

## Submission to the Consultation on Protecting Customers Affected by Family Violence

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**Uniting welcomes the opportunity to provide input to the Consultation on Protecting Customers Affected by Family Violence run by the Australian Energy Market Commission (AEMC). Our submission provides views and insights based on Uniting's practice experience and consumer feedback. About Uniting Vic.Tas**

Uniting Vic.Tas is the community services organisation of the Uniting Church in Victoria and Tasmania. We have worked alongside local communities in both states since 1881. Our reach is national through the interconnected UnitingCare network.

We deliver a broad range of services in the areas of crisis and homelessness, child, youth and families, alcohol and other drugs, mental health, disability, early learning, employment, and aged and carer services. We work across the full spectrum of community services, intervening early to help people avoid crisis, as well as supporting people experiencing hard times.

Our depth of service and experience in the provision of community services feeds directly into our role as an influential voice and trusted advisor to State and Commonwealth government, regulatory bodies and corporates on consumer vulnerability and community impacts.

### Our expertise in Family Violence prevention, support & care

Uniting Vic.Tas (Uniting) holds a depth of experience in understanding the extent, complexity and impacts of Domestic and Family Violence (DFV) across the community. Through multiple programs and initiatives, we work tirelessly to prevent DVF and to support people to deal with and recover from the impacts of previous or current trauma. We also work directly with perpetrators of violence to take responsibility for their attitudes and actions, and to change behaviours that directly harm others.

Uniting programs and initiatives relating to family violence include:

- Lead agency managing the national Escaping Violence Payment (EVP) program
- Family Violence counselling support programs for victim survivors of family violence to assist with recovery (e.g. we have a role in Orange Doors, the entry point for family violence and family services entry point in Victoria, across metropolitan and rural Victoria)
- Men's Behaviour Change programs in Victoria
- Partnering with some of Australia's largest banks & insurers as well as other businesses (including utility providers) to deliver *CareRing*, a pioneering wrap-around service that provides specialist referral and support to victim survivors of family violence identified by the business
- Financial Counselling teams that embed specialist family violence practitioners in support programs
- A Training and Consulting arm (Enterprise Partnerships) that leads organisational change within the banking, debt collection, water and insurance sectors as well as regulatory bodies, guiding policy response and providing training to organisational leaders and frontline staff to identify, understand and respond appropriately to disclosures of DFV within their customer base.

As an organisation, we see the effects of violence on individuals and families, and are well-placed to understand the underlying complexities, systemic issues and inherent biases that contribute to DFV in Australia.

As a leading training consultancy with national reach, we are also well versed in understanding the unique terrain that each business or organisation must travel to build organisational and staff capacity to understand, identify and respond appropriately to indications or disclosures of family violence from their customer and employee base.

## Responses to Questions

Uniting has addressed the questions most relevant to its expertise in this response to the Commission's consultative process for the rule change proposed by Red and Lumo Energy. For consistency, we have adhered to the numbering framework set out in the Commission's consultation paper.

### QUESTION 1: RED AND LUMO'S RULE CHANGE REQUEST

#### 1.2.1 Mandatory FV Policy

Uniting supports the intention of this proposed change to the National Energy Retail Rules (NERR) which would require energy retailers to develop, publish and implement a family violence policy.

At the same time, we note the importance of effective implementation of the policy that is necessary to build a retailer's capacity to respond to the demands of DFV.

In considering its response to this rule change request, the Commission needs to ensure that any family violence policy put forward by a retailer is not merely an aspirational statement.

We need to be mindful that the existence of a requirement for energy retailers to include a hardship policy on their website does not guarantee that customers experiencing financial difficulty will receive appropriate assistance when they need it.

In all jurisdictions, our Financial Counsellors, Emergency Relief Workers and Energy Advisors continue to see clients who are arbitrarily denied access to hardship programs, concessions and other entitlements. The inconsistency in responses stems from inadequate training, organisational culture, individual attitudes and prejudices, and poor system design which interferes with the simple task of recognising financial difficulty and putting in place suitable supports for the customer.

Given the risk of harm and death that people living with DFV are exposed to, it is critical that retailers get the implementation right from the start.

We encourage the Commission to consider the role of the regulator in leading any process that would require retailers to implement a family violence policy. It is vital that this regulatory body has an in-depth understanding of the issue and the appropriateness of responses to support people impacted by DFV. The work undertaken by the Essential Services Commission (ESC) in Victoria prior to rolling out requirements for water businesses provides a well-developed and established model for how this can be achieved. Without adequate understanding of DFV, it will be difficult for a regulatory body to provide environmental conditions that lead to the development of good practice and ensure compliance amongst retailers.

Uniting encourages the Commission to consider adopting the equivalent standards already established in Victoria by the ESC for water and energy retailers, rather than accepting a less prescriptive approach.

## **1.2.2 Ensuring Account Security**

Steps that retailers can take to protect the personal information of victim survivors of DFV need to be carefully considered, especially within large retail providers.

While the proposal to withhold a customer's information without explicit consent is sound, we maintain that retailers can implement secure information and communication approaches based on the advice of their customer.

However, retailers also need to be prepared to take their lead from each customer who is impacted by DFV as they are living with the inherent risks and harms daily. A skilled operator, properly trained in family violence awareness and response, can effectively lead a customer through the necessary steps to understand those risks and work collaboratively with them to put in place appropriate safeguards.

Customers impacted by DFV would be better served if retailers were prepared to ask questions like 'given your circumstances, what is the safest way we can communicate with you?' than relying on retailers to nominate what that looks like.

Where it is reasonably foreseen that an action may amplify the risk of harm to a person impacted by DFV, then the retailer cannot in good conscience proceed with that action until they are sure that any intended action will not jeopardize the safety of that individual. For example, inadvertently providing change of address information to a perpetrator posing as an authorised agent on the account.

Where a customer is unsure which form of communication is safest in their circumstances, then good practice dictates the retailer refer the customer to an appropriate support service such as SafeSteps or 1800RESPECT for professional input and advice.

## **1.2.3 Customer Safety**

Safety must be the primary consideration in any implementation of family violence policy by energy retailers.

In Uniting's view, both approaches outlined by the Commission in its discussion paper are valid, as they build in requirements that highlight the importance of safety particularly in handling, securing and disclosing personal or account information.

We also encourage the Commission to consider the importance of retailers factoring in the psychological safety of customers impacted by DFV, whether from current harmful behaviours or exposure to past trauma. If agents are not properly informed and equipped to conduct conversations with sensitivity and free of judgement, then they are likely to trigger past trauma or amplify existing anxiety and fear.

## **1.2.4 Cause of Payment Difficulty**

More than financial assistance, people impacted by DFV need to be confident that any disclosure of past or present experiences of family violence will be treated respectfully and in confidence by their energy retailer. Victim survivors need to be taken at their word.

Uniting is hesitant to support a requirement that places someone impacted by DFV automatically onto a hardship program, as what victim survivors need may not be best served by this step.

Some victim survivors will need access to financial assistance to stay connected to an essential service. Others will need guidance to recognise that the behaviour they are being subjected to is harmful or abusive, or that the restrictions imposed on them by a family member is unreasonable. Some victim survivors will need assistance or guidance to establish financial independence and untangle themselves from harmful debt, while others will need more intensive assistance to locate

safe and secure housing, protect children or access legal advice. For example, a significant proportion of people accessing the EVP program identify unpaid energy bills as a major source of stress and barrier to being able to re-establish their lives free from violence.

We encourage the Commission to look at existing practices within the banking, debt collection, insurance, and water sectors that link customers with specialist staff well versed in managing customers impacted by DFV. Such specialists are highly trained and experienced to lead sensitive conversations with customers and are charged with appropriate delegations to make decisions. They are responsible for managing account security, maintaining safe communication channels and linking customers with external supports. In some businesses, these roles sit within hardship or financial assistance teams while in others they are established separately.

Each retailer must thoroughly consider how to best respond to victim survivors of DFV to secure personal information from any deliberate interference, checks or inadvertent disclosure. Any false step can have life-altering consequences for customers and their families.

### **1.2.5 Debt Collection Practices**

Uniting's position is that any practice established by retailers in respect to customers impacted by DFV should naturally extend to any third party acting on behalf of the incumbent retailer, including debt collectors.

We encourage the Commission to look at the approach taken by some banks in Australia to explicitly require third party suppliers or providers to implement the same practice standards in regard to family violence that they hold themselves to. From a consumer perspective, such a contractual obligation ensures there is consistent practice at all stages of the customer journey, including from broker to any debt collection activity.

The Commission and retailers need to be sufficiently informed about DFV to understand the multitude of ways that debt and liability for debt can be used to harm others. Particularly when relationships end, debt can be used by perpetrators to extract revenge or prolong harm through the deliberate accrual of debt, prolonging financial dependence and potentially harming their ex-partner's credit rating and access to essential services.

In the case of older family members who are dependent on a carer for assistance with payments, they may be subjected to theft or fraudulent behaviour or be left in circumstances where they are not able to afford sufficient heating or cooling to maintain their health and wellbeing.

In assessing whether an account holder is solely or jointly responsible for an accrued debt, retailers should primarily listen to the customer and respond to the individual circumstances of that person.

### **1.2.6 Requesting Evidence of FV**

The Commission needs to carefully consider this proposal as it is highly problematic.

Despite existing and long-standing legislation and guidelines, retailers routinely overstep the boundary when responding to customers' disclosure of financial difficulty or insufficient income to pay the bills, insisting on asking invasive, inappropriate and unnecessary questions.

Our team of Energy Advisors continue to report instances of customers being denied access to hardship assistance for inexplicable or arbitrary reasons, or where unnecessary conditions such as consulting a financial counselling service are imposed in order to be admitted to the retailer's hardship program.

We are concerned that if retailers are given scope to request evidence of DFV to avoid disconnection, it may result in the use of similarly arbitrary judgements and decisions and expose victim survivors to

unnecessarily invasive and detailed examination and questioning. It is also difficult to conceive what sort of documentation an energy retailer would reasonably require to establish a 'burden of proof' from the victim survivor.

As disconnection is meant to be an action of last resort, it is more practical and reasonable to take a customer's disclosure at face value, without pressing for personal detail, and work with them to maintain an affordable connection and ensure safety provisions are put in place for ongoing communication.

We also encourage the Commission to consider the act of a specialist community agent (women's refuge worker, Child Protection agent, Financial Counsellor etc) informing the retailer that the customer has been impacted by DFV, to be sufficient evidence without requiring any further detailed history, notes or statements.

This principle aligns with the intent outlined by the Commission in question 2.1.3 to take steps to minimise repeated disclosure of DFV.

## QUESTION 2: ADDITIONAL MATTERS

The omission of critical aspects of good practice in respect to the identification and disclosure of DFV by the proponents of this rule change, indicates that the energy retail sector has a considerable distance to travel in meeting current community expectations and standards. Consideration of the points below is necessary to properly equip the sector to respond to the demands of DFV.

In considering the rule change, Uniting encourages the Commission to also consider the following:

- The implementation of a family violence policy within a retail operation should also extend to the employees of that business (if there is not already such a policy in place). This includes building internal mechanisms and procedures for employees to safely disclose past or current concerns about the impact of DFV on themselves or close family members. It includes protocols for safe record-keeping, on site and remote working guidelines, family violence leave provisions, and referral options to DFV support agencies and services.
- A family violence policy needs to be gender-inclusive, providing surety for all victim survivors of family violence including females, males, people who are same-sex attracted and those who identify as non-binary or gender fluid.
- The Fourth Action Plan<sup>1</sup> (2019-2022) highlights that women from culturally and linguistically diverse backgrounds are exposed to forms of coercive control and economic abuse beyond those experienced in the broader community.
- There is a growing appetite within the banking sector in Australia to confront the economic abuse that older Australians are subjected to through controlling or abusive behaviour by family members, with initiatives in place to identify and prevent further harm.
- Adoption of a standard policy for the National Energy Market (NEM) would establish a minimum standard that could be easily adopted by smaller retailers. This policy could then be provided in Easy English and multiple community languages to make it accessible to the whole community. Removing these costs from smaller retailers allows them to focus more on the necessary implementation steps within their operations.

In addition to the above points, Uniting has addressed the additional questions posed by the Commission in its Consultation Paper.

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<sup>1</sup> Under Australia's National Plan to Reduce Violence against Women and their Children, 2010.

## **2.1.1 Small Business Customers**

There is no plausible reason for excluding small businesses from this proposed rule change.

It is noted that the proponents of the rule change have highlighted concerns with the complexity arising from ownership structures. If there is any uncertainty in respect of this consideration, the Commission only needs to look at the established practices of financial institutions which extend from personal to business and investment arms.

Banks have established responses that protect the privacy, safety and security of the affected account holder, whilst carefully navigating the demands of notifying changes to a financial arrangement that affects multiple signatories to a loan, or where a Power of Attorney (POA) lawfully provides for access to account information and updates on activity.

In partnering with businesses to develop DFV response frameworks, guidelines and policies, Enterprise Partnerships has observed that organisations can initially be hesitant or reluctant to include all parts of their business. While it might be expedient or convenient to exempt some areas of the business from having to respond to DFV, astute leaders within the business soon recognize that DFV occurs in all segments of the community. It is simply an inappropriate response to apply measures to some identified groups and exclude others.

Uniting recommends that the Commission align with the provisions established under the Victorian code to include small business customers.

## **2.1.2 Specialist family violence training**

Specialist family violence training is a critical component in equipping businesses to identify and respond appropriately. A DFV policy in isolation is a pointless and powerless instrument unless it is coupled with the rollout of training across the organisation.

As an experienced provider of specialist family violence training across multiple industry sectors, we have observed that to properly equip a business to respond to DFV involves a significant investment in systemic and organisational change that extends beyond the cost of any training. Like individuals, organisations sometimes grapple with the size and complexity of the issues as well as the inherent moral challenges, gendered and cultural biases that must be dealt with to effectively challenge prevailing attitudes and progress to more informed perspectives.

Uniting anticipates that the Commission will include specialist family violence training as a mandatory part of any rule change covering responses to DFV.

Any rollout of specialist family violence training needs to be independent of the retailer and be informed by current practices in the identification, awareness and prevention of DFV. That expertise is readily available through multiple community agencies around the country that have led training rollouts and policy development in other jurisdictions (including the banking, insurance, debt collection and water industries) and whose training is informed by the lived experience of DFV victim survivors and practitioners alike.

Embedding DFV policy and response frameworks is most effective when businesses opt to involve the whole organisation in awareness training. In our experience, this is a critical step as it enables the business to develop appropriate procedures and support mechanisms internally to respond to employees who are personally impacted by DFV.

As well as retail operations, training needs to be extended to third parties involved in the sale and provision of energy, including meter readers, brokers and debt collection agencies who act on behalf of the incumbent retailer.

### **2.1.3 Minimising Repeated Disclosure**

This is one of the key takeaways from the Royal Commission into Family Violence that handed down its report and recommendations in March 2016.

It is critical that any disclosure of DFV is not only treated with appropriate sensitivity and respect at all times, but that the retailer develop procedures to prevent or minimize the need to request information or revisit disclosure. This extends to minimizing the number of personnel who have contact with the customer once DFV is identified or disclosed, through to access to customer records and the flagging of records. Retailers must also develop procedures to only record pertinent details where express permission of the victim survivor (or their advocate) has been sought and suitable measure are in place to prevent exposure to further risk of harm through accidental or inadvertent leaks of personal information.

We emphasise the importance of retailers engaging training providers with sufficient expertise in the delivery of family violence prevention programs. This will ensure that content is clear on the harm that comes from forcing customers to repeatedly disclose details of past abuse or violence, or to have to recount their experiences at the hands of a perpetrator when that abuse is current and ongoing.

### **2.1.4 Referral to External Support Services**

There are ample benefits and minimal costs involved in linking customers impacted by DFV to external support services.

As a provider of specialist family violence awareness training, we ensure that participants are made aware of the principal helplines that are available and provide instructions on how to respectfully check if an individual requires support and direct them to appropriate resources.

The expectation is not for retailers to develop an extensive list of resources that support people impacted by DFV, but to have awareness of helplines that support women, men, gender diverse and same-sex attracted people necessary for an essential service provider. This should also include helplines that meet the needs of First Nations and Culturally and Linguistically Diverse (CALD) communities.

In addition to providing referrals to external helplines, energy retailers and distributors have the option of aligning with wraparound support service initiatives such as Uniting's *CareRing* referral and support service, or other industry initiatives that seek to make it easier for businesses and customers alike to access appropriate support.

## **2.2 Compliance and enforcement**

Uniting supports the Commission's intent to ensure that any provisions that are established for households serviced by mainstream energy providers in respect of DFV are extended to residents serviced by embedded networks.

## **2.3 Implementation**

Having worked alongside businesses and regulatory bodies alike over the past six years, guiding the development and implementation of strategy and directly building their capacity to understand and respond to family violence through training, we are well aware of the task faced by energy retailers in the NEM.

On that basis, we consider a staged approach to be entirely reasonable. We would expect that retailers whose operations include Victorian households and small businesses will be some way down

the track in the development of responses, whereas others who operate solely within the NEM will be starting from scratch.

We urge the Commission to consult more widely than it has to date on this issue with community sector advocates and agencies who provide family violence programs.

We further encourage the Commission to be mindful that the processes required to develop effective responses to DFV is typically a slow build. To equip a business, its leadership group and its entire personnel takes considerable time, consistency of purpose and application to establish a sufficiently mature approach to what is a pervasive and challenging societal issue.

## **QUESTION 3: ADDITIONAL MATTERS**

The Royal Commission into Family Violence handed down its report and recommendations at the end of March 2016. In the six years since those recommendations were published, many businesses, organisations and sectors in Australia have embarked on what is a challenging journey to build their awareness of the extent and impacts of family violence and to develop systems and procedures that ensure appropriate responses and safeguards are in place for victim survivors.

In our view, the approaches undertaken by the Essential Services Commission in Victoria and the Australian Banking Association provide clear pathways that can be easily leveraged by the energy industry.

As outlined earlier in our response, we see clear opportunities for collaboration between the AER and energy retailers to ensure learnings are shared and consistency is achieved.

## **QUESTION 4: ASSESSMENT FRAMEWORK**

In our view, the proposed rule change does not provide sufficient protections for small consumers and is not in the long-term interests of consumers in its current form.

What the proposed rule change does is effectively highlight that the energy sector is lagging behind community expectations and the practices and provisions that have been implemented to good effect in other industries, including nationally in the banking & finance sector, insurance industry and debt collection, as well as the Victorian water industry.

We encourage the Commission to continue investigating and consulting with stakeholders so as to learn from other sectors and take a leading role in the energy sector to adopt measures and practices that will better serve the needs of victim survivors of DFV.

## **Conclusion**

Given that the Royal Commission into Family Violence (which commenced in 2015) featured the testimony of many courageous victim survivors who reported their experiences of being judged, denied or traumatised further by service providers who failed to grasp the impact of domestic and family violence, it is fair to say that the energy sector has considerable room for improvement. While the banking, water, insurance and debt collection industry have made significant progress, we are concerned that action has been far too slow within the energy sector.

It is Uniting's view that in its current form, the proposed rule change does not adequately meet the needs of customers impacted by domestic and family violence. There are too many exclusions and omissions that are important to achieve the necessary change.

We are hopeful though that this rule change request propels the Commission to consider how to more effectively implement DFV protections and responses for consumers in the NEM states.

As it has potential to reach significant numbers of individuals and households that are living with daily threats, intimidation, abuse, impossible restrictions, ultimatums and physical violence from a current or former partner, or another family member, it is critical that we get this right.