



Proposed amendments to the Tasmanian Gas Retail Code

Consultation Paper

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TABLE OF CONTENTS

- 1 INVITATION FOR SUBMISSIONS..... 1**
- 2 INTRODUCTION 2**
- 3 GAS REGULATION IN TASMANIA 2**
- 4 NATIONAL ENERGY CUSTOMER FRAMEWORK 3**
 - 4.1 CUSTOMER HARDSHIP..... 3
 - 4.2 FAMILY VIOLENCE..... 4
- 5 PROPOSED AMENDMENTS TO THE GAS RETAIL CODE..... 6**
 - 5.1 CUSTOMER HARDSHIP..... 6
 - 5.2 FAMILY VIOLENCE..... 7
 - 5.3 MISCELLANEOUS AMENDMENTS..... 9

1 INVITATION FOR SUBMISSIONS

This Consultation Paper has been prepared to assist interested persons and stakeholders in making submissions on the proposed amendments to the *Tasmanian Gas Retail Code, Version 8* (Gas Retail Code). The Tasmanian Economic Regulator (the Regulator) will consider submissions prior to the proposed amendments being finalised and taking effect.

It is the Regulator's policy to publish all submissions on the Office of the Tasmanian Economic Regulator's (OTTER) website unless the author of the submission requests confidentiality in relation to the submission (or any part of the submission). Those parts of a submission that are requested to be kept confidential should be submitted as an attachment to that part suitable for publication.

The Regulator will not publish submissions which contain material that the Regulator believes is, or could be, derogatory or defamatory.

Submissions should be received by close of business on 8 May 2023.

To facilitate the publication of submissions on the OTTER website, submissions in electronic form are preferred. Submissions and enquiries may be submitted to:

office@economicregulator.tas.gov.au

or to

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Copies of this Consultation Paper and the draft revised Gas Retail Code are available on the OTTER website: www.economicregulator.tas.gov.au. Please access these documents via the 'Consultations' tab.

Following consideration of all submissions, the changes (with or without alteration) will be incorporated into the Gas Retail Code and published on OTTER's website.

2 INTRODUCTION

The Gas Retail Code establishes the minimum terms and conditions under which gas retailers must sell gas to customers in Tasmania. This Consultation Paper provides information on proposed amendments to the Gas Retail Code to introduce general customer hardship provisions and specific protections for customers of Tasmanian gas retailers who are experiencing family violence.

The proposed amendments are similar to established customer hardship arrangements and soon-to-commence assistance and protections for customers experiencing family violence under the National Energy Retail Rules (NERR), which do not apply to the retailing of gas in Tasmania.

Minor amendments to address drafting errors and to make administrative corrections are also proposed.

It is proposed that amendments will come into effect on 1 July 2023.

A marked-up draft version of the revised Gas Retail Code has been prepared and is provided supplementary to this Consultation Paper.

3 GAS REGULATION IN TASMANIA

The Regulator's functions with regard to the gas supply industry in Tasmania are set out in the *Gas Industry Act 2019* (Gas Industry Act). These functions exclude price regulation, but include:

- administering the licensing system for gas licensees;
- establishing, publishing and monitoring standards and codes in respect of the gas activities carried out by gas licensees;
- reporting on the state of the gas industry; and
- granting gas infrastructure licences and gas retail licences.

The Regulator is required to act in a fair and equitable manner, taking proper account of the interests of gas consumers, except as they relate to safety which is the responsibility of the Director of Gas Safety under the *Gas Safety Act 2019*.

The Gas Industry Act provides for the Regulator to issue codes, which may provide for matters relating or incidental to the supply or selling of gas by retail.

As at 1 April 2023, the following entities held a gas retail licence, issued by the Regulator, to sell gas by retail in Tasmania:

- Aurora Energy Pty Ltd;
- Globird Energy Pty Ltd;
- Tas Gas Retail Pty Ltd; and
- Origin Energy Retail Pty Ltd (liquefied petroleum gas only).

These retailers also hold Australian Energy Regulator (AER) authorisations to retail gas in the ACT, NSW, QLD and SA and do so under the National Energy Customer Framework (NECF) for those customer bases.

4 NATIONAL ENERGY CUSTOMER FRAMEWORK

In 2006, the Council of Australian Governments agreed to develop a new NECF governing the sale and supply of energy (electricity and natural gas) to retail customers.

The NECF was developed in recognition that energy is an essential service for all Australians and provides strong national protections. It ensures that customers should receive the same level of consumer protections, regardless of where they live.

The main NECF documents are the:

- National Energy Retail Law (NERL);
- NERR; and
- National Energy Retail Regulations (Regulations).

Parts of the NECF are also contained in new chapters of the National Electricity Rules and the National Gas Rules.

The AER is responsible for monitoring and enforcement of the NECF.

The NECF legislative framework commenced on mainland Tasmania from 1 July 2012. It was applied to the Tasmanian electricity industry, but not the Tasmanian gas industry (Tasmania opted out with respect to gas). The NECF has also been adopted in the ACT, South Australia, NSW and Queensland. Victoria has not adopted the NECF, however, it has completed a process to harmonise the Victorian Energy Retail Code and the NECF. The Northern Territory has adapted a modified form of the NECF through chapter 5A of the National Electricity Rules.

The Australian Energy Market Commission (AEMC) can amend the NERR, National Electricity Rules or National Gas Rules if it receives a request to do so from any person.

4.1 Customer hardship

The NERL requires energy retailers to develop, maintain and implement an AER-approved customer hardship policy for their residential customers.

The purpose of a retailer's customer hardship policy is to identify residential customers experiencing payment difficulties due to hardship and to assist those customers to better manage their energy bills on an ongoing basis.

The AER approves retailers' compliant customer hardship policies in accordance with its *Customer Hardship Policy Guideline*¹ (the Hardship Policy Guideline). The Hardship Policy Guideline creates binding, enforceable obligations on retailers to strengthen

¹ [AER Customer Hardship Policy Guideline, Version 1 - March 2019](#)

protections for customers experiencing payment difficulties due to hardship. Retailers' hardship policies must comply with the Hardship Policy Guideline and contain clear and specific statements of the actions the retailer will take to meet the following minimum requirements, as specified in the NERL:

- processes to identify customers experiencing payment difficulties due to hardship, including identification by the retailer and self-identification by the customer;
- processes for the early response by the retailer to customers in hardship;
- flexible payment options (including payment plans and Centrepay) for the payment of energy bills by hardship customers;
- processes to identify and to notify customers of appropriate government concession programs and appropriate financial counselling services;
- an outline of programs that the retailer may use to assist hardship customers;
- processes to review the appropriateness of a hardship customer's market retail contract against the retailer's hardship policy; and
- processes or programs to assist customers with strategies to improve their energy efficiency, where relevant.

Further, customer hardship policies must include standardised statements specified in the Hardship Policy Guideline that inform customers of how the retailer will comply with the minimum requirements and provide guidance to customers on their rights, and retailer obligations.

As noted under section 3 of this Consultation Paper, the gas retailers presently licenced by the Regulator to sell gas by retail in Tasmania are also authorised by the AER to retail gas in ACT, NSW, QLD and SA. As such, they are required to have a NERL customer hardship policy for any retail customers which they have in these jurisdictions.

However, Tasmania opted out with regard to gas when it adopted the NECF and gas retailers with customers based in Tasmania are not currently required to develop, maintain and implement a customer hardship policy with respect to those customers.

The Gas Retail Code does not currently contain customer hardship provisions. It does, however, provide that the retailer must ensure that gas accounts, when issued to customers, include a telephone number that is specifically identified as a number at which the retailer may be contacted when a customer is experiencing difficulty paying a gas account. The Gas Retail Code also presently provides for the establishment of 'payment plans' whereby an arrangement may be entered into (between the customer and the retailer) for the customer to pay by instalments any amounts due to a retailer.

4.2 Family violence

On 15 September 2022, the AEMC introduced new regulatory protections for customers impacted by family violence, which are to come into effect on 1 May 2023. These rules allow family violence customers to focus on other important matters and provide peace of mind that they will receive clear, transparent and honest support from their energy retailers.

As part of its work on this matter, the AEMC stated that intimate partner violence contributes to death, disability, homelessness, and illness in adult women more than any other preventable risk factor. Because they are critical to everyday life, essential services like electricity, gas, water and communications can be exploited by perpetrators of family violence to control victims, perpetuate psychological abuse, affect their financial security, and potentially cause injury or death.

The key changes to be provided by the new rule are:

- Retailers must have a separate family violence policy.
- Retailer staff must understand the nature and consequences of family violence and be able to identify, engage appropriately and effectively with, and assist customers affected by family violence.
- Retailers must provide a secure method to identify affected customers and to minimise the need for customers affected by family violence to repeatedly disclose their experiences.
- Retailers must have regard firstly to the safety of an affected customer and must take into account their personal circumstances in any dealing that they have with that customer.
- Family violence must be considered a likely cause of payment difficulties and hardship.
- Before retailers take action to recover arrears of payment from an affected customer, or sell the debt to a third party, they must take into account: the impact of debt recovery action on an affected customer; and whether other people are jointly or severally liable for the energy usage that resulted in the accumulation of arrears.
- Retailers must not disclose confidential information about an affected customer to another person (and must procure their contractors and agents do not disclose this information) without the customer's consent.
- Retailers must take reasonable steps to identify and use a safe method of communicating with customers. Once identified this preferred method takes precedence over all other communication requirements in the retail rules.
- Customers cannot be required to provide documentary evidence as a precondition for receiving family violence protections.
- Retailers are to refer customers to one or more external family violence support services, at a time and in a manner that is safe, respectful and appropriate for affected customers' circumstances.
- A retailer and affected customer are not in breach of the standard or market retail contract if they communicate with each other using that customer's preferred communication method.
- A retailer's family violence policy takes precedence over its market retail contract and neither the retailer nor the customer will be in breach of the retail contract for complying with these family violence rules.

The final rule applies to both residential and small business customers. It uses the term 'family violence' (for consistency with the Victorian Energy Retail Code of Practice) but relies

on the South Australian definition of ‘domestic abuse’, which provides broad coverage of the types of relationships within which abuse may occur - including where one person is a carer of the other.

As previously noted, the NECF applies to Tasmanian electricity retailers but not to Tasmanian gas retailers. Consequently, gas retailers are not required to be compliant with the NERL and NERR with respect to Tasmanian customers and, therefore, will not be required to develop, maintain and implement a family violence policy with respect to Tasmanian customers.

The Gas Retail Code does not currently include provisions with respect to family violence.

5 PROPOSED AMENDMENTS TO THE GAS RETAIL CODE

5.1 Customer hardship

The Regulator proposes to introduce a regulatory framework that supports customers who are experiencing payment difficulties due to hardship when they approach their gas retailer for payment assistance. Energy supply is an essential service and it is important that retailers do as much as possible to maintain customer access to these services and that disconnection due to a customer’s inability to pay bills remains a last resort option.

The Regulator proposes to amend the Gas Retail Code by introducing customer hardship provisions, including the requirement that Tasmanian gas retailers develop, maintain and publish a customer hardship policy.

In drafting the proposed customer hardship provisions, the Regulator has given consideration to current customer hardship arrangements under the NERR. Whilst the Regulator’s draft amendments do reflect many of the overarching hardship ‘themes’ of the NERR, it is not the Regulator’s intention to fully replicate the rules for application in the Tasmanian gas retail sector. For example, the proposed retailer obligations are less prescriptive, by comparison, to the terms outlined in the AER’s Hardship Policy Guideline (which requires retailers to include in their customer hardship policies the exact wording of many standardised statements). The Regulator’s proposed hardship provisions will provide minimum standards with which a Tasmanian gas retailer must comply but affords retailers the discretion to present the required information in their customer hardship policy in a format of their choosing.

To this end, those gas retailers presently licenced by the Regulator to sell gas by retail in Tasmania and which are also authorised, by the AER, to retail gas in other states and territories, may choose to apply a modified version of their NERL/NERR customer hardship policy to their Tasmanian gas retail customers. Providing the policy meets the minimum standards outlined in the Gas Retail Code, the retailer may, giving consideration to best practice hardship policies in the energy industry sector and NERR requirements, draft its policy to be as comprehensive and detailed as it chooses.

Similar to requirements of the NERR, the Regulator proposes to require Tasmanian gas retailers to publish their customer hardship policies on their websites. A gas retailer will not, however, be required to provide a copy of its customer hardship policy to the Regulator for

review and approval. This is in line with the Regulator's current practice with respect to the financial hardship policy of Tasmania's water and sewerage retailer. The Regulator may, however, request a copy of a Tasmanian gas retailer's customer hardship policy, at its discretion, so as to assess its compliance with the Gas Retail Code. Breaches of the requirements of the Gas Retail Code will be dealt with in accordance with the Regulator's *Compliance Enforcement Policy, Version 3, February 2021*.

The proposed amendments to be introduced to the Gas Retail Code will require a Tasmanian gas retailer's customer hardship policy to include, amongst other things:

- processes to identify customers experiencing payment difficulties due to hardship;
- processes for staff training on relevant customer hardship policies and procedures;
- the offering of payment options in accordance with a customer's capacity to pay;
- the exemption of customers experiencing payment difficulty due to hardship from supply restriction, legal action and additional debt recovery costs while the customer is making payments to the retailer according to an agreed payment plan or other payment schedule;
- information about a retailer's complaints and disputes resolution processes and the rights of a customer to lodge a complaint with the Tasmanian Ombudsman; and
- a review mechanism for the customer hardship policy.

5.2 Family violence

In its *Protecting Customers Affected by Family Violence - Final Determination*, the AEMC stated that intimate partner violence contributes to more death, disability and illness in adult women than any other preventable risk factor.² Survivors of family violence, including children, can be impacted by it for significant parts of their lives.³ In 2017, the Australian Bureau of Statistics (ABS) found that one in four Australian women has experienced violence by a current or previous intimate partner, and around one in thirteen men have also experienced intimate partner violence.⁴ Recent surveys show the incidence and severity of family violence increased during the COVID-19 pandemic.⁵ Essential services including electricity and gas can be exploited by family violence perpetrators to harm victims.

The new rules introduced by the AEMC to protect people leaving violent relationships include a requirement for energy retailers to safeguard their customers' identities and locations by not giving out confidential information about an affected person without their consent. The measures specifically recognise domestic violence as a form of hardship and brings

² Australia's National Research Organisation for Women's Safety (2018). *Violence against women: Accurate use of key statistics* (ANROWS Insights 05/2018). Sydney, NSW:ANROWS.

³ Family violence typically involves a pattern of behaviour intended to coerce and control the victim survivor, that can cause psychological, physical, and financial damage to the victim survivor. It can erode the victim survivor's sense of self-worth and can lead the victim survivor to be in a permanent state of hyper-vigilance, impacting the way they process information, communicate and make decisions. Safe and Equal, *Guidelines for Better Practice Responses to Family violence for the Essential Services Commission and essential services providers*, May 2022, p. 8.

⁴ ABS (2017) Personal safety, Australia, 2016.

⁵ Carrington et al, *The Impact of COVID-19 Pandemic on Domestic and Family Violence Services and Clients*. Australia, Queensland University of Technology, May 2021.

survivors into line with others who are experiencing financial difficulties, by allowing them to apply for an extension on their bills or setting up payment plans.

The AEMC also requires energy retailers build staff awareness of the nature and consequences of family violence. Retailers will need to provide a secure process to identify affected customers and not require evidence of abuse to be provided before they offer protection. The new rules will bring other states into line with reforms that have been adopted in Victoria and drafted for Western Australia.

Whilst the NERR does not apply to the retailing of gas in Tasmania, the Regulator supports the changes to be introduced by the AEMC, and those already established in Victoria. The Regulator further acknowledges that many organisations have a role in both supporting victims and survivors of family violence and ensuring that regulatory frameworks and business practices do not cause harm to impacted customers.

The Regulator proposes to introduce family violence provisions to its Gas Retail Code that will protect customers' physical safety by safeguarding their identities and locations, as well as helping with the financial challenges that may arise in such situations.

Specifically, the Regulator is proposing to introduce amendments in keeping with those applicable in Victoria, whereby gas retailers will need to develop, maintain and publish a family violence policy, and meet minimum standards on:

- training;
- account security;
- customer service;
- debt management practices;
- external support services; and
- evidence of family violence.

Consistent with the NERR however, the Regulator has also chosen to use the term 'family violence' in its drafting of the proposed Gas Retail Code amendments and to similarly rely on the South Australian definition of 'domestic abuse' to provide a broader capture of the types of relationships within which abuse may occur. This option is preferred to the option of defining family violence as having the meaning given to it in section 7 of the *Family Violence Act 2004* (Tasmania), which limits such conduct to being against a person's spouse or partner.

Consistent with the proposed approach for a retailer's customer hardship policy, a Tasmanian gas retailer will not be required to provide a copy of its family violence policy to the Regulator for review and approval. The Regulator may, however, request a copy of a Tasmanian gas retailer's family violence policy, at its discretion, and assess it for compliance against the provisions of the Gas Retail Code. Any identified compliance breaches, against the requirements of the Gas Retail Code, will be dealt with in accordance with the Regulator's *Compliance Enforcement Policy, Version 3, February 2021*.

5.3 Miscellaneous amendments

The Regulator also proposes to make a number of minor amendments to the Gas Retail Code to address drafting errors and to make administrative corrections. These issues, and the proposed amendments are discussed in Table 1.

Table 1: Miscellaneous Amendments

Clause (current Gas Retail Code)	Issue	Proposed Amendment
1.1 2(a) 2(b) 3(a) 15.1	The current version of the Gas Retail Code states that its purpose is to establish the minimum terms and conditions under which a retailer must sell gas to 'small customers', with the term 'small customer' being defined in the current clause 15.1 (Definitions) as having the meaning given to that term in the <i>Gas Industry Act 2019</i> . The Gas Industry Act does not, however, refer to, or define, 'small customers'. Rather, the Gas Industry Act defines the term 'customer'. References to 'small customer' throughout the Gas Retail Code will need to be replaced with 'customer'.	Replace all references to 'small customer' in the current version of the Gas Retail Code to 'customer'. Delete definition of 'small customer' as currently presented in clause 15.1.
1.3	Clause 1.3 of the current Gas Retail Code makes reference to clause 1.6(e) of the Gas Retail Code, however clause 1.6(e) no longer exists. This was a drafting oversight in the updating of the Gas Retail Code to Version 8, at which time subclauses 1.6(a) to 1.6(e) were removed.	Remove the text 'and clause 1.6(e) binds the Minister' in clause 1.3 of the current Gas Retail Code.
7 15.1	Reference to <i>Australian/New Zealand Standard (AS/NZS 10002:2014)</i> requires updating to the most recent version of this standard.	Update references in clauses 7 and 15.1 to <i>Australian/New Zealand Standard (AS/NZS 10002:2022)</i> .
13.1	Clause 13.1 of the current Gas Retail Code makes reference to 'schedule 2'. However, there is no longer a 'schedule 2' in the Gas Retail Code as it was removed as part of the development of Version 8. The 'schedule 2' reference in this clause should have been updated in Version 8 to read 'schedule 1'.	Replace reference to 'schedule 2' in Clause 13.1 with a reference to 'schedule 1'.
15.1	Reference to Australian Standard (<i>AS ISO 19600:2015</i>) requires updating to the most recent version, <i>Australian Standard (AS ISO 37301:2023)</i> .	Update references in Clause 15.1 to <i>Australian Standard (AS ISO 37301:2023)</i> .
15.1	The current version of the Gas Retail Code has a definition of the term 'compliance plan'. In that definition, it states that a compliance plan must 'be in accordance with Australian Standard (AS 19600)'. It is	Replace the words 'be in accordance with', in the definition of 'compliance plan' in clause 15.1, with

	<p>noted, however, that the definition of that same term in the Tasmanian Electricity Code (TEC) states that the compliance plan must 'have regard to the Australian Standard...'. It is considered that 'have regard to' is the preferable terminology in this instance as it permits the licensee to afford matters, as outlined in the relevant standard, genuine attention and thought and give the provisions of the relevant standard appropriate weight in the drafting of its compliance plan. As opposed to 'be in accordance with' which requires 'agreement with or conformity' and provides the licensee less flexibility and discretion in the drafting of its compliance plan.</p>	'have regard to'.
15.1	<p>The current version of the Gas Retail Code includes a definition of 'interested party'. However, this term is not used in the Gas Retail Code and may, therefore, be removed.</p>	Remove definition of 'interested party' in clause 15.1.
15.2(e) 15.2(l)	<p>The words 'this code', where presently used in subclauses 15.2(e) and 15.2(l), requires capitalisation of the word 'Code' (for consistency with the presentation of the term throughout the Gas Retail Code).</p>	Update 'this code' in subclauses 15.2(e) and 15.2(l) to be 'this Code'.