OPERATIONALISING AN ENERGY CONSUMER DUTY

REPORT #4

Jeannie Marie Paterson and Lauren Willis. Research assistance: Evgenia Bromberg and Reasey Keo

14 August 2026

1. Introduction

Overview

There is considerable interest in introducing an Energy Consumer Duty into the Australian energy market. The aim would be to lighten the burden on consumers in managing their energy needs and reduce regulatory complexity governing energy suppliers, while also placing greater responsibility on them for good outcomes for consumers.[1]

The ACCC has expressed support for

> "The development of an overarching consumer duty for current and future energy services".[2]

The ACCC has also expressed support for exploring the model identified in Report 2 as most suitable for Australian energy markets.[3]

An Energy Consumer Duty would require Retail Energy Providers to affirmatively develop sales, billing, and service processes calculated to deliver good consumer outcomes, to perform regular consumer testing and data analysis to see if those processes are working, and to revise those processes where the desired outcomes are not being achieved. An Energy Consumer Duty would accordingly take the burden from consumers in making choices about energy services and products. It puts greater obligations on energy providers to ensure good outcomes for consumers but also allows greater flexibility in achieving these outcomes. Regulators, and potentially ombudsman services, retain a critical role in overseeing the process, providing guidance on the scope of the duty and ensuring the Energy Consumer Duty is not mere 'tick a box' compliance or a weak self-regulatory code.

Illustrations

To illustrate the operation of an Energy Consumer Duty, this report focuses on two categories of issue that are highly significant to consumers, complex for retail providers and have been the subject of concern by regulators and consumer advocates. These issues are:

- Retail Energy Plans: price confusion and, relatedly, the loyalty penalty, which means existing customers may pay more for energy.

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[1] For background and discussion see Exploring a consumer duty for Australia's energy market | Energy Consumers Australia.

[2] ACCC, *Inquiry into the National Energy Market* (12 June 2026) p 10.

[3] ACCC, *Inquiry into the National Energy Market* (12 June 2026) p 95.

- Consumer Energy Resources: mis-selling and unsuitability.

In each of these categories there may be existing or proposed energy rules and consumer protection principles that provide a level of protection to consumers. Nonetheless, an Energy Consumer Duty would place direct, proactive obligations on energy providers to provide good outcomes to consumers that are more coherent and adaptive than relying on these disparate and often reactive regimes.

Series

This report is part of a series:

Research Report #1 – considers the reasons for introducing an Energy Consumer Duty (Rationale Report)

Research Report #2 – discusses the form of the Consumer Duty (Models for an Energy Consumer Duty Report)

Research Report #3 – considers the limits of existing consumer protection regimes that might be addressed by an Energy Consumer Duty (Gap Analysis Report)

Research Report #4 – considers the 'on the ground operation' of an Energy Consumer Duty (What an Energy Consumer Duty may Require Report)

Research Report #5 – considers protections for people in situations of vulnerability (Vulnerability Report)

These reports focus on reforms to the National Energy Retail Law, overseen by the Australian Energy Regulator. They also refer, where relevant, to reforms proposed by the Essential Services Commission in Victoria.

2. THE PROPOSED ENERGY CONSUMER DUTY

This part outlines the broad guiding principles of an Energy Consumer Duty.

We have previously recommended that an Energy Consumer Duty should be modelled on the UK Consumer Duty in financial services. This would mean the Energy Consumer Duty would encompass three elements: the guiding principle, cross-cutting rules and outcomes.

Fig 1: Structure of a Consumer Duty

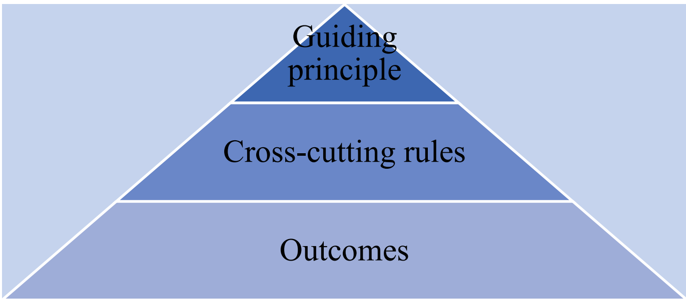

Fig 2: Key elements of an Energy Consumer Duty

Overarching guiding principle

The guiding principle of an Energy Consumer Duty is acting to deliver good outcomes for consumers.

Supported by three cross-cutting rules:

Conduct in pursuit of this principle should be guided by the cross-cutting rules:

1. Retail Energy Providers must respect retail consumers' *reasonable expectations* in contracting for energy services and products;

2. Retail Energy Providers must avoid *foreseeable harm* to their retail consumers; and

3. Retail Energy Providers must *support* retail consumers in accessing and maintaining access to affordable energy and meeting their energy needs.

To deliver four outcomes:

The principle of good consumer outcomes is operationalised through four subcategories of expectation:

1. *Fair price and value:* consumers pay a price for energy that represents fair value.

2. *Suitable products and services:* consumers receive energy products and services that have been designed to meet their needs, circumstances and objectives.

3. *Understanding*: consumers are equipped with information that supports them to make effective and informed decisions about their energy needs, including energy products and services.

4. *Customer support*: consumers are able to access good quality customer service and dispute resolution that supports them to meet their energy needs.

Fig 3: Expectations of providers and regulators

Expectations of Retail Energy Providers

An outcomes-based Energy Consumer Duty would require regulated energy providers to:

- affirmatively develop their products, services, pricing structures, communications, sales and billing practices, and customer support in a manner calculated to deliver good consumer outcomes,
- perform regular customer testing and data analysis to assess whether their actions are producing good customer outcomes,
- revise their approaches where they know or reasonably ought to know that their actions are not producing good customer outcomes, and
- report data to, and submit to auditing by, the regulator, in regard to good consumer outcomes.

These obligations would be scalable to the size of the energy provider.

Expectations of Regulators

Regulators would continue to play an active role under an Energy Consumer Duty:

- Regulators must review reporting data to assess whether the provider is producing the desired outcomes.
- Regulators must assess the adequacy of the measures reported to support the objectives of the regime.
- Regulators must also impose sanctions or award benefits to incentivise Retail Energy Providers to develop the methods and take the actions necessary to produce the desired outcomes.

3. THE OPERATION OF AN ENERGY CONSUMER DUTY

Before turning to more specific categories of application, this part considers the broad principles and application of an outcomes-based duty.

The proposed Energy Consumer Duty moves from overreliance on prescriptive rules and reactive statutory standards that place responsibility for reading material and making purchasing choices on consumers to outcomes-based duties that focus on the firm providing the product or service.

The energy sector is particularly ripe for outcomes-based regulation for several reasons. First, a regulatory scheme focused on good consumer outcomes, enforced well, reduces price complexity and supports competition on service quality and innovation. It can further give consumers confidence in the new technologies that will be key to a green energy transition. Second, this approach gives energy providers substantial flexibility at a time of technological change; it thereby avoids some of the innovation-retarding effects of inflexible rules. Third, the approach empowers regulators to keep up with technological change, because it is technologically agnostic – a new energy product or service is subject to the same outcomes requirements as older products and services.

A focus on providers

Outcomes-based (or sometimes termed performance-based) duties specify the outcome that the firm responsible for the regulated activity must meet, but not the process for achieving that outcome. Thus, under an Energy Consumer Duty, Retail Energy Providers would be responsible for implementing measures to achieve these outcomes, and for verifying to the regulator how they intend to do this and by what measures they will assess compliance. Retail Energy Providers must change course if the methods they develop fail to produce the required outcomes, whether due to flawed design of the methods or due to changes over time in the environment (for example, changes in technology, consumer beliefs, or market structure). Outcomes-based regulation places responsibility on firms, such as Retail Energy Providers, to produce desired outcomes because firms have much greater capacity and expertise than regulators to develop ways to produce these outcomes effectively and at lower cost.

A proactive duty

An Energy Consumer Duty differs from the existing regime in being a proactive duty focused on outcomes.

It would require regulated energy suppliers to do more than refrain from conduct that is prohibited under energy or consumer laws. Rather, they must affirmatively act to eliminate wasteful expenditure of consumer time and effort, to dispel consumer uncertainty and confusion, and otherwise to produce good consumer outcomes. This includes not only addressing problems after they arise, but also actively looking for indicators of potential problems. When retail energy providers discover such indicators, they must redesign factors within their control – such as pricing structures (what consumers pay for energy), 'feed-in' payment structures (what consumers are paid for putting energy into the grid), ownership and control structures for products and services, and marketing and other communications with consumers – to head off problems before they occur.

More specifically, an Energy Consumer Duty would require Retail Energy Providers to audit their own processes, marketing, and contracts for friction and other barriers to consumers obtaining affordable energy, suitable new energy products and, for consumers in need, hardship assistance. For example, if confusing pricing structures prevent consumers from selecting lower cost tariffs, those firms probably need to simplify their pricing structures.[4]

An Energy Consumer Duty requires Retail Energy Providers to make products, services, pricing and ownership structures transparent. This means Regulated Retail Energy Providers must test their consumers for understanding of key facts about their energy transactions. If a firm discovers customer confusion, it must act to dispel it, such as by improving the information provided to those consumers or by restructuring transactions to bring them into alignment with consumer expectations. Whether the firm 'caused' the confusion is not relevant to the analysis; what is relevant is whether the firm dispelled it.

An Energy Consumer Duty is not a duty to produce a perfect outcome in all circumstances

An Energy Consumer Duty would be a duty on Regulated Retail Energy Providers to take actions that produce good consumer outcomes. However, Regulated Retail Energy Providers do not have a duty to ensure every consumer will experience a good outcome in all circumstances. For example, natural disasters will unavoidably cut off power at times, some households will change energy use patterns in unexpected ways that affect the appropriateness of some contracts, and some consumers will experience unanticipated financial hardship (knowing that effective hardship policies should be in place). But providers do have a duty to ensure that consumers experience good outcomes under reasonably anticipated circumstances, and to revise their approach when they have reason to know of the occurrence of a previously unanticipated circumstance that negatively affects consumer outcomes.

In the retail energy sector, this could mean, eg, facilitating tariff structure changes mid-contract when a household's energy use changes significantly, affirmatively placing consumers on the best available tariff (from which the

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[4] With respect to pricing simplification, a regulator might perform a coordinating function, standardising the format in which those prices are presented, analogous to the comparison rate used in consumer credit. However, standardised disclosures alone will not produce good consumer outcomes unless firms are incentivised to produce customer understanding of prices. See, eg, Lauren E. Willis, 'Decision-making and the Limits of Disclosure: The Problem of Predatory Lending', *Maryland Law Review* (2006).

consumers might choose to opt out[5]), or affirmatively providing hardship assistance where late or missing bill payments reasonably suggest consumer hardship.

Of course, where existing regulation creates inefficiency, opacity, and unfairness, that too must change. An Energy Consumer Duty can produce good outcomes only when Retail Energy Providers do not face major regulatory barriers to restructuring processes and transactions to achieve good consumer outcomes. Such barriers could include strict requirements of consent as a bar to switching existing customers to lower tariffs, regulation that mandates time-consuming hardship application procedures that differ between jurisdictions or requires bills to use confusing terminology.[6]

On the other hand, Regulated Retail Energy Providers are not excused from producing good consumer outcomes where an alleged regulatory 'barrier' is easily avoided. For example, that a regulation uses confusing terminology does not in itself require Regulated Retail Energy Providers to use that terminology; Regulated Retail Energy Providers can, and must, find ways to communicate with consumers, whether through text, visuals, or other means, such that consumers understand the key information they need to confidently make welfare-enhancing decisions.

The role of regulators

Outcomes-based regulation does not leave Retail Energy Providers to self-regulate or make up their own performance standards. In outcomes-based regulation, regulators remain central in providing guidance on their expectations, overseeing performance of firms and, where necessary, imposing penalties on non-compliant firms.

Continued role of rules in the regime

Although an outcomes-based approach reduces the need for detailed rules, it does not eliminate them. Instead, it will operate in conjunction with cognate rules and complement consumer protection regimes. For example, rules may perform a safety net function, specifying the performance that must be provided in situations where consumers are experiencing vulnerability or managing hardship, or setting down essential safety standards.

[5] See, eg, ASIC, Better Banking for Indigenous Consumers, Report 785 (July 2024) (finding that banks that required low-income consumers to opt in to low-fee bank accounts achieved very low uptake rates but banks that defaulted low-income consumers into low fee accounts from which consumers could opt out achieved much higher uptake rates, improving consumer outcomes).

[6] For example, consumers may be confused by 'best offer' versus 'default offer', 'standard offer' and 'standing offer', all of which appear to be required by regulation.

4. PRICE CONFUSION

The following sections set out in more detail how a Consumer Duty in energy might operate, starting with price confusion.

Understanding energy pricing is difficult for consumers. The Australian Energy Market Commission's Pricing Review Final Report noted that:

> "Electricity pricing today is widely experienced as complex, confusing and difficult to compare. Many people feel they should not need to be an expert to find a good plan, yet the current system often requires ongoing effort just to avoid paying more than necessary."[7]

Price confusion means consumers may not select the products that would serve them best. This means consumers may be paying more for energy than they need, even on the current operation of the market. They may also be failing to act on incentives to use energy outside peak periods. The ACCC's Inquiry into the National Energy Market for December 2025 observed that:

> "complexity in the market presents a barrier to customer switching. We found customers would be offered up to 233 plans when seeking to switch plans, and that there are increasing numbers of customers on plans with complex pricing structures".[8]

Price confusion arises primarily from two factors: (i) complexity and (ii) marketing practices.

Price complexity

Although electricity itself is a commodity, with invariant quality across the marketplace, retail electricity pricing structures are surprisingly complex. For consumers to select the lowest-priced retail electricity offer, given their needs, and thereby drive the retail electricity provider market toward efficiency, consumers must understand the net prices they are likely to pay, given their energy usage patterns (and, in the case of sustainable energy products, energy production patterns), under the various offers available from energy retailers.

Those offers are multidimensional, and can include:

- Supply charges: a daily fixed charge for having access to the electricity grid.

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[7] Australian Energy Market Commission, *The Pricing Review – Electricity Pricing for a Consumer Driven Future: Final Report* (18 June 2026) [14].

[8] ACCC, *Inquiry into the National Energy Market* (18 Dec 2025) p 6.

- Demand tariffs: a charge, typically in addition to low flat rate usage charges, which is typically calculated based on the customer's highest 30-minute period of consumption during pre-defined peak energy grid usage periods in the prior billing period multiplied by the number of days in the billing period.[9]
- Time of use rates: a variety of electricity usage prices (for example, peak, off-peak, and shoulder) depending on the times of day when the consumer pulls energy from the grid.
- Billing period or block tariffs: different prices for the first [x] kWh of electricity used during the billing period versus the kWh used above that threshold, often with these tiers being applicable to peak time of day usage only.
- Frequent flyer points, coupons, or other perks.[10]

For consumers, the offer may include payment for electricity fed into the grid at peak usage times and charges for electricity fed into the grid at nonpeak usage times (beyond a kWh threshold under which the customer can export energy into the grid at no charge during off-peak times).

Many aspects of these price structures are heavily influenced by network operator charges. Network operators structure their charges to retailers to incentivise demand shifting and cover fixed network distribution costs.[11] Note, however, that retailers are not strictly bound to the distribution cost pricing parameters set by network operators; retailers can alter these so long as they pass through sufficient funds back to the network operators.

Given the complexity consumers face, forecasting the prices they will pay for electricity, net of perks and profitable energy exports, so as to be able to compare retail provider offers, would be difficult even if all the parameters of price components were uniform across the market (for example, if all plans of all retailers used the same threshold kWh usage amount before a second tier of prices applies).

But these parameters are not fixed – for example, one retailer might offer plans with only peak and off-peak pricing, whereas another could include shoulder

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[9] The ACCC notes that 'the proportion of customers on time of use and demand tariff structures continues to grow across the NEM, with customers on these tariff types accounting for over a quarter of all customers in the NEM for the first time. However, the growth between these categories varies between states.' Demand plans are most concentrated in SE Queensland: ACCC, *Inquiry into the National Energy Market* (2026) p 40.

[10] Discussed further below.

[11] See discussion of both equity and simplification issues in these charges: Australian Energy Market Commission, *The Pricing Review – Electricity Pricing for a Consumer Driven Future: Final Report* (18 June 2026).

pricing. Moreover, retailers are not limited to these pricing components – for example, a retailer could offer a plan with multiple consumption tiers, and consumption tiers could be applied to energy usage in both peak and nonpeak periods. Retailers might structure rates to give their consumers direct exposure to the wholesale electricity market, which may benefit some consumers over time but also make them subject to fluctuations in the wholesale market that they may not be equipped to manage.

Confusing marketing

In addition to the pricing structures themselves, retail energy services may be designed and marketed in ways that are likely to confuse consumers, undermining efforts to shop for the best offer.

The Choice designated complaint in 2025 drew attention to confusing marketing practices:

- Energy plans marketed as ‘saver’ or ‘savings’ plans that were more expensive than other offerings from the same retailer.
- Energy plans with different pricing but the same name, meaning customers on older, more expensive plans may not understand there was a cheaper plan because it was described as having the same name.
- Prompts to switch that referred to plans that were not available or for which individual consumers were not eligible.[12]

The use of the word ‘saver’ or ‘saving’ to describe more expensive plans was investigated by the ACCC. In July 2026, the ACCC announced that Origin Energy Limited would ‘refund over $270,000 to more than 4,500 customers after an ACCC investigation into allegedly misleading representations regarding Origin’s “Ongoing Saver” residential electricity plan’. [13]

Choice has also drawn attention to the confusing features of energy plans sold with nonfinancial bundled features, such as movie tickets or frequent flyer points. The value of these offerings is hard to calculate, and it is not clear whether and to what extent they counterbalance the increased price of the plans themselves.[14]

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[12] Choice, *Designated Complaint* (2025).

[13] ACCC, ‘Origin Energy to Refund Customers After ACCC Investigation’ (14 July 2026) https://www.accc.gov.au/media-release/origin-energy-to-refund-customers-after-accc-investigation.

[14] Andy Kollmorgen, ‘Energy plans bundled with extras might not add up to a good deal’ *Choice* (21 July 2025).

Another issue is that the financial value of the added services is not factored in on government comparison sites such as Victorian Energy Compare or Energy Made Easy, making like-for-like comparisons with other non-bundled plans impossible.

Consequences for consumers of confusing pricing

Energy Consumers Australia, Submission to the Australian Energy Market Commission (AEMC) on electricity pricing reported that:

> "Many consumers find energy offers and contracts complex and confusing. Our Consumer Energy Report Card surveys show that 30% of consumers don't know what type of electricity tariff or plan they have, and 31% of consumers don't know what a tariff is (only 23% 'definitely know' what a tariff is)".[15]

What are the consequences of complex and confusing pricing in the retail energy market? Pricing might be used to shift energy time of use, which is an efficient outcome. To the extent that price structures shift energy usage to off-peak times to relieve pressure on electricity distribution networks, reducing the resources that would otherwise be spent building more distribution capacity, this could be a net positive for consumers, who would otherwise bear the burden of those distribution capacity building costs.

But there are other, considerable unproductive outcomes. In many cases, it likely attracts new consumers and keeps them not on the basis of the actual net price the consumer is likely to pay for the offer but instead on the basis of misunderstanding this price; that is, complex pricing likely allows energy retailers to extract profits from consumers by impeding effective consumer price shopping. Complex pricing also impedes switching as consumers are unable to understand and compare options.[16]

In some instances, consumers may be unable to respond to the factors that determine whether the plan brings them value. In particular, for demand tariffs, price is retrospective, depending on use over a previous period. Many consumers may fail to achieve value from these plans, making them not only complex but potentially unsuitable.[17] Prices linked to the wholesale market

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[15] Energy Consumers Australia, *Submission to the Australian Energy Market Commission (AEMC) on electricity pricing for a consumer-driven future draft report*, (13 February 2026) p 9: https://energyconsumersaustralia.com.au/our-work/submissions/submission-aemc-pricing-review-draft-report.

[16] Energy Consumers Australia, *Submission to the Australian Energy Market Commission (AEMC) on electricity pricing for a consumer-driven future draft report*, (13 February 2026) p 10: https://energyconsumersaustralia.com.au/our-work/submissions/submission-aemc-pricing-review-draft-report.

[17] Noting demand tariffs are increasingly being phased out.

may similarly fail to benefit many consumers with no proactive duty on retailers to measure outcomes and move customers to better plans.

Existing and proposed mechanisms for reducing the impact of pricing confusion

A variety of interventions have been identified to reduce pricing complexity and confusion. These interventions include rule changes:

- Draft Energy Retail Code of Practice (version 4, 2025 – expected to take effect from 2026). Division 5 contains provisions with the objective of giving customers 'an entitlement to clear, timely, easily understood information' to allow them to evaluate the ongoing suitability of their customer retail contract and the steps they can take to find an alternative customer retail contract. [18] This includes 'prominently displayed, helpful information that enables them to easily… identify whether they are on their retailer's deemed best offer; understand how to access their retailer's deemed best offer; and understand how to access offers from other retailers via the price comparator'.
- A May 2025 Australian Energy Regulator decision requires retailers that re-use plan names to provide additional information below their Better Offer message alerting consumers to a cheaper 'same named' plan.[19]

AEMC recommendations

The Australian Energy Market Commission, *The Pricing Review* recommended more system-wide changes to simplify pricing structures, aiming for 'a market that is easy to navigate and built around real consumer needs'. It made four key recommendations to this end:

> "Recommendation 1: Shine a light on retailer behaviour that contributes to negative outcomes for loyal customers.
>
> Recommendation 2 Make it easier for consumers to find electricity plans and services that suit them.

[18] ESC, Draft Energy Retail Code of Practice, clause 105(a).

[19] AER, 'AER requires retailers to include additional information on bills' (Media Release, 23 May 2025) https://www.aer.gov.au/news/articles/communications/aer-requires-retailers-include-additional-information-bills.

> Recommendation 3 Simpler energy plans, with complexity handled behind the scenes, to unlock the full value of a consumer-led energy system for everyone.
>
> Recommendation 4 Regularly review customer outcomes to refine regulations and eliminate unnecessary red tape".[20]

These recommendations might be part of an Energy Consumer Duty, and the recommendations from the AEMC are broadly consistent with the approach, especially in their focus on reducing the burden on consumers and reviewing outcomes. An energy consumer duty would be squarely focused on outcomes that are beneficial to consumers.

The Energy Consumer Duty and confusing pricing

One application of the Energy Consumer Duty may be to require retailers to design retail tariffs that are comprehensible to consumers and marketed only to consumers who can respond to features of the plan.

Existing law and reform proposals may assist in making the pricing options clearer for consumers and addressing the issues for consumers on older, more expensive deals. An Energy Consumer Duty differs from these options in that it places obligations on providers to ensure that consumers obtain fair prices, rather than leaving this to consumers (after being encouraged to switch) or prescriptive rules about pricing.

To the extent a policy places the onus on the retailer to provide simple pricing structures, an Energy Consumer Duty would provide the principled outcome that should drive these measures rather than being ends in themselves. An Energy Consumer Duty represents an approach that takes the burden of navigating complex pricing off consumers to instead make retailers responsible for simpler pricing with the aim of ensuring good outcomes.

An Energy Consumer Duty also provides a comprehensive rather than ad hoc approach to the goal of good consumer outcomes. It builds review-and-revise style obligations into the expectations on energy providers rather than requiring rule change where interventions are not providing the expected outcomes for consumers.

To the extent that complex and confusing pricing extracts profits from consumers by attracting consumers who misunderstand the likely long-term costs and benefits of the offer and by impeding existing consumers from engaging in effective price shopping, it would violate an Energy Consumer

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[20] Australian Energy Market Commission, The Pricing Review – Electricity Pricing for a Consumer Driven Future: Final Report (18 June 2026) ix–x.

Duty. Firms can seek profit by competing on price and quality. However, extracting profit through complexity that impedes shopping violates:

- the fair value outcome
- the consumer understanding outcome.

Confusing pricing also violates the three cross-cutting Energy Consumer Duty rules: confusing plans and complex pricing are inconsistent with consumers' reasonable expectations that 'discounts' mean something substantive. They cause harms to consumers by potentially leading them to pay more for energy without reaping the benefits of behavioural change. These actions also fail to support consumers' household energy objectives, which for all consumers include obtaining the most cost-effective plan.

Clear and understandable pricing

Proposed reforms responding to confusing pricing have suggested requiring clearer information be provided to consumers. From a consumer perspective, clearer information is not the same as understandable information or the ability to act on that information.[21]

By comparison, the UK Consumer Duty is accompanied by specific obligations addressing the consumer outcome of *consumer understanding*. This includes information in Principle 2A.5.3:

> (1) A *firm* must support *retail customer* understanding so that its communications:
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> (a) meet the information needs of *retail customers*;
>
> (b) are likely to be understood by *retail customers*; and
>
> (c) equip *retail customers* to make decisions that are effective, timely and properly informed.
>
> (2) A *firm* must communicate information to *retail customers* in a way which is clear, fair and not misleading.
>
> This obligation requires firms to communicate 'in good time for retail customers to make effective decisions, including (1) before the purchase of a product; and (2) at suitable points throughout the lifecycle of the product' (Principle 2A.5.5).

Additionally, the outcome of understanding should not be established by assertion. The question then becomes, what clearly defined measures that can

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[21] Australian Energy Market Commission, The Pricing Review – Electricity Pricing for a Consumer Driven Future: Final Report (18 June 2026) Recommendation 2.

be effectively monitored would fairly assess whether a firm's retail pricing structure extracts profit through confusion?

One practical approach to the concern about price confusion would be to expect confusion audits – which means testing consumer understanding of the issue and setting metrics for understanding. If the metrics are not met, then providers must change the way in which pricing is structured.

For example:

- Retail Energy Providers must demonstrate that 80% or more of consumers understand different offers available to them from the firm or face penalties, or

- Retail Energy Providers must pay for a collective auditor that tests bills for consumer understanding, and face penalties if test subjects do not understand.

The kinds of questions that might be asked include:

- Do consumers understand and have the capacity to fulfil the requirements to use energy at a particular time to benefit from the pricing tariff they have chosen?

- Can consumers accurately compare the value of plans with giveaways (points, tickets etc) with comparable plans without those giveaways to understand the value of the 'reward'?

5. THE LOYALTY PENALTY

Complex and confusing energy pricing impedes effective consumer choice and also places barriers on switching. This effect leads to the so-called *loyalty penalty*, which refers to consumers who remain on the same plan for longer than a year paying more for the same plan than recent subscribers. Thus, the Australian Energy Market Commission, *The Pricing Review – Final Report* recognised:

> "There is also a strong sense that the system penalises those who do not shop around. Longstanding customers often pay more simply for staying put. In response, many consumers disengage, sticking with a familiar plan even if they suspect they are overpaying."[22]

[22] Australian Energy Market Commission, The Pricing Review – Electricity Pricing for a Consumer Driven Future: Final Report (18 June 2026) [17].

The nature of the loyalty penalty

There is a concern that customers who do not regularly switch providers or products may be left on overly expensive deals, referred to as a 'loyalty penalty'. The ACCC's *Inquiry into the National Electricity Market* (2024) evaluated the level of competition for new and switching customers in the energy market. Its report identified that customers who switch energy offers regularly 'tend to be on better prices' due to retailers intentionally engaging in differential treatment of price-setting and adjustment for new and existing customers.[23] The retail pricing analysis by the ACCC – which excluded rebates and concessions – found that across Australia, customers on flat rate offers that were two or more years old had calculated annual prices that were, on average, 16.9% or $317 higher compared to customers on newer offers.[24]

Considering the loyalty penalty again in 2025, the ACCC found '"loyalty penalties" persist in the retail electricity market, with customers on very old plans paying significantly more than customers on newer plans.' [25] There had been some reduction in this effect. The ACCC found 'more customers on newer plans (41.8%, up from 29% in 2024) and a higher proportion of customers on their retailer's best offer (26.7% of residential customers, up from 19.3% in 2024).' [26] Nonetheless, the ACCC found that:

> "Retailers continue to offer new or switching customers prices well below default offers. The potential gains from switching away from the default offer range between about $100 to $250 per year under typical usage assumptions, depending on region."[27]

The ACCC found '36.5% of customers (nearly 2.5 million) are paying prices at or above the default offers'. [28] Customers on older plans pay 'between 0.9% and 4.7% more than customers on newer plans, depending on plan type'. [29]

Analysis by Energy Consumers Australia suggests that only 20% of Australian energy customers review their household energy plan and investigate

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[23] ACCC, *Inquiry into the National Electricity Market* (December 2024) p 1.

[24] ACCC, *Inquiry into the National Electricity Market*, (December 2024) p 3. This analysis assumed 100% achievement of conditional discounts. Older offers examined by the ACCC, which were not subject to regulations limiting the size of conditional discounts to a 'reasonable estimate of costs incurred' for contracts entered into from 1 July 2020, were more likely to have significant conditional discounts attached: at 47.

[25] ACCC, *Inquiry into the National Energy Market* (18 Dec 2025) p 2, 4.

[26] ACCC, *Inquiry into the National Energy Market* (18 Dec 2025) p 2, 4.

[27] ACCC, *Inquiry into the National Energy Market* (18 Dec 2025) p 2, 4.

[28] ACCC, *Inquiry into the National Energy Market* (18 Dec 2025) p 2, 4.

[29] ACCC, *Inquiry into the National Energy Market* (18 Dec 2025) p 20.

alternative options several times per year, while 43% do so around once per year.[30]

Better offer options

These figures raise questions about the effectiveness of some recent consumer protections implemented to facilitate price comparison for consumers. The Default Market Offer[31] and Victorian Default Offer[32] are pricing mechanisms set by the Australian Energy Regulator and the Victorian Essential Services Commission respectively. They apply to customers on standing offer contracts (although retailers are still able to offer contracts differing from the default as part of their market offers).[33] Default offers were introduced 'to protect customers by capping standing offer prices and acting as a common reference price for the majority of customers on market offers, enabling comparison of offer prices against a common benchmark.'[34] However, the above data raise concerns that customers on longer-standing market offers are not receiving the benefits of these protections.

A measure intended to facilitate price comparison and switching for consumers consists of requirements for retailers to inform customers whether there is a better offer available by including messages on their bills at prescribed intervals.[35] Known as 'Best Offer' messages in Victoria and 'Better Offer' messages in New South Wales, South Australia and South East Queensland, these messages are intended to provide consumers with an easy way to ascertain their retailer's best available offer without actively searching for alternatives online.[36]

The ACCC's December 2025 *Inquiry into the National Energy Market* concluded that 'we have also seen signs of tangible improvements in the way customers are engaging in electricity markets. This is evident in the higher

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[30] ECA, Consumer Energy Report Card data (June 2026).

[31] A price cap on standing offers.

[32] The price of a standing offer.

[33] See Australian Government, 'Default Market Offer and Reference Price Explained', *EnergyMadeEasy* (Web Page, 13 September 2019) <https://www.energymadeeasy.gov.au/hot-topics/default-market-offer-and-reference-price-explained>; Essential Services Commission (Vic), *Victorian Default Offer* (Web Page) <https://www.esc.vic.gov.au/electricity-and-gas/prices-tariffs-and-benchmarks/victorian-default-offer>.

[34] ACCC, *Inquiry into the National Electricity Market* (December 2024) p 4.

[35] See Essential Services Commission (Vic), Guideline 1 (2023): Form and Content of Deemed Best Offer Messages (23 November 2023); Australian Energy Regulator, Better Bills Guideline — Key Obligations for Energy Retailers (July 2025) 4.

[36] ACCC, *Inquiry into the National Electricity Market* (December 2024) p 53.

number of customers on newer plans and also the increase in the proportion of customers on their retailer's best offer'. Nonetheless, the majority of customers were not on their supplier's best offer (53.2%).[37]

The reasons for this may include the retailer practice of re-using offer names, which may be causing confusion and leading some customers to refrain from switching on the (mistaken) assumption that they are already benefiting from the better offer.[38] Many customers also do not open their bill – for example, because they have direct debit arrangements in place and are not required to open their bill to pay – and thus may not see such messages at all.[39]

Link with complexity

As noted earlier, the problem of the loyalty penalty is compounded by price complexity. The ACCC, *Inquiry into the National Energy Market* in 2025 observed that:

> "We observe barriers to switching, including complex pricing structures, a large number of available plans and plans with the same name but different prices".[40]

The Australian Energy Market Commission, *Pricing Review – Final Report* found that:

> "Many consumers find it difficult to compare alternative offers and decide whether to switch offers and/or energy service providers. ECA reports that over a quarter of consumers who tried to switch energy plans but did not, found that:
>
> • they could not find a product that suited them, or
>
> • the process was either:
>
> • too complicated
>
> • too confusing
>
> • too time-consuming."[41]

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[37] ACCC, *Inquiry into the National Energy Market* (18 Dec 2025) p 21.

[38] See Choice, *Designated Complaint* (2025).

[39] Australian Energy Markets Commission, Draft Rule Determination: National Energy Retail Amendment (Improving the ability to switch to a better offer) Rule (19 June 2025) i.

[40] ACCC, *Inquiry into the National Energy Market* (18 Dec 2025) p 20.

[41] Australian Energy Market Commission, *The Pricing Review – Electricity Pricing for a Consumer Driven Future: Final Report* (18 June 2026) p 18.

Proposals for reducing the impact of the loyalty penalty

A variety of interventions have been identified to avoid the loyalty penalty. These include:

- Draft Energy Retail Code of Practice (version 4, 2025 – expected to take effect from 2026). Division 5 contains provisions with the objective of giving customers 'an entitlement to clear, timely, easily understood information' to allow them to evaluate the ongoing suitability of their customer retail contract and the steps they can take to find an alternative customer retail contract.[42] This includes 'prominently displayed, helpful information that enables them to easily… identify whether they are on their retailer's deemed best offer; understand how to access their retailer's deemed best offer; and understand how to access offers from other retailers via the price comparator'.
- A May 2025 Australian Energy Regulator decision requires retailers that re-use plan names to provide additional information below their Better Offer message alerting consumers to a cheaper 'same named' plan.[43]
- Draft rule under the National Energy Retail Law preventing energy retailers from raising prices more than once every 12 months.[44]
- Draft rule under the National Energy Retail Law to 'ensure hardship customers benefit from their retailer's cheapest available deal if they cannot switch'.[45]
- Victoria's Essential Services Commission has recently reviewed the Energy Retail Code of Practice, publishing a Final Decision

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[42] ESC, Draft Energy Retail Code of Practice, clause 105(a).

[43] AER, '*AER requires retailers to include additional information on bills'* (Media Release, 23 May 2025) https://www.aer.gov.au/news/articles/communications/aer-requires-retailers-include-additional-information-bills.

[44] AEMC, '*AEMC delivers enhanced consumer protections to help customers find better energy deals'* (Media Release, 19 June 2025) https://www.aemc.gov.au/news-centre/media-releases/aemc-delivers-enhanced-consumer-protections-help-customers-find-better-energy-deals.

[45] AEMC, '*AEMC delivers enhanced consumer protections to help customers find better energy deals'* (Media Release, 19 June 2025) https://www.aemc.gov.au/news-centre/media-releases/aemc-delivers-enhanced-consumer-protections-help-customers-find-better-energy-deals.

and draft revised code that provides for an automatic best offer for customers facing payment difficulty.[46]

- Victoria's Essential Services Commission draft revised code also contains protections for 'customers on older contracts', with the objective of ensuring 'that a small customer on an older retail contract pays a reasonable price for their energy and is not unfairly disadvantaged in relation to the price they are paying in comparison to the price being paid by other small customers of the same retailer.'[47]

- Under this scheme, if a retailer identifies that a small customer on an older customer retail contract is not paying a reasonable price for their energy (whether through a review undertaken in accordance with these requirements or otherwise), the retailer must, within 30 days of identification: (a) reduce the tariffs paid by the small customer; or (b) subject to clauses 121C to 121F, switch the small customer to a cheaper plan.[48]

AEMC recommendations

The AEMC initially recommended in its Pricing Review that energy service providers should be required to charge all customers on the same plan the same price. However, following feedback, the AEMC recommended instead the clearer pricing obligations,[49] discussed above. The AEMC also recommended a response to the loyalty tax that would require energy service providers to:

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[46] These changes are effective from 2026. See ESC, *Energy Retail Code of Practice* (draft, 2025, version 4). See also, ESC, *Reviewing the Energy Retail Code of Practice* (Web Page, September 2025) https://www.esc.vic.gov.au/electricity-and-gas/codes-guidelines-and-policies/energy-retail-code-practice/reviewing-energy-retail-code-practice

[47] The draft code defines 'older customer retail contract' as 'a customer retail contract that is four years or older'. 'Reasonable price' is defined as 'a price determined by a retailer having regard to: (a) the lowest cost generally available plan available to new customers of the retailer; (b) the median price paid by customers of the retailer; (c) the price of the Victorian default offer or the retailer's standing offers; (d) the value of benefits available to the customer under their customer retail contract, including a discount, rebate or credit (including a conditional discount); (e) any other matters specified in a guideline published by the Commission: ESC, *Energy Retail Code of Practice* (draft, 2025, version 4) div 8 clause 121A(1).

[48] Clause 121B of the draft code also requires a retailer to:

- ensure that a small customer on an older customer retail contract is paying a reasonable price for their energy.

- review the tariffs of a small customer on an older customer retail contract at least annually.

[49] Andy Kollmorgen, 'Energy pricing review fails to rein in the loyalty tax' *Choice* (23 June 2026).

- Notify customers who have been on the same plan for four years (and annually thereafter) of the total amount they could have saved if they had switched to a better offer over that period.
- Report to the AER on how many customers are affected by a loyalty tax, and the total amount those customers paid over the better offer. These outcomes will be published to reveal treatment of customers who remain on the same plan, incentivising better behaviour by energy service providers.
- Make new market offers available to both new and existing customers, allowing existing customers to access the best prices.[50]

These recommendations are consistent with an Energy Consumer Duty. A Duty would however identify and inform the purpose behind more specific rules. It would also focus squarely on the obligation of retail energy providers to provide good outcomes for consumers, rather than efforts to make the consumer responsible.

Applying an Energy Consumer Duty to the loyalty penalty

Existing law and reform proposals may assist in making the pricing options clearer for consumers and addressing the issues for consumers on older, more expensive deals. An Energy Consumer Duty differs from these options in that it places obligations on providers to ensure that consumers obtain fair prices, rather than leaving this to consumers (after being encouraged to switch) or prescriptive rules (eg caps on price increases). An Energy Consumer Duty represents an approach that takes the burden of navigating complex pricing off consumers to instead make retailers responsible for ensuring good outcomes. An Energy Consumer Duty also provides a comprehensive rather than ad hoc approach to the goal of good consumer outcomes. It builds review-and-revise style obligations into the expectations on energy providers rather than requiring rule change where interventions are not providing the expected outcomes for consumers.

Energy Consumer Duty Measures to respond to the Loyalty Penalty

Under the Consumer Duty in Energy, increases in plan prices that leave existing customers on worse offers than comparable new customers, particularly coupled with confusing plan names, may violate the overarching consumer principle, which is to take actions that deliver good consumer

[50] Australian Energy Market Commission, The Pricing Review – Electricity Pricing for a Consumer Driven Future: Final Report (18 June 2026) Recommendation 2.

outcomes. The same applies to unevenly distributed discounts that leave existing customers worse off. Such products and services cease to offer fair value. Mis-naming violates the understanding outcome, because these actions prevent consumers from understanding key price information they need to make welfare-enhancing decisions with confidence.

Outcomes-based expectations might require metrics that show existing customers are not being made worse off during their plan period combined with effective deterrents against the loyalty penalty. For example, the Energy Consumer Duty might include commitments to:

- review customers on older plans and offer a reasonable price;
- redress poor pricing outcomes for existing customers;
- ensure that no new customers get a better deal than existing consumers on the same energy plan receive the following year.

6. CONSUMER ENERGY RESOURCES

Recent years have seen significant growth in new Consumer Energy Resources (CER) offered to consumers. The ACCC describes these new products as providing 'broader benefits to the energy system' and 'an important part of Australia's energy transition'.[51] The Australian Energy Market Commission, *Pricing Review – Final Report* reports that:

- "Australia already has the highest uptake of rooftop solar PV in the world, and battery adoption is accelerating rapidly encouraged by government subsidies.
- By the early 2030s, the smart meter rollout will be complete, and battery uptake will be more widespread.
- By 2040, around one in two households is expected to have rooftop solar, while one in four homes is expected to have batteries and electric vehicles."[52]

Terminology

Before considering these issues, it is useful to understand something of the nature of these new offerings, which we call together 'Consumer Energy Resources' and separately 'CER goods' and 'CER services'.

CER goods are 'located at consumers' premises [and] used to generate, store, consume, manage, convert or sell energy'.[53] They include:

- solar photovoltaic ('PV') systems;
- home batteries;
- thermal energy storage (eg water heaters);
- electric vehicles (EVs) and chargers;
- smart energy devices (eg controllable air conditioners).[54]

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[51] ACCC, *Inquiry into the National Electricity Market Report* (December 2024) p 3.

[52] Australian Energy Market Commission, *The Pricing Review – Electricity Pricing for a Consumer Driven Future: Final Report* (18 June 2026) [19].

[53] Department of Energy, Environment and Climate Action (Vic), *Consumer Energy Resources Consumer Protections Review* (Directions Paper, December 2024) 9 https://engage.vic.gov.au/Consumer Energy Resources-consumer-protections-review ('Consumer Energy Resources Review Directions Paper'). This paper includes a discussion of proposals to introduce a general consumer duty: see 32.

[54] Ibid.

While new energy goods are purchases by consumers of products that support sustainable household energy, *new consumer energy services* involve a service provider that assists consumers in achieving more sustainable and efficient energy use, including in circumstances where the consumer may not own or control the relevant assets.

CER services include:

- Single-premises energy management services: these work 'by using software to manage a consumer's energy consumption. This can include turning devices – for example, smart appliances, air conditioning, pool pumps, batteries, whitegoods – 'on and off remotely, and/or setting devices to operate within certain rules or conditions'.[55]

- Aggregation services: these 'utilise behind the meter [distributed] energy resources, smart devices, or a combination of both to manage energy usage at a premises and export of energy to the grid'.[56]

- Virtual power plants (VPPs): these arrangements allow individual energy sources based at multiple consumers' premises – for example, 'solar photovoltaic system, battery storage, air conditioners, storage water heaters, or pool pumps'[57] – to be aggregated and controlled by a single operator, typically in exchange for a benefit to consumers that participate, such as credit or a reduced electricity tariff. [58]

- Embedded networks: these 'may contain [distributed energy resource assets] that are controlled and operated by the embedded network operator… Some embedded networks may take the form of microgrids'.[59]

- Microgrids: these are 'a local energy grid with control capability, meaning they can disconnect from the traditional grid and operate autonomously'.[60]

Challenges

The Australian Energy Regulator and the ACCC have also identified multiple challenges for consumers arising from this transition, which are discussed

[55] AER, *Retailer Authorisation and Exemptions Review: Issues Paper* (2022) p 21.

[56] ACCC, *Inquiry into the National Electricity Market Report* (December 2024) p 61.

[57] ACCC, *Inquiry into the National Electricity Market Report* (December 2024) p 15.

[58] ACCC, *Inquiry into the National Electricity Market Report* (December 2024) p 61.

[59] AER, *Retailer Authorisation and Exemptions Review: Issues Paper* (2022) p 19.

[60] AER, *Retailer Authorisation and Exemptions Review: Issues Paper* (2022) p 19.

below. The price complexity already considered also contributes to the challenges for consumers in this market. [61] Comparisons between offers are also difficult:

"Further, the price of energy is no longer the main point of comparison or value to some consumers. Instead, consumers wish to compare different services e.g. VPPs, or no bill/cost type services. However, existing product and service comparison tools are largely focused on price comparison only".[62]

An Energy Consumer Duty potentially has a significant role to play in this context. For an Energy Consumer Duty to respond to these issues, providers of CER need to be brought within the energy regulatory system.

Bringing suppliers of Consumer Energy Resources under the jurisdiction of the AER

In the context of sustainable energy transition, providing consumers with the kind of protection provided under an Energy Consumer Duty, or even making the ACL protections effective 'on the ground', will require bringing providers of CER under the energy regulatory regime in some form, as discussed in Report 2. This would give the Energy Regulator oversight of the supply of these products. [63] It would also provide consumers with access to dispute resolution for problems arising from CER through industry ombudsman schemes.[64]

Our discussion assumes that this step to include providers within the retail energy regulatory regime is taken.

Concerns about CER

The ACCC's *Inquiry into the National Energy Market* (2026) observes that:

> "Consumer complaints relating to the purchase, installation and operation of household batteries and virtual power plants are all rising as battery take up grows".[65]

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[61] Australian Energy Market Commission, *The Pricing Review – Electricity Pricing for a Consumer Driven Future: Final Report* (18 June 2026) p 7.

[62] Australian Energy Market Commission, *The Pricing Review – Electricity Pricing for a Consumer Driven Future: Final Report* (18 June 2026) p 7.

[63] See further CALC *Submission to the Consumer Energy Resources (CER) Consumer Protections Review* (31 Jan 2025); ACCC, *Inquiry into the National Energy Market* (12 June 2026) p 10.

[64] ACCC, *Inquiry into the National Energy Market* (12 June 2026) pp 12–13.

[65] ACCC, *Inquiry into the National Energy Market* (12 June 2026) p 6.

The ACCC reports:

> "a 107% increase in consumer reports about consumer energy resources over the past 12 months. While battery installations have increased by 181% over the same period, we note reports could lag battery installations as issues may only occur sometime after installation. Energy ombuds schemes, fair trading offices, electrical safety regulators and industry code administrators have also experienced a marked increase in consumer energy resource reports since July 2025".[66]

The key risks for consumers associated with Consumer Energy Resources lie in the sales tactics and problems with the quality and suitability, as well as financial overcommitment. These issues lead to a mismatch between consumer expectations and the performance of the products, with considerable potential losses and other adverse consequences for consumers.

Mis-selling

Poor sales practices around Consumer Energy Resources (CER) include high-pressure sales, mis-selling and misrepresentations about the products and their likely benefits for the consumer.[67] The complexity around the products may enable them 'to be marketed in ways that take advantage and mislead consumers'.[68] This risk is particularly apparent with certain sales models (eg unsolicited selling through independent contractors who are remunerated per sale).[69] Mis-selling is likely to produce poor outcomes for consumers, including the supply of products that are not suitable for consumers' needs in terms of price or performance.

Unsolicited sales

Unsolicited sales techniques, which are increasingly common, may increase the risk of poor consumer outcomes.[70] In the context of unsolicited selling, marketing companies are more likely to use independent contractors and

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[66] ACCC, *Inquiry into the National Energy Market* (12 June 2026) p 10.

[67] EWOV, Victorian Energy and Water Ombudsman's Investigation of Consumer Experiences (VOICES); Consumer Action Law Centre, Sunny side up: strengthening the consumer protection regime for solar panels in Victoria (Report, 2019); Consumer Action Law Centre submission to DEECA consultation, Protections for consumers of DER.

[68] AER, *Review of Consumer Protections: Final Advice Report* (2023) p 39.

[69] ACCC, *Inquiry into the National Electricity Market Report* (December 2024) p102.

[70] ACCC, *Inquiry into the National Electricity Market Report* (December 2024) p 111.

remunerate them based on each successful sale, thus incentivising 'high-pressure sales techniques' and conduct that does not comply with the ACL. As stated by the ACCC, 'certain selling models may incentivise poor or inadequate information provision to consumers'.[71] The ACCC has observed that there is:

> "an increased risk of consumer harm from unsolicited selling of solar and household energy devices due to the higher costs and availability of government incentives, and this is an area we have been actively monitoring… For respondents in our market research who purchased solar in the last 24 months and household energy devices, 56.4% made purchases of more than $1,000 with 28.8% spending between $5,000 to $20,000. This confirms that the risk of financial detriment for these consumers is higher".[72]

Quality

Quality issues concern CER goods that are faulty or otherwise do not meet the consumers' performance expectations. When things go wrong, consumers may struggle with recourse – including identifying the core problem or knowing who is responsible. These kinds of risks associated with CER may amplify payment difficulties, where the consumer cannot pay the costs of the product, especially if it is failing to work effectively or has been mis-sold for their circumstances.[73]

Unsuitable products

Another risk arising from CER concerns products that are not a good fit for consumers or do not satisfy their needs, circumstances and expectations.

The issue largely arises from the complexity of the products being offered. CER products are highly complex. Indeed, some products, such as aggregation and energy management devices and services, have been described as 'too complex for consumers to understand'.[74] In particular, while most consumers will assume their initial investment in CER Products will be recouped through savings on their bills, this is a complex assessment that requires consideration of the consumers' individual circumstances (including household consumption

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[71] ACCC, *National Electricity Market Inquiry Report* (2024) p 102.

[72] ACCC, *Unsolicited Selling and Lead Generation* (July 2026) p 40.

[73] AER, *Review of Consumer Protections: Final Advice Report* (2023) p 17.

[74] AER, *Review of Consumer Protections: Final Advice Report* (2023) p 37. Although the AER Report phrases this risk in terms of a lack of information, the real concern is lack of understanding; it is likely that most information exists in the fine print of documents available to consumers, but information needs to be understood to be useful.

profile, solar intensity and availability of subsidies in their geographic location).[75] Further complexity lies in how tariffs may differ depending on charging schedules; for example, consumers may not understand the risk of incurring higher usage rates if they charge an electric vehicle outside automated scheduled periods.[76]

Complexity affects the ability of consumers to choose suitable products and makes them more susceptible to mis-selling. The AER has observed that:

> “There is a risk of consumers not understanding energy products, services, and pricing well enough ‘to make decisions about energy services that will best suit their needs and wants. … [This includes misunderstanding] the value a service can offer to a customer, its fit/appropriateness to the customer’s circumstances and how it interacts with other services the customer may already have at their premise.”[77]

Thus, consumers may enter into contracts that are not suitable for their circumstances or that specify financial commitments and/or lock-in terms that the consumer does not fully understand.[78]

Financial overcommitment

A related risk to consumers concerns financial overcommitment arising from the arrangements they enter into to fund their purchase of CER Products. There are reports that consumers do not understand the pricing plan for the goods they are provided with or even who provides the credit for the cost of the service. These misunderstandings may make the overall arrangement financially unsuitable for the consumer, even leading to financial hardship.

For example, consumers face unforeseen costs if they enter such agreements with expectations of being able to draw down on their battery for free when access to the battery is controlled by the provider of the New Consumer Energy Service.[79] During the term of a contract, changes to pricing structure and price terms (eg solar feed-in tariffs) may substantially affect what consumers pay for electricity.[80] While time of use pricing has the potential to result in lower bills,

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[75] ACCC, *Inquiry into the National Electricity Market Report* (December 2024) p 46, 76, 103.

[76] ACCC, National Electricity Market Inquiry Report, 92.

[77] AER, *Review of Consumer Protections: Final Advice Report* (2023) p 16.

[78] AER, *Review of Consumer Protections: Final Advice Report* (2023) p 16.

[79] ACCC, *Inquiry into the National Electricity Market Report* (December 2024) p 73.

[80] ACCC, *Inquiry into the National Electricity Market Report* (December 2024) p 114.

consumers may experience bill shock if they lack the knowledge or flexibility required to make use of the lower-priced periods.[81]

Consumers may also have separate financing agreements in place with retailers' third-party finance partners. These arrangements may mean the consumer terminates the service agreement but remains liable for making payments to the finance provider.[82]

VPPs

VPPs provide a useful example of the various risks arising from CER products.

VPPs can offer considerable cost benefits to consumers. The ACCC's 2026 National Energy Market Inquiry reports that:

> "Customers who participate in virtual power plants can achieve lower bills by shifting a greater amount of usage away from peak periods and receiving greater reimbursement for the electricity they supply to the grid, when compared to customers with only a battery and solar system. The lower bills also allow them to recover the cost of their system faster".[83]

However, VPPs also raise considerable issues of understanding and suitability. These were described by the ACCC, *Inquiry into the National Energy Market* (2026) as follows:

- "Product diversity and complexity: Virtual power plant products are complex and vary significantly between operators. This can make it difficult for consumers to understand the potential benefits and risks, as they may apply to their personal circumstances.
- …
- Limited interoperability: A lack of minimum common technical standards means virtual power plant operators are selective about which batteries they make compatible with their virtual power plants.
- Operator discretion in battery use: Virtual power plant customers give up control of their battery to their virtual power plant operator, who have significant discretion in how they use it and with limited liability or warranties over performance. This means customers bear most of the risk for the virtual power plant operator's performance in coordinating their

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[81] ACCC, *Inquiry into the National Electricity Market Report* (December 2024) p 38, 94.

[82] ACCC, *Inquiry into the National Electricity Market Report* (December 2024) p 95.

[83] ACCC, *Inquiry into the National Energy Market* (12 June 2026) p 7.

battery and requires customers to trust the operator to use their battery in their interest."[84]

The Australian Energy Market Commission, *The Pricing Review – Final Report* (18 June 2026) also reiterated the complexity of choices and key information barriers:

- "Products of the same type of VPP service vary significantly, including levels of control, responsibilities for installation/customer service. This may make it difficult for customers to compare product offerings.

- New energy services are often 'bolted on' to energy supply contracts. This increases the complexity of energy products, by increasing the terms and conditions consumers are asked to engage with.

- Contracts with lengthy contract terms may lock customers in and present barriers to switching. Further, many products only work with specific makes and models of CER."[85]

The complexity of services and the loss of control by consumers to VPP providers may mean the products do not meet expectations.[86]

For example, while some consumers are motivated by the expectation of being protected from blackouts when entering virtual power plant agreements, some of these agreements expressly restrict consumers from operating the battery during a blackout, or fail to provide for the operator to leave sufficient battery capacity in reserve for the consumer's use.[87] This consumer confusion is unsurprising, given that it accords with traditional understanding of property within the home being under the dominion of the homeowner.

Additionally, consumers may need to stick to automated scheduled charging times for electric vehicles if they are to benefit from cheaper usage – but to fully charge their vehicle during those times, they may also need to incur the cost of investing in fast-charging equipment.[88]

Financial commitment issues also arise. In particular, VPP agreements typically have a lengthy duration of 7 years or longer. When exiting such an

[84] ACCC, *Inquiry into the National Energy Market* (12 June 2026) pp 10–11.

[85] Australian Energy Market Commission, *The Pricing Review – Final Report* (18 June 2026).

[86] ACCC, *Inquiry into the National Energy Market* (12 June 2026) pp 10–11.

[87] ACCC, *Inquiry into the National Electricity Market Report* (December 2024) p 107.

[88] ACCC, *Inquiry into the National Electricity Market Report* (December 2024) p 92.

agreement, consumers risk incurring large exit fees correlating with the remaining value of the system.[89]

Existing responses to concerns about CER

The Australian Consumer Law provides some recourse for consumers who have been subject to mis-selling, poor quality products or unsuitable products. These concerns are addressed, at least to some extent, through the prohibition on misleading conduct, the consumer guarantees of acceptable quality and fitness for purpose in goods and due care and skill for services, as well as the regime regulating distance sales.

The ACL does not, however, provide a positive obligation on suppliers to ensure products are suitable for consumers' overall circumstances or ensure consumers understand the features of what is being provided. Moreover, the ACCC has no direct enforcement powers in respect of the consumer guarantees, which leaves consumers to pursue these claims themselves. The AER has no oversight over suppliers of CER Products, which also means consumers cannot access energy ombudsman services for dispute resolution.[90]

ACCC's suggested reforms

The ACCC's 2026 Energy Market Report has supported the introduction of a consumer duty to respond to the issues around CER. The ACCC has also suggested more specific reforms to improve consumer confidence in CER:

- Comparison tools.
- A mandatory code for the sale and supply of consumer energy resources.[91]

The ACCC has also previously recommended more specific reforms to address conflicts between the needs of consumers and operators, including:

> A requirement that a customer's foreseeable household consumption needs are taken into account as part of the sign-up process.[92]
>
> A 'guarantee that a minimum battery level will always be preserved so that: the battery is operated in accordance with the warranty specifications

[89] ACCC, *Inquiry into the National Electricity Market Report* (December 2024) p 95.

[90] AER, *Review of Consumer Protections: Final Advice Report* (2023) p 17. See also, ACCC, *Inquiry into the National Electricity Market Report* (December 2024) p 99, 103.

[91] ACCC, *Inquiry into the National Energy Market* (12 June 2026) p 13.

[92] ACCC, *Inquiry into the National Electricity Market Report* (December 2024) p 100.

> (thus protecting the consumer's asset); and the consumer's own household consumption needs can be met, so they are not forced to draw energy from the grid at peak times for example (or, where this cannot be prevented, that the cost is reimbursed to the consumer)'.[93]

DEECA has also suggested reforms including that an Energy Consumer Duty would encompass a duty to avoid unfair marketing practices.[94] DEECA has made recommendations for clear and accurate information about such products.[95] Moreover, DEECA has proposed duties of installation servicing and suitability.[96]

These types of requirements might be seen as components of the *understanding* and *suitability* outcomes under the Consumer Duty. However, without an overarching duty, they risk being piecemeal reforms that may prove too rigid over time as technology develops. The focus on *fair value* may be lost, as ultimately understanding and suitability support a CER that delivers value to consumers.

Applying an Energy Consumer Duty to the Supply of CER Products

Where there is a gap between consumers' expectations and the product provided (CER or NES/VPPs), consumers inevitably will not be receiving the value they contracted for from the service, and their confidence in the market is undermined. In such circumstances the product does not meet the Energy Consumer Duty outcome of *understanding* and is unlikely to meet the outcome of *suitability*. As a result, consumers may not receive *fair value*.

In the context of Consumer Energy Resources (CER) this would mean ensuring the suitability of the service, mediating conflicts between the interests of the provider and the consumer in relation to the control of energy assets, and ensuring the information provided to the consumer is able to be understood and acted on. Providers of New Energy Products would be required to demonstrate their compliance by testing and recalibrating the measures taken to give effect to the Consumer Duty.

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[93] ACCC, *Inquiry into the National Electricity Market Report* (December 2024) p 101.

[94] Victoria Department of Energy, Environment and Climate Action, Consumer Energy Resources (Consumer Energy Resources) *Consumer Protections Review Directions Paper* (Dec 2024) 32.

[95] Victoria Department of Energy, Environment and Climate Action, Consumer Energy Resources (Consumer Energy Resources) *Consumer Protections Review Directions Paper* (Dec 2024) p 33.

[96] Victoria Department of Energy, Environment and Climate Action, Consumer Energy Resources (Consumer Energy Resources) *Consumer Protections Review Directions Paper* (Dec 2024) pp 34–5.

Thus, in terms of *understanding*, retail energy providers should either:

- engage in sufficient education efforts that consumers come to understand unusual or counterintuitive features of Consumer Energy Products, including financing, prior to entering a contract; or
- restructure the supply of Consumer Energy Products to accord with homeowners' current intuitive expectations.

Understanding would ensure that the identified common misunderstandings in consumers signing on to CER, including especially VPPs, are addressed, eg control of the battery and payback periods.

An Energy Consumer Duty would also require energy providers to ensure the *suitability* of their products for consumers' needs.

In terms of suitability, a comparison might be made with the considerations identified as relevant under the UK Consumer Duty to suitable products, namely that:

> A retailer must:
>
> "(1) ensure that its *products* provide fair value to *retail customers* in the *target markets* for those *products*' (Principle 2A.4.2(1)).
>
> Principle 2A.4.8 states that: A *retailer's* assessment of whether or not a *product* provides fair value must include (but is not limited to) consideration of the following:
>
> (1) the nature of the *product*, including the benefits that will be provided or may be reasonably expected and its quality;
>
> (2) any limitations that are part of the *product*;
>
> (3) the expected total price to be paid by the *retail customer* or that may become due from the *retail customer*.
>
> (4) any characteristics of vulnerability that *retail customers* in the *target market* display and the impact these characteristics have on the likelihood that *retail customers* may not receive fair value from its *products*."

To the extent there are shortcomings, energy providers would need to change the way they are providing the product. Thus, in terms of *suitability*, energy providers should:

- identify the kinds of household for which the products are suitable and
- ensure they are distributed in this manner, with regard to consumers in circumstances of vulnerability.

7. NEXT STEPS

Essentially, an Energy Consumer Duty squarely places responsibility for good outcomes on the retail energy provider and the CER provider. In return there is a lessened burden from fine-grained prescriptive rules.

Next steps in introducing an Energy Consumer Duty include determining:

- The place to locate the duty within Australia's energy laws;
- The necessary legislative reforms
- The guidance needed to support the application of the duty
- Implementing a regime for bringing CER providers into the regime (eg through licensing)
- Making safeguards such as for hardship and vulnerability compatible with and complementary to the Energy Consumer Duty.