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Australian Energy Market Commission  
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### **Protecting customers affected by family violence, Draft Determination paper**

Powershop Australia Pty Ltd (**Powershop**) thanks the Australian Energy Market Commission (**AEMC**) for the opportunity to provide comments in response to the AER's Protecting customers affected by family violence, Draft Determination paper (the **Paper**).

#### **Background on Powershop**

Powershop is an innovative retailer committed to providing lower prices for customers and recognises the benefits to customers in transitioning to a more distributed and renewable-based energy system. Powershop has introduced numerous new, innovative, and customer-centric initiatives into the market.

#### **Statement**

Powershop supported the original rule change proposed by Red Energy and Lumo Energy since its inception in 2021, by seeking consistency in family violence (**FV**) regulatory frameworks between the National Energy Customer Framework (**NECF**) and Victoria. Significantly, consistency of allowing the flexibility for retailers to assist and work with customers who are subject to FV is essential.

Powershop supports retailers needing to maintain a FV policy, manage accounts securely and having regard of safety for FV customers among other items within in the Paper. This provides strong accountability on the retailer to assist their customer, but in a manner flexible to a customer's circumstances (e.g. evolving better practices).

Powershop does not support the application of civil penalties considered in the Paper that would be subject to mandatory action and civil penalties. Powershop does not support a framework that allows a regulator to make subjective decisions and then apply civil penalties on the rules they make. The process immediately lacks objective integrity.

Powershop believes the AEMC's more preferable rule changes outlined in the Paper do not add value to a FV framework and there is no available evidence to suggest the original rule change proposal was not fit for purpose. Furthermore, it should be noted that it was industry via Red Energy and Lumo Energy that instigated in good faith the rule change proposal.

The rule change was to ensure customers suffering from FV are cared for but also for retailers to be incentivised to provide ongoing and improved FV process. Such a process would provide a greater opportunity to increase the engagement of vulnerable customers. Powershop does not believe the preferable rule changes proposed encourage a positive response or engagement between customers and retailers (e.g. engagement methods already in practice). The civil penalties proposed have no link to the principle reasons the rule change was raised.

## **The Australian Energy Regulator**

The energy industry's approach to family violence should be one of an open-minded collaborative approach, not a divisive approach such as this Paper presents. The Paper is presented in a manner that indicates enforcement and penalty must be the priority for the Australian Energy Regulator (**AER**) to administer, presuming that reliance on strict regulation of stakeholders by an unqualified energy regulator on the issue of FV is satisfactory.

Powershop believes the Paper is incorrect to broadly accept the expectation that the AER would be the appropriate body to apply FV rulings (e.g., subjective judgements on a retailer representative for an isolated incident) without achieving consistency across the whole industry. Like retailers, an energy regulator does not hold the adequate expertise in the field of family violence or qualified to provide advice on how to manage any of the subjective matters that would inevitably arise.

The paper assumes the Essential Services Commission Victoria (**ESC**) which oversee the Victorian FV framework, is qualified to make significant but highly subjective judgment calls on issues that range from personal to the highly sensitive. The ESC has always maintained collaboration is crucial to help address FV and Powershop believes the AEMC and by extension the AER also seek collaboration.

However, by applying a strict compliance framework to what is a highly subjective, qualitative concept carries risk for retailers in managing these discussions and applying FV policies in a flexible way. Retailers should not be pushed to a minimum standard in line with a preferred regulatory requirement to ensure they do not incur punishments.

The Paper and regulators should be focussed on assisting retailers with feedback and improvement mechanisms from FV expert bodies without fear of enforcement. Regulator collaboration with industry would then improve and ultimately benefit customers, not deteriorate these relationships. The priorities of the Paper need further review to encourage collaboration, not division.

## **Civil Penalties**

Powershop believe that the civil penalties outlined in the Paper are inappropriate to apply to an FV framework. Powershop does not believe the AEMC can promote flexibility within this Paper and simultaneously apply an ill-fitting, rigid penalties framework. The rules were designed specifically at a high level to accommodate and encourage industry improvement opportunities, not to be disincentivised by the fear of attracting penalties.

Consultation on why the AEMC believes they should be added to the original rule change raised by industry has been inadequate. Alarmingly, there appears to be no alignment between the ESC framework of civil penalties, despite the Paper's stated intention to replicate the ESC FV framework (Victoria only has 3 applicable immediate report type 1 breaches<sup>1</sup>, yet this rule change has listed 9 potential rules for potential immediate reporting). Powershop believes further consultation between industry and the AEMC is essential to confirm if such a framework is appropriate.

Further, there are three crucial elements to debate why civil penalties are not appropriate.

1. The AEMC must consider that industry proposed this rule change to benefit customers. The AEMC, if they wish to make these rules civil penalties, must outline what the benefits are for customers and industry alike. Specifically, they should advise, with evidence, how they believe civil penalties would improve outcomes for FV impacted customers and improve industry standards.
2. Because of the difficult, subjective nature of FV for service providers to effectively manage, this was why it was necessary for the rules to be drafted at a high level. Because of this, the opportunity is there for the AEMC to allow time for the new rules to embed themselves. Once there is a body of evidence to assess whether applying civil penalties to some rules or not is appropriate, the AEMC can then recommend this to National Cabinet accordingly.
3. The AEMC should provide evidence around how the AER will be able to confirm a breach and subsequent civil penalty on a consistent basis. There would need to be specific, tangible, quantifiable measurements to be applied.

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<sup>1</sup> Essential Services Commission Victoria, Compliance and Performance Reporting Guideline – Version 7, 16 February 2022

Civil penalty provisions in this case could imply that there is a consistent, repeatable process to deal with cases of family violence, regardless the circumstances involved. A civil penalty also implies that there was a deliberate action by the retailer or its representative which is also without basis or evidence.

Powershop believes the civil penalty regime is not appropriate to apply to this FV framework at this time, especially when unintended consequences are not limited to interacting with and assisting the customer. Most crucially, applying civil penalties will only undermine the confidence of agents and retailers to work with each FV customer on their merits.

Such a scenario could also unfairly impact the industry's reputation and erode trust. If a civil penalty is widely publicised due to a technical breach of a rule when, upon investigation, the retailer is found to be reasonable in their actions (there is no customer impact).

### **Family Violence metrics**

Powershop received an email from the AEMC on 28 July 2022 outlining a broad suggestion to include a performance standard metric; outside the required, standard consultation requirements. The email proposes a clause for the AER to report on family violence metrics amongst retailers.

Besides the compliance costs of implementation outweighing any perceived benefits related to this metric, and without any current retailer performance measurements for FV, further consultation and information is required before an informed decision could be made. For such a sensitive topic, Powershop would seek to critically understand how the data is to be utilised publicly.

Given the sensitive and flexible, varied nature of working with FV customers, it would be inappropriate to compare retailer numbers and then somehow draw performance comparisons. Retailer A may have low numbers whereas Retailer B has high numbers. What would this mean from a compliance perspective to the AER and how would they work with either retailer?

Powershop and other retailers rely heavily on the sensitive information a customer is willing to provide as opposed to a hardship specific customer whereby information is usually freely provided. Powershop uses hardship data to monitor and assist a customer to progress away from financial hardship. This cannot be done for a FV customer. The flexing nature of FV means retailers will at best have measures to protect customers as best they can. Beyond this, there is no measure of improvement that could be applied unless the FV customer advises they no longer require FV assistance under a retailer's FV policy.

### **Inclusion of Small Business customers**

Despite the small business customer category applying in Victoria, Powershop does not support the position that small business customers should be covered by this framework. Transactions between a small business and retailer are complex with multiple owners and account holders, with business names rather than individual customer names.

Retailers have little to no control over certain small business relationships which can include individual access to their own data and transactions, accounts between multiple owners. For example, a retailer could inadvertently tip off a perpetrating owner when trying to assist another owner who may be the victim of the perpetrator's actions. Powershop believes the framework should be focussed at the individual level when dealing with FV given a customer's own unique, sensitive scenario.

### **Specialist family violence training**

Despite current Victorian obligations, Powershop is concerned if it is appropriate to place obligations of an operational nature on retailers in the energy retail rules, it is inappropriate to add specific training activity as a separate rule. Training for FV is already covered in a retailer's family violence policy, which has ongoing obligations. The concept of this as a separate rule appears redundant.

### **Referrals to support services**

Powershop believes there are potential risks making referrals compulsory, believing they need only be provided upon agreement from the customer in their dialogue with their retailer. The assumption that each case where FV is apparent, requires a mandatory referral to external services ignores the different circumstances of each customer.

The nature of family violence can potentially make the suggestion of contacting a family violence support service a confronting experience and may not necessarily be appropriate. Assessing the sensitive needs of the customer has to be the priority, not making compulsory, blanket requirements not fit for purpose.

When the current Victorian requirements stipulate “at a time and in a manner that is safe, respectful and appropriate given the affected customer’s circumstance”, how does a regulator objectively assess this measure on a case-by-case basis?

Powershop does not believe the AEMC should have gone above and beyond the original proposed rule change without further consultation. The AEMC has undermined the industry accordingly with their preferred rule changes without the required, appropriate engagement in order to respect the issue FV presents. By recognising the importance and magnitude of FV for its customers, industry was proactive in recommending a regulatory framework around FV, in line with the Victorian regulatory framework, which has worked effectively to date.

The issue of FV is sensitive and unique; an approach of strict compliance with extraordinary penalties attached to subjective matters should be abandoned in favour of a ‘best practice’ approach that will encourage more flexible, supportive engagement between industry and customers impacted by family violence.

If you have any questions in relation to this submission, please do not hesitate to contact Alan Love, Regulatory Manager at [alan.love@powershop.com.au](mailto:alan.love@powershop.com.au).

Yours sincerely



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