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4 August 2022

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

Dear Ms Collyer

Re: Submission on draft *National Energy Retail Amendment (Protecting Customers Affected by Family Violence) Rule 2022*

We welcome the opportunity to comment on the Australian Energy Market Commission's ('AEMC') proposed amendments to the National Energy Retail Rules ('NERR') to provide protections and assistance to customers affected by family violence. As noted by the AEMC in its *Draft rule determination – Protecting customers affected by family violence*,¹ 'essential services like electricity, gas, water and communications can be exploited by perpetrators of family violence to control victims, perpetuate psychological abuse, affect their financial security, and potentially cause injury or death'. The AER considers this proposal as timely and essential for the National Energy Customer Framework ('NECF').

Protecting vulnerable consumers while enabling consumers to participate in energy markets is a key objective for the AER. An important AER priority during 2020–2025 is to develop a vulnerability strategy.² Our draft Consumer Vulnerability Strategy proposed 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.

The Consumer Vulnerability Strategy also advocates for collaboration across industry, identifying working together as a key enabler of success. We reiterate our support, expressed in our submission on the *Consultation paper – Protecting customers affected by family violence*,³ for an industry-led rule change proposal that supports victim-survivors and ensures that energy regulations and business practices do not cause or exacerbate harm.

Listening to the lived experience of vulnerable consumers is a key part of human-centric policy design. In the coming month we intend to publish research prepared by Bastion

¹ AEMC, [Protecting customers affected by family violence](#), Draft rule determination, 16 June 2022 ('draft determination').

² Australian Energy Regulator, [Strategic Plan 2020-25](#), December 2020, p. 2.

³ AEMC, [Protecting customers affected by family violence](#), Consultation paper, 18 November 2021 ('consultation paper').

Insights on behalf of the AER that focusses on the lived experience of vulnerable consumers. The AER advocates for embedding the lived experiences of consumers within policy design and this submission draws on the generous contributions of our panel participants with lived experience of family violence. 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'.⁴ We encourage the AEMC to have particular regard to lived experience findings and consider how these insights could inform the design and implementation of the final rule.

We also acknowledge that many retailers are already supporting victim survivors. We see that these family violence protections are an extension of baseline requirements to the NECF and that retailers should continue to engage with best practice for their customers. The AER is not aware of a cost assessment of the draft rule in relation to implementation and cost to serve. We acknowledge that there will be costs to retailers in complying with these draft rules. Retailers that trade in Victoria will face a cost in extending protections to other jurisdictions, while retailers that do not trade in Victoria will face costs in establishing new procedures to comply with these rules. While we acknowledge these costs, we also acknowledge that there are benefits to these provisions in relation to keeping customers safe and alive.

Lived experience insight

"I experienced several issues with my ex-husband trying to access my account. Thankfully my provider called me to cross check my security questions before he was able to get access."

Female, Single Parent, Metro NSW

We have set out our views in relation to the draft *National Energy Retail Amendment (Protecting customers affected by family violence) Rule 2022*⁵ and draft determination below.

Scope of definition of 'affected customer'

The rule change request as submitted by Red Energy and Lumo Energy proposed that the definition of an affected customer include current and former residential customers. In the AER's submission on the consultation paper, we advocated for alignment with the family violence protections specified in the Essential Services Commission's *Energy Retail Code of Practice*⁶ ('Victorian approach'), and therefore that the definition of an affected customer include current and former residential and small business customers.

We are pleased that the AEMC has proposed protections for residential and small business customers.⁷ We also support the acknowledgement of a spectrum of family relationships, including carer and Aboriginal and Torres Strait Islander kinship relationships by adopting

⁴ Royal Commission into Family Violence, [Summary and Recommendations: Final Report](#), March 2016, recommendation 201.

⁵ AEMC, [Protecting customers affected by family violence](#), Draft rule, 16 June 2022 ('draft rule').

⁶ Essential Services Commission Victoria ('ESC'), [Energy Retail Code of Practice](#), 1 March 2022.

⁷ AEMC, Draft rule, rule 3.

the South Australian definition of 'domestic abuse'⁸ for the definition for 'family violence' in the draft rule.

Embedded networks

The AER has noted the AEMC's recommendation to apply family violence protections to embedded network customers. The AER recognises the importance of accessibility to family violence safeguards in embedded networks. The AER will consider the timing of a review of the exempt selling guidelines to incorporate the application of family violence conditions to embedded networks, once the final rule comes into effect.

An outcomes-based approach to ensure staff can assist affected customers

The AEMC has not specified a requirement for staff training, instead favouring an outcomes-based obligation to ensure that staff are able to assist affected customers. This approach deviates from the Victorian approach, which enforces training.

The AEMC notes that the outcomes-based requirement will ensure that retailer personnel:

- understand the nature and consequences of family violence
- identify and engage appropriately and effectively with affected customers
- assist affected customers in accordance with the rule and the retailer's family violence policy.

The AEMC also expects that this outcomes-based approach will ensure that retailers engage with family violence issues and solutions actively and on an ongoing basis.⁹

The AER acknowledges that achievement of these outcomes would greatly benefit consumers experiencing family violence and are necessary and proportionate. We further note that we generally support outcomes-based regulation to reduce regulatory and cost burden. Additionally, we accept the AEMC's view that an outcomes-based approach may complement current cultural change in respect of family violence.

We understand that outcomes-based approaches can sometimes cause concern for stakeholders in respect of an ability to comply and how compliance will be carried out by the AER. We therefore propose that the AER provide guidance, to clarify compliance measures and ensure awareness of how the outcomes may be achieved. Guidance will provide consistency and transparency around requirements of the final rule.

Providing guidance sits within the remit of the AER's Compliance and Enforcement powers, described in our Compliance and Enforcement Policy. The AER provides guidance in circumstances where stakeholders express concerns about ambiguity or the requirements are new and therefore application is novel. We have previously provided guidance in respect of obligations relating to life support to clarify the customer registration and deregistration process.

Without adding regulatory burden, AER guidance should provide clear parameters for retailers while acknowledging their nuanced understanding of their staff and customer base. Retailers are therefore afforded discretion to achieve the outcomes in a way that fits their organisation.

⁸ *Intervention Orders (Prevention of Abuse) Act 2009* (SA) section 8.

⁹ AEMC, Draft determination, p. 26.

We consider that the outcomes-based requirement could also extend to staff who undertake consumer data analysis receiving training, to improve insights into trends or key indicators of family violence. These insights may promote identification of victim survivors who do not self-identify as experiencing family violence. Additionally, we propose that the AEMC should consider the currency and regularity of awareness-building of family violence for staff.

Documentary evidence of family violence

The draft rule deviates from the Victorian approach by prohibiting a retailer from requiring documentary evidence prior to disconnecting a customer or recovering debts. The AER is supportive of this deviation as it is in line with leading practice.

A frequent argument against prohibitions on requiring documentary evidence of family violence is that this may increase the risk of fraud. In their submission on the consultation paper, the Economic Abuse Reference group noted that ‘generally, we hear from industry that they don’t believe that there are false claims, and that the customer and staff benefit from believing customers when they disclose family violence’.¹⁰ Further, broader research suggests that it is more likely that family violence victim-survivors will be reluctant to raise allegations for fear of consequences in courts or contact services, or of having their motives questioned.¹¹ We also submit that providing documentary evidence of family violence may be upsetting or traumatising for retailer staff to review.

Security deposits

The NERR places a prohibition on requiring security deposits from hardship customers.¹² The draft rule requires retailers to consider if an affected customer may be a hardship customer, and extends certain protections that are currently available to hardship customers and those with payment difficulties to all affected customers.¹³ Therefore, where an affected customer is identified as a hardship customer, the prohibition on requiring a security deposit applies. However, if circumstances of hardship are not identified for an affected customer, a retailer may be able to require a security deposit. The AER has heard that access to hardship supports can depend on the consumer understanding the availability of these supports (which may not be likely for a consumer experiencing family violence). The CPRC found that “retailers often fail to recognise payment difficulty unless customers use specific ‘magic’ words”.¹⁴ Therefore, we advocate for a prohibition on requiring security deposits from affected customers to ensure financial protections are impactful. This is to ensure that affected customers are afforded greater flexibility and resources to negotiate their circumstances. Further, a similar approach to Victoria ensures regulatory consistency.

Disconnection and debt recovery

We support, in principle, the similarities between the draft rule and the Victorian approach in relation to disconnection protections and debt management. The draft rule requires a retailer to consider how disconnection and debt recovery impact an affected customer, and whether

¹⁰ Economic Abuse Reference Group, [Submission to the consultation paper](#), AEMC website, 2 March 2022, p 4.

¹¹ L Liang, [No way to live Women's experiences of negotiating the family law system in the context of domestic violence](#), 1 June 2010, p 54.

¹² NERR, subrule 40(3).

¹³ AEMC, draft rule, subrule 76D.

¹⁴ L Nicholls and K Dahlgren, [Consumer experiences following energy market reforms in Victoria: Qualitative research with community support workers](#), 22 June 2021, p. 5.

other persons are jointly or severally liable for non-payments that lead to disconnection. The AER sees that these provisions protect:

- single account holders from bearing full or majority liability for circumstances leading to disconnection or debt if household is shared
- joint account holders from bearing split liability for circumstances leading to disconnection or debt if household is no longer shared or energy usage is being unfairly proportioned
- family violence victims that may not be on the account but still experience detriment because of disconnection or debt recovery measures.

The AER also supports the draft rule's requirement for retailers to waive late payment fees for affected customers and allowance for affected customers to pay using Centrepay.

Lived experience insight

“For the last 6 years I have suffered at the hands of an emotionally & financially abusive husband, and I have had to manage all of our bills without any guidance or support.”

Female, Single Parent, Metro SA

The AER recognises the AEMC's view that implementing these debt management obligations are unlikely to have a significant regulatory or cost impact on retailers. The AER further submits that as the disconnection protections and debt management provisions are proposed to align closely with the Victorian approach, the cost and regulatory impact will be minimised.

However, the AER considers that there may be potential for these provisions to be strengthened to prohibit debt recovery and disconnection for an affected customer in any circumstances. In their joint submission on the consultation paper, PIAC, ACTCOSS, Good Shepherd, Financial Rights Legal Centre and QCOSS highlighted that a victim-survivor may be unreachable by their retailer at times when they may be focussed on their health and safety or the health and safety of their dependents, when they may be actively seeking help, or because they are not being informed of attempts to contact them.¹⁵

Further, we consider there may be benefit in reframing the assessment of the 'impact' of disconnection or debt recovery on an affected customer as an outcomes-based provision. While we acknowledge the overriding requirement to act in the interests of a small customer's safety, safety may be limited to physical or mental safety, rather than the physical or mental safety of dependents or financial safety. Therefore, structuring this provision to articulate examples of what the impact should not cause or lead to (i.e. financial distress, physical harm to customer or dependents) may strengthen protections for consumers.

We recognise that a prohibition on debt recovery and disconnection would increase costs for retailers. However, protecting the safety and security of an affected customer (and an

¹⁵ Public Interest Advocacy Centre (PIAC), Australian Capital Territory Council of Social Service (ACTCOSS), Good Shepherd, Financial Rights Legal Centre and Queensland Council of Social Service (QCOSS), [Submission to the Consultation paper – Protecting customers affected by family violence](#), AEMC website, 9 March 2022.

affected customer's dependents) is a clear and meaningful benefit. We encourage the AEMC to balance strengthening these protections and the benefit to affected customers while minimising costs to retailers.

Lived experience insight

“They need better payment options, like lower repayments till you are back on your feet. I knew the risks of disconnection but my hands were tied. A little bit of understanding would go a long way.”

Female, Dual Parent, Metro SA

Review periods

The draft rule does not specify a review period for retailer family violence policies. We would encourage the AEMC to align the draft rule with the arrangements that apply in Victoria. This would deliver regulatory consistency and ensure best practice for all consumers. Further, the AER considers that regularly reviewing the family violence protections as a whole will ensure that the rules are in step with societal views. Therefore, we advocate for a review of the family violence rules a few years after implementation.

Data collection and reporting

In preparing this submission, we heard support from the community sector for reporting on key indicators of family violence. The AER considers that collecting data on family violence indicators including numbers of affected customers, how affected customers were identified and the types of supports affected customers were offered, would provide insight into market performance. The AER currently reports on data in relation to hardship indicators and we see family violence indicators as an additional important data set. We submit that the AEMC should consider the benefits of reporting on family violence noting however that this would create additional cost burden on retailers in producing this data.

We are grateful for the opportunity to work with the AEMC 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 or mark.feather@aer.gov.au.

Yours sincerely,



Jim Cox
Deputy Chair
Australian Energy Regulator