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Energy Reform team

Essential Services Commission

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EWOV Submission to the Better Protections for Life Support Customers in Victoria Consultation

The Energy and Water Ombudsman (Victoria) (EWOV) welcomes the opportunity to provide input to the Essential Services Commission's (the Commission) *Better Protections for Life Support Customers in Victoria* Consultation.

EWOV is a free and independent service that resolves disputes between Victorian consumers and energy and water companies. We work to ensure fair and reasonable outcomes when energy and water problems arise between consumers and their providers. We also use our unique data insights about consumers' experiences of the Victorian energy and water markets to improve consumer and market outcomes, through our engagement with businesses, government, regulators and the wider community. Our systemic investigation function examines the cause of emerging issues and determines the depth and breadth of consumer harm.

EWOV has previously identified concerns with the current life support rules and impacts on consumers in our submission to the Commission's [Review of the Energy Retail Code of Practice](#). While EWOV does not receive a large number of life support related complaints, our recent investigations have identified gaps in processes around registration and deregistration of life support customers, resulting in the disconnection of life support customers.

We welcome many of the changes proposed in this consultation, as well as the approach to seek consistency with other jurisdictions to minimise potential for consumer harm.

New definitions to provide better life support protections to customers

1. *Do you have any views on the proposed definitions? Would they appropriately capture all life support customers' needs, including those that do not involve equipment, such as refrigeration for insulin pumps?*
2. *Is it appropriate to have the same list of equipment from which to draw the definitions of assistive and supportive life equipment? Are two different sets of lists needed, one for each type of equipment?*

EWOV is supportive of the proposed revisions and additional definitions outlined in the consultation paper and supports the proposal to retain the ongoing distinction between a "life support resident" and a "life support customer" as outlined in Victorian codes of practice.

EWOV welcomes and supports the proposed introduction of a distinction between **critical** life support equipment and **assistive** life support needs equipment. We understand this delineation serves to enable distribution businesses to triage the appropriate prioritisation of consumers with critical power needs, which is particularly pertinent in restoring power during unplanned outages. We consider this delineation is appropriate for this sole purpose, where this distinction is determined by a medical practitioner and where all life support customers retain other protections, such as protection against disconnection for non-payment.

EWOV also supports the proposed introduction of a nominated contact person as an additional contact to the life support customer. Given the risk of harm to life support customers, we consider there is value in this additional requirement to provide an alternative contact point for a variety of purposes without requiring a full authority to act.

EWOV suggests the Commission consider retaining a single list of various life support equipment, given some technologies may apply to both critical or assistive needs, determined by a medical practitioner. This may address subtleties arising from particular life support needs of consumers (e.g. refrigeration of insulin) and equipment that may support either assistive or critical life support needs.

Recommendation

1. EWOV **recommends** the Commission retain a single list of life support equipment.

Improving registration and deregistration processes

5. *Do you have any views on requesting an updated medical confirmation form from life support customers every four years? Is four years a reasonable timeframe?*
6. *Should customers with a permanent condition be exempt from the requirement to update their medical confirmation form every four years?*
7. *Do you have any views on mandating life support customers to provide a medical confirmation form no older than four years to a prospective or new retailer when changing retailer?*
8. *Do you have any views on introducing a cap on registration attempts without medical confirmation?*
9. *Who should be responsible for sending reminders to customers prior to the expiry date of medical confirmation forms (distributors/exempt distributors or retailers/exempt retailers)?*
10. *Are there special considerations or implementation issues we should consider if we request life support customers to provide updated medical confirmation form every four years or introduce a cap on registration attempts without medical confirmation?*

EWOV supports the initiative to improve registration and deregistration processes to ensure the life support register is as accurate as possible, particularly given the potential for consumer harm. To this end, we broadly support the requirement that consumers periodically provide an updated medical confirmation, to better align Victoria with other jurisdictions. However, we observe some life support customers do report cost and administrative burden of seeking a medical practitioner's appointment. We consider any requirements to provide an updated medical confirmation should be contingent on the adoption of further protections such as:

- the introduction of an exception for permanent medical conditions, as determined by a medical professional, and
- the Commission considers the Australian Energy Market Commission's 2021 '*Maintaining life support customer registration when switching*' rule change and implements similar requirements in Victoria - that enables life support customers who switch retailers or move premises to reuse a previously submitted medical confirmation document.¹

Further, to help mitigate harms arising from deregistration of consumers who should be entitled to life support protections, EWOV recommends that EWOV's details should be required on all deregistration notifications.

Permanent medical conditions

EWOV considers the requirement to update medical confirmation documents every four years should be contingent on the introduction of an exception for medical conditions that are deemed permanent, as determined by a medical professional. In our view, it would be appropriate for this exemption to include consumers with permanent assistive life support needs, rather than limited to

¹Australian Energy Market Commission, [Maintaining life support customer registration when switching](#), 2021.

those with a permanent *critical* medical condition only. In either case, a medical professional is required to determine whether a condition is permanent. It seems unreasonable to require those with ongoing assistive life support needs to seek updated medical confirmation simply because their condition is not critical, given the ongoing administrative and cost burden to seek a renewed medical confirmation form. The Commission could consider the exemption be based on the ongoing implications (i.e. permanence) of the medical condition as approved by a medical practitioner as part of the standardised medical confirmation template.

Maintaining life support registration when switching

Through a recent investigation, a retailer advised EWOV that when a consumer is registered as a life support customer and moves address, it does not automatically transfer the life support registration to the new premises. Instead, the retailer requires consumers to complete new life support forms including new medical confirmation forms for their new address. If a new medical confirmation form is not completed when a consumer moves to a new premises, the retailer considers that the original confirmation form is no longer valid for the new premises. The retailer advised that, between November 2022 and October 2023, 168 medically confirmed life support customers of the retailer moved address. Of those consumers, 39 were deregistered for failure to provide a new medical confirmation reflecting their new address.

Our understanding is that this practice arises due to interpretation of the requirement to provide a 'medical confirmation form' in accordance with clause 163(5) of the Energy Retail Code of Practice; Version 3; 1 October 2024 (the Code) which includes 'medical confirmation'. Clause 163(5)(a)(iii) provides that a medical confirmation form must request the property address of the relevant consumer, the dates from which supply is required for the purpose of life support equipment, and medical confirmation. The Code's definition of 'medical confirmation' requires certification from a medical practitioner that a person residing at a consumer's address requires life support. These provisions suggest that a specific address must be identified, however it does not indicate that a previous medical confirmation can be re-used. This has given rise to retailers requesting new medical confirmations each time someone moves, which can require considerable time and effort on the consumer's behalf. Life support customers experiencing a range of vulnerabilities, often above and beyond their medical condition, may face additional significant barriers obtaining a medical confirmation form each time they move address or change retailer.

EWOV recommends it would benefit both consumers and retailers to minimise the administrative burden and barriers to life support registration by clarifying that medical confirmation and a medical confirmation form for the purposes of life support equipment, is valid for a consumer rather than an address and for a specified period. A consumer's medical condition or other reason(s) for being eligible for being a life support customer is highly unlikely to be related to their address. In these circumstances, a consumer's medical condition or other reason(s) for being eligible for being a life support customer has already been confirmed by a medical practitioner so the risk of a consumer's claim being false is minimal. Requiring a consumer to seek new medical confirmation each time they move address imposes a significant additional burden on a cohort of consumers who are already known to be experiencing a vulnerability. We acknowledge this may require legislative changes, but consider this effort would be warranted given the potential for severe consumer harm and in the context of other proposed requirements – such as medical reconfirmation requirements.

Life support deregistration forms

EWOV recommends that EWOV's contact details should be required on all deregistration notifications. This proactive measure can help to raise awareness of dispute resolution support in a context where consumers eligible for life support protections have been deregistered. Providing EWOV contact details on deregistration notifications can support consumers to contact EWOV to achieve expedited resolution of any issue or concerns related to providing updated medical confirmation forms or deregistration.

Recommendations

2. EWOV **supports** the introduction of an exemption from the need to seek renewed medical confirmation for consumers with permanent (i.e. chronic/ongoing) life support needs, including those that require both critical and assistive life support equipment.
3. EWOV **recommends** the Commission consider how to enable life support customers who switch retailers or move premises to reuse a previously submitted medical confirmation document.
4. EWOV **recommends** the Commission require inclusion of ombudsman contact details on all deregistration notifications.

Registration caps

EWOV recognises the issue created by the absence of a limitation on registrations as a life support user, which creates inaccuracy in the register. We would strongly caution against assuming that the main reason for multiple registrations is a deliberate attempt to misuse the system and avoid disconnection. Rules that operate on the basis of a customer accumulating a certain number of "strikes" may inadvertently punish consumers who are trying to navigate the system in good faith, including consumers at risk of, or experiencing, complex vulnerability. EWOV recommends language that states the retailer, distributor or exempt seller "is not required to re-register" a consumer after two attempts until a medical confirmation is obtained, rather than adopting prohibitive wording such as "must not reregister" a consumer. This provides some discretion to allow more than two attempts if the retailer or distributor identifies extenuating customer circumstances.

Reminder notifications prior to expiry

EWOV considers the provider with the primary consumer facing role and relationship (e.g. retailer or embedded network) should be responsible for sending reminders to the consumer about the need to register as a life support customer. Providing clarity about who holds this primary responsibility may help to improve or avoid any subsequent consumer confusion about where to provide an updated medical confirmation (i.e. to their distributor).

Recommendations

5. EWOV does not support the proposal to introduce more prescriptive mandatory deregistration requirements. We recommend the ESC amend this provision to allow the retailer, distributor or exempt seller discretion in registering consumers for life support.

Mandatory deregistration

13. *Do you have any views on mandating deregistration when customers have not provided medical confirmation or when customers' circumstances have changed?*
14. *Are there other measures that we could consider to increase the accuracy of life support registers?*
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EWOV broadly supports the initiative to improve deregistration processes where consumers have not provided medical confirmation of life support or where their circumstances have changed. This will help ensure the life support register is as accurate as possible, given the potential for consumer harm.

EWOV does not support the proposal to mandate deregistration and instead suggests the Commission consider how provisions could be constructed to ensure providers are required to take reasonable care to avoid deregistering consumers with legitimate life support needs, and to avoid potentially disconnecting legitimate life support customers. The Commission should retain language to the effect that providers “may” deregister the relevant consumer, and consider clarifying additional requirements, such as clear best endeavours requirements, rather than creating an obligation on providers to deregister consumers. Removing a provider’s ability to exercise discretion around the deregistration of a life support customer could result in breach of the new compliance obligations in circumstances where a provider considers there are reasonable barriers to a timely application and permits their customer additional time to obtain medical confirmation.

EWOV observes some provider’s processes to deregister life support customers may be overly rigid or narrow, resulting in unintended consequences. In one systemic investigation, we found a provider’s deregistration processes led to the disconnection or issuing of disconnection warning notices to 9 consumers that EWOV considered were life support customers at the time of disconnection, or would likely have met the eligibility criteria for registration as life support customers.² The provider’s process involved sending multiple deregistration notices to the consumer via their preferred contact method i.e. registered mail, but had not sought to contact the consumer via an alternative method, e.g. phone call or electronic methods.

Clause 166 of the Code imposes rules in relation to deregistration of life support customers. One of the requirements is that the retailer has taken reasonable steps to contact the relevant customer in connection with the relevant customer’s failure to provide medical confirmation, in one of the following ways: (A) in person; (B) by telephone; or (C) by electronic means.

EWOV considers that the framing of clause 166(6)(a)(ii) is not limited by a consumer’s preferred contact method and requires reasonable contact attempts beyond the reminder and deregistration notices required under clauses 164 and 166(6)(a)(iii). Given the potential harm to these consumers, EWOV suggests the Commission consider further clarification of this process, to adopt a requirement for providers to require the use of multiple contact channels, for example, “by phone,

² Based on the information the consumers provided to EWOV.

electronic **and** in person” or at least “phone **and** electronic means”. EWOV is aware of at least one energy retail provider who adopts a best endeavour contact method which involves:

- issuing a medical confirmation form, registration letter, first reminder letter and second reminder letter through the consumer’s preferred contact method, and
- if the consumer has not responded, engaging with a consumer via means other than their preferred contact method, such as SMS, email, phone calls, and/or field calls.

EWOV notes similar approaches have been adopted relating to disconnection, such as “knock before you disconnect”.³ A similar requirement for in-person contact could be required ahead of deregistration and could help to identify consumers without a nominated contact person or who may be encountering a range of difficulties engaging in the process.

To improve consumer awareness of this deregistration process, the Commission might also consider a requirement to include the nominated contact in any deregistration notifications of life support.

Recommendations

6. EWOV **recommends** the Commission consider further clarification around deregistration, including requirements for providers to contact consumers through multiple contact channels.
7. EWOV **recommends** guidance outlining other measures to ensure deregistration does not cause eligible life support customers to be deregistered, such as requirements for providers to knock before they deregister
8. EWOV **recommends** the Commission require that nominated secondary contacts are also notified as part of any deregistration communication.

Publication of a medical confirmation form template

16. *Does the medical confirmation form template capture all relevant information to ensure an accurate life support registration and to effectively protect and prioritise customers during planned and unplanned power outages? Is there any information that should be added or removed?*
17. *Should the form allow life support customers to identify as Aboriginal or Torres Strait Islander? Are there any special considerations the form should include in relation to these customers?*

EWOV supports the use of a consistent template form to apply for medical confirmation across providers. EWOV has observed a case where a consumer we consider was likely eligible for life

³ [Knock to Stay Connected - The Energy Charter](#)

support, interpreted the form to mean they were unable to be registered as a life support customer because an 'Electric Controlled Bed' was not listed as life support equipment on the energy retailer's life support registration form. Through an investigation, EWOV identified that the energy retailer's life support registration form did not include an option for consumers to identify '*any other equipment requiring electricity or gas that a registered medical practitioner certifies is required for a life support resident*' which is part of the definition of life support equipment in the Victorian *Electricity Industry Act 2000* and the *Gas Industry Act 2001*.

EWOV considers there would be merit in including self-identification of other socio-economic demographics (e.g. Indigenous Australian and Torres Strait Islander, primary language spoken at home if not English) which might aid how providers approach registration, subsequent contact, and create an additional protection around deregistration where language creates a barrier for consumers. In one case, EWOV observed a consumer encountered barriers registering for life support because she was unable to speak English and complete forms in English as requested by the provider. Enabling consumers to self-identify factors or other potential barriers, can assist providers to adopt best practices when communicating outages and other notifications.

Improving communication methods to contact life support customers

18. *Should we allow the nomination of a secondary contact person to receive notifications and information about planned interruptions? Should the secondary contact person also receive communications about unplanned interruptions?*
 19. *Do you have any views on allowing exempt sellers and distributors to provide information on planned interruptions to life support customers and secondary contacts through electronic channels? Should this be done in addition to or in replacement of a letter by post?*
 20. *For life support customers affected by family violence, does having to nominate a secondary contact person create any challenges? What additional rules or safeguards could better support these customers?*
 21. *Are there any other issues in relation to communicating with life support customers that we should consider as part of this reform?*
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Given the risk of harm, EWOV supports the proposal for a nominated secondary contact to receive notifications and information about both planned and unplanned interruptions to better support consumers to put in place contingency measures to manage outages.

We support the proposal for exempt sellers and distributors to provide information about planned interruptions to life support customers and secondary contacts through a consumer's preferred electronic channels. In our view, this communication about planned outages should occur in addition to letter by post.

EWOV considers life support customers affected by family violence nominating a secondary contact person, may create additional complexities in the business-to-business communication between retailers and distribution businesses. The Commission might consider imposing more prescriptive obligations in certain circumstances, for example, an obligation could be imposed that requires retailers to flag consumers' accounts as being that of someone impacted by family violence within a specified period when they have willingly disclosed this information and consent to this occurring. We note that similar obligations are currently in effect to protect life support customers in Victoria, with retailers having an obligation to inform distributors of the life support need of a consumer.⁴

EWOV recommends the Commission introduce a requirement to notify life support customers about unplanned outages, which should be communicated through electronic channels to ensure timeliness.

Recommendations

9. EWOV **supports** the proposal for life support customers to have a nominated secondary contact person who receives notifications around planned and unplanned interruptions.
10. EWOV **supports** the proposal for exempt sellers and distributors to provide information about planned interruptions to life support customers and nominated secondary contacts through electronic channels to ensure consumers are aware of outages.
11. EWOV **recommends** outage notification requirements should be extended to include unplanned outages for life support customers.

Implementation considerations

22. *Do you have any views on our proposed implementation approach? Are there any alternatives we should consider?*
23. *Are there any further changes required to ensure that communications between energy businesses are effective and support the accuracy of life support registers?*
24. *Are there any specific issues we should consider in relation to exempt persons and embedded networks?*

Implementation challenges for embedded networks

EWOV observes multiple consumers have raised complaints about their embedded network operator failing to notify residents about planned and unplanned outages. In some cases, embedded networks have not communicated via a consumer's preferred methods of

⁴ Energy Retail Code of Practice 2024 (Vic), clause 165.

communication. While exempt providers already have obligations to ensure consumers are properly registered for life support, notified of outages and deregistered as outlined under clauses 168 to 172 of the Code, we observe smaller embedded networks may not have sufficient capability or reliable processes to meet these obligations.

The second stage of the Victorian Government's Embedded Network Reform will require the transition to a fit-for-purpose licensing framework for currently exempt entities, to ensure consumers in embedded networks have the same protections as on market consumers.⁵ EWOV expects that new licensing requirements will raise the compliance requirements of exempt entities and improve outcomes for embedded network consumers.

In the interim, the Commission might consider measures to avoid severe consumer harms for life support customers. For example, the Commission might consider an option for consumers in smaller embedded networks to register directly with distribution businesses that serve their embedded network to ensure the accuracy of the life support register, and to ensure life support customers can be notified of outages to avoid serious harm.

Recommendations

12. EWOV **recommends** the Commission consider measures to ensure life support customers in small-embedded networks, such as caravan parks, are sufficiently protected from severe harms.

If you would like to discuss any aspect of our submission, please do not hesitate to contact Felicity Fast, Head of Public Affairs at [REDACTED]. We welcome the opportunity to further discuss this submission, the consultation and the Commission's next steps.

⁵ See [The Embedded Networks Review](#).