

3 March 2022

Australian Energy Market Commission
Level 15, 60 Castlereagh St
Sydney NSW 2000

Reference: RRC0042

Submitted online: <https://www.aemc.gov.au/contact-us/lodge-submission>

Dear Sir/Madam

RE: AEMC Protecting Customers Affected by Family Violence Consultation

Thank-you for the opportunity to provide a submission in response to the Australian Energy Market Commission's (AEMC) consultation paper titled "Protecting Customers Affected by Family Violence" (the Paper).

Momentum Energy Pty Ltd (Momentum) is an Australian operated energy retailer, owned wholly by Hydro Tasmania, Australia's largest producer of renewable energy. We pride ourselves on providing competitive pricing, innovation and outstanding customer service to electricity consumers in Victoria, New South Wales, South Australia, Queensland, the ACT and on the Bass Strait Islands. We also retail natural gas to Victorian customers. We offer competitive rates to both residential and business customers along with a range of innovative energy products and services.

Momentum is cognisant of the physical and psychological harm caused by family violence and we fully understand the role and actions that an energy retailer can undertake to support and protect affected members of the community. We support and comply with the family violence provisions of the Victorian Energy Code of Practice. Moreover, we apply these protections to our non-Victorian affected customers on a voluntary unregulated basis.

Although we support the intent of the rule change proposed by Red/Lumo, we do not agree that mandated regulations are required. We believe that allowing retailers the ability to implement process changes in line with a rapidly changing energy market will enable us to maximise support and protection for affected customers. Imposing mandated family violence obligations would place a strict compliance emphasis on our approach to protection and support rather than our preferred bespoke customer approach.

Nevertheless, if the AEMC chooses to proceed with this rule change we would prefer it to be imposed with similar obligations as those that exist in Victoria as this largely reflects our current practice in non-Victorian jurisdictions and would ensure the benefit of consistent national regulation.

Suggested Amendments to the Proposed Rules

We refer to the proposed rules as outlined in the Red/Lumo rule change request and provide the following comments and suggested changes:

The proposed rules 76E(1) to 76E(3) (**Proposed Rules**) state:

(1) A retailer must not disclose or provide access to confidential information about an affected customer to any other person without the consent of the affected customer.

(2) In this clause, the term “confidential information” refers to any information that may be used to identify or locate an affected customer, including information about their whereabouts, contact details, or financial or personal circumstances.

(3) In this clause, the term “any other person” includes a person who is or has been a joint account holder with an affected customer.

We note that the Proposed Rules are almost identical to their counterparts in clause 106G of the Victorian Energy Retail Code. In implementing clause 106G, Momentum Energy identified an issue which we would like clarified in any implementation of the Proposed Rules, which may be stated briefly as follows:

- A customer may be unlikely to consent to the disclosure of their confidential information at the time they inform an energy retailer they are an affected customer.
- If such consent is not given by an affected customer, the energy retailer will potentially be unable to disclose the relevant confidential information to third party service providers who require that information to perform services essential to the sale of energy to the affected customer.

Consent

In most cases, an energy retailer’s most significant engagement with a customer is at sign-up, when we collect the critical information we need to sell energy to them. Most, if not all, of that information is personal information (as defined by the *Privacy Act 1988* (Cth) (the **Privacy Act**)) and probably deemed confidential information under the Proposed Rules.¹

We (and we expect most energy retailers) do not ask customers for their explicit consent to disclose the majority of personal information we collect at sign-up.² Rather, customers are provided with a collection statement (pursuant to the requirements of the Privacy Act) which explains, among other things, that the customer’s personal information will be disclosed in accordance with our privacy policy.

¹ For the purposes of this submission, we use the term personal information with the intention that this includes confidential information as defined by the Proposed Rules.

² We note the Privacy Act does require that consent to disclose certain types of personal information.

Taking this approach into account, affected customers present a unique challenge. In our experience, customers do not identify as affected customers at sign-up, so when we are made aware at some later time that they are affected customers, we already hold their personal information and we have almost certainly disclosed it to other persons, which is contrary to the Proposed Rules.

Further, when a customer contacts us to identify as an affected customer, they are invariably concerned about the security of their personal information. In this context, asking for consent to the disclosure of their personal information to ‘any other persons’ may be problematic as, from the affected customer’s perspective, the easiest, and possibly safest, option may be to not give their consent.

Disclosure

We understand the primary concern of the Proposed Rules is to ensure that an affected customer’s personal information is not disclosed to an individual that could cause harm to them. We agree this concern should be addressed, and that such a disclosure should not be made. We also accept that restricting disclosure to ‘any other person’ may achieve this objective; however, there are difficulties with deploying such a broad term.

Energy retailers rely on a number of third-party service providers (for the purposes of this submission, **Essential Persons**) to sell energy to their customers.³ In turn, each of these Essential Persons relies on energy retailers providing them with sufficient personal information about those customers to perform their particular service. Consequently, if a customer (whether an affected customer or otherwise) does not give their consent for the retailer to disclose their personal information to those Essential Persons (i.e. ‘any other person’), the retailer is unlikely to be unable to sell them power.

Recommended Approach

We recommend that the Proposed Rules are amended to exclude Essential Persons from the consent requirement set out in paragraph (1) of the Proposed Rules.⁴

We appreciate the AEMC is better positioned to draft any future Rule, however, to demonstrate our recommended approach we provide the following example formulation of the Proposed Rules.

(1) A retailer may disclose or provide access to confidential information about an affected customer to an excepted person but must not disclose or provide access to protected information about an affected customer to any other person without the consent of the affected customer.

³ To date, Momentum Energy has identified these third parties to comprise energy distributors, IT service providers, and mail service providers. Other energy retailers may have identified other categories of service providers particular to their circumstances.

⁴ We accept that this approach may not align with future changes to consent requirements under the Privacy Act. However, we suggest that it is unlikely the Privacy Act will ever require an APP entity to contract with a person without the necessary information to perform that contract. For background, see www.ag.gov.au/integrity/consultations/review-privacy-act-1988.

- (2) *In this clause, the term “confidential information” refers to any information that may be used to identify or locate the affected customer, including information about their whereabouts, contact details, or financial or personal circumstances.*
- (3) *In this clause, the term “any other person” includes a person who is or has been a joint account holder with an affected customer but does not include an excepted person.*
- (4) *In this clause, the term “excepted person” means a person who is essential to the sale of energy to the affected customer, including [energy distributors, information technology service providers and postal mail service providers], but does not include [excluded persons].*

We note that our paragraph (4) presumes that the phrase ‘essential to the sale of energy to the affected customer’ is readily understood. Further or other drafting may be required to clarify this concept or, equally, the AEMC may determine to instead develop an exhaustive list of excepted persons, in which case paragraph (4) could be revised to the effect of:

(4) In this clause, the term “excepted person” means [energy distributors, information technology service providers and postal mail service providers].

Should you require any further information regarding this submission, please don’t hesitate to contact me on 0478 401 097 or email randall.brown@momentum.com.au.

Yours sincerely

[Signed]
Randall Brown
Regulatory Manager