



Australian Energy Market Commission

DRAFT RULE DETERMINATION

National Electricity Amendment (Strengthening protections for customers requiring life support equipment) Rule 2017

Rule Proponent(s)

Australian Energy Regulator

26 September 2017

**RULE
CHANGE**

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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

The Australian Energy Market Commission (AEMC) has made a draft rule to strengthen protections for customers¹ who need life support equipment. This will provide better protection for life support customers, allocate responsibilities clearly and appropriately between retailers and distributors, and improve the accuracy of life support registers.

The draft rule has been made in response to a rule change request submitted by the Australian Energy Regulator (AER), in the context of problems the AER has identified with the life support provisions which are currently planned to come into force from 1 December 2017. Specifically:

- some customers requiring life support equipment are not being validly registered to receive protections, putting them at increased risk of harm
- there is no onus on retailers and distributors to provide customers with information to facilitate registration when notified of the need for life support equipment
- life support registers have grown and become increasingly inaccurate.

While the draft rule is a more preferable rule it incorporates many of the elements proposed by the AER. The draft rule amends the life support provisions so that customers will be entitled to life support protections from the time they first inform either retailer or distributor that they need life support. It establishes minimum requirements for retailers and distributors to register and deregister customers for life support protections. It also clarifies the role of different retailers and distributors with regards to the registration, medical confirmation, and deregistration processes.

The draft rule would:

- enable a customer to receive the protections of the life support rules from the time they inform their retailer or distributor until they are deregistered
- require the registration process owner (the retailer or distributor contacted by the customer) to:
 - notify customers of their rights and obligations under the life support rules
 - follow a prescribed process for obtaining medical confirmation of a customer's eligibility to be on the life support register
 - follow a prescribed process if the registration process owner chooses to remove a customer from the register where medical confirmation is not provided
- enable either the retailer or the distributor to deregister the customer if the customer informs them that life support equipment is no longer required.

¹ The terms 'customers who need life support equipment' and 'life support customers' are used in this draft determination to refer to customers at whose premises reside a person requiring life support equipment. This person may or may not be the customer themselves.

- enable the non registration process owner (either the retailer or the distributor) to deregister the customer in the event where medical confirmation is not provided and the registration process owner has deregistered the customer.

1 AER's rule change request

1.1 The rule change request

On 28 February 2017, the AER submitted a rule change request to the Commission which seeks to strengthen the protections provided to customers requiring life support equipment.² The AER proposes changes to the National Energy Retail Rules (NERR) to modify the obligations of retailers and distributors when a person residing at a customer's premises requires life support equipment. The rule change request can be found on the Commission's website.

1.2 Current protections for people on life support

Part 7 of the NERR (life support rules) sets out the obligations on retailers and distributors when a person residing at a customer's premises requires life support equipment.³ Life support equipment is defined in Part 1 of the NERR and means any of the following:

- An oxygen concentrator
- An intermittent peritoneal dialysis machine
- A kidney dialysis machine
- A chronic positive airways pressure respirator
- Crigler najjar syndrome phototherapy equipment
- A ventilator for life support
- In relation to a particular customer – any other equipment that a registered medical practitioner certifies is required for a person residing at the customer's premises for life support.

The life support rules state 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.⁴ Similarly, the life support rules state that a distributor must not de-energise premises at which life support equipment is required, except in the case of an interruption under Division 6 of Part 4.⁵

Under the rules, a distributor or retailer wanting to interrupt the electricity supply to premises at which life support equipment is required must give the customer at least four business days written notice of the planned interruption to supply at the premises

² See www.aemc.gov.au/Rule-Changes/Strengthening-protections-for-customers-requiring

³ In its rule change request, the AER notes the life support rules are changing on 1 December 2017 as part of the *Expanding competition in metering and related services* rule change. The rule change request proposes amendments to the post 1 December 2017 version of the NERR, having regard to the timings involved in effecting a rule change. Accordingly, it is this post 1 December 2017 set of rules, not the current rules, that we describe below for the purposes of consultation. A copy of the set of rules that come into force on 1 December 2017 can be found on the AEMC's website. See: <http://www.aemc.gov.au/Rule-Changes/Expanding-competition-in-metering-and-related-serv>

⁴ See subrule 124(1)(d) of the NERR as at 1 December 2017.

⁵ See subrule 125(2)(d) of the NERR as at 1 December 2017.

(the four business days to be counted from, but not including, the date of receipt of the notice).⁶ This means that premises at which life support equipment is required cannot be disconnected for non-payment, for instance.

The life support rules will apply to retailers where:

1. a customer provides a retailer with confirmation from a registered medical practitioner that a person residing at the customer's premises requires life support equipment; or
2. the retailer is advised by a distributor that a person residing at the customer's premises requires life support equipment.⁷

Similarly, the life support rules will apply to distributors where:

1. a customer provides a distributor with confirmation from a registered medical practitioner that a person residing at the customer's premises requires life support equipment; or
2. the distributor is advised by a retailer that a person residing at the customer's premises requires life support equipment.⁸

The life support rules require retailers and distributors to register premises as having life support equipment.⁹ At the time it registers the customer's premises as having life support equipment, a retailer must give the customer:

- an emergency telephone contact number for the distributor (the charge for which must be no more than the cost of a local call)
- general advice that there may be a retailer planned interruption to supply at the address.¹⁰

The obligations for distributors at the time of registering are similar, with one addition. A distributor must give the customer:

- an emergency telephone contact number for the distributor (the charge for which must be no more than the cost of a local call)
- general advice that there may be a distributor planned interruption or unplanned interruption to supply at the address; and
- information to assist the customer to prepare a plan of action in case of an unplanned interruption.¹¹

Both retailers and distributors are required to share relevant information about premises on their life support registers¹² and to keep their registers up to date.^{13A}

⁶ Rule 124(1)(f) of the post 1 December 2017 NERR applies to retailers and rule 125(2)(f) of the post 1 December 2017 NERR applies to distributors

⁷ Rule 124(1A) of the post 1 December 2017 NERR

⁸ Rule 125(1)

⁹ Rule 124(1)(a) of the post 1 December 2017 NERR applies to retailers. Rule 125(2)(a) of the post 1 December 2017 NERR applies to distributors.

¹⁰ Rule 124(1)(e)

¹¹ Rule 125(2e) of the post 1 December 2017 NERR

retailer must inform the distributor if a customer advises the retailer that the person for whom the life support equipment is required has vacated the premises or no longer needs the life support equipment.¹⁴

Both a retailer and a distributor may also request a customer whose premises have been registered under rule 124 or 125 of the post 1 December 2017 NERR to inform them if the person for whom the life support equipment is required has vacated the premises or no longer requires the life support equipment.¹⁵

1.3 Potential gaps in protection and other issues

In its rule change request, the AER sought to address three main concerns with the life support rules¹⁶:

1. Some customers requiring life support equipment are not being validly registered:
 - (a) customers must provide confirmation from a registered medical practitioner in order to receive the life support protections¹⁷
 - (b) customers may be unaware of the need to provide medical confirmation as distributors and retailers are not required to provide customers:
 - (i) information that the customer needs to provide confirmation from a registered medical practitioner to be validly registered
 - (ii) information that the customer must be validly registered to receive critical protections under the law
 - (iii) details about the registration process
2. The AER has difficulty enforcing certain life support rules if the customer does not provide medical confirmation to either the retailer or distributor.
3. Life support registers have grown and have become increasingly inaccurate.

The AER's work with retailers and distributors to ensure compliance with the life support rules has raised a concern that many customers on the life support registers of

¹² Rule 124(1)(c) of the post 1 December 2017 NERR applies to retailers and rule 125(2)(c) of the post 1 December 2017 NERR applies to distributors

¹³ Rule 124A of the post 1 December 2017 NERR applies to retailers and rule 126 of the post 1 December 2017 NERR applies to distributors

¹⁴ Rule 124(2) of the post 1 December 2017 NERR

¹⁵ Rule 124A(2) of the post 1 December 2017 NERR applies to retailers and rule 126(2) of the post 1 December 2017 NERR applies to distributors

¹⁶ See rule change request pp.7-8 and pp.12-22

¹⁷ This would not however apply where either rule 124(1A)(a) or rule 125(1)(a) of the post 1 December 2017 NERR apply. Where a distributor advises a retailer that a person residing at the customer's premises requires life support equipment, prior medical confirmation is not required for the life support rules to be applicable to the retailer. i.e. the life support rules will apply to the retailer in this case immediately upon receiving the advice from the distributor, whether or not the distributor has received medical confirmation from the customer. Similarly, where a retailer advises a distributor that a person requires life support equipment, prior medical confirmation is not required for the life support rules to be applicable to the distributor.

retailers and distributors are not receiving the legal protection the life support rules are supposed to provide. Typically customers advise retailers and distributors their premises require life support equipment and the retailer or distributor registers them.¹⁸ However, the AER reports cases where it cannot enforce the protections because the customer has not provided confirmation from a registered medical practitioner, including where the customer was not informed they were required to do so.¹⁹

The AER is concerned that some retailers and distributors, when they are advised by customers of the need for life support at their premises, are not providing those customers with adequate information about what protections their registration entitles them to and what they are required to do to confirm their eligibility for those protections. This contributes further to the number of customers on life support registers who have not provided confirmation from a medical practitioner, unaware their omission might mean there are no legal repercussions for the business if a retailer or distributor de-energises them.²⁰

The AER surveyed retailers and distributors and was concerned that some retailers and distributors do not have a complete process for receiving medical confirmation of the need for life support equipment. This lack of a process to advise and follow up contributes to more customers being on a life support register without having provided medical confirmation.²¹ The AER has expressed concern at the growth in the numbers of customers on life support registers due to low levels of follow up for medical confirmation and increasing numbers of inaccurate and out-of-date registrations.²²

1.4 Solution proposed in the AER's rule change request

The AER's proposed changes aim to:

- enable a customer to receive the protections of the life support rules from the time they inform their retailer or distributor until they are deregistered, either because they:
 - do not provide medical confirmation within a prescribed time; or
 - inform the retailer or distributor that life support equipment is no longer required.²³
- require the registration process owner (the retailer or distributor contacted by the customer) to:
 - notify customers of their rights and obligations under the life support rules
 - follow a prescribed process for obtaining confirmation of a customer's eligibility to be on the life support register

18 See rule change request pp. 12-14

19 See rule change request p. 18.

20 See rule change request p. 12.

21 See rule change request p.19.

22 See rule change request p. 12.

23 Proposed rule 125.

- follow a prescribed process if the registration process owner chooses to remove a customer from the register.

1.4.1 Changes to the registration process

The AER acknowledges that retailers and distributors are already placing customers on their life support registers when customers advise them of the need for life support equipment at their premises.²⁴ The AER aims to ensure the benefits of the life support rules are made available, and can be legally enforced, even if a customer has not yet provided the retailer or distributor medical confirmation that life support equipment is required at the customer's premises. Medical confirmation would still be required but the obligations of distributors and retailers in the life support rules would be enforceable prior to the customer providing it.

When advised by a customer that a person residing or intending to reside at the customer's premises requires life support equipment the retailer or distributor would be required to register that a person residing at the customer's premises required life support equipment.²⁵

Within five calendar days of being notified of the need for life support equipment at the premises, the registration process owner would be required to send a medical confirmation form to the customer and information about the implications of not providing medical confirmation.²⁶

A medical confirmation form should prompt the customer for information required to meet the requirement to provide confirmation from a registered medical practitioner that someone residing or intending to reside at the customer's premises requires life support equipment. A medical confirmation form issued by a retailer or distributor would need to:

- state that completion and return of the form will satisfy the requirement to provide medical confirmation under the Rules
- request from the customer the property address, the date from which the customer requires supply to the premises for the purpose of the life support equipment, certification from a registered medical practitioner confirming that a person residing or intending to reside at the premises requires life support equipment
- specify the types of equipment considered to be life support equipment in Division 1 of Part 1 of the rules

²⁴ See rule change request pp. 12-14.

²⁵ Proposed rule 124(1)(a) applies where the retailer is advised by the customer. This proposed rule 124(1)(a) also requires the retailer to register that a person intending to reside at the customer's premises requires life support equipment in the retailer's register and the date from which the life support equipment is required. Proposed rule 124(2)(a) applies where the retailer is advised by the distributor. Proposed rule 124(3)(a) applies where a distributor is advised by a customer. Proposed rule 124(4)(a) applies where the distributor is advised by the retailer.

²⁶ Proposed rule 124(1)(b)(i)-(ii) applies to retailers and proposed rule 124(3)(b)(i)-(ii) applies to distributors.

- advise the date by which the customer must return the completed medical confirmation form
- advise the customer they can request an extension to complete and return the medical confirmation form.²⁷

Retailers and distributors must also comply with obligations, as they would exist from 1 December 2017, to provide the customer with:

- advice that there may be planned interruptions or unplanned interruptions²⁸ to the supply at the address²⁹
- information to assist the customer prepare a plan of action in the case of an unplanned interruption (required of distributors only)
- an emergency contact number for the distributor (the charge for which is no more than the cost of a local call).

1.4.2 A new medical confirmation process

The AER is proposing that a process for confirming the need for life support equipment at a premises be prescribed in the life support rules.³⁰ Customers would be given a minimum of 65 calendar days to provide confirmation from a registered medical practitioner that a person residing or intending to reside at the premises requires life support equipment.³¹ During this period, if they do not receive medical confirmation from the customer, the registration process owner must send at least two confirmation reminder notices:³² the first, no less than 21 days from the date the medical confirmation form was issued³³ and the second no less than 21 days from the date the first confirmation reminder notice was issued.³⁴ They would also be required to provide a customer at least one extension of a minimum of 30 calendar days to return the medical confirmation form, if the customer requests it.³⁵

The AER proposes that the confirmation reminder notice be defined in the life support rules³⁶ and must contain the following:

- the date of issue
- the date by which confirmation is required

27 Proposed rule 123A(4)

28 Only distributors are required to provide advice about unplanned interruptions

29 The AER proposes an additional obligation for customers to be advised of the notification timeframes for planned interruptions.

30 Proposed rule 124A

31 Proposed rule 124A(1)

32 Proposed rule 124A(2)

33 Proposed rule 124A(3)

34 Proposed rule 124A(4)

35 Proposed rule 124A(5)

36 Proposed rule 123A(1)

- the types of equipment considered to be life support equipment in Division 1 of Part 1 of the Rules
- advice that:
 - the customer must provide confirmation from a registered medical practitioner that a person residing or intending to reside at the premises requires life support equipment
 - the premises is temporarily registered as requiring life support equipment until medical confirmation is received
 - failure to provide medical confirmation may result in the premises being deregistered
 - the customer can request an extension to provide medical confirmation.

1.4.3 Changes to the process for removing a customer's premises from a life support register

The AER is proposing that the choice to deregister a customer's premises is at the discretion of the registration process owner. Only this business could choose to deregister a customer's premises on its life support register.

The AER proposes defining deregistration in the life support rules as the process by which a retailer or distributor updates its register to remove, for a particular premises, the requirement for life support equipment.³⁷

If the registration process owner decides to initiate the deregistration process, in the circumstance where a customer has failed to provide medical confirmation, the registration process owner:

- must have complied with the requirements in the confirmation process
- in addition, must have taken reasonable steps to contact the customer in connection with the customer's failure to provide medical confirmation in one of the following ways:
 - in person
 - by telephone
 - by electronic means
- must have provided the customer with a deregistration notice
- may deregister the customer only if the customer has not provided medical confirmation before the date for deregistration specified in the deregistration notice.³⁸

The AER proposes defining the deregistration notice issued by the retailer or distributor in the proposed life support rules and prescribing that the deregistration notice must:

- state the date of issue

³⁷ Proposed rule 123A(2)

³⁸ Proposed rule 125(4)

- state the date on which the customer's premises will be deregistered, which must be at least seven days from the date of issue
- advise the customer the premises will cease to be registered as requiring life support equipment unless medical confirmation is provided before the date for deregistration
- advise the customer that the customer will no longer receive the protections under the law when the premises is deregistered.³⁹

Retailers and distributors must, within five days of any deregistration for failure to provide medical confirmation, send the other party a copy of the deregistration notice sent to the customer.⁴⁰

After receiving a deregistration request from the customer, the AER proposes that the registration process owner:

- must take steps to verify the deregistration request with the customer but need only do so for three days from the date of the notification
- may, after this three day period, deregister the customer.⁴¹

If a retailer or distributor, who registered a customer's premises as requiring life support equipment following notification from the registration process owner, receives a deregistration request from the customer the retailer or distributor must:

- inform the customer within two days that the registration process owner is responsible for deregistration
- refer the request to the registration process owner, who must take steps to verify the deregistration request.⁴²

1.5 The rule making process

On 20 June 2017, the Commission published a notice advising of its commencement of the rule making process and consultation in respect of the rule change request.⁴³ A consultation paper identifying specific issues for consultation was also published. Submissions closed on 18 July 2017.

The Commission received 19 submissions as part of the first round of consultation. The Commission considered all issues raised by stakeholders in submissions. Issues raised in submissions are discussed and responded to throughout this draft rule determination. Issues that are not addressed in the body of this document are set out and addressed in Appendix A.

³⁹ Proposed rule 123A(3)

⁴⁰ Proposed rule 125(5) and proposed rule 125(6)

⁴¹ Proposed rule 125(7) and proposed rule 125(8)

⁴² Proposed rule 125(9) and proposed rule 125(10)

⁴³ This notice was published under s. 251 of the National Energy Retail Law (NERL).

1.6 Consultation on draft rule determination

The Commission invites submissions on this draft rule determination by 8 November 2017.

Any person or body may request that the Commission hold a hearing in relation to the draft rule determination. Any request for a hearing must be made in writing and must be received by the Commission no later than 3 October 2017.

Submissions and requests for a hearing should quote project number RRC0009 and may be lodged online at www.aemc.gov.au or by mail to:

Australian Energy Market Commission
PO Box A2449
SYDNEY SOUTH NSW 1235

2 Draft rule determination

2.1 The Commission's draft rule determination

This chapter outlines:

- the rule making test for changes to the NERR; and
- the assessment framework for considering the rule change request.

Further information on the legal requirements for making this draft rule determination is set out in Appendix B.

The Commission's draft rule determination is to make a more preferable draft rule. This incorporates many aspects of the AER's proposal. Key differences include:

- either retailer or distributor can deregister if the customer informs them that life support equipment is no longer required
 - In practice this would mean that as in the AER's proposed rule, only the 'registration process owner' could instigate the deregistration of a customer for failing to provide medical confirmation within the required timeframe. However unlike in the AER's proposed rule, either business (retailer or distributor) could deregister the customer if that customer were to tell them, either spontaneously or in response to a query from the business, that they no longer need life support equipment.
- under the AER's proposed rule change, both the retailer and the distributor are required to provide the customer with information on their rights and obligations when they are registered. Under the more preferable draft rule, only the registration process owner would be required to provide this information, including information to assist the customer to prepare a plan of action in the case of an unplanned interruption.

The table below illustrates circumstances under which each business can and cannot deregister a customer under the Commission's more preferable draft rule.

Table 2.1 Can the business deregister the customer?

Is the business the registration process owner?	Reason for deregistering	Does the business have a right to instigate deregistration of the customer?
Yes	Customer has informed that they no longer need life support equipment.	Yes
Yes	Failure to provide medical confirmation	Yes
No	Customer has informed that they no longer need life support.	Yes

Is the business the registration process owner?	Reason for deregistering	Does the business have a right to instigate deregistration of the customer?
No	Failure to provide medical confirmation	No ⁴⁴

Like the AER's proposed rule, the more preferable draft rule seeks to make sure customers have continuous protection under the life support provisions of the rules from the time they inform their distributor or retailer that they need life support, to the time they are de-registered. It places obligations on both the retailer and the distributor to notify customers of their rights and obligations, and on the business contacted by the customer (either the retailer or the distributor) to follow a prescribed process in seeking medical confirmation of their life support status. However, the more preferable draft rule gives the business that was not advised directly by the customer of the need for life support equipment greater scope to manage its costs and risks relating to life support by allowing it to deregister customers' premises under some circumstances.

The Commission's reasons for making this draft determination are set out in Chapter 3.

2.2 Rule making test

2.2.1 Achieving the national energy retail objective

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).⁴⁵ This is the decision making framework that the Commission must apply.

The NERO is:⁴⁶

“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 consumers, including (but not limited to) protections relating to hardship consumers" (the "consumer protections test").⁴⁷

The classes of consumer protections that are relevant to the draft rule amending the NERR are:

- disconnection of the supply of electricity to a small customer's premises, as the draft rule protects life support customers from de-energisation of their premises

⁴⁴ Although the business can remove the customer from its register if the registration process owner has already deregistered the customer.

⁴⁵ Section 236(1) of the NERL.

⁴⁶ Section 13 of the NERL.

⁴⁷ Section 236(2)(b) of the NERL.

- interruption of the supply of electricity to a customer's premises, as the draft rule places obligations on retailers and distributors to inform customers of planned interruptions; and
- provision of information to consumers, as the draft rule places obligations on retailers and distributors to inform life support customers of their rights and obligations.

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.⁴⁸ 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.

2.3 Assessment framework

This section sets out the analytical framework that the Commission has used to assess the rule change request.

To assess whether the rule change request promotes efficiency in the investment, operation and use of energy services for the long term interest of consumers, the Commission has applied the following assessment criteria:

- whether the proposed rule change will provide adequate access to the life support protections for people who need a continuous supply of energy in order to avoid potentially negative medical outcomes, by providing transparency and certainty around their rights and obligations
- whether the proposed rule change will allocate responsibilities to do with registration and deregistration clearly and appropriately between stakeholders (including retailers, distributors and customers)
- whether the proposed rule change will impose costs on retailers and distributors that are proportionate to the customer protections achieved; and
- whether the proposed changes to the NERR are compatible with wider consumer protections.

These criteria have been marginally updated from the consultation paper. This is so as to reflect both the process improvements the more preferable rule seeks to achieve (ie, more certainty and transparency for customers and retailers and distributors navigating the life support provisions in the rules), and the intended outcome - that is, better protection for life support customers at an efficient cost.

⁴⁸ That is, the legal tests set out in s. 236(1) and (2)(b) of the NERL.

2.4 Summary of reasons for making a more preferable rule

Having regard to the issues raised in the rule change request and during consultation, the Commission is satisfied that the more preferable draft rule will, or is likely to, better contribute to the achievement of the NEO. This is because the draft rule is likely to:

- Provide adequate access to the life support protections for people who need a continuous supply of energy in order to avoid potentially deadly medical outcomes:
 - The draft rule ensures that customers can access protections under the life support rules from the time they inform their retailer or distributor until they are deregistered. It does so by making sure that life support protections are legally enforceable prior to a medical certificate being provided, and by requiring retailers and distributors to follow a minimum process in seeking medical confirmation and in deregistering a customer.
- Allocate responsibilities to do with registration and deregistration clearly and appropriately between stakeholders (including retailers, distributors and customers):
 - The draft rule clarifies the obligations on retailers, distributors and customers. It requires retailers and distributors to follow a minimum process to seek a medical certificate confirming that the customer needs life support. It clearly allocates responsibility for seeking medical confirmation and providing the customer with information to the business contacted by the customer. It also clarifies the customer's responsibility to provide information to retain their life support status.
- Impose costs on retailers and distributors that are proportionate to the customer protections achieved:
 - The draft rule strongly prioritises protecting life support customers from erroneous deregistration. Customers who have previously confirmed their need for life support through medical documentation cannot be required to provide additional medical confirmation, although they may voluntarily do so on. Nor can they be deregistered for lack of medical confirmation by any business other than the retailer or distributor which had the initial responsibility for obtaining that medical confirmation.

However, the draft rule also gives retailers and distributors appropriate tools to manage their costs by removing some inaccurately registered customers from their registers. This includes enabling the registration process owner to deregister a customer for failing to provide a medical certificate, the non registration process owner the ability to remove the customer from their register in response to their removal by the registration process owner, and either business to deregister customers who inform them that they no longer need life support.

- Be compatible with wider consumer protections:
 - The draft rule is compatible with consumer protections as it is in itself an example of protections for small customers, including hardship customers

3 Assessment of the proposed rule against the framework

3.1 Protecting life support customers

3.1.1 AER's view

In its rule change proposal the AER expressed concern that some retailers and distributors, when they are advised by customers of the need for life support at their premises, are not providing those customers with adequate information about what protections their registration entitles them to and what they are required to do to confirm their eligibility for those protections. The AER has reported cases where it cannot enforce the protections because the customer has not provided confirmation from a registered medical practitioner, including where the customer was not informed they were required to do so.⁴⁹ The AER surveyed retailers and distributors and was also concerned that some retailers and distributors do not have a complete process for receiving medical confirmation of the need for life support equipment.⁵⁰

These gaps in the framework could lead to some customers not receiving the protection that they need. For example, someone who needs life support may fail to provide a medical certificate because they do not know it is required, or because the retailer or distributor has not followed an adequate process for prompting or enabling them to provide it.⁵¹

3.1.2 Stakeholder views

Six stakeholders including two jurisdictional ombudsmen,⁵² one energy retailer,⁵³ two distributors⁵⁴ and one customer advocacy group,⁵⁵ supported the AER's proposed rule change as they thought it would improve protections for customers. Other energy retailers and distributors stated that while they support the rule change's intent to strengthen customer protections⁵⁶ the AER's proposed rule needs to be refined to reflect the realities facing retailers and distributors, particularly as applies to the deregistration process.⁵⁷

49 Rule change proposal p. 18

50 Rule change proposal p. 17-18

51 Rule change proposal p. 8.

52 AEMC, *Strengthening protections for customers requiring life support equipment*, Consultation paper submissions: Energy and Water Ombudsman South Australia p. 1, Energy and Water Ombudsman Victoria p. 2

53 Origin, submission to the consultation paper, p. 1.

54 AEMC, *Strengthening protections for customers requiring life support equipment*, Consultation paper submissions: Energex and Ergon p. 1

55 Public Interest Advocacy Centre, submission to the consultation paper, p. 1.

56 AEMC, *Strengthening protections for customers requiring life support equipment*, Consultation paper submissions: AGL p. 1, Australian Energy Council pp. 1-2, Energy Australia p. 1, ERM p. 1, AusNet p. 1, Jemena p. 1, Energy Networks Australia p. 1, Red Energy and Lumo Energy p. 1., Ausgrid p. 1.

57 See section 3.2.2

3.1.3 AEMC's approach

The Commission agrees with the AER's assessment that there are gaps in protection for customers under the current life support framework. The AER's proposed rule would substantially address the following gaps: a) potential lack of protection before a medical certificate has been provided, and b) customers lacking information about their obligation to provide a medical certificate. It would do so by allowing for life support protections to be legally enforceable prior to a medical certificate being provided, and by requiring the business contacted by the customer to notify that customer of their rights and obligations to provide medical confirmation under the life support rules.

3.2 Allocating responsibility for registration, confirmation and deregistration from the register

3.2.1 AER's view

The AER believes it is important to maintain a clear line of responsibility determining which business 'owns' the registration process. Under the AER's proposed rule, this entails the responsibility to provide the customer with information about their rights and obligations, and to follow a minimum process to seek a medical certificate confirming that the customer needs life support equipment. To avoid ambiguity and potential confusion for customers, the AER proposes that these obligations should belong to the party contacted by the customer who informs them that they need life support equipment, who will be designated the 'registration process owner'. The process owner also has the choice, although not the obligation, to deregister the customer. Under the AER's proposal no other business would have the ability to do so.⁵⁸

3.2.2 Stakeholder views

There were differences in opinion between stakeholders as to which party should be responsible for registering life support premises. Five submissions generally supported the AER's proposed rule as providing greater transparency and certainty for consumers and retailers and distributors, particularly in the registration process.⁵⁹

However, not all stakeholders agreed with the proposed allocation of responsibility for registering, confirming and deregistering customers in the proposed rule. Several stakeholders suggested that retailers should have responsibility for the registration process, due to their greater interaction with customers and their direct financial incentive, as the party which bills life support customers for their energy usage, to maintain an accurate life support register.⁶⁰

On the other hand, South Australia Power Networks thought that distributors should have this responsibility based on their experience from prior to the National Energy

⁵⁸ See rule change proposal pp. 15-17.

⁵⁹ AEMC, *Strengthening protections for customers requiring life support equipment*, Consultation paper submissions: Energy and Water Ombudsman SA p. 1, Energy and Water Ombudsman Victoria p. 1, PIAC p. 1, Origin Energy p. 1, Energex and Ergon p. 1.

⁶⁰ AEMC, *Strengthening protections for customers requiring life support equipment*, Consultation paper submissions: Endeavour p. 4, Jemena p. 4, Ausgrid p. 2, AusNet p. 2.

Customer Framework (NECF). During this time they as the distributor had sole responsibility for managing the register and provided a single point of contact for customers.⁶¹ AGL noted that under some circumstances, the identity of the registration process owner may not be clear, particularly if there is 'churn' or switching of retailers during the registration process.⁶²

Several retailers and distributors suggested that the deregistration process should be compulsory under certain circumstances, for instance if a medical certificate is not provided within the allocated timeframe⁶³, with the rationale that this would assist retailers and distributors with risk management. While acknowledging the value of retailers and distributors retaining some discretion, Energy Australia and Jemena argued that if the decision to deregister is left to business discretion retailers and distributors will never deregister anyone due to risk aversion, leading to increasing inaccuracy in the register.⁶⁴

Energy Australia noted that the AER's proposed rule requires the registration process owner to seek to 'verify' a customer initiated deregistration request for three days before deregistering the customer, stating that this requirement was excessive, came with little guidance as to what verification might entail, and may confuse the customer.⁶⁵

The Public Interest Advocacy Centre (PIAC) stated that customers should not have to re-inform their retailers or distributors that they need life support each time they switch providers as this will inhibit switching for vulnerable customers.⁶⁶

3.2.3 AEMC's approach

Registration

The Commission shares the AER's view that responsibility for a) registering customers and b) seeking medical confirmation needs to be clearly allocated. The AER's proposed rule achieves this by allocating both of these roles to the business contacted by the customer, designated the 'registration process owner'. While the Commission acknowledges the potential for confusion as to the identity of the registration process owner, for instance in the case where the customer has contacted more than one provider, the obligation under the rules for retailers and distributors to share relevant information about life support premises should mitigate this problem. In any case the consequences of confusion are unlikely to be disastrous. The most likely outcome in this circumstance is that the customer will receive the same information twice, ie, two copies of the information pack informing them of their rights and two directions to provide medical confirmation in order to retain their life support status.

⁶¹ South Australia Power Networks, submission to the consultation paper, pp. 1-2.

⁶² AGL, submission to the consultation paper, p. 7.

⁶³ AEMC, *Strengthening protections for customers requiring life support equipment*, Consultation paper submissions: ERM p. 3, AusNet pp. 1-2, Jemena pp. 1-2

⁶⁴ AEMC, *Strengthening protections for customers requiring life support equipment*, Consultation paper submissions: Jemena pp. 1-2, Energy Australia p. 2.

⁶⁵ Energy Australia, submission to the consultation paper, p. 2.

⁶⁶ Public Interest Advocacy Centre, submission to the consultation paper, p. 4.

The more preferable draft rule therefore preserves AER's approach for placing obligations on the business contacted by the customer.

The Commission has amended the information provision requirements from the proposed rule. Under the AER's proposed rule change, both the retailer and the distributor are required to provide the customer with information on their rights and obligations when they are registered. Under the more preferable draft rule, only the registration process owner would be required to provide this information, including information to assist the customer to prepare a plan of action in the case of an unplanned interruption. This is to avoid providing customers being unnecessarily contacted by multiple parties.

Deregistration when the customer says life support is no longer needed

In the more preferable rule the Commission has amended the AER's proposal by allowing either provider (retailer or distributor) to deregister a customer after following the appropriate deregistration processes, in the case that the customer has informed them they no longer need life support. The rationale is as follows: obligations and the risks should be allocated to those who are best placed to manage them. Both the distributor and the retailer have an ongoing obligation to provide life support protections to the customer, and face costs (such as maintaining an accurate register) and risks (such as erroneously categorising a life support customer as not needing life support). However under the AER's proposed rule, only the registration process owner can take steps to manage these costs and risks by removing customers who do not need to be on the register.

Consider the following illustrative example: a sick person might move house meaning that their previous home, the original premises classified as containing life support equipment, no longer contains that equipment. For administrative or other reasons, the registration process owner contacted by that person (assume this is the retailer) neglects to remove the premises from their register of properties to which life support protections apply. The distributor contacts the person now living at those premises and confirms that the life support protections are no longer needed for the premises. However, under the AER's proposed rule the distributor has no ability to deregister the customer's earlier premises.

The more preferable rule addresses this problem by allowing either party to deregister the customer's earlier premises in this circumstance. Retailers and distributors could develop their own processes to contact customers, ask if they still require life support equipment, and update their own life support register accordingly.

However, the more preferable draft rule does **not** allow either provider to initiate the deregistration process for a customer based on their failure to provide medical confirmation. Only the registration process owner has this ability (although the non registration process owner can remove the customer from their register in response to the registration process owner having deregistered the customer). At this stage the Commission considers that allowing either party to initiate deregistration where the customer has not provided medical confirmation would open up scenarios which could increase the burden on some life support customers and expose them to additional risk which is not proportionate to any benefits that would be achieved. This will be discussed further in section 3.3.

Compulsory deregistration

The Commission does not agree that deregistration should be compulsory under certain circumstances as proposed by some stakeholders (for instance, failure to provide a medical certificate). Individual retailers or distributors should be able to make this decision based on their relationship with their customers. There should be room for discretion, particularly given the potentially disastrous consequences of incorrectly removing someone from the register.

From a risk management perspective, the Commission notes that making deregistration compulsory does not remove the risk that a customer will be wrongly categorised as needing or not needing life support. Rather it shifts some of that risk from retailers or distributors to customers. This is inappropriate. Risks should be allocated to those parties who are best placed to manage them. Retailers and distributors have a range of tools for seeking information and managing financial impacts. For example, retailers or distributors typically have a range of staff who can identify and manage their legal obligations, and seek to make contact with the customer through various channels. By contrast, customers do not typically have access to the same risk management resources. This is particularly the case for vulnerable people who are disproportionately likely to need life support protections.

Verification

The draft rule retains the requirement in the AER's proposed rule for the registration process owners to take steps to verify a request for deregistration by the customer. At this stage the Commission considers it is appropriate, given that deregistering a customer could have major consequences for that person, for the registration process owner to make an effort to ascertain the customer genuinely wants to be deregistered and understands what this entails. In practice, this might mean phoning the customer to confirm that their written request to be deregistered reflects their genuine wishes.

Change in customer circumstances

In cases where the customer initiates a change in their circumstances, such as changing retailers or moving house, the customer will need to confirm their need for life support to their new retailer or at their new address. The Commission acknowledges that this requirement will make it harder for customers to switch 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. This is particularly the case in unusual circumstances, such as the dissolution of a retailer. 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. This is likely to be particularly feasible for engaged customers who are actively shopping around between retailers.

3.3 Costs proportionate to protections achieved

3.3.1 AER's view

The AER has expressed concern about the growth in the life support register due to customers remaining on registration lists where they have not provided medical confirmation, and increasing numbers of inaccurate and out-of-date registrations.⁶⁷

3.3.2 Stakeholder views

Many stakeholders both supportive and critical of the proposed rule noted that life support registers have grown significantly in recent years, with an associated increase in costs. For example, AusNet states that the number of registered life support customers on its network has grown by 53 per cent in the last two years.⁶⁸ South Australia Power Networks noted growth since the introduction of the NECF, from 2000 to almost 6000 premises in four years.⁶⁹ Endeavour describes a 25 per cent increase in registrations in the three years from 2014 and 2017.⁷⁰ Energex and Ergon experienced a six per cent increase in the number of life support premises between 6 January 2017 and 10 July 2017, while Energex alone has seen 20 per cent growth since December 2015.⁷¹ Jemena has seen growth of 963 life support premises in 2010 to 2442 in 2015.⁷² Energy Networks Australia states that recent customer surveys undertaken by distribution retailers and distributors suggest that between ten and 30 per cent of life support customers have been inaccurately recorded.⁷³

Different stakeholders arrived at a range of estimates for the cost of the AER's proposed changes to the life support registration and de-registration process. Energex and Ergon - both of whom state that they have already implemented registration processes similar to those proposed by the AER - estimated that the cost of these processes as equivalent to that of two full time staff members for each business, at a cost of about \$104,000 per annum for each staff member. This is equivalent to about 0.05% of each business' annual operating expenditure. AusNet estimated the cost of establishing a new registration system to comply with the AER's requirements at \$9.2 million - about 4 per cent of its annual operating expenditure.⁷⁴ Jemena estimated that additional costs to comply with the changes to the registration and medical confirmation processes would be

⁶⁷ Rule change proposal p. 12.

⁶⁸ AusNet, submission to the consultation paper, cover letter to submission.

⁶⁹ South Australia Power Networks, submission to the consultation paper, p. 3.

⁷⁰ Endeavour, submission to the consultation paper, p. 2.

⁷¹ AEMC, *Strengthening protections for customers requiring life support equipment*, Consultation paper submissions: Energex and Ergon p. 11

⁷² Jemena, submission to the consultation paper, p. 3.

⁷³ Energy Networks Australia, submission to the consultation paper, p. 2.

⁷⁴ Expenditure estimates are from Energex and Ergon p. 9 and AusNet (cover letter to submission). Percentage estimates are calculated by dividing by total operating expenditure in 2015 as reported to the AER. See Opex tab in 'AER distribution partial performance indicators', at <https://www.aer.gov.au/system/files/AER%20distribution%20partial%20performance%20indicator%20trends.xlsx>

insignificant.⁷⁵ Energy Networks Australia suggested that additional costs arising from the medical confirmation process were proportionate to the circumstances.⁷⁶

Energex and Ergon anticipated additional costs imposed by the AER's proposed deregistration process would be minimal (in the order of \$20,000 per annum) while Endeavour Energy did not expect to incur any material additional costs from this component of the proposed rule change.⁷⁷ Other stakeholders were unable to quantify the additional costs for deregistration,⁷⁸ although some estimated these as 'significant'.⁷⁹

To cut down on inaccurate registrations, Energy Australia proposed some form of incentive or compulsion for customers to notify retailers and distributors when life support equipment is no longer needed.⁸⁰ Energy Networks Australia, AGL and Energex and Ergon also suggested that life support customers should be required to re-confirm the registration at intervals, or that the rules should otherwise provide guidance on the appropriate issuing period for a medical certificate.⁸¹

South Australia Power Networks stated that protections should only apply if a medical certificate has been provided, as under the proposed rule a customer could continuously re-register their premises without ever supplying a medical certificate.⁸²

3.3.3 AEMC's approach

It is better for a register of life support customers to be more accurate than not. Ideally all of the customers who are entitled to life support protections, and none of the customers who were not entitled, would be listed on the register. The more preferable rule seeks to improve the accuracy of the register by formalising and improving processes for both registration and deregistration.

In practice, however, any large register is likely to have some inaccuracies.⁸³ Over time these inaccuracies may tend to either overestimate the 'true' number of life support customers, imposing unnecessary costs on retailers and distributors, or underestimate that number, depriving potentially vulnerable customers of life support protections. The rules must therefore strike a balance between these two imperatives.

The Commission's view is that in striking this balance the rules should strongly prioritise the interests of vulnerable customers. If life support protections are erroneously withheld from somebody who truly needs them, the consequences can

⁷⁵ Jemena, submission to the consultation paper, p. 3.

⁷⁶ Energy Networks Australia, submission to the consultation paper, pp. 8-9.

⁷⁷ AEMC, *Strengthening protections for customers requiring life support equipment*, Consultation paper submissions: Energex and Ergon pp. 12, 16, Endeavour p. 4.

⁷⁸ Ausgrid, submission to the consultation paper, p. 4.

⁷⁹ ActewAGL, submission to the consultation paper, p. 2.

⁸⁰ Energy Australia, submission to the consultation paper, p. 2.

⁸¹ AEMC, *Strengthening protections for customers requiring life support equipment*, Consultation paper submissions: Energex and Ergon p. 7, Energy Networks Australia p. 5, AGL p. 4.

⁸² South Australia Power Networks, submission to the consultation paper, pp. 3-4.

⁸³ For instance, caused by human error in data entry.

include severe damage to health or even death. This is a much greater harm than might occur in the opposite scenario - relatively minor additional costs being incurred by retailers and distributors. In other words, errors which *overestimate* the number of customers needing life support are more acceptable than those which *underestimate* this number. A margin of safety may be necessary to prevent needy customers from slipping through the cracks.

As a result, at this stage the Commission does not agree with either of the following suggestions to improve the accuracy of the register:

- including a requirement in the rules for life support customers to periodically re-confirm their medical status in order to retain the life support protections
- allowing providers other than the registration process owner to deregister the customer due to failure to provide medical confirmation.

While either of these proposals have the potential to remove some inaccurate registrations, they also increase the risk that people who need life support will be erroneously removed from the register. Under the first proposal, requiring customers to re-confirm their medical status or else lose their protections inevitably creates the possibility that genuine life support customers will neglect to fulfil this obligation. This could occur because they mistakenly believe they have already provided enough medical confirmation, or because the process of obtaining documentation is challenging due to their circumstances. It would also represent an additional administrative burden on life support customers which could lead to unintentionally burdensome outcomes, such as persons with incurable conditions being repeatedly required to gather evidence that they have not been cured.

Under the second proposal, allowing providers other than the registration process owner to deregister customers due to lack of a medical confirmation increases the risk that a customer may be issued with a deregistration notice, and subsequently deregistered, without having been informed about their obligation to provide medical confirmation in the first place. For example, this could occur if the registration process owner for whatever reason neglects to provide the customer with an information pack as required under the rules, but the other energy provider assumes that this information has been received by the customer. While the obligation for retailers and distributors to share relevant information should to an extent mitigate this issue, there may still be cases of miscommunication.

The Commission acknowledges that more stringent requirements for medical confirmation could decrease the risk that customers will deliberately deceive their retailers or distributors regarding their need for life support equipment. However at this stage the Commission has seen no evidence that misuse of the system is occurring on any appreciable scale.

Under the more preferable draft rule, retailers and distributors have the *option* to contact customers to confirm their eligibility in the particular instances where they suspect the requirement for life support no longer applies. They also have the option to request additional medical confirmation, which they may exercise at their discretion. These steps will likely be sufficient to identify inaccurate registrations in a large number of cases.

3.4 Compatibility with wider consumer protections

The consumer protections test considers whether the rule changes can be made without causing problems for, or conflicting with, the development and application of consumer protections for small customers. The "application" of consumer protections relates to consumer protections as they exist and apply, both within and outside the energy rules from 1 December 2017.

Considering the "development" of consumer protections also requires a forward-looking assessment. The Commission assessed whether the proposed changes are likely to be compatible with the future legislative development of consumer protections, and with consumer protections that may be developed through other regulatory avenues.

As a result of this assessment, the Commission has come to the conclusion the draft rule is compatible with the development and application of customer protections for small customers, including (but not limited to) protections relating to hardship customers.⁸⁴ This is because the draft rule is in itself an example of an improved protection for small customers, including hardship customers.

⁸⁴ Section 236(2)(b) of the NERL.

4 Implementation

This chapter sets out stakeholder views and the Commission's analysis in relation to implementing new life support rules.

4.1 Transitional arrangements

If new life support provisions come into force, this has the potential to create two categories of customers: those who advised their retailer or distributor of the need for life support equipment at their premises under the old rules and under the new ones. The new life support provisions can either:

- apply to all customers, including those registered before the new rules came into force
- apply only to customers registered after the new rules come into force; or
- impose a transitional period during which different rules apply to customers registered before and after the changeover date, after which protections for the two groups of people will be harmonised.

The Commission considers that applying the amended life support provisions to all customers regardless of their date of registration is the best option in this case. This option would harmonise protections between different customers, avoiding a situation where some are entitled to greater life support protections than others, as well as potentially dangerous confusion if some believe they are covered by the new rules when they are not. In practice, this would mean that all customers who have informed either their retailer or distributor of their need for life support will be protected under the life support provisions until they are deregistered, regardless of whether they made contact with their retailer or distributor before or after the new rule came into force.

It would also assist retailers and distributors both in clarifying their obligations to all customers, and in enabling them to deregister some inaccurately registered customers to improve the accuracy of the registers as a whole. In practice, this would mean that retailers and distributors could make a choice to contact existing customers on their registers to ask them if they needed life support, and going through the deregistration process if they said that they did not. However, it would not be compulsory for them to do so.

Some stakeholders supported this view in submissions on the consultation paper. PIAC considers that changes to the life support rules should apply to existing registers of life support customers, to ensure that customers are not mistakenly led to believe they are protected when they are not.⁸⁵ Energex and Ergon state that the medical confirmation and deregistration processes should be applied to all existing life support customers where medical confirmation has not been provided.⁸⁶

⁸⁵ PIAC, submission to the consultation paper, p. 2.

⁸⁶ AEMC, *Strengthening protections for customers requiring life support equipment*, Consultation paper submissions: Energex and Ergon (pp. 7-8).

Timing

Stakeholders suggested a range of timeframes for implementing the new rules. AGL suggested a timeframe of 12 to 15 months to put new rules into place, and also proposed a six month period for retailers and distributors to implement the draft rule and provide feedback to be incorporated into the final rule. Energy Australia suggested 12 months' for implementation from the time the rule change is finalised. Both referred to significant systems changes in response to the *Expanding competition in metering and related services rule change*. Red and Lumo Energy suggested the start date for new life support rules should be no earlier than 6 months from the metering rule change.⁸⁷

At this stage the Commission considers that six months is an appropriate timeframe, as the new rules are unlikely to entail major systems changes for businesses.

⁸⁷ AEMC, Strengthening protections for customers requiring life support equipment, Consultation paper submissions: AGL pp. 1-2, Energy Australia (p. 2), Red and Lumo Energy p. 2

Abbreviations

AEMC	Australian Energy Market Commission
AEMO	Australian Energy Market Operator
AER	Australian Energy Regulator
Commission	See AEMC
MCE	Ministerial Council on Energy
NECF	National Energy Customer Framework
NEL	National Electricity Law
NERL	National Energy Retail Law
NERO	National energy retail objective
NERR	National energy retail rules

A Summary of additional issues raised in submissions

This appendix sets out the issues raised in the first round of consultation on this rule change request and the AEMC'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.

Stakeholder	Issue	AEMC Response
Citi power and Powercor (p. 1), Endeavour (p. 4), United Energy (p. 3), Energex and Ergon (p. 6), Energy Networks Australia (p. 3), ActewAGL (p. 1) United Energy (p. 3)	Information sharing between retailers and distributors is inadequate under present market systems. Retailers can provide customer information to distributors but not vice-versa. ⁸⁸ Current b2b processes do not allow for comprehensive life support details to be shared between retailers and distributors. A template might assist in clarifying what information needs to be shared between retailers and distributors. ⁸⁹ Distributors be obliged to notify retailers when a customer informs them there is no need for life support equipment. ⁹⁰	The draft rule imposes parallel obligations on retailers and distributors to share relevant information with regards to life support records. ⁹¹ b2b processes may need to be updated to support implementation with the rule change. This a procedural issue rather than an issue with the rules.
Energex and Ergon (p. 8), Citipower and Powercor (p. 1), Energy Networks Australia (p. 3)	There should be a centralised source of information such as a national register of life support customers to help maintain consistency and accuracy between retailers and distributors' records.	The draft rule relies on the obligation for retailers and distributors to share relevant information regarding life support registers will perform this function. As retailers and distributors have separate obligations under the proposed rule and will have different sets of customers registered it is appropriate for each entity to maintain its own register.

⁸⁸ Citipower and Powercor p. 1, Endeavour p. 4.

⁸⁹ Energex and Ergon p. 6, Energy Networks Australia p. 3, ActewAGL p. 1.

⁹⁰ United Energy p. 3.

⁹¹ Rule 124B

Stakeholder	Issue	AEMC Response
Endeavour (p. 4)	There is scope to align the proposed registration process with the existing rebate schemes offered by state governments to life support customer.	It is unfeasible to harmonise the life support registration process with rebate schemes as these vary from state to state whereas the rules apply to the entire NEM.
Ausgrid (cover letter to submission), South Australia Power Networks (p. 5), Energex and Ergon (p. 6), Energy Networks Australia (p. 3)	The definition of life support in the rules should be amended or clarified to draw a distinction between categories of equipment that are urgently necessary to sustain life, and those which are less urgent.	The Commission considers this outside the scope of the rule change as it entails detailed consideration of various medical conditions and technologies. This will require additional consultation and non-energy related expertise. Interested stakeholders may submit a rule change specifically relating to the definition of life support.
AEC (p.), AGL (p. 2), Energy Networks Australia (pp. 4-5), ERM (p. 3), Red and Lumo Energy (p. 2), United Energy (p. 2)	The rules should specify that 'days' refers to business rather than calendar days.	The Commission has amended the rule to refer to business rather than calendar days.
PIAC (p. 4)	PIAC is concerned that four days' written notice of a planned disconnection is inadequate given the vulnerability of many life support customers and would support a requirement that retailers and distributors contact these customers directly, eg by telephone.	The Commission considers this outside the scope of the rule change which is primarily concerned with customers' access to life support protections rather than the general requirements regarding notice of planned interruptions. Interested stakeholders may submit a rule change specifically relating to what the planned interruption provisions should entail.
PIAC (p. 2)	Customers should not have to re-inform their retailers or distributors that they need life support each time they switch providers as this will inhibit switching for vulnerable customers.	The Commission acknowledges that needing to re-iterate the need for life support will make it harder for customers to switch 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. This is particularly the case in unusual circumstances, such as the dissolution of a retailer. As such, the Commission considers that the lower-risk option is for switching customers to inform their new providers that they

Stakeholder	Issue	AEMC Response
		need life support. This is likely to be particularly feasible for engaged customers who are actively shopping around between retailers.
AusNet (p. 2), United Energy (p. 1)	The life support provisions should specify the type of fuel used to power the life support equipment (electricity or gas).	The rules do not specify a fuel source but refer instead to the sale of 'energy', which should cover both electricity and gas. ⁹²

92 Rule 123

B Legal requirements under the NERL

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

B.1 Draft rule determination

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

The Commission's reasons for making this draft rule determination are set out in section 3.

A copy of the more preferable draft rule is attached to and published with this draft rule determination. Its key features are described in section 2.

B.2 Power to make the rule

The Commission is satisfied that the more preferable draft rule falls within the subject matter about which the Commission may make rules. The more preferable draft rule falls within s. 237 of the NERL as it relates to:

- regulating the provision of energy services to customers, including customer retail services and customer connection services;⁹³ and
- regulating the activities of persons involved in the sale and supply of energy to customers.⁹⁴

B.3 Power to make a more preferable rule

Under section 244 of the NERL, the Commission may make a rule that is different (including materially different) from a market initiated proposed rule if the Commission is satisfied that, having regard to the issue or issues that were raised by the market initiated proposed rule (to which the more preferable rule relates), the more preferable rule will, or is likely to, better contribute to the achievement of the NERO.

As discussed in Chapter 2, the Commission has determined to make a more preferable draft rule. The reasons for the Commission's decision are set out in Chapter 3.

B.4 Commission's considerations

In assessing the rule change request the Commission considered:

- its powers under the NERL to make the rule;
- the rule change request;
- submissions received during first round consultation; and
- the Commission's analysis as to the ways in which the proposed rule will or is likely to, contribute to the NERO.

⁹³ Section 237(1)(a)(i) of the NERL.

⁹⁴ Section 237(1)(a)(ii) of the NERL

There is no relevant Ministerial Council on Energy (MCE) statement of policy principles for this rule change request.⁹⁵

B.5 Civil penalties

The provisions of the NERR that are classified as civil penalty provisions are listed in the National Energy Retail Regulations. While the Commission cannot create new civil penalty provisions, it may recommend to the COAG Energy Council that new or existing provisions of the NERR be classified as civil penalty provisions. The Commission's draft more preferable rule amends rules 124, 124A, 125 and 126 of the post 1 December 2017 version of the NERR. Subrules 124(1), 124(2), 125(2) and 126(1) of the post 1 December 2017 version of the NERR will be classified as civil penalty provisions under NERR Schedule 1 of the National Energy Retail Regulations.

Where the draft rule amends an existing clause that is currently a civil penalty provision, the Commission has considered whether the civil penalty should be retained.

Where the draft rule either amends an existing clause that is not currently a civil penalty provision or introduces a new clause, the Commission has considered whether that clause should be subject to a civil penalty.

In considering whether a civil penalty should apply, the Commission has taken the following general approach:

- Where an existing clause is currently a civil penalty provision and the clause has not been amended substantially, the civil penalty should continue to apply.
- Where an amended clause or a new clause introduces a new obligation that relates to key consumer protections, the provision should attract a civil penalty.

The rules of the NERR that the Commission recommends should attract a civil penalty are rule 124, rule 124A, subrule 124B(1), subrule 124B(2) and rule 126.

⁹⁵ Under s. 236 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 COAG Energy Council.