Submission to the Australian Energy Regulator (AER) on Retail guidelines review

DATE: 17/07/2026

Energy Consumers Australia is the national voice for household and small business energy consumers. We advocate for a fair, affordable, and reliable energy system that meets everyone's needs and leaves no one behind on the journey to net zero.

Feedback on Draft Retail Guidelines

Energy Consumers Australia (ECA) welcomes the opportunity to comment on the Australian Energy Regulator's (AER) draft Retail Guidelines and Notice of Draft Instruments. The Guidelines under review shape how consumers experience the market in practice and are central to ensuring households and small businesses receive clear information and meaningful assistance when they need it.

ECA supports the AER's efforts to consolidate the Guidelines and introduce overarching design principles, such as the requirement that retailers communicate "fairly and honestly."[1] We also recognise the need to update the guidelines to reflect recent rule changes, including new obligations around hardship protections and comparative information.

However, it is important to acknowledge the structural limits of what this review can achieve. The current regulatory framework places the retail guidelines subordinate to the National Energy Retail Law (NERL) and National Energy Retail Rules (NERR). Because of this legislative hierarchy, the AER's ability to mandate structural market improvements through this review is heavily constrained. As the AER has said, "The scope of this guideline and the fact that customer hardship is set out in the NERL means our ability to be more principle-based or make changes that are not specifically provided for in the NERR and the NERL is very limited."[2]

The AER is largely restricted to refining *how* retailers disclose information, rather than being able to implement rules that ensure the *suitability* of the products or the *fairness* of the outcomes themselves. Attempting to address deep, structural market issues, such as energy affordability, complex pricing, and barriers to accessing hardship support, using regulatory tools that were primarily designed to govern document formatting, and information disclosure is an inherently limited approach.

As a result, the proposed Guidelines continues to place the primary burden of achieving fair outcomes on consumers. The framework assumes that standardised notices, comparison tools and plain-language policies will sufficiently equip people to navigate market complexity, avoid loyalty penalties and access support. Furthermore, making structural modifications solely at the guideline level faces an inherent operational challenge: by the time subsequent rule changes or broader reforms are finalised, these Guidelines must inevitably undergo resource-intensive reviews and revisions. This cyclical approach is an inefficient method of regulation, particularly given the rapid emergence of increasingly complex products and services in the Australian energy market. By continuously reacting to market changes with new layers of information disclosure rather than shifting the legal responsibility onto providers, this regulatory cycle leaves structural protection gaps and forces consumers to bear the "burden of navigating complex pricing."[3]

We note the AER has previously recommended introducing a principles-based consumer duty; the AER notes in other contexts such as Australian financial services markets a duty incorporates obligations to

[1] AER, 2026, Retail guidelines – Draft, 8.
[2] AER, 2026, Notice of draft instruments, 25.
[3] Paterson et al., 2025, Suitability analysis for a consumer duty in retail energy markets, 7

act honestly and fairly.[4] ECA also continues to advocate for an overarching, outcomes-based consumer duty that would shift the responsibility for delivering good consumer outcomes onto energy providers.[5] To address the gap between the limitations of the current guidelines and the aspiration for a consumer duty, the AER should explicitly articulate in its final decision how it views the principles-based approach and the new "honest and fair" objective as a deliberate step toward a consumer duty.

While we acknowledge the AER cannot create such a duty through this review under the existing legislative architecture, these Guidelines and the “fair and honest” objectives should act as a stepping stone. As well as continuing to advocate for a consumer duty, ECA strongly encourages the AER to formally capture these structural insights to recommend that the Energy Ministers’ Council (ECMC) and the Australian Energy Market Commission (AEMC) consider expanding the underlying authorising provisions for the Guidelines to overcome the limitations the AER has identified. This would overcome current constraints and ensure that future regulatory instruments can directly address product suitability and target market complexity.

We encourage the AER to foster a culture of continuous improvement. While the Guidelines establishes a necessary regulatory floor, they should not be seen as the limit of a retailer’s responsibility. Indeed, in many instances, the current prescriptive nature of the guidelines inadvertently caps the potential for retailer innovation, preventing them from exceeding these minimum standards to deliver better outcomes. However, the Guidelines should also grant retailers the flexibility to design products and services that demonstrably improve consumer outcomes. We encourage the AER to foster a culture of continuous improvement by looking beyond prescriptive rule-setting. For instance, the AER could adopt a model similar to the UK Financial Conduct Authority, which publishes reports on "good practice" and "areas for improvement" in product and service design.[6] This approach empowers retailers to learn from leading practices and adapt their operations proactively, rather than reacting to prescriptive, resource-intensive guideline amendments. Providing real-world examples of successful strategies would allow the AER to reduce the compliance burden while simultaneously driving a culture of better consumer outcomes. To support this shift toward an outcomes-based culture, we also encourage the AER, in its advice to the ECMC and AEMC, to identify the additional tools, data, and resources it would need to effectively administer such a framework alongside a broader consumer duty.

This submission therefore recommends that the AER:

- Reduce avoidable sources of confusion that undermine trust by being clear about the intended outcomes for consumers and how retailers are expected to demonstrate compliance.
- Ensure guidance reflects how consumers actually engage with energy, moving away from a reliance on proactive consumer switching as the primary safeguard and better accommodating digital channels and emerging energy products and services.
- Report on “good practices” and “areas for improvement” in product and service design, modelled on by regulators like the UK Financial Conduct Authority to drive industry-wide learning.

[4] AER, Review of consumer protections for future energy services, Final advice (2023).
[5] ECA, Exploring a consumer duty for Australia’s energy market | Energy Consumers Australia.
[6] Financial Conduct Authority, *Products and services: good practice and areas for improvement*, https://www.fca.org.uk/publications/good-and-poor-practice/products-services.

Part 3: Design principles

ECA supports the introduction of the design principle objective in Clauses 6 and 7, which mandate that retailers "act fairly and honestly when presenting prescribed information".[7] Shifting the regulatory focus toward the intent and impact of retail communications is an important step toward an outcomes-focused framework.

To maximise the effectiveness of this approach, the AER must establish a clear hierarchy governing how principles-based obligations interact with prescriptive layout rules. We encourage the AER to clarify how retailers are expected to demonstrate the “fair and honest” objectives as the overarching compliance obligation while also adhering to the prescriptive rules under each section of these guidelines. It may be helpful to adhere this to real-world consumer outcomes and examples. Furthermore, there must be clear, enforceable consequences for retailers who strictly follow prescriptive rules but still produce notices that fail to achieve these design principles.

This hierarchy is critical because prescriptive rules on their own, when applied to a broad, varied and evolving range of retailer communications and market conditions, can lead to suboptimal consumer outcomes, either inadvertently or because flexible, principles-based approaches allow for more flexible and better-tailored solutions.

For example, under the current "Deemed Better Offer" (DBO) calculation requirements (Clause 16, Section 4), retailers must base comparisons on the previous 12 months of usage history. For a household that has recently installed a solar and battery system, this prescriptive requirement could require the retailer to present a flat-rate plan as the best option, even when it is financially inferior to a plan suited to their new set up. In such cases, the Guideline should clarify whether and how the retailer can prioritise the "fair and honest" objective by presenting the most suitable offer for the consumer’s current circumstances, rather than relying on a prescriptive rule that could result in suboptimal outcomes. If the DBO obligation cannot be derogated from, the Guideline could clarify whether and how retailers might provide additional information or otherwise support consumers to make informed decisions in circumstances where the DBO may not present a full picture of the best offer available to the consumer.

We support the inclusion of Clause 10, which requires communications meet technical accessibility standards and be adapted to the needs of culturally and linguistically diverse (CALD) consumers. We support this accessibility framework be broadly applied to other energy consumer touchpoints. When information is designed to work for those with the most needs, such as individuals with low English proficiency, limited digital skills, or low vision, it works better for all consumers. However, technical compliance with accessibility standards is an insufficient baseline on its own. The AER should consider how these principles translate into actual outcomes, ensuring that communications are evaluated based on real-world comprehension and usability in practice. To support implementation, the guidelines should provide clear compliance requirements so that retailers understand how they can demonstrate they have met the "honestly and fairly" presentation benchmark.

We also support the formatting requirements introduced in Clauses 8 through 13. These rules align with established best practices for document navigability. However, the AER must recognise the structural limits of these design principles. Focusing only on how a document looks treats the side effects of a complicated market rather than the root problem. Even a perfectly designed page cannot deliver a fair outcome if the energy plan itself is too confusing to understand. BETA’s behavioural research notes that while simplifying language and layout makes information less intimidating to navigate, the actual

[7] AER, 2026, Retail guidelines - Draft, 8

effectiveness of these guidelines remains heavily dependent on whether consumers read static notices or choose to engage via alternative channels, such as apps and web portals.[8] For example, if a retailer offers an inherently convoluted product, such as a flexible plan linked to secondary settlement points, adjustments to white space or typography will not achieve clear consumer understanding.

For pricing and product complexity that falls outside the legislative scope of these guidelines, we encourage the AER to use the evidence gathered during this review to demonstrate where information disclosure alone fails to protect consumers from harm. The AER should ensure its findings are considered as part of the BECE process and continue to recommend structural changes such as a consumer duty.

Part 4: Comparative Information

ECA supports the intent of Part 4 to provide clear, actionable comparative disclosures, including Better Offer messages. However, the current framework continues to rely heavily on consumer vigilance. It assumes that people regularly check and interpret complex notice documents to avoid a loyalty penalty. To align Part 4 with the "honest and fair" objective in Part 3, the guidelines must move from checking prescriptive document disclosures to empowering consumers through simpler product communication across more effective channels.

Clause 19(f) allows retailers to continue reusing identical plan names for differently priced plans, provided they add a commencement date (Month-YYYY). We understand that requiring unique names for every minor price change can lead to an unmanageable volume of plan names for retailers. Viewed this way, a date suffix could be a pragmatic improvement.

However, the AER must ensure this date-stamping method is executed in a way that provides genuine context for consumers to take action. Showing a date suffix only on the recommended offer is insufficient. To make this more functional, the guidelines should require retailers to display the commencement date of the consumer's current plan version alongside the recommended plan date. For example, if a bill shows a consumer they are on "Smart Saver [Jan-2024]" but could switch to "Smart Saver [Sept-2025]," the timeline becomes more transparent allowing them to see exactly how outdated their current rates are, or understand that they are looking at a newer, cheaper version of the same product. This approach also limits confusion during price-update periods (such as 1 July), where a better offer message could otherwise become inapplicable before a consumer even has the chance to review it.

The problem is that still it relies on a consumer to actively open and read a bill or letter to discover they are overpaying for an essential service. To make communications genuinely “honest and fair” the application of these principles should be broadened to allow comparative information such as the delivery of DBO notifications allowed outside the billing windows and traditional billing formats. The guidelines and the application of the Design Principles should actively encourage non-prescriptive, proactive notifications across channels such as direct text messages or within energy provider mobile apps outside the bill allowing retailers to demonstrate they have actively and honestly communicated to consumers that they could be on a better deal.

We also support the AER’s decision to exclude non-financial benefits from the Deemed Better Offer calculation. Non-financial benefits, such as streaming subscriptions or frequent flyer points carry either hidden or subjective values and including them in the formula would make bill comparisons unclear and

[8] Behavioural Economics Team of the Australian Government (BETA), Better bills impact report: How the AER's Better Bills Guideline drives consumer confidence and market engagement, 2025, 41–42.

potentially misleading. We encourage the AER to remain alert to how these plans are marketed. While a contract that includes non-financial rewards can be a positive outcome for some households, the lack of an objective, upfront monetary value means the burden once again falls on consumers to figure out whether they are getting a genuine deal.

Part 5: Plan information and flexible plans

ECA welcomes the consolidation of the Retail Pricing Information Guidelines into Part 5 and supports the broad intent of the new Plan Information Objective (Clause 23). Requiring retail disclosures to "help customers understand and differentiate between key features" is an important regulatory alignment.

However, as highlighted in our executive summary, there is a fundamental constraint on what document disclosure can achieve when underlying market structures grow more convoluted. As the energy market introduces emerging products, distributed assets, and dynamic pricing, the focus of the guidelines must move beyond traditional formatting to actively prevent consumer detriment.

Plan information

This includes the use of the term “flexible plan” to categorise any offer where unit rates vary based on external factors and are not standard flat-rate or standard time-of-use tariffs. The AER notes in the Notice of Draft Instruments that it adopted this term because it is used in the Consumer Data Right (CDR) data standard and the Competition and Consumer (Industry Code – Electricity Retail) Regulations.

ECA is concerned that this terminology creates unnecessary confusion. The Industry Code defines a “flexible tariff” in a way that includes standard TOU plans,[9] whereas the AER’s proposed guidelines adopt a different definition that excludes TOU plans. Moreover, “flexible” may suggest something accommodating *for* the consumer i.e. beneficial to a consumer’s schedule or needs. In the context of the draft guidelines, however, a “flexible plan” represents an inherently complex product where prices could be subject to the consumer shifting their energy use. Labelling a multi-rate tariff or wholesale pass-through product as a “flexible plan” could create a false impression of simplicity.

The proposed definition is also overly broad. It groups together fundamentally distinct products that carry completely different consumer risks. A wholesale pass-through plan exposes a consumer to severe financial market volatility, while a VPP agreement exposes a consumer to the risk of asset degradation (e.g., heavy automated usage reducing a battery's lifespan). Regulating these disparate products under a single, vague umbrella term makes it exceedingly difficult to mandate clear, specific disclosures that actually help the consumer understand what they are signing up for. If disclosures are to be “fair and honest” as required by Part 3, the AER must replace the broad and confusing 'flexible plan' definition with terminology that more accurately reflects the nature of these offers. The term 'flexible' is problematic as it implies a benefit to the consumer, whereas these products are often inherently complex and require active oversight to avoid poor financial outcomes. The AER should consider alternative terminology, such as 'conditional rate plan', that more transparently communicates the need for active engagement and the risks associated with variable external conditions.

Energy Made Easy

ECA supports the data submission timelines and the requirement in Clause 33 that retailers must cross-reference a plan based solely on its Energy Made Easy (EME) generated plan ID. This practical

[9] Competition and Consumer (Industry Code—Electricity Retail) Regulations 2019 - Federal Register of Legislation; flexible tariff means a tariff, for supplying electricity, that varies (wholly or partly) according to the time of day when the electricity is supplied.

mechanism removes a major point of friction for consumers interacting with customer service representatives during a switch. However, EME currently has limitations in effectively comparing flexible plans.[10] It is critical that the AER fast-tracks technical upgrades to EME to accurately reflect the costs and benefits of “flexible plans” without overwhelming consumers.

Language requirements

ECA supports the retention of the language mandates and standardised vocabulary items set out in Table 1, such as the required terms for discounts and charges[11]. However, to ensure these guidelines do not become a source of unnecessary friction or confusion, the AER should review the 'prohibited' and 'required' terms list to resolve inconsistencies. For example, the Guideline prohibits the use of ‘unconditional discount’ while Energy Made Easy continues to use the term ‘conditional discount.’[12] We encourage the AER to refine this list or Energy Made Easy to ensure terminology is intuitive and consistent across all digital and printed channels.

The AER must also establish firmer operational boundaries regarding how value-based descriptors are integrated into plan names. Retailers frequently use promotional terms like "Savings" or "Bonus" in plan names to entice consumers, even when the plan’s rates are higher than the default standing offer or safety net safety margins. For instance, the ACCC’s recent investigation into Origin Energy’s 'Ongoing Saver' plan confirms the real-world harm caused by these practices, where customers were misled by the implication of ongoing savings that did not materialise.[13] As suggested previously, we believe that plan names should align more closely with the outcomes customers experience, rather than marketing language or technical constructs.[14] This position aligns with formal feedback from the ACCC, which warned that promotional plan names can undermine informed choice if they imply "discounts, benefits or suitability that are not borne out in practice".[15] While a footnote in the draft guidelines notes that names must not alter the operation of the Australian Consumer Law, this general expectation should be codified as an explicit prohibition. To ensure plan names comply with the “honest and fair” standard, the guidelines should explicitly ban the use of value-oriented language unless the plan guarantees a net financial improvement compared to the benchmark safety net tariff and any other generally available plans offered by the same retailer. This would prevent retailers from marketing a plan as a 'saving' while simultaneously offering superior, lower-cost alternatives to the same consumer

Part 6 & 7: Benefit change notices and customer bills

ECA broadly supports the changes to the *Benefit Change Notice* and *Customer bills* guidelines. Removing the confusing "do nothing" cost calculation and zone-based layout templates and replacing them with the overarching design principles is a positive step. This gives retailers the necessary flexibility to design notices that improve consumer comprehension. However, the effectiveness of Part 6 depends on ensuring that these changes deliver real-world outcomes. Benefit change notices are a critical communication touchpoint that signals a reduction in plan value or a price increase, and they must give consumers a direct, clear way to respond.

We support Clause 50(f), which mandates that a Benefit Change Notice must feature a Better Offer message (except where a specific exemption applies). Rather than forcing the customer to take the

[10] AER, 2026, Notice of draft instruments, 18-19.
[11] AER, 2026, Draft Retail Guidelines, 14.
[12] Glossary of energy market terms | Energy Made Easy
[13] Origin Energy to refund customers after ACCC investigation | ACCC
[14] ECA, Submission to the AER Consultation Paper on Retail Guidelines Review, 14.
[15] AER, 2026, Notice of draft instruments, 33.

initiative to research alternatives when their plan value drops, placing a specific alternative offer directly on the notice shifts the burden of finding a better deal back onto the provider.

Clause 49 and 55 requires that benefit change notices and communication of bills be provided using a customer's preferred method of communication "where possible." While we support this for customers affected by family violence, the "where possible" phrasing creates an unacceptable risk for all consumers. If a customer has not explicitly recorded a preference, or if their digital contact details are outdated, relying on retailer discretion often leads to the notice being sent via a channel the customer does not monitor. [16] Given that these notices signal a direct financial loss for the household, ensuring actual receipt must be the priority. Relying on retailer discretion is a symptom of a framework that places the burden of engagement on the consumer.

To ensure this protection is effective, the guidelines should shift to a standard where retailers are obligated to identify and utilise a reliable communication channel for all customers. If a confirmed digital preference does not exist or has failed, mail must serve as the reliable default. We encourage the AER to elevate this requirement, ensuring that no customer is left uninformed simply because of an unclear channel preference or outdated digital records.

Part 8: Customer Hardship Policies

We broadly support the proposed changes to the Customer Hardship policies section. Modernising the language of these policies and ensuring standardised statements are rewritten in plain, accessible English are positive steps that will help remove immediate barriers to engagement.

The term "hardship" remains deeply stigmatising and acts as a significant psychological barrier that deters customers from accessing assistance. We acknowledge the AER's constraints regarding the prescriptive terminology embedded in the NERL. However, the AER should use the Guideline to explicitly encourage retailers to substitute the term "hardship" with "affordability" or "payment difficulty" in all consumer-facing communications, including variations of the standardised statements, wherever legally permissible. Support must be framed as an entitlement, not a favour, to ensure vulnerable consumers feel safe to engage.

Furthermore, while rewriting standardised statements into plain English is a positive step, it does not correct the deeper structural issues in the market where support is often provided too late, is too narrow in scope, and is insufficiently focused on reducing debt and keeping people connected. Despite the current guideline, energy debt levels have continued to increase, successful hardship program exits remain low, and disconnections for non-payment remain unacceptably prevalent. [17] To ensure these efforts are genuinely effective, the AER should draw on the inclusive service design practices championed by the UK Financial Conduct Authority, and directly test these specific standardised statements with consumers who face the highest barriers to engagement, including seniors, those with low English literacy, and CALD communities, to confirm that the terminology is genuinely comprehensible and stigma-free in practice before the guidelines are finalised.

Access to concessions also remains a significant systemic barrier. ECA found that among households identified as vulnerable to, or experiencing, energy hardship, 65% of those with two or more hardship indicators were not enrolled in a hardship program with their retailer, 30% had not contacted their retailer about difficulty paying bills, and 49% had not applied for any government assistance in the past 12

[16] Energy & Water Ombudsman NSW, Energy & Water Ombudsman Queensland and Energy & Water Ombudsman South Australia, 2025, *Retail guidelines review – Consultation paper*, 8.

[17] ECA, 2025, Submission to the AER Consultation Paper on Retail Guidelines Review, 21.

months. This suggests that current support systems are not sufficiently reaching households in need and points to the need for more proactive identification and assistance.[18] ECA acknowledges the AEMC's rule change regarding the application of concessions to bills. While we continue to advocate for fully automated concession matching by governments, the hardship guideline must require retailers to take proactive steps to identify eligible households and assist them in verifying and applying their concessions.

Shifting from reactive disclosure to proactive, outcomes-based support

To drive better outcomes, we encourage the AER to consider whether the Guideline needs to move towards a performance framework. Rather than treating the hardship policy as a series of procedural steps, the AER should define the statutory requirement to act "fairly and reasonably" as an active performance standard. This means retailers must be held accountable for the effectiveness of their assistance, not just their adherence to the guidelines.

The Customer Hardship Policy Guideline should compel retailers to focus on the key outcomes expected from their practices o achieve its purpose. The AER should evaluate retailer compliance based on whether their hardship policies effectively lead to:

- Early and proactive identification of payment difficulty (significantly reducing the average age and size of debt upon entry to a program).
- Lower ongoing energy costs for customers (e.g., through proactive energy efficiency measures and appliance upgrades).
- A demonstrable reduction in disconnections for non-payment, ensuring disconnection is genuinely a last resort and that threats of disconnection are strictly prohibited as a routine customer engagement tool.
- Ensure assistance information is prominently displayed on website homepages, expressed inclusively, and supported by simple navigation and multiple languages.
- Provide self-service options for adjusting payment plans, smoothing bills, and accessing better tariffs.

These key outcomes are part of a consumer duty mindset that requires retailers to affirmatively provide hardship assistance where objective indicators, such as repeated missed payments, broken payment plans, or severe usage suppression, reasonably suggest a customer is experiencing financial stress. It is vital that the regulatory framework recognises the "invisibly vulnerable" customers who pay their bills on time but do so by rationing essential energy use to detrimental levels or foregoing other essentials like food and medication.

[18] ECA, 2025, Consumer Energy Report Card: Understanding and measuring energy hardship in Australia, 16.

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