 AEC, submission to consultation paper, p. 3; See the RBA's Issues Paper [here](#).

232 JEC, submission to the consultation paper, p. 16.

233 Draft rule 32(1A).

We note that direct debits and some forms of electronic funds transfer are generally free payment methods, however JEC noted that there are fees associated with direct debit dishonour fees.<sup>234</sup>

Ensuring retailers must provide a free method that is commonly used and easily accessible would provide consumers certainty that they can pay their bill at no extra cost, no matter which retailer they switch to. Enshrining this requirement would provide consumers greater trust and certainty at minimal cost to retailers.

We note that our draft rule would guarantee multiple free ways to pay for vulnerable consumers by prohibiting all ancillary fees and charges.

The Commission proposes to recommend that the requirement for retailers to provide at least one free payment method that is commonly used and easily accessible should be a tier 2 civil penalty provision. See appendix B.4 for further details on the proposed civil penalty provisions.

## 6.5 Retailers would have 12 months to implement the rule change

### **Box 22: Draft determination - retailers would have 12 months to implement the rule changes**

The draft rule provides retailers with approximately 12 months to implement the final rule (if made). Retailers would be required to comply with the rule by 1 July 2026.

The draft rule proposes that the rule would take effect on 1 July 2026. This applies across all components of the draft rule which encompasses all four consolidated rule change requests. Having the rule apply from 1 July 2026 is appropriate because:

- it aligns with the key period where retailers can change the prices under their contracts
- retailers will have sufficient time to adjust their customer and hedging contracts, if necessary.

<sup>234</sup> This occurs when there are insufficient funds in the account when money is drawn; JEC, submission to the consultation paper, pp. 14-15.

## A Rule making process

A standard rule change request includes the following stages:

- a proponent submits a rule change request
- the Commission initiates the rule change process by publishing a consultation paper and seeking stakeholder feedback
- stakeholders lodge submissions on the consultation paper and engage through other channels to make their views known to the AEMC project team
- the Commission publishes a draft determination and draft rule (if relevant)
  - stakeholders lodge submissions on the draft determination and engage through other channels to make their views known to the AEMC project team
- the Commission publishes a final determination and final rule (if relevant).

You can find more information on the rule change process on our website.<sup>235</sup>

### A.1 The Energy and Climate Change Ministerial Council proposed rule changes to improve market retail contracts

The rule change requests were developed by ECMC in response to findings presented to energy ministers in March 2024 by the ACCC (see chapter 1 for a list of the four rule change requests). The ACCC found that consumers who do not regularly engage in the retail energy market experience higher prices.<sup>236</sup>

The rule change proposals sought to improve consumer confidence in the retail energy market by addressing issues relating to retail energy market contracts that are linked to legacy contracts as well as certainty and transparency of prices that consumers will pay on retail energy market contracts.

### A.2 The proposals seek to address the loyalty penalty paid by many consumers

The package of rule change requests stem from findings presented to the ECMC from the ACCC, AER and ECA. They found 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 NEM* reports showed that:

- consumers who do not actively engage in the retail energy market experience higher prices (or "loyalty penalty"), 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.

### A.3 The proposals were to amend requirements relating to retail energy contracts

The proponent suggested changes to the NERR that would improve the clarity of retail contracts, by:

<sup>235</sup> See our website for more information on the rule change process: <https://www.aemc.gov.au/our-work/changing-energy-rules>

<sup>236</sup> ACCC, *Inquiry into the NEM*, December 2023, p. 5

- requiring any benefit provided under a contract to extend for the duration of the contract
- removing the grandfathering arrangement in the Commission's *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
- prohibiting increases to tariffs or charges payable by consumers for a specified fixed period following commencement of an energy plan
- removing specific fees and charges that retailers typically levy in relation to establishing and maintaining contracts.

## A.4 The rule change process to date

On 28 November 2024, the Commission published a notice advising of the initiation of the rule making process and consultation in respect of the rule change request.<sup>237</sup> A consultation paper identifying specific issues for consultation across all four rule change requests was also published. Submissions closed on 16 January 2025. The Commission received 18 submissions as part of the first round of consultation, including verbal feedback from consumer groups which is summarised on our website. The Commission considered all issues raised by stakeholders in submissions. Issues raised in submissions are discussed and responded to throughout this draft rule determination.

With effect from the date of this draft determination, the Commission has consolidated the four rule change requests into one project (project code RRC0058), under NERL section 248. The Commission considered it desirable to do this to allow for an integrated approach, given the relationships between the issues and solutions identified in the four requests.

## A.5 The Victorian ESC is also considering the rule change proposals as part of its review of the Energy Retail Code

The Victorian Essential Services Commission's (ESC VIC) current review of its Energy Retail Code of Practice is considering the same or similar rule changes as those proposed by the ECMC and considered in this draft determination. More information on its review can be found [here](#). We are engaging with the ESC VIC as part of this rule change to consider points of alignment. ESC VIC may make recommendations that may align with or be additional to our draft rule. The ESC VIC expects to make a final decision on these reforms by June 2025.

<sup>237</sup> This notice was published under section 251 of the NERL.

## B Legal requirements to make a draft rule

This appendix sets out the relevant legal requirements under the NERL for the Commission to make a draft rule determination, and outlines our proposed civil penalty recommendations.

### B.1 Draft rule determination and draft rule

In accordance with section 256 of the NERL, the Commission has made this draft rule determination for a more preferable draft rule in relation to the following rules proposed by the Hon. Chris Bowen MP, Minister for Climate Change and Energy, as Chair of the Energy and Climate Change Ministerial Council:

- *Ensuring energy plan benefits last the length of the contract*
- *Preventing price increases for a fixed period under retail market contracts*
- *Removing fees and charges*
- *Removing unreasonable conditional discounts.*

The Commission has consolidated these four rule change requests under NERL s 248.

The Commission's reasons for making this draft rule determination are set out in chapter 2.

A copy of the more preferable draft rule is attached to and published with this draft determination. Its key features are described in chapters 3-6.

### B.2 Power to make the draft rule

The Commission is satisfied that the more preferable draft rule falls within the subject matter about which the Commission may make rules.

The more preferable draft rule falls within:

- section 237(1)(a)(i) of the NERL as it relates to the provision of energy services to customers, specifically customer retail services
- section 237(1)(a)(ii) of the NERL as it relates to the activities of persons involved in the sale and supply of energy to customers.

### B.3 Commission's considerations

In assessing the rule change requests the Commission considered:

- its powers under s244 of the NERL to make the draft more preferable rule
- the rule change requests
- submissions received during the first round of consultation
- bilateral discussions with stakeholders
- stakeholder input received at a feedback session with consumer groups on the consultation paper, held on 16 December 2024
- the Commission's analysis of how the draft more preferable rule would or is likely to contribute to the achievement of the NERO
- the extent to which the draft rule is compatible with the development and application of consumer protections for small customers.

There is no relevant Ministerial Council on Energy (MCE) statement of policy principles for this rule change request.<sup>238</sup>

## B.4 Civil penalty provisions and conduct provisions

The Commission cannot create new civil penalty provisions or conduct provisions. However, it may recommend to the energy ministers that new or existing provisions of the NERL be classified as civil penalty provisions or conduct provisions.

The NERL sets out a three-tier penalty structure for civil penalty provisions in the NERL and the NERR.<sup>239</sup> A Decision Matrix and Concepts Table,<sup>240</sup> approved by Energy Ministers, provides a decision-making framework that the Commission applies, in consultation with the AER, when assessing whether to recommend that provisions of the NERR should be classified as civil penalty provisions, and if so, under which tier.

Subject to consulting with the AER, the Commission proposes to make the following civil penalty recommendations to the energy ministers in relation to the final rule.

**Table B.1: Civil penalty provision recommendations**

Rule	Description of rule	Proposed classification	Reason
32(1A)	This draft rule requires retailers to provide small customers at least one method to pay their energy bills, which is commonly used and accessible, at no charge.	Tier 2	Failure to comply with this rule may cause consumer harm.  This tiering is consistent with the tiering of other provisions relating to billing and payment in NERR Part 2, Division 4 (including rule 32(1)).
46AA(1)	This draft rule requires retailers to not increase tariffs, charges or fees payable by a customer under a market retail contract unless such increase takes effect on a date within the month of July.	Tier 2	Failure to comply with restricting price increases to July may cause consumer harm by undermining consumers' price certainty expectations.  This tiering is also consistent with similar rules within NERR Part 2, Division 7.
46AA(2)	This draft rule requires retailers to not increase tariffs, charges or fees payable by a customer under a under a fixed price period contract more frequently than once every 12 months, where the first 12 month	Tier 2	Failure to comply with restricting price increases to once in a 12 month period may cause consumer harm by undermining consumers' price certainty expectations.

<sup>238</sup> Under s. 225 of the NERL the AEMC must have regard to any relevant MCE statement of policy principles in making a rule. The MCE is referenced in the AEMC's governing legislation and is a legally enduring body comprising the Federal, State and Territory Ministers responsible for energy.

<sup>239</sup> Further information is available at <https://www.aemc.gov.au/regulation/energy-rules/civil-penalty-tools>

<sup>240</sup> The Decision Matrix and Concepts Table is available at: [https://web.archive.org/awa/20210603104757mp\\_/https://energyministers.gov.au/sites/prod.energycouncil/files/publications/documents/Final%20-%20Civil%20Penalties%20Decision%20Matrix%20and%20Concepts%20Table\\_Jan%202021.pdf](https://web.archive.org/awa/20210603104757mp_/https://energyministers.gov.au/sites/prod.energycouncil/files/publications/documents/Final%20-%20Civil%20Penalties%20Decision%20Matrix%20and%20Concepts%20Table_Jan%202021.pdf)

Rule	Description of rule	Proposed classification	Reason
	period commences on the date that the fixed price period contract commences.		This tiering is also consistent with similar rules within NERR Part 2, Division 7.
48C	For market retail contracts with a benefit change, this draft rule requires retailers not to charge customers more than their standing offer prices after the benefit changes or expires.	Tier 2	Failure to comply with this rule may lead to consumer harm.  This tiering is consistent with similar rules within NERR Part 2, Division 7.
52A	<p>This draft rule places restrictions on fees and charges.</p> <p>Under subrule (1), a retailer may only include a charge or fee (other than an energy rate or network charge) in a contract with a small customer if such charge or fee does not exceed a reasonable estimate of the costs the retailer is likely to incur in relation to the relevant service.</p> <p>Under subrule (2), retailers are prohibited from charging any ancillary fees and charges to vulnerable customers (including hardship customers, customers on payment plans, those receiving government concessions, and those who may be affected by family violence).</p> <p>Under subrules (3) and (4), retailers must not charge account establishment fees or fees for a <i>meter</i> read where that <i>meter</i> read is for the purposes of commencing or terminating a customer retail contract or a deemed customer retail arrangement.</p>	Tier 2	<p>Failure to comply with any of the provisions within rule 52A may cause consumer harm by imposing unnecessary costs on consumers and imposing fees that some consumers can not respond to.</p> <p>This tiering is consistent with similar rules within NERR Part 2, Division 7.</p>
52B	This is an existing rule requiring conditional fees to be no higher than a reasonable estimate of the retailer's costs.	Remove from civil penalty list	The draft rule deletes this rule 52B, as the draft rule introduces broader protections in new rule 52A(1) (above).
73	This is an existing rule requiring retailers to waive late payment fees for hardship customers.	Remove from civil penalty list	The draft rule deletes this rule 73, as the draft rule introduces broader protections in new rule



Rule	Description of rule	Proposed classification	Reason
			52A(2) (above).

The draft rule amends rule 46(4) which is currently classified as a civil penalty provision. The Commission does not propose to recommend to the energy ministers any changes to the classification of this provision.

## Abbreviations and defined terms

ACCC	Australian Competition and Consumer Commission
AEC	Australian Energy Council
AEMC	Australian Energy Market Commission
AEMO	Australian Energy Market Operator
AER	Australian Energy Regulator
Commission	See AEMC
DMO	Default Market Offer
DNSP	Distribution Network Service Provider
DSO	Distribution System Operator
ECA	Energy Consumers Australia
ECMC	Energy and Climate Change Ministerial Council
EIC	Explicit Informed Consent
EME	Energy Made Easy
ESB	Energy Security Board (now Energy Advisory Panel)
ESC Vic	Essential Services Commission of Victoria
EWON	Energy and Water Ombudsman New South Wales
EWOQ	Energy and Water Ombudsman Queensland
EWOSA	Energy and Water Ombudsman South Australia
JEC	Justice and Equity Centre
MC	Metering Coordinator
NECF	National Energy Customer Framework
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
Proponent	The individual / organisation who submitted the rule change request to the Commission
RBA	Reserve Bank of Australia
ROLR	Retailer of Last Resort
SACOSS	South Australian Council of Social Service
VDO	Victorian Default Offer