



# Energy Retail Code Changes to Support Family Violence Provisions for Retailers

Draft Decision

19 March 2019



**An appropriate citation for this paper is:**

Essential Services Commission 2019, *Energy Retail Code Changes to Support Family Violence Provisions for Retailers*: Draft Decision, 19 March

**Copyright notice**

© Essential Services Commission,



This work, *Energy Retail Code Changes to Support Family Violence Provisions for Retailers*, is licensed under a Creative Commons Attribution 4.0 licence [[creativecommons.org/licenses/by/4.0/](https://creativecommons.org/licenses/by/4.0/)]. You are free to re-use the work under that licence, on the condition that you credit the Essential Services Commission as author, indicate if changes were made and comply with the other licence terms.

The licence does not apply to any brand logo, images or photographs within the publication.

# Contents

Summary	3
What our code changes aim to do	3
When these code changes take effect	3
1. Introduction	4
1.1. Purpose of the paper	4
1.2. What the Royal Commission into Family Violence recommended	4
1.3. Our work so far	5
2. Our approach to amending the code	7
2.1. Our regulatory framework	7
2.2. Royal commission’s findings and recommendations	7
2.3. Views from family violence experts	8
2.4. Retailer and community sector response to our issues paper	9
3. Our proposed family violence framework for Victoria’s energy market	11
3.1. The Energy Retail Code	11
3.2. Better practice guide	11
4. Our draft code amendment	13
4.1. Assistance for customers affected by family violence	13
4.2. A family violence entitlement	13
4.3. A family violence policy	14
4.4. Minimum standards	14
4.4.1. Training	15
4.4.2. Account security	16
4.4.3. Customer service	17
4.4.4. Debt management	18
4.4.5. Family violence as a potential cause of payment difficulty	18
4.4.6. External support services	19
4.4.7. Evidence	20
4.5. Ensuring consistency across the Energy Retail Code	20
5. Next steps	23
5.1. We invite feedback from stakeholders	23
5.2. Final decision	23
5.3. Better practice guide	23
Appendix A: Draft code amendment	24
New part 3A – Assistance for customers affected by family violence	24
Appendix B: Our consultation	32
Workshops	32
Issues paper	33
Appendix C: Submissions to our 2018 issues paper	34

## Summary

The Essential Services Commission proposes to amend the Energy Retail Code (the code) to strengthen protections for residential and small business customers affected by family violence.

We propose to make these changes as part of our implementation of recommendation 109 of the Victorian Royal Commission into Family Violence. This recommendation requires us to amend our water and energy codes to ensure support for utility customers facing family violence.

### **What our code changes aim to do**

Our proposed code changes provide customers affected by family violence with an entitlement to safe, supportive and flexible assistance from their energy retailer in managing their personal and financial security. In particular, we propose code changes that require energy retailers to have a family violence policy and meet minimum standards of conduct relating to:

- training
- account security
- customer service
- debt management
- external support services
- evidence.

These minimum standards have been developed following six months of consultation with energy retailers, family violence specialists and the community sector. Importantly, these minimum standards have been informed by victim-survivors, who generously shared their stories and experiences and showed us the critical role energy retailers can play in helping customers stay safe.

This proposed code amendment will form part of our family violence framework and our ongoing commitment to work with the water and energy sectors to support collaboration on better practice approaches to family violence responses.

### **When these code changes take effect**

We propose for the code amendment to take effect from 1 January 2020. We consider this starting date provides a reasonable time for energy retailers to establish compliant systems and processes, including training relevant staff. We encourage energy retailers not to wait to begin implementation but to establish their family violence programs sooner.

# 1. Introduction

## 1.1. Purpose of the paper

This draft decision forms part of our response to the Victorian Royal Commission into Family Violence, and is a component of our broader family violence framework for the energy sector. The draft decision proposes amending the code to improve consumer protections for customers affected by family violence. This draft decision details the form of the proposed amendment to the code, the specific obligations on retailers, and our considerations in proposing these obligations—including our views on how these obligations will improve outcomes for customers. We are seeking feedback from stakeholders before we finalise the code amendment later in 2019.

## 1.2. What the Royal Commission into Family Violence recommended

In March 2016, the Royal Commission into Family Violence released its report after a year inquiring into Victoria's response to preventing and responding to family violence. Its 227 recommendations sought to bring about comprehensive reform across government, industry and community sectors.<sup>1</sup> All of the recommendations were accepted by the Victorian Government.

In its report, the royal commission identified how essential services are used by perpetrators to coerce and cause harm as a form of economic abuse due to the critical function essential services play in daily life. For example, perpetrators were found to:

- put a service in the sole name of the victim without their knowledge or consent
- refuse to contribute to bills leading to high debt in the victim's name or disconnection of the victim's supply
- intercept mail that identifies a victim's location.

In making these findings, the royal commission noted our role as the economic regulator of Victoria's energy and water sectors, and recommended that we amend our energy code and water codes to ensure customers experiencing family violence receive the support they need when they need it. It also recommended we develop industry guidelines to train customer service staff, and require the publication of dispute resolution mechanisms for people affected by family violence.

---

<sup>1</sup> Royal Commission into Family Violence, The Commission (accessed 08 February 2019, <http://www.rcfv.com.au/The-Commission>).

### **Recommendation 109**

The Victorian Government work with the Essential Services Commission [within 12 months] to:

- amend the Energy Retail Code and Customer Service Code – Urban Water Businesses to:
  - list minimum eligibility criteria for access to hardship programs
  - include family violence as an explicit eligibility criterion
- develop industry guidelines for energy and water retailers to require comprehensive and ongoing training of customer service staff to help them identify customers experiencing family violence and financial hardship
- publicise the availability of dispute resolution mechanisms for people affected by family violence.

## **1.3. Our work so far**

Following the Victorian Government's acceptance of all of the royal commission's recommendations in March 2016, we began work to implement recommendation 109 by focusing on making changes to our water customer service codes.<sup>2</sup>

### **Water sector**

In 2017 we made changes to the water customer service codes following a 12-month consultation process with family violence experts, the community sector and water corporations. The changes introduced obligations on water businesses to develop a family violence policy that included minimum requirements defined by the water customer service codes. We also published guiding material with examples of better practice approaches to family violence support. In 2018, we audited water businesses for compliance with the water customer service codes.

### **Energy sector**

In 2018 we shifted focus to the retail energy sector. We first met with stakeholders to consider how the recommendations of the royal commission could apply, and what lessons could be learned from the work being carried out in the water sector. We engaged extensively with interested

---

<sup>2</sup> The customer service codes are: Essential Services Commission, *Customer service code - urban water businesses*, August 2018; and Essential Services Commission, *Rural water customer service code*, August 2018.

parties, focusing on building the capacity of the energy sector to understand and respond effectively to family violence.

In October 2018, we published what we had learned in an issues paper, *Providing family violence support*.<sup>3</sup> The issues paper also set out our proposed approach to establishing a family violence framework for the energy sector. Further information about our consultation program is in Appendix B of this paper and on our website, [www.esc.vic.gov.au/family-violence](http://www.esc.vic.gov.au/family-violence).

---

<sup>3</sup> Essential Services Commission, *Providing family violence support: exploring ways energy retailers can provide family violence assistance that is safe and effective*, October 2018.

## 2. Our approach to amending the code

In proposing changes to the code to develop a family violence framework, we considered the following elements:

- our regulatory framework
- the royal commission's findings and recommendations
- views from experts
- responses to our issues paper.

### 2.1. Our regulatory framework

In Victoria, we administer a number of energy laws including the Electricity Industry Act and Gas Industry Act. These industry acts require us to promote protections for customers, including in relation to helping customers facing payment difficulty.<sup>4</sup>

Our proposed changes to the code seek to promote protections for customers by ensuring customers facing family violence have access to safe, supportive and flexible assistance from their energy retailer in managing their personal and financial security.

The amendments to the code are made under section 25 of the Electricity Industry Act 2000 and section 31 of the Gas Industry Act 2001.

### 2.2. Royal commission's findings and recommendations

The royal commission recommended the Victorian Government work with us to amend our water and energy codes to support customers facing family violence. The royal commission did this because it found that perpetrators used energy retailers to threaten the safety and financial security of their victim.

For example, the royal commission found that because of the actions of perpetrators, victims were often:

- forced to bear the full cost of utilities in order to maintain supply
- pursued by debt collectors over debts for which they receive no benefit

---

<sup>4</sup> Section 10(c) of the *Electricity Industry Act 2000* (Vic) and Section 18(c) of the *Gas Industry Act 2001* (Vic).



- fearful that energy retailers would inadvertently disclose their contact information to perpetrators.<sup>5</sup>

The royal commission also highlighted that:

- customers who faced family violence often could not access hardship programs despite being in payment difficulty<sup>6</sup>
- few companies had family violence provisions in their hardship policies, to ensure customers could access appropriate assistance when required.<sup>7</sup>

Overall, the royal commission's findings demonstrated the important role energy retailers could play in promoting a customer's personal safety and financial security. In particular, it highlighted that through staff training and appropriate assistance measures energy retailers could improve how they support customers as they address family violence.

### **2.3. Views from family violence experts**

Family violence experts and the regulatory community acknowledge the role that energy retailers and we, the regulator, can play to help victims-survivors stay safe and financially secure.

The Economic Abuse Reference Group includes representatives from family violence services, community legal services and financial counsellors.<sup>8</sup> The group is supported by the Victorian Government to guide government and industry responses to the financial impact of family violence.

In a submission on our work, the group noted that regulatory change (such as the development of industry policies and guidelines) has the ability to influence meaningful and long term change by promoting financial security for customers facing family violence.<sup>9</sup>

The views of the group reinforce the role that industry frameworks and regulators can play to address family violence challenges in the energy sector.

---

<sup>5</sup> Royal Commission into Family Violence (RCFV), *Final Report*, Volume IV, 119.

<sup>6</sup> RCFV, Vol IV, 105.

<sup>7</sup> RCFV, Vol IV, 105.

<sup>8</sup> Family violence services represented through the group are Consumer Action Law Centre, Domestic Violence Victoria, Financial and Consumer Rights Council, Good Shepherd Youth and Family Services Australia & New Zealand, Justice Connect, Uniting Kildonan, WestJustice, Women's Information & Referral Exchange (WIRE), Women's Legal Service Victoria (<https://earg.org.au>).

<sup>9</sup> Economic Abuse Reference Group 2018, *Submission*.

Our approach to amending the code

## 2.4. Retailer and community sector response to our issues paper

Our October 2018 issues paper, *Providing family violence support*, outlined:

- high level principles for safe and effective support
- practical actions to guide retailers on how to deliver safe and effective help to customers affected by family violence
- our intention to amend the code as part of our regulatory response.

Feedback on the issues paper from the community sector supported retailers having greater awareness of their role in the lives of customers affected by family violence:

A woman may reveal family violence to her energy retailer and few others. The person on the other end of the phone can show support to help foster self-belief; ensure energy supply is maintained so women can care for themselves and their children; free up time, money and space to concentrate on other aspects of survival; and encourage the victim-survivor in their path to build a life free from violence.<sup>10</sup>

Feedback from energy retailers highlighted the importance of the work, and also considered the role retailers can play, with one retailer noting:

...relatively recent experiences with customers who may have been at risk of family violence have highlighted the need for appropriate policies and processes to exist to protect all involved.<sup>11</sup>

Feedback on the issues paper accepted our involvement in supporting responses to family violence, and recognised the value of our recent work with the energy sector encouraging collaboration, knowledge sharing and continuous improvement in a retailer's family violence programs and support.<sup>12</sup> In most instances, retailers supported the intent of our principles-based approach noting the opportunity for good practice guidance across our regulated sectors.<sup>13</sup>

There was broad support across all submissions for the principles highlighted in the issues paper, with energy retailers saying that many of the actions identified in the paper aligned with work that

---

<sup>10</sup> VCOS 2018, *Submission*.

<sup>11</sup> Momentum Energy 2018, *Submission*.

<sup>12</sup> AGL 2018, *Submission*.

<sup>13</sup> Origin Energy 2018, *Submission*; Red Energy and Lumo Energy 2018, *Submission*.

Our approach to amending the code

was already being carried out, or was being considered as part of an organisation-wide response to family violence.<sup>14</sup>

Most retailers expressed concern about the scope of our role should we require retailers to implement all of the principles and their relevant actions. Some submitted that we should focus our efforts on the recommendations outlined by the royal commission.<sup>15</sup>

In particular, retailers held concerns about actions to support staff affected by family violence. One submission noted that assistance for employees is outside the work that the royal commission recommends we do, and goes beyond the parameters of our regulatory powers.<sup>16</sup> While noting the importance of this work with staff, the submission argued it was best addressed through relevant employment laws or as part of a retailer's 'social licence to operate' and implement policies aligned to community expectations.<sup>17</sup> All submissions are listed in Appendix C and are available on our website, [www.esc.vic.gov.au/family-violence](http://www.esc.vic.gov.au/family-violence).

We respond to these issues in the following two chapters of this paper.

---

<sup>14</sup> Momentum Energy 2018, *Submission*; Red Energy and Lumo Energy 2018, *Submission*; AGL 2018, *Submission*.

<sup>15</sup> Red Energy and Lumo Energy 2018, *Submission*; AGL 2018, *Submission*.

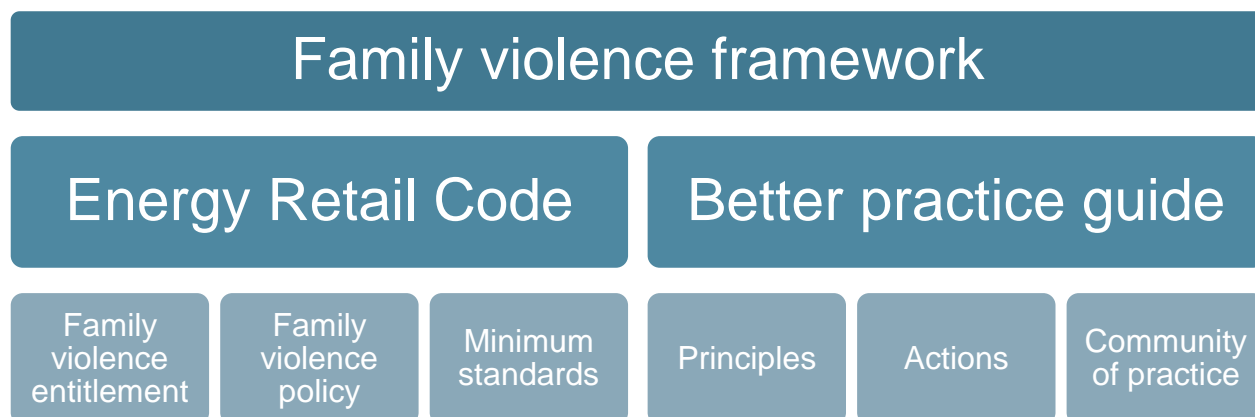
<sup>16</sup> AGL 2018, *Submission*.

<sup>17</sup> AGL 2018, *Submission*.

## 3. Our proposed family violence framework for Victoria’s energy market

We are developing a family violence framework for energy customers in Victoria. The framework will be designed around the code and a better practice guide.

Figure 1: Our family violence framework



### 3.1. The Energy Retail Code

We propose to amend the code to require energy retailers to assist customers who are affected by family violence.

The proposed code change will include a customer entitlement to family violence assistance, it will require energy retailers to have a family violence policy, and to meet minimum standards of conduct.

### 3.2. Better practice guide

We are developing a better practice guide to support information sharing between retailers and continuous improvement beyond the minimum requirements of the code.

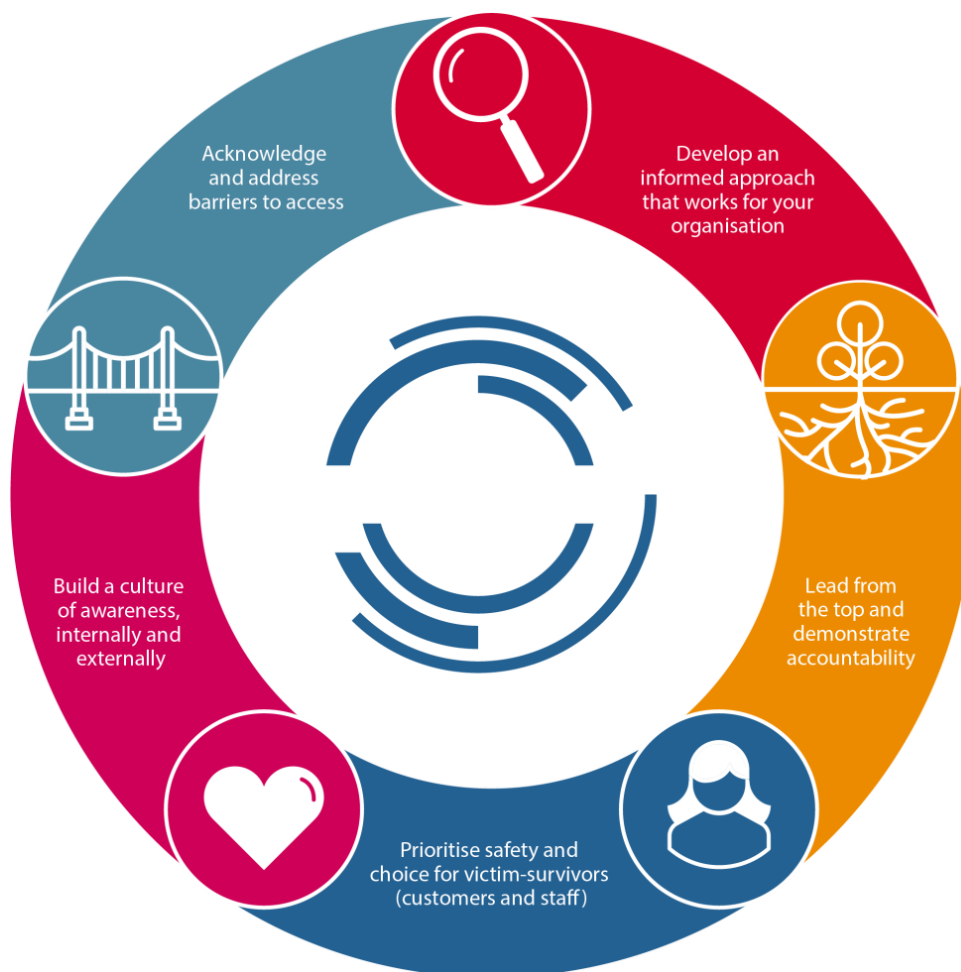
Through collaboration, the guide aims to promote innovation and to improve performance (beyond minimum standards) on family violence initiatives across the energy and water sectors.

Underpinning the guide will be family violence principles and actions refined through our 2018 workshop series and issues paper, *Providing family violence support*. These principles are described in figure 2. The practical actions that sit within each principle are listed in appendix B.

Our proposed family violence framework for Victoria’s energy market

This guide will include case examples developed by a family violence community of practice. The community of practice is comprised of organisations that have participated in our workshop series and contributed to the development of our principles and actions through sharing their experiences and lessons with implementation. The case examples will reflect actions implemented to a high standard or actions successfully adapted to address an emerging family violence challenge. To identify these better practice approaches, we will continue to work closely with our family violence stakeholders, including family violence specialist services.

Figure 2: Our five principles of better practice



This guide forms part of our public education function to promote the long term interests of consumers and raise awareness of changes in the regulation of the energy sector.<sup>18</sup>

---

<sup>18</sup> Subsection 10(f)(ii) of the *Essential Services Commission Act 2001* (Vic).

## 4. Our draft code amendment

### 4.1. Assistance for customers affected by family violence

This draft decision proposes to amend the code to provide for customers who may be affected by family violence. In particular we propose to introduce a new Part 3A to the code— assistance for customers affected by family violence. The purpose of Part 3A will be to promote the protection of customers affected by family violence.

Our proposed purpose aims to align the code with the customer protection objective in the Electricity Industry Act and the Gas Industry Act.

We also propose minor changes through the code in support of this new Part. The proposed amendments, including the new Part 3A is set out in appendix A.

### 4.2. A family violence entitlement

In keeping with our previous approach to modernising the code in Parts 3<sup>19</sup> and Part 2A<sup>20</sup>, this draft decision proposes to create an entitlement for customers affected by family violence.

We propose that customers affected by family violence be entitled to safe, supportive and flexible assistance from an energy retailer in managing their personal and financial security.

This entitlement aims to create the environment in which retailers take a personalised approach when assisting customers affected by family violence, in particular an approach that is safe, supportive and flexible. We consider an approach that is flexible enough to recognise individual circumstances is necessary for customers affected by family violence to maintain their physical safety and ultimately recover from family violence.

---

<sup>19</sup> Essential Services Commission 2017, *Payment difficulty framework: Final decision*, 10 October.

<sup>20</sup> Essential Services Commission 2018, *Helping customers engage confidently in the retail energy market: Draft decision*, 18 December.

### 4.3. A family violence policy

We propose to amend the code to require energy retailers to:

- have a family violence policy
- publish the policy on their website
- update the policy at a minimum every two years.

The purpose of the family violence policy is to set out how an energy retailer will provide assistance to customers facing family violence. The proposed code change will require energy retailers to address within the policy the minimum standards set out by the code (and discussed below). Through the family violence policy, energy retailers will also be able to identify additional family violence assistance that extends beyond the minimum standards.

During our consultations, we heard from family violence services, as well as victim-survivors of family violence, that making family violence assistance visible on a website encouraged victim-survivors of family violence to engage with energy retailers. We consider that making policies accessible, logical to find and readily available on websites supports customers to access their entitlements.

This proposed change is reflected in clauses 106N, 106O and 106P of the code.

### 4.4. Minimum standards

We propose to amend the code to require energy retailers to comply with minimum standards of conduct when assisting customers facing family violence.

These standards relate to:

- training
- account security
- customer service
- debt management
- family violence as a potential cause of payment difficulty
- external support services
- evidence.

Nothing in this code would prevent a retailer from providing assistance in addition to these minimum standards.

Our draft code amendment

#### 4.4.1. Training

We propose to require that energy retailers train any person who:

- engages with customers
- is a manager of a person who engages with customers
- is responsible for how this engagement occurs.

During our consultation we learned that a lack of awareness about family violence within an organisation can lead to customers encountering products, processes and systems that can be weaponised by a perpetrator to cause harm, or used by a perpetrator as an excuse for further abuse.<sup>21</sup> Training all employees, agents and contractors who have responsibility for customer contact, or the system through which contact occurs, will help customers maintain their personal and financial security and to access their energy retailer's family violence assistance.

We propose to require training be about:

- the nature of consequences of family violence
- how to apply the retailer's family violence policy
- how to identify the signs of family violence and how to engage effectively with a customer affected by family violence.

Through our consultation, we learned that low awareness and poor responses by employees can deter customers who experience family violence from disclosing or accessing support.<sup>22</sup> Victim-survivors who participated in our consultation reported instances where employees either did not understand or did not allow for the complexity of their circumstances. Alternatively, employees did not have the tools they needed to help them identify workable options to manage financial or environmental constraints. We heard that to respond appropriately to family violence, it is necessary for employees to first understand the nature of family violence, and the consequences family violence may have for their customers. We heard that productive interactions required employees to understand their policy and be able to identify and engage effectively with

---

<sup>21</sup> Economic Abuse Reference Group 2018, *Submission*.

<sup>22</sup> Consumer Action Law Centre, *Heat or Eat: Households should not be forced to decide whether they heat or eat*, August 2015, 16, 28-29.



customers; including where family violence may not have been disclosed by where there are signs (including in their previous interactions with the retailer) that it is occurring.<sup>23</sup>

This proposed change is reflected in clause 106F of the code.

### **We won't be proposing family violence support programs for employees**

Our draft changes to the code do **not** require energy retailers to offer family violence programs for other employees. We have listened to the concerns from energy retailers who suggested organisation-wide support programs for employees may go beyond the scope of this work program.<sup>24</sup> We accept this feedback to the extent that the code aims to regulate the relationship between the retailer and the customer. The support and training measures we propose in this code amendment are confined to obligations that aim to directly help customers.

Nevertheless, through our consultation we have heard repeatedly that organisation-wide family violence support for employees complements support that is provided to customers.

Organisation-wide support for employees forms part of our principles and actions of better practice and will be addressed as part of our broader family violence framework, specifically through our better practice guide.

#### **4.4.2. Account security**

We propose to require energy retailers to keep secure the contact information and personal details of customers affected by family violence, including from joint account holders.

Our proposal aims to focus energy retailers' attention on the specific interactions that can promote customer safety. This includes requiring energy retailers to take measures to guard the contact information it holds about a customer, which if disclosed to a joint or past account holder could lead to a reoccurrence of family violence.

Importantly, we heard that without additional safeguards on the part of an energy retailer, a perpetrator may use information they know about a customer, such as date of birth or a maiden name to obtain contact information about that customer, allowing them to continue to pursue them. Our proposal would address this by requiring that energy retailers take measures necessary to avoid disclosing the personal and financial circumstances of the customers affected by family violence, including to joint account holders.

---

<sup>23</sup> VCOSS 2018, *Submission*.

<sup>24</sup> AGL 2018, *Submission*.

Our proposed code amendment also requires energy retailers to reach agreement with the customer on a safe method of communication by:

- eliciting the customers' preferred method of communication
- offering alternative options of communication if the customer's preferred method is not practicable
- complying with this agreed method, including when giving effect to other parts of the code
- keeping a record of these arrangements to improve transparency and accountability around the agreements they reach with customers.

These proposed amendments aim to support victim-survivors of family violence to manage their personal safety by providing control and agency over their communications with energy retailers.

We consider that customers are best placed to manage the risk to their personal safety. At the same time, we note that retailers are best placed to understand energy retail systems and processes. Through this amendment, energy retailers must work productively with customers, providing tools and information where needed to support customers to safely navigate these processes and to remain safe in their interactions with retailers.

This proposed change is reflected in clause 106G of the code.

#### **4.4.3. Customer service**

We propose requiring energy retailers to establish processes that provide for safe and secure engagement between customers and retailers.

A customer should be able to access their energy retailer's support and assistance options without having to disclose their family violence experience every time they make contact. We are proposing energy retailers must have a secure process that:

- allows retailers to identify the accounts of a customer who is affected by family violence
- provides for effective engagement with that customer
- avoids the customer having to repeatedly disclose their experience of family violence.

Our consultation told us that requiring a customer to repeatedly disclose their experience of family violence can be traumatising. By providing a means of identifying a customer who has previously disclosed family violence, a retailer will avoid customers having to retell their story. Such identification of sensitive accounts will also prompt employees to draw on their family violence training in order to engage effectively with the customer and their specific circumstances.

Our draft code amendment

Identifying an account where there may be a history of family violence equips employees to engage effectively with all customers on the account, recognising that both victims and perpetrators of abuse are entitled to fair service from their energy retailer. Importantly, employees are better placed to assess whether a routine request or transaction may lead to an unsafe outcome for the customer who has disclosed family violence.

This proposed change is reflected in clause 106H of the code.

#### **4.4.4. Debt management**

We propose that, before pursuing customer debt, energy retailers consider the circumstances of a customer experiencing family violence. This includes situations where there is joint or several liability for the account.

Debt can be weaponised by perpetrators to coerce and control their victims as a form of economic abuse. Through our consultation, we heard that perpetrators establish accounts in the victim's name and do not contribute to bills, fail to contribute to joint accounts, or hold accounts in their own name and avoid paying bills as a threat to service disconnection.<sup>25</sup> In such instances, customers affected by family violence are often left financially responsible for services from which they received little or no benefit and bear a disproportionate responsibility for debts stemming from the relationship. In this way, a perpetrator can use high debt and poor credit history as means to restrict a victim of family violence from establishing themselves independently, away from family violence.

Our proposed amendment covers instances where the customer holds a joint account. Under our draft decision, an energy retailer may consider collecting only half the energy debt from the customer affected by family violence where there is an additional account holder or other beneficiary of the service.

This proposed change is reflected in clause 106I of the code.

#### **4.4.5. Family violence as a potential cause of payment difficulty**

We propose to require energy retailers to recognise family violence as a potential cause of payment difficulty.

---

<sup>25</sup> VCOSS 2018, *Submission*.

This proposal reflects the specific recommendation of the royal commission that we amend the code to make family violence an explicit criterion of access to a financial hardship program. The royal commission reported that victims of family violence were often not able to access hardship assistance despite being in payment difficulty as a result of economic abuse.

A recent study found up to 99 per cent of women who present to family violence services experience economic abuse.<sup>26</sup> Our proposed amendment means that customers affected by family violence won't need to prove payment difficulty in order to access payment difficulty assistance.

This proposed change is reflected in clause 106J of the code.

#### 4.4.6. External support services

We propose to require energy retailers to help customer's access specialist family violence assistance.

We propose that energy retailers must provide a customer with information about the availability of external family violence support services at a time and in a manner that is safe, respectful and appropriate, given the customer's circumstances.

We are **not** proposing that retailers inform a customer about assistance every time the customer makes contact. The proposed code amendment requires energy retailers to assess whether it is safe, respectful and appropriate before doing so. In assessing this, employees will need to draw on their family violence training, engage effectively with customers, and take into account all the circumstances of the customer.

We also propose to require energy retailers to maintain and publish a list of external family violence support services on its website. Through our consultation process, we learned that the retailer's website is an important means of accessing information where customers deem it unsafe to disclose or engage with their energy retailer about family violence.<sup>27</sup>

This proposed change is reflected in clauses 106K and 106O of the code.

---

<sup>26</sup> Kutin, J., Russell, R., Reid, M., 2017, *Economic abuse between intimate partners in Australia: prevalence, health status, disability and financial stress*, Chapter 41.

<sup>27</sup> VCOSS 2018, *Submission*.

#### 4.4.7. Evidence

We propose that customers need **not** provide documentary evidence to access family violence assistance in relation to account security, customer services, payment difficulty and referrals.

During our consultation process, we heard that requests for documentary evidence prevent victim-survivors from accessing assistance when they are most vulnerable. Furthermore we note advice from family violence specialist services that obtaining evidence, such as an intervention order, is not a simple request and the process of obtaining an order can place victim-survivors at greater risk of violence.<sup>28</sup> In developing this proposal, we also considered feedback from water businesses already providing family violence assistance, which don't require documentary evidence and are yet to encounter false claims in this area.

**We propose to allow energy retailers to seek documentary evidence when considering debt management and recovery, or de-energisation of supply.**

We consider that there may be some circumstances where energy retailers may need documentary evidence to inform their decision making. We consider these circumstances are most likely confined to issues relating to debt recovery and de-energisation. In making a request for documentary evidence, we would expect energy retailers to take into account the customer's ability to access various forms of documentary evidence and to make any request in such a way that is safe, supportive and flexible, namely in a way that aligns with the objective of the division.

This proposed change is reflected in clause 106L of the code.

### 4.5. Ensuring consistency across the Energy Retail Code

We propose various changes through the code to support customers affected by family violence. Our aim in doing so is to ensure energy retailers take into account a customer's personal and financial security in all their dealings with customers who may be affected by family violence.

#### 4.5.1. Customer retailer contracts and market integrity

We propose to require energy retailers to safeguard the confidentiality of customers who may be experiencing family violence when engaging on retail contracts and market integrity.

---

<sup>28</sup> WEstjustice, 2018, *Restoring Financial Safety: collaborating on responses to economic abuse: Project report describing WEstjustice's work and reflections on economic abuse*, July 2018, 11.

In particular, we require energy retailers to keep secure the contact information and personal details of customers affected by family violence when carrying out activities relating to Part 2 of the code (customer retailer contracts) and Part 2A of the code (relating to marketing integrity).

We propose to provide for this through inserting notes in Part 2 and Part 2A of the code.

#### **4.5.2. Requirements for security deposit**

In deciding whether to require a customer affected by family violence to provide a security deposit, we propose to require energy retailers to take into account that customer's experience of family violence.

In proposing this amendment we seek to recognise the consequences of economic abuse and to support a victim of family violence to re-establish themselves independently away from family violence.

This proposed change is reflected in subclause 40 (7A) of the code.

#### **4.5.3. Retailer obligations under the payment difficulty framework**

In providing assistance for residential customers anticipating or facing payment difficulties, and who may also be affected by family violence, we propose to require energy retailers to take into account that customer's experience of family violence.

In proposing this amendment we seek to ensure that energy retailers give consideration to all the circumstances of the customer, including where family violence has not been disclosed but where previous interactions with the energy retailer suggest it is occurring and subsequently, assistance has been provided under part 3A of the code.

This proposed change is reflected in subclause 89(4)(aa) of the code.

#### **4.5.4. Disconnection of small business customers for not paying a bill**

Prior to de-energising the supply of a non-residential customer who may be affected by family violence, we propose to require energy retailers to take into account that customer's experience of family violence.

In proposing this amendment we seek to ensure that where family violence is occurring in the context of a small business, customers receive family violence assistance available under Part 3A prior to an energy retailer taking action to de-energise supply for non-payment.

This proposed change is reflected in subclause 111(1)(g) of the code.

Our draft code amendment

#### 4.5.5. Disconnection of residential customers for not paying a bill

Prior to de-energising the supply of a residential customer who may be affected by family violence, we propose to require energy retailers to take into account that customer's experience of family violence.

In proposing this amendment we seek to ensure that residential customers receive family violence assistance available under Part 3A prior to an energy retailer taking action de-energise supply for non-payment.

This proposed change is reflected in subclause 111A(1)(a)(vi) of the code.

## 5. Next steps

### 5.1. We invite feedback from stakeholders

Stakeholders are invited to provide feedback on this draft decision as outlined in the paper. Consultation opens on 19 March 2019 and closes on 16 April 2019.

A forum will be held on 28 March 2019 where participants are invited to discuss the draft decision and prepare what feedback they will provide in written submissions.

We prefer to receive submissions via email at [energy.submissions@esc.vic.gov.au](mailto:energy.submissions@esc.vic.gov.au).

Alternatively, send feedback by mail to:

Family violence resources review  
Essential Services Commission  
Level 37, 2 Lonsdale Street  
Melbourne VIC 3000

We usually make all comments and submissions publicly available in the interests of transparency. If you wish part or all of your submission to be private, please let us know.

### 5.2. Final decision

Following the consultation period, we will release our final decision on the code amendment in May 2019, with a proposed start date of 1 January 2020.

We have already consulted extensively with energy retailers on family violence initiatives during 2018 and consider this implementation period provides a reasonable time for energy retailers to establish compliant systems and processes, including training relevant staff. We encourage energy retailers not to wait until 1 January 2020 to put their family violence programs in place.

### 5.3. Better practice guide

In mid-2019 we will publish examples of better practice approaches to implementing family violence assistance. These examples will be drawn from across our regulated sectors, and other service providers who are already taking action on family violence. Many examples of better practice will extend beyond the minimum requirements of the code to encompass the principles and actions identified in our 2018 issues paper.

We will update these examples periodically to highlight emerging practice and innovation so as to promote collaboration on improved performance across all our regulated sectors.

Next steps



# Appendix A: Draft code amendment

## New part 3A – Assistance for customers affected by family violence

### AMENDMENTS TO THE ENERGY RETAIL CODE: FAMILY VIOLENCE SUPPORT AND ASSISTANCE

[Insert Date]

Amendments made by the Essential Services Commission on [insert date]

#### 1 Nature and commencement of this instrument

- (1) This instrument amends the *Energy Retail Code*.
- (2) This instrument comes into operation on 1 January 2020.

#### 2 Table of amendments

- (1) Insert the following definition in clause 3 after *additional retail charge*:  
  
*affected customer* means any *customer*, including a former *customer*, who is or was a *small customer* and who may be affected by *family violence*;
- (2) Insert the following definition in clause 3 after *exempt person arrangement*:  
  
*family violence* has the meaning given in section 5 of the *Family Violence Protection Act 2008* (Vic);
- (3) In Part 2 after the heading “Part 2 – Customer retail contracts” insert the following note:

**Note:**

The obligations in Part 2 relating to any communications with a *customer* are subject to the obligation on *retailers* in clause 106G which relates to the secure handling of information in respect of an *affected customer*.

(4) In clause 40 after subclause (7) insert new subclause (7A):

(7A) In considering whether to require a *customer* who is an *affected customer* to pay a *security deposit* the *retailer* must take into account the particular circumstances of that *customer*.

(5) In subclause 40(10) after “clause” insert “, other than subclause (7A),”.

(6) In Part 2A after the heading “Part 2A – Market Integrity” insert the following note:

**Note:**

The obligations in Part 2A relating to any communications with a *customer* are subject to the obligation on *retailers* in clause 106G which relates to the secure handling of information in respect of an *affected customer*.

(7) In subclause 89(1) before paragraph (a) insert new paragraph (aa):

(aa) in any dealing with an *affected customer* who is receiving, or is entitled to receive, assistance pursuant to Part 3A (Assistance for customers affected by family violence), take into account the particular circumstances of that *affected customer*; and

(8) In paragraph 89(1)(b) after “Part” insert “, having regard to the *retailer’s* obligations under clause 106G”.

(9) In subclause 89(1)(f) delete “, including customers who may be affected by *family violence*” and insert “.”

(10) In subclause 89(2) after “clause” insert “, other than subclause (1)(aa),”.

(11) In subparagraph 111(1)(f) delete “.” and insert “; and”.

(12) In subclause 111(1) after paragraph (f) insert new paragraph (g):

- (g) where the *customer* is an *affected customer*, the *retailer* has taken into account the particular circumstances of that *customer*.
- (13) In subclause 111(6) after “clause” insert “, other than subclause (1)(g),”.
- (14) In subclause 111A(1) after subparagraph 111A(1)(a)(v) insert new subparagraph (vi):
  - (vi) has, where the *customer* is an *affected customer*, taken into account the particular circumstances of that *customer*; and
- (15) In subclause 111A(2) after “clause” insert “, other than subparagraph (1)(a)(vi),”.
- (16) Insert new Part 3A after clause 106.

## **Part 3A Assistance for customers affected by family violence**

### **Division 1 Operation of this Part**

#### **106A Requirement**

A *retailer* is required to perform its obligations under this Part in a way that promotes the purpose of this Part.

#### **106B Purpose**

The purpose of this Part is to promote protections for *affected customers*.

#### **106 C Interpretation of this Part**

The approach that the *Commission* will take to the interpretation of this Part is as follows:

- (1) clear words will be given their natural and ordinary meaning; and
- (2) where this Part appears to be capable of having more than one meaning, the *Commission* will have regard to the following, in the following order, in seeking to discover the intended meaning of the Part:
  - (a) first, the objective of the relevant Division(s);

- (b) secondly, the purpose of this Part;
- (c) thirdly, any guidelines published by the *Commission* under section 13 of the *Essential Service Commission Act 2001* (Vic);
- (d) fourthly, any relevant guidance notes published by the *Commission* under its Energy Compliance and Enforcement Policy; and
- (e) fifthly, any written information issued by the *Commission* regarding an *affected customer's* entitlement to supporting measures under this Part.

## **Division 2 Providing family violence assistance—minimum standards**

### **106D Requirement**

A *retailer* is required to perform its obligations under this Division in a way that promotes the objective of this Division.

### **106E Objective**

The objective of this Division is to give *affected customers* an entitlement to safe, supportive and flexible assistance from a *retailer* when managing their personal and financial security.

### **106F Training**

- (1) A *retailer* must ensure that training is provided to any person (including employees, agents and contractors) acting on its behalf who:
  - (a) may engage with *affected customers* by any means of communication; or
  - (b) is a manager of a person identified in paragraph (a); or
  - (c) is responsible for systems and processes that guide interactions with *customers*.
- (2) For the purposes of subclause (1), a *retailer* must ensure that the training provided addresses:
  - (a) the nature and consequences of *family violence*; and
  - (b) the application of the *retailer's family violence* policy; and

- (c) how to identify *affected customers*; and
- (d) how to engage appropriately and effectively with *affected customers*.

## **106G Account Security**

- (1) Notwithstanding any other requirement in this Code, a *retailer* must not disclose or provide access to confidential information about an *affected customer* to any other person without the consent of the *affected customer*.
- (2) In this clause, the term “confidential information” refers to any information that may be used to identify an *affected customer*, including their whereabouts, contact details, or financial or personal circumstances.
- (3) In this clause, the term “any other person” includes a person who is or has been a joint account holder with an *affected customer*.
- (4) To identify a safe method of communication with an *affected customer*, a *retailer* must:
  - (a) take reasonable steps to elicit the *affected customer’s* preferred method of communication; and
  - (b) offer alternative methods of communication if the *affected customer’s* preferred method of communication identified in paragraph (a) is not practicable.
- (5) A *retailer* must comply with arrangements reached pursuant to subclause (4) notwithstanding any requirement in this Code to provide an *affected customer* with a written communication or to otherwise make contact with the *customer*.
- (6) A *retailer* must keep a record of arrangements reached pursuant to subclause (4).

## **106H Customer service**

- (1) A *retailer* must provide for a secure process designed to:
  - (a) provide for identification of *affected customers*; and
  - (b) provide for effective ongoing engagement with *affected customers*; and

- (c) avoid *affected customers* having to repeatedly disclose or refer to their experience of *family violence*.

## **106I Debt management**

- (1) Before taking action to recover arrears from an *affected customer*, a *retailer* must take into account:
  - (a) the potential impact of debt recovery action at that time on the *affected customer*;  
and
  - (b) whether other persons are jointly or severally responsible for the *energy* usage that resulted in the accumulation of those arrears.
- (2) Nothing in this Part prevents a *retailer* from waiving, suspending or repurchasing the debt of an *affected customer*.

## **106J Family violence as a potential cause of payment difficulty**

A *retailer* must recognise *family violence* as a potential cause of payment difficulty.

## **106K External support services**

A *retailer* must provide an *affected customer* with information about the availability of external *family violence* support services at a time and in a manner that is safe, respectful and appropriate given the *affected customer's* circumstances.

## **106L Evidence**

- (1) A *retailer* must not require an *affected customer* to provide documentary evidence of *family violence* when applying clauses 106G, 106H, 106J, and 106K.
- (2) A *retailer* may seek appropriate documentary evidence of *family violence* when considering debt management and recovery under clause 106I, or restrictions on *de-energisation* in Part 6.

## **106M Assistance beyond the minimum standards**

Nothing in this part prevents a *retailer* from providing assistance to *affected customers* in addition to the minimum standards set out in this Part.

## **Division 3 Family violence policies and support services**

### **106N Family violence policy**

A retailer must develop a *family violence* policy that addresses this Part.

### **106O Provision of information to customers**

- (1) A *retailer* must ensure that its *family violence* policy is easily accessible on its website in a readily printable form.
- (2) A *retailer* must publish on its website and keep up to date a list of external *family violence* support services.

### **106P Family violence policy to be reviewed**

A *retailer* must review its *family violence* policy no less than once every two years.

## **Division 4 Compliance and reporting**

### **106Q Compliance**

- (1) A *retailer* must maintain records that are sufficient to evidence its compliance with this Part.
- (2) The *retailer* must ensure that the records required to be maintained pursuant to subclause (1) are retained:
  - (a) for at least 2 years; or
  - (b) for as long as the *customer* continues to receive assistance under this Part; or

- (c) where a *customer* has, within the periods referred to in paragraph (a) or (b) above, made a complaint or referred a dispute to the *energy ombudsman* in relation to the provision of *family violence* assistance by the *retailer*—for the period the complaint or dispute remains unresolved, whichever is the longer period.



## Appendix B: Our consultation

In July 2018 we embarked on an extensive engagement program to better understand what kind of regulatory arrangements would best support energy retailers to support customers affected by family violence. We consulted with family violence experts, the energy sector and water businesses that had already started this work. We held a series of workshops to raise awareness of how family violence manifests and to share insights across sectors.

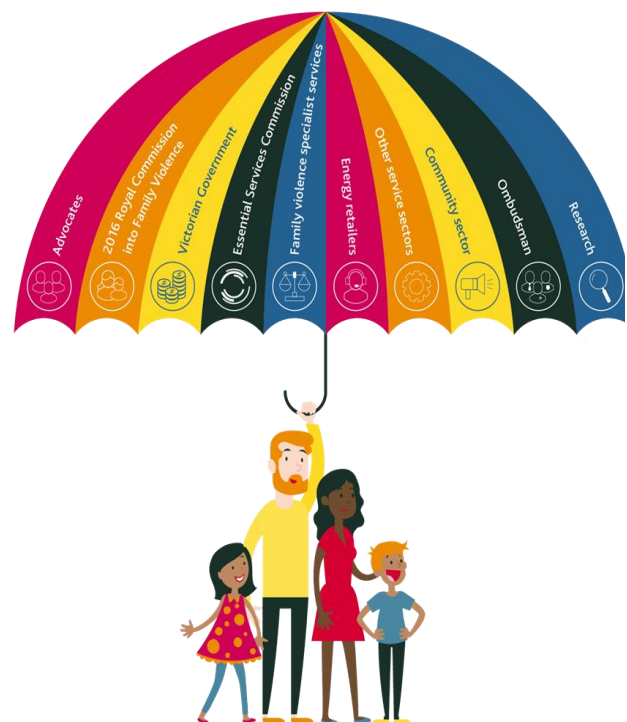
### Workshops

We held four family violence workshops between August 2018 and December 2018. The workshop series spanned 20 hours, featured 27 presenters from a range of sectors, and brought together 140 unique participants from 20 energy retailers.

In designing the workshops we recognised that retailers would be at different stages of their journey in developing responses to family violence, and would have considerations based on the size and context of their business. So in each session we included an education component on how and why family violence occurs, why it's relevant for essential services and what to consider in developing safe and effective responses. We also held sessions on developing training and policies and considering responses to perpetrators of family violence.

We invited survivor advocates to attend our final workshop, to share insights from their own experiences on working with utility companies. Further details about the workshops and materials covered can be found on our website.

[www.esc.vic.gov.au/family-violence](http://www.esc.vic.gov.au/family-violence)



## Issues paper

In October 2018, we published what we had learned in an issues paper, *Providing family violence support*.<sup>29</sup> The paper described five high-level principles, as well as practical actions to guide retailers on how to deliver safe and effective assistance for customers affected by family violence.

We intend to refine these principles and actions in response to feedback we received in stakeholder submissions on the issues paper. Changes to the principles and actions proposed by stakeholders are in bold in the table 1.

Table 1: Our principles and actions for better practice responses to family violence

Principles	Actions
Develop an informed approach that works for the organisation	<ul style="list-style-type: none"> <li>• Seek expert advice to inform the approach</li> <li>• Apply an approach that is tailored to the organisation's need</li> <li>• Learn from others and share experiences</li> </ul>
Lead from the top and demonstrate accountability	<ul style="list-style-type: none"> <li>• Develop a family violence strategy for the whole organisation</li> <li>• Consider appropriate responses to perpetrators</li> <li>• Show commitment by embedding cultural and systems changes</li> <li>• Take responsibility and show accountability with ongoing monitoring and evaluation</li> </ul>
Prioritise safety and choice for victims/survivors	<ul style="list-style-type: none"> <li>• Show empathy to victims-survivors</li> <li>• <b>Do not require proof as an eligibility criteria for family violence assistance</b></li> <li>• Support victims-survivors' agency by sharing the burden and showing the way</li> <li>• Reduce trauma by minimising repeat disclosure</li> <li>• Keep victims-survivors safe by protecting private and confidential information</li> <li>• Respond to the financial impacts of family violence</li> </ul>
Build a culture of awareness, internally and externally	<ul style="list-style-type: none"> <li>• Educate, train and support employees to understand and to show empathy</li> <li>• Tailor training for customer-focused and senior roles</li> <li>• Support staff to understand their role <b>and limitations</b></li> </ul>
Acknowledge and address barriers to access	<ul style="list-style-type: none"> <li>• Understand the gendered nature of family violence</li> <li>• Provide support that is inclusive for all Victorians</li> <li>• Provide referrals to expert support services</li> </ul>

<sup>29</sup> Essential Services Commission, op. cit.

## Appendix C: Submissions to our 2018 issues paper

Organisation	Date received
Economic Abuse Reference Group	5 December 2018
- Addendum	- 10 December 2018
Powershop	6 December 2018
AGL	7 December 2018
Momentum Energy	10 December 2018
Victorian Council of Social Services	11 December 2018
Red Energy and Lumo Energy	11 December 2018
Origin Energy	11 December 2018