

Australian Energy Market Commission  
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Lodged online: [www.aemc.gov.au](http://www.aemc.gov.au)

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### **RRC0038 – Maintaining life support customer registration when switching**

The Australian Energy Council welcomes the opportunity to make a submission to the Australian Energy Market Commission's (AEMC) Consultation Paper on the proposed Maintaining life support registration when switching Rule Change (the Consultation Paper).

The Australian Energy Council (AEC) is the industry body representing 22 electricity and downstream natural gas businesses operating in the competitive wholesale and retail energy markets. These businesses collectively generate the overwhelming majority of electricity in Australia and sell gas and electricity to over 10 million homes and businesses.

The AEC does not consider the Rule Change proposed by the Energy and Water Ombudsman of New South Wales (the Proponent) is in the long-term interests of consumers. That being said, the AEC acknowledges the issue highlighted in the rule change as one that has the potential to deter some customers with life support from switching, and if evidence shows that this is material, consider that alternative methodologies and approaches might better enable this group of customers to benefit from the competitive retail market.

#### **Issues with the EWON Rule Change**

##### **Materiality**

The AEC does not consider that issue highlighted by the Proponent is material enough to warrant the change proposed, nor that the rule change as proposed would materially improve outcomes for customers with life support seeking to switch retailer.

In their rule change proposal, the Proponent notes that they have received several complaints about this issue and provide a case study to illustrate the customer experience issues that might arise from the scenario the proposed rule intends to avoid. The AEC does not dispute that there is a potential for this issue to impact customers with life support, but does not consider that EWON has provided adequate evidence to highlight the extent this issue is impacting customers in the National Electricity Market. In particular, the case study included in the proponents rule change proposal does not appear likely to be resolved by the proposed rule. The AEC considers that the case study highlights a customer service issue that should have been avoided – it was not driven by a lack of engagement between the customer's new and old retailer.

For this rule change to be progressed, the AEC expects the AEMC will need to undertake further research to seek to identify the switching rates of customers with life support, the extent the obligation to re-register life support with the new retailer is impeding engagement, and the costs to customers to undertake the re-registration process under the existing arrangements.

Without adequate evidence of the customer detriments of the current obligations, the AEC is unable to provide comment on the potential benefits of the proposed rule. However, it is worth considering the operation of the existing regulatory framework to identify the delta between the outcomes for customers under the existing process and the Proponent's proposed rule.

In December 2018, the AEMC made new rules to enhance the protections for customers needing life support, and increase the accuracy of life support registers currently shared between retailers and networks in the NEM. These new rules placed obligations on both retailers and networks to immediately place customers who advised that life support equipment was required at the property onto that electricity businesses life support register. It is important to note that the new rules require retailers and networks to register customers prior to requesting the medical confirmation that is the subject of this rule change proposal.

After notification from the customer that life support equipment is present, the retailer or distributor is required to send the customer a medical confirmation form. This party is known as the Registered Process Owner (RPO). Once the medical confirmation form is sent, the customer is entitled to at least 50 business days to return the form, with the ability of the customer to request an additional 25 business days if necessary.

If the medical confirmation is still not provided, the RPO is able (but not required) to issue a deregistration notice, which notifies the customer that the site will be removed from the life support register in no less than 15 business days.

In effect, a customer who notifies the RPO that life support is will be registered for at least 90 business days before confirmation is required. In practice, this means a customer who notified a retailer on 3 September 2020 that life support was required would not be deregistered until at least 12 January 2021.

In the scenario highlighted by the proponent, if in fact a customer with life support opted to switch retailers, they would merely be required to notify their new retailer that life support was required, and then obtain medical confirmation sometime in the next four months. The AEC expects most customers with life support requirements will engage with their medical practitioner during a period of this length, and as such is unlikely to incur any additional costs to comply with the obligations in the existing rules.

In effect, the Proponent's rule change would assist customers who wish to switch retailer or move premises but are not expecting to engage with their medical practitioner in the coming months. For these customers, provided they are not eligible for life support concessions, there would be an incremental benefit of being able to avoid the cost of the appointment, and the costs and inconvenience of attending that appointment.

For customers eligible for jurisdictional life support concessions, the proposed rule would not mean a customer is able to avoid the need to obtain medical confirmation. The AEC understands that existing state government processes require customers to complete and return to their retailer medical confirmation that includes specific information about their retailer account number, and personal details. For a customer eligible for these concessions, they will be required to obtain medical confirmation irrespective of the outcome of this rule change consultation.

### **Proportionality**

In the Proponent's rule change proposal, it highlights that implementing rule changes requires significant resources. The AEC agrees with this assessment, and as a matter of course considers that rule changes should only be put forward where there are clear benefits that outweigh these costs. As noted above, the AEC is unable to comment on the quantitative benefits of the rule change without any evidence of the scale of the issue described by the proponents.

In any event, the AEC expects recent developments implemented as a result of the COVID-19 pandemic will mitigate some of the impacts life support customers previously experienced due to the requirement to re-register their premises for life support when they switched retailers. Of particular benefit to customers in

this scenario is the implementation of telehealth and the development of online methods of engaging with medical practitioners. While the future of telehealth is uncertain, as highlighted by the AEMC in its 2020 Retail Competition Review, online delivery of services is increasingly prevalent, and the AEC expects that these improvements will simplify engagements with energy retailers, including where customers are notifying the retailer of life support.

### **Risks**

The AEC strongly believes that life support registers must be as accurate as possible to ensure both that customers who need life support are protected as is critical, but also to ensure that energy businesses are confident that existing life support registrations in the NEM are reliable to ensure that the registers are not incorrectly protecting the connection of more customers than is necessary. It is clear that there are significant costs to retailers and distributors to provide life support protections, and it is in the long-term interests of consumers for these protections to be provided only to those who need them.

The Strengthening Protections for Customers Requiring Life Support Equipment rule change expressly sought to mitigate risks that arise from inaccurate life support registers. The AEC is concerned that the proposed rule change places some of the enhanced rules in the existing framework at risk.

Whilst drafting has not been provided by the Proponent, the AEC expects that if the AEMC were to make a preferable rule enacting the intent of the rule change, there would need to be new obligations placed on the customer's existing RPO, as well as the future RPO. Obligations would need to be placed on each party to send and receive the customers medical confirmation, as well as to update their own life support registers. This will require personal information to be sent between participants, using either new market systems, or less secure existing communication tools such as email.

The AEC considers that the proposed rule change would increase the risks of inaccurate life support registers, and of breaches of customer privacy. With more personal information flowing between market participants, there is clearly a greater risk that incorrect information will be transferred, or that it might be transferred to the wrong participant, than the existing practice where the customer is required to control the flow of their own personal information. It is important to note that the existing rules do not require the process owner to provide medical confirmation to the other party. Instead, the process owner merely notifies the other party that life support is present. This decreases the risk of a privacy breach significantly when compared to the proposed rule.

### **Achieving the National Energy Retail Objective (NERO)**

The AEMC in its Consultation Paper proposes to assess the NERO by considering three key factors.

1. improves access to retail market competition, by reducing barriers to switching and supporting life support customer choice.
2. improves transparency and certainty on the requirements on parties regarding the switching or moving process of life support customers.
3. allocates risk and costs between life support customers, retailers and DNSPs appropriately, and avoids unnecessary regulatory and administrative burdens and costs.

The AEC supports these criteria, and provides the following comments.

1. Improving access to retail competition

As noted above, the AEC agrees that there may be some barriers to life support customers engaging in the retail market that are not present for other customers. Given this, the AEC agrees with the Proponent that

consideration must be given to whether or not improvements in the rules framework, or other processes, might enhance the ability of a life support customer to access the benefits of the retail market, and ideally, switch to a market offer that better suits their needs.

The AEC does not consider that life support customers are unable to access choice, given obligations on all retailers and distributors to provide life support protections, however, acknowledge that the exercise of this choice may be of greater burden than it might be for others.

2. Improve transparency and certainty on the requirements on parties regarding the switching or moving process of life support customers

The AEC considers that the proposed rule change will decrease transparency and certainty on the requirements of affected parties. The proposed rule is a more complex iteration of the recently enhanced protections for life support customers which were intended to impose strict compliance obligations regarding the timing of information flows between life support customers, retailers, and distributors when a customer notified either party that life support equipment was required. These reforms have clarified obligations on parties, and enshrined a customer's access to life support protections immediately upon notification, irrespective of whether or not medical confirmation is provided.

The proposed rule however will increase complexity into this existing process. The RPO will be required to transfer a historical medical confirmation to another party. It is not clear how the new process owner might be expected to enforce the previous RPO to undertake the task, nor how either party will be able to be certain that life support remains necessary, and that consent has been provided to transfer the personal information.

While these risks may not be high, the rule will require additional processes, which can only reduce transparency and certainty.

3. Allocates risk and costs between life support customers, retailers and DNSPs appropriately

In effect, the intent of this rule change proposal is to shift costs from life support customers to retailers and distributors by increasing the obligations on these market participants. Given no evidence has been provided as to the number of customers impacted by the scenario the Proponent purports to avoid, the AEC is unable to comment as to whether this is appropriate.

That being said, the AEC in principle considers the benefits of accessing the competitive market fall to customers. This rule change seeks to reduce the barriers facing life support customers from switching to a cheaper energy deal. The effect of reducing those barriers will increase the costs on market participants, who will be required to implement systems and processes to securely and effectively transfer sensitive information to other market participants to which they hold no existing relationship. Given the subject matter, the AEC expects retailers and distributors will take this task extremely seriously, resulting in significant implementation costs.

The appropriate question remains whether the incremental costs of re-registering for life support customers without concessions outweigh the costs of implementing the new rules, in addition to the potential risks of inaccuracy in the life support registers caused by increased complexity in the obligations on market participants.

On balance, the AEC does not consider this rule change proposal meets the NERO. Without clear evidence as to the number of customers who do not switch due to the barriers highlighted by the proponent, nor any understanding of the quantum of costs customers might avoid due to the rule change, the AEC is unable to

quantify the benefits of change. Given the notable costs and risks highlighted above, the AEC considers this rule change fails to deliver benefits to the long-term interests of consumers.

### **Alternative policy responses**

Despite the rule change proposal failing to achieve the NERO, if the AEMC determines that a change to the status quo is required, the AEC considers that there might be value in stakeholders seeking to enhance the ability of life support customers to engage in the retail market by simplifying some of the existing processes that might result in barriers to switching.

It is important to consider life support customers in one of two categories. The first category includes customers who have life support equipment that is eligible for a state funded energy concession, and the second category includes customers who have life support equipment that is not eligible for a concession.

For customers in category one, there is little value in improving the experiences for customers in registering their life support equipment with their new energy business if the concessions scheme in that jurisdiction continues to require the customer to obtain medical confirmation to maintain their concessions. For these customers, collaboration is required between industry, state governments, and consumers to identify enhancements to both the registration process, and the concession application process.

For customers in category two, there may be benefits from improving the energy registration process as the customer does not also need medical confirmation to maintain concession eligibility. The AEC's proposed alternative policy responses below focus on category two customers, but consider that the number of customers they benefit could be substantially enhanced if state governments opt to simplify their own concession application processes to reduce barriers within their control.

#### *Enabling a customer to request a copy of their existing medical confirmation*

The AEC consider that the vast majority of the barriers highlighted by the Proponent could be avoided if the rules simply required a process owner, on request, to provide a copy of an existing medical confirmation form to the life support customer to provide to the new process owner.

Whilst some issues may arise from inconsistent forms and terminology between participants, the AEC expects these issues to be immaterial to the intent of the medical confirmation requirements. The new process owner could be expected to register life support on provision of the existing form – removing the requirement for the life support customer to incur costs in obtaining a new medical confirmation from their practitioner.

Importantly, this approach would enable the existing risk allocation in the current rules to remain. The process owner would be obliged to register the site immediately, and the customer would be responsible for providing their own personal information after a switch. As noted above, the AEC considers that as a matter of principle, customers should maintain ownership of the provision of their own personal data. Avoiding the need for energy businesses to build processes to transfer that information between themselves decreases the strength of that principle.

The AEC considers that there might need to be some limitations on this obligation to ensure that the accuracy of the registers remains paramount. For example, the AEMC might consider that the new retailer or distributor might only be required to accept the previous process holder's form where medical confirmation was provided within the previous two years. This would ensure that providers would not need to hold forms in perpetuity, but also periodical re-confirmation would provide stakeholders with greater confidence that life support registers were as accurate as possible – mitigating costs and risks falling on other customers.

### *Industry led online confirmation processes*

The AEC considers there may be opportunities for industry and jurisdictional governments to develop processes collaboratively to simplify the life support and concession registration process for customers in the digital age.

Predominantly life support registration processes require the completion of paper-based forms with wet signatures. This results in life support customers having to physically attend the premises of their medical practitioner whenever registration is required. In the circumstances where a customer switches retailer or moves premises, they currently need to undertake this paper-based registration process again.

Given the developments in digital service delivery, 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.

### **Conclusion**

In closing, the AEC does not consider that sufficient evidence has been put forward by the proponent to ensure that the benefits of this rule change will outweigh the detriments. Whilst customers with life support may face additional barriers when seeking to switch retailer or move premises compared to those without life support, it is unclear how placing an obligation on the RPO to transfer the existing medical confirmation to a third party will reduce those barriers and enable greater engagement. In particular, the requirement from state governments for customers to complete new concession application forms supplementary to the medical confirmation requirements in the National Energy Retail Rules will significantly reduce any benefits gained.

The AEC encourages the AEMC to seek guidance from state governments, and industry participants, to consider whether or not process improvements or non-regulatory solutions might be a more proportionate response to the issues raised by the proponent.

For any questions about our submission please contact me by email at [ben.barnes@energycouncil.com.au](mailto:ben.barnes@energycouncil.com.au) or on (03) 9205 3115.

Yours sincerely,



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