

Essential Services Commission Energy Retail Code of Practice Review

Safe and Equal

At Safe and Equal, we work towards a world where everyone is safe, respected and thriving, living free from family and gender-based violence.

Our work prioritises the safety of all people experiencing, recovering from or at risk of family and gender-based violence. While we know that most family violence is perpetrated by men against women and children, we recognise that family violence impacts people across a diversity of gender identities, social and cultural contexts, and within various intimate, family and other relationships. We apply an intersectional feminist lens in our work to address the gendered drivers of violence, and how these overlap and intersect with additional forms of violence, oppression and inequality.

We are the peak body for Victorian organisations that specialise in family and gender-based violence across the continuum, including primary prevention, early intervention, response and recovery. We are an independent, non-government organisation. As a peak, we work with and for our members to prevent and respond to violence, building a better future for adults, children and young people experiencing, at risk of, or recovering from family and gender-based violence.

Background to review

The Energy Retail Code of Practice sets out rules for electricity and gas retailers to comply with when selling energy to Victorian customers.

The purpose of the review is to:

- address key actual or potential harms to Victorian consumers in a proportionate manner
- clarify or update obligations identified as unclear or inconsistent
- advance the Essential Services Commission Getting to fair strategy by further supporting consumers experiencing vulnerability.

Safe and Equal was invited to make a submission to the review of the Energy Retail Code of Practice due to our expertise as the peak body for Victorian organisations that specialise in family and gender-based violence across the continuum, including our connection to lived experience. Safe and Equal centre and platform the lived experience

of victim survivors affected by violence and ensure that responses to family violence are informed by the expert knowledge and advocacy of survivor advocates.

Additionally, Safe and Equal has worked closely with a number of organisations in the energy and water sectors in recent years, to deeply explore their operational procedures as they relate to family violence. This has afforded us additional knowledge and understanding of the intersection between family violence and essential services.

This submission draws on intersecting forms of knowledge and expertise across these areas.

Themes

There are four themes that are being reviewed:

1. protections for consumers experiencing vulnerability
2. supporting choices of energy consumers
3. pricing and contract protections
4. general updates and other changes.

Overall, Safe and Equal endorse the general direction of this review. We look forward to engaging in future consultation to explore best practice solutions beyond the observations included in the submission below. Safe and Equal's engagement, both for this early submission as well as all future consultations, prioritises the safety of all people experiencing or at risk of experiencing family violence.

Safe and Equal's submission

Theme One - Protections for consumers experiencing vulnerability

Topic: Strengthening Family Violence Protections

1. *Are there any specific rules in the National Energy Retail Rules (NERR) we should include that would strengthen protections?*

We recommend adopting these NERR protections:

- Additional requirements of businesses in order to avoid repeated disclosures of a customer's experience of family violence

- Retailers must, during all of their engagements with the customer including by a third-party provider acting on behalf of the retailer, have regard for the safety of a family violence-affected customer by having a deep consideration for the customer's personal circumstances.
- Retailers must have processes, systems and training in place to ensure that customer's circumstances are taken into account before referring their debt to an external provider or attempting to recover any outstanding amount. This includes the ability to identify if a debt or arrears outstanding is jointly or severally owned
- Considering family violence as a likely cause for a customer experiencing hardship or payment difficulties
- Prohibiting retailers from requesting documentary evidence as a precondition for receiving family violence protections
- Broadening the definition of family violence to include carers, and Aboriginal and Torres Strait Islander kinship relationships
- Consider certain family violence provisions be classified as civil penalty provisions to ensure retailers comply with these obligations ¹²

This would improve consistency nationally for all consumers and retailers.

The Code of Practice specifically requires energy retailers to provide family violence training, while the NERR obliges energy retailers to provide for staff capability. Safe and Equal posits that training is a key component of family violence consumer obligations but should not be viewed as a 'tick box exercise'. It should be both comprehensive and tailored; including content and delivery of training as determined in collaboration with specialist family violence services and inclusive of embedding training content in other contexts, measures and communications, and an effective monitoring and evaluation framework.

2. *Are there any family violence protections in water we should replicate?*

A key theme in the ESC Family Violence Standards Water Review 2022 was that 'businesses provide limited or no customer safety protections when family violence is not disclosed'. There is also a strong focus within energy retail sectors of organisations relying on disclosure to access additional protections and provisions. This is limiting as many victim survivors will not disclose – even when barriers have been addressed or

¹ Pritish Naik Salgaonkar (2022) *Family Violence obligations in NCF States* <https://www.compliancequarter.com.au/family-violence-obligations-in-necf-states/> (accessed 6 June 2024)

² Essential Services Commission (2024) *Energy Retail Code of Practice review: Issues Paper* [file:///C:/Users/RobynStone\(sheher\)/Downloads/Review%20of%20Energy%20Retail%20Code%20of%20Practice%20-%20Issues%20Paper_O.pdf](file:///C:/Users/RobynStone(sheher)/Downloads/Review%20of%20Energy%20Retail%20Code%20of%20Practice%20-%20Issues%20Paper_O.pdf) (accessed 6 June 2024)

removed. A safety by design approach is needed, to devise safety for all consumers wherever possible.

3. *Any other protections we should consider including in the code of practice to further support consumers affected by family violence?*

Economic abuse is one of the least known, yet most common types of family violence, and is particularly relevant in context of energy retail and provision³⁴. Many people experiencing economic abuse will not identify their experience as family violence, which means that disclosure focused practices will not be inclusive of them. A clear definition of economic abuse, along with understanding of how this impacts on consumers in their energy retail experience, should be further explored by the ESC and incorporated into the Code wherever appropriate – for instance in training and policy provisions.

WA Gas Customer License Obligations 2024⁵ provides two additional protections we wish to highlight here:

- Require the retailer to advise a vulnerable customer of the consequences of being named on the account of a residential customer who is not a vulnerable customer.
- Protection from disconnection – ensuring that the vulnerable customer is not disconnected for a period of 9 months.

Whilst these are new provisions and are yet to be evaluated; they could provide important additional protections for a victim survivor of family violence. To our knowledge, these protections are not currently available in the Energy Retail Code of Practice or NERR.

Topic: Payment Difficulty Framework – Training Requirements

1. *Do you have any suggestions about how to improve the current payment difficulty framework training obligations established in the code of practice? and*

³ Venville, E, Batagol, B and Satur, P (2023) *Economic abuse and water utilities: exploring victim-survivor experiences in Victoria* <https://www.unswlawjournal.unsw.edu.au/wp-content/uploads/2023/11/Issue-463-08-Venville-et-al.pdf>. (accessed 26 July 2024).

⁴ Energy and Water Ombudsman (2024) *Energy and Water Ombudsman Victoria Position Statement – Family Violence* <https://www.ewov.com.au/uploads/main/EWOV-Draft-Family-Violence-Position-Statement.pdf> (accessed 26 July 2024).

⁵ Economic Regulation Authority (2024) *Compendium of Gas Customer Licence Obligations* <https://www.erawa.com.au/cproot/24149/2/Final-Compendium-effective-1-July-2024-following-2023-Compendium-review.PDF> (accessed 26 July 2024).

2. *Do you consider that retailers should be required to train their staff to assist customers experiencing different vulnerability or hardship issues (beyond the current obligation to train staff on family violence matters)? If so, what are the costs and benefits of imposing these additional training requirements?*

As proposed in Energy Retail Code of Practice review Issues Paper, we would strongly support expanding the training focus for staff to include a range of vulnerability or hardship issues (beyond the current obligation to train staff on family violence matters), noting that many vulnerability or hardship issues intersect and co-exist with family violence. Training relevant staff with content which includes core knowledge and skills around empathy, being person-centered and trauma informed will enhance customer communication and interactions. The provision of training should not be a 'tick box exercise' but include a comprehensive framework including evaluation and monitoring.

Whilst the costs will include resourcing (time and money), the benefits will be far-reaching and significant to both consumers and retailers. It should also have a flow on effect to improving access to support for customers experiencing a wider range of hardships. This will likely include consumers who are experiencing family violence but haven't disclosed it (they may not identify their experience as family violence or may not be ready to disclose). It is likely to improve connection and trust between consumer and retailer and enhance their ability to meet their bill payment requirements. Providers of essential services have a significant social responsibility, and this improvement will enhance how they meet that responsibility to a wider range of people experiencing vulnerability or hardship.

Theme Four - General updates and other changes

Topic: Protections for Embedded Network Customers (Questions 39-42)

The AER is currently reviewing the regulatory framework for exempt sellers they regulate across NSW, QLD, ACT, SA and TAS and is considering how or whether the family violence rules could be applied to them. AER engaged Safe and Equal provide best practice family violence advice to support energy customers within exempt seller arrangements. This work has been documented through the submission of a report to the AER. Safe and Equal recommends the ESC communicate with the AER on this matter for further information.