



RULE

Australian Energy Market Commission

CONSULTATION PAPER

PROTECTING CUSTOMERS AFFECTED BY FAMILY VIOLENCE

PROPONENTS

Red Energy
Lumo Energy

18 NOVEMBER 2021

Content warning: this document contains descriptive information about violence against women and children

INQUIRIES

Australian Energy Market Commission
GPO Box 2603
Sydney NSW 2000

E aemc@aemc.gov.au
T (02) 8296 7800

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ABOUT THE AEMC

The AEMC reports to the Energy Ministers' Meeting (formerly the Council of Australian Governments Energy Council). We have two functions. We make and amend the national electricity, gas and energy retail rules and conduct independent reviews for the Energy Ministers' Meeting.

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1 EXECUTIVE SUMMARY

- 1 The Australian Energy Market Commission would like to hear your views on whether the energy rules need to change to better protect customers affected by family violence. Red Energy and Lumo Energy have requested new protections and help for energy customers, by proposing changes to the National Energy Retail Rules. These changes would require energy retailers to protect and support customers affected by family violence. The Commission welcomes your views on:
- Red and Lumo’s rule change proposal
 - any issues not raised in the proposal that should be addressed
 - lessons from other sectors
 - how the Commission should assess the policy options.
- 2 Family violence can cause physical and psychological harm, particularly to women and children. The Australian Bureau of Statistics found that one in six Australian women has experienced violence by a current or previous intimate partner.¹ Recent surveys have found the incidence and severity of family violence has increased during the COVID-19 pandemic.²
- 3 Men are victims of family violence and violence occurs in same-sex relationships, however women are more likely than men to experience family violence. One study found that 87 per cent of survivors of domestic and family violence are women and 98 per cent of perpetrators are men.³
- 4 Financial security is an important factor in victims gaining freedom from abusive partners. The financial security of victims can be affected by partners who perpetuate family violence by controlling household finances, accounts and by incurring debts in a victim’s name.⁴ In particular, the Commission recognises that many perpetrators use essential services to control and harm victims. A conservative estimate is that economic abuse occurs in 50 per cent of family violence cases.⁵
- 5 The Commission is treating this rule change request as a priority. Family violence is a pervasive and harmful reality of contemporary Australia that must be stopped. We will look at a broad range of solutions to identify the most effective response to prevent, and protect consumers affected by family violence related to energy services.
- 6 The Commission will use open and inclusive consultation on this rule change. We invite victims/survivors, family violence service providers, community and peak bodies, governments, other essential services and businesses seeking to end family violence to be involved. To participate, the Commission invites you to attend a forum in February 2022.

1 Australian Bureau of Statistics, reported by the Australian Government, Australian Institute of Health and Welfare, March 2016.
2 Carrington, Kerry, Morley, Christine, Warren Shane, Harris, Bridget, Vitis, Laura, Clarke, Jo and Ryan, Vanessa, *The Impact of COVID-19 Pandemic on Domestic and Family Violence Services and Clients*. Australia, Queensland University of Technology, May 2021.
3 Anthony Morgan & Hannah Chadwick, *Key issues in Domestic Violence: Research in Practice Number 7* (Australian Institute of Criminology, 2009); Economic abuse reference group, *Family violence and economic abuse - an overview*, April 2018, p. 1.
4 The Royal Commission into Family Violence, March 2016, vol. 21, p.93.
5 Economic abuse reference group, *Family violence and economic abuse - an overview*, April 2018, p. 2.

Please register interest by emailing ProjectRRC0042@aemc.gov.au. The Commission also encourages you to provide a written submission. These are due several weeks after the forum, on 3 March 2022.

- 7 You will find a template you can use at the project page for this rule change. Please lodge your written submission via the Commission's website, www.aemc.gov.au, using the 'lodge a submission' function and selecting the project reference code **RRC0042**.
- 8 The submission must be on letterhead (if submitted on behalf of an organisation), signed and dated. Tips for making a submission are available here: <https://www.aemc.gov.au/our-work/changing-energy-rules-unique-process/making-rule-change-request/our-work-3>.
- 9 The Commission publishes all submissions on its website, subject to confidentiality requirements and certain other exceptions as noted on our submissions webpage. Please clearly mark any sections of your submission which you consider contain confidential material.

QUESTIONS : LIST OF ALL QUESTIONS FOR CONSULTATION

- **Red and Lumo's rule change request:** What are your views on the effectiveness of the changes proposed by Red and Lumo in protecting customers affected by family violence? What improvements and challenges should the Commission consider?
- **Additional matters:** Are there matters you would like to see addressed in the National Energy Retail Rules beyond those considered in the proposed rule? These could be issues, protections or requirements. For instance, regarding the Victorian approach, compliance and enforcement, or ways to minimise implementation costs?
- **Alternative approaches:** What regulatory approaches from other sectors should the Commission consider, to complement, amend or replace Red and Lumo's proposal? Please explain why that regulatory approach is being used and provide the evidence of its effectiveness in protecting consumers from family violence. Could a broader cross-sector approach effectively address family violence in the energy sector? What would be its key aspects? What existing jurisdictional provisions should the Commission take into account for this rule change?
- **Assessment framework:** Is the proposed assessment framework appropriate? What amendments or additions would you suggest, and why?

1 VIEWS ON THE RULE CHANGE PROPOSAL

The Commission would like to hear your views on the changes Red and Lumo propose to the National Energy Retail Rules. We invite comments on the effectiveness of each of their proposed changes to the rules. We also seek your views on amendments that could enhance the proposed changes. To help your analysis, this chapter outlines:

- the role of essential services like energy in domestic violence through financial abuse
- the key changes to the energy rules that Red and Lumo propose.

1.1 Perpetrators use energy services to control and cause financial harm

Many cases of family violence involve financial abuse. Perpetrators often use essential services like energy to financially harm and control their partners. A conservative estimate is that economic abuse occurs in 50 per cent of family violence cases.⁶ The Victorian Royal Commission observed that typically economic abuse involves perpetrators undermining a victim's financial security by controlling household finances, financial and utility accounts, and/or incurring debt in the victim's name through coercion or deception.⁷ These behaviours control a woman's ability to acquire, use and maintain economic resources. They threaten a woman's economic security and potential for self-sufficiency.⁸

While financial abuse can affect all people, women with disabilities or with long-term health conditions are significantly more likely than the general population to experience this type of abuse.⁹

As it is not always identified by victims or the community as family violence, there is a lack of study on the prevalence of economic abuse in Australia, however some studies estimate that up to 16 per cent of women will experience financial abuse in their lifetime.¹⁰

Perpetrators also manipulate essential services to cause non-financial abuse. For instance, technological facilitated abuse (to access information such as usage data), or stalking (for example by gaining the address of a victim's new secure location through a retailer).

Electricity, gas, water and communications are essential for full participation in society. Because of this, perpetrators can use them to inflict financial harm on and control of victims. Abusive behaviours include:

- putting a service in the sole name of the victim without their knowledge or consent
- insisting an account be in the victim's name and refusing to contribute to the cost
- holding an account jointly and refusing to contribute to the cost

⁶ Economic Abuse Reference Group, earg.org.au. accessed 8.45am 8 November 2021.

⁷ State of Victoria, The Royal Commission into Family Violence, March 2016, Vol. 4, p. 93.

⁸ Good Shepherd Australia New Zealand, 'Economic Abuse Policy Position Paper,' December 2015, p. 1.

⁹ Australian Human Rights Commission, 'Accumulating Poverty? Women's Experiences of Inequality Over the Lifecycle: An Issues Paper Examining the Gender Gap in Retirement Savings' (September 2009)

¹⁰ Kutin, Russell and Reid, Economic Abuse between intimate partners in Australia: prevalence, health status, disability and financial stress, Australian and New Zealand Journal of Public Health, 2017.

- holding the account in their own (the perpetrator's) name and not paying bills, resulting in disconnection
- holding the account in their own (the perpetrator's) name and threatening to have the service cut off or having it cut off when they leave their family home.¹¹

As a result:

- victims can be forced to bear the full economic cost of utilities
- victims fear that they may be pursued by debt collectors or experience disconnection of services
- services are disconnected and victims and their children go without necessary services
- the victim's new address can be discovered by a perpetrator when a utility provider sends correspondence, which risks their safety.¹²

1.2 The changes that Red and Lumo propose to the energy rules

The AEMC is seeking feedback on the key aspects of Red and Lumo's rule change. These include:

- the requirement that all retailers must develop and publish their own family violence policy
- account security measures to protect account information for customers affected by family violence
- a requirement on retailers that, in dealing with a customer affected by family violence, the retailer must firstly have regard for the safety of that customer
- recognising family violence as a cause of financial hardship
- additional protections for customers affected by family violence when a retailer is considering recovering a debt
- that a retailer can only require documentary evidence of family violence from a customer when that retailer is considering disconnecting the energy supply to that customer
- that a retailer's family violence policy prevails in the event it is inconsistent with a customer's retail contract or the energy rules.

1.2.1 Energy retailers must have a family violence policy

The Commission welcomes comments on the proposal that each energy retailer must have a family violence policy. Red and Lumo's rule change request would require a retailer to develop, publish and implement a family violence policy. Each retailer's policy would contain information on the assistance available to customers affected by family violence. A retailer would have to review its policy at least every two years.¹³

We are interested in the level of prescription the Commission should include in the rules on what a retailer's policy should include. For instance, under Red and Lumo's proposal, the

11 State of Victoria, The Royal Commission into Family Violence, March 2016, Vol. 4, p. 104.

12 State of Victoria, The Royal Commission into Family Violence, March 2016, Vol. 4, p. 104.

13 Red and Lumo, Rule change request, 24 September 2021, p. 7.

policy would contain less detailed information on the assistance available for affected customers than the equivalent obligations in the Victorian Energy Retail Code. The Victorian code requires a retailer's family violence policy to address each relevant aspect of the code.¹⁴ For example, in Victoria an energy retailer's policy must explain:

- that a customer is entitled to communicate with their retailer in a way that is most practical for them (including by having someone else communicate on their behalf)
- how a retailer handles personal information
- ways a customer can access payment assistance.

The Commission would also like to hear views on whether a retailer should have to include in its family violence policy how it will meet the requirements established in the energy rules.

On the other hand, there is a view that less prescription in the rules on a policy's contents makes it easier for retailers to update their policy in line with any changes to the needs of customers affected by family violence over time.

The Commission also seeks comments on the proposal that a retailer's family violence policy would take priority over a market retail contract, and that the family violence provisions in the rules would take priority over both a retail contract and other provisions of the rules. The proposed rule provides that, if there is an inconsistency between a retailer's policy and the market retail contract, the terms of the contract have no effect to the extent of the inconsistency.¹⁵ Further, if a retailer is, due to complying with the new family violence provisions in the rules (such as implementing its policy), unable to fulfil another obligation under the rules, the retailer will not be in breach.¹⁶

The rule change request notes these provisions are required because retailers should be able to provide protections to customers affected by family violence, without fear of compliance implications and that the safety of the customer should take precedence over obligations in the NERR.¹⁷ As a retailer's policy would take precedence to the extent of any inconsistency with the Rules and their retail contracts, the proposal could weaken retailers' accountability, for instance in regards to existing consumer protections. Retailers also could use the scope of the policy to change the terms of their retail contracts unilaterally, by including content in a family violence policy.

The Commission is interested in your views on whether the breadth of these clauses is necessary and if not, how they should be narrowed. For example:

- Could the Victorian approach where the precedence of a retailer's family violence policy is limited to customer communication matters be sufficient and practicable? (Specifically, the Victorian code requires that the preferred method for communication identified with an affected customer take precedence over any other customer entitlement or regular code requirement to communicate with or provide information to the relevant customer¹⁸)

14 Clause 106N of the Energy Retail Code.

15 Red and Lumo, Rule change request, 24 September 2021, p. 8 - proposed rule 76G.

16 Red and Lumo, Rule change request, 24 September 2021, p. 8 - proposed rule 76H.

17 Red and Lumo, Rule change request, 24 September 2021, pp. 4 and 7.

18 Clause 106G of the Energy Retail Code.

- Are these provisions of the proposed rule workable, for instance are there issues with enforceability or interactions with other proposed clauses such as safety?
- What issues or action, if any, would this leave out that retailers may need to address to protect customers affected by family violence?
- Could the AER as the enforcing agency consider factors related to customers affected by family violence when considering any breaches of the Rules or contracts by a retailer?

1.2.2 **Protect account security for affected customers**

The Commission is interested in understanding what measures are needed to protect the account information of customers affected by family violence. Red and Lumo propose that a retailer must not disclose an affected customer's personal information without that customer's consent (including to a joint account holder). A retailer must find a preferred communication method for an affected customer, including by suggesting alternative methods, if the affected customer's choice isn't practicable.¹⁹

This proposal is largely similar to the approach in the Energy Retail Code. However, the Victorian approach also includes the additional requirement that a customer's preferred communication method must take precedence over any other entitlement or retailer requirement to communicate or provide information to that customer.²⁰ This requirement emphasises that complying with the customer's preference is a retailer's paramount communication obligation when assisting customers affected by family violence.²¹

1.2.3 **Retailers must firstly have regard to a customer's safety**

The Commission is interested in stakeholders views on Red and Lumo's proposal that, in dealing with a customer affected by family violence, a retailer must firstly have regard for the safety of that customer.²²

No similar specific clause is in place in the Energy Retail Code. Instead, personal safety is prioritised across every action in Part 3A through its inclusion as an objective.²³ However, specific clauses promoting customer safety are included in the Victorian Customer service code (Urban water) (Urban water code) and Customer service code (Rural Water) (Rural water code). Both water sector codes require that a retailer must promote customer safety by providing for the secure handling of information about those affected by family violence.²⁴ This requirement was in response to stakeholders' concerns that customer safety should drive the secure handling of information.²⁵ The Commission would welcome comments and examples of the benefits and challenges associated with this proposal.

19 Red and Lumo, Rule change request, 24 September 2021, p. 8.

20 Clause 106G of the Energy Retail Code.

21 ESCV, Energy Retail Code changes to support family violence provisions for retailers: Final decision, 22 May 2019, p. 21.

22 Red and Lumo, Rule change request, 24 September 2021, p. 7.

23 see Part 3A of the Energy Retail Code, including clauses 106E and 106(2)(a).

24 ESCV, Moving towards better practice: Implementing family violence policies in the Victorian water sector, May 2017, p. 5.

25 ESCV, Moving towards better practice: Implementing family violence policies in the Victorian water sector, May 2017, p.21.

1.2.4 **Rules to include family violence as a cause of payment difficulty**

The Commission is interested in understanding if stakeholders see additional benefit in including a clause that requires that family violence must be recognised by a retailer as a form of payment difficulty.

This clause means that being affected by family violence, rather than accumulation debt as a result of family violence, would allow a customer to access hardship assistance. It would also mean that a customer would not need to be in debt to access hardship assistance such as payment plans or payment assistance. This may be important because 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.

While this has been proposed in Red and Lumo's rule change proposal, the Australian Energy Regulator's Hardship guidelines already place similar requirements on retailers.²⁶ The AER guidelines require retailers to acknowledge that family violence can cause hardship for residential customers who may find it hard to pay their energy bills.²⁷

This means that when a customer affected by family violence is accepted into a retailer's hardship program they are entitled to additional assistance and protections. These include:

- advice on the most appropriate retail plan for them, the government concessions, relief schemes or energy rebates to which they may be entitled, and how to reduce their energy use
- information on a payment amount that suits the person's circumstances
- more flexible payment options.²⁸

We would like to hear what additional benefits the proposed rule would provide and any disadvantages.

1.2.5 **Retailers to consider who caused energy debt, and the impacts of debt collection before disconnecting**

The Commission would like to hear your views on Red and Lumo's proposal regarding debt collection. This would require that, before a retailer attempts to recover a debt from a customer affected by family violence, the retailer must consider:

- the impact of recovery action on the affected customer, at that time
- whether other persons might be jointly responsible for the usage.²⁹

This proposal mirrors that in the Energy Retail Code. This recognised that customers may be left either to bear financial responsibility for services which they received little or no benefit from and/or cannot establish themselves independently because they have been left with high debts and poor credit.³⁰ We are also interested in understanding how this clause would be implemented by retailers (including how retailers get information about who in a

26 Red and Lumo, Rule change request, 24 September 2021, p. 7; AER, Customer hardship policy guideline, March 2019, p.20.

27 AER, Customer Hardship Policy Guideline, March 2019, p. 20.

28 AER, Customer Hardship Policy Guideline, March 2019, pp. 22-24.

29 Red and Lumo, Rule change request, 24 September 2021, p. 8

30 ESCV, Energy Retail Code changes to support family violence provisions for retailers: Final decision, 22 May 2019, p. 18.

household has been responsible for energy use), and how the proposal would interact with the requirements under the AER's hardship guidelines.

1.2.6

A retailer can only ask for evidence of family violence for energy disconnections

The Commission seeks feedback on the circumstances (if any) in which a customer affected by family violence should be required to provide documentary evidence. Red and Lumo's request only requires this when a retailer is considering disconnection of an energy service (de-energisation). It also requires that the evidence sought must only be that which is reasonably required by the retailer for considering de-energisation.³¹

During initial discussions, some stakeholders have observed that customers affected by family violence may not have or be able to easily provide documentary evidence and/or may find discussing their experiences traumatic. The proposal for documentation is narrower than the equivalent clause in the Energy Retail Code, wherein retailers can also seek evidence when considering debt management and recovery.³²

QUESTION 1: RED AND LUMO'S RULE CHANGE REQUEST

What are your views on the effectiveness of the changes proposed by Red and Lumo in protecting customers affected by family violence? What improvements and challenges should the Commission consider?

³¹ Red and Lumo, Rule change request, 24 September 2021, p. 8.

³² Clause 106L of the Energy Retail Code.

2 ADDITIONAL COMPONENTS THAT COULD BE INCLUDED IN THE RULE

The Commission would like to hear about any issues, protections or requirements not included in the proposed rule that should be addressed in the NERR in order to protect or help energy consumers affected by family violence. In particular, we welcome feedback on:

- the aspects of the Victorian Energy Retail Code that are not proposed for adoption in the National Electricity Consumer Framework (NECF) jurisdictions.³³
- compliance and enforcement issues, for instance the lack of proposed civil penalties
- ways to implement the rule change to reduce the burden on retailers, including what the appropriate time frames should be for implementing any changes.

2.1 Aspects of the Victorian Energy Retail Code that are not proposed

The Commission will examine whether the relevant parts of the existing Victorian code that were not included in Red and Lumo's request should be included in a rule. Their proposal is the NECF jurisdictions adopt some aspects of the Victorian framework. The proposed rule would not:

- apply to small business customers, only to residential customers³⁴
- include mandatory training for energy retailers' staff
- require a retailer to implement systems that minimise the need for a customer affected by family violence to repeatedly disclose details of their experience
- require a retailer to refer a customer to an appropriate external support service.

2.1.1 Small business customers would not be covered

The Commission is interested in views on whether small business customers affected by family violence should be excluded from the protections and help that would be provided by this rule change. Also, as the protections under the Victorian code apply to small businesses and have been in place for nearly two years, we want to hear if retailers operating in Victoria have experienced any material negative consequences from this application.

Red and Lumo note that they have excluded small business customers from the rule change because business structures can be complex and can require retailers' staff to communicate with multiple owners.³⁵ The Proponents note that excluding a registered business owner from accessing account information could be problematic.³⁶ They also raised similar concerns in the Essential Services Commission of Victoria's (ESCV) Energy Retail Code reform process.³⁷

33 That is, aspects on the Victorian approach that are not proposed for New South Wales, ACT, Queensland, Tasmania and South Australia.

34 Any reference to 'small business customers' in this consultation paper refers to energy customers that are small businesses, not customers of small businesses.

35 Red and Lumo, Rule change request, 24 September 2021, p. 4.

36 Red and Lumo, Rule change request, 24 September 2021, p. 5.

37 Red and Lumo, Submission to Energy Retail Code Draft Decision, 16 April 2019, p. 2.

Ultimately, the ESCV found that including small business customers provided a more coherent framework to underpin retailers' family violence assistance and to ensure consistency across the industry.³⁸

The Commission notes that many small businesses are family businesses. For instance, farms, small retail shops, cafes and restaurants. If the rule does not cover small business customers, joint account holders on small business retail contracts may continue to be at risk of adverse consequences such as:

- an individual affected by family violence could have their personal details (such as a new home address) disclosed to a perpetrator in the context of their co-ownership of a small business
- a victim could be required to approach a perpetrator to obtain consents in relation to a joint business account
- a victim could be left to bear substantial costs on a business contract because both parties are liable for all debts.

2.1.2

Specialist family violence training for retailers' staff

The Commission is interested in your views on whether the energy rules should require family violence training for retailers' staff. We would like to hear about the benefits and costs, precedents, including the experiences of retailers in Victoria and, if the rules should include this requirement, how specific they should be.

Red and Lumo have not included mandatory training for retail staff in their rule change proposal. One concern could be whether it is appropriate to place obligations of an operational nature on retailers in the energy retail rules.

On the other hand, the Royal Commission into Family Violence recommended comprehensive and ongoing training of customer service staff to help to identify customers experiencing family violence.³⁹ The Royal Commission found that victims trying to access hardship programs across utility providers were often confronted by a lack of empathy and understanding of family violence, which also made it harder for them to then disclose their abuse.⁴⁰

As a result, under the Victorian Energy Retail Code energy retailers must provide their staff specialised family violence training. This includes customer facing staff, their managers, and staff responsible for systems and processes. The Victorian regulator considered this was necessary because it found that for an organisation to be able to prevent its products, systems and processes being exploited by perpetrators, it first needed to better understand family violence.⁴¹

38 ESCV, Energy Retail Code changes to support family violence provisions for retailers: Final decision, 22 May 2019, p. 12.

39 State of Victoria, The Royal Commission into Family Violence, March 2016, Recommendation 109.

40 State of Victoria, The Royal Commission into Family Violence, March 2016, Vol. 4, p. 103.

41 ESCV, Energy Retail Code changes to support family violence provisions for retailers: Final decision, 22 May 2019, p. 16
Clause 106F of the Energy Retail Code now requires training for:
- customer facing staff who may engage with customers affected by family violence
- the managers of those people
- those responsible for systems and processes that guide interactions with customers.

The Victorian code prescribes the types of training that staff must undertake. This involves training about the nature and consequences of family violence; the retailer's domestic violence policy; and how to identify and engage with affected customers.⁴² The Commission welcomes feedback on the benefits, costs and lessons learnt from the Victorian approach.

2.1.3 **Minimising repeated disclosure of family violence experiences**

The Commission is interested in understanding how to best to balance the need for providing relevant disclosures to retailers and ensuring that a customer affected by family violence is not forced to unnecessarily recount details of their experiences. Under the Energy Retail Code a retailer operating in Victoria must provide a secure process to avoid the need for a customer affected by family violence to repeatedly disclose their experiences. Retailers must provide:

- a method for the customer account to be identified
- effective ongoing engagement.⁴³

We are particularly interested in hearing about:

- Whether the NERR could require retailers to include in their family violence policies how they will minimise requirements for customer disclosures. We consider this could make it easier and less traumatic for victims to access assistance from their retailer. However the Commission is also mindful that this may also make it easier for perpetrators to find ways to circumvent these protections. So we would value input on whether there are aspects of a retailers' approach that a retailer should not publish to protect customer safety
- How retailers operating in Victoria have been able to adapt their operations and systems to minimise the need for victims to repeatedly disclose their experience.

Red and Lumo's rule change request does not include a similar clause. The Commission invites feedback on the benefits, costs and lessons learnt from the Victorian approach to minimising the need for repeated disclosure.

2.1.4 **Actively referring a customer to an external support service**

The Commission is interested in stakeholders' view on the benefits and costs of a requirement that retailers help customers affected by family violence to access external family violence support services. This could require retailers to provide a customer with information about support services at a time and in a manner that is safe, respectable and appropriate given the customer's circumstances. This requirement is provided in the Energy Retail Code.⁴⁴ We are also interested to understand the interaction between this clause and other potential provisions, such as a requirement for staff training.

42 Clause 106F of the Energy Retail Code.

43 Clause 106H of the Energy Retail Code.

44 Clause 106K of the Energy Retail Code.

Red and Lumo’s rule change request does not include a similar clause. However, under the proposed rule a retailer is required to include in its policy information on assistance that is available for customers affected by family violence.⁴⁵

In including the referral requirement in the Victorian code, the ESCV considered it necessary as the range of available support services can be overwhelming.⁴⁶ It also noted that because staff would have undertaken compulsory family violence training, they would be well-placed to identify appropriate support.⁴⁷ We welcome comments on this issue including experiences from Victoria.

2.2 Compliance, enforcement and civil penalties

The Commission welcomes stakeholder views on any potential compliance and enforcement issues that may exist in relation to the rule change proposal.

The Commission notes that the rule change request does not propose any civil penalties for breaches of any provisions of the proposed rule. We are interested in views on whether any provisions should have civil penalties attached to them and, if so, specifically which provisions. While the Commission cannot itself provide that a provision of the NERR is a civil penalty provision, it may recommend that certain provisions be added to the list of civil penalty provisions. In making such a recommendation the Commission would consider the importance of compliance with the provision and the types of consumer harm which could result from non-compliance, among other factors. The AER remains able to take action to enforce retailer compliance with provisions in the rules that are not civil penalty provisions.

We also would like to hear your views on whether equivalent family violence protections should apply for customers who live in homes where energy is provided by the owner of the site, rather than directly from an authorised retailer. In these embedded networks the site owner buys energy from a retailer and then “on-sells” the energy to all the tenants or residents. For instance, should energy customers living in these embedded networks — such as retirement homes and caravan parks, and renters in large apartment blocks — have equivalent family violence protections to other residential customers?⁴⁸ The Commission is interested in regulatory avenues to apply family violence protections in embedded networks.

The Commission is interested in understanding what stakeholders consider will assist compliance with the NERR. For example, could compliance be improved if there was a model family violence policy, that met the rules requirements, available for voluntary use by retailers? This could be facilitated by a consumer-focused body such as The Energy Charter and involve close collaboration with the AER. Does the proposed rule create any other potential compliance or enforcement issues?

45 Red and Lumo, Rule change request, 24 September 2021, p. 7.

46 ESCV, Energy Retail Code changes to support family violence provisions for retailers: Final decision, 22 May 2019, p. 27

47 ESCV, Energy Retail Code changes to support family violence provisions for retailers: Final decision, 22 May 2019, p. 26.

48 For more information on embedded networks and exempt sellers, see the Australian Energy Regulator’s website at <https://www.aer.gov.au/consumers/information-for-electricity-consumers-in-embedded-networks>

2.3 Implementation costs, impact mitigation and timing

The Commission would like to hear your comments on the costs that retailers are likely to face in implementing the rule change, how these could be minimised, and the potential impacts of the remaining costs on retail offers and retail competition. We are particularly interested in the views of those retailers that are not currently operating in Victoria. We want to understand any other adverse impacts retailers are likely to experience as a result of adapting their systems for this rule change (if made).

The rule change proposal highlights that most retailers that operate in the NECF jurisdictions also operate in Victoria. This means the proposed rule may have low implementation costs for most retailers, given most retailers already comply with the Victorian code obligations.⁴⁹ However, the AER's State of the Energy Market Report indicates that 14 NECF retailers currently do not operate in the Victoria.⁵⁰ These are predominantly smaller retailers, and may face higher proportional implementation costs than bigger retailers, particularly retailers with Victorian operations.⁵¹

The Commission is also interested in stakeholders' views on when the rule change, if made, should be implemented. How long would retailers need to prepare for compliance? Could a staged implementation process reduce the burden on retailers, particularly those that do not currently operate in Victoria? If that is the case, what should the stages involve?

QUESTION 2: ADDITIONAL MATTERS

Are there matters you would like to see addressed in the National Energy Retail Rules beyond those considered in the proposed rule? These could be issues, protections or requirements. For instance, regarding the Victorian approach, compliance and enforcement, or ways to minimise implementation costs?

⁴⁹ Red and Lumo, Rule change request, 24 September 2021, pp. 4 and 7.

⁵⁰ AER, State of the Energy Market Report, June 2021, pp. 244-5.

⁵¹ The retailers are Bright Spark Power; Electricity in a Box; Enova Energy; Future X Power; GlowPower; Locality Planning Energy; Mojo Power; Nectr Energy; Pooled energy; Radian energy; ReAmped energy; ActewAGL Retail; Aurora Energy and Ergon Energy.

3 ALTERNATIVE AND COMPLEMENTARY POLICY APPROACHES

The Commission is also interested in understanding if there are other regulatory approaches that the Commission could use or recommend to complement the proposed rule, or to provide alternative protections that may be more effective in protecting customers affected by family violence than Red and Lumo’s proposal. We would like to hear views on whether the Commission should consider:

- implementing approaches from other sectors (that could be used either in whole or part)
- recommending, and playing a role in, a broader cross-sectoral regulatory approach
- relying on jurisdictional legislative or regulatory frameworks, rather than a national approach.

3.1 How can we draw on approaches from other sectors?

The Commission is particularly interested in understanding the lessons learnt from other sectors about protecting consumers effectively from financial abuse. Specifically, we welcome comments on the regulatory frameworks used, the rationale for that approach, and their effectiveness.

Recent reforms in the water and banking sectors appear to use different regulatory arrangements:

- the water industry in Victoria, for instance, has mandatory minimum family violence policy requirements for water businesses.⁵²
- the banking industries in Australia and the United Kingdom rely on industry codes.

The ESCV designed high level requirements in the Victorian water sector to allow businesses to learn and adapt policies and approaches to family violence over time, while ensuring that minimum standards are met.⁵³

Both the Australian Banking Association and UK Finance have developed industry frameworks. These provide information and practical proposals to help banks and related businesses be more proactive and consistent in how they support customers affected by family violence.⁵⁴ The Australian Banking Association’s banking industry code of practice is binding on signatory banks. It sets out the standards of practice and service that member banks should abide by in dealing with individuals, small business customers, and their guarantors.⁵⁵ UK Finance’s ‘Financial abuse: code of practice’ is also voluntary and includes high-level principles with additional prescription, to explain good practice for banking and finance businesses.⁵⁶

52 ESCV, Amendments to water customers service codes, final decision, April 2017, pp. i and 14.

53 ESCV, Amendments to water customers service codes, final decision, April 2017, pp. 14-5.

54 See Australian Banking Association, Industry guideline: Preventing and responding to family and domestic violence, November 2016; and UK Finance Financial Code of Practice, August 2018.

55 Australian Banking Association, Preventing and responding to financial abuse (including elder abuse), March 2021.

56 UK Finance. Financial Code of Practice, August 2018.

3.2 Does the problem require a cross-sectoral and/or jurisdictional approach?

The Commission is interested in understanding if a cross-sectoral approach would more effectively address financial abuse than focusing solely on changes to the NERR. This could involve a coordinated response across electricity and gas, water, communications and financial services given perpetrators may engage in similar conduct across different sectors. A cross-sectoral approach could complement or substitute for energy-specific reform.

Potential concerns with a cross-sectoral approach could include the time it would take to align the thinking in each sector and design and implement a coordinated response, the lack of a central organising agency with the necessary authority and funding, the uncertainty as to if and when the cross-sectoral approach may take effect, and the difficulty in accommodating sector-specific differences in a generic approach.

One example of cross-sector coordination is in Victoria where the Urban and Rural Water Codes, and the Energy Retail Code, have similar requirements on retailers for: relevant training; secure handling of information; avoiding repeated disclosures; managing customers' debt, and; referring customers to appropriate assistance.⁵⁷

The Commission is also interested in further understanding the extent to which existing jurisdictional frameworks provide protections for energy consumers from financial abuse. Do jurisdictional laws on family violence already provide similar protections or conflict with those proposed by Red and Lumo? If a cross-sectoral response is valuable, how might it interact with jurisdictional laws, protections and assistance?

Finally, the Commission will examine the extent to which policy alignment or differences across the NEM might impact customers affected by family violence.

QUESTION 3: ALTERNATIVE APPROACHES

What regulatory approaches from other sectors should the Commission consider, to complement, amend or replace Red and Lumo's proposal? Please explain why that regulatory approach is being used and provide the evidence of its effectiveness in protecting consumers from family violence.

Could a broader cross-sector approach effectively address family violence in the energy sector? What would be its key aspects?

What existing jurisdictional provisions should the Commission take into account for this rule change?

⁵⁷ Clause 14 Customer service code – urban water businesses 2017; clause 11 Rural water customer service code 2017; and Part 3A of the ERC.

4 WHAT IS AN APPROPRIATE ASSESSMENT FRAMEWORK FOR THIS RULE CHANGE?

The Commission is interested in your views on the proposed assessment framework for this rule change. To help you form your views, this chapter explains the:

- National Energy Retail Objective (NERO), which the Commission must apply when making a rule
- assessment framework that the Commission proposes to use
- Commission's ability to make a more preferable rule where it satisfies the NERO.

4.1 Achieving the NERO

The Commission may only make a rule if it considers the rule will, or is likely to, contribute to the achievement of the NERO, as set out in s.236(1) of the National Energy Retail Law (NERL). The NERO is:⁵⁸

to promote efficient investment in, and efficient operation and use of, energy services for the long term interests of consumers of energy with respect to price, quality, safety, reliability and security of supply of energy.

The Commission must also, where relevant, satisfy itself that the rule is "compatible with the development and application of consumer protections for small customers, including (but not limited to) protections relating to hardship customers" (the "consumer protections test").⁵⁹

Where it is relevant in the making a rule, the Commission must be satisfied that both the NERO test and the consumer protections test have been met.⁶⁰ If only one test has been met, the rule cannot be made.

There may be some overlap in the application of the two tests. For example, a rule that provides a new protection for small customers could also promote the NERO.

4.2 What components should be in the assessment framework?

The Commission welcomes comments on the criteria we will use to assess the rule change request. These criteria are designed to operationalise the NERO. This could include adding or removing criteria or modifying the proposed criteria.

There are three proposed assessment criteria:

- **Consumer protections** - does the rule change provide effective consumer protections for small customers?
- **Transparency and certainty** - does the rule change provide better access to information, and certainty, for consumers who may be affected by family violence about

58 Section 13 of the NERL.

59 Section 236(2)(b) of the NERL.

60 That is, the legal tests set out in s. 236(1) and (2)(b) of the NERL.

the support and protections available to them? Does policy consistency across the NEM impact consumers' information access and certainty?

- **Minimise unnecessary and inefficient regulatory and administrative burden** - are the costs to market participants and market regulatory bodies of implementing the solution minimised, and proportional to the benefits, and are the responsibilities consistent with the role of energy sector businesses? Could policy alignment/differences across the NEM have an impact?

4.3 Making a more preferable rule

Under s. 244 of the NERL, the Commission can make a rule that is different (including materially different) to a proposed rule (a more preferable rule) if it is satisfied that, having regard to the issue or issues raised in the rule change request, the more preferable rule will or is likely to better contribute to the achievement of the NERO.

QUESTION 4: ASSESSMENT FRAMEWORK

Is the proposed assessment framework appropriate for considering the proposed rule? What amendments or additions would you suggest, and why?

A THE VICTORIAN ROYAL COMMISSION INTO FAMILY VIOLENCE

Warning: this appendix contains content that may be distressing for some readers

A.1 Overview

On 22 February 2015 the Victorian Government established the Royal Commission into Family Violence. This followed a series of family violence-related deaths in Victoria, including the death of Luke Batty who was killed by his father on 12 February 2014 after years of abusive behaviour directed at Luke's mother, Ms Rosie Batty. The Royal Commission was established in recognition of the harm that family violence causes, and the need to invest in family violence reforms, to assure the future well-being and prosperity of all Victorians.⁶¹

The Royal Commission's terms of reference sought to:

- prevent violence
- improve early intervention
- support victims
- make perpetrators accountable
- develop and refine systemic responses
- ensure better coordination between the community and government in responding to family violence
- to evaluate and measure the success of strategies.⁶²

The Royal Commission's final report contained 227 recommendations. These were directed at:

- improving the current system
- seizing opportunities to transform the way that we respond to family violence
- building structures to guide and oversee a long-term program that deals with all aspects of family violence.

All of its recommendations were adopted by the Victorian Government.⁶³

A.2 Essential household utilities and economic abuse

The Royal Commission recognised that perpetrators can use services such as electricity, gas, water and communications devices, which are essential to enable full participation in society, as a form of economic abuse. This includes by:

- insisting the account is in the victim's name and refusing to contribute to the cost
- putting a service in the sole name of the victim without their knowledge or consent

61 State of Victoria, Royal Commission into Family Violence, March 2016, Summary and Recommendations, p. 1.

62 State of Victoria, Royal Commission into Family Violence, March 2016, Summary and Recommendations, p. 1.

63 State of Victoria, Royal Commission into Family Violence, March 2016, Summary and Recommendations

- holding an account jointly and refusing to contribute to the cost
- holding the account in their own name and not paying bills, resulting in disconnection
- holding the account in their own name and threatening to have the service cut off or having it cut off when they leave their family home.⁶⁴

A.3

The Royal Commission's response to economic abuse: Recommendation 109

To address this economic abuse, the Royal Commission recommended the Victorian Government and the ESCV work together to:

- Amend the Energy Retail Code and Customer Service Code (Urban water businesses) to:
 - list minimum eligibility criteria for access to hardship programs
 - include family violence as an explicit eligibility criterion for hardship programs.
- Develop guidelines for energy and water retailers to require comprehensive and ongoing training of customer service staff to help them identify customers experiencing family violence.
- Publicise the availability of dispute resolution mechanisms for people affected by family violence.⁶⁵

⁶⁴ State of Victoria, The Royal Commission into Family Violence, March 2016, Vol. 4, p. 104.

⁶⁵ State of Victoria, Royal Commission into Family Violence, March 2016, Summary and Recommendations, p. 120

B THE ENERGY RETAIL CODE (VICTORIA)

In response to the Royal Commission, the Victorian Government asked the ESCV to provide guidance on the policies and practices energy companies should adopt to help them to engage with survivors, victims and perpetrators of family violence.⁶⁶

B.1 Developing changes to the Energy Retail Code

Beginning in July 2018, the ESCV consulted with family violence experts and the broader energy sector to understand how it could provide effective and meaningful guidance to energy retailers on family violence processes and policies. Guided by this initial consultation, the ESCV released a consultation paper that identified principles and actions designed to demonstrate best practice as it applies to the energy sector.⁶⁷

The ESCV's issues paper received 7 submissions from a mixture of retailers (Powershop, AGL, Momentum Energy, Red and Lumo and Origin Energy) and Community groups (Economic Abuse Reference Group, Victorian Council of Social Services (VCOSS)).⁶⁸ Its draft decision received 11 submissions, 7 of these came from energy retailers (Momentum Energy, AGL, Simply Energy, EnergyAustralia, Origin Energy, Red and Lumo and Alinta), 2 came from Community sector groups (Economic Abuse Reference Group, VCOSS) and the final submission came from the Energy and Water Ombudsman Victoria.⁶⁹

B.2 Changes to the Energy Retail Code

On 22 May 2019 the ESCV released its final decision and final ERC changes to support family violence provisions for retailers. The amended rules came into effect on 1 January 2020. The rules require retailers to implement a family violence policy, and meet minimum standards on:

- account security – retailers are required to keep the contact information and personal details of customers affected by family violence, including from joint account holders, secure. Additionally, it requires a retailer to reach agreement with an affected customer on a safe method of communication, this takes precedence over all other customer entitlements or retailer requirements.
- customer service – energy retailers are required to establish processes that provide for safe and secure engagement between customers and retailers
- debt management practices – energy retailers are required to consider the circumstances of a customer experiencing family violence before pursuing a customer debt
- external support services – energy retailers are required to help customers access one or more specialist external family violence assistance services

66 ESCV, Providing family violence support: Exploring ways energy retailers can provide family violence assistance that is safe and effective, 31 October 2018, p. 2.

67 ESCV, Providing family violence support: Exploring ways energy retailers can provide family violence assistance that is safe and effective, 31 October 2018, p. 2.

68 ESCV, Energy Retail Code changes to support family violence provisions for retailers: Draft decision, 19 March 2019, p. 34.

69 ESCV, Energy Retail Code changes to support family violence provisions for retailers: Final decision, 22 May 2019, p. 40.

- evidence of family violence – customers are not required to provide evidence of family violence in most circumstances, but retailers could have the option of seeking evidence when addressing issues related to debt recover and de-energization.
- training – staff that either engage with customers, their managers or persons responsible for designing this engagement are required to undertake training relating to: The nature and consequences of family violence; how to apply the retailer’s family violence policy; how to identify signs of family violence; and how to engage effectively with affected customers.⁷⁰

70 ESCV, Energy Retail Code changes to support family violence provisions for retailers: Final decision, 22 May 2019

C SUPPORT SERVICES

National sexual assault, domestic and family violence counselling service - 1800 737 732 (1800 RESPECT)

NSW domestic violence line - 1800 656 463

Lifeline - 13 11 14

ABBREVIATIONS

AEMC	Australian Energy Market Commission
AEMO	Australian Energy Market Operator
AER Commission	Australian Energy Regulator See AEMC
ESCV	Essential Services Commission of Victoria
NECF	National Energy Consumer Framework, applying in NSW, ACT, Tasmania, Queensland and South Australia.
NERL	National Energy Retail Law
NERO	National Energy Retail Objective
NERR	National Energy Retail Rules