



Australian Energy Market Commission

FINAL RULE DETERMINATION

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

Rule Proponent(s)

Australian Energy Regulator

19 December 2017

RULE
CHANGE

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Reference: RRC0009

Citation

AEMC, Strengthening protections for customers requiring life support equipment, Final Rule Determination, 19 December 2017, Sydney.

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

The final rule sets out minimum legal requirements to be met by retailers and distributors. The AEMC acknowledges that some market participants aim to do better than the minimum requirements in the current life support rules to provide appropriate information and protections to life support customers. The final rule aims to avoid prescription that would discourage market participants from doing better than the minimum requirements. It is important that market participants take responsibility for providing appropriate information and protections to life support customers based on the customer's circumstances.

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

Features of the final rule

The final 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 premises if the customer informs them that life support equipment is no longer required
- enable the non-registration process owner (either the retailer or the distributor) to deregister the premises once the registration process owner has deregistered the premises in the event where medical confirmation is not provided.

Changes from the draft rule to the final rule

Stakeholders generally supported the intent of the draft rule published by the Commission, but highlighted that there were some implementation challenges and operational issues associated with it. The Commission has made some amendments between the final rule and the draft rule which in the Commission's view make the final rule more practicable, including these key changes:

- The deregistration process when there is a change in a customer's circumstances has been amended such that the customer no longer has to reconfirm their advice that life support equipment is no longer required with the retailer and distributor. Instead the contacted party must send a written notice advising the customer of the impending deregistration.
- The scope of information that has to be given to the other party by the registration process owner for the purposes of updating their register has been clarified. The final rule specifies any relevant contact details are also to be shared.
- The final rule removes the requirement on the registration process owner to provide the other party with a copy of the deregistration notice sent to the customer. Notifying the other party that the premises has been deregistered for failure to provide medical confirmation is sufficient.
- Under the final rule, when a customer who has completed the medical

confirmation process with their distributor decides to change retailer they do not have to re-provide medical confirmation.

The final rule also makes changes to the model terms and conditions for standard retail contracts and deemed standard connection contracts to reflect the changes made to Part 7 of the NERR.

Implementation

The majority of stakeholders' submissions on the draft determination raised concerns about the implementation timeframe of six months as outlined in the draft determination.

Stakeholders were of the view that more time was required to allow for the Information Exchange Committee (IEC) to develop and consult on amended business to business (B2B) procedures and for processes and systems to be developed, as they are needed for the stakeholders to be able to meet their obligations under the rule.

Having considered feedback and comments from stakeholders including the IEC, the Commission considers that an implementation timeframe of 12 months will allow sufficient time for updated B2B procedures to be made and for systems and processes to be updated.

The final rule will come into effect on 1 February 2019. From 1 February 2018 transitional arrangements will apply that:

- provide the protections in the current life support rules during the transition period to all existing customers who are registered as having life support equipment, whether they have provided medical confirmation or not
- provide the protections in the current life support rules during the transition period to all new customers who advise a retailer or distributor they require life support equipment, whether they provide medical confirmation or not.

From 1 February 2019, the new life support provisions will apply to all life support customers whose premises are registered as at 1 February 2019 as having life support equipment (including those mentioned above) regardless of their date of registration. Retailers and distributors may, though are not obliged to, then seek medical confirmation from the customers covered by the transitional arrangements that have not provided medical confirmation by starting the medical confirmation process set out in the final rule.

The Commission considers that these transitional arrangements harmonise protections between different life support 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.

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1 AER's rule change request

This chapter outlines the current protection arrangements for customers who need life support equipment, the inadequacies of the current arrangements and the solutions proposed by the AER in its rule change proposal.

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 proposed 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 arrangements

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

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

³ In its rule change request, the AER noted the life support rules were 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 timing involved in effecting a rule change.

⁴ See subrule 124(1)(d) of the NERR.

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 energy 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 (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 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 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:

⁵ See subrule 125(2)(d) of the NERR.

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

⁷ 124(1A) of the NERR

⁸ Rule 125(1)

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

¹⁰ Rule 124(1)(e)

- 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
- 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.¹³ A 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 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 Rationale for the rule change request

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:

¹¹ Rule 125(2e) of the NERR

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

¹³ Rule 124A of the NERR applies to retailers and rule 126 of the NERR applies to distributors

¹⁴ Rule 124(2) of the NERR

¹⁵ Rule 124A(2) of the NERR applies to retailers and rule 126(2) of the 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 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.

- (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 retailers and distributors are not receiving the legal protection the life support rules are supposed to provide.¹⁸ Typically customers advise retailers and distributors their premises require life support equipment and the retailer or distributor registers them.¹⁹ However, the AER 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.²⁰

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.²¹ 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.²²

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.²³ 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.²⁴ 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

¹⁸ See rule change request p. 18.

¹⁹ See rule change request pp. 12-14

²⁰ See rule change request p. 18.

²¹ See rule change request p.12, pp. 14-16.

²² See rule change request p. 12.

²³ See rule change request p.13

²⁴ See rule change request p.19.

medical confirmation and increasing numbers of inaccurate and out-of-date registrations.²⁵

1.4 Solution proposed in the 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.²⁶
- 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.

1.4.1 Changes to the registration process

The AER acknowledged 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.²⁷ 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.²⁸

²⁵ See rule change request p. 12.

²⁶ Proposed rule 125.

²⁷ See rule change request pp. 12-14.

²⁸ 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

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.²⁹

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
- 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.³⁰

The AER also proposed that retailers and distributors must also comply with obligations, as they exist in the NERR, to provide the customer with:

- advice that there may be planned interruptions or unplanned interruptions³¹ to the supply at the address³²
- information to assist the customer prepare a plan of action in the case of an unplanned interruption (required of distributors only)

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.

²⁹ Proposed rule 124(1)(b)(i)-(ii) applies to retailers and proposed rule 124(3)(b)(i)-(ii) applies to distributors.

³⁰ Proposed rule 123A(4)

³¹ Only distributors are required to provide advice about unplanned interruptions

³² The AER proposed an additional obligation for customers to be advised of the notification timeframes for planned interruptions.

- 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 proposed that a process for confirming the need for life support equipment at a premises be prescribed in the life support rules.³³ 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.³⁴ 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:³⁵ the first, no less than 21 days from the date the medical confirmation form was issued³⁶ and the second no less than 21 days from the date the first confirmation reminder notice was issued.³⁷ 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.³⁸

The AER proposed that the confirmation reminder notice be defined in the life support rules³⁹ and must contain the following:

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

33 Proposed rule 124A

34 Proposed rule 124A(1)

35 Proposed rule 124A(2)

36 Proposed rule 124A(3)

37 Proposed rule 124A(4)

38 Proposed rule 124A(5)

39 Proposed rule 123A(1)

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

The AER proposed 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 proposed 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.⁴⁰

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 premises only if the customer has not provided medical confirmation before the date for deregistration specified in the deregistration notice.⁴¹

The AER proposed 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
- 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

⁴⁰ Proposed rule 123A(2)

⁴¹ Proposed rule 125(4)

- advise the customer that the customer will no longer receive the protections under the law when the premises is deregistered.⁴²

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.⁴³

After receiving a deregistration request from the customer, the AER proposed 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 premises.⁴⁴

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.⁴⁵

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.⁴⁶ 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 these submissions were summarised and responded to in the draft rule determination.

On 26 September 2017, the Commission published a draft rule determination that put forward a draft more preferable rule which incorporated many of the elements proposed by the AER.⁴⁷ Submissions on the draft rule determination closed on 8 November 2017. The Commission received 17 submissions in total on the draft rule determination.

42 Proposed rule 123A(3)

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

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

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

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

47 The draft rule determination was published under s.256 of the NERL.

The Commission considered all issues raised by stakeholders in submissions. Issues raised in submissions are discussed and responded to throughout this final rule determination. Issues that are not discussed in the body of this document have been summarised and responded to in Appendix A.

2 Final rule determination

This chapter outlines:

- the Commission's final rule determination
- the rule making test for changes to the NERR
- the assessment framework for considering the rule change request
- summary of reasons for making the more preferable rule
- the differences between the final and draft rule.

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

2.1 The Commission's final rule determination

The Commission's final rule determination is to make a more preferable final rule to strengthen protections for customers who need life support equipment. The more preferable final rule incorporates many aspects of the AER's proposal. Key differences include the following:

- Either retailer or distributor can deregister if the customer informs them that life support equipment is no longer required.
 - 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's premises 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. Table 2.1 illustrates circumstances under which each business can and cannot deregister a customer under the Commission's more preferable final rule. The Commission expects that retailers and distributors will exercise caution in any decision to deregister a customer's premises.
- Under the AER's proposed rule change, both the registration process owner and the other party (retailer or distributor) are required to provide the customer with information when they are registered. Under the more preferable final rule, only the registration process owner would be required to provide information, including information to assist the customer to prepare a plan of action in the case of an unplanned interruption.
- When a customer contacts either the retailer or the distributor to provide advice of a change in their circumstances such that they no longer require life support

protections, the contacted party does not have to take steps to verify the deregistration request with the customer. Under the AER’s proposed rule only the registration process owner could deregister a customer’s premises following a deregistration request and they were required to take steps to verify the deregistration request with the customer. The final rule requires the contacted party to send the customer a written notice advising them of the impending deregistration and provide the customer at least 15 business days to raise an issue with the deregistration.

- The AER’s proposed rule required the party (registration process owner) carrying out a deregistration due to the customer failing to provide medical confirmation to provide the other party with a copy of the deregistration notice sent to the customer. The final rule only requires the registration process owner to provide notification of the date of deregistration and the reason for deregistration to the other party in order to avoid unnecessary administration costs.
- The AER’s proposed rule required retailers and distributors to give each other relevant information about the premises when they received information about life support equipment requirements for a customer’s premises, for the purposes of updating their registers. The final rule has expanded the scope of the information to be shared to also include any relevant contact details.

Table 2.1 Can the business instigate deregistration of the premises?

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
No	Failure to provide medical confirmation	No ⁴⁸

Like the AER's proposed rule, the more preferable final rule seeks to provide customers with continuous protection under the life support provisions of the rules

⁴⁸ Although subrules 125(7) and 125(8) permit the business to deregister a customer’s premises if the registration process owner has deregistered the premises for failure to provide medical confirmation

from the time they inform their distributor or retailer that they need life support equipment, to the time they are deregistered. It places obligations on the business contacted by the customer (either the retailer or the distributor) to notify customers of their rights and obligations, and to follow a prescribed process in seeking medical confirmation of their life support status. However, the more preferable final 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 final 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).⁴⁹ This is the decision making framework that the Commission must apply.

The NERO is:⁵⁰

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

The Commission must also, where relevant, satisfy itself that the rule is "compatible with the development and application of consumer protections for small customers, including (but not limited to) protections relating to hardship customers" (the "consumer protections test").⁵¹

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

- disconnection of the supply of electricity to a small customer's premises, as the final rule protects life support customers from de-energisation of their premises in some circumstances, such as non-payment
- interruption of the supply of electricity to a customer's premises, as the final rule places obligations on retailers and distributors to inform customers of planned interruptions

49 Section 236(1) of the NERL.

50 Section 13 of the NERL.

51 Section 236(2)(b) of the NERL.

- provision of information to consumers, as the final rule places obligations on retailers and distributors if they are the registration process owner 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.⁵² 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 interests 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 retailers, distributors and customers
- whether the proposed rule change will impose costs on retailers and distributors that are proportionate to the customer protections achieved
- whether the proposed changes to the NERR are compatible with the development and application of consumer protections.

2.4 Summary of reasons for making a more preferable rule

The final rule, which is a more preferable final rule, made by the Commission is attached to and published with this final rule determination. The key features of the more preferable final rule are:

- customers receive the protections of the life support rules from the time they inform their retailer or distributor until they are deregistered

⁵² That is, the legal tests set out in s. 236(1) and (2)(b) of the NERL.

- the registration process owner (the retailer or distributor contacted by the customer) is required 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
- the retailer or the distributor is able to deregister the premises if the customer informs them that life support equipment is no longer required
- the non-registration process owner (either the retailer or the distributor) is able to deregister the premises in the event where medical confirmation is not provided and the registration process owner has deregistered the customer.

Having regard to the issues raised in the rule change request and during consultation, the Commission is satisfied that the more preferable final rule will, or is likely to, better contribute to the achievement of the NERO. This is because the final 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 dangerous medical outcomes:
 - The final rule allows customers to 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 retailers, distributors and customers:
 - The final rule clarifies the obligations on retailers, distributors and customers. It requires the business contacted by the customer (either the retailer or the distributor) 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 confirm their life support status.
- Impose costs on retailers and distributors that are proportionate to the customer protections achieved:

- The final rule strongly prioritises protecting life support customers from erroneous deregistration. Customers’ premises can only be deregistered for lack of medical confirmation by the retailer or distributor which had the initial responsibility for obtaining that medical confirmation. Customers’ premises where the need for life support has been confirmed through medical confirmation can only be deregistered if the customer: advises a retailer or distributor that life support equipment is no longer required; changes retailer without advising the new retailer that they still require life support equipment; or ends their contract with the retailer.
- However, the final 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 confirmation, the non-registration process owner the ability to remove the customer from their register in response to deregistration of the customer’s premises by the registration process owner, and either business to deregister a customers’ premises when informed by the customer that they no longer need life support equipment.
- Be compatible with the development and application of consumer protections:
 - The final rule can be made without causing problems for, or conflicting with, the development and application of consumer protections for small customers. It builds on the existing protections for small customers in the NERR and is in itself an example of an improved protection, including for hardship customers.

2.5 How the final rule compares to the draft rule

The final rule, which is a more preferable rule, takes the same overall approach to addressing the issues raised by the AER as the draft rule. The major features of the draft rule are included in the final rule. However in response to the concerns raised by the stakeholders, the Commission has made adjustments to the draft rule to arrive at the final rule. The main differences between the final rule and the draft rule are as follows:

- The deregistration process requirements when a customer advises that life support equipment is no longer required have been amended to reflect stakeholder feedback. Upon advice from the customer that life support equipment is no longer required, the retailer and distributor are no longer required to re-contact the customer to verify the advice, as this may have resulted in the customer being contacted several times. Instead the contacted party must send a written notice advising the customer of the impending deregistration based upon the customer’s advice and provide the customer at least 15 business days to raise an issue with the deregistration.
- Under the draft rule there was an ongoing obligation on the retailer and the distributor to give the other party “relevant information about the life support equipment requirements for a customer’s premises” for the purposes of updating

their registers. The final rule has clarified that the relevant information to be shared includes “any relevant contact details”.

- The Commission considered that the draft rule led to unresolved issues under the scenario where a customer completes their life support registration process with their distributor (the registration process owner) and then switches retailers. The final rule requires a distributor in these circumstances to notify the new retailer of life support requirements at the premises. When the new retailer is advised by a new customer of life support requirements and if the new retailer confirms that the customer has already provided medical confirmation to the distributor, the retailer does not have to seek medical confirmation and the customer does not have to re-provide it to the retailer.
- The draft rule required a registration process owner that carried out a deregistration when a customer failed to provide medical confirmation to provide the other party with a copy of the deregistration notice sent to the customer. The final rule instead requires the registration process owner to notify the other party of the date of deregistration and reason for deregistration.
- The draft rule instructed retailers and distributors to “promptly” register on advice from a customer and or the other party, and “promptly” notify the other party of life support requirements of a customer. The final rule removes the word “promptly” as requested by the AER in its submission to the draft determination.
- Under the final rule, upon deregistration of a premises, the party carrying out the deregistration is also required to notify the other business of the date of deregistration and reason for deregistration. Under the draft rule, the obligation was only to notify of the date of deregistration.
- The final rule clarifies that all obligations which have to be carried out within a specific timeframe have been prescribed a timeframe in business days.
- The final rule has been adjusted from the draft rule to clarify that the registration process owner may utilise a period greater than 50 business days in seeking medical confirmation. This is to allow a retailer or distributor the flexibility to delay sending confirmation reminder notices to a customer at a later date, for example, when a customer is moving into new premises.
- The final rule clarifies that under the scenario where a retailer is the registration process owner and the customer changes to a new retailer and does not inform their new retailer that life support equipment is required at their premises, the distributor can deregister that premises based on the updated information from the new retailer, provided it follows a prescribed process for notifying the customer.
- The information to be provided by the registration process owner to the customer has been expanded to also include advice that if the customer decides to change retailer, and a person residing at the customer’s premises continues to require life support equipment, they should advise their new retailer of this requirement.

- The final rule clarifies that information regarding the life support provisions provided by a retailer or distributor to a customer should be in writing.
- The final rule also makes changes to the model terms and conditions for standard retail contracts and deemed standard connection contracts to reflect the changes made to Part 7 of the NERR .

After considering stakeholder feedback on the draft determination, the Commission has come to a view that 12 months is a more appropriate implementation period.

The final rule will come into effect on 1 February 2019. From 1 February 2018 transitional arrangements will apply that:

- provide the protections in the current life support rules during the transition period to all existing customers who are registered as having life support equipment, whether they have provided medical confirmation or not
- provide the protections in the current life support rules during the transition period to customers who advise a retailer or distributor during the transition period they require life support equipment, whether they provide medical confirmation or not.

From 1 February 2019, the new life support provisions will apply to all life support customers whose premises are registered as at 1 February 2019 as having life support equipment (including those mentioned above) regardless of their date of registration. Retailers and distributors may, though are not obliged to, then seek medical confirmation from the customers covered by the transitional arrangements that have not provided medical confirmation by starting the medical confirmation process set out in the final rule.

See section 4.3 for further details on the transitional arrangements.

3 Assessment of the proposed rule against the framework

This chapter outlines stakeholders' views and the Commission's analysis in relation to features of the more preferable rule adopted by the Commission and assessment of the final rule against the framework.

3.1 Protecting life support customers

This section considers whether the proposed rule change will provide appropriate access to the life support protections for people who need a continuous supply of energy in order to avoid potentially negative medical outcomes as well as the provision of emergency contact information.

3.1.1 Gaps in customer protections

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.⁵³

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.⁵⁴

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.⁵⁵

Stakeholder views

In submissions on the consultation paper, five stakeholders including two jurisdictional ombudsmen,⁵⁶ one energy retailer,⁵⁷ one distributor⁵⁸ and one

⁵³ Rule change proposal p. 18.

⁵⁴ Rule change proposal pp. 17-18.

⁵⁵ Rule change proposal p. 8.

⁵⁶ 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.

⁵⁷ Origin, submission on the consultation paper, p. 1.

customer advocacy group,⁵⁹ 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 protections⁶⁰ the AER's proposed rule needs to be refined to reflect the realities facing retailers and distributors, particularly as applies to the deregistration process.⁶¹

Responding to the Commission's draft rule determination, six stakeholders stated that they were supportive of amendments to the life support rules as the changes strengthened the protections provided to the life support customers.⁶² The remaining stakeholders generally supported the intent of the rule change.

Most of the stakeholders that made a submission had suggestions for changes to be made to the draft rule that in their view enhanced the operation of the life support arrangements. These suggestions are discussed in the following sections.

AEMC's final position

As set out in the draft determination, the Commission agrees with the AER's assessment that there are gaps in protection for customers under the current life support framework.

The Commission's more preferable final rule, based on the AER's proposed rule, would substantially address the following gaps:

- a) potential lack of protection before a medical certificate has been provided
- 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.

The final rule sets out minimum legal requirements to be met by retailers and distributors. The AEMC acknowledges that some market participants aim to do better than the minimum requirements in the current life support rules to provide appropriate information and protections to life support customers. The final rule aims

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

59 Public Interest Advocacy Centre, submission on the consultation paper, p. 1.

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

61 See section 3.2.2

62 AEMC, *Strengthening protections for customers requiring life support equipment*, Draft determination submissions: Energy and Water Ombudsman NSW, p. 1, Simply Energy, p. 1, Australian Energy Council, p. 1, PIAC, p. 1, Australian Energy Regulator, p. 1, Energy Networks Australia, p. 3.

to avoid prescription that would discourage market participants from doing better than the minimum requirements. It is important that market participants take responsibility for providing appropriate information and protections to life support customers based on the customer's circumstances.

The final rule also makes changes to the model terms and conditions for standard retail contracts and deemed standard connection contracts to reflect the changes made to Part 7 of the NERR.

3.1.2 Emergency contact details

AER's view

The current life support rules require retailers and distributors to provide to the life support customer an emergency telephone contact number for the distributor. The rules proposed by the AER required the retailer to provide the customer with the emergency telephone contact number for the distributor and, if relevant, also for the retailer.⁶³ The proposed obligations on the distributor only required it to provide the emergency telephone contact number for the distributor.⁶⁴

AEMC's draft position

In the draft rule, the Commission made the emergency contact requirements equivalent for both parties requiring the registration process owner to provide to the customer the emergency contact details of the retailer and the distributor. In the Commission's view this would allow the customer to be able to contact either party in the case of an emergency.

Stakeholder response to the draft rule

Several stakeholders expressed concern regarding the obligation under the draft rule for the registration process owner to provide the customer with an emergency contact number for the distributor and the retailer.⁶⁵ The stakeholders were concerned that providing the customer with two contact numbers could confuse the customer and that under most circumstances the distributor would be the best first point of contact.

AGL stated in its submission that in the event of an emergency, the distributor would be best placed to deal with the emergency promptly.⁶⁶ AGL considered that the provision of a second emergency number may confuse the customer or slow down the process for a life support customer seeking relevant information on outages or other emergency events.

⁶³ Proposed rule 124 (1) (b) (iv) and 124(2)(b)(ii)

⁶⁴ Proposed rule 124 (3) (b) (v) and 124(2)(b)(iii)

⁶⁵ AEMC, *Strengthening protections for customers requiring life support equipment*, Draft determination submissions: ERM Business Energy, p. 2, Energy Queensland, p. 4, Simply Energy, p. 1, Australian Energy Council, p. 2, AGL, p. 6, Australian Energy Regulator, p. 6.

⁶⁶ AGL, submission on the draft determination, p. 6.

ERM Business Energy stated that having more than a single emergency number to choose from brings significant risk to the customer who may not be in a position to identify the issue. It further noted that distributors retain exclusive responsibility for unscheduled, unplanned interruptions and outages in the distribution system.⁶⁷

AEMC's final position

The changes that came into effect from 1 December 2017 allow retailers to make retailer planned interruptions and require them to provide an emergency number to customers.⁶⁸ As such a customer may need to contact the retailer on an emergency number about the planned interruption.

The Commission does not consider the provision of two emergency contact details to pose a material risk for the life support customers and believes that providing the customer with the emergency contact details of both the retailer and distributor allows the customer to contact either party in the case of an emergency. If the party contacted by the customer is not in a position to assist the customer, then it can transfer or refer the customer onto the other party which may be in a better position to assist the customer.

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

This section considers whether the proposed rule change will allocate responsibilities clearly and appropriately between retailers, distributors and customers regarding:

- the registration process
- the deregistration process
- deregistration verification process for change in a customer's circumstances
- mandatory or non-mandatory deregistration
- advising the other party of deregistration
- issues arising from a customer changing retailers
- issues arising from the "intend to reside" provision for customer registration
- issues arising from a customer changing retailer when a distributor is the registration process owner
- requirements for customer information to be captured and shared.

⁶⁷ ERM Business Energy, submission on the draft determination, p. 2.

⁶⁸ NERR, s.59C.

3.2.1 Registration process

AER's view

The AER's rule change request stated that it is important to maintain a clear line of responsibility determining which business 'owns' the registration process.⁶⁹ Under the AER's proposed rule, this entailed 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.⁷⁰ To avoid ambiguity and potential confusion for customers, the AER proposed 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'.

Stakeholder views on the consultation paper

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.⁷¹

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.⁷²

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 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.⁷³ 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.⁷⁴

⁶⁹ See rule change request p.15

⁷⁰ See rule change request pp.15-16, p.21,

⁷¹ 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.

⁷² AEMC, *Strengthening protections for customers requiring life support equipment*, Consultation paper submissions: Endeavour, p. 4, Jemena, p. 4, Ausgrid, p. 2, AusNet, p. 2.

⁷³ South Australia Power Networks, submission on the consultation paper, pp. 1-2.

⁷⁴ AGL, submission on the consultation paper, p. 7.

AEMC's draft position

In its draft determination, the Commission shared the AER's view that responsibility for a) registering customers and b) seeking medical confirmation needs to be clearly allocated.

The Commission was of the view that the AER's proposed rule achieved this by allocating both of these roles to the business contacted by the customer, designated the 'registration process owner'. While the Commission acknowledged 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, i.e., 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.

The Commission 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 when they are registered. Under the more preferable draft rule, only the registration process owner was required to provide information, including information to assist the customer to prepare a plan of action in the case of an unplanned interruption. This was to avoid customers being unnecessarily contacted by multiple parties.

Stakeholder views on the draft determination

Some stakeholders generally supported the registration and deregistration arrangements proposed by the draft rule.⁷⁵

The Australian Energy Council stated in its submission that it generally agreed "with the concept that the first point of customer contact become the 'registration process owner'".⁷⁶ In its view this arrangement should assist customers to have clarity over who to contact regarding life support needs.⁷⁷ Simply Energy considers that the rule changes will improve the life support registration process, leading to overall better outcomes for both life support customers and industry participants.⁷⁸ Red Energy and Lumo Energy said the draft rule clearly allocates responsibilities between retailers and distributors by specifying a 'registration process owner'.⁷⁹

Ausgrid was of the view that the responsibility for registering life support customers should be clearly assigned to one party. Ausgrid proposed that the distributors be

⁷⁵ AEMC, *Strengthening protections for customers requiring life support equipment*, Draft determination submissions: Energy Queensland, p. 6, AEC, p. 1, Simply Energy, p. 1, Origin, p. 1.

⁷⁶ AEC, submission on the draft determination, p. 1.

⁷⁷ Ibid.

⁷⁸ Simply Energy, submission on the draft determination, p. 1.

⁷⁹ Red Energy and Lumo Energy, submission on the draft determination, p. 1.

made responsible for this process, thereby ensuring consistency, clear accountability and independence from retail churn.⁸⁰

AEMC's final determination

The Commission maintains its view expressed in the draft determination. The Commission agrees with the AER regarding the need for responsibility for registering customers and seeking medical confirmation to be clearly defined. The Commission's view remains that it is appropriate to give customers the choice of contacting either their retailer or distributor to arrange life support protections based on their relationship with either business and their understanding of the risk they are seeking to mitigate (e.g. disconnection for non-payment or distributor planned interruptions).

3.2.2 Deregistration processes

AER's view

Under the AER proposed life support rule the registration process owner has the choice, although not the obligation, to deregister a customer's premises from the life support register for failing to provide medical confirmation or if the customer made a deregistration request. Under the AER's proposal no other business would have the ability to deregister a customer's premises.⁸¹ Under the proposed rule if the party that is not the registration process owner receives a deregistration request from the customer, that party is required to refer the deregistration request onto the registration process owner and inform the customer of the referral.

AEMC draft position

The Commission agreed with the AER's proposal that only the registration process owner would be able to deregister a customer's premises from the life support register for failing to provide medical confirmation (although the non-registration process owner can remove the customer from their register in response to the registration process owner having deregistered the customer). This is only possible after:

- the registration process owner has:
 - sent at least two reminder notices
 - taken reasonable steps to contact the customer in connection with their failure to provide medical confirmation
 - provided the customer with a deregistration notice, and
- the customer has not provided medical confirmation before the date of deregistration specified in the deregistration notice.

⁸⁰ Ausgrid, submission on the draft determination, p.2

⁸¹ See rule change proposal pp. 15-17.

The Commission considered 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.

However, in the more preferable draft rule the Commission amended the AER's proposal by allowing either party (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 equipment. The rationale was as follows: obligations and 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 could 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 draft rule addressed this problem by allowing either the retailer or the distributor to deregister a premises if the customer informs them that life support equipment is no longer required. 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.

Stakeholder views on the draft determination

There were differences in opinion between stakeholders regarding the provision in the draft rule for either party to be able to deregister a life support premise when advised by the customer they no longer require life support equipment.

The AER considered that this provision might unintentionally undermine the proposed objectives of the rule change.⁸² The AER considered that the provision would:⁸³

- introduce complexity into the deregistration process and potentially result in customers being erroneously removed from life support registers as the customer could provide incorrect advice to the non-registering party

⁸² AER, submission on the draft determination, p. 2.

⁸³ AER, submission on the draft determination, pp. 3-4.

- allow the deregistration process to be used retrospectively to address the accuracy of and update retailer and distributor life support registers resulting in customers potentially receiving multiple contacts from either businesses to verify their life support status
- reduce the quality of the registers as 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 errors.

The AER recommended an additional safeguard should the provision in AEMC's draft rule be adopted, which requires a business receiving advice from the customer that life support equipment is no longer required, to require the customer to confirm its request in writing.⁸⁴

Energy Networks Australia and the Australian Energy Council expressed support for the deregistration provision in draft rule which allowed the non-registration process owner to deregister a premises when advised by a customer they no longer require life support equipment. They believed it provided them flexibility over the rules proposed by the AER which will help them with the accuracy of their registers.⁸⁵

The Australian Energy Council stated that enabling deregistration by either the retailer or distributor should result in fewer inaccurate registrations as it will enable retailer or distribution businesses to check the accuracy of their registers.⁸⁶

AEMC final position

The Commission maintains its view expressed in the draft determination and the final rule allows either party (retailer or distributor) to deregister a customer after following the appropriate deregistration processes, in the case that a customer whose premises has been registered has informed them they no longer need life support equipment or that the person for whom the life support equipment is required has vacated the premises.

The Commission is of the view that without this provision, a business's ability to manage its costs and risks could be limited by the action or inaction by the other party involved. The costs and risks associated with providing life support protections to customers may not fall equally between the parties involved. Hence one party may have a greater incentive in keeping its register up to date in comparison to the other party for whom the risks associated with deregistering a customer even when a customer has advised of a change in their circumstances, may not outweigh its benefits.

The Commission has carefully considered the issues raised by the AER regarding this provision but is of the view that the provision appropriately allocates responsibilities and risks.

⁸⁴ AER, submission on the draft determination, p. 2.

⁸⁵ AEMC, *Strengthening protections for customers requiring life support equipment*, Draft determination submissions: Energy Networks Australia, p. 6, Australian Energy Council, p. 1.

⁸⁶ Australian Energy Council, submission on the draft determination, p. 2.

The Commission notes that there is a potential risk of the customer providing incorrect advice and being erroneously deregistered, however this risk would also exist if the registration process owner was the only party with the ability to deregister a customer for a change in their circumstances. To reduce the risk of erroneous deregistration the Commission has made changes to the rule to require the deregistering party to send the customer a written notice advising of upcoming deregistration and providing the customer at least 15 business days to raise a concern.

The requirement proposed by the AER for the customer to provide their advice of no longer needing life support equipment in writing, is in the Commission's view too onerous on the customers as well as the parties involved. A deregistering customer does not have an incentive to go through the effort of providing written advice, once they no longer need life support protections. This requirement could lead to an increased number of customers on the life support registers that no longer need life support protections.

The Commission's view is that there is not a significant risk of customers receiving numerous contacts from business to verify their life support status, as the process can be resource intensive, costly and pestering life support customers could carry reputational risks for businesses. The current life support rules allow businesses to request a customer 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.⁸⁷

The Commission generally disagrees with the proposition that the provision would reduce the quality of the registers. The deregistration process requires the deregistering party to inform the other party of the deregistration within five business day. The provision also allows the businesses to keep their registers up to date with the customers who still require life support protections.

The Commission expects that retailers and distributors will exercise caution in any decision to deregister a customer's premises.

3.2.3 Deregistration verification process for change in a customer's circumstances

AER's proposed rule

Under the AER's proposed rule, if the registration process owner received a deregistration request from the customer when there is a change in circumstances the registration process owner must take steps to verify the deregistration request with the customer (but need only do so for three days) before they are able to deregister the premises.⁸⁸

Similarly, under the AER's proposed rule, if the non-registration process owner received a deregistration request from the customer when there is a change in

⁸⁷ See subrules 124A(2) and 126(2) of the NERR

⁸⁸ AER rule change request, pp. 38-39.

circumstances the non-registration process owner must refer the deregistration request to the registration process owner. The registration process owner must then take steps to verify the deregistration request with the customer (but need only do so for three days) before they are able to deregister the premises.⁸⁹

Stakeholder views on consultation paper

EnergyAustralia 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. It stated that this requirement was excessive, came with little guidance as to what verification might entail, and may confuse the customer.⁹⁰

AEMC's draft position

The draft rule retained 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. Also, given the draft rule allowed the non-registration process owner to deregister a customer when advised of a change in circumstances (see section 3.2.3), the draft rule required the non-registration process owner to take steps to verify a request for deregistration by the customer. Further when the second party is advised of deregistration due to a change in circumstances this second party was also required to take steps to verify the deregistration request with the customer (but need only do so for three days) before they are able to deregister the premises.

Stakeholder views on the draft rule

Five stakeholders raised an issue with this deregistration process, generally stating that the two stage verification of advice with a customer was unnecessary, inefficient and would result in duplication of effort for all parties involved without clear benefits.⁹¹ Some stakeholders also raised concerns regarding scenarios where a family member requiring life support may have passed away and under these circumstances requiring the customer to confirm life support deregistration advice with multiple parties may be distressing for the customer.⁹²

AusNet services stated they were unsure why the AEMC included the obligation on the contacted party to verify the advice received from the customer. Under the deregistration processes the customer initiates the advice that the premises no longer requires the life support equipment and the associated protections. AusNet added that it was not clear why the retailer or distributor would need to confirm this again with the customer who has just provided this advice.⁹³

⁸⁹ AER rule change request, pp. 38-39.

⁹⁰ EnergyAustralia, submission on the consultation paper, p. 2.

⁹¹ AEMC, *Strengthening protections for customers requiring life support equipment*, Draft determination submissions: Energy Queensland, p. 7, Energy Networks Australia, p. 6, AusNet, p. 2, Citipower PowerCor United Energy, p. 3, AER, p. 5.

⁹² AusNet services, submission on the draft determination, p. 2.

⁹³ Energy Networks Australia, submission on the consultation paper, p. 6.

The AER expressed concern regarding the draft requirements for the business advised by the other business of life support no longer being needed at premises to take reasonable steps to verify advice with the customer.⁹⁴ In the AER's view the requirements are unnecessary and the multiple verification steps would lead to customers being contacted by more than one business to confirm their deregistration advice which could be frustrating for the customer.⁹⁵

AEMC's final position

The Commission agrees with the concern expressed by stakeholders regarding the two stage verification process proposed under the draft rule being inefficient and duplication of effort for the parties involved.

The Commission also shares stakeholders concern regarding scenarios where customer contact by multiple parties may be distressing for the customer. The Commission has weighed up the risk of erroneous deregistration under the deregistration process prescribed in the final rule against the benefits of reduced customer frustration from not being contacted by multiple parties as well as reduced administrative cost for businesses. The Commission has come to the view that a streamlined deregistration process that includes a notification of the intended deregistration strikes the right balance between providing the customer adequate recourse in case of incorrect advice and reducing administrative costs for all parties involved.

In the final rule, the Commission has removed the two stage verification process that was proposed under the draft rule. Under the final rule for deregistration where there has been a change in customer's circumstances, the party contacted by the customer to notify of a change in circumstances must follow the following steps:

- send the customer a written notice that, along with other information, states that the customer's premises will be deregistered as the customer advised that the person for whom the life support equipment is required has vacated the premises or no longer requires the life support equipment
- provide the customer at least 15 business days to raise an issue with the notice for intended deregistration
- if the customer has not contacted the party to raise an issue with the deregistration, the contacted party is allowed to deregister the premises
- notify the other party of the date and reason for deregistration within five business days.

Under the final rule, there are no obligations on the other party (party which is not directly advised by a customer of a change in circumstances) to engage with the customer, either to verify advice or send notifications. The final rule provisions at

⁹⁴ Draft rule 125 (11) (a) and 125 (12)(a)

⁹⁵ AER, submission on the draft determination, p. 5.

subrules 125 (11) and 125 (12) allow the other party to be able to deregister the premises once it has received notification from the party contacted by the customer with advice of change in circumstances, that it has deregistered the premises.

3.2.4 Mandatory or non-mandatory deregistration

AER's proposed rule

Under the AER's proposed rule, retailers or distributors "may" deregister a customer's premises in the circumstances set out in AER's views under Section 3.2.2, but they are not obliged to.⁹⁶ The AEMC agreed that the term "may" should be used in the draft rule.

Stakeholder views

In the first round of stakeholder consultation, 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 timeframe,⁹⁷ with the rationale that this would assist retailers and distributors with risk management. While acknowledging the value of retailers and distributors retaining some discretion, EnergyAustralia 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.⁹⁸

In response to the draft determination several stakeholders reiterated their view that upon failure to provide medical confirmation to the registration process owner, it must be made mandatory for the customer to be deregistered.⁹⁹ The stakeholders generally believed that this measure would assist in reducing the size of the life support registers, and make it more manageable. SAPN also suggested there wasn't enough incentive for some industry participants to deregister customers' premises for failure to provide medical confirmation and that deregistration had to be made mandatory to curb growing registers.¹⁰⁰

AEMC's final position

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

⁹⁶ Proposed rule 125.

⁹⁷ AEMC, *Strengthening protections for customers requiring life support equipment*, Consultation paper submissions: ERM Business Energy, p. 3, AusNet, pp. 1-2, Jemena, pp. 1-2.

⁹⁸ AEMC, *Strengthening protections for customers requiring life support equipment*, Consultation paper submissions: Jemena, pp. 1-2, EnergyAustralia, p. 2.

⁹⁹ AEMC, *Strengthening protections for customers requiring life support equipment*, Draft determination submissions: Energy Queensland, p. 6, SAPN, p. 3, AusNet, p. 3, Red Energy and Lumo Energy, p. 2.

¹⁰⁰ SAPN, submission on the draft determination, p. 3.

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 need life support protections.

3.2.5 Advising the other party of deregistration

AER's proposed rule and AEMC draft rule

Under the AER's proposed rule, if the registration process owner deregisters a customer's premises for failing to provide medical confirmation it must provide the other party a copy of the deregistration notice sent to the customer within five days of deregistration.¹⁰¹ This requirement was included in the AEMC's draft rule.

Stakeholder views

Energy Queensland (EQ) in its submission on the draft determination stated that the registration process owner should be responsible for retaining a copy of the deregistration notice sent to the customer and that requiring both parties to hold a copy is unnecessary duplication of administrative effort. In Energy Queensland's view, the other party should only require notification of the date of deregistration and the ability to request a copy of the deregistration notice if required.¹⁰²

AEMC's final position

The Commission agrees with Energy Queensland's submission that the requirement to provide a copy of the deregistration notice is unnecessary and would involve a duplication of effort. However, the Commission does not deem it necessary for the other party to be able to request and receive a copy of the deregistration notice sent to the customer.

The final rule requires the registration process owner to notify the other party of the date of deregistration and reason for deregistration within five business days and allows the other party to deregister after they are notified.¹⁰³

¹⁰¹ Proposed rule 125(5) and 125(6) and AER rule change request, p. 10.

¹⁰² Energy Queensland, submission on the draft determination, p. 6

¹⁰³ Final rule 125(2), 125(7) and 125(8).

3.2.6 Issues arising from a customer changing retailers

Under the AER's proposed rule when a customer switches retailers and their previous retailer was the registration process owner, their life support protections would not automatically be transferred to the new retailer. Therefore, the customer is required to inform their new retailer or distributor of the life support protections if they need their life support protections to continue.

Under the draft rule, obligations on the registration process owner (either retailer or distributor) begin from when it is advised by the customer of life support requirements. Obligations include registering the customer promptly and within five business days providing the customer with an information pack.

Stakeholder views

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.¹⁰⁴

AGL's submission on the draft determination expressed concern regarding the life support registration process commencing very early relative to the customer transfer process between retailers.¹⁰⁵ AGL believed that the early commencement of obligations can lead to increased administrative burden and confusion for customers.

AGL highlighted that retailers often contract with customers well in advance of customer transfer being completed and that it is not unusual for a customer to receive and accept other offers or change their minds before the customer transfer takes place. AGL highlighted a scenario where a customer may contract with a retailer (retailer one) and provide advice of life support equipment requirement but before the transfer is complete decide to contract with another retailer (retailer two). Under these scenarios, AGL's view was that a few issues may arise:

- Retailer one's obligations are triggered and it may have completed or almost completed the registration process. Under this scenario the customer will have to go through the registration process again with the second retailer it ended up transferring to, including providing the medical confirmation again. There is also the risk for the customer to mistakenly believe they have met their obligations through the process with retailer one.
- In the instance where retailer one informs the distributor then the customer changes to retailer two but does not inform them about their life support equipment requirements, this could result in neither retailer two nor the distributor being the registration process owner and neither being able to deregister the customer's premises for not providing medical confirmation.

AGL highlighted that clarity is required for instances where a registration process owner cannot be established and suggested that the businesses involved should be able

¹⁰⁴ PIAC, submission on the consultation paper, p. 4; PIAC, submission on the draft determination paper, p.1.

¹⁰⁵ AGL, submission on the draft determination, pp. 3-4.

to seek each other's agreement for one of the parties to take responsibility as the registration process owner.

Red and Lumo Energy asked for further clarification regarding the responsibilities of current and new retailers when a customer changes retailers.¹⁰⁶ They questioned if a customer informs their new retailer of their life support equipment requirements without having informed their current retailer, could the life support obligations for the current retailer be triggered for the period before the retailer customer transfer takes place? In their view, the new retailer once informed by the customer would inform the distributor of life support equipment requirements at customer's premises, who in turn could inform the current retailer.

AEMC's final position

The Commission's view is that it is appropriate to require customers to inform their new retailer or distributor of life support requirements. Under the final rule, where the customer initiates a change in their circumstances, such as changing retailers or moving house, the customer will need to inform their new retailer or distributor of their need for life support.¹⁰⁷

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

Regarding the scenario raised by AGL, where a customer completes their life support registration with a prospective retailer but then chooses a new retailer before their transfer to the prospective retailer is complete, the customer would need to inform that new retailer of the need for life support. The outcome of this scenario would not be different to a customer completing a transfer to a new retailer and completing life support registration but within a short time frame switching to another retailer.

Regarding the scenario of the customer mistakenly believing they have met their obligations through the process with an earlier retailer, the Commission's view is that this should be addressed by providing further information to the customer. The Commission has amended the draft rule so that the final rule requires the registration process owner to provide additional advice to the customer: if the customer decides to change retailer, and a person residing at the customer's premises continues to require

¹⁰⁶ Red and Lumo Energy phone call with the AEMC on 8 December 2017.

¹⁰⁷ Except in the case where the customer is changing retailer at the same premises and has completed the medical confirmation process with their distributor, as discussed in section 3.2.8, though it is still prudent to inform their new retailer in this case.

life support equipment, the customer should advise their new retailer of this requirement.¹⁰⁸

In the Commission's view, it is likely that a customer who requires life support equipment and has registered through their retailer will inform a new retailer of their life support requirement. However the Commission notes that issues for distributors may arise when a customer who registered for life support protections through a retailer later changes their retailer and does not advise their new retailer of their life support equipment requirements. Under these circumstances a distributor may not be able to contact the customer to confirm whether life support equipment is still required at the customer's premises. The Commission has made amendments to the draft rule so that the final rule explicitly allows deregistration under these circumstances.

The final rules allow the distributor to deregister a customer's premises where it was not the registration process owner and the customer has changed their retailer without advising of a need for life support equipment, provided the distributor sends to the customer a written notice advising of upcoming deregistration and provides the customer at least 15 business days to raise a concern.¹⁰⁹

By requiring customers to inform their new retailer or distributor of life support requirements, the life support registration process is restarted, which helps to avoid the potential gaps raised by stakeholders. To communicate this requirement, as noted above, the final rule requires information to be provided to life support customers that they should inform their new retailer of life support requirements if changing retailer.¹¹⁰ In response to Red and Lumo Energy's query, the Commission notes that under the final rules, the life support obligations on retailers and distributors are triggered once they are informed either by a customer or by the other party (retailer or distributor) who has been informed by the customer.

3.2.7 Issues arising from the "intend to reside" provision for customer registration

The current life support rules allow a customer to advise a retailer or distributor that a person residing at the customer's premises requires life support equipment.¹¹¹ The AER's proposed rule allowed a customer to advise a retailer or distributor that a person residing or *intending to reside* at the customer's premises requires life support equipment. The Commission adopted the 'intending to reside' provision in the draft rule to address two scenarios. The first scenario is where the person requiring life support equipment was moving into a new premises and sought to arrange life support protections from the date they intended to move. The second is where a person requiring life support equipment was moving into a customer's current premises.

108 Final rule, s.124(1)(b) (vii) and s.124 (4)(b)(vii)

109 Final rule 125(14) and 125(15)

110 Final rule, s.124(1)(b) (vii) and s.124 (4)(b)(vii)

111 NERR, s.124(1A) and s.125(1)

Stakeholders view on the draft determination

In their submissions to the draft rule determination, some stakeholders raised concerns regarding this provision covering customers prior to them moving into the premises.

Red Energy and Lumo Energy raised concerns regarding a customer potentially receiving reminder notices as part of their proposed registration process prior to moving to those premises. It is conceivable that a customer may have notified their retailer or distributor regarding their life support requirements “well in advance of their intention to reside” at their premises.¹¹²

Red and Lumo also expressed concerns regarding a scenario where a customer may advise the distributor of their intention to reside at a premise which would create operational complexities and confusion between parties.¹¹³ Red and Lumo recommended that only when the retailer is financially responsible for that premises that they be required to advise the distributor or be advised by the distributor.

CitiPower, Powercor and United Energy stated in their submission that the concept of intend to reside is problematic for existing market arrangements which have been developed on the basis that there is no relationship between the parties involved until the commencement of a retailer sale and distributor supply contract.¹¹⁴ CitiPower, Powercor and United Energy also highlighted that the market systems will only enable update of the customer details by a party that has a current relationship with the customer. Furthermore, the requirements on the distributors to provide information to life support customers could result in incorrect emergency contact details being provided to the customer.¹¹⁵

AEMC’s final position

The Commission has considered the issues raised by the stakeholders regarding the provision for customers to be able to inform the businesses of their intention to reside at a customer’s premises. This provision enables a customer to be able to receive life support protections as soon as they start residing at their premises or the person requiring life support equipment starts residing at the customer’s premises.

In regards to the issue of the customer potentially receiving reminder notices as part of their proposed registration process prior to moving to those premises, the obligation on the registration process owner is to provide the information listed in the rule 124(1)(b) and 124(4)(b) to the customer. To fulfil this obligation the registration process owner may need to send this information onto the customer’s preferred location, which for example could be their current residential address if different to the premise they intend to reside in.

112 Red Energy and Lumo Energy, submission on the draft determination, p. 1.

113 Red Energy and Lumo Energy, submission on the draft determination, p. 2.

114 CitiPower, Powercor and United Energy, submission to the draft determination, p.4.

115 CitiPower, Powercor and United Energy, submission on the draft determination, p. 4.

The Commission has made changes to the draft rule to permit the registration process owner to be able to utilise a period greater than 50 business days in seeking medical confirmation.¹¹⁶ In a move-in situation, this would allow a retailer or distributor the flexibility to delay sending confirmation reminder notices to a customer until after they moved-in to the relevant premises.

The Commission notes the stakeholder view that the existing market arrangements have been developed on the basis that there is no relationship between a retailer, distributor and customer at a premises until the commencement of supply under a retailer sale and distributor supply contract. However, the Commission is of the view that appropriate notifications can be provided between the parties before the commencement of supply. Further, the ability of customers to be able to notify of life support requirements before they move to a premises is needed to avoid any gap in life support protections. In particular it is important that life support customers be notified of any planned outages that may affect their energy supply from the date they move in.

In regards to the scenario where a customer informs the distributor of their intention to reside in a premises leading to the customer being provided incorrect emergency contact details, we note that rule 123 in the NERR makes the life support rules apply only where there is a customer who is already a party to a contract with a retailer for the sale of energy. As such the identity of the retailer must be known in order for the life support protections to apply. If the customer informs the distributor of their intention to reside at a premises, it would be prudent for the distributor to ask the customer for the identity of the retailer that has contracted to supply energy at their premises.

Under the scenario where a customer requires life support equipment at a premises they intend to reside in, it is the customer's responsibility to advise the retailer or the distributor for the premises of their life support equipment requirements. The continuity of life support protections through a distributor offered under rule 124B(2)(b) only applies to a change of retailers at the same premises and does not cover the scenario where the customer is changing their premises.

3.2.8 Issues arising from a customer changing retailer when the distributor is the registration process owner

Issue description

The Commission has given further consideration to scenarios that can possibly arise under the more preferable rule when life support customers change retailers and has come to a view that the draft rule lacked clarity under some of these scenarios.

The Commission is of the view that the scenario where a customer completes their life support registration process with their distributor and then switches retailers could lead to unresolved issues under the draft rule. Some of these issues include:

- Possibility of incomplete protections for the life support customer in the case the customer does not inform their new retailer of their life support equipment requirements. It is possible the customer could overlook informing their new

¹¹⁶ Final rule, s.124A(1)(a)

retailer as they were under the impression that their life support protections are in place through their distributor.

- After the customer switches retailers, the retailer emergency contact number provided by the distributor during their registration process is no longer valid.

Options considered

The Commission considered two options in deciding on the approach to addressing these issues:

- a) Registration process restart: where the onus would be on the customer to inform their new retailer of their life support requirements (as discussed in section 3.2.6). The customer would then go through the registration process again, with the retailer as the new registration process owner.
- b) Distributor informs the new retailer: where the onus to ensure continuity of life support protections would be on the distributor if it is the registration process owner and the customer has provided medical confirmation. The distributor would be required to notify the new retailer that the customer requires life support equipment and that they have already provided medical confirmation. Also, if the customer notifies the new retailer of life support requirements and that they have provided medical confirmation to the distributor, then the new retailer would be able to confirm this with the distributor. If confirmed, the new retailer would not be required to seek medical confirmation from the customer again. Upon notification from the distributor or the customer, the retailer is required to provide an emergency contact number for the retailer and distributor to the customer and advice that there may be retailer planned interruptions.

AEMC's final position

Having considered the options available, the Commission has come to a view that the second option that places onus on the distributor to notify the new retailer of the customer's life support requirements is more appropriate.

The final rule requires a distributor to inform the new retailer that a person residing at a customer's premises requires life support equipment if the distributor is the registration process owner and the distributor has become aware that the customer has transferred to another retailer.¹¹⁷ The new retailer is required to provide an emergency contact number for the retailer and distributor to the customer and advice that there may be retailer planned interruptions if:¹¹⁸

- the customer advises the retailer that they need life support equipment and that the customer already provided medical confirmation to the distributor for the premises and the retailer can confirm the advice received from the customer with the distributor, or

117 Final rule 124B(2)(b)

118 Final rule 124(2) and 124(3)(b)

- the retailer receives notification from the distributor that a customer requires life support equipment.

This option allows the customer to continue receiving life support protections without having to go through the life support registration process again. It also reduces the burden on the new retailer having to go through the full registration process and providing customer with the full information pack.

In the Commission's view, this approach is prudent as a customer would expect that life support protections organised through the distributor to remain in place if their address does not change.

The Commission notes that there may be some additional costs involved with putting in place processes and systems for distributors to notify a new retailer when there is a change in the customer's retailer and the customer is registered as requiring life support equipment and has provided medical confirmation. New processes may also be required for a retailer to be able to check whether a customer has already provided medical confirmation to a distributor.

The distributors will be notified of a change in the customer's retailer through Market Settlement and Transfer Solution (MSATS). As the current rules require the distributor to notify the retailer, when a customer provides the distributor with the confirmation that the customer requires life support equipment, the additional costs would arise from the distributor having processes to notify the retailer when a life support customer they were the registration process owner for changes retailer.¹¹⁹ In the Commission's view the clarity of protections offered by this option justifies the costs.

3.2.9 Requirements for customer information to be captured and shared

Under the current life support rule there is an obligation on the retailer and the distributor to give the other party relevant information about the customer's premises for the purposes of updating their life support records and register.¹²⁰ This was generally maintained in the AER's proposed rule and the AEMC's draft rule.

Stakeholder views on the draft determination

Some stakeholders have expressed the need for more detailed customer information to be captured during the life support registration process. The stakeholders believe some of this information would help them provide a better service to life support customers, and increase transparency and certainty for customer and businesses.

Energy Networks Australia (ENA) stated that it is important for the distributors to know the identity and contact details of the life support customer and if necessary their carer's name and contact details. Fixed and mobile phone numbers as well as email addresses are important contact methods and current industry B2B rules do not oblige retailers to supply contact details to distributors. ENA also outlined a template for information to be captured from registering life support customers which included

¹¹⁹ Current rules 125(1)(b) and 125(2)(b)

¹²⁰ NERR, s.124(1)(c) and s.125(2)(c).

information such as the life support equipment used by the customer, fuel type of the life support customer and life support customer's contact details. ENA recommended this measure to ensure retailers and distributors collect harmonised and consistent information on life support customers. ENA recommended that the AEMC mandate that retailers supply email addresses and mobile phone details as a required obligation for all customers and a mandatory requirement for life support customers.¹²¹

On a similar note, Ausgrid proposed amendments and clarifications to customer detail fields captured during the registration process. It proposed telephone details of the customer be made mandatory to be captured and proposed new requirements on the information to be captured which included email address, life support equipment type and secondary contact telephone numbers.¹²²

ERM Business Energy recommended that the NMI information should accompany the site address when registration details are sought from the customer or information transferred between parties. In ERM Business Energy's view making the NMI information mandatory as part of the life support registration process would mitigate the likelihood of registering the incorrect site.¹²³

The AEMC also consulted with the Information Exchange Committee (IEC), which is the body responsible for the development of and changes to the electricity Business to Business (B2B) procedures. The IEC considered "that the rules should provide the head of power with the B2B procedures outlining the nature of the information to be exchanged".¹²⁴ This was in order to provide appropriate flexibility given that technology and modes of communication change.

AEMC's final position

The Commission agrees that the capturing and sharing of appropriate customer information is important to providing effective communication to life support customers. For example, mobile phone numbers may allow a distributor to provide text message notification on the day of a planned interruption on top of the required written four day notification.

The Commission sees there may be benefit in more customer contact information being shared between the businesses but holds the view that the rules are not the appropriate setting for prescribing the fields of information that must be shared with the other party. The B2B procedures and IEC processes are the appropriate settings for detailed arrangements on information exchange.

The Commission has made adjustments in the final rule¹²⁵ to clarify the retailers and distributors are obliged to share any relevant contact details with the other party along with the relevant information about the life support equipment requirements for a customer's premises.

121 Energy Networks Australia, submission on the draft determination, p. 5

122 Ausgrid, submission on the draft determination, p. 3.

123 ERM Business Energy, submission on the draft determination, p. 3.

124 IEC, submission on the draft determination, p. 2.

125 Final rule, s.124B(1)(a) and s. 124B(2)(a)(i)

3.3 Costs proportionate to protections achieved

This section considers whether the proposed rule change will impose costs on retailers and distributors that are proportionate to the customer protections achieved.

3.3.1 Costs associated with life support protections

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.¹²⁶

Stakeholder views

Stakeholder views on the consultation paper

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.¹²⁷ South Australia Power Networks noted growth since the introduction of the NECF, from 2000 to almost 6000 premises in four years.¹²⁸ Endeavour describes a 25 per cent increase in registrations in the three years from 2014 and 2017.¹²⁹ 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 2015.¹³⁰ Jemena has seen growth of 963 life support premises in 2010 to 2442 in 2015.¹³¹ 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.¹³²

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 per cent of each business' annual operating expenditure. AusNet estimated the cost of establishing a new registration system to comply with the AER's requirements

¹²⁶ Rule change proposal, p. 12.

¹²⁷ AusNet, submission on the consultation paper, cover letter to submission.

¹²⁸ South Australia Power Networks, submission on the consultation paper, p. 3.

¹²⁹ Endeavour, submission on the consultation paper, p. 2.

¹³⁰ Energex and Ergon, submission on the consultation paper, p. 11.

¹³¹ Jemena, submission on the consultation paper, p. 3.

¹³² Energy Networks Australia, submission on the consultation paper, p. 2.

at \$9.2 million - about 4 per cent of its annual operating expenditure.¹³³ Jemena estimated that additional costs to comply with the changes to the registration and medical confirmation processes would be insignificant.¹³⁴ Energy Networks Australia suggested that additional costs arising from the medical confirmation process were proportionate to the circumstances.¹³⁵

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.¹³⁶ Other stakeholders were unable to quantify the additional costs for deregistration,¹³⁷ although some estimated these as 'significant'.¹³⁸

To cut down on inaccurate registrations, EnergyAustralia proposed some form of incentive or compulsion for customers to notify retailers and distributors when life support equipment is no longer needed.¹³⁹ 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.¹⁴⁰

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.¹⁴¹

Stakeholder views on the draft determination

Stakeholder views on the draft determination on this matter were similar to those expressed in response to the consultation paper.

Several stakeholders expressed concerns regarding the increasing size and inaccuracy of the life support registers. ENA stated that life support registers have grown and have become increasingly inaccurate. According to ENA, customer surveys undertaken by distribution businesses showed that 10 to 30 per cent of their recorded life support

¹³³ 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>

¹³⁴ Jemena, submission on the consultation paper, p. 3.

¹³⁵ Energy Networks Australia, submission on the consultation paper, pp. 8-9.

¹³⁶ AEMC, *Strengthening protections for customers requiring life support equipment*, Consultation paper submissions: Energex and Ergon, pp. 12, 16, Endeavour, p. 4.

¹³⁷ Ausgrid, submission on the consultation paper, p. 4.

¹³⁸ ActewAGL, submission on the consultation paper, p. 2.

¹³⁹ EnergyAustralia, submission on the consultation paper, p. 2.

¹⁴⁰ 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.

¹⁴¹ South Australia Power Networks, submission on the consultation paper, pp. 3-4.

customers were inaccurate. United Energy has seen an almost doubling in life support customers since 2012 and Ausgrid's life support register has grown by 30 per cent since 2014.¹⁴²

Several stakeholders also suggested a limited life support registration period after which the customer should have to renew their life support registration. AGL suggested that the proposal to seek renewed life support confirmation forms every two to three years should not be a substantial additional administrative burden on consumers, and would ensure that the requirements for life support were current.¹⁴³

AGL believed that the benefits of the life support protections for customers are being eroded by customers who do not genuinely meet the requirements for accessing these protections. They submitted:¹⁴⁴

“AGL has a large number of customers who have claimed to require Life Support, but have failed to provide the required medical confirmation, after multiple communications requesting that confirmation. In those jurisdictions where there is a clear financial benefit for energy concessions, the return rate varies between 27% and 66%. This suggests that a substantial number of customers who request Life Support potentially cannot provide a medical confirmation.”

PIAC was generally supportive of the balance between costs and protection struck by the draft rule. PIAC agreed that consumers should not have to periodically reconfirm their medical status in order to retain their life support protection as this would place a confusing and burdensome requirement on vulnerable consumers. Their view was that it is much more appropriate for large businesses to have in place systems to manage consumer details rather than placing this responsibility on consumers.¹⁴⁵

AEMC's final position

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.¹⁴⁶ 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.

¹⁴² ENA submission on the draft determination, p. 3.

¹⁴³ AGL, submission on the draft determination, pp. 5-6.

¹⁴⁴ AGL, submission on the draft determination, p. 6.

¹⁴⁵ PIAC, submission on the draft determination, p. 2.

¹⁴⁶ For instance, caused by human error in data entry.

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 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.

Hence the Commission does not agree with 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 premises due to failure to provide medical confirmation
- mandatory deregistration for failure to provide medical confirmation (see section 3.2.4).

While 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. 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. Under an arrangement requiring the customer to periodically renew their registration, there is a risk that a customer could unintentionally miss their obligation to renew their registration which could have significant consequences for them. It would result in 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. Such an arrangement would not prioritise the interest of vulnerable customers.

Allowing providers other than the registration process owner to deregister customers' premises 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 properly 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 the Commission is not convinced misuse of the system is occurring at a scale that warrants additional administrative burdens and risks being placed on genuine life support customers.

Under the final rule, retailers and distributors have the *option* to at any time contact customers to confirm whether life support equipment is still required at the customer's premises. These steps will likely be sufficient to identify inaccurate registrations in a large number of cases.

The final rule is likely to require some changes to retailers' internal procedures, limited changes to the retail market procedures administered by AEMO, and (if desired by retailers and distributors) new electronic transactions for business-to-business communications (known as B2B transactions, see section 4.1). However, based on stakeholder comments, the costs associated with these changes are likely to be proportionate to the risks associated with not offering protection to genuine life support customers. Once implemented, the final rule is also likely to provide an efficient framework for keeping businesses life support registers up to date.

3.4 Compatibility with the development and application of 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 currently exist and as they are presently applied, both within and outside the energy rules. More specifically, would the proposed changes to strengthen protections for customers who need life support equipment impede currently applicable consumer protections or are they consistent with such protections?

Considering the "development" of consumer protections requires a forward-looking assessment. The Commission assessed whether the 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 final rule is compatible with the development and application of consumer protections for small customers, including (but not limited to) protections relating to hardship customers. The final rule is generally consistent with current consumer protections as it builds on the existing protections in the NERR. The final rule is likely to be compatible with the future development of consumer protections for small customers and is in itself an example of an improved protection for small customers, including hardship customers.

In Victoria the NERR do not apply and life support requirements are applied through the Victorian Energy Retail Code. The life support arrangements under the Retail Code require retailers to be responsible for registering and deregistering life support customers rather than the customer having the option to contact the retailer or

distributor to arrange life support protections.¹⁴⁷ However, this difference in approach does not make the final rule incompatible with the life support arrangements in Victoria as neither arrangement prevents the other from operating effectively.

The Commission is satisfied that the final rule to strengthen protections for customers who need life support equipment is compatible with the development and application of:

- relevant consumer protections within the Retail Law and the Retail Rules
- consumer protections under the general law, including the Australian Consumer Law
- consumer protections under retail energy laws and regulations of jurisdictions participating in the NECF
- consumer protections under energy laws and regulations of Victoria.

¹⁴⁷ Rule 124 of part 7 of the Energy Retail Code

4 Implementation

This chapter outlines stakeholders' views and the Commission's analysis in relation to the implementation of the final rule.

4.1 Changes to B2B processes

The B2B procedures detail the processes for providing information between different market participants, notably between Metering Data Providers (MDPs), retailers and distributors. There are many aspects of the B2B transactions and procedures which relate to the exchange of information regarding life support customers.

A B2B procedure called the customer and site details notification (CSDN) process outlines the process for communication between each party when the initiator¹⁴⁸ becomes aware of a customer requiring life support.¹⁴⁹ It also details what is required in the customer details reconciliation process for life support customers.¹⁵⁰

4.1.1 Stakeholder views

Many stakeholders highlighted in their submissions on the draft determination that B2B procedures would likely need updating to allow for obligations regarding information exchange as outlined in the draft rule to be met. Stakeholders also expressed concern regarding the need for the Commission to consult with the IEC regarding the potential B2B changes that may be required.

AGL¹⁵¹ suggested that B2B procedural changes are required to share the relevant information to ensure both retailer and distributor have adequate information to undertake their obligations.

Energy Australia¹⁵² stated that the Commission should consider in more detail the implementation timeframe to allow the necessary B2B procedures to be properly assessed, developed and enabled to ensure the final rule is implemented efficiently and accurately for the benefit of life support customers.

ENA¹⁵³ suggested that B2B procedures need to be updated to allow both retailers and distributors to meet the new rule requirements. ENA also recommend that the final rule mandate that the B2B procedures "must support information transfer between retailers and distributors so that key information identified in the rules can be recorded and held in the life support registers".¹⁵⁴

148 The B2B party which is a sender of a transaction

149 See Section 4.3.2, AEMO, B2B procedures: Customer and Site Details Notification Process.

150 See Section 4.4, AEMO, B2B procedures: Customer and Site Details Notification Process.

151 AGL, Submission on the draft determination, p. 5.

152 Energy Australia, Submission on the draft determination, p. 3.

153 ENA, Submission on the draft determination, p. 4.

154 Ibid.

Citipower¹⁵⁵ acknowledged that updates and support enhancements to the B2B procedures will be required which at a minimum include facilitating a bi-directional exchange of customer information between distributors and retailers.

Red and Lumo Energy¹⁵⁶ considered that changes to the B2B procedures are not required by the draft rule, however Red and Lumo support the Commission engaging with the IEC should any substantial changes be made to the draft rule which may create a need to develop more formal mechanisms to transmit information between distributors and retailers.

The IEC¹⁵⁷ considered that changes to the B2B procedures require efficient and robust processes and recommends that the Commission allow a minimum of 12 months for the necessary design, consultation and process/system development to take place. The IEC also recommend that the final rule not be overly prescriptive on the nature of information to be exchanged to allow flexibility for the B2B procedures to be updated as required to adapt to a changing technological environment.

4.1.2 AEMC final position

The introduction of the changes to life support obligations outlined in the final rule may require B2B processes to be updated to allow for the exchange of information between retailers and distributors in relation to life support customers. The Commission has consulted with AEMO and the IEC on the need for changes and the timeframe required for efficient implementation of the final rule.

The Commission acknowledges the importance of implementing any required changes to the B2B procedures through a robust process, and also acknowledges the importance of implementing the changes outlined in the final rule as promptly as possible to ensure life support obligations are strengthened to protect customers. The Commission considers that allowing an appropriate amount of time to accurately update systems and procedures will promote certainty and transparency for all parties around their obligations. Therefore having considered advice from the IEC, views of stakeholders and undertaken further analysis, the Commission considers that a 12 month implementation period, rather than 6 months as outlined in the draft rule, is sufficient to allow this balance to be reached.

The Commission considers that prescription of what should be contained in the B2B procedures regarding changes to life support obligations are best to remain with the IEC under the current processes for development of the B2B procedures. The final rule allows flexibility for procedures to be updated to allow for life support obligations to be met in the most efficient and robust manner.

4.2 Timing

Appropriate timing for implementation of the obligations outlined in the final rule is important to ensure consumers life support protections are strengthened as promptly as possible while also allowing sufficient time for processes and procedures to be updated in an efficient manner.

155 Citipower, Submission on the draft determination, p. 2.

156 Red Energy and Lumo Energy, submission on the draft determination, p. 4.

157 IEC, letter to the AEMC regarding life support rule change, 24 November 2017, p. 2.

4.2.1 Stakeholders' views on the consultation paper

In response to the consultation paper, stakeholders suggested a range of timeframes for implementing the new rules. ENA suggested that the industry takes 12-18 months to implement such changes.¹⁵⁸ AGL indicated that a six month period is required for the consultation process to change the B2B procedures.¹⁵⁹

Energy Australia suggested 12 months' for implementation from the time the rule change is finalised.¹⁶⁰ Stakeholders 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.¹⁶¹

4.2.2 Stakeholders' views on the draft determination

The majority of stakeholders' submissions on the draft determination raise concerns around the implementation timeframe of 6 months as outlined in the draft rule. Many suggest 12-18 months would be appropriate to allow for B2B procedures to be updated and allow for internal processes and systems to be reconfigured as required. Section 4.1 discusses the key concerns stakeholders raise regarding the timeframe required to make the appropriate changes to B2B procedures.

ERM Business Energy¹⁶² and Energy Australia¹⁶³ suggest extending the implementation period beyond 6 months, given the expected changes to processes and systems, including industry systems to transfer life support information between participants.

Origin¹⁶⁴ raise concerns that an expedited timeframe may lead to adverse outcomes and believe a 12 month minimum implementation timeframe would be more appropriate once the IEC has completed a review of system and process requirements.

Australian Energy Council¹⁶⁵ considers six months would be the minimum requirement for changes to be implemented. Businesses may need longer to accommodate the systems changes required in the context of other systems changes which are required as a result of the Power of Choice reforms and other existing reforms, which particularly impact the beginning of the time period.

Simply Energy¹⁶⁶ recommends that the proposed rule changes should come into effect from 1 July 2018 with a six month transitional phase-in of the relevant obligations, without compromising the protections provided to customers.

158 ENA, Submission on the draft determination, p. 4

159 AGL, Submission on the draft determination, p. 5

160 Energy Australia, Submission on the draft determination, p. 1

161 Consultation paper submissions: AGL pp. 1-2, Energy Australia, p. 2, Red and Lumo Energy, p. 2.

162 ERM Business Energy, Submission on the draft determination, p. 3

163 Energy Queensland, Submission on the draft determination, p. 3

164 Origin Energy, Submission on the draft determination, p. 1

165 Australian Energy Council, Submission on the draft determination, p. 1

166 Simply Energy, Submission on the draft determination, p. 2

4.2.3 AEMC final position

The Commission supports the prompt introduction of the life support obligations to strengthen the protection for consumers. However having considered feedback and comments from stakeholders including the IEC the Commission considers that an implementation timeframe of 12 months will allow sufficient time for systems and processes to be updated to allow the obligations under the final rule to be met.

Schedule 2 of the final rule will commence on 1 February 2018, from which date transitional arrangements will apply. The balance of the final rule will commence operation on 1 February 2019.

Section 4.3 outlines how life support customers will have their protections strengthened during the implementation period through the transitional arrangements in the final rule.

4.3 Transitional arrangements

The Commission considers that applying the amended life support provisions to all customers regardless of their date of registration is an appropriate option for customers whose premises are registered as having life support equipment.

The implementation of these arrangements in practice requires that the transitional rules cover a range of different categories of life support customers:

- **Validly registered life support customer** - an existing life support customer who has provided a retailer or distributor with medical confirmation prior to 1 February 2019.
- **Deemed life support customer** - any customer whose premises are registered as having life support equipment as at 1 February 2018, but who has not provided a distributor or a retailer with medical confirmation prior to 1 February 2019.
- **Registered life support customer** - any customer whose premises are registered as having life support equipment as at the start date, but who has not provided a distributor or a retailer with medical confirmation prior to 1 February 2019.
- **Transitional distributor life support customer** - any customer who advises a distributor during the transition period (i.e. 1 February 2018 to 31 January 2019) that a person residing at the customer's premises requires life support equipment, but does not provide a distributor with medical confirmation prior to 1 February 2019.
- **Transitional retailer life support customer** - any customer who advises a retailer during the transition period (i.e. 1 February 2018 to 31 January 2019), that a person residing at the customer's premises requires life support equipment, but does not provide a retailer with medical confirmation prior to 1 February 2019.

This section outlines the transitional arrangements introduced in the final rule so life support customers in each category are covered by the new protections during the transition period.

4.3.1 Stakeholders' views on the consultation paper

PIAC considered 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.¹⁶⁷

Energex and Ergon stated that the medical confirmation and deregistration processes should be applied to all existing life support customers where medical confirmation has not been provided.¹⁶⁸

4.3.2 Stakeholders' views on the draft determination

The majority of stakeholders' submissions on the draft determination supported the decision to apply the new protections to all existing customers.

Simply Energy considered that an appropriately adapted transitional framework is required to ensure industry participants have sufficient time to make all necessary procedural and business-to-business process changes. Simply Energy also considered the new requirements should extend to existing life support customers. Extending the scope of the rule change to include these customers will provide industry participants with greater flexibility to manage the costs and risks associated with supplying electricity to residents requiring life support equipment.¹⁶⁹

PIAC¹⁷⁰ supported the draft rule and considers it appropriate to apply the amended rule change to all life support consumers regardless of the date on which they registered. This would provide an opportunity to ensure that all consumers on the register who still need life support are registered properly.

Australian Energy Council¹⁷¹ considered that the final rule will need to clearly indicate whether existing customers are required to provide medical confirmation as per the new rule or are exempt from this requirement as some customers may have been on the life support register for long periods.

Energy Australia¹⁷² considered that more clarity is required around how the new rules will apply in practise to existing life support customers.

While AGL believed that the implementation of the proposed rules are appropriate, they believed it would be a substantial burden to contact all existing customers immediately on Rule commencement.¹⁷³

¹⁶⁷ PIAC, Submission on the consultation paper, p. 2

¹⁶⁸ Energex and Ergon, Submission on the consultation paper, p. 7-8

¹⁶⁹ Simply Energy, Submission on the draft determination, p. 1

¹⁷⁰ PIAC, Submission on the draft determination, p. 2

¹⁷¹ Australian Energy Council, Submission on the draft determination, p. 2

¹⁷² Energy Queensland, Submission on the draft determination, p. 2

¹⁷³ AGL, submission on the draft determination, p. 6.

4.3.3 AEMC final position

The new life support provisions introduced by the final rule will apply to all life support customers whose premises are registered as having life support equipment regardless of their date of registration.

Schedule 2 of the final rule will commence on 1 February 2018, from which date transitional arrangements will apply. The balance of the final rule will commence operation on 1 February 2019.

The Commission considers that applying transitional arrangements as outlined in the final rule from 1 February 2018 gives businesses sufficient time to assess requirements to comply with obligations under the final rule to life support customers already on their registers. Customers continue to be covered by the existing life support protections up until the start date of 1 February 2018.

The final rule outlines that during the transitional period:

- Deemed life support customers are regarded as having provided confirmation from a registered medical practitioner to the retailer, whether medical confirmation has been provided or not.¹⁷⁴
- Transitional retailer life support customer and transitional distributor life support customers are regarded as having provided confirmation from a registered medical practitioner to the retailer or distributor (as the case may be), whether medical confirmation has been provided or not.¹⁷⁵
- The retailer for a deemed life support customer is exempt from the requirement to inform the distributor that a person residing at the premises requires life support equipment and from the requirement to provide emergency contact details and general advice that there may be a retailer planned interruption, as these are processes which should of already been adhered to when the customer was originally registered.¹⁷⁶ Other key obligations in the existing life support rules remain such as registering the customer, not arranging for de-energisation, except in the case of a retailer planned interruption and providing 4 days' notice of a retailer planned interruption.
- Similarly, the distributor for a deemed life support customer is exempt from the requirement to inform the retailer that a person residing at the premises requires life support equipment and from the requirement to provide emergency contact details, general advice that there may be a distributor planned or unplanned interruption, and information to assist the customer to prepare a plan of action in case of an unplanned interruption, as these are processes which should of already been adhered to when the customer was originally registered.¹⁷⁷ Other key obligations in the existing life support rules remain such as registering the

¹⁷⁴ Subrule 2(3) of Part 9 of Schedule 3.

¹⁷⁵ Subrule 2(1) and subrule 2(2) of Part 9 of Schedule 3

¹⁷⁶ Subrule 2(4) of Part 9 of Schedule 3.

¹⁷⁷ Subrule (2)(5) of Part 9 of Schedule 3.

customer, not de-energising the premises, except in the case of an interruption and providing 4 days' notice of a distributor planned interruption.¹⁷⁸

After the transitional period, on and from the effective date of 1 February 2019, the final rule outlines the treatment for various different categories of existing life support customers:

- An existing validly registered life support customer is taken to be registered; necessary communication between the retailer and distributor is taken to have occurred and medical confirmation received.¹⁷⁹
- An existing deemed or transitional retailer life support customer is taken to be registered by the retailer; necessary communication between the retailer and distributor to have occurred; and medical confirmation received. The retailer is not required to seek confirmation of premises as requiring life support equipment, however the retailer may seek this confirmation and if so the retailer is required to start the medical confirmation process for existing deemed or transitional retailer life support customers.¹⁸⁰
- An existing transitional distributor life support customer is taken to be registered by the distributor; necessary communication between the retailer and distributor is taken to have occurred; and medical confirmation received. The distributor is not required to seek confirmation of premises as requiring life support equipment, however the distributor may seek this confirmation and if so the distributor is required to start the medical confirmation process for existing transitional distributor life support customers.¹⁸¹

The Commission considers that these transitional arrangements 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 provided confirmation from a registered medical practitioner or not.

On and from 1 February 2019, retailers or distributors can also follow the relevant processes to deregister inaccurately registered customers and improve the accuracy of the registers as a whole. For example, retailers and distributors could make a choice to contact existing customers on their registers to ask them if they needed life support, and go through the deregistration process if they said that they did not. However, it would not be compulsory for them to do so.

178 The obligation to inform a retailer about a life support customer (NERR s.125(2)(b)) will not apply as deemed life support customers are deemed to have provided medical confirmation to the retailer.

179 Subrule (3)(2) of Part 9 of Schedule 3.

180 Subrule (3)(3) of Part 9 of Schedule 3.

181 Ibid.

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
NERL	National Energy Retail Law
NERO	National energy retail objective
NERR	National Energy Retail Rules
NEL	National Electricity Law
NEO	National Electricity Objective

A Summary of other issues raised in submissions

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

A.1 Submissions on consultation paper

Stakeholder	Issue	AEMC response
Citipower 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. ¹⁸² 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. ¹⁸³ Distributors be obliged to notify retailers when a customer informs them there is no need for life support equipment. ¹⁸⁴	The draft rule imposed parallel obligations on retailers and distributors to share relevant information with regards to life support records. ¹⁸⁵ 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.

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

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

184 United Energy, p. 3.

185 Rule 124B

Stakeholder	Issue	AEMC response
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.	<p>The final 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.</p> <p>There is a risk of information not being fully captured in the centralised register. Each party maintaining its own register is the least risk approach.</p>
Endeavour (p. 4)	There is scope to align the proposed registration process with the existing rebate schemes offered by state governments to life support customers.	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.
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, e.g. 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.

Stakeholder	Issue	AEMC response
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. ¹⁸⁶

A.2 Submissions on draft determination

Stakeholder	Issue	AEMC response
AER (p.4)	The inclusion of 'promptly' in the draft rules may limit the AER's ability to enforce the rules given it introduces a subjective element into the drafting. AER's proposed approach would be for it to be replaced either with a specific timeframe or no prescriptive timeframe at all. AER considers that 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.	The Commission has removed any instructions on the participants to act 'promptly'.
EQ (p.6), SAPN (p.4)	The draft rule prescribes some instances of timeframe in 'business days' while prescribing other instances in days. EQ recommended that these rules should be amended to read '15 business days' to ensure consistency with other life support process timelines. SAPN considers that all timeframes associated with the registration process, provision of information of life support customers, and deregistration process should be specified in business days.	For obligations that have to be carried out in a specific timeframe, the Commission has amended the rules to clarify all timeframes in 'business days'.
PIAC (p.3), AER (p.5)	The provision under the section 125(3) allows either the retailer or the distributor to at any time, request a life support customer to confirm	This Commission is of the view that the customers are unlikely to be contacted very frequently by the

¹⁸⁶ Rule 123

Stakeholder	Issue	AEMC response
	<p>their requirement for life support protections. Stakeholders are concerned that this could lead to unsolicited and frequent contact by businesses resulting in adverse customer outcomes. PIAC suggested that rules should provide guidance around when this would be appropriate and how often a consumer can be contacted to confirm their need for life support.</p>	<p>businesses. Contacting customers can be costly and resource intensive for the businesses. Limiting how often a customer may be contacted by businesses is likely to add further complexity for businesses and to the enforceability of the rules.</p>
<p>ERM Business Energy (p.2)</p>	<p>ERM suggested that the requirements on the retailer to provide information to assist customers ‘prepare a plan of action’ carries the risk of retailers providing professional advice in an area to which they have no control nor current exposure. ERM suggested it should either be provision from a consistent pamphlet, or link used across industry mandated provision of the distributor.</p>	<p>Information to assist customers “prepare a plan of action”, is currently required to be provide by distributors to customers. Retailers may choose to pass on information that has been prepared by distributors or work with distributors to harmonise the information provided.</p>
<p>AGL (p.4)</p>	<p>AGL was concerned that the rules did not require the distributor to issue a jurisdictional energy concession form to the customer, along with the medical confirmation form once informed by the customer of their life support requirements. AGL was concerned that this would place extra administrative burden on the customer of providing the medical confirmation form to the distributor and the energy concession form to the retailer. AGL would prefer that Life Support customers are referred by the Distributor to the Retailer for the initial processing of the Life Support request so that the Retailer can be sure of the details regarding the account holder, the Life Support patient and that all necessary forms are provided in the initial pack to the customer.</p>	<p>As the customer has a direct financial relationship with the retailer, it would be appropriate for them to have to send their concession form to the retailer.</p> <p>Allowing the customer to approach either their retailer or distributor for life support protections is a key feature of the current and new life support rules.</p> <p>In the scenario where a customer has contacted the distributor regarding life support requirements, it would be clearer for the customer to deal with the distributor to attain their life support protections and the retailer for the concession.</p>
<p>ERM Business Energy (p.3)</p>	<p>ERM Business Energy suggested that binding life support registration to effective dates is unnecessary and should be removed and that the additional variable of effective dates adds to the likelihood of registration errors. ERM suggested that life support status should be activated immediately from registration until deregistration (that is, a site is registered as life support until it is not) simplifying the</p>	<p>Recording and passing onto the other party the date from which the life support equipment is required allows life support protections to be targeted to when they are needed. The effective date is required in order to cover situations where a customer is moving into a new home or a person requiring life support</p>

Stakeholder	Issue	AEMC response
	registration and removing the requirement of life support prospective dates or active periods.	equipment is moving into the customer's existing home.
EQ (p.6)	EQ is concerned that there is nothing in the draft rule to prevent customers from repeatedly recommencing the registration process (and receiving life support protections) without ever providing medical confirmation. EQ suggested limiting the number of times registration process can be re-initiated without medical certificate or providing for a shortened registration process for those previously deregistered for not providing medical confirmation.	The Commission is of the view that this is unlikely to occur very often. Making amendments such as limiting the number of times the registration process can be reunited to cover such unlikely scenarios would not be prudent.
PIAC (p.1)	PIAC is concerned that rental property managers, brokers and switching sites might unwittingly shift a vulnerable consumer to a new retailer without ensuring that the new retailer is aware of the life support requirement.	In this scenario the customer will have responsibility to inform their new retailer or distributor of the need for life support equipment. The practices of these agents are a broader issue outside the scope of this rule change request.
EQ (p.8)	EQ considered that it would be appropriate for the registration process owner to maintain the information specified in Rule 126, however it should only be necessary for the other party to maintain the details of the date when the customer requires life support registration and the date when the premises is deregistered.	The Commission is of the view that both parties should be required to maintain appropriate information to facilitate compliance with the final rule.
ENA (p.5)	ENA stated that the current definition of life support equipment is wide-ranging, which may see some equipment that is required intermittently or to improve quality of life, but not required for life support purposes being included and certified as life support equipment. ENA suggested that a further education program with doctors via the Australian Medical Association may be appropriate.	The Commission considers this suggestion to be out of scope of this rule change, though is an approach stakeholders could consider.
ENA (p.6)	ENA suggested that the Rules should allow confirmation reminder notices being sent electronically.	The Commission considers the medical confirmation form and the confirmation reminder notices should be sent in writing.

Stakeholder	Issue	AEMC response
ENA (p.6)	ENA's members support amendments to the Rules which would allow the customer's retailer to deregister a customer for not providing medical confirmation. ENA does not support distributors managing this confirmation process.	Allowing the customer to approach either their retailer or distributor for life support protections is a key feature of the current and new life support rules. Subsequently either the retailer or distributor is required to manage the process of obtaining medical confirmation.
PIAC (p.2)	For the deregistration process under the draft rule when customer has had a change in circumstances, the requirement to 'take reasonable steps' to verify advice with customer be clarified.	The deregistration process for when a customer advises of change in circumstances has been amended in the final rule. There is no a longer a requirement on the businesses to contact the customer to verify received advice.

B Legal requirements under the NERL

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

B.1 Final rule determination

In accordance with s. 259 and s.261 of the NERL the Commission has made this final rule determination and final rule in relation to the rule proposed by the AER.

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

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

B.2 Power to make the rule

The Commission is satisfied that the more preferable final rule falls within the subject matter about which the Commission may make rules. The more preferable final 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 services¹⁸⁷
- regulating the activities of persons involved in the sale and supply of energy to customers.¹⁸⁸

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 final rule. The reasons for the Commission's decision are set out in Chapter 3.

¹⁸⁷ Section 237(1)(a)(i) of the NERL

¹⁸⁸ Section 237(1)(a)(ii) of the NERL

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 and second rounds of consultation
- the Commission's analysis as to the ways in which the proposed rule will or is likely to, contribute to the NERO.

There is no relevant Ministerial Council on Energy (MCE) statement of policy principles for this rule change request.¹⁸⁹

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 more preferable final rule amends rules 124, 124A, 125 and 126 of the NERR. Subrules 124(1), 124(2), 125(2) and 126(1) of the NERR are classified as civil penalty provisions under Schedule 1 of the National Energy Retail Regulations.

Where the final 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 final 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.

¹⁸⁹ 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.

The Commission is proposing to recommend, subject to consultation with the AER, to the COAG Energy Council that rule 124, rule 124A, subrule 124B(1), subrule 124B(2), rule 125 and rule 126 should attract a civil penalty.

The Commission considers that these provisions should be classified as a civil penalty provision to maintain continuity with the civil penalty provisions in the current life support rules, though these are substantially rewritten and expanded by the final rule. The Commission further considers that detriment to consumers (by not receiving the life support protections when appropriate) could occur if the new provisions are not complied with, and that classifying these provision as civil penalty provisions will assist in avoiding this detriment by increasing compliance.