

14 January 2021



Mr Conrad Guimaraes
Australian Energy Market Commission (AEMC)
GPO Box 2603
Sydney NSW 2000

Dear Mr Guimaraes

AEMC DRAFT RULE DETERMINATION: MAINTAINING LIFE SUPPORT CUSTOMER REGISTRATION WHEN SWITCHING (RRC0038)

Endeavour Energy appreciates the opportunity to provide feedback to the AEMC's draft rule to enable life support customers to reuse medical certificates and confirmation forms when switching retailers or moving premises. To facilitate this, the draft rule requires the registration process owner (RPO) to:

- keep medical confirmation for 110 business days after the person ceases to be a customer;
- return medical confirmation to the customer upon request and within 10 business days (subject to applicable privacy laws); and
- inform the customer that medical confirmation provided to their previous retailer or distributor can be re-utilised provided it is dated less than four years and is legible.

We recognise the current requirement to resubmit medical confirmation presents a barrier which may deter some life support customers from switching retailers. In our view, the draft amendments will make it easier for customers to actively engage in the retail market by reducing the cost and effort required to maintain their life support registration.

Relative to the original proposed rule, the draft rule lowers the risk of inadvertent deregistration; avoids the costs of establishing a secure information sharing platform; and alleviates concerns relating to the transfer of personal medical information between RPOs without informed and explicit customer consent. We agree that the current draft arrangements are preferable to the proposed rule as they are more likely deliver improved safety, price and privacy outcomes to life support customers.

Suggested minor amendments to the draft rule

The draft amendments could be further improved if the rule obligating RPOs to keep medical details for 110 business days only applied where the medical confirmation is less than four years old. This will avoid RPOs being obliged to keep documents that have expired and cannot be used by the customer as medical confirmation for future life support registration purposes.

The draft rule should also more comprehensively consider the various ways a retailer or distributor might obtain the medical confirmation, including situations where the customer has provided confirmation to the non-RPO business. This could be achieved by including each clause referred to in draft rules 124B(1A) and 124B(2A) into the draft rule 126(2) to make the medical confirmation return and storage obligations consistent across the full range of scenarios potentially encountered when registering a life support customer.

Compliance with privacy laws requires a robust verification process

Given the personal nature of the information contained in medical confirmation documents, it would be appropriate for RPOs to verify a life support customer's personal information prior to returning the medical confirmation. However, RPOs may have limited ability to apply a verification process that ensures applicable privacy laws are adhered to in every instance.

Distributors could be particularly challenged as networks typically do not capture customers' personal information as frequently and to the same level of detail as retailers and therefore may not have access to information required to cross-check and confirm a requesting customer's identity. An inability to confidently verify a customer may add to existing reservations about releasing copies of medical

confirmation to a requesting customer who has moved to a new address which differs from the one detailed in the documentation or conflicts with the customer information held by the RPO.

We note the need for retailers and distributors to verify a life support customer's deregistration request was discussed during the *Strengthening protections for customers requiring life support equipment* rule change (2017). Ultimately, the AEMC determined the two-stage verification process initially proposed in the draft rule was inefficient, duplicative and potentially distressing for the customer. The final rule adopted a more streamlined process that better balances the risk of erroneous deregistration against the benefits of reduced administrative costs and customer frustration adopted in the final rule¹.

The consequences of erroneous deregistration are arguably more severe than the inadvertent disclosure of a life support customer's medical confirmation to another party. Therefore, the verification process required to comply a request to return medical confirmation should be no more thorough or extensive than the steps retailers and distributors are currently required to follow in deregistering a customer when notified of a change in their life support circumstances. These steps are set out in rules 125(9) and 125(10) of the National Energy Retail Rules (NERR) respectively.

If the AEMC determines that this (or a similar) verification approach is not adequate in the context of this rule, we recommend the final rule determination provide clear advice to retailers and distributors on what effective verification that complies with applicable privacy laws might entail. Ideally, the verification process would be prescribed in the NERR to provide businesses with clear and consistent obligations which would also facilitate compliance monitoring and enforcement.

If a prescriptive approach is adopted, it is important that any new processes or system changes required by RPOs to implement the final rule be kept to a minimum to ensure costs remain proportionate to the benefits, particularly as the extent of the issue the rule change is attempting to address remains unclear.

Further changes are required to improve the life support framework

Stakeholder submissions to the rule change consultation paper revealed there are several issues with the life support framework that require attention but may be out of the scope of this rule change. From a network perspective, we are concerned that life support registers risk becoming increasingly inaccurate. This adds unnecessarily to network costs and resource requirements to manage planned and unplanned interruptions and, in part, can be attributed to the risk of civil penalties driving a general reluctance to deregister customers who have not provided medical confirmation.

Given the AEMC's need to prioritise a congested work program, it may be preferable to consider future prospective amendments to the life support framework through a consolidated rule change or alternatively via industry-led initiatives. We support pursuing improvements through flexible and collaborative stakeholder forums in the first instance and limiting conventional regulatory intervention via a rule change process on issues where industry consensus cannot be reached.

If you wish to discuss our submission further please contact Joe Romiti, Regulatory Analyst at Endeavour Energy on (02) 9853 6232 or via email at joseph.romiti@endeavourenergy.com.au.

Yours sincerely



Colin Crisafulli
Manager Network Regulation

¹ AEMC, Final rule determination, *Strengthening protections for customers requiring life support equipment*, 19 December 2017, p. 35