



Australian Energy Market Commission

RULE

RULE DETERMINATION

NATIONAL ENERGY RETAIL AMENDMENT (PROTECTING CUSTOMERS AFFECTED BY FAMILY VIOLENCE) RULE 2022

PROPONENTS

Red Energy
Lumo Energy

15 SEPTEMBER 2022

INQUIRIES

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Reference: RRC0042

CITATION

AEMC, Protecting customers affected by family violence, Rule determination, 15 September 2022

ABOUT THE AEMC

The AEMC reports to the Energy Ministers' Meeting (formerly the Council of Australian Governments Energy Council). We have two functions. We make and amend the national electricity, gas and energy retail rules and conduct independent reviews for the Energy Ministers' Meeting.

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SUMMARY

- 1 To help protect customers affected by family violence, the Australian Energy Market Commission has made this final determination and more preferable final rule that amends the National Energy Retail Rules (NERR). This reform is in response to the rule change request submitted by Red Energy and Lumo Energy (Red and Lumo).
- 2 The Commission considers that the rule change is important and that the protections it introduces will improve energy retailers' response to and support for customers suffering family violence across the ACT, NSW, Queensland, South Australia, and Tasmania. In our view, these new rules form part of the broader ongoing changes needed in this area.

The case for change

- 3 Intimate partner violence contributes to more death, disability and illness in adult women than any other preventable risk factor.¹ Survivors of family violence, including children, can be impacted by it for significant parts of their lives.² In 2017, the Australian Bureau of Statistics (ABS) found that one in four Australian women has experienced violence by a current or previous intimate partner, and around one in thirteen men have also experienced intimate partner violence.³ Recent surveys show the incidence and severity of family violence increased during the COVID-19 pandemic.⁴
- 4 Essential services including electricity and gas can be exploited by family violence perpetrators to harm victims.⁵
- 5 Recognising the need for change and guided by the 2020 reforms in Victoria's Energy Retail Code of Practice (Victorian Code)⁶, many energy retailers have introduced their own programs to help customers experiencing family violence (affected customers). However, more needs to be done to protect energy customers in the jurisdictions covered by the National Energy Customer Framework (NECF).⁷
- 6 This rule change recognises that all energy retailers have a role to play in providing targeted, practical assistance and support to affected customers.⁸
- 7 Since the Victorian Royal Commission into Family Violence, industries including water,

1 Australia's National Research Organisation for Women's Safety (2018). Violence against women: Accurate use of key statistics (ANROWS Insights 05/2018). Sydney, NSW:ANROWS.

2 Family violence typically involves a pattern of behaviour intended to coerce and control the victim survivor, that can cause psychological, physical, and financial damage to the victim survivor. It can erode the victim survivor's sense of self-worth and can lead the victim survivor to be in a permanent state of hyper-vigilance, impacting the way they process information, communicate and make decisions. Safe and Equal, Guidelines for Better Practice Responses to Family violence for the Essential Services Commission and essential services providers, May 2022, p. 8

3 ABS (2017) Personal safety, Australia, 2016.

4 Carrington et al, The Impact of COVID-19 Pandemic on Domestic and Family Violence Services and Clients. Australia, Queensland University of Technology, May 2021.

5 Refer to Chapter one for more detail.

6 Energy Retail Code of Practice (Vic), 2022, Part 7.

7 The NECF applies in the ACT, NSW, Tasmania, Queensland and South Australia. The NECF does not apply in the Northern Territory, Western Australia (WA) or Victoria (with limited exceptions).

8 This is also acknowledged by the rule change's proponents, Red and Lumo, Rule change request, Family violence protections for energy customers, 23 September 2021, p. 8.

banking, and telecommunications have taken steps to address family violence. The Essential Services Commission of Victoria has been at the forefront of many of the developments. In developing this rule the Commission has followed leading practice in the Victorian code and other essential services so that energy regulation will reduce the impacts of family violence and assist survivors. The Commission also has considered the Economic Regulation Authority of Western Australia's draft *Code of Conduct for the Supply of Electricity to Small Use Customers (Western Australian draft code)*, now in the final stages of development.⁹

The final rule

- 8 The Commission's final determination is to make a more preferable final retail rule that will commence on **1 May 2023**.
- 9 The final rule contributes to achieving the National Energy Retail Objective (NERO) because it
- Introduces **targeted consumer protections** that address family violence issues and vulnerabilities in the energy sector.
 - **Provides retailers flexibility** in how they choose to comply with protections, including relying on principles-based and outcomes-based drafting. It also typically aligns with the rules in the Victorian code unless there is a compelling reason to take a different approach.
 - **Improves transparency and certainty** for customers by requiring retailers to have a family violence policy.
- 10 The final rule:
- **Has a broadly defined scope that provides wide customer coverage and protection.** The final rule is broadly drafted to give customers certainty that they are entitled to protections. In this respect, it relies on a definition of family violence that includes important relationships such as carers and Aboriginal and Torres Strait Islander kinship relationships. It will apply to residential and small business customers.¹⁰ The Commission also recommends that the AER apply protections to customers in embedded networks.
 - **Requires all retailers to publish a family violence policy to support transparency and certainty for consumers.** The final rule requires retailers to develop and implement a family violence policy that addresses how the retailer will apply each of the new family violence obligations in the NERR.¹¹
 - **Requires retailers to prioritise affected customer safety and protect their personal information.** The final rule introduces account security protections to prevent perpetrators from accessing affected customers' sensitive information. It also requires retailers to firstly consider the affected customer's safety in all their dealings and to identify and use an affected customer's preferred method of communication.

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

10 Small business customers are covered if they are "small customers" under the NERL.

11 Retailer must keep their policy consistent with leading practice, and it must be accessible on their website

- **Recognises the financial impacts faced by family violence and protects affected customers.** The final rule requires retailers to consider the impact of selling debt or commencing debt recovery action on an affected customer, including if another person is responsible for that debt.¹² It also requires retailers to consider that an affected customer is likely to be affected by payment difficulties or to be a hardship customer. The rule also extends certain customer hardship and payment difficulty protections to affected customers (whether or not the affected customer is in financial hardship).¹³
- **Includes protections for customers to get the right support from retailers' staff that understand their issues.** The final rule requires retailers' staff to understand family violence issues and to be able to identify, engage with and assist affected customers.¹⁴ It also requires that retailers: not require affected customers to provide documentary evidence to receive support; have systems to identify affected customers and minimise the need for customers to repeatedly disclose details of their family violence experiences; and provide customers with the details of at least one external support service.¹⁵
- **Provides flexibility for retailers to help customers when they need it, minimising unnecessary regulatory burden.** The final rule gives retailers greater assurance when assisting affected customers by providing:
 - that retailers can communicate with affected customers using their preferred method of communication, regardless of other communication requirements in the NERR, and
 - that the retailer's family violence policy prevails to the extent of any inconsistency with a customer's market retail contract.¹⁶

11

The Commission intends to recommend Tier 1 civil penalty provisions for three key provisions in the final rule, as compliance with these overarching provisions will encompass compliance with the full set of family violence rules, and recognising the significance of impacts that may flow from a breach of these three provisions.

12

To maximise certainty for affected customers, retailers, and service providers, and to reduce implementation costs, the Commission has extended many of the protections that are currently available in Victoria to the NECF. In some instances, the Commission has introduced an approach that differs from the Victorian code, where it considers doing so furthers the National Energy Retail Objective.¹⁷

12 The final rule also requires similar considerations from a retailer when it is arranging for de-energisation of an affected customer's premises.

13 In this respect, the rule requires retailers to waive late payment fees for affected customers and allows affected customers to pay using Centrepay.

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

15 This must be done in a manner that is safe, respectful, and appropriate to the affected customer's circumstances. The retailer must also keep an up-to-date list of external family violence support services on its website.

16 The draft rule also updates the model terms and conditions of the standard retail contract, to reflect these new retailer obligations and help for customers affected by family violence, and requires retailers to update their standard retail contracts to reflect this.

17 For instance, the rule prohibits retailers asking for documentary evidence in any situation as this has recently become leading practice and there is no evidence of fraudulent claims by consumers in Victoria.

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1

WHY ENERGY REGULATIONS NEED TO INCLUDE FAMILY VIOLENCE PROTECTIONS

This chapter explains:

- How essential services are exploited by perpetrators, and
- The work that essential services providers have done to address the issues identified by the Royal Commission into Family Violence.

1.1

How essential services can be exploited by perpetrators

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, and
- 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 home.¹⁸

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, and
- a perpetrator harassing or threatening a survivor's personal safety at their new address.¹⁹

1.2

Some essential service regulators and providers have acted to reduce the impacts of family violence, but more 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.²⁰ In this respect:

¹⁸ State of Victoria, Royal Commission into Family Violence: Summary and recommendations, Parliamentary Paper No 132 (2014–16), p. 104.

¹⁹ State of Victoria, Royal Commission into Family Violence: Summary and recommendations, Parliamentary Paper No 132 (2014–16), p. 104.

²⁰ 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.

- The Essential Services Commission of Victoria (ESC) has introduced new requirements in the Victorian water codes and in the Victorian Energy Retail code of practice (Victorian code - see Appendix A for further details), and recently published a series of reports to support better practice responses to consumers experiencing family violence.²¹
- The Australian Banking Association has included measures in the Banking code of conduct and has released industry guidelines responding to specific family violence issues.²²
- The telecommunications sector has developed industry guidelines to assist customers experiencing family violence.²³
- 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.²⁴

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

21 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.

22 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.

23 Communications Alliance, Assisting Customers Experiencing Domestic and Family Violence Industry Guideline, October 2018.

24 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.

2

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

The Commission’s final rule determination is to make a more preferable final rule to provide new protections and assistance for residential and small business customers experiencing family violence. The final rule is published with this determination.²⁵

The Commission’s reasons for making the final rule are set out in chapter three. Information on the legal requirements for making the determination is set out in Appendix D. Information on the rule change request, and on our consultation during this rule change process, is set out in Appendix A.

This chapter outlines the key changes to the NERR and recommendations on:

- civil penalty provisions
- extending protections to embedded network customers, and
- the AER undertaking a review of the final rule.

2.1

The rule provides new protections and help for affected customers

The final rule contains a number of protections for customers affected by family violence, including:

1. **a broadly defined scope** that covers most energy customers, including open and closed energy accounts.
2. **family violence policies** to support transparency and certainty for consumers.
3. requiring retailers to prioritise an affected customer’s safety, consider their individual circumstances, and protect their personal information.
4. consumer protections to **address the financial challenges** faced by affected customers.
5. requirements to develop the **culture, skills and practices** that retailers need so that customers get the right support from retailer staff that understand their issues, and
6. **flexibility for retailers** to help customers when they need it, minimising unnecessary regulatory burden.

The Commission expects the outcomes of the final rule will:

- **Provide effective protections for small customers affected by family violence.** The final rule introduces new protections that will help to keep affected 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 clear and consistent levels of protections for affected customers across jurisdictions.** As the final rule is similar to the family violence protections for energy customers in Victoria, customers in six jurisdictions will be entitled to substantially

25 Changes between the draft rule and the final rule are outlined in Appendix B.

similar protections from their retailer, even if they move interstate. These protections will be set out in clear, public documents.

- **Be a targeted and proportionate solution.** The rule is targeted. Its outcome-based provisions require retailers to provide effective protections using their own systems and processes and taking into account the circumstances of their customers.

2.1.1

A broadly defined scope that provides the widest customer coverage and protection

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

The final 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, or where the relationship is established under cultural kinship rules.²⁶

Other coverage decisions are as broad as practicable

The final rule also will have the broadest coverage possible, by applying to:

- small customers that are business customers as well as those that are residential customers²⁷
- open and closed energy accounts, and²⁸
- customers with standard and market retail contracts.²⁹

Separately, we recommend to the AER that it apply these family violence protections to embedded network customers (refer to section 2.4 below).

The 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. This could be considered as part of a review of the rule, such as that recommended in section 1.7 below.

2.1.2

All retailers must publish and implement a family violence policy to support transparency and certainty

The rule requires that every energy retailer must develop, implement and comply with a family violence policy that sets out how the retailer will identify and assist affected customers. The policy must:³⁰

- at a minimum, explain how the retailer will apply each of the new family violence provisions of the NERR
- be easily accessible on the retailer’s website, and

26 Appendix E contains greater detail about relevant definitions.

27 See the definition of “affected customer” in the final rule (as an amendment to NERR rule 3).

28 The definition of “affected customer” in the final rule includes a former customer of a retailer.

29 Final rule 76M.

30 Final rule 76A.

- be updated from time to time, to reflect changes in circumstances and to maintain consistency with leading practice.

2.1.3

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.³¹ 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.³² The Commission's expectation is that a retailer's staff would, relying on their relevant knowledge of family violence:

- consult with the affected customer to understand their safety needs, while also considering their unique circumstances,³³ and
- recognise that these considerations 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.³⁴ Information would include date of birth, maiden name, phone numbers, email addresses, PO Boxes, and residential addresses, for instance.³⁵

The final 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.³⁶

2.1.4

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 final 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, and
- whether other people are jointly or severally liable for the energy usage that resulted in the accumulation of arrears.³⁷

31 Final rule 76D.

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

33 Recognising that people from different backgrounds often experience family violence differently (eg. people with disabilities or chronic health conditions, First Nations people, culturally and linguistically diverse and recently arrived migrants.) PIAC, Submission to the draft determination, p. 13.

34 Final rule 76G.

35 Retailers will still be able to share information about an affected customer with relevant service providers and their subcontractors, as long as they ensure that these persons also will not disclose this confidential information. Retailers are also able to share information as required by law or law enforcement agencies. Rule 76G(2)-(3).

36 Retailers will be required to offer alternative methods of communication if the customer's preferred method is not practicable. Final rule 76H. The preferred method of communication will take precedence over any other customer communication requirement in the NERR; see section 2.1.6.

37 Rule 76F. The rule also requires similar considerations from a retailer when it is arranging for de-energisation of an affected customer's premises - final rule 111(2A). For additional details see section 2.1.7, below.

The final rule also specifically requires retailers to recognise that an affected customer is likely to experience financial hardship or is otherwise likely to experience payment difficulties (as those terms are defined or explained in the NERL).³⁸ 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 NERL and NERR.³⁹

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 rule requires retailers to waive late payment fees for affected customers, and allows affected customers to pay using Centrepay.⁴⁰

2.1.5 Protections that will provide customers the right support from retailer staff that understand their issues.

The Commission is introducing new retailer requirements that will help affected customers to get the right assistance and support from retailer staff who understand and are able to engage with their issues. The final rule:

- **Requires relevant retailer staff to be able to appropriately assist customers.**⁴¹
The final rule requires retailers to ensure their staff: understand the nature and consequences of family violence; are able to recognise customers affected by family violence; can engage appropriately with them; and are able to provide the support and protections established in the NERR and the retailer's family violence policy.⁴²
- **Requires retailers to have a process to identify affected customers and to avoid an affected customer repeatedly disclosing their experiences.** The final rule requires retailers to have systems in place that allow them to identify affected customers and, once they have been identified, to minimise the need for affected customers to repeatedly disclose their experiences of family violence.⁴³ 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.
- **Provides protections and support to affected customers without requiring documentary evidence.** The final rule will not allow retailers to require customers to provide documentary evidence as a precondition for receiving family violence protections.⁴⁴ Requirements for documentary evidence can prevent survivors of family violence from engaging with energy retailers and getting the help they may need. However, this rule does not prevent retailers asking affected customers to provide

38 Final rule 76E. Retailers should also be periodically reassessing this, in accordance with their hardship policy.

39 See for example NERR Part 3.

40 Rules 76F(3) and (4), mirroring existing rules 73 and 74.

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

42 Final rule 76B.

43 Final rule 76C.

44 Final rule 76I. This diverges from the Victorian requirement which allows retailers to request evidence in relation to de-energisation and debt management matters: Energy Retail Code of Practice, 1 March 2022, clause 155.

information so the retailer can better understand their circumstances and how to assist them.

- **Obliges retailers to provide a referral to an external support service.** The final rule requires retailers to 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. Retailers must also keep an up-to-date list of one or more external support services on their websites.⁴⁵

2.1.6

Flexibility for retailers to help customers when they need it, minimising unnecessary regulatory burden.

The final 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.⁴⁶
- A retailer's family violence policy will take precedence over the terms of that retailer's market retail contracts (new and existing).⁴⁷

In addition, the final 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 final rule, and
- an affected customer will not be in breach of their customer retail contract if they use their preferred communication method with the retailer.⁴⁸

2.1.7

Other minor and consequential changes that support the new provisions

The final rule also makes 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 plan⁴⁹
- 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-energisation⁵⁰

45 Final rule 76J.

46 Final rule 76H(3).

47 Final rule 76L.

48 Final rule 76K.

49 Final rule, amending rule 33(2).

50 Final rule, amending rule 111 to insert new paragraph (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 confusion⁵¹, and
- changes to the Model terms and conditions for standard retail contracts to reflect, where appropriate, the new family violence provisions.⁵²

2.2

The new protections take effect in 2023

The rule commences on 1 May 2023, allowing an implementation period of approximately seven and a half months after the final rule is published. The Commission has chosen this commencement date because:

- it is important to protect 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 processes developed for compliance with the family violence provisions in the Victorian code, and
- the limited number of NECF retailers that do not operate in Victoria will still need time to develop family violence policies and appropriate internal processes to ensure compliance with the new rules.

2.3

Civil penalty recommendations

The Commission cannot specify that provisions in the NERR are civil penalty provisions, but we may (jointly with the AER) make civil penalty recommendations for provisions where a civil penalty would assist with compliance. The recommended civil penalty tier is based on the civil penalties decision matrix and concepts table approved by Energy Ministers.⁵³

Based on this assessment, we intend to recommend that the following three final rule should be Tier 1 civil penalty provisions, for the reasons set out below.⁵⁴ This approach is supported by the AER.

- Retailers to develop, implement and comply with a family violence policy (rule 76A)
- Retailers to have regard to customer safety (rule 76D), and
- No disclosure of affected customer information (rule 76G).

2.3.1

Considerations in our approach to civil penalty recommendations

In developing these recommendations we considered the following key matters:

51 Final rule, amendments to rules 59C, 90, 91, 143.

52 Final rule, amendments to NERR schedule 1.

53 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>.

54 The Commission is not recommending any Tier 2 or Tier 3 civil penalty provisions. This recommendation differs from the draft determination, in which the Commission proposed to recommend nine Tier 1 penalty provisions and one Tier 2 penalty provision. It has taken this approach recognising the burden that penalty provisions place on retailers and the fact that retailers have largely complied with family violence provisions in Victoria since these were implemented.

- It is appropriate to recommend civil penalty provisions for parts of the rules addressing the risk of significant consumer harm. 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.⁵⁵
- Whether targeting the civil penalty recommendations to cover the key, overarching requirements in the Part, and the rules most closely associated with preventing significant consumer harm, would provide an effective and appropriate approach to compliance and enforcement.
- The fact that there has generally been good compliance with the family violence rules in Victoria.⁵⁶
- The potential burden on retailers of having civil penalty provisions, particularly for new outcomes-based provisions.⁵⁷

2.3.2

Reasons for Tier 1 recommendations and parallels in other provisions

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

- **Family violence policy (rule 76A)** - As the policy must cover all the family violence protections in the NERR, and under rule 76A(c) the retailer has to implement and comply with the policy, it is likely that a breach of the other family violence rules will also breach this rule. Therefore, this is a key provision. 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.
- **Regard to safety and circumstances of affected customers (rule 76D)** -This is an overriding provision. Breaching other provisions within this part may lead to a breach of this provision as well.⁵⁸ Failing to have regard to the safety of a customer could lead to

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

56 In this respect, the ESC:

- had no self-reported breaches in 2019-20
- reviewed 14 family violence policies in 2020-21 and sought improvements in only two instances (but otherwise reported no breaches)
- reported two breaches in 2021-22 (Origin used the non-preferred communication method for a customer and Tas Gas Retail failed to train relevant staff) See Essential Services Commission 2021, Victorian energy market update: June 2021, 29 June; Essential Services Commission 2022, Victorian Energy Market Report: 2022, 31 March; Essential Services Commission 2021 Victorian energy market report: 2020-2129 November; Essential Services Commission 2020, Victorian Energy Market Report 2019—20, 30 November.

57 Retailers and the AEC were opposed to the number of penalty provisions proposed in the draft rule. Submissions to the draft determination: AGL, p. 2., Alinta,p. 2., EnergyAustralia, p. 1., Next Business Energy, p. 2., Powershop, p. 2., Simply, p. 2., AEC, p. 1. Concerns included:

- many of the rules are subjectively drafted
- retailers may require time to settle their systems and procedures for new rules.

58 For instance, failing to avoid repeated disclosures (rule 76C(c)) would likely lead to a failure to have regard to the safety of the customer.

death or serious injury, particularly in circumstances where it may be readily apparent that a person is at risk of harm and a retailer can take action to prevent that.⁵⁹

- The NERR hardship policy provision, including communication of it to customers, is a Tier 1 penalty provision. The Victorian framework has no comparable safety clause.
- **Affected customer information (rule 76G(1))** - This rule has the most direct connection between retailer action and customer risk of harm. A breach of this provision can lead to death or serious injury. A disproportionate amount of partner homicides take place shortly after the female partner separates.
- The equivalent provision in the Victorian code is a penalty provision.

2.4

We recommend the AER extend these 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.⁶⁰

The Commission recommends the AER should, at an appropriate time, revise the Retail exempt selling guideline to apply affected customer protections as conditions for exempt sellers, as the AER has recently done in relation to hardship customer protections.⁶¹ 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.⁶²

When determining exemption conditions, the AER must ensure, as far as practicable, that embedded network customers are not denied customer protections afforded to retail customers under the NERL and NERR, and that regulatory arrangements for exempt sellers do not unnecessarily diverge from those applying to retailers.⁶³ In order to comply with these requirements from the commencement date of this final rule on family violence, May 2023, the AER could commence consulting on the relevant changes to the Retail exempt selling guidelines after the final rule is published in September 2022.

Providing protections to embedded network customers will help people who may be 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

59 Evidence in assessing compliance with this rule could include records of retailer action taken and reasons, and voice recordings of service calls.

60 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-july-2022/final-decision>

61 The AER's review of the Retail exempt selling guideline, which introduced hardship customer protections, is available here: <https://www.aer.gov.au/retail-markets/guidelines-reviews/retail-exempt-selling-guideline-july-2022>

62 The Commission recognises that 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.

63 National Energy Retail Law s. 114(1)(a) and (c).

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.⁶⁴

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.

Extending protections to customers in embedded networks would be consistent with the views of most stakeholders during this process.⁶⁵

2.5

We recommend the AER undertakes a review of the family violence protections

The Commission sees merit in the AER reviewing the family violence protections introduced in this rule, and associated materials, after they have been in effect for a period of time that enables useful observation on how they are working in practice, to consider if these protections are operating as intended and are still fit for purpose. For example, this review could consider if:

- existing family violence rules need to be revised or removed
- new rules need to be introduced to recognise new or evolving risks
- the scope of the protections or obligations needs to be revised (for instance to include network businesses)
- the status of certain provisions as civil penalty provisions should be changed
- different compliance and enforcement activities are required
- different or additional guidance materials should be provided by the AER, and
- the family violence protections in the AER's conditions for exempt sellers in embedded networks need to be revised (if introduced pursuant to the recommendation above).

The review could draw on the AER's compliance and enforcement experience with these provisions, retailers' published policies, information from consumer organisations and ombudsmen, and other relevant data available to the AER. The review could also consider

64 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.

65 Submissions to the consultation paper: Origin, p. 4., EWON et al, p. 8., ECA, p. 6., the Economic Abuse Reference Group, p. 5. PIAC, ACTCOSS, Financial Rights Legal Centre, Good Shepherd: Australia and New Zealand, QCOSS (PIAC et al.), p. 25 and Uniting Vic Tas, p. 7. Submissions to the draft determination: Origin, p. 1., Telstra, p. 2, AER, p. 3, Ombudsmen, p. 3, ACAT, p. 1, EARG, p. 1., PIAC, p. 15.

developments arising from other review processes that are likely to take place over the next few years. These may include:

- reviews by the Essential Services Commission of Victoria of family violence protections in the Urban Water Business Customer Service Code, Rural Water Business Customer Service Code and Energy Retail Code of Practice
- reviews of the Code of Conduct for the Supply of Electricity to Small Use Customers by the Economic Regulation Authority of Western Australia, and
- any reviews in other Australian utilities and essential service industries such as banking and telecommunications.

After the review is complete, if necessary the AER could submit a rule change request to the Commission, which we may be able to address under the fast-track rule change process.

An AER review of the rule acknowledges that protecting family violence customers is an ongoing process

Family violence is an area where the offending behaviours, impacts and risks evolve rapidly and protections can struggle to keep up, particularly where perpetrators find new ways to harm victims. It is important therefore for industry and regulators to have a continuing dialogue to recognise and respond to new risks as those risks emerge.

Reviewing the rule at an appropriate time could ensure the rules continue to achieve their objectives,⁶⁶, support consistency across jurisdictions (where appropriate) and remove any unnecessary or inefficient existing regulation. It was also strongly supported by consumer stakeholders and at least one retailer.⁶⁷

The AER is the most appropriate organisation to undertake a review, because it will be:

- responsible for monitoring compliance with the rules
- well placed to consider the interaction with the rest of the consumer protections framework it administers (eg., hardship and life support protections)
- able to provide an independent view of the provisions, and
- able to propose a rule change if necessary in response to its review.

66 This may involve:

- recognising new risks that were not apparent at the time of this determination,
- adjusting existing provisions to keep these consistent with leading practice and enforceable (see submissions to the draft determination from EARG, p. 2, and Ombudsmen p. 5.),
broadening the scope of the rule to consider support that other organisations can provide, for instance NSPs (see Alinta, submission to the draft determination, p. 2).

67 Submissions to the draft determination: The AER, p. 6., Ombudsmen p. 5., EARG p. 2., ECA p. 2., PIAC, p. 18. and Alinta p. 2.

3

WHY THE FINAL RULE CONTRIBUTES TO ACHIEVING THE NATIONAL ENERGY RETAIL OBJECTIVE

This chapter outlines:

- 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 final rule
- why the Commission considers the final rule will effectively protect customers affected by family violence, and contribute to achieving the national energy retail objective (NERO)
- why the proposed civil penalty recommendations are appropriate, and
- why the Commission has not made broader changes in the final rules.

3.1

3.1.1

The Commission's rule making tests

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.⁶⁸ This is the decision-making framework that the Commission must apply.

The NERO is:⁶⁹

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”).⁷⁰

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.⁷¹ 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.

68 Section 236(1) of the NERL.

69 Section 13 of the NERL.

70 Section 236(2)(b) of the NERL.

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

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 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 final rule. The reasons are summarised in section 3.3 below.

3.2

Assessment framework

In light of the issues raised in the rule change request, the Commission has considered the following assessment framework to assess the extent to which the final rule is likely to contribute to achieving the NERO and the consumer protections test:

- **Will the rule provide effective 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.⁷² Following the Victorian Royal Commission into Family Violence, energy retailers, banks, 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 considered whether approaches are compatible with cross-sectoral developments in protections for victim-survivors, consistently with the consumer protections test outlined above.
- **Will the rule increase transparency and certainty regarding protections for affected customers?**
 - 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.⁷³

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

73 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.

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 included considering if the rule change provides greater certainty and access to information for consumers who may be affected by family violence. The Commission has also considered whether policy consistency across the NEM would foster access to clear information.
- **Will the rule minimise unnecessary and inefficient regulatory and administrative burden?**
 - In the rule change request, Red and Lumo noted 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.⁷⁴ However, there are a group of mostly smaller retailers the Commission has 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 considered if the costs to market participants and market bodies of implementing the solution are minimised, and are proportional to the benefits to customers. 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 final rule is likely to contribute to the NERO

This section set out how the more preferable retail rule meets the assessment criteria and therefore is likely to better contribute to the achievement of the NERO, taking into account the proposed rule, the issues raised by Red and Lumo in their rule change request, and stakeholder submissions.

3.3.1

The broadly defined scope provides the widest practicable coverage to customers

The Commission has decided that the final rule will apply to small business customers as well as residential customers, and has decided to use the South Australian definitions of family relationships for the purposes of defining family violence in the final rule.

Small business customers can also 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, and the Commission therefore

⁷⁴ 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.

considers this aspect of the more preferable final rule is likely to better contribute to achieving the NERO (including the consumer protections test) than the proposed rule, which excluded small business customers.

As small businesses are often family businesses, a victim-survivor is unlikely to escape family violence at work.⁷⁵ Further, many of the family violence risks faced by residential customers also apply to small business customers, such as sole traders and partnerships, and it is important that energy retailers actively work to prevent risks to these customers as well. Ultimately, failing to include protections for small business customers leaves a critical gap in protections from family violence and financial abuse.⁷⁶

The Commission considers that excluding small business customers 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 relocate a business to a different state,⁷⁷ or that fall between the retail and small business customer categories.⁷⁸

Furthermore, the implementation risks cited by some retailers are either unlikely to eventuate or are matters that retailers should be identifying ways to address. In this respect the Commission notes:

- it is unlikely that important business information (such as amounts owing) could be withheld because of the application of account security provisions, as the confidential information that is subject to the account security provision only covers personal information and not account balance information. Further, 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. The ESC is also unaware of any issues of this kind taking place.⁷⁹
- retailers should be considering how their processes can prevent inadvertent disclosures.⁸⁰

The Commission notes that while some retailers have raised concerns about complexity in applying protections to small business customer accounts, there is evidence that others operating in Victoria have developed process solutions to manage these concerns.

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

76 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.

77 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, Submission to the consultation paper, p. 3.

78 AGL points out several customer sub-categories where this could occur, including:
- where the affected customer resides in premises that are 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.

79 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 prohibitions on insolvent trading apply to the insolvent business itself rather than to its service providers such as energy retailers. Red and Lumo, Rule change request - Family Violence Protections for Energy Customers, 23 September 2021, p. 4; submissions to the consultation paper, Origin, p. 3., Simply, p. 2; and Powershop, submission to the draft determination, p. 3.

80 Powershop, submission to the draft determination, p. 3. In its submission, Powershop raised concerns that a retailer could ultimately be liable for inadvertently tipping-off a business owner who is a perpetrator when trying to assist another owner who is a victim. The Commission believes that these circumstances - the acknowledged potential for small business customers to be affected by family violence - demonstrate why it is so important that retailers take action to ensure their systems properly protect small business customers.

The Commission considers that this creates a good opportunity for retailers and their representatives to leverage off the goodwill in the sector on this topic, to share existing process solutions and develop new solutions that work, in respect of this issue and others that present in the future.⁸¹

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

As outlined, the final 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 Appendix E, the definition includes Aboriginal and Torres Strait Islander kinship rules, other culturally recognised family groups and carers.⁸²

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 likely to contribute to achieving the NERO than the South Australian definition, in the circumstances, as:

- The Commonwealth definition is somewhat narrower than the Victorian and South Australian definitions, and therefore would cover fewer customers and could potentially increase retailer implementation costs.
- A new definition (for instance the Victorian definition) in the NERR may become out of date, and would require the Commission to consider matters relating to family relationship definitions that are outside the Commission’s expertise.
- The Victorian definition was not appropriate given the NERR do not apply in Victoria.

3.3.2

Making helpful information readily available in a policy can help to empower customers to seek assistance

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:

81 For instance, 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.

82 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. Stakeholders were also broadly supportive of this definition in the draft determination. Submissions to the draft determination: Origin, p. 2., Telstra, p. 2, the AER, pp. 2-3., Ombudsmen, p. 1., ACAT, p. 1., PIAC, p. 15.

- will have a degree of flexibility in the assistance that they provide to consumers, including potentially providing protections that extend beyond the minimum requirements⁸³
- operating in both the NECF jurisdictions and Victoria should be able to rely on substantially the same policy as they currently use in Victoria, and
- operating only in the NECF can look at existing Victorian policies as examples.⁸⁴

Most stakeholders tended to favour a rule that was not prescriptive about the contents of the family violence policy.⁸⁵ However, other models were favoured by some stakeholders. PIAC et al sought a highly prescriptive policy document.⁸⁶ The Commission does not consider this as necessary as many of the matters PIAC sought to have included will be 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.⁸⁷ The final rule takes this approach, as well as the Victorian approach of requiring the policy to refer to the protections in the rules,⁸⁸ as it was considered that this would lead to greater transparency and certainty for consumers, while also reducing the potential burden on retailers.

The Commission did not support the AER approving a policy or developing a model policy, with prescribed minimum standards.⁸⁹ This is because:

- this would create significant additional burden for the AER
- this is unlikely to deliver better outcomes for consumers,⁹⁰ and
- the AER will ultimately still be responsible for monitoring policy compliance anyway.

Importantly, requiring a retailer to engage directly in the development of a policy is important to drive cultural awareness in the sector.

The final rule requires that retailers review and update their family violence policy from time to time as required to reflect changes in circumstances, or to maintain consistency with leading practice.⁹¹ The Commission considered including a review timeframe (for instance every two years),⁹² but decided that this would not likely lead to better consumer protections

⁸³ Rule 76A(a) clarifies that the policy is to set out how the retailer will assist affected customers, including, but not limited to, how the retailer will apply the protections in the rules.

⁸⁴ 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.

⁸⁵ 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.

⁸⁶ PIAC et al, Submission to the consultation paper, p. 6.

⁸⁷ Rule change request, proposed rule 76B(1).

⁸⁸ ESCV, Energy Retail Code of Practice, clause 157.

⁸⁹ The Ombudsmen, PIAC and Wirringa Baiya supported a model policy, while PIAC also wanted the policy approved and monitored by the AER. Submissions to the draft determination: Ombudsman, p. 3., PIAC, p. 4. and Wirringa Baiya, p. 1.

⁹⁰ If the AER provides a model policy, retailers are unlikely to provide protections over and above this and those that do adopt it and are unlikely to then update their policy to keep it consistent with best practice. Similarly, requiring the AER to approve changes to the policy, is likely to remove the incentive on retailers to regularly update their policies, because the AER will have to approve any changes.

⁹¹ Rule 76A(d).

⁹² This was supported by most consumer groups and the AER, the Ombudsmen and Telstra. Submissions to the draft determination: ECA, p. 1., EARG, p. 2., the AER, p. 6., the Ombudsmen, p. 3, PIAC p. 4. and Telstra, p. 1.

(nor would it be likely to drive cultural change appropriately) because it risked retailers treating the review as a procedural compliance exercise or ‘cost of doing business’ item.

Requiring retailers instead to consider what leading practice involves will support meaningful engagement with this question. Retailers should, for example, consider the findings of key public inquiries and reviews such as royal commissions, parliamentary inquiries and reviews by regulators, industry groups and consumer-focused groups in Australia (including reviews in other essential services) in the energy and other sectors.

The Commission also disagreed with the suggestion by some stakeholders that this could lead to broad interpretations among retailers of the meaning of from ‘time to time as required to reflect changes in circumstances or maintain consistency with leading practice,’ as the rule is recommended to be a tier one penalty provision which will give retailers strong incentive to regularly reconsider it.⁹³

3.3.3 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:

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

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

A broad requirement to recognise an affected customer’s safety as the immediate and paramount concern gives a clear direction to energy retailers to acknowledge the critical importance of protecting customers from harm.⁹⁴ Taking a narrow view of safety, in the circumstances, risks limiting this rule’s effectiveness.⁹⁵

This protection is also important because it should continue to evolve as retailer interactions with customers change over time, which should mitigate against new safety risks that we could not foresee at the time of this rule change.⁹⁶ It will also adapt to respond to the changing tactics of perpetrators, because affected customers can continue to be harassed, harmed or otherwise impacted by family violence for years after leaving a relationship.⁹⁷

93 Some submissions suggested retailers may take different interpretations to the term ‘leading practice’. Submissions to the draft determination: the AER, p. 6., the Ombudsman, p. 3.

94 The Commission also believes that this protection should consider matters such as the physical, psychological and economic safety of the customers as well as other risks to a customer’s safety that are non-remote, as was suggested by PIAC. PIAC, submission to the draft determination, p. 7.

95 This provision also codifies comments that we received from several stakeholders that keeping customers safe or minimising harm should be a key consideration of the rule change. Submissions to the consultation paper: AER, p. 4, PIAC et al. p. 9., AGL, p. 2., ECA, p. 2.

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

- 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.

97 For instance, in this rule change process we have learnt that:

- perpetrators can access and use information they know about a customer, such as a date of birth or maiden name, to obtain

The Commission considers this clause is unlikely to be unnecessarily burdensome for retailers because:

- Many stakeholders supported an overarching safety provision in addition to specific measures to protect safety, and.⁹⁸
- The degree of the obligation on a retailer - to 'have regard firstly to the safety of the customer' - is not an unnecessary or disproportionate regulatory burden as it only requires retailers to have regard to the safety and circumstances of the customer. This does not mandate a particular action in response and could potentially be satisfied by a retailer demonstrating that it has taken steps to consider relevant aspects of customer's safety before making its decision.

The Commission believes that the principle-based approach to this clause should ultimately reduce the regulatory burden on retailers, by allowing them to tailor their services to differing circumstances.

The Commission notes that any initial regulatory uncertainty noted by retailers could be reduced by the AER publishing additional guidance for retailers.⁹⁹ The AER noted that it "provides guidance in circumstances where stakeholders express concerns about ambiguity or the requirements are new and therefore application is novel."¹⁰⁰

This additional guidance from the AER could include information about, or referral to external expert reports on:

- key safety risks that retailers should consider, including in relation to the physical, psychological and financial safety of the affected customer and their dependants, and
- how to consider the circumstances of particular customers (such as those with disability and/or chronic health conditions, First Nations people, culturally and linguistically diverse people, including recently arrived migrants and customers that are LGBTIQA+).

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

Account security protections and safe communication methods can prevent perpetrators from obtaining a customer's contact information and continuing to pursue and abuse them after they have attempted to separate from the perpetrator. Without these protections, victims can face multiple risks, including:

contact information (phone numbers, email, address etc), to continue to pursue/abuse that customer
- perpetrators can establish accounts in the victim's name and not contribute to paying the bill
- perpetrators may avoid paying bills to threaten their victim with service disconnection
- requiring a victim of family violence to retell their story can re-traumatise them, discourage them from seeking support, or put them at greater risk if requiring them to re-disclose their experience puts them in a position where a perpetrator becomes aware that they may be seeking assistance.

98 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.

99 AGL noted the uncertainty of this provision and warned that it would be open to interpretation by the AER and the courts, while PIAC noted that it should be interpreted broadly. Submissions to the draft determination, AGL p. 2. and PIAC, p. 7.

100 AER, submission to the draft determination, p. 3.

- death or serious injury (victims are often most at risk of death soon after leaving an abusive relationship)¹⁰¹, and
- having to relocate to reduce the risk of death or injury.¹⁰²

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 help both parties properly manage safety risks regarding communications.¹⁰³

The Commission believes implementing these changes, which were largely supported by stakeholders,¹⁰⁴ is manageable and not likely to be overly burdensome.

To maintain affected customer safety, the rule requires retailers to ensure that their contractors and agents do not disclose affected customer information to other people.¹⁰⁵ 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.¹⁰⁶ The Commission has 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.¹⁰⁷

3.3.4

Recognising the financial impacts of family violence

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

- that family violence is likely to cause payment difficulties and hardship
- the impact of debt recovery on affected customers and whether other people may be responsible for the debt, and
- the impact of de-energisation for non-payment on the affected customer and whether other people may be responsible for non-payment.

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

101 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.

102 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.

103 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.

104 Submissions to the consultation paper, EWON et al. p. 3, Energy Consumers Australia, p. 3, PIAC et al, p. 9. Submissions to the draft determination: Ombudsman, p. 1., PIAC, p. 12.

105 Final rule 76G(1).

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

107 Final rule 76G(2), definition of "any other person".

Hardship customers, and those with payment difficulties, have special protections under the NERL and NERR. For example retailers must:

- offer a payment plan to a hardship customer¹⁰⁸
- provide customer information about government funded energy charge rebates, concessions or relief schemes¹⁰⁹
- waive late payment fees for hardship customers,¹¹⁰ and
- not arrange for a hardship customer to be de-energised for non-payment unless the retailer has offered 2 payment plans in the previous 12 months and the customer has not agreed, or has had one or two payment plans cancelled for non-payment.¹¹¹

While retailers use a range of measures to identify hardship customers,¹¹² there is some evidence that customers experiencing family violence are often unable to access hardship assistance.¹¹³ The final rule, therefore, requires energy retailers to recognise that a customer experiencing family violence is likely to be affected either by payment difficulties or customer hardship.¹¹⁴ If this is the case for a particular affected customer, they will have access to the protections in the NERL and NERR on hardship and payment difficulties, including the protections outlined above. The Commission's final rule seeks to ensure that customers experiencing family violence receive these forms of financial support when needed.

The Commission has decided to include this rule, which is stronger than the equivalent clause in the Victorian Code,¹¹⁵ the proposed rule and the draft rule,¹¹⁶ because retailers should recognise that women who experience family violence are also likely to experience financial disadvantage. In this respect:

- approximately 99 per cent of women who present to family violence services have also experienced economic abuse.¹¹⁷

108 NERL section 50.

109 NERR rule 33(3).

110 NERR rule 73.

111 NERR rule 111(2).

112 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, or 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.

113 State of Victoria, Royal Commission into Family Violence: Summary and recommendations, Parliamentary Paper No 132 (2014–16), p. 105. The AER also noted in its submission that access to hardship supports can depend on the consumer understanding the availability of these supports, with retailers often failing to recognise payment difficulty unless customers use specific 'magic' words'. The AER, submission to the draft determination, p. 4.

114 Rule 76E.

115 Energy Retail Code of Practice (Vic), Cl. 153.

116 The proposed rule and the draft rule were similar to the Victorian code, and required retailers to recognise family violence as a potential cause of a residential customer being a hardship customer or a small customer experiencing payment difficulties: proposed rule 76C, draft rule 76D.

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

- family violence is considered the leading cause of homelessness for women and children.¹¹⁸
- a Women's Information and Referral Exchange (WIRE) study found that almost half (44 per cent) of respondents, who had experienced financial abuse had a household income of less than \$40,000 post-separation. ¹¹⁹
- family law property settlement outcomes found that women who reported physical abuse received disadvantageous financial outcomes.¹²⁰

Stakeholders including retailers supported clarifying affected customer eligibility for hardship and payment difficulty assistance.¹²¹

Unlike the draft rule, the final rule does not require retailers to periodically reassess if a customer has become affected by payment difficulties or hardship.¹²² The Commission does not think it is necessary to retain a specific requirement in new Part 3A to periodically reassess if a customer is a hardship customer or affected by payment difficulty, as retailers are already required to "identify early the customers experiencing payment difficulty due to hardship", in accordance with their hardship policy (and maintaining and implementing this policy is a civil penalty provision).¹²³ Retaining this provision also risked creating inefficient regulation because it is effectively duplicating the hardship policy requirements.¹²⁴

Debt management protections will mean a retailer considers an affected customer's circumstances before it takes action over a debt

The Commission considers introduction of these new provisions will provide assurance to the nearly two million customers that 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).¹²⁵ Debt can be a key financial abuse tool and in some cases these requirements could help customers leave an abusive relationship.

The Commission also considers the new obligation, which is largely consistent with the existing Victorian requirement, is a low burden on retailers, when compared to other potential provisions that could address this issue, including the outcomes-based clause suggested by the AER in its submission to the draft determination, which would require

¹¹⁸ The Australian Institute of Health and Wellbeing notes that 38 per cent of all persons that present to specialist homelessness services listed "family and domestic violence as a cause of their homelessness, The Australian Institute of Health and Wellbeing, Specialist Homelessness Services Annual Report 2018 - 19, <https://www.aihw.gov.au/reports/homelessness-services/specialist-homelessness-services-collection-data-c/contents/clients-services-and-outcomes>, accessed 8:14am 25 August 2022.

¹¹⁹ Cameron, Prue, Relationship problems and money: Women talk about financial abuse, WIRE, 2014

¹²⁰ Victims of violence were three times more likely to receive less than 40 per cent of the property than those who did not report abuse. Grania Sheehan and Bruce Smyth, 'Spousal violence and post-separation family law outcomes' (2000) 14(2) Australian Journal of Family Law 102.

¹²¹ 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.

¹²² Draft rule 76D(2).

¹²³ The AER, Customer hardship policy guidelines, Version 1, March 2019, section 2.2. NERL section 43(2).

¹²⁴ Red and Lumo, submission to the draft determination, pp. 1-2.

¹²⁵ Final rule 76F(1).

retailers to avoid certain impacts on the customer (such as causing financial distress or physical harm).¹²⁶

The Commission notes some stakeholder concerns about retailer staff complying with the principles-based drafting of the provision, including being required to take into account the impact of debt recovery on affected customers.¹²⁷ The Commission considered this can be addressed, similar to rule 76D, by the AER providing guidance for retailers, for example on key potential impacts from debt recovery action that retailers should consider. The ESC has a similar clause in the Energy Retail Code of Practice and it has previously issued guidance that the AER may wish to consider, as an example. Further, the AER's Compliance and Enforcement Policy is a useful reference for retailers as it sets out how the AER approaches its roles and functions in monitoring, investigating, and enforcing compliance with the national energy laws and rules.

The rule also protects customers by requiring retailers:

- waive late payment fees for affected customers and
- to allow payment using Centrepay.

These protections should not increase the regulatory burden for retailers as they already comply with similar requirements in relation to hardship customers.¹²⁸

Disconnection protections will mean a retailer considers an affected customer's circumstances before it takes action over a debt

The introduction of this rule will mean that before a customer is disconnected by their energy retailer, it will have to take their personal circumstances into account and consider if someone else is responsible for the non-payment. This is important because disconnection can make an affected customer's situation more difficult.¹²⁹

The Commission considers this rule is unlikely to place unnecessary burden on retailers because it only requires retailers to consider the impact or whether others may be

126 AER, submission to the draft determination, p. 5. Including this clause would significantly raise compliance costs for retailers, because:

- Avoiding specific outcomes for individual customers will involve substantial additional and potentially ongoing engagement to address specific risks faced by that customer
- It would be a substantial departure from the Victorian requirements and the draft Western Australian requirements. This would mean additional systems adjustments for existing retailers and inconsistency across different jurisdictions for affected customers
- the retailer is already required to consider the circumstances of the individual customer under rule 76D.

127 See Ergon, submission to the consultation paper p. 2-3. The Commission disagreed because:

- The provision only requires consideration of a customer's circumstances not a comprehensive assessment,
- Many retailers already comply with the similar Victorian provision and none have raised concerns about its subjectivity.

128 rules 73 and 74 NERR.

129 In this respect, PIAC has noted that disconnection can:

- add expense and stress for victim-survivors, who are already likely to be experiencing financial and psychological stress.
- it can prevent escape from family violence because a lack of electricity supply means that victim-survivors cannot reach out for help using the internet or mobile phones. PIAC, submission to the draft determination, p. 16.

responsible for the non-payment, which is less onerous than alternative proposals such as prohibition on disconnections.¹³⁰

3.3.5

Organisational culture, skills and practices to support affected customers

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

- mandatory skills requirements for retailers' staff¹³¹
- requiring retailers to have secure processes to readily identify customers and minimises the need for a person to repeatedly disclose their experiences of family violence¹³²
- not requiring documentary evidence from an affected customer¹³³, and
- referring an affected customer to a relevant external support service.¹³⁴

Requiring that relevant retailer staff can assist customers will ensure that customers get the full benefit from family violence protections

The Commission has chosen to introduce requirements for relevant retailer staff to be able to assist affected customers, in the final rule. The Commission concurs with the views of some 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.¹³⁵

Provisions on family violence training are becoming increasingly common in essential services regulation.¹³⁶ As such, including requirements to ensure staff interacting with affected customers are able to appropriately assist these customers is 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.¹³⁷

130 Some stakeholders felt that a prohibition on de-energisation was necessary; submissions to the draft determination: the AER p. 5, PIAC, p. 16. However, the Commission did not consider this to be necessary, because it would lead to regulatory burden on retailers, without providing significant additional benefit to affected customers. This is because affected customers will already receive strong protections against disconnection as a result of rule 111 and potentially other rules in this rule change. For instance rule 76D will require retailers to consider that an affected customer is likely to be a customer affected by hardship or is likely to be affected by payment difficulty.

131 Final rule 76B.

132 Final rule 76C.

133 Final rule 76I.

134 Final rule 76J.

135 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.

136 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).

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

However, this requirement is unlikely to address many of the key issues at the core of this rule change.¹³⁸

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.¹³⁹ Many stakeholders supported mandatory training requirements¹⁴⁰ and few stakeholders explicitly raised concerns about implementing training.¹⁴¹

The Commission considers an outcome-based obligation, that does not specify how training occurs, but does require relevant staff to be able to assist affected customers, is a more effective and appropriate regulatory approach.¹⁴²

The approach allows retailers that operate in Victoria to use and expand their existing training and systems, 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.¹⁴³ Importantly, it should also mean retailers will more quickly recognise and respond to new concerns. This is critical as family violence protections and

138 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. For this reason the Commission also disagrees with the retailer submissions that noted that they felt that hardship policy regime was the most appropriate way to manage family violence protections; see submissions to the draft determination: Ergon, p. 1, Powershop, p. 3.

139 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.

140 Submissions to the consultation paper: AGL p. 5., EnergyAustralia, p. 2., Ergon, p. 4., Origin, p. 3., Tango, p. 3., AER, p. 3., Ombudsmen, 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. Submissions to the draft determination: EARG, Ombudsmen, Wirringa Baiya.

141 Submissions to the draft determination: Ergon, p. 1, Powershop, p. 3.

142 The final 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.

143 The AER supported this approach, noting that it accepts that an "outcomes-based approach may complement cultural change in respect of family violence." Submission to the draft determination, p. 3. 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.

support are rapidly evolving; retailers and regulators are continuing to learn and perpetrators continuing to adapt their tactics to harm or control affected customers.

- Gives retailers **flexibility to choose** how they wish to satisfy the provision. A training requirement by comparison is a rigid solution that may not necessarily deliver the best outcome for affected customers. Allowing retailers to employ different mechanisms, as they see fit, to satisfy the requirement (which could include training, systems upgrades and policy changes or other mechanisms) will allow retailers to provide more efficient and flexible support for customers.¹⁴⁴
- 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.

Some stakeholders suggested that the provision should go further and cover other staff categories or even all staff,¹⁴⁵ but extending this requirement to all staff (and contractors) would involve substantial upfront compliance costs for all retailers and high ongoing costs. Further, there would be limited benefits to customers of requiring some staff to have these skills (for instance cleaning staff and energy traders). Many of the other staff categories that were noted by the AER and PIAC are arguably responsible for systems and processes that guide interactions with small customers and so would already be included in the final rule.¹⁴⁶

Some retailers, particularly those that do not operate in Victoria, noted they would benefit from additional clarity about the practical operation of this provision.¹⁴⁷ The Commission welcomes the AER's proposal in its submission to the draft determination to provide guidance on this provision:

*"We therefore propose that the AER provide guidance, to clarify compliance measures and ensure awareness of how the outcomes may be achieved. Guidance will provide consistency and transparency around requirements of the final rule. ... Without adding regulatory burden, AER guidance should provide clear parameters for retailers while acknowledging their nuanced understanding of their staff and customer base. Retailers are therefore afforded discretion to achieve the outcomes in a way that fits their organisation."*¹⁴⁸

The Commission considers this rule is designed to encourage retailers to actively engage with issues and solutions on an ongoing basis and to develop their own bespoke systems to address the risks they identify. As such, it may assist if guidance materials encourage retailers to consider how their systems and policies can evolve so that they can continue to actively engage with their customers to respond to these problems.

¹⁴⁴ The AER noted, in response to this provision in the draft rule, that it generally "support[s] outcomes-based regulation to reduce regulatory and cost burden." Submission on the draft determination, p. 3.

¹⁴⁵ Submissions to the draft determination: PIAC, p. 6. AER, p. 3.

¹⁴⁶ These include computer systems, design, invoicing design and communication systems and payment systems, as noted in submissions to the draft determination: PIAC, p. 6. AER, p. 3.

¹⁴⁷ Submissions to the draft determination: Ergon, p. 1.; Powershop, p. 3.

¹⁴⁸ AER, submission to the draft determination, p. 3.

Processes to identify affected customers and to minimise repeated disclosures can be beneficial for affected customers and retailer staff

The final rule requires retailers to implement a process that:

- provides a method to identify customers that are affected customers, and
- minimises the need for customers to repeatedly disclose their experiences of family violence.¹⁴⁹

The draft rule did not specifically require retailers to have a method to identify affected customers, however, the Commission believes that this is an important consumer protection, that will ultimately complement the ability of staff to assist affected customers.

Further, the Commission does not believe that this will place significant additional burden on retailers, because:

- it does not place an active obligation on retailers to identify affected customers, only to establish a method to do so,¹⁵⁰, and
- it is complementary to rule 76B, which requires retailer staff to have the skills and knowledge to identify affected customers.

The requirement to avoid repeated disclosures is important because requiring a victim of family violence to repeatedly tell 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.

The Commission does not expect it will be difficult for retailers to implement this rule as the mix of stakeholders that commented on it in response to the consultation paper were supportive of it (retailers and consumer groups) and many of these retailers already operate in Victoria, where a similar clause is already in place.¹⁵¹

The Commission also does not support further strengthening this rule by preventing the sale of debts or requiring retailers to participate in the Thriving Communities Partnership's 'One stop one story' project,¹⁵² as suggested by PIAC.¹⁵³ Retailers should already be considering the impact of selling debts in line with rule 76F, and while we accept there is value in retailers

149 Rule 76C. 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.

150 Similarly, one of the purposes of a retailer's customer hardship policy is to identify residential customers experiencing payment difficulties; NERL section 43(1).

151 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. Origin. In its submission to the draft determination, Origin noted that it felt the requirement to have a process that provides for 'effective ongoing engagement with an affected customer' was unclear, but the Commission notes no other retailers felt this clause was ambiguous and further it abides by the same clause in Victoria. Origin, submission to the draft determination, p. 2.

152 This would limit the need for survivors to disclose their experiences to debt collectors and other essential services providers.

153 PIAC, submission to the draft determination, p. 12.

engaging with 'One stop one story,' or similar projects, making this a requirement is likely to lead to inefficient regulation particularly as it may not be consistent with the wishes of the affected customer.

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.¹⁵⁴ In choosing to do this the Commission has recognised that including this prohibition may lead to some increased burden on retailers. However, it has chosen to prioritise the important customer protections benefits that this rule provides over the costs that this may lead to for retailers, which the Commission considers to be the outcome likely to best contribute to the NERO, in the circumstances.¹⁵⁵

Not requiring customers affected by family violence to provide documentary evidence in order to receive protections is increasingly considered best practice, and other industries such as water, banking, and telecommunications are also progressively moving away from requirements to seek documentary evidence from affected customers.¹⁵⁶

The Commission considers this rule will mean that affected customers get the support and protections they need, even in circumstances where they are unable or unwilling to provide documentary evidence, because (for instance):

- this evidence is not readily accessible for victims of family violence,¹⁵⁷ or

154 Rule 76I. 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. Submissions to the draft determination: Simply, p. 2., Next Business Energy, 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. Submissions to the draft determination: ECA, p. 1., EARG, p. 2., PIAC, p. 13., the AER, p. 4., Ombudsmen, p. 2., and ACAT, p. 2.

155 The Commission also notes that this does not prohibit retailers from requesting documentary evidence from customers, as where affected customers are able to provide this additional information, it may allow retailers to assist them more easily. Origin, submission to the draft determination, p. 2.

156 In this respect:

- The Victorian water businesses do not request documentary evidence from survivors.
- In its best practice guide, the ESC 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 p.31
- The Communications Alliance does not recommend requiring documentation to establish domestic and family violence. Communications Alliance, Assisting Customers Experiencing Domestic and Family Violence Industry Guideline, 2018, p. 30.
- 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.
- the ECSV has also flagged with Commission staff that it is also likely to re-consider documentary evidence requirements when it reviews the Victorian code (potentially in the next financial year).

157 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
- Not everyone can access a community worker who can provide a letter confirming family violence, particularly those in marginalised or remote communities
- intervention orders are typically expensive to attain, not easy to access, and typically are not available 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.

- when the information disclosed it can be graphic, re-traumatising or embarrassing.¹⁵⁸

This can also be beneficial for retailer staff who otherwise can be similarly subjected to details of family violence that can be harrowing.¹⁵⁹

In deciding not to require documentary evidence for all small customers, the Commission also considered the suggestion by some retailers that the rule should apply differently to small business customers.¹⁶⁰ However, it recognised that practically, the documents that small business customers can provide to prove they are affected customers would be the same documents that would likely be requested of a residential customer (police reports, intervention orders, counsellor's reports etc.) and an affected customer in their capacity as a small business customer, is still just as likely to experience the same issues providing these documents as they would as a residential customer.

Finally, some retailers have suggested that prohibiting retailers from requiring documentary evidence will result in people fraudulently claiming that they are affected customers,¹⁶¹ or will mean that more deserving customers cannot be prioritised.¹⁶² The Commission disagrees with this as:

- there is no strong evidence that customers are fraudulently claiming to be affected customers, either in energy or in other industries.¹⁶³
- retailers can best determine which affected customers most need assistance using effective engagement with affected customers, which should help to understand how support can be tailored to address their issues.

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

A mandatory requirement to provide details of a relevant external support services is important, as an affected customer may be more likely to seek support if they have a referral from an essential services provider.¹⁶⁴ This is because 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.¹⁶⁵ The Commission considers that:

158 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. The EARG, in particular, noted one of its members reported that a financial service business insisted on documentary evidence when the only evidence available contained details of their customer's sexual assault. EARG, submission to the draft determination, p. 2.

159 ECA, submission to the draft determination, p. 2.

160 Submissions to the draft determination: Simply, pp.2-3., Next Business Energy, p. 1.

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

162 Aurora, Submission to the draft determination, p. 1.

163 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.

164 Rule 76J. Both Powershop and Ergon disagreed that this requirement should be mandatory; submissions to the draft determination: Powershop, p. 4, Ergon, p. 2.

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

- The key initial referral services for supporting people experiencing family violence are well-established and the EARG provides a practical guide that recommends referral options appropriate to different circumstances (ie., an emergency, family violence counselling, financial or debt issues etc).¹⁶⁶
- 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.¹⁶⁷
- The requirement is unlikely to require major changes to retailer practices or systems as they already refer customers to other support services.¹⁶⁸

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 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 NERR¹⁶⁹
- a retailer's family violence policy takes precedence over the terms of its market retail contracts, to the extent of any inconsistency¹⁷⁰
- 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 NERR,¹⁷¹ and
- a customer will not be in breach of their customer retail contract if they use their preferred communication method with their retailer.¹⁷²

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

This provision, which was broadly supported by retailers and consumer groups,¹⁷³ will protect customers and reduce burden on retailers, by allowing them to withhold communications

166 For instance, the 24-hour 1800-RESPECT help line, similar state-based family violence support services and the Men's Referral Service. See EARG, Good practice for industry family violence guidelines - Referral Services, 19 September 2017; this can be viewed [here](#). PIAC suggested that this should be a mandatory requirement (submission to the draft determination, p. 15), but because this is a very helpful guide, we believe there are already strong incentives on retailers to take advantage of this guide, and mandating it would be unnecessary.

167 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.

168 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.

169 Final rule 76H(3).

170 Final 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.

171 Final rule 76K(1).

172 Final rule 76K(2).

173 Submissions to the draft determination: Simply, p. 2., Ombudsmen, p. 1, PIAC, p. 12

from a perpetrator to protect a customer's identity and personal information, without risking a breach of the NERR.¹⁷⁴

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, and no other retailers have subsequently suggested this clause is required.¹⁷⁵

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 final rule provisions to clarify how the new provisions and the family violence policies will apply in relation to both standard and market retail contracts. These rules were broadly supported by retailers and consumer groups, because they allow retailers to provide prompt effective assistance and protections to customers, including when people are in crisis, without the risk of breaching the NERR or the contract.¹⁷⁶

- *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 to 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.¹⁷⁷
- *Standard retail contracts.* The final 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 rule aim to address this issue, for both market and standard retail contracts.¹⁷⁸

¹⁷⁴ In its submission, Simply noted that it felt this rule was critical to allow it to assist customers without strict compliance implications, submissions to the draft determination, p. 2.

¹⁷⁵ 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.

¹⁷⁶ Submissions to the draft determination: AGL, p. 2., Origin, p. 1., Simply p. 2. and PIAC, p. 15.

¹⁷⁷ 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.

¹⁷⁸ However, the 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.

ABBREVIATIONS

AEMC	Australian Energy Market Commission
AER	Australian Energy Regulator
Commission	See AEMC
EARG	Means Economic Abuse Reference Group
EWON et al.	Means the joint submission to the consultation paper 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
Ombudsmen	Means the joint submission to the draft determination by Energy and Water Ombudsman NSW, Energy and Water Ombudsman South Australia and Energy and Water Ombudsman Queensland.
PIAC	Means the joint submission to the draft determination by Public Interest Advocacy Centre, ACTCOSS, the Financial Rights Legal Centre, Good Shepherd Australia and New Zealand and SACOSS and TasCOSS
PIAC et al.	Means the joint submission to the consultation paper by Public Interest Advocacy Centre, ACTCOSS, the Financial Rights Legal Centre, Good Shepherd Australia and New Zealand and QCOSS.
Royal Commission	Means the State of Victoria's The Royal Commission into family violence.

A

THE VICTORIAN CODE, RED AND LUMO'S RULE CHANGE REQUEST AND THE COMMISSION'S CONSULTATION ON THIS RULE CHANGE

This appendix summarises key parts of:

- the customer violence provisions in the Victorian Energy Retail Code of Practice.
- Red and Lumo's rule change request, and
- The Commission's consultation on this rule change

A.1

Family violence protections in the Victorian code

In response to the Royal Commission, in 1 January 2020 the ESC introduced assistance and protections for victim-survivors of family violence (called "affected customers"). These are established in the Victorian Energy Retail Code of Practice (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:¹⁷⁹

- **Staff training** - compulsory training for relevant staff to enable them to engage with, and assist, affected customers.
- **Account security protections** - that prohibit the disclosure of confidential information about an affected customer.
- **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.
- **Processes to avoid repeated disclosures** - providing secure processes to avoid the need for an affected customer to repeatedly disclose their experience.
- **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.
- **Payment difficulty** - a requirement to recognise family violence may be a form of payment difficulty.
- **Referrals to support services** - a requirement to provide affected customers with information about one or more external support services.
- **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.
- **A retailer Family violence policy** - that addresses these protections.
- **Record keeping** - in relation to family violence protections.

179 Victorian code Part 7.

Additional detail about the Victorian Code can be found in Appendix B of the Consultation paper for this rule change. The ESC has committed to reviewing the family violence protections under the Victorian code and the Urban and Rural Water codes by 2024.¹⁸⁰

A.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 NERR to introduce requirements on energy retailers to provide assistance and support to customers experiencing family violence, similar to the protections in Victoria. 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.*¹⁸¹

Red and Lumo proposed that most of Victorian code protections should apply to other regions of the national energy market.¹⁸² Red and Lumo proposed new or amended protections including:

- **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 NECF jurisdictions, such as mandatory staff training and protections for small business customers.

A.3

The Commission's consultation on this rule change process

On 18 November 2021, the Commission published a consultation paper identifying specific issues for stakeholder comment. Submissions to our consultation paper closed on 3 March 2022.¹⁸³

We held a forum on this rule change in February 2022, attended by over 80 stakeholders. The forum outlined the rule change request, explained how perpetrators use essential

¹⁸⁰ ESC, Getting to Fair: Breaking down barriers to essential services, 12 August 2021, p. 9.

¹⁸¹ Red and Lumo, Rule change request - Family violence protections for energy customers, 23 September 2021, p. 1.

¹⁸² Red and Lumo, Rule change request - Family violence protections for energy customers, 23 September 2021, pp. 7-8.

¹⁸³ Submissions are available on the [project page](#).

services to abuse affected customers and how they are impacted by this, and examined approaches that other essential service sectors are taking to address family violence.

The Commission considered all the issues raised in the 21 submissions received on the consultation paper, as well as learnings from the forum, and published a draft determination and draft rule on 16 June 2022.

The Commission has considered all the issues raised in the 19 submissions received on the draft determination, as well as input from a number of one-on-one meetings with consumer groups and retailers, in developing this final determination and final rule. Issues raised in submissions that are not addressed in the body of this document are set out and addressed in Appendix C.

B COMPARING THE MEASURES IN THE FINAL RULE TO THOSE IN THE VICTORIAN CODE AND THE DRAFT RULE

This appendix compares the measures in the final rule:

- to those in the Victorian code, and
- to those in the draft rule.

B.1 Comparing measures in the final 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.¹⁸⁴ In most cases, the protections and help established in the final rule are the same or similar to those provided in Victoria. This will:

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

Table B.1 lists the provisions in the Commission's rule change and highlights similarities and any key differences.

Table B.1: Provisions in the final rule - compared to the Victorian code

THIS RULE CHANGE	COMPARISON TO VICTORIAN CODE
A broadly defined scope that provides the widest coverage to customers	
Definition of family relationships The final rule relies on South Australian definitions of family relationships (includes carers and Aboriginal and Torres Strait Islander kinship relationships)	Similar, but not identical, to the Victorian definition of 'Family member' under Family Violence Protection Act 2008 (Vic)
Small business customers and embedded network customers <ul style="list-style-type: none">• The final 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	<ul style="list-style-type: none">• Application to small business customers is consistent with Victoria.• The Victorian code does not apply to embedded network customers.

¹⁸⁴ Refer to Chapter three for more detail.

THIS RULE CHANGE	COMPARISON TO VICTORIAN CODE
protections as conditions for exempt sellers in the Retail exempt selling guideline.	
Measures that prioritise safety considerations and protect personal information	
Affected customer information Retailers will be required to not disclose confidential information about an affected customer to any other person without the consent of the affected customer.	Similar to clause 150 - 'Account security' of the Victorian code.
Retailer to have regard to customer safety Retailers will be required to have regard firstly to the safety of an affected customer in any dealing that they have with that customer.	Departs from the Victorian code. 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 family violence provisions in the code. Retailers are to develop their policy with regard to that purpose. (The purpose of this Part is to give 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	Consistent with clause 141(1) 'Retailer obligations' of the Victorian code
Protections that respond to the specific financial challenges that survivors face	
Debt management 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.	Similar to clause 152 'Debt management' of the Victorian code The Victorian code applies only applies to actions to recover arrears, whereas the final rule also applies when a retailer is considering selling a debt to a third party.
Family violence as a cause of payment difficulties and hardship Retailers must recognise family violence as a likely cause of a residential customer being a hardship customer or experiencing payment difficulties.	Similar to clause 153 'Family violence as a cause of payment difficulty' of the Victorian code The Victorian code requires retailers to consider family violence a potential cause of payment difficulty, whereas the Commission's final rule requires

THIS RULE CHANGE	COMPARISON TO VICTORIAN CODE
	<p>retailers to consider it likely that affected customers will experience hardship or be affected by payment difficulty, reflecting the realities faced by affected customers.</p>
Systems changes and assistance that will require skilled staff and processes to recognise and support affected customers	
Ability of retailer to assist affected customers 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>Less prescriptive than clause 149 'Training' of the Victorian code</p> <ul style="list-style-type: none"> • The final rule is framed around achieving outcomes for customers. • The Victorian code identifies the types of training that a retailer's relevant staff must undertake.
Referring affected customers to an external support service 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.	Consistent with clause 154 'External support' of the Victorian code
Process to identify affected customers and avoid repeated disclosures Retailers should provide a secure process that <ul style="list-style-type: none"> • provides a method to identify customers that are affected customers • avoids affected customers repeatedly disclosing their experiences. 	Similar to clause 151 'Customer Service' of the Victorian code, however the Victorian provision does not explicitly require retailers to find a way to identify affected customers
Documentary evidence The final rule does not allow retailers to require customers to provide documentary evidence as a precondition for receiving family violence protections	<p>Departs from clause 155 'Evidence' of the Victorian code</p> <p>The Victorian code allows retailers to request documentary evidence in certain circumstances:</p> <ul style="list-style-type: none"> • debt management or recovery • de-energisation of supply
Policy requirements on retailers	
<ul style="list-style-type: none"> • Retailer must have a family violence policy that sets out how the retailer will identify and assist 	Similar to Division 2 of Part 7 'Family Violence Policies' of the Victorian code

THIS RULE CHANGE	COMPARISON TO VICTORIAN CODE
<p>affected customers, including (at a minimum) how the retailer will apply customer protections in the rules</p> <ul style="list-style-type: none">• Retailer must implement, maintain and comply with its policy• Retailer must review its family violence policy as required from time to time to maintain consistency with leading practice	<ul style="list-style-type: none">• The final rule clarifies that retailers must have a family violence policy that they have implemented and are complying with.• The final 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.
Flexibility for retailers to allow them to help customers when they need to	
<p>Preferred method of communication</p> <ul style="list-style-type: none">• A retailer must take reasonable steps to identify an affected customer's preferred method of communication (including by offering alternative methods of communication if the customer's preferred method is not practicable)• Retailers must identify and use, and affected customers may use, a preferred method of communication between retailer and affected customers.• An affected customer's preferred method of communication takes precedence over any other communication requirements in the NERR.	Similar to clauses 150(4)-(5) of the Victorian code. The final rule is broader than the Victorian code as it extends the use of the preferred communication method to communications from the customer to the retailer.
<ul style="list-style-type: none">• The family violence policy takes precedence over the retail contract to the extent of any inconsistency.• The retailer is not held to breach the retail contract by complying with the family violence Part of the NERR• The customer will not be in breach of their retail contract in using their preferred method of communication with the retailer.	No similar clauses in the Victorian code

B.2

Comparing the measures in the final rule to those in the draft rule

The Commission has made few substantial changes from the draft rule to the final rule. Key changes are outlined below, and the rationale for those changes is discussed in Chapter 3.

- **Family violence policy (rule 76A):** Clarifying the purpose and scope of the policy in paragraph (a), including by recognising that some family violence protections are outside Part 3A (eg rule 111(2A)); including reference to complying with the policy in paragraph (c); and requiring retailers to update their policies, if required after a review, in paragraph (d).
- **Process to identify affected customers and avoid repeated disclosures (rule 76C):** Clarifying that retailer systems must provide a method to assess, on an initial basis, if a small customer is an affected customer (paragraph (a)). This complements the requirement in the draft rule to identify, on an ongoing basis, the account of a customer who has already been identified as an affected customer (now paragraph (b)).
- **Family violence as a likely cause of hardship or payment difficulties (rule 76E):** This has been strengthened from the draft rule position that family violence is a *potential* cause of hardship, to family violence being *likely* to cause hardship. The requirement to consider whether a customer is an affected customer initially, and from time to time, has been deleted on the grounds that it duplicates requirements under hardship provisions.
- **Affected customer information (rule 76G):** For completeness, including reference to subcontractors being able to access affected customer information where necessary, but not disclose it; and allowing affected customer information to be disclosed to the extent required by law (for example when requested by police for the purposes of a criminal investigation).
- **Order of provisions:** The order of the provisions within Part 3A changed between the draft and final rules, to place the key general provisions (on retailer policies, staff skills, and systems) up front, followed by individual customer protections.

C

SUMMARY OF OTHER ISSUES RAISED IN SUBMISSIONS

This appendix sets out the issues raised 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 C.1: Summary of other issues raised in submissions

STAKEHOLDER	ISSUE	COMMISSION RESPONSE
AGL (submission to the consultation paper)	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."	In this final determination, the Commission has included a clause that requires retailers to recognise that family violence is likely to cause payment difficulty or hardship. 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.
AGL (submission to the consultation paper)	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	The final rule requires 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. As such, retailers may also have to engage with customers to consider the impact of debts and whether they have been partially caused by another person.

STAKEHOLDER	ISSUE	COMMISSION RESPONSE
EnergyAustralia (submission to the consultation paper)	take in these situations" p. 4 - 5 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.	To maximise certainty for affected customers, retailers and service providers, and to reduce implementation costs, the Commission has extended many of the protections that are currently available in Victoria to the NECF. In some instances, the Commission has introduced an approach that differs from the Victorian code, where it considers doing so furthers the National Energy Retail Objective. However, a retailer complying with the Victorian requirements will be well placed to comply with these requirements.
Ergon (submission to the consultation paper)	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 final rule does not allow retailers to require affected customers to provide documentary evidence to prove that they are affected by family violence at any time. The final rule sets out processes and requirements on retailers to understand an affected customer's circumstances, including changes over time. These include skills and knowledge capabilities and preferred methods of communication.
Ergon (submission to the draft determination)	DIn relation to the best way to include family violence protections: "We acknowledge that family violence is one of a range of factors that can lead to hardship, and support protections and assistance being made available in the National Energy Retail Rules (NERR) for	Family violence issues go beyond financial hardship. The final rule provides targeted consumer protections that address family violence issues and vulnerabilities in the energy sector. Further, it provides sufficient flexibility for retailers to comply with the provisions introduced. As hardship

STAKEHOLDER	ISSUE	COMMISSION RESPONSE
	customers affected by family violence. We also suggest that this complex matter is best addressed under existing Hardship policies to ensure continuity and consistency in vulnerable customer practices across the National Electricity Market.”	is defined in the NERL rather than the NERR, the Commission could not extend the meaning of that term to encompass affected customers.
Momentum (submission to the consultation paper)	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 final 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 final rule.
Next Business Energy	In relation to the rule’s application “as drafted these rules will apply to any affected customer, even those that are not a person (companies etc) who are not natural individuals.”	These protections are intended to apply to individuals affected by family violence, regardless of whether their small business is incorporated.
AER and ECA (submission to the draft determination)	These organisations both raised the importance of including the views of victim survivors in the design and implementation of the final rule.	The Commission acknowledges the importance of understanding survivors’ perspectives and many of the rules are likely to require retailers to engage with affected customers to ensure that they are properly satisfied. The Commission has used a transparent process for considering the views of stakeholders in making its final rule. The Commission did not receive any submissions directly from survivors, however, several of the submissions provided are from

STAKEHOLDER	ISSUE	COMMISSION RESPONSE
		consumer advocate groups that do work first-hand with victim survivors.
Origin (submission to the consultation paper)	<p>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 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>The final 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 declaration, when similar details could just as easily be sought and recorded by retailer staff during conversations with a customer. The final 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. (submission to the consultation paper)	<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</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>

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STAKEHOLDER	ISSUE	COMMISSION RESPONSE
	<p>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>	
ECA (submission to the consultation paper)	<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 final determination are broadly aligned with the Victorian code. As such, smaller retailers should be able to consider other retailers' policies in developing their own.</p>
ECA (submission to the draft determination)	<p>"We reiterate the importance of support for staff when engaging with issues of family violence. This could be an Employee Assistance Program (EAP) but note that EAP providers are not always appropriately family violence informed. Safe and Equal, the peak body for family violence services in Victoria, suggests this could be resolved by supporting the development of a family violence standards checklist for EAP utilised by essential service providers."</p>	<p>This is outside the scope of this rule change, however the Commission recognises that accounts of family violence can be confronting for retailer staff as well as re-traumatising for victims, and supports joint approaches to address these issues.</p>
ECA (submission to the draft determination)	<p>In discussing waiving credit checks "we note the drafted rules do not specifically capture customers who are trying to establish an account but may be declined due to their credit score.</p> <p>We suggest the AEMC stay abreast of this issue, and to consider what guidance or action may be required if the reforms</p>	<p>The Commission accepts that affected customers may have their credit adversely impacted by an abusive partner or former partner. We note that the NERL requires supply to a customer, but retailers may ask for a credit check to determine whether to require a customer to provide a security deposit (NERR rule 39). The recommendation for the AER to review the operation of the family</p>

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STAKEHOLDER	ISSUE	COMMISSION RESPONSE
	appear insufficient in safeguarding affected customers.”	violence protections will allow for amendments to these protections if required.
Ombudsmen (submission to the draft determination)	The changing energy market could contribute to customers falling outside of the NECF and the NER. This needs to be a continual focus of the AEMC in making this and other rule changes.	The Commission is aware of this issue more broadly, and in relation to other rule changes. The AER is also conducting a review into this issue (among others). In the context of this rule change, the Commission has given this rule the broadest scope possible to ensure that the greatest number of affected customers are protected. In this respect the rule relies on a broad definition of family violence, it applies to all small customers purchasing energy in NECF jurisdictions, and it recommends the AER apply protections to embedded networks.
Ombudsmen (submission to the draft determination)	In relation to making sure that consumers are entitled to a retail account: Under section 22 of the National Energy Retail Law NSW (NERL) a FRMP must allow a customer an account at standing offer prices under a standard retail contract. A customer moving hurriedly into new accommodation may not have an opportunity to find out who the FRMP is and should not be further penalised due to their situation. There is an opportunity for this gap in protections to be addressed by requiring retailers to waive the credit check requirement for customers where family violence indicators are present. Alternatively, retailers could be	The Commission considers that existing provisions and this final rule are already sufficiently strong in these circumstances to protect customers. Existing provisions provide a clear right for a customer to receive a standing offer. The final rule also includes protections for customers to get the right support from retailers' staff that understand their issues, and provides flexibility for retailers to help customers when they need it. The final rule also requires retailers to recognise that family violence is likely to cause payment difficulties and customer hardship, which will help affected customers access financial help when needed.

STAKEHOLDER	ISSUE	COMMISSION RESPONSE
	<p>required to provide an account at standing offer prices under a standard retail contract when an affected customer advises the retailer of family violence circumstances, or if this is shared by another party such as an entity who subscribes to the Thriving Communities One Stop One Story Hub. This would further strengthen the protection of minimising repeated disclosure by a consumer who has experienced family violence.</p>	
PIAC et al. (submission to the consultation paper)	<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.	<p>The final 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 final rule. The Commission notes that some of these matters are broader than the scope of the rule change; however, the rule change will go some way to bring about broader cultural change within retailers. Matters such as support for employees could be more appropriately dealt with through a retailer's internal work place policies. Other matters are dealt with at a higher level in the final 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>

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	<ul style="list-style-type: none"> • 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. 	
PIAC et al. (submission to the consultation paper)	Proposed the introduction of an AER guideline for account security.	The final rule establishes the outcomes that a retailer must deliver regarding account security and the 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. (submission to the consultation paper)	<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 	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 final rule skills requirement and related aspects of the final rule.

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	<p>lived experience.</p> <ul style="list-style-type: none"> • 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: • 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. • 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. (submission to the consultation paper)	The rule change must consider people who are not in a position to self-advocate,	Appropriately skilled staff (consistent with the final rule's requirements) should be able to recognise common factors associated with customers affected

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		by family violence.
PIAC et al (submission to the consultation paper)	The rule change must consider if DNSPs should look out for violence,	The final determination recognises that distributor communications with affected customers is an area for potential future work.
PIAC et al (submission to the consultation paper)	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),	The compulsory skills requirement will require staff to be able to assist customers affected by family violence, and to take into account the circumstances of individual customers. 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 specified groups risks significantly increasing compliance costs, particularly on smaller retailers.
PIAC et al (submission to the consultation paper)	The rule change must consider how family violence occurs in familial relationships, p.	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.
PIAC et al (submission to the consultation paper)	The rule change should prohibit retailers from recovering debts from an affected customer	The Commission ultimately concluded that this was not necessary because consumer stakeholders were generally supportive of the equivalent clause in Victoria, which suggests that the current approach is not ineffective.
PIAC (submission to the draft determination)	"More guidance needs to be given around expectations of retailer competency regarding family violence and these	The Commission has included requirements including that: <ul style="list-style-type: none"> • retailers staff be able to assist affected customers

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	<p>expectations must be enforceable by the AER so that victim-survivors receive appropriate and consistent responses”</p>	<ul style="list-style-type: none"> • retailers have a process to identify affected customers. <p>These rules are enforceable by the AER. The Commission is also encouraging the AER to provide guidance in relation to three of the provisions in the final rule.</p>
PIAC (submission to the draft determination)	<p>In relation to the proposed penalties in these rules</p> <p>“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:</p> <ul style="list-style-type: none"> • Licence suspension or revocation for very serious or repeat breaches. • Disclosure of breaches to consumers (e.g. on bills and on websites).” 	<p>These matters are beyond the scope of this rule change, but could be considered by the AER.</p>
PIAC (submission to the draft determination)	<p>“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</p>	<p>The Commission encourages all retailers to work with governments to address family violence issues. However to mandate this in the rules risks creating inefficient regulation for retailers.</p>

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	family violence financial supports such as the Escaping Violence Payment”	
PIAC and the AER (submission to the draft determination)	The final rule should prohibit retailers requiring a security deposit.	<p>The Commission decided not to include this because a retailer will be required under rule 76E to recognise that family violence is a likely cause of hardship. If an affected customer is a hardship customer, then a security deposit will be prohibited (see NERR rule 40(3), while if they are not affected by hardship then there is not a good reason for prohibiting a deposit.</p>
PIAC and the AER (submission to the draft determination)	The final should introduce an AER monitoring requirement.	<p>The Commission considered introducing AER reporting requirements, but it was not clear that mandating reporting by retailers to the AER, and by the AER in its retail market performance reports, would improve transparency for customers or customer protections. This is because:</p> <ul style="list-style-type: none">• family violence indicators are not easily comparable between retailers.^A• reporting on protections in family violence policies is unlikely to be effective because customers are not likely to choose their retailer based on the quality of its family violence policy.^B <p>Further, any family violence monitoring and reporting requirements would likely require retailers to upgrade their systems, as the ESC does not undertake monitoring and Western Australia’s</p>

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		<p>draft rule also does not include it. The AER can still undertake some monitoring of family violence statistics as part of its hardship monitoring and can request information from retailers as part of its compliance functions.^c</p> <p>Reporting requirements can be reconsidered as part of a review of the family violence protections, recommended in this determination because by this point in time there may be greater evidence available to determine what appropriate indicators should be and how trends can be interpreted.</p>
PIAC and Wirringa Baiya (submissions to the draft determination)	The final rule should require retailers to consider different forms of assistance such as waiving, suspending or assisting customers to manage debt	The Commission decided not to include this because retailers are already likely to be voluntarily assisting customers using tools such as debt waivers, debt suspensions or debt management as a part of Rule 76F(2), their family violence policies or customer hardship obligations. Retailers also have a general obligation to consider the safety of affected customers, and the individual circumstances of those customers, which may prompt retailers to offer the kinds of assistance suggested by PIAC and Wirringa Baiya where appropriate in the circumstances.
TasCOSS (submission to the consultation paper)	<p>TasCOSS recommended debts be automatically waived once a disclosure of 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</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. Requiring retailers to automatically waive debts may risk placing significant burden on retailers. The general safety</p>

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	before the disclosure of family violence, the retailer should immediately take steps to repurchase and manage the debt.	considerations noted above will also guide retailer's actions in individual circumstances.
HelpPay (submission to the consultation paper)	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.	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.

^A: For instance, numbers of affected customers may vary between retailers because a retailer's customer base may be disproportionately affected by family violence because of other factors or because a retailer may be more effective than others at identifying affected customers.

^B: Rather, protections are valuable because customers, who do not anticipate needing them, can ultimately rely on them if a crisis arises.

^C: Under rule 75, the AER establishes and may amend hardship program indicators, and could potentially include indicators relating to hardship customers who are also affected customers. Under rule 167, the AER must report on matters including customer service, handling of customers experiencing payment difficulties and de-energisation, by reference to different categories of customers as determined by the AER; the AER could potentially specify affected customers as a relevant category for such reporting. Under NERL s. 282, retailers must provide information to the AER relating to the hardship program indicators and the retail market performance reports.

D

LEGAL REQUIREMENTS UNDER THE NERL

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

D.1

Final rule determination

In accordance with s. 259 of the NERL the Commission has made this final rule determination in relation to the rule proposed by Red and Lumo.

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

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

D.2

Power to make the rule

The Commission is satisfied that the more preferable final rule falls within the subject matter about which the Commission may make rules. The more preferable final 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.

D.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 and second rounds of 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.¹⁸⁵

¹⁸⁵ 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.

D.4

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 final 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 final rule be classified as conduct provisions.

D.5

Review of operation of final rule

The more preferable final rule does not require the Commission to conduct a formal review of the operation of the final rule. The Commission may however self-initiate a review of the operation of the rule at any time if it considers such a review would be appropriate, pursuant to s. 232 of the NERL. In addition, the Commission recommends that the AER conduct a review of the rule after it has been in effect for some years - see section 2.5.

E RELEVANT DEFINITIONS

Note: The definitions included in this appendix reflect South Australian legislation as of August 2022, and are provided for information only. The relevant South Australian provisions may change from time to time, and the updated definitions will apply.

Family violence

The final rule provides that family violence means **domestic abuse** under the *Intervention Orders (Prevention of Abuse) Act 2009* SA (SA Act).

The SA Act (section 8(1)) provides that abuse “*may take many forms including physical, sexual, emotional, psychological or economic abuse*”. Specifically, per section 8(2) of the SA Act:

An act is an act of abuse against a person if it results in or is intended to result in:

- (a) physical injury; or
- (b) emotional or psychological harm; or
- (c) an unreasonable and non-consensual denial of financial, social or personal autonomy; or
- (d) damage to property in the ownership or possession of the person or used or otherwise enjoyed by the person.

The relationships covered by the definition

The SA Act provides:¹⁸⁶

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; or
- (b) they are domestic partners [*see definition below*]; or
- (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; or
- (d) 1 is the child, stepchild or grandchild, or is under the guardianship, of the other

¹⁸⁶ *Intervention Orders (Prevention of Abuse) Act 2009* (SA), s. 8(8).

(regardless of age); or

- (e) 1 is a child, stepchild or grandchild, or is under the guardianship, of a person who is or was formerly in a relationship with the other under paragraph (a), (b) or (c) (regardless of age); or
- (f) 1 is a child and the other is a person who acts in loco parentis in relation to the child; or
- (g) 1 is a child who normally or regularly resides or stays with the other; or
- (h) they are brothers or sisters or brother and sister; or
- (i) they are otherwise related to each other by or through blood, marriage, a domestic partnership or adoption; or
- (j) they are related according to Aboriginal or Torres Strait Islander kinship rules or are both members of some other culturally recognised family group; or
- (k) 1 is the carer (within the meaning of the *Carers Recognition Act 2005*) of the other [see definition below].

Domestic partner

The SA Act incorporates the definition of “domestic partners” from the *Family Relationships Act 1975* (SA), which provides (relevantly):¹⁸⁷

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 [see definition below] and—
 - (i) the person -
 - (A) has so lived with the other continuously for the period of 3 years immediately preceding that date; or
 - (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; or
 - (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).

Close personal relationship

¹⁸⁷ *Intervention Orders (Prevention of Abuse) Act 2009* (SA), s. 3. *Family Relationships Act 1975* (SA), s. 11A.

A “close personal relationship” is defined in turn as:¹⁸⁸

close personal relationship means 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 with 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.

Carer

The relationships within which domestic abuse may occur include **carers**, defined as follows:¹⁸⁹

- (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*; or
 - (b) a person who has a chronic illness, including a mental illness within the meaning of the *Mental Health Act 1993*; or
 - (c) a person who, because of frailty, requires assistance with the carrying out of everyday tasks; or
 - (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; or
 - (b) in the course of doing community work organised by a community organisation within the meaning of the *Volunteers Protection Act 2001*.

¹⁸⁸ *Family Relationships Act 1975 (SA)*, s. 11.

¹⁸⁹ *Intervention Orders (Prevention of Abuse) Act 2009 (SA)*, s. 8(8)(k). *Carers Recognition Act 2005 (SA)*, s. 5.