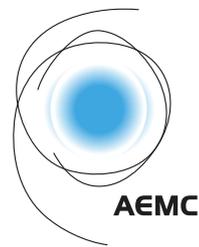


Note: Please be advised that references to “25 February 2020” in this final determination should read as “25 February 2021”.



Australian Energy Market Commission

RULE DETERMINATION

NATIONAL ENERGY RETAIL AMENDMENT (MAINTAINING LIFE SUPPORT CUSTOMER REGISTRATION WHEN SWITCHING) RULE

PROPONENT

Energy and Water Ombudsman of New South Wales

25 FEBRUARY 2020

RULE

INQUIRIES

Australian Energy Market Commission
GPO Box 2603
Sydney NSW 2000

E aemc@aemc.gov.au
T (02) 8296 7800

Reference: RRC0038

CITATION

AEMC, Maintaining life support customer registration when switching, Rule determination, 25 February 2020

ABOUT THE AEMC

The AEMC reports to the Council of Australian Governments (COAG) through the COAG Energy Council. We have two functions. We make and amend the national electricity, gas and energy retail rules and conduct independent reviews for the COAG Energy Council.

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SUMMARY

- 1 The Australian Energy Market Commission's (Commission or AEMC) final rule determination is to make a more preferable final rule (final rule) that amends the National Energy Retail Rules (NERR) to reduce barriers for life support customers¹ who change premises or retailers.
- 2 The final rule introduces an obligation on the outgoing registration process owner (RPO) (the retailer or DNSP contacted by the customer for life support registration purposes) to provide the customer with a copy of the medical confirmation which was used to register the customer's premises, on request. It also allows a customer to reuse a valid medical confirmation previously submitted to its outgoing RPO for the purpose of providing medical confirmation to the incoming RPO.
- 3 This process is expected to reduce costs and mobility challenges related to medical visits for life support customers. Customer safety is also maintained by the combination of a simpler registration process while maintaining a degree of customer responsibility to pass accurate information to RPOs via the usual life support registration process.

Background

- 4 Life support requirements are designed to provide additional customer protections and require retailers and DNSPs to register premises that have a person using life support equipment (such as an oxygen concentrator or kidney dialysis machine) that relies on electricity or gas to operate. The requirements facilitate the provision of information to parties that need to be aware of life support equipment at premises, and impose obligations on retailers and DNSPs to provide additional safeguards around de-energisation for customers using life support equipment.
- 5 The NERR was revised in December 2017, when the Commission made a final rule to strengthen protections for life support customers (the *Strengthening protections for customers requiring life support equipment* rule change).² The rule came into effect on 1 February 2019. Amongst other things the rule enabled customers to receive the protections of the life support rules from the time the customer informs the RPO of its life support status. In addition, the rule required the RPO to notify customers of their rights and obligations under the life support rules and follow a prescribed process for obtaining medical confirmation, registering customers and removing customers from the register where medical confirmation is not provided.

Rule change process and the proposed rule

- 6 On 11 June 2020, the Energy and Water Ombudsman of New South Wales (EWON) submitted a rule change request that sought changes to the NERR to maintain life support

1 The terms 'customers who need life support equipment' and 'life support customers' are used in this final determination to refer to customers whose premises are registered as requiring life support equipment. The life support equipment may be for the customer or another person who resides at the premises.

2 AEMC, *Strengthening protections for customers requiring life support equipment* rule change, available at: <https://www.aemc.gov.au/rule-changes/strengthening-protections-for-customers-requiring>.

registration when a life support customer changes premises or retailer. The rule proposal sought to enable the transfer of medical information between the outgoing and incoming life support RPOs, following a customer change of premises or retailer. Under the current rules, customers that are registered as life support customers may be required to re-submit medical confirmation following a change of premises or retailer (depending on who the RPO for the customer is in each circumstance). EWON considered that the resubmission of medical confirmation creates barriers for life support customers from fully participating in the retail energy market and that its proposed changes would reduce the need for an incoming RPO to require customers to submit medical confirmation, thus lowering imposts on life support customers.

7 The Commission published a draft determination and a more preferable draft rule on 5 November 2020. In the draft determination the Commission considered that it was likely that the solution proposed in EWON's rule change request would be costly and complex to implement. There was also the potential for the increased risk of inadvertent deregistration of life support customers if the customer expects medical confirmation to be transferred, but they had not provided medical confirmation to the outgoing RPO. The Commission concluded that the costs of EWON's proposed solution would likely outweigh the benefits.

8 21 submissions to the draft determination were received from stakeholders. In addition, the Commission published a consultation paper seeking stakeholder feedback on the rule change request on 6 August 2020. 33 stakeholders provided submissions to the consultation paper, raising a wide range of issues.

9 Evidence presented by stakeholders during consultation was insufficient to determine the extent of the issue. Nevertheless, the Commission considered that the health impacts in relation to life support customers could be serious, and that other avenues which can improve the ease in which life support customers can access competition at lower costs (without reducing safety) should be considered. An alternative solution that involved smaller adjustments to the NERR to better minimise risks of deregistration while increasing access to retail competition was considered to be an appropriate response to the issue raised by EWON.

The more preferable final rule

10 The final rule amends several clauses of Part 7 of the NERR to enable life support customers to receive back and re-utilise their previously submitted medical confirmation to satisfy the medical confirmation requirements for life support registration purposes when switching or moving. The key components of the final rule are that it:

- requires, subject to applicable privacy laws, the outgoing RPO to return the medical confirmation document to the customer within 15 business days of the customer's request. The obligation is only binding on the RPO if the request takes place within 110 business days of the person ceasing to be a customer for the registered premises.
- requires RPOs to retain the medical confirmation document for the period of time the person remains a customer for the registered premises and for 110 business days after the person has ceased to be a customer for the registered premises.

- requires the incoming RPO to inform the customer that they may reuse a medical confirmation provided to their previous retailer or DNSP for the purpose of registering their premises with the incoming RPO, provided the form is still valid.
- allows four years old and are legible.
- an update to the definition of 'medical confirmation' to clarify that a medical certificate may be used to provide medical confirmation.

11 The final rule aims to make it easier and reduce the cost for existing life support customers registering for life support if they switch retailers or move premises. This is likely to reduce barriers to engaging in the retail market for life support customers. Further, by clarifying that RPOs must accept medical certificates as medical confirmation and the responsibilities for outgoing and incoming RPOs with respect to the retention and return of forms, safety outcomes are likely to be improved.

12 The Commission also considered the effect of the final rule with respect to the allocation of risks and avoidance of unnecessary costs. The final rule will assist in reducing administrative costs for life support customers when compared to current arrangements by enabling these customers to obtain and reuse their existing medical confirmation for the purpose of providing medical confirmation to the incoming RPO.

Benefits of the final rule

13 The Commission is of the view that the final rule meets the National Energy Retail Object (NERO) and satisfies the consumer protections test by:

- improving access to retail market competition, including switching, by enabling an easy and low cost way for consumers to access their previously used medical confirmation document from their outgoing RPO.
- providing greater transparency and certainty by clarifying that RPOs must accept medical certificates as medical confirmation while also clarifying responsibilities for outgoing and incoming RPOs with respect to the retention and return of medical confirmation documents.
- maintaining the balanced allocation of risk and responsibilities. Customer safety is supported by ensuring RPOs have updated information without overburdening customers with respect to the submission of medical confirmation and by clarifying that a medical certificate or the medical confirmation section of an existing medical confirmation form (MCF) may be used for the purpose of providing medical confirmation during the registration process.

Changes from draft rule

14 The final rule largely retains the content and form of the draft rule. However, a small number of changes have been made between the draft and final rule to enhance the operation of the rule and to clarify its intent. These are summarised below:

- Extended the implementation date for part of the final rule. The commencement date for new rule 126A is 4 March 2021, requiring retailers and distributors to keep all medical

confirmations held by them on 4 March while the relevant customers remain customers for the registered premises and for 110 business days after they cease to be customers for the registered premises. The implementation date for the remainder of the rule is 1 August 2021, to enable RPOs to make any internal changes required to systems and processes to ensure compliance.

- Extended the timeframe by which the RPO has an obligation to return the customer's medical confirmation from 10 to 15 business days. This is expected to give RPOs additional time to action customer requests.
- Clarified that a medical confirmation for registered premises must be signed and dated no more than four years before the customer requested the incoming RPO to register the premises for life support.
- Created a separate rule for the obligation to store the customer's medical confirmation while the relevant customer remains a customer for the registered premises and for 110 business days after they cease to be a customer for the registered premises (new rule 126A, previously rule 126(2)). The Commission recommends that new rule 126A be classified as a Tier 2 civil penalty provision.
- Clarified that the outgoing RPO's obligation to return medical confirmation is linked to the RPO's obligation to retain the medical confirmation document under the new rule 126A. Without this clarification, RPOs were required to return medical confirmation after 110 business days despite not having an obligation to retain the document.
- Clarified that new rule 126A obliged RPOs to retain a copy of the medical confirmation document for 110 business days after the customer ceases to be a customer for the premises registered for life support equipment, rather than a general customer relationship.
- Clarified the definition of medical confirmation to specify that medical confirmation must be signed and dated, and to remove the requirement for the medical confirmation to refer to the customer's premises. This will enable RPOs to better assess the four-year validity period for medical confirmation and enables medical confirmation to be reused following a change of premises.

Commencement of the final rule

15 The provisions in the final rule relating to the retention of medical confirmation will commence on 4 March 2021.

16 The remainder of the provisions in the final rule will commence on 1 August 2021. The longer implementation timeframe (when compared to the draft rule) for these provisions will allow RPOs to make any internal changes required to systems and processes to ensure compliance.

Other issues raised with respect to life support

17 A number of other issues relating to life support were raised by stakeholders during the initial consultation phase. A small number of issues were again raised by stakeholders during consultation on the draft rule. The majority of these issues were outside the scope of the rule change request, which focused on reducing barriers to retail competition for life support

customers. For example, some stakeholders suggested that an obligation be introduced for RPOs to deregister customers who do not provide medical confirmation within the period prescribed in the NERR (currently RPOs have a choice on whether to deregister these customers).

- 18 The range of diverging views on reforms, coupled with participants' valuable operational expertise and responsibility for decisions affecting customers means that industry must play a key role in coordinating reforms to life support systems *ahead* of a rule change processes being initiated by market bodies. It is essential that participants actively communicate with each other to reach high-level consensus on priority areas for change (including provision of evidence for potential changes) and articulate their vision for reforms to life support settings. Such coordination should ideally provide a list of key issues for reform that can be discussed with the Commission and the Australian Energy Regulator so that a full range of options to address these issues are considered.
- 19 Some issues raised by stakeholders, and those that may emerge as part of the coordination process described above, may require changes to current regulatory settings, some of which were introduced in February 2019. It may be appropriate to consider more urgent issues through a consolidated rule change process rather than through a more piece meal approach requiring several rule changes. The Commission notes that rule change requests received will be considered within a prioritisation framework, which takes into consideration the significant resources industry and market bodies are dedicating to the post-2025 market design initiatives.

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1 EWON'S RULE CHANGE REQUEST

The Energy and Water Ombudsman of New South Wales (EWON) submitted a rule change request to the Commission in June 2020 seeking to improve current life support registration arrangements for life support customers who switch retailer or premises. This section outlines:

- the current life support arrangements
- switching-related arrangements for life support customers
- medical confirmation roles and responsibilities
- EWON's rule change request.

1.1 Current arrangements

Life support requirements are designed to provide additional customer protections and require retailers and distribution network service providers (DNSPs) to register premises that have a person using life support equipment (such as an oxygen concentrator or kidney dialysis machine) that relies on energy to operate. The requirements facilitate the provision of information to parties that need to be aware of life support equipment at premises, and impose obligations on retailers and DNSPs to provide additional safeguards around de-energisation for customers using life support equipment that relies on energy to operate.

For example, rule 124B(1)(c) of the National Energy Retail Rules (NERR) states that a retailer must not arrange for the de-energisation of premises at which life support equipment is required, except in the case of a retailer planned interruption under rule 59C. Similarly, rule 124B(2)(a)(iii) of the NERR states that a distributor must not de-energise premises at which life support equipment is required, except in the case of an interruption, including under Division 6 of Part 4. Premises at which life support equipment is required must not be disconnected for non-payment.

Part 7 of the NERR sets out rules for energy businesses and customers with respect to life support protections. In summary, Part 7 of the NERR contains three major types of obligations that are relevant for this rule change request, including:

- customer obligations
- retailer and DNSP obligations
- requirements for registration and deregistration of life support premises.

Part 7 of the NERR was revised in December 2017, when the Commission made a final rule to strengthen protections for life support customers (the *Strengthening protections for customers requiring life support equipment* rule change).³ The rule came into effect on 1 February 2019. Further information is provided below.

³ AEMC, *Strengthening protections for customers requiring life support equipment*, Final rule determination, 19 December 2017. Available at: <https://www.aemc.gov.au/rule-changes/strengthening-protections-for-customers-requiring>.

BOX 1: STRENGTHENING PROTECTIONS FOR CUSTOMERS REQUIRING LIFE SUPPORT EQUIPMENT RULE CHANGE

On 19 December 2017, the Commission published a final rule determination on a rule change request from the Australian Energy Regulator (AER) to strengthen protections for customers that have a person requiring life support equipment residing at their premises.

The AER's rule change request was motivated by concerns over the accuracy of life support registers, difficulties in enforcement and lack of customer awareness of the need to provide medical confirmation.

Key features of the final rule:

- Customers receive the protections of the life support rules from the time they inform their retailer or distributor, which then becomes the registration process owner (RPO).
- The RPO is required to:
 - notify customers of their rights and obligations under the life support rules
 - follow a prescribed process for obtaining medical confirmation
 - follow a prescribed process if the registration process owner chooses to remove a customer from the register where medical confirmation is not provided
- The non-registration process owner can deregister the premises where medical confirmation is not provided and the RPO has deregistered the customer.

Source: AEMC, Strengthening protections for customers requiring life support equipment, Final rule determination, 19 December 2017.

1.1.1 Customer obligations

Customers have certain important contractual obligations to advise their retailer or distributor of their need for additional life support protections.

Under their retail and standard connection contracts, customers are expected to:

- register with their retailer or distributor that their premises require life support equipment
- provide medical confirmation of the requirement for life support at their premises, and
- tell their retailer or distributor if the life support equipment is no longer required at their premises.

1.1.2 Retailer and DNSP obligations

Retailer and DNSP obligations under Part 7 of the NERR are largely the same due to the need for customer protections to be identical regardless of whether a customer first contacts, and is registered with, a retailer or a DNSP.

The retailer or DNSP that first registers the customer is known as the "registration process owner" (RPO).⁴ The RPO is responsible for initially registering the customer, requiring and

⁴ This term is not defined in the NERR but is widely used, for instance see, AER, Life support registration guide, 2019.

recording medical confirmation and updating the customer registration in line with changes in the customer's circumstances. In this paper, the Commission will utilise the term RPO to refer to the energy business that holds the customer's medical confirmation.

Retailers and DNSPs both need to be aware of a customer's life support equipment requirements for a number of reasons. For example, retailers must be aware of a customer's status in order to avoid retailer-planned interruption or premises for non-payment. DNSPs play a critical role with respect to the de-energisation of a customer's premises when network repairs occur. Despite differing practical roles, both retailers and DNSPs have significant and nearly identical legal obligations as RPOs.

Under Part 7 of the NERR, if a customer tells a retailer or DNSP that a person living or intending to live at their premises requires life support equipment, a retailer or distributor must:

- immediately register the premises as requiring life support equipment and the date from which the life support equipment is required.⁵
- give the customer at least 50 business days to provide medical confirmation for the premises (in practice many businesses require a customer to complete a medical confirmation form (MCF), and written advice that failure to provide the MCF could result in deregistration of the customer's premises as requiring life support).⁶
- notify their counterpart business (i.e. the relevant retailer or DNSP which is not the RPO) about the newly registered customer's life support requirements and the date from which the life support equipment is required.⁷
- give the customer general advice that there may be a planned or unplanned interruption to the supply of energy to their premises and information to assist them to develop a plan for when there are outages.⁸
- take reasonable steps to contact the life support customer prior to deregistration of the customer as requiring life support protections.⁹
- establish policies, systems and procedures for registration of life support customers (for example, maintain a register of life support customers).¹⁰

1.1.3

Medical confirmation

Medical confirmation is a critical component of Part 7 of the NERR. Medical confirmation is a requirement imposed on customers under the rules to obtain information about the life support requirements at the premises. Medical confirmation enables life support protections to be maintained for those customers who have a person residing at their premises that requires life support equipment.

5 NERR, 124(1)(a), and 124(4)(a).

6 NERR, 124(1)(b)(i) and (ii), 124(4)(b)(i) and (ii), 125(4).

7 NERR, 124(1)(c), and 124(4)(c).

8 NERR, 124(1)(b)(iii)-(v), and 124(4)(b)(iii)-(v).

9 NERR, 125(4), (5), (9), (10) and (14).

10 NERR, 126(a).

Section 123A of the NERR currently defines 'medical confirmation' as:

certification from a registered medical practitioner that a person residing or intending to reside at a customer's premises requires life support equipment

The rules also prescribe that the RPO must send life support customers a MCF when the customer informs it that someone at the premises requires life support equipment. Among other things the form must:¹¹

- include a statement that completion and return of the form to the energy business will satisfy the requirement to provide medical confirmation under the NERR
- request the following information from the customer:
 - property address
 - the date from which the customer requires supply of energy at the premises for the purposes of the life support equipment
 - medical confirmation
- specify the types of equipment that fall within the definition of life support equipment;
- advise the customer that they can request an extension of time to complete and return the form.

Where medical confirmation is not provided, section 125(4) of the NERR allows an RPO to deregister a customer as a life support customer, providing it follows the prescribed process.

1.1.4 Requirements when switching retailers or moving premises

Under Part 7 of the NERR, if a life support customer moves house or changes energy providers, they may be required to resubmit medical confirmation in some, but not all, scenarios.

The rules contain two explicit references to customers switching retailers:

- Under rule 124B(2)(b), where a DNSP is the RPO and becomes aware that a customer has switched to a new retailer (at the same premise), the distributor must notify the new retailer of the life support registration and the life support registration will likely be maintained without the customer being required to resubmit medical confirmation.
- Under rule 125(14), where a DNSP is the RPO and becomes aware that the customer has switched, the DNSP may deregister the premises as requiring life support protections, provided it follows the prescribed process for notifying the customer.

In practice, under the current rules, an existing life support customer may be required by a retailer or DNSP to resubmit medical confirmation where the customer:

- moves to new premises and changes retailer (retailer or DNSP is RPO)
- moves to new premises within the same distribution zone and remains with current retailer (DNSP is RPO)

¹¹ NERR, 124(6).

- moves to new premises in a different distribution zone and remains with current retailer (DNSP is RPO)
- remains at the same premises but switches retailers (retailer is RPO).

As part of its 2017 *Strengthening protections for customers requiring life support equipment* rule change, the Commission made a decision with respect to the appropriate allocation of responsibility for the submission of medical confirmation where life support customers change premises or retailer. The Commission's final determination noted that:

it is appropriate to require customers to inform their new retailer or distributor of life support requirements. Under the final rule, where the customer initiates a change in their circumstances, such as changing retailers or moving house, the customer will need to inform their new retailer or distributor of their need for life support.

The Commission acknowledges that this requirement may deter some customers from switching retailers. However, given that information sharing processes between retailers are not likely to be completely accurate, requiring retailers to share customers' life support details between themselves could also increase the risk that someone will erroneously be left off the register. As such, the Commission considers that the lower-risk option is for customers initiating a change in their circumstances to inform their new providers they need life support...the registration process is not particularly onerous for the customer, especially if they already have certification from a registered medical practitioner.

The 2017 decision prioritised the accuracy of life support registers as a way of protecting life support customers. This objective was underpinned by allocating customers with the responsibility of notifying and providing relevant medical confirmation when switching retailer or moving premises. The Commission considered that this approach best reduced risk of errors in allocating life support protections.

1.2 The rule change request

On 11 June 2020, EWON submitted a rule change request to the Commission that sought changes to the NERR to facilitate transfer of life support information when life support customers change premises or retailer.

1.2.1 Issue

Under the current rules, in some situations retailers and DNSPs may require the re-submission of medical confirmation of life support following a change of premises or retailer for customers already registered as life support customers. EWON considers that the resubmission of medical confirmation creates barriers for life support customers from fully participating in the retail energy market.

The rule proposal sought to enable the transfer of medical information between outgoing and incoming life support RPO,¹² following a customer change of premises or retailer.

¹² RPO is defined and discussed in section 2.1.2.

EWON considered changes should be made to the NERR because:¹³

- costs associated with the resubmission of medical confirmation deter life support customers from switching retailers
- current arrangements regarding resubmission of medical confirmation impose barriers on life support customers that are not faced by other types of customers.

As outlined above, the NERR enables retailers and DNSPs to require a re-submission of medical confirmation in various situations. Resubmitting medical confirmation can lead to costs to life support customers that are not faced by other types of customers.¹⁴ These include:

- the cost of the medical appointment and travel
- the time and inconvenience related to the medical appointment, particularly for customers with mobility challenges.

1.2.2

Proposed solution

EWON's rule change request proposed that changes be made to the NERR to enable the transfer of medical information between outgoing and incoming life support RPO, following a customer's change of premises or retailer.

EWON considered that these changes would reduce the need for an incoming RPO to require customers to resubmit medical confirmation, thus lowering imposts on life support customers who engage with the retail market. The rule change request did not include a proposed rule.

Further information on EWON's proposed solution is provided in section 3.1.

1.3

The rule making process

On 6 August 2020, the Commission published a notice advising of its commencement of the rule making process and consultation in respect of the rule change request.¹⁵ A consultation paper identifying specific issues for consultation was also published. The Commission received 33 submissions. Issues raised in these submissions were summarised and responded to in the draft rule determination.

The Commission published the draft determination and draft rule on 5 November 2020. The draft rule was a more preferable rule. 22 submissions were received as part of the second round of consultation.

The Commission considered all issues raised by stakeholders in submissions. Issues raised in submissions are discussed and responded to throughout this final determination. Issues that are not addressed in the body of this document are set out and addressed in appendix A.

¹³ EWON, Rule change request, p. 2.

¹⁴ Ibid.

¹⁵ This notice was published under s. 251 of the National Energy Retail Law (NERL).

2 FINAL RULE DETERMINATION

This chapter outlines:

- a summary of the final rule determination, including the final rule's key features and changes from the draft rule
- the rule making test for changes to the NERR, including the more preferable rule test
- the assessment framework for considering the rule change request
- a summary of reasons for the rule determination, including consideration of the more preferable final rule against the national energy retail objective

Further information on the legal requirements for making this final rule determination and the more preferable final rule are set out in appendix B.

2.1 The Commission's final rule determination

The Commission's final rule determination is to make a more preferable final rule (the final rule). The final rule aims to reduce barriers for life support customers who switch retailer or premises by introducing an obligation on the outgoing RPO to provide the customer with a copy of the medical confirmation previously used by the customer for life support registration on the customer's request.

The rule also allows customers to reuse a valid medical confirmation document for the purpose of providing medical confirmation to the incoming RPO. The rule clarifies responsibilities for outgoing and incoming RPOs with respect to the retention and return of medical confirmations. The rule is expected to reduce costs and mobility challenges related to medical visits for the majority of life support customers while supporting the safety of these customers through an easier registration process, thereby reducing barriers to switching.

The key features of the final rule are that it:

- requires, subject to applicable privacy laws, the outgoing RPO to return the medical confirmation document to the customer within 15 business days of the customer's request. The obligation is only binding on the RPO if the request takes place within 110 business days of the person ceasing to be a customer for the registered premises.
- requires RPOs to retain the medical confirmation document for the period of time the person remains a customer for the registered premises and for 110 business days after the person has ceased to be a customer for the registered premises.
- requires the incoming RPO to inform the customer that they may reuse a medical confirmation provided to their previous retailer or DNSP for the purpose of registering their premises with the incoming RPO, provided the form is still valid.
- allows customers to reuse medical confirmations that were submitted to the outgoing RPO for the purpose of providing medical confirmation to the incoming RPO, provided the forms are no more than four years old and are legible.
- includes an update to the definition of "medical confirmation" to clarify that a medical certificate may be used to provide medical confirmation along with further updates to the

definition of medical confirmation to specify that it must be signed and dated, and remove the reference to a specific premises

The final rule is largely the same as the proposed rule. The changes to it include:

- Changed the implementation date of the rule. The commencement date for new rule 126A is 4 March 2021, requiring retailers and distributors to keep all medical confirmations held by them on 4 March while the relevant customers remain customers for the registered premises and for 110 business days after they cease to be customers for the registered premises. The implementation date for the remaining changes is 1 August 2021, to enable RPOs to make any internal changes required to systems and processes to ensure compliance.
- Extended the timeframe by which the RPO has an obligation to return the medical confirmation document from 10 to 15 business days. This is expected to give RPOs additional time to action customer requests.
- Clarified that a medical confirmation for registered premises must be signed and dated no more than four years before the customer requested the incoming RPO to register the premises for life support. These changes were needed to enable RPOs to better assess the four-year validity period for medical confirmations.
- Created a separate rule for the obligation to store the customer's medical confirmation while the relevant customer remains a customer for the registered premises and for 110 business days after they cease to be a customer for the registered premises (new rule 126A, previously rule 126(2)). The Commission recommended that this new rule be classified as a Tier 2 civil penalty provision.
- Clarified that the outgoing RPO's obligation to return a medical confirmation document does not apply where a customer has ceased to be a customer of the retailer, for the registered premises, for more than 110 business days. Without this clarification, RPOs might have been required to return a medical confirmation document after 110 business days despite not having an obligation to retain the document.
- Clarified that new rule 126A obliged RPOs to retain a copy of the medical confirmation document for 110 business days after the customer ceases to be a customer for the premises registered for life support, rather than a general customer relationship. This change ensures document retention obligations on RPOs are efficient and reflective of a customer's circumstances (e.g. a life support customer no longer requires life support equipment).
- Clarified the definition of medical confirmation to specify that medical confirmation must be signed and dated, and to remove the requirement for the medical confirmation to refer to the customer's premises. These changes were needed to enable RPOs to better assess the four-year validity period for medical confirmations and to enable medical confirmations to be reused following a change of premises.

The final rule made by the Commission is attached to and published with this final rule determination. The Commission's reasons for making this final determination are set out in section 2.4.

2.2 Rule making test

2.2.1 Achieving the NERO

Under the NERL the Commission may only make a rule if it is satisfied that the rule will, or is likely to, contribute to the achievement of the national energy retail objective (NERO).¹⁶ This is the decision making framework that the Commission must apply.

The NERO is:¹⁷

to promote efficient investment in, and efficient operation and use of, energy services for the long term interests of consumers of energy with respect to price, quality, safety, reliability and security of supply of energy.

The Commission must also, where relevant, satisfy itself that the rule is “compatible with the development and application of consumer protections for small customers, including (but not limited to) protections relating to hardship customers” (the “consumer protections test”).¹⁸

Where the consumer protections test is relevant in the making of a rule, the Commission must be satisfied that both the NERO test and the consumer protections test have been met.¹⁹ If the Commission is satisfied that one test, but not the other, has been met, the rule cannot be made.

There may be some overlap in the application of the two tests. For example, a rule that provides a new protection for small customers may also, but will not necessarily, promote the NERO.

2.2.2 Making a more preferable rule

Under s. 244 of NERL, the Commission may make a rule that is different (including materially different) to a proposed rule (a more preferable rule) if it is satisfied that, having regard to the issue or issues raised in the rule change request, the more preferable rule will or is likely to better contribute to the achievement of the NERO.

In this instance, the Commission has made a more preferable rule. The reasons are summarised in section 2.4.

2.3 Assessment framework

In assessing the rule change request against the NERO, the Commission considered the following principles:

- **Competition and consumer choice:** where feasible, providing for customer choice in the provision of services generally leads to more efficient outcomes. Unnecessary or excessive barriers to choice may lead to less efficient outcomes, with customers being exposed to higher prices. The proposed solution and more preferable final rule were

¹⁶ Section 236(1) of the NERL.

¹⁷ Section 13 of the NERL.

¹⁸ Section 236(2)(b) of the NERL.

¹⁹ That is, the legal tests set out in s. 236(1) and (2)(b) of the NERL.

assessed as to whether they may facilitate greater customer choice by reducing barriers to switching and supporting life support customer choice.

- **Transparency and certainty with respect to life support roles:** protections and obligations relating to the registration and deregistration processes for confirming the need for life support equipment should be clear and understandable for all customers and participants. This minimises the risk of negative health outcomes for customers and inadvertent breaches of the rules for energy providers. Transparency and certainty around obligations can also lead to reduced costs for customers and energy providers. The Commission assessed how the proposed solution and more preferable final rule may improve clarity for customers and businesses regarding the switching or moving process of life support customers. Several of the amendments made from the draft rule further clarify obligations on market participants.
- **Allocation of risks and avoidance of unnecessary costs:** generally, the Commission considers that risks should rest with those parties best placed to manage them. For this rule change request, the primary risk allocation issue is whether current arrangements requiring the resubmission of medical confirmation in various customer switching or moving scenarios are an appropriate and efficient arrangement. The Commission considered the level of risk that customers and businesses should bear when they change premises or retailer as well as the costs that may be incurred by energy providers to update their life support registration policies and systems.

2.4 Summary of reasons

Having regard to the issues raised in the rule change request and during consultation, the Commission is satisfied that the final rule will, or is likely to, contribute to the achievement of the NERO (particularly customer interests with respect to price and safety) for the following reasons:

- improved access to retail market competition, including switching, by enabling an easy and cost-free way for consumers to access their previously used medical confirmation document from their outgoing RPO.
- greater transparency and certainty by clarifying that RPOs must accept medical certificates as medical confirmation while also clarifying responsibilities for outgoing and incoming RPOs with respect to the retention and return of medical confirmation documents.
- potential reduction in most life support customers' administrative costs, when compared to current arrangements, by enabling the customer to secure their previously used medical confirmation document upon request.
- maintenance of the current balanced allocation of risk and responsibilities, an approach which is likely to support customer safety by ensuring RPOs have updated information without overburdening customers with respect to submission of medical confirmation and by clarifying that a medical certificate or the medical confirmation section of an existing MCF may be used for the purpose of providing medical confirmation during the registration process.

Further, the Commission considered the final rule meets the consumer protection test as it facilitates improved consumer protections for life support customers.

Compared to the solution proposed by EWON the final rule will:

- be less costly and complex to implement
- reduce compliance challenges on RPOs with respect to privacy legislation
- remove the risk that a customer may inadvertently be deregistered either through system error or through a customer assumption that life support status has been transferred or maintained (even when this customer has not submitted a medical confirmation document with the outgoing RPO).

Therefore, the Commission considers that the more preferable final rule will better contribute to the NERO than the proposed solution.

Further detail on the benefits of the more preferable final rule can be found in chapter 4 below.

3 ANALYSIS AND RATIONALE FOR THE RULE

This chapter focuses on the rationale and benefits of the final rule, including and stakeholder comments. Stakeholder comments dealing with specific elements or implementation issues are dealt with in chapter 4. The more preferable rule and its potential benefits are described in detail.

This section outlines:

- EWON's proposed solution
- Stakeholder comments on EWON's proposed solution
- The Commission's analysis and draft determination
- Stakeholder comments on the draft rule
- The Commission's analysis and final determination

3.1 EWON's proposed solution

EWON's request proposed that changes be made to the NERR to enable the transfer of medical information between outgoing and incoming life support RPO, following a customer change of premises or retailer. The rule change request did not include a proposed rule.

In the event a customer changes premises or retailers, EWON proposed that the incoming and outgoing RPO transfer the following information:²⁰

- medical confirmation form (MCF) completed by the customer and filed with the outgoing RPO
- medical certificate or confirmation filed with the outgoing RPO
- a 'communication flag' noting the customer requires continued life support protections.

EWON suggested that the proposed rule change may deliver the following benefits:²¹

- reduced costs faced by life support customers who change premises or retailer
- provision for greater life support customer choice with respect to switching retailers
- provision for a more standardised treatment of different types of life support customers where the customer changes premises or retailer.

In its rule change request, EWON also noted that the proposed rule is consistent with the application of customer protections for life support customers.

Costs identified by EWON in its request included that the proposed rule change may lead to increased costs to businesses if a rule requires changes to a business' systems and processes, and that AEMO or the AER may face costs depending on the nature of the solution adopted.²²

²⁰ EWON, rule change request, p. 3.

²¹ EWON, rule change request, pp. 2, 4.

²² EWON, rule change request, p. 4.

3.2 Stakeholder comments on EWON's proposed solution

The Commission received 33 submissions to the consultation paper from stakeholders, and also engaged with retailers, DNSPs and consumer groups in round table discussions.

3.2.1 Comments on EWON's proposed solution

Responses to the consultation paper from stakeholders with regard to the solution proposed by EWON varied significantly. Support for the solution proposed by EWON was limited, with many stakeholders providing alternative solutions.

Support for the proposed rule

In submissions to the consultation paper, Energy and Water Ombudsman of Queensland (EWOQ), Energy and Water Ombudsman of South Australia (EWOSA), Essential Energy, St Vincent de Paul Society (SVDP) the AER expressed support for a process under which a medical confirmation could be transferred safely and securely between RPOs with the customer's consent.²³ However, Essential Energy recommended medical information be updated after a set time frame to ensure ongoing applicability.²⁴

SVDP considered that the onus of confirming whether life support registration is still required should be on energy businesses.²⁵ The Public Interest Advocacy Centre (PIAC) considered that, in comparison to life support customers, energy businesses are well-placed to manage the risks of the medical confirmation registration process with established systems and resources.²⁶

Opposition to proposed rule

Costs and privacy considerations of the solution

A number of retailers expressed concern about sharing medical confirmation documentation with (sensitive) personal information with another RPO, because this would have to be handled confidentially and in accordance with Australian privacy legislation. Some also expressed concerns with differences in MCFs.²⁷

The Information Exchange Committee (IEC), Jemena and Tango noted that current Market Settlement and Transfer Solutions (MSATS) functionality would not be able to accommodate EWON's proposed solution as it does not currently support the attachment of documentation, and therefore EWON's solution would likely be costly to implement in practice.²⁸

Due to privacy concerns and the expense of MSATS changes, EnergyAustralia, AGL and AusNet Services considered that a separate, secure platform would need to be developed to

23 Submissions to consultation paper: EWOQ, p. 1; EWOSA, p. 1, Essential Energy, p. 2; St Vincent de Paul Society, p. 1; AER, p. 1.

24 Essential Energy, submission to consultation paper, p. 2.

25 St Vincent de Paul Society, submission to consultation paper, p. 1.

26 PIAC, submission to consultation paper, p. 1.

27 Submissions to consultation paper: AGL, p. 7; Red Energy and Lumo Energy, p. 3; Energy Queensland, p. 5; Momentum Energy, p. 2; ERM Power, p. 2; Meridian Energy, p. 2; EnergyAustralia, p. 4; Simply Energy, p. 6.

28 Submissions to consultation paper: Jemena, p. 2; Tango Energy, p. 2; Information Exchange Committee, p. 2.

share the medical confirmation information, while complying with privacy obligations.²⁹ The IEC considered that such a platform would likely have to enable information flowing through it to be auditable, traceable, confirmed as current and confirmed as received.³⁰

Privacy, data integrity and costs of the manual transfer of information was raised as a concern by some stakeholders if the information was to be transferred by email or similar.³¹

Concessions

EnergyAustralia, Momentum Energy, AGL, Alinta and AusNet Services, were of the view that any solution that did not address concessions requirements would be limited to life support customers not on concession schemes.³²

Risk allocation

AGL, EnergyAustralia, South Australia Power Networks (SAPN) and ERM Power did not support additional responsibilities being placed on RPOs, and considered that customers were best placed to obtain information for medical confirmation, accurately complete forms and safe keep records.³³

Further, SAPN considered that obliging industry participants to attempt to track and pass life support information between parties would not be feasible and may potentially lead to gaps and inaccuracies in Life Support registers.³⁴ Momentum Energy and Energy Queensland similarly supported the current risk allocation on the basis that it supports the maintenance of accurate registers of life support customers, thus ensuring customer safety.³⁵

Meridian expressed concern that the proposed solution may increase the risk of inadvertent deregistration of life support customers if the life support customer has not provided medical confirmation to the original RPO and then switches. In this scenario there is a risk that the customer may assume that life support status is automatically maintained in the transfer process and does not take any action, however the incoming RPO would not receive any documentation from the outgoing RPO.³⁶

3.2.2

Materiality of the issue

Responses from stakeholders with regard to the materiality of the issue raised by EWON varied significantly. Consumer groups generally considered the issue to be a significant barrier for some life support customers.³⁷ Retailers and some DNSPs did not consider there was sufficient evidence indicating the issue was material and would therefore warrant the costs required to implement EWON's proposed solution.³⁸

²⁹ Submissions to consultation paper: EnergyAustralia, p. 4; AGL, p. 5, AusNet Services, p. 10.

³⁰ Information Exchange Committee, submission to consultation paper, p. 3.

³¹ Submissions to the consultation paper: Red Energy and Lumo Energy, p. 3; EnergyAustralia, p. 3; AusNet Services, p. 10.

³² Submissions to consultation paper: EnergyAustralia, p. 3; AGL, p. 2, AusNet Services, p. 10; Alinta Energy, p. 1; Momentum Energy, p. 3.

³³ Submissions to consultation paper: AGL Energy, p. 4; EnergyAustralia, p. 2; ERM Power, p. 2, SAPN, p.5.

³⁴ South Australia Power Networks, submission to consultation paper, p. 5.

³⁵ Submissions to consultation paper: Momentum Energy, p. 2; Energy Queensland, p. 6.

³⁶ Meridian Energy, submission to consultation paper, p. 2.

³⁷ Submissions to consultation paper: PIAC, p. 2; EWOQ, p. 1; EWOSA, p. 1; PDCN, p. 2.

Stakeholders who considered that the issue warranted the changes proposed

The majority of consumer groups, the AER and ombudsmen considered the issue raised by EWON presented customers with unnecessary barriers for engagement. The Commission also received a submission from Carolyn Campbell-McLean, a private individual with a disability, indicating her support for EWON's rule change request.

PIAC, EWOQ, EWOSA and the Physical Disabilities Council of New South Wales (PDCN) all indicated that they considered requirements relating to submission of medical confirmation documents were barriers for life support customers fully engaging with the retail energy market.³⁹ PIAC, EWOQ and PDCN all considered that these barriers were of a practical (mobility) and financial nature (costs of medical visit) for customers.⁴⁰

Ms Campbell-McLean suggested that life support customers may not change plans because of the paperwork involved, particularly for concessions.⁴¹

Nectr submitted that they have had instances of customers cancelling during their cooling-off period due to the need to submit a new MCF.⁴²

Stakeholders who considered that the issue does not warrant the changes proposed

The majority of retailers and certain DNSPs did not consider the issue raised by EWON to be material and therefore viewed the proposed changes as unwarranted. These stakeholders generally considered that little evidence was presented in the rule change request to indicate current medical confirmation requirements have created barriers for customer engagement in the retail market.

AGL and Origin Energy were of the view that customers highly value concessions payments for which eligibility is required to be renewed every two years in NSW. They submitted that the costs of securing medical confirmation should to be considered within the context of the benefits earned by the concession scheme.⁴³ Similarly, Momentum Energy was of the view that the costs of medical confirmation would be a relatively small factor influencing a customer's switching decision.⁴⁴

The Australian Energy Council (AEC), EnergyAustralia, AusNet Services and Origin Energy considered the likelihood of a life support customer visiting a medical practitioner during the 50 business days allowed for the submission of medical confirmation to be high, and as such, customers would be unlikely to incur any additional costs in obtaining medical confirmation.⁴⁵ Meridian Energy considered that the RPO's ability to grant an extension on the submission date would likely mitigate the issue of doctors visits for life support customers.⁴⁶

38 Submissions to consultation paper: Origin Energy, p. 1; Energy Queensland, p. 5; Momentum Energy, p. 2; ERM Power, p. 2; Meridian Energy, p. 2.

39 Submissions to consultation paper: PIAC, p. 2; EWOQ, p. 1; EWOSA, p. 1; PDCN, p. 2.

40 Submissions to consultation paper: PIAC, p. 2; EWOQ, p. 1; PDCN, p. 2.

41 Carolyn Campbell-McLean, submission to consultation paper, p. 1.

42 Nectr, submission to consultation paper, p. 1.

43 AGL Energy, submission to consultation paper, p. 4; Origin Energy, submission to consultation paper, p. 1.

44 Momentum Energy, submission to consultation paper, p. 2.

45 Submissions to consultation paper: AEC, p. 2; EnergyAustralia, p. 3; AusNet Services, p. 4; Origin Energy, p. 1.

46 Meridian Energy, submission to consultation paper, p. 2.

Further, Alinta Energy and EnergyAustralia suggested that, the current availability of “telehealth” services would likely assist in decreasing barriers faced by customers with mobility challenges.⁴⁷

In relation to the extent of the issue, Origin Energy, Momentum Energy, Energy Queensland, ERM Power, Meridian Energy submitted that they were unaware of any evidence suggesting that the provision of medical confirmation is a key factor discouraging customers to switch retailers.⁴⁸ Jemena and the AEC considered that the information provided in the rule change request did not make it possible to assess the extent of the issue.⁴⁹

EnergyAustralia commented that its data indicated that churn to other retailers among Life support customers is occurring at a higher rate than churn across its general customer base, suggesting that requirements to obtain medical confirmation were not a significant barrier to switching in their experience.⁵⁰

3.3 Commission’s analysis and draft determination

After carefully considering EWON’s proposed solution, including the materiality of the issue the rule change is aiming to resolve, and the implications of the proposed solution and stakeholder feedback the Commission made a more preferable draft rule.

The Commission’s draft decision was to develop a more preferable solution rather than EWON’s proposed solution. After considering available evidence and stakeholder feedback on EWON’s proposed rule the Commission concluded that:

- the materiality of the issue raised was uncertain
- the approaches considered for the implementation of EWON’s proposed solution would likely be costly and complex and raise privacy concerns — on balance it is likely the costs of the proposed solution would outweigh the benefits provided
- possible mitigating factors raised by stakeholders may reduce barriers for specific cohorts of life support customers, but there is insufficient evidence to conclude their effect would be widespread enough, or of an ongoing nature
- although the interrelationship with concession schemes in New South Wales should be considered, the key issue remained safety of life support customers and concessions are not available to all life support customers.

The draft rule introduced an obligation on the outgoing RPO to provide the customer with a copy of the medical confirmation document used to register the customer’s premises on request. It also allowed customers to reuse confirmation documents for the purpose of providing medical confirmation to the incoming RPO.

47 Submissions to the consultation paper: Alinta Energy, p. 1; EnergyAustralia, p. 3.

48 Submissions to consultation paper: Origin Energy, p. 1; Energy Queensland, p. 5; Momentum Energy, p. 2; ERM Power, p. 2; Meridian Energy, p. 2.

49 Submissions to consultation paper: Jemena, p. 2; AEC, p. 1.

50 EnergyAustralia, submission to consultation paper, p. 3.

3.3.1 **Comments on EWON's proposed solution**

Costs and privacy considerations

The Commission considered that a secure system would be required to facilitate the sharing of medical confirmation documentation between RPOs under EWON's proposed solution. In addition, this system would also need to be compliant with any applicable privacy laws. For example, the Commission considered that upgrades to MSATS were likely to be a lengthy and costly solution, and noted that there were significant system changes already scheduled for MSATS with further changes restricted to after the end of 2022. Similarly, the Commission considered a similar rationale applies to the development of a separate bespoke platform as a viable solution, with the added complication that new privacy protocols would need to be developed and enforced for this platform. In both approaches, the cost of the solution likely outweigh the benefits to consumers.

For the above solutions, and a suggestion to share forms between RPOs via email, privacy considerations were a concern, given customers would likely need to give their explicit informed consent for the sensitive personal information contained within medical confirmation to be shared from the outgoing RPO to the incoming RPO.

Risk allocation

In submissions to the consultation paper, a number of stakeholders indicated that there is a relatively large proportion of life support customers who are registered, but that have not completed the registration process by providing medical confirmation. The Commission considered there was a risk that, when a customer switches retailers and has not previously provided medical confirmation, if the solution proposed by EWON was adopted, a customer may not have realised that they have not provided medical confirmation and will expect the medical confirmation to be passed from the outgoing RPO to the incoming RPO. Given the outgoing RPO has no documentation to share, this scenario could result in the customer becoming deregistered. The Commission considered that any proposed solutions should minimise risk to consumers with respect to inadvertent deregistration.

The Commission therefore considered it important that customers continue to maintain visibility and control over life support registration — this approach is likely to minimise risks to customer health.

3.3.2 **Materiality of the issue**

The extent of the issue

The Commission considers that the extent of the issue is unclear, with a number of stakeholders questioning the extent of the issue raised in the rule change request, and whether the issue was material enough to warrant change (particularly if the proposed solution would require the development or augmentation of systems at significant cost).

The Commission was of the view that improvements to the regulatory framework should be considered if an issue could potentially have a serious effect on a small number of stakeholders, or where the risks and costs may not be allocated to the groups which can best

bear them. Life support registration processes are inherently linked with customer health outcomes and any problems with this process may be significant, as underscored by the anecdotal evidence provided by stakeholders in favour of the issue being addressed. On balance, the Commission considers it is likely that the costs of large system changes to facilitate the sharing of medical confirmation outweigh the benefits which would be gained.

Evidence provided by stakeholders who did not support the proposed rule suggested that the issue is not systemic in nature, and may not be a barrier to all (or many) life support customers switching. The Commission notes that some evidence provided of higher switching rates of life support customers when compared to other customers groups does not appear to indicate the presence of more widespread barriers affecting life support customer decisions to switch retail plans. However, there could be other reasons for this, for example, the impact of energy costs for these customers may be significant, so they are particularly motivated to switch to a better energy offer, despite barriers being present. This does not necessarily mean life support customers do not view medical confirmation barriers as significant, but rather that they prioritise seeking a cheaper energy offer.

Mitigating factors

The Commission acknowledges that the mitigating factors raised by stakeholders may apply for specific cohorts of life support customers. However, there seems to be insufficient evidence to allow the Commission to conclude that these factors would negate the materiality of the barriers for a majority of life support customers with respect to medical confirmation.

3.3.3

Rationale for the draft rule

Given uncertainty regarding the extent of the issue, privacy considerations, the possibility of increasing the risk of a customer being deregistered and the number of other issues relating to life support raised in submissions, the Commission did not consider that a rule with a large cost impost to be appropriate at this time.

Nevertheless, the Commission considered that other solutions to address the underlying issue should be explored and that it was appropriate that an alternative solution with lower cost imposts and less risk of inadvertent deregistration be developed. The Commission was of the view that an alternative solution would need to:

- reduce the risk of deregistration and provide an appropriate allocation of risks to make it easier and cheaper to register as a life support customer.
- provide a proportionate solution where the benefits to consumers outweigh the costs of implementing the solution

In the draft determination, the Commission considered a solution based on the customer's medical confirmation being returned to the customer, so that the customer can share the previously obtained medical confirmation with the incoming RPO would appropriately allocate risks and benefits, provide transparency and clarity of roles and responsibilities and improve access to retail competition for life support customers.

In the Commission's view, it was unreasonable to expect life support customers to maintain copies of the medical confirmation document as many of these are mailed directly to the RPO

and many customers may not have facilities to copy documentation readily available. In contrast, RPOs would have the systems and resources to easily and cost effectively provide customers with this information. The Commission considered that the draft rule was unlikely to lead to significant additional costs to RPOs because customers may already be entitled to obtain this information under Australian privacy legislation.

The Commission considered that the draft rule would facilitate switching processes for life support customers, thus enabling these customers to access lower priced (or otherwise more appropriate) offers. The more preferable draft rule was also seen to reduce the risk of customers being deregistered by making the registration process easier and by clarifying that both an MCF and medical certificate may be accepted for the purpose of providing medical confirmation during registration. Further, customers who switch are also given increased certainty that they can reuse an existing medical confirmation document for the purpose of providing medical confirmation.

As part of the process of making its draft determination, the Commission considered a range of alternative suggested by stakeholders, these solutions and the Commission's response to these are included in appendix C.

3.4 Stakeholder comments on the draft determination

This section outlines high-level stakeholder responses to the draft determination and its rationale. Stakeholder comments on specific elements and implementation of the rule are dealt with in chapter 4.

3.4.1 Comparison between the draft rule and EWON's proposed rule

Although EWON considered that its initial proposed solution would best suit life support customer needs, it supported the draft rule on the basis that it balanced the need to improve the life support registration processes with stakeholder concerns (such as privacy) raised during consultation. EWON added that the draft rule would contribute to reducing barriers for life support customers to participate in the energy market — thus realising the objective of EWON's initial proposal.⁵¹ EWOQ and EWOSA similarly supported the draft rule on the basis that it would make it easier for life support customers to engage in the retail energy market.⁵²

A number of retailers and Endeavour Energy considered that the Commission's draft rule was preferable to the solution proposed by EWON.⁵³ ERM Power, considered that the draft rule was a balanced and simplified measure which equally promoted security, reduced costs and access to retail competition. It added that the draft rule would mitigate the risk of a customers' privacy being breached when compared with EWON's approach.⁵⁴

⁵¹ EWON, submission to the draft determination, p. 2.

⁵² Submissions to the draft determination: EWOSA, p. 1; EWOQ, p. 1.

⁵³ Submissions to the draft determination: Endeavour Energy, p. 2; Origin Energy, p. 1; Simply Energy, p.1; ERM Power, p. 1; Meridian Energy, p. 1; EnergyAustralia, p. 2; AEC, p. 2; and Alinta Energy, p. 1.

⁵⁴ ERM Power, submission to the draft determination, p. 1.

The IEC was also supportive of the draft rule because it considered the materiality of the issues raised, the potential costs and likely benefits to be derived from the change, and the risks, issues and opportunities raised by different types of stakeholders.⁵⁵

A joint consumer group submission (authored by PIAC, SVDP, ACT Council on Social Services, Consumer Action Law Centre, Physical Disability Council of NSW, Uniting, Combined Pensioners and Superannuants Association, henceforth referred to as the 'PIAC' submission) considered that the draft rule was preferable to the current situation where consumers are required to obtain new medical confirmation every time they switch retailers or move residence. However, PIAC considered that the draft rule was less preferable than the solution proposed by EWON and its own proposal (discussed in section 3.4.3 below). It considered that the draft rule will still require considerable effort from consumers who require life support equipment to switch retailers and does little to address the risk of vulnerable consumers dropping off the register when they switch.⁵⁶

3.4.2

Materiality of the issue

Most retailers considered that insufficient evidence was provided to justify the introduction to deal with the problem raised by EWON and queried whether the NERO would be promoted under this approach.

EWON appreciated that the Commission's draft rule was based on realising benefits of greater participation in the energy market for a cohort of consumers that currently face barriers, rather than evidence of a large number of consumers raising the issue.⁵⁷

Many retailers continued to consider that there was insufficient evidence that the current registration process acted as an impediment to life support customers switching.⁵⁸ Momentum Energy was of the view that in the absence of evidence, any proposed change could not satisfy the NERO. It suggested that data be sought from EWON to determine the extent of the issue behind the proposed rule change.⁵⁹

The AEC considered that there was insufficient evidence that there was currently a barrier to life support customers switching and that whether the rule achieved the NERO was contingent on there being barriers and the rule therefore providing benefits. The AEC expressed concern that the rule change was, in its view, progressing a rule absent real evidence that customers have been impacted by current processes. AEC further added that implementation costs of the draft rule will not be immaterial, and suggested any changes be delayed until a more holistic review is carried out.⁶⁰

55 Information Exchange Committee, submission to the draft determination, p. 2.

56 PIAC p. 2.

57 EWON, submission to the draft determination, p. 2.

58 Submissions to the draft determination: Momentum Energy, p. 1; Origin Energy, p. 1; Simply Energy, p. 3; AGL, pp. 1-2; Red Energy and Lumo Energy, p. 1; ERM Power, p. 1; EnergyAustralia p. 1; AEC, p. 1; Alinta Energy, p. 1.

59 Momentum Energy, submission to the draft determination, p. 1.

60 AEC, submission to the draft determination, p. 3.

AGL and EnergyAustralia suggested that evidence indicated that barriers for life support customer switching did not exist, and that life support customers are more active in sourcing better market offers than the general energy consumer.⁶¹

3.4.3 Consumer benefits of the draft rule

Stakeholders indicated there were a number of benefits of the draft rule, including a reduction of cost and effort to maintain life support registration on switching, and a reduced risk of customers being deregistered.

Endeavour Energy considered that the draft rule would make it easier for customers to actively engage in the retail market by reducing the cost and effort required to maintain their life support registration.⁶² Origin Energy supported the draft rule because it would result in a lower risk of the customer losing their registration by removing additional requirements and enables the customer to provide a valid confirmation document almost immediately.⁶³

Meridian Energy considered that the draft rule applied a common-sense approach to a complicated industry process and added that the draft rule would likely have the effect of reducing both time and costs for life support customers, allowing this more vulnerable segment of energy consumers greater access to the retail energy market.⁶⁴

Energy Queensland noted that the benefits of the rule would be limited to those customers that provide medical confirmation documentation.⁶⁵ AGL considered that it was not clear how many customers would likely want to use the system created by the draft rule to contact their losing retailer to receive a copy of their form because the customer has made an active decision to transfer away from the outgoing retailer.⁶⁶

PIAC considered that the draft rule maintains barriers to switching and that it did not sufficiently decrease the risk of people dropping off the register while leaving unrealised the potential to reduce the risks for people who require life support equipment.⁶⁷ In its submission, PIAC re-iterated its preference for a life support registration system where only DNSPs are RPOs, it considered that this approach would enhance safety outcomes by ensuring DNSPs (who are charged with managing disconnection and outages) have full control of information to manage risks.⁶⁸

3.5 Commission's analysis and final determination

The Commission continues to consider that the draft rule addressed the underlying issue raised in EWON's rule change request in a proportionate manner. The more preferable rule

61 Submissions to the draft determination: AGL, p. 1; Energy Australia, p. 1.

62 Endeavour Energy, submission to the draft determination, p. 1.

63 Origin Energy, submission to the draft determination, p. 1.

64 Meridian Energy, submission to the draft determination, p. 2.

65 Energy Queensland, submission to the draft determination, p. 3.

66 AGL, submission to the draft determination, p. 4.

67 PIAC, submission to the draft determination, pp. 2-3.

68 Ibid, p. 4.

provides a proportionate solution with benefits outweighing risks and costs and risks appropriately allocated.

The rule aims to reduce barriers for life support customer who switch retailer or DNSP by introducing an obligation on the outgoing RPO to provide the customer with a copy of the medical confirmation on request, and allowing customers to reuse that medical confirmation for the purpose of providing medical confirmation to the incoming RPO. These obligations are expected to reduce costs and mobility challenges related to medical visits for the majority of life support customers while supporting the safety of these customers through an easier registration process, thereby reducing barriers to switching.

The issue of materiality has been raised by a number of stakeholders in submissions. There is, indisputably, an additional obligation on life support customers to provide medical confirmation, which non-life support customers do not face when switching retailers. Any additional obligations (which currently generally entail visiting a medical professional with the associated financial costs and potential physical discomfort for those customers) could reasonably be seen as a barrier. The Commission considered that access to retail competition is an important consumer protection for all customers.

It remains appropriate to require customers to inform their new retailer or distributor of life support requirements. When the customer has a change in their circumstances, such as changing retailers or moving house, it is appropriate that the customer should also be required to inform their RPO of their need for life support. This minimises the risk of the customer being erroneously left off the register. However, the final rule minimises the impost on life support customers in providing that medical confirmation and therefore makes the registration process easier.

3.5.1 Materiality of the issue

The Commission notes that concerns with the materiality of the issue have been raised, predominately by retailers. Whilst the extent of the issue remains unclear, anecdotal evidence has been provided by consumer groups and private individuals that some life support customers do find the requirement to provide new medical confirmation a barrier to switching. Further, evidence of a clear causal link between the switching rates (the main type of evidence provided against the proposed rule) and the medical confirmation barrier has not been provided.

As noted above, the provision of medical confirmation with a corresponding visit to a medical professional is an additional step which only applies to life support customers. The more preferable rule reduces life support customers' administrative costs when compared to current arrangements by enabling the customer to secure their previously used medical confirmation document upon request. This removal of a clear barrier to engagement in the retail energy market does, in the Commission's view, promote the NERO.

The Commission is proceeding with the more preferable rule on the basis of the benefits it brings to consumers, while balancing RPO implementation concerns. The Commission continues to be of the view that, due to the lack of clarity in relation to the extent of the

issue, the costs associated with development of a new system (or system upgrades to MSATS) to transfer medical confirmation would likely outweigh the benefits.

The Commission considers that the more preferable rule is proportionate to the materiality of the issue and does meet the NERO. The Commission has carefully considered the more preferable rule and determination and is of the view that the rule is in line with other determinations made by the Commission.

3.5.2 **Consideration of other options**

An alternative to the more preferable draft rule was suggested by PIAC in a joint submission with a number of consumer groups.⁶⁹ In the joint submission, PIAC recommended that DNSPs become the only RPOs for life support customers. The Commission considered that the key rationale for PIAC's solution was the enhancement of safety outcomes for consumers.

The Commission has considered PIAC's alternative solution, noting that limited detail has been provided on how the system would work or how a transition from the current system to the alternative system would work, including the costs and risks associated with this.

Whilst the Commission appreciated the argument behind the proposal, and there would be some benefits from having the DNSP as the single RPO, the Commission considered that such an approach would add complexity and confusion for customers. A customer can currently contact either their retailer or their DNSP and be registered for life support. Regardless of whether they call their DNSP or their retailer they are registered at their first point of contact and are not required to be transferred or make contact with further parties.

The main point of contact for energy consumers is generally the retailer. Many customers may not know who their DNSP is, and would only contact their DNSP in the case of power outages. In contrast, the retailer has a direct and visible relationship with the customer. This is evidenced by the overwhelming majority of life support customers having the retailer as the RPO for their premises. If the DNSP is the only RPO, the customer would be required to contact further parties to register life support, or be transferred. This introduces an element of risk and could reduce safety outcomes.

The Commission has not been presented with sufficient evidence that DNSPs (or retailers) aren't provided with information via the B2B system to protect customers at present. EWON's rule change request was primarily focused on the reduction of barriers to engagement in the retail market, and did not identify any major safety issues with the current system.

The Commission also considers that the benefits of having a DNSP as a sole RPO are overstated. SAPN, for example, has informed the Commission that their life support registers centre of NMIs rather than a customer identification necessary to track a customer that moves premises.⁷⁰ It is therefore likely that the solution does not resolve the issue for customers who move premises, both within the DNSP's network, or if they were to move into a different DNSPs network. As a consequence, submission of medical confirmation

⁶⁹ The submission was jointly authored by PIAC, SVDP, ACT Council on Social Services, Consumer Action Law Centre, Physical Disability Council of NSW, Uniting, Combined Pensioners and Superannuants Association.

⁷⁰ SAPN, submission to consultation paper, p. 5.

documents when switching premises may be required. Fixes to DNSPs internal systems and processes to address this issue are likely to be lengthy and costly and would be best pursued only where there is clear evidence indicating that current systems contain significant safety flaws.

Finally, the barriers, risks and costs of transitioning life support registration from retailers (with whom the vast majority of life support customers are currently registered) to DNSPs are likely to be significant. Given the concerns of RPOs in relation to the transfer of sensitive personal information (as stated by various stakeholders during the first consultation phase), retailers will not be able to share medical confirmation documents (and potentially other information they have) with the DNSP.

3.5.3

Rationale for the final rule

Promotion of the NERO and compatibility with consumer protections

The Commission considers that the final rule will contribute to the achievement of the NERO because it promotes long term interest of consumers with respect to price and safety.

Customer interests with respect to price are promoted because the more preferable draft rule reduces barriers for securing life support registration. This is likely to facilitate switching processes for life support customers, thus enabling these customers to access lower priced (or otherwise more appropriate) offers. With respect to safety, the more preferable rule reduces the risk of customers being deregistered by making the registration process easier and by clarifying that both an MCF and medical certificate may be accepted for the purpose of providing medical confirmation during registration.

The final rule is compatible with the development and application of consumer protections for small customers as it may result in improved protection and certainty for life support customers by facilitating an easier registration process for switching customers and clarifying the types of documents that must be accepted as medical confirmation by RPOs.

Competition and consumer choice

Access to retail market competition is improved and barriers to switching reduced by enabling an easy and low cost way for consumers to secure their medical confirmation from their outgoing RPO. For customers who are searching for better energy offers, knowledge that their safety needs (i.e. life support registration) can be met at little to no cost, via the return and re-utilisation of an existing medical confirmation, will likely improve their ability engage in the competitive retail market. Customers who switch are also given increased certainty that they can re utilise existing medical confirmation documentation.

Transparency and certainty with respect to life support roles

The final rule contributes to transparency and certainty by clarifying that RPOs must accept medical certificates as medical confirmation while also clarifying responsibilities for outgoing and incoming RPOs with respect to the retention and return of medical confirmation documents.

Allocation of risks and avoidance of unnecessary costs

The Commission considered that the final rule maintains the current balanced allocation of risk and responsibilities. Customers continue to have visibility and control over life support registration information, which minimises the risk of inadvertent deregistration as well as costs for consumers.⁷¹

In addition, the more preferable rule avoids unnecessary costs and complexity being placed on RPOs to implement EWON's proposed rule. RPOs are likely to face limited additional costs or obligations given that customers may already be entitled to obtain this information under Australian privacy legislation. Life support customers will likely see their administrative costs reduced (when compared to current arrangements) by being able to obtain their previously used valid medical confirmation upon request.

The Commission recognises that the more preferable rule may lead to some additional costs being placed on RPOs to administer the solution. There may be costs to RPOs with respect to:

- redesigning systems or processes to:
 - enable the medical confirmation to be returned to an existing customer
 - inform a new customer that they may re-utilise a previously used valid medical confirmation when switching
- "data translation" issues when the RPO accepts an existing medical confirmation from another RPO.

These issues are mitigated by making the return of the medical confirmation conditional on customer request rather than automatic — this will likely reduce the number of times the RPOs need to implement this solution. The Commission considers that the costs to RPOs of this solution are likely outweighed by the cost saving and safety benefits of the rule for life support customers.

3.5.4

Issues raised outside the scope of the rule change

A number of issues (and potential solutions) relating to the life support framework were raised by stakeholders during the first and second consultation stages of the rule change process. The issues raised are detailed in appendix A. The majority of these issues were outside the scope of the rule change request. These out of scope issues included:

- a requirement for RPOs to carry out deregistration of customers who do not provide medical confirmation
- the provision of detailed information on life support customer needs to assist in managing impact of outages
- the facilitation of immediate deregistration of premises with explicit customer consent

⁷¹ There was a small risk that customers who are registered for life support, but that have not completed the registration process by providing medical confirmation (a relatively large proportion of life support customers), may not have realised that they have not provided medical confirmation and would expect the medical confirmation to be passed from the outgoing RPO to the incoming RPO. Given the outgoing RPO has no documentation to share, this scenario could result in the customer becoming deregistered. The Commission considered that its final rule minimises risks to consumers with respect to inadvertent deregistration.

- an obligation to check life support status when any customer signs up or changes energy plans
- an obligation to regularly check the accuracy of information for existing life support customers
- a requirement for outgoing RPOs to retain life support registration for a reasonable amount of time post-transfer
- clarification of the obligations of gas retailers and DNSPs with respect to life support customers whose equipment only operates with electricity.

The Commission recognises the importance of the life support framework and the need for industry to pursue improvements of the life support customer experience. The Commission is of the view that, given the operational complexity and sensitivity of life support provisions in the NERR, industry collaboration and coordination are critical. In particular, stakeholders interested in making improvements to the life support framework should consider a variety of mechanisms available to:

- address certain issues without regulatory intervention.
- coordinate industry views on detailed reforms needed to the framework

The Energy Charter was developed as a forum for participants across the supply chain to improve customer experience while going beyond regulatory requirements. By leveraging these types of mechanisms, such coordination could yield low cost, effective solutions without explicit regulatory action while improving life support customer outcomes. This type of avenue for change appears, to date, to be underutilised by industry as a way of addressing issues with life support. For instance, all RPOs could make a commitment to check a customer's life support status at key parts of the customer journey without the Commission making this an obligation under the NERR.⁷²

Life support is an issue that affects participants across the supply chain in various ways — it involves a range of systems and obligations, but may also require that participants utilise discretion (if possible) to protect consumers from harm. Submissions to this rule change have highlighted sharply diverging views on the current state of the life support system and priorities for reform.

The range of diverging views on reforms, coupled with participants' valuable operational expertise and responsibility for decisions affecting customers means that industry must play a key role in coordinating reforms to life support systems *ahead* of a rule change processes being initiated by market bodies. It is essential that participants actively communicate with each other to reach high-level consensus on priorities areas for change (including provision of evidence for potential changes) and articulate their vision for reforms to life support settings. Such coordination should ideally provide a list of key issues for reform that can be discussed with the Commission and the AER so that a full range of options to address these issues are considered.

⁷² The Commission understand most retailers already implement these in practice, especially given regulation in Victoria mandates this.

Some issues raised by stakeholders, and certain issues that may emerge as part of the coordination process described above, may require changes to current regulatory settings, some of which were introduced in February 2019. It may be appropriate to consider more urgent issues through a consolidated rule change process rather than through a more piecemeal approach requiring several rule changes. The Commission noted that rule change requests received will be considered within a prioritisation framework, which takes into consideration the significant resources industry and market bodies are dedicating to the post-2025 market design initiatives led by the ESB.

3.5.5

Conclusion

The Commission's final determination was to introduce an obligation on the outgoing registration process owner (RPO) to provide the customer with a copy of the medical confirmation document used to register the customer's premises on request. The rule allows customers to reuse confirmation documents for the purpose of providing medical confirmation to the incoming RPO.

The Commission considered that the more preferable rule is a more effective approach to address the issues raised in the rule change request. It will assist in addressing the underlying issue raised by EWON in a proportionate manner, with risks and costs allocated to those who can best manage them.

Most stakeholders have expressed support for the more preferable rule (even if not as their preferred option) and stakeholder feedback was considered in developing the final rule. Issues raised by stakeholders did not justify a change in the Commission's policy decision in making a final rule — the solution outlined in the draft determination is the option that best balances a range of concerns (costs and privacy) while improving the ability of life support customers to engage with the retail market.

The Commission has also carefully considered and responded to stakeholder suggestions with respect to elements and implementation of the rule — these issues are analysed in chapter 4.

4 ELEMENTS AND IMPLEMENTATION OF THE RULE

Having dealt with the rationale for the rule in chapter 3, this chapter describes in detail elements and implementation issues of the more preferable rule as well as the Commission's consideration of stakeholder issues and changes between draft and final rules.

This section outlines:

- Elements of the more preferable rule
- Implementation of the more preferable rule
- Stakeholder views on elements and implementation of the more preferable rule
- The Commission's analysis and final determination

4.1 The more preferable draft rule

4.1.1

Elements of the draft rule

The draft rule proposed amendments to several rules and sub rules in Part 7 of the NERR. Its key components are described in the table below. The draft rule also included a clarification to the definition of medical confirmation. The changes were designed to enable a process whereby life support customers are able to receive and re-utilise a copy of their previously submitted medical confirmation document, which may be in the form of a medical certificate or MCF, for the purpose of providing medical confirmation during the life support registration process when switching or moving.

Table 4.1: Major elements of the more preferable draft rule

ELEMENT OF MORE PREFERABLE DRAFT RULE	DESIGN COMMENT	PROPOSED RULE AMENDED
1. A requirement for the outgoing RPO to return the medical confirmation to the customer within 10 business days of the customer's request, subject to applicable privacy laws.	A requirement for the RPO to return the medical confirmation conditional on the customer request is likely to reduce cost and complexity of the solution.	124B
2. A requirement for RPOs to keep the medical confirmation form and/or medical confirmation document used to register a customer for the period of time that the person remains a customer, and for 110 business day from the date the person ceases to be a customer.	Enabling customers to request the medical confirmation form and/or medical confirmation document for 110 business days after a switch or move should allow sufficient time for a customer to request and obtain the document and then provide it to the incoming RPO within the timeframe required to	126

ELEMENT OF MORE PREFER- ABLE DRAFT RULE	DESIGN COMMENT	PROPOSED RULE AMENDED
	confirm life support status.	
3. Allowing the use of a medical certificate or a medical confirmation form for the purposes of providing medical confirmation.	This is designed to increase awareness that life support customers can submit an MCF or medical certificate for the purpose of providing medical confirmation.	123A
4. A requirement for the incoming RPO to inform the customer that for the purpose of providing medical confirmation, the customer may submit the medical confirmation that was submitted to their previous retailer or distributor, provided it is dated less than four years ago and is legible.	Limiting the time for when a medical confirmation form and/or medical confirmation document can be re-utilised for medical confirmation to four years will balance concerns regarding data translation and legibility of forms as well as reduce the need for medical visits for confirmation during that extended period. This change does not affect the validity of existing MCFs, it simply puts a limit in utilising it for medical confirmation purposes.	124(1), 124(4), 124A

In addition to the amendments in the above table, the more preferable draft rule amends rule 123A to update the definition of 'medical confirmation' to clarify that a medical certificate with appropriate information was an acceptable form of medical confirmation. The more preferable draft rule amends the definition of 'medical confirmation' to be:

medical confirmation means certification from a registered medical practitioner that a person residing or intending to reside at a customer's premises requires *life support equipment*, including the type of equipment, which may take the form of a medical certificate or section(s) completed, or confirmed as accurate, by a medical practitioner within a medical confirmation form.

4.1.2 Implementation of the draft rule

Implementation date

The Commission proposed that the more preferable draft rule would commence on 4 March 2021.

Impact of the draft rule on registration requirements for incoming RPOs

The more preferable draft rule proposed to allow life support customers to re-utilise the confirmation document from their outgoing RPO for the purpose of providing medical

confirmation to the incoming RPO, provided it is dated less than four years ago and is legible. However, the customer may still be required to complete an MCF by the incoming RPO for the purpose of obtaining other details contained in the MCF (excluding any section dealing with medical confirmation). This would allow the incoming RPO to have written confirmation of the customer's latest information (for example address and phone numbers), which minimises issues of accuracy with respect to customer transfers. Additionally, the new MCF would be able to be used for complying with a concession scheme. This approach was seen to help minimise costs placed on customers with respect to visits to a medical practitioner while maximising safety outcomes by enabling RPOs to have updated information.

Validity of medical confirmation

The four-year time limit was included in the more preferable draft rule to reduce RPO concerns with legibility and readability, for example, if the confirmation document has been reused multiple times over the years the legibility could potentially degrade. The Commission considered it was reasonable that a life support customer will visit a medical practitioner during a four-year period and that this requirement was therefore likely not too onerous.

The four-year time period applied to reusing a medical confirmation document for medical confirmation purposes when switching or moving house. The draft rule did not require a life support customer to reapply for life support status with new confirmation documentation every four years.

4.2 Stakeholder views on the elements and implementation of the draft rule

This section outlines major stakeholder feedback on the draft rules.

4.2.1 Implementation date

Many stakeholders were opposed to the implementation date of 4 March 2021 on the basis that the short time frame would make it unfeasible for RPOs to make changes to systems and processes required to comply with the rule.⁷³

The AEC suggested that, to implement the draft rule retailers would need to:⁷⁴

- Amend customer communications to ensure that new customers are aware of the ability to utilise historical MCFs
- Identify and train all frontline staff that have responsibilities regarding life support to ensure all customer interactions are in line with the objectives of the reform
- Update scripting and system prompts to ensure customer awareness
- Develop processes and procedures to implement new rules and mitigate risks of error, particularly with regard to operator error

⁷³ Submissions to the draft determination, Simply Energy, p. 1; Momentum Energy, p. 2; AGL, p. 2; Red Energy and Lumo Energy, p. 1; Energy Queensland, p. 5; ERM Power, p. 2; EnergyAustralia, pp. 1-3; AEC, p. 2 and Alinta Energy p. 2.

⁷⁴ AEC, submission to the draft determination, p. 2.

- Redesign nationally harmonised processes to deliver the new rule in NECF states only
- Develop quality assurance mechanisms to ensure compliance with new rules

Energy Queensland, EnergyAustralia and Red Energy and Lumo Energy outlined a similar list of steps to comply with the draft rule.⁷⁵

Many retailers proposed a preferred implementation date of 1 August 2021 (i.e. a six-month implementation period).⁷⁶ Red Energy and Lumo Energy and the AEC recommended the 1 August 2021 date on the basis that this date avoided the busy 1 July 2021 period where a range of pricing changes are often implemented for customers.⁷⁷

4.2.2

Privacy considerations

Many DNSPs considered that they may have limited ability to implement the draft rule in practice. Their core concern was that DNSPs would not usually hold sufficient information to identify a customer that requests their medical confirmation document to be returned.⁷⁸ These same stakeholders also acknowledged that the draft rule included a proviso that the obligation to return the form was subject to any applicable privacy laws.

TasNetworks, Energy Queensland and Energy Networks Australia also considered that the clarification in the draft rules that medical certificates may constitute valid medical confirmation may make it harder for DNSPs to implement the draft rule in future given medical certificates normally contain less information required to identify the customers.⁷⁹

In addition, Energy Queensland was of the view that RPOs would have limited information to verify a life support user where that life support user and the customer (or account holder) are different people. Further, if the customer was not the life support user, Energy Queensland expressed concern that the RPO may not have the authority to provide the documents to the customer.⁸⁰ It considered that where a life support user who is not the customer has provided medical confirmation, the RPO would, to comply with the privacy laws, require the consent of the life support user in order to provide their medical confirmation to any third party, including the customer. It suggested that the draft could be expanded to include the situation where a non-customer has provided the medical confirmation.⁸¹

75 Submissions to the draft determination, Red Energy and Lumo Energy, p. 3; Energy Queensland, p. 5; EnergyAustralia, p. 2;

76 Submissions to the draft determination, Red Energy and Lumo Energy, p. 3; Alinta Energy, p. 2; EnergyAustralia, p. 2; AGL, p. 2; AEC, p. 2.

77 Submissions to the draft determination, Red Energy and Lumo Energy, p. 3; AEC, p. 2.

78 Submissions to the draft determination: TasNetworks, p. 1; Endeavour Energy, p. 2; Energy Queensland, p. 4; South Australia Power Networks; p. 2; Energy Networks Australia, p. 2; Australian Gas Infrastructure Group, p. 2;

79 Submissions to the draft determination: TasNetworks, p. 1; Energy Queensland, p. 6; Energy Networks Australia, p. 2.

80 Energy Queensland, submission to the draft determination, pp. 6-7.

81 Ibid, p. 7.

4.2.3 **Validity of medical confirmation**

There were a number of questions relating to determining the validity of medical confirmation in stakeholder submissions, as well as suggestions for amendments to the draft rule.

Origin Energy, Energy Queensland and Alinta Energy all considered that a two-year validity of medical confirmation documents would be desirable on the basis that this was more aligned with other record keeping legislation and concessions.⁸²

Both AGL and Meridian suggested greater clarity be provided with respect to RPO discretion to determine whether a medical confirmation document can be reused for providing evidence of medical confirmation. AGL indicated that it was concerned that RPOs may have difficulties contacting customers to inform them of any issues with their medical confirmation document.⁸³ Meridian considered that the draft rule was unclear on whether another RPOs medical confirmation form could be rejected for reasons other than legibility. Meridian considered that it should not be incumbent upon the incoming RPO to accept another RPOs medical confirmation that was deficient in any way.⁸⁴

AGL also considered that the draft rule did not make clear how RPOs would determine the age of a medical confirmation document. For example, the date could either be the date it was signed by a medical practitioner or the date it was lodged with the outgoing RPO.⁸⁵

SAPN considered that premises should not be validly registered for life support equipment where the medical certificate was for a person residing at a different address, as a person's name is not necessarily unique. Consequently, SAPN considered that a person should be only able to re-register premises for life support equipment using an existing medical confirmation document if they are switching retailers, not DNSPs.⁸⁶

4.2.4 **Obligations to retain and return medical confirmation**

A number of stakeholders suggested that the Commission clarify the draft rule obligations on RPOs to retain and send back medical confirmation documents under various scenarios. Suggestions included that:⁸⁷

- the obligation to retain medical confirmation should only apply where a life support user continues to reside at the customer's premises, rather than continuing when a customer's premises are not registered for life support but the customer continues to have a relationship with the retailer or DNSP
- the obligation to return medical confirmation should cease if the customer's premises cease to be registered for life support

82 Submissions to the draft determination: Energy Queensland, p. 2; Alinta Energy, p. 2; Origin Energy, p. 2.

83 AGL, p.4

84 Meridian Energy, submission to the draft determination, p. 2.

85 AGL, submission to the draft determination, p. 4.

86 SAPN, submission to the draft determination, p. 2.

87 Submissions to the draft determination: SAPN, p. 2; Energy Queensland, p. 4, 7; Energy Networks Australia, p. 2; Endeavour Energy, p. 1.

- the rule should clarify that only valid medical confirmation must be retained by the RPO, for example, the retention of medical confirmation for 110 business days should only apply where the medical confirmation is less than four years old.

EWOQ, Origin Energy, the Australian Gas Infrastructure Group, EnergyAustralia and ENA provided feedback on the 10 business day timeline to return the medical confirmation to the customer. EWOQ and Origin Energy supported the timeframe without qualification. AGIG and the ENA requested that the Commission make amendments to the draft rule so that the return of the medical confirmation was considered a 'deemed delivery'.⁸⁸ EnergyAustralia considered that a 15 business day timeframe would be more appropriate to account for scenarios where a high volume of requests for return occur, these high volume events could particularly affect large retailers.⁸⁹

In relation to the format of the returned medical confirmation, EWON was of the view that the format of the returned medical confirmation should meet the customer's needs. It suggested that, for retailers, the default should be the same format as the way the retailer issues bills to the customer. For DNSPs, it should be in the same format as the customer submitted the information to the distributor initially.⁹⁰

4.2.5

Other issues

Transitional matters

The AEC and Alinta Energy recommended that the Commission clarify in its final rule that medical confirmation must only be returned to the customer if it is held by the RPO at the time the rule is made.⁹¹ Energy Queensland considered that, as there is currently no requirement under rule 126 of the NERR for RPOs to hold medical confirmation documentation for a specified period, clarification is required.⁹² Energy Queensland recommended that the new obligations to retain and return medical confirmation documents will only apply to life support registrations initiated after the date of commencement of the new rules.⁹³

Civil penalty provisions

EnergyAustralia queried the application of civil penalties to the draft rule, and was of the view that the majority of the draft rules should not be classified as civil penalty provisions. It considered that the draft rules are administrative in nature and that customer harm would be limited to inconvenience. It further suggested that, should civil penalty provisions be proposed by the Commission, they be classified as Tier 3 civil penalty provisions.⁹⁴

Exemptions for large customers

88 Submissions to the draft determination: Energy Networks Australia, p. 2; Australia Gas Infrastructure Group, p. 2.

89 EnergyAustralia, submission to the draft determination, p. 4.

90 EWON, submission to the draft determination, p. 3.

91 Submissions to the draft determination: AEC, p. 2; Alinta Energy, p. 2.

92 Energy Queensland, submission to the draft determination, p. 4.

93 Ibid.

94 EnergyAustralia, submission to the draft determination, p. 5.

ERM Power considered that the draft rule should account for large energy customers who may want to switch retailers, and may have many individuals residing at the premises (such as medical facilities or nursing homes). It considered that, at these businesses, residents requiring life support may change relatively frequently, and the need for medical confirmation was seen as superfluous. ERM Power suggested that this issue could be addressed by amending the definition of medical confirmation to exempt large energy customers classified as medical facilities from providing a medical confirmation form.⁹⁵

4.3 Commission's analysis and final determination

The Commission has considered stakeholders view on the elements of the more preferable rule, as well as the implementation of the rule. This section outlines the Commission's response to issues raised by stakeholders and Commission's conclusion and final determination on the elements of the final rule.

4.3.1 Commission's response to issues raised

Implementation date

The Commission considers that a longer implementation timeframe for the requirement to return medical confirmations and to advise customers of their ability to request a copy of a previously used medical confirmation is justified. The Commission agrees that a 1 August 2021 implementation date for the obligation to return medical confirmation, and to advise customers of the ability to request the return of medical confirmation was appropriate. However, as discussed below, it is appropriate for certain aspects of the final rule to come into force on 4 March 2021 to enable the rule to operate with optimal benefits for life support customers from 1 August 2021.

Privacy

The Commission considers that the more preferable draft rule, which includes a proviso that relevant privacy laws must be complied with when the RPO is returning medical confirmation, is adequate and provides RPOs with a degree of flexibility to comply with the rule. This includes situations where the life support user and the customer are different people. If the customer's right to access the medical confirmation is unable to be adequately determined, in accordance with the applicable privacy laws, the RPO can choose not to provide the medical confirmation until the individual's identity and right to the information can be determined. While DNSPs in particular (which account for a small percentage of RPOs) may struggle to identify a customer that has provided only a medical certificate under current processes, the Commission considered that retailers would be better placed to identify customers in these situations and should face limited scenarios where there are privacy concerns. The advantages of extending medical confirmation to include medical certificates therefore outweigh its disadvantages.

Rule 123 of the NERR states that Part 7 (dealing with life support equipment) applies in relation to a customer who is a party to a contract with a retailer for the sale of energy. Part

⁹⁵ ERM Power, submission to the draft determination, pp. 1-2.

7 does not cover parties who are not customers. Therefore, the rule is unable to be expanded to include a situation where a non-customer has provided medical confirmation and is seeking that confirmation back. Non-customers who desire to request their medical confirmation back would likely be able to request any information that the RPO holds on the individual under privacy laws.

It is likely that RPOs will make their own assessment of information required to identify customers ahead of returning medical confirmation documents, considering a range of factors. The Commission notes that Australian privacy principles guidelines state that 'the minimum amount of personal information needed to establish an individual's identity should be sought.'⁹⁶

Moving forward, the Commission encourages RPOs, particularly DNSPs (who haven't traditionally held detailed information on customers) to review their life support registration processes to identify ways to assist the rule to operate more smoothly, and to enable more customers to access their medical confirmation forms, without privacy concerns. For example, future medical confirmation forms issued by DNSPs could include all information required by DNSPs to enable identification (such as a date of birth or a driver's licence number) and include statements that enable the customer to give consent for the medical confirmation document to be returned to parties other than the customer or account holder.⁹⁷The storage of these forms will enable DNSPs to have a data repository from which to adequately identify the customer in the future. This is an example of an area where industry-led actions may lead to better customer outcomes as outlined in section 3.5.4.

Validity of medical confirmation documents

The validity period for re-using medical confirmation was considered by the Commission. The Commission has determined that a four-year timeframe for validity was better suited in this occasion for life support customers. Many of these customers may have permanent or long-standing conditions which would negate the need for a shorter validity period and that may also make visits to the doctor for the purposes of securing medical confirmation more physically difficult. The Commission is cognisant that customers receiving life support rebates in NSW are required to resubmit medical confirmation every two-years and a number of stakeholders suggested that medical confirmation be restricted to a two-year validity period. The Commission does not consider there would be widespread benefits aligning to this timeframe as life support customers in NSW who do not receive concessions, and customers in other jurisdictions would have no need to resubmit medical confirmation on a more regular basis.

The Commission does not believe that it is necessary to set out detailed information or processes on the validity of a medical confirmation document beyond the legibility and age

⁹⁶ <https://www.oaic.gov.au/privacy/australian-privacy-principles-guidelines/chapter-12-app-12-access-to-personal-information/>

⁹⁷ A similar type of solution was proposed by Energy Queensland: "Energy Queensland considers that the adoption of a standard medical confirmation form containing all necessary identity information requirements for verification purposes would be of benefit. This form could include a form of consent by the life support user at the premises (if they are not the customer) to enable the RPO to return the documents to the customer upon request. It may also be necessary to amend subrule 124(6)(a) of the NERR to ensure sufficient identity information for the person requiring life support protection is provided.", Energy Queensland, submission to the draft determination, p. 7.

requirements. Only the medical confirmation component of a medical confirmation form (or medical certificate) will be utilised under the more preferable rule. The RPO would still be required to send out an MCF to obtain the other customer information required (or via another method with the customer). The RPO should not reuse any other information on any re-submitted MCFs, i.e. the customers contact details should not be taken from an old MCF. Further, the more preferable rule has a flexible approach which enables RPOs to apply their discretion on a case-by-case basis to determine if the medical confirmation is legible.

It was suggested that an RPO's refusal to accept a medical confirmation document on grounds other than legibility or document age must be weighed against the potential impact on the customer if it was not able to re-register premises for life support. The Commission also notes its comments in section 4.1.2, whereby the more preferable rule does not replace incoming RPO registration requirements — this regular registration process (aided by the reused medical confirmation) would, in most cases, provide the incoming RPOs with sufficient information to successfully register the customer.

The Commission considered AGL's comments with respect to establishing the baseline date to determine if a form is valid due to age. The final rule clarifies that the baseline date is the date that the customer informs the incoming RPO of its requirement for life support.

In its submission, SAPN's suggested that a medical confirmation for someone residing in certain premises could not be used when the person is switching DNSPs to register the person's new premises as requiring life support equipment as a person's name is not unique. Insufficient information has been provided to fully understand this issue. However, the Commission considered that, in general, where a medical confirmation document meets the legibility and age requirements, then an RPO must accept that document for confirmation purposes. Critically, as outlined in section 4.1.2 the draft rule does not replace incoming RPO registration requirements. The regular registration process with the RPO should establish the person's unique identity.

Obligations to retain and return a medical confirmation document

The Commission considers that the final rule can be improved by clarifying the retention requirements for medical confirmation. The final rule clarifies that the obligation to retain the medical confirmation document applies for:

- the period of time the person remains a customer for the registered premises and
- 110 business days from the date the person ceases to be a customer for the registered premises.

This accounts for scenarios where the customer is no longer registered for life support (but continues to be a customer) while also giving 110 business days for the customer to request back the medical confirmation document. The Commission does not consider that the rules should specify that only valid medical confirmation documents must be retained by the RPO.

The obligation on RPOs to return medical confirmation documents was clarified to confirm that the obligation does not apply where a customer has ceased to be a customer of the RPO, for the registered premises, for more than 110 business days. Further, the Commission extended the time for the outgoing RPO to return the medical confirmation to the customer

from 10 to 15 business days. This allows the outgoing RPO additional time to retrieve the previously submitted medical confirmation and attempt to identify the customer if there are complexities with the identification process. The Commission considers that the increase of time by five business days should have limited impact to the life support customer as the customer should be registered as a deemed life support customer and can access extensions to the period of time for providing medical confirmation if required.

In response to EWON's suggestion in relation to the format in which medical confirmation should be returned to the customer, the Commission considered that, in order to minimise costs and to enable potential future innovation, the rule should retain flexibility in this area, with mechanisms for the return of medical confirmation not prescribed in the rule.

Other issues

Transitional matters

The Commission considers that the transitional matters raised by the AEC and Alinta Energy and Energy Queensland merit clarification in the final rule. The Commission considered that the effectiveness of the rule would be limited if it only applied new medical confirmations received after 1 August 2021. RPOs will therefore be required to continue to keep all medical confirmations held as at 4 March 2021. This does not apply to any medical confirmations received prior to, but not held, on 4 March 2021.

Civil penalties

The Commission considered that the obligation to retain medical confirmation (new rule 126A) should be classified as a civil penalty provision. This obligation has been introduced primarily as an administrative process aimed at improving life support customers' ability to switch energy providers, rather than to address a safety issue within the NERR. Given this, the Commission considers that it is appropriate that 126A be classified as a Tier 2 civil penalty provision.⁹⁸ The obligation on RPOs to return the medical confirmation (sub rules 124B(1A) and 124B(2A)) is not a civil penalty provision. Amendments to rules 124 and 124A affect existing civil penalty provisions. The Commission has not recommended a change to the classification of these rules on the basis that the amendments do not substantively change the nature of these rules. Therefore, both will remain Tier 1 civil penalty provisions.

Exemptions for large customers

The application of medical confirmation to large customers was considered by the Commission. The Commission is cognisant that the provision of medical confirmation for hospitals, rehabilitation facilities, retirement villages and similar is not straightforward with potentially many residents within these facilities using life support equipment. Although an exemption to sending back medical confirmation for such sites was considered, the underlying issue is the provision of medical confirmation and the requirement to seek medical

⁹⁸ Under the Decision Matrix for tiering classification of civil penalty provisions under the National Energy Laws (available here: http://www.coagenergycouncil.gov.au/sites/prod.energycouncil/files/publications/documents/Final%20-%20Civil%20Penalties%20Decision%20Matrix%20and%20Concepts%20Table_Jan%202021.pdf) tier 2 provisions may include civil penalty provisions where a breach of the provision may result in or involve a failure to retain records appropriately or inadequate record keeping or administrative process.

confirmation for such facilities and is therefore outside of the scope of this rule change. Further, the Commission considers that the practical impact of the rule would be minimal for this customer class as the person to whom the medical confirmation applies is not a customer, and therefore an exemption as suggested by ERM Power would not be necessary.

4.3.2 **The Commission's final determination**

The Commission has carefully considered stakeholder feedback on various elements of the draft rule. It considered that none of the issues raised compelling reasons which would justify changes to the overarching policy decision expressed in the draft determination. However, there are a number of minor amendments to the final rule that the Commission considers will improve its implementation and clarify obligations on RPOs. The Commission's final determination is to make the more preferable final rule outlined in the draft determination, while enacting minor amendments to improve the effectiveness and usability of the final rule. These minor amendments are described in detail below.

In summary, the final rule will enable customers registered as requiring life support equipment to request back and re-utilise a copy of their previously submitted medical confirmation when switching retailers or moving premises. The final rule places a corresponding obligation on the RPO to store medical confirmation whilst the customer remains a customer for premises that are registered for life support (and for 110 business days after the customer ceases to be a customer at the registered premises), and to return to a customer a valid medical confirmation on request. The main elements of the final rule are:

- requires, subject to applicable privacy laws, the outgoing RPO to return the medical confirmation document to the customer within 15 business days of the customer's request. The obligation is only binding on the RPO if the request takes place while the person remains a customer for the registered premises and within 110 business days of the person ceasing to be a customer for the registered premises.
- requires RPOs to retain the medical confirmation document for the period of time the person remains a customer for the registered premises and for 110 business days after the person has ceased to be a customer for the registered premises.
- requires the incoming RPO to inform the customer that they may reuse a medical confirmation provided to their previous retailer or DNSP for the purpose of registering their premises with the incoming RPO, provided the form is still valid.
- allows customers to reuse medical confirmations that were submitted to the outgoing RPO for the purpose of providing medical confirmation to the incoming RPO, provided the forms are no more than four years old and are legible.
- An update to the definition of "medical confirmation" to clarify that a medical certificate may be used to provide medical confirmation.

Changes from the draft rule

This section outlines in more detail changes from the draft rule, considering stakeholder comments and the Commission's analysis outlined above.

Table 4.2: Changes from draft to final rule

CHANGE AND DESCRIPTION OF FINAL RULE	RATIONALE FOR THE CHANGE	DRAFT RULE POSITION
1. Amended implementation date. The commencement date for new rule 126A is 4 March 2021, requiring retailers and distributors to keep all medical confirmations held by them on 4 March while the relevant customers remain customers for the registered premises and for 110 business days after they cease to be customers for the registered premises (this is consistent with the implementation date in the draft rule). The implementation date for the remaining changes has been extended to 1 August 2021.	The implementation date for most of the changes under the rules has been extended to 1 August 2021. This enables RPOs to make any internal changes required to systems and processes to ensure compliance. 4 March 2021 remains the commencement date for the requirements for RPOs to store (or continue to store) any valid medical confirmation. This extends the usefulness of the rule, enabling the reduction of barriers to accessing competition for any life support customers who have a valid medical confirmation which has already been stored and retained by its RPO.	All aspects of the rule to come into effect on 4 March 2021.
2. The timeframe by which the RPO has an obligation to return the medical confirmation to the customer has been extended from 10 to 15 business days from the customer's request.	This change provides RPOs with additional time to action customer requests, with minimal risk to life support customers as they should be registered as deemed life support customers and will likely still have adequate time to send the medical confirmation to the new RPO to complete the life support registration process.	10 business days from the date of the customer's request for the RPO to return medical confirmation.
3. Clarified that a medical confirmation for registered premises must be signed and dated no more than four years before the customer requested the incoming RPO to register the premises for life support.	These changes clarified the date from which the four-year time period was to be taken from to minimise confusion.	Not directly addressed in draft rule.
4. The obligation to store the medical confirmation while the person remains a customer for the registered premises and for 110 business days after the	This rule should not to be a Tier 1 civil penalty provision given it aimed at improving access to retail competition for consumer rather than protecting consumers' health.	Previously included under rule 126.

CHANGE AND DESCRIPTION OF FINAL RULE	RATIONALE FOR THE CHANGE	DRAFT RULE POSITION
person ceases to be a registered customer for the premises was moved to a new rule 126A.	As a result, it was moved to a separate rule and a recommendation was made that it be classified as a Tier 2 civil penalty provision.	
5. Clarified that the outgoing RPO's obligation to return medical confirmation does not apply where a customer has ceased to be a customer of the retailer, for the registered premises, for more than 110 business days.	Without this clarification, RPOs might have been required to return a medical confirmation document after 110 business days, despite not having an obligation to retain the document.	Not directly addressed in draft rule.
6. Clarified that new rule 126A obliges RPOs to retain a copy of the medical confirmation document for 110 business days after the customer ceases to be a customer for the premises registered for life support, rather than a general customer relationship.	This change ensures document retention obligations on RPOs are efficient and reflective of a customer's circumstances (e.g. a life support customer no longer requires life support equipment). It also acknowledges that the customer may have multiple premises with an RPO and may remain a customer of the RPO for one or more of the other premises.	Draft rule did not account for a scenario where the customer may no longer be registered for life support but still remain a customer for those premises, or may still remain a customer for other premises.

In addition to the amendments in the above table, the final rule amends rule 123A to update the definition of 'medical confirmation'. The definition in the draft rule clarified that a medical certificate with appropriate information would be an acceptable form of medical confirmation. The final rule amends the definition further by clarifying that medical confirmation must be signed and dated, and removes the requirement for the medical confirmation to refer to the customer's premises. These changes were needed to enable RPOs to better assess the four-year validity period for medical confirmation and to enable medical confirmation to be reused following a change of premises. The definition of 'medical confirmation' in the final rule is:

medical confirmation means signed and dated certification from a registered medical practitioner that a person requires *life support equipment* (including details of the type of equipment required), which may take the form of a medical certificate or section(s) completed by a registered medical practitioner within a medical confirmation form.

ABBREVIATIONS

AEC	Australian Energy Council
AEMC	Australian Energy Market Commission
AEMO	Australian Energy Market Operator
AER	Australian Energy Regulator
CDR	Consumer data right
Commission	See AEMC
EWON	Energy and Water Ombudsman of NSW
IEC	Information Exchange Committee
MCE	Ministerial Council on Energy
MCF	Medical confirmation form
NECF	National Energy Customer Framework
NERL	National Energy Retail Law
NERO	National energy retail objective
NERR	National energy retail rules
PIAC	Public Interest Advocacy Centre
PDCN	Physical Disabilities Council of NSW
RPO	Registration process owner
SAPN	South Australia Power Networks
SVDP	St Vincent de Paul Society

A SUMMARY OF OTHER ISSUES RAISED IN SUBMISSIONS

This appendix sets out the issues raised in the first and second round of consultation on this rule change request and the Commission’s response to each issue. If an issue raised in a submission has been discussed in the main body of this document, it has not been included in this table.

A number of issues with the life support framework were raised by stakeholders. The majority of these issues were outside the scope of the rule change request, which focused on reducing barriers to retail competition for life support customers that were created by current life support registration requirements. As these issues were out of scope, the Commission has not addressed these issues, although it has suggested avenues for industry to progress thinking on these issues ahead of future rule changes.

Table A.1: Summary of other issues raised in submissions

STAKEHOLDER	ISSUE	COMMISSION RESPONSE
Australian Energy Council	Considered that the completion of paper-based forms with wet signatures led to customers needing to physically attend the premises of their medical practitioner whenever registration is required. The AEC expects that the development of consistent, online registration processes for both life support and concessions could allow customers to engage with their medical practitioner using telehealth or through some other means to mitigate concerns highlighted by the Proponent in their rule change proposal.	The process for securing confirmation from doctors via digital media for registration processes would not address the key cost concern raised by EWON. Even in a digital medium, life support customers would still be liable to pay for many types of medical appointments.
Red & Lumo	Considered that customers would benefit if a customer and their medical professional could complete their respective sections online and automatically submit it to their nominated retailer. Currently processes often lead to customers returning incomplete forms or failing to return the forms at all. An online application process would likely have more success in ensuring all required fields are completed.	An online system to meet requirements suggested by Red & Lumo would likely be complex and costly to develop but may lead to improvements in completion rates and verification of eligibility. Further evidence is needed to understand how material the issue is with respect to incomplete forms and whether doctors would be able to

STAKEHOLDER	ISSUE	COMMISSION RESPONSE
		access and use such a system. The development of such a system would be outside of the Commission's remit.
AusNet Services	Considered that rule 125(14) and similar Victorian obligations strike the right balance in allowing businesses to manage old and incorrect records and providing a high level of protection to customers with life support equipment.	Upon review, the Commission considers that changes to rule 125(14) of the NERR are outside the scope of this rule change request.
Physical Disability Council of New South Wales	PDCN would like to see a system to allow individuals to indicate that their disabilities are permanent and ongoing and bypass the need to provide updated information when they switch retailers or move house.	This issue merits consideration but is outside the scope of this rule change request.
Public Interest Advocacy Centre	PIAC does not consider it appropriate that, where a distributor is the RPO, it may deregister the consumer's premises upon learning a consumer has switched retailers (125(14) of the NERR). Switching retailers should not indicate that life support equipment is no longer needed. PIAC recommends removing this section from the NERR to ensure a consumer's status does not change.	Upon review, the Commission considers that changes to rule 125(14) of the NERR are outside the scope of this rule change request.
Public Interest Advocacy Centre	PIAC considered that the medical confirmation document should be valid until the person passes away, or until the RPO is informed that life support equipment is no longer required. This provision would not be applicable if the medical confirmation document was no longer legible and a medical professional has not specifically indicated the need for life support equipment is temporary. This was justified on the basis that most conditions requiring the use of life support equipment were permanent.	This issue merits consideration but would likely require the development of a new system for management of life support which is outside the scope of this rule change request.
Energy Networks Australia (ENA), Energy Queensland,	Considered that many RPOs may be reluctant to deregister consumers that do not provide medical confirmation after their initial life support	This issue merits consideration but is outside the scope of this rule change request.

STAKEHOLDER	ISSUE	COMMISSION RESPONSE
Essential Energy and CitiPower, Powercor and United Energy and the Australian Gas Infrastructure Group	<p>registration. Currently the rules provide RPOs with an option to deregister a customer that does not provide medical confirmation, however, these stakeholders considered that RPOs (particularly retailers) have been hesitant to deregister customers in practice.</p> <p>These stakeholders recommended that the rules be amended to require RPOs to deregister the customer if medical confirmation is not received within the required timeframe, and considered this would provide RPOs with greater certainty while deregistering customers who have been unable or unwilling to provide medical confirmation within the time frames under the NERR.</p>	
South Australia Power Networks	<p>Considered that a significant growth in customers registered as requiring life support equipment is causing DNSPs significant issues in managing planned and unplanned outage events.</p> <p>The lack of detailed information on life support customer requirements makes it hard for DNSPs to provide those life support customers with the most urgent life support needs with the protections they require. SAPN was of the view that more granular information on life support customer needs and equipment was needed to allow DNSPs to better prioritise support for customers in the event of unscheduled outages.</p>	This issue merits consideration but is outside the scope of this rule change request.
Simply Energy, Australian Gas Infrastructure Group	Simply Energy and the Australian Gas Infrastructure Group requested that the NERR be amended to allow the 15-day wait period for deregistration of premises to be waived when the consumer provides explicit informed consent. Considered that the inability to deregister a site creates inaccuracies in the life support register, resulting in confusion between retailers and distributors.	This issue merits consideration but is outside the scope of this rule change request.
AusNet Services	Suggested a requirement for RPOs to check life support status when	This issue merits consideration but is outside

STAKEHOLDER	ISSUE	COMMISSION RESPONSE
	<p>signing up the customer to a new or renewed offer be introduced. This obligation is already in place in Victoria. This may assist in identifying life support customers that require assistance.</p>	<p>the scope of this rule change request.</p>
<p>CitiPower, Powercor and United Energy and EnergyAustralia</p>	<p>Suggested a new requirement aimed at improving the accuracy of life support customer register data be introduced whereby life support customers be required to provide updated medical confirmation periodically. This is aimed at ensuring the data within life support customer registers is more accurate.</p>	<p>This issue merits consideration but is outside the scope of this rule change request.</p>
<p>AusNet Services</p>	<p>Suggested extending the RPO's obligations with respect to the outgoing customer to require the outgoing RPO to retain the customer's life support registration information for the customer or the site for a reasonable amount of time. This period would allow the RPO to fully process a customer's move to a new premises and deregister life support at the old premises. It would also prevent a life support customer that had been transferred in error from having to re-register once the error is corrected. Currently, outgoing RPO's obligations cease immediately when a customer transfers.</p>	<p>This issue merits consideration but is outside the scope of this rule change request.</p>
<p>Jemena, Australian Gas Infrastructure Group</p>	<p>Recommended that the NERR be amended to adopt the registration approach in Victoria whereby the RPO is required to clarify whether a customer's life support equipment is fuelled by electricity or gas, or both fuel types. Also recommended that the role of gas RPOs in the event of de-energisation of a property that is contracted for gas, but where the life support equipment is not powered by gas, be clarified. Currently, process owners with dual fuel customers are expected to automatically register any customer who requires life support equipment as requiring it for both electricity and gas.</p>	<p>This issue merits consideration but is outside the scope of this rule change request.</p>

STAKEHOLDER	ISSUE	COMMISSION RESPONSE
EWOSA, TasNetworks, Energy Queensland, Australian Energy Council, PIAC	Supported a holistic review of life support provisions under the NERR.	This issue merits consideration but is outside the scope of this rule change request. Please see section 3.5.4 for more details on the Commission's views.
Endeavour Energy, Simply Energy,	Supported changes to life support provisions under the NERR via a consolidated rule change process.	This issue merits consideration but is outside the scope of this rule change request. Please see section 3.5.4 for more details on the Commission's views.
EnergyAustralia	Stated that life support rules do not require fundamental changes, and only targeted changes to adjust rules that are not working well in practice are required.	This issue merits consideration but is outside the scope of this rule change request. Please see section 3.5.4 for more details on the Commission's views.
South Australia Power Networks	Potential retailers who are not the Financial Responsible Market Participant (FRMP) are currently able to register premises for life support and in effect become the Registration Process Owner (RPO) and never become the customer's retailer and therefore their FRMP. This causes inaccuracies in the register.	This issue merits consideration but is outside the scope of this rule change request.

B LEGAL REQUIREMENTS UNDER THE NERL

This appendix sets out the relevant legal requirements under the NERL for the AEMC to make this rule determination.

B.1 The rule determination

In accordance with s. 256 of the NERL the Commission has made this rule determination in relation to the rule proposed by EWON.

The Commission's reasons for making this rule determination are set out in section 2.1.

A copy of the more preferable rule is attached to and published with this rule determination. Its key features are described in section 2.4.

B.2 Power to make the rule

The Commission is satisfied that the more preferable rule falls within the subject matter about which the Commission may make rules. The more preferable rule falls within s. 237 of the NERL as it relates to regulating the provision of energy services to customers, and to the activities of persons involved in the sale and supply of energy to customers (s. 237(1)(a) of the NERL).

B.3 Commission's considerations

In assessing the rule change request the Commission considered:

- its powers under the NERL to make the more preferable rule
- the rule change request
- submissions received during first round consultation
- the Commission's analysis as to the ways in which the proposed more preferable rule will, or is likely to, contribute to the NERO (including the consumer protection test).

There is no relevant Ministerial Council on Energy (MCE) statement of policy principles for this rule change request.⁹⁹

B.4 Civil penalties

The Commission cannot create new civil penalty provisions. However, it may, jointly with the AER, recommend to the ministerial forum of Energy Ministers (formerly COAG Energy Council) that new or existing provisions of the NERR be classified as civil penalty provisions.

⁹⁹ Under s. 225 of the NERL the AEMC must have regard to any relevant MCE statement of policy principles in making a rule. The MCE is referenced in the AEMC's governing legislation and is a legally enduring body comprising the Federal, State and Territory Ministers responsible for energy. On 1 July 2011, the MCE was amalgamated with the Ministerial Council on Mineral and Petroleum Resources. The amalgamated council is now called the ministerial forum of Energy Ministers.

The NERL sets out a three-tier penalty structure for the NERL and NERR¹⁰⁰. A Decision Matrix and Concepts Table¹⁰¹, approved by Energy Ministers, provides a decision-making framework that the AEMC applies, in consultation with the AER, when undertaking the assessment of whether provisions of the NERR should be classified as civil penalties, and if so, under which tier.

The Commission's more preferable rule amends:

- rule 124(1)(b) and 124(4)(b) to require retailers and distributors to request customers to provide a medical confirmation that is no more than four years old and legible, and inform customers that they may submit a copy of a valid medical confirmation that was submitted to their previous retailer or distributor, and
- rule 124A(1) to refer specifically to the 'medical confirmation form' required under rule 124 rather than generally refer to rule 124.

These rules are currently classified as Tier 1 civil penalty provisions under Schedule 1 of the National Energy Retail Regulations. The Commission considers that the more preferable rule does not substantively change rules 124(1)(b), 124(4)(b) and 124A(1), so these rules should continue to be classified as Tier 1 civil penalty provisions, and the Commission does not propose to recommend any change to their classification to the ministerial forum of Energy Ministers.

The Commission considered that the obligation to retain medical confirmation while the relevant customer remains a customer for the registered premises and for 110 business days after they cease to be a customer for the registered premises (new rule 126A) should be recommended as a civil penalty provision. This obligation has been introduced primarily as an administrative process aimed at improving consumer access to retail energy competition, rather than to address a safety issue. Given this, the Commission considers it is appropriate to recommend to the ministerial forum of Energy Ministers that new rule 126A be classified as a Tier 2 civil penalty provision.

The Commission has consulted with the AER on the changes to 124(1)(b), 124(4)(b) and 124A(1), and on new rule 126A and the AER supports these decisions.

The Commission does not consider any other provisions of the more preferable rule should be classified as civil penalty provisions.

B.5 Conduct provisions

The Commission cannot create new conduct provisions. However, it may recommend to the ministerial forum of Energy Ministers that new or existing provisions of the NERR be classified as conduct provisions.

The more preferable rule does not amend any rules that are currently classified as conduct provisions under the NERL or the National Energy Retail Regulations. The Commission does

¹⁰⁰ <https://www.aemc.gov.au/regulation/energy-rules/civil-penalty-tools>

¹⁰¹ http://www.coagenergycouncil.gov.au/sites/prod.energycouncil/files/publications/documents/Final%20-%20Civil%20Penalties%20Decision%20Matrix%20and%20Concepts%20Table_Jan%202021.pdf

not propose to recommend to the ministerial forum of Energy Ministers that any of the proposed amendments made by the more preferable rule be classified as conduct provisions.

C ALTERNATIVE SOLUTIONS PROPOSED BY STAKEHOLDERS

This section outlines the six major alternative solutions proposed by stakeholders in submissions to the consultation paper and the Commission's responses at the draft determination.

C.1 Alternative solutions proposed

Return of the medical confirmation document to the customer on switching

EnergyAustralia, Tango Energy and the AEC suggested that a requirement be instituted for the outgoing RPO to provide the customer with the completed MCF or confirmation document. This document would need to be accepted by the incoming RPO as medical confirmation. These stakeholders noted that this approach would maintain an efficient risk allocation, and that RPOs would not face the same privacy concerns than what was proposed under EWON's solution.¹⁰²

Development of a centralised database

SAPN and Meridian Energy suggested that a centralised database with DNSPs being solely responsible for obtaining and maintaining MCFs would provide positive customer outcomes and improve efficiency.¹⁰³ PIAC also supported the approach for the DNSP as the sole RPO, as de-energisation requests are generally still actioned by the DNSP (however a centralised database was not mentioned in its submission).¹⁰⁴ PIAC also added that any requirements for the concessions schemes could be confirmed by the distributor to the retailer.¹⁰⁵ CPSA, SVDP, PDCN supported PIAC's proposed approach in their submissions.¹⁰⁶

Encouraging customers to register with DNSPs

Alinta suggested that rules be changed to oblige retailers to inform transferring-in life support customers that if they wish to maintain life support status at the premises, and avoid life support re-registration when transferring retailers in the future, they can do so by registering for life support status with their DNSP. Alinta noted that this approach would remove the barrier of switching retailers in the future.¹⁰⁷

Annual energy plan assessments

AGL suggested that an annual plan assessment for customers registered for life support to determine if they are on the most appropriate plan offered by the current retailer, with the option to switching to another offer (within the same retailer). AGL contended that this approach would ensure life support customers have access to competitive market offers

102 Submissions to consultation paper: EnergyAustralia, p. 5; Tango Energy, p. 1; AEC, p. 5.

103 Submissions to consultation paper: SAPN, p. 3; Tango Energy, p. 4.

104 Public Interest Advocacy Centre, submission to consultation paper, p. 5.

105 Ibid.

106 Submissions to consultation paper: CPSA, p. 3; SVDP, p. 1; PDCN, p. 2.

107 Alinta Energy, submission to consultation paper, p. 2.

without potentially having to re-register for life support as well as life support concession payments.¹⁰⁸

Utilisation of upcoming CDR

EnergyAustralia and Nectr, were of the view that life support information could be considered as shareable data under the Consumer Data Right process being run by the ACCC, allowing it to be shared between participants with customer consent. Both stakeholders noted CDR is still under development in the energy industry and that the Commission would need to engage with ACCC to progress this solution.¹⁰⁹

Discretion to request medical confirmation

CALC suggested that RPOs be given the discretion to request medical confirmation, thus removing the requirement that medical confirmation be submitted to an RPO. CALC noted that approach would likely reduce costs of confirmation for most customers but that there are risks that RPOs would be inconsistent with their application. CALC was of the view that this approach would be consistent with practices surrounding customer requests to be on a payment plan or hardship framework.¹¹⁰

C.2 Commission's response to alternative solutions proposed

Return of the medical confirmation document to the customer on switching

The solution proposed by EnergyAustralia, Tango Energy and the AEC for the outgoing RPO to provide the customer with the completed MCF or confirmation document which would then be accepted by the incoming RPO as medical confirmation would likely:

- not introduce significant costs on RPOs and
- reduce the risk for inadvertent deregistration and make it easier for life support customers to complete the life support registration process.

Based on this assessment, the Commission has explored this option further as part of the draft rule, as outlined in chapter 3 and 4 of the determination.

Development of a centralised database

The Commission has not progressed the approach put forward by SAPN and Meridian on the basis that the development of a centralised database would likely be complex and costly. These factors, coupled with the unclear materiality of the issue make this alternative solution unlikely to promote long-term customer interests in this instance. This is consistent with the position taken on EWON's proposed solution.

The Commission has not progressed PIAC's approach as a transition from the current state where RPOs are mostly retailers, to a state where all RPOs are DNSPs is likely to be a lengthy and potentially confusing process for customers, particularly given the role retailers play with respect to the customer relationship. This solution would also negate the benefits customers

¹⁰⁸ AGL, submission to consultation paper, p. 1.

¹⁰⁹ Submissions to consultation paper: EnergyAustralia, p. 5; Nectr, p. 2.

¹¹⁰ Consumer Action Law Centre, submission to consultation paper, p. 7.

can receive by contacting a single RPO to deal with their concession and life support registration.

Encouraging customers to register with DNSPs

Alinta's suggestion has not been pursued as the Commission considers it would not address barriers for consumers switching at present, but would rather place an additional burden on consumers to contact their DNSP. This approach would also negate the benefits of customers contacting a single RPO to deal with their concession and life support registration.

Annual energy plan assessments

The Commission has not pursued AGL's proposed solution as the Commission considers it is unlikely that it would promote greater access to retail competition for life support customers because it limits customers to better offers by their current retailer. There is a risk that this approach would unfairly advantage incumbent retailers.

Utilisation of upcoming CDR

With respect to the CDR, the Commission considers these reforms are, at present, unlikely to cover life support information of the nature required to deal with both barriers to retail competition and life support registration.

Discretion to request medical confirmation

With respect to CALC's proposed solution to give RPOs discretion to request medical confirmation, the Commission recognises that this solution would likely reduce costs for customers. However, it is less clear what impact this approach would have on RPOs, particularly DNSPs. DNSPs have raised significant concerns (raised in section 4.5.1) with respect to the increased number of customers on life support registers — CALC's proposed approach has the potential to compound this. This alternative solution would also be a significant departure from the current framework and such a departure would likely not be justified under the current rule change process given the difficulty in establishing the materiality of the issue raised.