

3 March 2022

Ms Anna Collyer
Chair
Australian Energy Market Commission (AEMC)
PO Box A2449
Sydney South NSW 1235

Dear Ms Collyer

RRC0042 Consultation Paper: Protecting Customers Affected by Family Violence

Thank you for the opportunity to comment on this consultation paper.

The comments contained in this submission reflect the feedback of the Energy & Water Ombudsman NSW (EWON), Energy & Water Ombudsman South Australia (EWOSA), and Energy & Water Ombudsman Queensland (EWOQ). We are the industry-based external dispute resolution schemes for the energy and water industries in New South Wales, South Australia, and Queensland.

We have collectively reviewed the consultation paper and we have only responded to those questions in the consultation paper that align with issues customers raise, or with each respective organisation's operations as they relate to this proposed rule change.

If you would like to discuss this matter further, please contact Rory Campbell, Manager Policy and Research (EWON), on (02) 8218 5266, Jo De Silva, Policy and Communications Lead (EWOSA), on (08) 8216 1851 or Jeremy Inglis, Principal Policy Officer (EWOQ), on (07) 3087 9423.

Yours sincerely



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RRC0042 Consultation Paper: Protecting Customers Affected by Family Violence

The Energy & Water Ombudsman (EWON, EWOQ and EWOSA) are strongly supportive of the intent of the proposed rule change request to *‘provide consumers affected by family violence with safe, supportive and flexible assistance in managing their personal and financial security.’*¹

The development of assistance and protections is vital and should make a significant difference to many customers who experience family violence. It should also contribute to building a framework with truly embedded changes in attitudes and business cultures within the energy sector, that strongly supports assistance for all customers.

Definition of family violence

Family violence can occur in any type of familial relationship including current or former partners (spousal or de-facto), siblings, grandparents or grandchildren, and close extended family. It also occurs in relationships that have a high level of trust and are often considered to be family like, such as between a person with a disability and their unrelated carer.

The definition of family violence in the proposed rule change has the meaning given by section 4AB (1) *Family Law Act 1975* (Cth) which provides “**family violence** means violent, threatening, or other behaviour by a person that coerces or controls a member of the person’s family (the **family member**), or causes the family member to be fearful”.²

To ensure that there is clear and transparent information available to customers, clarifying the coverage of the provision within the rules or listing the specific examples detailed under section 4AB (2) *Family Law Act 1975* (Cth). Alternately a list of types of abuse (however not limited to) to be detailed within the energy retailer’s family violence policy.

The current definition does not provide protection to affected customers who experience abuse in a family like relationship. The energy sector is positioned to lead the provision of additional protections and assistance to this group by extending the definition of family violence.

Family violence policy

Energy retailers should be required to have a family violence policy and for these policies to be reviewed and updated accordingly at a minimum every two years.

These policies should have regulatory oversight and, like financial affordability policies, the Australian Energy Regulator (AER) should implement an approval process to ensure compliance and a harmonised approach across retailers.

Like financial affordability policies, a standard model policy, or minimally standard clauses, should be developed for inclusion in energy retailers’ policies. We welcome a consultation process by the AER on the development of a standard model policy and note that this supports the aim of the AER’s Customer Vulnerability Strategy.

It is important that there is consistency between states and that each person in Australia receives the same level of support, regardless of retailer or state in which they live.

¹ RRC0042 Red Energy Rule Change request to AEMC 23 September 2021

² *Family Law Act 1975* (Cth) s4AB (1)

In its letter of 21 March 2018 to the Australian Energy Market Commission (AEMC), the AER noted that *‘During our investigation of this matter, we found that if a policy contains general principles as opposed to clear commitments, it can be difficult to determine whether a retailer has in fact acted in accordance with its hardship policy. In addition, the presence of subjective phrasing in a hardship policy (such as ‘we believe’) can lead to differing interpretations of a retailer’s obligations and difficulties when enforcing potential breaches of the hardship provisions’*³

Detailed specific rules and information are imperative to developing a meaningful family violence policy, and not one that is simply in place to tick boxes. This ensures that there is not differing interpretations but that, most importantly, each customer will receive the same level of support regardless of retailer.

The Victorian *Energy Retail Code*⁴ requires a retailer’s policy to address each relevant aspect of the code, including how a retailer handles personal information and ways a customer can access payment assistance. If the rules do not demand specificity, retailers will not develop clear and meaningful policies. Further, any subsequent model policy would lack detail as it would only contain what is required by the rules.

Account Security

We support the proposed rule change requiring retailers to protect account security for affected customers and are strongly supportive of the requirement that details are not disclosed without customers’ consent.

Issues may arise when a victim flees a family violence situation but does not disclose the family violence to the retailer. The case study below highlights that account security and not disclosing particular types of personal information should be standard practice for all customers, not just victims of family violence.

Freely providing personal information may put someone at risk of harm. If an authorised contact is listed on an account, it is reasonable to assume that person knows the address of the account holder. By safeguarding personal information for all customers, or as standard practice retailers confirming authorised contacts upon opening or closing accounts, retailers add a layer of account security that would protect affected customers who have undisclosed circumstances. Refer [Case Study 1](#).

Preferred contact method

The proposed rule does not require the customer’s preferred communication type to take precedence over other customer entitlement, or requirements of the retailer within the Code, regarding communication. This is contrary to the Victorian *Energy Retail Code* which requires the preference to be identified.

We support the requirement to identify the customer’s preferred contact method as occurs in the Victorian *Energy Retail Code*. This should ensure a customer’s safety. Retailers should also be required to appropriately record the customer’s choice.

³ Australian Energy Regulator

⁴ Essential Services Commission (VIC), *Energy Retail Code Version 21*, 1 July 2021

A customer's preferred contact method (including choosing no contact) does not prevent harm being inflicted on them by a perpetrator for example, if a perpetrator lists a customer's mobile phone number on an account in the perpetrator's name that they do not pay. This often results in customers receiving multiple calls from 'unknown numbers' that are collections agencies. Refer [Case Study 2](#).

Prioritising customer safety

The proposed rule of 76D provides that 'A retailer must in any dealing with an affected customer have regard firstly to the safety of the customer'. Whilst the intent of ensuring that an affected customer's safety is incredibly important, this is the overarching aim of developing additional rules and developing family violence policies.

The scope of the proposed term is problematic as it is broad and difficult to measure if a retailer is complying with it. The actions of retailer staff members will be subjective regarding customer's safety.

Ultimately it would be difficult to measure compliance, enforcement or any civil penalties that would apply for any 'breaches'.

We consider that having regard to the safety of the customer may be more appropriate as an objective. This aligns with the Victorian *Energy Retail Code* which gives affected customers 'an entitlement to safe, supportive, and flexible assistance from a retailer when managing their personal and financial security'.

Family violence recognised as a cause of payment difficulty

Inclusion of this provision in the proposed rule change is required. Currently financial affordability policies do not provide early intervention or access to affordable payment plans, until there is a debt. Further, retailers will allow debt to accrue before affordability is considered, which can cause additional stress.

Most consumers subject to family violence who leave that situation are already financially disadvantaged and leaving the family home leads to increased financial disadvantage - this is often the reason people stay in abusive relationships. They may be fearful of future debt combined with the sense of a lack of support. There is a clear potential benefit from early engagement with a retailer and paying some money toward their account with support from an affordability team, who manage and provide follow-up to reassess their needs. This type of support builds financial security, increases empowerment, and helps to build a wider support network.

While recognising family violence as a cause of payment difficulty, it may not stop debt from occurring, but it will assist in the better management of debt and building trust through consumer engagement.

[Case Studies 3 and 4](#) highlight the need for early intervention and the benefits, not just for affordability but also security.

The Royal Commission into Family Violence found that customers experiencing family violence often faced barriers in accessing hardship programs despite being in payment difficulty⁵

⁵ State of Victoria, *Royal Commission into Family Violence: Report and recommendations*, vol 4, March 2016 p105

The proposed wording of 76C provides that ‘a retailer must recognise family violence as a potential cause of payment difficulty’.

However, rule 33 (1)(b) of the NERR indicates that a retailer must offer and apply a payment plan for customers experiencing affordability challenges and other residential customers experiencing payment difficulties if the customer informs the retailer (in writing or over the phone) that they are experiencing payment difficulties – or if the retailer otherwise believes the customer is experiencing repeated difficulties in paying their bill or requires payment assistance.

At present, customers can already access a payment plan by advising the retailer they are experiencing payment difficulty, and there is no requirement for them to divulge the reason for their payment difficulty. If/when adhered to, this provides protection against debt recovery (s51 NERL(NSW)), protection against disconnection (Rule 116(d) NERL), and places an obligation on retailers to offer payment plans twice before disconnection (Rule 111 (2) NERL).

In establishing a payment plan section 72 of the NERL indicates that a payment plan must take into account:

- The customer’s capacity to pay
- Any arrears owing by the customer
- The customer’s expected energy consumption needs over the following 12-month period

A customer experiencing financial affordability challenges should be referred to a retailer’s affordability team/program, which allows more flexibility and assistance from a retailer. The proposed wording of the rule change request in 76C is not clear. It does not demonstrate that recognising family violence as a cause of payment difficulty would automatically lead to a referral to the retailer’s hardship policy.

There may be benefit in the wording of 76C being reviewed to test whether it is fit for purpose and whether it offers any additional assistance to customers which they would receive under rule 33 NERR, without having to disclose their personal circumstances.

The rules should provide additional clarity by stipulating retailers must recognise family violence as a potential cause of payment difficulty or hardship and that a retailer must apply the provisions of their affordability policies.

Affected customer

We support the inclusion of former customers in the proposed rule change under the definition of affected customers.

The key element to any reform should aim to provide equal assistance to all customers and provide appropriate additional support whenever possible.

In EWON’s recent *Spotlight On Consumer and small business energy debt solutions*, it called for hardship provisions under the National Energy Retail Law (NERL) and National Energy Retail Rules (NERR) to be extended to closed accounts and for an extension of the AER Sustainable Payment Plan Framework to closed accounts to assist in bridging the gap between consumer protections.

The proposed rule does not clearly articulate if this would apply to affected customers, including former customers. This potentially means that if a customer does not have an active account, they will not continue to receive assistance from their previous retailer.

We seek further clarification on if the rule, that requires the recognition of family violence as a cause of payment difficulty, would necessitate retailers automatically referring a customer to their hardship programs. Clarification is also required on if this also extends to 'affected customers' including those who have closed accounts to manage old debts.

[Case Study 5](#) is an indication of the support that may be offered to an affected customer with a closed account. Despite this customer being provided options, only the first would grant her access to ongoing assistance considering her circumstances and ability to pay, without the possibility of debt collection activity.

Debt management

We support the proposed provision that retailers consider the cause of energy debt and if it relates to economic abuse, and the impacts of debt collection before disconnection.

This is consistent with other industry reforms and has recently been considered by the Office of Australian Information Commissioner in its [Review of the Privacy \(Credit Reporting Code\) 2014 Consultation Paper](#).

There is potential for further assistance to be provided to victim-survivors of family violence through retailers outlining what additional things they can do. These include debt waiver, removal of default listings, or additional assistance in paying part of a debt, if it is clear that the debt may have been coerced or not all attributable to the customer alone. [Case study 6](#) illustrates that more needs to be done by retailers when informed of a family violence situation.

Requesting evidence of family violence for energy disconnections

While this proposed rule change is less restrictive than the Victorian *Energy Retail Code*, which allows for evidence in debt management and recovery, asking for evidence of family violence is concerning. If a victim of family violence has fled their home due to personal safety concerns, they may have limited access to relevant documentation.

It is also potentially further victimising for a person to have to prove they are a survivor of family violence. The social stigma of family violence is placing the onus on a victim to prevent further affordability challenges including disconnection. At a time when a victim is facing financial hardship, as well as other burdens that come with rebuilding their lives, there is an opportunity for retailers to instil trust in their customer relationship by believing a customer in the first instance.

Family violence experts suggest that businesses should carefully consider the purpose of seeking evidence from people who have survived/effectively left family violence situations. EWON's family violence policy states that EWON will not request evidence of family violence unless it is absolutely necessary – and to date, we have not found any circumstances where we would request evidence. This proposed provision could be used with the further stipulation that a retailer can only ask for evidence as a last resort when there is lack of engagement, ongoing increasing arrears, and no other indicators are available.

Small business customers

We believe that the provisions should be extended to small businesses. Consumer protections should be consistent between consumer groups and a consistent approach across the energy sector will create a consistent experience regardless of location or retailer.

We acknowledge the challenges that have been raised by the rule change proponents, however, the risks to customers who have experienced family violence outweigh those issues raised. We welcome further review or consultation of how the rules would apply to small business and whether they should be differences to account for joint account holders and business operation. [Case Study 7](#) illustrates that family violence can affect small business customers and the need for protection.

Specialist family violence training for retailers' staff

We strongly support the requirement for mandatory specialist training for staff.

It is not only customers who are affected by family violence, retailers' staff or family members may also experience this and specialist training may assist staff in their personal circumstances.

If the energy sector is going to take a leading space in enabling change and truly see a cultural shift, staff need to be equipped with the skills they need to recognise the signs of family violence and to be able to offer appropriate referral or assistance. We all need to support our staff as managing conversations with customers, or peers, who experience family violence is very stressful.

We strongly support encouraging proactive rather than reactive approaches for identifying customers experiencing family violence and vulnerability. This is also highlighted in the AER Consumer Vulnerability Strategy which indicates that identification of vulnerability is a key factor and staff need to be equipped with the tools to recognise what is occurring.

Section 2.3 (a)(ii) of the AER *Customer Hardship Policy Guideline* requires that a retailers' affordability policies must confirm that its staff have undergone training to understand financial affordability issues in order to identify customers experiencing payment difficulties. Family violence is a delicate subject that that requires knowledge to recognise the signs and staff who are empowered with the tools to take the right actions for consumers and for themselves.

Minimising repeated disclosure of family violence experiences

Requiring customers to tell their story repeatedly is at odds with effective response to family violence. The additional requirement for retailers to minimise repeated disclosure of family violence experiences, should align with relevant provisions of the Victorian *Energy Retail Code*.

We receive complaints from customers who advise their account is password protected who share that this gives them an additional sense of security. In the water sector, some providers have specialist teams that deal with accounts that are flagged as affected customers. Just as customers who are on affordability programs, customers who experience family violence benefit from dealing with specialised teams.

Appropriate flags or specialist teams will reduce repeated disclosure and the need to re-live traumatic experiences.

Actively referring a customer to an external support service

The inclusion of this provision should extend from placing a requirement on a retailer to list what assistance is available to customers within the family violence policy. It is unlikely that customers will access that information directly. A personal referral to a support service is more likely to be taken up particularly if it is in the customer's local area.

There is also a need for harmonisation and consistency with Victoria and other jurisdictions. Affected customers flee and sometimes move interstate and should get the same level of support, regardless of the state in which they reside.

Retailers already readily refer customers to financial counsellors, national debt hotline, and other types of government assistance. Actively providing referrals to family violence support services should be standard practice.

Empowering and training staff to recognise potential family violence and provide practical assistance will assist in the culture shift needed to normalise the issues faced their customers. It will also help enable staff to know they have provided practical assistance.

Compliance, enforcement, and Civil penalties

A strong compliance framework is required to embed this rule change into day to day practice. Some retailers already have exceptional policies and procedures – but many do not. Culture needs to change and until it does, penalties for non-compliance are required to normalise provision of support to customers experiencing family violence across the sector.

Embedded networks

We strongly support all provisions being applied to customers who reside in embedded networks. There is already a significant gap in consumer protections for these consumers and these gaps need to be closed, not expanded.

Other considerations

There are two other things the AEMC should consider when advancing this rule change:

Firstly, the changing energy market could contribute to customers falling outside of the NECF and the NER. This needs to be a continual focus of the AEMC in making this and other rule changes.

Secondly, a gap in protections relates to customers who have credit issues due to debt caused by a family violence situation and establishing new accounts with a retailer of choice. When an affected customer contacts a retailer to establish an account, they are sometimes declined an account due to their credit and advised to contact the financially responsibly retailer (FRMP).

Under section 22 of the National Energy Retail Law NSW (NERL) a FRMP must allow a customer an account at standing offer prices under a standard retail contract. A customer moving hurriedly into new accommodation may not have an opportunity to find out who the FRMP is and should not be further penalised due to their situation.

There is an opportunity to waive the credit check requirement for customers or for retailers to be required to provide an account at standing offer prices under a standard retail contract when an affected customer advises the retailer of their circumstances.

This would also further strengthen the protection of minimising repeated disclosure by a consumer who has experienced family violence, which is often traumatic and would provide a customer with a sense of control by being able to choose their retailer.

Attachment – Case studies

Case Study 1 (EWON)

A customer advised EWON that she had left her previous property due to family violence. Her ex-partner had contacted the retailer to establish an electricity account, however provided her mobile phone number, which resulted in him being given her current address. The ex-partner had contacted her to ask if she lived at the supply address, something that she had been able to avoid for 6 months. She was concerned regarding her privacy and for her safety, if her ex-partner came to the new supply address.

When EWON contacted the retailer, it advised that the ex-partner was listed as an authorised contact on the account however it had not received any notification to remove him when the customer moved properties. The retailer acknowledged that the address had been provided to the ex-partner and provided a letter of apology to the customer. The retailer also removed the ex-partner as an authorised contact.

Case Study 2 (EWOQ)

A customer, who had experienced family violence, contacted EWOQ as the phone number listed on an account was theirs, however the account was in the partner's name. The customer was not authorised on the account and after leaving the relationship was receiving collection calls. The customer asked for their phone number to be removed from the account, but this was declined by the retailer as they were not authorised to make changes to the account.

EWOQ raised a case and sent it to the retailer as a Refer to Higher Level. The retailer returned to EWOQ advising they would not deal with the customer as they were not authorised on the account. EWOQ then had to contact the retailer directly to have the customer's number removed from the account.

Case Study 3 (EWOQ)

A customer contacted EWOQ as she could not afford her bills, and as a result had turned off her electricity supply at the mains. In doing so, this left her without hot water during winter and without a security system at night. An already vulnerable person was left feeling even more vulnerable and at risk.

With early intervention and awareness of the support and assistance available to her, this customer would not have been in a position to fear disconnection or worrying about debt management.

Case Study 4 (EWOSA)

A customer contacted EWOSA as she had applied for a loan which was declined because she had been credit listed by her retailer. She advised that she had experienced family violence and as a result had moved to 4 different properties in the last 2 years. Each time she moved, she signed up with the same retailer, however she did not pay her bills. She was unaware of the default listing until her loan application was declined. In trying to resolve the issue, the customer attempted to get the previous bills from her retailer but did not know the previous addresses.

Early identification and intervention with this customer could have prevented the credit listing and assisted in management of the debt.

Case Study 5 (EWON)

A customer contacted EWON to advise that she had recently vacated a property with her 4 children due to family violence and had received a final bill of over \$4000. The debt was an accumulation of arrears from previous properties, and she had been making payments of \$30 per fortnight towards the account, however the retailer had now cancelled this. As the account was closed, she was unable to gain financial assistance and had capacity to pay \$30.00 per fortnight towards the debt. She had concerns about the future credit action on the account.

EWON was unable to maintain contact with the customer, however emailed her to advise proposed actions by the retailer in which they would do one of three things:

- defer the debt for 3 to 6 months to allow her time to set up an account at a new address and transfer the existing debt to allow ongoing assistance
- apply a credit of \$1000 to the account, with the remaining \$3000 to be paid at \$58 per fortnight over a period of two years, or
- sell the debt to a debt buyer, which may allow her to negotiate a payment arrangement or higher settlement with the debt buyer.

Case Study 6 (EWOSA)

A customer was disconnected due to an outstanding balance of \$1800. She advised her retailer that she was experiencing family violence, and that this had affected her health. She thought she had made payments via Centrepay and did not realise the payments were not being made.

When she was disconnected, she contacted the retailer and requested a payment plan of \$400 per month however her request was declined. She said she was told by the retailer that if she could not pay \$300 while on the call, she would have to pay 75% of the outstanding balance in order to be reconnected. She advised she could not make the \$300 payment that day.

The customer contacted EWOSA and was able to negotiate a payment arrangement of \$200 per fortnight via Centrepay.

Case Study 7 (EWON)

A customer contacted EWON due to an accumulated debt of over \$10,000, over a period of 5 years. She operated a business at the supply address, however due to personal circumstances, including a family violence situation, left, and failed to close her energy account. She had capacity to pay half of the debt, however the retailer had offered to reduce the debt by 30%. She considered that this was unreasonable, given her personal circumstances and affordability issues that she was experiencing.

After EWON completed a review of the complaint the customer and retailer agreed to reduce the balance of the account by 30%, with the customer to pay \$5000 and to allow a payment arrangement for the remaining balance.