

11 June 2020

Mr Ben Barr
Chief Executive
Australian Energy Market Commission
PO Box A2449
Sydney South NSW 1235

Dear Ben

Rule change request to the Australian Energy Market Commission: Improving retailer transfers and consumer choice for vulnerable life support customers

Congratulations on your new appointment.

The Energy & Water Ombudsman NSW (EWON) investigates and resolves complaints from customers of electricity and gas providers in New South Wales (NSW), along with some water providers. Some of these complaints are from customers reliant on life support equipment. This letter is informed by our investigations into these complaints, and through information shared with us via our community outreach and stakeholder engagement activities.

This is the first time EWON has put a rule change request to the AEMC. We believe this issue is one which needs to be addressed and, given its impact on a particularly vulnerable customer sector, a rule change provides the most robust approach. However, I am conscious that rule changes are process intensive, involve wide scale consultation and if agreed, costly to implement. We have therefore also identified an alternative approach. I consider that if this approach is led by the AEMC to ensure it was adopted by all retailers and networks, the same outcome should be achieved.

Background

On 19 December 2017, the AEMC published a final determination on a rule change request that aimed to strengthen protections for customers that have a person requiring life support equipment residing at their premises.

The final rule, which came into effect on 1 February 2019, amended the life support provisions in Part 7 of the National Energy Retail Rules (NERR) so customers would be entitled to life support protections from the time they first inform their retailer or distributor they need life support. The first entity they contact, either their retailer or distributor, becomes the customer's 'life support registration process owner'.

Statement of the issue

The NERR requires customers to provide medical confirmation to register for life support.ⁱ This requirement also applies to a new life support registration when a customer moves to a new house and/or retailer and the retailer is the registration process owner.

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At a physical disabilities group meeting in Blacktown, life support customers told EWON that it is onerous and expensive to make an extra visit to their medical practitioner solely for the purpose of again providing medical confirmation of life support. This was seen by these customers as a barrier to switching retailers, and a cause of stress. We have received several complaints about this requirement. Please see Attachment 1 for a case study illustrating this issue.

Forms commonly used to provide medical confirmation (see Attachment 2) for life support registration require the applicant to obtain a medical sign-off on their condition and need for life support equipment. Once completed they are returned to the process owner.

However, not all life support customers face this problem. Some who register their life support with their distributor do not have to arrange, and in many cases pay, for an extra visit to their medical practitioner when transferring retailers in-situ.^{ii iii}

However, customers are more likely to make first contact with their retailer for life support as they do not have a direct relationship with their distributor. Further, this approach enables them to obtain related concessions and rebates as well as making their retailer their “life support registration process owner”.

In NSW, life support customers are required to visit their medical practitioner every two years to reapply for their Life Support Rebate.^{iv} These customers can reduce the burden to the extent they can coordinate their retail market engagement with the required reapplication for the rebate, and make one visit to their doctor for both purposes. However, this still imposes an unnecessary barrier to switching retailers for customers with a disability that is not imposed on customers without a disability.

Previous AEMC statements regarding the issue raised in this rule change request

The AEMC has, to some extent, responded to the issue raised in this rule change request in the *Strengthening protections for customers requiring life support equipment* final determination, which stated:

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

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.^v

This implies a customer possessing a medical practitioner’s certificate can use it multiple times, ie each time they change retailers.

As shown in Attachment 2, the common practice is for retailers to provide their own form to be completed and this requires the customer to make an extra visit to their medical practitioner.

Nature and scope of the issue

The scope of the issue includes medical information (such as a medical confirmation form, or other medical related information) passing between market participants, specifically, outgoing and incoming life support registration process owners, along with the transfer of this information between customers and market participants.

Proposed solution to the issue raised

The most effective solution to the issue raised in this rule change request is enabling the transfer of medical information between the outgoing and incoming life support registration process owners, following a customer change of premises or retailer.

For this proposed solution, “medical information” could include (but may not be limited to):

- The medical confirmation form as currently defined in Part 7 of the NERR.
- The transfer of a medical certificate to meet the requirements of medical confirmation for life support registration.
- A communication or ‘flag’ noting the customer requires life support registration (potentially a B2B communication) passed between the outgoing and incoming life support registration process owner. This would be triggered by a customer informing their new life support registration process owner of their continued need for life support.

There are three scenarios where, to ensure continued life support registration, a customer’s change in circumstances triggers either a transfer or re-provision of medical information to meet the medical confirmation requirement. These scenarios are:

- (1) in-situ retailer transfers that do not involve a change of premises
- (2) move-in/move-out retailer transfers (in other words, a change of premises) that *do not* involve a change of distribution network area
- (3) move-in/move-out retailer transfers that involve a change of distribution network area.

In considering this rule change proposal, the AEMC may also wish to consider the appropriateness of a requirement to provide updated medical confirmation for continued life support registration after a set timeframe.

Privacy issues with proposed solution

During EWON discussion with industry participants on the issue raised in this rule change request, privacy was flagged as a matter of concern, when a life support customer’s medical information is transferred between market participants.

Under the *Privacy Act 1988*, medical information (including the subject of this rule change request) constitutes sensitive information^{vi} and customer consent is required to enable the transfer of medical information between the old and new life support registration process owners. Consent could be given and recorded when the customer tells their new retailer of their need for life support equipment. Alternatively, the medical confirmation forms provided by retailers could contain a statement to the effect that the information can be provided to any new retailer the customer transfers to in the future

Achievement of the national energy retail objective

The National Energy Retail Objective (NERO), as stated in the National Energy Retail Law, is:

“...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 proposed rule change will enable greater consumer choice for a particularly vulnerable group of consumers, and it is also consistent with the application of consumer protections for life support customers.

Potential impacts of the proposed rule change

If the proposed rule change is effected, costs would inevitably be incurred to upgrade business participants' systems and processes. This particularly applies to retailers and distributors as life support registration process owners and may also apply to AEMO or the AER depending on the nature of the solution adopted.

An alternative solution

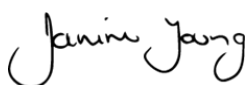
It may be that changing the rules is not necessary to achieve the policy outcome this proposal seeks.

A solution that does not require a rule change would be preferable due to the costs associated with processing a rule change. EWON considered other solutions such as a universal medical form that could be submitted to multiple retailers, every time a customer switched. However, this would require the customer to keep a copy of the form. In the likely situation where the customer had mailed their only copy of the form to the retailer or simply misplaced it, a process where information is transferred between market participants would still be required.

An industry solution may be possible, where retailers and distributors establish robust processes which enable them to agree to share the required information, with the customer's agreement. To achieve this outcome, a working group would need to be established with buy-in from all parties to ensure that the objective is achieved. If that were the outcome of this proposal, then EWON would be satisfied, as the policy objectives will be met and life support customers will be better able to engage with the retail energy market.

If you would like to discuss this matter further, please contact me or Rory Campbell, Manager Policy and Research, on (02) 8218 5266. I look forward to meeting you once you have settled into your new role – either via digital means or at the AEMC.

Yours sincerely



Janine Young
Ombudsman
Energy & Water Ombudsman NSW

ⁱ NERR 124(1)(b)(ii); NERR 124(4)(b)(ii); NERR 124A. The *Strengthening protections for customers requiring life support equipment* final determination states (brackets are added): “the customer will have to go through the registration process again with the second [incoming] retailer it ended up transferring to, including providing the medical confirmation again.” Source: AEMC, *Strengthening protections for customers requiring life support equipment*, final determination, 19 December 2017, Sydney, p. 38.

ⁱⁱ NERR 124B(2)(b) requires that, where there is an in-situ transfer of retailer, the distributor must inform the new (incoming) retailer of a person at the premises requiring life support equipment.

ⁱⁱⁱ The *Strengthening protections for customers requiring life support equipment* final determination states: “The continuity of life support protections through a distributor offered under rule 124B(2)(b) only applies to a change of retailers at the same premises and does not cover the scenario where the customer is changing their premises.”

Source: AEMC, *Strengthening protections for customers requiring life support equipment*, final determination, 19 December 2017, Sydney, p. 46.

^{iv} NSW Government, *NSW Social Programs for Energy Code*, version 6.0, 1 May 2019, Sydney, clause B3.2.5 and B3.2.6, p. 21.

^v AEMC, *Strengthening protections for customers requiring life support equipment*, final determination, 19 December 2017, Sydney, p. 39.

^{vi} Sensitive information can mean information about an individual’s health. For further information see the definition for “sensitive information” in *Privacy Act 1988*, Part II, Division 1, Section 6.

Attachment 1: Case study

Life support customer asked by her original retailer to re-submit life support medical confirmation following correction of a transfer in error

A life support customer approached EWON after she received a letter from her retailer advising a re-submission of her life support forms was required for life support re-registration following rectification of a transfer in error.

The letter was received, despite the fact that the life support registration had been valid with her original retailer prior to the transfer in error. The customer considered her life support rebate and registration should have been restored with her account being transferred back to her original retailer following resolution of the erroneous transfer.

The customer considered the request from her original retailer unreasonable. She communicated to EWON that she was elderly, very ill and that the stress of this situation has impacted her health.

EWON was able to confirm with the customer's retailer that the letter sent requesting another medical confirmation form was an automated notice. The retailer confirmed the premises were still registered for life support and that the NSW Life Support Rebate was still being applied to the customer's bills. A customer service gesture was offered in goodwill considering the inconvenience caused. The customer accepted this outcome as a resolution to her complaint.

Attachment 2: selected retailer approaches to medical confirmation in NSW

The forms used as “medical confirmation forms” to meet the requirements of medical confirmation for life support registration vary across electricity retailers.

EWON’s analysis appears to show that the NSW retailers examined by EWON (see Table 1 below) do not distinguish on their websites between medical confirmation forms and medical confirmation. While the NERR stipulate that medical confirmation forms must be provided by a distributor or retailer, these forms are one means to meeting the medical confirmation requirement.¹

Table 1: Selected providers in NSW and their life support registration process, current as at June 2020

Provider	Relevant source(s)	EWON analysis
EnergyAustralia	<p>Webpage for life support information: https://www.energyaustralia.com.au/home/help-and-support/faqs/life-support</p> <p>Medical confirmation form: https://www.energyaustralia.com.au/sites/default/files/2019-12/120919_Medical_Confirmation_Form_Interactive.pdf</p>	<p>EnergyAustralia customers can use their online account (“My Account”) with them to access their life support registration form. Otherwise, they can email the life support registration form to the retailer’s dedicated life support email address or send the form by fax or mail. The form is the only means to register for life support.</p>
Origin Energy	<p>Webpage for life support information: https://www.originenergy.com.au/life-support.html</p> <p>Medical confirmation form (used for all states and territories where Origin operates): https://www.originenergy.com.au/api/products/v1/life-support-medical-confirmation-form.pdf</p>	<p>Origin Energy’s webpage details the process of life support registration with them. It has a link to the downloadable medical confirmation form on Origin letterhead. This is to be returned either by post, fax or to a dedicated life support administration email address. The form is the only means to register for life support.</p>
AGL	<p>Webpage for life support information: https://www.agl.com.au/get-connected/connection-support/life-support</p>	<p>AGL’s website does not have a form. It says forms are emailed or mailed to the requesting customer. The form is the only means to register for life support. Under “How to register for the life support program” only the medical confirmation form is mentioned. Under “Staying registered” it is noted that a “new medical confirmation form” is required with them or their new retailer.</p>
Red Energy	<p>Webpage for life support information: https://www.redenergy.com.au/life-support</p>	<p>Red Energy does not provide a form on its webpage for life support registration. Rather, it outlines the process for life</p>

¹ NERR 125(1)(b)(i) and NERR 124(4)(b)(i).

Provider	Relevant source(s)	EWON analysis
		<p>support registration with them. The webpage states that upon being advised of the need for life support from a customer Red Energy will provide a life support registration form. The form is the only means to register for life support. The website states: "To be registered, both you and your medical practitioner will need to complete and sign the <i>life support registration form</i>. All sections of this form are to be completed and then signed by your medical practitioner. Once complete, please send the form back to us by the nominated due date so we can ensure that your life support protection has been registered."</p>
Mojo Power	<p>Webpage that provides life support information: https://www.mojopower.com.au/faq/life-support/</p> <p>An information guide for life support customers: https://www.mojopower.com.au/wp-content/uploads/2019/08/Mojo-Power-Life-Support-Guide.pdf</p>	<p>Mojo Power provide life support registration forms on request. Their website also details their life support registration process, including contact details to inform them of a life support registration. Life support registration forms must be returned to Mojo via email or post. The form is the only means to register for life support.</p>
Powershop	<p>Webpage that provides life support information: https://www.powershop.com.au/life-support/</p> <p>NSW and Queensland medical confirmation form: https://s3-ap-southeast-2.amazonaws.com/psau-wordpress/wp-content/uploads/2018/06/26033316/nsw-qld-life-support-equipment-registration-form.pdf</p>	<p>Powershop's website has general information on life support, as well as information on how to register life support with them and how to apply for life support related concessions. There are links to Powershop's medical confirmation form, on Powershop letterhead, for all jurisdictions. The form is the only means to register for life support.</p>