



# Joint Submission to the AEMC Improving the Ability to Switch to a Better Offer Rule Change Consultation Paper

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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**

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.

## **Combined Pensioners and Superannuants Association**

CPSA is a non-profit, non-party-political membership association that promotes the rights and interests of pensioners of all ages, older people on low incomes and self-funded retirees. Founded in 1931, our aim is to improve the standard of living and well-being of CPSA's constituents.

## **Consumer Action Law Centre**

Consumer Action is an independent, not-for profit consumer organisation with deep expertise in consumer and consumer credit laws, policy and direct knowledge of people's experience of modern markets. We work for a just marketplace, where people have power and business plays fair. We make life easier for people experiencing vulnerability and disadvantage in Australia, through financial counselling, legal advice, legal representation, policy work and campaigns. Based in Melbourne, our direct services assist Victorians and our advocacy supports a just marketplace for all Australians.

## **People With Disability Australia**

PWDA is Australia's national peak disability organisation, representing the 1 in 6 Australians with disability. We are the leading disability rights advocacy and representative organisation and the only national cross-disability organisation representing the interests of people with all kinds of disability. We are a not-for-profit and non-government organisation, and our membership is comprised of people with disability and organisations primarily constituted by people with disability, including the PWDA Board and many members of our staff.

## **Financial Counsellor's Association of NSW**

The Financial Counsellors' Association of NSW Inc (FCAN) is the peak membership body that represents and supports NSW Financial Counsellors. FCAN represents the financial counselling sector to advocate for suitable regulation and products to protect the financially vulnerable and to prevent people and families from experiencing financial hardship.

## **Queensland Council of Social Service**

QCOSS is Queensland's peak body for the social service sector. Our vision is to achieve equality, opportunity, and wellbeing for all Queenslanders.

## **ACT Council of Social Service**

ACTCOSS is the peak body for the community sector in the ACT – advocating for social justice in our territory and representing not-for-profit community organisations. ACTCOSS advocates for better outcomes for ACT energy consumers through the ACT Energised Consumers Project.

## **St Vincent de Paul Society NSW**

The St Vincent de Paul Society NSW is a lay catholic organisation whose vision is to create a more just and compassionate society. Members provide help and support to people at risk of homelessness or experiencing disadvantage in all sorts of ways.

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# Recommendations

## **Recommendation 1**

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*That this process includes direction to the AER to ensure the forthcoming Review of the Better Bills Guideline includes qualitative data on the actual experience of consumers in accessing their deemed better offer, and to engage with organisations that hold direct relationships with communities. Ideally this direction should include a recommendation for bills and bill information to be standardised.*

## **Recommendation 2**

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*That the Commission consider and adopt both principles-based and prescriptive measures in formulating a preferred response to streamlining switching processes to ensure consumer experience and outcomes are prioritised and measures appropriately reflect retailer responsibility.*

## **Recommendation 3**

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*The AEMC consider wider measures to augment explicit informed consent. This could include options for sign-up consent to include simple provisions for future 'automatic' switching to a better offer (subject to conditions detailed in this submission)*

## **Recommendation 4**

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*That the AEMC, alongside other energy market bodies and Energy Ministers, consult on and implement a retailer duty of care to act in the best interests of the consumer in the delivery of good consumer outcomes in access to energy as an essential service.*

# 1. Introduction

The Justice and Equity Centre, Australian Council of Social Service, Sydney Community Forum, Consumer Action Legal Centre, People with Disability Australia, Financial Counsellors Association of NSW, Ethnic Communities Council of NSW, Combined Pensioners and Superannuants Association, St Vincent de Paul Society NSW, Queensland Council of Social Service and Australian Capital Territory Council of Social Service welcome the opportunity to respond to the AEMC's consultation paper on *Improving the ability to switch to a better offer: rule change proposal*.

We strongly support comprehensive reform to the National Energy Retail Rules (NERR) intended to reshape the retail market and materially improve outcomes for all consumers. The package of seven rule changes<sup>1</sup>, of which this rule change is a part, seeks to address issues that our organisations have been consistently raising with regulators, governments and other stakeholders over several years. Importantly, this is not the first time that attempts have been made to address these issues. Failure to make material change and improvement has stemmed from a narrow focus on specific manifestations of a problem, rather than the underlying cause. For instance, seeking to prevent unreasonable discounting, rather than examining the more fundamental market structures which may allow or encourage practices with unreasonable impacts on consumers. Broadly, this approach has resulted in 'shifting' rather than resolution of the underlying issues, seeing us regularly required to resolve a new manifestation of the problem. We see this process (when taking the rule change package as a whole) as an opportunity to take a different, more fundamental and more enduring approach.

Our organisations broadly support the intent behind this rule change proposal (as part of the broader package), in seeking to improve outcomes and processes for consumers making it easier (and more likely) for them to access the best offer from their retailer. However, we are concerned that intention is unlikely to be substantively delivered because this rule change is narrowly focused on addressing a small aspect of a larger underlying issue (i.e. making the process of switching to an offer the retailer has identified as better, rather than examining how to ensure consumers are never left on poorer offers). While our organisations support any measures to improve scope for better outcomes and support requiring retailers to create more streamlined processes for consumers to switch to their deemed better offer, there are more robust and durable reforms that would better achieve the desired outcomes in the long-term interest of consumers.

Our submission provides relevant context on current consumer experiences in the retail energy market, including barriers to switching and the efficacy of the Better Bills Guidelines. This is followed by feedback on the proposed rule change and recommendations for more durable and robust reforms to the retail energy market, including implementing a retailer duty of care and improving explicit informed consent.

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<sup>1</sup> See: The Justice and Equity Centre et al. 2025, [Submission to the AEMC on Delivering more protections for energy consumers: changes to retail contracts](#); The Justice and Equity Centre et al. 2025, [National Energy Retail Amendment \(Assisting Hardship Customers\) Rule Change](#); The Justice and Equity Centre et al. 2025, [Submission to the AEMC on Improving the Application of Concessions to Bills \(sent to the AEMC and publication forthcoming – request a copy from the JEC\)](#).

## 2. Consumer experience in the retail energy market

### 2.1 The assumptions underpinning retail market design do not work for consumers

The fundamental assumption underpinning the current retail energy market, that consumers can and should be required to ‘shop around’ for more efficient, ‘fair’ retail offers is not reasonable due to structural market failures to consistently deliver and support meaningful consumer choice and consent.<sup>2</sup>

Our retail energy market assumes all consumers can and must, regularly (every 3-6 months) assess retail offers available against their own, understand complex differences between offers, determine what the best offer for their needs is and successfully complete the switch to the offer they have identified. It also accepts that those who are unsuccessful at any part of this process should pay more for their energy needs (and effectively subsidise retailers and the small proportion of consumers who are successful). Consumer advocates have consistently rejected this as unacceptable in the context of an essential service, and neither in the interests of consumers, nor aligned with their consistently expressed preferences.

In simple terms, it is not acceptable for decent consumer outcomes in an essential service to be so contingent upon assumed consumer behaviour which is so seldom in evidence. Nor is it acceptable for the price of failure 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 consistent preference for many (if not most consumers) to find a reasonable energy plan and ‘set and forget’. This was acknowledged in the rationale underpinning Minister Bowen’s rule change package. 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.<sup>3</sup> 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 it is in the interests of consumers for regulation to help shape a market that better meets consumer needs and responds to their preferences.

Recently IPART has also found that while better offers (and significant savings) are theoretically available in the retail market (that is, better offers are publicly advertised), the majority of consumers are not accessing them.<sup>4</sup> This includes those experiencing payment difficulty and in need of retail hardship support. The price differentials indicate affected consumers (which represents, to some degree, the bulk of consumers) are more likely to experience payment difficulty due to being on more expensive offers.

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<sup>2</sup> The Justice and Equity Centre et al. 2025, [Submission to the AEMC on Delivering more protections for energy consumers: changes to retail contracts](#)

<sup>3</sup> Energy Consumers Australia, 2024, [Energy Consumer Sentiment Survey June 2024](#), p.12

<sup>4</sup> IPART, 2024, [Monitoring the NSW retail electricity market 23-24 report](#), pp.54-67



The current retail market and practices leave many, if not most consumers on terms which are more expensive than necessary. This is the result of a fundamental misalignment between the way consumers think about and engage with energy services, and the way the energy market is designed to deliver those services and price them for consumers.

## 2.2 Costs and barriers to switching

While we consider the assumption of regular switching to be a flaw in current market design, it is critical to consider why this assumption is so problematic for many consumers. For many households, particularly households experiencing disadvantage, there are considerable barriers to effectively switching energy plans with the regularity required to ensure reasonable 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;
- Constraints on time from long retailer call wait times and time to access an interpreter<sup>5</sup>;
- 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 shame and fear of being in payment difficulty<sup>6</sup>;
- Constraints resulting from mental health, physical health, domestic violence and other issues<sup>7</sup> impacting the capacity to deal with the 'mental load' of processes involved;
- 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; and
- The inability to ensure continuity between assessing and selecting a desired offer, and accessing it. This may be due to listed offers not being available, or not being available to them specifically. It may also be due to flaws in retail practices where a request for one offer, results in sign-up to a different offer.

In this context, the complexity of the retail energy market and the practices of retailers make comparing, identifying and effectively switching offers time-consuming, confusing, frustrating and

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<sup>5</sup> Sydney Community Forum and Energy Consumers Australia, 2024, [Insights Report: Understanding the diversity of consumers and their experiences of the energy system](#).

<sup>6</sup> The Justice and Equity Centre, 2024, [Powerless: Debt and Disconnection](#) and AER and Sydney Community Forum, 2024, [Consultation summary: Voices for Power listening session](#)

<sup>7</sup> Ibid.

often disappointing. Many consumers' previous experience can leave them knowing they are worse off by remaining on their current offer but concluding that the effort required to address this is likely to be wasted (because they will soon be 'back where they started') 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.

The deemed better offer was introduced as a means of aiding identification of the existence of a better offer and reducing barriers to consumers accessing them. As this rule change recognises, the introduction of the deemed better offer has had some impact, but it has not materially resolved the issues of barriers to consumers being on the best possible offer from their retailer. Further reforms are required to both improve the efficacy of deemed better offers, and /or ensure that consumers can more easily access and remain on the best possible offer from their retailer.

### 2.3 Deemed Better Offers

While implementation of the Better Bills Guidelines and deemed better offers were intended to help simplify information for consumers and smooth access to better offers, consumers continue to find bills confusing, with further reforms required. Consumers also consistently report difficulty in accessing their deemed 'better offer', even after having it provided to them on their most recent bill. In advance of a review of the Better Bills Guideline, and assessment of its impact, we highlight the following examples of issues with the practical accessibility of deemed better offers and inconsistencies with how they are calculated, including:

- Failures of choice and consent in the energy retail market, detailed in our submission to the AEMC's consultation paper on *Delivering more protections for energy consumers: changes to retail contracts*<sup>8</sup>. These are commonly reported by consumers in their attempts to access their deemed better offer (as well as access chosen offers more broadly). This includes being told offers are no longer available, not available to them, being signed up for a different offer than requested, and being told they are already on the better offer indicated (though at a different price).
- Inconsistencies in how deemed better offers are calculated across retailers, including what are regarded as material terms, and the period over which those terms are considered.
- Inconsistencies 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.

#### ***Recommendation 1.***

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*That this process includes direction to the AER to ensure the forthcoming Review of the Better Bills Guideline includes qualitative data on the actual experience of consumers in accessing their*

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<sup>8</sup> The Justice and Equity Centre et al. 2025, [Submission to the AEMC on Delivering more protections for energy consumers: changes to retail contracts](#)

*deemed better offer, and to engage with organisations that hold direct relationships with communities<sup>9</sup>. Ideally this direction should include a recommendation for bills and bill information to be standardised.*

### **3. Response to the proposed reform**

The proposal is to require retailers to provide a streamlined process for customers to switch to their retailer's deemed better offer as presented on the customers' bill. The proponent and the AEMC's consultation paper both provide little specifics regarding how such streamlining may be accomplished.

Without such detail it is difficult to provide detailed feedback on the proposed mechanism. However, we do note that any proposed approach should not regard prescription or principles-based approaches as mutually exclusive. We recommend any approach be based on robust principles and incorporate aspects of prescription consistent with those principles. This could include:

- Adopting a principle that retailers are responsible for ensuring consumers are not left on inferior offers, and that particularly those experiencing payment difficulty do not experience worse outcomes as a result;
- Adopting a 'multiple pathways' principle. This should aim to ensure consumers are provided with a range of 'streamlined' avenues through which to access the better offer, to ensure disadvantage and vulnerability are not further entrenched through exclusionary processes;
- That measures implemented to streamline access to better offers place requirements on retailers commensurate to the potential harm to consumers being left on inferior offers;
- Adopting a 'no wrong door' principle. Retailers should be required to implement systems which enact this principle, and proactively inform consumers of their deemed better offer whenever and wherever consumers engage with them. This should not be limited to bills, but include other interactions in-person, on phone calls, through chat boxes and digital apps and accounts;
- That consumer benefit and protection principles be applied to potential augmentation of sign-up and consent processes. This should include considering enabling consumers to "opt-out" of any automatic switch to a better offer, while being required to "opt-in" for any offers which may leave them worse off. This would obviously need to be accompanied by appropriate regulation of information, and timing periods; and
- Requiring retailers to improve supporting service infrastructure and capability, including measures to reduce retailer call-wait times, exploration of avenues for in-person support,

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<sup>9</sup> Sydney Community Forum and Energy Consumers Australia, 2024, [Insights Report: Understanding the diversity of consumers and their experiences of the energy system](#), p.7.

more practical access to interpreters and reviews to ensure culturally-safe customer service.<sup>10</sup>

## **Recommendation 2**

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*That the Commission consider and adopt both principles-based and prescriptive measures in formulating a preferred response to streamlining switching processes to ensure consumer experience and outcomes are prioritised and measures appropriately reflect retailer responsibility.*

## **4. Durable reforms**

Our organisations recommend the AEMC consider a range of more robust and durable reforms alongside, or built into, the proposed requirement for retailers to provide a streamlined better offer process. Even with a more streamlined process for consumers to switch to their deemed better offer, the substantive issues underpinning poor consumer outcomes will persist.

Consumers need an energy retail market that is designed to provide a fair price without the need for constant consumer-led switching, which simply exacerbates the structural information and power imbalance between retailers and consumers. The recommendations in this section of our submission have been advocated for by consumer and community organisations in a range of processes, including the Gamechanger process that was the precursor to this retail rule change package. We also draw the AEMC's attention to robust feedback provided to the AER on how the energy retail market can provide stronger outcomes for culturally and linguistically diverse communities.<sup>11</sup>

### **4.1 Improving explicit informed consent**

Our organisations have consistently raised the apparent failure to consistently apply Explicit Informed Consent in a way which delivers on the intent to protect consumers and ensure they get the outcomes they expect. This failure manifests in a practical asymmetry between retail practices which effectively leave consumers worse off than the terms they consented to (through the use of benefits periods, price increases and other changes during the term of a contract), and retailer assertions that consumers cannot be made better offer (through being put on a better offer) without violating the terms of consent.

This rule change, alongside others in the broader retail package, will achieve more meaningful outcomes for consumers if the AEMC incorporates measures to ensure explicit informed consent better delivers on its intent.

The AEMC should consider measures to augment explicit informed consent. This could include options for sign-up consent to include simple provisions for future 'automatic' switching to a better offer. This approach would need to involve appropriately robust conditions protecting consumers and preserving their choice and meaningful consent, including:

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<sup>10</sup> AER and Sydney Community Forum, 2024, [Consultation summary: Voices for Power listening session](#)

<sup>11</sup> AER and Sydney Community Forum, 2024, [Consultation summary: Voices for Power listening session](#)

- Ensuring that the terms of any ‘future consent’ are clearly and simply (and consistently) communicated to the consumer, and are time limited to the period of the contract they apply to. This should also involve ensuring a maximum time period for such consent, or a requirement for it to ‘sunset’ or be required to be ‘refreshed’ at regular intervals (for instance every year, where the contract period exceeds 12 months).
- Ensuring any ‘automatic switch’ must be clearly signalled in advance, outlining the impact for the consumer and offering them a defined period to ‘opt out’ if they wish to retain their current offer. This would need to be a simple process, able to be undertaken in the preferred consumer communication or engagement method. This would be in line with the principle that ‘opt out’ provisions should apply where consumers are being offered changes which leave them demonstrably better off.
- Involve defined, simple and consistent criteria by which ‘best offers’ are determined.
- Ensuring any ‘benefit’ assumed in a best offer is not contingent upon consumer behaviour (or does not require a change from the consumers current behaviour) and is predictable and durable. For instance, it cannot involve paying on time, managing usage in a particular way (particularly where that differs from the consumers established behaviour), or meeting other specific conditions.
- Ideally be implemented alongside measures to implement a retailer duty of care or responsibility to consumers (as outlined below).

Our organisations consider this measure could be implemented alongside a version of the proposals being considered in this rulechange, or as a simpler and more effective alternative to it. It should be possible for retailers to obtain (a defined) general consent for future automated switching to their best available offer. Alongside other reforms, such as the implementation of a consumer duty, this involves less risks and is more likely to be effective than the mechanism proposed alone.

### ***Recommendation 3***

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*The AEMC consider wider measures to augment explicit informed consent. This could include options for sign-up consent to include simple provisions for future ‘automatic’ switching to a better offer (subject to conditions detailed in this submission).*

## **4.2 Introducing retailer duty of care**

Our organisations strongly support the introduction of an explicit retailer duty of care and responsibility to act in the best interests of the consumer in the delivery of good consumer outcomes in access to energy as an essential service. This would support a narrower principle (which should influence this process) that retailers are responsible for ensuring consumers are not left on inferior offers, and that particularly those experiencing payment difficulty do not experience worse outcomes as a result.

Energy is an essential service, and retailers do (and should) have a ‘duty of care’ to their customers in providing that service. Making this duty more explicit is demonstrably in the long-

term interests of consumers. Enshrining this duty, and responsibility for customer outcomes, would put the onus on retailers to demonstrate they have fulfilled their duty and acted to deliver the good outcomes understood and agreed upon by their customer. It would better align retailers' incentives for service and product innovation, with better consumer outcomes, and provide a more durable basis for the AER to monitor their performance.

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

There are different interpretations of what an explicit retailer duty of care would entail, and its implementation will require deep consultation with consumer and community organisations to ensure intended improved, positive outcomes for consumers. An explicit retailer duty of care should complement and strengthen, not replace, a regulatory framework for the energy retail market. As we detailed in consultations with the AER, this should involve prescription and robust principles, alongside strong monitoring and enforcement mechanisms.

#### ***Recommendation 4***

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*That the AEMC, alongside other energy market bodies and Energy Ministers, consult on and implement a retailer duty of care to act in the best interests of the consumer in the delivery of good consumer outcomes in access to energy as an essential service.*

## **5. Continued engagement**

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