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Thursday, 8 May 2025

Anna Collyer
Chair
Australian Energy Market Commission
GPO Box 2603
SYDNEY, NSW, 2001

Dear Ms Collyer,

Re: Assisting hardship customers – Draft determination

The Australian Energy Regulator (AER) welcomes the opportunity to respond to the Australian Energy Market Commission's (AEMC) draft determination on the National Energy Retail Amendment (Assisting hardship customers) Rule 2025.

The AER's [Game changer](#) proposed a number of reforms to better balance cost and risk within the energy sector and provide better outcomes for consumers experiencing vulnerability, including requiring retailers to automatically place hardship customers on a better offer if it is available.¹ We are pleased to see this proposal progressing and welcome the AEMC's draft determination, which aligns with the Game changer proposal's policy intent to ensure that hardship customers are on the best tariff available for their circumstances.

The draft rule has direct implications for the AER, with resourcing impacts related to updating regulatory instruments as well as monitoring and enforcing compliance with new obligations. We also have some feedback on the proposed approach to implementing the amended rule, which could help maximise the benefits for hardship customers.

Strengthening the proposed principles-based obligation in the National Energy Retail Rules would support compliance, consistency and better customer outcomes

We welcome the AEMC's proposal to introduce 'a new principle that places a direct and clear obligation on retailers to ensure hardship customers pay no more than the deemed better offer', noting that flexibility in implementation would minimise costs for retailers and therefore customers.² However, the draft rule appears to take an inconsistent approach in doing so. Draft rule 75C includes a direct and clear obligation for retailers to provide a financial benefit to a hardship customer where the customer is not on the better offer. In

¹ AER, [Game changer: A package of reforms to improve outcomes for consumers in energy hardship](#), November 2023.

² AEMC, [National Energy Retail Amendment \(Assisting hardship customers\) Rule 2025: Draft rule determination](#), March 2025, p ii.

contrast, draft subrule 75B(1)(d) instead requires retailers to specify in their customer hardship policies that they will offer a customer a deemed better offer and to include clear statements of the actions the retailer will take to meet the requirements of rule 75C. This inconsistency in approach is likely to increase complexity and lead to less consistency in protections for customers experiencing payment difficulty.

Our [Review of payment difficulty protections in the National Energy Customer Framework \(NECF\)](#) has highlighted how embedding protections in retailer hardship policies rather than directly in the National Energy Retail Law or National Energy Retail Rules can increase regulatory complexity, result in inconsistent protections, and make hardship policies less customer friendly. For example, requirements to include information about retailer processes can be less relevant for customers than communicating available assistance. To support greater consistency and reduce the risk of unintended consequences, the obligation to offer a customer a deemed better offer as set out in draft rule 75B(1)(d) could be embedded directly in the National Energy Retail Rules, similar to the draft rule 75C. This would also make it easier to enforce the obligation as there would be no need to consider whether a failure to offer a customer a deemed better offer was a failure to implement a customer hardship policy. Therefore, we recommend the AEMC amend the proposed obligation in draft subrule 75B(1)(d) to place a direct and clear obligation in the rules for retailers to offer the customer a better offer, similar to the draft rule 75C.

This approach could also benefit customers by enabling a transitional approach to varying and approving updated customer hardship policies. The current drafting means that the AER would have no avenue to pursue non-compliance until such time as a retailer's hardship policy is updated and approved. While we agree that customer hardship policies should be updated as soon as practicable for consistency with the new obligations and to ensure that customers are provided with relevant information about assistance they are entitled to, strengthening the principles-based obligation in the rules would ensure that the obligation to provide assistance would not depend on updated hardship policies being in place. This approach would ensure that there is an enforceable obligation on retailers to offer a better offer and, where relevant, provide a financial benefit of equivalent monetary value regardless of whether updated retailer hardship policies have been approved. This could enable greater flexibility in the timing of retailer hardship policy updates, which could benefit customers overall by supporting earlier implementation and reducing implementation costs which may be passed on by their retailer.

Clarifying the definition of 'deemed better offer' would support effective implementation

We acknowledge that the draft rule would require the AER to define 'deemed better offer' in the Better Bills Guideline, given that the term is not currently defined. The AER has an existing obligation under the National Energy Retail Rules to review and if necessary update the Customer Hardship Policy Guideline, Better Bills Guideline and other guidelines (using the retail consultation procedure) to take into account the amendments introduced by the Unlocking CER benefits through flexible trading rule change.³ We have commenced planning for this review process and [currently expect](#) to begin consultation on the Better Bills Guideline in early 2026, with the final instrument expected to be published in quarter 3 of 2026. We could consider the definition of 'deemed better offer' in this review, including to remove any potential ambiguity to ensure customers are only moved to a deemed better offer with an estimated cost that is lower than the estimated cost of their current plan under the proposed rule change.

³ National Energy Retail Rules, Part 13, schedule 3, part 1, division 3, rule 11.

Allowing the AER to determine specific indicators through the Retail Performance Reporting Procedures and Guidelines would better ensure reporting is fit for purpose

Draft subrules 75(2)(d) and (e) prescribe specific hardship program indicators that must be reported in relation to the new obligations. This is a substantial departure from current practice, in which the National Energy Retail Law and National Energy Retail Rules set out general areas for reporting, with indicators subsequently specified by the AER's [Retail Performance Reporting Procedures and Guidelines](#).

For example, the current rule 75 requires hardship program indicators to cover 'entry into hardship programs', 'participation in hardship programs' and 'assistance available and provided to customers under customer hardship policies'. The AER's Retail Performance Reporting Procedures and Guidelines specify the data that must be provided by retailers to enable this reporting, such as the number of customers in hardship programs, their contract type, average debt upon entry into the hardship program, age of debt for hardship customers, and the number of customers receiving certain types of assistance. Under the current procedures and guidelines, retailers are required to report 16 different metrics to enable the AER to report on the 3 broad areas set out in rule 75(2). A number of these metrics were refined in our most recent review of the procedures and guidelines, which was completed in August 2024.

In contrast, the draft subrule 75(2)(d) specifies indicators including the total number of hardship customers and the percentage of total hardship customers that do or do not purchase energy under a deemed better offer and that purchase energy at a price above or below the applicable standing offer price of the retailer. However, it is not yet clear how practical these indicators are, especially as the term 'deemed better offer' is not currently defined in the National Energy Customer Framework and the deemed better offer is determined using a point-in-time calculation and as such is subject to change. It is also not clear whether the total number and percentage figures proposed are the best metrics to be tracked.

It is appropriate to consult on the specific indicators to ensure that they are practical and fit for purpose. We must follow the retail consultation procedure when amending the Retail Performance Reporting Procedures and Guidelines. Therefore, we suggest that the AEMC take a similar approach to the existing rule 75 by setting out broad areas for reporting and allowing the AER to define specific indicators through our Retail Performance Reporting Procedures and Guidelines. This approach is also much more responsive than embedding specific indicators within the rules as proposed in the draft rule, which may better ensure that the indicators remain fit for purpose over time.

In addition, we note that draft subrule 75(2)(e) specifies that retailers must use 'reasonable endeavours' to understand the reasons why hardship customers are not on a deemed better offer. Supporting compliance with this obligation will likely have resourcing impacts for the AER (for example, to issue proactive guidance on the scope of 'reasonable endeavours', given the potential risk of customers feeling pressured to provide this information).

A longer implementation timeframe would better align with the AER's current resourcing and enable a more practical approach to compliance

The draft rule recommends that the AER review and update the Customer Hardship Policy Guideline, Better Bills Guideline and Retail Performance Reporting Procedures and Guidelines by 1 July 2026. As noted above, we have an existing obligation to review some of these guidelines to take into account the amendments introduced by the Unlocking CER benefits through flexible trading rule change, which commences on 1 November 2026. The draft rule would increase the scope of these guideline reviews by introducing new issues that must be considered and consulted on, while reducing the timeframe for us to complete these

reviews. In addition, we would require at least 6 months to review the Retail Performance Reporting Procedures and Guidelines and to undertake the necessary change management process to implement the new hardship indicators proposed in the draft rule. As such, the effect of the proposed timeline is that the AER would be consulting on changes to the Retail Performance Reporting Procedures and Guidelines only 6 months after the current guidelines come into effect on 1 July 2025.

Taking into account the AER's current resourcing and other obligations (including to review other guidelines to take into account other rule changes), AER staff do not consider it is feasible to review the guidelines by the date proposed in the draft rule (1 July 2026). It would be more practical to align the deadline for these guideline reviews more closely with the existing obligation. In acknowledgement of the potential impact that delaying implementation could have on customers experiencing payment difficulty, we propose 1 October 2026 as a feasible date for us to complete necessary reviews of the relevant guidelines, with new reporting obligations to align with the reporting year commencing 1 July 2027. This would allow sufficient time for the AER to consult on and determine appropriate indicators in the Retail Performance Reporting Procedures and Guidelines, for reporting obligations to be implemented by retailers and for the AER to make necessary operational arrangements to include these metrics in our reporting processes.

In proposing this timeline, we note that it would also require postponing the date by which retailers must submit their updated customer hardship policies to the AER for approval, which is 1 September 2026 in the draft rule. Currently, the draft rule allows two months from the potential publication of an updated Customer Hardship Policy Guideline for retailers to amend and submit their hardship policies to the AER. The approval process can take several months, with hardship policies often requiring multiple iterations to meet a compliant standard. Once compliant, the AER has a 3-month statutory timeframe to approve the policy. However, the draft rule also appears to place the new obligations on retailers under rule 75C from 30 December 2026, whether or not hardship policies are updated, reviewed and approved.

We agree that retailers can and should be required to comply with the new obligations whether or not their hardship policies are updated, but suggest a transitional period of 6 months for customer hardship policies to be varied and submitted to the AER for approval. This timeline would be more consistent with the current timeframes for varying and approving a hardship policy. Although the AER cannot enforce compliance with a customer hardship policy until the hardship policy is approved, placing clear and direct obligations in the rules would ensure that there is a clearly enforceable obligation on retailers from the commencement date and provide clarity that the new obligations commence on the commencement date rather than once a hardship policy is approved.

Other feedback

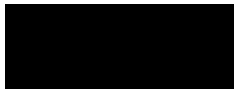
We acknowledge that some stakeholders raised broader issues related to customers experiencing payment difficulty, which the AEMC suggests could be addressed through our Review of payment difficulty protections in the NECF and its recommended reforms. We have concluded consultation on our review and expect to publish our findings before the AEMC makes its final determination. We will continue to engage closely with the AEMC on both our review and this rule change in the meantime. Many of the broader issues noted in the draft determination have been considered by our review, except for allowing or requiring retailers to obtain explicit informed consent to automatically switch hardship customers onto

the better offer.⁴ Our review did not consider this issue due to the concurrent rule change process under way.

Subject to the specific implementation considerations raised above, we note that the findings of our review support the proposed changes and that the draft rule complements the opportunities we have identified to strengthen protections for customers experiencing payment difficulty in the NECF. We welcome further feedback and engagement on the findings from our review when they are published.

If you have any questions about this submission, please contact the AER's Consumer Policy team at ConsumerPolicy@aer.gov.au.

Yours sincerely,



Sara Stark
Acting General Manager, Policy
Consumers, Policy and Markets

Submitted online on: 08.05.2025

⁴ AEMC, [National Energy Retail Amendment \(Assisting hardship customers\) Rule 2025: Draft rule determination](#), March 2025, p 5.