

4 August 2022

Ms Anna Collyer
Chair
Australian Energy Market Commission (AEMC)
PO Box A2449
Sydney South NSW 1235

Dear Ms Collyer

**RRC0042 Draft rule determination
Protecting Customers Affected by Family Violence, 16 June 2022**

Thank you for the opportunity to respond to the AEMC Draft rule determination.

The comments contained in this submission reflect the feedback of the Energy & Water Ombudsman NSW (EWON), Energy & Water Ombudsman South Australia (EWOSA), and Energy & Water Ombudsman Queensland (EWOQ). We are the industry-based external dispute resolution schemes for the energy and water industries in New South Wales, South Australia, and Queensland.

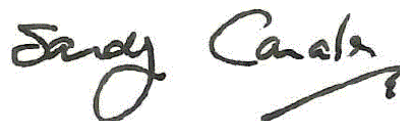
We have collectively reviewed the draft rule determination and we have only responded to points within the draft determination that align with issues customers raise, or with each respective organisation's operations as they relate to this draft rule change.

If you would like to discuss this matter further, please contact Rory Campbell, EWON Manager Policy and Research (EWON) via email roryc@ewon.com.au or by phone on (02) 8218 5266.

Yours sincerely



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RRC0042 Draft rule determination: Protecting Customers Affected by Family Violence

The Energy & Water Ombudsman (EWON, EWOQ and EWOSA) commend the AEMC on the Draft rule determination ('the draft rule') which aims to address the incredible challenges faced by energy customers affected by family violence. We consider that overall, the draft rule meets the intended objectives of the proposed rule change, which is to *'provide consumers affected by family violence with safe, supportive and flexible assistance in managing their personal and financial security.'*¹

The development of assistance and protections is vital and should make a significant difference to many customers who experience family violence. We are pleased to see that the draft rule aligns with feedback in our submission to the Consultation paper, particularly:

- Extending the definition of family violence to cover family like relationships by adopting a broad definition of 'family'
- Extending the definition of 'affected customer' within the draft rule to former (closed) account holders and to small business customers
- Preferred customer contact methods taking precedence over other customer entitlement, or requirements of the retailer within the Code, regarding communication
- Family violence being recognised as a potential cause of financial affordability challenges, and not just a potential cause of payment difficulty
- Requiring a retailer to actively refer customers to an external support service
- Not requiring (or allowing retailers to require) victim-survivors to provide documentary evidence as a precondition for receiving family violence support, including in relation to disconnections
- Recommending that the AER consider extending protections to customers that reside in an embedded network.

Not requesting evidence of family violence for energy disconnections

We reiterate the importance of this being included in the draft rule. We support the AEMC's progressive approach in moving away from the example set by Victorian *Energy Retail Code*, which allows retailers to request evidence in debt management and recovery.

The draft rule also aligns with other industries such as water, banking and telecommunications. These industries are appropriately increasingly moving away from requiring documentary evidence in cases of family violence. Requiring documentary evidence is problematic because:

- Victim-survivors of family violence who have fled their home due to personal safety concerns may have limited access to relevant documentation
- It places the onus on the victim-survivor to prove that they are a survivor of family violence; causing a victim-survivor to further disclose and re-live personal and traumatic experiences
- It can eliminate the opportunity for providers to gain victim-survivor's trust by asking for proof before they are believed (at a time they are experiencing intense stress in multiple aspects of rebuilding their lives).

Embedded networks

We strongly support the AEMC's recommendation that the AER consider inclusion of family violence provisions for customers who reside in embedded networks as it updates the *Retail exempt selling*

¹ RRC0042 Red Energy Rule Change request to AEMC 23 September 2021

guideline. We welcome further consultation with the AER on this issue for inclusion in the *Retail exempt selling guidelines*. We acknowledge that the AER published the Retail Exempt Selling Guideline (version 6) in July 2022, however this should not prevent an amendment or an expedited consultation process to ensure customers living in embedded network receive equal family violence protections as soon as possible.

The draft rule will contribute to building a framework to embed changes in attitudes and business cultures within the energy sector that strongly supports assistance for all customers. We have commented on aspects that would strengthen and truly instil the aims of this rule change in day-to-day practise.

Family violence policy

Retailers should be required to implement a family violence policy that addresses the new family violence retailer obligations in the NERR; is consistent with leading practise; and is accessible on their website.

Our submission to the Consultation Paper, suggested that family violence policies be:

- reviewed and updated at a minimum every two years
- overseen by the Australian Energy Regulator (AER) and, like financial affordability policies, the AER should implement an approval process to ensure compliance and a harmonised approach across retailers
- standardised, or minimally include standard clauses developed by the AER (this is in support of the AER's Customer Vulnerability Strategy).

The draft rule does not include any regulatory oversight by the AER. Nor does it include an approval process or the development of a 'standard model policy' or minimally standard clauses for inclusion in the policy.

Regulatory oversight and review period

The draft rule requires that a retailer's family violence policy be 'reviewed from time to time, to maintain consistency with leading practice.' The AEMC notes that the departure from the Victorian framework (where retailers must review their policies every two years) is to minimise unnecessary regulatory burden but ensure retailers update their policies whenever needed.

Without clear definitions or the requirement to review on a set period, this leaves scope for different interpretations of what 'leading practice' is and how frequently 'time to time is measured.' Mandatory review periods and compliance oversight will ensure that family violence policies are up to date and kept at the forefront of retailer priorities. They would also ensure consistency with retailers that operate in Victoria and other jurisdictions, therefore minimising additional regulatory burden.

AER development of a standard model policy, or minimally standard clauses

While many retailers already have family violence policies, these may not meet the requirements of the draft rule or may only meet the requirements that apply in Victoria. Additionally, retailers that operate solely in the NECF framework may not have a family violence policy.

The development of a standard model policy would ensure adherence to the draft rule, assist retailers in meeting the requirements of the draft rule that go above and beyond that of the Victorian requirements, and lead to customers receiving the same minimum level of support

regardless of their retailer. Equally, it would not prevent retailers from choosing to go above and beyond a standard model policy.

A standard model policy would also reduce the administrative burden on retailers if they chose just to adopt the standard model policy.

Specialist family violence training for retailers' staff

We acknowledge the draft rule places a mandatory skills requirement on relevant staff to ensure that they understand family violence and can identify, engage with and assist affected customers.

While we support the intention of this provision in the draft rule, we do not believe that retailers can consistently achieve this without adequate training being provided to all front-line staff and other staff who interact with customers from time to time. Therefore, we strongly suggest strengthening the mandatory skills-based requirement, with the requirement that this be achieved through mandatory specialist training for all staff who interact with customers ie front line and on a less regular basis.

The current wording and autonomy within the draft rule leaves room for retailers to assume that staff will be able to recognise the signs of family violence, without receiving training.

Training staff to recognise potential family violence and provide practical assistance will assist in the culture shift needed to normalise the issues faced by customers. Family violence is a delicate subject that requires specialist knowledge to recognise the signs and staff who are empowered with the tools to take the right actions for consumers.

Specialist training will not only enable staff to appropriately assist customers, it will also give them the tools to ensure their own wellbeing is managed while dealing with sensitive and sometimes confronting information.

The importance of training staff to assist customers (and peers) while looking after themselves cannot be understated. It is required for all stakeholders in the energy sector if we are to lead a cultural shift around responses to family violence.

Compliance, enforcement, and Civil penalties

We support the proposed penalty provisions recommended in the rule. However, we believe that a strong compliance framework is required to embed this rule change into day-to-day practice.

The draft rule does not outline how compliance issues will be identified and it does not provide information on reporting requirements.

The AER wants to closely monitor customer outcomes and the extent to which laws, rules and regulations are being met by market participants. As part of this work, it has asked Energy & Water Ombudsman (EWO) schemes to undertake quarterly compliance reporting through the monitoring and review of complaints for potential misalignment with NECF or other energy rules and regulation. Our reporting will be extended to include potential misalignment with the final rule relating to family violence.

We also recommend that the [AER Compliance Procedures and Guidelines](#) be updated to include mandatory retailer self-reporting of breaches of family violence provisions in the draft rule (the nine Tier 1 and one Tier 2) category.

Until the culture around responses to family violence changes, penalties for non-compliance should be required to normalise the provision of support to customers experiencing family violence across the sector. Mandatory self-reporting will also bring consistency with financial affordability related provisions within the NERR.

Review of the rule

We recommend that a review take place two years from its commencement. This will ascertain whether the rule is fit-for-purpose, reflects current leading practice and meets the needs of family violence victim-survivors.

Other considerations

There are two other critical considerations:

1. 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.
2. There is a gap in protections for customers who have credit issues due to debt caused by a family violence situation and who are establishing new accounts with a retailer of their choice. When an affected customer contacts a retailer to establish an account, they are sometimes declined an account due to their credit history and advised to contact the financially responsibly retailer (FRMP).

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 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.