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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: Improving consumer confidence in retail energy plans – 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 (Improving consumer confidence in retail energy plans) Rule 2025.

It is important that customers are confident engaging in the energy market to support better outcomes for customers and a successful energy transition. The changes proposed in the draft rule are likely to support this outcome. We also welcome reforms to strengthen protections for customers experiencing vulnerability and payment difficulty, such as the proposal to prohibit fees and charges for hardship customers. Through our Review of payment difficulty protections in the NECF, stakeholders shared feedback and research that highlighted how banning reconnection fees for customers experiencing payment difficulty could reduce the harm of disconnection.

The draft rule has direct implications for the AER, with resourcing impacts related to updating regulatory instruments and monitoring and enforcing compliance with new obligations. We have provided more detailed feedback on these implications below.

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

The draft rule requires the AER to review, and if necessary, update the Benefit Change Notice Guidelines and the Retail Pricing Information Guidelines by 1 July 2026. While some of the recommended changes do not appear to differ significantly from existing obligations (for example, in relation to ensuring fees and charges are transparent on Energy Made Easy), we note that the AER has an existing obligation under the National Energy Retail Rules to review, and if necessary, update these and other guidelines (in accordance with the retail consultation procedure) to take into account the amendments introduced by the Unlocking CER benefits through flexible trading rule change, which commences on 1

November 2026.[1] We have commenced planning for this review process and currently expect to begin consultation on both the Benefit Change Notice Guidelines and Retail Pricing Information Guidelines in October 2025, with final guidelines expected to be published in quarter 1 and quarter 4 of 2026 respectively.

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. 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 with the existing obligation, which would ensure all necessary guideline reviews are completed by 1 November 2026.

In providing this feedback, we acknowledge the impact this delay could have on timing of implementation of the draft rule. We also note that the draft transitional rules require that retailers ensure all new and existing contracts are compliant with the new obligations by 1 July 2026, the same date the draft determination suggests the AER can have completed its review of our guidelines. However, we recognise that retailers may need to implement changes to comply with the updated guidelines and may also benefit from proactive guidance to support compliance. Therefore, it would be more practical to allow a reasonable transitional period after the AER releases its updated guidelines, and time for the AER to provide guidance to retailers on key elements of the draft rule (such as reasonable fees and charges), before retailers are required to be compliant with the new obligations.

**A transitional approach to updating retailer hardship policies is likely to benefit customers by enabling earlier implementation and reducing implementation costs**

We also note that the rule change will require updates to the AER Customer Hardship Policy Guideline, which sets out standardised statements that retailers must include in their hardship policies. These standardised statements currently refer to fees and charges for hardship customers,[2] and would need to be updated to align with the proposed rule changes. All authorised retailers would then be required to amend their customer hardship policies and submit them to the AER for approval. 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.

To allow a practical approach to retailer compliance and to mitigate the additional resource burden placed on retailers and the AER to make and approve updates to hardship policies, we suggest a transitional period of 6 months for hardship policies to be varied and submitted to the AER for approval. The transitional period could commence from the date the AER is required to have updated the Customer Hardship Policy Guideline. The transitional period should relate to when retailers submit compliant varied policies to the AER for approval rather than the date of the AER's approval, as this may take some time. The AER's statutory timeframe to approve compliant policies will ensure that the AER does so in a timely fashion once a compliant policy is received.

As part of this transitional approach, we also suggest retailers be required to comply with the obligation to not charge hardship customers fees and charges from the final rule's commencement date (which we propose would be before retailers are required to have submitted an updated hardship policy to the AER). Allowing this flexibility is likely to pose

[1] National Energy Retail Rules, Part 13, schedule 3, part 1, division 3, rule 11.
[2] Customer Hardship Policy Guideline, cl 89(3) and 89(9).

minimal risks for customers, as the inconsistencies between the current standardised statements and the changes proposed in the draft rule are minor. Currently, the standardised statements require retailers to state in their hardship policies that they may be able to remove some debt, fees or charges owed by the customer and that they will not charge hardship customers late payment fees. While these references should be updated for consistency with the new obligations, it is more important that customers benefit from the new protections as early as possible. If the new protections for hardship customers are contained directly in the rules (as proposed by draft rule 52A(2)) and apply from the commencement date, any inconsistency in retailer hardship policies will not act as a barrier to customers benefiting from the new protections. Therefore, a flexible timeline for varying and approving hardship policies is likely to benefit customers overall by enabling earlier implementation and reducing implementation costs which may be passed on by their retailer.

**Compliance monitoring and enforcement of the new obligations will have significant resourcing implications for the AER**

The draft determination notes that account establishment fees and move-in/out fees would be easily captured by the AER.[3] While retailers provide this data to the AER for the purposes of Energy Made Easy (EME), we note that utilising this data to monitor compliance with restrictions on account establishment fees and move-in/out fees would involve a manual data analysis process, which would have an impact on our resourcing.

The draft determination also notes that the AER may be able to monitor whether fees and charges reflect reasonable costs through its default market offer (DMO) calculations. DMO calculations use a cost-stack methodology that requires retailers to report their costs to the AER annually. This data is inclusive of all costs incurred by retailers in acquiring, retaining and serving their customers, including those that are not passed on and are absorbed by the retailer. As such, the DMO is not currently designed to calculate what constitutes a reasonable fee or charge. Doing so on an annual basis for all retailers would be a resource-intensive process for the AER.

In general, the most practical approach to monitoring compliance is likely to involve a combination of breach self-reports and proactive monitoring. We note that only certain provisions listed in the AER's Compliance Procedures and Guidelines or breaches of civil penalty provisions which a retailer deems as being material are captured by the breach self-reporting framework. New rules that are classified as civil penalty provisions are automatically captured by the material breach requirements. However, to require breaches of new rules to be reported immediately or half-yearly, the AER would be required to undertake a review of the Compliance Procedures and Guidelines to add these new rules. These guidelines were reviewed in 2024 with the new version coming into effect on 1 April 2025, so a review in the short term may not be practical.

Where new rules remain reportable on a material basis only, additional proactive compliance monitoring will be required, which is resource intensive for the AER. For example, this may involve spot-checks to review relevant terms and conditions to ensure contracts are compliant. This approach would require a significant resourcing commitment from our retail compliance function.

[3] AEMC, National Energy Retail Amendment (Improving consumer confidence in retail energy plans) Rule 2025: Draft rule determination, March 2025, p 50.

**Civil penalties should consider the potential impact on customers experiencing vulnerability**

The draft rule would delete existing rule 73, which prohibits retailers from charging late payment fees to hardship customers as it would be incorporated as part of new rule 52A(2). Failure to comply with rule 73 attracts a Tier 1 civil penalty, as do other existing rules related to hardship customers. The AEMC proposes to classify new rule 52A(2) as a Tier 2 civil penalty provision. Failure to comply with new rule 52A(2) could, at its most serious, impact customers experiencing vulnerability, including hardship customers. Therefore, classifying rule 52A(2) as a Tier 2 civil penalty provision would reduce the penalty associated with the protection of hardship customers. Classifying new rule 52A(2) as a Tier 1 civil penalty provision (consistent with existing rule 73 and other provisions relating to hardship customers) would maintain the penalty for non-compliance to ensure sufficient and appropriate deterrence is achieved.

**Other feedback**

The draft determination notes that stakeholders suggested the AER factor the costs of removing fees and charges into DMO calculations to provide retailers with the opportunity to recover these costs. We note the DMO methodology includes an allowance for the costs retailers incur to serve, acquire and retain customers. Presumably, a customer action that incurs a fee also has a cost for the retailer, which would be included in the information retailers report to us in calculating the DMO. We also note that the AER undertakes consultation with stakeholders when developing the DMO, which provides the opportunity for retailers to share feedback on the methodology. Consultation on the next DMO is expected to commence in October 2025.

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