

Your Ref: RRC0009
Our Ref: 60881
Contact Officer: Sarah Proudfoot
Contact Phone: (03) 9290 6965

GPO Box 520
Melbourne VIC 3001
Telephone: (03) 9290 1444
Facsimile: (03) 9290 1457
www.aer.gov.au

8 November 2017

Mr John Pierce
Chairman
Australian Energy Market Commission
PO Box A2449
SYDNEY SOUTH NSW 1235

Submitted online via www.aemc.gov.au

Dear Mr Pierce

Re: National Energy Retail Amendment – strengthening protections for customers requiring life support equipment

We welcome the AEMC's draft rule aimed at ensuring customers requiring life support equipment are fully protected under the law.

Our objective in our rule change proposal was to introduce clearer processes for registering and deregistering life support customers. The rule change request was informed by our compliance work with retailers and distributors and was intended to address issues observed in the operation of the life support obligations in the National Energy Retail Rules, specifically:

- customers requiring life support equipment unaware of registration requirements including the need for medical confirmation to receive the protections, and;
- difficulty enforcing certain life support rules where the customer has not provided medical confirmation to either to the retailer or distributor; and
- customers on life support registers not registered in accordance with the rules.

To address these issues, the proposed rule sets out clear requirements and responsibilities on retailers and distributors to establish and implement systems, policies and procedures to facilitate registration and deregistration of customers requiring life support equipment. It was anticipated that clearer processes would over time improve the accuracy and integrity of the life support registers, and assist businesses in managing the associated costs and risks.

We are pleased the AEMC has incorporated these objectives into its draft rule; but note the draft rule permits a person that is not the registration process owner to deregister a premise when advised by the customer.

While we acknowledge the AEMC’s aim to minimise retailer and distributor costs and risks in maintaining life support registers, we consider this change might unintentionally undermine the proposed objectives by:


- introducing rather than reducing complexity into the deregistration process, potentially resulting in customers being erroneously removed from life support registers
- allowing the deregistration process to be used retrospectively to address the accuracy of and update retailer and distributor life support registers. This may result in the customer potentially receiving multiple contacts from either business to verify their life support status.

Although our preferred approach is for only the registration process owner to deregister on advice from the customer regarding their life support status, if the AEMC’s draft rule is adopted we have proposed an additional safeguard that could be incorporated into the final rule. As discussed in our submission, to prevent life support customers from being erroneously deregistered a business (distributor or retailer) receiving advice from the customer that life support equipment is no longer required at the premises should require the customer to confirm its request *in writing*.

We support the AEMC’s assessment that six months is an appropriate timeframe for implementing the new life support rules and that it should apply to all customers regardless of their date of registration.

Please contact Jacqui Thorpe on (03) 9290 1994 if you would like to discuss any aspect of this submission.

Yours sincerely,



Paula Conboy
Chair

AER Submission: Strengthening protections for customers using life support equipment

Summary

In February 2017, the AER submitted a rule change request to the AEMC to strengthen the current retailer and distributor obligations towards life support customers under the National Energy Retail Rules (Retail Rules).

The objective of our proposed rule change was to put in place minimum requirements for registering and deregistering life support customers, and to require retailers and distributors to have policies, systems and procedures in place to ensure life support customers are registered and receiving the full protections under the Retail Rules.

It was also aimed at addressing issues we had identified in the registration processes for life support customers, specifically:

- customers requiring life support equipment not validly registered and unaware of the process including the need to provide medical confirmation to receive protections;
- difficulty enforcing certain life support rules where the customer has not provided medical confirmation to either the retailer or distributor; and
- customers on life support registers not registered in accordance with the rules.

However, the objective of the rule change could be reduced by amendments that permit either the retailer or distributor to deregister a life support customer if the customer informs them life support equipment is no longer required.

Our comments on the AEMC's more preferable draft rule, and other issues raised in the draft determination are set out below.

Issue 1 – increased complexity in the deregistration process

In its draft rule, the AEMC permits either the retailer or distributor to deregister a customer (by following the appropriate deregistration processes) if the registered customer informs them they no longer need life support equipment. In our rule change request, we proposed only the business initially contacted by the customer, known as the 'registration process owner', could deregister a premises upon receiving advice that life support equipment was no longer required.

There is a risk that allowing the non-registration process owner to de-register a life support customer might unintentionally weaken the objectives of our proposed rule change by:

- introducing rather than reducing complexity into the deregistration process, potentially resulting in customers being erroneously removed from life support registers, and
- allowing the deregistration process to be used retrospectively to address the accuracy of and update existing life support registers. This may result in the customer potentially receiving multiple contacts from either business to verify their life support status.

Our proposed rule was based on one business having ownership over the entire process, including deregistration. Our rationale was the registration process would require a number of

interactions with the life support customer – including providing the customer with information about their rights and obligations and setting out the requirements for registration include the receipt of medical confirmation. Given this level of engagement, our view was the registration process owner was most appropriately placed to act upon the advice of a life support customer.

While acknowledging the risk may be low, a customer could provide incorrect advice to the non-registering party about no longer needing life support equipment. The lack of visibility over the registration process may mean that the customer may confirm there is no need for the equipment because they feel pressured or otherwise provide a response that does not reflect an ongoing need of a person at the premises. The potential for premises to be deregistered on that basis introduces a risk we sought to avoid with our original rule.

Key points: we consider only the registration process owner be allowed to deregister a premises upon advice that life support equipment is no longer required. This approach ensures the business with the greatest oversight over the customer's circumstances has the ability to deregister when advised by the customer, and will avoid the customer being contacted by multiple businesses for verification purposes.

Issue 2 – management of the life support registers

In developing our rule change proposal, we considered whether there was benefit in allowing multiple businesses to manage both registration and deregistration. In the end we proposed a single business manage the process as we considered there was a risk that introducing a second de-registering business could reduce the quality of the registers.

This is because in practice the obligations for facilitating medical confirmation rest with the business first contacted by the customer and there will therefore be an information imbalance between the registration process owner and the other business. The non-registration process owner may theoretically have no contact with the life support customer until they are advised that life support equipment is no longer required at the premises. By allowing the non-registration process owner to amend its register on the advice of a customer it had no prior contact with (outside the registration process) could lead to discrepancies between the businesses' lists and potential for errors.

We consider the positive obligation in both the proposed and draft rule on a business to advise the registration process owner of a change in life support status is sufficient and will ensure registration lists are accurate and up to date.

We recognise the draft rule may make it simpler for a customer who only has to inform either the retailer or distributor that life support equipment is not required. However, the positive obligation on a business to act on information provided by the customer and only one business being responsible for registration offsets this impact.

Should the AEMC determine its preferred rule to be final, we consider there needs to be a clear process for confirming the request for de-registration. This would mitigate the potential risks with introducing a second party responsible for de-registration. We recommend an obligation should be placed on the business receiving advice from the customer that life support equipment is no longer required at the premise for the customer to confirm the request *in writing*. This could be done by either the registering or non-registering party as we recognise

that distributors may not have the necessary contact information to advise the customer who has requested to be removed from the register.

The draft rules may also permit two scenarios to arise that could lead to adverse customer impacts.

Scenario 1 - multiple contacts to customers to confirm whether life support is required at the registered premises

The draft rule allows both businesses to deregister upon notification by a customer (rule 125 (13) and may result in non-registration process owners approaching life support customers to confirm whether they still require life support equipment, in order to update their life support registers. This could potentially result in increased unsolicited contact by businesses resulting in adverse customer outcomes.

While we acknowledge rule 125(13) is based on the AER's proposed rule 125(11), the intent of the proposed rule 125(11) was to allow businesses the option of confirming with the customer whether life support equipment was required at a premises. Under our proposed rule, if the non-registration process owner was advised by a customer that life support equipment was not required, it could then advise the registration process owner who consequently had an obligation to act on that advice.

Our proposed rule placed a further limitation on a business by requiring the non-registration owner, if contacted by the customer, to advise the registration process owner who could then deregister the premises. The draft rule, 125(13) allows either business to actively seek out life support customers to confirm whether they still require life support equipment at the premises, and then deregister on the basis of this advice.

Taking into account the ability of a non-registration process owner to deregister, we consider rule 125(13) in the draft rule could result in adverse customer outcomes.

<p>Key point: reconsider the inclusion of 125(13) in the context of allowing both businesses to deregister upon the advice of the customer.</p>
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Scenario 2 – customers contacted by multiple businesses to verify a request for deregistration

The draft rules 125 (11) and (12) require the business advised by the other business that life support is no longer required at a premises to take reasonable steps to verify that information with the customer. This is after the customer's deregistration advice has already been verified by the business who received the advice in the first instance in accordance with rules 125(9)(b) and 125(10)(b). We are concerned the multiple verification steps will lead to customers being contacted by more than one business to confirm their deregistration advice.

For example, under draft rule 125 (9) if a retailer is contacted by the customer, or becomes aware that life support equipment is no longer required at the premises, it must take steps to verify this information and concurrently inform the distributor of that advice. Upon receipt of this information the distributor, under rule 125(11), is then required to again to take reasonable steps to verify the customer's request for deregistration. We consider the additional requirements in rules 125(11) and 125(12) are unnecessary and potentially frustrating for customers.

Key point: amending draft rules 125(11) and (12) to remove the requirement for the business contacted in the second instance to again verify with the customer that life support equipment is no longer required.

Issue 3 - information provision requirements

We note the AEMC has amended the information provision requirements to require only the registration process owner to provide the life support customer with information on their rights and obligations upon registration.

This may result in a single contact from one business to satisfy the information provisions requirements after registration. However, this approach may cause confusion for customers about which business the customer should contact if an issue arises.

For example, if a customer is first advised by the retailer they require life support equipment at the premises, the retailer is considered to be the registration process owner. In accordance with the draft rule, the retailer will send the customer information about their rights and obligations, including advice there may be distributor planned and unplanned interruptions to supply at the premises, and information to assist the customer prepare a plan of action in case of an unplanned interruption. The distributor would be the appropriate business for the customer to contact in the case of distributor planned or unplanned interruptions, however this may be unclear to some life support customers given their only previous contact was with their retailer.

In addition, some retailers and distributors may be concerned about the lack of oversight over the information provided that is directly relevant to their own operations. For example, information regarding unplanned interruptions may be provided to a life support customer by a retailer if it is the registration process owner, instead of the distributor.

Key point: we support the proposed approach in the draft rule, however it should be made clear in the information provided to the life support customer which business should be their first point of contact and in what circumstances.

Issue 4 – use of promptly in the draft rule

The inclusion of ‘promptly’ may limit the AER’s ability to enforce the rules given it introduces a subjective element into the drafting. For example, rule 124(1)(a) states ‘When advised by a customer that a person residing or intending to reside at the customer’s premises requires life support equipment, the retailer must *promptly* register that a person residing or intending to reside at the customer’s premises requires life support equipment and the date from which the life support equipment is required’.

Terms such as ‘promptly’, are ambiguous as to timing and open to a range of practices by businesses and can be dependent on the maturity of their systems and processes. Our preferred approach would be for it to be replaced either with a specific timeframe or no prescriptive timeframe at all. We consider businesses are likely to action the required steps in relation to life support registration relatively quickly even if the rules are silent on a timeframe.

Key point: references to 'promptly' may create enforceability issues and should be removed.