

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

3.3.3

Conclusion

The Commission's draft decision is to develop a more preferable solution rather than EWON's proposed solution.

After considering available evidence and stakeholder feedback on EWON's proposed rule the Commission has concluded that:

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

Given uncertainty regarding the extent of the issue, privacy considerations, the possibility of increasing the risk of a customer being deregistered (see section 3.3.1) and the number of other issues relating to life support raised in submissions (see section 4.5), the Commission does not consider that a rule with a large cost impost to be appropriate at this time.

Nevertheless, the Commission considers that other solutions to address the underlying issue should be explored and that it is appropriate that an alternative solution with lower cost imposts and less risk of inadvertent deregistration is developed.

4 THE MORE PREFERABLE DRAFT RULE

This chapter considers alternative solutions put to the Commission to address the issue raised by EWON. The more preferable draft rule (draft rule) and its potential benefits are described in detail. In summary, the changes are designed to enable a process whereby life support customers are able to receive and utilise a copy of their previously submitted medical confirmation form (MCF) or medical confirmation document (whichever is applicable) for the purpose of providing medical confirmation to their new retailer or DNSP. This chapter outlines:

- Alternative solutions raised by stakeholders as a solution to the issue raised by EWON and the Commission's response to these
- The Commission's rationale for a more preferable draft rule
- Elements of the draft rule
- Benefits of the draft rule
- Other issues raised by stakeholders that were outside the scope of this rule change

4.1 Alternative solutions proposed by stakeholders

This section outlines the six major alternative solutions proposed by stakeholders in submissions to the consultation paper. The Commission has not included the alternative suggestions provided by stakeholders which provided less complete resolution of the underlying issue.⁶⁹ Solutions that dealt with other issues or partially addressed the problem are noted in section 4.5.

4.1.1 Solutions proposed

Return of the medical confirmation document to the customer on switching

EnergyAustralia, Tango Energy and the AEC suggested that a requirement be instituted for the outgoing RPO to provide the customer with the completed MCF or confirmation document. This document would need to be accepted by the incoming RPO as medical confirmation. These stakeholders noted that this approach would maintain an efficient risk allocation, and that RPOs would not face the same privacy concerns than what was proposed under EWON's solution.⁷⁰

Development of a centralised database

SAPN and Meridian Energy suggested that a centralised database with DNSPs being solely responsible for obtaining and maintaining MCFs would provide positive customer outcomes and improve efficiency.⁷¹ PIAC also supported the approach for the DNSP as the sole RPO, as de-energisation requests are generally still actioned by the DNSP (however a centralised

⁶⁹ For example, the Commission has not addressed in this section PDCN's suggested solution which is the development of system that allows individuals to indicate that their disabilities are permanent and ongoing and bypass the need to provide updated information when they switch retailers or move house. This solution only partially addresses the issue raised by EWON.

⁷⁰ Submissions to consultation paper: EnergyAustralia, p. 5; Tango Energy, p. 1; AEC, p. 5.

⁷¹ Submissions to consultation paper: SAPN, p. 3; Tango Energy, p. 4.

The Commission also notes that it is prioritising its work program to optimise resourcing and stakeholder feedback, particularly in light of major consultation being done as part of the ESB post-2025 project, which the Commission has been closely involved. Rule change requests received during the current financial year will also be considered within this prioritisation framework.

Industry-led initiatives

The Commission suggests that stakeholders interested in making changes to the life support framework also consider a variety of mechanisms available to:

- coordinate industry views on detailed reforms of the framework which may be needed
- address issues which can be resolved without regulatory intervention.

The Energy Charter, which has been developed as a forum for participants across the supply chain to improve customer experience while going beyond regulatory requirements, may be one such mechanism to address some life support issues.⁹⁰ In addition, the Australian Energy Foundation started a research and consultation process in August 2020 on better ways of supporting life support customers.⁹¹ This process may be a useful way to determine detailed changes needed, and drive industry consensus on these measures. The Commission would also encourage consultation be undertaken with the AER on any proposed amendments.

By leveraging such mechanisms, participants with deep operational expertise may be able to develop low cost, effective solutions without explicit regulatory action while improving life support customer outcomes or, at a minimum, suggest a comprehensive set of reforms to market bodies for consideration. For instance, RPOs could make a commitment to check life support status when a customer signs up or changes energy plans without the Commission making this an obligation.⁹²

90 "The Energy Charter complements existing regulatory obligations by setting out direct commitments from energy businesses to their customers and stakeholders, with the intent to go above and beyond what is required by law so as to deliver improved customer outcomes." Energy Charter, *The Energy Charter - First Edition* January 2019, January 2019, p. 5.

91 <https://energyconsumersaustralia.com.au/news/three-new-grants-approved-by-energy-consumers-australia-board-of-directors>

92 The Commission understand most retailers already implement this in practice across the NECF, with regulation in Victoria mandating this.

ABBREVIATIONS

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

A SUMMARY OF OTHER ISSUES RAISED IN SUBMISSIONS

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

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

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

STAKEHOLDER	ISSUE	COMMISSION RESPONSE
	fields are completed.	and RPOs have two different sets of information on customers.
AusNet Services	Considered that rule 125(14) and similar Victorian obligations strike the right balance in allowing businesses to manage old and incorrect records and providing a high level of protection to customers with life support equipment.	Upon review, the Commission considers that changes to rule 125(14) of the NERR are outside the scope of this rule change request. It also considers that information provided indicates that current industry practice for both retailers and DNSPs has been very conservative with respect to deregistration of customers, thus minimising the prospects of adverse customer outcomes.
Physical Disability Council of New South Wales	PDCN would like to see a system to allow individuals to indicate that their disabilities are permanent and ongoing and bypass the need to provide updated information when they switch retailers or move house.	This issue merits consideration but is outside the scope of this rule change request.
Public Interest Advocacy Centre	PIAC does not consider it appropriate that, where a distributor is the RPO, it may deregister the consumer's premises upon learning a consumer has switched retailers (125(14) of the NERR). Switching retailers should not indicate that life support equipment is no longer needed. PIAC recommends removing this section from the NERR to ensure a consumer's status does not change.	Upon review, the Commission considers that changes to rule 125(14) of the NERR are outside the scope of this rule change request. It also considers that information provided indicates that current industry practice for both retailers and DNSPs has been very conservative with respect to deregistration of customers, thus minimising the prospects of adverse customer outcomes.

B LEGAL REQUIREMENTS UNDER THE NERL

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

B.1 Draft rule determination

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

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

A copy of the more preferable draft rule is attached to and published with this draft rule determination. Its key features are described in section 4.3.

B.2 Power to make the rule

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

B.3 Commission's considerations

In assessing the rule change request the Commission considered:

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

There is no relevant Ministerial Council on Energy (MCE) statement of policy principles for this rule change request.⁹³

B.4 Civil penalties

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

The Commission's more preferable draft rule amends:

⁹³ Under s. 225 of the NERL the AEMC must have regard to any relevant MCE statement of policy principles in making a rule. The MCE is referenced in the AEMC's governing legislation and is a legally enduring body comprising the Federal, State and Territory Ministers responsible for energy. On 1 July 2011, the MCE was amalgamated with the Ministerial Council on Mineral and Petroleum Resources. The amalgamated council is now called the ministerial forum of Energy Ministers.

- rule 124(1)(b) and 124(4)(b) to require retailers and distributors to inform customers that for the purpose of providing medical confirmation, the customer may submit a copy of the medical confirmation that was submitted to their previous retailer or distributor (existing confirmation), provided the existing confirmation is dated less than 4 years ago and is legible
- rule 124A(1) to clarify that the 'medical confirmation form' referred to in this rule is that provided under subrules 124(1)(b)(i) or 124(4)(b)(i).

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

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

B.5 Conduct provisions

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

The more preferable draft rule does not amend any rules that are currently classified as conduct provisions under the NERL or the National Energy Retail Regulations. The Commission does not propose to recommend to the ministerial forum of Energy Ministers that any of the proposed amendments made by the more preferable draft rule be classified as conduct provisions.