

2nd March 2022

Australian Energy Market Commission
By website upload



contact: earg@earg.org.au

Dear Sir/Madam,

Protecting Customers Affected by Family Violence - Response to Consultation Paper

We welcome the opportunity to provide a submission to this consultation paper.

Economic Abuse Reference Group

The Economic Abuse Reference Group (EARG) is a network of community organisations throughout Australia, which influences government and industry responses to the financial impact of domestic and family violence (DFV). Members include family violence services, community legal services, financial counselling services and women's services. See www.earg.org.au

EARG regularly engages with government, industry, and regulators. We have produced guiding principles for use by industry and have provided input to draft industry codes, guidelines, and legislation. EARG is funded by the Ecstra Foundation. See earg.org.au

This submission:

- Supports the proposal to change the National Energy Retail Rules to better protect customers affected by family violence
- Argues that in general, the National Rules should reflect the Victorian Code
- Explains why appropriately trained staff is key to achieving good customer outcomes
- Raises the importance of compliance
- Explains why other additional components which apply in Victoria (but are not currently proposed) should be included in the national rules.
- Outlines some work from other sectors and opportunities to share good practice

The Victorian experience

EARG's Victorian members provided significant input to the development of the Victorian family violence (FV) provisions, primarily based on their experience helping FV survivors, and we continue to support the Victorian Code changes.

The experience of customers and community workers when providers put effective policies in place is positive, and can be life-changing for victim survivors.

*"I was able to get that [account] put into her name. So she is now in control of when the power is on and off."*¹

"My client was a mother of three children who had escaped family violence and was living in a refuge. While the energy debt was in her name, the person at the energy provider was understanding about family violence. Within 7 days the provider had agreed to waive the debt, relieving my client of this added stress". (quote from an EARG member).

The Code provisions also make it easier for the Energy and Water Ombudsman to resolve disputes that arise which involve family violence, as they clearly outline the processes that providers must have in place.

However, there are too many examples of providers failing to comply with the provisions.

A recent report for the Consumer Policy Research Centre² illustrates the problems faced by customers, and community agencies, due to a lack of compliance.

Appropriately trained staff is key

The most common concern reported by caseworkers is the initial response from some front-line staff, who appear to have no understanding of family violence or to be aware that their business has a relevant policy. We understand that Energy and Water Ombudsman Victoria identify inadequately trained staff as the cause of most family violence related complaints to them.

We strongly support mandatory training, similar to that required by the Victorian code. Regardless of the quality of a business' family violence policy, customers won't benefit if there is failure to identify clear signs of family violence, or failure to refer to appropriate staff internally. This is identified by caseworker advocates as a significant barrier to them assisting their clients.

Just as important as understanding how to respond, is that staff are aware of their limitations. Otherwise, there is a risk of exposing staff to situations they can't handle, thereby placing staff as well as customers at risk.

We also recommend that the people who supervise those front-line staff understand how to support their staff who may be handling difficult calls – and that staff who design internal processes are alert to family violence risks and don't introduce new products or processes

¹ Larissa Nicholls and Karl Dahlgren (Monash University) ,2021, Consumer Experiences Following Energy Market Reforms in Victoria – Qualitative Research with Community Support Workers, Consumer Policy Research Centre

² Ibid

that put customers at risk. While the E-safety Commissioner's comments to business relate to digital safety, they could also apply to responding to family violence: "Rather than retrofitting safeguards after an issue has occurred, Safety by Design focuses on the ways technology companies can minimise online threats by anticipating, detecting and eliminating online harms before they occur."

Should the AEMC decide not to include training requirements, the Rules must clearly require energy providers to ensure that all staff that may have contact with customers who are victim survivors, or who may be required to make decisions regarding these matters, must demonstrate the knowledge and skills to effectively implement the provider's family violence policy, and this should be expressed in a manner that would aid enforcement.

Compliance

Family violence rules and policies are only effective if energy providers comply. In the case of family violence approaches, we agree that cultural change is often required, with leadership from top management.

Ongoing work is required by the regulator and the industry to support and encourage compliance.

While enforcement action may not be appropriate (at least initially), we believe that a strong focus on enforcement of financial hardship requirements could help establish a foundation for family violence policies.

Caseworkers report to us that the providers who don't respond appropriately to customers affected by family violence, also tend to respond poorly to other customers in financial hardship or experiencing other vulnerable circumstances. While family violence policies should cover more than financial hardship, a business with a poor response to customers in financial hardship is not well placed to develop effective responses to customers in vulnerable circumstances such as DFV.

Reflecting the Victorian Energy Code provisions

The Victorian Code amendments resulted from a process of consultation, building on work previously undertaken in relation to water businesses, and including written input and a number of forums which involved industry and community representation. Many of the energy businesses that operate outside Victoria also operate within Victoria and are therefore subject to the Victorian regulation. We suggest that there could be benefits of reflecting the Victorian Code as far as possible, so that everyone is clear about what is expected, regardless of what state they are in.

Family violence policies

Businesses which operate in Victoria are required to have family violence policies which meet the requirements set out in the Code.

While a model policy could have the benefit of ensuring all businesses had appropriate policies, there may be some benefit if retailers are required to develop their own policies. This could ensure businesses spend some time engaging with the issue and tailoring a policy for their business.

If there won't be a model policy, the Rules should outline the key issues that should be covered in the policy in detail, to ensure that important areas are covered. These requirements could be similar to those in the Victorian Code.

Family violence policies taking priority

We support the safety of victim survivors (including financial safety) being given priority over other Rules. We also agree that a customer's preferred method of contact should take priority (as it does in Victoria).

However, it will be important to ensure that businesses don't include some less important provisions in their policies, which could risk family violence being used as an excuse for non-compliance. There will be a need to analyse where these conflicts could arise.

We are aware, in some other industries, where an appropriate family violence response (for example withholding information from a customer where it could put another person at risk) does require some change to regulatory guidance, so it would be appropriate for the AER to consider whether there are potential Rule breaches which might occur as a result of a retailer responding appropriate to family violence circumstances.

Family violence as a cause of payment difficulty

We agree that family violence alone (even where there is no accumulated debt) should be included as a cause of payment difficulty.

The impact of family violence itself can place victim survivors in stressful financial situations.

However, it's important that the Rules are clear that family violence shouldn't be regarded solely with a financial hardship lens.

We strongly support an obligation that prior to attempting to recover a debt from a victim survivor, retailers consider the impact of recovery action on the affected customer and whether another person might be jointly responsible for usage before disconnecting.

Requiring documentation

Needing to provide documented evidence can be difficult and traumatising, so we welcome the proposal that this be required in very limited circumstances. We also support the proposal that a document provided by an advocate be accepted as evidence. However, it is important that staff within the business who make the relevant decisions understand the difficulty of providing evidence, especially for victim survivors without advocates, so that an informed decision can be made about whether it is reasonable to require documentation in each case.

There are good reasons why many victim survivors don't obtain court orders and requiring them to seek evidence can be unreasonable and traumatising. Generally, we hear from industry that they don't believe that there are false claims, and that the customer and staff benefit from believing customers when they disclose family violence.

Requiring retailer to refer to appropriate external support service

The Victorian Code does require a retailer to provide an affected customer with information about the availability of one or more external support program, but requires that to be safe, respectful and appropriate given the circumstances. We don't believe this is too onerous.

In many cases, the customer will already be receiving assistance, and the retailer will know this because the support program will make contact with the retailer, or the customer will mention it. However, where a customer makes contact directly, and doesn't mention any external support, this is an appropriate requirement.

It is important that staff don't have too many options to choose from. We wrote a [guide](#) on these referral options for businesses.

Preventing repeated disclosure of family violence experiences

It is important, where possible, to prevent the need for victim survivors to have to repeatedly explain their story which is often traumatic. This is an important element of a family violence response, and we recommend that the Victorian Code be reflected in the Rules.

Unfortunately, poor experiences for victim survivors (and their advocates) in Victoria tend to result from untrained, unresponsive staff, so it is a lack of training that often leads to victim survivors or advocates needing to repeat details of the person's situation.

The proposed rule should apply to small business customers

Caseworkers regularly see family violence (including financial abuse) impact on individuals who are involved in running a business. In more extreme cases, the individual may not have any practical involvement in the business but finds that business debts are in their name.

It will sometimes be the case that the same person who has a business account will also have a domestic account with the same provider. It is just as important that an individual can contact someone who understands family violence and who is able to respond appropriately whether the account is domestic or small business.

Embedded networks

While we can't comment on this in detail, we believe that customers in embedded networks who experience family violence should have similar protections to other energy customers.

Lessons from other sectors / other approaches

Each industry has had its own specific issues and risks to address in a DFV approach, as well as different regulatory structures. It's important to develop approaches tailored for a specific industry, at the risk of introducing DFV rules that are too general to be effective. In fact, our experience suggests that it's often identification of the products or processes specific to a particular sector, that impact affected customers, which drives effective change within an industry. We therefore believe that energy specific reforms are needed.

In response to the reference in the Consultation Paper to family violence laws, these laws differ in each state. While generally they provide some protections for victim survivors (for example by enabling courts to make Personal Safety Intervention Orders), state laws don't address the relationship between affected customers and businesses, and they don't appear to conflict with any of the proposals regarding the national energy rules.

However, there are currently some opportunities for businesses share and learn within their sector, and with other sectors, and there may be opportunities to build on these initiatives.

EARG has engaged with reforms in a number of sectors including banking, insurance, energy, telecommunications, toll roads and vehicle registration. Each of these sectors has had to address issues specific to its industry, for example:

- banks need to respond to issues of joint debt where this is rare in energy or telecommunications
- insurers need to respond to cancellation of policies by a co-insured and the conduct of claim investigators or claims for malicious damage caused by another co-insured
- energy businesses need to consider maintaining an essential service for a person who may not be named on the account
- VicRoads need a process for transferring registration from a victim survivor to a perpetrator who is incurring fines or who needs to change number plates for safety reasons.

Despite these differences, some issues are shared across all industries including staff training, identifying DFV, how to record these matters on an account while respecting privacy, and how to support staff who might be affected by customer stories.

There are several examples of the sharing of lessons and ideas across industries. As part of the development of DFV approaches, some industries have sought input from experts in other industries, for example bank experts have presented to energy businesses (in Victoria) and to insurers. Businesses in most states can share information and collaborate as members of [Thriving Communities Partnership \(TCP\)](#), which focuses on improving outcomes for customers (particularly those experiencing challenging circumstances such as family violence). TCP and EARG hosted a series of workshops in 2020, which resulted in a Business DFV Network, which meets regularly and enables staff responsible for DFV processes in their business to share and learn from staff in other industries.

Please don't hesitate to contact us if you require further information.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Carolyn Bond', written in a cursive style.

Carolyn Bond AO
National Co-ordinator