**Rule determination**

# National Energy Retail Amendment (Assisting hardship customers) Rule 2025

**19 June 2025**

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**Reference: RRC0060**

## 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 decided to make a more preferable final retail rule (final rule) in response to the *Assisting hardship customers* rule change request submitted by the Hon Chris Bowen MP, Minister for Climate Change and Energy, as Chair of the Energy and Climate Change Ministerial Council (ECMC).

2 The ECMC *Assisting hardship customers* rule change considered that hardship customers face barriers to engaging with their retailer, such as "lack of time, agency, literacy or language barriers". The rule change request outlined that these barriers prevent hardship customers from getting the best retailer offer available to them. The ECMC considered that support for these customers could be improved beyond existing retailer obligations and processes. They proposed to amend the National Energy Retail Rules (NERR) to require retailers to provide hardship customers with a credit on their bill if there is a deemed better offer for that customer, as referred to in the Australian Energy Regulator's (AER's) Better Bills Guideline.

3 The Commission's final rule recognises that hardship customers face many barriers to engaging with their retailer. The final rule will:

- increase support and improve outcomes for hardship customers so that they are not financially worse off if they do not take up their retailer's deemed better offer. This includes preventing hardship customers from incurring more debt or expenses than is necessary
- place a stronger onus on retailers to assist hardship customers with deemed better offers, but afford retailers flexibility in delivering these protections
- improve the reporting and transparency of the type of offers hardship customers are on and assist the AER with monitoring to ensure retailers comply with the final rule.

4 The Commission views that a principle or outcomes-based approach that provides for hardship customers to be financially no worse off than the deemed better offer is appropriate. This is because retailers are best placed to assess, manage and minimise costs associated with ensuring customers are on the deemed better offer. Under the outcomes-based approach, retailers can consider different lower-cost implementation approaches to meet their obligations.

5 The Commission also considers that the final rule contributes to our vision for A consumer-focused net zero energy system, specifically our consumer priority that seeks to inform, empower and protect consumers individually and as a collective. As such, it was prioritised in AEMC's work program. The final rule will reduce the onus and burden for hardship customers to take action to move to a retailer's deemed better offer, that is, the lowest-priced plan in terms of cost for a customer.

6 The rule change process has leveraged the AER's game changer work. The AER viewed consumer outcomes for those in financial hardship as needing improvement, and considered that there should be more intensive support for these consumers to overcome their debt burden to break the cycle of energy debt.[1]

**7 This rule change forms one of the ECMC consumer package of rule changes**

8 The rule change request forms 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 package of consumer


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

related rule changes includes:

- *Ensuring energy plan benefits last the length of the contract*
- *Restricting price increases for a fixed period under market retail contracts*
- *Removing fees and charges*
- *Removing unreasonable conditional discounts*
- *Assisting hardship customers*
- *Improving the ability to switch to a better offer*
- *Improving the application of concession to bills*.

9 The final determination and final rule for the *Improving consumer confidence in retail energy plans* rule change request was released on 19 June 2025.[2] The two remaining rule changes, *Improving the ability to switch to a better offer* and *Improving the application of concessions to bill*, seek to increase customers' awareness of savings that can be achieved from switching plans with their retailer and increase the number of eligible consumers who access concessions or rebates on their energy bill. The *Improving the ability to switch to a better offer* rule change will publish its draft determination and draft rule on 19 June 2025. The *Improving the application of concessions to bills* rule change will follow shortly thereafter.

## There are three key changes to the NERR

10 The final determination sets out what the final rule introduces and how the final rule will work. It also sets out the Commission's reasons for the final rule, differences from the draft rule and reasons for not pursuing the proposed crediting mechanism. See chapter 3 and appendix D for more details.

11 The figure below gives an overview of the three components of the final rule.

**Figure 1: The final rule involves three key components**


Source: AEMC

2 The four rule changes of the ECMC consumer rule package that relate to changes to retail energy contracts have been consolidated into the *Improving consumer confidence in retail energy plans* rule change.

12 **The final rule includes a new principle to ensure that hardship customers are not financially worse off than the deemed better offer**

13 The final rule sets out a clear and direct obligation on retailers to ensure that where the hardship customer is not on the retailer's lowest cost deemed better offer, the hardship customer will be financially no worse off than if they were on the deemed better offer. The final rule affords flexibility to the retailer in how they must meet this new principle — either by:

- obtaining Explicit Informed Consent (EIC) and moving a hardship customer onto the deemed better offer as per existing mechanisms in the National Energy Retail Law (NERL). Under rule 38 of the NERL, retailers must obtain a customer's EIC before they can move them onto a new contract, including a deemed better offer, or
- providing a financial benefit under their current plan, such as a downward price adjustment, enduring discount or credit where they cannot obtain EIC to move to the deemed better offer.

14 The Commission notes that it does not have the ability to require retailers to transfer customers onto the deemed better offer without the customers' EIC. This would require changes being made to EIC, which are set out in the NERL and is beyond the AEMC's rule-making powers. Due to the importance of EIC in the framework, any changes to the NERL would need to be considered carefully as part of a holistic review, such as through the ECMC's Better Energy Customer Experiences (BECE) process.

15 The financial benefit that can be provided to hardship customers to meet the new principle must be at least the equivalent monetary value the hardship customer would have received or saved if they were on the retailer's deemed better offer. This differs from the draft rule, which stated that it should be the same monetary value.

16 There will be no timing restrictions for when the retailer can provide the decreased prices to hardship customers in line with this final rule. For the avoidance of doubt, restricting price increases to once in a 12-month period, introduced in the *Improving consumer confidence in retail energy plans* final rule, does not apply to retailers decreasing prices for hardship customers.

17 The final rule provides retailers with a specific obligation when a hardship customer switches to another retailer (the retailer will be required to apply the financial benefit to the customer's final bill), and there are some changes to when retailers are required to notify customers of price changes.

18 The final rule will require the AER to define the term 'deemed better offer', taking into account the following factors, which we have derived from the existing AER description of the better offer:[3]

- The better offer is the lowest-priced plan in terms of cost for a customer - maintaining this will ensure that where the hardship customer is not on the retailer's lowest cost deemed better offer, the hardship customer will be no financially worse off than if they were on the deemed better offer.
- A customer's energy usage history - this is important for calculating the financial benefit.
- Whether all non-financial benefits are part of the deemed better offer - this will provide clarity and address retailers' concerns about whether deemed better offers will or will not include offers with non-financial benefits going forward. We consider that the AER is best placed to consider and clarify this in its guidelines, rather than in the rules. This is because it allows the

3 Under AER Better Bills Guideline, a 'deemed better offer' must be either: (a) the plan the retailer offer which: (i) is the lowest generally available plan applicable to the customer having regard to the customer's annual usage history; and (ii) does not have as a precondition or condition that the customer have or maintain an affiliation or membership with an entity that is unrelated to the retailer; or (b) a plan that has a lower cost than the lowest cost generally available plan applicable to the customer. AER, Better Bills Guideline, 2023.

AER to have regard to the factors in the context of the definition and the elements needed for its calculation over time, including how retailers will be able to comply.

19 The Commission has included guidance to the AER because it maintains those factors in the existing description that we consider important for the final rule. It also provides certainty to retailers that any changes to the definition over time will be minimised. At the same time, we consider that the guidance provides the AER with flexibility to adjust the definition as the market changes over time.

20 We will also recommend to energy ministers that compliance with the obligation to provide a financial benefit, as described above, be a Tier 1 civil penalty.

**21 The final rule requires retailers to offer hardship customers a deemed better offer on an ongoing basis**

22 The final rule provides an explicit obligation in the NERR that retailers offer the deemed better offer:

- upon a customer joining their hardship program
- at the time of letting the hardship customer know on their bill, there is a deemed better offer that is lower cost than the offer the hardship customers is on. The retailer must make this offer at least once every 100 days, or where the retailer and customer have agreed to a different cycle that is greater than 100 days. This is in line with the AER's Better Bills Guideline.

23 Unlike the draft rule, our final rule places the explicit obligation in the NERR meaning that retailers will not be required to update their customer hardship policies for the new requirement to take effect.

**24 The final rule requires new hardship program indicators**

25 The final rule requires the AER to consider and determine the hardship indicators in accordance with the AER retail consultation procedures. This requirement is different from what was set out in the draft rule, where the rules prescribed the hardship program indicators. The final rule requires that the revised hardship program indicators cover the:

- purchase of energy by hardship customers at prices relative to the relevant standing offer price
- uptake of the lowest cost energy offer available to hardship customers.

26 This change will improve reporting and transparency on the uptake of the lowest-cost energy offer available to hardship customers, including whether and how retailers are meeting the new principle.

27 The AER will include the new hardship program indicators in its Performance Reporting Procedures and Guidelines that retailers will report to the AER. The AER will be required to report them in its annual retail market reports similar to the existing hardship indicators in the NERR.

## We have considered stakeholder feedback in developing this final rule

28 The Commission considered stakeholder submissions and feedback for the more preferable final rule.

29 We note that stakeholder submissions supported the policy intent of the proposed changes under the draft determination. However, a number of retailers raised concerns with the proposed approach in the draft rule and cited implementation concerns about how the draft rule would work. Consumer groups supported the approach for the draft rule but preferred greater prescription or

guidance for retailers on how the protections would apply to hardship customers. The AER outlined some preferred implementation options for the final rule. This was related to whether the retailer requirements sit directly in the rules or via the AER's Customer Hardship Policy Guideline. More details on stakeholder feedback and the Commission's considerations in response is provided in chapter 1 and chapter 3.

30 The Commission considers that obligations in the final rule are a supporting or additional measure for hardship customers, including those who are not able to engage with their retailer and provide EIC to switch to the deemed better offer that is cheaper than their current plan.

31 The final rule does not negate or override other protections that retailers are required to provide under existing arrangements, including requirements to implement their overarching customer hardship policies. The final rule should not pose a barrier to retailers from providing additional or tailored assistance to hardship customers.

32 As outlined in the National Equity Framework, there are different categories of hardship (ie, transient or short-term hardship to more extreme, longer-term hardship) where they may require different forms and duration of support from retailers. Given retailers have direct contact and relationship with hardship customers, they are best placed to assist these customers as necessary and appropriate in a way that best suits their needs and circumstances under the full suite of protections under the National Energy Customer Framework (NECF).

33 The Commission considered the impacts on consumers and retailers (including benefits and costs). The Commission considers that the outcome-based approach of the final rule will provide important protections for hardship customers. It does this by reducing the onus and burden for all hardship customers to engage with their retailer and take action to move to or benefit from the lowest-cost deemed better offer. Although there may be some costs to retailers to update their billing systems and meet additional compliance requirements, the Commission considers that the benefits of this rule change outweigh the costs because we have crafted the final rule to leverage or build upon existing systems and processes where possible and appropriate. We also note that impacts to retailers are not expected to be large, given that the proportion of hardship customers makes up a small proportion of the retailer's total business costs.

34 See below for more details on our reasoning against the assessment criteria used for this rule change.

## The final rule will promote the National Energy Retail Objective (NERO)

35 In making our final rule, we considered the NERO by applying the assessment criteria that we outlined in the consultation paper and the impacts to consumers and retailers (including costs).

36 We also had regard to promoting equitable energy outcomes across households experiencing hardship in terms of accessing or benefiting from their retailer's deemed better offer. This complements the AEMC developing 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 — that is, 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 final rule will promote equity, so that hardship customers have the support and protection they need to access and benefit from their retailer's lowest cost deemed better offer, particularly those who may face additional barriers to engaging with the market or their retailer.

37 We consider the final rule will meet the assessment criteria in the following ways.

- **Outcomes for consumers** The final rule will:
  - Help hardship customers better manage their bills and debt (ie, have more affordable bills, meet payment plans and/or manage or reduce the accumulation of ongoing energy usage debt) by putting a stronger onus on retailers for hardship customers to access or benefit from the deemed better offer.
  - Maintain customer choice and agency over their energy plan. The final rule enables hardship customers to have a choice over their energy plans to suit their needs and preferences, as per existing provisions under the NERL.
  - Reduce transaction and opportunity costs by reducing the burden, time and stress often associated with engaging in the energy market and their retailer to find and move onto the best offer for the customer.
  - Allow equitable access to the benefit from the deemed better offer by reducing the onus and burden for all hardship customers to engage with their retailer and take action to move to the deemed better offer.
  - Promote or enable hardship customers to pay no more than necessary.
- **Principles of market efficiency.** The final rule will likely maintain or promote market efficiency by:
  - Building on existing retailer obligations and processes to minimise implementation costs. The Commission expects that the costs and regulatory burden of this final rule are not expected to be large, given reliance on some of the existing processes and that the proportion of hardship customers makes up a small proportion of the retailer's total business costs.[4] For example, the total proportion of hardship customers was 1.6 per cent in quarter two of 2024-25.[5]
  - Seeking appropriate risk allocation between retailers and hardship customers in terms of hardship customers not being on the deemed better offer.
  - Helping to build hardship customers' confidence in their retailer and by extension their confidence in engaging in the energy market.
  - Supporting competition by providing retailers flexibility in how they meet their obligations compared to the proposed credit mechanism. This will minimise any further cost disadvantages to the smaller retailers and support them to compete in the market.
  - Promoting transparency by allowing for greater accountability and transparency relating to retailers' reporting and compliance. It also supports the AER to undertake its monitoring and compliance with proposed outcomes.
- **Implementation considerations.** Under a principles-based approach, retailers can explore and find their own lowest-cost approaches to supporting all hardship customers with a deemed better offer.
- **Principles of good regulatory practice.** The final rule provides an appropriate balance of principles and prescriptions in terms of the regulatory approach. This is achieved by setting out expectations on retailers to meet the intended outcome — that is, hardship customers access or benefit from the retailer's lowest cost deemed better offer and affording retailers the ability to consider how they will meet the proposed obligations.

4 ACCC, Inquiry into the National Electricity Market report December 2024 report, p. 79.

5 The total proportion of hardship customers includes those across the NEM, excluding Victoria. AER, Schedule 4-Quarter 2 2024-25 retail performance data, March 2025.

## Implementation considerations

38 The final rule will commence on 30 December 2026.

39 We anticipate that the rule changes will require around 18 months for implementation. This is because the AER will be required to undertake consultation processes in relation to its guidelines and market participants will also need to update their guidelines/policies. This also takes into account updates to the AER's supporting procedures, such as the AER Performance Reporting Procedures and Guidelines and Compliance Procedures and Guidelines.

40 Given the number of procedures and guidelines that the AER is amending, the Commission has aimed to align timeframes for updates where possible. [6]

## There are interactions with broader issues and reforms

41 Several stakeholders noted linkages or overlaps between this rule change and other broader reforms, including:[7]

- AER's Review of payment difficulty protections in the NECF
- Essential Service Commission Victoria's (ESC VIC's) consideration of the rule change proposal in its Review of the Retail Code of Practice, and/or
- ECMC's Better Energy Customer Experiences (BECE) review.

42 The final determination addresses the specific issue that hardship customers may not be accessing or benefiting from the deemed better offer. The Commission considers that the broader issues raised by stakeholders are important and are more appropriate to be addressed through broader reforms underway. More details on additional issues and proposals from stakeholders are outlined in section 1.3 and appendix D.

**43 AER Review of payment difficulty protections in the NECF**

44 The AER undertook a Review of the payment difficulty protections in the National Energy Customer Framework as part of the AER's broader Towards energy equity — a strategy for an inclusive energy market. The AER released its findings on the Review of Payment Difficulty Protections in the National Energy Customer Framework (NECF) on 15 May 2025.[8]

45 The review considered the effectiveness of the current protections and identified opportunities to strengthen protections and improve outcomes for consumers experiencing payment difficulty. The AER also considered 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.

**46 ESC VIC Review of the Energy Retail Code of Practice**

47 We note that ESC VIC is considering the ECMC rule change proposal as part of its Review of the Energy Retail Code of Practice. On 16 May 2025, it published a Regulatory Impact Statement (RIS) as its draft decision on this rule change proposal, outlining the options they are considering around eligibility and implementation.

48 The ESC VIC is proposing that retailers would be able to switch customers automatically without EIC and customers will still be able to opt-out or request a switch back to their earlier contract. We note that ESC VIC can provide options involving changes to EIC provisions in Victoria because

6 AER, AER is reviewing four retail guidelines in 2025 and 2026, May 2025.

7 Submissions to draft determination: AGL, p. 2-3, Momentum, p. 3, Origin, p. 1, ENGIE, p. 5-6, JEC, p. 1.

8 AER, Review of payment difficulty protections in the National Energy Customer Framework, 2025.

these are located in the ESC's Retail Code of Practice and not the Victorian Law.[9]

49 The ESC VIC expects to make a final decision on this reform by August 2025.[10]

**50 ECMC's Better Energy Customer Experiences review**

51 ECMC, led by the Department of Climate Change, Energy, the Environment and Water (DCCEEW) is progressing the Better Energy Customer Experiences work to understand reforms needed to modernise and ensure the consumer protections framework is fit for purpose for the evolving energy market. As part of this, DCCEEW is assessing how the current protections regime is operating, including its strengths and weaknesses. This includes examining protections such as explicit informed consent and information provision requirements, and how these may need to evolve as the market transitions.

52 The key focus of the review will be the NECF, given that it is the primary national regulatory framework providing energy-specific protections to consumers. However, consideration will also be given to other related legislation, frameworks and policy settings, including the Australian Consumer Law, state and territory-based legislation, and the New Energy Tech Consumer Code.

9 As noted, changes to EIC are beyond the AEMC rule-making powers as the provisions governing EIC are set out in the NERL, which applies to all NEM jurisdictions except Victoria.

10 ESC VIC, Reviewing the Energy Retail Code of Practice, 2025.

# Contents

# 1 The Commission has made a final determination

The Commission has made a final determination and more preferable final retail rule (final rule) in response to a rule change request submitted by the Hon Chris Bowen MP, Minister for Climate Change and Energy, as Chair of the Energy and Climate Change Ministerial Council (ECMC) (the proponent) on 12 August 2024.[11]

The rule change request proposes to amend the National Energy Retail Rules (NERR) to require retailers to provide hardship customers with a credit on their bill if there is a 'deemed better offer' for that customer, as referred in the Australian Energy Regulator's (AER's) Better Bills Guideline.[12]

This rule change request forms 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.[13]

The Commission's final rule recognises that hardship customers face many barriers to engaging with their retailer. The final rule will:

- increase support and improve outcomes for hardship customers so that they are no worse off, if they are not able to engage with their retailer to take up and switch to their retailer's deemed better offer. This includes not incurring more debt or expenses than is necessary
- place a stronger onus on retailers to assist hardship customers with moving onto or benefitting from a deemed better offer, whilst affording retailers flexibility in delivering these protections
- improve the reporting and transparency of the type of offers hardship customers are on and assist the AER with monitoring and ensuring retailers' compliance with the proposed rule.

The expected timeline for implementation is 18 months, with a commencement date of 30 December 2026 as set out in the final rule.

This final determination has the following chapters:

- Chapter One (this chapter) provides an overview of what the final rule will introduce and the inputs we have considered, including stakeholder feedback and findings from the AER, including from its Game changer final report.
- Chapter 2 sets out our assessment framework and summarises how the Commission considers the final rule will contribute to achieving the National Energy Retail Objective (NERO).
- Chapter 3 outlines how the final rule will work in terms of:
  - obligations on retailers and the AER
  - key changes between the draft and final rule
  - supporting reasoning for the final rule.

11 See the project webpage here.

12 See consultation paper here. Under AER Better Bills Guideline, a 'deemed better offer' must be either: (a) the plan the retailer offer which: (i) is the lowest generally available plan applicable to the customer having regard to the customer's annual usage history; and (ii) does not have as a precondition or condition that the customer have or maintain an affiliation or membership with an entity that is unrelated to the retailer; or (b) a plan that has a lower cost than the lowest cost generally available plan applicable to the customer.

13 The package of consumer-related rule change requests includes: *Ensuring energy plan benefits last the length of the contract*; *Restricting price increases for a fixed period under market retail contracts*; *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*. The four rule changes of the ECMC consumer rule change package that relate to changes to retail energy contracts have been consolidated into a single rule change called *Improving consumer confidence in retail energy plans*.

There is also a set of appendices including:

- rule-making process
- legal requirements to make a rule
- summary of changes from draft to final
- other issues raised in stakeholder submissions
- abbreviations.

## 1.1 Our final rule will support hardship customers to be on or pay no more than a retailer's deemed better offer

The final determination sets out the policy positions and the final rule covering three key components, as shown in Figure 1.1.

**Figure 1.1: The final rule involves three key components**


Source: AEMC

**We made some refinements for the final rule**

The refinements for the final rule included:

- Providing guidance to the AER for defining the term 'deemed better offer'.
- Clarifying that retailers are to provide a financial benefit that is at least the monetary value of what they would have received under the deemed better offer. The draft rule provided that it should be the same monetary value.
- Changing the timing of when retailers are required to provide hardship customers a financial benefit. We aligned it with the deemed better offer check under AER's Better Bills Guideline, which is at least once every 100 days, or where the retailer and customer have agreed to a different cycle that is greater than 100 days.
- Including a specific obligation in the final rule for retailers when a hardship customer switches to another retailer (the retailer will be required to apply the financial benefit to the customer's final bill).

- Including an explicit obligation in the NERR - rather than relying on AER hardship guideline and retailers hardship policies - that retailers check and offer the deemed better offer upon a customer joining their hardship program and on ongoing basis in line with the timing of informing the hardship customer of a deemed better offer under AER's Better Bills Guideline.
- Providing that the AER consider and determine how the specific hardship indicators should be prescribed, in accordance with the retail consultation procedure - rather than specifying the indicators directly in the NERR.

Further details on the changes under each of the components are outlined in chapter 3.

**The final seeks to address the stated problem in the rule change request**

The Commission considers it important to reduce the onus and burden for all hardship customers to engage with their retailer and take action to move to the best offer for them. This is because of existing issues that hardship customers face to engage in the market. The AER found, as part of its Game Changer final report, that the cost to consumers for time spent navigating the retail market was $108 million or 15 per cent of the $643 million quantifiable annual cost of vulnerability.[14] Also, the risk and consequence of these customers not being on the better offer means that they can be prone to higher prices the longer they stay on their current offer and incur more debt or expenses than necessary.

The final rule aims to account for the different types of hardship customers that may or may not engage in the market and with their retailer. This means that, despite barriers they may or may not face (ie, "lack of time, literacy, language" or other as outlined in the rule change request), all hardship customers will benefit from the deemed better offer.

The Commission considers an outcomes-based regulatory approach is appropriate as retailers will have flexibility in how they meet the new principle in the NERR. This will minimise implementation costs and complexity for retailers, which will then minimise costs that could be passed onto all consumers.

The Commission also considers that the final rule will improve the transparency of the kind of offers hardship customers are on and support the AER in its compliance and monitoring.

## 1.2 Recent work, findings and stakeholder feedback shaped our final determination

The Commission considered a number of reports and findings that intersect with this rule change. We also considered stakeholder submissions in response to the consultation paper[15] and bilateral discussions with retailers and consumer groups.

Appendix A provides further detail on the rule-making process.

### 1.2.1 The rule change request builds on the AER's Game changer work

As outlined in the consultation paper, the ECMC rule change request to assist hardship customers is drawn from the AER's Game changer recommendation for automated better offers. The AER recommended that consumer outcomes for those in financial hardship need improvement, and considered that more intensive support should be provided for consumers who find it challenging

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

15 AEMC, *Assisting hardship customers* consultation paper, November 2024.

to overcome their debt burden to break the cycle of energy debt.[16] It recommended three options that involved automatically switching customers to a deemed better offer. [17]

The Commission is currently progressing the *Improving the ability to switch to a better offer* rule change proposal, which aims to improve the visibility of opportunities for small customers to save money, by requiring the deemed better offer message to be provided to small customers on billing communications, such as bill summaries and cover emails. This aims to encourage customers to engage in the retail market and switch to cheaper deals.[18]

### 1.2.2 Stakeholders broadly supported the policy intent of the proposed changes, but some raised implementation concerns and considerations

In response to the draft determination, retailers who provided submissions supported the policy intent of the proposed rule change, but they also raised several concerns with the implementation approach as reflected in the draft rule. Concerns were particularly around:[19]

- calculating the benefit of the deemed better offer and having to do complicated and accurate credit calculations to ensure retailers' compliance
- the need to align and link the deemed better offer with billing cycles (time-slicing) and automate benefits for each bill
- the need for additional investments in systems and staff to meet compliance requirements
- ensuring the mechanism is auditable and compliant with regulatory obligations (eg, potential need to reverse and reapply credits when bills are reversed and/or reissued – due to metering data errors).[20]
- the potential for unintended consumer outcomes, eg, the proposed approach discouraging hardship customers from actively engaging with their retailer because of the financial benefit and hence reduce the opportunity for retailers to provide them with additional, tailored or comprehensive support.

Consumer groups, Energy Consumer Australia (ECA) and SA Power Networks (SAPN) supported the proposed approach in the draft determination and draft rule.[21] Justice Equity Centre (JEC) in a joint submission with other consumer groups and the ECA supported the proposed approach but noted a need for more prescription and/or clarification on retailer requirements for providing a financial benefit and noted that non-energy price benefits should not be considered as part of a deemed better offer.[22]

A number of retailers suggested a number of alternative approaches to achieve the policy intent of the stated problem in the rule change request, including the potential for:

- A social or hardship tariff. Origin and Compliance Quarter proposed a social tariff of setting a single consistent tariff rate for all hardship customers and determined by the AER alongside the AER's determination of the Default Market Offer (DMO) [23]

16 The AER's Game changer final report noted that there was roughly $194 million accumulated consumer energy debt across Queensland, NSW, South Australia, the ACT and Tasmania as at 30 June 2023. It also found in 2022, that the cost of bad debt accounted for 21 percent of the costs to retailers, or $152 million per year in terms of quantifiable costs of vulnerability.

17 See section 1.2 of the consultation paper. AER, Game changer, November 2023, p. 22.

18 AEMC, Improving the ability to switch to a better offer,2025

19 Submissions to draft determination: Origin, p. 3, ENGIE, p. 1, Red/Lumo, p. 2-3, Momentum, p. 2, EnergyAustralia, p. 5, AGL, p. 3

20 Submissions to draft determination: Red/Lumo, p. 1-2, Origin, p. 2-3, AGL, p. 4-5, ENGIE, p. 3, Compliance Quarter, p. 2.

21 Submissions to draft determination: ECA, p. 2, SAPN, p. 1-2, Ombudsman of QLD, NSW and SA, p. 1.

22 Submissions to draft determination: JEC, p. 5-, ECA, p. 2-3.

23 Submissions to draft determination: Origin, p. 1-3, Compliance Quarter, p. 4.

- A standardised hardship discount determined by the AER. The Compliance Quarter proposed requiring retailers to apply a standardised, fixed percentage discount (eg, determined by the AER) to the energy usage charges for all hardship customers.[24]
- Amendments to the retail standard and market contract terms and conditions or ex ante Explicit Informed Consent (EIC). Red/Lumo, AEC and EnergyAustralia suggested making amendments to the retail standard and market contract terms and conditions to give retailers the ability to change a customer to a deemed better offer.[25]
- Sandboxing. Alinta, Momentum and Australian Energy Council (AEC) proposed a sandboxing arrangement to trial the proposed changes before implementation.[26]

The Commission's considerations and response to each of these alternative approaches are outlined in appendix D.

The AER sought changes in the implementation approach for two of the proposed changes for the draft rule (enhancing existing retailer obligations and new hardship program indicators).[27] This was in the interest of reducing regulatory complexity, supporting AER enforcement of retailer obligations, delivering more timely protections and ensuring the new hardship program indicators are fit for purpose.[28]

Chapter 3 provides further detail on stakeholder submissions and the Commission's considerations.

## 1.3 There are interactions with broader issues and reforms

Several stakeholders noted linkages or overlaps between this rule change and other broader reforms, including:[29]

- AER's Review of payment difficulty protections in the National Energy Customer Framework (NECF)
- ESC VIC's consideration of the rule change proposal in its Review of the Retail Code of Practice
- Commonwealth's Better Energy Customer Experiences review.

Stakeholders also raised a broad range of issues, including:

- concern about eligibility for hardship and payment difficulty support, and the onus being on consumers to self-identify as experiencing payment difficulty or hardship
- whether the assessment of payment difficulty and hardship is too subjective to be consistent across retailers
- retailers 'gatekeeping' access to hardship support based on opaque criteria
- the terminology of 'hardship' being problematic as it's subjective in nature and many people do not identify with the term
- existing provisions implicitly assume that customers experience hardship temporarily rather than permanently

24 Compliance Quarter, submission to draft determination, p. 4.

25 Submissions to draft determination: Red/Lumo, p. 3, AEC, p. 2, EnergyAustralia p. 6.

26 Submissions to draft determination: Alinta, p. 1, Momentum, p. 3, AEC, p. 3

27 See details in section 3.2.1 and 3.3.1.

28 AER, submission to draft determination, p. 2-3.

29 Submissions to draft determination: AGL, p. 2-3, Momentum, p. 3, Origin, p. 1, ENGIE, p. 5-6, JEC, p. 1.

- allowing or requiring retailers to obtain EIC to automatically switch hardship customers onto the better offer, which would require changes to EIC provisions under the NERL.

The final determination and final rule addresses the specific issue that hardship customers may not be accessing or benefiting from the deemed better offer. The Commission considers that the above broader issues raised by stakeholders are important and are more appropriate to be addressed through broader reforms underway.

**The AER undertook a Review of the payment difficulty protections in the NECF**

The review considered the effectiveness of current consumer protections and sought to identify opportunities to strengthen them and improve outcomes for consumers experiencing payment difficulty. The AER also considered 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.[30]

The AER released its findings on the Review of Payment Difficulty Protections in the National Energy Customer Framework (NECF) on 15 May 2025. This review, as part of the AER's "Towards Energy Equity" strategy, aims to enhance protections for consumers facing payment difficulties.[31] It outlines 13 opportunities to improve the NECF that interlink with broader issues that stakeholders raised throughout this rule change, which are listed above in this section.

**ESC VIC is considering the ECMC rule change proposal as part of its Review of the Energy Retail Code of Practice**

On 16 May 2025, it published a Regulatory Impact Statement (RIS) as its draft decision on the ECMC rule change package. For the ECMC rule change proposal to assist hardship customers, it is proposing that retailers would be able to switch customers automatically without EIC and customers will still be able to opt-out or request a switch back to their earlier contract. We note that ESC VIC can provide options involving changes to EIC provisions in Victoria because these are located in the ESC's Retail Code of Practice and not the Victorian Law.[32] The ESC VIC expects to make a final decision on this reform by August 2025.

**ECMC Better Energy Customer Experiences process is reviewing energy-specific consumer protections**

ECMC, led by the Department of Climate Change, Energy, the Environment and Water (DCCEEW) is progressing the Better Energy Customer Experiences work to understand reforms needed to modernise and ensure the consumer protections framework is fit for purpose for the evolving energy market. As part of this, DCCEEW is assessing how the current protections regime is operating, including its strengths and weaknesses. This includes examining protections such as EIC and information provision requirements, and how these may need to evolve as the market transitions.

The key focus of the review will be the NECF, given it is the primary national regulatory framework providing energy-specific protections to consumers. However, consideration will also be given to other related legislation, frameworks and policy settings, including the Australian Consumer Law, state and territory-based legislation, and the New Energy Tech Consumer Code.

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

31 AER, Review of payment difficulty protections in the National Energy Customer Framework findings reports, May 2025. AER, Towards energy equity - a strategy for an inclusive energy market, 20 October 2022.

32 As noted, changes to EIC are beyond AEMC rule-making powers as the provisions governing EIC are set out in the NERL, which applies to all NEM jurisdictions except Victoria.

DCCEEW published a Terms of Reference and consultation paper on 27 March 2025 inviting feedback to identify key reform priorities. Consultation will close on 6 June 2025.[33]

33 DCCEEW, Better Energy Customer Experiences, 2025.

# 2 The rule will 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 will or is likely to contribute to the achievement of the relevant energy objectives.[34]

For this rule change, the relevant energy objective is the national energy retail objective (NERO):

The NERO is: [35]

> 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, quality, 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.[36]

## 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.[37]

For this rule change, the Commission has made a more preferable final rule because it is satisfied that it meets the NERO. Specifically, the Commission considers the more preferable final rule will promote efficient investment in, and efficient operation and use of, energy services with respect to the price of the supply of energy. The reasons are set out in section 2.3 section 2.3 below.

### 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).[38] 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.[39] If the Commission is satisfied that one test, but not the other, has been met, the rule cannot be made (noting that there may be some overlap in the application of the two tests).

34 Section 236(1) of the NERL.

35 Section 13 of the NERL.

36 Section 224A(5) of the NERL.

37 Section 244(1) of the NERL.

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

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

The Commission is also satisfied that the more preferable final rule meets the consumer protections test. The Commission has maintained the application of consumer protections for hardship customers, including those under AER's Customer Hardship Policy Guideline.[40] The final rule will enhance protections for hardship customers to access or benefit from a retailer's lowest cost deemed better offer so that hardship customers will be no financially worse off than if they were on the deemed better offer. It will achieve this by introducing explicit and direct obligations on retailers to increase support and improve outcomes for hardship customers so that they are no worse off, if they do not take up their retailer's deemed better offer (where the deemed better offer is lower cost than the hardship customer's current offer). The Commission considers that this will provide appropriate protections for all hardship customers by providing them a financial benefit equivalent of paying the lowest price available to them, while providing them choice and allowing hardship customer to maintain their agency over their energy plans under EIC provisions under the NERL.

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

The Commission has considered the NERO, and the issues raised in the rule change request, and has assessed the final preferable rule against the four assessment criteria outlined in its consultation paper.

We identified the following criteria to assess whether the proposed rule change, 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 these consumers as part of our assessment criteria.

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 – that is 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. [41]

- **Outcomes for consumers.** We considered whether the proposed rule change will:
  - help hardship customers to better manage their bills and debt (ie, have more affordable total bills, and meet payment plans and/or manage or reduce the accumulation of ongoing energy usage debt)
  - promote consumers to benefit from the retailer's best offer (ie, the retailer's lowest cost deemed better offer), while considering meeting their needs and preferences, including potentially non-monetary benefits from an offer
  - minimise opportunity and transaction costs that hardship customers incur from difficulty and time spent navigating the market
  - be compatible with or strengthen existing consumer protections and assistance for hardship customers under the NECF, including the NERR and AER's guidelines (eg, Customer Hardship Policy Guideline)
  - promote equity, so that all hardship customers have the support and protection they need to access and benefit from the best offer, particularly those who may face additional barriers to engaging with the market or their retailer.
- **Principles of market efficiency.** We considered:

40 AER, Customer Hardship Policy Guideline, March 2019.

41 See AEMC guidance on "How the national energy objectives shape our decisions".

    - current processes of retailers to help ensure their customers are on the best offer and suit their customer's needs
    - helping to build hardship customers' confidence in their retailer and by extension their confidence in engaging in the energy market
    - current risk allocation between retailers and hardship customers on non-payments of energy bills
    - the impact of an 'automated' bill credit on competition, including how they package their generally available offers and their incentive to provide deemed better offers.
- **Implementation considerations.** We had regard to the cost and complexity for retailers to leverage or build upon existing systems and processes that would be needed to calculate and provide a financial benefit to their customers. We also considered if the AER could update its existing AER guidelines (eg, the AER Better Bills Guideline and Customer Hardship Policy guideline) without a proposed rule change.[42]
- **Principles of good regulatory practice.** We considered:
    - whether the proposed approach for applying a bill credit if there is a better offer is the best approach
    - how prescriptive the rules need to be, including considering a principle-based approach
    - how this rule will interact with recommendations made under the AER's current Review of payment difficulty protections in the NECF.

The more preferable final rule will achieve the NERO based on each area of the assessment framework, as outlined below.

### 2.3.1 The final rule will provide hardship customers additional support, so they can benefit from the deemed better offer

The final rule is more likely to deliver long-term benefits for consumers in hardship by:

- **Strengthening protections and enhancing support.** The preferable final rule will help hardship customers better manage their bills and debt (ie, have more affordable bills and meet affordable payment plans and/or manage or reduce the accumulation of ongoing energy usage debt). This will be achieved by adding stronger protections and enhancing existing retailer obligations. These obligations place a greater onus on retailers to provide their hardship customers with the deemed better offer or its financial benefits so that they are no financially worse off than if they were on the deemed better offer.
- **Maintaining customer choice and agency over their energy plan.** The final rule enables hardship customers to have choice over their energy plans to suit their needs and preferences, as per existing provisions under the NERL.
- **Reducing transaction and opportunity costs**. The final rule will reduce the burden, time and stress incurred by hardship customers when engaging with the energy market and their retailers when searching and moving onto a retailer's lowest-cost deemed better offer.
- **Allowing equitable access to the deemed better offer.** The final rule recognises that some hardship customers face barriers in actively engaging in the market or with their retailer to access or benefit from the best offer available to them. The final rule enables all hardship customers to access or benefit from the best offer where they have been unable to actively

42 Rule 44 of the NERL sets out the minimum requirements for a customer's hardship policy. This means that there are some limitations for the AER on what it can include in its customer hardship policy guidelines.

engage in the market or with their retailer, which means they are able to experience the benefits of a lower-priced plan in terms of cost without needing to change their energy plan.[43]

### 2.3.2 The final rule will likely promote market efficiency, particularly on risk allocation between retailers and hardship customers

The final rule will likely maintain or promote market efficiency by:

- **Building on existing retailer obligations and processes.** The final rule will broadly align and build on current retailer processes (where possible) to ensure hardship customers benefit from the price of the deemed better offer where it is lower cost than the hardship customer's current offer. These protections are a supporting measure for those not able to engage in the market or with their retailer to provide EIC to switch to a deemed better offer that is cheaper than their current plan. The final rule will also not negate or override retailers from meeting their existing obligations under the NECF (ie, under both rules and AER guidelines) or providing additional support as necessary.
- **Seeking appropriate risk allocation**. The final rule will allocate risk and the direct financial consequences of hardship customers not being on the best offer available to them towards retailers who could better manage it.
- **Supporting competition**. The final rule will afford retailers flexibility in how they meet their obligations compared to the proposed credit mechanism. This will minimise any further cost disadvantages to the smaller retailers and support them to compete in the market.
- **Promoting transparency**. The final rule will allow for greater accountability and transparency relating to retailers' reporting and support the AER in its compliance monitoring of the proposed rule by providing new items to which hardship program indicators must cover. This will provide direct and public transparency on consumer outcomes from the final rule.

### 2.3.3 The final rule will minimise implementation costs

The final rule will minimise implementation costs as it provides retailers with some flexibility to consider and implement different approaches that may be lower in cost to their billing operations and/or systems. That is, unlike the proposed crediting mechanism in the rule change request, the final rule does not prescribe a method or means by which retailers must meet the new proposed principle that hardship customers are no worse off than the deemed better offer (where it is a lower cost than the hardship customer's existing offer) and do not incur more debt than necessary. We note that the costs to retailers will depend on each retailer's own systems, existing support for hardship customers and their associated processes. The final rule aims to leverage and align many of the current processes to the extent possible to reduce implementation costs and regulatory burden.

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

The final rule provides an outcomes-based versus a prescriptive regulatory approach. This is achieved by setting out expectations on retailers to meet the intended outcome — that is, hardship customers access or benefit from the best offer and affording retailers the ability to consider how it will meet the proposed obligations.

43 ESC VIC found that switching customers to a retailer's best offer could result in total average annual savings of up to $16.8 million for affected electricity customers and $11.0 million for affected gas customers. ESC VIC, Energy Consumer Reforms Regulatory impact statement, p. 3.

# 3 How our rule will operate

The final rule has three components.

1. **Introducing a new principle**— that sets out a clear and direct obligation on retailers to ensure that where the hardship customer is not on the retailer's lowest cost deemed better offer, the hardship customer will be no financially worse off than if they were on the deemed better offer.[44]
2. **Enhancing and strengthening an existing retailer obligation.** Including an explicit obligation in the NERR that retailers check and offer the deemed better offer upon a customer joining their hardship program and at the time of informing the hardship customer of a deemed better offer under AER's Better Bills Guideline. This means that the final rule does not require the AER and retailers to update their customer hardship policies for the new requirement to take effect.
3. **Adding new items that the hardship program indicators must cover, in accordance with the retail consultation procedure.** The AER will include the new hardship program indicators in its Performance Reporting Procedures and Guidelines that retailers will report to the AER. The AER will be required to report them in its annual retail market reports similar to the existing hardship indicators in the NERR.[45]

This chapter provides an overview of the three components of the final rule, including:

- key refinements between the draft rule and final rule, having regard to stakeholder feedback to the draft determination
- considerations that shaped the Commission's decisions
- changes required to the AER procedures and guidelines, including:
  - Better Bills Guideline
  - Performance Reporting Procedures and Guidelines.

## 3.1 A new principle that places a clear and direct obligation on retailers to ensure hardship customers are not financially worse off than the deemed better offer

**Box 1: New principle-based obligation for retailers — hardship provisions in the NERR**

Under the final rule, retailers will be required to ensure that where the hardship customer is not on the retailer's deemed better offer, the hardship customer will be financially no worse off than if they were on the deemed better offer (where the deemed better offer is lower cost than the offer the hardship customer is on).

The final rule affords flexibility to the retailer in how they must meet this new principle. This means retailers could either:

- obtain EIC and move hardship customers onto the deemed better offer, as per existing mechanisms in the NERL (under rule 38 of the NERL, retailers must obtain a customer's EIC before they can move them onto a new contract, including a deemed better offer), or

44 As outlined in chapter 1, under AER Better Bills Guideline, a 'deemed better offer' must be either: (a) the plan the retailer offer which: (i) is the lowest generally available plan applicable to the customer having regard to the customer's annual usage history; and (ii) does not have as a precondition or condition that the customer has or maintain an affiliation or membership with an entity that is unrelated to the retailer; or (b) a plan that has a lower cost than the lowest cost generally available plan applicable to the customer. AER, Better Bills Guideline, section 47 and 49, 30 January 2023, p. 19

45 AER, Retail performance reports.

- provide them a financial benefit under their current plan (for example downward price adjustment, an enduring discount or credit) that must be at least the equivalent monetary value the hardship customer would have received or saved if they were on the retailer's better offer (that is cheaper than their current plan)(under rule 75D of the final rule). This applies where the deemed better offer is cheaper than a hardship customer's current plan.

The final rule requires retailers to provide the enduring discount at least once every 100 days, or at a later time where the retailer and customer have agreed to a different cycle greater than 100 days. The value of the financial benefit will be accrued from the date that a customer joins a retailer's hardship program. The timing to provide the financial credit aligns with the existing AER Better Bills Guideline requirement to do the better offer check - that is, at least once every 100 days, or at a later time where the retailer and customer have agreed to a different cycle greater than 100 days.

Where a hardship customer switches to another retailer before the next round of a deemed better offer check, the retailer will be required to provide them their financial benefit that they accrued over time with that retailer and apply it to their last bill (For example, switching retailers at day 15 since the last round of a deemed better offer check that is done every 100 days).

As part of the final rule, the AER will be required to define the term 'deemed better offer' in its Better Bills Guideline, taking into account the lowest cost energy offer available to a small customer and a small customer's energy usage. It must also consider whether non-financial benefits of an offer are included as part of the definition of a deemed better offer (under rule 25A(4)(b)).

The AEMC recommends to Energy Ministers that this provision be classified as a Tier 1 civil penalty.

### 3.1.1 The Commission made a number of refinements for the final rule regarding the new principle

The Commission considered stakeholder feedback on the draft determination and made some refinements relating to the new principle that included:

- providing guidance to the AER for defining the term 'deemed better offer'
- clarifying that retailers are to provide a financial benefit that is "at least" the monetary value of what they would have received under the deemed better offer. The draft rule provided that it should be the same monetary value
- changing the timing of when retailers are required to provide hardship customers a financial benefit from each bill. We are aligning it with the deemed better offer check under AER's Better Bills Guideline, which is at least once every 100 days, or where the retailer and customer have agreed to a different cycle that is greater than 100 days
- a specific obligation in the final rule for retailers when a hardship customer switches to another retailer (the retailer will be required to apply the financial benefit to the customer's final bill).

**The final rule includes guidance to the AER for defining the term 'deemed better offer'**

The draft rule included a new provision that required the AER to explicitly define the term 'deemed better offer'. This was because AER's Better Bills Guideline only provides a description of the process for calculating the 'deemed better offer' rather than a specific, defined term. The draft rule did not include any guidance to the AER on factors it should consider when defining the 'deemed better offer' in its Better Bills Guideline. The Commission noted in the draft determination that we would consider guidance based on feedback to the draft determination and draft rule.

Some retailers proposed that greater guidance is needed on what is included in AER's definition of a 'deemed better offer', specifically, if non-financial benefits are included. This was in response to retailers highlighting that some hardship customers may prefer or value other aspects of an offer or their current plan, for example, movie tickets, insurance bundle, energy efficiency advice or other non-financial, non-price benefits and that this may be one reason customers may not take up a retailer's deemed better offer (ie, the cheaper priced plan).[46]

Red/Lumo and ENGIE noted that if the proposed approach was maintained, retailers may withdraw non-price benefits and hence hardship customers may not have access to such benefits.[47] AGL considered that retailers should be allowed to consider the monetary value of non-financial benefits in meeting the new principle in ensuring that hardship customers are no worse off than the deemed better offer [48]

ECA and JEC in a joint submission with other consumer groups viewed that there should be more prescription for retailers, including guidance on:[49]

- how retailers calculate financial benefits
- when it should be applied (ie, from date of joining the program)
- applying protections under the final rule to those not only those in hardship under the rules but also those in payment difficulty
- the financial benefit only includes energy-related services and their price, not perks like rewards and frequent flyer points and movie tickets.

AEC noted an energy debt threshold to provide a financial benefit could be considered and allow retailers to calculate it at their discretion should be considered.[50]

The final rule includes guidance to the AER that it must take into account or consider in determining the deemed better offer definition which we have derived from the existing AER description of the better offer.[51] The specific guidance in the final rule includes:

- Ensuring the deemed better offer reflects the lowest-priced plan in terms of cost for a customer so that hardship customers pay for their energy usage under the cheapest plan for them, have more affordable bills and manage their debt.
- The customer's energy usage history. This is particularly important for calculating the financial benefit.
- Whether any non-financial benefits of energy offers available to a small customer should be considered as part of the deemed better offer. We consider that the AER is best placed to consider and clarify this as part of defining the deemed better offer, along with the deemed better offer identification and check processes under the Better Bills Guidelines, and make updates to these guidelines.

The Commission has included guidance to the AER in the rules because it:

- maintains or continues to have regard to those elements/factors in the existing description that we consider are important for the final rule and any future definition of the deemed better

46 Submissions to draft determination: AGL, p. 7, ENGIE, p. 2. Submissions to the consultation paper: ENGIE, p. 4, Origin, p. 2, Red/Lumo, p.1.

47 Submissions to draft determination: Red/Lumo, p. 1-2, ENGIE, p. 2.

48 AGL, submission to draft determination, p. 7.

49 Submissions to draft determination: JEC, p. 5-, ECA, p. 2-3.

50 AEC, submission to draft determination, p. 2

51 Under AER Better Bills Guideline, a 'deemed better offer' must be either: (a) the plan the retailer offer which: (i) is the lowest generally available plan applicable to the customer having regard to the customer's annual usage history; and (ii) does not have as a precondition or condition that the customer have or maintain an affiliation or membership with an entity that is unrelated to the retailer; or (b) a plan that has a lower cost than the lowest cost generally available plan applicable to the customer. AER, Better Bills Guideline, 2023.

offer, while still providing the AER with some flexibility to update the definition as the market changes over time

- provides certainty to retailers that any future changes to supporting systems and processes are likely to be minimised.

**There are changes to the timing of when retailers are required to provide hardship customers a financial benefit**

Where hardship customers do not provide their EIC to a retailer to be moved onto a deemed better offer, the draft rule required that retailers must provide hardship customers a financial benefit on each bill.

AGL considered that retailers should be allowed to provide hardship customers a financial benefit that is greater than the difference between the customer's plan and the deemed better offer.[52] EnergyAustralia viewed that it would be reasonable for retailers' assessment to be required less frequently than the proposed draft rule and at least, limiting the required frequency to at least 100 every days to align with the AER Better Bills Guideline.[53]

For the final rule, the Commission has aligned the timing for providing the financial benefit with that of the deemed better offer check under AER's Better Bills Guideline. That is, at least once every 100 days, or where the retailer and customer have agreed to a different cycle greater than 100 days.

We consider that this will minimise implementation costs and complexity for retailers as it will reduce the frequency of calculations that retailers must do for the financial benefit (eg, customers on monthly billing). It will also avoid additional administrative effort and costs involved from misalignment between the timing of financial benefit calculations and that of the deemed better offer check and message under AER's Better Bills Guideline (unless a hardship customer switches to another retailer). We understand some hardship customers of a retailer may have a monthly billing cycle, and the retailer may perform the deemed better offer check less frequently (eg, once every 100 days) in meeting the requirement under AER's Better Bills Guideline.

We consider that this timing change will not negatively impact hardship customers (those not on a deemed better offer cheaper than their current plan) as it will still meet the new principle that they are financially, no worse off than they would be if they were on the deemed better offer.

Under the *Restricting price increases for a fixed period under market retail contracts* rule change, the final rule provides that retailers will no longer be required to provide customers advance notification for a price decrease or energy payment (ie, feed in tariffs) increase. Retailers will be required to notify customers of price decreases as soon as practicable and no later than the next bill.[54]

### 3.1.2 The Commission considers that the new obligation enhances the existing arrangements for hardship customers to be on or benefit from a retailer's deemed better offer

The Commission outlined in the draft determination that it is important for hardship customers to have stronger support and that existing arrangements should be enhanced to assist hardship customers to be on or benefit from a retailer's deemed better offer. This is based on that:

52 AGL, submission to draft determination, p. 2.

53 EnergyAustralia,submission to draft determination, p. 6.

54 Under current arrangements, retailers are required to provide all customers with notice at least five business days before the variation in the tariffs and charges is to apply to the customer. Rule 46 of the NERR.

- **A strong onus on retailers is lacking.** Retailers currently have discretion as to when and how often they offer a deemed better offer to a hardship customer under AER's Customer Hardship Policy Guideline (other than when hardship customers first join a hardship program).[55]
- **The risk and consequence of not financially benefiting from a better offer fall disproportionately on hardship customers.** Hardship customers can be prone to higher prices the longer they stay on their current offer more than necessary, which could worsen payment difficulties and increase their build-up of (further) debt. ECA's Energy consumer sentiment survey found, consumers under financial pressure are more likely to consider but decide not to switch retailers or plans because it is too confusing, complex and time-consuming.[56] As a result of hardship customers paying higher prices than necessary, they are more likely to face challenges in meeting requested payments. Failure to meet requested payments was the primary reason that electricity and gas customers in hardship were excluded from hardship programs between quarter three of 2022 to 2024.[57]
- **Transparency could be stronger.** There is limited public data on the kind of offers hardship customers are on.
- **Issues relating to hardship and energy affordability have been persistent.** The Commission notes stakeholder views on the policy intent and that there are a range of persistent issues facing hardship customers (see Box 2 for details).[58]

### Box 2: Stakeholder views and findings on issues relating to hardship and accessing a deemed better offer

- **Some hardship customers are not benefiting from the deemed better offer.**
  - JEC, in a joint submission with other consumer groups, notes that there is consistent evidence that most people experiencing payment difficulty (including those in retailer hardship programs) are not on their retailers' deemed better offer and are often unable to consistently access better offers from other retailers.
  - ACCC December 2023 retail market inquiry report noted that:
    - customers who don't regularly switch offers tend to pay higher prices from staying on their current offer longer than necessary, which increases the longer a customer stays on the same offer
    - residential customers on flat rate offers that are at least two years old (2.1 million residential customers) have calculated annual prices on average 16.9 per cent or $317 higher than those on newer offers
    - 59 per cent of customers on flat rate offers at least two years old were on offers priced at or above the default offers, excluding rebates and concessions.
- **Recent trends and data on hardship**. The AER's game changer and quarterly retail performance reports indicate issues relating to hardship have been persistent.
  - Fewer electricity and gas customers have successfully exited hardship programs each year for the past four financial years.

55 AER, AER Customer Hardship Policy Guideline, March 2019, p. 24.

56 ECA, Energy consumer sentiment survey, June 2024, p. 2.

57 AER, Retail energy market performance update for quarter 3, 2023-24, Schedule 4-Quarter 3 2023-24 retail performance data, 21 June 2024.

58 JEC joint submission with Ethnic Communities' Council of NSW; St Vincent de Paul Society, ACOSS and Sydney Community Forum, p. 2. In 2024, the ACCC reported vulnerable customer groups, including those in hardship, have higher usage than other customer groups. Inquiry into the National Electricity Market June 2024 report, 2 June 2024, p, 46. PIAC, Powerless: Debt and disconnection, June 2024, p. 9, AER, Annual retail markets report 2023-24, November 2024, p. 87,93-95, ACCC, Inquiry into the National Electricity Market June 2023, 2 June 2023, p. 45.

- The main reason electricity and gas customers are being excluded from hardship programs has been due to failure to meet requested payments.
- A significant portion of hardship customers are not meeting their electricity usage costs, where 43 per cent of electricity customers on hardship programs in 2023-24 were not meeting their electricity costs. The AER reports retailers state this was primarily due to electricity prices and rising cost of living pressures.
- In 2024, hardship customers without a payment plan or concession faced their highest median bills since the ACCC inquiry began in 2018.

### 3.1.3 The Commission considers that the new obligation will better achieve the NERO than the proposed crediting mechanism

Based on its assessment and stakeholder input, the Commission considers that the proposed crediting mechanism may lead to some unintended outcomes for consumers, as outlined in appendix Asection 3.1.3 In particular, potentially leading to customer confusion and disputes over the credit amount and how it was calculated.

Further, the crediting mechanism would be a highly prescriptive regulatory approach given it would require additional implementation considerations to those outlined in the rule change request (see appendix A.1) and be less flexible to amend over time.[59] Implementation challenges are likely to include:

- potential eligibility criteria for receiving a credit
- interaction of the credit with existing payment plans or methods (eg, Centrepay)
- consideration of hardship customers switching retailers.

**The Commission considers a more outcomes-based regulatory approach is appropriate**

The Commission views that a principle or outcomes-based approach that provides for hardship customers to be financially no worse off than the deemed better offer is appropriate. This is because retailers are best placed to assess, manage and minimise costs associated with ensuring customers are on the deemed better offer. Under the outcomes-based approach, retailers can consider different lower-cost implementation approaches to meet their obligation.

For example, retailers could provide an enduring discount, a credit or a downward price adjustment so that the price under their current offer matches that of the better offer. They can also consider the approach that will suit their existing systems and operations.

Affording retailers this flexibility will minimise potential perverse incentives, and avoid potentially greater implementation costs associated with the proposed crediting mechanism. More details on the impacts to consumers and retailers, including costs is outlined in chapter 2.

**The Commission considered the benefits and impacts on consumers and retailers, including costs**

The Commission considers that the outcome-based approach of the final rule will provide important protections for hardship customers by reducing the onus and burden for all hardship customers to engage with their retailer and take action to move to or benefit from the lowest-cost deemed better offer. Although there may be some costs to retailers to update their billing systems

59 As outlined in the rule change request, the crediting mechanism would involve requiring retailers to provide hardship customers a credit on their bill to match the amount they would pay if they were on the deemed better offer.

and meet additional compliance requirements, we have crafted the final rule to leverage or build upon existing systems and processes where possible and appropriate.

Overall, the Commission considers the benefits of the final rule outweigh the impacts and costs to retailers because:

- the final rule has sought to align many of the current processes under the Better Bills guideline to the extent possible to reduce implementation costs and regulatory burden
- we do not expect the costs and regulatory burden to be large, given reliance on some of the existing processes and obligations
- the proportion of hardship customers makes up a small proportion of the retailer's total business costs.[60]

## 3.2 Enhancing and strengthening an existing AER guideline requirement for the 'right energy plan'

**Box 3: Enhancing and strengthening an existing guideline obligations for retailers to check if customers are on the deemed better offer**

The final rule requires retailers to offer their hardship customers the deemed better offer (ie, where the deemed better offer is lower cost than the offer the hardship customer is on) not only when a customer joins the hardship program but on an ongoing basis, that is:

- at least once every 100 days, or
- where the retailer and customer have agreed to a different cycle greater than 100 days.

This timeframe requirement is in accordance with AER's Better Bills Guideline.

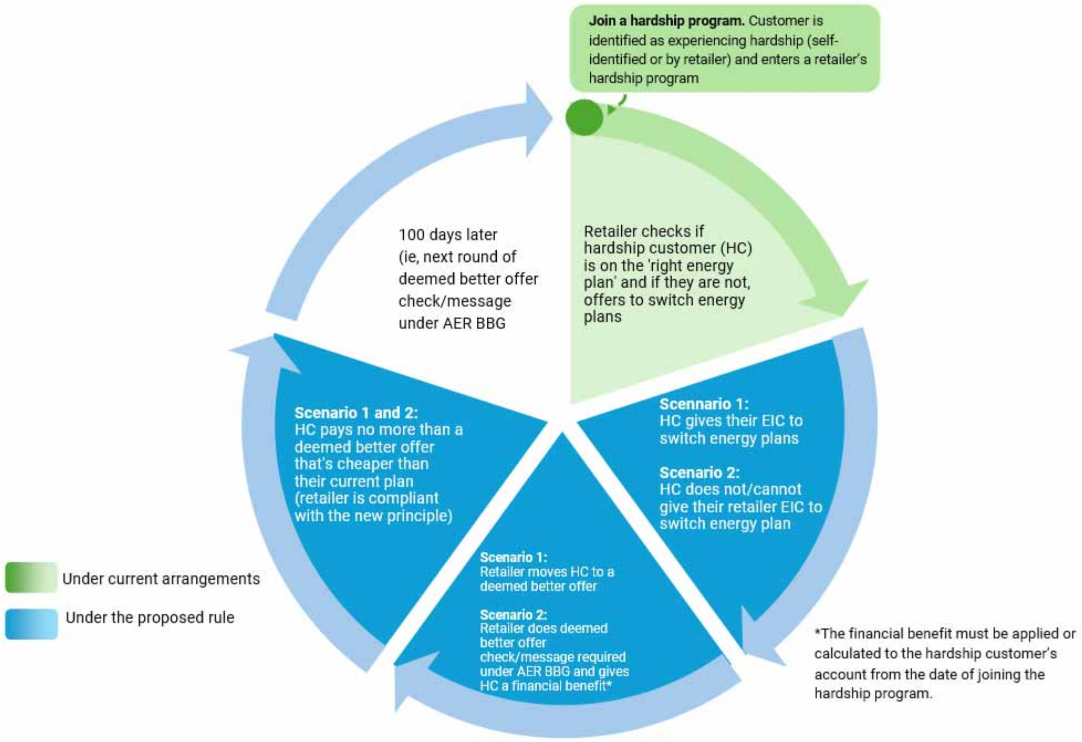
The final rule will:

- make the existing requirement on retailers under the AER's Customer Hardship Policy Guideline explicit and stronger by having the requirements directly in the NERR
- give the hardship customers, particularly those who are or can be engaged, frequent and ongoing opportunities to switch to the deemed better offer that is available to them. This maintains or promotes hardship customers' engagement with their retailer.

Figure 3.1 shows the customer journey under the final rule.

60 ACCC, Inquiry into the National Electricity Market report December 2024 report, p. 79. For example, the total proportion of hardship customers was 1.6 per cent in quarter two of 2024-25AER, Schedule 4-Quarter 2 2024-25 retail performance data, March 2025.

**Figure 3.1: A customer's journey on how the final rule will apply to them along with existing protections under the NECF**




Source: AEMC

### 3.2.1 The Commission made a number of refinements for the final rule on enhancing and strengthening an existing guideline obligation for retailers

The draft rule required the AER to update its customer hardship guidelines so that retailers state in their customer hardship policies that they will offer hardship customers a deemed better offer:

- upon joining a hardship program and at least once every 100 days, or
- in line with a billing cycle between the retailer and customer.

In practice, this means checking if there is a deemed better offer and then notifying the customers beyond a message on their bill that they could be on a deemed better offer.

The final rule places a direct obligation in the NERR for retailers to offer customers a deemed better offer that is lower cost than the customer's current plan (if available) when the:

- customer becomes a hardship customer
- retailer is required to inform the customer of the availability of a deemed better offer under AER's Better Bills Guideline.

The Commission considers that placing the requirement directly in the rule will enable:

- the AER to enforce retailers' obligations without confusion and ambiguity, which would support achieving the policy outcome. Specifically, the AER would not need to allege that a retailer has failed to 'implement' its customer hardship policy under the NERL, which can be challenging to evidence. [61]

61 Section 43(2)(c) of the NERL.

- allowing the retailer requirements to commence sooner as it will no longer be dependent on the AER and retailers to finalise updating their hardship guidelines and policies, respectively.

Having retailers' existing obligations in the NERR instead of in AER guidelines will also strengthen this obligation and better support the overarching outcome-based obligation.

### 3.2.2 Stakeholders generally had mixed views and noted some considerations for the final rule

JEC and other consumer groups in a joint submission, EnergyAustralia and SAPN supported the draft rule in enhancing existing retailer obligations in the AER hardship guidelines.[62] SAPN stated it would ensure hardship customers benefit from better offers that may be available since joining a hardship program.[63] As outlined, JEC noted that there should be more prescription so that retailers are required to check, offer and apply (or confirm) either the deemed better offer (or the equivalent financial benefit):[64]

- at any point of annual price change relevant to the customers offer during their participation in the hardship program
- when the customer exits the hardship program.

ENGIE, AGL and Compliance Quarter argued that mandating retailers as to when they must offer hardship customers a deemed better offer (that is cheaper than their current plan) could or would:[65]

- disrupt the personalised support they provide to hardship customers
- lead to disengagement
- lead to unnecessary and excessive communications, especially for customers on a monthly billing cycle, and/or
- divert resources away from more tailored and human-centric support that might be more effective in assisting an individual hardship customer.

AGL supported offering hardship customers a deemed better offer when they join a hardship program but considered:

- ongoing better offer obligations should remain under the existing AER Better Bills Guideline.
- this retailer requirement should be removed as it would duplicate existing deemed better offer calculations and message requirements under AER Better Bills Guideline.[66] ENGIE also expressed uncertainty as to why an additional requirement in the NERR would be necessary as the AER Better Bills guideline currently requires retailers to identify the availability of deemed better offers for all customers and provide information in how to access this offer.[67]

### 3.2.3 The final rule will support hardship customers who are or can actively engage with the market and their retailer

The final rule recognises that some hardship customers may engage in the market and/or with their retailer or could engage with the right ongoing support from their retailer. As ECA found in its recent Energy consumer sentiment survey, customers facing affordability challenges are less likely to switch retailers or plans as they tend to find them too confusing, time-consuming or

62 Submissions to draft determination: JEC, p. 6, EnergyAustralia, p. 6, SAPN, p. 2.

63 SAPN, submission to draft determination, p. 2.

64 JEC joint submission, submission to draft determination, p. 6.

65 Submissions to draft determination: AGL, p. 6, ENGIE, p. 4, Compliance Quarter, p. 3.

66 AGL, submission to draft determination, p. 6.

67 ENGIE, draft determination, p. 4.

complicated.[68] However, some hardship customers may be actively and regularly engaged in the market and/or with their retailer in seeking to find a better energy deal or take up a deemed better offer to reduce their energy bills. In 2024, the ACCC reported higher rates of customers switching retailers and that around 20 percent of customers across the NEM switch retailers in any given year.[69]

Under current arrangements, retailers only have to check and offer hardship customers the deemed better offer on joining the program and not on an ongoing basis. As indicated in box 4, under the existing AER Customer Hardship Policy Guideline, retailers are required to include a standardised statement in their customer hardship policy (see box 4).[70]

### Box 4: Standardised statement in AER's Customer Hardship Policy Guideline for retailers' hardship policies

**"We want to check you have the right energy plan**

**What we will do**

When you join our hardship program, we will talk to you about your energy use and whether you are on the right plan.

If we think there is a better energy plan for you, we will:

- explain why the plan is better
- ask if you'd like to transfer to the new plan for free.

We will only talk to you about energy plans we can offer."

The Commission considers that enhanced or more explicit and stronger provision for retailers to offer hardship customers the deemed better offer upon joining a hardship program and an ongoing basis (beyond a deemed better offer message on bills), will support hardship customers by:

- **Reducing their transaction costs**. Hardship customers will not need to spend additional time, effort and stress in searching the market or attempting to engage with their retailer (with potentially long wait times) to find a deemed better offer that is available to them. This is by putting a stronger onus on retailers for hardship customers to access or benefit from the deemed better offer.
- **Reducing their opportunity costs**. Hardship customers will not miss out on the benefits of the deemed better offer (ie, savings) and help manage debt.
- **Accessing better deemed better offers.** Supporting hardship customers to engage in the market and with their retailer could lead them to find a deemed better offer from other retailers, not just from switching plans with their current retailer.
- **Maintaining or providing greater opportunity for engagement and support.** Hardship customers will be notified and be made aware of a deemed better offer (where the deemed better offer is lower cost than the offer the hardship customer is on) through stronger retailer requirements. We expect retailers to offer hardship customers a deemed better offer beyond a

68 ECA, Energy consumer sentiment survey, June 2024, p. 10.

69 ACCC, Inquiry into the National Electricity Market December 2024 report, 3 December 2024, p. 4,51,52.

70 A retailer's requirement to maintain and implement its customer hardship policy, including the standardised statement above, is subject to civil penalties under sections 43(2)(c) and 43(3)(b)(iv) of the National Energy Retail Law and Schedule 1 of the National Energy Retail Regulations, made on 21 February 2019.

message on their bill, for example, as part of a conversation with the hardship customer in providing tailored assistance and/or an affordable payment plan.

As noted, the Commission anticipates that additional costs on retailers for implementing this final rule will be minimal as it leverages existing retailer obligations and processes under AER's Better Bills Guideline and Customer Hardship Policy Guideline These existing processes include:[71]

- processes to identify residential customers who are experiencing payment difficulty due to hardship (self-identification or identification by the retailer)
- discussing and providing flexible payment options that suit a hardship customer's situation
- processes to identify appropriate government concession programs and appropriate financial counselling services and to notify them of those programs and services
- processes to review the appropriateness of a hardship customer's market retail contract in accordance with the purpose of the customer hardship policy
- processes or programs to assist customers with strategies to improve their energy efficiency.

The final rule leverages retailers' current obligations or processes in reaching out or having discussions with hardship customers and assisting them with payment difficulty. This includes discussions beyond a message on their bill, letting them know of a deemed better offer that is available to them. As noted, the obligations for the final rule are additional measures and do not negate or override retailers from meeting their existing obligations or providing additional support as necessary.

## 3.3 Adding new items that hardship program indicators must cover and for retailers and the AER to report on

**Box 5: New hardship indicators that support monitoring and compliance**

The final rule introduces new items that hardship program indicators must cover, including:

- assistance available to and provided to customers under the Rules (in addition to under customer hardship policies)
- purchase of energy by hardship customers at prices relative to standing offer prices
- uptake of the lowest cost energy offer available to hardship customers.

The final rule leaves it up to the AER to consider and determine how they should be prescribed, in accordance with the retail consultation procedures. The AER will include the new hardship program indicators in its Performance Reporting Procedures and Guidelines. Retailers will report on these new hardship program indicators to the AER, and the AER will be required to report them in their annual retail market reports similar to the existing hardship indicators in the NERR (under rule 75(2) of the NERR, hardship program indicators must cover the following: entry into hardship programs, participation in hardship programs and assistance available to and assistance provided to customers under customer).

Under current arrangements, there are no existing hardship program indicators that provide transparency on offers that hardship customers are on for their energy usage, particularly whether they are on the lowest cost offer and if not, how far their offer is from the relevant standing offer.

The new hardship program indicators will be an addition to existing hardship program indicators that the AER is currently required to report in its retail market performance reports under the NERL

71 Rule 44 of the NERL.

and NERR.[72] The AER collects information and data from retailers relating to their performance under the NERL and NERR according to the AER Performance Reporting Procedures and Guidelines.[73]

The new hardship program indicators will be determined through the retail consultation process.[74] This will be consistent with how information and data on existing hardship program indicators are currently reported in AER's annual (and quarterly) retail market reports.

### 3.3.1 The Commission made a number of refinements for the final rule on new hardship program indicators

The key refinement is changing the way new hardship program indicators are determined. The draft rule specified that the new hardship program indicators must measure the number and percentage of hardship customers on offers that are:

- the deemed better offer
- not the deemed better offer, including providing to the AER reasons why (retailers were required to use reasonable endeavours to gather information on why hardship customers are not on the deemed better offer)
- above and below the standard retail contract offer.

For the final rule, the Commission has determined these hardship program indicators will be determined in accordance with the retail consultation procedure and outlined in AER's Performance Reporting Procedures and Guidelines, as per current requirements or processes. This will:

- **ensure the hardship program indicators are fit for purpose.** The AER stated that the draft rule's approach would be a departure from current practice, and it is appropriate to consult on the specific indicators to ensure that they are practical and fit for purpose.[75] While agreeing with the AER, we also view providing guardrails in determining the indicators under the final rule will ensure the indicators will meet the policy intent of improving the reporting and transparency on the uptake of the lowest cost energy offer available to hardship customers, including whether and how retailers are meeting the new principle.
- **allow flexibility for changes to the indicators.** Further information may become available or circumstances relating to hardship and payment difficulty may change over time as the market transitions.

In submissions to the draft determination, a few retailers and the AER raised concerns that certain aspects of the indicators may not be practical, add administrative burden and operational costs.[76] This was particularly with reference to the deemed better offer and the 'best endeavours' obligation on information why hardship customers are not on the deemed better offer that is cheaper.

AGL and the AER considered that there would be challenges with reporting information on the deemed better offer as it is a dynamic value that changes periodically within a single reporting period. To overcome this, AGL recommended that the reporting requirement be a snapshot at a

72 Section 286 of the NERL and rule 75(1), 75(2) and 166 of the NERR.

73 This guideline sets out the manner and form in which retailers must provide the information and data to the AER. AER, Performance Reporting Procedures and Guidelines, August 2024.

74 Victoria has its own payment difficulty framework and consumers in Victoria are protected under the Victorian Energy Retail Code of Practice.

75 AER, submission to draft determination, p. 3

76 Submissions to draft determination: AGL, p. 2, 8, EnergyAustralia, p. 6,7, ENGIE, p. 4-5, AER, p. 3.

point-in-time at the end of the reporting period.[77] The AER also noted resourcing impacts from the 'best endeavours' obligation. For example, to issue proactive guidance on the scope of 'reasonable endeavours', given the potential risk of customers feeling pressured to provide this information.[78] EnergyAustralia and ENGIE viewed this particular obligation to be vague, open to interpretation and would complicate calls and support provided to hardship customers.[79]

Overall, stakeholders generally supported introducing new hardship program indicators.[80]Compliance Quarter and JEC in a joint submission with other consumer groups agreed that increased transparency via retail performance reporting is essential or key in monitoring the effectiveness of the new rule.[81]

### 3.3.2 The final rule will support AER monitoring and compliance enforcement

The Commission considers that the new items to which hardship program indicators must cover will provide direct and public transparency on consumer outcomes from the final rule. It will also allow the AER and retailers to balance resourcing impacts and ensuring the new hardship program indicators are practical and fit for purpose in delivering this intent. In particular, transparency on whether hardship customers are accessing or benefiting from the cheapest offer and if not, how far their offers are from standing offer prices. It will also support the AER in monitoring, investigating and enforcing compliance with retailers' obligations under the final rule.

We note the AER will likely need to update:[82]

- its Compliance Procedures and Guidelines, which set out the manner and form in which retailers must submit information and data to the AER on their compliance with the NERL, NERR and National Energy Retail Regulations.[83]
- Performance Reporting Procedures and Guidelines to set out the manner and form retailers must submit this information to the AER.

## 3.4 Implementation considerations

The AER will need to update its guidelines and procedures as noted to reflect the changes from the final rule. That is, the AER will need to update the following and consider any necessary changes or additional considerations as outlined above.[84] These include:

- Better Bills Guideline
- Performance Reporting Procedures and Guidelines
- Compliance Procedures and Guidelines
- Customer Hardship Policy Guideline as required
- Benefit Change Notice Guidelines (if any, where hardship customers do not require advance prior notice to retailers applying a benefit change where the hardship customers would be made better off).

77 Submissions to draft determination: AGL, p. 8, AER, p. 3.

78 AER, submission to draft determination, p. 3.

79 Submissions to draft determination: EnergyAustralia, p. 6,7, ENGIE, p. 4-5.

80 Submissions to draft determination: JEC, p. 6, Compliance Quarter, p. 3, Qombudsman of QLD, NSW and SA, p. 1, AGL, 8.

81 Submissions to draft determination: JEC, p. 6, Compliance Quarter, p. 3.

82 AER, Compliance Procedures and Guidelines, September 2018. AER, AER Performance Reporting Procedures and Guidelines, July 2025.

83 AER, Compliance Procedures and Guidelines, September 2018.

84 In 2025 and 2026, the AER will review four of its enforceable retail guidelines, which apply to authorised retailers operating in the ACT, NSW, Queensland, South Australia and Tasmania. These guidelines are: Benefit Change Notice Guidelines, Better Bills Guideline, Customer Hardship Policy Guideline and Retail Pricing Information Guidelines. AER, AER is reviewing four retail guidelines in 2025 and 2026, May 2025.

The key milestones for implementing the changes under the final rule are as follows:

- publication of the final determination and rule
- AER updates procedures and guidelines
- retailers report data to the AER and then the AER reports the new hardship program indicators in its annual retail market report.

# 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.[85]

## A.1 The ECMC proposed a rule to provide hardship customers with a credit on their bill if they are not on the deemed better offer

The rule change request highlighted that hardship customers face many barriers to engaging and taking action to move to the best offer for them. These barriers can include “lack of time, literacy or language barriers, among others”. The rule change noted that this may mean hardship customers may remain on less affordable plans, making it more difficult for them to tackle their debts and manage ongoing energy usage.

**ECMC sought to increase support for people experiencing hardship and proposed a crediting mechanism**

Retailers are not able to move consumers onto a deemed better offer/plan without obtaining the customer’s EIC under the NERL. In the proponent’s view, EIC is widely recognised as an important consumer safeguard in ensuring consumers understand the contracts they enter with their retailer and should be maintained.[86]

Given this, the ECMC proposed not to change EIC requirements but rather proposed a crediting mechanism that would serve consumer interests while remaining consistent with the NERL’s EIC provisions (see appendix A.1 about the proposed crediting mechanism).

The proponent proposed that retailers provide their hardship customers with a credit on their bill to match the amount they would pay if they were on a deemed better offer. The rule change request set out some considerations for how a retailer would apply a credit on hardship customers’ bills, including:[87]

- **Calculating the credit amount.** The credit would be calculated as the difference between the full amount of a customer’s bill and what the customer would have been charged if they were on the deemed better offer under the AER’s Better Bills Guideline. There would be no credit if the customer is already on the deemed better offer.

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

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

87 ECMC, Assisting hardship customers rule change request, p. 4.

- **Pro-rating the credit.** When a customer moves onto or off a hardship program, the bill credit would be pro-rated to the period during which they were on the hardship program. The credit could be similarly pro-rated if a customer changes energy plans.
- **No need to change energy plans.** Retailers should not be allowed to change a hardship customer's energy plan or tariff (unless the hardship customer chooses to do so, as below).
- **Maintain customer choice.** Consumers should not be precluded from changing energy plans if that is their preference. Nor should the rule lift the existing obligations on retailers to engage with these consumers on whether their current plan is right for them.

**Most stakeholders supported the policy intent of the rule change proposal but not the proposed crediting mechanism**

Most consumer groups broadly agreed with the stated issues in the rule change request but, similar to retailers, were concerned about the nature and impacts of the proposed crediting mechanism prescribed in the NERR. Stakeholder concerns included:[88]

- the credit being only temporary relief for hardship customers for the duration they are in a hardship program
- bill shock when customers exit a hardship program and no longer receive the credit and reinforcing the cyclical nature of consumers experiencing hardship
- available better offers becoming less publicly available and accessible
- disincentivises retailers to proactively identify and support hardship customers — ie, keeping people on payment plans for longer
- higher barriers to entry to hardship programs
- retailers become more aggressive in removing people from a hardship program
- discourage hardship customers from engaging with the market or retailer, undermining retailers' ability to help them with payment difficulties
- incentivises hardship customers to not switch to the deemed better offer, so they can remain on a higher priced plan to receive the credit and other benefits of their current plan
- potential rise in complaints to the Ombudsmen where hardship customers dispute the credit amount and its accuracy
- negative customer experiences and outcomes (eg, confusion and disputes over how the credit was calculated and its amount). [89]

ECA strongly supported the policy intent of the rule change proposal. It considered that existing arrangements are not adequate to protect and ensure hardship customers pay the lowest possible bill. [90] As Ombudsman of QLD, NSW and SA noted in their joint submission, hardship customers could potentially dispute the credit amount on whether it's high enough and whether it's accurate.[91] The AER and SACOSS while supporting the credit approach, noted some wider or detailed implementation issues for consideration in line with retailers to ensure success and good outcomes for consumers, including:[92]

- transparency in 'best offer' calculations

88 Submissions to consultation paper: COTA, p. 2-3; Ombudsman of QLD, SA and NSW, p. 3, 21; EWOV, p. 4; SACOSS, p. 11; JEC joint submission with Ethnic Communities' Council of NSW; St Vincent de Paul Society, ACOSS and Sydney Community Forum, p. 2, 6-8, ENGIE, p. 1, AGL, p. 4-5, Energy Locals, p. 2, Red/Lumo, p. 2.

89 The top complaints that EWON received in financial year (FY) 2023 and 2024 were issues relating to billing and credit. Credit related complaints included payment difficulties and debt collection. Overall, it increased by 23% in FY 2024. EWON, Annual report 2023-2024, p. 21.

90 ECA, submission to consultation paper, p. 3, 7.

91 Ombudsman of QLD, NSW and SA, submission to consultation paper, p. 3.

92 Submissions to consultation paper: AER, p. 3, SACOSS, p. 11.

- updates to current standardised statements in the AER Customer Hardship Policy Guideline,
- the event of a miscalculation and its impact on hardship customers — ie, estimated versus actual meter reads
- establishing a clear set criterion to define debt levels and the frequency of credits applied to customers so that application is consistent and equal across retailers.

JEC, who strongly supported the intent of the rule change, considers the proposal to ensure customers experiencing payment difficulty or energy affordability issues are on the deemed better offer could be applied more broadly to other customer segments. [93]

Many retailers considered that the crediting mechanism would lead to significant implementation costs complexity, risks and challenges as it would involve:[94]

- the need for complicated, accurate and transparency calculations of the credit to ensure retailers' compliance
- increased administrative and labour costs
- new and complex IT development
- significant system and operational changes, such as building automated billing capabilities, reconfiguring billing platforms and integrating new data processing functionalities.

We note stakeholder submissions to the draft determination are provided in chapter 1 and chapter 3.

## A.2 The rule change request builds on the AER's previous work

### A.2.1 The request draws from the AER's Game changer recommendation for an automated better offer

This rule change request to assist hardship customers is drawn from a recommendation in the AER Game changer report.[95]

**The AER found more customers are experiencing payment difficulty**

In its Game changer report, the AER identified high levels of consumer debt and hardship, even more so with rising living costs and energy prices. It states these challenges remain despite efforts from the energy sector, including consumer protections in the regulatory framework, hardship and support programs from energy businesses and concessions and rebates from governments.[96]

The AER views consumer outcomes for those in financial hardship as needing improvement, and considers that there should be more intensive support for these consumers to overcome their debt burden (if any) to break the cycle of energy debt.[97]

**The AER recommended options to address these issues**

As part of its Game changer work, the AER considered three implementation options for automatically switching customers to the deemed better offer. Each would require removing or changing EIC provisions under the NERL.[98]

93 JEC joint submission with Ethnic Communities' Council of NSW; St Vincent de Paul Society, ACOSS and Sydney Community Forum, p. 6.

94 Submissions to consultation paper: EnergyAustralia, p. 2, AGL, p. 1, Energy Locals, p. 3, Red/Lumo, p. 2, Alinta, p. 3, Origin, p. 2.

95 AER, Game changer, November 2023.

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

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

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

1. **Automated switch with post-switch reversal.** This involves the retailer notifying their customer that an automated switch has taken place, and the customer can choose to reverse the switch during the existing 10-day cooling-off period.
2. **Automated switch with pre switch opt-out and post switch reversal**. The retailer would notify their customer of an upcoming automated switch and the customer can choose to opt out beforehand or reverse the switch during the cooling-off period.
3. **General consent for automated switch in the future.** A customer provides consent for their retailer to automatically switch them to a deemed better offer in the future. Customers can choose to reverse the switch during the cooling-off period.

The rule change request notes the options above from the AER Game changer report, but proposes the alternative credit mechanism approach which would not require a change to the NERL. ECMC considers that the existing EIC provisions are widely recognised as an important consumer safeguard in ensuring consumers understand the contracts they enter with their retailer.[99]

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

As noted in chapter 1, the Commission is currently progressing the *Improving the ability to switch to a better offer* rule change proposal, which would increase customers' awareness of savings that can be achieved from switching plans with their retailer. This would reduce the amount consumers pay for energy and increase the amount of competition in the retail market.[100]

## A.3 The 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.[101] The Commission also published a consultation paper identifying specific issues for consultation. The Commission received 16 submissions on the consultation paper. Issues raised in these submissions were summarised and responded to in the draft rule determination.

On 27 March 2025, the Commission published a draft rule determination including a draft rule. The Commission received 15 submissions on the draft rule determination. Issues raised in submissions are discussed and responded to throughout this final rule determination. A summary of other issues raised in submissions and the Commission's response to each issue is contained inappendix D.

99 ECMC, Assisting hardship customers rule change request, p. 3.
100 AEMC, Improving the ability to switch to a better offer, 2025.
101 This notice was published under section 251 of the NERL.

# B Legal requirements to make a rule

This appendix sets out the relevant legal requirements under the NERL for the Commission to make a final rule determination.

## B.1 Final rule determination and final rule

In accordance with section 252 and 259 of the NERL, the Commission has made this final rule determination for a more preferable final rule in relation to the rule proposed by the Hon Chris Bowen MP, Minister for Climate Change and Energy, as Chair of ECMC. The Commission's reasons for making this final rule determination are set out in chapter 1and chapter 3.

A copy of the more preferable final rule is attached to and published with this final determination. Its key features are described in chapter 3.

## B.2 Power to make the rule

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

The subject matter of the final rule falls within:

- section 237(1)(a)(i) of the NERL as it relates to the provision of energy services to customers, including customer retail services and customer connection 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 request the Commission considered:

- its powers under the NERL to make the final rule[102]
- the rule change request
- submissions received during the first round of consultation
- stakeholder input received at a feedback session with some consumer groups on the consultation paper held on 16 December 2024 and bilateral discussions with stakeholders
- the Commission's analysis in which the final rule will or is likely to contribute to the achievement of the NERO
- the extent to which the 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.[103]

102 s244 NERL

103 Under s. 33 of the NEL and s. 73 of the NGL 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. On 1 July 2011, the MCE was amalgamated with the Ministerial Council on Mineral and Petroleum Resources. In December 2013, it became known as the Council of Australian Government (COAG) Energy Council. In May 2020, the Energy National Cabinet Reform Committee and the Energy Ministers' Meeting were established to replace the former COAG Energy Council.

## 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' Meeting 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.[104] A Decision Matrix and Concepts Table,[105] 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.

In conjunction with the AER, the Commission proposes to make the following civil penalty recommendations to the Energy Ministers' Meeting in relation to the final rule.

**Table B.1: Civil penalty recommendation**

| NERR Clause | Description of rule | Proposed classification | Reason |
|---|---|---|---|
| 75D(1) | This clause requires retailers to ensure hardship customers pay no more than the deemed better offer — either by providing a financial benefit on each bill of at least the equivalent monetary value to the financial benefit that the hardship customer would receive if that customer were purchasing energy under a deemed better offer. | New Tier 1 civil penalty provision | Failure by retailers to comply with this provision may negatively impact a hardship customer's ability to manage their bills and debt (if any). |

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

105 The Decision Matrix and Concepts Table is available at: https://web.archive.org.au/awa/20210603104757mp_/https://energyministers.gov.au/sites/prod.energycouncil/files/publications/documents/Final%20-%20Civil%20Penalties%20Decision%20Matrix%20and%20Concepts%20Table_Jan%202021.pdf

# C Summary of changes from draft to final

We made four key refinements to the draft rule for the final rule. These are on:

- the definition of 'deemed better offer'
- timing of when the financial benefit for hardship customers not on better offer is provided
- obligation to offer the better offer
- new hardship program indicators.

**Definition of 'deemed better offer'**

The draft rule included an obligation on the AER to include a definition of the term 'deemed better offer' in its billing guideline. The final rule builds on this obligation by requiring the AER to consider, when defining that term, the lowest cost energy offer available to a small customer and the small customer's energy usage history. The final rule also requires the AER to consider if any non-financial benefits of energy offers available to a small customer should be considered as part of the deemed better offer definition.

**Financial benefit for hardship customers not on better offer**

The draft rule proposed an obligation on retailers to ensure hardship customers pay no more than the deemed better offer. The final rule makes it clear when a financial benefit must be paid (in line with the requirement to offer a deemed better offer in the billing guideline) and, additionally, on the issue of the customer's final bill. The final rule does not include an obligation on retailers to find out why a hardship customer is not purchasing energy under a deemed better offer.

Where the hardship customer is not on the retailer's lowest cost deemed better offer, the draft rule proposed requiring retailers to provide hardship customers a financial benefit that is the same monetary value the hardship customer would have received or saved if they were on the retailer's deemed better offer. The final rule requires the financial benefit to be at least the equivalent monetary value to the financial benefit that the hardship customer would receive if that customer were purchasing energy under a deemed better offer.

**Obligation to offer the better offer**

The draft rule required retailers to explicitly state in their hardship policy that they would check and offer the deemed better offer upon a customer joining their hardship program and at least once every 100 days, or where the retailer and customer have agreed to a different billing cycle, in line with that billing cycle.

The final rule makes this obligation a strict obligation on retailers in the Rules, rather than something they must include in their hardship policies. This means that the final rule does not require retailers to update their customer hardship policies for the new requirement to take effect.

**New hardship program indicators**

The draft rule sought to add new hardship program indicators that retailers report to the AER on. These included the total number and percentage of hardship customers:

- on a deemed better offer
- not a deemed better offer and reasons why (if known)
- being charged amounts above and below the standing offer.

Instead of prescribing these hardship program indicators, the final rule leaves it up to the AER to consider and determine how they should be prescribed, in accordance with the retail consultation procedures. The final rule requires only that the revised hardship program indicators cover:

- purchase of energy by hardship customers at prices relative to the relevant standing offer price
- uptake of the lowest cost energy offer available to hardship customers.

# D Summary of other issues raised in submissions

Table D.1: Summary of other issues raised in stakeholder submissions on the draft determination

| Stakeholders | Issue | Response |
|---|---|---|
| Origin and Compliance Quarter | As an alternative approach to the draft determination and draft rule, these stakeholders suggested a social tariff, which would set a single consistent rate for all hardship customers. They noted/argued that:<br>• the AER could develop it alongside the DMO<br>• provide a transparent, fair and equitable solution (ie, all hardship customers receive the same price irrespective of their retailer). | We note that the concept of a social tariff was raised in AER's Game Changer work and was not part of the final set of proposals in the final report. We view the consideration of a social tariff as broader in nature than this rule change. The AEMC is undertaking a forward-looking review (the Pricing Review) to consider future electricity products and services, and the prices that consumers pay for these. The objectives of the review will be how to ensure that the pricing framework supports the availability of the products and services that consumers want in the future, while also delivering a lower-cost system for all consumers. |
| Compliance Quarter | As an alternative approach to the draft determination and draft rule, Compliance Quarter proposed requiring retailers to apply a standardised, fixed percentage discount (eg, determined by the AER) to the energy usage charges for all hardship customers. It argued this would significantly reduce operational complexity and reduce costs associated with the current draft rule. | Similar to the proposed crediting mechanism in the rule change request, there would need to be prescription in determining the discount and how it is applied. It also would not allow for flexibility over time and for different retailers to support hardship customers that best suit their business operations. We note that stakeholders supported a principles-based approach in submissions to the draft determination. |
| Red/Lumo, EnergyAustralia, AEC, ECA, JEC | Red/Lumo, EnergyAustralia and AEC suggested making amendments to the retail standard and market contract terms and conditions to give retailers the ability to change a customer to a deemed better offer. AEC stated:<br>• upon entry and continued participation in a retailer's hardship program, a retailer would shift a customer | We note that under clause 38 of the NERL, retailers must obtain a customer's EIC before they can move them onto a new market retail contract, including a deemed better offer. |

| Stakeholders | Issue | Response |
|---|---|---|
| | to a deemed better offer if one is available<br>• the updated terms and conditions could explicitly accommodate customer requests to retain their current energy plan<br>• consent could be obtained at the time of entry into a hardship program and remain valid either for the full duration of their participation or for a shorter period, depending on the customer's preferences.<br>ECA noted there is an imbalance where retailers appear to be able to change consumer pricing but retailers are restricted from placing hardship customers on lower-priced plans without consent.<br>JEC noted that the form of EIC could enable the retailer to keep the customer on the best available offer at least for the duration of their hardship support. This would enable ongoing switches to any better offer that may arise – with opt out provision. | |
| Alinta, Momentum and AEC | These stakeholders proposed testing the proposed reforms through the regulatory sandbox arrangements. | The final determination addresses the specific issue that hardship customers may not be accessing or benefiting from the deemed better offer and to provide appropriate support and protections in a timely manner.A sandboxing arrangement as proposed would lead to delaying protections, as a trial rule can last up to five years. |
| AGL and Origin | AGL and Origin raised concerns that the advance notice requirements for changes to tariffs and charges (under NERR) and benefits (under AER Benefit change notice guidelines) would add administrative burden, costs and involve compliance issues. AGL sought an exemption | The AER may consider amending its benefit change notification requirements under its guidelines to align with changes to advance notification requirements in the NERR.<br>We note that the AER is reviewing its Benefit Change Notice |

| Stakeholders | Issue | Response |
|---|---|---|
| | from these advance notice requirements. | Guidelines and intends to update its guidelines to make them more flexible.<br><br>As noted inchapter 3, under the *Restricting price increases for a fixed period under market retail contracts* rule change, the final rule provides that retailers do not need to provide customers advance notification for a price decrease or energy payment increase. This same provision applies for this final rule. That is, retailers will be able to notify customers of price decreases as soon as practicable and no later than the next bill. |
| Momentum | Momentum considered that retailers should be provided with an exemption so that they can increase prices if a customer rolls off a hardship arrangement, rather than once in July under the *Restricting price increases under a market retail contract* rule change. | We consider that providing an exemption to allow retailers to increase prices more than once a year for hardship customers would exacerbate the risk of bill shock. In submissions to the consultation paper and draft determination, consumer groups raised risk of bill shock as hardship customers no longer receive a financial benefit once they exit a hardship program.<br><br>As noted in chapter 3, in the National Equity Framework, there are different categories of hardship (ie, transient or short-term hardship to more extreme, longer-term hardship) where they may require different forms and duration of support from retailers. Customers who have just exited a hardship program may be vulnerable to reverting to payment difficulties and re-entering a hardship program. |
| Application of the proposed changes to Ergon Energy Queensland's (EEQ) customers | EEQ sought clarification that the proposed changes would not apply to EEQ's customers. It noted that specific provisions in the NERL-Queensland restrict EEQ to only sell electricity to customers under EEQ's standard retail contract and at the notified prices determined by the Queensland Competition Authority (QCA). As such, | We note that the final rule will not apply to EEQ given retail price regulation in the area. |

| Stakeholders | Issue | Response |
| --- | --- | --- |
| | they are exempted from the deemed better offer message requirement under AER BBG. | |

# Abbreviations and defined terms

| | |
|---|---|
| ACCC | Australian Competition and Consumer Commission |
| ACOSS | Australian Council of Social Service |
| AEC | Australian Energy Council |
| AEMC | Australian Energy Market Commission |
| AEMO | Australian Energy Market Operator |
| AER | Australian Energy Regulator |
| Commission | See AEMC |
| DCCEEW | Department of Climate Change, Energy, the Environment and Water |
| DMO | Default market offer |
| ECA | Energy Consumers Australia |
| ECMC | Energy and Climate Change Ministerial Council (ECMC) |
| EIC | Explicit informed consent |
| ESC VIC | ESC VIC |
| EWOV | Energy and Water Ombudsman Victoria |
| IT | Information technology |
| JEC | Justice and Equity Centre |
| NECF | National Energy Customer Framework |
| NEM | National Electricity Market |
| NERL | National Energy Retail Law |
| NERO | National Energy Retail Objective |
| NERR | National Energy Retail Rules |
| Proponent | The individual / organisation who submitted the rule change request to the Commission |
| RIS | Regulatory impact statement |
| SACOSS | South Australian Council of Social Service |
| SAPN | SA Power Networks |