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LIGHT THE WAY

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AEMC: www.aemc.gov.au

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AEMC consultation: Improving life support processes

ESC consultation: Better outcomes for life support customers

EnergyAustralia is one of Australia's largest energy companies with around 2.2 million electricity and gas accounts across eastern Australia. We also own, operate and contract a diversified energy generation portfolio across Australia, including coal, gas, battery storage, demand response, wind and solar assets, with control of over 5,000MW of generation capacity.

We appreciate the opportunity to provide feedback on the AEMC's consultation *Improving life support process* and the ESC's mirror consultation *better outcomes for life support customers*. We appreciate the effort and coordination that has been invested in undertaking a harmonised consultation in relation to this rule change proposal and are hopeful that this will result in harmonised regulatory settings.

EnergyAustralia supports changes which ensure the objectives of the established life support protections are met.

- The introduction of critical and assistive categories is likely to help Distribution Network Service Providers manage critical needs customers in emergencies.
- An improved deregistration process design should lead to better outcomes when assessed against the intention of the protections, but we do not support mandatory deregistration.
- Ongoing registration should apply based on permanence of condition, not an industry-developed categorical assignment, and should therefore apply to both critical and assistive life support registration types.
- Regulators, governments and consumer bodies to support customers in creating back up plans for their life support requirements.
- The paper does not discuss the required implementation timeframes or transitional arrangements, which will be necessary to ensure appropriate execution of the proposed changes.

Our comments in relation to the issues raised within the consultation papers are set out below.

Key issues for NERR definitions

Critical and assistive life support

The key issue identified within the rule change proposal is that Distribution Network Service Providers (DNSPs) (and retailers) cannot distinguish between, or effectively triage, customers with critical needs. This was highlighted within the findings of Victoria's reviews of DNSP response after recent significant weather events. The proposed changes to the NERR definitions would provide greater ability for DNSPs to prioritize sites within the life support register in case of outage or emergency. In the broader context of changes proposed, particularly with greater rigor around the ongoing management and deregistration for LS processes, we consider this prioritization issue can be addressed.

However, we do not consider this 'assistive versus critical' distinction has been appropriately reflected throughout the drafted rules, particularly in respect of what needs to be registered in the retailer's register and communicated to the distributor, and vice versa. For example, it could be clearer that when the medical confirmation is returned, indicating critical life support needs, only then do we need to update our initial registration with critical under rule 124B. As the rules read, initial registration prior to the medical confirmation form being returned seems to always be assistive - this is what rule 124A(2)(d)(ii) suggests - is this what is intended? If so, how does this work where the customer's registration is updated to critical, and then the periodic review process under rule 124C is triggered? We consider it is not intended participants 'demote' a critically flagged customer to assistive until their replacement medical confirmation form is provided, but this could be an interpretation based on the current drafting.

Life support equipment

We consider it is appropriate to use the same list of equipment for definitions of critical and assistive life support equipment. We note that determining whether life support needs are 'critical' or 'assistive' in this case relies on the medical practitioner having knowledge of what this selection means on the form. We should not assume that this is the case, and a description of the difference should be included on the part of the form filled in by the medical practitioner.

Additionally, the proposed drafting of (3) Definitions *life support equipment (k) Other medical equipment that a registered medical practitioner certifies is required for a Life Support Customer* is sufficient to appropriately capture all needs of life support customers, including those that do not involve specific medical equipment but still rely on their power supply for assistive purposes.

We also note that there is no mention of gas within the life support process. Currently gas life support notifications cater to hot water (this covers dialysis machines which rely on hot water) and heating. The inclusion of these for gas life support requests would likely be sufficient.

Deregistration issues unlikely to be resolved

The proponent raises concerns about the process for deregistration of life support sites and the AEMC has suggested that there is confusion around who may deregister a premise when there is a change in the customer's circumstances. We consider the issue to be less one of confusion than one of risk. At present it is true that when one party (retailer or DNSP) tries to deregister a site with a life support flag, the other may override this request. This largely is because there is no evidentiary requirement to remove the flag, and the risk associated with getting this wrong is unacceptable.

We cannot provide comments on why a DNSP may refuse to deregister a site. In our experience, whilst at face value we should always accept deregistration advice received from a DNSP, there are some legitimate circumstances where we do not. For example, if we have had a recent interaction with our customer who has confirmed their need for life support registration, but the DNSP has requested deregistration based on information

pre-dating our interaction. The most common scenario for this is when the customer switches retailer. In this case some DNSPs will initiate 'Deregistration – No Customer Response', but our new customer has just confirmed their life support requirement in the recent sign up.

For these reasons, we do agree that a deregistering process such as that described in the proposal provides regulatory certainty that the appropriate steps had been undertaken and resolve the problem of risk exposure with asymmetric information that currently exists. This improved process design should lead to better outcomes in terms of the intended nature of the protections, especially prioritization in emergency situations or instances of widespread damage to infrastructure.

We do not consider mandatory de-registration is necessarily a good outcome. There are several reasons it would not be appropriate to mandate deregistration, particularly in relation to large sites which are flagged as requiring life support. These relate to sites such as nursing homes or embedded assisted living facilities, where there is likely to be more than one customer requiring life support. If it is made mandatory, we consider there should be an exception to this where a retailer (or DNSP) has reasonable grounds to consider that the customer has a life support requirement generally, noting our previous comments around timeliness of information, where a retailer receives newer information, compared to the distributor.

We note that this 'reasonable grounds' approach remains unfavourable since breach provisions are associated with life support protections, and this approach asks the registration process owner to take on the risk of a breach and associated penalty when determining whether there are 'reasonable grounds.' We believe it is more appropriate that the requirement remain 'may deregister', particularly given the proposed introduction of critical and assistive definitions to help with prioritization.

Changes to B2B processes will be required

It is likely that significant changes to the existing B2B processes will be required to support the proposed changes. The ultimate mechanism that is decided upon by AEMO remains to be decided, however we note that there will need to be differences between the 'life support - critical' and 'life support – assistive' flag, among other significant differences between the current- and future- B2B transactions state. AEMO consultations into B2B procedures take at a minimum 9 months, and industry would require a minimum of 9 months after the AEMO transactions are decided to implement. We also note that there are a significant number of changes currently in train within the sector, and as a result minimum timeframes may not be sufficient.

Four-year life support confirmation cycles

The NERR currently does not require up-to-date medical confirmation for all registered premises and permanent medical conditions cannot be identified.

It is more appropriate to have a permanent confirmation for life support customers with ongoing needs regardless of whether the registration type is 'critical' or 'assistive'. One purpose of the confirmation is to ensure that legitimate applicants are flagged and processed with priority. The purpose of the split between 'critical' and 'assistive' is to provide industry (mostly DNSPs) with a secondary prioritization mechanic within the life support register, which is helpful in emergency situations or instances of widespread damage to infrastructure. The retail obligation not to disconnect the site remains regardless of whether the registration is 'critical' or 'assistive'.

The purpose of a permanent registration option is to reduce the barriers for LS customers who will not experience a change in circumstances or health that means they

will no longer require the registration. For instance, an insulin pump requiring refrigeration or is likely to fall under 'assistive', but this is also a permanent need.

The proposed process relies on the medical practitioner having knowledge of what this critical/ assistive selection means on the form. As we have noted, we should not assume that this is the case, and an explanation should be included on the part of the form filled in by the medical practitioner. However, if this is provided, then the proposed role appears appropriate.

The question of whether it is appropriate to compel deregistration for customers that do not provide a medical confirmation is largely one of how best to ensure that customers who have legitimate life support needs receive the protections the regulatory framework is intending to provide them. In the current state, there is no rigor assigned to the process of deregistration and a significant focus on the process of registration. This creates an environment where there is emphasis on the importance of obtaining the protection, but no emphasis on the importance of ensuring that it can be delivered in practice.

There is a need to provide similar rigor for the off-taking process. We consider that in combination, the proposal to require re-confirmation from the customer if their requirement is not permanent, combined with the requirement to notify them of this obligation, and the two-attempts safeguard, provides this rigor. It is likely that this will ensure that customers remain protected for a period even if their registration lapses, and that they will only be removed from the register (and therefore experience a cease in additional protections) with fair notice that this is to occur.

Potential for undermining benefits of the proposed change

We observe that ongoing, permanent life support registration may undermine the solution to the ever-growing life support register that this rule change proposed to solve. Just because the condition is ongoing, does not mean the resident continues to reside at the site. For instance, they may move to a care facility. There is no mechanism to require the resident to engage in a re-confirmation process; we consider that consideration of a 'lite' re-confirmation process where the customer has been 'permanently' registered and a mechanism for de-registering the site if the registration is no longer required may be necessary.

Potential for additional consumer confusion

While there is a distinction between life support as a consumer protection and life support as a concessional rebate, customers may not realise this is the case. This is particularly pertinent in NSW where customers with a life support concession are required to provide a new concession rebate form every 4 years. NSW customers may end up being required to undertake a form of confirmation every 4 years irrespective of their life support protection status.

Life support registration can be misused to avoid disconnection

While it is true that life support registration can be misused to avoid disconnection, we know that this is a proportionality small number of instances. However, the levels of debt accrued by customers who are acting in 'bad faith' can be significant.

In most instances, it is likely that the customer requests registration and simply does not follow through with their paperwork because there is no reason to do so – they remain protected irrespective.

We acknowledge there are unintended consequences of introducing additional hurdles to registration. However, in this case the rule appears designed to introduce a balance to ensure protections are prioritized for people who have genuine needs and have provided the required documentation to support this. We acknowledge that in some instances it may mean that people who have legitimate needs but have not returned paperwork

experience an additional barrier to what are extended consumer protections. On balance, it is likely that most customers will be able to return the forms where they have a legitimate need, particularly as there are several opportunity safeguards in place.

Similarly, where there is a reason to follow through (i.e., there is some risk that they will be deregistered if they do not) we consider this is likely to increase the number of successfully returned registration forms. This is a better outcome for customers broadly and provides DNSPs with more accurate data in instances of emergency or widespread damage to infrastructure. This benefit appears to outweigh any unintended consequence which may arise from the proposed rule design.

Inconsistency in how life support is assessed by medical professionals

The proponent's included templates capture all relevant information to ensure accurate life support registration and effectively protect and prioritise customers during planned and unplanned outages.

The proposed registration template includes a question in the 'medical practitioner' section which relates to life support concession information. We propose that this not be included, because:

- Medical practitioners do not have concessional information and should not be expected to.
- Discussion of concessions with a medical practitioner may lead the customer to believe that they have made an application for a concession when they have not.
- Concessional life support is largely unrelated to medical life support obligations, including which life support equipment(s) are provided concessional value. The equipment varies within each of the jurisdictional concessional schemes.
- Instead, the party who accepts the registration form ought to be obliged to inform the customer of any concession that they may be eligible for. This would extend to DNSPs since customers are able to make their registration application directly, noting that the first two points apply to DNSP interactions also.

The AER (and Victoria) could adopt the Medical Confirmation template submitted by the Proponents, but we do not think this is necessary or fundamental to the issues the rule change is hoping to address. Our observation is that the template would likely be accompanied by a letter which provides instructions to the customer. If a template is adopted, then this letter ought not to be templated, and the participant engaging with the customer should be able to create a short covering letter that is designed to be clear and accessible.

Back-up planning is lacking

We consider that back-up planning is likely not to be a priority for customers, since we are used to reliable power supply. Australian Bureau of Statistics data from 2008 indicates that despite 'approximately one-fifth of all households had at least one household member who would have difficulties evacuating without help in an emergency, this did not increase the likelihood of those households having an emergency plan. Across all jurisdictions over 60% of households had a household member who would have difficulties evacuating did not have an emergency plan.'¹

It is most appropriate for individuals to be responsible for the development of their Household Life Support Equipment Back-up Plan (or any other kind of emergency action

1 [4818.0.55.001 - Household Preparedness for Emergencies: NSW, Vic., Qld and ACT, Oct 2007](#)

plan) and we support any efforts by regulators, governments and consumer bodies to support customers in doing so.

In-form electronic details capture

We consider that the life support user's electronic contact information does not by necessity need to be captured in the medical registration form, but if a customer chooses to provide it then it ought to be acceptable to use for the purposes of life support related activities. If it were to be a field included on the form, the customer should be aware of what the information in that field would be used for and provided an opportunity to opt out/ choose not to provide it if they prefer.

We note additionally that clause 10 of the Victorian Energy Retail Code of Practice requires customers provide Explicit Informed Consent (EIC) to receiving the notice electronically. EIC is a higher standard largely designed to protect customers (for instance, when entering contracts) by requiring the explicit establishment of consent. In this instance, electronic notices may reduce the amount of time between the notification being provided and the outage occurring.

We would prefer the Rules across jurisdictions be harmonised where possible.

Including a nominated contact person may not improve safety and experience

In concept we understand why the suggestion to add a nominated contact person would seem to improve the safety and experience of life support users. In practice we are not convinced that this would be the case. There are some privacy and safety considerations to account for.

- Any information capture and provision should be led by the customer. This is particularly relevant where there is a customer who is affected by domestic and family violence at the premises.
- In Victoria, we are obliged not to share the family violence affected customer details with anyone; this directly conflicts with a requirement to provide customer details where a life support customer is also a family violence customer. This has led to some DNSP's rejecting our request to apply life support registration at affected customer sites.
- If the third party is not the customer or the life support user, then there are some interactions with the Australian Privacy Principles which require broader consideration. For instance, who can provide and consent to the sharing of this third-party person's information? We consider that the Responsible Party for registration (Retailer or DNSP) would need to capture the consent of the nominated contact person to share LS related notifications. A mechanism for tracking this consent specific to life support only would also be required which adds complexity and cost to systems upgrades that would likely outweigh any minimal service experience that may be available.
- The information capture and sharing would ultimately need to interact with B2B transactions and xml field build. It would be important that this field not become mandatory (i.e., the field content would need to be optional) and this stipulation seems outside of the AEMCs remit since the B2B transactions are developed under AEMO procedures.

Transitional arrangements

Neither the AEMC's or ESC's consultation papers directly address transitional arrangements to move from the current-state registration process and register to the future-state registration process and register. It is important that these be considered, particularly in establishing a process to ensure all sites registered for life support have returned the registration form and or have been re- or de-registered appropriately.

For instance:

- Does the four-year re-registration requirement apply from the date the new rules come into effect, or, from the date the customer last registered?
- If the customer has not returned the registration form previously, does the two-attempts rule apply to these prior non-return instances, or only to non-return instances that have occurred after the change in the rules?
- If there is a transitional process to be undertaken (as would be the case if the above issues are to be proactively managed), what timeframe is this to be undertaken within? On which participant does this obligation fall, given there are multiple parties who can undertake the registration process?

In the ECS's consultative form, there was a suggestion that retailers would be required to have undertaken some kind of proactive re-confirmation process by 18 months from the rule change taking effect. We note that this is not outlined within any of the consultation papers, and that this timeframe is relatively short. We believe this obligation ought to sit with whichever party is currently the responsible organisation for the current registration, not only retailers, particularly since:

- there is limited benefit of this proposal to retailers (but the potential for not insignificant cost, depending on B2B design), and
- most of the benefit of the proposed change flows to DNSPs and life support customers.

If you would like to discuss this submission, please contact me on [REDACTED] or by email [REDACTED].

Regards

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