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3 March 2022

Ms Anna Collyer
Chair
Australian Energy Market Commission
GPO Box 2603
SYDNEY NSW 2001

Dear Ms Collyer

Re: Protecting customers affected by family violence consultation paper

We thank you for the opportunity to comment on this important issue for energy consumers affected by family violence. As the AEMC notes in the *Consultation Paper – Protecting Customers Affected by Family Violence* (18 November 2021, the consultation paper), family violence is a significant issue for the Australian community. Many organisations have a role in both supporting victim-survivors and ensuring the energy regulatory framework and business practices do not cause or exacerbate harm. We welcome the industry-led rule change proposal initiated by Red Energy and Lumo Energy and the AEMC's consultation to improve consumer outcomes in this important area.

Protecting and supporting vulnerable consumers is a priority

Protecting vulnerable consumers while enabling consumers to participate in energy markets is a key AER strategic objective, and an important AER priority during 2020-2025 is to develop a vulnerability strategy to inform work across the AER.¹ To support our strategic objectives, our draft Consumer Vulnerability Strategy proposes targeted actions to improve identification of vulnerability and to strengthen protections for consumers facing payment difficulty, including a commitment to advocate for protections for consumers experiencing family violence.²

The AER supports collaborative, cross-sector initiatives to address consumer harms and improve outcomes for energy consumers. As noted in our draft Consumer Vulnerability Strategy, one of the important proposed enablers of success to improve consumer outcomes is working together.³ We consider that best outcomes will be achieved if stakeholders work collaboratively to identify ongoing solutions which are effective in preventing and addressing the devastating impacts of family violence.

In early 2020, we published new research into regulatory approaches to consumer vulnerability.⁴ Our report noted the seriousness and widespread impact of family violence. It

¹ Australian Energy Regulator, *Strategic Plan 2020-25*, December 2020, p. 2.

² Australian Energy Regulator, *Draft Consumer Vulnerability Strategy*, 20 December 2021, p. 24.

³ Australian Energy Regulator, *Draft Consumer Vulnerability Strategy*, 20 December 2021, p. 50.

⁴ Consumer Policy Research Centre (CPRC), *Exploring Regulatory Approaches to Consumer Vulnerability – A Report for the AER*, February 2020

is now well-known that family violence affects at least one in six Australian women,⁵ and can cause long-lasting and serious physical, psychological and financial harm, or even death.

Family violence is known to be underpinned by a pattern of coercion, control and domination by one person over another.⁶ Because of the essential nature of energy, perpetrators can use control over these services to exercise abuse on victim-survivors.⁷ The Royal Commission into Family Violence Report outlined the following non-exhaustive list of ways that perpetrators can exploit energy services to control victim-survivors:

- insisting the account is in a 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;
- 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 the family home.

These tactics can have a number of significant effects on victim-survivors:

- victim-survivors are forced to bear the full economic cost of utilities to ensure the household has access to services;
- victim-survivors are fearful that their inability to pay, or their partner's refusal to pay, may result in being pursued by debt collectors or lead to disconnection of services;
- victim-survivors experience disconnection, incur reconnection fees and have a poor credit history;
- victim-survivors face difficulties extricating themselves from debts and liabilities incurred through abuse, limiting their potential for ongoing financial security and self-sufficiency;
- utilities are disconnected and women go without services necessary to care for themselves and their children;
- utility providers send correspondence to the household (containing the victim's new residential address) which is intercepted by the perpetrator and potentially threatens their personal safety.

We have also heard from stakeholders about further harms that can be caused to victim-survivors when engaging with their energy retailer, such as being asked for evidence to prove that they have been affected by family violence.

Due to the prevalence of family violence in Australia, and the significant impact this can have on victim-survivors' health, safety and long-term financial security, the AER considers it is timely and necessary to ensure the *National Energy Retail Rules* support consumers experiencing family violence in their engagement with the energy market, and ensure that business practices do not cause or exacerbate the harm experienced by victim-survivors. We have set out below our views in response to the four key consultation questions.

⁵ Consumer Policy Research Centre (CPRC), *Exploring Regulatory Approaches to Consumer Vulnerability – A Report for the AER*, February 2020, p. 30. Family violence also affects 1 in 19 men: Australian Bureau of Statistics, Personal Safety Survey, 2016.

⁶ Royal Commission into Family Violence, *Summary and Recommendations: Final Report*, March 2016, Vol I p. 17.

⁷ Royal Commission into Family Violence, *Summary and Recommendations: Final Report*, March 2016, Vol IV, p. 104.

1. Views on the rule change proposal

The AER supports increasing protections for consumers affected by family violence. While the rule change request seeks to address issues by proposing partial alignment with current Victorian requirements, it omits a number of important provisions that exist in the Victorian framework, which we discuss in section 2 below.

We highlight that the provisions within the Victorian framework were underpinned by significant research and consultation. We also note the cost to serve implications of a consistent regulatory approach across the jurisdictions, rather than differing regulatory frameworks between the NECF and Victoria. We therefore consider the national and Victorian frameworks should be consistent to the extent reasonably practical, absent a strong reason for departure from the Victorian framework.

2. Additional components that could be included in the rule

The AER considers it will be important to ensure the proposed rule is comprehensive enough to address current harms and to improve consumer outcomes, and that there are important aspects of the current Victorian requirements not captured in the proposed rule. We have set these out in the Attachment to this submission. We also discuss in further detail below specific aspects that we consider should be included in the rule.

The importance of considering victim-survivors' lived experiences in policy design

The Royal Commission into Family Violence report emphasised that any system responses and reforms would be most effective if informed by the lived experiences of women and children who experience family violence. This led to a recommendation to 'ensure voices of victims are heard and inform policy development and service delivery.'⁸ We encourage the AEMC to consider how the lived experiences of victim-survivors of family violence could inform the design and implementation of the rule change.

Disconnection

As the AEMC's consultation paper notes, one of the key harms experienced by victim-survivors of family violence is disconnection caused by the behaviour of the perpetrator, resulting in victim-survivors and their children going without essential services.⁹ We encourage the AEMC to consider how to reduce the impact of this harm, potentially by aligning with the current Victorian requirement to consider consumer's experiences of family violence prior to disconnection.

Training and customer service

We consider there are important opportunities to address current harms and improve consumer outcomes through the rule. As noted in the AEMC's consultation paper, poor customer service and a lack of understanding of family violence can make it more challenging for victim-survivors to disclose their abuse and seek assistance from their retailer. On the other hand, support and services provided in a safe and respectful manner can deliver successful consumer outcomes, and reduce the risk of long term or entrenched harm.¹⁰ The AER would support an approach that requires appropriate training. We encourage the AEMC to assess whether training provisions should apply in NECF jurisdictions.

⁸ Royal Commission into Family Violence, *Summary and Recommendations: Final Report*, March 2016, recommendation 201.

⁹ Australian Energy Market Commission, [Protecting Customers affected by Family Violence: Consultation Paper](#), 18 November 2021, p. 1-2.

¹⁰ Essential Services Commission (Victoria), *Energy Retail Code Changes to Support Family Violence Provisions for Retailers*, May 2019.

Small business customers

The pervasive nature of coercion often impacts many aspects of peoples' lives, including economic security and employment.¹¹ 70% of Australian businesses are family-owned,¹² increasing the potential types and impacts of harm that small business owners and operators may experience where, for example, joint business accounts are held, or a victim-survivor is listed as an owner, operator, or employee of a small business.¹³ Given the serious impact of family violence on consumers, we consider it is important that small business customers are also able to access supports under the proposed rule. We note that small businesses customers do fall within the scope of the current Victorian framework.

Civil penalties

The consultation paper seeks views about to whether civil penalties should be attached to the proposed rules. Under the current Victorian framework, each of the minimum standards required of retailers to provide assistance for consumers affected by family violence is classified as a civil penalty provision.¹⁴ Given the serious nature of the harm to victim-survivors that could eventuate from breaches of the proposed rules, it is appropriate that proportionate civil penalties are available to address such breaches.

Regulatory simplification and consistent approaches benefit consumers and retailers

Advocating to simplify the retail market regulatory framework to encourage effective competition and reduce cost to serve is an important AER priority during 2020-2025. This goal is supported in the rule change request, which notes that the vast majority of retailers operate in both Victorian and NECF jurisdictions. Consequently, implementing changes consistent with the Victorian regime is likely to be low cost, whilst ensuring victim-survivors of family violence receive tailored, safe and effective supports.

3. Alternative approaches

We consider there are opportunities to learn from tested approaches in other sectors, including the Australian Banking Association's Banking Code of Practice and the Victorian Water Code. In particular, research to measure the impact of the Victorian Water Code supports found overall positive outcomes stemming from the changes.¹⁵ We note the Water Code Outcomes review provides insights about further improvements, which the AEMC may wish to consider.

4. Proposed assessment framework

We note the consultation paper sets out proposed criteria for assessing whether a rule should be made (including consumer protection, transparency and certainty, and minimising unnecessary and inefficient regulatory and administrative burden). Given the purpose of this rule change is to protect consumers affected by family violence, it is the AER's view that when assessing the rule change the AEMC should consider whether the rule will ultimately reduce or eliminate harms to consumers experiencing family violence when they are engaging with the energy market.

When considering potential consumer information requirements, we encourage the AEMC to consider whether safe defaults can be used to 'design in' baseline protections,¹⁶ such as the

¹¹ Essential Services Commission (Victoria) *Energy Retail Code Changes to Support Family Violence Provisions for Retailers*, May 2019.

¹² KPMG, *Family business – the balance for success*, May 2018.

¹³ Chamber of Commerce and Industry Queensland, [Domestic and Family Violence as a Workplace Issue: Small Business Social Impact Series 2021](#), 2021.

¹⁴ Energy Retail Code of Practice, Schedule 1.

¹⁵ Essential Services Commission (Victoria), *Water Code Outcomes Review: Family Violence Changes*, June 2019.

¹⁶ See Australian Energy Regulator, *Draft Consumer Vulnerability Strategy*, 20 December 2021, p. 44.

proposal in the rule change to ensure that consumers have access to information through the delivery method of their choosing. We also consider it will be appropriate to ensure that consideration of costs incurred by retailers in supporting consumers affected by family violence is balanced by the seriousness of the harms or potential harms that may be experienced by such consumers in the absence of stronger protections.

We look forward to working together with the AEMC and our stakeholders to ensure energy consumers who are affected by family violence are protected and supported.

If you have any questions about this submission, please contact Mark Feather, General Manager, Strategic Policy and Energy Systems Innovation on (03) 9290 6958.

Yours sincerely

A handwritten signature in black ink that reads "Jim Cox". The signature is written in a cursive style with a large, stylized 'J' and 'C'.

Jim Cox
Deputy Chair
Australian Energy Regulator

Sent by email on: [Click here to enter a date.](#)

Attachment:

	Current Victorian requirements	Proposed NECF rules
Definition of an affected customer ¹⁷	Current and former residential <i>and small business</i> customers.	Current and former <i>residential</i> customers only.
Content of the family violence policy ¹⁸	Family violence policy must include information on the assistance available to consumers. The policy must address the minimum standards set out in Part 7 of the <i>Energy Retail Code of Practice</i>	Family violence policy must include information on the assistance available to consumers
Training ¹⁹	Certain staff required to be provided with family violence training.	Not included in rule change proposal Limited requirements for staff training in AER Customer Hardship Policy Guideline
Customer service ²⁰	Retailers to provide processes to ensure affected customers not required to repeatedly disclose family violence	Not included in rule change proposal
External support ²¹	Retailers to provide affected customers with information about family support services.	Not included in rule change proposal
Record keeping ²²	Retailers required to maintain records sufficient to evidence compliance	Not included in rule change proposal
Account security ²³	Affected customers entitled to nominate a preferred method of contact, which must take precedence over any other requirement to communicate with a customer in a particular way	Affected customers entitled to nominate a preferred method of contact
Consistency of market retail contract with family violence policy and compliance	No analogous rule	If a retailer, in complying with Part 3A or their Family Violence policy, is unable to fulfil a contractual obligation or obligation under the Rules, they are not in breach of the contract or the rules
Disconnection ²⁴	Prior to disconnecting an affected customer, a retailer is required to take into account that customer's experience of family violence	Not included in rule change proposal
Security deposit ²⁵	When deciding whether to require a customer to provide a security deposit, a retailer is required to take into account that customer's experience of family violence	Not included in rule change proposal

¹⁷ Energy Retail Code of Practice, s 3.

¹⁸ Energy Retail Code of Practice, s 157.

¹⁹ Energy Retail Code of Practice, s 149.

²⁰ Energy Retail Code of Practice, s 151.

²¹ Energy Retail Code of Practice, s 154.

²² Energy Retail Code of Practice, s 160.

²³ Energy Retail Code of Practice, s 150.

²⁴ Energy Retail Code of Practice, s 187(1)(a)(iv).

²⁵ Energy Retail Code of Practice, s 40(7A).