AEMC

AUSTRALIAN ENERGY MARKET COMMISSION

Draft rule determination

National Energy Retail Amendment (Assisting hardship customers) Rule 2025

27 March 2025

Inquiries

Australian Energy Market Commission
Level 15, 60 Castlereagh Street
Sydney NSW 2000

E aemc@aemc.gov.au
T (02) 8296 7800

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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To cite this document, please use the following:
AEMC, Assisting hardship customers, Draft rule determination, 27 March 2025

Summary

1 The Commission has decided to make a more preferable draft retail rule (draft rule) in response to the 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 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 related rule changes includes:

- *Ensuring energy plan benefits last the length of the contract*
- *Preventing 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*.

3 The rule change request on *Assisting hardship customers* considered that hardship customers face barriers to engaging with their retailer, such as “lack of time, agency, literacy or language barriers”. They considered that these barriers prevent hardship customers from getting the best retailer offer available to them and support for these customers could be improved beyond existing retailer obligations and processes. ECMC 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 in the Australian Energy Regulator’s (AER’s) Better Bills Guideline.

4 The Commission’s draft rule recognises that hardship customers face many barriers to engaging with their retailer. The proposed changes and the draft rule seeks 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. This includes not 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 hardship offers customers are on and assist the AER with monitoring and ensuring retailers comply with the proposed rule.

5 The Commission considers that the draft 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. The draft rule seeks to reduce the onus and burden for hardship customers to take action to move to a retailer’s deemed better offer. We note that the four ECMC rule changes on *Improving consumer confidence in retail energy plans* have been released for consultation on 27 March.[1] The remaining two rule changes (*Improving the ability to switch to a better offer* and *Improving the application of concessions to bills*), released for consultation on 6 February 2025, also seek to help hardship customers and others in payment

1 The four rule changes of the ECMC consumer rule 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*.

difficulty access cheaper energy deals and have better protections.

6 We are seeking feedback on our draft determination and draft rule by **8 May 2025**. There are a variety of ways to provide feedback including participating in workshops or bilateral meetings to providing formal submissions.

There are three key proposed changes to the NERR

7 The draft determination sets out what the draft rule introduces and how the draft rule would work. It also sets out the Commission's reasons for the draft rule, including why we are not pursuing the proposed crediting mechanism, as outlined in chapter 3.

8 The Commission has considered the issues raised in the rule change request, stakeholder submissions and feedback and opportunities to improve outcomes for hardship customers having regard to our assessment criteria outlined below. We note that most stakeholder submissions supported the policy intent of the proposed rule but there was not strong support for the proposed crediting mechanism in the NERR. More detail on stakeholder feedback is provided in chapter 3.

9 The figure below gives an overview of the three proposed changes under the draft rule. The Commission considers an outcomes-based regulatory approach appropriate as retailers would have flexibility in how they meet the proposed principles in the NERR. This would minimise implementation costs and complexity for retailers, which would then minimise costs that could be passed onto all consumers. The proposed changes include:

1. A new principle that places a direct and clear obligation on retailers to ensure hardship customers pay no more than the deemed better offer. The draft rule affords flexibility to the retailer in how they must meet this new principle — either by:
   - providing a financial benefit under their current plan, such as a downward price adjustment, enduring discount or credit where they cannot obtain Explicit Informed Consent (EIC) to move to the deemed better offer, or
   - obtaining EIC and move hardship customer 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.

   The financial benefit must be the same monetary value the hardship customer would have received or saved if they were on the retailer's deemed better offer. We propose recommending to energy ministers that compliance with this principle be a Tier 1 civil penalty.
2. Enhancing existing obligations with an additional principle that requires retailers to explicitly state in their hardship policy that they will check and offer the deemed better offer:
   - upfront upon a customer joins the 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.
3. Adding new hardship program indicators that retailers would report to the AER. The AER must report this data in its annual retail market report. These include the total number and percentage of hardship customers on offers that are:
   - a deemed better offer
   - not a deemed better offer and reasons why (if known)
   - above and below the standing offer.

Retailers would be required to use their reasonable endeavours to understand why hardship customers are not on a deemed better offer. This proposed change seeks to improve the reporting and transparency of the type of hardship offers customers are on and assist the AER with monitoring and ensuring retailers' compliance with the proposed rule.

The draft rule would promote the National Energy Retail Objective (NERO)

10 In making our draft rule, we have considered the NERO by applying the assessment criteria that we outlined in the consultation paper. For this draft determination, we also had regard to promoting equitable energy outcomes 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 draft rule seeks to promote equity, so that 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.

11 We consider the draft rule would meet the assessment criteria in the following ways.

- **Outcomes for consumers** The draft rule seeks to:
  - Help hardship customers better manage their bills and debt (ie, have more affordable bills, meet payment plans and/or manage or reduce 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 draft 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. It also maintains the important aspect of EIC for customers.
  - 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.
- **Principles of market efficiency.** The draft rule would likely maintain or promote market efficiency by:
    - Building on existing retailer obligations and processes.
    - Seeking appropriate risk allocation between retailers and hardship customers in terms of hardship customers not being on the deemed better offer.
    - Supporting competition by providing retailers flexibility in how they meet their obligations compared to the proposed credit mechanism. This would 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 draft 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 best offer and affording retailers the ability to consider how it will meet the proposed obligations.

Implementation considerations

12 The draft rule requires the AER to amend its Hardship Customer Policy Guideline. This guideline will specify retailer requirements, as well as transitional arrangements, to ensure that the rule changes would operate as intended and would be as accessible as possible to consumers and market participants.

13 Noting that the AER will be required to undertake consultation processes in relation to its guidelines and that market participants will also need to update their guidelines/policies, we anticipate that the rule changes will require around 18 months for implementation. As such, the draft rule proposes a commencement date of 30 December 2026. This also takes into account updates to its supporting procedures, such as the AER Performance Reporting Procedures and Guidelines and Compliance Procedures and Guidelines.

Broader issues and reforms are being considered in AER's Review of payment difficulty protections in the National Energy Customer Framework

14 The AER is currently undertaking a Review of the payment difficulty protections in the National Energy Customer Framework (NECF) and the review forms part of the AER's broader Towards energy equity — a strategy for an inclusive energy market.

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

16 Several stakeholders noted linkages or overlaps between this rule change and AER's Review of payment difficulty protections in the NECF. Some suggested delaying this rule change until AER's findings can be considered or leveraging AER's review to consider the broader context relating to payment difficulty.

17 The draft determination seeks to address 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. The Commission also considers that the broader issues raised by stakeholders could be addressed through AER's Review of payment difficulty protections in the NECF and its recommended reforms. These include for example:

- minimum requirements for customers experiencing payment difficulty and hardship, including the onus being on consumers to self-identify as experiencing payment difficulty or hardship
- the assessment of payment difficulty and hardship being 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 that many people do not identify with the term
- existing provisions implicitly assuming that customers experience hardship temporarily rather than permanently
- 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.

18 We are engaging with the AER and will continue to consider interactions as the rule change progresses.

19 We note the Essential Services Commission of Victoria (ESC VIC) is considering this rule change proposal as part of its Review of the Energy Retail Code of Practice. The ESC VIC expects to make a final decision on these reforms by June 2025. We are also engaging with the ESC VIC as part of this rule change.

How to make a submission

We encourage you to make a submission

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

How to make a written submission

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

How to make a submission: Go to the Commission's website, www.aemc.gov.au, find the "lodge a submission" function under the "Contact Us" tab, and select the project reference code RRC0060**.**[2]

Tips for making submissions on rule change requests are available on our website.[3]

Publication: The Commission publishes submissions on its website. However, we will not publish parts of a submission that we agree are confidential, or that we consider inappropriate (for example offensive or defamatory content, or content that is likely to infringe intellectual property rights).[4]

Next steps and opportunities for engagement

There are other opportunities for you to engage with us, such as one-on-one discussions or industry briefing sessions.

You can also request the Commission to hold a public hearing in relation to this draft rule determination.[5]

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

How to request a hearing: Go to the Commission's website, www.aemc.gov.au, find the "lodge a submission" function under the "Contact Us" tab, and select the project reference code RRC0060**.** Specify in the comment field that you are requesting a hearing rather than making a submission.[6]

For more information, you can contact us

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

Project leader:	Lisa Fukuda
Email:	lisa.fukuda@aemc.gov.au
Telephone:	(02) 8296 0637

2 If you are not able to lodge a submission online, please contact us and we will provide instructions for alternative methods to lodge the submission

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

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

5 Section 258(2) of the NERL.

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

Contents

1 The Commission has made a draft determination

The Commission has made a draft determination and draft preferable retail rule (draft 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.[7] 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.[8]

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.[9]

The Commission's draft rule recognises that hardship customers face many barriers to engaging with their retailer. The proposed changes and the draft rule specifically seeks 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. 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 benefit from 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 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 draft rule.

We are seeking feedback on our draft determination and the draft rule by **8 May 2025.** There are a variety of ways to provide feedback, from participating in working groups and bilateral meetings to providing formal submissions.

This draft determination has the following chapters:

- chapter one (this chapter) provides an overview of what the draft rule seeks to introduce and the inputs we have considered, including stakeholder feedback and findings from the AER, including from its Game changer final report, annual retail market performance reports[10] and Australian Competition and Consumer Commission (ACCC) Retail electricity pricing inquiry December 2024, June 2024 and 2023 reports.[11]

7 See the project webpage here.

8 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.

9 The package of consumer-related rule change requests includes: *Ensuring energy plan benefits last the length of the contract*; *Preventing 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*.

10 AER, Game changer, November 2023. See https://www.aer.gov.au/publications/reports/performance/annual-retail-markets-report-2023-24.

11 ACCC, Inquiry into the National Electricity Market December 2024 Report, 3 December 2024, Inquiry into the National Electricity Market June 2024 Report, 3 June 2024, Inquiry into the National Electricity Market June 2023 Report, 2 June 2023.

- Chapter 2 sets out our assessment framework and summarises how the Commission considers the draft rule would contribute to achieving the National Energy Retail Objective (NERO).
- Chapter 3 outlines how the draft rule would work in terms of obligations on retailers and the AER and supporting reasoning for the draft rule.

There is also a set of appendices including:

- rule-making process
- legal requirements to make a rule
- abbreviations.

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

The draft determination sets out the policy positions and the draft rule covering three key proposed changes, as shown in Figure 1.1. More details on each of the proposed changes are below and in chapter 3.

Figure 1.1: The draft rule involves three key proposed changes

Source: AEMC

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, 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.[12] 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.

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

As noted, the draft 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 would benefit from the deemed better offer.

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

The Commission also considers the draft rule would improve the transparency of the kind of offers hardship customers are on and support the AER in its compliance and monitoring of the proposed rule.

1.2 Recent work, findings and stakeholder feedback shaped our draft 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[13] 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 change work and findings from the ACCC's retail electricity pricing inquiry reports

As outlined in the consultation paper, the ECMC rule change request to assist hardship customers is drawn from AER's Game changer recommendation for automated better offers. The AER recommended that consumer outcomes for those in financial hardship need improvement, and considered more intensive support should be provided for consumers who find it challenging to overcome their debt burden to break the cycle of energy debt. It recommended three options that involved automatically switching customers to a deemed better offer. [14]

The Commission is currently progressing the *Improving the ability to switch to a better offer* rule change proposal, which seeks to reduce the transaction costs associated with switching offers. This is achieved by requiring retailers to provide a streamlined process for consumers to switch to the deemed better offer, as presented on the customer's bill.[15]

1.2.2 Most stakeholders broadly supported the intent of the rule change proposal but did not overall support the crediting mechanism

In submissions to the consultation paper, consumer groups generally supported the policy intent of the rule change proposal but did not support the proposed crediting mechanism. These stakeholders were generally concerned that the proposed crediting mechanism would lead to potential negative experiences and outcomes for hardship customers and perverse incentives on retailers.[16]

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

14 See appendix A.2, section 1.2 of the consultation paper. AER, Game changer, November 2023, p. 22.

15 AEMC, Improving the ability to switch to a better offer consultation paper, 6 February 2025

16 Submissions to consultation paper: COTA, p. 2-3; Ombudsman of QLD, SA and NSW, p. 3; EWOV, p. 4; SACOSS, p. 11; JEC joint submission with Ethnic Communities' Council of NSW; St Vincent de Paul Society, SACOSS and Sydney Community Forum, p. 6-7.

The AER supported the crediting mechanism in terms of the proposed outcomes for consumers.[17] ECA strongly supported the intent of the rule change proposal to ensure hardship customers pay the lowest possible bill, stating that existing arrangements are inadequate to protect these consumers.[18] SACOSS supported the rule change proposal in seeking "…to enhance consumer protections and improve the transparency and fairness of energy retail markets."[19]

Retailers generally supported providing hardship customers appropriate protections in accessing the deemed better offer but opposed the credit mechanism. They noted significant implementation costs, complexity and challenges such as increased administrative and labour costs and the need for new and complex information technology (IT) development.[20] Some retailers raised other issues, such as potentially incentivsing some hardship customers to be on higher-priced plan to obtain the credit and stay on other benefits of their current plan. It may also act as a barrier to engaging in the market or with their retailer.[21]

Consumer groups, including the Justice and Equity Centre (JEC), Ethnic Communities' Council of NSW, St Vincent de Paul Society, Australian Council of Social Service (ACOSS) and Sydney Community Forum, raised in a joint submission broader issues related to the payment difficulty protections in the National Energy Customer Framework (NECF). These are outlined below.

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

1.3 Broader issues and reforms are being considered in the AER's Review of payment difficulty protections in the NECF

The AER is currently undertaking a Review of the payment difficulty protections in the NECF and the review forms part of the AER's broader Towards energy equity — a strategy for an inclusive energy market.[22]

The review considers the effectiveness of the current protections and seeks to identify opportunities to strengthen protections and improve outcomes for consumers experiencing payment difficulty. The AER is also considering whether changes to the NECF are required to ensure that consumers in hardship are proactively identified, engaged early and supported based on their individual circumstances.[23]

Several stakeholders noted linkages or overlaps between this rule change and AER's Review of payment difficulty protections in the NECF. Some suggested delaying this rule change until AER's findings can be considered, or leveraging AER's review to consider the broader context relating to payment difficulty.[24]

The draft determination seeks to address the specific issue that hardship customers may not be accessing or benefiting from the deemed better offer and increase protections in a timely manner. The Commission considers that the broader issues raised are important and that these can be addressed by the AER's review and its recommended reforms. These issues include:

17 AER, submission to consultation paper, p. 2-3.

18 ECA, submission to consultation paper, p. 7.

19 SACOSS, submission to consultation paper, p. 3.

20 Submissions to the consultation paper: EnergyAustralia, p. 2, 15-16; Alinta, p. 3; Origin, p. 1-2; ENGIE, p. 3-4; AGL, p. 1-3; Energy Locals, p. 2-3; Red/Lumo, p. 2; AEC, p. 2.

21 Submissions to consultation paper: Energy locals, p. 3, Red/Lumo, p. 2, Alinta, p. 1, Origin, p. 2; AGL, p. 4.

22 AER, Towards energy equity - a strategy for an inclusive energy market, 20 October 2022

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

24 Submissions to consultation paper: Red/Lumo, p. 1, ENGIE, p. 2, AEC, p. 2, JEC joint submission with Ethnic Communities' Council of NSW; St Vincent de Paul Society, ACOSS and Sydney Community Forum, p. 3-6, Ombudsman of QLD, SA and NSW, p. 2, AGL,p.2.

- minimum requirements for customers experiencing payment difficulty and hardship, including the onus being on consumers to self-identify as experiencing payment difficulty or hardship
- 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
- allowing or requiring retailers to obtain Explicit Informed Consent (EIC) to automatically switch hardship customers onto the better offer, which would require changes to EIC provisions under the NERL.

We are engaging with the AER and will continue to consider interactions as the rule change progresses.

We note the Essential Services Commission of Victoria (ESC VIC) is currently considering the rule change proposal as part of its Review of the Energy Retail Code of Practice (see more in appendix A.4).

2 The rule would contribute to the energy objectives

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

The Commission can only make a rule if it is satisfied that the rule will or is likely to contribute to the achievement of the relevant energy objectives.[25]

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

The NERO is: [26]

> to promote efficient investment in, and efficient operation and use of, energy services for the long term interests of consumers of energy with respect to—
>
> (a) price, safety, reliability and security of supply of energy; and
>
> (b) the achievement of targets set by a participating jurisdiction—
>
> (i) for reducing Australia's greenhouse gas emissions; or
>
> (ii) that are likely to contribute to reducing Australia's greenhouse gas emissions.

The targets statement, available on the AEMC website, lists the emissions reduction targets to be considered, as a minimum, in having regard to the NERO.[27]

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.[28]

For this rule change, the Commission has made a more preferable draft rule because it is satisfied that it meets the NERO. Specifically, the Commission considers the draft more preferable rule would 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 2.2.2 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).[29] 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.[30] 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).

25 Section 236(1) of the NERL.
26 Section 13 of the NERL.
27 Section 224A(5) of the NERL.
28 Section 244(1) of the NERL.
29 Section 236(2)(b) of the NERL.
30 Sections 236(1) and (2)(b) of the NERL.

The Commission is also satisfied that the draft more preferable rule meets the consumer protections test. The Commission has maintained the application of consumer protections for hardship customers, including those relating to customer hardship policies (eg, what they must specify) in accordance with the purpose of customer hardship policies under the better offer.[31] The draft rule seeks to enhance protections for hardship customers to be on energy offers that best suits their needs. It seeks to achieve this by putting explicit obligations on retailers to ensure hardship customers pay no more than the deemed better offer for them. The Commission considers this would provide appropriate protections for all hardship customers while providing them choice and 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 draft 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. [32]

- **Outcomes for consumers.** We considered whether the proposed rule change would:
  - help hardship customers to better manage their bills and debt (ie, have more affordable bills, meet payment plans and/or manage or reduce energy usage debt)
  - promote consumers to benefit from the retailer's best offer (ie, deemed better offer) while 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:
  - current processes of retailers to help ensure their customers are on the best offer and suit their customer's needs
  - current risk allocation between retailers and hardship customers on non-payments of energy bills

31 Section 43 of the NERL.

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

    - 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 bill credit 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.[33]
- **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 would interact with recommendations made under the AER's current Review of payment difficulty protections in the NECF.

The draft preferable rule would achieve the NERO based on each area of the assessment framework, as outlined below.

2.3.1 The draft preferable rule would provide hardship customers additional support, so they can benefit from the deemed better offer

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

- **Strengthening protections and enhancing support.** The preferable draft rule would help hardship customers better manage their bills and debt (ie, have more affordable bills, meet payment plans and/or manage or reduce energy usage debt). This would be achieved by adding stronger protections and enhancing existing retailer obligations. These obligations place greater onus on retailers to provide their hardship customers with the deemed better offer or its financial benefits so that they are no worse off than the deemed better offer and do not incur more debt than necessary.
- **Maintaining customer choice and agency over their energy plan.** The preferable draft rule enable hardship customers to have choice over their energy plans to suit their needs and preferences, as per existing provisions under the NERL. It also maintains the important aspect of EIC for customers.
- **Reducing transaction and opportunity costs**. The preferable draft rule seeks to reduce the burden, time and stress often associated with engaging with the energy market and retailer for searching and moving onto the best offer.
- **Allowing equitable access to the deemed better offer.** The draft rule enables all hardship customers to access or benefit from the best offer without having the onus to actively engage in the market or with their retailer to access or benefit from the best offer, particularly those who face barriers in doing so. This means they are able to experience the benefits of a lower-priced plan in terms of cost without needing to change their energy plan.

2.3.2 The preferable draft rule would likely promote market efficiency, particularly on risk allocation between retailers and hardship customers

The draft rule would likely maintain or promote market efficiency by:

33 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.

- **Building on existing retailer obligations and processes.** The draft preferable rule seeks to broadly align and build on current retailer processes (where possible) to ensure hardship customers benefit from the deemed better offer.
- **Seeking appropriate risk allocation**. The draft rule seeks to allocate risk and the direct financial consequences of hardship customers not being on the best offer towards retailers who could better manage it.
- **Supporting competition**. The draft rule seeks to afford retailers flexibility in how they meet their obligations compared to the proposed credit mechanism. This would minimise any further cost disadvantages to the smaller retailers and support them to compete in the market.
- **Promoting transparency**. The draft rule would allow for greater accountability and transparency relating to retailers' reporting and support the AER in its compliance monitoring of the proposed rule.

2.3.3 The draft rule would minimise implementation costs

The draft rule seeks to minimise implementation costs as it provides retailers with some flexibility to consider and implement different approaches that may be lower in cost to their billing operations and/or systems. That is, unlike the proposed crediting mechanism in the rule change request, the draft 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 and do not incur more debt than necessary.

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

The draft 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.

3 How our rule would operate

The draft rule proposes three main changes.

1. Introducing a new principle—setting out a clear and direct obligation on retailers to ensure where the hardship customer is not on the retailer's deemed better offer, the hardship customer will be no worse off than if they were on the deemed better offer. [34]
2. Enhancing existing retailer obligations in AER's Customer Hardship Policy Guideline by including an additional principle in the NERR —so that it is explicit that retailers must offer hardship customers a deemed better offer not only when they join but on an ongoing basis.
3. Adding new hardship program indicators which retailers would report to the AER and the AER must report on. This would provide transparency on the type of offers hardship customers are on and the ability for the AER to undertake appropriate monitoring and compliance of whether the outcomes sought are being achieved. The AER would report these in its annual retail market reports.[35]

This chapter provides an overview of the three core areas of the draft rule including:

- key stakeholder feedback, findings and considerations that shaped the Commission's decisions
- changes required to the AER Customer Hardship Policy Guideline due to the proposed changes.

3.1 Introducing a clear and direct obligation on retailers — a new principle

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

Under the draft rule, retailers would be required to ensure that hardship customers pay no more than the deemed better offer. The draft 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
- give them a financial benefit under their current plan (eg, downward price adjustment, an enduring discount or credit) that is the same value the hardship customer would have received if they were on the better offer (under rule 75C(1) of the draft rule).

The financial benefit must be the same monetary value the hardship customer would have received or saved if they were on the retailer's deemed better offer (rule 75C(1) of the draft rule). This would mean that if a retailer chooses to give a hardship customer an enduring discount, for example, it would be applied to each bill while the customer is in a hardship program so that the total bill would be the same as being on the deemed better offer.

This provision would be subject to a Tier 1 civil penalty upon recommendation to the energy ministers.

Retailers would be required to amend and clearly state in their hardship policy the actions they will

34 As outlined in chapter one, 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.

35 AER, Retail performance reports.

take to meet their obligation in the new principle (under rule 75B(e) of the draft rule). The AER would also be required to define 'deemed better offer' in its Better Bills Guideline (under rule 25A(4)(c)).

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

The rule change request outlines that hardship customers face a number of barriers to engaging with their retailer and taking action to move to the deemed better offer that's available to them. This is despite retailer requirements to let them know that they could be on a deemed better offer. Such barriers noted in the rule change request can include "stress, lack of time, literacy or language". 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.[36]

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.[37]

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).

3.1.2 Most stakeholders support the policy intent of the rule change proposal but not the proposed crediting mechanism

As outlined, most consumer groups broadly agree with the stated issues but, similar to retailers, are concerned about the nature and impacts of the proposed crediting mechanism prescribed in the NERR. Stakeholder concerns included:[38]

- 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

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

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

38 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.

- 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). [39]

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. [40] 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.[41] 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:[42]

- transparency in 'best offer' calculations
- 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. [43]

Many retailers consider that the crediting mechanism would lead to significant implementation costs complexity, risks and challenges as it would involve:[44]

- 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.

3.1.3 The Commission considers the existing arrangements can be enhanced to assist hardship customers be on or benefit from a retailer's deemed better offer

The Commission considers that it's important for hardship customers to have stronger support to be on the retailers deemed better offer. This is based on:

- **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).[45]
- **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

39 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.

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

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

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

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

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

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

stay on their current offer more than necessary, which could worsen payment difficulties and 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's too confusing, complex and time-consuming.[46] From hardship customer 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.[47]

- **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).[48]

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.
  - 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

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

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

48 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.

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.

3.1.4 The Commission considers the draft rule would 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 section 3.1.2. 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.[49] 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 a principle or outcomes-based approach for hardship customers to be on or no worse off than the deemed better offer as 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 proposed 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 also can consider the approach that would suit their existing systems and operations. Affording retailers this flexibility would minimise potential perverse incentives, and avoid potentially greater implementation costs associated with the proposed crediting mechanism.

3.2 Enhancing existing retailer obligations in AER's Customer Hardship Policy Guideline

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

The draft rule requires retailers to clearly state in their customer hardship policy that they will offer their hardship customers the deemed better offer not only when a customer joins the hardship program (as per rule 52 under AER's Better Bills Guideline and standardised statement number 6 under AER Customer Hardship Policy Guideline) but on an ongoing basis:

49 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.

- at least once every 100 days, or
- in line with a billing cycle agreed between the hardship customer and retailer (under rule 75B(d)(ii) of the draft rule).

We note that the draft rule would amend an existing provision that is a tier one civil penalty provision (rule 75B of the NERR).

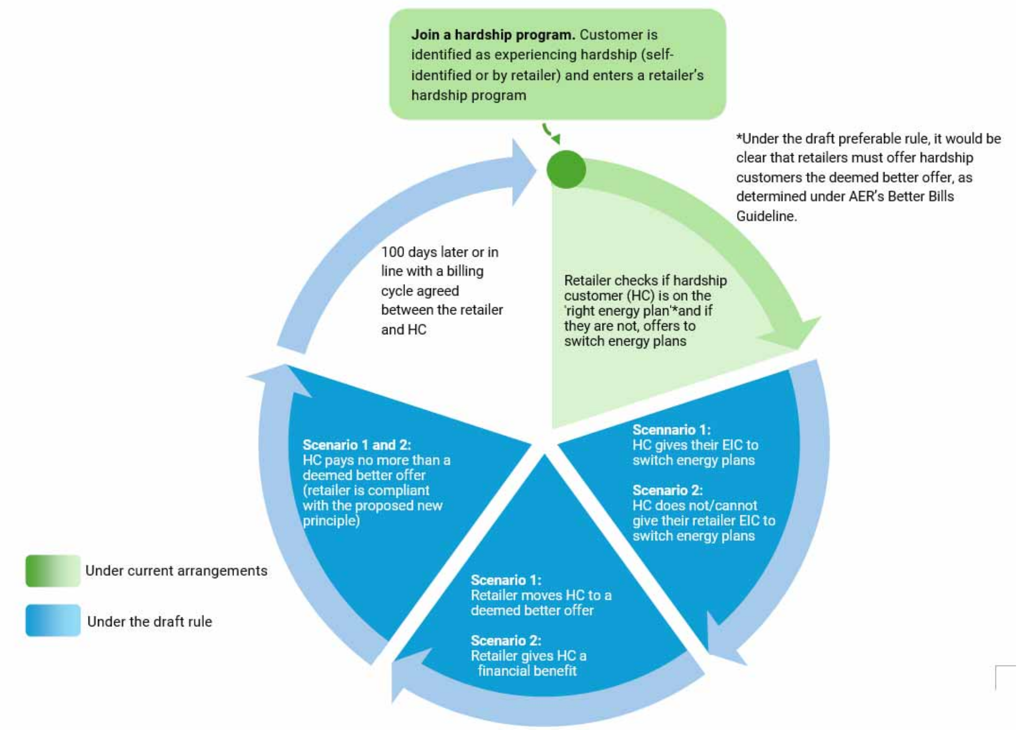
The draft rule seeks to:

- make the existing requirement on retailers under AER Better Bills Guideline and Customer Hardship Policy Guideline explicit 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's available to them. This maintains or promotes hardship customers' engagement with their retailer.

The timeframe of once every 100 days or where the retailer and customer have agreed to a different billing cycle is in line with the timeframe requirement of providing all customers a deemed better offer message on their bill under the current AER Better Bills Guideline.[50]

Figure 3.1shows the customer journey under the draft rule (ie, under the first and second proposed changes).

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



Source: AEMC

50 Rule 52 under Part 4 of AER's Better Bills guideline.

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

Under the existing AER Customer Hardship Policy Guideline, retailers are required to include a standardised statement in their customer hardship policy (see box 4).[51]

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."

As indicated in box 4, retailers are currently required to check and engage with hardship customers on whether they are on the 'right energy plan' and only when they join a hardship program rather than on an ongoing basis.

The draft rule supports hardship customers who are or can actively engage with the market and their retailer

The proposed change 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 complicated.[52] 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.[53]

The Commission considers that enhanced or more explicit provision for retailers to offer hardship customers the deemed better offer upon joining a hardship program and an ongoing basis would support hardship customers by:

- **Reducing their transaction costs**. Hardship customers would 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's available to them
- **Reducing their opportunity costs**. Hardship customers would not miss out on the benefits of the deemed better offer (ie, savings) and help manage debt

51 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.

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

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

- **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.

Providing additional support to hardship customers to switch to the deemed better offer by giving their EIC, rather than staying on their current high-priced plan, would further minimise implementation costs. This is because it would avoid additional administrative and operational costs associated with retailers calculating and providing them a financial benefit under the proposed new principle in section 3.1.

The Commission anticipates that additional costs on retailers for implementing this draft rule (if any) would be minimal as it leverages existing retailer obligations under AER Better Bills Guideline and Customer Hardship Policy Guide as outlined above.[54] This also means the draft rule would be consistent with the level of prescription behind these existing retailer obligations.

3.3 Adding new hardship program indicators that retailers and the AER would report on

Box 5: New hardship indicators that support monitoring and compliance

The draft rule proposes to introduce new hardship program indicators that 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
- above and below the standard retail contract offer (under rule 75(2)(3) of the draft rule).

Retailers would be required to use their best endeavours to understand why hardship customers are not on the deemed better offer (under rule 75C(2) of the draft rule).

Retailers would report these new hardship program indicators to the AER, and the AER would 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).

We note that the proposed hardship program indicators would 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 and NERR.[55] 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.[56]

Under current arrangements, there are no existing hardship program indicators that provide how many hardship customers are on the retailer deemed better offers or how many are on offers above or below standing retail offers.

54 Under current AER Better Bills Guideline (rule 52), retailers are required to undertake a deemed better offer check and provide all small customers a deemed better offer message on their bill at least once every 100 days or where the retailer and customer have agreed to a different billing cycle under rule 24(2) of the NERR and the billing cycle is greater than 100 days, in alignment with a billing cycle.

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

56 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.

The new hardship program indicators proposed under the draft rule are intended to cover the number and proportion of hardship customers on the offers listed in Box 5 under each retailer's customer base and across the NEM, excluding Victoria.[57] This would be consistent with how information and data on existing hardship program indicators are currently reported in AER's annual (and quarterly) retail market reports.

We seek stakeholder feedback on whether the proposed hardship program indicators outlined in Box 5 are the appropriate metrics, including whether additional ones should be added to support the intent outlined below.

The draft rule seeks to support AER monitoring and compliance enforcement

The Commission considers these new hardship program indicators would provide direct and public transparency on consumer outcomes in terms of whether they are accessing or benefiting from the deemed better offer and more broadly, whether they are on offers above and below the standing retail market offer. It also seeks to support the AER in monitoring, investigating and enforcing compliance with retailers' obligation under the draft rule. A number of stakeholders, including ECA, JEC, Ethnic Communities' Council of NSW, St Vincent de Paul Society, ACOSS and Sydney Community Forum, supported this noting that it's important that the AER actively monitors, investigates and enforces the proposed retailer obligations to achieve the intended outcomes of the rule change proposal.[58]

The AER may need to update its Compliance Procedures and Guidelines, which sets 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.[59]

We also note that the AER may also need to update its Performance Reporting Procedures and Guidelines to set out the manner and form retailers must submit these proposed information to the AER.[60]

3.4 Implementation considerations

The AER would need to update its Customer hardship policy guidelines and other procedures as noted to reflect the changes proposed by the draft rule. That is, the AER would need to update its Customer Hardship Policy Guideline to align with the proposed new principle and consider any necessary changes or additional considerations as outlined above. We are proposing this would be completed by 1 July 2026.

As noted in stakeholder submissions to the consultation paper, some hardship customers may value certain features of a plan other than the price, such as rewards programs (eg, frequent flyer points), carbon offsets or vouchers (eg, movie tickets).[61]

We consider it appropriate for the AER Customer Hardship Policy Guideline to consider these issues when the AER updates this guideline. We also note that the AER may consider these broader issues as part of its Review of payment difficulty protections in the NECF.

The key milestones for implementing the proposed changes are as follows:

- publication of final determination and rule

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

58 Submission to consultation paper, ECA, p. 10, JEC joint submission with Ethnic Communities' Council of NSW; St Vincent de Paul Society, ACOSS and Sydney Community Forum, p. 52-53.

59 AER, Compliance Procedures and Guidelines, September 2018.

60 AER, AER Performance Reporting Procedures and Guidelines, 1 July 2025.

61 Submissions to consultation paper: ENGIE, p. 4, Origin, p. 2 and Red/Lumo, p. 1.

- AER updates procedures and guidelines
- retailers must update their hardship policies for AER approval
- AER approves retailers’ updated hardship policies
- retailers update their hardship policy (as AER approved) and comply with the final rule
- 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.[62]

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.

The proponent proposes 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 sets out some considerations for how a retailer would apply a credit on hardship customers’ bills, including:[63]

- **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.
- **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.

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

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

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 automated better offer

This rule change request to assist hardship customers is drawn from a recommendation in the AER Game changer report.[64]

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.[65]

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 dent.[66]

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.[67]

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.[68]

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.

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.[69] A consultation paper

64 AER, Game changer, November 2023.

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

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

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

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

69 This notice was published under section 251 of the NERL.

identifying specific issues for consultation was also published. Submissions closed on 16 January 2025. The Commission received 16 submissions as part of the first round of consultation. The Commission considered all issues raised by stakeholders in submissions. Issues raised in submissions are discussed and responded to throughout this draft rule determination.

A.4 The Victorian ESC is considering the rule change proposal as part of its review of the Energy Retail Code

The ESC VIC's current review of its Energy Retail Code of Practice is considering the proposed change in this rule change request (*Automatic best offer for consumers experiencing payment difficulty* in ESC VIC's discussion paper). More information on their review can be found here.

Unlike the NECF jurisdictions where EIC provisions are empowered under the NERL (and cannot be changed by the rules), the ESC VIC can make changes to its Victorian Energy Retail Code of Practice to alter EIC provisions in Victoria.[70]

We are engaging with the ESC VIC as part of this rule change to consider points of alignment. ESC VIC may make recommendations that may align with or be additional to our proposed changes. The ESC VIC expects to make a final decision on these reforms by June 2025.

70 The NERL applies to the Australian Capital Territory, New South Wales, South Australia, Queensland and Tasmania.

B Legal requirements to make a rule

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

B.1 Draft rule determination and draft rule

In accordance with section 256 of the NERL, the Commission has made this draft rule determination for a more draft 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 draft rule determination are set out in chapter two.

A copy of the draft rule is attached to and published with this draft determination. Its key features are described in chapter three.

B.2 Power to make the rule

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

The subject matter of the draft 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 draft rule[71]
- 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 draft rule would 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.[72]

71 s244 NERL

72 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.[73] A Decision Matrix and Concepts Table,[74] approved by Energy Ministers, provides a decision-making framework that the Commission applies, in consultation with the AER, when assessing whether to recommend that provisions of the NERR should be classified as civil penalty provisions, and if so, under which tier.

Subject to consulting with the AER, the Commission proposes to make the following civil penalty recommendations to the Energy Ministers' Meeting in relation to the final rule, if made.

Table B.1: Civil penalty recommendation

NERR Clause	Description of rule	Proposed classification	Reason
75B(1)	The draft rule amends 75B of the NERR, which contains the content, requirements and obligations that retailers' customer hardship policies must comply with.	Amend existing Tier 1 civil penalty provision. We do not propose to recommend any changes to the classification of this provision, but will recommend the extended application of the existing civil penalty provision.	This amended provision will capture the additional obligations on retailers which have been added to this clause. Failure to comply with this provision may lead to adverse outcomes for hardship customers.
75C(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 (such as a price discount or a credit on their bill) of 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).

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

74 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

In addition, the draft rule proposes to amend clause 75B(1) of the NERR to include the requirement that a retailer must clearly state that where a deemed better offer is available, the retailer will (i) offer the customer a deemed better offer when the customer becomes a hardship customer; and (ii) at least every 100 days following (unless an alternate billing cycle has been agreed), which is classified as a Tier 1 civil penalty provision. We do not propose to recommend to the Energy Ministers' Meeting any change to the classification of this provision, but propose to note to Energy Ministers the extended application of the existing civil penalty provision.

Abbreviations and defined terms

ACCC	Australian Competition and Consumer Commission
ACOSS	Australian Council of Social Service
AEMC	Australian Energy Market Commission
AEMO	Australian Energy Market Operator
AER	Australian Energy Regulator
Commission	See AEMC
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
SACOSS	South Australian Council of Social Service