



Energy Retail Code Changes to Support Family Violence Provisions for Retailers

Final Decision

22 May 2019

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Summary

On 1 January 2020, we will update the Energy Retail Code (the code) to strengthen protections for residential and small business customers of energy retailers affected by family violence.

These protections form part of our implementation of recommendation 109 of the Victorian Royal Commission into Family Violence. This recommendation involves us amending our water and energy codes to ensure support for utility customers who may be facing family violence.

What our family violence code changes aim to do

From January 2020, the code will 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, the code will 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
- evidence.

These minimum standards have been developed following consultation with energy retailers, family violence specialists, the community sector and importantly, victim-survivors, who generously shared their stories and experiences.

We received 11 submissions from the community sector and energy retailers in response to our draft code changes, and have taken feedback into account in finalising family violence amendments to the code.

The family violence provisions that will come into effect under the code 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.

1. Introduction

1.1. Purpose of the paper

This final 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.

This decision sets out the changes to the code that are designed to improve protections for customers affected by family violence. It details the specific obligations on retailers, our considerations in proposing these obligations, and how we addressed feedback stakeholders submitted in response to the draft decision.

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-long inquiry into Victoria's family violence protection and response measures. Its 227 recommendations sought to bring about comprehensive reform across government, industry and community sectors.¹ All of the recommendations were accepted by the Victorian Government.

In its report, the royal commission identified how essential services are used by perpetrators of family violence 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 the victim's knowledge or consent
- refuse to contribute to bills leading to high debt in the victim's name or disconnection of the victim's supply, or
- intercept mail from a service provider that identifies a victim's location.

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

¹ 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 customer service codes for water businesses.²

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 created obligations under which water businesses were required to develop a family violence policy, meeting a minimum standard set out in the changes. We also published guiding material with examples of better practice approaches to family violence support. In 2018, we audited water businesses and found strong 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

² 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 a discussion paper: *Providing family violence support*.³ This paper set out our proposed approach to establishing a family violence framework for the energy sector.

In March 2019, we published a draft decision where we detailed our proposed amendments to the code. We held a forum on 28 March 2019 where 70 attendees from across the energy and community sectors together explored the draft proposals in detail. We received 11 written submissions including from energy retailers. We have taken into account all the views raised during this consultation and addressed some specific areas in the following chapters of this final decision.

Further information about the discussion paper and the draft paper is on our website, www.esc.vic.gov.au/family-violence.

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

Introduction

2. Our approach to amending the code

In our draft decision we proposed changes to the code to develop a family violence framework. In doing so we considered:

- our regulatory framework
- the royal commission's findings and recommendations
- views from experts
- responses to our October 2018 discussion paper.

2.1. Our regulatory framework

In Victoria, we administer a number of energy laws including the *Electricity Industry Act 2000* (Vic) and *Gas Industry Act 2001* (Vic). These industry acts require us to promote protections for customers, including in relation to helping customers facing payment difficulty.⁴

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* and section 31 of the *Gas Industry Act*.

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:

- customers experiencing family violence often could not access hardship programs despite being in payment difficulty;⁵ and
- few companies had family violence provisions in their hardship policies to ensure customers could access appropriate assistance when required.⁶

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

⁵ RCFV, Vol IV, 105.

⁶ RCFV, Vol IV, 105.

Our approach to amending the code

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.⁷ 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 impact by promoting financial security for customers experiencing family violence.⁸

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

2.4. Retailer and community sector response to our discussion paper

Our October 2018 discussion 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.

The feedback we received on the discussion paper accepted our involvement in supporting responses to family violence. Feedback also 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.⁹

⁷ 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>).

⁸ Economic Abuse Reference Group 2018, *Submission*.

⁹ AGL 2018, *Submission*.

Our approach to amending the code

In most cases, retailers supported the intent of our principles-based approach noting the opportunity for good practice guidance across our regulated sectors.¹⁰

Most retailers expressed concern about the scope of our role should we require retailers to implement all of the high level principles outlined in the discussion paper, and their relevant actions. Some submitted that we should focus our efforts on the recommendations outlined by the royal commission.¹¹

In particular, retailers had 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.¹² 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.¹³ All submissions to the discussion paper are available on our website, www.esc.vic.gov.au/family-violence.

We used the feedback from these submissions to develop the proposals in our draft decision, *Energy Retail Code Changes to Support Family Violence Provisions for Retailers: Draft Decision*.¹⁴

¹⁰ Origin Energy 2018, *Submission*; Red Energy and Lumo Energy 2018, *Submission*.

¹¹ Red Energy and Lumo Energy 2018, *Submission*; AGL 2018, *Submission*.

¹² AGL 2018, *Submission*.

¹³ AGL 2018, *Submission*.

¹⁴ Essential Services Commission 2019, *Energy Retail Code Changes to Support Family Violence Provisions for Retailers: Draft Decision*, 19 March

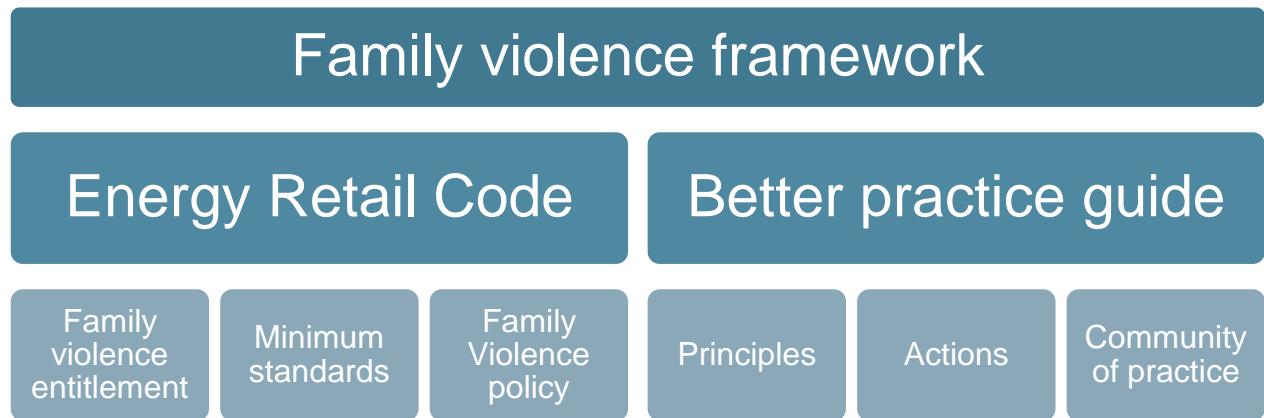
Our approach to amending the code

3. Our family violence framework for Victoria's energy market

Our draft decision

Our draft decision proposed a family violence framework for energy customers in Victoria. The framework involves code changes and a better practice guide. This chapter outlines the draft proposal for this framework, feedback from submissions, and our final decision.

Figure 1: Our family violence framework



3.1. The Energy Retail Code

We proposed to amend the code to provide for customers who may be affected by family violence. In particular, we proposed to introduce a new Part 3A (the Part) into the code - *assistance for customers affected by family violence*.

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

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

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.

Our family violence framework for Victoria's energy market

The guide aims to promote innovation and to improve performance (beyond minimum standards) through collaboration 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 discussion 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.

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. The case examples provided by the community of practice 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



Our family violence framework for Victoria’s energy market

Essential Services Commission Energy Retail Code Changes to Support Family Violence Provisions for Retailers

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.¹⁵

Submissions on our framework

Submissions from both the community sector and energy retailers were supportive of our proposed family violence framework, with some highlighting our proposal to maintain a better practice guide in addition to the changes we proposed to the energy retail code.¹⁶

Most retailers supported introducing new minimum standards in the code. Alinta Energy's submission strongly endorsed our approach, noting it was an appropriate means of promoting consistent standards across the energy industry.¹⁷ EnergyAustralia submitted the commission's approach 'achieved the right balance to deliver a minimum standard across all retailers, uplifting current practices to provide a consistent level of support for customers facing family violence'.¹⁸

Retailers also responded favourably to the specific minimum standards we included. Simply Energy submitted that the proposals were well balanced and adequately addressed the recommendations handed down by the Victorian Royal Commission into Family Violence.¹⁹ Powershop submitted that when read at a high level, the minimum standards would be effective in achieving the purpose of the code changes.²⁰ Momentum Energy noted that the minimum standards were non prescriptive, allowing for a level of flexibility but sought further clarification on some areas.²¹

Submissions noted the important role the better practice guide would play in supporting retailers' implementation of family violence policies, and in providing an overarching framework for future learning and improvement.²² AGL's submission supported the commission developing a better practice guide 'as a vehicle for providing training to customer service staff and to help keep

¹⁵ Subsection 10(f)(ii) of the *Essential Services Commission Act 2001* (Vic).

¹⁶ Energy and Water Ombudsman (Victoria) (EWOV) 2019, *Submission*, AGL 2019, *Submission*, Alinta Energy 2019, *Submission*, EnergyAustralia 2019, *Submission*, Momentum Energy 2019, *Submission*, Powershop 2019, *Submission*.

¹⁷ Alinta Energy 2019, *Submission*.

¹⁸ EnergyAustralia 2019, *Submission*.

¹⁹ Simply Energy 2019 *Submission*.

²⁰ Powershop 2019 *Submission*.

²¹ Momentum Energy 2019 *Submission*.

²² EWOV 2019, *Submission*, AGL 2019, *Submission*, Alinta Energy 2019, *Submission*, EnergyAustralia 2019, *Submission*, Momentum Energy 2019, *Submission*, Powershop 2019, *Submission*.

affected customers safe'.²³ Momentum Energy's submission noted that the guide would be a vital tool for navigating changes to the code, and to assist in capturing lessons from a businesses' family violence policy implementation journey.²⁴ Some submissions suggested topics where further detail would be valuable in the better practice guide.²⁵

Our final decision

Overall, submissions on our framework were consistent with the aspects we considered in developing our draft decision. For this reason, we have adopted the family violence framework proposed in the draft decision in our final decision. This includes amending the energy retail code to include a purpose and entitlement to family violence assistance, a family violence policy, and minimum standards.

Our response to feedback on the entitlement, the requirement for a policy, and specific minimum standards is discussed in chapter four.

²³ AGL 2019, *Submission*.

²⁴ Momentum Energy 2019, *Submission*.

²⁵ AGL 2019, *Submission*, Alinta Energy 2019, *Submission*, EnergyAustralia 2019, *Submission*, Momentum Energy 2019, *Submission*.

4. Our final code amendment on assistance for customers affected by family violence

4.1. Our family violence definition

Our draft decision

Our draft decision proposed a definition of *affected customer* as: any customer, including a former customer, who is or was a small customer and who may be affected by family violence.

In defining affected customers this way, our draft decision sought to extend family violence support to past customers and some non-residential customers.²⁶ In doing so, the draft decision aimed to make explicit that a person's eligibility for family violence assistance is their experience with family violence, rather than the category of the account.

By including customers who **may** be affected by family violence into the definition, the draft decision aimed to be inclusive and provide for assistance. This applied even where family violence has not been disclosed but where the retailer suspects it is occurring based on their interactions with the customer.

Submissions

Submissions from retailers generally supported the intent of the definition. EnergyAustralia noted the long-term impacts of financial abuse for former customers and Alinta Energy recognised that small business customers could also be affected by family violence.²⁷

Momentum Energy and EnergyAustralia both asked for the better practice guide to include further clarification on the types of assistance to former customers.²⁸ They suggested that this clarity would better support training and system upgrades.

Red Energy and Lumo Energy requested that we give further consideration to our draft decision to extend family violence assistance to small business customers.²⁹ They noted small businesses often have complex ownership structures and communication arrangements, meaning that

²⁶ Essential Services Commission 2019, op. cit.,.

²⁷ EnergyAustralia 2019, *Submission*, Alinta Energy 2019, *Submission*.

²⁸ Momentum Energy 2019, *Submission*, EnergyAustralia 2019, *Submission*.

²⁹ Red Energy and Lumo Energy 2019, *Submission*.

implementation of family violence provisions may have adverse outcomes for some small business customers. Alinta Energy suggested that assistance for small business customers affected by family violence should be addressed through the better practice guide to allow for retailer discretion rather than a uniform application of provisions.³⁰

Our final decision

For our final decision, we have taken into account the views in all submissions and considered the long-term financial consequences of family violence, which often extend beyond the period a customer has an active account with a retailer. We also considered the pervasive nature of coercion, which may not be confined to a customer's residential arrangements, but may extend to other aspects of their lives. We have reviewed all submissions and note that many retailers recognise the benefits to consumers in extending support to former and non-residential customers. We acknowledge the comments from retailers that this is an area where they have little experience and that they will need to think critically about how and when to provide appropriate family violence assistance.

In making this final decision we reflected on the purpose of the Part, which is to promote protections for customers experiencing family violence. On balance, we consider that including *former* and *small business* customers provides a coherent framework to underpin retailers' family violence assistance. We consider retaining these obligations in the code (rather than moving this to the better practice guide) is an important way to ensure consistency across the industry. For this reason we propose to keep accountability for small business customers in the family violence definition in our final decision.

In the better practice guide we intend to include examples and case studies from businesses who are already providing different forms of assistance for former and small business customers affected by family violence.

³⁰ Alinta Energy 2019, *Submission*.

4.2. A family violence entitlement

Our draft decision

In keeping with our previous approach to modernising the code in Parts 3³¹ and Part 2A³², our draft decision proposed to create an entitlement for customers affected by family violence.

We proposed 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 an environment in which retailers take a personalised approach to assisting customers affected by family violence, in particular an approach that is safe, supportive and flexible. Flexibility is essential for retailers to recognise the individual circumstances of customers affected by family violence and provide tailored and appropriate assistance. This prioritises the physical safety of customers, and aids in their recovery from family violence.

Submissions

Four submissions made comment on the entitlement, with Alinta Energy strongly supporting its policy intent and Origin Energy noting the entitlement was useful for framing policies and to ensure that policy objectives are put into operation effectively.³³ The Victorian Council of Social Services (VCOSS) noted the value of the entitlement as a reference point for retailers to meaningfully consider the nature of assistance they provide.³⁴

The submission from the Energy and Water Ombudsman Victoria (EWOV) noted that 'enshrining' family violence entitlements in the code would support data collection and enhance policy and service provision decisions.³⁵

Our final decision

Based on the positive endorsement received from submissions about the customer entitlement, our final decision adopts this entitlement into the code. This entitlement will also form the basis for the case studies and examples in the better practice guide.

³¹ Essential Services Commission 2017, *Payment difficulty framework: Final decision*, 10 October.

³² Essential Services Commission 2018, *Helping customers engage confidently in the retail energy market: Draft decision*, 18 December.

³³ Alinta Energy 2019, *Submission* and Origin Energy 2019, *Submission*.

³⁴ VCOSS 2019, *Submission*.

³⁵ EWOV 2019, *Submission*.

4.3. A family violence policy

Our draft decision

We proposed 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 an energy retailer's family violence policy is to set out how that retailer will provide assistance to customers experiencing family violence. The proposed code change will require energy retailers to meet the minimum standards set out by the code (and discussed below) in the policy. In the family violence policy, energy retailers can also include 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, and easy to find on websites supports customers to access their entitlements.

Submissions

In its submission on the draft decision, EWOV supported the requirement for energy retailers to adopt a family violence policy on the basis that it would aid retailers' efforts to meet the minimum standards in the code.³⁶ Origin Energy agreed with the requirement for retailers to have a family violence policy that meets minimum standards. They said it was essential retailers have discretion in how the policy objectives are put into operation to ensure they are effective.³⁷

VCOSS also supported including a requirement for a family violence policy. It noted the importance of regulatory oversight at this early stage of implementation to ensure retailers informed, safe and high quality assistance. VCOSS also made suggestions about the publication of family violence policies on retailer websites in a way that is safe for customers.³⁸

³⁶ EWOV 2019, *Submission*.

³⁷ Origin Energy 2019, *Submission*.

³⁸ VCOSS 2019, *Submission*.

Our final decision

Based on the positive support we received from submissions about the family violence policy, our final decision adopts the requirement for retailers to have a family violence policy. We agree with VCOSS that energy retailers may need additional support to develop policies that provide safe and high quality assistance. Rather than review individual retailer polices, we will continue to take a collaborative approach to support retailers develop their policies through our better practice guide, workshops and other support materials. This change is reflected in clauses 106N, 106O and 106P of the code.

4.4. Minimum standards

Our draft decision proposed to require energy retailers to comply with minimum standards of conduct when assisting customers affected by family violence. Table 4.1 shows the proposed minimum standards and the relevant sections in the code.

4.1 Minimum standards of retailer conduct on family violence assistance

Minimum standards	Section of the code
Training	106 F
Account security	106 G
Customer service	106 H
Debt management	106 I
Family violence as a potential cause of payment difficulty	106 J
External support	106 K
Evidence	106 L

Further detail about our final decision on each minimum standard is provided in this section.

Our draft code amendment

In setting each minimum standard, it is the commission's intention that the standard will be considered in the context of the entitlement for customers affected by family violence: *an entitlement to safe, supportive and flexible assistance from a retailer when managing their personal and financial security*; and through the purpose of the Part: *to promote the protection of customers affected by family violence*.

Importantly, nothing in the code would prevent a retailer from providing assistance in addition to the minimum standards.

4.4.1. Training

Our draft decision

We proposed 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.

We proposed that training would be required to cover:

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

During our consultation prior to the draft decision, 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. Training all employees, agents and contractors who have responsibility for customer contact, or the system through which contact occurs, will help customers to maintain their personal and financial security and access their energy retailer's family violence assistance.

We also learned that low awareness and poor responses by employees can deter customers who experience family violence from disclosing or accessing support.³⁹ Victim-survivors who

³⁹ Consumer Action Law Centre, *Heat or Eat: Households should not be forced to decide whether they heat or eat*, August 2015, 16, 28-29.

Our draft code amendment

participated in our consultation reported instances where employees either did not understand or did not account 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 the retailer's policy and be able to identify and engage effectively with customers--including where family violence may not have been disclosed by a customer but there are signs (including in their previous interactions with the retailer) that it is occurring.⁴⁰

Submissions

Most submissions endorsed the requirement for training, noting the important role training plays in delivering successful customer outcomes. Some retailers asked us to give further consideration to the nature of the training specified in the draft code amendment, or sought greater flexibility in order to tailor training to the specific roles undertaken by staff. Specifically, most retailers requested greater flexibility on the extent and nature of the training provided to staff responsible for systems and processes that guide interactions with customers.

Simply Energy submitted that training should be focused only on those who directly interact with customers.⁴¹ Powershop submitted that training beyond those who directly engage with affected customers should be addressed through the better practice guide.⁴² AGL suggested allowing for different levels of training for staff responsible for systems and processes to the level of training required for its call centre staff.⁴³ Momentum Energy submitted it was not necessary for staff responsible for systems and processes to receive training to *identify and engage with customers on family violence*.⁴⁴ EnergyAustralia also sought flexibility in training based on role and job function, and suggested a phased approach to training to ensure quality training was available for the breadth of roles with customer facing responsibilities.⁴⁵

⁴⁰ VCOSS 2018, *Submission*.

⁴¹ Simply Energy 2019, *Submission*.

⁴² Powershop 2019, *Submission*.

⁴³ AGL 2019, *Submission*.

⁴⁴ Momentum Energy 2019, *Submission*.

⁴⁵ EnergyAustralia 2019, *Submission*.

EWOV's submission reflected on its past experience noting that implementation of reform can be hindered if training is not adequately thorough. On the issue of family violence it also noted:

a lack of organisational awareness of family violence issues can create dangerous situations for victim-survivors, enabling perpetrators to weaponise processes and systems against them.⁴⁶

EWOV also made a specific suggestion that training be extended to include those responsible for policies, in addition to systems and processes. A submission from the Economic Abuse Reference Group (which includes representatives from family violence services, community legal services and financial counsellors)⁴⁷ suggested the scope of training be expanded to include the vicarious trauma staff may experience through their interactions with customers.⁴⁸

Our final decision

We have given consideration to the multiple views expressed through these submissions.

In considering which *roles* within an organisation should be trained, we do not accept that the minimum standards for training should be limited to only those who directly engage with customers. In drafting the code we took into account that products, processes and systems can result in harm. In making this final decision, we reflected on the purpose of the Part, which is to promote protections for customers experiencing family violence. We consider that training for staff responsible for the development of products, processes and systems is a vital way to promote safe outcomes for customers. We also consider this is appropriate as a minimum code requirement in order to ensure consistent outcomes for customers.

In considering the *nature* of the training we took into account EWOV's comments about the challenges of implementing policy reform. We agree with EWOV that a thorough approach to training will better reflect the policy intent of the minimum standards, which is to provide assistance that is safe, supportive and flexible. We also agree with feedback raised by electricity and gas retailers that not all roles and job functions will need the same level of training across the four areas identified in the code. We consider these two views are compatible and consider that the current drafting provides for flexibility on the subject matter (including on vicarious trauma for those

⁴⁶ EWOV 2019, Submission. p3

⁴⁷ 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>).

⁴⁸ Economic Abuse Reference Group 2019, *Submission*.

Our draft code amendment

with direct customer contact) delivered through training, based on different responsibilities and roles.

In forming our final decision, we consider there is an adequate pool of appropriately qualified and experienced family violence training providers available to work with energy retailers to support the implementation of the minimum requirements as drafted. On this basis, we intend to adopt the draft into the final decision. In the better practice guide we intend to include examples and case studies showing various better practice approaches to training.

4.4.2. Account security

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

Our proposal aimed to focus energy retailers' attention on the specific interactions that can promote customer safety. This included requiring energy retailers to take measures to guard a customer's contact information, 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 current contact information about that customer which they would otherwise not be able to obtain, allowing the cycle of family violence to continue. Our proposal addressed this by requiring that energy retailers take measures necessary to avoid disclosing the personal and financial circumstances of customers affected by family violence, including to joint account holders.

Our proposed code amendment required 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 aimed to support victim-survivors of family violence to manage their personal safety by providing control and agency over their communications with energy retailers.

Our draft code amendment

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 would 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.

Submissions

Submissions supported having specific provisions around account security as an important way of giving effect to the customer's entitlement to safe, supportive and flexible assistance.⁴⁹

Origin Energy noted that the provisions were consistent with how it, and the majority of retailers currently engage with customers.⁵⁰

Three retailers sought greater clarity about how this provision would interact with retailers' other obligations in the code, for example, where a customer requests that a retailer stop all communication for a period of time including the cessation of bills or other notification.⁵¹

EnergyAustralia submitted that 'it did not consider that the current drafting...offers sufficient clarity around the hierarchy in precedence as compared to other requirements in the code'.⁵² Momentum Energy requested further 'clarification on this issue to ensure that retailers are able to manage communication requests and obligations in the best possible manner'.⁵³

Origin Energy suggested adopting terminology similar to privacy law, such as personal information and sensitive information, as a way to strengthen and simplify the provisions within the code.⁵⁴

On the commission's approach to compliance generally, AGL sought recognition of the importance of growth and learning by retailers as their systems mature.⁵⁵

Our final decision

We have taken into account the views raised in submissions, including whether aligning the minimum standard on account security with Australian privacy law would strengthen or weaken the consumer protection we are seeking to achieve through this code change.

⁴⁹ Powershop 2019, *Submission*, EnergyAustralia 2019, *Submission*.

⁵⁰ Origin Energy 2019, *Submission*.

⁵¹ Red Energy and Lumo Energy 2019, *Submission*.

⁵² EnergyAustralia 2019, *Submission*.

⁵³ Momentum Energy 2019, *Submission*.

⁵⁴ Origin Energy 2019, *Submission*.

⁵⁵ AGL 2019, *Submission*.

Our draft code amendment

We acknowledge the protection available under privacy law. We tailored the proposed amendments to the code to address feedback we received from stakeholders about what is in the best interest of affected customers in their dealings with energy accounts. Specifically, we sought to ensure safeguards to protect contact information from a perpetrator who already holds personal information about the account holder, such as their date of birth or a maiden name.

In making this final decision we reflected on the purpose of the Part, which is to promote protections for customers experiencing family violence. We consider the current drafting promotes the optimal outcome for customers seeking to protect their contact information in the context of their energy account.

We have considered feedback from retailers seeking greater clarity about how best to support customers' communication requirements, while maintaining compliance with other obligations in the code. In making our final decision, we sought to address these concerns through new drafting aimed to make explicit the hierarchy of obligations retailers must consider when assisting customers who are affected by family violence. Our Energy Compliance and Enforcement Policy provides further detail about our approach to enforcement and compliance.⁵⁶

This change is reflected in subclause 106G(5) and below:

An *affected customer's* entitlement for communications to be in accordance with the method of communication identified pursuant to subclause (4) takes precedence over any other *customer* entitlement or *retailer* requirement in this Code to communicate with a *customer* in a particular way.

The better practice guide to family violence assistance will include examples and case studies showing various better practice approaches to account security.

4.4.3. Customer service

Our draft decision

We proposed 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 family violence assistance options without having to repeatedly disclose their family violence experience every time they make contact. To ensure this, we proposing energy retailers must have a secure process that:

⁵⁶ Essential Services Commission 2019, Energy Compliance and Enforcement Policy: March 2019.

Our draft code amendment

- 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.

From our consultations, we learned 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.

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.

Submissions

Many submissions supported the inclusion of obligations in relation to the identification of customer accounts and processes to avoid customers having to repeatedly disclose their experience of family violence.⁵⁷

There were some contrary views about the central policy intent with this provision. Powershop suggested that identification was the central policy objective (and that other elements were better addressed in the better practice guide).⁵⁸ Whereas AGL submitted that ‘repeat disclosure’ was more central to the policy objective, and suggested the focus should be on minimising rather than avoiding the need for repeat disclosure.⁵⁹

EnergyAustralia sought clarity over whether it was our intent that retailers audit all past interactions with former and current customers, and whether it extended to informing future retailers prior to a customer transfer. EnergyAustralia also suggested a drafting change that would focus on identifying customer accounts rather than customers individually (which is already addressed through training).⁶⁰

⁵⁷ AGL 2019, Submission, Powershop 2019, Submission, EnergyAustralia 2019, Submission, VCOSS 2019, Submission.

⁵⁸ Powershop 2019, *Submissions*.

⁵⁹ AGL 2019, *Submissions*.

⁶⁰ EnergyAustralia 2019, *Submission*.

Our draft code amendment

VCOSS suggested a requirement that processes provide for timely and expedited service, and address customer disengagement. Its submission noted timely support is important as customers may be facing immediate risks to their safety and/or other forms of stress that make engagement difficult – for example issues with other utility providers and services, or prioritising ‘day-to-day safety, recovery, care of children or legal processes’.⁶¹

Our final decision

We have taken into account feedback from all submissions and agree that greater clarity both in the code and the better practice guide would be beneficial. For this reason have drafted code changes similar to those proposed in submissions by AGL and EnergyAustralia.

We have not adopted all suggested drafting changes. For example, we do not agree that it is sufficient to design a process that only minimises repeat disclosure. Process design should aim to avoid the need for repeat disclosure. Any repeat in disclosure should be the result of how staff exercise discretion in the application of customer entitlement for safe, supportive and flexible assistance, rather than in the design of the process.

We have not adopted the suggested requirement for timely and expedient service in this area. We consider that clarity over the new minimum requirements, as well as the policy objective of safe, supportive and flexible assistance will provide the necessary preconditions for retailers to meet these service objectives. We also consider that customer disengagement is appropriately addressed through the training provisions as currently drafted. The updated drafting is reflected in clause 106H of the code.

4.4.4. Debt management

Our draft decision

We proposed 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 used 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 with the threat of disconnection.⁶² In such instances, customers affected by

⁶¹ VCOSS 2019, *Submission*.

⁶² VCOSS 2018, *Submission*.

family violence are often left financially responsible for services from which they receive little or no benefit, while bearing 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 covered 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.

Submissions

Few submissions identified debt management in their feedback on the draft decision. Simply Energy noted the important role evidence would play in supporting debt management practices, and also called for a more integrated approach to debt relief including greater access to one off government payments such as the utility relief grant scheme.⁶³

VCOSS supported the general intent of the provision. In its submission it noted that financial abuse is the norm among those affected by family violence, and in many instances, customers would be accessing payment difficulty support at the same time as family violence assistance. Specifically, VCOSS noted that collection practices can compound harm as well as hinder a victim's recovery. On this basis it suggested we introduce specific requirements to provide for debt recovery as a measure of last resort for customers affected by family violence, with retailers required to first consider and record steps taken to assist customers with debt management before recovering debt as a last resort.⁶⁴

The Economic Abuse Reference Group suggested greater clarity and additional obligations to ensure customers have better success in having their debt called back to a retailer, or having the energy debt addressed by third parties in accordance with the code.⁶⁵

Our final decision

We acknowledge the concerns raised by community sector stakeholders in relation to current debt practices and the specific impact this can have on customers who are affected by family violence.

In making the draft decision we wanted to strengthen protections for customers by introducing a new customer entitlement to safe, supportive and flexible assistance when managing their

⁶³ Simply Energy 2019, *Submission*.

⁶⁴ VCOSS 2019, *Submission*.

⁶⁵ Economic Abuse Reference Group 2019, *Submission*.

Our draft code amendment

personal and financial security. We proposed new requirements for training as well as new requirements for retailers when implementing the payment difficulty framework (subclause 89 (aa)), and prior to the disconnection of residential and small business customers (subclause 111A and 111).

We have considered the feedback, and have decided that the measures proposed across the code are sufficiently balanced to support retailers in their decision making on debt recovery and also achieve improved long term financial outcomes for their customers. On this basis we intend to adopt the draft decision in this final decision. This is reflected in clause 106I of the code. We will also include various examples and approaches to debt management in the better practice guide.

4.4.5. Family violence as a potential cause of payment difficulty

Our draft decision

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

This proposal reflects the specific recommendation of the royal commission that we amend the code to make family violence an explicit criterion for 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.⁶⁶ 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.

Submissions

We received only one comment on this draft proposal. Origin Energy sought clarification about whether it was our intent to include small business customers in the payment difficulty framework, noting energy retailers are currently obliged to provide payment difficulty support only to residential customers.⁶⁷

⁶⁶ Kutin, J., Russell, R., Reid, M., 2017, *Economic abuse between intimate partners in Australia: prevalence, health status, disability and financial stress*, Chapter 41.

⁶⁷ Origin Energy 2019, *Submission*.

Our draft code amendment

Our final decision

In drafting this code it was our intent to recognise family violence as a form of payment difficulty. It was not our intent to expand eligibility under the payment difficulty framework beyond the current residential customers. Nonetheless, there is nothing stopping a retailer from providing additional assistance, beyond the obligations in the code, where a customer (including a small business customer) is affected by family violence.

We received no other submissions on this issue and plan to adopt the draft into the final decision.

4.4.6. External support

Our draft decision

We proposed to require energy retailers to help customers access specialist family violence assistance.

We proposed that energy retailers 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 did **not** propose 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 proposed to require energy retailers to maintain and publish a list of external family violence support services on their websites. Through our consultation process, we had 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.

Submissions

There was support from both retailers and community organisations about providing information to affected customers (where appropriate) about available support services. Red Energy and Lumo Energy, Momentum Energy and the Economic Abuse Reference Group suggested that providing a list of services may be confusing or overwhelming for customers and staff, and

Our draft code amendment

suggested providing a single support service may be more appropriate.⁶⁸ In its submission Red Energy and Lumo Energy recommended we amalgamate this minimum requirement relating to external support (clause 106K) with the requirement to provide access to external support on the website subclause 106O(2).

Our final decision

We acknowledge the range of available support services can be overwhelming and agree with stakeholders that there may be benefits to consumers and staff in some retailers opting to provide details about a single service. On this basis we have made a minor change to the drafting of the minimum standard relating to external support to provide for one or more external support service.

We considered the feedback about amalgamating two items relating to external support (making them available to customers and publishing them on the website) and consider that this provides for improved clarity. We have amalgamated this under subclause 106O as we consider it appropriate to retain external support in the minimum requirements.

The better practice guide will include examples showing various approaches to informing customers about external family violence support services.

4.4.7. Evidence

Our draft decision

We proposed 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. We noted advice from family violence specialist services that obtaining evidence, such as an intervention order, is not a simple request, and that the process of obtaining an order can place victim-survivors at greater risk of violence.⁶⁹ In developing this draft decision, we also considered feedback from water businesses already providing family violence assistance without requiring documentary evidence and are yet to encounter false claims in this area.

⁶⁸ Red Energy and Lumo Energy 2019, *Submission*, Momentum Energy 2019, *Submission*, Economic Abuse Reference Group 2019, *Submission*.

⁶⁹ WEstjustice, 2018, *Restoring Financial Safety: collaborating on responses to economic abuse: Project report describing WEstjustice's work and reflections on economic abuse*, July 2018.

Our draft code amendment

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

We acknowledged that in some circumstances energy retailers may need documentary evidence to inform their decision making. We considered these circumstances were 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, and in a way that aligns with the objective of the code amendments.

Submissions

Community organisations (Economic Abuse Reference Group and VCOSS) agreed that documentary evidence should not be required for family violence assistance in relation to account security, customer services, payment difficulty and referrals. They recommended businesses accept the word of the customer unless there is information available to the contrary, and they should accept the word of support workers working with the customer (e.g. financial counsellors or family violence support workers).⁷⁰

The submission from the Economic Abuse Reference Group highlighted the risk in asking customers for evidence when considering debt management and recovery or disconnection. It also noted that providing evidence of family violence can be difficult or put the victim-survivor in further danger. VCOSS recommended retailers be flexible and seek 'informal' evidence such as caseworker letters or verbal reports.

Simply Energy supported allowing retailers to seek documentary evidence when assessing suspension of disconnection or providing customer debt relief.⁷¹ Its submission noted that evidence allowed retailers to verify customers affected by family violence and ensure support is going to those who need it. Momentum Energy suggested the better practice guide include examples of appropriate evidence (where evidence is required) to ensure customers aren't re-traumatised or asked to share inappropriate personal information.⁷² EnergyAustralia noted its policy was not to request documentary evidence, and suggested that any provision should be mindful that evidence of family violence may contain sensitive information that could be inappropriate for staff to view.⁷³

⁷⁰ Economic Abuse Reference Group 2019, *Submission*, VCOSS 2019, *Submission*.

⁷¹ Simply Energy 2019, *Submission*.

⁷² Momentum Energy 2019, *Submission*.

⁷³ Energy Australia 2019, *Submission*.

In its submission, Powershop made a recommendation in regards to the drafting of 106L to summarise sub clauses (1) and (2) to provide greater clarity.⁷⁴

Our final decision

We considered all feedback raised in the submissions on the issue of evidence. We agreed with our stakeholders that there is scope for further clarity on how retailers identify appropriate forms of evidence. We also agreed with Powershop that the drafting in the code could be simplified. In making this final decision we intend to retain the policy objective that customers should not be required to provide evidence of family violence in most circumstances, but that retailers could have the option of seeking evidence when addressing issues related to debt recovery and de-energisation. This is reflected in clause 106 L of the code.

In the better practice guide we intend to include examples of appropriate forms of evidence for the particular circumstances of the customer.

4.5. Ensuring consistency across the Energy Retail Code

In our draft decision we proposed various changes through the code to support customers affected by family violence. Our aim in doing so was 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

Our draft decision

Our draft decision proposed inserting notes into the part of the code relating to customer retail contracts (Part 2) and marketing integrity (Part 2A) to highlight that family violence provisions relating to account security might be relevant to this Part of the code.

Submissions

In its submission, Origin Energy suggested further reference to 106G on account security in other areas of the code, specifically in 70Y on fact sheets (which comes into effect in the code from 1 July 2019).⁷⁵ Red Energy and Lumo Energy suggested we make it clear where retailers are able to

⁷⁴ Powershop 2019, *Submission*.

⁷⁵ Origin Energy 2019, *Submission*.

prioritise assistance provided to a customer affected by family violence over other obligations in the code.⁷⁶

Our final decision

We acknowledge that some retailers desire further clarity regarding how the family violence framework interacts with existing provisions of the code. We consider that changes of this nature may lead to uncertainty in instances where no note of 106G is made. In the interests of certainty, our final decision is to remove all notes relating to 106G from Part 2 and Part 2A of the code, and to redraft 106G to provide greater clarity about how it applies to all other areas of the code.

4.5.2. Requirements for security deposit

Our draft decision

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

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

Our final decision

We received no submissions on this element of the draft decision. Our final decision is to adopt the draft decision.

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

4.5.3. Retailer obligations under the payment difficulty framework

Our draft decision

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

In proposing this amendment we sought to ensure that energy retailers give consideration to all the circumstances of the customer, including where family violence has not been disclosed but where

⁷⁶ Red Energy and Lumo Energy 2019, *Submission*.

previous interactions with the energy retailer suggest it is occurring and subsequently, assistance has been provided under Part 3A of the code.

Submissions

Submissions from VCOSS and the Economic Abuse Reference Group supported better access to hardship support, particularly in the area of debt management.⁷⁷

Our final decision

In making our final decision, we reviewed all feedback from submissions raised on this issue and consider the current drafting supports customers' access to hardship assistance. On this basis, we intend to adopt the draft into the final decision. This is reflected in subclause 89(1)(aa) of the code.

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

Our draft decision

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

In proposing this amendment we sought 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.

Submissions

We received no specific feedback on this element of the draft decision. Submissions from Momentum Energy, EnergyAustralia, Alinta Energy and Red Energy and Lumo Energy raised concerns about extending family violence support to small business customers.⁷⁸

Our final decision

We responded to these concerns in section 4.2, where we also made a final decision to retain family violence support to small business customers in the code on the basis that it provides a coherent framework to underpin retailers' family violence assistance. We intend to adopt this draft

⁷⁷ VCOSS 2019, Submission, Economic Abuse Reference Group 2019, *Submission*.

⁷⁸ Momentum Energy 2019, *Submission*, EnergyAustralia 2019, *Submission*, Alinta Energy 2019, *Submission*, Red Energy and Lumo Energy 2019, *Submission*.

code decision (relating to disconnection of small business customers for not paying a bill) into the final decision. This is reflected in subclause 111(1)(g) of the code.

4.5.5. Disconnection of residential customers for not paying a bill

Our draft decision

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

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

Submissions

A submission from VCOSS noted that customers affected by family violence often find it difficult to maintain engagement with services (including retailers).⁷⁹ It submitted that retailers should have appropriate responses to disengagement, including avoiding disconnection.

Our final decision

We acknowledge this feedback about family violence customers' capacity to engage. In making the draft we sought to ensure retailers fully considered a family violence customer's unique circumstances prior to disconnection. In making this final decision we consider the draft we proposed will support retailers' decision making and improve outcomes for vulnerable customers, including by ensuring that disconnection only occurs as a last resort. Accordingly, we intend to adopt the draft into the final decision. This is reflected in subclause 111A(1)(a)(vi) of the code.

⁷⁹ VCOSS 2019, *Submission*.

5. Next steps

5.1. 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. We intend that the examples of better practice will extend beyond the minimum requirements of the code to encompass the principles and actions identified in our 2018 discussion paper.

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.⁸⁰ We may update these examples periodically to reflect changing trends or when better practices emerge.

Later in 2019, we will continue our workshop series to support cross sector collaboration and learning and to assist energy retailers prepare for implementation of their family violence initiatives ahead of 1 January 2020.

If we consider it necessary to do so, we may initiate an audit on retailers' compliance with the new part at some point in the future. Alternatively, we may audit an individual retailer (or retailers) if we have reason to be concerned about their compliance and their treatment of customers affected by family violence. Our Energy Compliance and Enforcement Policy provides further detail about our approach to enforcement and compliance.⁸¹

⁸⁰ Subsection 10(f)(ii) of the *Essential Services Commission Act 2001* (Vic).

⁸¹ Essential Services Commission 2019, *Energy Compliance and Enforcement Policy*: March 2019.

Next steps

Appendix A - Final code amendments

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

21 May 2019

Amendments made by the Essential Services Commission on 21 May 2019

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 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*.

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

- (5) 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

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

- (7) In subparagraph 111(1)(f) delete “.” and insert “; and”.
- (8) 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*.
- (9) In subclause 111(6) after “clause” insert “, other than paragraph (1)(g),”.
- (10) In subclause 111A(1) after subparagraph 111A(1)(a)(v) insert new subparagraph
 - (vi) has, where the *customer* is an *affected customer*, taken into account the particular circumstances of that *customer*; and
- (11) In subclause 111A(2) after “clause” insert “, other than subparagraph (1)(a)(vi),”.
- (12) 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*.

106C 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 Services 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 or locate an *affected customer*, including information about 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) An *affected customer*’s entitlement for communications to be in accordance with the method of communication identified pursuant to subclause (4) takes precedence over any other *customer* entitlement or *retailer* requirement in this Code to communicate with or provide information to a *customer* in a particular way.
- (6) A *retailer* must keep a record of arrangements reached pursuant to subclause (4).

106H Customer service

A *retailer* must provide for a secure process designed to avoid the need for an *affected customer* to repeatedly disclose or refer to their experience of *family violence* by:

- (a) providing a method for readily identifying the account of a *customer* who has been identified as an *affected customer*; and
- (b) providing for effective ongoing engagement with an *affected customer*.

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

- (1) A *retailer* must 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 given the *affected customer*'s circumstances.
- (2) A *retailer* must publish on its website and keep up to date a list of one or more external *family violence* support services.

106L Evidence

- (1) A *retailer* may only seek documentary evidence of *family violence* when considering debt management and recovery under clause 106I, or restrictions on *de-energisation* in Part 6.
- (2) Any documentary evidence sought in accordance with subclause (1) must be limited to that which is reasonably required by the *retailer* for the purposes of 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

106N Family violence policy

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

106O Family violence policy to be accessible

A *retailer* must ensure that its *family violence* policy is easily accessible on its website in a readily printable form.

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 - Submissions

We received 11 submissions including from the community sector, water retailers and Victoria's energy and water ombudsman. Their submissions are available on our website at www.esc.vic.gov.au/family-violence.

Date	Insert definition
11 April 2019	EWOV
12 April 2019	Momentum Energy
15 April 2019	AGL
16 April 2019	Simply Energy
16 April 2019	EnergyAustralia
16 April 2019	Origin Energy
16 April 2019	Red Energy and Lumo Energy
17 April 2019	Economic Abuse Reference Group
17 April 2019	Alinta Energy
18 April 2019	VCOSS (Victorian Council of Social Services)