



Delivering more protections for energy consumers: changes to retail energy contracts

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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;
- Salvation Army;
- Tenants Union NSW; and
- The Sydney Alliance.

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The Justice and Equity Centre office is located on the land of the Gadigal of the Eora Nation.

Australian Council of Social Service

The Australian Council of Social Service is a national advocate supporting people affected by poverty, disadvantage and inequality, and the peak council for community services nationally.

Sydney Community Forum

Sydney Community Forum is a regional community development organisation that has worked towards social justice, inclusion, and sustainability outcomes for disadvantaged and marginalised communities in Sydney since 1974. Since 2017, in collaboration with the Sydney Alliance, we have worked closely with migrant community leaders through the Voices for Power project to highlight the climate justice and energy equity related issues, concerns and priorities of migrant communities in Western and South-Western-Sydney.

Ethnic Communities Council of NSW

The Ethnic Communities' Council of NSW (ECCNSW) is the peak body for all culturally and linguistically diverse communities in NSW. It undertakes a range of activities on behalf of its members and has maintained an energy advocacy officer who operates across the National Energy Market (NEM) for nearly two decades.

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Acronyms list

Acronym	Full name
ACCAN	Australian Communications Consumer Action Network
ACCC	Australian Competition and Consumer Commission
ACOSS	Australian Council of Social Service
AEMC	Australian Energy Market Commission
AER	Australian Energy Regulator
DMO	Default Market Offer
ECA	Energy Consumers Australia
EWCAP	Energy and Water Consumers' Advocacy Program
EWON	Energy and Water Ombudsman NSW
JEC	The Justice and Equity Centre
NCOSS	NSW Council of Social Service
SACOSS	South Australia Council of Social Service

1. Introduction

The JEC, ACOSS, Sydney Community Forum and the Ethnic Communities Council of NSW welcome the opportunity to respond to the AEMC's consultation paper on *Delivering more protections for energy consumers: changes to retail contracts*.

Our organisations broadly support this package of four rule changes to retail energy contracts. We strongly support comprehensive reform to the National Energy Retail Rules (NERR) intended to shape the retail market and materially improve outcomes for all consumers. These rule changes seek to address or improve issues that our organisations have been consistently raising with regulators, governments and other stakeholders over several years. Importantly, previous attempts have been made to address similar issues over a number of years. These attempts have been narrowly focussed, resulting in a 'shift' rather than resolution of the underlying issues. This process is an opportunity to take a different and more enduring approach.

Everyone deserves access to affordable energy as an essential service. This affordable access cannot be dependent upon people's capacity to understand and navigate a complex retail market. Current retail practices and the nature of the retail energy market are harming consumers and compromising affordability for many consumers. This has helped drive a lack of trust in energy retail companies and the energy market more broadly¹.

Consumers have reasonable expectations about contracts and how retail relationships should function for an essential service such as energy. The opaqueness and complexity of offers and contracts in the retail energy market does not meet these expectations, contributes to poor consumer outcomes and heightens distrust of the retail energy sector. This is demonstrably not in the long-term interest of consumers. The intent of this process should be to better align the retail energy market with consumer and community expectations for an essential service and help enable better and more consistent outcomes for consumers.

We consider it unreasonable to require households to navigate and constantly interact with a complex retail market simply to get a fair price for an essential service. This process should focus on minimising this requirement and ensuring good outcomes are more consistently delivered. Navigating the market to identify and access a fair deal is a significant burden for many households, even where they have the skills and language capacity. It is a time-consuming activity. The accumulated burden of this on people increases every year, with consistent evidence peoples' efforts are not resulting in fair outcomes. More and more aspects of people's lives require high levels of understanding and 'engagement' which increasingly exceeds what people can commit. Energy can often be left, not because its unimportant or because households are happy with their arrangements, but because people are overwhelmed and make a determination that the effort to deal with energy is 'not worth it'.

Our submission provides comment on each of the four proposed rule changes, alongside providing context and detailing relevant consumer experiences of the retail energy market. While we strongly support the intent of these rule changes, there remain flawed assumptions regarding

¹ Energy Consumers Australia, 2024, [Energy Consumer Sentiment Survey June 2024](#)

consumer switching behaviour and engagement with the market that need to be challenged to ensure the final rule changes approved result in genuinely better outcomes for consumers.

2. Wider context for rule changes

Consumer and community advocates have consistently raised ongoing issues with choice, consent and fairness in the retail energy market, which are detailed in section 3 of this submission. These issues have been further exacerbated by ongoing cost of living and energy affordability challenges, particularly for more disadvantaged households. Advocates have regularly discussed experiences of disadvantage and broad problems with the retail energy market with governments, departments and regulators. This has contributed to a growing understanding of consumer and community expectations and where the energy sector is failing to meet those expectations.

2.1 Recognition of the role of the market in driving vulnerability

Through ‘Towards Energy Equity’, ‘Gamechanger’ and in the most recent State of the Market 2024 and 2023 reports, the AER has recognised that existing energy market arrangements fail to adequately support consumers experiencing disadvantage and are contributing to increased consumer vulnerability:

“For a range of reasons, many consumers face barriers to actively participate in the market and secure the best offer for their situation. This can exacerbate existing structural inequalities, whereby those who can least afford it are paying higher energy rates.²”

The AER’s work on consumer vulnerability also highlighted that 44% of the population have literacy and numeracy capability insufficient to navigate the energy market and successfully understand and access deals which may be in their best interests.³ This work also recognises the impact the structure and nature of the energy retail market has on the experience of consumer vulnerability.⁴ That is, the essential nature of energy (where it must be used regardless of capacity to afford) combined with the shape of the retail market and common retail practices make it difficult for consumers to identify, access and remain on offers which best meet their needs. With the increasing complexity of the energy system and the increased availability of different types of offers enabled by smart meters, it becomes even more difficult for households to feel confident that they can navigate offers and choose (and remain on) the best offer for their circumstances.

In effect, the households who are unable to successfully participate in the market (who are often the most disadvantaged households) are cross subsidising the energy costs of households who can more easily navigate the energy market or who can access the below cost acquisition and retention offers made by retailers to customers they see as ‘desirable’.

² AER, 2023, [State of the energy market 2023](#), p.248.

³ AER, 2022, [Towards energy equity: A strategy for an inclusive energy market](#), p.14

⁴ Consumer Policy Research Centre, 2019, [Exploring regulatory approaches to consumer vulnerability](#)

2.2 Cost of living and energy affordability

Current circumstances in the energy market see consumers facing significant and sustained high retail energy bills in addition to wider cost of living pressures placing stress on households. It is in the long-term consumer interest for retail regulation and consumer protections to ensure they pay no more than necessary for essential energy services, and to minimise the impact of their capacity (or inability) to navigate the market.

JEC's [Powerless](#) research into debt and disconnection/restriction of energy and water services reveals that utility affordability issues are more prominent than at any time since we commenced this research series in 2004. The pressure on lower income households is increasingly severe, with affordability and debt issues expanding to impact higher income groups. Consumers experiencing or at risk of energy debt and disconnection are likely to be impacted by structural disadvantage including First Nations, women, young people, people with disabilities, people experiencing mental health issues, people experiencing family and domestic violence, people on low-incomes, and renters. These cohorts represent a significant proportion of consumers who should not be intentionally disadvantaged due to poorly formulated or inconsistently applied retail contract practices.

A recent NCOSS survey of low-income NSW households⁵ showed:

- 50% of respondents reporting they could not pay utility bills on time.
- 74% of respondents reported going without health and wellbeing essentials.
- Many people taking drastic measures like not eating dinner 4-5 nights a week, not having visitors or going out with friends, and going without food or medicine to afford their bills.

The impact of affordability issues on essentials which support health and wellbeing are also consistently evidenced in the JEC's *Powerless* report⁶, in the ACOSS Raise the Rate Survey 2024⁷ and in the ACOSS Summer Heat Survey 2024⁸. Complaints to EWON are up over 30% from last year, with most complaints being about high electricity bills⁹.

Increasingly, these critical affordability issues are driving people to resort to non-traditional credit products such as Buy Now Pay Later and payday loans to pay for utility bills, further increasing their costs and raising risks to household financial security¹⁰.

This consistent evidence of consumer harm must be taken as context for the role the current shape of the retail market, and its regulations and practices, play in contributing to these poor outcomes, and conversely, delivering good outcomes for consumers. Consumers should not face higher prices because the nature of the retail energy market make it impossible to successfully navigate, particularly among other stresses households face. It is not in the long-term interest of

⁵ NSW Council of Social Service (NCOSS), 2024, [Impossible choices: Decisions NSW communities shouldn't have to make](#)

⁶ The Justice and Equity Centre, 2024, [Powerless: Debt and Disconnection](#), pp. 47-49.

⁷ ACOSS, 2024, [Raise the Rate Survey 2024](#)

⁸ ACOSS, 2024 [ACOSS Summer Heat Survey 2024](#)

⁹ Energy and Water Ombudsman, 2024, [EWON Insights Report: July to Sept 2024](#).

¹⁰ See: The Justice and Equity Centre, 2024, [Powerless: Debt and Disconnection](#), pp. 49-50 and NSW Council of Social Service (NCOSS), 2024, [Impossible choices: Decisions NSW communities shouldn't have to make](#), pp.46-49

consumers for many (or most) consumers to be condemned to higher energy costs. This process, in conjunction with other processes currently in train, is critical to shaping a retail market that more consistently delivers good outcomes for all consumers.

3. Consumer experiences in the retail energy market

Our retail energy market assumes all consumers can and must regularly (every 3-6 months) assess retail offers available against their own, determine what the best offer for their needs is and switch to it. It also accepts that those who are unsuccessful or unwilling to do so should pay more for their energy needs than others who are. Consumer advocates have consistently rejected this as unacceptable and neither in the interests of consumers, nor aligned with their preferences. In simple terms, it is not acceptable for decent consumer outcomes in an essential service to be so contingent upon assumed consumer behaviour. Nor is it acceptable for the price of failure to engage successfully to be so high, be incurred by the majority of consumers, and to have such a material impact on those who are already experiencing disadvantage and vulnerability.

Evidence of consumer behaviour reveals a strong and consistently preference for many (if not most consumers) to find a reasonable energy plan and 'set and forget'. This was acknowledged in Minister Bowen's rule change request. Despite market monitoring and consistent public advice to the contrary, ECA reported that most people do not consider switching retailers a way to save money.¹¹ Given prevailing retail practices (including regular price changes and differentials between contract and benefit periods) erode or eliminate benefits soon after sign-up, we consider this a reasonable and rational conclusion. In any case we consider it in the interests of consumers for regulation to help shape a market that meets consumer needs and preferences.

For many households, particularly disadvantaged households, there are considerable barriers to switching energy plans with the regularity required to ensure fair outcomes, including:

- Recognising how often plans need to be re-evaluated,
- Constraints on time impacting capacity to navigate and complete complex market assessments and choices,
- Language, literacy and numeracy constraints impacting capacity to assess and select the best available offers,
- Constraints on technological access, impacting ability to access comparison and switching services and complete switching processes,
- Constraints resulting from mental health, health, domestic violence and other issues impacting the capacity to deal with the 'mental load' of processes involved, and
- The increasing burden of engagement required throughout all aspects of everyday life, including work, family, essential services, banking, insurance, superannuation, government services and internet and communications.

In this context the complexity of the retail energy market and the practices of retailers make comparing, identifying and switching offers time-consuming, confusing and frustrating. Many consumers previous experience can leave them knowing they are worse off by remaining on their

¹¹ Energy Consumers Australia, 2024, [Energy Consumer Sentiment Survey June 2024](#), p.12

current offer but concluding that the effort required to address this is likely to be wasted or not worth the cost. In this context their behaviour should not be taken as a free choice, but as a failure of the market to match consumer needs and expectations.

3.1 Retail market failure to deliver meaningful choice and consent

Our organisations have consistently highlighted failures of consumer choice and consent, and unfair and inequitable outcomes in access to energy as an essential service. Ongoing poor outcomes contributes to consumer distrust in the energy sector – which is consistently demonstrated in ECA’s consumer sentiment surveys¹².

Consumer choice and competition is assumed to ‘discipline’ the market and ensure retail offers present good value, as retailers compete to understand consumer preferences and deliver products which meet them. However, there is a structural imbalance in market information and power between retailers and their customers which undermines consumer scope to meaningfully exercise choice and ensure competition delivers the assumed good outcomes. Current regulation does not sufficiently address these imbalances, with this process a critical opportunity to do so.

The fundamental assumption underpinning the current retail energy market, that consumers can ‘shop around’ for more efficient, ‘fair’ retail offers is not reasonable advice for many consumers due to failures to consistently deliver and support meaningful consumer choice and consent, including:

- Significant evidence¹³ that retail practices make identifying and accessing better offers difficult or even impossible for many consumers, including:
 - That all best retail offers are not consistently publicly available and equally accessible to all consumers, undermining consumer choice. Often the ‘best’ offers are not publicly listed and may only be offered to or accessed by ‘desirable’ customers who contact the retailer.
 - That the best publicly available offers are not equally accessible to all consumers and often exclude many consumers experiencing disadvantage (such as those on income support or those with current or previous debt) being excluded, undermining consumer choice for many. Market monitoring relies on assessing listed offers, but does not consider if people can (and are) accessing those offers and who may be excluded.
 - That there can be differences between the offer selected by a consumer and the offer they are signed up to, undermining the exercise of consumer choice and informed consent. Particularly for those with lower digital or English language proficiency, it can be unclear that the deal they rang/emailed to inquire about is not the one they are being offered.

¹² See: Energy Consumers Australia, [Energy Consumer Sentiment and Behaviour Surveys](#)

¹³ See: AER and Sydney Community Forum, 2024, [Consultation summary: Voices for Power listening session](#), CHOICE, 2024, [Are you paying more than other customers for the same energy plan?](#); and The Justice and Equity Centre and All Sustainable Futures, 2022, [Insights into retailer practices](#);

- That retailers may discriminate between legacy and ‘new’ customers by offering different terms for the same energy deal, undermining free consumer choice and meaningful consent. Recent CHOICE investigations¹⁴ highlighted new and legacy customers on offers with the same name receiving materially different terms.
- That the price terms of an offer at time of sign-up (which the consumer chose and consented to) regularly increases throughout the term of a contract (including when that contract is effectively perpetual) with nothing more than required notification. This undermines both effective choice and meaningful consent. This disproportionately impacts those on low incomes and others experiencing disadvantage. As described by one consumer who investigated after receiving a high bill, “Apparently my plan had run out, so they'd bunged me on the highest rate¹⁵.”

Where retailers assert that they cannot place consumers on ‘better offers’ or terms without violating explicit informed consent, it is hard to see how this practice of price increases is allowable without also undermining meaningful consumer consent. This practice is the main contributor to the ACCC’s findings that 47% of consumers are on offers above the DMO¹⁶ and is a significant source of consumer frustration, distrust and conclusion that shopping around is not a worth the effort.

- The use of technical language which is inconsistent across retailers and makes understanding what the offer includes difficult.
- Consumers continue to find bills confusing, despite the Better Bills Guidelines. Consumers have reported difficulty in accessing their deemed ‘better offer’, even after having it provided to them on their most recent bill. A key driver of this is likely to be inconsistency in the format, language and presentation of key information on the bill. Given the importance of comparison, we consider it necessary to standardise and regulate the presentation of the most fundamental billing information, including how and where better offers are presented.

4. Ensuring plan terms last the length of the contract

The rule change proposal submitted by Minister Bowen stated that,

Consumers should not be subject to persistently high costs if they do not regularly engage with the market, particularly those who are experiencing hardship or face other barriers to engagement.

Our organisations support this statement and the intent of this rule change to provide better outcomes for consumers. Our engagement with consumers and with financial counsellors aligns with the ACCC’s finding¹⁷ that this is an issue for households.

¹⁴ CHOICE, 2024, [Are you paying more than other customers for the same energy plan?](#)

¹⁵ Endeavour Energy Tariff Awareness Consumer Engagement Session August 14th 2024

¹⁶ ACCC, 2023, [Inquiry into the National Electricity Market report – December 2023](#)

¹⁷ Ibid.

However, we contend the rule should be simplified and strengthened to refer to ‘contract terms’ or ‘material contract terms’ rather than ‘benefits’. Differentiating between contract terms (and timeframes) and ‘benefits’ (and timeframes) is unreasonably complicated and undermines meaningful choice and consent.

Consumers should (and likely do) have a reasonable expectation that all material aspects of a consumer energy contract they agree to will endure for the life of the contract they agree to. This aligns with the simplest understanding of consumer consent and helps ensure a level of comparability and consumer certainty regarding the terms they are agreeing to. Ensuring this would also help build trust in energy providers.

A rule change of this nature would likely impact retail contracting practices. This should be regarded as a positive effect. Importantly this rule change would not preclude one-off benefits (such as sign-up bonuses) or for ‘additional’, non-energy ‘benefits’ to be time limited – for instance free memberships of tv streaming services. To be effective this rule would need to clearly relate to the material terms of the energy contract and clearly communicate where other ‘non-energy’ terms are different.

The priority for the AEMC and other stakeholders in the remainder of this process will be defining what material aspects of energy contracts this rule should apply to, and how communication of any other terms or benefits should interact with them. For example, ensuring that communication of one-off sign-up bonuses does not imply the material terms of the contract are better than they are (i.e. that the plan is cheaper on an enduring basis).

This rule should be considered in conjunction with the others in this package (as well as the hardship rule change), which we consider to be complementary. Correctly implemented, this rule change will interact positively with the ‘preventing price increases for a fixed period’ rule change discussed in section 6. Our organisations support limiting price increases to no more than once a year. These two rule changes combined could functionally result in contracts that are one year in length, as after that period consumers will likely either proactively switch or be moved to the local standing offer without active retail efforts to retain them.

We note that the entire package of seven rule changes will also increase the importance of the DMO as a more genuine default. Should retailers not respond to the new market signals and actively offer existing customers more attractive renewal offers, over time more consumers will likely be on the local standing offer than at present. Given that the DMO is currently better value than the expired market offers 47% of consumers are on, we regard this as a good outcome.

Our organisations advocate for reform of the DMO both as a crucial consumer protection, and as an important contributor to shaping retail competition that delivers better outcomes. Key to both is making the DMO a more efficient, fair and genuine default. Should these proposed retail rule changes be implemented, the case for reform of the DMO will become even stronger and more pressing than it already is. For further detail on the need for reform of the DMO, we recommend the AEMC review our recent submissions¹⁸ to the AER.

¹⁸ See: JEC, ACOSS & SACOSS, 2024, [Submission to AER Issues Paper on DMO 7](#) and JEC, 2023, [Submission to AER Issues Paper on DMO 6](#)

5. Removing unreasonable conditional discounts

Our organisations support the cessation of conditional discounts. Consumer organisations including the JEC¹⁹, SACOSS²⁰, ECA²¹ and CHOICE²² provided submissions to the *2019 AEMC Rule Change: Regulating Conditional Discounting consultation paper*, supporting the removal of conditional discounts. While our positions and understanding of consumer experience has matured since those submissions were published, the main arguments and evidence provided remain relevant today.

In more recent research, JEC's *Paying to Pay*²³ found that many consumers on lower incomes pay more for their energy bills, not necessarily because of higher consumption, but due to:

- the way they pay;
- not having the money and/or the cash flow to pay on time, and
- other circumstances associated with their situation.

Conditional discounts often exacerbate or unfairly disadvantage households who are already struggling to afford the energy they need.

For this package of retail rule change proposals, we suggest that it could be possible to resolve the issue of conditional discounts via the settings of other rule changes in this package.

A well-structured rule ensuring the material contract terms last the length of the contract co-ordinated with preventing price increase for 12 months should result in any consumers who are currently on legacy offers with conditional discounts being moved to their local standing offer, or being offered a replacement for an 'obsolete or expired' deal.

Should this rule change proceed, it should focus on the definition of 'unreasonable'. For instance, it could ensure discounts do not exceed the cost benefit/impact to the retailer of the associated activity. We also consider it appropriate to specify discounts which are always 'unreasonable', such as pay on time discounts. We do not support pay on time discounts in principle and consider them to operate as effective penalties for consumers unable to meet requirements set by the retailer. This is particularly unacceptable where the associated discount (and penalty) far outweighs the associated cost/benefit for the retailer. Discounts which are 'non-discriminatory' and can be accessed by all consumers regardless of their circumstances (such as loyalty discounts) are examples of 'reasonable' discounts which should be accommodated in any rule which proceeds.

¹⁹ Public Interest Advocacy Centre, 2019, [Regulating conditional discounts](#)

²⁰ SACOSS, 2019, [Submission on the AEMC's Consultation paper: Regulating Conditional Discounting Rule Change Request](#)

²¹ ECA, 2019, [Regulating Conditional Discounting: Consultation Paper](#)

²² CHOICE, 2019, [National Energy Retail Amendment \(Regulating Conditional Discounting\) Rule: Submission to the AEMC](#)

²³ PIAC and ACCAN, 2023, [Payment harms in the energy and telecommunications sectors](#). Some aspects of this research are unpublished but can be provided to the AEMC on request.

6. Preventing price increases for a fixed period under market retail contracts

Our organisations strongly support the principle underpinning this rule change proposal. Price changes during the term of a contract undermine consumers ability to effectively understand, choose and consent to energy deals which meet their needs. The current system allows price changes well in excess of consumer and community expectations and acceptable essential service business practices. Retailers primary purpose is to accumulate costs of energy service provision, manage associated risks and create simple products which meet consumers' needs. Identifying a price and guaranteeing that price for a reasonable period is a fundamental part of this role, and consumers should expect retailers to be required to fulfil it.

JEC's *Paying to Pay* research found that energy bills are seen as hard to manage because they are not only large, but also the amount is difficult to estimate. JEC's *Powerless: Debt and disconnection* research found that the second most likely reason why households were disconnected, notified of a disconnection or seriously worried about being disconnected is because their bill was much higher than expected. Whilst changes in usage are the most significant contributor to this unpredictability, changes in prices are material and exacerbate people's inability to budget for their energy bills.

We recommend the AEMC set the fixed period at 12 months. Preventing price increases for a 12-month period will ensure simplicity and clarity for consumers that the price terms they agree to at signup will be delivered for a reasonable period.

We recommend that consideration be given to preventing any price increases during a market contract, which is our preferred outcome. This could be implemented with provisions which allow retailers a mechanism to ask consumers to 'opt-in' to a renegotiated market offer with a new price. But it would need to involve clarity that where a consumer does not 'opt-in' they are to default to the standing offer, which would effectively be the DMO. This may result in many retailers choosing only to offer 12-month contracts, with the alternative being to assume more risk by guaranteeing prices for a longer term.

Where most contracts are currently obsolete (and more expensive) after 12 months, this would make it more clear to consumers that contracts and terms are required to be re-set every 12 months. If consumers do not re-engage after 12 months, they would be defaulted onto their local standing offer.

There is scope for the AEMC to consider a rule which allows longer contracts but which ensures that prices cannot change within any 12-month period, and ensures that consumers are required to 'opt-in' for the ongoing offer at the new price. This would ensure consistency, while also providing scope for retailers to offer different, longer-term products which may utilise contract certainty to manage risk and pass those benefits on to impacted consumers.

In any case we consider this rule, implemented in conjunction with other recommended changes would give a more appropriate and substantial incentive to retailers to offer attractive new offers to existing customers coming to the end of their contract period, placing the onus on retailers

rather than consumers. It would also build consumer trust and ensure that the market is shaped to meet consumer needs, and deliver consistent and expected outcomes.

7. Removing fees and charges

Our organisations broadly support an intent to remove and limit certain fees and charges, and consider that fairness and equity should be a key consideration when looking at what fees and charges might be allowed and how to regulate their quantum.

If approved, this rule change will provide more consistency for consumers and improve their understanding (and trust) as to what fees retailers can charge. Consumers expect consistency in the delivery of essential services, with material differences in fees and charges being a risk for consumer distrust and poor consumer outcomes.

Our organisations consider that a ‘white list’ approach of approved fees and charges would provide for better consumer outcomes than a ‘black list’ approach. For fees and charges that are allowed, they should be explicitly limited to reflecting reasonable costs only.

We suggest the AEMC consider the relative benefits of having the list of approved fees and charges written into the rules or instead detailed in an enforceable guideline. A guideline would allow for improvements or adjustments to be made less laboriously than if the approved list is included in the rules.

7.1 Consumer experience of fees and charges

JEC’s *Paying to Pay* research²⁴ examined whether people experiencing disadvantage pay more because of their method of payment. It found that many people on low incomes pay more for their energy bills because of the way they pay, because they cannot otherwise afford to pay the bill in full on time. One service provider explained:

The late fees and the missed direct debit and then the fees in the bank account because they’ve missed the payment, all those things mean the cost... you can sit here and say, “the electricity only cost \$X”. Fact is, plus for Defer-It,³⁴ plus the missed direct debit, plus the late fee, plus the paper statement fee. What’s the real cost? The real cost is if you are of lower income, if you are lower financial literacy and lower literacy, you will have the disadvantage surcharge.

– Financial Counsellor, NSW

The research provided some insight into the true cost of late fees on the people who can least afford them:

“There are late fees. You know, every time you get your bill there’s a late fee of \$12 or \$15... it’s just goes up and up.”

²⁴ PIAC and ACCAN, 2023, [Payment harms in the energy and telecommunications sectors](#). Some aspects of this research are unpublished but can be provided to the AEMC on request.

– Financial Counsellor, WA

Unfortunately for some people experiencing payment difficulty, these fees are part of their expected payment process:

“Late payments, yes. I think, from a lot of conversations we have, people expect that it is a part of their payment process. Some people are on products, such as bill smoothing, or they are doing direct debits and they do get caught by the ‘pay on time discounts.’ But usually, they’ll end up with some sort of fee, either non-payment or late payment, and are expecting that’s part of their billing cycle.” – Financial Counsellor, SA

People who have difficulty paying their bills on time often do not understand or have access to internet billing. They often cannot make quarterly repayments by direct debit due to a lack of savings/cashflow or because they need to defer some bills while paying off other essentials. These people are likely to get charged late fees, dishonour fees, additional fees and/or interest accruing on amounts owing (if using a credit card).

Our research found that people who often experience structural disadvantage, including First Nations people, people from Culturally and Linguistically Diverse backgrounds and people living with disability are more likely to:

- incur late fees;
- incur multiple fees on the one bill;
- have to resort to using a credit product to afford a bill.

The ‘paying more to pay’ or ‘disadvantage surcharge’ means that people who already struggle to pay their energy (and other) bills end up paying more and get caught in a loop of always trying to catch up with bills.

Base:	873	265	200	309	63	174	147	365	228
Q7. Payment Issues with electricity and/or gas bills	TOTAL	Low Income	Seniors	Not employed	First Nations	CALD	Disability	Non-Capital City	High School Or Less
I incurred fees from my bank for paying my bill late	13%	11%	2%	5%	50%	23%	23%	13%	10%
I incurred fees from my electricity and/or gas company for paying my bills late	13%	14%	3%	5%	49%	24%	21%	13%	10%
I incurred more than one fee on the same bill/debt	10%	10%	2%	5%	32%	20%	18%	10%	8%
I used my credit card to pay a bill/debt because I didn't have the money up front	15%	14%	7%	7%	38%	25%	19%	14%	10%

This is likely to be a material under-estimate of the scale of the issue as our research also shows people are often unaware of the fees they are being charged and inaccurate in their assessment of all the fees they are incurring.

Declined/dishonour fees and late fees make a material and detrimental difference in the lives of people on low incomes where every dollar (and cent) counts. Most people who regularly pay late don't forget to pay their energy bills or just choose not to pay them. They pay late because they are juggling competing, unavoidable necessities, including food. They are often having to make impossible choices to manage their costs. Instead of charging fees for people who regularly pay late, which makes energy even more unaffordable, retailers should be reaching out to these consumers to offer them assistance to help them manage their payments.

Given that declined/dishonoured fees and late payments disproportionately impact households on low incomes both in terms of frequency and quantum, these fees should not be set in ways which punish these households, or set at rates that encourage people to access Buy Now Pay Later and other credit products as a preference to paying an essential service late.

In their report [Direct Debit in Telecommunications](#), ACCAN (who undertook this research with JEC), found that direct debit is often the only free payment options available for paying for telco, yet it disadvantages already disadvantaged people. For example, whilst overall 11% of people indicated that they found it difficult to manage direct debit for their telco bills, this was substantially higher for First Nations people at 28% and twice as high (22%) for people living with disability. Although paying by direct debit is convenient for many households, it is an unequally accessible convenience that some households can't afford and results in dishonour fees and the stress of juggling payments. It should never be the only fee-free payment option available.

7.2 Specific fees and charges

Many of the fees and charges specified in the proposed rule change are already incorporated into the customers' bills through the allowance for operational expenditure. In any case it is hard to ensure that many of these fees charged are genuine additional costs which are not already being recovered elsewhere. Considering the relatively small total cost impact on energy retailers, relative to the large impact on the customers affected, our organisations recommend that most identified fees and charged be disallowed, with some exceptions that could have reasonable costs charged directly to consumers.

Fee or charge	Our position
Account establishment fee	<p>Support disallowing this fee.</p> <p>Establishing accounts is a standard part of any energy retail business and should already be covered by operational expenses incorporated into retail contracts.</p>
Special meter read fees (move in and move out reads)	<p>Support allowing reasonable costs for accumulation meter reads, where a meter reader is required to specifically attend a property outside of routine checks. There should be a fee exemption for concession card holders, customers in hardship</p>

	<p>programs, customers impacted by family violence and customers on payment plans.</p> <p>Support disallowing this fee for consumers with smart meters.</p>
Credit card payment fees	<p>Support disallowing this fee.</p> <p>Processing payments is a standard part of any energy retail business and should already be covered by operational expenses incorporated into retail contracts. JEC’s research shows that some households on low incomes use credit cards to manage cash flow to ensure they can pay their energy bill on time.</p> <p>A range of fee-free payment options must be provided to consumers.</p>
Late payment fees	<p>Support disallowing this fee.</p> <p>JEC’s research has shown that late payment, declined and dishonoured circumstances often arise as a result of disadvantage and a range of circumstances that are not directly in the customer’s control, with an impact that outweighs the cost to the business.</p> <p>Energy Australia and Origin Energy already do not charge these fees to pensioners or people receiving the Medical Energy Rebate.</p>
Early termination fees	<p>Support allowing reasonable costs, with exemptions for consumers on hardship or impacted by family violence.</p>
Australia post fees	<p>Support disallowing this fee.</p> <p>Charging fees for over-the-counter payments at Australia post perpetuates disadvantage by charging more to people who have lower digital literacy or digital access. A range of fee-free payment options must be provided to consumers.</p>
Paper bill fees	<p>Support disallowing this fee.</p> <p>Paper bill fees perpetuate disadvantage for people with lower digital literacy or digital access and should not be allowed.</p>

8. Continued engagement

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