

Survivors will get valuable assistance from capable staff without needing to provide evidence and information that can traumatise them

- 14 It is important that vulnerable customers get the help that they need without the process causing them unnecessary grief or leading to further trauma. Staff skilled in helping customers affected by family violence are critical to the effectiveness and certainty of any family violence protections. The Commission is therefore placing new requirements on retailers to ensure that their key staff understand family violence issues and can identify, engage with and assist affected customers.
- 15 The Commission considers an outcome-based obligation, that does not specify training but requires staff to be able to assist affected customers, is a more effective and appropriate regulatory approach. It allows retailers that operate in Victoria to use and expand their existing training, encourages sharing of leading practice, and as it is an ongoing obligation arguably places a higher bar on retailers than an input-based training requirement.
- 16 Further, because we recognise it can be harmful for an affected customer to repeatedly disclose details of their experience, or to provide documentary evidence, the draft rule requires retailers to prevent the need for repeated disclosure and bans retailers from seeking documentary evidence to verify claims of family violence. Finally, consistent with Victoria and recognising that advice from a retailer can be critical to a customer taking action, we are introducing new requirements on retailers to refer affected customers to a relevant support service.

Retailers will need a family violence policy

- 17 The draft rule requires retailers to implement a family violence policy that at a minimum addresses these new family violence requirements in the NERR. Affected customers are more likely to seek assistance when they have access to transparent information about the support that is available to them. To assist with implementation the Commission will continue to work with industry through existing working groups to help retailers that do not yet have family violence policies in place to draw on the experience, knowledge and policies of those retailers that already do.

Providing retailers greater regulatory assurance that they can help their customers

- 18 The Commission is increasing regulatory certainty and efficiency by clearly requiring retailers to use the affected customer's preferred method of communication ahead of any other requirement to communicate with that customer in the Retail Rules or in a customer's standard market contract. The Commission is also making it clear in the rules that these protections are available to customers on both standard and market retail contracts. To achieve this, the draft rule changes the terms and conditions of standard retail contracts, and establishes that a retailer's family violence policy (which addresses the family violence provisions in the rules) takes precedence over the terms of their market retail contracts.

Proportionate penalty provisions

- 19 Breaches of most of the new provisions of the draft rule have the potential to lead to death

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Australian Energy
Market Commission

Draft rule determination
Protecting customers affected by family violence
16 June 2022

or serious injury for customers; or to a failure to deal appropriately with vulnerable customers. The Commission therefore proposes to recommend Tier one penalty provisions should apply for most of the new provisions. These sanctions are also broadly consistent with the sanctions under Energy Retail Code of Practice in Victoria (Victorian code).

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1 RED AND LUMO'S RULE CHANGE REQUEST AND THE VICTORIAN CODE

This chapter explains:

- how essential service regulators and providers have acted to reduce the impacts of family violence and the work that still needs to be done
- Red and Lumo's rule change request
- the consultation we have undertaken on this rule change to date
- how to provide feedback on this draft determination.

1.1 Essential service regulators and providers have acted to reduce the impacts of family violence but work still needs to be done

In the years since the Victorian Royal Commission into family violence there has been a concerted effort on the part of family violence service providers, regulators and essential service providers to address the risks and impacts of family violence.¹⁷ In this respect:

- The Essential Services Commission (ESC) has introduced new requirements in the Victorian water codes and in the Victorian code, and recently published a series of reports to support better practice responses to consumers experiencing family violence.¹⁸
- The Australian Banking Association has included measures in the Banking code of conduct and has released industry guidelines responding to specific family violence issues.¹⁹
- The telecommunications sector has developed industry guidelines to assist customers experiencing family violence.²⁰
- The Economic Regulation Authority of Western Australia has published a draft *Code of Conduct for the Supply of Electricity to Small Use Customers* (Western Australian draft code), which included family violence protections for the first time.²¹

These measures by regulators have also been actively designed with and supported by businesses, many of which have provided assistance to their customers that extends beyond what is required by regulators. This groundswell of action has been critical to reduce and

17 Safe and Equal, *The Family Violence Experts by Experience Framework Implementation Plan and Guidelines for the Essential Services Commission and essential services providers*, May 2022, p.9

18 See *Customer Service Code: Urban Water Businesses (Vic)*, 5 August 2020; *Rural Water Customer Service Code (Vic)*, 5 August 2020. *Energy Retail Code of Practice*, 1 March 2022; Safe and Equal, *The Family Violence Experts by Experience Framework Implementation Plan and Guidelines for the Essential Services Commission and essential services providers*, May 2022; Safe and Equal, *Guidelines for Better Practice Responses to Family violence for the Essential Services Commission and essential services providers*, May 2022; Safe and Equal, *The Family Violence Experts by Experience Framework: Implementation plan for the Essential Services Commission and essential services providers*, May 2022.

19 Australian Banking Association, *Code of Practice: setting the standards of practice for banks, their staff and their representatives*, 5 October 2021, Australian Banking Association, *Industry guideline: preventing and responding to financial abuse (including elder financial abuse)*, March 2021, Australian Banking Association, *Industry guideline: preventing and responding to family and domestic violence*, March 2021

20 Communications Alliance, *Assisting Customers Experiencing Domestic and Family Violence Industry Guideline*, October 2018

21 Economic Regulation Authority (Western Australia), *Draft decision: Repeal and replacement of the Code of Conduct for the Supply of Electricity to Small Use Customers 2018*, 9 December 2021. The Economic Regulation Authority published submissions in response to its draft determination on 24 February 2022.

prevent the harm that perpetrators inflict through essential services like electricity, gas, banking, water and communications.

The Victorian Royal Commission into Family Violence identified that perpetrators exploit essential services including by:

- gaining personal information, such as the victim's new address or contact details, from an essential services provider
- insisting an account be 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
 - threatening to have the service cut off or having it cut off when they leave the family home²²

The impacts on victim-survivors include:

- victim-survivors being 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
- utilities are disconnected and women go without services necessary to care for themselves and their children
- a perpetrator harassing or threatening a survivor's personal safety at their new address.²³

1.2 Red and Lumo's rule change request

On 23 September 2021, Red Energy and Lumo Energy (Red and Lumo) made a request to the Commission to amend the National Energy Retail Rules (NERR or the Rules) to introduce requirements on energy retailers to provide assistance and support to customers experiencing family violence. Red and Lumo stressed that energy retailers have a crucial role to play in supporting affected customers, because:

*Family violence affects a large number of Australians and can occur in any range of circumstances across cultures and communities. It can take many forms, including physical, sexual, social, emotional, and financial abuse, as well as a wide range of coercive and intimidating behaviour.*²⁴

Red and Lumo proposed that most of Victorian code protections should apply to other regions of the national energy market.²⁵ Red and Lumo proposed new or amended protections including:

22 State of Victoria, Royal Commission into Family Violence: Summary and recommendations, Parliamentary Paper No 132 (2014–16), p. 104.

23 State of Victoria, Royal Commission into Family Violence: Summary and recommendations, Parliamentary Paper No 132 (2014–16), p. 104

24 Red and Lumo, Rule change request - Family violence protections for energy customers, 23 September 2021, p. 1

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

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- **Customer safety** - a requirement on retailers that, in dealing with a customer affected by family violence must firstly have regard for the safety of that customer
- **Narrower documentary evidence** - a retailer can only require documentary evidence of family violence from a customer when that retailer is considering disconnecting the energy supply to that customer.
- **Family violence provisions prevail over retail contracts, and the retail rules** - where a retailer is unable to fulfil an obligation under a customer retail contract or the NERR in complying with the new family violence provisions, the retailer would not be in breach of the contract or the rules.

Red and Lumo also proposed that several components of the Victorian code should not be included in National Energy Customer Framework (NECF) jurisdictions, such as mandatory staff training and protections for small business customers.

BOX 1: THE VICTORIAN CODE

In response to the Royal Commission, in 1 January 2020 the Essential Services Commission of Victoria (ESC) introduced assistance and protections for victim-survivors of family violence (called "affected customers"). These are established in the Victorian code. They apply to residential and small business customers, but not energy customers in embedded networks. The Victorian code requires retailers operating in Victoria to introduce:

1. **Staff training** - compulsory training for relevant staff to enable them to engage with, and assist, affected customers.
2. **Account security protections** - that prohibit the disclosure of confidential information about an affected customer.
3. **A preferred method of communication** - work with an affected customer to identify a safe method of communication and then rely on that safe method of communication over any other requirement to communicate or provide information to the affected customer.
4. **Processes to avoid repeated disclosures** - providing secure processes to avoid the need for an affected customer to repeatedly disclose their experience.
5. **Debt management considerations** - a requirement to consider the impact of debt on an affected customer, and whether other persons are responsible for the usage that led to that debt.
6. **Payment difficulty** - a requirement to recognise family violence may be a form of payment difficulty.
7. **Referrals to support services** - a requirement to provide affected customers with information about one or more external support services.
8. **Documentary evidence** - a requirement to only ask for documentary evidence for debt management and disconnections, and to limit the evidence sought to what is reasonable.
9. **A retailer Family violence policy** - that addresses these protections.
10. **Record keeping** - in relation to family violence protections.

Note: The ESC has committed to reviewing the family violence protections under the Victorian code and the Urban and Rural Water codes by 2024.²⁶

1.3

Consultation on this rule change to date

On 18 November 2021, the Commission published a notice advising it had commenced the rule-making process and consultation for this rule change request.²⁷ The Commission also published a consultation paper identifying specific issues for stakeholder comment. Submissions to our consultation paper closed on 3 March 2022. The Commission received 21 submissions.²⁸

²⁶ ESC, Getting to Fair: Breaking down barriers to essential services, 12 August 2021p. 9.

²⁷ This notice was published under s.251 of the National Energy Retail Law (NERL).

²⁸ You can find the submissions on the [project page](#).

We also held a forum in February 2022 that was attended by over 80 stakeholders. The forum outlined the rule change request and examined approaches that other essential service sectors are taking to address family violence.

We thank all stakeholders for engaging with, and providing their views on, this rule change request. The Commission has analysed and responded to the issues that stakeholders have raised throughout this draft rule determination. (Issues that are not addressed in the body of this document are set out and addressed in Appendix B.)

On 20 April 2022 the Commission extended the publication date for this draft determination by six weeks to 16 June 2022. The rule change was extended because of a material change in circumstances as project team members were unavailable. It also raises new and complex questions about reforms in areas that are new to the Commission.

1.4 Feedback on this draft determination

The Commission invites written submissions on this draft rule determination by **4 August 2022**, including on the draft rule and the reasons for making the draft rule.

During the consultation period, the Commission will hold a workshop to hear stakeholders' views on the draft rule and answer any questions before submissions are due.

Any person or body may request that the Commission hold a hearing in relation to this draft rule determination. Any request for a hearing must be made in writing and be received by the Commission no later than **23 June 2022**. Submissions and requests for a hearing should quote project number RRC0042 and may be lodged online at www.aemc.gov.au.

2 HOW THE DRAFT RULE WILL PROTECT AND HELP CUSTOMERS AFFECTED BY FAMILY VIOLENCE

The Commission's draft rule determination is to make a more preferable draft rule to provide new assistance, and protections, for residential and small business customers experiencing family violence. The draft rule is published with this determination. This chapter details the benefits for affected customers and the key changes to the retail rules, if the Commission were to make this draft rule a final rule.

The Commission's reasons for making the draft rule are set out in chapter 3. Information on the legal requirements for making the determination is set out in Appendix A.

2.1 Outcomes for customers experiencing family violence and retailers

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, as most of the clauses of the draft rule are the same or similar to the equivalent clauses in effect in Victoria, customers in six jurisdictions will be entitled to substantially similar protections from their retailer, even if they move interstate.
- **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.

2.2 New protections and help for energy consumers

The draft rule provides:

1. **a broadly defined scope** that covers the most energy customers possible
2. that Retailers must prioritise an affected customer's safety and protect their personal information
3. measures to **recognise the financial impacts** of family violence
4. requirements to underpin the **culture, skills and practices** that retailers need so their staff can recognise, respond appropriately, and help affected customers
5. that all retailers must have and **implement a family violence policy**
6. flexibility for retailers **to help customers when they need to** and **strong deterrence against breaches.**
7. several minor and consequential changes that support the new provisions

8. a new compliance and enforcement approach

These protections apply to open and closed energy accounts.

2.2.1

A broadly defined scope that provides the widest customer coverage

A broad definition of “family” for the purposes of recognising family violence

The draft rule uses the term “family violence” (for consistency with the Victorian Code) but relies on the South Australian definition of domestic abuse, which provides broad coverage of the types of relationships within which abuse may occur - including where one person is a carer of the other,²⁹ or where the relationship is established under cultural kinship rules.³⁰

Other coverage decisions are as broad as practicable

The draft rule also will have the broadest coverage possible, by:

-
- 29 Carers are defined as follows under the *Intervention Orders (Prevention of Abuse) Act 2009 (SA)*, s. 8(8)(k) and Carers Recognition Act 2005) (SA), p. 5:
- (1) Subject to this section, a person is a **carer** for the purposes of this Act if he or she is a natural person who provides ongoing care or assistance to—
- (a) a person who has a disability within the meaning of the *Disability Inclusion Act 2018*;
 - (b) a person who has a chronic illness, including a mental illness within the meaning of the *Mental Health Act 1993*;
 - (c) a person who, because of frailty, requires assistance with the carrying out of everyday tasks;
 - (d) a person of a class prescribed by regulation.
- (2) A person is not a carer if the person provides the care or assistance—
- (a) under a contract for services or a contract of service;
 - (b) in the course of doing community work organised by a community organisation within the meaning of the *Volunteers Protection Act 2001*.
- 30 *Intervention Orders (Prevention of Abuse) Act 2009 (SA)*, s. 8(8). This definition provides that:
- If the act of abuse is committed by a defendant against a person with whom the defendant is or was formerly in a relationship, it is referred to in this Act as an act of **domestic abuse**; and for that purpose, 2 persons are in a relationship if—
- (a) they are married to each other;
 - (b) they are domestic partners [see definition below];
 - (c) they are in some other form of intimate personal relationship in which their lives are interrelated and the actions of 1 affects the other;
 - (d) 1 is the child, stepchild or grandchild, or is under the guardianship, of the other (regardless of age);
 - (e) 1 is a child, stepchild or grandchild, or is under the guardianship, or a person who is or was formerly in a relationship with the other under paragraph (a), (b) or (c) (regardless of age)
 - (f) 1 is a child and the other is a person who acts in *loco parentis* in relation to the child
 - (g) 1 is a child who normally or regularly resides or stays with the other
 - (h) they are brothers or sisters or brother and sister
 - (i) they are otherwise related to each other or through blood, marriage, a domestic partnership or adoption;
 - (j) they are related according to Aboriginal or Torres Strait Islander kinship rules or are both members of some other culturally recognised family group;
 - (k) 1 is the carer (within the meaning of the *Carers Recognition Act 2005*) of the other [see definition above]
- This definition also incorporates the definition of “domestic partners” from the *Family Relationships Act 1975 (SA)*, (which in turn also incorporates the definition of “close personal relationship” from the same Act) *Intervention Order (Prevention of Abuse) Act 2009 (SA)*, s. 3. *Family Relationships Act 1975 (SA)*, s. 11A. This definition provides relevantly
- A person is, on a certain date, the domestic partner of another if—
- (b) the person is, on that date, living with the other in a close personal relationship and —
- (i) the person
 - (A) has so lived with the other continuously for the period of 3 years immediately preceding that date
 - (B) has during the period of 4 years immediately preceding that date so lived with the other for periods aggregating not less than 3 years;
 - (ii) a child, of whom the 2 persons are the parents, has been born (whether or not the child is still living at that date)
- “A close personal relationship is defined in *Family Relationships Act 1975 (SA)*, s.11 as; the relationship between 2 adult persons (whether or not related by family and irrespective of their sex or gender identity) who live together as a couple on a genuine domestic basis, but does not include:
- (a) the relationship between a legally married couple; or
 - (b) a relationship where 1 of the persons provides the other domestic support or personal care (or both) for fee or reward, or on behalf of some other person or an organisation of whatever kind:
- Note: Two persons may live together as a couple on a genuine domestic basis whether or not a sexual relationship exists, or has ever existed, between them.

- applying to small customers that are business customers as well as those that are residential customers³¹
- applying to open and closed energy accounts³²
- applying to customers with standard and market retail contracts.³³

Separately, we recommend to the AER that it apply these family violence protections to embedded network customers - see section 2.5 below.

2.2.2

Retailers must prioritise an affected customer's safety and protect their personal information

The Commission is introducing a new obligation that a retailer must have regard firstly to the safety of the customer in any dealing with an affected customer.³⁴ This is consistent with Red and Lumo's rule change proposal and aims to give retailers a clear direction that safety takes precedence over other matters.³⁵ The Commission's expectation is that a retailer would:

- consider an affected customer's safety needs in consultation with the affected customer
- recognise that safety considerations for an affected customer can change over time.

The Commission is also introducing a new obligation on retailers to not disclose confidential information about an affected customer to any other person without the affected customer's consent. This includes any information that may be used to identify, communicate with or locate an affected customer, including information about their whereabouts, contact details, or financial or personal circumstances.³⁶ It would include date of birth, maiden name, phone numbers, email addresses, PO Boxes, and residential addresses, for instance.

The draft rule also helps victim-survivors manage their personal safety by requiring a retailer to work with an affected customer to identify, and then use, a preferred method for communicating with each other.³⁷

2.2.3

Recognising the financial impacts of family violence

The Commission is seeking to ensure that energy retailers recognise and do not exacerbate the financial impacts of family violence. The draft rule requires that, before a retailer takes action to recover arrears or sell debt owed by an affected customer to a third party, it must take into account:

- the potential impact of these actions, at the time, on the affected person
- whether other people are jointly or severally liable for the energy usage that resulted in the accumulation of arrears.³⁸

31 See the definition of "affected customer" in the draft rule (as an amendment to NERR rule 3).

32 The definition of "affected customer" in the draft rule includes a former customer of a retailer.

33 Draft rule 76M.

34 Draft rule 76A.

35 Rule change request: Red and Lumo, pp. 4, 7.

36 Draft rule 76F.

37 Draft rule 76G. The preferred method of communication will take precedence over any other customer communication requirement in the NERR; see section 1.2.5.

38 Draft rule 76J. The draft rule also requires similar considerations from a retailer when it is arranging for de-energisation of an affected customer's premises - draft rule 111(2A) for additional details see section 1.2.7, below

The draft rule also specifically requires retailers to consider whether an affected customer is a hardship customer or is otherwise in payment difficulties (as those terms are defined or explained in the NERL). Retailers should consider this when they first identify a customer as an affected customer, and must reassess this periodically.³⁹ If a retailer determines an affected customer is a hardship customer, or is otherwise in payment difficulties, the customer will be eligible for a range of existing protections under the NERR.⁴⁰

The rule also applies some protections that are currently offered to hardship customers and customers with payment difficulties, to all customers experiencing family violence, where those protections may be relevant for affected customers for reasons other than their financial circumstances. For example, the draft rule requires retailers to waive late payment fees for affected customers, and allows affected customers to pay using Centrepay.⁴¹

2.2.4 Organisational culture, skills and practices to support affected customers

The draft rule:

- **Introduces skill and knowledge requirements for retailers' staff:**⁴² The rule requires retailers to ensure their staff have the knowledge and skills to recognise customers affected by family violence, be able to engage appropriately with them, and provide the support and protections established in the draft rule and the retailer's family violence policy.⁴³
- **Requires retailers to have a secure process that avoids an affected customer repeatedly disclosing their experiences:** The draft rule requires retailers to minimise the need for customers affected by family violence to repeatedly disclose their experiences.⁴⁴ Retailers across essential services are minimising repeated disclosures through dedicated family violence support staff, adequate training on the signs of family violence, and systems that identify and flag affected customers allowing tailored support.
- **Protections and support not limited to evidence:** The draft rule will not require (or allow retailers to require) customers to provide documentary evidence as a precondition for receiving family violence protections, including in relation to disconnections.⁴⁵ Requesting documentary evidence can prevent survivors of family violence from engaging with energy retailers and getting help.
- **Obliges retailers to provide a referral to an external support service:** The draft rule requires that a retailer provide an affected customer with information about the availability of one or more external family violence support services — at a time and in a manner that is safe, respectful and appropriate to the affected customer's circumstances.

39 Draft rule 76E.

40 See for example NERR Part 3.

41 Draft rules 76J(3) and (4), mirroring existing rules 73 and 74.

42 This includes those that engage with affected customers, their managers and people responsible for systems and processes that guide interactions with affected customers.

43 Draft rule 76C.

44 Draft rule 76H.

45 Draft rule 76I.

It must also keep an up-to-date list of one or more external support services on its website.⁴⁶

2.2.5 All retailers must publish and implement a family violence policy

The draft rule requires that every energy retailer must develop and implement a family violence policy that (at a minimum):⁴⁷

- addresses the new family violence provisions of the NERR
- is easily accessible on the retailer's website, and
- is reviewed from time to time, to reflect changes in circumstances and to maintain consistency with leading practice.

2.2.6 Flexibility for retailers to allow them to help customers when they need to

The draft rule contains 'override provisions' to give retailers regulatory certainty and confidence when helping customers affected by family violence. To the extent of any inconsistency:

- An affected customer's preferred method of communication will take precedence over any other communication requirements in the NERR.⁴⁸
- A retailer's family violence policy will take precedence over the terms of that retailer's market retail contracts (new and existing).⁴⁹

In addition, the draft rule aims to reduce concerns about inadvertent breaches of contract in circumstances involving affected customers:

- a retailer will not be in breach of a customer retail contract in complying with the new family violence provisions in the draft rule
- an affected customer will not be in breach of their customer retail contract if they use their preferred communication method with the retailer.⁵⁰

2.2.7 Other minor and consequential changes that support the new provisions

The draft rule also proposes the following consequential changes to existing provisions in the NERR:

- limiting the circumstances in which a retailer is not required to offer an affected customer a payment plan⁵¹
- requiring a retailer to take into account impacts of de-energisation on an affected customer, and whether other persons were responsible for the non-payment that lead to de-energisation⁵²

⁴⁶ Draft rule 76J.

⁴⁷ Draft rule 76B.

⁴⁸ Draft rule 76G(3).

⁴⁹ Draft rule 76G.

⁵⁰ Draft rule 76L.

⁵¹ Draft rule, proposed amendment to rule 33(2).

⁵² Draft rule 111(2A).

- replacing existing references in the NERR to “affected customer” (currently undefined, and used in relation to customers facing supply interruptions) with “relevant customer”, to avoid confusion⁵³
- changes to the Model terms and conditions for standard retail contracts to reflect, where appropriate, the new family violence provisions.⁵⁴

The draft rule does not apply to distributors. However, the Commission notes that there may be value in the future in examining distributor communications requirements with affected customers, if it becomes evident that distributor interactions with affected customers may affect the safety of those customers.

2.3 Proposed compliance and enforcement approach

The Commission proposes to recommend that the following provisions in the draft rule be Tier 1 civil penalty provisions under the National Energy Retail Regulations, for the reasons discussed in section 3.4:

- Retailers to have regard to customer safety (rule 76A)
- Retailers to develop and implement a family violence policy (rule 76B).
- Retailers to ensure that relevant staff demonstrate the knowledge and skill to recognise and assist customers affected by family violence (rule 76C)
- Family violence as a cause of payment difficulties and hardship (rule 76D)
- Assistance with debt management, fees and payment methods (rule 76E)
- Affected customer information (rule 76F)
- Preferred method of communication (rule 76G)
- Process to avoid repeated disclosures (rule 76H)
- Not requiring (or allowing retailers to require) customers to provide documentary evidence as a precondition for receiving family violence protections (rule 76I).

We also propose to recommend that the provision in the draft rule requiring retailers to provide information on family violence support services (rule 76J) be a Tier 2 civil penalty provision.

2.4 We propose the new protections take effect in 2023

The Commission proposes that the amending rule, if made as final, would commence on 1 May 2023, which is around seven and a half months after the final rule is published. We would welcome your views on whether this commencement date is appropriate, given:

- the importance of protecting affected customers as promptly as possible
- the majority of the retailers in NECF jurisdictions also operate in Victoria, and therefore should not need to make substantial changes to their existing policies or internal

⁵³ Draft rule, proposed amendments to rules 59C, 90, 91, 143.

⁵⁴ Draft rule, proposed amendments to NERR schedule 1.

processes developed for compliance with the family violence provisions in the Victorian code

- the limited number of NECF retailers that do not operate in Victoria would need time to develop family violence policies and appropriate internal processes to ensure compliance with the new rules.

2.5 Recommendation to apply protections to customers of embedded networks

The Commission is not able to apply the rule change to customers of embedded networks, served by exempt sellers, because under the NERL, NECF provisions relating to retailers do not apply to exempt sellers. Conditions for exempt sellers are an AER function, and the AER has accordingly developed the Retail exempt selling guideline which imposes certain conditions on certain types of exempt sellers.⁵⁵ The Commission sees merit in the AER examining changes to the Retail exempt selling guideline to apply affected customer protections as conditions for exempt sellers, as the AER is currently proposing to do in relation to hardship customer protections.⁵⁶ This would prevent there being an arbitrary distinction in the protections and support available to customers based on how they obtain their energy services and where they live. It would provide protections and assistance to some of the most vulnerable energy customers.

The AER is currently considering stakeholder submissions regarding family violence protections, as part of its review of the AER (Retail) Exempt Selling Guideline (version 5). The AER anticipates the final guideline will be published in July 2022. When determining potential new exemption conditions, the AER must ensure regulatory arrangements for exempt sellers do not unnecessarily diverge from those applying to retailers.⁵⁷

2.6 Comparing the measures in the draft rule to those in the Victorian code

The Commission has sought to align the protections for family violence victim-survivors in NECF regions with the protections available in Victoria, where alignment would advance the NERO.⁵⁸ In most cases, the protections and help established in the draft rule are the same or similar to those provided in Victoria. This will:

- give customers the certainty that the same protections apply whether they are in NSW, the ACT, Queensland, South Australia or Victoria
- reduce the costs and complexity for retailers that currently operate in Victoria of applying the protections in this draft rule.

⁵⁵ NERL Part 5, Division 6. The current AER guidelines are available here: <https://www.aer.gov.au/retail-markets/guidelines-reviews/retail-exempt-selling-guideline-march-2018>

⁵⁶ The AER's review of the Retail exempt selling guideline, including the draft revised guideline which includes hardship customer protections, is available here: <https://www.aer.gov.au/retail-markets/guidelines-reviews/retail-exempt-selling-guideline-review-2021-22>

⁵⁷ National Energy Retail Law s. 114(1)(a)

⁵⁸ See Chapter 3.

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Table 2.1 lists the provisions in the Commission's rule change and highlights similarities and any key differences.

Table 2.1: Provisions in the draft rule - compared to the Victorian code

THIS RULE CHANGE	COMPARISON TO VICTORIAN CODE
A broadly defined scope that provides the widest coverage to customers	
<p>Definition of family relationships</p> <ul style="list-style-type: none"> The draft rule relies on South Australian definitions of family relationships (includes carers and Aboriginal and Torres Strait Islander kinship relationships) 	<p><i>Similar, but not identical, to the Victorian definition of 'Family member' under Family Violence Protection Act 2008 (Vic)</i></p>
<p>Small business customers and embedded network customers</p> <ul style="list-style-type: none"> The rule will apply to residential and small business customers Recommendation that the AER extend protections to affected customers in embedded networks by means of including those protections as conditions for exempt sellers in the Retail exempt selling guideline. 	<ul style="list-style-type: none"> <i>Application to small business customers is consistent with Victoria.</i> <i>The Victorian code does not apply to embedded network customers.</i>
Measures that prioritise safety considerations and protect personal information	
<p>Account security measures</p> <ul style="list-style-type: none"> Retailers will be required to not disclose confidential information about an affected customer to any other person without the consent of the affected customer. Retailers must identify and use, and affected customers may use, a preferred method of communication between retailer and affected customers 	<p><i>Similar to clause 150 - 'Account security' of the Victorian code. The draft rule extends the use of the preferred communication method to communications from the customer to the retailer.</i></p>
<p>Retailer to have regard to customer safety</p> <ul style="list-style-type: none"> Retailers will be required to have regard firstly to the safety of an affected customer in any dealing that they have with that customer. 	<p><i>Departs from the Victorian code.</i></p> <p>The Victorian code does not place a direct obligation of this type on retailers. It does contain a clause (147) that sets out the purpose of the DFV provisions in the code. Retailers are to develop their policy with regard to that purpose. (The purpose of this Part is to give</p>

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THIS RULE CHANGE	COMPARISON TO VICTORIAN CODE
	affected customers “an entitlement to safe, supportive and flexible assistance from a retailer when managing an affected customer’s personal and financial security.”)
Retailer to take into account the particular circumstances of the affected customer	<i>Consistent with clause 141(1) ‘Retailer obligations’ of the Victorian code</i>
Protections that respond to the specific financial challenges that survivors face	
<p>Debt management</p> <ul style="list-style-type: none"> • Before a retailer can take action to recover arrears or sell the debt to a third party from an affected customer it must take into account the impact on the affected person and whether other people may have been responsible for the debt. 	<p><i>Similar to Clause 152 ‘Debt management’ of the Victorian code</i></p> <p>The Victorian code applies only applies to actions to recover arrears, whereas the draft rule also applies when a retailer is considering selling a debt to a third party.</p>
<p>Family violence as a cause of payment difficulties and hardship</p> <ul style="list-style-type: none"> • Family violence must be considered a cause of payment difficulties and hardship by retailers • Retailers must consider this initially with an affected customer, and then from time to time 	<p><i>Similar to Clause 153 ‘Family violence as a cause of payment difficulty’ of the Victorian code</i></p> <p>The Victorian code requires retailers to consider family violence a form of payment difficulty, whereas the draft rule also requires retailers to consider family violence as a form of hardship. The draft rule also requires retailers to consider this periodically.</p>
Systems changes and assistance that will require skilled staff and processes to recognise and support affected customers	
<p>Mandatory skill requirements for retailer staff</p> <ul style="list-style-type: none"> • Retailers must ensure that particular staff are able to understand the nature and consequences of family violence, be able to identify and engage appropriately with, and assist, affected customers, consistent with this part of the NERR and the retailer’s family violence policy. 	<p><i>Departs from Clause 149 ‘Training’ of the Victorian code</i></p> <ul style="list-style-type: none"> • The draft rule is framed around achieving outcomes for customers. • The Victorian code identifies the types of training that a retailer’s relevant staff must undertake.
<p>Referring affected customers to an external support service</p>	<p><i>Consistent with Clause 154 ‘External support’ of the Victorian code</i></p>

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THIS RULE CHANGE	COMPARISON TO VICTORIAN CODE
<ul style="list-style-type: none"> Retailers will be required to provide an affected customer with detail about one or more support services, at a time and in a manner that is safe for the customer. 	
<p>Minimising repeated disclosures</p> <ul style="list-style-type: none"> Retailers should provide a secure process that avoids affected customers repeatedly disclosing their experiences. 	<p><i>Consistent with Clause 151 'Customer Service' of the Victorian code</i></p>
<p>Documentary evidence</p> <ul style="list-style-type: none"> The draft rule does not require (or allow retailers to require) customers to provide documentary evidence as a precondition for receiving family violence protections 	<p><i>Depart from Clause 155 'Evidence' of the Victorian code</i></p> <p>The Victorian code allows retailers to request documentary evidence in relation to:</p> <ul style="list-style-type: none"> debt management or recovery de-energisation of supply
<p>Policy requirements on retailers</p>	
<ul style="list-style-type: none"> Retailer must have a family violence policy that (at a minimum) addresses the family violence part of the NERR and is easily accessible on its website in a readily printable form. Retailer must review its family violence policy as required from time to time to maintain consistency with leading practice 	<p><i>Similar to Division 2 of Part 7 'Family Violence Policies' of the Victorian code</i></p> <ul style="list-style-type: none"> The draft rule does not have a specific policy review period. Instead, it contains a high level clause for retailers to keep their policies aligned to leading practice. In contrast, the Victorian code requires a retailer's family violence policy to be updated every two years.
<p>Flexibility for retailers to allow them to help customers when they need to</p>	
<p>Preferred method of communication</p>	
<ul style="list-style-type: none"> An affected customer's preferred method of communication takes precedence over any other communication requirements in the NERR. 	<p><i>Consistent with Clause 150(5) of the Victorian code</i></p>
<ul style="list-style-type: none"> The family violence policy takes precedence over the retail contract to the extent of any inconsistency. 	<p><i>No similar clauses in the Victorian code</i></p>

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Australian Energy
Market Commission

Draft rule determination
Protecting customers affected by family violence
16 June 2022

THIS RULE CHANGE	COMPARISON TO VICTORIAN CODE
<ul style="list-style-type: none">the retailer is not held to breach the retail contract by complying with the draft Assistance for customers affected by family violence Part of the NERRthe customer will not be in breach of their retail contract in using a their preferred method of communication with the retailer.	

3 WHY THE DRAFT RULE CONTRIBUTES TO ACHIEVING THE NATIONAL ENERGY RETAIL OBJECTIVE

This chapter explains:

- the tests that the Commission applies in deciding whether and how to change the NERR
- the assessment framework the Commission has used to consider the rule change and develop the draft rule
- why the Commission considers the draft rule will effectively protect customers affected by family violence, and contribute to achieving the national energy retail objective (NERO).

3.1 The Commission's rule making tests

3.1.1 Achieving the NERO

The Commission may only make a rule if it is satisfied that the rule will, or is likely to, contribute to the achievement of the NERO.⁵⁹ This is the decision-making framework that the Commission must apply.

The NERO is:⁶⁰

to promote efficient investment in, and efficient operation and use of, energy services for the long term interests of consumers of energy with respect to price, quality, safety, reliability and security of supply of energy.

The Commission must also, where relevant, satisfy itself that the rule is "compatible with the development and application of consumer protections for small customers, including (but not limited to) protections relating to hardship customers" (the "consumer protections test").⁶¹

The consumer protections test is relevant to the making of this rule (and has been incorporated into the assessment framework detailed below).

The Commission must be satisfied that both the NERO test and the consumer protections test have been met.⁶² If the Commission is satisfied that one test, but not the other, has been met, the rule cannot be made. There may be some overlap in the application of the two tests. For example, a rule that provides a new protection for small customers may also, but will not necessarily, promote the NERO.

3.1.2 Making a more preferable rule

Under s. 244 of the NERL, the Commission may make a rule that is different (including materially different) to a proposed rule (a more preferable rule) if it is satisfied that, having

⁵⁹ Section 236(1) of the NERL.

⁶⁰ Section 13 of the NERL.

⁶¹ Section 236(2)(b) of the NERL.

⁶² That is, the legal tests set out in s. 236(1) and (2)(b) of the NERL.

regard to the issue or issues raised in the rule change request, the more preferable rule will or is likely to better contribute to the achievement of the NERO.

In this instance, the Commission has made a more preferable draft rule. The reasons are summarised in section 3.3 below.

3.2 Assessment framework

To assess the extent to which the draft rule and the rules proposed in the rule change request are likely to contribute to achieving the NERO and the consumer protections test, and address the issues raised in the rule change request, the Commission considered the following assessment criteria:

- **Consumer protections**
 - In the rule change request, Red and Lumo noted that family violence is a major societal issue that kills on average one woman per week.⁶³ Following the Victorian Royal Commission into Family Violence, energy retailers, banks, and telecommunication and water companies have recognised that perpetrators use essential services to harm and control victims, and many are acting to protect and support victim-survivors.
 - Further, since publishing the consultation paper the Commission recognises that there is significant knowledge and understanding of family violence issues in energy and essential services that can guide its decision-making, including evidence of which reforms have been effective and which may have led to outcomes that were unexpected.
 - Therefore, central to the Commission's assessment is the extent to which the rule change provides effective consumer protections for small customers affected by family violence. The Commission has examined the extent to which the rule change reduces risks to consumers experiencing family violence when they are engaging with the energy market, whilst also avoiding unintended consequences. The Commission's assessment also considers whether approaches are compatible with cross-sectoral developments in protections for victim-survivors.
- **Transparency and certainty**
 - In the Rule change request, Red and Lumo stated that the inconsistency in regulatory protections between Victoria and other NEM regions creates uncertainty and confusion both for survivors and service providers about entitlements to assistance.⁶⁴ This discourages engagement with a retailer and the energy market more generally. To address this some retailers now provide similar support across all NEM regions.
 - The Commission's assessment criteria therefore includes considering if the rule change provides greater certainty and access to information for consumers who may

⁶³ Red and Lumo, Rule change request: Family violence protections for energy customers, 23 September 2021, pp. 1 and 3.

⁶⁴ Red and Lumo also note that these retailers will have adapted their systems to meet these obligations, Red and Lumo, Rule change request: Family violence protections for energy customers, 23 September 2021, p. 5.

be affected by family violence. The Commission has also considered whether policy consistency across the NEM would foster access to clear information.

- **Minimise unnecessary and inefficient regulatory and administrative burden**
 - In the rule change request, Red and Lumo note that the vast majority of retailers that operate in the NECF also operate in Victoria, and so they will have experience with the Victorian code and its provisions.⁶⁵ However, there are a group of mostly smaller retailers we have identified that currently only operate in NECF regions, and may not have any internal processes or policies relating to customers affected by family violence. It is important that any rule is proportionate to the problem it is trying to address, or else it will increase operating costs for existing retailers. Similarly, introducing measures that diverge widely from the Victorian code will require additional systems changes for retailers that operate in Victoria, which could lead to similar issues for these participants.
 - Therefore, the Commission's assessment criteria also considers if the costs to market participants and market bodies of implementing the solution are minimised, and are proportional to the benefits. The Commission has also considered if the responsibilities introduced by the rules are consistent with the role of energy sector businesses and whether policy alignment/differences across the NEM could reduce regulatory burden.

3.3

Why the draft rule is likely to contribute to the NERO

3.3.1

A broadly defined scope that provides the widest practicable coverage to customers

The Commission has decided that the rule should apply to small business customers as well as residential customers. It has also included a recommendation that the AER should examine changes to the Retail exempt selling guideline to apply affected customer protections as conditions for exempt sellers. Finally, it has chosen to use the South Australian definitions of family relationships for the purposes of defining family violence in the draft rule.

Small business customers also can experience family violence and failing to protect them risks harm, confusion and uncertainty

Extending protections and support to small business customers is the most effective way to protect victim-survivors from harm related to energy services. As small businesses are often family businesses, a victim-survivor is unlikely to escape family violence at work.⁶⁶ Failing to include protections for small business customers risks leaving a critical gap in protections from family violence and financial abuse.⁶⁷

Excluding small business customers also would likely create substantial uncertainty for consumers as small businesses are protected under the Victorian Energy Code. Confusion would be particularly material for those that operate businesses across state borders, who

⁶⁵ Red and Lumo also note that these retailers will have adapted their systems to meet these obligations, Red and Lumo, Rule change request: Family violence protections for energy customers, 23 September 2021, p. 6.

⁶⁶ Importantly, around 70 per cent of small businesses are family businesses: AER, Submission to the consultation paper, p. 4.

⁶⁷ The Commission considers that a voluntary approach such as that suggested by Simply will likely also lead to protections gaps. Simply, submission to the consultation paper, p. 2.

relocate a business to a different state,⁶⁸ or that fall between the retail and small business customer categories.⁶⁹

Furthermore, the implementation risks cited by some retailers, that business owners could have important business information (such as amounts owing) withheld because of the application of account security provisions, is unlikely to eventuate. The confidential information that is subject to the account security provision only covers personal information and not account balance information.⁷⁰ Finally, there is evidence that some retailers' concerns about implementation complexity are manageable, given the current practices used by retailers operating in Victoria.⁷¹

Using a broad definition of "family" for the purposes of family violence protects more people and makes the draft rule relatively consistent with Victoria

The draft rule adopts the South Australian definitions relating to family relationships, for the purposes of the definition of family violence, as they provide an appropriately broad definition of "family", and South Australia is the legislating jurisdiction for the national energy framework. As outlined in chapter 2, the definition includes Aboriginal and Torres Strait Islander kinship rules, other culturally recognised family groups and carers.⁷²

While these definitions are not identical to the Victorian definitions, they have a broadly similar scope, and this consistency will provide the sector, consumers and their advocates with clarity, and will assist in limiting implementation and systems costs for retailers.

The Commission considered that other options were less appropriate in the circumstances:

- adopting the Victorian definition - not appropriate given the NERR do not apply in Victoria
- adopting the Commonwealth definition - this definition is somewhat narrower than the Victorian and South Australian definitions, and therefore would cover fewer customers and could potentially increase retailer implementation costs

68 Including affected business owners who have been forced (or are considering) to relocate themselves and their business to a different state because they are fleeing family violence, for instance; this was also recognised by AGL in its submission. AGL, Submissions to the consultation paper, p. 3.

69 AGL points out several customer sub-categories where this could occur, including:
- where the affected customer resides in a premises that is a mixed-use property, such as a milk bar;
- where the affected customer may be temporarily taking shelter at the premises of their small business after fleeing their usual place of residence. AGL, Submission to the consultation paper, p. 5.

70 Small business customers have been protected under the Victorian code since January 2020 and so far retailers have not been able to demonstrate to us that these risks are more than theoretical. Further, the ESC is also unaware of any issues of this kind taking place. While some retailers raised concerns around insolvent trading, the limited definition of "affected customer information" should preclude any such issues arising for the small business, and these issues do not apply to service providers such as energy retailers. Red and Lumo, Rule change request - Family Violence Protections for Energy Customers, 23 September 2021, p. 4. and Submissions to the consultation paper, Origin, p. 3., Simply, p. 2.

71 Retailers including EnergyAustralia have noted that they have been able to implement protections that respond to the specific issues raised by Red and Lumo, Simply and Origin, by introducing measures such as:
- Applying the full protections when it is a single account holder on a small business account
- Removing an affected customer's personal information from an account that has shared access
- Applying a password to the account as an additional verification step before information about the account can be obtained by a person contacting the retailer.
See EnergyAustralia, Submission to the consultation paper, p. 2.

72 This is also consistent with the views of some stakeholders who wanted a broader definition of family violence, to ensure that the rule change would consider broader relationships. Submissions to the consultation paper, Energy and Water Ombudsman NSW, Energy and Water Ombudsman South Australia and Energy and Water Ombudsman Queensland (EWON et al.), p. 2., TasCOSS, p. 1.

- setting out a definition in the NERR, instead of adopting an external definition - may become out of date, and would require the Commission to consider matters relating to family relationship definitions which are outside the Commission's expertise.

Failing to provide protections to embedded network customers risks excluding people that are most in need

There is a strong case for extending family violence protections for victim-survivors to customers in embedded networks. If affected customers living or working in embedded networks are not covered by similar protections to those that apply to customers connected to the national grid, the energy sector risks creating an arbitrary distinction between customers based on how they get their energy services and where they live.⁷³ This distinction is problematic as many residents in the types of accommodation that are commonly set up as embedded networks, such as nursing homes and caravan parks, are amongst the most vulnerable. They also face complex, opaque and less regulated arrangements regarding their energy services that could be exploited by perpetrators. Some residents may be living in embedded networks because they have recently fled violence, noting that many do so with little money or other resources.

Currently, under the NERL, protections for embedded network customers are within the jurisdiction of the AER not the Commission, as discussed in chapter 2. Given this, the Commission recommends that the AER consider applying the family violence protections provided in the draft rule as conditions for exempt sellers.⁷⁴ Extending protections to customers in embedded networks would be consistent with the views of most stakeholders.⁷⁵

3.3.2

Retailers must protect an affected customer's personal information and prioritise their safety

The Commission has introduced the following obligations on retailers centred on protecting an affected customer's safety:

- secure personal information and communications (rules 76F and 76G)
- a broad requirement for retailers to have regard to the safety of affected customers (rule 76A).

Including account security protections and a safe method of communication prevents perpetrators from accessing and using personal information to find and abuse a victim

⁷³ For example, the owner of a caravan park or a nursing home, as a small business customer, could be entitled to family violence protections, but the residents of that park or home, if it is an embedded network, would not be entitled to the same protections. Furthermore, a person who goes from living in a standard residential setting to living in an embedded network would lose the entitlement to family violence protections, which has the potential to put them at risk of harm, or at the very least the potential to cause confusion.

⁷⁴ As was noted in Chapter 2, the AER is currently considering stakeholder submissions regarding family violence protections, as part of its review of the AER (Retail) Exempt Selling Guideline (version 5). The AEMC recognises there are different types of embedded networks and there may need to be variation in how protections are put in place for each of these, these are matters for the AER to consider.

⁷⁵ Submissions to the consultation paper: Origin, p. 4., EWON et al, p. 8., ECA, p. 6., the Economic Abuse Reference Group, p. 5. Public Interest Advocacy Centre (PIAC), ACTCOSS, Financial Rights Legal Centre, Good Shepherd: Australia and New Zealand, QCOSS (PIAC et al.), p. 25 and Uniting Vic Tas, p. 7.

Account security protections and safe communication methods can prevent perpetrators from obtaining a customer's contact information and continuing to pursue and abuse them.

Without these protections victims can face multiple risks, including:

- death or serious injury (victims are often most at risk of death soon after leaving an abusive relationship)⁷⁶
- having to relocate to reduce the risk of death or injury.⁷⁷

Additionally, as affected customers are best placed to understand the risks to their personal safety, and retailers are best placed to understand energy retail systems and processes, establishing and using a preferred method of communication will ensure both parties are best placed to properly manage safety risks regarding communications.⁷⁸

Furthermore, the Commission believes implementing these changes, which were largely supported by stakeholders,⁷⁹ is manageable and not overly burdensome.

Momentum raised substantive concerns about the ability to share customer contact details with contractors providing services to the retailer, such as distributors and mail or telecommunications service providers.⁸⁰ We have addressed these concerns by allowing retailers to continue to provide affected customer information to contractors or agents of the retailer that require access to that information to provide services to the relevant retailer.⁸¹ To maintain affected customer safety, the draft rule requires retailers to ensure that its contractors and agents do not disclose affected customer information to other people.⁸²

Requiring retailers to firstly have regard to safety clearly directs retailers that safety is paramount in any dealing with an affected customer

A requirement to recognise an affected customer's safety as the immediate and paramount concern gives a clear direction to energy retailers to firstly consider that customer's safety in all dealings with them. This provision codifies comments that we received from several stakeholders that keeping customers safe or minimising harm should be a key consideration of the rule change.⁸³ Furthermore, as the national energy market continues to change, this high-level provision will continue to mitigate safety risks that could not have been realistically foreseen at the time of this rule change.⁸⁴

76 In NSW between 2017-2019 in two-thirds of all intimate partner homicides (where a woman was killed by a former partner), the victim and perpetrator had separated within three months of the killing. NSW Domestic Violence Death Review Team, *Report 2017-2019, 2020*, NSW Government.

Similarly, in Queensland between 2006 and 2019, 27 per cent of victims of intimate partner homicide were separated from the perpetrator. Domestic and Family Violence Death Review and Advisory Board (Qld), [2018-19 Annual Report](#), 2019, Queensland Government

77 The ECA noted that survivors have been forced to move after energy companies inadvertently disclosed contact details to a former partner, Energy Consumers Australia, Submission to the consultation paper, p. 3.

78 Essential Services Commission 2019, *Energy Retail Code Changes to support family violence provisions for Retailers: Final Decision*, 22 May, p. 20. In including this amendment the ESC also noted that it would encourage energy retailers to work productively with customers, providing tools and information where needed to support customers to safely navigate processes and to remain safe in their interactions with retailers.

79 Submissions to the consultation paper, EWON et al. p. 3, Energy Consumers Australia, p. 3, PIAC et al, p. 9.

80 Momentum, submission to the consultation paper, p. 3-4.

81 Draft rule 76F(2), definition of "any other person".

82 Draft rule 76F(1).

83 Submissions to the consultation paper: AER, p. 4, PIAC et al. p. 9., AGL, p. 2., ECA, p. 2.

84 We note that new unforeseen family violence concerns could arise from matters such as:

Finally, the degree of the obligation on a retailer - to 'have regard firstly to the safety of the customer' - is not considered an unnecessary or disproportionate regulatory burden. Many stakeholders supported an overarching safety provision in addition to specific measures to protect safety.⁸⁵ It may reduce the burden on retailers by allowing them to tailor their services to respond flexibly to differing circumstances.

3.3.3

Alleviating the financial impacts of family violence

To reduce the financial impacts of family violence, the draft rule requires retailers to consider:

- the impact of debt recovery on affected customers and whether other people may be responsible for the debt
- family violence as a cause of payment difficulties and hardship.

Debt management protections will mean an affected customer's circumstances are properly considered by a retailer before it takes action over a debt

The introduction of these new provisions will provide assurance to the nearly two million customers that will experience financial abuse (a common form of family violence) that, if they are impacted by debt, their energy retailer will take their personal circumstances into account before recovering debt or selling it to a third party (such as a debt collection agency).⁸⁶ Debt can be a key financial abuse tool and in some cases these requirements could help customers leave an abusive relationship.

The Commission considered if a stronger response was needed. For instance, prohibiting retailers from recovering debts from affected customers. The Commission concluded it was not necessary, as stakeholders' general support for the equivalent clause in Victoria suggests that the current approach is not ineffective.⁸⁷ The Commission considers the new obligation is unlikely to have a significant regulatory or cost impact on retailers.⁸⁸

Requiring retailers to recognise that family violence can cause payment difficulties and customer hardship will help affected customers access financial help when needed

The draft rule compels energy retailers to consider whether a customer experiencing family violence is affected either by payment difficulties or customer hardship.⁸⁹ Approximately 99 per cent of women who present to family violence services have also experienced economic

- the ESB's post-2025 market design process
- retail market changes such as the potential introduction of flexible trading arrangements
- technological innovations such as the increasing prevalence of smart homes and remotely-controlled devices.

85 While stakeholders had mixed views on the best approach to a safety clause, most that commented on the topic believed that the primary focus of the rule change should be protecting customer safety. Submissions on the consultation paper: TasCOSS, p. 3. Telstra, p. 2., AGL, p. 3. and ECA, p. 2.

86 Draft rule 76E(1).

87 Stakeholders that commented on this clause were generally supportive. Submissions to the consultation paper: AGL, pp. 4-5., Origin, p. 2., EWON et al, p. 6., Economic Abuse Reference Group, p. 4., Uniting Vic Tas, p. 4

88 Further, we do not agree with the assertion made by Ergon in its submission that its staff would be unable to assess the impact of debt recovery on affected customers (Ergon, Submission to the consultation paper p. 2-3), because:
- The provision only requires consideration of a customer's circumstances not a comprehensive assessment,
- Many retailers already comply with the similar Victoria provision and none have raised concerns about its subjectivity.

89 Draft rule 76D.

abuse.⁹⁰ However, customers experiencing family violence are often unable to access hardship assistance.⁹¹

Under the energy rules, retailers must provide assistance to hardship customers and customers with payment difficulties.⁹² Available measures include payment plans, waiving late payment fees, allowing for payment by Centrepay and providing information about government rebates. Certain protections also apply to de-energisation and disconnection. The Commission's draft rule seeks to ensure that customers experiencing family violence receive these forms of financial support when needed.

The draft rule also requires retailers to periodically reassess if a customer has become affected by payment difficulties or hardship.⁹³ The Commission recognises that an affected customer's financial situation can change over time as:

- customers that leave abusive relationships are likely to experience financial disadvantage at different stages during their recovery, and
- customers that are trapped in an abusive relationship often see their personal financial circumstances deteriorate.⁹⁴

Stakeholders including retailers supported clarifying affected customer eligibility for hardship and payment difficulty assistance.⁹⁵

3.3.4

Organisational culture, skills and practices to support affected customers

The rule change introduces new requirements on retailers so they foster the culture and tailor their services to better respond to customers experiencing family violence. These include:

- mandatory skills requirements for retailers' staff⁹⁶
- minimising the need for a person to repeatedly disclose their experiences of family violence⁹⁷

90 Kutin, Russell and Reid., *Economic abuse between intimate partners in Australia: prevalence, health status, disability and financial stress*, 2017. Chapter 41.

91 State of Victoria, *Royal Commission into Family Violence: Summary and recommendations*, Parliamentary Paper No 132 (2014–16), p. 105.

92 To identify customers affected by hardship or payment difficulties retailers will look for customers that have:
- a history of late payments
- broken payment plans
- requested payment extensions
- received a disconnection notice
- been disconnected for non-payment, see AGL, *Hardship Policy: New South Wales, South Australian and Queensland customers*, p. 5.; Origin Energy, *Our hardship policy: Power on Program (ACT, NSW, QLD. SA)*, September 2019, p. 5; EnergyAustralia, *Financial Hardship Policy (ACT, NSW, QLD and SA)*, September 2019, p. 4.

93 Draft rule 76D(2).

94 Retailers will be required to flag family violence customers to meet obligations around avoiding repeated disclosures, they can periodically check this list of customers against common metrics that indicate a customer may be affected by hardship, this assessment could take place every 12 months, or more frequently if the retailer sees value in doing so.

95 Simply, for example, suggested that there was value in clarifying if the rule change would also apply to hardship customers. Submissions to the consultation paper: Origin, p. 3., Simply, p. 3 EWON et al., p. 4., ECA, p. 2., Economic Abuse Reference Group, p. 4. Commission staff also met with representatives of the AER who also supported this.

96 Draft rule 76C.

97 Draft rule 76H.

- not requiring documentary evidence from an affected customer⁹⁸
- referring an affected customer to a relevant external support service.⁹⁹

Mandatory skills requirements for retailers' staff will ensure that customers get the full benefit from family violence protections

The Commission has chosen to introduce mandatory family violence skills requirements for retailer staff in the draft rule. The Commission concurs with the views of stakeholders — that well-trained, skilled staff are essential to help affected customers access services and maintain personal and financial security. It recognises that poor awareness of family violence within organisations can lead to products and systems that can be used by perpetrators to harm or even kill victims.¹⁰⁰

Mandatory family violence training is becoming increasingly common in essential services regulation.¹⁰¹ As such, including requirements to ensure staff interacting with affected customers are appropriately skilled and trained would be consistent with best practice in essential services regulation.

Currently there are no training requirements relating specifically to family violence in the NECF. The AER's customer hardship policy guideline requires training so retailer staff understand hardship issues, and this training may include some consideration of family violence as the guideline recognises that family violence may be a cause of hardship.¹⁰² However, this requirement is unlikely to address many of the key issues at the core of this rule change.¹⁰³

The Commission has assessed a spectrum of regulatory approaches: from a new prescriptive training provision, broadening the existing prescriptive AER provision on hardship training, an outcomes-based provision, to having no training provision at all. The Commission has concluded that a provision in the rule is needed to complement and underpin the cultural change underway in many parts of the industry.¹⁰⁴ Many stakeholders supported mandatory training requirements¹⁰⁵ and no stakeholders explicitly raised concerns about implementing training.¹⁰⁶

98 Draft rule 76I.

99 Draft rule 76J.

100 AER, Submission to the consultation paper, p. 3. Safe and Equal, The Family Violence Experts by Experience Framework Implementation Plan and Guidelines for the Essential Services Commission and essential services providers, May 2022, p.9.

101 In this respect:

- The Victorian code and the draft Western Australian energy code both mandate family violence training (see Energy Retail Code of Practice, Cl. 149; and Draft Code of Conduct for the Supply of Electricity to Small Use Customers, Cl. 91(2)(a));
- A family violence training requirement is included in the Victorian water codes (see Customer Service Code - Urban Water Businesses, Clause 14)
- the telecommunications industry and the Australian banking industry also incorporate family violence training requirements in their respective codes of conduct (see Australian Banking Code of Conduct Clause 39).

102 AER, Customer Hardship Policy Guideline, March 2019, clause 33, clause 89.

103 For instance, account security requirements are not a hardship requirement and therefore would not be required to be addressed even though these are among the most important to this rule change.

104 It will help ensure for instance that retailers that are new to the market, less experienced in family violence, that internally struggle to have funds allocated to training, or who do not prioritise customer protections, recognise and act to train their staff.

105 Submissions to the consultation paper: AGL p. 5., EnergyAustralia, p. 2., Ergon, p. 4., Origin, p. 3., Tango, p. 3., AER, p. 3., EWON et al., p. 7., ECA, p. 4., Economic Abuse Reference Group, p. 2., PIAC et al, p. 21., TasCOSS, p. 2., Uniting Vic Tas, p. 6., White Ribbon, p. 2.

106 Retailers that may be most affected by a new requirement, those that currently do not operate in Victoria and do operate in

However, the Commission considers an outcome-based obligation, that does not specify training but requires staff to be able to assist affected customers, is a more effective and appropriate regulatory approach.¹⁰⁷

It allows retailers that operate in Victoria to use and expand their existing training, encourages sharing of leading practice, and as it is an ongoing obligation arguably places a higher bar on retailers than an input-based training requirement. An outcomes-based approach:

- Requires a retailer to **actively engage** with family violence issues and solutions, for instance to consider how their systems can prevent family violence. A training requirement, by contrast, can effectively transfer responsibility for identifying family violence issues and proposing responses onto a training service provider.
- Requires a retailer to engage with family violence issues on **an ongoing basis**. When new issues become apparent, retailers will have to examine their impact and ensure their staff can identify, engage, and assist customers on the issue, rather than relying on training service providers to offer solutions. This builds a retailer's internal capability and drives cultural change.¹⁰⁸ Importantly, it should also mean retailers will more quickly recognise and respond to new concerns. This is critical as the family violence protections and support are rapidly evolving; retailers and regulators are continuing to learn and perpetrators continuing to adapt their tactics to harm or control affected customers.
- Reflects that many retailers' **culture and capability in protecting customers experiencing family violence has changed** since the ESC introduced protections in Victoria. As such, a different regulatory approach may be appropriate now than was needed when the Victorian Code was introduced. Notwithstanding that it is outcomes-based obligation, the Commission is recommending that it be a Tier 1 penalty provision in recognition of **the importance of compliance** in protecting customers experiencing family violence.

Minimising repeated disclosures of family violence can be beneficial for affected customers and retailer staff

NECF jurisdictions, did not raise this as an issue in their submissions. Submissions to the Consultation Paper from ReAmped, Aurora and Ergon.

107 The draft rule requires that a retailer must ensure that key staff are able, on an ongoing basis, to:

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

Key staff are any person with authority or capacity to act on the retailer's behalf (including employees, contractors and agents, including call centre and marketing personnel) who:

- may engage with affected customers by any means of communication;
- is responsible for systems and processes that guide interactions with small customers
- is a manager of a person identified above.

108 However as part of considering an appropriate response, retailers could consider advice from services providers or industry experts. They could also rely on communities of practice to identify issues and respond to new issues.

The draft rule requires retailers to minimise the need for customers to repeatedly disclose their experiences of family violence.¹⁰⁹ This is important because requiring a victim of family violence to retell their story can re-traumatise them, discourage them from seeking support, or even put them at renewed risk of harm if it puts them in a position where a perpetrator becomes aware they are seeking assistance.

We do not expect it will be difficult for retailers to implement this provision as the mix of stakeholders that commented on this potential provision in response to the consultation paper (retailers and consumer groups) all supported its inclusion and importantly many of the retailers that commented already operate in Victoria, where a similar clause is already in place.¹¹⁰

Not requiring documentary evidence from an affected customer is best practice because it reduces trauma risks and helps survivors get the assistance they need

The Commission has determined that family violence protections should not be limited to customers who can produce documentary evidence.¹¹¹ It is increasingly considered best practice to not ask for documentary evidence. Other industries such as water, banking, and telecommunications are progressively moving away from requirements to seek documentary evidence in cases of family violence.¹¹²

The Commission recognises that documentary evidence is not always easily accessible for victims of family violence, and when it is available the details can be graphic, re-traumatising survivors and impacting retailer staff.¹¹³

109 Repeated disclosure may occur if there are no dedicated family violence support staff; if staff members aren't adequately trained to identify signs of family violence; or if retail staff lack empathy.

Retailers can avoid customers having to retell their story by providing systems and processes to identify customers who have previously disclosed family violence and providing them with special assistance. A common solution is to introduce an account flag for affected customers, so whenever they contact the retailer they are transferred to a customer services representative experienced with their circumstance.

110 Submissions to the consultation paper: AGL, p. 6., EnergyAustralia, p. 2., Ergon, p. 4, Origin, p. 4., EWON, et al., p. 7., ECA, p. 5., Economic Abuse Reference Group, p. 5., PIAC et al, p. 23, Uniting Vic Tas, p. 6.

111 Stakeholder views were mixed on this topic:

- several stakeholders supported allowing evidence to be sought for particular matters; see submissions to the consultation paper from AGL, pp. 4-5, Ergon, p. 3., Origin, p. 2., Simply, p. 1.

- several stakeholders supported not requiring documentary evidence in any circumstances; see submissions to the consultation paper: EWON et al, p. 6., ECA, p. 4., Economic Abuse Reference Group, p. 4., PIAC et al., p. 15., TasCOSS, p. 3., Uniting Vic Tas, p. 4.

112 In this respect:

- The Victorian water businesses do not request documentary evidence from survivors.

- In its best practice guide, the ESCV recognises that evidence is not always easily accessible. Essential Services Commission 2019, Better practice in responding to family violence: Exploring ways energy and water retailers can provide family violence assistance that is safe and effective, 6 August 2019?, p.31

- The Communications industry's recommended approach is for providers to accept the word of those who have experienced family violence and not require them to provide additional evidence or specific details.

- The Banking code does not require an intervention order as evidence of family and domestic violence when assessing a financial hardship application (customers can give verbal or written hardship notices under the law). Australian Banking Association, Industry Guideline: preventing and responding to family and domestic violence, March 2021, Cl. 4.9.

113 Some common reasons why survivors may not have access to documentary evidence or may not wish to provide a retailer with particular documentary evidence are:

- survivors in crisis often will not be thinking about collecting evidence, particularly if they are fleeing abuse and some more common evidence types like family violence orders are actually not easily accessible, particularly for economic abuse victims

- collecting evidence can put a victim at risk of violence

- perpetrators do not always leave clear evidence, because they are either meticulous or may rely on verbal put downs.

- providing evidence of family violence forces an affected customer to reveal or relive their experience which can be embarrassing, hurtful or even traumatic. PIAC et al, Submission to the consultation paper, p. 15.

Finally, removing the need for documentary evidence is unlikely to lead to a substantial increase in customers fraudulently trying to claim they are affected by family violence, as has been suggested by some stakeholders.¹¹⁴ There is no strong evidence either in energy or in other industries that this takes place.¹¹⁵

Requiring retailers to refer customers to a relevant external support service gives them greater encouragement to seek help

Often women experiencing family violence may not be aware of the support that is available to them, or may even not recognise they are victims of family violence.¹¹⁶ Because of this, an affected customer may be more likely to seek support if they have a referral from an essential services provider. The Commission considers that:

- The key initial referral services for supporting people experiencing family violence are well-established.¹¹⁷
- This requirement is unlikely to create additional risk for consumers as a retailer must provide the referral in a manner that is safe, respectful and appropriate given the affected customer's circumstances.¹¹⁸
- The requirement is unlikely to require major changes to retailer practices or systems as they already refer customers to other support services.¹¹⁹

3.3.5

Making helpful information readily available in a policy can help to empower customers to take action

Requiring retailers to have a family violence policy that addresses the new family violence provisions in the NERR, and publish the policy on their website, is appropriate as victim-survivors are more likely to engage with their energy retailer when they understand the support that is available to them.

The use of a non-prescriptive approach that is substantially similar to the Victorian requirement will also mean that retailers:

- will have a degree of flexibility in the assistance that they provide to consumers, including potentially providing protections that extend beyond the minimum requirements

114 Submissions to the consultation paper, Origin p. 2., Simply, p. 1.

115 In this respect the Commission notes that:

- Retailers have not provided any evidence that customers fraudulently claim to be victims of family violence. Additionally, in the more than two years since the changes came into the Victorian code, the ESCV has not been presented with evidence of customers fraudulently claiming to be victims of family violence.
- Victorian water businesses already provide family violence assistance and do not require documentary evidence, and the ESCV has noted that none of these businesses encountered fraudulent claims.
- We have spoken to representatives in the banking industry who believe it may be happening but that it is largely insignificant.

116 As it can involve behaviours that are not typically considered violent.

117 For instance, the 24-hour 1800-RESPECT help line, similar state-based family violence support services and the Men's Referral Service.

118 Retail staff should also be considering the paramount responsibility to consider the customer's safety when liaising with them. They can also rely on the customer's preferred communication method. For these reasons the Commission does not agree with the assertion by Ergon that providing a referral could place an affected customer at risk of harm if a perpetrator was to find it. Ergon, Submission to the consultation paper, p. 2.

119 This can include referring them to financial counsellors, debt hotlines, and other forms of government assistance under NERR rule 33(3). EWON et al, Submission to the consultation paper, p. 8. We also note that because the requirement is not to choose the best service, but one or more of those available, we do not agree with the assertions by Ergon that the number of support services available would make it difficult to choose an appropriate service. Ergon, Submission to the consultation paper, p. 2.

- operating in both the NECF jurisdictions and Victoria should be able to rely on substantially the same policy as they currently use in Victoria
- operating only in the NECF can look at existing Victorian policies as examples.¹²⁰

Most stakeholders tended to favour a rule that was not prescriptive about the contents of the family violence policy.¹²¹ However, other models were favoured by some stakeholders. PIAC et al sought a highly prescriptive policy document.¹²² We do not consider this is necessary as many of the matters it sought to have included would have been covered by the model the Commission has chosen, and greater prescription may reduce retailer flexibility and increase costs. The rule proposed by Red and Lumo required the policy to contain information on the assistance available for affected customers.¹²³ The draft rule does not take this approach as we considered using the same wording as the relevant clause in the Victorian code would lead to greater transparency and certainty for consumers, while also reducing the potential burden on retailers.

The draft rule requires that retailers review their family violence policy from time to time as required to reflect changes in circumstances, or to maintain consistency with leading practice. This departure from the Victorian framework (where retailers must review their policies every two years) is to minimise unnecessary regulatory burden but ensure retailers update their policies whenever needed.

3.3.6

Flexibility for retailers to allow them to help customers when they need to

To assist retailers and to ensure that customers can get support when they need, the draft rule clarifies the priority of the new requirements, with respect to contracts and other provisions of the NERR:

- an affected customer's preferred method of communication takes precedence over any other customer communication requirement in the NERR¹²⁴
- a retailer's family violence policy takes precedence over the terms of its market retail contracts, to the extent of any inconsistency¹²⁵
- a retailer will not be in breach of its customer retail contract if it takes action to comply with the family violence provisions in the NERR¹²⁶
- a customer will not be in breach of their customer retail contract if they use their preferred communication method with their retailer.¹²⁷

120 The Energy Charter includes some retailer family violence policies on its content hub (this can be viewed [here](#)). This also features other customer and community facing communications and links to useful information on a range of topics.

121 Submissions to the consultation paper: AGL, p. 3., Aurora, p. 1., Origin, p. 1., Tango, pp. 4-5., Telstra, p. 2., ECA, p. 2., Uniting Vic Tas, p. 2.

122 PIAC et al, Submission to the consultation paper, p. 6.

123 Rule change request, proposed rule 76B(1).

124 Draft rule 76G(3).

125 Draft rule 76L(1). This is to assist in relation to existing contracts, in particular. Retailers may, in future, refer to their family violence policy in new retail market contracts.

126 Draft rule 76H(1).

127 Draft rule 76H(2).

Having the preferred method of communication take precedence over other communication requirements allows retailers to assist affected customers without compliance concerns

This clause will allow retailers to withhold communications from a perpetrator to protect a customer's identity and personal information and keep them safe, without risking a breach of the NERR. In the rule change request, Red and Lumo suggested a broader clause that would mean that the family violence part of the NERR could override any provisions in any other part of the NERR. However, the Commission has not seen evidence of a need to extend this protection beyond communication provisions.¹²⁸

Allowing the family violence policy to take precedence over a market retail contract, and updating the terms of standard retail contracts, provides greater clarity and consistency of protections

The Commission is including in the draft rule provisions to clarify how the new provisions and the family violence policies will apply in relation to both standard and market retail contracts.

- *Market retail contracts* - existing market retail contracts will not reflect these new family violence protections (though the protections will still apply under the NERR to customers with existing contracts). A provision that gives precedence the family violence policy over market contracts is needed so retailers can easily apply their new family violence policy to customers on existing market retail contracts, and provide these customers clarity that they are entitled to the same protections as new customers.¹²⁹
- *Standard retail contracts* - the draft rule also updates the model terms and conditions for standard retail contracts in the NERR to align with the family violence provisions, and requires retailers to update their standard retail contracts accordingly, for consistency and clarity.
- *No breach of contract* - while the protections in the NERR will apply regardless of the contract, a retailer or customer could potentially be in breach of a contractual requirement in complying with the new family violence provisions (for example, in using their preferred communication method instead of the method specified in the contract). The no-breach provisions in the draft rule aim to address this issue, for both market and standard retail contracts.¹³⁰

128 See Red and Lumo, Rule change request - Family violence protections for energy consumers, 23 September 2021, p. 8. Another case provided by the proponents involved being in a potential breach of the NERR if a retailer, to protect a customer's safety, chose not to send someone to a house to read the meter. A retailer can manage this case already as the NERR allow for estimating a meter read.

129 This provision does not apply to standard retail contracts as their terms are set out in the rules (NERR schedule 2) and cannot be amended by retailers.

130 However, the draft changes to the model terms and conditions for standard retail contracts, noted above, should ensure that future standard retail contracts are consistent with the family violence provisions.

3.4 Why the proposed civil penalty recommendations are appropriate

The Commission cannot specify that provisions in the NERR are civil penalty provisions, but we may (jointly with the AER) make civil penalty recommendations, based on the civil penalties decision matrix and concepts table approved by Energy Ministers.¹³¹ Based on this assessment, and in light of the potential for serious harm to come to affected customers if there is a breach of the draft rule, we propose to recommend that:

- nine of the proposed provisions in the draft rule should be Tier 1 civil penalty provisions, for the reasons set out below, and
- the provision in the draft rule requiring retailers to provide information on family violence support services (rule 76J) should be a Tier 2 civil penalty provision, as it relates to customer harm type 2 and is similar to existing NERR provisions which are Tier 2 provisions.¹³²

In developing these recommendations we considered the following key matters:

- This approach aligns with other Tier 1 penalty provisions in the NERR, notably the Customer Hardship Part (Part 3) and the Life Support Part (Part 7).
- Tier 1 penalties are appropriate where a breach of the provision may result in consumer harm type 1, including death or serious injury to a person, or a failure to deal with vulnerable customers appropriately.¹³³
- The provisions in the draft rule that we recommend to be civil penalty provisions are similar to the civil penalty provisions in the family violence part of the Victorian code.

3.4.1 Reasons for Tier one recommendations and parallels in other provisions

The Commission recommends that the following provisions be classified as Tier 1 civil penalty provisions:

- **Affected customer information (rule 76F)** - A breach of this provision can lead to death or serious injury. A disproportionate amount of partner homicides that threaten the safety of women and children take place shortly after the female partner separates. The equivalent provision in the Victorian code is a penalty provision.
- **Ability of retailer staff to assist affected customers (rule 76C)** - Failing to ensure that retailer staff are properly trained could potentially lead to a customer being seriously injured or killed. A breach of this provision could also lead to a failure to deal with vulnerable customers appropriately. The Training requirements under the Victorian Code are penalty provisions.
- **Regard to safety and circumstances of affected customers (rule 76A)** - Failing to have regard to the safety of a customer could lead to death or serious injury, particularly in circumstances where it may be readily apparent that a person is at risk of harm and a

¹³¹ National Energy Laws: Civil penalty provisions concepts table, January 2021, available at: <https://www.energy.gov.au/government-priorities/energy-ministers/energy-ministers-publications/proposed-classification-tiers-reform-australian-energy-regulator-civil-penalty-regime>

¹³² National Energy Laws: Civil penalty provisions concepts table, January 2021, p. 4. A similar example in the NERR is rule 33(3) on providing information on availability of government funded energy charge rebate, concession or relief schemes.

¹³³ National Energy Laws: Civil penalty provisions concepts table, January 2021, p. 2.

retailer can take action to prevent that. (Evidence in assessing compliance with this rule could include records of retailer action taken and reasons, and voice recordings of service calls.) The Victorian framework has no comparable safety clause.

- **Family violence policy (rule 76B)** - A breach of this provision could lead to a failure to deal with vulnerable customers appropriately. The NERR hardship policy provision, including communication of it to customers, is a Tier 1 penalty provision. Also, the equivalent provision in the Victorian code is a civil penalty requirement.
- **Family violence as a potential cause of hardship or payment difficulties (rule 76D)** - A breach of this provision could lead to a failure to deal with vulnerable customers appropriately. In the NERR, failure to establish a payment plan with regard to a customer's ability to pay is a Tier 1 provision. The equivalent provision in the Victorian code is a civil penalty requirement.
- **Assistance with debt management, fees and payment methods (rule 76E)** - A breach of this provision could lead to a failure to deal with vulnerable customers appropriately. NERR hardship provisions include a Tier 1 penalty for a retailer failing to waive late payment fees for a hardship customer. The equivalent provision in the Victorian code is a civil penalty requirement.
- **Retailers not to require documentary evidence (rule 76I)** - A breach of this provision could lead to a failure to deal with vulnerable customers appropriately. (Potentially a breach of this rule could prevent a customer from accessing protection and appropriate support.) The equivalent provision in the Victorian code is a civil penalty requirement.
- **Preferred method of communication (rule 76G)** - A breach of this provision could lead to a failure to deal with vulnerable customers appropriately. Potentially a breach could result in a perpetrator accessing information intended for the affected customer. The equivalent provision in the Victorian code is a civil penalty requirement.
- **Process to avoid repeated disclosures (rule 76H)** - A breach of this provision could lead to a failure to deal with vulnerable customers appropriately. The equivalent provision in the Victorian code is a civil penalty requirement.

ABBREVIATIONS

AEMC	Australian Energy Market Commission
AER Commission	Australian Energy Regulator See AEMC
EWON et al.	Means the joint submission by Energy and Water Ombudsman NSW, Energy and Water Ombudsman South Australia and Energy and Water Ombudsman Queensland.
MCE	Ministerial Council on Energy
NECF	National Energy Customer Framework
NERL	National Energy Retail Law
NERO	National energy retail objective
PIAC et al.	Means the joint submission by Public Interest Advocacy Centre, ACTCOSS, the Financial Rights Legal Centre, Good Shepherd Australia and New Zealand and QCOSS.

A SUMMARY OF OTHER ISSUES RAISED IN SUBMISSIONS

This appendix sets out the issues raised in the first round of consultation on this rule change request and the Commission’s response to each issue. (If an issue raised in a submission has been discussed in the main body of this document, it has not been included in this table.)

Table A. 1: Summary of other issues raised in submissions

STAKE-HOLDER	ISSUE	COMMISSION RESPONSE
AGL	Discussing including family violence as a form of payment hardship: “[i]n practice, the customer will have likely accumulated debt with the retailer as it is often a co-factor to, or by-product of, the exploitative tactics used by perpetrators. Although the inclusion of Clause 76C of the proponent’s rule change request may appear duplicative of the AER’s Customer Hardship Policy Guideline, retailers’ family violence policies already specify that affected customers can access short and long-term financial support measures.”	<p>In this draft determination, the Commission has included a clause that requires retailers to consider if a customer affected by family violence is affected by payment difficulty or hardship.</p> <p>We recognise that many retailers have proactively sought to provide financial assistance and protections to customers affected by family violence, while other retailers may not have provided support, or may not have provided support that is sufficiently comprehensive. The Commission, therefore, considers that including this rule is required.</p>
AGL	Discussing including debt management protections: “for the retailer to exercise its discretion over the collection of energy debt, the customer must have disclosed that they require additional support measures... The relevant account indicators must be present in order for retailers to take appropriate action and therefore, it is critical to engage the energy retailer at a time that is safe and suitable for the customer to discuss the measures that the retailer can take in these situations” p. 4 - 5	<p>The draft determination will require retailer staff to have the skills to identify customers affected by family violence and will also require retailers to consider if a customer affected by family violence is affected either by payment difficulty or hardship.</p> <p>As such, retailers may also have to engage with customers to consider the impact of debts and whether they have</p>

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STAKE-HOLDER	ISSUE	COMMISSION RESPONSE
		been partially caused by another person.
EnergyAustralia	Overall, the proposed differences with the Victorian requirements, at best remove any consistency and efficiency by having a national framework, and at worst limit the protection offered to customers experiencing family violence. P. 1.	In this draft determination the AEMC has chosen to make a more preferable rule that incorporates elements of the rule change request and the Victorian code. The Commission has sought to adopt the current Victorian protections to the extent that doing so promotes the NERO and the consumer protections test.
Ergon	Discussing when documentary evidence should be sought: "evidence provided by the customer should remain current for a term of four years with the customer required to re-confirm with the retailer they are continuing to experience family violence. It is recognised that a timeframe cannot be placed on how long a person may be a victim of family violence. However, such a time limit ensures the retailer is made aware of the customer's evolved circumstances." p. 3	The draft determination does not require customers to provide documentary evidence to prove that they are affected by family violence at any time. The draft rule sets out processes and requirements on retailers to use to understand an affected customer's circumstances, including changes over time. These include skills and knowledge capabilities and preferred methods of communication.
Momentum	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. p. 2	The draft determination recognises that some retailers have voluntarily taken steps to address family violence issues. Additionally, many of the provisions that the Commission has introduced are not prescriptive and should not affect the tailored and voluntary efforts of retailers particularly where these go beyond the draft rule.
Origin	Origin suggested that documentary evidence should be able to be requested for debt management issues where there is not sufficient evidence in documentation or recordings held by the retailer to demonstrate an environment of family violence (as an example it suggested a situation	The draft determination recognises that documentary evidence is not easily accessible for customers, particularly family violence orders, but it is also likely to be intimidating for a customer to have to provide a statutory

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STAKE-HOLDER	ISSUE	COMMISSION RESPONSE
	<p>where the customer could provide a statutory declaration or an existing order that provides evidence of the family violence); it also suggested that documentary evidence should be able to be sought before a retailer is required to remove credit default listings where a person was coerced or otherwise ought not be considered liable for the debt accrued in their name (example: a child turned 18 and their parent coerced them into creating an energy account and taking responsibility for usage they should not have been liable for) P. 2</p>	<p>declaration, when similar details could just as easily be sought and recorded by retailer staff during conversations with a customer as the draft rule does not preclude a retailer from asking questions to assess if a customer is affected by family violence.</p> <p>In response to the second example of a child turning 18 and being coerced into creating an energy account, it would be time-consuming, traumatising and difficult for an individual to get a statutory declaration or a family violence order as the coercion may not involve violence. Again, if a retailer develops appropriate systems for its staff it should be able to properly identify affected customers by conversing with them.</p>
EWON et al.	<p>In relation to debt management provisions EWON et al. noted there is potential for further assistance to be provided to victim-survivors of family violence through retailers outlining what additional things they can do. These include debt waiver, removal of default listings, or additional assistance in paying part of a debt, if it is clear that the debt may have been coerced or not all attributable to the customer alone. p. 6</p>	<p>The family violence policy requires retailers to address the family violence part of the NERR (which includes debt management provisions) as a minimum. Retailers will be able to explain the financial assistance available (both required and support provided by the retailer above statutory requirements) in their policy.</p>
ECA	<p>The availability of a standard family violence policy would mean retailers could simply adopt the standard policy, ensuring victim-survivors have a 'floor' of adequate protections. This is likely to be particularly useful to the many small retailers.</p>	<p>The Commission considers the new provisions in the NERR will provide a "floor" of adequate protections. In addition, the family violence policy requirements under the draft determination align with the Victorian code. As such, smaller retailers should be able to consider other retailers' policies in developing their own.</p>

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STAKE-HOLDER	ISSUE	COMMISSION RESPONSE
PIAC et al.	<p>PIAC et al (p. 6.) supported the introduction of a policy and wanted a retailer’s policy to include minimum standards and principles (below) and transparent approvals and a two-year review by AER with policy benchmarking.</p> <p>A family violence policy should cover the following areas:</p> <ul style="list-style-type: none"> • assessing processes and services to identify DFV risks, contribute to ability to inflict harm, or create barriers or further impacts. • Making sure safety is paramount. • Early recognition of family violence. • Training to improve employees’ responses . • Protecting private and confidential information of customers. • Minimising needs to disclose information. • Ensuring sensitive collection arrangements. • Arranging access to Financial Hardship assistance. • Informing customers, employees and service suppliers about information and assistance available to people experiencing family violence. • Referring to specialist services. • Supporting employees who: <ul style="list-style-type: none"> • are affected by family violence; • experience vicarious trauma. 	<p>The draft rule requires that a retailer’s family violence policy will need to address most of the items on this list, as their policy needs to address each aspect of the draft rule. There are several matters that the rule does not require a retailer to include in their policy such as support for employees, but this matter is more appropriately dealt with through work place relations policy rather than the NERR. Other matters are dealt with at a higher level in the draft rule (e.g. early recognition of family violence).</p> <p>The Commission also notes that requiring approvals, a two-year review by the AER and policy benchmarking, would put significant additional burden on the AER, and is not the regulatory framework utilised in the Victorian Energy Code.</p>
PIAC et al.	Proposed the introduction of an AER guideline for account security. p. 9.	The draft rule establishes the outcomes that a retailer must deliver regarding account security and the

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STAKE-HOLDER	ISSUE	COMMISSION RESPONSE
		Commission recommends a breach of the clause should attract a Tier 1 penalty. Retailer systems vary considerably, and so it would impractical and inappropriate for the framework to regulate at a more granular level.
PIAC et al.	<p>PIAC et al noted that family violence training should include:</p> <p>Whole-of-business (including outsourced). Managers and systems designers need to understand.</p> <ul style="list-style-type: none"> • Developed to help staff identify and respond appropriately to victim-survivors and perpetrators, ongoing trauma. • include the voices and experiences of people with lived experience. • trained staff can recognise DFV flags and products can be designed around this issue. • On-going and updated with evolving research. • Integrated with Victorian requirements • Be delivered by experts • The training should include: <ul style="list-style-type: none"> • The gendered nature of DFV, the gendered nature of energy use and how energy rationing can be used to inflict harm. • Intersectional experiences of DFV, shaped by culture, race, disability, gender identity, sexuality and age. • An understanding that DFV does not always result in financial hardship issues, and that energy retailers may need to provide assistance in other ways, e.g. account security. 	<p>The Commission has introduced a less prescriptive approach to training with a focus on outcomes. Its focus is on ensuring that retailers' staff can identify, engage with and assist affected customers. The requirements extend to key retailer staff including system designers. Many of the aspects proposed would be encompassed by the draft rule skills requirement and related aspects of the draft rule.</p>

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STAKE-HOLDER	ISSUE	COMMISSION RESPONSE
	<ul style="list-style-type: none"> Support for staff who may be dealing with their own DFV situation or past trauma and ongoing support for staff experiencing vicarious trauma or other impacts resulting from work with victim-survivors. 	
PIAC et al.	The rule change must consider people who are not in a position to self-advocate, p. 20 - 1.	Appropriately skilled staff (consistent with the draft rule's requirements) should be able to recognise common factors associated with customers affected by family violence.
PIAC et al	The rule change must consider if DNSPs should look out for violence, p. 20 - 1.	The draft determination recognises that distributor communications with affected customers is an area for potential future work.
PIAC et al	The rule change must recognise that special consideration needs to be given to how to best meet the needs of particular groups (indigenous, CALD, etc), p. 20 - 1.	The compulsory skills requirement will require staff to be able to assist customers affected by family violence. This may include the needs of specific customer groups. However, placing specific additional requirements on staff to identify the best way to meet the needs of groups risks significantly increasing compliance costs, particularly on smaller retailers.
PIAC et al	The rule change must consider how family violence occurs in familial relationships, p. 20 - 1.	The Commission has used the South Australian definitions of family relationships because these are more comprehensive than the Commonwealth definition. Further, the compulsory skills requirement will require retailer staff to understand issues relating to family violence; this is likely to include understanding how family violence can take place in common situations like familial relationships.
TasCOSS	TasCOSS recommended debts be automatically waived once a disclosure of	The Commission considers that requiring retailers to do

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STAKE-HOLDER	ISSUE	COMMISSION RESPONSE
	<p>family violence has been made.</p> <p>Debts involving victim-survivors of family violence should not be sold or escalated to debt collectors – if the debt was sold before the disclosure of family violence, the retailer should immediately take steps to repurchase and manage the debt. p. 2</p>	<p>more than taking into account the impact (for instance by requiring retailers to forgive debts) risks placing significant burden on retailers.</p> <p>It is up to an individual retailer to determine in what circumstances they would repurchase and manage debts owed by family violence customers.</p>
HelpPay	<p>HelpPay noted that the rules can be enhanced and supported by researching innovations including digital technologies to enable secure, discrete payments that enable and empower victim survivors of family violence to get out of their situation with minimal to no financial hardship or repercussions.</p>	<p>The Commission acknowledges that innovative digital technologies may be able to assist some customers affected by family violence. In other cases, for instance at times of crisis or for people who are traumatised, they may be less useful, accessible or appropriate. The Commission supports but is not in a position to advocate for research into digital technologies. As such minimum protections and assistance are essential for achieving outcomes for consumers experiencing family violence.</p>

B LEGAL REQUIREMENTS UNDER THE NERL

This appendix sets out the relevant legal requirements under the NERL for the Commission to make this draft rule determination.

B.1 Draft rule determination

In accordance with s. 256 of the NERL the Commission has made this draft rule determination in relation to the rule proposed by Red and Lumo.

The Commission's reasons for making this draft rule determination are set out in Chapter 3.

A copy of the more preferable draft rule is attached to and published with this draft rule determination. Its key features are described in Chapter 2.

B.2 Power to make the rule

The Commission is satisfied that the more preferable draft rule falls within the subject matter about which the Commission may make rules. The more preferable draft rule falls within s. 237(1)(a)-(b) of the NERL as it relates to the provision of energy services to customers and the activities of persons involved in the sale and supply of energy to customers, as well as s. 237(2)(d) of the NERL as it relates to confidential information held by a retailer, s. 237(3)(e) of the NERL as it relates to imposing obligations on a retailer, and s. 237(3)(g) of the NERL as it relates to requiring a retailer to make or issue procedures.

B.3 Commission's considerations

In assessing the rule change request the Commission considered:

- its powers under the NERL to make the rule
- the rule change request
- submissions received during first round consultation
- the Commission's analysis as to the ways in which the proposed rule will, or is likely to, contribute to the NERO, and
- the extent to which the rule is compatible with the development and application of consumer protections for small customers.

There is no relevant Ministerial Council on Energy (MCE) statement of policy principles for this rule change request.¹³⁴

B.4 Civil penalties

The Commission cannot create new civil penalty provisions. However, it may (jointly with the AER) recommend to the Energy Ministers Meeting that new or existing provisions of the

¹³⁴ Under s. 225 of the NERL the AEMC must have regard to any relevant MCE statement of policy principles in making a rule. The MCE is referenced in the AEMC's governing legislation and is a legally enduring body comprising the Federal, State and Territory Ministers responsible for energy.

NERR be classified as civil penalty provisions. The new provisions in the draft rule that the Commission proposes to recommend be classified as civil penalty provisions, and the reasons for those recommendations, are set out in chapter 3.

B.5 Conduct provisions

The Commission cannot create new conduct provisions. However, it may recommend to the Energy Ministers Meeting that new or existing provisions of the NERR be classified as conduct provisions.

The draft rule does not amend any rules that are currently classified as conduct provisions under the NERL or the National Energy Retail Regulations. The Commission does not propose to recommend to the Energy Ministers Meeting that any of the proposed amendments made by the draft rule be classified as conduct provisions.

B.6 Review of operation of draft rule

The more preferable draft rule does not require the Commission to conduct a formal review of the operation of the draft rule. The Commission may however self-initiate a review of the operation of the rule (if a final rule is made) at any time if it considers such a review would be appropriate, pursuant to s. 232 of the NERL.