

1 March 2021

Michelle Shepard
Commissioner
Australian Energy Market Commission
Lodged via website

SUBMISSION – PROTECTING CUSTOMERS AFFECTED BY FAMILY VIOLENCE (RRC0042)

Dear Michelle

Energy Consumers Australia welcomes the opportunity to comment on how the National Energy Retail Rules (NERR) should be changed to better protect customers affected by family violence and provide feedback on the changes proposed by Red Energy and Lumo Energy.

Energy Consumers Australia is the national voice for residential and small business energy consumers. Established by the then Council of Australian Governments Energy Council in 2015, our vision is that customer values, expectations, and needs are realised through a modern, flexible, and resilient energy system.

Statistically in Australia, it is likely that family and domestic violence will, whether indirectly or directly, affect us all and it is a national crisis that needs widespread action'.¹ Further, research suggests the COVID-19 pandemic has worsened the severity and prevalence of family and domestic violence in Australia.² As an essential service, energy retailers can play an important role in preventing harm and supporting recovery, as perpetrators have used essential services to control and harm victim-survivors.³

Following the rule change in Victoria that set minimum standards in providing family violence assistance, we commend Red and Lumo for putting forward this important rule change proposal to ensure similar protections are mandated within the NERR. However, we feel the proposal has further opportunities to strengthen protections for an affected customer, and where applicable we have suggested these align with the Victorian Energy Retail Code (ERC) for consistency.

We note that an evaluation of the ERC provisions on family violence has not yet been conducted, and there is evidence to suggest the regulatory obligations are not meeting the needs of affected customers.⁴ The Australian Energy Market Commission (AEMC) should be open to reviewing the NERR rules, such that it can respond to incoming evidence and views on their effectiveness in protecting customers affected by family violence.

In response to the Consultation Paper, we outline below how the proposed rules can be improved to better protect customers affected by family violence. We also stress that effective implementation of these reforms relies on industry and community awareness, and recommend that the industry

¹ Bryant, W. and Bricknell, S. (2017). Homicide in Australia 2012–13 to 2013–14. Canberra: Australian Institute of Criminology, p.iii.

²Carrington, K., Morley, C., Warren, S., Ryan, V., Ball, M., Clarke, J. and Vitis, L. (2021). The impact of COVID-19 pandemic on Australian domestic and family violence services and their clients. *Australian Journal of Social Issues*, 56, p.540.

³ Economic Abuse Reference Group (2018). Family violence and economic abuse - an overview. p. 2.

⁴ Energy and Water Ombudsman Victoria (2022). *Reflect - February 2022*.



explores ways to communicate these new rules to our diverse community in a way that is meaningful and appropriate.

SPECIFIC COMMENTS ON THE RULE CHANGE PROPOSAL

Family violence policy

While we agree that retailers must have a family violence policy which contains *information on the assistance available for affected customers*,⁵ we believe the drafting should go further in ensuring the policy specifically addresses the protections and support that a customer is afforded. This level of prescription still allows for flexibility, but better ensures customers can identify the safeguards available to them (such as account security) when engaging with a retailer.

Review of family violence policy

The proposal requires retailers to review their family violence policy no less than once every two years. While we think this is reasonable, we suggest a better practice approach for retailers is to be proactive and iterative, allowing them to identify and address the evolving nature of family violence and the rapidly changing energy landscape, so that policies are successful in continuing to support affected customers.

A comparable example can be found in the banking industry, where businesses proactively identified that perpetrators of family violence were using digital payment channels as alternate messaging services to share abuse and threats, and consequently implemented safeguards to protect all customers.⁶

Family violence as a potential cause of payment difficulty

We see considerable value in explicitly recognising family violence as a form of payment difficulty. As noted in the AEMC Consultation Paper, a customer affected by family violence may have debts with other creditors or service providers even if they are not yet in debt with an energy retailer and may find a payment plan or other support measures helpful while working through their circumstances.⁷

While the Australian Energy Regulator's Hardship Guidelines place requirements on retailers to consider family violence as a reason a customer may be experiencing hardship, the requirement is not explicit, and may not be afforded the appropriate attention or sensitivity it requires. To recognise payment difficulty within the family violence policy only strengthens awareness and appreciation of an affected customer's circumstances, and further embeds this holistic view of family violence within the policy.

Safety of affected customers prioritised

We emphasise the importance of prioritising an affected customer's safety and suggest the AEMC consider this as an overarching clause that underpins the proposed rules.⁸ This would appropriately

⁵ Red Energy and Lumo Energy (2021). Rule change request – Family Violence Protections for Energy Customers. p.7.

⁶ Westpac Banking Corporation (n.d.). *Westpac Domestic Violence*. [online] [www.westpac.com.au](https://www.westpac.com.au/about-westpac/sustainability/our-positions-and-perspectives/difficult-circumstances/experiencing-family-violence/). Available at: <https://www.westpac.com.au/about-westpac/sustainability/our-positions-and-perspectives/difficult-circumstances/experiencing-family-violence/> [Accessed 23 Feb. 2022].

⁷ Australian Energy Market Commission (2021). Protection customers affected by family violence, Consultation Paper. p.5.

⁸ See, for example, the requirements in the *Energy Retail Code* 106E.



set the tone for the provisions, such that prioritising the safety of affected customers is not a singular requirement a retailer must fulfill but must be a consideration in everything they do.

Ensuring an affected customer's safety is paramount and should incur a civil penalty if breached. A Type 1 breach seems an appropriate measure, given a breach of the proposed rules may result in a risk to an affected customer's safety, be that severe injury, death, financial harm, or economic loss and we see risk of penalty and reputation only improving compliance.⁹

Additional clauses may require civil penalties, and we welcome the opportunity to provide comment when the Draft Determination is released.

Account security

Communicating with an affected customer through their preferred method is crucial, and the consequences for a customer's wellbeing can be serious if inappropriately managed. For example, the Energy and Water Ombudsman Victoria (EWOV) reported that an electricity retailer sent an SMS to a customer's former partner with her new account and address details, despite a family order against him. Due to the risk for her safety, the affected customer was forced to move.¹⁰ We therefore suggest aligning the proposed rules with the ERC provisions that gives communication preferences precedence.

In any event (whether alignment with the ERC or the drafting stays the same), we consider the rule should also include a requirement for retailers to keep a record of any arrangements that are agreed with the affected customer in line with the ERC. This requirement will ensure retailers are accountable for arrangements made with customers on communication preferences (particularly where the drafting leaves some discretion).¹¹

Consistency of market retail contract with family violence policy

We acknowledge the potential complexity retailers face in providing adequate support for affected customers and that in doing so, may breach other retailer requirements.¹² However, as raised in the Consultation Paper, we are concerned that the broad scope suggested by Red and Lumo, wherein a retailer's policy takes precedence to the extent of any inconsistency with their market retail contract, could go beyond what is required to ensure affected customers are supported and adequately protected, particularly with the high-level policy requirements as drafted in the proposal.¹³ We recommend further consideration is given to this issue, keeping in mind the outcomes sought for consumers affected by family and domestic violence.

⁹ Ashurst (2022). The Australian Energy Regulator gets a much bigger stick. [online] Ashurst.com. Available at: <https://www.ashurst.com/en/news-and-insights/legal-updates/the-australian-energy-regulator-gets-a-much-bigger-stick/> [Accessed 24 Feb. 2022].

¹⁰ Energy and Water Ombudsman (2018). *EWOV 2018 Annual Report*. p.43.

¹¹ *Energy Retail Code* 106G(6).

¹² Red and Lumo's submission addresses that there are instances relating to communication where retailers must prioritise the needs of an affected customer over strict compliance with the NERR (Red Energy and Lumo Energy (2021). Rule change request – Family Violence Protections for Energy Customers. P.3).

¹³ Australian Energy Market Commission (2021). Protection customers affected by family violence, Consultation Paper. p.3.



Evidence

An affected customer should not be required to provide documentary evidence when a retailer is considering disconnection of an energy service. Unless there is compelling evidence to the contrary, we consider any documentary evidence unnecessary in these circumstances.

Customers affected by family violence may not have, or be able to easily provide, documentary evidence, and may find discussing their experiences traumatic. We note that EWOV has recommended removing the request for unnecessary documentary evidence that can further endanger customers, as disclosures or information requests could jeopardise their very safety.¹⁴

ADDITIONAL COMPONENTS THAT COULD BE INCLUDED IN THE RULE

Small business customers should be covered

The pervasive impact of coercion is not confined to a customer's residential arrangements, and we believe a comprehensive approach to ensure consistent outcomes for affected customers must include SMEs. Retailers may be alerted to family violence issues through the business rather than residential account and should be able to respond accordingly.

As family businesses represent 67 percent of all Australian businesses,¹⁵ and over 1.4 million are sole traders,¹⁶ the concerns Red and Lumo raised in their proposal regarding the complex management and ownership structures of SME's we feel would be, if any, in the minority and could be managed on a case-by-case basis. Further, we note that in the Victorian consultation retailers were mostly silent on the inclusion of SMEs in the definition of an 'affected customer.'

Specialist family violence training for retailers' staff

We propose the inclusion of mandated specialist family violence training for retailer businesses, and for jurisdictional consistency recommend mirroring the ERC requirements.¹⁷

Economic abuse is still not well understood by Australians, such that almost a quarter could not identify specific behaviours that may signify this form of abuse even when presented with them.¹⁸ A retailer must first understand family violence before it can effectively address it.

In the ERC, staff training must be provided to both customer-facing staff and those responsible for the products and systems that a customer engages with. As noted by EWOV, "a lack of organisational awareness of family violence issues can create dangerous situations for victim-survivors, enabling perpetrators to weaponise processes and systems against them".¹⁹

¹⁴ Energy and Water Ombudsman Victoria (2021). Detect - September 2021.

¹⁵ KPMG Australia and University of Adelaide (2021). Family Business Report. p.2.

¹⁶ Mitchell, J. and Mitchell, J. (2021). Are there really 2.3m small businesses in Australia? [online] www.mybusiness.com.au. Available at: <https://www.mybusiness.com.au/management/8348-are-there-really-2-3-million-small-businesses-in-australia>.

¹⁷ *Energy Retail Code* 106F.

¹⁸ Glenn, R. and Kutin, J.J. (2021). Economic abuse in Australia: Perceptions and experience. Centre for Women's Economic Safety: Sydney.

¹⁹ Energy and Water Ombudsman Victoria (2019). Energy Retail Code Changes to Support Family Violence Provisions for Retailers - Draft Decision. p.3.



The provisions should also ensure affected customers can access family violence policies without impediment, such that staff are not, “asking for evidence when they should not, or [are] not providing the minimum assistance”.²⁰

Further, the ERC requires that the training acknowledges the complex nature and consequences of family violence. Family abuse is experienced differently by each victim-survivor, for example intimate partner violence, non-spousal abuse, or elder-abuse. There are also interdependent elements which may impact a customer’s situation and ability to engage, such as their cultural and linguistic background, if they are living with a disability, or if they are homeless.²¹

We also suggest training should include an understanding of vicarious trauma, such that frontline staff receive appropriate support in relation to the impact their interaction with customers may have on them.²² Providing support for staff will ultimately also support them in providing a better response to affected customers.²³

Additionally, to minimise costs of implementation, the AEMC could consider a carve out for retailers that are licensed in Victoria, who have not generated complaints to the Ombudsman, and whose staff are up to date on their family violence training, or perhaps that a ‘refresher session or equivalent’ be required (pending the outcomes of the proposed rule).

Avoid the need for repeat disclosure

Retailers should design their processes to avoid an affected customer needing to repeat their experiences. Repeat disclosure can be traumatising for an affected customer and may impact the likelihood of engagement, switching for a better deal, or accessing support.²⁴ For simplicity, we suggest following the ERC clause.²⁵

The *One Stop One Story* pilot program by Thriving Communities Partnership has demonstrated the cost for customers in needing to repeat a traumatic story to multiple suppliers, and we strongly encourage energy retailers to enrol in the program. The hub aims to reduce the burden and complexity for customers impacted by family violence by mitigating the need for repeat disclosure across like for like sectors.²⁶

Referring affected customers to an external support service

We support a requirement for retailers to assist affected customers in accessing external family violence support services, at a time and in a manner that is safe, respectful, and appropriate given the customer’s circumstances. We would be comfortable with an approach similar to the ERC, which also requires information be easily accessible on a retailer’s website.

²⁰ Energy and Water Ombudsman Victoria (2021). Detect - September 2021.

²¹ Essential Services Commission (2019). Better practice in responding to family violence. p. 59.

²² Economic Abuse Reference Group (2019). *Energy Retail Code Changes to Support Family Violence Provisions for Retailers*.

²³ Essential Services Commission (2019). Better practice in responding to family violence. p. 18.

²⁴ Essential Services Commission (2019). *Energy Retail Code Changes to Support Family Violence Provisions for Retailers: Final Decision*. p.22.

²⁵ *Energy Retail Code* 106H.

²⁶ Thriving Communities Partnership (n.d.). A one-stop/one-story solution providing a single-entry point to access all vulnerability support services across private, public and community based organisations. [online] thriving.org.au. Available at: <https://thriving.org.au/what-we-do/the-one-stop-one-story-hub>.



This is an important inclusion, as while an affected customer may not seek institutional help, they are likely to interact with essential services in their everyday life.²⁷ We note that the success of this requirement relies on the strength of retailer staff training.

Inclusion of embedded networks

Embedded network arrangements are commonly used in apartment buildings, retirement villages, caravan parks and in shopping centres and precincts, where the owner of the property also supplies energy. We propose that equivalent family violence protections should apply to all residential and small business customers. We acknowledge there may be additional complexities to including customers whose home or small business premises are under an embedded network arrangement. However, affected customers should be afforded the protections they need regardless of their energy supply arrangements.

Communicating the new rules

It is important to note that the success of the proposed rules will heavily depend on awareness of the potential for help for an affected customer, as well as the range of organisations offering direct help to that person. We suggest industry explore ways to communicate these new rules to our diverse community in a way that is meaningful and appropriate.

Lessons learnt from the Victorian water sector's comparable policy implementation revealed that customers had limited knowledge of the support measures available, such that financial counsellors suggested improvements including easier access to information on business websites, and for businesses to proactively reach out to the community (e.g., through financial counsellors, attending expos, hosting 'bring your bill' sessions, and more advertising).²⁸

Conclusion

System gaps and insufficient support can risk the lives and wellbeing of people affected by family violence. We welcome this rule change to address how the National Energy Retail Rules can provide protections and support for affected customers, which should include protecting all residential and small business customers (including those within an embedded network), staff training provisions, and the recommendation of civil penalties for breaches of the rules.

Should you have any questions about our comments in this submission, or require further detail, please contact Isabella Darin, Graduate Policy Officer, by email at isabella.d@energyconsumersaustralia.com.au.

Yours sincerely,

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²⁷ Centre for Women's Economic Safety (2021). Support my economic safety: A guide for organisations thinking about how to address economic abuse.

²⁸ Essential Services Commission (2019). *Water Outcomes Review 2019: Family Violence Changes Research Report*. Melbourne: Wallis Market & Social Research, p.1-2.