



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

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## About the Justice and Equity Centre

The Justice and Equity Centre is a leading, independent law and policy centre. Established in 1982 as the Public Interest Advocacy Centre (PIAC), we work with people and communities who are marginalised and facing disadvantage.

The Centre tackles injustice and inequality through:

- legal advice and representation, specialising in test cases and strategic casework;
- research, analysis and policy development; and
- advocacy for systems change to deliver social justice.

## Energy and Water Justice

Our Energy and Water Justice work improves regulation and policy so all people can access the sustainable, dependable and affordable energy and water they need. We ensure consumer protections improve equity and limit disadvantage and support communities to play a meaningful role in decision-making. We help to accelerate a transition away from fossil fuels that also improves outcomes for people. We work collaboratively with community and consumer groups across the country, and our work receives input from a community-based reference group whose members include:

- Affiliated Residential Park Residents Association NSW;
- Anglicare;
- Combined Pensioners and Superannuants Association of NSW;
- Energy and Water Ombudsman NSW;
- Ethnic Communities Council NSW;
- Financial Counsellors Association of NSW;
- NSW Council of Social Service;
- Physical Disability Council of NSW;
- St Vincent de Paul Society of NSW;
- The Salvation Army;
- Tenants Union NSW; and
- The Sydney Alliance.

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## Acronyms list

Acronym	Full name
ACOSS	Australian Council of Social Service
ACTCOSS	ACT Council of Social Service
AEMC	Australian Energy Market Commission
AER	Australian Energy Regulator
ECMC	Energy and Climate Change Ministerial Council
EIC	Explicit Informed Consent
EWCAP	Energy and Water Consumers' Advocacy Program
JEC	Justice and Equity Centre
QCOSS	Queensland Council of Social Service
SACOSS	South Australian Council of Social Service

# 1. Introduction

The Justice and Equity Centre, Financial Rights Legal Centre, Mob Strong, Australian Council of Social Service, ACT Council of Social Service, South Australia Council of Social Service, Queensland Council of Social Service, Financial Counsellors' Association of NSW, Ethnic Communities Council of NSW, Council of the Aging Australia and St Vincent de Paul Society NSW welcome the opportunity to respond to the Australian Energy Market Commission's Draft Determination and Preferred Rule Change for the *National Energy Retail Amendment (Assisting hardship customers) Rule 2025* (the Draft).

Households experiencing payment difficulty are often materially impacted because they are not on the best available deal from their retailer. Paying more than necessary (and often accumulating larger debts than necessary) not only contributes to them being in payment difficulty but exacerbates and protracts existing experience of payment difficulty. We highlight the detailed input and evidence provided in our response to the consultation paper<sup>1</sup>, and reiterate the necessity and urgency of making substantial reform to resolving this issue and improve outcomes for people experiencing energy payment difficulty.

While we strongly support the intent of the rule change to make the required meaningful steps to improve outcomes, we continue to have concerns regarding the detailed solutions proposed in the preferred rule change proposal. Similar to the initial rule change, the proposal involves significant risks and limitations which were – detailed in our submission to the consultation paper – acknowledged but not resolved by the AEMC in the Draft paper.

We acknowledge the limitations to the potential action of the AEMC but strongly recommend the finalised decision take every possible further step to address and mitigate the risks and issues identified and narrow the gap between these reforms and what is required to ensure better outcomes for people experiencing payment difficulty. This submission responds directly to the proposed mechanisms in the preferred rule change and makes comments and recommendations on how the final measure can better meet its intent. We are particularly concerned that a reliance on retailer flexibility without strong guidance and prescription is not warranted and is not likely to best achieve the stated aims of the rule change.

We also provide comment on broader and more meaningful reforms that could better resolve the problem this rule change is seeking to address. These wider reforms are critical to highlight as we strongly recommend the AEMC consider how this reform, and the principles and approaches which it embraces, can be meaningful steps towards those reforms. We note that the AEMC has identified both the AER's Review of payment difficulty framework and the Commonwealth's Better Energy Customer Experience as two processes where stronger reforms may be achieved. Where reforms within this rule change are not deemed possible by the AEMC, we strongly encourage the AEMC to work collaboratively with the AER and the ECMC to ensure the risks and limitations identified through this rule change process are recognised and responded to in those reform processes.

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<sup>1</sup> The Justice and Equity Centre et al, 2025, [Submission on National Energy Retail Amendment \(Assisting hardship customers\) rule change](#)

## 2. Direct response to the draft

### 2.1. Proposed mechanisms

The preferred rule change proposes to place an obligation on retailers to ensure 'hardship customers' are paying no more for their energy bill than their deemed better offer. The AEMC proposes retailers do this via either by:

- obtaining explicit informed consent (EIC) to move 'hardship customers' onto their deemed better offer, or
- by providing a financial benefit on their contract to the equivalent amount of their deemed better offer.

As Noted above, the concerns, risks and limitations raised by consumer stakeholders (detailed in sections 1.3 and 3.1.2 of the Draft) are not resolved by this preferred rule change. Further, we contend providing retailer flexibility without strong guidance and prescription introduces new risks and issues which are likely to result in poor consumer outcomes.

In our submission to the consultation paper, we recommended that any mechanism for this rule change should be based on clearer, more objective, consistent and transparent parameters determining when 'hardship' measures should be activated, and how they may be applied to optimise impact. These recommendations are still relevant. While full implementation may require the more fundamental reforms envisaged in coming processes, principles (such as assistance based on objective criteria) can be embedded in the final rule to help ensure delivery of its intent.

#### Parameters for consideration

Some of the risks and limitations of the proposal could be mitigated through the introduction of greater prescription and certainty, alongside the adoption of more objective, consistent and transparent parameters for when the rule should apply, who it should apply to and what outcome it should have. In particular, we recommend:

- **Robust measures to clarify who should be impacted**

While we note the proposal relies on categories (hardship) drawn from existing rules and laws, there are opportunities for the AEMC to clarify – either in the rule or in directions for associated AER guidelines and measures – who the intended impact should cover. That is, we recommend the final rule change include some added guidance as to who should be regarded as in 'hardship' for the purposes of this rule change, in order to assist the AER and retailers in implementing the final rule.

As detailed in our previous submission, the AEMC could consider providing direction or advice that consumers:

- With accumulated debt above a certain level,
- Who have been threatened with disconnection due to inability to pay,
- unable to afford their payment plans,

Be regarded as likely to be experiencing payment difficulty due to hardship, for their purposes of this rule change.

- **Prescribing a consistent sequence or default sequence for assistance**

The AEMC should designate a default sequence or process or prescribe an approach retailers must take in implementing the rule change. We recommend this involving requiring retailers to **first** seek to obtain EIC from hardship customers to be moved onto their deemed better offer at defined points including:

- At the point of admission to a hardship support program,
- At any point when a better offer is required to be communicated,

The rule should also consider ensuring that the form of this EIC enables the retailer to keep the customer on the best available offer at least for the duration of their hardship support. This should include enabling ongoing switches to any better offer that may arise, on an 'opt-out' basis.

Should no EIC be obtainable (or should it be declined) the retailer should then be required to provide the financial benefit via a combination of measures including:

- Recalculation of any accumulated debt obligation at the time of the better offer notification according to the better offer. Where this is undertaken at a point during a customer's hardship assistance, the recalculation should apply at least to any debt at the point of entry into the hardship program.
- Indication of the credit that will be applied in subsequent bills during participation in the hardship program, and how this will be calculated.
- Application of any other financial benefit relevant to the 'better offer'.

In any case, the decision should ensure that the deemed better offer and/or equivalent financial benefit must be applied to accumulated hardship customer debts as well as bills

- **Only energy-related benefits included in calculations**

The final decision must include a clear determination that only energy-service related benefits can be included in the calculation or provision of the equivalent financial benefit – and by extension the better offer determination. While 'non-energy benefits can be important, energy related payment difficulty and hardship provisions should relate only to the energy services and their terms (e.g. Price) rather than ancillary service offers E.g. movie tickets, discounts on streaming services. While these non-energy benefits may still be offered to customers, these are not appropriate or relevant considerations in the application of protections and assistance to support essential energy affordability.

- **Providing consistency regarding the period of coverage of benefit.**

The final decision must seek to apply guidance or prescription on how retailers' calculation of benefits should be undertaken. This should include a determination that the deemed better offer and/or equivalent financial benefit must be applied to the hardship customer's account **at least** from the date of joining the hardship program. Debts and bills will need to be recalculated at least from that start date as a default. Retailers should be allowed and

encouraged to offer benefit covering a greater period where they determine that the customer has been experiencing 'hardship' for a period longer than that covered by their participation in the hardship program. Accumulated debt, disconnection threats and inability to meet a prior payment plan (as detailed above) could be examples of criteria retailers could be encouraged to use to determine this.

## **Communication and customer engagement**

The draft proposes an additional principle and obligation on retailers to explicitly state in their hardship policy that they will check and offer the deemed better offer when customers join the hardship program and then every 100 days. The intent is to ensure that all customers are appropriately aware of the full extent of hardship assistance measures, and how they will be applied.

Our organisations support the introduction of such a principle. It provides some clear guidance and parameters on the application of the rule. However, the *Improving consumer confidence in retail energy plans* rule change may (if introduced) provide an additional means of delivering the intent, which should be incorporated into this rule.

Specifically, if retailers are required to re-calculate debt and bills from the start date of a customer entering a hardship program **and** if retailers are restricted from increasing customer bills to no more than once every 12 months, then the 100 days provision should be considered additional such that retailers are required to check, offer and apply (or confirm) either the deemed better offer or the equivalent financial benefit:

- At a customer's commencement in a hardship program
- No less than every 100 days during participation in a hardship program
- At any point of annual price change relevant to the customers offer, during participation in the hardship program
- When the customer exits the hardship program.

We recommend the AEMC, the AER and retailers engage with consumer and community stakeholders to ensure communications to hardship consumers regarding the new protections are effective and accessible.

## **Hardship indicators**

We strongly support the proposed addition of new hardship indicators for AER retail performance reporting.

The AER's role in monitoring energy retail markets is critical to understanding the experiences and outcomes for energy consumers and helping to ensure the energy system is working for them. It will also be a vital foundation, informing ongoing reform processes including those seeking to comprehensively upgrade retail regulation and protection. Retail performance reporting is a key transparency mechanism, providing crucial insights into how consumer outcomes are being achieved and prioritised by energy retailers in their provision of an essential service.



## Penalties

Our organisations support the application of Tier 1 penalties for rules that seek to improve protections for hardship customers.

## 3. The need for broader reforms

We note the AEMC has identified both the AER's review of payment difficulty and the Commonwealth's Better Energy Customer Experience as processes where broader and more enduring reforms may be sought. While we will continue to engage with those processes, the AEMC and its conclusions and recommendations from this process have an important contribution to make. We caution against any 'assumption' that these processes will take a particular path or fully respond to the issues uncovered in this process. Accordingly, we strongly recommend the AEMC include detailed statements, comments and recommendations for those processes based on the findings of this (and related retail rule change) process.

In this context we highlight a number of recommendations the AEMC has deemed outside the scope of this process, which the AEMC should consider including as commentary or guidance, as part of its final decision. These include:

- Applying a more robust set of criteria for determining who should benefit from automatic 'best offer' benefit mechanisms. This could include:
  - Applying any mechanism to consumers who fall into defined categories (or defined combinations of categories) which are transparently and consistently applied (and monitorable). Such as:
    - Recipients of government concessions or rebates
    - Consumers with debt or arrears or who have accumulated debt or arrears which exceeds a defined amount or timeframe.
    - Consumers on a payment plan of any kind
    - Consumers experiencing domestic violence.
    - Consumers who meet any other criteria set by the retailer as a demonstrating experience of payment difficulty (that is the retailer nominates these criteria in advance and is responsible for ensuring all consumers who meet these criteria receive the benefit).

It is crucial that any criteria are as objective as possible, independently monitorable and subject to independent dispute resolution or regulatory response where not applied correctly.

- A principled approach applying any 'benefit' mechanism to all consumers – or at least all consumers with arrears or accumulated debt - so that retailers are required to regularly or periodically compensate all consumers (or all consumers with debt) for being left on an offer which is inferior according to narrowly defined criteria (or which has resulted in their debt being larger than necessary).

In any case energy debts should not be calculated according to costs higher than those

relating to the best possible/lowest cost deal available to that customer.

- Other measures to apply an objective definition to which consumers should be assisted by any 'benefit' measure. This should operate on a principle of limiting retail discretion to including additional consumers, rather than determining which consumers are eligible. This may involve implementing a consistent definition of 'payment difficulty due to hardship' for the purposes of the application of this or other similar rules or measures. If this approach is taken, we recommend an inclusive definition based on our response to the AER review of payment difficulty protections – such as:

*'a consumer is experiencing payment difficulty when they are unable to afford the energy they need to support household health, wellbeing and inclusion, without impacting their ability to afford other essentials'*

We note that an approach of this nature would likely require the implementation of a retail duty of care to be most effective and should be considered alongside processes implementing such a duty.

- Reforms to augment explicit informed consent and facilitate consent that can work better for consumers, including by enabling automatic transfer to better offers. This approach would necessitate developing appropriate conditions protecting consumers and preserving their choice and meaningful consent, including:
  - Ensuring that the terms of any 'future consent' are clearly and simply (and consistently) communicated to the consumer, and are time limited to the period of the contract they apply to.
  - Ensuring any 'automatic switch' must be clearly signalled in advance, outlining the impact for the consumer and offering them a reasonable opportunity to 'opt out' if they wish to retain their current offer.
  - Involve defined, simple and consistent criteria by which 'best offers' are determined.
  - Ensuring any 'benefit' assumed in a best offer is energy service related (i.e. is not free film tickets or a streaming service discount) and is not contingent upon consumer behaviour (or does not require a change from the consumers current behaviour) and is predictable and durable. For instance, it cannot involve paying on time, managing usage in a particular way, or meeting other specific conditions
  - Be implemented alongside measures to implement a retailer duty of care or responsibility to consumers (as outlined below).

This reform could be implemented to enhance the hardship measures considered in this rule change or follow as a simpler and more effective alternative to it. It should be possible for retailers to obtain (a defined) general consent for future automated switching to the best available offer. Alongside other reforms, such as the implementation of a consumer duty, this is likely to be more effective in delivering consumer outcomes and addressing risks we identified in our previous submission to this process.

- The introduction of an appropriately robust, explicit retailer duty of care and responsibility to act in the best interests of the consumer in the delivery of good consumer outcomes in access to energy as an essential service. This would support a principle that retailers are

responsible for ensuring consumers are not left on inferior offers, and that retailers are responsible for helping consumers avoid and address payment difficulty.

Energy is an essential service, and retailers do (and should) have a 'duty of care' to their customers in providing that service. Enshrining this duty, and responsibility for customer outcomes, would put the onus on retailers to demonstrate they have fulfilled their duty and acted to deliver the good outcomes understood and agreed upon by their customer.

The onus of proof would be on retailers to show how they helped the consumer in need and contributed to a good outcome for them. Where defined 'poor outcomes' occur (such as the accumulation of certain levels of debt, or threats of disconnection) the onus would be on the retailer to demonstrate they have still fulfilled their duty and done everything possible to avoid that outcome. This is particularly important in relation to disconnections and large debts and leaving consumers on the inferior offers which contribute to them. A duty of care would incorporate proactive and culturally sensitive communication (both preventative and supportive).<sup>2</sup>

- Exploring measures to materially alter the underlying cost of energy, the equity of the recovery of costs and their impact on affordability of energy for people experiencing disadvantage (such as renters, people on low incomes and other consumers without access to efficiency or household generation technology). This should include:
  - Recovering the cost of environmental and efficiency schemes more equitably, and
  - recovering the upfront costs of large transmission investments and Renewable Energy Zones more equitably.
- Considering options for the implementation of a form of social tariff.<sup>3</sup> This was discussed and recommended as part of the AER's Gamechanger processes and warrants further consideration.

A social tariff should apply to all consumers who fall into a transparently and consistently within definable categories – such as any consumers with debt exceeding a certain amount, any consumer receiving a rebate or concession and/or any consumer on a payment plan of any kind.

## 4. Continued engagement

Our organisations welcome the opportunity to meet with the AEMC, Energy Ministers and other stakeholders to discuss these issues in more depth.

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<sup>2</sup> AER and Sydney Community Forum, 2024, [Consultation summary: Voices for Power listening session](#), p.7-8

<sup>3</sup> Consumer Action Law Centre has similarly recommended the introduction of social tariffs to address energy affordability issues. Consumer Action Law Centre, 2024, [Energy Assistance Report: 4<sup>th</sup> Edition: Keeping the lights on - How Victoria's energy policies are impacting Victorian households](#), p.13