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Draft Rule Determination - National Energy Retail Amendment (Assisting hardship customers) Rule 2025

AGL Energy (AGL) welcomes the opportunity to comment on the Australian Energy Market Commission's (AEMC) *Assisting Hardship Customers* Draft Rule Determination (the Draft Determination), dated 27 March 2025.

AGL commends the AEMC on its productive and collaborative engagement with industry and other stakeholders throughout the rule change consultation process. Open and genuine dialogue and whole-of-sector collaboration are key to delivering strong outcomes for Australians experiencing financial distress. An effective, customer-focussed and sustainable solution needs bold action that strikes at the root cause of the problems it seeks to address, rather than piecemeal reforms that skirt around the fringes of a bigger issue. There is a real opportunity to build on the recommendations of the cross-sector AER Game Changer project and adopt meaningful and impactful change for hardship customers.

While AGL is supportive of the AEMC's principles-based approach to regulation and the overall intent of the rule change, AGL reiterates that in its current drafting, it will only result in limited customer outcome improvements while imposing disproportionately large cost, implementation and operational burdens on industry. Further, the fundamental questions of equity and fairness of this rule remain unaddressed.

AGL does not support the changes proposed in the Draft Determination and makes the following high-level observations:

1. There are several ongoing and anticipated **parallel reviews and regulatory reforms** that will consider protections for hardship customers, which may supersede, interfere with, or contradict this rule change.
2. Rather than address the root cause of the proponent's **problem statement**, the Draft Determination instead attempts to remedy the effects, leaving the underlying reasons untreated to the detriment of consumers.
3. AGL is concerned that the proposed Draft Determination solution has serious **limitations** and inherent **complexity** - this will lead to **heightened costs** which are ultimately worn by consumers. Instead, there are a range of alternative and more favourable solutions that should be pursued to minimise implementation and operational costs.
4. The proposed new **hardship program indicators** have mixed utility – there is inherent value in some of the new data points, whereas others will be overly onerous to collect and serve little probative value.



5. Notwithstanding AGL's broader feedback, the proposed **implementation timeframe** is appropriate and reasonable having regard to the Draft Determination in its current form.

A broad range of stakeholders expressed reservations with, or opposition to, the original crediting mechanism proposed in the AEMC's Assisting Hardship Customers Consultation Paper.¹ Noting that the Draft Determination presents substantively the same rule change as was put forward by the AEMC in November 2024, respondents' concerns with the crediting mechanism will persist even with the proposed expanded definition of 'financial benefit'. AGL questions why the AEMC is still choosing to progress the rule change in its current form when stakeholders have expressed it to be a suboptimal outcome to the proponent's problem statement. We urge the AEMC to review and re-evaluate how the *Automated better offer with consent for future switching* can be made a viable solution in the NECF. As the national energy policymaker, it is incumbent on the AEMC to create rules and regulations that reflect the expectations and feedback from industry and broader participants.

While AGL does not support the changes proposed in the Draft Determination and it is our strong recommendation not to progress it further at this stage, we have put forward a number of suggestions for the AEMC's consideration. While these revisions in isolation will not materially improve the overall rule, they may go some way to reducing the operational and implementation complexities for retailers. Broadly, the AEMC should amend the draft rule to:

- a. Consider the 'net' benefit that the customer receives on their existing contract with retailers permitted to ascribe a nominal monetary value to the benefits a customer receives under their contract.
- b. Allow retailers to apply a credit, discount or price adjustment that is *greater than* the difference between the customer's plan and the deemed better offer.
- c. Remove duplicative better offer requirements from the Hardship Policy as equivalent provisions already exist in the Australian Energy Regulator's (AER) Better Bills Guideline.
- d. Remove or revise new Hardship Reporting Indicators that require retailers to undertake reasonable endeavours to capture why customers are not on the deemed better offer.

About AGL

At AGL, we believe energy makes life better and are passionate about powering the way Australians live, move, and work. Proudly Australian for more than 185 years, AGL supplies around 4.5² million energy, telecommunications, and Netflix customer services. AGL is committed to providing our customers simple, fair, and accessible essential services as they decarbonise and electrify the way they live, work, and move.

AGL operates Australia's largest private electricity generation portfolio within the National Electricity Market, comprising coal and gas-fired generation, renewable energy sources such as wind, hydro and solar, batteries and other firming technology, and storage assets. We are building on our history as one of Australia's leading private investors in renewable energy to now lead the business of transition to a lower emissions, affordable and smart energy future in line with the goals of our Climate Transition Action Plan. We'll continue to innovate in energy and other essential services to enhance the way Australians live, and to help preserve the world around us for future generations.

¹ Submissions to the AEMC's Assisting Hardship Customers Consultation Paper dated 28 November 2024: 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, Australian Energy Council; AGL Energy p1; Engie Energy page 3; Energy Australia, p2.

² Services to customers number as at 31 December 2024.



1. Ongoing Reviews and Reforms

There are currently a number of ongoing reviews and reforms, the outcomes of which could materially impact the *Assisting Hardship Customers* rule change. For example, the AER's *Review of the Payment Difficulty Framework in the National Energy Customer Framework* is considering the appropriateness of the existing consumer protections for customers experiencing payment difficulties and hardship. The Review will likely identify and recommend alternative consumer protections regimes that are more appropriate for the National Energy Customer Framework (NECF) and subsequent reforms may render the crediting/financial benefit mechanism obsolete. The AER's Review of the Better Bills Guideline will evaluate, amongst other things, the effectiveness of better offer message which appears on customers' bills. Further, other Energy and Climate Ministerial Council (ECMC) consumer-focussed reforms, such as the '*Improving switching to the better offer*' will seek to reduce barriers to switching to the better offer, a key concern that the proponent is trying to address. Finally, the ECMC's *Better Energy Customer Experiences* review will also seek to consider holistic changes to regulatory frameworks.

Noting the scale, costs and impact on industry, it would be premature to progress the current rule change prior to the completion of the abovementioned reviews and reforms. As a national energy policymaker, the AEMC will be acutely aware that energy regulations are complex and interdependent; they do not exist in isolation to each other and should, therefore, be considered holistically during these formative stages. It would be preferable if the AEMC enacted one set of rules that addressed hardship and payment difficulty holistically, rather than through a fragmented, piecemeal approach where the AEMC, the AER and to an extent, the Essential Services Commission of Victoria (ESC) act independently of each other³. A unified front is needed to genuinely achieve strong customer outcomes and create effective and sustainable, support mechanisms for individuals experiencing payment difficulty and hardship. Harmony between the NECF and Victorian jurisdictions is critical to improving customer payment-debt outcomes, avoiding significant and duplicative systems build out for retailers, and minimising costs associated with multiple rule change reforms which are ultimately worn by the end consumer.

2. Responsiveness to the problem statement

AGL is concerned that the Draft Determination does not adequately solve or address the root cause of the problem statement that gives rise to this rule change request. The problem statement as presented by the proponent is that hardship customers face barriers to engaging with their retailer and those barriers include amongst other things, "lack of time, agency, literacy or language barriers"⁴. It follows that these barriers prevent hardship customers from accessing lower cost energy offers and broader support. AGL agrees with this premise and has consistently argued that limited engagement is the primary contributor to poor outcomes for vulnerable customers.

However, having established that the central problem is engagement (or lack thereof), AGL is concerned that the proposed solution does little to *improve* engagement (or reduce its barriers) but instead, pursues an approach that seeks to perpetuate, entrench and incentivise disengagement. This is a fundamental policy consideration as engagement between retailer and customer is critical to building trust in the energy market as well as ensuring customers can access the full suite of holistic support available to them. The AEMC's consumer strategic priorities include informing, empowering and protecting consumers, but this solution certainly does not contribute to the first two – it arguably diminishes them by reducing their agency.

³ The ESC has also been [tasked by the ECMC](#) to introduce parallel Consumer Energy Reforms in Victoria.

⁴ ECMC, [Assisting Hardship Customers Rule Change Request](#), p3.



3. Draft Determination Solution Design

AGL provides the following feedback in relation to the various features of the Draft Determination solution:

3.1 *Principles-based regulatory approach*

AGL supports the AEMC's principles-based approach and the proposition that retailers should be able to explore and find their own lowest-cost approach to supporting all hardship customers with a deemed better offer. AGL generally agrees that a well-designed principles-based regulatory framework allows for greater flexibility on how to meet the overarching intention of the rule. Retailers are well placed to understand the unique circumstances that affect our customers and how best to provide tailored, meaningful support measures that are sensitive to the customer's needs and, as such, allowing flexibility in solution design is paramount.

3.2 *Applying credits, discounts or price reductions equating to the difference between the current plan and the best offer*

While the Draft Determination has introduced flexibility around the type of 'financial benefit' that must be provided by the retailer, each of the conceivable options (downward price adjustment, an enduring discount or a bill credit) would still require detailed calculations to be performed to ensure the financial benefit provided equates to the delta between the customer's offer and the deemed better offer. As a result, the proposed Draft Determination solution would require retailers to perform daily calculations on each NECF customer account that is participating in a hardship program. This would be necessary to ensure correct time slicing and apportionment of plan differences versus daily consumption.

AGL remains concerned that the previous challenges and barriers relating to the crediting mechanism and the complexity of calculating a dynamic better offer still persist as the Draft Determination has not effectively addressed the following:

- a. **Complexity:** Retailers will need to develop and implement new system capabilities to dynamically calculate the difference between a customer's actual bill versus the better offer during each day of that billing period and then apply corresponding bill credits, discounts or price reductions for the delta. This will involve building a sophisticated algorithm that can recalculate concessions rebates, backdated charges, non-energy charges and other complex components of the customer's billing calculation at scale. We envisage that despite retailers' best efforts, this complexity will inevitably result in compliance challenges.
- b. **Dynamic better offer calculations:** The existing better offer calculation acts as a snapshot at a point-in-time (being the date on which the calculation is performed by the system) that compares the customer's current plan and AGL's current in-market deemed better offer, pro-rated over a 12-month period. On the other hand, the proposed solution requires the ongoing application of credits, discounts or price reductions to the customer's account. These two functions are distinctly different because:
 - i. In-market deemed better offers are constantly changing as retailers react to the competitive market within which we operate. Within a single billing period, there could be multiple better offers in market at different times; and
 - ii. A hardship customer might choose to change their product one or more times within a single billing period. Changes in product can also be cancelled and reversed due to a change of mind.
- c. **Retrospectivity:** The methodology determines the better offer as at the date of the snapshot and gives a comparison of the cost differential for illustrative purposes only, i.e. the customer



cannot retrospectively apply the deemed better offer to their historical bills, rather they can only seek to access it *prospectively*. However, with this proposal, the methodology appears to contemplate applying a current price to historical consumption (where that price might not have been available during the billing period in question) or alternatively, to recalculate the historical deemed better offer for each previous timeframe to apply that to the historical consumption. The former scenario involves a disproportionate transfer of risk to retailers and the latter scenario invites significant complexity for both retailers and customers.

- d. **Bill accuracy:** Credits, discounts or price reductions could adversely impact bill accuracy with respect to the application and validation of concessions, the calculation of solar exports, treatment of product swaps and transfers and the processing of meter data adjustments from the market. This complexity would invariably extend to consumers, potentially leading to confusion, complaints and decreased consumer comprehension of their bills.

Further, the application of credits, discounts or price reductions will mean retailers cannot accurately process adjustments for revised meter data which will have a significant impact on accuracy of concession calculations and concessions invoicing to the government.

- e. **Customer experience:** It would be very difficult for customers to understand how the credit, discount or price reduction in any billing period was calculated and applied. The quantum may vary vastly from bill to bill (based on comparative position of plans in that period) and this is likely to trigger questions that frontline staff may find challenging to explain without taking the customer through a spreadsheet of calculations. Given this customer group is one which the proposal suggests find it hard to navigate and understand energy bills, this will undoubtedly become a problem and is likely to lead to distrust and a reduction in transparency around energy costs.
- f. **System Performance:** This will impact overall system performance due to the increased calculation load ('number crunching').

3.3 *Discounts and Price Reductions under the AER's Benefit Change Notice Guideline*

The AEMC is proposing that retailers have the flexibility to apply a discount or downward price adjustment to meet the intent of the principle in lieu of applying a credit or switching the customer to the better offer.

The AEMC will be aware that a discount is classified as a benefit under the AER's Benefit Change Notice Guideline. The application of an "enduring discount" at the point of enrolling a customer into hardship would constitute a benefit change and be subject to 20 business day advanced notice requirements. The AEMC may also be aware, a retailer's better offer may periodically (or even frequently) change in market meaning that the customer would require constant benefit change notices to be issued making the solution unworkable. From a compliance perspective, if the expectation is that the discount appears on the customer's next bill, this could compromise the ability of the retailer to comply with its regulatory obligations if a bill is issued before the 20-business day notice period lapses. For customers on a monthly billing cycle compliance with the 20-business day advanced notice for discounts or other benefits severely impacted.

Similarly, a 'downward price adjustment' could be construed as a price change event under the National Energy Retail Rules and would attract advanced notice requirements⁵ while creating the same compliance challenges as above following the commencement of the *Preventing price*

⁵ As part of the *Improving customers confidence in energy retail contracts* rule change, the AEMC is proposing to increase the advanced notice of price change requirements from 5 business days to 20 business days.



increases for a fixed period rule change. Additionally, if a customer rolls off a hardship arrangement, retailers would be unable to increase the prices to the normal level again due to the *Preventing price increases* rule change.

The AEMC will need to work with the AER to explore how discounts and downward price adjustments can be made exempt from advanced notification requirements for hardship customers captured under this rule change.

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

The AEMC notes that "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." While this may be accurate with respect to the current Hardship Policy requirements, retailers have ongoing obligations under the Better Bills Guideline to "...provide a deemed better offer message on a bill to a small customer" at least once every 100 days or in line with the customer-retailer billing agreement if that billing cycle is greater than 100 days.

While AGL agrees that customers should be offered to move to the deemed better offer at the time of joining a retailer's financial hardship program,⁶ the subsequent obligations to perform the better offer calculation and provide a deemed better offer message on a bill should revert to those designated under *Part 4 - Better Offer* of the Better Bills Guideline.

The new requirement under Rule 75B(1) that "...the retailer will, offer the customer a deemed better offer...at least once every 100 days following the date the customer becomes a hardship customer for the purposes of subparagraph" will mean that hardship customers receive both the deemed better offer message once every 100 days (or in line with the agreed billing cycle) **and** on every 100 day anniversary of enrolling into the hardship program. Customers on monthly billing for example would continue to receive these messages every month and become inundated with communications with duplicative better offer messaging and unnecessary letters or emails.

The intended purpose of a Hardship Policy is to outline the payment support mechanisms and assistance available in circumstances of financial distress. It is not an appropriate instrument to deal with matters of better offer calculations and message requirements. AGL recommends that the AEMC remove Clause 75B(1)(d)(ii) from the Draft Rule as it would be duplicative and misplaced if inserted into the Hardship Policy.

3.5 *Recommendations*

AGL has a number of recommended alternative designs to put forward, ranging from entirely different solutions through to enhancements to the Draft Determination:

a. Alternative Designs

- i. **Relaxing explicit, informed consent requirements:** More broadly, the AEMC could improve the customer experience for switching to the better offer or any other energy plan by addressing the lengthy, highly scripted and disengaging EIC requirements associated with swapping energy products. The perceived mental overload and time constraints for customers can be addressed by enabling retailers to provide key energy plan information through alternative methods of communication. This could be through Apps, mobile push notifications, emails, landing pages, automated recordings, or any other way that allows the customer to

⁶ Which is already an obligation under the AER's Hardship Policy Statement 6.



review and absorb information at a time and in the format that suits them. Some customers may have a limited ability to understand and retain volumes of information and identify the aspects that are important to them at the time of contacting the retailer. By changing the way customers engage with retailers, swapping energy deals can become a seamless, quick experience for customers and improve the uptake of the best offer.

- ii. **Principle-based regulation that responds to problem statement:** consider increased consumer protection through a requirement that retailers provide streamlined and simplified processes that are accessible (with specific focus on supporting culturally and linguistically diverse customers).

b. Enhancements to Draft Determination

- i. **“Net Benefit”:** Retailers should be able to consider the “net” benefit that the customer receives on their existing contract. For example, a market retail offer including a streaming service subscription arguably has a financial benefit. The customer may receive these bundled services at a lower price than if they purchased them as a standalone service. The AEMC may allow retailers to be able to ascribe a nominal monetary value to the benefits a customer receives under their plan. For illustrative purposes, a customer may be on a bundled streaming service plan but could save \$100 p.a. by switching to a no-frills basic plan. However, the streaming service subscription could be ascribed an ‘equivalent monetary value’ of \$227.88 per annum (equivalent to the \$18.99 per month cost of purchasing it individually) which for this hypothetical customer, represents a *greater* financial benefit than the \$100 saving if they switched plans.
- ii. **Value of the financial benefit:** The rule should be clear that retailers are allowed to apply a financial benefit that is the same or *greater than* the monetary value that the hardship customer would have received or saved if they were on their retailer’s better offer. This could alleviate some of the complexities of a precise calculation between a dynamic better offer and the customer’s current plan by for example applying a rounded-up credit or adjustment, or by offering a dedicated hardship energy plan that is consistently set at a lower cost than the retailer’s more frequently changing generally available best offers.
- iii. **Other energy plans:** retailers should also be deemed compliant if they have offered the customer an energy plan that is actually cheaper than the better offer or requested by the customer at the time of enrolling into hardship.
- iv. **Standing offer comparison point:** Instead of using the deemed better offer as the comparison against the customer’s current offer, substitute this requirement with the retailer’s standard retail contract price. The standing offer is a more stable point of comparison as it changes annually for all retailers.

4. New hardship programme indicators

AGL understands the rationale for introducing new hardship programme indicators and offers the below specific feedback for the AEMC’s consideration:



4.1 Deemed better offer and standing offer price indicators

AGL understands the rationale for, and is generally supportive of, the introduction of new metrics related to the total number and percentage of hardship customers on the deemed better offer, or paying above the standing offer. We anticipate there will be some challenges with having a dynamic value as a reference point for performance reporting purposes (i.e. where the value of the standing offer changes annually or the deemed better offer changes periodically within a single reporting period). To overcome the complexities of reporting against an everchanging reference point, AGL recommends that the reporting requirement be a snapshot at a point-in-time at the end of the reporting period.

AGL also notes that the intended purpose of the new indicators is to support AER compliance and enforcement activities. However, AGL believes that the indicators (as currently drafted) would not support compliance or enforcement as they do not provide any visibility to the AER around the financial benefit applied to those customers who are not on the deemed better offer - simply being on an offer greater than the deemed better offer is not in and of itself a contravention. Given the financial benefit is intended to be defined non-prescriptively, any number of alternative approaches could be applied making standardised reporting difficult to achieve. Consideration should be given as to whether these reporting indicators will in fact achieve their desired outcomes.

4.2 Reasonable endeavours to ascertain why the hardship customer is not on the better offer

The AEMC is proposing that retailers must use reasonable endeavours (also referred to as 'best endeavours' in the Draft Determination – which is a higher standard at common law) to ascertain why a hardship customer is not purchasing energy under the deemed better offer. AGL strongly recommends against introducing performance reporting indicators that are dependent on capturing consumer sentiment. Performance reporting metrics should be confined to quantitative data only, while AGL also foresees a number of issues and challenges with the AEMC's proposal:

- Frontline agents would be required to question consumer's personal choices and preferences.
- It presupposes that price is the only valuable feature of a customer's energy plan and ignores other features and intrinsic values that customers seek out.
- While it may be possible to capture the reason at the initial point of entry (assuming the retailer is speaking to the customer as part of the hardship onboarding process), it is less clear as to the expectations on an ongoing basis (i.e. should the retailer continue to interrogate the reasons why a customer has not signed up to the better offer every 100 days or in line with the agreed billing cycle)
- If required on an ongoing, perpetual basis for future touch points, it will add significant cost and effort as well as negative customer experience, leading to poor consumer sentiment and disengagement.
- Whether the list will be predefined and fixed by the AER, or whether the reasons will vary between retailer-to-retailer.
- There would likely be a large cohort of responses where the reason is 'unknown' which would minimise value.
- Retailers should not be required to explain why a customer is not on the current Best Offer, if they are in fact on an offer that is more favourable than the generally available Best Offer. The current drafting does not contemplate this scenario.



5. Implementation Timeframe

AGL welcomes the 31 December 2026 commencement date proposed by the AEMC in the Draft Determination. We are pleased to see that the AEMC has been pragmatic with respect to the implementation timeframe, particularly noting the complexity associated with this rule change.

If you would like to discuss any aspect of AGL's submission, please contact Valeriya Kalpakidis at vkalpakidis@agl.com.au.

Yours sincerely,

A handwritten signature in black ink that reads 'Liam Jones'.

Liam Jones

Senior Manager Policy and Market Regulation

AGL Energy