EnergyAustralia
LIGHT THE WAY

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Submitted electronically: https://www.aemc.gov.au/contact-us/lodge-submission

Dear Commissioners

Delivering more protections for energy consumers: changes to retail energy contracts and assisting hardship customers

EnergyAustralia is one of Australia's largest energy companies with around 2.4 million electricity and gas accounts across eastern Australia, of which around 22k customers are supported under our hardship program (EnergyAssist). EnergyAustralia owns, contracts, and operates a diversified energy generation portfolio across Australia, including coal, gas, battery storage, demand response, wind and solar assets, with control of over 5,000MW of generation capacity.

EnergyAustralia greatly appreciates the opportunity to participate in the AEMC's consultation on improving protections for customers on retail energy contracts and assisting customers experiencing hardship. We strongly support reforms that enhance consumer outcomes and build trust in the market. That said, we believe some of the proposed changes would benefit from further evidence, refinement, and consideration of practical alternatives to ensure they do not inadvertently impact market efficiency or consumer choice. It is important that regulatory reform remains proportionate, evidence-based, and aligned with the long-term goals of fostering competition, innovation, and positive outcomes for consumers.

Overall, we support:

1 **Aligning benefit periods with the length of contracts** to provide customers with greater certainty and reduce the risk of bill shock. We suggest there are better ways to improve outcomes without adopting the Victorian model, which requires placing inactive customers on the standing offer at the end of their contract. Retaining the flexibility in non-Victorian states for retailers to transfer customers onto more competitive offers below the standing default contract can deliver better outcomes. Additionally, we recommend:

- repealing or scaling back the AER *Benefit Change Notice Guidelines* (per rules 48A and 48B of the *National Energy Retail Rules*), as these would become less relevant if plan benefits are required to last the full contract term.
- allowing "deemed better offer" prices on notices to be provided 'as at a specific date' rather than referencing a future offer price. This practical adjustment can reduce operational complexity.

2 Strengthening consumer protection for customers on **legacy contracts with large conditional discounts**. We recommend the option to adjust existing plans so that conditional discounts align with reasonable costs making the conditional price the guaranteed price (option b). This approach would be less disruptive and operationally challenging than migrating customers to post-2020 plans (option a). Our support for option b is based on ensuring appropriate transitional arrangements that permit general notifications instead of individual benefit change notices, simplifying communication and reducing regulatory complexity.

3 Efforts to reduce bill shock but believe there is insufficient evidence of a widespread issue to justify an unprecedent change of **preventing price increases for a fixed period after signing up to a contract**. While the ACCC has highlighted instances of post-sign-up price increases, there is limited data on the frequency, scope, and financial impact of these practices across the market. Retailers typically reprice annually to account for changes in wholesale energy prices, network tariffs, and the DMO/VDO, reflecting operational efficiency and prudent cost management rather than any exploitative practices. We recommend that, as a first step, the AER collect data on price changes to better understand the extent of this concern before progressing this proposed change.

We caution against adopting an approach that limits price increases to once per year, as seen in the Victorian model. This could restrict the flexibility needed to navigate market volatility, potentially undermining market stability and retailer resilience—challenges highlighted during the 2022 market crisis.

4 Simplifying offers but **prohibiting certain fees and charges, including blacklisting or whitelisting approaches**, **risks unintended consequences** such as cross-subsidisation, higher base prices and reduced service quality for all customers. Clearer disclosure requirements can be a better alternative to address concerns about fee visibility.

5 Providing appropriate protections to ensure vulnerable customers are receiving the "Best Offer", but we **do not support the proposal of providing bill credits to hardship customers** equal to the difference between their current bill and the deemed better offer. This would impose significant risk and cost due to its operational complexity. We recommend establishing a principles-based expectation that retailers explore all avenues to ensure a hardship customer are on the best offer, with a corresponding requirement to report on what is or isn't successful. Amending the Market and Standard Terms and Conditions to enable retailers the ability to change a hardship customer to a better offer could also be an option.

Our full submission is detailed in the **Attachment**. We reserve comments on the two-remaining consumer -focussed rule change requests on: improving the ability to switch, and improving application of concession to bills, for future consultations by the AEMC.

If you would like to discuss this submission, please contact me on 03 9060 0934 or Maria.Ducusin@energyaustralia.com.au.

Regards

Maria Ducusin and Travis Worsteling
Regulatory Affairs Leads

EnergyAustralia Submission

1. We support the AEMC assessment criteria

In assessing the issues in the AEMC's consultation paper, we welcome the AEMC's assessment criteria and support its focus on:

1. **Outcomes for consumers** and the impacts of these rule changes on incentives provided to consumers from retailers
2. **Principles of market efficiency** and the impact on retail competition, allocation of risks and costs between retailers and consumers and transparency of market offers.
3. **Implementation considerations** including interactions with other processes**.**
4. **Principles of good regulatory practice** and whether principle-based approaches are more appropriate than prescriptive approaches.

These criteria are key for ensuring reforms deliver meaningful benefits while avoiding unintended consequences.

When assessing **market efficiency**, it's important to consider whether the proposed measures unintentionally benefit larger players while disadvantaging smaller ones. Competition, rather than regulation, is often the best way to deliver cost-effective outcomes and consumer-aligned product choices. With current cost-of living pressures, regulatory changes should balance customers protection with retailer flexibility to compete and innovate, ensuring long-term benefits for customers.

Principles of good regulatory practice should also ensure that measures are proportionate to the issue to avoid unnecessary costs and market distortions.

We discuss the following proposed rule changes in turn.

Changes to retail energy contracts:

2. Conditional discounts on legacy contracts
3. Ensuring energy plan benefits last the length of the contract
4. Preventing price increases for a fixed period on new acquisition offers
5. Removing hidden fees and improving transparency

6. **Assisting Hardship Customers**

Changes to retail energy contracts – assessing the materiality of issues

The AEMC consultation paper notes that the four rule change requests that relate to changes to retail energy contracts stem from findings presented to the ECMC from the Australian Competition and Consumer Commission (ACCC).

> *The ACCC's June and December 2023 Inquiry into the National Electricity Market reports found that:*
> 1. *consumers who do not actively engage in the retail energy market experience higher prices, particularly those on legacy plans with large conditional discounts or expired benefit periods.*

2. *energy plans need to be more transparent about the frequency of price changes and the underlying fees and charges included.*

Notably, these findings relate to electricity consumers, with no comparable evidence provided for gas customers. Accordingly, discussions on these measures should remain focused on electricity markets.

We agree there is an opportunity to enhance consumer protections, particularly for disengaged customers. However, the materiality of the issues must be carefully assessed to ensure the proposed solutions are proportionate to the challenges they aim to address.

Recent findings from the ACCC's latest report indicate that competition in the electricity market has increased and switching tools are having an impact on improved customer outcomes.[1] For example:

- The share of customers paying over 20% above the DMO/VDO has declined from 2022, indicating legacy contracts with excessive discounts and penalties is less prevalent. See Figure 2.3 in Appendix A.

- Tools such as "Best Offer" messaging and Government comparative websites appear to be contributing to switching and the reduced number of customers on higher priced contracts.[2]

- Retail competition has improved slightly, with a reduction in market concentration. See Figures 3.1 and 3.4 in Appendix B and C.

A core issue related to customer disengagement appears to be less about structural barriers and more about customer perceptions of value in switching. Victorian data shows many customers choose not to switch because they see little benefit. See Figure 5 in Appendix D. Introducing additional regulation to force switching may miss the mark if it does not address this perceived value gap.

Overly prescriptive measures that force switching to address the loyalty "penalty" may inadvertently erode the perceived benefits of switching, further reducing consumer engagement. The UK's experience highlights the risks of overregulation, where rigid measures led to narrower price disparities, reduced customer engagement, and fewer innovative product offerings.

2. Conditional discounts on legacy contracts

The concerns about legacy contracts with large conditional discounts raised in the proposed rule change closely align with the ACCC's findings on customer disengagement. While addressing such contracts may enhance protections for a small subset of customers, recent trends in retail competition suggest that legacy contracts with high conditional discounts are now less significant in the overall market. As noted above, the share of customers paying more than 20% above the DMO/VDO has declined, indicating that reforms

1 ACCC, *Inquiry into the National Electricity Market December 2024 report*, 3 December 2024, p 1-5.
2 ACCC, *Inquiry into the National Electricity Market December 2024 report*, 3 December 2024, p 12.

implemented since 2019, such as the DMO/VDO reference price and "Better offer" messaging, are already helping to address this issue.

2.1 Proposed rule change and intended benefits

The proposed rule change seeks to remove grandfathering for pre-2020 contracts with large conditional discounts, offering two pathways:[3]

a) Migrating customers to post-2020 compliant plans with equivalent or better pricing.
b) Adjusting existing plans to reduce conditional discounts to reasonable levels while maintaining the conditional price as the guaranteed price.

The intended benefits include:[4]

- Protecting consumers from excessive penalties or high tariffs for not meeting conditions.
- Aligning protections for all consumers with current standards.

2.2 EnergyAustralia view and recommendations

We believe that the materiality of this issue, as demonstrated by ACCC data, warrants a proportionate response. Only 5.1% of customers on flat-rate market offers pay 25% or more above the DMO due to unmet conditional discounts (down from 6% in 2023). This limited scale suggests that the issue is not widespread enough to justify highly disruptive regulatory changes.

Of the two proposed pathways, we support **option b)** as a more balanced approach. Adjusting existing plans to reduce conditional discounts to reasonable levels making the conditional price the guaranteed price (option b), can shield customers from excessive penalties while avoiding the operational complexity and potential unintended consequences of mass migrations to post-2020 plans. Furthermore, this approach aligns with the principle of targeting disengaged customers without undermining the broader competitive framework of the energy market.

Our support for option b) is based on appropriate transitional arrangements being introduced to ensure this change can be implemented efficiently and in a way that minimises operational disruption and avoids regulatory complexity. To do this, we recommend:

- precluding requirements of a 'benefit change notification' and instead allow retailers to provide general notification to customers. This provides for streamlined communication while maintaining transparency and reducing significant administrative burden.

3 Ensuring energy plan benefits last the length of the contract

3.1 Proposed rule change and intended benefits

The proposed rule change aims to address concerns that consumers who do not actively engage in the energy market may face higher prices when the benefit period of their energy contract ends.[5] The ACCC has

3 ECMC, *Removing unreasonable conditional discounts*, rule change request, p. 4.
4 ECMC, *Removing unreasonable conditional discounts*, rule change request, p. 6.
5 ECMC, *Ensuring energy plan benefits last the length of the contract*, rule change request, p. 2.

noted that energy plan selection is often a 'set and forget' activity for many consumers, allowing retailers to compete at the acquisition stage, but not maintain competitive prices for existing customers.[6]

To address this issue, the proposed rule change suggests:

a) Aligning the benefit period with the contracts term, requiring benefits to last the full duration of the fixed-term contract rather than just for the introductory period.[7]

b) Placing customers that do not choose a new market offer at the end of their contract, to be placed onto the local standing offer.[8]

c) Providing consumers with reasonable notice before the end of their benefit period and contract.[9]

d) Informing consumers of their options at the end of the benefit period, including:[10]

- The retailer's deemed better offer for the customer (aligned with Better Bills Guideline requirements). A suggestion to compare the **standard retail contract** and the best available market retail contract (i.e. not the customer's expiring contract).

- The default action if the customer does not engage, such as being moved to the local standing offer, if they do not select a new market offer.

e) Including a standard term in retail market contracts allowing consent for end-of-contract arrangements, to address the need for explicit informed consent from inactive customers.[11]

The proposed rule change is intended to reduce price penalties for disengaged customers and place more responsibility on retailers to maintain competitive pricing. The proposal aligns with Victoria, where contracts must include benefits for the eternity of their term, and consumers without explicit informed consent are moved to the VDO.

The proposal does not aim to limit the ability of retailers to change underlying prices.[12] However there may be an interaction with the preventing prices increases for a fixed period under market retail contracts rule change request.[13]

3.2. EnergyAustralia view and recommendations

a) Aligning benefit periods with contract length

We support this measure which can align consumer protections with reasonable expectations that benefits, such as discounts advertised at the start of the contract will remain in effect for its entire duration.

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6 ACCC, *Inquiry into the NEM*, December 2023, p. 9.
7 ECMC, *Ensuring energy plan benefits last the length of the contract*, rule change request, p. 3.
8 Ibid.
9 ECMC, *Ensuring energy plan benefits last the length of the contract*, rule change request, p. 4.
10 Ibid.
11 Ibid
12 Ibid.
13 AEMC *consultation paper Consumer rule changes*, 28 November 2024, p. 8.

Avoiding challenges of retrospective application, while still preserving the ability for retailers to adjust their pricing strategies over time helps create a balanced targeted approach and aligns with good regulatory practice. **We support a forward-looking measure** to ensure plan benefits last the length of the contract, which can strengthen consumer certainty and help reduce bill shock.

We recommend that the AEMC and AER consider repealing or scaling back the AER *Benefit Change Notice Guidelines* (per rules 48A and 48B of the *National Energy Retail Rules*), as they would become largely redundant if retailers are prohibited from changing or ending energy plan benefit without ending the contract. Such a repeal would reduce regulatory burden and streamline compliance processes, helping to offset the operational impacts of the proposed new rule.

Alternatively, the restriction should follow the Victorian rules, whereby only discounts, rebates, or credits offered for a "fixed benefit period" are required to align with the contract term.[14] Doing so would retain flexibility for retailers to offer, and amend, other types of "benefits" during the customer's contract term, with notice to the customer.

b) Placing customers that do not choose a new market offer at the end of their contract, to be placed onto the local standing offer

We believe there are opportunities to improve customer outcomes and market efficiency by drawing lessons from the Victorian model. Adopting option b) as proposed can have unintended consequences that harm customer outcomes

In non-Victorian states, when a customer's benefit period ends, retailers have the flexibility to roll the customer onto lower rates, which can be more competitive than the standing default contracts. By contrast, in Victoria, retailers are restricted from transferring the customer onto anything outside of the standing offer, or Victorian Default Offer, when transitioning customers after their contract ends. While this restriction is well-intended to shield customers from rolling onto excessively high tariffs, it inadvertently prevents retailers from offering customers more attractive rates than the default contract, leading to situations where customers may be worse off.

We urge the AEMC to retain the flexibility currently available outside of Victoria, as this allows retailers the flexibility to provide customers with more competitive offers than the default contract. To do this, we recommend the AEMC not progress with option b) as proposed. At the very least - there should be flexibility for retailers to place customers on an equivalent *or better* offer than the standing default contract. This would support better customer outcomes in non-Victorian states and avoid unintended perverse outcomes from the Victorian Model.

c) Reasonable notice before the end of their benefit period and contract

We support a notice period of 'no earlier than 40 business days and no later than 20 business days before the end date of the contract' as established under rule 48 of the NERR as a reasonable notice period for fixed term contracts. There does not appear to be evidence that this notice timing is unreasonable.

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14 Clause 96, ESC, *Energy Retail Code of Practice (version 3)*, 1 October 2024.

d) Informing customers of options, including the retailer's deemed better offer and default action

We believe there are opportunities to improve customer outcomes and market efficiency when informing customers about their options at the end of the benefit period. There are operational complexities in comparing plans with a future 'deemed better offer' price required for a notice 20 business days ahead of time. We suggest a better way would be to inform of the 'deemed better offer' price available in the market 'as at a certain date' stated in the notice at the time when the retailer runs the calculation for the customer notice. This can manage customer expectations, avoid perceptions of misleading information and remove the operational complexity of determining a future 'deemed better offer price' that far in advance of preparing the customer notice.

Better/best offer messaging

We do not support any changes to the better/best offer messaging, as there does not appear to be any evidence in the rule change proposal or AEMC consultation paper justifying the need for this change.

The suggestion to compare the **standard retail contract** and the best available retail contract (i.e not the customer's expiring contract'),[15] appears to be a fundamental shift to the current bill notice requirement and how retailers calculate the deemed better/best offer message.

In non-Victorian jurisdictions:

> *A retailer must carry out a deemed better offer check in accordance with the following formula: deemed better offer check result = A – B Where: A = annual total cost of current plan B = annual total cost of deemed better offer*[16]

In Victoria:

> *A retailer must carry out the deemed best offer check by calculating the deemed best offer check result in accordance with the following formula: deemed best offer check result = A - B Where: A = annual total cost of current plan Essential Services Commission Energy Retail Code of Practice 85 B = annual total cost of deemed best offer*[17]

The better/best offer messaging reforms were introduced at considerable cost to retailers, which is ultimately borne by customers. This suggestion under the rule change will require substantive changes to retailer billing systems and processes, which we anticipate can be significant. Before any changes to established retailer billing systems and processes are progressed, we strongly recommend:

- examining the necessity for change. There does not appear to be any sufficient evidence in the rule change proposal to suggest there are material issues warranting this intervention. Any change to bill messaging should be first supported by consumer behaviour research to ensure the change will benefit customers.

Broadly, changing the established approach for this bill comparison could also cause customer confusion and may not lead to intended outcomes. Customers may not fully understand the comparison between the

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15 ECMC, *Ensuring energy plan benefits last the length of the contract*, rule change request, p. 4.
16 Clause 49, AER *Better Bills Guideline (Version 2)*, 30 January 2023.
17 Clause 109, ESC, *Energy Retail Code of Practice (version 3)*, 1 October 2024.

standard retail contract and the best available market retail contract if not explained clearly. For instance, if customers' current usage patterns differ from the assumed average used in calculations of the DMO, they might misinterpret the savings.

e) Including a standard term in market contracts allowing consent for end-of-contract arrangements

We believe further clarity is needed regarding this aspect of the proposal below:

> *To address the need for explicit informed consent, the rules for* ***market retail contract minimum requirements*** *could be amended to include a standard term in the terms and conditions for the end of-contract arrangement, such that consent is given.*[18]

We understand that EIC is not required to move customers from a market retail contract to a standard contract, so we seek confirmation on the intent of the proposal and the interaction with proposal b) above. In principle, we support exploring a provision for pre-consent under option e) that enables retailers to transition customers to a new market offer at the end of the period under a market retail contract. This, when aligned with our revised option b) to retain flexibility for placing customers on competitive offers, could work together to streamline processes for retailers. This combined approach would ensure operational efficiency while enabling inactive customers to benefit from more competitive pricing than default standing offers at the end of their benefit period.

4 Preventing price increases for a fixed period on new acquisition offers

4.1 Proposed rule change and intended benefits

The problem raised in this rule change request suggested frequent price increases may be harming consumers and that on a month-to-month basis consumers do not necessarily know if the price they are paying for energy will change.[19]

The proposed solution recommends preventing price increases for a fixed period following commencement of an energy plan. Specific suggestions include:[20]

a) Mandating a fixed period (e.g., 100 days) during which no price increases are allowed for all new contracts.
b) Limiting price increases to once per year, aligned with Victoria's model.
c) In the absence of the Victorian model, requiring the AER to collect data on price changes for market transparency as there is limited public data on the number of price increase to market contracts.

The proposed rule change is intended to benefit customers with greater certainty and predictability.

4.2 EnergyAustralia view and recommendations

While efforts to reduce the risk of bill shock for customers is well intended, we consider that there is insufficient evidence to justify the introduction of this measure. Although the ACCC has highlighted instances where some customers experienced price increases shortly after signing up for new plans,[21] critical data gaps remain including:

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18 ECMC, *Ensuring energy plan benefits last the length of the contract*, rule change request, p. 4.
19 ECMC, *Preventing price increases for a fixed period under market retail contracts,* rule change request, p 3.
20 ECMC, *Preventing price increases for a fixed period under market retail contracts,* rule change request, p 4.
21 ECMC, *Preventing price increases for a fixed period under market retail contracts,* rule change request, p 2.

- The frequency of such practices across retailers. Are they systemic, or limited to a few market participants?
- The proportion of customers affected relative to the entire customer base
- The financial impact on affected customers, such as the average dollar increase or percentage rise in bills.

There also appears to be no data quantifying the number of complaints or feedback related to post-acquisition price increases.

Further, while Victorian reforms limiting price increases to once a year have reportedly reduced-price volatility,[22] there does not appear to be evidence demonstrating the reduction in customer harm due to post-acquisition increases.

We believe there is insufficient evidence to support the introduction of this measure and suggest that the AEMC:

- **progress with option c) in the first instance** to require the AER to collect data on price changes for market transparency. This can provide the AER and policy makers with insight on the nature and extent of this issue to inform whether change is necessary. We note the AER has recently updated their retail performance reporting guideline[23] and consider that revisions to the collection of price change data can be explored in subsequent revisions to the guideline and relevant consultation.

In non-Victorian states, there is no regulatory restriction preventing retailers from repricing within a one-year period. However, the typical industry practice among most retailers is to reprice annually to align with cost considerations, such as wholesale energy costs, network tariff changes, and regulatory updates like the DMO/VDO. This reflects operational efficiency and prudent cost management rather than an attempt to exploit customers.

The underlying assumption under the proposed rule change appears to be a concern that some retailers may use predatory practices to attract customers with attractive initial offers, only to significantly increase prices shortly thereafter ("bait-and-switch" tactics). While such practices are indeed problematic, they are not representative of the broader retail market, where most retailers prioritise minimising costs and maintaining long-term customer trust. While we do not believe the issue is a prevailing concern, we note the ACCC's consumer protection and enforcement powers remain the appropriate mechanism to address isolated instances of misleading "bait-and-switch" retailer practices.

4.3 Concerns with Option b): lessons from the Victorian model

While we understand the intent behind limiting price increases to once per year to provide customers with greater certainty, it is worth highlighting concerns with this approach from on experiences with the Victorian model:

22 ECMC, *Preventing price increases for a fixed period under market retail contracts,* rule change request, p 3.

23 AER *Retail performance reporting procedures and guidelines (2024 update),* 28 August 2024.

Market volatility and the need for repricing flexibility

Although repricing more than once per year is not common, in years with significant market volatility, retailers must have the ability to reprice to reflect rapidly changing wholesale energy costs, network tariff adjustments, or unforeseen regulatory changes. Without this flexibility, retailers could face significant financial strain, compromising their ability to remain viable.

Restricting the ability to reprice introduces heightened financial risk, which can threaten the stability of the market and the resilience of individual retailers. The cascading Retailer of Last Resort (ROLR) events in 2022 demonstrated the consequences of insufficient flexibility in managing risks during periods of high market stress. A similar regulatory constraint, as proposed in this rule change in options a) and b), could exacerbate risks in times of volatility.

The Victorian model provides a cautionary example. During the significant market volatility of 2022, retailers were prohibited from modifying retail rates outside the annual VDO review cycle. This restriction left retailers unable to completely respond to skyrocketing wholesale prices, creating operational and financial challenges. Such rigidities should not be replicated across all other jurisdictions.

Flexibility in end of contract transitions

Any restriction on repricing should explicitly exclude scenarios where a customer's fixed-term contract ends, and the retailer moves the customer to another market contract. The end-of-contract period is a natural point for pricing adjustments based on prevailing market conditions. Restricting the ability to adjust prices at this point would limit retailers' flexibility and could lead to unintended consequences, such as less competitive offers for acquisition.

4.4 Broader impacts: risks of a fixed-period pricing mandate

Imposing a fixed period pricing restriction post sign-up is an unprecedented change that that carries significant risks and lead to unintended negative outcomes for customers and the broader market, including:

- **Misalignment with existing requirements.** Retailers are already required to provide notice of price changes and notify customers if there may be a better offer available to them (e.g., under the "Best Offer" and Better Bills Guideline frameworks). Overlaying additional fixed-period rules might complicate communication and create redundancy or inconsistencies in messaging. Further, fixed-period pricing would clash with the timing of annual price reviews or network tariff adjustments, making it harder to craft clear and timely messages to customers about their pricing.

- **Operational challenges in communication**. Retailers tailor communication for customers on various plans with different fixed periods. This measure increases the risk of errors or miscommunication, particularly in large customer bases with diverse contracts. Additionally, increased customer confusion could lead to more enquiries, complaints, and disputes, placing additional strain on customer service teams and increasing operational costs.

- **Higher base prices**: Retailers may be forced to build risk premiums into initial pricing of acquisition offers to account for the risk of network cost changes during the fixed period, reducing the intended benefit of the reform for customers and undermining market efficiencies as the broader customer base – including engaged customers are penalised.

- **Greater disengagement.** As discussed above, overly prescriptive rules risks making energy choices less customer driven, reducing the incentive to shop around and eroding the competitive framework.

- **Disrupting positive market dynamics**: smaller or newer retailers, with less capacity to absorb cost changes or financial shocks, may struggle to compete under these constraints, leading to reduced competition and fewer innovative product offers.

Retailers must also retain the ability to recover network-initiated price changes during this period to ensure they can manage external cost pressures effectively. Some jurisdictions such as Queensland already require retailers offer flat tariffs, even when the default network tariff is a time of use structure. This divergence can blunt price signals and create unintended detrimental outcomes for customers. For example, flat tariffs can become more expensive as retailers price in network demand charges. Preventing price increases for a fixed period can exacerbate this divergence, even where there is exemption for network-initiated tariff changes as it can introduce uncertainty for retailers in practice on how much retailers can rely on this exemption.

Overall comments

The potential costs and risks of this proposal seem to outweigh the perceived benefit of addressing bill shock post-sign up, which we believe is unlikely to be a widespread issue. Prioritising customer protection through enabling choice rather than imposing constraints is likely to achieve better customer outcomes. Regulators might consider encouraging customers to explore fixed-price energy plans, which many retailers already offer. These plans provide certainty by guaranteeing no price increases for a defined period (typically 12 months), and the existing rules support retailers in offering such products.

5 Removing fees and charges

5.1 Proposed rule change and intended benefits

The problem raised in this rule change request suggested fees and charges are often not transparent to consumers when they are making a decision about entering into a retail energy contract.[24]

The proposed solution is to remove certain fees and charges for all small customers by amending the NERR (potentially Part 2, Divisions 7 and 7A) to prevent retailers charging these types of fees, unless State or Territory legislation authorises them being charged:[25]

- account establishment fees
- special meter read fees (move-in and move-out reads)

[24] ECMC, *Removing fees and charges*, rule change request, p 1.
[25] ECMC, *Removing fees and charges*, rule change request, p. 4.

- credit card payment fees[26]
- late payment fees[27]
- early termination fees
- over the counter fees at Australia Post, and
- paper bill fees

Under the proposed rule, retailers would:

- have the option to recover these costs through tariffs, which would help ensure these costs face competitive pressures.[28]
- retain the ability to charge fees arising due to a customer-initiated specific arrangement, where the customer is informed of the costs.[29]

As an alternative to the 'blacklisting' approach proposed to prohibit certain fees and charges the rule change request also proposed 'white listing' where only prescribed fees and charges can be imposed on consumers.[30] If a retailer wanted to include a new type of fee in the list of approved fees, it could submit a rule change request to the AEMC and make the case for including that fee on the list.

It is anticipated that in aggregate, shifting the recovery of retailers' business costs away from fees and charges and into tariffs exposed to competition would drive efficiency, rewarding retailers who can efficiently manage risk and maintain the lowest possible tariff. Also, removing certain fees and charges is seen to benefit consumers by simplifying the structure of energy bills and reducing shock caused by additional fees.

5.2 EnergyAustralia view and recommendations

We support efforts to simplify offers for customers, but we consider there is limited evidence that the targeted fees set out in the proposed rule change, including paper billing fees or special meter read fees, represent a widespread and material issue to justify intervention. The ACCC Inquiry into the National Electricity Market, released in June 2023, noted that 'for most customers, fees and charges have a minimal impact on the overall cost of electricity'.[31]

Further, these fees are tied to genuine costs to supply specific services, and it is essential to preserve retailers' ability to recover cost-reflective fees and charges. For example, postage costs and paper billing services involve higher costs to serve compared to digital billing, and these expenses should remain recoverable through distinct retailer tariffs where applicable. Similarly, direct meter fees that reflect network costs passed through to retailers should also be recoverable to ensure cost fairness and market efficiency.

An approach to 'blacklist' and prohibit cost-reflective fees risks cross-subsidisation, where customers who do not use specific services, such as postal billing, subsidise those who do. This undermines fairness and

26 Except if they reflect reasonable costs.
27 Except if they reflect reasonable costs.
28 ECMC, *Removing fees and charges*, rule change request, p. 2.
29 ECMC, *Removing fees and charges*, rule change request, p. 4.
30 Ibid.
31 ACCC, *Inquiry into the National Electricity Market June 2023 report*, 2 June 2023, p 27.

could lead to higher base prices or reduced service quality across all customers, particularly affecting vulnerable customers.

Conversely, a 'whitelist' approach would impose substantial administrative burdens on retailers and regulators, delay cost recovery for legitimate expenses, and risks stifling innovation in energy offerings. This approach could also disproportionately affect smaller retailers, who may lack the resources to navigate an approval process for fees. This could lead to reduced competition and innovation, potentially harming market dynamics and consumer choice.

Overall, while exposing more costs to competitive pressures is a worthwhile objective, the proposed approaches to prohibit certain fees and implement blacklisting or whitelisting mechanisms carry significant risks of unintended consequences, including reducing fairness and affordability for customers.

We recommend that the AEMC:

- not proceed with the proposed rule change and preserve retailer's ability to charge cost-reflective fees and charges. Retailers should retain the flexibility to price differently for varying levels of service, such as postal billing versus direct debit, ensuring these costs remain recoverable through distinct retail tariffs where applicable.
- consider exploring clearer disclosure requirements for fees and charges.

This approach would achieve a more balanced outcome, effectively addressing concerns that fees and charges are often not transparent while supporting market efficiency and fairness.

6 Assisting Hardship Customers

Is it challenging to ensure hardship customers are on the "Best Offer"?

We do not necessarily agree with the premise that it is challenging for hardship customers to engage with retailers to be on the deemed "Best Offer", our agents are highly trained to ensure that conversations with hardship customers are handled respectfully and, in a manner, suitable to the specific customer. We believe that this is reflected in the vast majority of customers on our hardship program (EnergyAssist) being on the best offer [redacted] Confidential information has been omitted for the purposes of section 24 of the Australian Energy Market Commission Establishment Act 2004 (SA) and sections 223 and 268 of the National Energy Retail Law

EnergyAustralia agrees it is preferable to have vulnerable customers on the "Best Offer" available; however, the small percentage of customers within the cohort not on the deemed best offer indicates that there are not significant challenges to ensuring hardship customers are on the "Best Offer", and that the challenges are not due to a failure of retailers seeking to achieve this. In our experience the challenges relate to:

- varying customer circumstances, usage patterns changing since their previous best offer assessment;
- ongoing engagement, while the customer remains in the hardship program and subsequent better offer options are identified; and,
- customer refusal to consent to the change.

As identified in the consultation paper, the inability to obtain consent is important to consider. This is something that can happen because either a customer does not want to engage – this can be because they have had a bad experience in the past, or because they do not have the capacity for the discussion – or the customer does not want to provide consent to have their plan changed. This last reason is more nuanced, it includes where a customer is aware that a better offer is available and has made the informed decision to not change[32].

Applying a credit to the customer's account can surpass these hurdles; however, in EnergyAustralia's opinion this is not the suitable option based on the AEMC's assessment criteria and there are alternatives available that can be more effective (discussed in detail below).

Are improvements necessary to retailer's processes and requirements to ensure hardship customers are on the deemed "Best Offer"?

Vulnerable customers require additional protections, as their circumstances can lead to an inability to participate/engage in the energy market. Additionally, we agree the better offer reforms have improved the outcomes for customers that have been able to receive and action a 'better offer' notification from their retailer. However, we don't agree that there is a need for improvement in the process.

We believe existing retailer requirements to advise customers, particularly hardship customers, of a deemed better offer are sufficient. They ensure retailers are advising customers where a better offer is available, it is then the customer's responsibility to action this change if they desire. The element of desire is the target of the rule change proposal, seeking to shift the onus of responsibility to the retailer.

The quantum of vulnerable customers not on the deemed "Best Offer" is comparatively small[33], this is because of existing retailer requirements and processes to promote (in writing and verbally) where a better offer is available. These discussions commence upon entering a retailer's hardship program where a "Best Offer" comparison is conducted, ([redacted] subsequently occurs on any call or any billing that is provided.

Confidential information has been omitted for the purposes of section 24 of the Australian Energy Market Commission Establishment Act 2004 (SA) and sections 223 and 268 of the National Energy Retail Law

This indicates that the existing reforms are not able to achieve the outcome of all customers on a hardship program being on the deemed "Best Offer", and that this is not a failing on retailer's behalf in trying to achieve this outcome. While this suggests there is some need to consider how to ensure hardship customers are on the deemed "Best Offer", it is worth considering whether the quantum of the problem is best addressed by the proposed solution and whether it is the appropriate avenue to achieve the intended outcome.

Is the proposed solution appropriate?

The requirement to credit a customer for any difference between their plan and a better offer would require an expensive technology solution. As outlined above, the better offer assessment changes due to varying circumstances, developing a process to comply with the proposed obligation would require frequent verification and the outcomes could vary either positive or negative on a daily basis based on the

32 *EnergyAustralia has recorded evidence of this on numerous occasions, we are happy to share these examples upon request.*

33 [redacted]

Confidential information has been omitted for the purposes of section 24 of the Australian Energy Market Commission Establishment Act 2004 (SA) and sections 223 and 268 of the National Energy Retail Law customers usage patterns. The compliance risk would likely lead to retailers considering what changes they can make to reduce this risk, such as reducing the available offers in market.

The counterfactual for the proposed change is that the intention to improve price outcomes for vulnerable customers may unintentionally produce worse pricing outcomes for all customers. Regulated pricing (DMO and VDO) and "Best Offer" obligations have already resulted in a reduction in the diversity of price offerings available (as described earlier in our submission). In EnergyAustralia's opinion, this is the opposite of what an effective competitive market should be producing, with a reduction in the price offers available customers have less incentive and are therefore less inclined to switch.

We appreciate the AEMC's consultation has considered these risks and has outlined an assessment framework to ensure good regulatory practise in achieved. We believe the cost and complexity of implementing the proposal and the ramifications on competition make it unsuitable for satisfying the AEMC's assessment criteria. Notably, we also believe the proposal is in contradiction of the AEMC's assessment criteria of market efficiency; *current risk allocation between retailers and hardship customers on non-payments of energy bills.*

As the outcome sought isn't the result of a retailer failing, it is concerning the proponent believes it is warranted for retailers to absorb the cost of this proposal. While we acknowledge our responsibility to support vulnerable customers, we believe the main responsibility for supporting those members of our society in financial hardship or experiencing vulnerability sits with State and Federal Governments. We therefore believe the primary consideration should be in how the concessions framework or other Government funded initiatives could address the proponents desired outcomes.

We have seen significant efforts from State and Federal Government since the pandemic to support electricity consumers via energy subsidies and bill relief, and we have witnessed the positive impact these measures have had to protect customers during financially difficult time. We believe that these avenues remain possible for addressing the proponent's concern that hardship customers are not on the deemed "Best Offer" energy plan. State and/or Federal Government contribution to addressing the discrepancy would ensure that funding for this proposal is more appropriately assigned, instead of imposing a cost on energy retailers, and subsequently incurred by all customers through increased prices.

This alternative proposal wouldn't need to be reliant on any discrepancy in the customer's price compared to the "Best Offer", it could purely be a contribution from Governments to ensure that any customer on a retailer's hardship program receives a credit (fixed or variable) to assist in reducing their energy debt. We appreciate that the AEMC doesn't have the ability to require this, but we believe it is pertinent to outline our preference for additional government contribution to directly supporting vulnerable customers, as vulnerability is not constrained to any one product or service, and some vulnerable customers are not eligible for existing support mechanisms (concession frameworks).

6.1 EnergyAustralia view and recommendations

In considering how to improve or ensure that hardship customers are on the deemed better offer, we propose the following as preferable solutions that address the proponents' concerns and meet the AEMC's assessment criteria. In order of preference:

1. **Establish a principles-based expectation for retailers to explore all avenues to ensure a hardship customer are on the "Best Offer", with a corresponding requirement to report on what is or isn't successful.**

The solution to address the issue must be effective and the cost to implement should be appropriate, therefore it is warranted to allow a period of exploration to both establish the quantum of the issue, gather information on customer preferences, and to explore a range of available options against the metrics of effectiveness and cost appropriateness.

A principles-based expectation would provide a clear signal on what the expectation to retailers is and would provide the flexibility to explore different options, gathering crucial data on what is effective to produce the desired outcome and would incur a reasonable/appropriate cost to achieve it.

Retailers could explore additional communication choices, such as collaborating with other service providers (Telecommunication, water, banking) or govt agencies (Services Australia) to explore alternative avenues to achieve engagement; this could be similar to the Thriving Communities *One Stop One Story*[34] initiative which has achieved significant success.

Retailers could also explore how the regulatory sandbox could enable options to resolve the issue that are not currently available under existing regulation. This mechanism could allow retailers to explore the proponent's proposal of applying credits where a discrepancy is identified, or alternative options, as an example;

- allowing a customer to provide consent when entering a hardship program instead of a requirement for each contract change while a customer remains on the program; or,
- retailers being able to change the rates of customers on their hardship program to the lowest available offer without the normal notification requirements.

The AEMC could provide a suitable timeframe for these options to be explored before finalising their decision. The benefit in allowing a principles-based approach is that the final decision would be evidence-based, ensuring the cost to implement is appropriate to achieve the desired outcome.

2. **Amend the Market and Standard Terms and Conditions to enable retailers the ability to change a hardship customer to a better offer.**

Allow retailers to change a customer's plan where a deemed better offer is identified without the limitation of additional Explicit Informed Consent requests, by amending the Market and Standard Terms and Conditions. A change to this contract could outline, that upon entry and through continued participation in a retailer's hardship program, a retailer can, and would be required to, shift a customer to a better offer if a deemed better offer is identified.

34 *Thriving Communities Australia - The One Stop One Story Hub*.

The changes to the Terms and Conditions should allow for the customer to explicitly request that their plan does not change. This will assure customers they can remain on their existing plan if they desire. This consent can be provided during entry to the hardship program, it could last the length of their participation on the program or a shorter timeframe (depending on the desires of the customer).

The frequency for this assessment could be annual (aligning with the timeframe proposed under the *Preventing price increases for a fixed period* proposal) or more frequent. EnergyAustralia believes that a six-monthly assessment is appropriate and balances out the objective of ensuring hardship customers are on the “Best Offer” and the potential they may not be.

This option could be adopted more seamlessly with existing processes, as better offer calculations could be used to identify where a plan change is necessary, and – without the need for additional Explicit Informed Consent – actioning the plan change can be conducted easily.

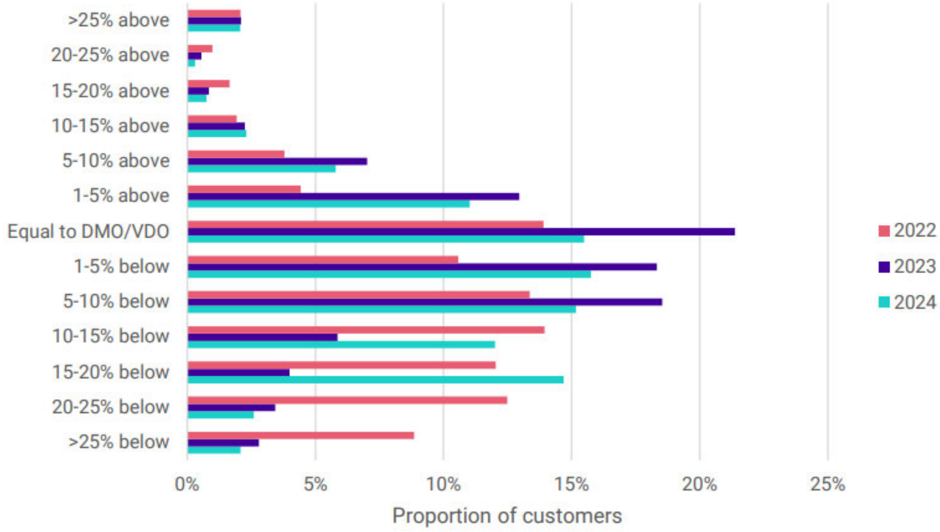
EnergyAustralia believe the existing deemed better offer threshold of $22 is appropriate but we suggest the AEMC consider conducting further analysis to verify this, including customer research on the value they require and attribute to switching plans.

Appendix

Appendix A:

Figure 2.3: More customers are paying prices below the default offers

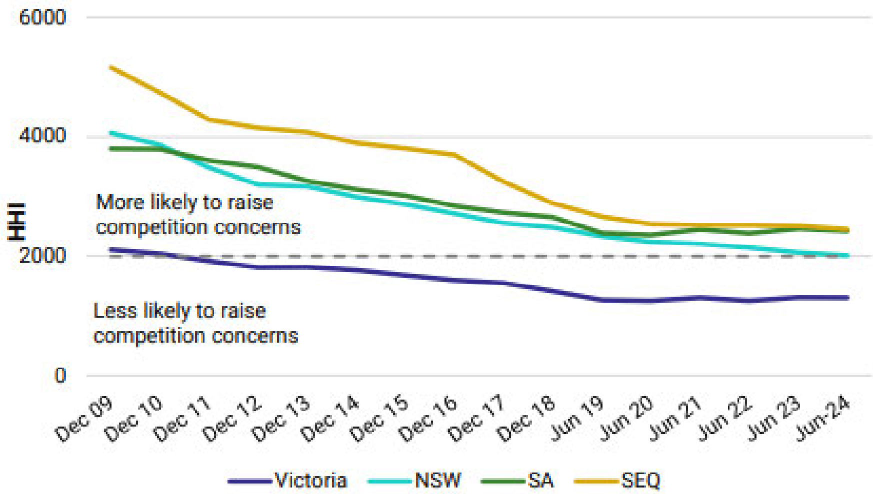
Proportion of residential flat rate offer customers without demand paying more, equal to, or less than the default offers, assuming 100% achievement of conditional discounts, all regions combined



Appendix B:

Figure 3.1: Market concentration declined slightly in 2023–24 in regions with competition

Herfindahl-Herschman Index, Victoria, New South Wales, South Australia and South East Queensland, residential customers, December 2009 – June 2024



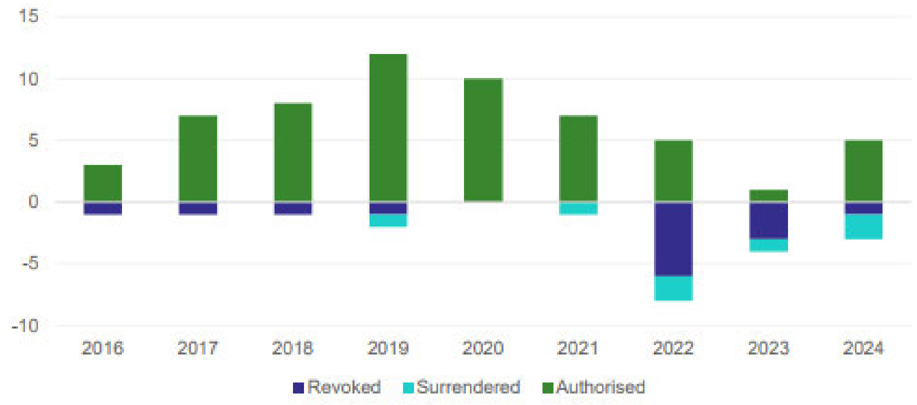
Source: Australian Energy Market Commission, Figure 3.3a: Long-term changes in HHI, 2009 to 2018 (electricity), AEMC website; Australian Energy Regulator, Retail energy market performance update for Quarter 4, 2023–24 [data set], AER website; Essential Services Commission of Victoria, Energy market dashboard [data set], ESC website.

Note: Victorian data for 2023–24 is estimated due to data unavailability for one retailer (Engie).

Appendix C:

Figure 3.4: The number of retailers entering the market increased in 2024

Retailer exits (surrender or revocation of retailer authorisation) and retailer entry (grant of authorisation) by year, National Electricity Market (excluding Victoria)

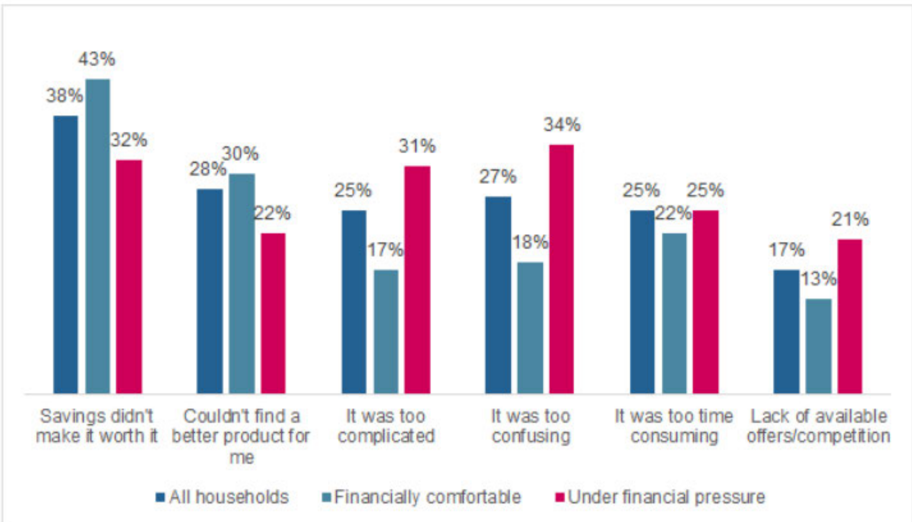


Source: ACCC analysis of Australian Energy Regulator, Public register of authorised retailers & authorisation applications, AER website, n.d., accessed 20 October 2024.

Note: Surrenders of retail licences can occur for a variety of reasons, and do not necessarily indicate an active retailer has left the market.

Appendix D:

Figure 5: Reasons why customers did not switch plans when they last considered changing retailers or switching to a better offer



Source: Energy Consumers Australia, Energy Consumer Sentiment Survey June 2024