



Protecting customers affected by family violence

Consultation on draft determination and rule

Stakeholders are invited to comment on a draft rule proposing new protections and assistance in the National Energy Retail Rules (NERR) for customers affected by family violence. The Commission has made this draft determination because essential services like energy can be exploited by perpetrators to control victims, undermine financial security, and inflict psychological and physical harm. Submissions close on 4 August 2022.

The case for change

Intimate partner violence contributes to more death, disability and illness in adult women than any other preventable risk factor.¹ In 2017, the Australian Bureau of Statistics found that one in four Australian women has experienced violence by an intimate partner.² More recent surveys show the incidence and severity of family violence increased during the COVID-19 pandemic.³

Because they are critical to everyday life, essential services like electricity, gas, water and communications can be exploited by perpetrators of family violence to harm and control victims. Many energy retailers around Australia have proactively introduced their own programs to help customers experiencing family violence. The Essential Services Commission of Victoria, has been at the forefront of many of the developments in the water and energy sectors. However, more needs to be done. This rule change recognises that all retailers have a role to play in providing targeted, practical assistance and support to customers affected by family violence

Overview of the draft rule

The Commission's draft determination is to make a more preferable draft retail rule. The key elements of the draft rule are:

- **Scope that protects the greatest number of customers possible:** The rule is drafted as broadly as practicable, to ensure that the wide range of energy customers who may experience family violence receive protections. In this respect, it relies on the South Australian definitions of family relationships, for the purposes of identifying family violence.⁴ The draft rule will also apply to both residential and small business customers. Finally, the Commission recommends that the AER apply protections to customers in embedded networks.
- **Requirements on retailers to protect an affected customer's personal information and prioritise their safety:** The draft rule introduces new account security protections. These are designed to prevent perpetrators from accessing information that may allow them to identify, communicate with, or locate an affected customer. The draft rule also includes a

¹ Australia's National Research Organisation for Women's Safety (2018). Violence against women: Accurate use of key statistics (ANROWS Insights 05/2018). Sydney, NSW:ANROWS.

² Australian Bureau of Statistics. (2017). Personal safety, Australia, 2016. Canberra, ACT:Australian Bureau of Statistics. Around one in thirteen men have also experienced intimate partner violence.

³ 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.

⁴ These cover carer relationships and Aboriginal and Torres Strait Islander kinship relationships.

paramount requirement for retailers to consider safety in all dealings with an affected customer and, in coordination with the customer, to identify and use their preferred method of communicating.

- **Help for the specific financial challenges that survivors face:** The draft rule places new requirements on retailers to consider the impact of selling debt or commencing action to recover debt from an affected customer, including where the debt may be partly the fault of another person similar considerations are required when a retailer is arranging for de-energisation of an affected customer. The draft rule also requires retailers to consider if an affected customer may have payment difficulties or be a hardship customer.⁵ The draft rule also extends certain protections that are currently available to hardship customers and those with payment difficulties to all affected customers.⁶
- **Requirements that drive the culture, skills and practices that retailers need to properly respond to affected customers:** The draft rule places new mandatory skills requirements on relevant retailer staff to ensure that they understand family violence and can identify, engage with, and assist affected customers. It also reduces the risks of customers being further traumatised, by banning retailer requests for documentary evidence to prove a customer is affected by family violence, and requiring that retailers minimise customers needing to repeatedly disclose their experience of family violence. The draft rule also requires retailers to provide customers with details of at least one external support service, in a manner that is safe, respectful and appropriate to the affected customer's circumstances.⁷
- **All retailers must have and implement a family violence policy:** The draft rule requires that all retailers must develop, publish and implement a family violence policy that addresses the new family violence retailer obligations in the NERR and is consistent with leading practice.
- **Flexibility for retailers to help customers when they need to:** The draft rule gives retailers greater regulatory assurance when assisting customers experiencing family violence as it provides:
 - that retailers can communicate with affected customers using their preferred method of communication, regardless of other requirements in the NERR
 - that the retailer's family violence policy prevails to the extent of any inconsistency between it and a customer's market retail contract with that retailer.⁸
- **Civil penalties:** The Commission proposes to recommend Tier 1 civil penalty provisions for nine provisions in the draft rule, recognising the significant impacts that may flow from a breach of the provisions.
- The Commission proposes that the amending rule, if made as final, would commence on 1 May 2023.

Benefits of the draft rule

The Commission expects the draft rule will:

- **Provide effective consumer protections for small customers:** The draft rule introduces new protections that will help keep customers safe, protect their personal information, minimise trauma when dealing with energy services, and encourage retailers to respond to the specific challenges faced by survivors.
- **Provide better access to information and certainty for affected customers:** The rule will give affected customers clear and accessible information about how the energy sector will support and protect them. Also, it will mean customers across six jurisdictions will be entitled to substantially similar protections from their retailer, as the Commission has sought to align these measures with those already in place in Victoria where appropriate.

⁵ This is an ongoing requirement; retailers must periodically assess if an affected customer's circumstances have changed and if they are subsequently impacted by payment difficulties or have become hardship customers.

⁶ In this respect, the rule requires retailers to waive late payment fees for affected customers and allows affected customers to pay using Centrepay.

⁷ It must also keep an up to date list of external family violence support services on its website.

⁸ The draft rule also updates the model terms and conditions of the standard retail contract, to reflect these new retailer obligations and help for customers affected by family violence, and requires retailers to update their standard retail contracts to reflect this.

- **Be a targeted and proportionate solution:** the draft rule is targeted. It provides effective protections yet allows retailers to develop their own systems and processes to deliver outcomes.

Background on the rule change request

On 23 September 2021, Red Energy and Lumo Energy (Red and Lumo) made a request to the Commission to introduce requirements on energy retailers to provide assistance and support to customers experiencing family violence.

Red and Lumo proposed that most of Victorian Energy Retail Code of Practice protections should apply to other regions of the national energy market.⁹ It also proposed new and amended protections, and that several components of the Victorian code should not be included in National Energy Customer Framework jurisdictions (such as mandatory staff training and protections for small business customers).

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⁹ Red and Lumo, Rule change request - Family violence protections for energy customers, 23 September 2021, pp. 7-8.