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Australia New Zealand



**Financial
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ACT *COSSA*
ACT Council of Social Service Inc




TasCOSS

**Submission to AEMC
Draft Determination Protecting
Customers Affected by Family
Violence**

4 August 2022

About ACT Council of Social Service

The ACT Council of Social Service (ACTCOSS) advocates for social justice in the ACT and represents not-for-profit community organisations. ACTCOSS leads the ACT Energised Consumers Project in partnership with Care Financial Counselling, advocating for small energy consumers in the ACT.

About Good Shepherd Australia New Zealand

Good Shepherd Australia New Zealand addresses the critical and contemporary issues facing women, girls and families. Guided by the values of reconciliation, justice, audacity and zeal, for more than 150 years Good Shepherd Australia New Zealand has supported women and their families to be safe, strong and well. Our programs and services help people overcome barriers that lead to hardship and live a safe, full life. We seek positive change in laws, policies, social norms and behaviours through targeted research, policy advocacy and corporate alliances.

About Financial Rights Legal Centre

Financial Rights is a community legal centre that specialises in helping consumers understand and enforce their financial rights, especially low income and otherwise marginalised or vulnerable consumers. We provide free and independent financial counselling, legal advice and representation to individuals about a broad range of financial issues. Financial Rights operates the National Debt Helpline, which helps NSW consumers experiencing financial difficulties. We also operate the Insurance Law Service which provides advice nationally to consumers about insurance claims and debts to insurance companies, and the Mob Strong Debt Help services which assist Aboriginal and Torres Strait Islander Peoples with credit, debt and insurance matters.

About the Public Interest Advocacy Centre

The Public Interest Advocacy Centre (PIAC) is leading social justice law and policy centre. Established in 1982, we are an independent, non-profit organisation that works with people and communities who are marginalised and facing disadvantage.

PIAC's Energy and Water Consumers' Advocacy Program works for better regulatory and policy outcomes so people's needs are met by clean, resilient and efficient energy and water systems. We ensure consumer protections and assistance limit disadvantage, and people can make meaningful choices in effective markets without experiencing detriment if they cannot participate.

About the South Australian Council of Social Service

The South Australian Council of Social Service is the peak non-government representative body for health and community services in South Australia, and has a vision of Justice, Opportunity and Shared Wealth for all South Australians. SACOSS does not accept poverty, inequity or injustice. Our mission is to be a powerful and representative voice that leads and supports our community to take actions that achieve our vision, and to hold to account governments, business, and communities for actions that disadvantage people on low incomes or experiencing vulnerability.

About the Tasmanian Council of Social Service

The Tasmanian Council of Social Service (TasCOSS) is the peak body for the community services industry in Tasmania. TasCOSS represents the interests of members and individuals/organisations active in the provision of community services to Tasmanians on low incomes or living in vulnerable circumstances. Through advocacy and policy development,

TasCOSS draws attention to the causes of poverty and disadvantage, and promotes the adoption of effective solutions to address these issues.

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1. Summary of recommendations

Recommendation 1

Develop AER guidance such as a standard family violence policy or guideline with minimum standards in consultation with the community sector, and require the AER to approve family violence policies which go beyond the minimum standards.

Recommendation 2

Family violence policies be mandatorily reviewed every two years, with an independent process to ensure that the policy is fit for purpose.

Recommendation 3

Retailer family violence policies on websites should be available in community languages and multiple accessible formats. Webpages containing information about family violence should have quick exit buttons.

Recommendation 4

All employees, contractors, agents and board members of the business must be required to maintain an understanding of family violence, the role that essential services have in exacerbating family violence, and how retailers can best assist victim-survivors.

Recommendation 5

Retailers be required to report on process indicators to demonstrate their progress to achieving outcomes.

Recommendation 6

More guidance needs to be given around expectations of retailer competency regarding family violence and these expectations must be enforceable by the AER so that victim-survivors receive appropriate and consistent responses.

Recommendation 7

Retailers be required to consider how family violence affects victim-survivors with disability and/or chronic health conditions, and/or are from First Nations, culturally and linguistically diverse, recently arrived migrants and LGBTIQ+ and how best to address their needs.

Recommendation 8

Requiring security deposits be prohibited for affected customers.

Recommendation 9

Preclude recovery of debts from family violence victim-survivors in financial hardship.

Recommendation 10

Require retailers to consider and clearly communicate a) the impact of debt recovery on victim-survivors and b) options for managing this impact.

Recommendation 11

Develop an AER guideline that clarifies the meaning of ‘safety’ in draft rule 76A and includes guidance on the economic drivers of family violence, the nature of economic abuse and the financial impacts of family violence, the potential impacts of debt recovery in family violence circumstances, and options for managing debts in these circumstances.

Recommendation 12

Further reduce the need for repeated disclosure by placing restraints on sale of debts in family violence circumstances and retailers participating in schemes to reduce disclosure.

Recommendation 13

Affected customers should not be disconnected for non-payment.

Recommendation 14

Consider non-pecuniary penalties for very serious or repeat breaches of the rule, including licence suspension or revocation.

Recommendation 15

Recommend to the AER that compliance and enforcement of this rule be a priority area and include compliance indicators of the rule in its regular reporting.

Recommendation 16

Breaches of this rule should be a reportable breach as part of Energy and Water Ombudsmen compliance reporting.

Recommendation 17

Recommend the AER update its Compliance procedures and guidelines to require retailers to self-report their breaches of this rule.

Recommendation 18

Provide options for retailers to comply with the rule ahead of the commencement date.

Recommendation 19

Undertake a broad review of the rule two years after commencement including the experiences of survivor advocates; where harms might be occurring outside of financial abuse and disconnection; and the role DNSPs have in identifying and protecting victim-survivors.

2. Introduction

ACT Council of Social Service (ACTCOSS), Financial Rights Legal Centre (FRLC), Good Shepherd Australia New Zealand (Good Shepherd), the Public Interest Advocacy Centre (PIAC), South Australian Council of Social Service (SACOSS) and Tasmanian Council of Social Service (TasCOSS) welcome the opportunity to respond to the Australian Energy Market Commission's (AEMC) Draft National Energy Retail Amendment (Protecting customers affected by family violence) Rule 2022 ('the draft rule').

The draft rule has significantly improved upon the original rule change proposal submitted by Red Energy and Lumo Energy ('Red/Lumo'). We are particularly pleased with the following aspects and changes which should result in better outcomes for victim-survivors:

1. Not allowing retailers to ask for evidence of family violence to avoid disconnection, or to access protections and support.
2. Including former customers, small businesses and a broad definition of family violence to include abuse outside of the context of intimate partner violence.
3. Recommendations to extend protections to people in embedded networks.

Whilst we are also pleased that there are some new proposed requirements around staff skills requirements, in this submission we detail our concerns about how this would look in practice and provide recommendations for improvement.

We welcome the requirement for retailers to have a family violence policy and debt management procedures, but use this submission to highlight further amendments to these provisions that would benefit victim-survivors.

Finally, we recommend that a wide review of this rule change take place two years after implementation.

3. The draft rule

Below we make comment on most aspects of the draft rule.

3.1 76A Regard to safety and circumstances of affected customers

We generally support this clause and welcome the inclusion of the requirement for retailers to take into account the particular circumstances of the victim-survivor. This principle of safety should underpin all aspects of the rule and enforcement of compliance.

However, we remain concerned that this clause could be applied subjectively. Without proper training, some retailer staff might regard 'safety' with a narrow, physical interpretation, rather than a broader definition which would encompass psychological and economic safety. This wider definition is critical in the context of family violence, where research shows strong links between financial precarity and violence, including victim-survivors being unable to escape.

Enforcement of this clause should place the burden of proof on the retailer to demonstrate how their processes prioritised the safety of the customer, inclusive of physical, psychological, and economic safety. The affected person (or the Australian Energy Regulator (AER)) should not have to establish that they did not.

3.2 76B Family violence policy

We support the requirement for retailers to develop a family violence policy, that the policy addresses the rule, and that it must be included on the retailer's website. However, a family violence policy is too sensitive and consequential to not have oversight. Simply addressing the rule in the policy will likely result in a list of vague and subjective protections that will do little to instil confidence in victim-survivors that disclosing abuse will result in help from their retailer.

The failure of a light-touch oversight approach from the AER has been demonstrated in relation to hardship assistance and exempt seller arrangements, necessitating the later implementation of mandatory guidelines.

If the AER developed a standard family violence policy it would mean retailers could simply adopt the standard policy, ensuring victim-survivors have a 'floor' of adequate protections. A standard policy proforma would be particularly useful to the many small retailers who have limited resourcing with which to undertake a policy development process that requires expertise located outside the energy sector. Having this guidance and minimum standards would mean that retailers who wish to go above and beyond the minimum standards in fulfilling the objectives of protecting and supporting victim-survivors could do so. Alternatively, the AER could provide guidance on this document, via an AER guideline, which would mirror the successful Victorian approach. Retailer staff, contractors and board members could then be trained to understand and meet the standards contained in these documents, ensuring consistent, high quality responses for victim-survivors across retailers.

Recommendation 1

Develop AER guidance such as a standard family violence policy or guideline with minimum standards in consultation with the community sector, and require the AER to approve family violence policies which go beyond the minimum standards.

Similarly, having policies 'reviewed from time to time' can become meaningless and unenforceable due to lack of specificity. We support family violence policies being reviewed at least every two years (as is done in Victoria and proposed by Red/Lumo), but again this is meaningless without an independent process to ensure that the policy is fit for purpose.

Safe and Equal note that one of the principles for better practice responses to family violence is the importance of '[p]roviding meaningful opportunities for victim survivors to give feedback about the responses offered, and this may mean gathering feedback later or through an anonymous platform.'¹

Review and assessment must evaluate policies against clearly established, consistent objectives, outcomes and principles, and include the experiences of victim-survivors.

In its Draft rule determination, the AEMC notes that 'requiring approvals, a two-year review by the AER and policy benchmarking, would put a significant additional burden on the AER, and is not

¹ Safe and Equal, *Guidelines for Better Practice Responses to Family Violence: for the Essential Services Commission and essential service providers* (2022) 11.

the regulatory framework utilised in the Victorian Energy Code.² We contend that the AER should be adequately resourced to ensure the protection of consumers, particularly consumers experiencing family violence. As we included in our response to the Consultation Paper, this review process could instead be undertaken by a recognised independent family violence expert who also understands energy retailer systems and processes.

Without an external approval or oversight process, there is little to encourage a retailer to maintain best practice.

Recommendation 2

Family violence policies be mandatorily reviewed every two years, with an independent process to ensure that the policy is fit for purpose.

We are pleased that family violence policies must be available on retailer websites. However, these documents must be easy for community members to find and available in accessible formats. Women with disabilities are disproportionately affected by family violence and are at risk of unique forms of family violence such as abuse by carers.³ Information about family violence policies should be provided in an inclusive way to all victim-survivors, including information in community languages and multiple accessible formats such as plain language, large print, Easy English and easy-read, audio and video.⁴ Webpages containing information about family violence should have quick exit buttons.

Recommendation 3

Retailer family violence policies on websites should be available in community languages and multiple accessible formats. Webpages containing information about family violence should have quick exit buttons.

3.3 76C Ability of retailer staff to assist affected customers

We support inclusion of a clause requiring skills capacity of retailer staff. We also support an outcome-based focus for staff competency since training can become a narrow box ticking exercise focussed on process. We know that in addressing payment difficulties, just having a hardship policy is not enough to ensure retailers provide consistent responses to people in need that meets the standards set in their hardship policy.⁵ As we detail below, an outcome-based focus must be accompanied by process indicators.

We also support that competency in understanding family violence, and identifying, engaging and assisting victim-survivors is required of people who directly engage with victim survivors, as well as their managers and people who are responsible for designing and implementing systems to engage with consumers.⁶ However, all members of an organisation must be required to have this

² AEMC, Draft Rule determination National Electricity Amendment (Protecting Customers Affected by Family Violence) Rule 2022, 37.

³ Our Watch and Women with Disabilities Victoria, *Changing the landscape: A national resource to prevent violence against women and girls with disabilities* (2022).

⁴ Yvette Maker, Nina Hudson and Bernadette McSherry for the Essential Services Commission, *Sensitive and appropriate engagement with consumers experiencing vulnerability*, (31 January 2021).

⁵ For example, retailers often need to hear 'magic words' for people to get access to hardship programs as detailed in Nicholls, Larissa and Dahlgren, Kari, 'Consumer Experiences Following Energy Market Reforms in Victoria: Qualitative Research with community Support Workers, Final Report' (2021) 20-21.

⁶ 76C of the Draft amendment.

competency to help drive organisational understanding and change,⁷ and to avoid breaches of safety of victim-survivors by retailer operations that are not considered as direct customer interactions.

Staff in other areas of the business, including short term contractors, can undermine consistent outcomes through a lack of understanding of vulnerability, and a lack of capacity to undertake their role in a way that consistently supports good outcomes for people requiring assistance.

In a retail energy business, many employees or contractors have roles which would not be considered customer facing, and therefore not explicitly covered by the current wording in the draft determination. However, most roles in the business can directly or indirectly impact upon the retailer's response to the needs of victim-survivors. It is not always apparent how a role may impact on outcomes for victim-survivors.

For example, many employees and contractors in computer systems, design, or data management roles have critical functions in data security, determining how easy it is to add or remove contact details from accounts, designing invoicing and communication systems, and payment options available for customers. If staff in these roles don't understand family violence, it might alter how easy it is to steal data that endangers victim-survivors, remove perpetrators from accounts to protect privacy, use invoicing mechanisms that are least likely to catalyse violence, or offer payment methods that are accessible and affordable for victim-survivors experiencing hardship. Unless every person in the organisation – whether they have direct customer interaction or not – adequately understands family violence, and prioritises customer safety, it is not possible to ensure that all systems and functions are working towards the goal of protecting victim-survivors. To ensure effective and consistent capacity-building throughout retail businesses, and support efficient monitoring of compliance and enforcement, requirements for understanding of family violence should be applied throughout the organisation universally.

Further, the end goal of regulatory change is to spark cultural change within the energy sector: to prioritise the lives and well-being of victim-survivors. While awareness and building skills is only a starting point, they are necessary precursors to widespread cultural change. All staff should have the confidence that when they are discussing family violence issues or cases with anyone in the organisation – whether it is a manager, contractor, IT, or operator – they are sharing the same language and understanding.

Recommendation 4

All employees, contractors, agents and board members of the business must be required to maintain an understanding of family violence, the role that essential services have in exacerbating family violence, and how retailers can best assist victim-survivors.

3.3.1 Process indicators and measurable and enforceable outcomes are required

We are concerned that the proposed outcome-based approach is not accompanied by process indicators. Outcome based approaches require long timeframes for monitoring and evaluation. Without the opportunity to monitor implementation progress in the shorter to medium term, there is a risk that organisations will delay implementation until just prior to a long-term outcomes

⁷ Safe and Equal, *The family violence experts by experience framework implementation plan and guidelines for the Essential Services Commission and essential services providers* (2022).

review, or that issues that could have been addressed early are left to compound over time. We recommend amending the draft approach to include process indicators as well as outcome measures, which would require retailers to track the steps they are taking to achieve staff competency. We recommend the AEMC require retailers to report on process indicators, similar to the approach taken to implementation of the *Gender Equality Act 2020 (Vic)*, which sets out seven workplace gender equality indicators that responsible agencies/departments must make reasonable and material progress against, such as workplace sexual harassment, recruitment and promotion, and gendered work segregation. Indicators could similarly be developed for implementation of the rule, for example, in relation to organisational leadership on family violence, implementation of a family violence policy, a supportive workplace culture, staff understanding of family violence, and capacity to assist customers.

Recommendation 5

Retailers be required to report on process indicators to demonstrate their progress to achieving outcomes.

As the rule is written, we are also concerned that the outcomes are not measurable enough to enforce them. Although the AEMC notes in its Draft determination that the minimum training requirements included in our response to the Consultation Paper would be ‘encompassed by the draft rule skills requirement and related aspects of the draft rule’⁸ we do not agree that all the aspects of training we listed in our submission would be covered by the Draft rule. Instead, we recommend that there be more guidance in the rule to enable retailers to easily demonstrate compliance and the AER to assess compliance.

As we highlighted in our response to the Consultation Paper, this rule change is designed to provide protections and supports for victim-survivors who:

1. understand that they are, or have been, in a family violence situation and that they are the victim-survivor;
2. have the capacity to disclose this, succinctly, in English;
3. have a safe opportunity to disclose this; and
4. have some understanding and/or willingness to get assistance if they disclose their situation to their retailer. Without effective retailer training, they will likely need to use explicit language to access this assistance as is often the case when consumers access hardship programs.⁹

However, the traumatic, dangerous, confusing and disempowering nature of family violence means that the rule is unlikely to help victim-survivors who:

- are not aware they are in a family violence situation;
- are not aware that they are the victim-survivor of family violence;
- are unable to disclose their situation, particularly to someone who can directly help them or assist them to get help;

⁸ 38-39.

⁹ Nicholls, Larissa and Dahlgren, Kari, *Consumer Experiences Following Energy Market Reforms in Victoria: Qualitative Research with community Support Workers, Final Report* (2021) 20-21.

- experience shame and/or concern they will not be believed;
- cannot reach out for assistance safely;
- do not use language that is commonly used to describe family violence (I.e. they may not use words like “abuse” or “violence”)
- are unaware assistance is available in the community (where they could access support to approach their energy retailer) and/or from their retailer.

One important way to help victim-survivors who cannot or do not disclose their situation is through adequate training. Frontline, credit and specialist hardship staff must have the skills to pick up on subtle hints and ‘red flags’, and products and services must be designed with family violence prevention and recovery in mind. Involving victim-survivors and community workers who work with victim-survivors in the training and service design processes can help address this issue as well.

As we highlighted in our response to the Consultation Paper, as a result of changes made to address family violence in the Energy Retail Code (ERC) in Victoria, some community workers in Victoria are seeing more responsiveness from retailers in dealing with family violence. However, they also report that despite mandatory training in family violence, they still encounter many retailer call centre staff who ‘don’t have a clue’ about family violence and that family violence responses are inconsistent or non-compliant. For example, Good Shepherd provided assistance in a family violence case involving very poor communication from the retailer, long delays, and the retailer chasing the victim-survivor for the debt despite solid supporting documentation of family violence. This case was ultimately escalated to the Energy Water Ombudsman Victoria (EWOV). In another case, a retailer refused to waive the debt despite clear evidence of hardship due to family violence and showed a significant lack of knowledge regarding family violence situations.

This indicates the need for strong, clear and enforceable training and oversight. External expertise could help build capacity and provide quality assurance. Compliance processes could include the AER listening to random calls between victim-survivors and retailers to ensure compliance.

Recommendation 6

More guidance needs to be given around expectations of retailer competency regarding family violence and these expectations must be enforceable by the AER so that victim-survivors receive appropriate and consistent responses.

3.3.2 Protections and supports for victim-survivors from diverse backgrounds

We know that family violence can affect anyone but that certain groups are over-represented, and some communities’ needs are not as well met through existing services.

People with disability and chronic health conditions require more understanding and responsive services. They:

- are over-represented as victim-survivors;

- can be especially reliant on energy for assistive & medical devices, or health-related heating or cooling needs;
- might require accessible communication options or information formats;
- consistently face high administrative burdens around ‘proof’ of disability when accessing public and private services.

This rule must also give special consideration to ensuring protections adequately support people who are:

- Aboriginal and/or Torres Strait Islander;
- culturally or linguistically diverse;
- recently arrived migrants, including people on temporary visas; and
- LGBTIQ+.

We recommend retailers be required to consider how family violence affects people from these communities and how best to address their needs.

Recommendation 7

Retailers be required to consider how family violence affects victim-survivors with disability and/or chronic health conditions, and/or are from First Nations, culturally and linguistically diverse, recently arrived migrants and LGBTIQ+ and how best to address their needs.

3.3.3 Expertise required

We also reiterate that providing family training requires expertise. People perceive training in family violence in different ways. It can take time to understand this complex issue and for it to be meaningful and lead to cultural change. We suggest the AER help retailers identify appropriate training providers. This would be particularly beneficial for smaller retailers.

3.4 76D Family violence as a potential cause of hardship or payment difficulties (76D)

We support this clause to make it explicit that family violence is a cause of hardship, as long as it does not lead to simplifying the support victim-survivors receive or reducing the time they receive support.

Victim-survivors may need support for some time, in some cases over multiple years as they begin to recover from family violence. Hardship can also be exacerbated or extended as victim-survivors navigate the justice or family court systems, sometimes for many years after leaving a family violence situation. We are aware that retailers tend to like to keep the number of people in their hardship programs to a minimum and to exit people out of hardship programs as soon as they can. This would not be appropriate for family violence victim-survivors.

Requiring security deposits from hardship customers is prohibited. This protection should be extended to affected customers whether they are also hardship customers or not. As we explain below in our response to draft rule 76E, economic insecurity and hardship are associated with a

higher likelihood of intimate partner violence. Prohibiting security deposits for affected customers would reduce the energy system's negative impact on victim-survivors.

Recommendation 8

Requiring security deposits be prohibited for affected customers.

3.5 76E Assistance with debt management, fees and payment methods

We support retailers, at a minimum, considering the impact of in-house or third-party debt recovery on affected customers, and whether other people may be responsible for the debt.

However, this requirement alone does not provide sufficient protection against inappropriate collection of abusive energy debts, or harmful debt collection that compounds trauma and economic insecurity. The draft rule effectively allows retailers to consider the impact of debt recovery on consumers affected by family violence but still enforce the debt.

3.5.1 Interaction with safety and hardship provisions

The limitations of this rule as currently drafted are only partly alleviated by other provisions. The overarching requirement to have regard to the safety of the consumer (draft rule 76A) should prevent debt recovery that endangers the physical safety of the victim-survivor – for example, where a confidential address has to be revealed for debt collection – but we expect most retailers will not take a broader view of safety that includes:

- Psychological safety, i.e. the mental health impacts of debt collection on consumers and the interaction between mental health issues and problem debt,¹⁰ including for family violence victim-survivors with existing psychological distress caused by anxiety, depression and stress. Good Shepherd services data shows that mental health issues co-occur in 26% to 35% of family violence cases.¹¹
- Economic safety, i.e. freedom and recovery from economic abuse and the creation of financial security and independence. This includes access to appropriate financial/consumer products, freedom from coercive or abusive debt, receiving fair and appropriate financial support that creates wellbeing, and having structural and systemic support to build economic security over time.¹² Economic safety underpins physical safety; without economic security and stability it is difficult (or impossible) to leave and remain separated from a physically abusive person.

We would support the AER enforcing a comprehensive concept of safety that reflects the nature and impact of family violence and the assistance victim-survivors may need from energy retailers to build true safety. This concept of safety could be clarified and explained in an AER guideline (see commentary below at 3.5.3).

We also recognise that the hardship provisions provide some degree of protection against harmful debt recovery, including the requirement to consider whether an affected customer is a hardship customer or experiencing payment difficulties, in both initial interactions with the

¹⁰ See N Bond and C Fitch, *The need to know: Understanding and evidencing customers' mental health problems*, Money and Mental Health Policy Institute and Money Advice Trust (2020).

¹¹ Drummond Street Services, GenWest and Good Shepherd Australia New Zealand, *Future-proofing safety: COVID-19 and family violence in Victoria 2020-2021* (2022) 77. <https://cfre.org.au/future-proofing-safety/>.

¹² <https://cwes.org.au/economic-abuse-safety/>

consumer and on an ongoing basis (draft rule 76D). A clear springboard to the NERR hardship protections is helpful. However, those protections still allow retailers broad discretion to pursue payment from a victim-survivor experiencing hardship.

If a victim-survivor is a hardship customer then debt recovery should be precluded. Even if a 'manageable' payment arrangement can be established, making these payments could compromise the victim-survivor's safety and recovery by diminishing already limited financial resources. Economic insecurity and hardship are associated with a higher likelihood of intimate partner violence.¹³ To build safety, many victim-survivors will need debt forgiveness; otherwise, financial hardship could force them to stay with or return to a violent partner.¹⁴

Recommendation 9

Preclude recovery of debts from family violence victim-survivors in financial hardship.

3.5.2 Transparent debt management options

We recommend draft rule 76E also require retailers to consider particular forms of debt assistance, such as full or partial waiver, credits for new accounts, and prevention of third-party sales where family violence is identified. It is important to place an onus on retailers to expressly consider and raise these options with consumers, otherwise particular forms of debt assistance become a kind of 'secret knowledge' and rely on strong self-advocacy or professional advocacy by financial counsellors, who are already unable to meet current demand.¹⁵

Transparent debt assistance options are especially important in family violence circumstances, where victim-survivors are often dealing with multiple financial, legal, health and housing issues, of which energy debts are only one. In these circumstances, 'just paying the bill' and avoiding negotiations with essential services providers may be used to limit/manage psychological distress. Retailers should therefore proactively provide victim-survivors with accessible options that relieve the burden of self-advocacy and still allow consumers the agency to determine the best assistance for them.

Clear debt assistance options are also important for victim-survivors who are not experiencing financial hardship and present with good capacity to pay. Economic disparity within relationships is associated with a higher likelihood of intimate partner violence – ANROWS research shows that during 2021, women who were the main income earner were more likely than women who were not the main income earner to have experienced physical violence, sexual violence, and emotionally abusive, harassing and controlling behaviours (including economic abuse).¹⁶ The reasons for this are complex, but the subversion of gender norms, such as the male breadwinner/economic power model, may be a factor in the violence. Victim-survivors in these circumstances are entitled to know about and explore options for dealing with abusive debts and the financial impacts of violence.

¹³ A Morgan and H Boxhall, *Economic insecurity and intimate partner violence in Australia during the COVID-19 pandemic*, ANROWS, (2022).

¹⁴ At least 1 in 4 women who want to leave a violent current partner are unable to do so because they do not have enough money or financial support: Australian Bureau of Statistics, Personal Safety, Australia, <https://www.abs.gov.au/statistics/people/crime-and-justice/personal-safety-australia/latest-release#data-download>.

¹⁵ L Sylvan, *The Countervailing Power: Review of the coordination and funding for financial counselling services across Australia*, (2019).

¹⁶ A Morgan and H Boxhall (n 13).

Recommendation 10

Require retailers to consider and clearly communicate a) the impact of debt recovery on victim-survivors and b) options for managing this impact.

3.5.3 An AER guideline

Alongside these regulatory prescriptions, victim-survivors would benefit from an AER Guideline that builds retailer understanding of:

- the economic drivers of family violence;
- the nature of economic abuse and the financial impacts of family violence;
- the potential impacts of debt recovery in family violence circumstances; and
- the different options for managing debts in these circumstances, including appropriate treatment of family violence-specific financial support.

A guideline would support family violence capacity-building and the skills outcomes retailers need to achieve under draft rule 76C, and would also help to minimise repeat disclosures, as required by draft rule 76H (e.g. by preventing consumers bouncing between third-party and in-house debt recovery, which Good Shepherd practitioners continue to see). A guideline would also build victim-survivor awareness of rights and options. We have heard, anecdotally, that some energy retailers are requiring victim-survivors to use family violence financial support packages (e.g. the Federal Escaping Violence Payment) to help clear energy debts. This allows retailers to avoid their hardship responsibilities and proper family violence assistance, and shrinks the money available to victim-survivors for essentials such as housing/relocation, health, personal security, children's wellbeing and other needs.

The guideline could be informed by existing industry guidance in other sectors, such as:

- The Australian Banking Association Industry Guideline on 'Preventing and responding to family and domestic violence', which includes guidance on the nature and effects of financial abuse, potential signs of family violence, and debt management options.¹⁷
- CommBank's 'Recognise and Recover' guide, which notes the support options CommBank will consider in cases of family violence, such as home loan payment arrangements, restructuring and avoidance of credit listings; money for relocation costs; partial or whole release of personal loan liability, or assistance with repayments; credit card debt waiver, reduced interest rates, reduced repayments and long-term assistance with repayments.¹⁸
- Wannon Water's holistic approach to family violence, which includes organisation-wide awareness and prevention activities, a dedicated family violence response team, and publicly accessible easy-read family violence and hardship policies that detail the rights of customers, the range of debt management options available to them, and links to other support services.

¹⁷ Australian Banking Association, 'Industry Guideline: Preventing and responding to family and domestic violence', <https://www.ausbanking.org.au/wp-content/uploads/2021/05/ABA-Family-Domestic-Violence-Industry-Guideline.pdf>.

¹⁸ CommBank, 'Recognise and Recover: A guide to help you recognise financial abuse, recover and regain financial control', <https://www.commbank.com.au/content/dam/commbank-assets/support/docs/financial-abuse-recognise-and-recover.pdf>.

If debt assistance options are not outlined in the rule, then they should, as a minimum, be listed for consideration by retailers in an AER guideline. This will be particularly important in the current environment, as a wave of economic abuse during the COVID-19 period surfaces,¹⁹ and as high inflation in energy, food, rent and other essentials puts additional financial pressure on women, who already face greater energy payment difficulty²⁰ that can co-occur with family violence.

Recommendation 11

Develop an AER guideline that clarifies the meaning of ‘safety’ in draft rule 76A and includes guidance on the economic drivers of family violence, the nature of economic abuse and the financial impacts of family violence, the potential impacts of debt recovery in family violence circumstances, and options for managing debts in these circumstances.

3.6 76F Affected customer information and account security

We support this clause.

3.7 76G Preferred method of communication

We support this clause but there may need to be guidance about what method of communication would be considered ‘not practicable’. Victim-survivors are best placed to judge their safety needs and advise about safe communication methods, even if this means having no communication for a certain period of time.

3.8 76H Process to avoid repeated disclosures

Minimising the need for repeated disclosure is important to reduce a victim-survivor’s trauma and we support this aspect of the rule. However, this rule would be strengthened if:

- Debt was not sold after family violence is disclosed. Selling a debt (even for closed accounts) forces a victim-survivor to re-explain their personal circumstances to an entirely new company which may or may not have a family violence policy in place. In the Industry Guideline *Preventing and responding to family and domestic violence*, the Australian Banking Association advises that after family violence is disclosed, debt should not be sold to a third-party debt collection agency and where it has been already sold to a collections agency that the bank work with the collections agency to ensure the best outcome for the victim-survivor, including re-purchasing the debt.²¹
- Retailers engage in the Thriving Communities Partnership’s ‘One Stop One Story Hub’ to help people safely manage their other essential services and avoid repeat disclosure.

Recommendation 12

Further reduce the need for repeated disclosure by placing restraints on sale of debts in family violence circumstances and retailers participating in schemes to reduce disclosure.

3.9 76I Retailers not to require documentary evidence

Not allowing retailers to ask victim-survivors to provide documentary evidence of family violence as a pre-condition of protections is a very welcome change which we strongly support and commend the AEMC for this clause.

¹⁹ A Morgan and H Boxhall (n 13); Drummond Street Services et al (n 11).

²⁰ Essential Services Commission, *Payment difficulty framework implementation review: Findings report*, 2022, 36.

²¹ Australian Banking Association (n 17).

This movement away from the Victorian model is in keeping with victim-survivors and their advocates urging people to believe victim-survivors. In their Final Decision on ERC changes, the Victorian Essential Services Commission (ESC) wrote that ‘...water businesses [are] already providing family violence assistance without requiring documentary evidence and are yet to encounter false claims in this area.’²² Based on our recent discussions with the ESC, the ESC has not received any reports of customers engaging in fraudulent behaviour to receive assistance under the family violence provisions of the ERC.

Concerningly, we have heard reports from financial counsellors, of energy retailers advising victim-survivors that it would be easier for them to use an Escaping Violence Payment to pay their energy debt than to access the retailer’s family violence assistance, as they require evidence of family violence to access.

This change also aligns with other industries, such as banking, which have moved away from requiring evidence of family violence as a condition of providing assistance.

The onus to get support should not be on the victim-survivor. This clause recognises that disconnection or threats of disconnection are often used deliberately by perpetrators to cause harm. It also recognises that it is often difficult to provide evidence of violence because:

- There is often no evidence of abuse. Often perpetrators are meticulous about ensuring there is no evidence that could be used against them.
- Family violence could be in the form of verbal put downs, isolation from friends and family and/or controlling movements. It is about patterns of behaviour which are not simple to demonstrate in the form of ‘evidence’.
- Abuse may be happening via an account a victim-survivor does not have access to.
- It can be difficult to get an intervention order (a common form of evidence) due to financial abuse on its own, and laws vary between states.
- Not everyone seeks out a community worker who could then provide a letter confirming family violence. Even if a person did seek assistance from a community worker, that may have been in the past, but their financial difficulties (caused by the family violence) have continued long after seeing the community worker.
- There are excessive wait times to access appropriate services, due to high demand.
- Victim-survivors may not have documents, particularly if they have left a situation quickly.
- If there is evidence and the victim-survivor has access to it, it is often very personal and is likely to cause distress to provide this, at the very least, or even put them in danger. It might be distressing for retailer staff to deal with this evidence as well.
- Reporting to police can escalate the risk faced by victim-survivors, whether due to backlash from the perpetrator, the high rate of perpetration amongst serving police officers, or the perpetrator or victim-survivor being personally known to police, which is common in rural areas.

²² Essential Services Commission (Victoria), *Energy Retail Code Changes to Support Family Violence Provisions for Retailers, Final Decision*, 22 May 2019, 27.

- An evidence requirement particularly disadvantages marginalised victim-survivors, such as people with disability, LGBTIQ+ people and First Nations women, who often find it difficult to access safe and inclusive services and law enforcement agencies and thereby build evidence, despite facing some of the greatest risks of violence.²³

3.10 76 J Information about family violence support services

We support this aspect of the draft rule, but encourage the use of the Economic Abuse Reference Group's (EARG) Family Violence Guide – Referral Options²⁴ to assist retailers with implementing this.

To respond to the diversity in our community, contact details for specialist services should also be available for people who are from First Nations communities, CALD communities (particularly where a person has limited English skills) and for people from the LGBTIQ+ community.

3.11 76K No breach of contract for compliance with this Part

We support this clause.

3.12 76L Consistency of market retail contract with family violence policy

We support the family violence policy prevailing where there is any inconsistency with the market retail contract, provided there is oversight of these policies to ensure they do not supersede fundamental and necessary customer entitlements.

3.13 Definitions

3.13.1 Current and former customers

We support a definition that includes former customers. Financial counsellors report that dealing with closed accounts is common in family violence circumstances where victim-survivors move out of a home and sometimes end up in a refuge or experiencing homelessness or housing precarity, making managing a closed account difficult.

3.13.2 Including small businesses

We support a definition that includes small business customers. This recognises that many small businesses are family run and, just like residential consumers, significant numbers of small business consumers can experience family violence.

3.13.3 A broader definition of family violence

We support a broader definition of family violence that adopts the South Australian legislative definition of domestic abuse. This includes a range of relationships where abuse could occur such as carer or kinship relationships. This goes some way to addressing the concerns we raised in our submission to the Consultation Paper to this rule change process.

²³ Our Watch and Women with Disabilities Victoria, *Changing the landscape: A national resource to prevent violence against women and girls with disabilities*, 2022; ANROWS, *Accurately identifying the person most in need of protection in domestic and family violence law: Key findings and future directions*, 2020.

²⁴ <https://earg.org.au/wp-content/uploads/referrals-good-practice-190917-1.pdf>

3.14 Rule 111 (2A) De-energisation for not paying bill

We do not support de-energisation for non-payment for an affected customer. We are concerned this draft rule contains vague language such as ‘taken into account’ and will be applied subjectively. Scope for subjective application has been a significant contributor to the ineffectiveness of hardship policy requirements that also provide unreasonable discretion to retailers. It is particularly dangerous without effective training.

Disconnection makes a difficult or dangerous situation even worse. It adds expense (including reconnection fees, loss of fridge/freezer contents, having to buy cooked food and/or having to purchase alternative accommodation) and stress for victim-survivors, who are already likely to be experiencing financial and psychological stress.²⁵ Disconnection may both escalate and prevent escape from family violence: some people experiencing family violence report an escalation of violence after receiving energy notices and bills, and a lack of electricity supply means that victim-survivors cannot reach out for help using the internet (needing a functioning modem) or mobile phones (which need to be charged).

Recommendation 13

Affected customers should not be disconnected for non-payment.

4. Other aspects of the draft rule and determination

4.1 Recommendation to extend protections to be in embedded networks

We support the AEMC’s recommendation that the AER consider inclusion of family violence as it updates the *Retail exempt selling guideline* so that people living in embedded networks have protections if they are affected by family violence.

As a principle, people should have the same protections regardless of where they live or their retail arrangement. Many people in embedded networks, particularly residential parks, nursing and retirement homes and social housing developments, are likely to have lower incomes and be more vulnerable to hardship.

The potential for family violence and its harmful impacts can be significantly higher for residents in embedded networks, because of the power dynamics that can exist in embedded networks (including the operator themselves potentially being a perpetrator); because of their personal circumstances; and because access to supports and protections are still to be implemented or can be difficult to access.

4.2 Aligning with ERC where appropriate

As much as suitable, and in the best interests of consumers, we support aligning the rules with the Victorian ERC. Having consistency across jurisdictions is of benefit to victim-survivors and reduces costs to implement for retailers who also operate in Victoria which in turn reduces costs for consumers. Alignment and consistency should not come at the expense of better practice, however, and the ERC rules should be regarded as a minimum rather than best practice where there are opportunities for further improvement.

²⁵ A Morgan and H Boxhall (n 13).

4.3 Penalties and compliance

We support that there are nine Tier 1 penalties recommendations. This communicates the seriousness of this rule to retailers.

However, we know that even large retailers with large resources to implement systems to support people in vulnerable situations such as those experiencing payment difficulties or requiring life support, do not get these protections right, as illustrated by the record fine recently given to Origin Energy for breaches of their hardship obligations.²⁶ Penalties – and loss of reputation – must be high enough to act as an incentive to get consumer protections right, especially when lives are at risk. Penalties should not just be a cost of doing business.

Although outside the scope of this rule change, non-monetary penalties could help deter non-compliance further, and would help manage risks to all consumers from very serious or repeatedly unlawful retailer conduct. A failure to provide proper family violence support could endanger the life of a victim-survivor and people in their care. Suitable penalties could include:

- Licence suspension or revocation for very serious or repeat breaches.
- Disclosure of breaches to consumers (e.g. on bills and on websites).

The onus of proof of compliance should be on retailers, not on victim-survivors or their advocates, especially given the under-resourcing of advocacy mechanisms such as regulatory and oversight bodies.

Recommendation 14

Consider non-pecuniary penalties for very serious or repeat breaches of the rule, including licence suspension or revocation.

Rules should be objective and measurable. As detailed in response to 76C, compliance processes for this rule could include the AER listening to random calls between victim-survivors and retailers to ensure compliance.

The AER should also include compliance and enforcement of this rule as a priority area and include compliance indicators of the rule in its regular reporting.

Recommendation 15

Recommend to the AER that compliance and enforcement of this rule be a priority area and include compliance indicators of the rule in its regular reporting.

Breaches of this rule detected by Energy and Water Ombudsmen (EWO) should also be a reportable breach as part of EWO compliance reporting.

Recommendation 16

Breaches of this rule should be a reportable breach as part of Energy and Water Ombudsmen compliance reporting.

²⁶

<https://www.aer.gov.au/news-release/origin-penalised-17-million-for-customer-hardship-breaches>

Retailers should be required to self-report their breaches of this rule and the AER's Compliance procedures and guidelines should be updated to require this.

Recommendation 17

Recommend the AER update its Compliance procedures and guidelines to require retailers to self-report their breaches of this rule.

Implementation of this rule change should happen as soon as possible. We would support opportunities for a staged compliance (similar to what has been put in place in the AER's *Better Bills Guideline*) where there is a period of voluntary compliance for retailers who are ready to comply earlier than the mandatory commencement date of 1 May 2023.

Recommendation 18

Provide options for retailers to comply with the rule ahead of the commencement date.

4.4 Review of the rule

Since this is a completely new rule and the stakes are high for victim-survivors, it is prudent to undertake a review of the rule to ensure it is fit for purpose and reflecting best practice and our increasing understanding of gendered and family violence.

As well as reviewing what is working well and not working well, the review should also be an analysis of what harms people are experiencing, what risks arise from energy service policies and processes, and what victim-survivors say would have helped them. This should include input from victim-survivors who were unable to disclose their situation to their retailer. This aligns with one of the four Foundation Principles of the draft *National Plan to End Violence Against Women and Children 2022-32* which recognises that 'we need to draw upon the diverse lived experience of victim-survivors to design appropriate and effective policies and solutions.'²⁷

A review could also look at abuse wider than just economic abuse and disconnection, and include forced (and unsafe) rationing of energy and the increasing capabilities associated with smart meters and smart appliances and the potential for them to be used for surveillance, stalking and external control of appliances.²⁸

From this, it can then be determined whether there are protective and/or support measures missing from the rule.

We recommend a review also look at the role of Distribution Network Service Providers (DNSPs) as the parties responsible for meter reads; repairs and maintenance; and disconnection and whose field staff (or contractors) may witness family violence. Safe and respectful options for DNSPs to alert retailers to the possible presence of family violence should be explored. Disconnection pre-visits (also known as 'knock before disconnection') have been shown to avoid

²⁷ <https://engage.dss.gov.au/wp-content/uploads/2022/01/Draft-National-Plan-to-End-Violence-against-Women-and-Children-2022-32.pdf>

²⁸ Mark Burdon and Heather Douglas, 'The smart home may worsen domestic abuse. But the same technology may also make us safer', *The Conversation*, 12 September 2017; 'Nellie Bowles, 'Thermostats, locks and lights: Digital tools of domestic abuse', *New York Times*, 23 June 2018.

current and future disconnections²⁹ and can act as an intervention to avoid disconnection in the case of family violence.

We recommend a review take place two years from commencement of the rule.

Recommendation 19

Undertake a broad review of the rule two years after commencement including: the experiences of survivor advocates; where harms might be occurring outside of financial abuse and disconnection; and the role DNSPs have in identifying and protecting victim-survivors.

4.5 Integration with the National Plan to End Violence Against Women and Children

The rule is a very practical action that aligns with the next National Plan to End Violence Against Women and Children ('National Plan'), which will likely outline the role of all sectors – government, community services, civil society and business – in ending gendered violence.

We hope the next National Plan has a strong focus on economic security, to ensure victim-survivors have the financial resources to leave and remain separated from abusive partners and to recover from family violence. Those resources include a supportive social security system and workplace entitlements such as paid family violence leave.

In pursuing the National Plan and the requirements under the rule, energy retailers have an important role to play in building their own supportive and informed workplace cultures; highlighting inadequate social protections to government (e.g. social security payments for victim-survivors), and ensuring existing financial resources are maximised to the benefit of victim-survivors, e.g. by providing appropriate debt assistance and quarantining family violence financial supports such as the Escaping Violence Payment.

5. Continued engagement

We would welcome the opportunity to meet with the AEMC and other stakeholders to discuss these issues in more depth.

²⁹ From discussions with PIAC, Essential Energy reported their trial resulted in 70% of disconnection notices being cancelled; Endeavour Energy reported their trial resulted in 45-47% of disconnection notices being cancelled.