

Australian Energy Market Commission

DRAFT RULE DETERMINATION

NATIONAL ENERGY RETAIL AMENDMENT (MAINTAINING LIFE SUPPORT CUSTOMER REGISTRATION WHEN SWITCHING) RULE

PROPONENT

Energy and Water Ombudsman of New South Wales

5 NOVEMBER 2020

INQUIRIES

Australian Energy Market Commission
GPO Box 2603
Sydney NSW 2000

E aemc@aemc.gov.au
T (02) 8296 7800

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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

- 1 The Australian Energy Market Commission's (Commission) draft rule determination is to make a more preferable draft rule (draft rule) that amends the National Energy Retail Rules (NERR) to reduce barriers for life support customers¹ who switch retailer or distribution network service provider (DNSP).
- 2 The draft rule introduces an obligation on the outgoing registration process owner (RPO) (the retailer or DNSP contacted by the customer for life support registration purposes) to provide the customer with a copy of the medical confirmation form (MCF) and/or medical confirmation document used to register the customer's premises on request. It also allows customers to reuse confirmation documents for the purpose of providing medical confirmation to the incoming RPO.
- 3 This process is expected to reduce costs and mobility challenges related to medical visits for life support customers. Customer safety is also maintained by the combination of a simpler registration process while maintaining a degree of customer responsibility to pass accurate information to RPOs.

Background

- 4 Life support requirements are designed to provide additional customer protections and require retailers and DNSPs to register premises that have a person using life support equipment (such as an oxygen concentrator or kidney dialysis machine) that relies on electricity or gas to operate. The requirements facilitate the provision of information to parties that need to be aware of life support equipment at a premises, and impose obligations on retailers and DNSPs to provide additional safeguards around de-energisation for customers using life support equipment that relies on electricity or gas to operate.
- 5 The NERR was revised in December 2017, when the Commission made a final rule to strengthen protections for life support customers (the *Strengthening protections for customers requiring life support equipment* rule change).² The rule came into effect on 1 February 2019. Amongst other things the rule enabled customers to receive the protections of the life support rules from the time the customer informs the RPO of its life support status. In addition, the rule required the RPO to notify customers of their rights and obligations under the life support rules and follow a prescribed process for obtaining medical confirmation and if the RPO chooses to remove a customer from the register where medical confirmation is not provided.

Rule change process and the proposed rule

- 6 On 11 June 2020, the Energy and Water Ombudsman of New South Wales (EWON)

1 The terms 'customers who need life support equipment' and 'life support customers' are used in this draft 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.

2 AEMC, *Strengthening protections for customers requiring life support equipment rule change*, available at: <https://www.aemc.gov.au/rule-changes/strengthening-protections-for-customers-requiring>.

submitted a rule change request that sought changes to the NERR to maintain life support registration when a life support customer changes premises or retailer. Under the current rules, customers that are registered as life support customers may be required to re-submit medical confirmation following a change of premises or retailer (depending on who the RPO for the customer is in each circumstance). EWON considers that the resubmission of medical confirmation creates barriers for life support customers from fully participating in the retail energy market.

7 The rule proposal sought to enable the transfer of medical information between the outgoing and incoming life support RPOs, following a customer change of premises or retailer. These changes would reduce the need for an incoming RPO to require customers to submit medical confirmation, thus lowering imposts on life support customers.

8 The Commission published a consultation paper to seek stakeholder feedback on the rule change request on 6 August 2020. 33 stakeholders provided submissions, raising a wide range of issues.

Consideration of the proposed rule

9 After consideration of the proposed rule and stakeholder submissions, the Commission is of the view that it is likely that the solution proposed in EWON's rule change request would be costly and complex to implement. There is also the potential for the increased risk of inadvertent deregistration of life support customers if the customer expects medical confirmation to be transferred, but they had not provided medical confirmation to the outgoing RPO (RPOs are not required to deregister life support customers if they fail to provide medical confirmation of their life support requirements).

10 There is limited evidence around the extent of the issue, and the Commission considers that the costs of the proposed solution would likely outweigh the benefits. Nevertheless, the Commission considers that the health impacts in relation to life support customers can be serious, and that other avenues which can improve the ease in which life support customers can access competition at lower costs (without reducing safety) should be considered. An alternative solution that involves smaller adjustments to the NERR to better minimise risks of deregistration while increasing access to retail competition may be an appropriate response to the issue raised by EWON.

The more preferable draft rule

11 The more preferable draft rule (draft rule) amends several clauses of Part 7 of the NERR to enable life support customers to receive back and re-utilise their MCF or other documents submitted for medical confirmation purposes (referred to in this draft determination as "medical confirmation document[s]") for life support registration purposes when switching or moving. The key components of the draft rule are:

- A requirement for the outgoing RPO to, subject to applicable privacy laws, return the MCF and/or medical confirmation documents to the customer within 10 business days of the customer's request.

- A requirement for RPOs to keep the MCF and/or medical confirmation document for 110 business days after the person has ceased to be a customer.
- A requirement for the incoming RPO to inform the customer that an MCF and/or medical confirmation document from their previous retailer or DNSP can be re-utilised for medical confirmation purposes.
- Allows customers to reuse medical confirmation that was submitted to the outgoing RPO for the purpose of providing medical confirmation to the incoming RPO, provided it is dated less than 4 years ago and is legible.
- An update to the definition of "medical confirmation" to clarify that a medical certificate may be used to provide medical confirmation.

- 12 The draft rule aims to make it easier and reduce the cost for existing life support customers registering for life support if they switch retailers or move premises. This is likely to reduce barriers to engaging in the retail market for life support customers. Further, by clarifying that RPOs must accept medical certificates as medical confirmation and the responsibilities for outgoing and incoming RPOs with respect to the return, storage and acceptance of forms safety outcomes are likely to be improved.
- 13 The Commission also considered the effect of the draft rule with respect to the allocation of risks and avoidance of unnecessary costs. The draft rule will likely reduce administrative costs for life support customers when compared to current arrangements by enabling these customers to obtain and reuse their existing confirmation documents for the purpose of providing medical confirmation to the incoming RPO.
- 14 The Commission proposes that the more preferable draft rule (if made) will commence on 4 March 2021.

Other issues raised with respect to life support

- 15 A number of other issues relating to life support were raised by stakeholders. The majority of these issues were outside the scope of the rule change request, which focused on reducing barriers to retail competition for life support customers. For example, some stakeholders suggested that an obligation be introduced for RPOs to deregister customers who do not provide medical confirmation within the period prescribed in the NERR (currently RPOs have a choice on whether to deregister these customers).
- 16 The Commission recognises the importance of the life support framework and the need for industry to pursue improvements in life support customer experience. Many of the issues raised could require significant changes to current regulatory settings, which were only fully introduced in February 2019. The Commission considers it may therefore be appropriate to consider these issues as part of more holistic review process, or a consolidated rule change process, rather than through a piecemeal approach requiring several rule changes. The Commission also notes that it is currently prioritising its work program to optimise resourcing and stakeholder feedback.
- 17 It is recommended that stakeholders interested in making changes to the life support framework also consider a variety of mechanisms available to coordinate views and develop

detailed reform proposals needed to the framework and consider addressing some issues without changes to the NERR. For example, the Energy Charter has been developed as a forum for participants across the supply chain to improve customer experience while going beyond regulatory requirements. Stakeholders should explore opportunities afforded through industry cooperation that may deliver lower cost solutions and better customer outcomes.

Consultation on draft determination

18

The Commission invites submissions on this draft rule determination, including the draft rule, by **14 January 2021**.

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1 EWON'S RULE CHANGE REQUEST

The Energy and Water Ombudsman of New South Wales (EWON) submitted a rule change request to the Commission in June 2020 seeking to improve current life support registration arrangements for life support customers who switch retailer or premises. This section outlines:

- the current life support arrangements
- switching-related arrangements for life support customers
- medical confirmation roles and responsibilities
- EWON's rule change request.

1.1 Current arrangements

Life support requirements are designed to provide additional customer protections and require retailers and DNSPs to register premises that have a person using life support equipment (such as an oxygen concentrator or kidney dialysis machine) that relies on energy to operate. The requirements facilitate the provision of information to parties that need to be aware of life support equipment at a premises, and impose obligations on retailers and DNSPs to provide additional safeguards around de-energisation for customers using life support equipment that relies on energy to operate.

For example, rule 124B(1)(c) of the NERR states 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. Similarly, rule 124B(2)(a)(iii) of the NERR states that a distributor must not de-energise premises at which life support equipment is required, except in the case of an interruption, including under Division 6 of Part 4. Premises at which life support equipment is required cannot be disconnected for non-payment.

Part 7 of the NERR sets out rules for energy businesses and customers with respect to life support protections. In summary, Part 7 of the NERR contains three major types of obligations that are relevant for this rule change request, including:

- customer obligations
- retailer and DNSP obligations
- requirements for registration and deregistration of life support protections.

Part 7 of the NERR was revised in December 2017, when the Commission made a final rule to strengthen protections for life support customers (the *Strengthening protections for customers requiring life support equipment* rule change).³ The rule came into effect on 1 February 2019. Further information is provided in Box 1 below.

³ AEMC, Strengthening protections for customers requiring life support equipment, Final rule determination, 19 December 2017. Available at: <https://www.aemc.gov.au/rule-changes/strengthening-protections-for-customers-requiring>.

BOX 1: STRENGTHENING PROTECTIONS FOR CUSTOMERS REQUIRING LIFE SUPPORT EQUIPMENT RULE CHANGE

On 19 December 2017, the Commission published a final rule determination on a rule change request from the Australian Energy Regulator (AER) to strengthen protections for customers that have a person requiring life support equipment residing at their premises.

The AER's rule change request was motivated by concerns over the accuracy of life support registers, difficulties in enforcement and lack of customer awareness of the need to provide medical confirmation.

Key features of the final rule:

- Customers receive the protections of the life support rules from the time they inform their retailer or distributor
- The registration process owner (RPO, retailer or DNSP 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
 - follow a prescribed process if the registration process owner chooses to remove a customer from the register where medical confirmation is not provided
- Non-registration process owner can deregister the premises where medical confirmation is not provided and the registration process owner has deregistered the customer.

Source: AEMC, Strengthening protections for customers requiring life support equipment, Final rule determination, 19 December 2017.

1.1.1

Customer obligations

Customers have certain important obligations under the life support rules. These obligations primarily relate to keeping the businesses that provides them with energy services aware of the need for additional life support protections in line with changing circumstances they may face.

Under the NERR, customers are expected to:

- notify their retailer or DNSP of the need of someone residing at the premises for life support protections⁴
- provide their retailer or DNSP with medical confirmation within 50 days of an initial request by the DNSP or retailer, although extensions can be requested by the customer⁵
- inform their retailer or DNSP of any changes to their circumstances, including when they switch retailers or move premises.⁶

⁴ NERR, 124(1) and 124(4).

⁵ NERR, 124A(1).

⁶ NERR, 125(9).

1.1.2

Retailer and DNSP obligations

Retailer and DNSP obligations under Part 7 of the NERR are largely the same due to the need for customer protections to be identical regardless of whether a customer first contacts, and is registered with, a retailer or a DNSP.

The retailer or DNSP that first registers the customer is known as the "registration process owner" (RPO).⁷ The RPO is responsible for initially registering the customer, requiring and recording medical confirmation and updating the customer registration in line with changes in the customer's circumstances. In this paper, the Commission will utilise the term RPO to refer to the energy business that holds the customer's medical confirmation.

Retailers and DNSPs both need to be aware of a customer's life support equipment requirements for a number of reasons. For example, retailers must be aware of a customer's status in order to avoid retailer-planned interruption or premises for non-payment. DNSPs play a critical role with respect to the de-energisation of a customer's premises when network repairs occur. Despite differing practical roles, both retailers and DNSPs have significant and nearly identical legal obligations as RPOs.

Under Part 7 of the NERR, a retailer or distributor must:

- register a life support customer when notified by them of the need of a person residing or intending to reside at the premises for life support equipment.⁸
- obtain medical confirmation from customers within a prescribed time frame (in practice many businesses require a customer to complete a Medical Confirmation Form (MCF), failure to provide the MCF could result in deregistration of the customer).⁹
- notify their counterpart business (i.e. the relevant retailer or DNSP which is not the RPO) about the newly registered customer's life support requirements and the date from which the life support equipment is required.¹⁰
- provide life support customers with information on unplanned interruptions and on how to develop a plan for when there are outages.¹¹
- take reasonable steps to contact the life support customer prior to deregistration of the customer as requiring life support protections.¹²
- establish policies, systems and procedures for registration of life support customers (for example, maintain a register of life support customers).¹³

1.1.3

Medical confirmation

Medical confirmation is a critical component of Part 7 of the NERR. Medical confirmation is a requirement imposed on customers under the rules to obtain information about the life

⁷ This term is not defined in the NERR but is widely used, for instance see, AER, Life support registration guide, 2019.

⁸ NERR, 124(1)(a), and 124(4)(a).

⁹ NERR, 124(1)(b)(i), 124(4)(b)(i), 125(4).

¹⁰ NERR, 124(1)(c), and 124(4)(c).

¹¹ NERR, 124(1)(b)(iv)-(v), and 124(4)(b)(iv)-(v).

¹² NERR, 125(4), (5), (9), (10) and (14).

¹³ NERR, 126(a).

support requirements at the premises. Medical confirmation enables life support protections to be maintained for those customers who have a person residing at their premises that requires life support equipment.

Section 123A of the NERR currently defines 'medical confirmation' as:

certification from a registered medical practitioner that a person residing or intending to reside at a customer's premises requires life support equipment

The rules also prescribe that the RPO must send life support customers a MCF when the customer informs it that someone at the premises requires life support equipment. Among other things the form must:¹⁴

- include a statement that completion and return of the form to the energy business will satisfy the requirement to provide medical confirmation under the NERR
- request the following information from the customer:
 - property address
 - the date from which the customer requires supply of energy at the premises for the purposes of the life support equipment
 - medical confirmation
- specify the types of equipment that fall within the definition of life support equipment;
- advise the customer that they can request an extension of time to complete and return the form.

Where medical confirmation is not provided, section 125(4) of the NERR allows an RPO to deregister a customer as a life support customer, providing it follows the prescribed process.

1.1.4

Requirements when switching retailers or moving premises

Under Part 7 of the NERR, if a life support customer moves house or changes energy providers, they may be required to resubmit medical confirmation in some, but not all, scenarios.

The rules contain two explicit references to customers switching retailers:

- Under rule 124B(2)(b), where a DNSP is the RPO and becomes aware that a customer has switched to a new retailer (at the same premise), life support registration will likely be maintained without the customer being required to resubmit medical confirmation.
- Under rule 125(14), where a retailer is the RPO and the customer switches to a new retailer and does not inform their new retailer that life support equipment is required at their premises, the DNSP may deregister the premises as requiring life support protections, provided it follows the prescribed process for notifying the customer.

In practice, under the current rules, an existing life support customer may be required by a retailer or DNSP to resubmit medical confirmation where the customer:

- moves to a new premises and changes retailer (retailer or DNSP is RPO)

¹⁴ NERR, 124(6).

- moves to a new premises within the same distribution zone and remains with current retailer (DNSP is RPO)
- moves to a new premises in a different distribution zone and remains with current retailer (DNSP is RPO)
- remains at the same premises but switches retailers (retailer is RPO).

As part of its 2017 *Strengthening protections for customers requiring life support equipment* rule change, the Commission made a decision with respect to the appropriate allocation of responsibility for the submission of medical confirmation where life support customers change premises or retailer. The Commission's final determination noted 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.

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...the registration process is not particularly onerous for the customer, especially if they already have certification from a registered medical practitioner.

The 2017 decision prioritised the accuracy of life support registers as a way of protecting life support customers. This objective was underpinned by allocating customers with the responsibility of notifying and providing relevant medical confirmation when switching retailer or moving premises. The Commission considered that this approach best reduced risk of errors in allocating life support protections.

1.2 The rule change request

On 11 June 2020, the EWON submitted a rule change request to the Commission that sought changes to the NERR to maintain life support registration when a customer changes premises or retailer.

1.2.1 Issue

Under the current rules, in some situations retailers and distribution network service providers (DNSPs) may require the re-submission of medical confirmation of life support following a change of premises or retailer for customers already registered as life support customers. EWON considers that the resubmission of medical confirmation creates barriers for life support customers from fully participating in the retail energy market.

The rule proposal sought to enable the transfer of medical information between outgoing and incoming life support registration process owners (RPO),¹⁵ following a customer change of premises or retailer.

EWON considered changes should be made to the NERR because:¹⁶

- costs associated with the resubmission of medical confirmation deter life support customers from switching retailers
- current arrangements regarding resubmission of medical confirmation impose barriers on life support customers that are not faced by other types of customers.

As outlined in section 1.1.4, the NERR enables retailers and DNSPs to require a re-submission of medical confirmation in various situations. Resubmitting medical confirmation can lead to costs to life support customers that are not faced by other types of customers.¹⁷ These include:

- the cost of the medical appointment and travel
- the time and inconvenience related to the medical appointment, particularly for customers which have mobility challenges.

1.2.2

Proposed solution

EWON's request proposed that changes be made to the NERR to enable the transfer of medical information between outgoing and incoming life support RPO, following a customer's change of premises or retailer.

These changes would reduce the need for an incoming RPO to require customers to resubmit medical confirmation, thus lowering imposts on life support customers who engage with the retail market. The rule change request did not include a proposed rule.

Further information on EWON's proposed solution is provided in section 3.1.

1.3

The rule making process

On 6 August 2020, the Commission published a notice advising of its commencement of the rule making process and consultation in respect of the rule change request.¹⁸ A consultation paper identifying specific issues for consultation was also published. Submissions closed on 3 September 2020.

The Commission received 33 submissions as part of the first round of consultation. The Commission considered all issues raised by stakeholders in submissions. Issues raised in submissions are discussed and responded to throughout this draft rule determination. As discussed in section 4.5 a number of issues were raised with the Commission on the life support framework but that were outside the scope of this rule change. Issues that are not addressed in the body of this document are set out and addressed in Appendix A.

¹⁵ RPO is defined and discussed in section 2.1.2.

¹⁶ EWON, Rule change request, p. 2.

¹⁷ Ibid.

¹⁸ This notice was published under s. 251 of the National Energy Retail Law (NERL).

1.4 Consultation on draft rule determination

The Commission invites submissions on this draft rule determination, including the more preferable draft rule, by 14 January 2021.

Any person or body may request that the Commission hold a hearing in relation to the draft rule determination. Any request for a hearing must be made in writing and must be received by the Commission no later than 5pm 12 November 2020.

Submissions and requests for a hearing should quote project number RRC0038 and may be lodged online at www.aemc.gov.au.

2 DRAFT RULE DETERMINATION

This chapter outlines:

- the rule making test for changes to the NERR
- the more preferable rule test
- the assessment framework for considering the rule change request
- the Commission's consideration of the more preferable draft rule against the national energy retail objective
- overview of other issues raised by stakeholders on the life support framework.

Further information on the legal requirements for making this draft rule determination and the more preferable draft rule are set out in Appendix B.

2.1 The Commission's draft rule determination

The Commission's draft rule determination is to make a more preferable draft rule (the draft rule). The draft rule aims to reduce barriers for life support customer who switch retailer or DNSP by introducing an obligation on the outgoing RPO to provide the customer with a copy of the medical confirmation form (MCF) and/or medical confirmation documents on request, and allowing customers to reuse the confirmation documents for the purpose of providing medical confirmation to the incoming RPO. These obligations are expected to reduce costs and mobility challenges related to medical visits for the majority of life support customers while supporting the safety of these customers through an easier registration process, thereby reducing barriers to switching.

The draft rule made by the Commission is attached to and published with this draft rule determination. In summary, the more preferable draft rule:

- requires, subject to applicable privacy laws, the outgoing RPO to return the MCF and/or medical confirmation document to the customer within 10 business days of the customer's request
- requires RPOs to keep the MCF and/or medical confirmation document for 110 business days after the person has ceased to be a customer
- requires the incoming RPO to inform the customer that a MCF or medical confirmation document from their previous retailer or DNSP can be re-utilised for medical confirmation purposes
- allows customers to reuse medical confirmation that was submitted to the outgoing RPO for the purpose of providing medical confirmation to the incoming RPO, provided the existing medical confirmation is dated less than 4 years ago and is legible.

The definition of medical confirmation is also updated to clarify that a medical certificate may be accepted as medical confirmation. Further detail on the more preferable draft rule can be found in section 4.3.

The Commission's reasons for making this draft determination are set out in section 2.4.

2.2

Rule making test

2.2.1

Achieving the NERO

Under the NERL 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).¹⁹ This is the decision making framework that the Commission must apply.

The NERO is:²⁰

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").²¹

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.²² 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.

2.2.2

Making a more preferable rule

Under s. 244 of NERL, the Commission may make a rule that is different (including materially different) to a proposed rule (a more preferable rule) if it is satisfied that, having regard to the issue or issues raised in the rule change request, the more preferable rule will or is likely to better contribute to the achievement of the NERO.

In this instance, the Commission has made a more preferable rule. The reasons are summarised in section 2.4.

2.3

Assessment framework

In assessing the rule change request against the NERO the Commission has considered the following principles:

- **Competition and consumer choice:** where feasible, providing for customer choice in the provision of services generally leads to more efficient outcomes. Unnecessary or excessive barriers to choice may lead to less efficient outcomes, with customers being exposed to higher prices. The proposed solution and more preferable draft rule were

¹⁹ Section 236(1) of the NERL.

²⁰ Section 13 of the NERL.

²¹ Section 236(2)(b) of the NERL.

²² That is, the legal tests set out in s. 236(1) and (2)(b) of the NERL.

assessed as to whether they may facilitate greater customer choice by reducing barriers to switching and supporting life support customer choice.

- **Transparency and certainty with respect to life support roles:** protections and obligations relating to the registration and deregistration processes for confirming the need for life support equipment should be clear and understandable for all customers and participants. This minimises the risk of negative health outcomes for customers and inadvertent breaches of the rules for energy providers. Transparency and certainty around obligations can also lead to reduced costs for customers and energy providers. The Commission has assessed how the proposed solution and more preferable draft rule may improve clarity for customers and businesses regarding the switching or moving process of life support customers.
- **Allocation of risks and avoidance of unnecessary costs:** generally, the Commission considers that risks should rest with those parties best placed to manage them. For this rule change request, the primary risk allocation issue is whether current arrangements requiring the resubmission of medical confirmation in various customer switching or moving scenarios are an appropriate and efficient arrangement. The Commission has considered the level of risk that customers and businesses should bear when they change premises or retailer as well as the costs that may be incurred by energy providers to update their life support registration policies and systems.

2.4 Summary of reasons

The Commission considers that the more preferable draft rule will better contribute to the achievement of the NERO because it promotes long term interest of consumers with respect to price and safety. Customer interests with respect to price are promoted because the draft rule reduces barriers for securing life support registration, thereby facilitating engagement in the retail energy market. With respect to safety, the draft rule reduces the risk of customer being inadvertently deregistered by making the registration process easier and by clarifying that a medical confirmation document or existing MCF may be used for the purpose of providing medical confirmation during the registration process. Further, the Commission considers the draft rule meets the consumer protection test as the draft rule facilitates improved consumer protections for life support customers.

The key benefits of the more preferable draft rule are:

- improved access to retail market competition, including switching by enabling an easy and cost-free way for consumers to secure their MCF and/or medical confirmation document from their outgoing RPO
- greater transparency and certainty by clarifying that RPOs must accept medical certificates as medical confirmation while also clarifying responsibilities for outgoing and incoming RPOs with respect to the return, storage and acceptance of forms.
- reduction in most life support customers' administrative costs, when compared to current arrangements, by enabling the customer to secure their MCF and/or medical confirmation document upon request.

- maintenance of the current balanced allocation of risk and responsibilities, an approach which is likely to support customer safety by ensuring RPOs have updated information without overburdening customers with respect to submission of medical confirmation.

Compared to the solution proposed by EWON the draft rule will:

- be less costly and complex to implement
- reduce compliance challenges on RPOs with respect to privacy legislation
- remove the risk that a customer may inadvertently be deregistered either through system error or through a customer assumption that life support status has been transferred or maintained (even when this customer has not submitted a medical confirmation document with the outgoing RPO).

Further detail on the benefits of the more preferable draft rule can be found in section 4.4 below.

2.5 Other issues raised and future work

A number of issues (and potential solutions) relating to the life support framework were raised by stakeholders. The majority of these issues were outside the scope of the rule change request. These out of scope issues included:

- a requirement for RPOs to carry out deregistration of customers who do not provide medical confirmation
- the provision of detailed information on life support customer needs to assist in managing impact of outages
- the facilitation of immediate deregistration of premises with explicit customer consent
- an obligation to check life support status when any customer signs up or changes energy plans
- an obligation to regularly check the accuracy of information for existing life support customers
- a requirement for outgoing RPOs to retain life support registration for a reasonable amount of time post-transfer
- clarification of the obligations of gas retailers and DNSPs with respect to life support customers whose equipment only operates with electricity.

The Commission recognises the importance of the life support framework and the need for industry to pursue improvements of the life support customer experience which will improve efficiency and effectiveness without impacting consumer protections.

Some issues raised by stakeholders may require significant changes to current regulatory settings, some of which were only fully introduced in February 2019. It may be appropriate to consider these as part of more holistic review process rather than through a more piece meal approach requiring several rule changes. The Commission notes that rule change requests received will be considered within a prioritisation framework, which takes into consideration the significant resources industry and market bodies are dedicating to the post-2025 market design initiatives led by the ESB.

In parallel, the Commission suggests that stakeholders interested in making improvements to the life support framework consider a variety of mechanisms available to:

- coordinate industry views on detailed reforms needed to the framework
- address certain issues without regulatory intervention.

The Commission notes, for example, that the Energy Charter has been developed as a forum for participants across the supply chain to improve customer experience while going beyond regulatory requirements. By leveraging such mechanisms, such coordination could yield low cost, effective solutions without explicit regulatory action while improving life support customer outcomes. For instance, all RPOs could make a commitment to check a customer's life support status at key parts of the customer journey without the Commission making this an obligation under the NERR.²³ At a minimum, participants with deep operational expertise may be able to suggest a comprehensive set of reforms to market bodies for consideration.

These issues are discussed in detail in section 4.5.

²³ The Commission understand most retailers already implement these in practice, especially given regulation in Victoria mandates this.

3 ANALYSIS OF EWON'S PROPOSED SOLUTION

This chapter outlines:

- EWON's proposed solution
- Stakeholder feedback on issue materiality and EWON's proposed solution
- The Commission's analysis and conclusion with respect to EWON's proposed solution

3.1 EWON's proposed solution

EWON's request proposed that changes be made to the NERR to enable the transfer of medical information between outgoing and incoming life support RPO, following a customer change of premises or retailer. The rule change request did not include a proposed rule.

In the event a customer changes premises or retailers, EWON proposed that the incoming and outgoing RPO transfer the following information:²⁴

- medical confirmation form (MCF) completed by the customer and filed with the outgoing RPO
- medical certificate or confirmation filed with the outgoing RPO
- a 'communication flag' noting the customer requires continued life support protections

EWON suggested that the proposed rule change may deliver the following benefits:²⁵

- reduced costs faced by life support customers who change premises or retailer
- provision for greater life support customer choice with respect to switching retailers
- provision for a more standardised treatment of different types of life support customers where the customer changes premises or retailer.

In its rule change request, EWON also noted that the proposed rule is consistent with the application of customer protections for life support customers.

Costs identified by EWON in its request included that the proposed rule change may lead to increased costs to businesses if a rule requires changes to a business' systems and processes, and that AEMO or the AER may face costs depending on the nature of the solution adopted.²⁶

3.2 Stakeholder feedback

33 stakeholders made submissions in response to the consultation paper. Further, the Commission engaged with retailers, DNSPs and consumer groups in round table discussions.

²⁴ EWON, rule change request, p. 3.

²⁵ EWON, rule change request, pp. 2, 4.

²⁶ EWON, rule change request, p. 4.

3.2.1

EWON's proposed solution

Responses from stakeholders with regard to the solution proposed by EWON varied significantly. Support for the solution proposed by EWON was limited, with many stakeholders providing alternative solutions, which are discussed in section 4.1.

Support for the proposed rule

EWOQ and EWOSA supported the proposed rule change on the basis that it would facilitate customer engagement in switching activity.²⁷ Similarly, Essential Energy supported the rule change, but recommended that updated medical information be provided by life support customers after a set time frame to ensure ongoing applicability.²⁸

St Vincent de Paul Society (SVDP) supported the development of a process for the transfer of medical confirmation between RPOs with the customer's consent, and considered that the onus should be on energy businesses to confirm whether a life support registration is still required before any premises are deregistered.²⁹ PIAC considered that in comparison to life support customers, energy businesses are well-placed to manage the risks of the medical confirmation registration process with established systems and resources.³⁰

The AER was supportive of the proposed rule change as it considered the rule change would reduce barriers and simplify the process for life support customers. The AER was of the view that EWON's solution would likely minimise the risk of a life support customer's premises becoming unregistered for any period during the switching process.³¹ The AER also noted the importance of the secure transfer of a customer's medical confirmation and added that the proposed solution may minimise privacy risks.³²

Opposition to proposed rule

Concerns with EWON's proposed solution fell into three categories:

- Costs and privacy considerations of the solution
- Concessions
- Risk allocation

Costs and privacy considerations of the solution

A number of retailers expressed concern that sharing medical confirmation documentation with (sensitive) personal information with another RPO because this would have to be handled confidentially and in accordance with Australian privacy legislation.³³

27 Submissions to consultation paper: EWOQ, p. 1; EWOSA, p. 1.

28 Essential Energy, submission to consultation paper, p. 2.

29 St Vincent de Paul Society, submission to consultation paper, p. 1.

30 Public Interest Advocacy Centre, submission to consultation paper, p. 1.

31 AER, submission to consultation paper, p. 1.

32 Ibid, p. 2.

33 Submissions to consultation paper: AGL, p. 7; Red and Lumo Energy, p. 3; Energy Queensland, p. 5; Momentum Energy, p. 2; ERM Power, p. 2; Meridian Energy, p. 2; EnergyAustralia, p. 4; Simply Energy, p. 6.

Further, AGL and Meridian considered that different approaches to compliance, privacy obligations and data management between participants may deter RPOs from wanting to share information in line with EWON's proposed solution.³⁴ Similarly, Red and Lumo was of the view that forms would not be interchangeable between RPOs as the format of the MCF and information provided by the customer will have been specifically developed to meet each business' needs.³⁵

The IEC, Jemena and Tango noted that current MSATS functionality would not be able to accommodate EWON's proposed solution as it does not currently support the attachment of documentation. These stakeholders considered that EWON's solution would therefore likely be costly to implement in practice.³⁶

Due to privacy concerns and the expense of MSATS changes EnergyAustralia, AGL and AusNet Services considered that a separate, secure platform would need to be developed to share the medical confirmation information, while complying with privacy obligations. These same stakeholders and Jemena were of the view that the development of such a platform would likely be costly.³⁷ The IEC considered that such a platform would likely have to enable information flowing through it to be auditable, traceable, confirmed as current and confirmed as received.³⁸

The manual transfer of information was raised as a concern by some stakeholders if the information was to be transferred by email or similar. Red and Lumo considered that the manual transfer of documentation (e.g. via email) would increase the chance of errors in transfer of that information,³⁹ while EnergyAustralia expressed concern that transfer of information via email would increase manual handling and staff costs.⁴⁰ AusNet indicated that an email solution (or similar) would not be a secure method of transferring private and sensitive information.⁴¹

Finally, Energy Queensland was of the view that while re-submission of medical confirmation may in certain circumstances be inconvenient and costly it was unclear whether the proposed rule change was proportionate, efficient or cost-effective.⁴²

Concessions

EnergyAustralia, Momentum Energy, AGL, Alinta and AusNet Services, were of the view that any solution that did not address concessions requirements would be limited to life support customers not on concession schemes.⁴³

³⁴ MCF

³⁵ Red Energy and Lumo Energy, submission to consultation paper, p. 1.

³⁶ Submissions to consultation paper: Jemena, p. 2; Tango Energy, p. 2; Information Exchange Committee, p. 2.

³⁷ Submissions to consultation paper: EnergyAustralia, p. 4; AGL, p. 5, AusNet Services, p. 10; Jemena, p. 2.

³⁸ Information Exchange Committee, submission to consultation paper, p. 3.

³⁹ Red Energy and Lumo Energy, submission to consultation paper, p. 3.

⁴⁰ EnergyAustralia, submission to the consultation paper, p. 4.

⁴¹ AusNet Services, submission to consultation paper, p. 10.

⁴² Energy Queensland, submission to consultation paper, p. 5.

⁴³ Submissions to consultation paper: EnergyAustralia, p. 3; AGL, p. 2, AusNet Services, p. 10; Alinta Energy, p. 1; Momentum Energy, p. 3.

Risk allocation

AGL, EnergyAustralia and ERM Power did not support additional responsibilities being placed on RPOs, considering that customers are best placed to obtain information for medical confirmation, accurately complete forms and safe keep records.⁴⁴

SAPN considered that responsibility for the provision of life support information should remain with the customer and that obliging industry participants to attempt to track and pass life support information between parties is not feasible and may potentially lead to gaps and inaccuracies in Life Support registers.⁴⁵ Momentum Energy and Energy Queensland similarly supported the current risk allocation on the basis that it supports the maintenance of accurate registers of life support customers, thus ensuring customer safety.⁴⁶

Meridian expressed concern that the proposed solution may increase the risk of inadvertent deregistration of life support customers if the life support customer has not provided medical confirmation to the original RPO and then switches. In this scenario there is a risk that the customer may assume that life support status is automatically maintained in the transfer process and does not take any action, however the incoming RPO would not receive any documentation from the outgoing RPO.⁴⁷

3.2.2

Whether the benefits of the proposed solution justify its costs

Responses from stakeholders with regard to the materiality of the issue raised by EWON varied significantly. Consumer groups generally considered the issue to be a significant barrier for some life support customers.⁴⁸ Retailers and some DNSPs did not consider there was sufficient evidence indicating the issue was material and would therefore warrant the costs required to implement EWON's proposed solution.⁴⁹

Most DNSPs, the Information Exchange Committee (IEC) and the AER did not comment in the materiality of the issue.

Stakeholders who considered that the issue warranted the changes proposed

The majority of consumer groups, the AER and ombudsmen considered the issue raised by EWON presented customers with unnecessary barriers for engagement. The Commission also received a submission from Carolyn Campbell-McLean, a private individual with a disability, indicating her support for EWON's rule change request.

PIAC, EWOQ, EWOSA and the Physical Disabilities Council of New South Wales (PDCN) all indicated that they considered requirements relating to submission of medical confirmation documents were barriers for life support customers fully engaging with the retail energy

⁴⁴ Submissions to consultation paper: AGL Energy, p. 4; EnergyAustralia, p. 2; ERM Power, p. 2.

⁴⁵ South Australia Power Networks, submission to consultation paper, p. 5.

⁴⁶ Submissions to consultation paper: Momentum Energy, p. 2; Energy Queensland, p. 6.

⁴⁷ Meridian Energy, submission to consultation paper, p. 2.

⁴⁸ Submissions to consultation paper: PIAC, p. 2; EWOQ, p. 1; EWOSA, p. 1; PDCN, p. 2.

⁴⁹ Submissions to consultation paper: Origin Energy, p. 1; Energy Queensland, p. 5; Momentum Energy, p. 2; ERM Power, p. 2; Meridian Energy, p. 2.

market.⁵⁰ PIAC, EWOQ and PDCN all considered that these barriers were of a practical (mobility) and financial nature (costs of medical visit) for customers.⁵¹

Ms Campbell-McLean suggested that life support customers may not change plans because of the paperwork involved, particularly for concessions.⁵²

Nectr submitted that they have had instances of customers cancelling during their cooling-off period due to the need to submit a new MCF.⁵³

Stakeholders who considered that the issue does not warrant the changes proposed

The majority of retailers and certain DNSPs did not consider the issue raised by EWON to be material and therefore viewed the proposed changes as unwarranted. These stakeholders generally considered that little evidence was presented in the rule change request to indicate current medical confirmation requirements have created barriers for customer engagement in the retail market.

Concerns with fell into two categories:

- Mitigating factors that reduce barriers
- Evidence on the extent of the issue

Mitigating factors

AGL and Origin Energy were of the view that customers highly value concessions payments or discounts and that the costs of securing medical confirmation need to be considered within the context of the benefits earned by the concession scheme, and the requirements in New South Wales for the eligibility for the concession to be renewed every two years.⁵⁴ Similarly, Momentum Energy considered that the costs of medical confirmation would be a relatively small factor influencing a customer's switching decision.⁵⁵

AEC, EnergyAustralia, AusNet Services and Origin Energy considered the likelihood of a life support customer visiting a medical practitioner during the 50 business days allowed for the submission of medical confirmation to be high, and as such, customers would be unlikely to incur any additional costs in obtaining medical confirmation.⁵⁶ Although agreeing that doctor visits for medical confirmation purposes could prove difficult for some customers (specifically customers who live in a rural areas or customers who have a disability), Meridian Energy considered that the RPO's ability to grant an extension on the submission date would likely mitigate this issue.⁵⁷

50 Submissions to consultation paper: PIAC, p. 2; EWOQ, p. 1; EWOSA, p. 1; PDCN, p. 2.

51 Submissions to consultation paper: PIAC, p. 2; EWOQ, p. 1; PDCN, p. 2.

52 Carolyn Campbell-McLean, submission to consultation paper, p. 1.

53 Nectr, submission to consultation paper, p. 1.

54 AGL Energy, submission to consultation paper, p. 4; Origin Energy, submission to consultation paper, p. 1.

55 Momentum Energy, submission to consultation paper, p. 2.

56 Submissions to consultation paper: AEC, p. 2; EnergyAustralia, p. 3; AusNet Services, p. 4; Origin Energy, p. 1.

57 Meridian Energy, submission to consultation paper, p. 2.

Alinta Energy and EnergyAustralia suggested that, the current availability of "telehealth" services would likely assist in decreasing barriers faced by customers with mobility challenges.⁵⁸

Evidence on the extent of the issue

Origin Energy, Momentum Energy, Energy Queensland, ERM Power, Meridian Energy submitted that they were unaware of any evidence suggesting that the provision of medical confirmation is a key factor discouraging customers to switch retailers.⁵⁹ Jemena and the AEC considered that the information provided in the rule change request did not make it possible to assess the extent of the issue.⁶⁰

EnergyAustralia commented that its data indicated that churn to other retailers among Life support customers is occurring at a higher rate than churn across its general customer base, suggesting that requirements to obtain medical confirmation were not a significant barrier to switching in their experience.⁶¹

3.3 Analysis and conclusions

The Commission has carefully considered EWON's proposed solution, including the materiality of the issue the rule change is aiming to resolve, and the implications of the proposed solution and stakeholder feedback. This section outlines the Commission's analysis and conclusion with respect to EWON's proposed solution.

3.3.1 Analysis of proposed solution

Costs and privacy considerations

The Commission considers that a secure system would be required to facilitate the sharing of medical confirmation documentation between RPOs under EWON's proposed solution. In addition, this system would also need to be compliant with any applicable privacy laws.

Stakeholder submissions suggested three possible approaches to implement EWON's proposed rule change:

- The upgrading of MSATS to enable it to attach life support documentation
- The development of a separate secure network specifically for the purpose of sharing MCFs
- The manual transfer of information between participants through email

The Commission considers that upgrades to MSATS are likely to be a lengthy and costly solution. MSATS currently does not have a functionality to share documents, and it is understood from discussions with AEMO that the costs of augmenting MSATS to add this additional functionality are likely to be substantial. In addition, there are other significant

58 Submissions to the consultation paper: Alinta Energy, p. 1; EnergyAustralia, p. 3.

59 Submissions to consultation paper: Origin Energy, p. 1; Energy Queensland, p. 5; Momentum Energy, p. 2; ERM Power, p. 2; Meridian Energy, p. 2.

60 Submissions to consultation paper: Jemena, p. 2; AEC, p. 1.

61 EnergyAustralia, submission to consultation paper, p. 3.

systems changes scheduled to MSATS to facilitate other rule changes and other required upgrades, with the IEC advising that the period through to late 2022 would not be appropriate for major changes to systems.⁶² The Commission considers a similar rationale applies to the development of a separate bespoke platform as a viable solution, with the added complication that new privacy protocols would need to be developed and enforced for this platform. In both approaches, the cost of the solution likely outweigh the benefits to consumers.

With respect to the manual transfer of life support information via email, the Commission considers that while this option would likely involve lower system development costs, these benefits would likely be offset by:

- Increased labour costs needed to operate the platform
- Increased risk of mishandling of personal information, particularly with respect to access to the email
- This approach would likely not immediately provide certain features highlighted by the IEC (e.g. auditability, traceability, confirmation of information currency and receipt)⁶³

For all solutions privacy considerations remain a concern, given customer would likely need to give their explicit informed consent for the sensitive personal information contained within medical confirmation to be shared from the outgoing RPO to the incoming RPO.

The Commission considers that the approaches considered for the implementation of EWON's proposed solution would likely be costly and complex, or raise privacy concerns.

Concessions

The impact of the proposed solution on New South Wales life support customers on a concession scheme is unclear.⁶⁴ Given that renewal of concessions is not a significant concern in other jurisdictions the Commission considers that it concessions should not be deemed a barrier to the proposed solution.

Risk allocation

Stakeholders raised concerns with respect to both current life support rules and EWON's proposed rule, particularly on data integrity and accuracy when life support customer information is transferred between RPOs and/or updated by customers.

In submissions, a number of stakeholders indicated that there is a relatively large proportion of life support customers who are registered, but that have not completed the registration process by providing medical confirmation.⁶⁵ This raises the issue of what happens when a customer switches retailers and has not previously provided medical confirmation. If the solution proposed by EWON is adopted, there is a risk that a customer may not have realised that they have not provided medical confirmation and will expect the medical confirmation to

⁶² Information Exchange Committee, submission to consultation paper pp. 1-2.

⁶³ The development of such features would likely effectively mean the development of a bespoke platform as noted above.

⁶⁴ New South Wales residents seeking a medical rebate must confirm their need for it every two years.

⁶⁵ See issues raised in section 4.5.2

be passed from the outgoing RPO to the incoming RPO. Given the outgoing RPO has no documentation to share, this scenario could result in the customer becoming deregistered. The Commission considers that any proposed solutions should minimise risk to consumers with respect to inadvertent deregistration.

While RPOs have systems and resources to manage some of this risk, these systems are based on customer provision of information (e.g. changes in contact details when a customer switches premises). Therefore, it is also important that customers continue to have a key role in passing on accurate information to their incoming RPO — this approach is likely to minimise risks to customer health.

EWON's proposed solution and current settings may have the potential to incrementally increase the risk of inadvertent deregistration of life support customers. While this risk is small, the consequences of any such issue for affected customers can be serious. The Commission's conclusion is that it may be appropriate to consider alternative solutions where the customer maintains visibility and control over life support registration. These alternative solutions should minimise risk of inadvertent customer deregistration and reduce barriers to customer access to retail competition (as discussed in chapter 4).

The Commission notes that a significant majority of stakeholders preferred either an alternative solution or no rule be made as a response to EWON's request, including some customer groups such as CALC, PIAC, PDCN, SVDP. A full list of alternative solutions is provided and discussed in section 4.1.

3.3.2

Analysis of the underlying issue

The extent of the issue

As noted above, a number of stakeholders questioned the extent of the issue raised in the rule change request, and whether the issue was material enough to warrant change, particularly if the proposed solution would require the development or augmentation of systems at significant cost.

The Commission considers that the extent of the issue is unclear. Anecdotal evidence has been provided suggesting that, for some life support customers the requirement to reconfirm medical confirmation is presenting a barrier to some life support customers switching and accessing competitive offers. Anecdotal cases provide important context to the Commission and are particularly important in the life support policy area given the significant health impact of a single case can have on customers and industry.⁶⁶

Evidence provided by stakeholders who did not support the proposed rule suggested that the issue is not systemic in nature, and may not be a barrier to all (or many) life support customers switching. The Commission notes that some evidence provided of higher switching rates of life support customers when compared to other customers groups does not appear to indicate the presence of more widespread barriers affecting life support customer

⁶⁶ Submissions to consultation paper: Carolyn Campbell-McLean, p. 1; Nectr, p. 1. During a round table with consumer groups on 14 September 2020, PDCN and PIAC raised anecdotal cases with the Commission.

decisions to switch retail plans. However, there could be other reasons for this, for example, high energy costs faced by these customers may be so significant that these types of customers are particularly motivated to go through various barriers to switch to a better energy offer. This does not necessarily mean life support customers do not view medical confirmation barriers as significant, but rather that they prioritise seeking a cheaper energy offer.

The Commission is of the view that improvements to the regulatory framework should be considered if an issue could potentially have a serious effect on a small number of stakeholders, or where the risks and costs may not be allocated to the groups which can best bear them. Life support registration processes are inherently linked with customer health outcomes and any problems with this process may be significant, as underscored by the anecdotal evidence provided by stakeholders in favour of the issue being addressed. On balance, the Commission considers it is likely that the costs of large system changes to facilitate the sharing of medical confirmation outweigh the benefits which would be gained.

Mitigating factors

As noted in stakeholder submissions, certain stakeholders recommended that the costs of medical confirmation should be considered within the context of the benefits gained through concessions and cheaper offers. The Commission considers that the value provided by concessions and cheaper energy offers do not "offset" costs incurred in securing medical confirmation for most customers. This is particularly the case for customers' whose main challenge was a practical one (e.g. mobility). Further, the Commission understands that in a number of jurisdictions medical rebates are not provided directly by energy retailers, so this would not be a factor in all jurisdictions.

In relation to stakeholder submissions suggesting that the long medical confirmation submission period afforded to customers makes it unlikely that additional costs would be incurred by consumers (given that a visit to the doctor was likely during this period), the Commission considers that customer circumstances vary significantly. For example, PDCN noted in that many life support customers have permanent disabilities or conditions which may render repeated confirmation unnecessary.⁶⁷ For these customers, medical visits for medical confirmation purposes may be an additional expense. Similarly, for unscheduled or illness driven visits to a medical practitioner, it is unreasonable to expect that all customers focus on the completion of an administrative step during this appointment.

With respect to the growing availability of telehealth, the Commission considers again that customer circumstances vary significantly — for example, forms that require a doctor's stamp and signature may not be easily filled through a telehealth consultation. Certain doctors may be hesitant to print, fill in, scan and send back the form. Similarly, telehealth may not be available for all customers, and the Commission agrees with concerns raised around the uncertainty of ongoing availability of telehealth raised by consumer groups.⁶⁸

⁶⁷ Physical Disability Council of New South Wales, submission to consultation paper, p. 2

⁶⁸ 14 September 2020 round table discussion with Commission on rule change.

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.

database was not mentioned in its submission).⁷² PIAC also added that any requirements for the concessions schemes could be confirmed by the distributor to the retailer.⁷³ CPSA, SVDP, PDCN supported PIAC's proposed approach in their submissions.⁷⁴

Encouraging customers to register with DNSPs

Alinta suggested that rules be changed to oblige retailers to inform transferring-in life support customers that if they wish to maintain life support status at the premises, and avoid life support re-registration when transferring retailers in the future, they can do so by registering for life support status with their DNSP. Alinta noted that this approach would remove the barrier of switching retailers in the future.⁷⁵

Annual energy plan assessments

AGL suggested that an annual plan assessment for customers registered for life support to determine if they are on the most appropriate plan offered by the current retailer, with the option to switching to another offer (within the same retailer). AGL contended that this approach would ensure life support customers have access to competitive market offers without potentially having to re-register for life support as well as life support concession payments.⁷⁶

Utilisation of upcoming CDR

EnergyAustralia and Nectr, were of the view that life support information could be considered as shareable data under the Consumer Data Right process being run by the ACCC, allowing it to be shared between participants with customer consent. Both stakeholders noted CDR is still under development in the energy industry and that the Commission would need to engage with ACCC to progress this solution.⁷⁷

Discretion to request medical confirmation

CALC suggested that RPOs be given the discretion to request medical confirmation, thus removing the requirement that medical confirmation be submitted to an RPO. CALC noted that approach would likely reduce costs of confirmation for most customers but that there are risks that RPOs would be inconsistent with their application. CALC was of the view that this approach would be consistent with practices surrounding customer requests to be on a payment plan or hardship framework.⁷⁸

72 Public Interest Advocacy Centre, submission to consultation paper, p. 5.

73 Ibid.

74 Submissions to consultation paper: CPSA, p. 3; SVDP, p. 1; PDCN, p. 2.

75 Alinta Energy, submission to consultation paper, p. 2.

76 AGL, submission to consultation paper, p. 1.

77 Submissions to consultation paper: EnergyAustralia, p. 5; Nectr, p. 2.

78 Consumer Action Law Centre, submission to consultation paper, p. 7.

4.2 Commission's analysis and conclusion

The Commission has considered the alternative solutions proposed by stakeholders to address the underlying issue of life support customers accessing retail competition. An alternative solution would need to:

- provide a proportionate solution where the benefits to consumers outweigh the costs of implementing the solution
- reduce the risk of deregistration and provide an appropriate allocation of risks to make it easier and cheaper to register as a life support customer.

4.2.1 A proportionate solution with benefits outweighing risks

As noted in section 3.3.2 and section 3.3.3, the Commission considers that while the materiality of the issue remains unclear, there is:

- anecdotal evidence indicating the issue impacts some life support customers
- potential for significant health impacts
- a lack of a clear causal link between the switching rates (the main type of evidence provided against the proposed rule) and the medical confirmation barrier.

The Commission also concluded in section 3.3.3 that it may be appropriate for it to consider alternative solutions that involve smaller adjustments to the current framework where an alternative solution may better minimise risk of inadvertent customer deregistration and provide benefits which outweigh the costs of the solution.

The Commission has not progressed the approach put forward by SAPN and Meridian on the basis that the development of a centralised database would likely be complex and costly. These factors, coupled with the unclear materiality of the issue make this alternative solution unlikely to promote long-term customer interests in this instance. This is consistent with the position taken on EWON's proposed solution.

The Commission has not progressed PIAC's approach as a transition from the current state where RPOs are mostly retailers, to a state where all RPOs are DNSPs is likely to be a lengthy and potentially confusing process for customers, particularly given the role retailers play with respect to the customer relationship. This solution would also negate the benefits customers can receive by contacting a single RPO to deal with their concession and life support registration.

With respect to CALC's proposed solution to give RPOs discretion to request medical confirmation, the Commission recognises that this solution would likely reduce costs for customers. However, it is less clear what impact this approach would have on RPOs, particularly DNSPs. DNSPs have raised significant concerns (raised in section 4.5.1) with respect to the increased number of customers of life support registers — CALC's proposed approach has the potential to compound this. This alternative solution would also be a significant departure from the current framework and such a departure would likely not be justified under the current rule change process given the difficulty in establishing the materiality of the issue raised.

Alinta's suggestion has not been pursued as the Commission considers it would not address barriers for consumers switching at present, but would rather place an additional burden on consumers to contact their DNSP. This approach would also negate the benefits of customers contacting a single RPO to deal with their concession and life support registration.

The solution proposed by EnergyAustralia, Tango Energy and the AEC for the outgoing RPO to provide the customer with the completed MCF or confirmation document which would then be accepted by the incoming RPO as medical confirmation would likely not introduce significant costs on RPOs and the Commission considers this should be explored further.

4.2.2 Reducing risk for life support customers

In deciding whether less complex and costly solutions were appropriate, the Commission has had to consider the risk posed to the life support customers in a scenario where no rule was made. A more preferable draft rule would:

- decrease the risk of inadvertent deregistration (as noted in section 3.3.1)
- make it easier and reduce costs for life support customers to complete their life support registration process, thus reducing risk that the customer be deregistered
- provide clarification of medical confirmation requirements.

The Commission has not pursued AGL's proposed solution as the Commission considers it is unlikely that it would promote greater access to retail competition for life support customers because it limits customers to better offers by their current retailer. There is a risk that this approach would unfairly advantage incumbent retailers.

With respect to the CDR, the Commission considers these reforms are, at present, unlikely to cover life support information of the nature required to deal with both barriers to retail competition and life support registration.

The solution proposed by EnergyAustralia, Tango Energy and the AEC for the outgoing RPO to provide the customer with the completed MCF or confirmation document, which would then be accepted by the incoming RPO as medical confirmation, would likely reduce the risk for inadvertent deregistration and make it easier for life support customers to complete the life support registration process.

4.2.3 Conclusion

The Commission has considered the above factors, the assessment framework and the NERO in determining if any of the alternative solutions are appropriate to deal with the issues raised in the rule change request.

The Commission considers that a solution based on the customer's medical confirmation being returned to the customer, so that the customer can share the previously obtained medical confirmation document with the incoming RPO would appropriately allocate risks and benefits, provide transparency and clarity of roles and responsibilities and improve access to retail competition for life support customers. The Commission supports the solution raised by EnergyAustralia, Tango Energy and the AEC. This solution is built upon and discussed in detail in the remainder of this chapter.

In the Commission's view, it is likely unreasonable to expect life support customers to maintain copies of the MCF and/or medical confirmation document as many of these are mailed directly to the RPO and many customers may not have facilities to copy documentation readily available. In contrast, RPOs have the systems and resources to easily and cost effectively provide customers with this information. The proposed solution is likely to address those two issues. The Commission also notes that this solution is unlikely to lead to significant additional costs to RPOs because customers may already be entitled to obtain this information under Australian privacy legislation.

4.3 Elements of the more preferable draft rule

This section outlines the objectives and elements of the more preferable draft rule (draft rule).

4.3.1 Description of proposed changes to the NERR

The draft rule amends several parts of Part 7 of the NERR. Its key components are described in the table below. The draft rule also includes a clarification to the definition of medical confirmation. In summary, the changes are designed to enable a process whereby life support customers are able to receive and re-utilise a copy of their previously submitted medical confirmation document, which may be in the form of a medical certificate or MCF, for the purpose of providing medical confirmation during the life support registration process when switching or moving.

Table 4.1: Elements of the more preferable draft rule

ELEMENT OF MORE PREFERABLE DRAFT RULE	DESIGN COMMENT	RULES CHANGED
1. A requirement for the outgoing RPO to return the medical confirmation form and/or medical confirmation document to the customer within 10 business days of the customer's request, subject to applicable privacy laws.	A decision has been made to require the return of the medical confirmation form and/or medical confirmation document conditional on customer request — this approach is likely to reduce cost and complexity of the solution.	124B
2. A requirement for RPOs to keep the medical confirmation form and/or medical confirmation document used to register a customer for the period of time that the person remains a customer, and for 110 business days from the date the person ceases to be a customer.	Enabling customers to request the medical confirmation form and/or medical confirmation document for 110 business days after a switch or move should allow sufficient time for a customer to request and obtain the document and then provide it to the incoming RPO within the timeframe required to	126

ELEMENT OF MORE PREFER- ABLE DRAFT RULE	DESIGN COMMENT	RULES CHANGED
	confirm life support status.	
3. Allowing the use of a medical certificate or a medical confirmation form for the purposes of providing medical confirmation.	This is design to increase awareness that life support customers can submit an MCF or medical certificate for the purpose of providing medical confirmation.	123A
4. A requirement for the incoming RPO to inform the customer that for the purpose of providing medical confirmation, the customer may submit the medical confirmation that was submitted to their previous retailer or distributor, provided it is dated less than 4 years ago and is legible.	Limiting the time for when a medical confirmation form and/or medical confirmation document can be re-utilised for medical confirmation to four years will balance concerns regarding data translation and legibility of forms as well as reducing the need for medical visits for confirmation during that extended period. This change does not affect the validity of existing MCFs, it simply puts a limit in utilising it for medical confirmation purposes.	124(1), 124(4), 124A

In addition to the amendments in the above table, the more preferable draft rule amends rule 123A to update the definition of 'medical confirmation' to clarify that a medical certificate with appropriate information is an acceptable form of medical confirmation. The more preferable draft rule amends the definition of 'medical confirmation' to be:

medical confirmation means certification from a registered medical practitioner that a person residing or intending to reside at a customer's premises requires *life support equipment*, including the type of equipment, which may take the form of a medical certificate or section(s) completed, or confirmed as accurate, by a medical practitioner within a medical confirmation form.

The Commission proposes that the more preferable draft rule (if made) will commence on 4 March 2021.

4.3.2

Implications of the more preferable draft rule on life support registration

Ability for RPOs to require a medical confirmation form to be filled in for safety purposes

The more preferable draft rule allows life support customers to re-utilise the confirmation document, which may be in the form of a medical certificate or MCF, from their outgoing RPO for the purpose of providing medical confirmation to the incoming RPO, provided it is dated

less than 4 years ago and is legible. However, the customer may still be required to complete a MCF by the incoming RPO for the purpose of obtaining other details contained in the MCF (excluding any section dealing with medical confirmation). This will allow the incoming RPO to have written confirmation of the customer's latest information (for example address and phone numbers), which minimises issues of accuracy with respect to customer transfers. Additionally, the new MCF may also be used for complying with a concession scheme. This approach will help minimise costs placed on customers with respect to visits to a medical practitioner while maximising safety outcomes by enabling RPOs to have updated information.

Previously accepted MCF or medical confirmation documents

The more preferable draft rule allows life support customers to re-utilise the confirmation document, which may be in the form of a medical certificate or MCF, from their outgoing RPO for the purpose of providing medical confirmation to the incoming RPO, provided it is dated less than 4 years ago and is legible. The four-year time limit has been included in the more preferable draft rule to reduce RPO concerns with legibility and readability, for example, if the confirmation document has been reused multiple times over the years the legibility could potentially degrade. The Commission considers it is likely that a life support customer will visit a medical practitioner during a four-year period and that this requirement is therefore likely not too onerous.

The four-year time period applies to reusing a medical confirmation document for medical confirmation purposes when switching or moving house. The draft rule does *not* require a life support customer to reapply for life support status with new confirmation documentation every four years.

4.4 Benefits of the more preferable draft rule

This section outlines the benefits of the more preferable draft rule by explaining how it promotes the NERO and the assessment criteria set out in the consultation paper. Both the NERO and the assessment criteria are outlined in section 2.2.1 and section 2.3.

4.4.1 NERO and the consumer protections test

The Commission considers that the more preferable draft rule will contribute to the achievement of the NERO because it promotes long term interest of consumers with respect to price and safety.

Customer interests with respect to price are promoted because the more preferable draft rule reduces barriers for securing life support registration. This is likely to facilitate switching processes for life support customers, thus enabling these customers to access lower priced (or otherwise more appropriate) offers. With respect to safety, the more preferable draft rule reduces the risk of customers being deregistered by making the registration process easier and by clarifying that both an MCF and medical certificate may be accepted for the purpose of providing medical confirmation during registration.

The more preferable draft rule is compatible with the development and application of consumer protections for small customers as it may result in improved protection and certainty for life support customers by facilitating an easier registration process for switching customers and clarifying the types of documents that must be accepted as medical confirmation by RPOs.

4.4.2

Assessment criteria

Competition and consumer choice

The more preferable draft rule improves access to retail market competition and reduces barriers to switching by enabling an easy and cost-free way for consumers to secure their MCF or medical confirmation document from their outgoing RPO. For customers who are searching for better energy offers, knowledge that their safety needs (i.e. life support registration) can be met at no cost, via the return and re utilisation of an existing medical confirmation document, will likely improve the ability engage in the competitive retail market.

Transparency and certainty with respect to life support roles

The more preferable draft rule clarifies that customers can use medical certificates (containing certain details of the life support requirements) as medical confirmation. Customers who switch are also given increased certainty that they can re utilise an existing medical confirmation document for the purpose of providing medical confirmation. The draft rule also improves transparency by clarifying the responsibilities for outgoing and incoming RPOs with respect to the return, storage and acceptance of forms.

Allocation of risks and avoidance of unnecessary costs

The current balanced allocation of risk and responsibilities is maintained under the more preferable draft rule. By maintaining a degree of customer visibility and control over information supplied to RPOs for registration, the more preferable draft rule minimises risk of inadvertent deregistration as well as costs for consumers.

In addition, the more preferable draft rule avoids unnecessary costs and complexity being placed on RPOs to implement EWON's proposed rule. RPOs are likely to face limited additional costs or obligations given that customers may already be entitled to obtain this information under Australian privacy legislation. Life support customers will likely see their administrative costs reduced (when compared to current arrangements) by being able to obtain their MCF or medical confirmation document upon request.

The Commission recognises that the more preferable draft rule may lead to some additional costs being placed on RPOs to administer the solution. There may be costs to RPOs with respect to:

- redesigning systems or processes to:
 - enable the MCF and/or medical confirmation document to be returned to an existing customer

- inform a new customer that they may re-utilise a medical confirmation document for the purpose of providing medical confirmation when switching
- "data translation" issues when the RPO accepts an existing medical confirmation document from another RPO.

These issues are mitigated by making the return of the medical confirmation form conditional on customer request rather than automatic — this will likely reduce the number of times the RPOs need to implement this solution. The Commission considers that the costs to RPOs of this solution are likely outweighed by the cost saving and safety benefits of the rule for life support customers.

4.5 Other issues raised with respect to life support

This section outlines several issues raised with the Commission with respect to life support that are outside the scope of this rule change process. It also outlines the Commission's view of how these issues may be progressed.

4.5.1 Issues raised and scope of the rule change request

A number of issues with the life support framework were raised by stakeholders. The majority of these issues were outside the scope of the rule change request, which focused on reducing barriers to retail competition for life support customers that were created by current life support registration requirements.

As these issues were out of scope, the Commission has not addressed these issues in detail, instead it has considered possible future work that may be done in the life support space to address these issues (see section below).

4.5.2 Major issues or solutions raised in submissions

Six major issues outside of the scope of the rule change request were raised in stakeholder submissions. Each of these issues is described in more detail below.

Obligation to deregister customers who do not provide medical confirmation

Energy Networks Australia (ENA), Energy Queensland, Essential Energy and CitiPower, Powercor and United Energy and the Australian Gas Infrastructure Group submitted that many RPOs may be reluctant to deregister consumers that do not provide medical confirmation after their initial life support registration. Currently the rules provide RPOs with an option to deregister a customer that does not provide medical confirmation, however, these stakeholders considered that RPOs (particularly retailers) have been hesitant to deregister customers in practice.⁷⁹ These stakeholders recommended that the rules be amended to require RPOs to deregister the customer if medical confirmation is not received within the required timeframe, and considered this would provide RPOs with greater certainty while deregistering customers who have been unable or unwilling to provide medical confirmation within the time frames under the NERR.⁸⁰

⁷⁹ In a round table with retailers, enforcement of life support provisions under the NERR were given as a reason for this outcome.

Provision of more detailed information on life support customer needs

South Australia Power Networks and ENA were of the view that a significant growth in customers registered as requiring life support equipment, as well as a large number of life support customers failing to providing medical confirmation, but remaining registered for life support is causing DNSPs significant issues in managing planned and unplanned outage events. ENA considers that the provision of support to premises where this is not critically required unnecessarily increases DNSPs resource requirements and costs to all customers.⁸¹ Further, the lack of detailed information on life support customer requirements makes it hard for DNSPs to provide those life support customers with the most urgent life support needs with the protections they require. SAPN was of the view that more granular information on life support customer needs and equipment was needed to allow DNSPs to better prioritise support for customers in the event of unscheduled outages.⁸²

SAPN considered that these issues stem from the changes introduced by the Commission in December 2017 (and that came into effect in February 2019), which placed an obligation on RPOs to register customers for Life Support status prior to receiving medical confirmation while not placing any obligation on RPOs to deregister customers who subsequently do not provide any such confirmation.⁸³

Immediate deregistration of premises with customer consent

A number of stakeholders requested that the NERR be amended to allow waiving of the 15-day wait period for deregistration of a premises when the consumer provides explicit informed consent. Simply Energy considers that the inability to deregister a site creates inaccuracies in the life support register, resulting in confusion between retailers and distributors. Simply Energy has noted it has received customer complaints that these delays may cause significant costs or inconvenience to customers under certain circumstances (e.g. wanting to demolish the premise).⁸⁴ The Australian Gas Infrastructure Group and AusNet Services also supported this change, with the former noting that the Essential Services Commission of Victoria adopted a similar approach.⁸⁵

Obligation to check life support status when any customer signs up or changes energy plans

AusNet Services suggested a requirement for RPOs to check life support status when signing up the customer to a new or renewed offer be introduced. This obligation is already in place in Victoria. This may assist in identifying life support customers that require assistance.⁸⁶

⁸⁰ Submissions to consultation paper: Energy Networks Australia, p. 2; Energy Queensland, p. 5; Essential Energy, p. 2; CitiPower, Powercor and United Energy, p. 1; Australian Gas Infrastructure Group, p. 3.

⁸¹ Energy Networks Australia, submission to consultation paper, p. 2.

⁸² SAPN noted that "Prior to the introduction of the NERR in February 2013, approximately 2,000 customers were registered as Life Support Customers in South Australia. Today that figure has increased seven-fold and we now have around 14,000 customers, or around 1.5% of our entire customer base, registered as Life Support Customers. Nearly half of these customers (46%) do not have any medical confirmation of their life support equipment"; South Australia Power Networks, submission to consultation paper, p. 1.

⁸³ Ibid.

⁸⁴ Simply Energy, submission to consultation paper, p. 3.

⁸⁵ Submissions to consultation paper: Australian Gas Infrastructure Group, p. 3; AusNet Services, p. 1.

⁸⁶ AusNet Services, submission to consultation paper, p. 1.

Obligation to regularly check the accuracy of information for existing life support customer

CitiPower, Powercor and United Energy and EnergyAustralia suggested a new requirement aimed at improving the accuracy of life support customer register data be introduced whereby life support customers be required to provide updated medical confirmation periodically. This is aimed at ensuring the data within life support customer registers is more accurate.⁸⁷

Requirement on outgoing RPOs to retain life support registration for a reasonable amount of time post-transfer

AusNet Services also suggested extending the RPO's obligations with respect to the outgoing customer to require the outgoing RPO to retain the customer's life support registration information for the customer or the site for a reasonable amount of time. This period would allow the RPO to fully process a customer's move to a new premises and deregister life support at the old premises. It would also prevent a life support customer that had been transferred in error from having to re-register once the error is corrected. Currently, outgoing RPO's obligations cease immediately when a customer transfers.⁸⁸

Clarification of the obligations of gas retailers and DNSPs with respect to life support customers

Jemena and the Australian Gas Infrastructure Group recommended that the NERR be amended to adopt the registration approach in Victoria whereby the RPO is required to clarify whether a customer's life support equipment is fuelled by electricity or gas, or both fuel types. Further, Jemena and the Australian Gas Infrastructure Group also recommended that the role of gas RPOs in the event of de-energisation of a property that is contracted for gas, but where the life support equipment is not powered by gas, be clarified. Currently, process owners with dual fuel customers are expected to automatically register any customer who requires life support equipment as requiring it for both electricity and gas. Jemena and the Australian Gas Infrastructure Group consider that this creates inefficiencies and additional cost to both retailers and for DNSPs.⁸⁹

Other minor issues are raised in appendix A.

4.5.3

Future work

Commission's work program and prioritisation

The Commission recognises the importance of the life support framework and the need for industry to pursue improvements in life support customer experience. Many of the issues raised above may require significant changes to current regulatory settings, which were only fully introduced in February 2019. It may therefore be appropriate to consider these issues as part of more holistic review process or a consolidated rule change process rather than through a piece meal approach requiring several rule changes.

⁸⁷ Submissions to consultation paper: CitiPower, Powercor and United Energy, p. 1; EnergyAustralia, p. 4.

⁸⁸ AusNet Services, submission to consultation paper, p. 1.

⁸⁹ Submissions to consultation paper: Australian Gas Infrastructure Group, p. 2; Jemena, p. 2.

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:

- it's 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.