

Date: 18 July 2017



Mr Greg Williams
Australian Energy Market Commission
PO Box A2449
Sydney South NSW 1235

Dear Mr Williams,

Consultation Paper on National Energy Retail Amendment (Strengthening protections for customers requiring life support equipment) Rule 2017

The Public Interest Advocacy Centre (PIAC) is an independent, non-profit legal centre based in New South Wales. Established in 1982, PIAC tackles systemic issues that have a significant impact upon disadvantaged and marginalised people. PIAC welcomes the opportunity to respond to the AEMC's Consultation Paper on National Retail Amendment (Strengthening protections for customers requiring life support equipment) Rule 2017.

PIAC supports the rule change as it considers it will lead to improved protections for vulnerable consumers who require the use of life support equipment in their home. With the introduction of contestable metering in December 2017 and the rollout of smart meters, consumers face the possibility of being more easily disconnected. Therefore, strengthening the protections of consumers requiring life support is a timely rule change.

The rule change does promote "transparency and certainty for consumers around their protections and obligations" as detailed below. Having a uniform and detailed process also promotes "transparency and certainty for retailers and distributors around their obligations, and in turn promote(s) efficiency". The rule change is also compatible with wider consumer protections because it provides protection to vulnerable consumers that is not at the expense of the majority of consumers (see our response to question 2 (d)). However, PIAC suggests some improvements, as we outline below.

Question 1 (a)

The AER has captured many of the issues regarding the current life support registration arrangements, particularly regarding the need to shift the obligation to complete the registration process from the individual consumer or their carer to the retailer or distributor.

The registration process

Question 2 (b)

It concerns PIAC that currently a person requiring the use of life support equipment in their home, or their carer, may unknowingly believe that they will be afforded the 'do not disconnect' protections, when in fact they will not because they have not provided medical confirmation to the business. Likewise, they may be unknowingly unable to rely on the consumer protections available should the retailer or distributor not follow the 'do not disconnect' rules.

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The registration obligations proposed by the AER are efficient and provide greater certainty and transparency for consumers and will address the above issues. The proposed rule change rightly shifts the onus to complete the life support protections registration process from the consumer to the business.

The rule change will formalise the common sense practise of placing consumers on the life support register when they first notify the retailer or distributor of the need to be on the register, rather than waiting until the medical confirmation has been received. To validly register households at the time they first contact the retailer or distributor appropriately limits the risk of disconnection during the period before receipt of medical confirmation. Having a robust follow up process to alert the consumer of the need to supply medical confirmation to ensure they remain validly registered is an important consumer protection.

The proposed rule change will make it easier for vulnerable consumers to receive the protection they need. Ensuring all retailers and distributors follow the same processes will ensure uniform protection is given.

However, PIAC is concerned with the suggestion that any change would not apply retrospectively. This carries a risk that some consumers and their carers may continue to believe that they are registered to receive life support protections when they are not. This is not compatible with the principle of shifting the onus from consumers to businesses and properly protecting vulnerable people.

Another issue is ensuring that a new retailer is aware of any life support requirement of the household. It is a safety risk as well as being unnecessarily onerous for consumers or their carers to need to inform the retailer each time they change retailers that they need to be on the life support register. This creates a barrier to consumers shifting retailers to ensure they are on the best retail offer they can find.

In particular, PIAC is concerned that rental property managers, brokers and switching sites might shift a vulnerable consumer to a new retailer but not ensure that the new retailer is aware of the life support requirement. PIAC is also concerned that the AER's survey into life support register processes revealed that only half of the retailers surveyed asked whether a consumer requires the use of life support equipment at home as part of their signing up process. PIAC would strongly support that the rule change incorporates this as a mandatory requirement of retailers.

Question 2 (c)

The notification arrangements between retailers and distributors are sufficient to achieve the requirement of keeping registers correct at the time of registration. However, noting the issues described above, this may not be the case when a consumer changes retailers.

Question 2 (d)

As the AER survey to businesses regarding life support register processes revealed, some businesses currently have rigorous processes around life support registers, whilst others do not. The expense of maintaining robust processes is being borne by some and not others.

Whilst there may be additional costs incurred by businesses to implement the proposed changes, there are likely to be longer term financial savings with reduced compliance costs from having a properly maintained register. In a properly functioning market, these cost savings achieved through efficiency should be passed on to consumers.

Only efficiently applied additional costs incurred by distributors to comply with the proposed registration process should be passed on to consumers.

In considering costs and benefits for life support arrangements, the full consumer benefits must be considered to include avoided loss of life, avoided pain and suffering, and avoided burden on the community, in the form of cost of emergency services and other support networks for the consumer in question.

Question 2 (e)

PIAC is satisfied that the information pack proposed in the rule change request provides the appropriate information.

The medical confirmation process

Question 3 (a)

The proposed rule change provides clarity for all parties regarding the process for obtaining medical confirmation and thus would improve transparency and confidence. Allowing 65 calendar days to return the required information with a process for reminders and time extension is fair to ensure consumers receive protection as well as a properly maintained register.

Question 3 (b)

Please refer to our response to question 2 (d).

The deregistration process

PIAC supports the implementation of a uniform and specific but permissive process to deregister a consumer. PIAC seeks detail about the definition of “reasonable steps” in relation to contacting the consumer about failing to provide medical confirmation. We urge that “reasonable steps” should be seen within the context of vulnerable households who may have multiple demanding priorities and/or language difficulties which could make contact difficult.

PIAC would also like to see that deregistration notice contain information about how to get back on to the life support register, in case the consumer had simply been unable to organise to get the medical confirmation in time.

Question 4 (a)

PIAC is satisfied that a voluntary process for deregistration strikes the right balance between the needs of the consumers and businesses.

Question 4 (b)

PIAC is satisfied that only the retailer or distributor who was originally notified by the consumer when they registered be in control of the deregistration process. Having a process owner for each consumer is likely to result in fewer mistakes being made, as well as reduced confusion for the consumer.

Question 4 (c)

Please refer to our response to question 2 (d).

Further concerns and recommendations

PIAC found that by looking at the three NSW distributor’s websites that information about life support protections can be easily found. However, it was quite difficult to find information about

life support protections on some retailer websites and, on some websites, we could only find information about rebates, not about the protections that the retailer is required to provide. PIAC recommends that all retailers and distributors be required to outline on their website the protections given to households who require the use of life support equipment at home, as well as the process to be put on the register.

Given the vulnerability of many households where a resident requires the use of life support equipment at home, PIAC is concerned that retailers and distributors are only required to provide 4 days written notice of a planned disconnection. PIAC would support a requirement that retailers and distributors contact these consumers directly, for example by telephone, to ensure that they are aware of the planned outage.

A further concern that PIAC has is that third parties who care for the person requiring the use of life support equipment at home could encounter difficulties when attempting to act on their behalf, for example when dealing with an emergency or registering the residence on the life support list. Whilst there are sometimes valid general concerns about the legitimacy of third parties acting on behalf of others, PIAC contends that in dealing with vulnerable people requiring life support equipment at home, that it is preferable to err on the side of caution and allow third parties to act readily on a consumer's behalf.

PIAC would welcome the opportunity to meet with the AEMC and other stakeholders to discuss these issues in more depth.

Yours sincerely,

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