

Interim guidance note: Family Violence Rule

- From 1 May 2023, the National Energy Retail Rules (the **Retail Rules**) will be amended to include new obligations on energy retailers. These new obligations are designed to improve energy retailers' response to and support of customers experiencing family violence across National Energy Customer Framework jurisdictions.¹ The new obligations apply to residential and small business customers.
 - These new obligations are the result of a [rule change process](#) conducted by the Australian Energy Market Commission (**AEMC**). The AEMC received submissions and conducted a forum as part of this process. The AEMC's final determination and Rule were published in September 2022.
- The purpose of this interim guidance note is to provide guidance to energy retailers on their key responsibilities to customers affected by family violence (**affected customer**) under the Retail Rules.
 - An affected customer means any customer, including a former customer of a retailer, who is or was a small customer and who may be affected by family violence.²
- Recognising the principles-based drafting of the new obligations, this interim guidance note sets out the Australian Energy Regulator's (**AER**) expectations on how the outcomes of the new obligations may be achieved. The AER welcomes ongoing engagement and feedback from energy retailers on the content of this interim guidance note.
- The AEMC recommended several obligations be Tier 1 civil penalty provisions.³ This interim guidance note will be updated and a final version issued in 2024 to include any civil penalty provisions and to clarify or refine aspects following feedback from energy retailers.
- The information contained in this interim note is for guidance purposes only. The AER cannot provide a definitive interpretation of the relevant legislation because that is the role of the Courts.
- Compliance with this interim guidance note cannot provide a guarantee against enforcement action by the AER.
- The AER will approach each potential compliance and enforcement matter on a case-by-case basis, consider all relevant circumstances, and apply the factors set out in our

¹ AEMC, Protecting customers affected by family violence, Final Rule determination, 15 September 2022.

² *National Energy Retail Rules*, subrule 3. The final rule provides that family violence means domestic abuse under the *Intervention Orders (Prevention of Abuse) Act 2009 SA*. For more information see p. 58 of the Final Rule determination.

³ AEMC, Final Rule determination, p.8.

[Compliance and Enforcement Policy](#). Energy retailers should consider seeking independent legal advice on compliance-related matters.

Family violence and essential services

- One in four Australian women and around one in thirteen men have experienced violence by a current or previous intimate partner.⁴
- Essential services, including retailers of gas and electricity, can be exploited by perpetrators of family violence to cause harm.⁵
- Examples of exploitation can include:
 - using essential services to obtain personal information such as an affected customer's contact details and using these to locate or contact them
 - forms of financial abuse such as controlling access to energy bills or refusing to contribute to their payment, leading to mounting debt and eventual disconnection, or
 - pressuring affected customers to sign or agree to contracts or arrangements with energy retailers.
- Customers who disclose that they have been affected by family violence should be believed by energy retailers and treated with flexibility and respect. Energy retailers should also be conscious that affected customers may not be aware of their financial situation, including their energy bills or debt, as an outcome of financial control by the perpetrator.
- Energy retailers need to consider key safety risks when dealing with affected customers. For example, inadvertent disclosure of confidential information to perpetrators through insecure customer accounts and poor internal processes pose a significant risk to affected customers. Energy retailers also risk retraumatising affected customers by requiring repeated disclosure or evidence of violence to access support or by having poorly trained and insensitive staff.
- Further consideration of these key safety risks and mitigation strategies is set out below.

⁴ Australian Bureau of Statistics (2017) Personal Safety, Australia 2016.

⁵ AEMC, Protecting customers affected by family violence, Draft Rule determination, 16 June 2022, p.i.

Energy retailer obligations

Prioritisation of safety

Rule summary

- In all dealings with an affected customer, energy retailers must:
 - have regard to the affected customer’s safety,⁶ and
 - take into account the particular circumstances of an affected customer.⁷

AER guidance

- Safety should be the paramount consideration for energy retailers. A failure here could result in an affected customer’s death, serious injury or further trauma.
- Taking an affected customer’s circumstances into account will involve a consideration of intersectionality. Intersectionality refers to the ways in which people have multiple overlapping identities which can create compounding forms of discrimination or privilege. Intersectionality recognises that many factors shape how people from different communities experience family violence.
- Family violence affects members of all communities, but because of institutionalised systems of power it can be more likely to occur for people who experience other forms of discrimination (including First Nations people, individuals with a disability and/or chronic health conditions, culturally and linguistically diverse people, including recently arrived migrants and customers that are LGBTIQ+).
- Understanding family violence through an intersectional lens enables the design of policies and practice which are accessible, inclusive, and non-discriminatory. Understanding intersectionality is complex and requires ongoing training for staff so they can understand intersectionality and how they can apply it in their work practice.
- A robust and meaningful intersectional approach to customer-client relationships will require ongoing commitment through induction training, workplace resources, refresher training, and collecting client and staff feedback with the aim of continually improving.
- The AER considers how energy retailers comply with the above requirements will depend on the individual circumstances of an affected customer. The AER will look at the steps taken by an energy retailer when considering compliance with these requirements.
- It is not an energy retailer’s responsibility to provide crisis family violence support to affected customers. This needs to be provided by a specialist family violence case manager. Energy retailers should prioritise a “Recognise, Respond, Refer” model when dealing with affected customers.
 - “Recognise, Respond, Refer” is an integrated health response to domestic and family violence, and seeks to equip all staff with the skills to identify signs of abuse,

⁶ *Retail Rules*, subrule 76D(a).

⁷ *Retail Rules*, subrule 76D(b).

effectively respond and refer to support services, when required. It involves recognising the signs of family violence, responding in an appropriate manner and referring customers to appropriate support services.

Family violence policy

Rule summary

- Energy retailers must have a family violence policy that sets out how they will identify and assist affected customers, including how the energy retailer will afford them the protections outlined in the Retail Rules.⁸ Energy retailers are required to implement, maintain, and comply with their family violence policy.⁹
- The family violence policy must be:
 - published in an easily accessible place on an energy retailer’s website¹⁰
 - reviewed and updated from time to time to reflect changes in circumstance and ensure consistency with leading practice.¹¹
- To the extent of any inconsistency, an energy retailer’s family violence policy will take precedence over the terms and conditions of an affected customer’s market retail contract.¹²

AER guidance

- The AER considers an energy retailer’s family violence policy should be written in plain, inclusive, and sensitive language. The AER recommends energy retailers engage the services of relevant advocacy groups and those with lived experience in drafting and developing their policy.¹³ The policy should be designed with oversight and endorsement from senior leadership within the energy retailer and be promoted across the organisation.
- The policy should clearly set out what support is available to affected customers and what affected customers can expect if they ask for help. The policy should also set out an evaluation and monitoring plan, to ensure regular review and that the policy continues to reflect best practice.
- The AER expects an energy retailer’s family violence policy to be available in a variety of accessible and inclusive formats. This would include printed, translated, large font and Easy English materials. Material should also be accessible through screen readers for those with a visual impairment.

⁸ Retail Rules, subrule 76A(a).

⁹ Retail Rules, subrule 76A(c).

¹⁰ Retail Rules, subrule 76A(b).

¹¹ Retail Rules, subrule 76A(d).

¹² Retail Rules, subrule 76L(1).

¹³ Energy retailers may wish to refer to [The Family Violence Experts by Experience Framework](#) which outlines engagement best practice principles.

- Energy retailers should consider ensuring webpages containing the family violence policy have 'quick exit' buttons to promote customer safety, allowing users to be immediately redirected to an innocuous site (for example, a search engine homepage).
- The AER may initiate compliance 'spot checks' in relation to energy retailers' family violence policies from time to time.

Skills requirement

Rule summary

- Energy retailers need to make sure their staff are able, on an ongoing basis, to:
 - understand the nature and consequences of family violence
 - identify and engage appropriately and effectively with customers affected by family violence, and
 - assist customers affected by family violence in accordance with the Retail Rules and the energy retailer's family violence policy.¹⁴
- This requirement extends to any person with authority or capacity to act on behalf of the energy retailer, who engages with affected customers. This includes energy retailer employees, contractors, and agents (including call centre and marketing staff), as well as their managers.¹⁵
- This obligation also applies to those responsible for systems and processes that guide interactions with small customers.¹⁶

AER guidance

- To meet this mandatory skills requirement, the AER expects energy retailers will need to engage with family violence issues and solutions actively and on an ongoing basis.
- This could be done by setting up a 'community of practice' to discuss challenges and best practice approaches, either internally between different teams or externally with other energy retailers, potentially with the input and ongoing guidance of a survivor-advocate.
- Energy retailers will need to conduct training across their business on family violence, both at the stage of initial onboarding of staff and by way of frequent refresher training.
 - A lack of internal understanding of family violence could delay or prevent access to crucial support for affected customers and risks further trauma. It also risks energy retailers failing to meet the requirements of the Retail Rules, including their family violence policy.

¹⁴ *Retail Rules*, subrule 76B(1)(a)-(c).

¹⁵ *Retail Rules*, subrule 76B(2)(a)-(b).

¹⁶ *Retail Rules*, subrule 76B(2)(c).

- The AER strongly encourages energy retailers to consider engaging or partnering with an experienced external provider to design and deliver specialist tailored training for their staff.¹⁷
- The AER considers training should cover, amongst other things:
 - how to recognise signs or signals of family violence
 - appropriate engagement for energy retailer staff who are not specialist family violence professionals
 - referral pathways to specialist services, and
 - the importance of a flexible ‘client centred’ approach when engaging with affected customers and using non-judgemental and non-victim blaming language.
- Training should be tailored based on the likely engagement particular staff may have with an affected customer. For example, experiences of family violence may be revealed in phone conversations with call centre staff, potentially over non or late payment of a bill.
- There may be circumstances where a customer does not overtly disclose they are affected by family violence but are displaying signs that they could be. Both staff training and an energy retailer’s family violence policy should outline what to do in this scenario, noting this will be situation specific. This may include informing the customer about the policy and the protections offered under it.
- Energy retailer staff working in overseas call centres may also have culturally different understandings of family violence and could also require tailored training.
- Energy retailers should be conscious that their own staff may be affected by family violence and should have internal policies in place to support these individuals. This includes making staff aware of their entitlement to paid family and domestic violence leave.¹⁸
- Training material should be reviewed regularly and updated. Energy retailers should also consider conducting regular ‘pulse checks’ and feedback opportunities for staff, both to check in on their own wellbeing and to encourage best practice family violence responses.
- Energy retailers could consider employing or seconding suitably qualified and skilled staff, as well as upgrading (and ensuring there is an ongoing review of) internal systems and policies to build capability within the business.

¹⁷ A list of potential family violence training providers can be found at <https://earg.org.au/family-violence-training-providers/>.

¹⁸ See for example <https://www.fairwork.gov.au/leave/family-and-domestic-violence-leave>.

Customer identification

Rule summary

- Energy retailers must implement a secure process that:
 - provides a method to readily assess if a small customer is affected by family violence
 - provides a method to readily identify the account of a small customer who has been identified as being affected by family violence
 - avoids the need for the affected customer to repeatedly disclose or refer to their experience of family violence, and
 - provides for effective ongoing engagement with an affected customer.¹⁹

AER guidance

- The AER considers this obligation is closely linked to the overarching requirement to prioritise an affected customer's safety and that a failure to implement a secure process could raise compliance concerns.²⁰
- Affected customers should not need to re-live their experience of family violence every time they contact a retailer. The need to repeatedly disclose circumstances of family violence can be traumatic. Repeated disclosure could increase the risk of a perpetrator discovering the disclosure has occurred, if they were monitoring an affected customer's communications. It may also discourage affected customers from seeking support.
- The process should ensure confidentiality is maintained and there is adequate security to ensure that there is no inappropriate disclosure of the affected customers personal details.
- The nature of this process and details of how and when information about affected customers will be accessed and stored should be:
 - set out in an energy retailer's family violence policy, and
 - directly communicated to the affected customer where possible.
- Identifying an affected customer, including what signs energy retailer staff need to be looking for, should be covered in staff training. Resources for staff on identification (along with appropriate engagement and referral options) should be easily accessible.
- Once family violence is disclosed by an affected customer, energy retailers should, after asking the affected customer, secure the account so that internal account access is limited on a needs basis.
- Energy retailers will also need to ensure their internal computer systems allow for affected customers, once initially flagged by energy retailer staff, to be promptly identified. This will avoid the need for repeated disclosure. Energy retailers may wish to introduce an account tag to an affected customer's accounts, with the affected customer's consent. With this

¹⁹ *Retail Rules*, subrule 76C(a)-(d).

²⁰ *Retail Rules*, subrule 76D.

tag, when contacting the energy retailer, the individual could be directly transferred to a trained staff member who is aware of their circumstances.

- The AER considers that once identified, a customer remains a customer affected by family violence until they inform the energy retailer otherwise.

Financial impacts of family violence

Rule summary

- Before taking action to recover debt from an affected customer or transferring the affected customer debt to a third-party debt collector, energy retailers must take into account:
 - the potential impact of debt recovery action at that time on an affected customer, and
 - whether someone else is jointly or severally responsible for the energy usage resulting in the debt.²¹
- Energy retailers must also:
 - waive late payment fees for affected customers,²² and
 - allow payment using Centrepay.²³

AER guidance

- Family violence can have long-term financial impacts on affected customers and their families. Energy retailers should be aware that debt can be accrued as a form of abuse against the affected customer.
- While financial abuse can manifest in many ways, perpetrators could:
 - insist an account be in an affected customer's name but not contribute to the energy bill
 - open an account in the name of an affected customer without their knowledge or consent
 - hold the account jointly with the affected customer, but not contribute to the energy bill
 - hold the account in their own name and not pay the energy bills, or²⁴
 - control spending, access to bank accounts or other assets, impacting an affected customer's ability to pay an energy bill.
- Energy retailers need to consider these and other possibilities before commencing debt recovery action.

²¹ *Retail Rules*, subrule 76F(1).

²² *Retail Rules*, subrule 76F(3).

²³ *Retail Rules*, subrule 76F(4).

²⁴ State of Victoria, Royal Commission into Family Violence: Summary and recommendations, Parliamentary Paper No 132 (2014–16), p. 104.

- Debt recovery action can have a significant impact on affected customers.
 - The affected customer will potentially need to redisclose the family violence to the debt collection agency which may lead to further trauma.
 - Unlike energy retailer staff, debt collectors may not have received training on family violence, leading to the use of potentially insensitive language, and again risking further trauma for the affected customer.
 - Debt collection agency payment plans may not factor in an affected customer's history of family violence, including the fact that the debt may have been accrued by the perpetrator.
 - Debt collectors may not refer these affected customers to sources of support, such as family violence services, community legal centres or financial counselling.
 - Debt collectors could unintentionally disclose the address or whereabouts of the affected customer to the perpetrator.
- The AER considers energy retailers should have systems in place to ensure affected customers with joint debt are not disadvantaged if they leave a situation of family violence. This could include promptly identifying situations where debt can be waived or suspended in part or in full.
- It is inappropriate for energy retailers to pressure affected customers into accessing and then using programs or financial assistance payments that are specifically designed to help a person leave a situation of family violence to clear energy debts.²⁵
- Energy retailers should also consider whether referral to a financial counsellor is appropriate, however speaking to a financial counsellor should not be a precondition to receiving support.

²⁵ For example, the [Escaping Violence Payment](#).

Hardship and payment plans

Rule summary

- An energy retailer must recognise family violence as a likely cause of a residential customer being a hardship customer or a small customer experiencing payment difficulties.²⁶
- Energy retailers need to offer affected customers further payment plans, even if they have had two cancelled due to non-payment in the previous 12 months or have been convicted of an offence involving illegal energy use in the last two years, where someone else may have been jointly or severally responsible for these actions.²⁷

AER guidance

- Energy retailers should use a disclosure of family violence as a prompt to discuss whether affected customers are experiencing payment difficulties and to then determine eligibility for the energy retailer's hardship program.

De energisation for not paying a bill

Rule summary

- An energy retailer must not arrange for the de-energisation of an affected customer's premises unless the energy retailer has taken into account:
 - the potential impact of de-energisation on the affected customer at that time, and
 - whether other persons are jointly or severally responsible for the relevant non-payment or action.²⁸

AER guidance

- Disconnection can seriously impact affected customers and their dependents. It can add an additional expense and be stressful in what is already a difficult time. Disconnection could also prevent an affected customer accessing assistance or leaving a situation of family violence. No power could mean no internet or ability to charge a mobile phone.
- As such, the affected customer's safety should take priority. Energy retailers should not disconnect affected customers unless they have formed a view that it will not cause harm.

²⁶ Retail Rules, subrule 76E.

²⁷ Retail Rules, subrule 33(2).

²⁸ Retail Rules, subrule 111(2A).

Protection of affected customer information

Rule summary

- Energy retailers must not disclose or provide access to information about an affected customer to any other person (including a current or former joint account holder), without the affected customer's consent.²⁹
 - This obligation extends to information that may be used to identify, communicate with, or locate an affected customer, including information about their whereabouts, contact details, or financial or personal circumstances.³⁰
 - Such information would include date of birth, maiden name, phone numbers, email addresses, PO boxes, and residential addresses.
- Energy retailers must ensure that their contactors, subcontractors and agents do not disclose or provide access to affected customer information without the consent of the affected customer.³¹
- Energy retailers are able to share affected customer information to the extent required by law.³²

AER guidance

- Inadvertent disclosure can seriously impact an affected customer's safety, including by revealing the affected customer's current location to the perpetrator. This could mean the affected customer is confronted or seriously harmed. The AER is aware of energy retailers applying additional layers of protection against inadvertent disclosure on customer accounts, including using a code word or a PIN identifier.
- Information about when, with whom and why information will be shared should be set out in an energy retailer's family violence policy and communicated directly to the affected customer where possible.
- Energy retailers may wish to conduct an internal audit to ensure automation within their systems does not lead to inadvertent disclosure of affected customer information.
- Inadvertent disclosure may also cause financial detriment, for example resulting in the affected customer potentially needing to move again to maintain safety or to organise for a new phone number or sim card. It may be appropriate for an energy retailer to financially compensate the affected customer in the event of an inadvertent disclosure.

²⁹ *Retail Rules*, subrule 76G(1).

³⁰ *Retail Rules*, subrule 76G(3).

³¹ *Retail Rules*, subrule 76G(1). This does not include a contractor, subcontractor or agent of the retailer that requires access to the affected customer information in order to perform services for the retailer (*Retail Rules*, subrule 76(3)).

³² *Retail Rules*, subrule 76G(2).

- The AER considers this obligation is closely linked to the overarching requirement to prioritise an affected customer's safety³³ and that a failure to protect a customer's information will raise compliance concerns.

Communication

Rule summary

- Energy retailers need to identify, record and use an affected customer's preferred method of communication.³⁴ The affected customer may use this method in their communications with the energy retailer.³⁵ If an affected customer's preferred method is not practicable, energy retailers need to offer alternative methods.³⁶
- An affected customer's preferred method of communication takes precedence over any other customer communication requirement in the Retail Rules.³⁷

AER guidance

- Sending communications via a non-preferred method may pose a risk to an affected customer's safety. Energy retailers could inadvertently disclose information such as an affected customer's location to the perpetrator. Using a non-preferred method also risks stress to the affected customer, for example if a perpetrator monitors the affected customer's phone calls, letterbox or email.
- Energy retailers should ensure their internal systems support the selection and use of a preferred communication method. One form of communication could be via a third-party support worker, including a financial counsellor. Energy retailers should accept an 'authority to act' in these circumstances.

³³ *Retail Rules*, subrule 76D(a).

³⁴ *Retail Rules*, subrule 76H(1) and (2).

³⁵ *Retail Rules*, subrule 76H(2).

³⁶ *Retail Rules*, subrule 76H(1)(b).

³⁷ *Retail Rules*, subrule 76H(3).

Documentary evidence

Rule summary

- Energy retailers must not require affected customers or third parties acting on their behalf to provide any documentary evidence of family violence as a precondition for receiving family violence protections.³⁸

AER guidance

- For some affected customers, documentary evidence may not exist or be difficult to access (for example, where the affected customer has left the family home). Providing documentary evidence can also be invasive and uncomfortable, risk further trauma or potentially result in the perpetrator discovering the disclosure, representing a risk to the affected customer's safety. Requiring documentary evidence also poses a risk of trauma to an energy retailer's staff.
- Failure to comply with this obligation could result in affected customers not receiving appropriate support.

Information about external support services

Rule summary

- Energy retailers must provide affected customers 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.³⁹
- Energy retailers must also keep a current list of one or more external support services on their website.⁴⁰

AER guidance

- Energy retailers should include an accurate description of what each service provides for ease of reference.
- The AER expects energy retailers to cover appropriate and timely referral to support services in any staff training.
- Support services referred to should cater to the diverse needs of different customer groups. This includes those with a disability and/or chronic health conditions, First Nations people, culturally and linguistically diverse people, including recently arrived migrants and customers that are LGBTIQ+.

³⁸ *Retail Rules*, subrule 76I.

³⁹ *Retail Rules*, subrule 76J(1).

⁴⁰ *Retail Rules*, subrule 76J(2).

- Energy retailers should review these support services regularly to ensure they reflect best practice and provided contact details are up to date.⁴¹

No breach of contract

Rule summary

- The final rule contains override provisions to give retailers regulatory certainty and confidence when helping customers affected by family violence.
 - A retailer will not be in breach of its contract if it is unable to fulfil an obligation under its retail contract as a result of complying with the family violence rules.⁴²
 - If an affected customer is unable to fulfil an obligation under their retail contract by using their preferred method of communication with the retailer, the customer will not be in breach of their contract.⁴³

Model terms and conditions

Rule summary

- The model terms and conditions for standard retail contracts have been amended to reflect, where appropriate, the new family violence provisions.⁴⁴

More information

- [Protecting customers affected by family violence – AEMC final determination](#)
- [Protecting customers affected by family violence – Final Rule](#)

⁴¹ A list of support services (state by state and national) is available at <https://areyousafeathome.org.au/find-a-service/#1648542618372-7ceae3a9-3fb3adb8-6382>.

⁴² *Retail Rules*, subrule 76K(1).

⁴³ *Retail Rules*, subrule 76K(2).

⁴⁴ *Retail Rules*, Schedule 1.

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