



**EnergyAustralia**

LIGHT THE WAY

16 April 2019

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Essential Services Commission  
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Dear Dr Ben-David

### **ESC – Family Violence Support and Assistance draft decision**

EnergyAustralia welcomes the opportunity to make this submission to the Essential Services Commission's (ESC's) draft decision to improve consumer protections for customers affected by family violence.

EnergyAustralia is one of Australia's largest energy companies, providing gas and electricity to 2.6 million household and business customer accounts in New South Wales, Victoria, Queensland, South Australia and the Australian Capital Territory. In Victoria, we provide gas and electricity to around 20 percent of households.

EnergyAustralia's corporate behaviours include 'doing the right thing'. This drives our continual practice of putting our customers at the centre of what we do. The provision of an essential service comes with implicit responsibility to support customers in a non-judgemental, non-intrusive and respectful way, particularly those in vulnerable circumstances. That is why, if a customer is experiencing family violence, we refer them to our *EnergyAssist* Program which supports customers via case managers.

We consider the proposed amendments to the Energy Retail Code – *assistance for customer affected by family violence* – has, for the most part, achieved the right balance. As drafted, it will deliver a minimum standard across all retailers, uplifting current practices to provide a consistent level of support for customers facing family violence. At the same time, retailers still have flexibility to provide additional services.

We also thank the ESC for an open and transparent consultation process. It was a well-run process that engaged with retailers and the wider community to develop the amended Code. We welcome continual engagement on the development of the better practice guide and support its purpose as a guide rather than an additional compliance document.

While we are broadly comfortable with the proposed Code amendments, we have some concerns around the implications of some of the draft Clauses and the implementation timeframe. As such, we have limited our comments to these elements in this submission.

## 1. Definition of affected customer

The ESC has proposed that the new Part 3A will include a new definition of customers. As proposed an “*affected customer* means any customer, including a former customer, who is or was a small customer and who may be affected by family violence”. However, the current definition potentially gives rises to some difficult interpretations. Further clarity around the below points would be beneficial.

### 1.1 “may be affected by family violence”

The inclusion of “may be” is likely intended to captured instances where a retailer has observed signs which could indicate family violence (but where the customer may not have explicitly said anything). However, it could be interpreted as a retailer having an obligation to treat all customers as *affected customers* on the bases that any customer could potentially be affected by family violence. As such, Part 3A would apply to all customers.

### 1.2 Former customers

We acknowledge that former customers are entitled to protections around any information that may be used to identify them. We also recognise the long ranging impacts of financial abuse impacting former customers and any debt management practices retailers have in place. We would appreciated further clarity around how a former customer interacts with Clause 106H below.

*(1) A retailer must provide a secure process designed to:*

- a. Provide for identification of affected customers; and*
- b. Provide for effective ongoing engagement with affected customers; and*
- c. Avoid affected customers having to repeatedly disclose or refer to their experience of family violence.*

We assume the intention of Clause 106H(1)(a) is a requirement for retailers to have in place a process that identifies *affected customer* accounts (for example a flag). As drafted the requirement sets an expectation that retailers are required to have a process in place to enable the identification of all customers impacted by family violence - former and current. We do not consider that retailers should have an obligation to go back and audit past interactions with former customers (or indeed, past interactions with a current customers) to identify signs or indications of family violence.

As such, we suggest the Clause be amended to:

- a. Provide a method for identifying the accounts of customers who have been for identified ~~ation of~~ as affected customers*

In addition, under Clause 106H(1)(c), is it the ESC’s intention that if an *affected customer* churns to another retailer we are required to have a process in place to inform that retailer that the customer is an *affected customer*? This is not feasible and, in most cases, we do not have contact with the customer during this process. As such, we have concerns with having to provide information to a third party about an *affected customer* without their consent and whether we would be breaching the customers privacy in doing this.

## 2. Training

The training requirements under Clause 106F are very broad, capturing a range of people (including employees, agents and contractors) who may engage, or are responsible for how the engagement occurs, with affected customers. We suggest that the draft Code be amended as follows:

- (1) *A retailer must ensure that training is provided to:*
- (a) any person (including employees, agents and contractors) acting on its behalf who:*
    - (i) may engage with affected customers by any means of communication; or*
    - (i) is a manager of a person identified in paragraph (a)(i); or*
  - (b) relevant employees who are responsible for designing or implementing systems and processes that guide interactions with customers.*

This provides retailers with some flexibility in determining the function of its business which is most suitable to undertake training to meet the objectives of Part 3A.

Additionally, while increasing awareness about family violence within retailers can improve customer outcomes, we do not believe that quality training can be rolled out across all identified cohorts by 1 January 2020.

Contractors can capture a wide array of people acting on a retailer's behalf, including electricians, solar and battery installers, and energy efficiency contractors. Has the ESC confirmed that training providers can meet a 1 January 2020 deadline for these industries? This is crucial for any contractors who may have set training module schedules.

We would encourage the ESC to consider a phased approach to the implementation of this provision to mitigate any training being a tick-box exercise to meet compliance dates. We suggest that:

- By 1 January 2020: all relevant staff, including those involved in the implementation of the amended Code.
- By 2 months from commencement: all front-line staff and specialised trained staff and managers of these staff.
- By 6 months from commencement: all persons acting on a retailer's behalf who engages with customers and any person who is responsible for how this engagement occurs.

By allowing for a phased approach, our people will receive the right quality training to be able to help customers maintain their personal and financial security.

### 3. Account Security

We agree with the requirement for retailers to take measures to safeguard contact information and personal details of customers affected by family violence. However, as proposed, it is unclear how Clause 106G will interact with our current obligations in the Energy Retail Code (ERC).

*(4) To identify a safe method of communication with an affected customer, a retailer must:*

*(a) take reasonable steps to elicit the affected customer's preferred method of communication; and*

*(b) offer alternative methods of communication if the affected customer's preferred method of communication identified in paragraph (a) is not practicable.*

*(5) A retailer must comply with arrangements reached pursuant to subclause (4) notwithstanding any requirement in this Code to provide an affected customer with a written communication or to otherwise make contact with the customer.*

As drafted, Clause 106G(4) requires retailers to agree with an *affected customer* on a safe method of communication. This includes the customer's preferred method of communication or offering an alternative if the preferred method is not practicable. Retailers are required to comply with this agreement when giving effect to other parts of the Code.

A scenario could present where the affected customer nominates to pause their communications for a period or nominates to not receive any communications. To ensure the affected customer remains safe, we would take all reasonable steps to implement this preference. However, this would mean that we are in breach of other elements of the Code. For example – Payment Difficulty Framework or sending an energy bill.

Another example could be where an affected customer has requested that all communications be received verbally. By complying with this request, we would be in breach of numerous sections of the Code which require written communication, and arguably also our Electricity Retail Licence which specifies 'communications' for the purpose of that licence must be 'in writing'.

We do not consider that the current drafting of Clause 106G(5) offers sufficient clarity around the hierarchy in precedence of this Clause as compared to other requirements in the Code. Retailers need confidence that if they use their judgement to meet the objective of Part 3A regarding safety, the ESC will not take any action for other potential breaches.

Simply reporting suspected breaches to the ESC, noting that the customer is impacted by family violence is not a suitable workaround. There are internal process retailers have in place to mitigate against breaches. An identified breach is resource intensive, requiring investigation from multiple parts of the business and reporting up the line. If the breach is systemic we would be required to undertake remediation and in doing so, may detract from any higher risk areas.

In the absence of clear exceptions, we have significant concerns on how to implement this Clause.

#### **4. Evidence**

It is not EnergyAustralia's policy to request documentary evidence of family violence from affected customers to receive support from us. However, we note that any provision around requiring evidence should be mindful that the evidence may contain personal information of other parties other than the account holder, or sensitive information that may not be appropriate for staff to view.

#### **Summary**

EnergyAustralia acknowledges the important role we play in supporting customers affected by family violence. We broadly support the ESC's draft decision and consider the minimum standards appropriate. However, we do encourage the ESC to allow retailers, and supporting parties, with an appropriate amount of time to implement effective training. This will ensure we get it right in helping customers maintain their personal and financial security. We also recommend the ESC consider the practical implications of Clause 106G more broadly and provide clear expectations in how to interpret this against current obligations.

If you would like to discuss this submission, please contact Carmel Forbes on [REDACTED].

Regards

**Sarah Ogilvie**

Industry Regulation Leader