Joint Submission to AEMC Draft determination Strengthening payment difficulty protections

30 July 2026

Justice and Equity Centre
ABN 77 002 773 524
www.jec.org.au

Gadigal Country
Level 5, 175 Liverpool St
Sydney NSW 2000
Phone + 61 2 8898 6500
Email contact@jec.org.au

About the Justice and Equity Centre

The Justice and Equity Centre stands for a society that is fair and free from discrimination and disadvantage. Established in 1982 as the Public Interest Advocacy Centre (PIAC), we use the law and policy advocacy to challenge injustice and inequality. We do this 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;
- Salvation Army;
- Tenants Union NSW; and
- The Sydney Alliance.

Contact

Thea Bray
The Justice and Equity Centre
Gadigal Country
Level 5, 175 Liverpool St
Sydney NSW 2000

T: +61 2 8898 6500
E: tbray@jec.org.au

Website: www.jec.org.au

The Justice and Equity Centre acknowledges and pays respects to the Gadigal as the Traditional Owners of the land on which our office stands.

Contents

Recommendations

Recommendation 1

That retailers be banned from requesting documentary evidence of 'hardship' to enable entry to an assistance program.

Recommendation 2

That retailers be banned from requesting details about why a consumer is in hardship to enable access to a hardship program. In any case – evidence and information requests should be limited to those already being assisted, for the limited purposes of identifying and targeting further assistance.

Recommendation 3

That retailers only be able to request information or evidence of a consumer ***in*** *hardship assistance where it is relevant to shaping effective assistance, a legal requirement or an otherwise necessary part of providing further assistance.*

Recommendation 4

That the regulatory framework be strengthened to more closely reflect the Victorian Electricity Retail Code of Practice, by:

- *Explicitly inserting a principle of early response to payment difficulty and hardship,*
- *imposing a positive obligation on retailers to identify and provide assistance to consumers experiencing payment difficulty and hardship, and*
- *establishing objective triggers for retailer intervention, or default definitions of when consumers should otherwise be regarded as experiencing payment difficulty due to hardship.*

Recommendation 5

That the NERR explicitly denotes consumer capacity to pay as the primary consideration for retailers when setting up and reviewing a payment plan. Outstanding debt and anticipated expected energy consumption needs over the following 12-month period should be regarded as additional or secondary considerations.

Recommendation 6

That if a consumer cannot afford to pay off debt and / or their ongoing usage – that is, if debt continues to accrue - this should automatically trigger additional supports such as debt waivers.

Recommendation 7

That the NERR be amended explicitly retailers to consider information or representations provided regarding capacity to pay, when provided by consumers or their representatives as part of setting up or adjusting a payment plan.

Recommendation 8

That retailers be required to implement consumer-centred payment plan processes that are accessible, low-friction and responsive to changing circumstances, and to provide clear information about consumers' rights to negotiate and only agree to affordable payment arrangements, including consideration of other essential costs.

Recommendation 9

That reviews of and amendments to payment plans be made where there are indications the consumers capacity to pay has changed.

Recommendation 10

That rule 33(2) of the NERR be removed to ensure retailers remain responsible for working with consumers experiencing payment difficulties, based on their current circumstances and capacity to pay rather than past payment plan failures.

Recommendation 11

That a rule be inserted requiring any payment to a payment plan be accepted 'in good faith' by a retailer, retaining payment plan assistance and triggering a review of capacity to pay – and further supports – by the retailer.

Recommendation 12

That in addition to other measures relating to payment plans, rule 111(2) be amended to align with s47 of the National Energy Retail Law making it explicit that disconnection is to be regarded only as a last resort.

Recommendation 13

That a consumer disconnected for inability to pay is assumed, by default, to be eligible for hardship assistance when they contact their retailer to reconnect. The rules and guidelines should ensure retailers are required to automatically offer entry into their hardship program, and assess affordable repayment and other available supports.

Recommendation 14

That the NERR be amended to prohibit disconnection or reconnection fees to consumers experiencing payment difficulty, and to ensure reconnection following disconnection for non-payment is not delayed or made conditional on payment of those fees or other unreasonable charges.

Recommendation 15

That debt from former retailers – prior to disconnection due to inability to pay - remain protected with the former retailer maintaining some responsibility to assist the consumer to manage the debt.

Recommendation 16

That the NERR be amended to require retailers to identify and provide additional assistance to consumers experiencing long-term or entrenched payment difficulty. Their response should include measures such as debt waivers, suspension of debt recovery, nominal repayment arrangements and energy efficiency support where ordinary payment plans will not resolve the payment difficulty. These identified consumers should have ongoing protection from disconnection threats.

1. Introduction

The Justice and Equity Centre (JEC) and the South Australian Council of Social Service (SACOSS) welcome the opportunity to respond to the Australian Energy Market Commission's (AEMC) consultation paper, *Strengthening standards for payment difficulty assistance*. This process is a critical part of reforms to ensure effective regulations and protections focused on better consumer outcomes and support for ongoing energy affordability.

Supporting improved energy equity through effective assistance

We commend the Australian Energy Regulator (AER) for its significant program of work to improve energy equity, particularly its *Review of Payment Difficulty in the NECF – Findings report*.

We broadly support this rule change proposal to strengthen protections for consumers experiencing payment difficulty as an important reform implementing this work. Clearer and more consistent obligations on retailers are needed to ensure consumers can access timely, practical and appropriate assistance before debt escalates, disconnection risk arises or people go without essentials to afford their energy bills.

An effective rule delivering on this intent should:

- reduce barriers to consumers connecting with the help they need,
- ensure consumers' feedback about their circumstances and capacity to pay are accepted,
- make payment plans genuinely affordable and flexible,
- require retailers to respond to changed circumstances of consumers before debt escalates or disconnection risk arises, and
- improve consistency between and within retailers, so that access to protection does not depend on a person's retailer, the staff member they speak to, or their capacity to advocate for themselves.

More is needed to deliver on the stated intent

We support the AER's findings and conclusions, but we are concerned the proposed rule change makes only incremental changes, relies too heavily on progress elsewhere – such as reforms being considered by the Commonwealth Department of Climate Change, Energy, the Environment and Water (DCCEEW) through the Better Energy Customer Experiences (BECE) program of work - and does not take every available opportunity to address the identified issues and best promote the consumer interest.

While undoubtedly a step in the right direction, the proposed changes are limited. They do not address the structural weaknesses of a system limited to responding to hardship after it has occurred, and which leaves significant numbers of people experiencing payment difficulty and going without other essentials to afford their energy bills, accumulating debt, and threatened with disconnection.

The JEC's research, *Powerless: Debt and disconnection* *("Powerless")*, provides clear evidence that most households experiencing payment difficulty are not receiving effective assistance that helps them overcome or avoid experiencing further payment difficulty in the future. In that research 83% of households experiencing payment difficulty in the prior 2 years indicated they were still grappling with payment problems.

As we outlined in our [Joint submission to the AER's Review of payment protections in the NECF](), the NECFs flaws and its narrow focus on response after the fact mean it is failing to prevent and adequately response to energy-related payment difficulty. The Victorian Payment Difficulty Framework (PDF) offers a stronger platform to address these issues, particularly if adopted with the augmentations detailed in our submission.

While we accept some aspects of this cannot be fully implemented through rule changes alone – and need to be pursued through the work streams noted earlier – there are opportunities for this process to make more substantive progress than has been proposed.

We encourage a robust focus on addressing the issues identified by the AER in *Review of Payment Difficulty in the NECF – Findings report* - which forms the basis of the current proposal - rather than more narrowly focusing on the proposed change itself. In that context, our submission focuses on recommendations responding to the issues identified in the rule change proposal, providing more substantive measures that would better promote the consumer interest.

Our recommendations focus on measures that would make assistance easier to access, better aligned with consumers' capacity to pay, and more responsive to changing circumstances.

2. Problem identification

We support the AER's findings that "assistance provided under the current framework is often ineffective, places inappropriate expectations on customers, and is inconsistent across retailers."

2.1 Persistent assistance gap

There is a "persistent assistance gap" between the number of people whose circumstances indicate they need help and those actually receiving it. In particular, significant numbers of consumers with energy debt are not receiving retailer assistance in the form of a payment plan or hardship program.

A key part of this 'gap' is the people experiencing persistent payment difficulty and hardship in effect, but not accumulating debt. Their payment difficulty is as real in impact, but shifted elsewhere, including through under-consuming energy, going without other essentials or borrowing money to pay their energy bill on time. In many cases people in 'hidden' payment difficulty may pay their bill in full and on time, or may make their payment plan obligations as required. Where it is recognised that the most effective response to payment difficulty is ' early response', before debt accumulates, these people in 'hidden payment difficulty' should be considered as part of the identified problem this proposal responds to.

The AER recognises that asking for documentary evidence may result in some consumers cutting back on essentials before engaging with their retailer. We consider the reasons behind hidden payment difficulty are more widespread and complex than retailers asking for documentary evidence and the response needs to go beyond banning retailers requiring documentary evidence to access their hardship program. At the very least, the response must extend to reshaping the default assumptions about who may be in circumstances for which hardship support is relevant and appropriate.

Retailers most often do not consider people being in payment difficulty or in need of more substantial assistance if they ‘can pay’. They tend to focus only on the payment being made, not the impact on consumers which may indicate the consumer is otherwise in payment difficulty and hardship even though they are managing to make required payments. Similarly, consumers threatened with disconnection (or even being disconnected) who manage to make a required payment may not trigger a retailer’s offer of more substantial payment assistance. In effect, they may be regarded as having been ‘able to pay’ after all. This represents an inappropriately narrow framing of capacity to pay and payment difficulty or hardship which prevents effective response and even compounds the impacts of hardship.

Retailers obviously do not have an obligation to ‘solve’ all affordability issues, but an assessment of payment difficulty and hardship is intended to extend beyond a simple assessment of whether a payment can be made under *any* circumstances. Retailers must be required to recognise the essentiality of energy and the priority for making energy payments. This places an obligation on retailers to do what they can to ensure paying for energy does not result in a cascade of unreasonable impacts on essentials elsewhere. Otherwise, retailers effectively narrow the definition of payment difficulty and hardship and ‘externalise’ or transfer payment difficulty from energy - where it is visible and subject to assistance - elsewhere (such as to Buy Now Pay Later (BNPL) or other credit products), where it is neither.

2.2 Inconsistent assistance between – and within - retailers

We support the AERs case that variation in retailer practices and hardship policies results in differences in how retailers assess eligibility for hardship programs and the types of support they provide.

We also support the AER case that some, and potentially the majority, of retailers unreasonably limit eligibility for their hardship programs to the circumstances outlined in the AER’s *Customer Hardship Policy Guideline*.

We have raised concerns with the AER about the inconsistent outcomes consumers experience when dealing with different staff members within the same retailer. For example, financial counsellors have reported that, when they are unable to secure appropriate assistance for a client, they will often end the call and contact the retailer again in the hope of speaking with a different staff member who may be more willing to provide support.

This indicates that while internal policies may enable reasonable discretion of action, the default is to restrict offers and access to assistance. At the very least, this suggests that many consumers are being impacted by the inconsistent interpretation of retail staff.

3. Barriers to effective assistance

3.1 Evidence

The AER noted “inappropriate expectations on customers to provide documentary evidence” with “documentary evidence potentially impacting on the willingness of a customer to engage with the retailer or disclose financial challenges.”

We support this conclusion. Our *Powerless* research also revealed concerning incidents where people are asked to provide personal details and ‘evidence’ in support of hardship eligibility. For example,

> “I had one client who was a kinship carer, so they were raising their grandchildren. The retailer was really probing as to what the issue was, like, ‘Why are you in hardship? Can you tell me more about this?’ And I said to the retailer that I don’t think it’s a requirement that the retailer has to know. She’s telling them that she’s in financial hardship, surely she doesn’t have to tell them her situation because, again, don’t make it harder for people when they have to expose themselves by outlining a difficult family situation – and to someone they don’t know like the retailer.”
>
> Financial Counsellor[1]

This is a common story, consistently documented by frontline service providers. It indicates there are not merely ‘problematic instances’ of documentary evidence being required, but also processes and retailer practices that can require people to disclose circumstances beyond what is appropriate. We strongly support the AER’s contention that consumers should be taken at their word regarding their capacity to pay. This is a critical principle which should, ultimately, explicitly shape payment difficulty and hardship protections.

3.1.1 Banning evidence requirements

We strongly support the proposed ban on retailers requiring proof of a consumer’s circumstances before providing access to payment difficulty assistance.

At the very least, requiring consumers to provide sensitive evidence can compound stigma, reduce engagement and disclosure, and create unnecessary administrative burden for households seeking help to maintain access to an essential service. Consumer claims should be responded to in good faith, and they should be taken at their word regarding capacity to pay.

We also support aligning this approach with the family violence protections in the NERR, and applying it regardless of whether a consumer self-identifies as experiencing payment difficulty or is identified by their retailer.

The AER’s Retail energy market performance data show the most common assistance provided through electricity hardship programs consists of payment plans, referral to a different contract,

---

1 Page 54.

and help to access concessions or rebates.[2] This level of low impact assistance does not justify a 'high bar' of entry and should not require documentary evidence. It should be available to anyone experiencing payment difficulty, not only consumers who 'qualify' for a hardship program.

It is broadly appropriate to have more flexibility to appropriately ask for relevant details after a consumer is within an assistance program. We note it is also more likely to get a good response where a retailer is already providing some support and has built trust in doing so. At this point a retailer is also in a better position to target and limit information requests only to what is reasonable and relevant to the support being offered to that consumer. For instance, a retailer may ask questions about capacity to pay to determine or update an appropriate and affordable payment plan.

However, asking for documentary evidence, particularly as a 'gateway requirement' for assistance creates barriers, administrative burden and potential trauma in exchange for what is often relatively limited assistance.

Recommendation 1

That retailers be banned from requesting documentary evidence of 'hardship' to enable entry to an assistance program.

Retailers need to make inquiries regarding payment plans to ensure they are genuinely suitable and affordable. But they must recognise that when and how this is done can create a barrier to access of appropriate support. For many people experiencing payment difficulty, discussing their ability to pay is likely to be a difficult and shame inducing experience. We recommend that it be made explicit in the final rule that a payment plan and other supports be developed to support the best interests of the consumer.

This rule change process should provide clear guidance on what retailers may/may not appropriately ask consumers seeking access to a hardship program. As we have noted above, we consider the general principle should be to ensure entry to 'hardship' support is simple, with any appropriate evidence or questions of circumstance being asked after support has been activated, for the purposes of targeting or adjusting further assistance. Given the relatively limited supports most hardship programs provide, a low bar to entry is appropriate and likely to be most effective in improving early take-up. Consumers should not have to explain why they cannot afford their bills; retailers should accept a consumer's statement that they cannot pay and focus on identifying suitable assistance.

Recommendation 2

That retailers be banned from requesting details about why a consumer is in hardship to enable access to a hardship program. In any case – evidence and information requests should be limited to those already being assisted, for the limited purposes of identifying and targeting further assistance.

---

2 AER, Retail energy market performance update for January to March 2026, Quarter 3, 2025–26, Schedule 4, Hardship Assist-Elec.

More substantial assistance, such as appliance replacement programs or onsite energy audits completed by the retailer, is much more rarely provided.[3] Where evidence or information is a necessary part of designing that assistance or legally providing that assistance - such as proof of home ownership before installing a hot water system - retailers should be able to request it. However, any request should be limited to the information or evidence required to provide the assistance effectively, not evidence of hardship or need.

Recommendation 3

*That retailers only be able to request information or evidence of a consumer **in** hardship assistance where it is relevant to shaping effective assistance, a legal requirement or an otherwise necessary part of providing further assistance.*

3.2 Measures to require early and proactive assistance

A critical aspect of reducing barriers to effective assistance is requiring earlier and more proactive assistance from retailers. This reflects the shared understanding that the most effective response to payment difficulty due to hardship is preventative, or otherwise as early as possible. In any case further changes are required to reduce reliance on consumers to identify themselves as being in hardship.[4]

Average debt when entering hardship programs is increasing. For example, debts between $2500 and $3500 and above $3500 have been increasing since 2022-23[5]. This is a concerning trend indicating that people are not accessing assistance early enough to avoid debt accumulation. It is particularly problematic where evidence has shown that for many consumers in hardship, once debt has accumulated, it is much harder to address and restore a stable payment circumstance. These trends indicate an urgent need for retailers to better identify and respond to payment difficulty before it escalates.

The AER's *Towards Energy Equity* work demonstrated that hardship presents and is managed by households in many different ways which can complicate the picture for retailers. Notwithstanding this, retailers have the ability to be more proactive in identifying possible payment difficulty. We support the AEMC considering a stronger requirement closer to the Victorian Electricity Retail Code of Practice, including objective 'backstop' triggers for assistance – such as ensuring the rules provide a default definition of hardship as including anyone with debt above a certain amount - and a positive obligation on retailers to reasonably prevent debt and provide assistance to consumers in debt.

When considering whether a consumer is in hardship, retailers have the capacity to look for signs beyond the traditional, narrow indicators of late payments, debt and disconnections – such as paying by credit products (particularly emerging and less regulated credit products), very low consuming households (particularly during peak summer and winter conditions), sudden changes in energy usage and habitually small incremental payments. A requirement or general principle to

3 Ibid.
4 Op cit Hardship entering program.
5 AER, *Retail energy market performance update for January to March 2026, Quarter 3, 2025–26, Schedule 4, Hardship debt on entering.*

act early, as well as objective ‘triggers’ would provide greater incentive to identify and respond to these signals.

Recommendation 4

That the regulatory framework be strengthened to more closely reflect the Victorian Electricity Retail Code of Practice, by:

- *Explicitly inserting a principle of early response to payment difficulty and hardship,*
- *imposing a positive obligation on retailers to identify and provide assistance to consumers experiencing payment difficulty and hardship, and*
- *establishing objective triggers for retailer intervention, or default definitions of when consumers should otherwise be regarded as experiencing payment difficulty due to hardship.*

Question 1: Banning retailers from requiring documentary evidence to access payment difficulty assistance

1. What are the impacts of not requiring documentary evidence from customers in accessing payment difficulty assistance?

Not requiring documentary evidence to access payment difficulty assistance would make payment difficulty assistance easier, faster and less distressing for consumers to access. It would reduce administrative burden, stigma, stress and potential trauma associated with having to prove hardship or disclose sensitive personal circumstances to a retailer. It would also help establish an important relationship of ‘trust’ which is critical to the success of later support.

The most commonly provided assistance through hardship programs is relatively limited, such as payment plans, switching to a more suitable contract, and help accessing concessions or rebates. These can and should be provided relatively freely to consumers. Consumers should be taken at their word about their capacity to pay.

After a consumer is being assisted, it is reasonable for any necessary information or evidence to be requested *only* after a consumer is being assisted in the program and where it is required to properly target or provide further assistance. this includes where documentary evidence is legally necessary to provide more substantial assistance, such as proof of home ownership for installation of CER or appliance replacement.

2. Would banning retailers from requiring evidence to access payment difficulty assistance reduce barriers customers face in seeking support?

Banning retailers from requiring evidence would reduce barriers customers face in seeking support by making assistance easier to access and less intimidating to request. It would also have a substantial potential impact in building trust which would have ongoing impacts on the potential effectiveness of ongoing assistance.

Requiring evidence can create administrative burden, compound stigma, increase stress and trauma, and discourage people from engaging with their retailer or disclosing payment difficulty.

This is particularly important for consumers experiencing hidden payment difficulty, who may be paying bills on time by cutting back on essentials, under-consuming energy or using credit products. Removing evidence requirements would support earlier engagement, reduce the onus on consumers to prove hardship, and help retailers focus on identifying affordable and appropriate assistance based on a consumer's capacity to pay.

3. Should retailers be able to require documentary evidence for some kinds of payment difficulty assistance? Does this matter for some types of assistance more than others?

Requests for information and evidence should only be allowed after a consumer is being supported within an assistance program. Further, any such requests should be explicitly limited to the information required to effectively target or legally provide further assistance – that is, assistance beyond payment plans, rebate/concession checks and better offer checks which are generally available. The limited exceptions may include proof of home ownership for installation of Consumer Energy Resources or fixed appliance replacement. This should be confined to information or evidence required to provide the assistance, not evidence of hardship or general need.

4. Making payment plans more affordable

When properly structured and managed, payment plans have the potential to enable households to repay their debt in a gradual, flexible and sustainable way that should help enable them to maintain their other essential expenses.

We support the AER's finding that unaffordable payment plans harm consumers, exacerbate hardship and force them to make unhealthy or dangerous trade-offs. We have detailed these harms in our *Powerless* research, which shows that adhering to unaffordable plans can leave people without enough money for other essentials such as health care and food.[6] Supporting the AER's findings, the research also reveals that people often agree to payment plans that aren't affordable because they are under stress, feel threatened – often in response to disconnection threats –are not aware, or don't feel capable of negotiating with their retailer. This reflects an inherent power imbalance which the NECF must explicitly overcome by placing the onus on retailers.

Payment plans "are unaffordable because they are not aligned with a customer's capacity to pay at the time they are first established" and "become unaffordable for some customers due to a change in the customer's circumstances". This indicates there is a need to ensure better processes in the establishment of plans, and more effective requirements for flexibility to maintain assistance when circumstances change.

4.1 Capacity to pay must be the primary consideration

"Capacity to pay" is not currently required to be the primary consideration when setting up a payment plan. Whilst the amount owed and anticipated energy use should be considered, they

---

6 See pages 31-34.

should be secondary considerations to the capacity to pay – and by extension the wellbeing - of the consumer.

The consultation paper demonstrated that more than half of payment plans are cancelled due to non-payment. The AER's Retail energy market performance data also shows that significantly more people exit out of hardship programs due to non-compliance than successfully complete a hardship program (in Q3 2025-26 three times as many people exited hardship programs due to non-compliance than successfully completed them).[7] This indicates the conditions to remain in hardship programs - adhering to payment plans – are not achievable for a significant majority of people in hardship programs. This completely undermines the intent of the assistance and puts them at significantly increased risk of disconnection. The JEC's *Powerless* research also found that 28% of people experiencing payment difficulty were receiving assistance from their retailer reported that they were on a payment plan they could not afford.[8]

Whilst continuing to accrue debt while on a payment plan is an issue, it is secondary to the health and wellbeing risks of disconnection or unhealthy under-usage. Not being able to afford ongoing usage indicates that the energy needs of the household are unaffordable and the root causes of this should be addressed and additional assistance provided (such as debt write offs) rather than payment amounts be increased. This could be achieved by altering Rule 72(1)(a) to:

(1) A payment plan for a hardship customer must:

(a) be established having *primary* regard to the customer's capacity to pay *with further consideration given* to:

(i) any arrears owing by the customer; and

(ii) the customer's expected energy consumption needs over the following 12-month period.

Recommendation 5

That the NERR explicitly denotes consumer capacity to pay as the primary consideration for retailers when setting up and reviewing a payment plan. Outstanding debt and anticipated expected energy consumption needs over the following 12-month period should be regarded as additional or secondary considerations.

Recommendation 6

That if a consumer cannot afford to pay off debt and / or their ongoing usage – that is, if debt continues to accrue - this should automatically trigger additional supports such as debt waivers.

4.2 Considering information provided

We support the AER's proposal clarifying the requirement for retailers to consider information or representations regarding capacity to pay or what the consumer can afford, when provided by the

---

7 AER, *Retail energy market performance update for January to March 2026, Quarter 3, 2025–26, Schedule 4, Hardship program exiting.*

8 See page 31.

consumer or their representative as part of consideration of a payment plan. This explicitly confirms a requirement which should already be the case.

Recommendation 7

That the NERR be amended explicitly for retailers to consider information or representations provided regarding capacity to pay, when provided by consumers or their representatives as part of setting up or adjusting a payment plan.

However, the ongoing power imbalance between retailers and consumers needs to be recognised. Establishing a payment plan can be an uncomfortable, and sometimes shame-inducing, process that requires consumers to disclose personal financial difficulties. In addition, many retailers require them to justify why they are unable to pay their bill.

To encourage consumers to manage energy payment difficulties within the protections of the energy framework, retailers need to make the process of setting up, reviewing and adjusting payment plans simpler, more accessible and more supportive. Consumers should be able to engage with these arrangements without feeling judged or having to overcome unnecessary barriers.

We recommend retailers be required to clearly inform consumers they should only agree to a payment plan if it is affordable for them – with affordability including a broad assessment of their capacity to pay other essential costs of housing and health, such as rent/mortgage, essential food and medicine - and that they have the right to propose an alternative arrangement. Retailers should be required to actively invite consumers to negotiate payment terms, rather than merely suggesting that alternative arrangements may be available.

Recommendation 8

That retailers be required to implement consumer-centred payment plan processes that are accessible, low-friction and responsive to changing circumstances, and to provide clear information about consumers' rights to negotiate and only agree to affordable payment arrangements, including consideration of other essential costs.

4.3 Updating payment plans

We support the AER's proposal requiring retailers to review and update a payment plan for a consumer in a hardship program in response to any reasonable indication or available information about changes in a consumer's circumstances.

We also support implementing a requirement for retailers to accept any substantive payment in good faith, maintaining support and assistance through the payment plan. Such action should trigger a review of the payment plan, but not its cessation.

The focus of any review should be adjusting to updated capacity to pay, not equal consideration of arrears and energy consumption needs.

If payment plans were easy to continue and alter as incomes and expenses fluctuate, it would help people stick to their payment plan and retain supportive engagement with their retailer. It would also reduce the need to turn to short-term credit such as BNPL loans and incur the fees and risks inherent in those types of products. Consumers should have an easy mechanism to inform their retailer of changes in their capacity to pay and for amendments to be made to their payment plans accordingly.

This new rule would need to strike a careful balance to ensure that the onus is not entirely on the consumer, but that where retailers check in with consumers, this does not add administrative burden to people who are likely to be already managing multiple issues.[9]

Recommendation 9

That reviews of and amendments to payment plans be made where there are indications the consumers capacity to pay has changed.

4.4 'Two strikes' rule must be removed

A fundamental barrier to keeping households connected to essential energy services is the rule that allows retailers to stop offering payment plans after two previous arrangements have not been met. Rule 33(2) of the NERR enables retailers to refuse to provide a further payment plan if a consumer has not adhered to two previous arrangements.

Given the high rates of non-adherence to payment plans (as noted above), it is clear that this is a systemic issue, rather than an individual failing. The 'two strikes' rule effectively removes the obligation on retailers to continue assisting households experiencing established hardship. It is an arbitrary provision that does not reflect the realities of payment difficulty or serve the best interest of consumers.

Households may be unable to comply to payment plans for a range of legitimate reasons including prioritising eating and medical needs.[10] By allowing retailers to focus on a consumer's payment history rather than their current circumstances and capacity to pay, rule 33(2) undermines the objective of supporting households in hardship. We recommend that rule 33(2) be removed.

As also noted above, we support introduction of rules requiring retailers to accept any good faith payment to a payment plan without cancelling the associated support. This should be implemented as part of further measures aimed at ensuring consumers retain payment plan support and stay in an effective supporting relationship with their retailer.

9 JEC's *Powerless* research found that households experiencing payment difficulty / at risk of disconnection often have someone in the home with a medical condition, disability, mental health issues and / or family violence; have been impacted by a natural disaster and / or 'a big event'; and / or the household is managing multiple debts. See pages 12-14;16-30.

10 See JEC's *Powerless* research pages 32-33; 47- 48.

Recommendation 10

That rule 33(2) of the NERR be removed to ensure retailers remain responsible for working with consumers experiencing payment difficulties, based on their current circumstances and capacity to pay rather than past payment plan failures.

Recommendation 11

That a rule be inserted requiring any payment to a payment plan be accepted 'in good faith' by a retailer, retaining payment plan assistance and triggering a review of capacity to pay – and further supports – by the retailer.

4.5 Payment plan failure should not enable disconnection

This rule change presents an important opportunity to protect consumers experiencing payment difficulty from disconnection by improving payment plan continuity and ensuring payment plan failure does not lead to disconnection.

A consumer identified as experiencing hardship who is subsequently unable to comply with two payment plans is demonstrating ongoing hardship and payment difficulty. But as it stands, they are at greatest risk of disconnection.

Consumers experiencing hardship should remain protected from disconnection regardless of their ability to adhere to the letter of a payment plan. As we note above, good faith payments should be accepted and missed payments trigger review of assistance. Responding to multiple failed payments by disconnecting a household is not consistent with the intent of hardship protections and utilising disconnection only as a last resort.

Recommendation 12

That in addition to other measures relating to payment plans, rule 111(2) be amended to align with s47 of the National Energy Retail Law making it explicit that disconnection is to be regarded only as a last resort.

5. Better measures to prevent and mitigate disconnection

5.1 Disconnection should trigger hardship assistance

Disconnection for inability to pay is most likely to be a strong indicator a household is experiencing payment difficulty and hardship. This should be reflected in retailer obligations.

Where a household has been disconnected due to inability to pay and contacts the same retailer to reconnect, it should automatically trigger an offer to enter the retailer's hardship program and a conversation about affordable repayment, ongoing usage, concessions, rebates and other available supports.

If the consumer has simply missed payment and does not need assistance, they are able to decline the offer. However, the default assumption and response to disconnection for non-payment should be proactive support from the retailer. The focus should not be reconnection –

often involving further payment requirements - followed by a return to the same unaffordable arrangements that led to disconnection.

Recommendation 13

That a consumer disconnected for inability to pay is assumed, by default, to be eligible for hardship assistance when they contact their retailer to reconnect. The rules and guidelines should ensure retailers are required to automatically offer entry into their hardship program, and assess affordable repayment and other available supports.

5.2 Remove fees associated with disconnection for non-payment

There should be no fees associated with disconnection – and reconnection – due to inability to pay.

Fees associated with disconnection for non-payment compound the financial stress and hardship. A household already unable to afford energy debt is often then required to pay additional fees before they can regain access to an essential service. They are unlikely to have access to this money and it can force them to divert money from food, medicine, rent or other essentials, take on high-cost credit, or remain disconnected for longer because they cannot afford the cost of reconnection.

The AER has recognised this harm. In its *Review of payment difficulty protections in the NECF – Findings report*, the AER noted that disconnection and disconnection warning notices cause real harm to households, and cited JEC's research showing that consumers disconnected from utilities reported paying an average of $316 in reconnection fees, $241 in bond fees, $149 in late payment fees and $310 in other fees. The AER also identified banning reconnection fees for customers experiencing payment difficulty as an opportunity to reduce the harm caused by disconnection.

These fees are not neutral administrative charges. They increase the total amount a household must find at the point of acute financial stress and can make reconnection conditional on paying costs that have arisen because the NECF failed to keep the household connected. Removing these fees would reduce immediate financial pressure, support faster reconnection, and strengthen the incentive for retailers to genuinely treat disconnection as a last resort.

Recommendation 14

That the NERR be amended to prohibit disconnection or reconnection fees to consumers experiencing payment difficulty, and to ensure reconnection following disconnection for non-payment is not delayed or made conditional on payment of those fees or other unreasonable charges.

5.3 Protections should apply to former retailers

Debt with a prior retailer is energy debt and should remain protected, with requirements to offer some form of assistance.

The dominant message people receive is to ‘shop around’ and switch to save money. People therefor switch retailers for legitimate reasons, including because they can get a cheaper deal, or the retailer has treated them poorly. This includes assuming a new retailer is the best way to deal with their current circumstances. Yet under the current framework, if a household switches energy retailer but has a debt with their former retailer, the former retailer no longer has a responsibility to help with the debt. This often results in sale of debt to recovery agents and a compounding of debt within the energy retail ‘eco-system’.

The AER also recognised this as a problem in its *Review of payment difficulty protections in the NECF – Findings report*, identifying the need to clarify that payment difficulty protections continue to apply to former customers, including customers who move house while remaining with the same retailer.

Recommendation 15

That debt from former retailers – prior to disconnection due to inability to pay - remain protected with the former retailer maintaining some responsibility to assist the consumer to manage the debt.

5.4 Assistance for people in long term payment difficulty

More robust responses to support people in long term payment difficulty are required to reduce risk of ongoing debt, disconnection threats and repeat disconnections.

The current assistance framework assumes payment difficulty is transitory and does not adequately respond to people experiencing long-term or entrenched payment difficulty. Many households cannot realistically afford ongoing usage or repay existing arrears without compromising their health and other essentials. In those circumstances, inability to meet a payment plan should be treated as evidence that more substantial support is required, not as non-compliance or unwillingness to pay.

For these consumers, assistance should shift from repeated payment plan renegotiation to measures designed to stabilise the household’s situation, such as debt waivers or debt matching, suspension of debt recovery, very low or nominal repayment arrangements, energy efficiency support and other assistance that reduces future energy costs on an ongoing basis.

Identified consumers in long-term payment difficulty should remain protected from disconnection - particularly if they are demonstrating ‘good faith’ through payment - while payment difficulty remains unresolved. Disconnection does not resolve unaffordable energy debt; it adds costs, disruption and stress, and makes it harder for a household to regain financial control.

Recommendation 16

That the NERR be amended to require retailers to identify and provide additional assistance to consumers experiencing long-term or entrenched payment difficulty. Their response should include measures such as debt waivers, suspension of debt recovery, nominal repayment arrangements and energy efficiency support where ordinary payment plans will not resolve the payment difficulty. These identified consumers should have ongoing protection from disconnection threats.

Question 2: Requiring retailers to consider information or representations by customers (or third-party) and changes of circumstances in determining capacity to pay/developing payment plans

1. How should retailers consider information provided by consumers including via newer digital means (ie chatbots etc)?

Retailers should treat information provided by consumers through any channel, including newer digital channels, as valid information about the consumer's circumstances and capacity to pay. Digital channels should not be used to narrow, standardise or limit what a consumer can communicate about affordability. Where information is provided through a chatbot, online form, app or webchat, retailers should be required to capture that information accurately, ensure it is considered by a person with authority to establish or amend assistance, and avoid requiring the consumer disclose or repeat distressing or sensitive information through multiple channels.

Consumers must be able to communicate their capacity to pay in a way that is accessible, safe and not shame-inducing. Retailers should make clear that consumers have a right to propose an amount they can afford, and that their own assessment of affordability must be central to the payment plan offered. Digital systems should support, not replace, meaningful engagement and should include clear escalation pathways where a consumer indicates payment difficulty, vulnerability, changed circumstances or inability to meet a proposed payment amount.

2. How should retailers consider information from third-party representatives (including, but not limited to, financial counsellors and community advocates) in determining a customer's capacity to pay? How is this information balanced against other factors, such as energy consumption an arrears?

Retailers should give significant weight to information provided by third-party representatives, including financial counsellors, community advocates, legal assistance services and other trusted supports. These representatives often assist consumers who face barriers to engaging directly with retailers, including stress, shame, limited capacity, language barriers, disability, family violence, digital exclusion or previous poor experiences with retailers. Information provided by a third-party representative should therefore be treated as credible and sufficient for the purpose of identifying payment difficulty and determining capacity to pay.

In determining capacity to pay, the consumer's stated capacity - including as communicated by a third-party representative - should be the primary consideration. Arrears and anticipated energy consumption are relevant, but they should be secondary considerations and should not be used to set a payment amount the consumer cannot afford. Where ongoing usage appears unaffordable, that should trigger additional assistance to address the underlying cause of energy hardship, not a higher payment plan amount that increases the risk of non-adherence, exclusion from hardship support or disconnection.

Assessment framework

Question 3: Assessment framework

1. Do you agree with the proposed assessment criteria? Are there additional criteria that the Commission should consider or criteria included here that are not relevant?

We broadly agree with the Commission's proposed assessment criteria, particularly the focus on outcomes for consumers. In assessing this rule change, the Commission should give greatest weight to whether the proposed rule will meaningfully respond to the identified problem and issues. That is, whether it improves protection for people experiencing payment difficulty, supports them to return to financial stability and reduces the risk of disconnection.

These outcomes should be prioritised over retailer flexibility or administrative simplicity where those considerations would weaken access to assistance or continue to allow inconsistent retailer practice to continue.

The assessment framework should explicitly recognise the essentiality of energy and the consequences of inadequate assistance.

We also recommend the Commission add, or make more explicit, assessment criteria relating to accessibility, equity and disconnection prevention. In particular, the Commission should assess whether the rule:

- reduces stigma, trauma and administrative burden;
- addresses hidden payment difficulty - including where people pay energy bills by going without other essentials, under-consuming energy or using credit products; and
- ensures payment difficulty is identified and responded to early.

The framework should also assess whether the rule reduces reliance on disconnection threats as a way of forcing engagement, and whether it ensures consumers remain protected where non-adherence to a payment plan indicates unresolved payment difficulty.

Criteria relating to regulatory and retailer costs are relevant, but should be considered in light of the social and consumer costs of ineffective assistance, escalating debt and disconnection. A rule requiring retailers to provide earlier, more accessible and more affordable assistance will involve changes to retailer systems and processes. Those changes are justified where they reduce scope for harm, better deliver the intent of assistance, better reflect the principle that disconnection is a last resort, and support more sustainable repayment arrangements.

The Commission should not treat minimal change to current retailer practice as a proxy for efficiency given current practice leaves many consumers without effective support.