

Strengthening protections for life support customers

Final Decision

5 December 2019

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Summary

This final decision sets out the reasons that underpin amendments to the Energy Retail Code, Electricity Distribution Code and Gas Distribution System Code that strengthen and clarify protections for customers who require life support equipment.

Overview of our final decisions

Largely, we have adopted our draft decisions as our final decisions.¹ However, after considering stakeholder feedback we have decided to delay the commencement of the new framework. Transitional arrangements for electricity distribution businesses and exempt persons will commence from 2 January 2020, with the full framework for electricity businesses coming into effect from 3 February 2020. The transitional arrangements for gas businesses will commence on 3 February 2020 with the full framework for gas businesses coming into effect on 1 July 2020.

We will maintain the existing critical protections for life support customers that prevent retailers from arranging the disconnection of life support customers for the non-payment of bills and require distribution businesses to notify life support customers in advance of a planned interruption.

For the first time, we have included life support obligations in the Gas Distribution System Code that will apply to gas distribution businesses.

We have also strengthened the protections for life support customers in embedded electricity networks by extending additional obligations to exempt sellers and suppliers and licensed retailers.

Key changes between the draft decision and final decision

In addition to delaying the commencement of the framework, we have made some other changes between the draft and final decisions. They include:

- not allowing medical certificates to be used as a form of medical confirmation
- removing the option for life support customers to request distribution business to bring forward a planned interruption to a specified date with the customers' explicit informed consent
- allowing energy businesses to obtain a customer's (or their authorised representative's) explicit informed consent to agree to a specified date that a customer's premises will be de-registered (which may be less than the otherwise requirement of at least 15 business days)

¹ Essential Services Commission 2019, Strengthening protections for life support customers: Draft decision, August.

- expanding the coverage of life support protections to include embedded network sites that use more than 40 MWh of electricity per year.

Energy businesses the new rules apply to

The new obligations will apply to licensed energy businesses and those who are exempt from holding an electricity licence, such as embedded electricity network sellers and suppliers. There are also some additional obligations for exempt persons that will ensure a customer’s premises is registered as requiring life support equipment with all relevant parties.

Table of final decisions

Table s.1 Overview of our final decisions

Final decision	Summary of final decision	Context
1	<p>Prohibition on de-energisation (disconnection) We will maintain the critical ongoing protection that prohibits the de-energisation (disconnection) of life support customers by distribution businesses, retailers, exempt sellers and exempt suppliers. This is consistent with our draft decision.</p>	Section 3.1
2	<p>Obligations to apply to gas retailers and distribution businesses Life support obligations will extend to licensed gas retailers and gas distribution businesses. This is consistent with our draft decision.</p>	Section 3.2
3	<p>Life support protections do not apply to medium and large customers We will only extend life support protections to medium and large customers who use more than 40MWh of electricity, where the medium or large customer operates an embedded network. But only where there is a life support customer residing or intending to reside in the embedded network who has provided medical confirmation that they require life support equipment . Stakeholders raised this matter in response to the draft decision. This is also related to final decision 17.</p>	Section 3.2
4	<p>Broaden protections to those with other health needs Life support obligations will not be extended to customers who do not have eligible life support equipment. Stakeholders raised this matter in response to the draft decision.</p>	Section 3.2
5	<p>Defining gas Life support obligations will not be extended where life support equipment is fuelled by Liquefied Petroleum Gas</p>	Section 3.2

(LPG). Stakeholders raised this matter in response to the draft decision.

6 Commencing the new framework and transitional arrangements Section 3.3

Electricity

Transitional electricity life support obligations will commence from 2 January 2020. The full framework will come into effect for electricity retailers, distribution businesses and exempt persons on 3 February 2020.

Gas

Transitional gas life support obligations will commence on 3 February 2020. The full framework for gas retailers and distribution businesses will come into effect on 1 July 2020.

These timeframes are different to those in our draft decision.

7 Notification of planned distribution business interruptions Section 3.4

We will not allow life support customers to give their explicit informed consent for a planned distribution business interruption to occur on a specified date. In response to stakeholder feedback, this is different to our draft decision.

We will retain existing obligations in the Gas Distribution System Code in relation to timeframes for notification of planned interruptions. This is consistent with our draft decision.

We will not allow life support customers to request a longer notification period for a planned interruption by a gas distribution business. In response to stakeholder feedback, this is different to our draft decision.

We will retain existing obligations in the Electricity Distribution Code that require electricity distribution businesses to provide affected customers written notice of the interruption, unless a longer period of notice is requested by the customer. This is consistent with our draft decision.

We will not adopt rule 90 of the National Energy Retail Rules. This rule is concerned with planned distribution business interruptions. This was not considered in our draft decision. Stakeholders raised this matter in response to the draft decision.

8 Registration and de-registration of life support customers Section 3.5

We will require the registration process owner to follow a prescribed process to notify the other party (or parties which may be the case for embedded electricity networks), and seek to obtain medical confirmation from the life support customer within five business days. This is consistent with our draft decision.

We will require retailers, distribution businesses and exempt sellers and suppliers to give at least 15 business days' written notification of de-registration. This is consistent with our draft decision. However, we will allow this obligation to be waived when the customer or their representative gives their explicit informed consent for de-registration to occur on an earlier date. This is in addition to our draft decision.

We will require electricity retailers and distribution businesses, and gas retailers and distribution businesses to act as the registration process owner when contacted first by a life support customer. This is consistent with our draft decision.

We will allow distribution businesses to validly de-register some life support customers when they are not the registration process owner. This is consistent with our draft decision.

We will allow the registration process owner to validly de-register customers when they do not provide medical confirmation. This is consistent with our draft decision.

We will state a retailer, distribution business, exempt seller or supplier 'may' validly de-register a life support customer on advice from the other party. This is consistent with our draft decision.

9 Medical confirmation processes

Section 3.6

We will require life support customers to provide medical confirmation so as not to be validly de-registered. This is consistent with our draft decision.

We will set out the process and timeframes to seek medical confirmation including reminder notices. This is consistent with our draft decision.

We have amended the definition of medical confirmation to mean: Certification in a medical confirmation form from a registered medical practitioner that a person residing or intending to reside at a customer's supply address requires life support equipment. This is different from the draft decision.

We will not allow medical certificates to be used as a form of medical confirmation. We have updated the definition of medical confirmation accordingly. This is different to our draft decision.

We will allow energy businesses to confirm at any time whether the person requiring life support equipment still

resides at the premises or still requires life support equipment. This is consistent with our draft decision.

10 **Defining life support equipment** Section 3.7
Following stakeholder feedback we have amended our proposed the definition of life support equipment to exclude allowing medical certificates to be used as a form of medical confirmation.

11 **Additional protections** Section 3.8
We will require retailers and exempt sellers to ask customers whether they require life support equipment at the time of entering a contract or re-contracting. This is consistent with our draft decision.

We will require the registration process owner to establish whether a customer's life support equipment is fuelled by electricity and gas. This is consistent with our draft decision.

We will require the registration process owner to notify the other party (or parties as the case may be with embedded networks) within one business day of the customer advising they are a life support customer. This is consistent with our draft decision.

We will require the registration process owner and the other party (or parties as the case may be with embedded networks) to update their registers within one business day. This is consistent with our draft decision.

12 **Privacy and disclosure** Section 3.9
We will not amend our Codes to include requirements for medical confirmation to be provided to the other party with the consent of the customer. We asked stakeholders about this matter in our draft decision paper.

13 **Information requirements** Section 3.10
We will require the registration process owner to forward life support customers specific information within specified timeframes. This is consistent with our draft decision.

We will include new requirements:

- that all information must be provided in plain English and include the details of how to access interpreter services.
- customers must be advised that they may be eligible for state and federal concessions and rebates and how to access them
- customers be provided with a list of possible life support equipment.

These new requirements are in addition to our draft decision.

14	Record keeping requirements We will specify how records of registration and de-registration are managed. This is consistent with our draft decision.	Section 3.11
15	Strengthening protections for embedded network customers We will largely apply the obligations that will exist for licensed electricity retailers and distribution businesses under the amended Energy Retail Code and Electricity Distribution Code to exempt sellers and suppliers. We will also include additional obligations to ensure that off-market life support customers are validly registered with the: <ul style="list-style-type: none">• exempt seller• exempt supplier• licensed retailer at the gate meter who sells electricity to the exempt seller• licensed distribution business whose network supplies the embedded network. This is consistent with our draft decision.	Section 3.12
16	On-market embedded network customers We will not adopt additional obligations at this time to protect embedded networks from disconnection where there is an on-market life support customer and no off-market life support customers. However, based on our code amendments, on-market customers will still be protected with their licensed retailer and will receive planned supply interruption notifications from their exempt supplier for both internal interruptions within the embedded network and planned interruptions in the licensed distribution business's network.	Section 3.12
17	Protecting embedded network customers in sites that consume more than 40MWh per annum Embedded network sites consuming more than 40MWh per year, will be included for the purposes of Part 7 of the Energy Retail Code and will be able to provide medical confirmation to the licensed retailer at the gate meter to ensure the whole embedded network site is registered with the licensed retailer and licensed distribution business supplying the network. This is different to our draft decision. This is also related to final decision 3.	Section 3.12
18	Exempt seller supply interruptions	Section 3.12

We will not extend retailer supply interruption obligations to exempt sellers. This is consistent with our draft decision.

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Notifying embedded network customers about planned outages

Section 3.12

Exempt sellers will be required to notify embedded network life support customers within one business day, after receipt of notification from the licensed distribution business, of any planned outage event occurring in the licenced electricity distribution business's network. This is consistent with our draft decision.

Exempt suppliers will be required to notify life support customers at least four business days prior to its planned outages within an embedded network. This is consistent with our draft decision.

1. Introduction

Our review of life support protections for Victorian customers was driven by two main factors. New life support equipment obligations under the National Energy Customer Framework came into full effect on 1 February 2019 to make them stronger and clearer for customers and industry.² We considered that if we aligned with the national framework, we would also strengthen the protections for Victorian customers who require life support equipment. These strengthened protections are in addition to the existing critical protections that prevent Victorian life support customers being de-energised or disconnected by their energy business and require distribution businesses to notify customers of a planned interruption.

We were also of the view that customers in embedded networks should also be given the same protections as customers of licensed retailers and distribution businesses. This is due to the critical nature of life support equipment and the potential serious impact on a customer.

1.1. National reforms

The National Energy Retail Rules relating to life support customers were amended in December 2017 to address concerns raised by the Australian Energy Regulator. The Australian Energy Market Commission's final determination noted that the Australian Energy Regulator's concerns were:

- customers requiring life support equipment were not being validly registered and they may have been unaware of the need to provide medical confirmation
- there has been difficulty enforcing certain life support rules if the customer does not provide medical confirmation to either the retailer or distributor; and
- life support registers had grown and become increasingly inaccurate.³

We considered that some deficiencies and gaps in our codes – and the industry practice of not always requiring customers to supply medical confirmation – have created similar issues in the Victorian regulatory environment. Accordingly, we incorporated the life support amendments to the National Energy Retail Rules to strengthen and clarify protections for Victorian life support customers, while also including some additional protections.

² Transitional arrangements applied between 1 February 2018 and 31 January 2019.

³ Australian Energy Market Commission, Strengthening protections for customers requiring life support equipment – Final Determination (page 9), 2017

Key features of the national framework we proposed to align with

Our draft decisions very largely aligned with the National Energy Retail Rules.⁴ Some of the key features we proposed to align with to strengthen protections for Victorian life support customers were:

- affording customers life support protections from making first contact with their energy business and informing them that they require life support equipment
- extending life support protections to customers who require gas to fuel their life support equipment
- ensuring clearer processes to seek medical confirmation
- clearer processes to de-register a life support customer's premises
- more robust processes to ensure the accuracy of life support registers
- promoting better communications between energy businesses in relation to life support customers
- providing more comprehensive information to life support customers about their rights, processes and energy businesses' obligations.

Additional protections

We proposed five additional protections in our draft decision. These were:

- requiring retailers and exempt sellers to ask a customer whether they require life support equipment in certain circumstances
- clarifying responsibilities between customers and energy businesses in situations where life support equipment is fuelled by both electricity and gas
- requiring the registration process owner to notify the other party within one business day that the customer is a life support customer
- requiring the registration process owner and other party to update their registers within one business day of becoming aware that a customer is a life support customer
- permitting customers to use a medical certificate from a registered medical practitioner that states the customer requires life support equipment to fulfil the medical confirmation requirement.

⁴ We did not introduce the concept of 'retailer interruptions' into the Victorian framework for licensees at this time as metering competition is not currently allowed. We maintained some existing and stronger protections in relation to distribution business planned interruptions in the Electricity Distribution Code and Gas Distribution System Code. We also introduced a new protection where life support customers could request a longer period of notice of a distribution business planned gas interruption. This was to provide an equivalent protection to the one provided in the Electricity Distribution Code. All of this is discussed further in section 3.4 – distribution business planned interruptions.

1.2. Existing protections for Victorian life support customers

Currently, protections for Victorian customers who require life support equipment are contained in our:

- Energy Retail Code
- Electricity Distribution Code.

When taken together, the obligations in the Energy Retail Code and the Electricity Distribution Code aim to register customers who require life support equipment to prevent these customers from being disconnected under any circumstance (other than a supply outage) and provide information to assist them in the event of planned and unplanned interruptions.

The obligations in the Electricity Distribution Code specifically deal with preventing and managing the physical loss of electricity supply (except in emergencies) to registered life support customers. This is because the distribution business or exempt supplier manages the operation of their networks, which includes planning supply interruptions to undertake maintenance and disconnecting customers for a range of reasons. The Energy Retail Code provides protections to prevent the retailer or exempt seller from arranging to de-energise a customer's premises for any reason except when requested by a customer.^{5,6}

1.3. Reform of energy codes

Table 1.1 shows which code applies to each energy business type. It also shows how our final decisions will affect each code.

Table 1.1 Final decision code changes

Energy business	Energy Retail Code	Electricity Distribution Code	Gas Distribution System Code
Electricity and gas retailers	Amended obligations	N/A	N/A
Electricity distribution businesses	N/A	Amended obligations	N/A

⁵ Under the Energy Retail Code, a retailer or exempt seller must not arrange for premises to be de-energised or disconnected except in accordance with Part 6, Division 2.

⁶ The retailer or exempt seller arranges for the distribution business or exempt supplier to de-energise the premises, which can occur remotely for electricity connections.

Gas distribution businesses	N/A	N/A	New obligations
Exempt sellers	Amended obligations	N/A	N/A
Exempt suppliers	N/A	Amended obligations	N/A

Consequential amendments

There are a number of consequential amendments that have been made to our codes in order to support our final decisions. Table 1.2 below shows the consequential amendments by code.

Table 1.2 Consequential amendments

Energy Retail Code	Electricity Distribution Code
Model terms and conditions standard retail contracts (schedule 1)	Planned interruptions (clause 5.5)
Clause 16(1)	Date of effect (clause 1.2)
Commencement (clause 2)	To whom and how this code applies (clause 1.3)
Definitions (clause 3)	Definitions (clause 19)

There are no consequential amendments to the Gas Distribution System Code.

1.4. Terminology we use in this final decision

We use the terms ‘medical confirmation’, ‘life support customer’ and ‘customer who requires life support equipment’ throughout this document. For clarity:

- ‘medical confirmation’ means certification in a medical confirmation form from a registered medical practitioner that a person residing or intending to reside at a customer’s supply address requires life support equipment
- ‘life support customer’ or ‘customer requiring life support equipment’ means a customer who resides or intends to reside at a premises where life support equipment is required. This person may or may not be the customer themselves.

When we are referring to the National Energy Retail Rules, we are referring to Part 7 – Life Support Equipment, unless stated otherwise.

Exempt persons

We also use the terms ‘exempt person’, ‘exempt seller’, ‘exempt supplier’, and ‘embedded networks’. For clarity:

- ‘exempt person’ means a person who is exempt under the General Exemption Order from the requirement to hold a Victorian licence for the sale or supply of electricity⁷
- ‘exempt seller’ means a person who has a retail exemption to sell electricity without a licence (these are referenced as an ‘exempt person’ in the Energy Retail Code)
- ‘exempt supplier’ means a person who has a network exemption to supply electricity without a licence (these are referenced as an ‘exempt distributor’ in the Electricity Distribution Code)
- ‘embedded network’ means a person who owns, operates or occupies a site where the on-selling and supply of electricity occurs, and that person is exempt from the requirement to hold an electricity licence under the General Exemption Order.

A full list of terminology and definitions can be found in the glossary.

1.5. Engaging with stakeholders

In July 2019, we notified key stakeholders that we were proposing to amend our Energy Retail Code, Electricity Distribution Code and Gas Distribution System Code to strengthen protections for life support equipment customers. Since then we prepared a draft decision on our proposed amendments on the codes. We published the draft decision on our website and Engage Victoria’s website on 15 August 2019.

We used three ways to gather stakeholder feedback on the draft decision. These were:

- encouraging stakeholders to provide written submissions through Engage Victoria’s portal
- inviting stakeholders to an energy forum facilitated by the commission, where an overview of the draft decision was given, and stakeholders were asked to give their views on selected questions
- asking stakeholders to complete a short survey on Engage Victoria’s website about their experiences as a life support customer dealing with energy businesses

We received 16 written submissions on the draft decision. An overview of stakeholder feedback is given in section 2 and specific feedback is given throughout section 3.

In addition, we met with some stakeholders who requested an opportunity to discuss the draft decision.

⁷ General Exemption Order available at: <https://www.energy.vic.gov.au/legislation/general-exemption-order>

1.6. Compliance and performance reporting guideline

We will propose draft indicators on life support protections for consultation. We will then finalise those indicators in a separate document and update the guideline later and will invite stakeholder feedback. We will subsequently finalise our compliance and reporting guideline based on that feedback.

1.7. Attachments

We have included four attachments with this final decision:

- attachment 1 – final tracked changes version 10 of the Electricity Distribution Code
- attachment 2 – final tracked changes version 13 of the Gas Distribution System Code
- attachment 3 – schedule of amendments to the Energy Retail Code
- attachment 4 – schedule of amendments to the Energy Retail Code – transitional arrangements.

2. Overview of stakeholder feedback

We received 16 stakeholder submissions to our draft decision. These submissions can be found on our website www.esc.vic.gov.au. Overwhelmingly, stakeholders supported our draft decision to strengthen protections for life support customers and largely align with the National Energy Retail Rules. This is mainly because stakeholders agreed with the importance of protecting customers who require life support equipment and harmonising with the national framework. Some examples of support from stakeholders are given below.

Origin endorses the ESC's approach to use the National Energy Retail Rules to guide amendments and strengthen protections for Victorian life support customers.⁸

We strongly support the Commission using the National Energy Retail Rules (NERR) to guide the proposed amendments to the Gas Distribution System Code⁹

It is clear that proactive protections for those who need energy for life support purposes need to be comprehensively regulated... Broadly we support the ESC's draft decisions to promptly implement improvements to existing protections¹⁰

AEMO supports efforts to improve protections for customers requiring LS equipment and changes which seek to harmonise, where possible, the Essential Services Commission's energy codes with the National Energy Retail Rules.¹¹

We asked stakeholders for their views on our draft decisions and a range of targeted questions to help us understand challenges stakeholders faced in implementing the National Energy Retail Rules in other jurisdictions and other related matters.

Specific feedback fell into nine main categories:

- number of life support customers in Victoria
- application of life support protections
- commencing the new framework and transition arrangements

⁸ Origin Energy Limited, submission to the Essential Services Commission 2019, Strengthening protections for life support customers: Draft Decision, August

⁹ Australian Gas Infrastructure Group, submission to the Essential Services Commission 2019, Strengthening protections for life support customers: Draft Decision, August

¹⁰ Consumer Action Law Centre, submission to the Essential Services Commission 2019, Strengthening protections for life support customers: Draft Decision, August

¹¹ Australian Energy Market Operator, submission to the Essential Services Commission 2019, Strengthening protections for life support customers: Draft Decision, August

- notification of planned distribution business interruptions
- registration and de-registration of life support customers
- medical confirmation
- disclosure of information and privacy
- protections that we proposed in addition to those prescribed in the National Energy Retail Rules
- protections for life support customers living in embedded networks.

2.1. Number of life support customers

We asked licensed distribution businesses and retailers, and exempt sellers and suppliers, to provide us with information about the number of life support customers that they have registered in Victoria. We did this to gain an understanding of the scale of the task to transition existing life support customers onto the new framework.

Table 2.1 below shows the percentage of total customers that are registered as life support customers for each licensed distribution business.

Table 2.1 Percentage of total customers that are life support customers for each distribution business

Distribution business	Number of life support customers (electricity)	Total customer numbers*	life support customers (%)
AusNet Services	12,297	666,021	1.9
CitiPower	1,761	268,668	0.7
Powercor	11,303	705,793	1.6
United Energy	7,046	623,481	1.1
Jemena	3,400	325,214	1.1
Total	35,807	2,589,177	1.4

Customer numbers are defined as residential electricity active account owners with unique customer IDs as at 30 June 2019.

In addition to the number of customers requiring life support equipment, some distribution businesses also reported that the rates at which customers are registering as life support customers have been increasing. AusNet Services reported a 300 per cent increase in electricity life support customers over the 2014-2019 period. CitiPower, Powercor and United Energy reported a 200 per cent increase in electricity life support customers over the 2016-2019 period.

While the exact number of life support customers who require gas were not reported by distribution businesses, we have some insight into the existence of life support customers who require gas to fuel their life support equipment. Gas retailer, Origin Energy reported it had 205 life support customers who require gas to fuel their life support equipment.¹² The Australian Gas Infrastructure Group reported that from 1 February to 30 June 2019 it had received 269 enquiries from retailers in relation to customers who may require gas to fuel their life support equipment.¹³

¹² Origin Energy, submission to the Essential Services Commission 2019, Strengthening protections for life support customers: Draft Decision, August

¹³ Australian Gas Infrastructure Group, submission to the Essential Services Commission 2019, Strengthening protections for life support customers: Draft Decision, August

3. Final decisions

In this chapter we set out our final decisions in relation to strengthening protections for life support customers. These decisions will be reflected in our final versions of the Energy Retail Code, Electricity Distribution Code and Gas Distribution System Code.

Our final decisions considered a range of factors including:

- being as consistent with the National Energy Retail Rules as far as practicable
- ensuring obligations are understandable by stakeholders
- ensuring energy businesses can comply with their obligations
- promoting consistency across the Electricity Distribution Code and Gas Distribution System Code as far as practicable
- ensuring existing protections in the Electricity Distribution Code and Gas Distribution System Code remain where they are stronger than those in the National Energy Retail Rules
- the reported growth in life support customers using life support equipment
- how on-market embedded electricity network life support customers could be accounted for in the new regulatory framework
- exempt sellers and suppliers' obligations to notify life support customers about planned supply interruptions.

3.1. Maintaining critical ongoing obligations to prohibit de-energisation

Final decision 1

We will maintain the critical ongoing protection that prohibits the de-energisation (disconnection) of life support customers by distribution businesses, retailers, exempt sellers and exempt suppliers.

In our draft decision we proposed to maintain the existing ongoing obligations in the Energy Retail Code and Electricity Distribution Code that prohibit de-energising or disconnecting life support customers. We also proposed to include this obligation in the Gas Distribution System Code for the first time. Our final decision is to adopt our draft decision in relation to these critical ongoing protections.

3.2. Application of life support protections

Obligations to apply to gas retailers and distribution businesses

Final decision 2

Life support obligations will extend to licensed gas retailers and gas distribution businesses.

AusNet Services, Australian Gas Infrastructure Group, AGL, and the Energy and Water Ombudsman (Victoria) supported our draft decision to extend life support protections to customers who require gas to fuel their life support equipment.

Energy and Water Ombudsman (Victoria) wrote:

We strongly support this decision which will significantly strengthen the protection framework for Victorian customers requiring life support equipment. As the Life Support Draft Decision notes, life support equipment can be fuelled by gas, yet the GDSC has not so far placed the same obligations on gas distributors [that] have existed for electricity distributors.¹⁴

Given the critical nature of life support equipment, our final decision is to adopt our draft decision to ensure that the same obligations placed on electricity distribution businesses are also placed on gas distribution businesses.

Life support protections in relation to medium and large customers

Final decision 3

We will extend life support obligations to large customers that use more than 40MWh of electricity, where the medium to large customer operates an embedded network. But only where there is a life support customer residing or intending to reside in the embedded network who has provided medical confirmation that they require life support equipment.

We will only amend the Energy Retail Code to include customers who use more than 40MWh of electricity per annum (these are medium to large customers), where the customer (exempt person) operates an embedded electricity network. But only where there is a life support customer residing in the embedded network who has provided medical confirmation. We discuss matters related to

¹⁴ Energy and Water Ombudsman (Victoria), submission to the Essential Services Commission 2019, Strengthening protections for life support customers: Draft Decision, August

embedded electricity networks in section 3.12. This amendment will only apply to Part 7 – Life Support Equipment. Currently the Energy Retail Code applies to small customers only.¹⁵

EnergyAustralia wrote that:

EnergyAustralia considers that large customer sites which are required to have life support equipment, for example, sites which are hospitals, day surgery centres, nursing homes/aged care facilities and, retirement villages should have protections from being disconnected.

EnergyAustralia added:

We are presented with some challenges from distributors. For example, we have had a distributor push back against registering a hospital/day surgery as it considered patients do not reside there and, as such, should be out of scope of regulations.¹⁶

We agree with EnergyAustralia that customers who use more than the prescribed thresholds in the Energy Retail Code and where they have people in residence that require life support equipment should be afforded the same critical protections as people who require life support equipment but live in a private residence.

However, we consider the intent of the framework is to afford protections to small customers who reside or intend to reside at a premise who require life support equipment. We consider the framework was not intended for large customers where they may have patients residing or receiving medical treatment over a short period of time.

Where larger customers operate life support equipment, we would expect commercial contracts would be in place between the customer and their energy business. These contracts would cover things like payment terms and reliability of supply. Further, we understand that hospitals and other medical facilities generally have backup generation facilities to account for unplanned and planned supply interruptions.

Nevertheless, we would strongly encourage energy businesses to factor in the customer's critical life support equipment requirements in any subsequent interactions with the customer.

Furthermore, we consider if a medium or large embedded network customer provides a copy of a completed medical confirmation form, signed by a registered medical practitioner, confirming that a

¹⁵ Clause 3B (1) Energy Retail Code. Small customers are defined as those whose aggregate electricity consumption is not likely to be more than 40MWhr per year or gas consumption is not likely to be more than 1000 GJ per year. The Electricity Distribution Code does not classify customers by size. The Gas Distribution System Code classifies customers by either size or type. For example, large customers are classified as using more than 5,000 gigajoules per year.

¹⁶ EnergyAustralia, submission to the Essential Services Commission 2019, Strengthening protections for life support customers: Draft Decision, August

life support customer is residing or intending to reside within the embedded network, then that embedded network site is confirmed as requiring life support equipment.

Broaden protections to those with other health needs

Final decision 4

Life support obligations will not be extended to customers who do not provide medical confirmation from a registered medical practitioner that they require life support equipment.

The Consumer Action Law Centre wrote that life support protections should be extended to customers where they have health issues that would worsen if their energy supply was interrupted. It recommended that:

a broader definition for households who should have equivalent protections but do not use life support equipment should be developed and incorporated into these changes. At a minimum, protections should extend to those who have access to the medical cooling concession or a health condition that may be significantly worsened by the loss of energy supply.¹⁷

While this recommendation has some merit, our final decision is that it is outside of the scope of this reform, which is solely focused on strengthening protections for customers who require life support equipment and provide confirmation from a registered medical practitioner that they do.

Defining gas

Final decision 5

Life support obligations will not be extended where life support equipment is fuelled by liquified petroleum gas (LPG).

Origin Energy stated in its submission that the draft decision was unclear about whether our proposed life support obligations applied to customers whose life support equipment is fuelled by liquified petroleum gas (LPG).

Gas retailers are licenced by the commission in accordance with the Gas Industry Act 2001. An Order in Council made under the Gas Industry Act 2001 stated that gaseous fuel other than natural gas is not gas for the purposes of Part 3 and Part 4 of the Act.¹⁸ Part 3 of the Gas Industry Act

¹⁷ Consumer Action Law Centre, submission to the Essential Services Commission 2019, Strengthening protections for life support customers: Draft Decision, August

¹⁸ Victorian Government Gazette, Order in Council S197 29 October 2002.

2001 deals with licensing gas distribution and retail businesses amongst other things. The Energy Retail Code specifies that a retailer is a person who holds a retail licence under the Electricity Industry Act 2000 or the Gas Industry Act 2001. Further the Gas Distribution System Code applies to licensed distribution businesses.

Therefore, our final decision is that the life support obligations in the Energy Retail Code and the Gas Distribution System Code only apply to licensees that supply and sell natural gas **not** liquified petroleum gas (LPG).

3.3. Commencing the new framework and transitional arrangements

Final decision 6

Electricity

The transitional electricity life support obligations will commence from 2 January 2020. The full framework will come into effect for electricity retailers, distribution businesses and exempt sellers and suppliers on 3 February 2020.

Gas

The transitional gas life support obligations will commence on 3 February 2020. The full framework for gas retailers and distribution business will come into effect on 1 July 2020.

Draft decision

In our draft decision we proposed the new framework would come into effect on 1 January 2020 for all energy businesses and that by 1 April 2020 all existing life support customers (as at 31 December 2019) would be given an opportunity to become validly registered life support customers.¹⁹

Stakeholder views on our draft decision

Red Energy and Lumo Energy, the Consumer Action Law Centre and the Energy and Water Ombudsman (Victoria) supported the proposed timeframes in the draft decision to commence and transition existing life support customers to the new framework. They wrote:

While at this stage the proposed transitional timeframe appears reasonable and appropriate we would support further discussions with the Commission to fully understand the

¹⁹ A validly registered life support customer is a customer who has provided their retailer, distribution business or exempt seller with confirmation from a registered medical practitioner that they require life support equipment.

requirements and the potential impact on businesses to allow for a seamless implementation of the changes.²⁰

We support the draft decision that would see changes take effect from 1 January 2020 and for transitional arrangements to commence from 1 December 2019²¹

Draft decisions 1 – 3 establish a sensible time-frame for implementation.²²

However, AGL, AusNet Services, the Australian Energy Council, Australian Gas Infrastructure Group, EnergyAustralia, Origin Energy and Simply Energy were cautious about when the framework could be implemented effectively. Their main concerns centred around the absence of an automated process to manage transactions between retailers and distribution businesses relating to life support customers who require gas to operate their equipment. Some stakeholders added that automated business-to-business (B2B) processes were in place to facilitate transactions between distribution businesses and retailers for life support customers who require electricity and that it would be beneficial if similar systems were in place for gas transactions.

Australian Gas Infrastructure Group wrote:

As gas distributors in Victoria are currently not required to have life support registers we request the Commission extend the commencement date for gas from 1 January 2020 to 1 January 2021. The implementation timeframe is consistent with the timeframe used by the Australian Energy Market Commission (AEMC) for the new life support provisions in the NERR.²³

AusNet Services made similar comments in relation to gas life support customers and suggested:

a minimum 12-month transitional arrangement for implementing secure and auditable B2B transactions for gas Life Support customers.²⁴

²⁰ Red Energy and Lumo Energy, submission to the Essential Services Commission 2019, Strengthening protections for life support customers: Draft Decision, August

²¹ Consumer Action Law Centre, submission to the Essential Services Commission 2019, Strengthening protections for life support customers: Draft Decision, August

²² Energy and Water Ombudsman (Victoria), submission to the Essential Services Commission 2019, Strengthening protections for life support customers: Draft Decision, August

²³ Australian Gas Infrastructure Group, submission to the Essential Services Commission 2019, Strengthening protections for life support customers: Draft Decision, August

²⁴ AusNet Services, submission to the Essential Services Commission 2019, Strengthening protections for life support customers: Draft Decision, August

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EnergyAustralia added that:

...given the high number of gas customers in Victoria, an onerous interim manual solution will be required. While EnergyAustralia will continue to register life support gas customers, we suggest that the ESC align the commencement of the obligations with the delivery of a full B2B solution.²⁵

However, the Australian Energy Market Operator reported to us that in other jurisdictions some life support transactions (relating to gas) between retailers and distribution businesses are managed using bilateral agreements. Further, the Australian Energy Market Operator stated that it does not provide systems or procedures to facilitate these bilateral agreements.

The Australian Energy Market Operator stated at its Gas Retail Consultative Committee Forum workshop on 3 September 2019 that:

no participant expressed that it would be uncomfortable with continuing to use these bilateral agreements to fulfil the LS obligations proposed in the ESC's draft decision. As such, no Procedure or IT system changes by AEMO will be required to facilitate the ESC's life support provisions as currently proposed.²⁶

The Australian Energy Market Operator also noted at the workshop that:

several dual-fuel participants expressed their belief that the current LS B2B transactions would be able to adequately fulfil market participants' obligations under the LS provisions proposed in the draft decision.²⁷

We also note that at a Gas Retail Consultative Forum facilitated by the Australian Energy Market Operator on 17 September 2019, participants discussed matters relating to transactions between energy businesses for customers who require gas to fuel their life support equipment. At this meeting, it was noted that stakeholders supported the adoption of an automated business to business system to manage transactions rather than use bilateral agreements indefinitely.²⁸

²⁵ EnergyAustralia, submission to the Essential Services Commission 2019, Strengthening protections for life support customers: Draft Decision, August

²⁶ Australian Energy Market Operator, submission to the Essential Services Commission 2019, Strengthening protections for life support customers: Draft Decision, August

²⁷ Australian Energy Market Operator, submission to the Essential Services Commission 2019, Strengthening protections for life support customers: Draft Decision, August

²⁸ Details of this meeting and attendees can be found at: <https://aemo.com.au/Stakeholder-Consultation/Industry-forums-and-working-groups/Retail-meetings/Gas-Retail-Consultative-Forum>

Final decisions

Other implementation matters

AGL and Origin Energy suggested that the effective date for the new framework should be extended to 1 July 2020.²⁹ AGL suggested this to ensure staff could be trained about the new obligations and systems could be updated to ensure compliance with state derogations.

Final decision – implementation of the new framework and transitional arrangements

Our priority is to ensure that life support customers receive strengthened protections that were proposed in our draft decision as soon as practicable. However, we are also mindful that energy businesses should be given time to have systems in place and staff trained to be able to comply with the new obligations. This is especially relevant given we have proposed life support obligations for the first time on gas distribution businesses and additional protections to those in the National Energy Retail Rules on all energy businesses.

Furthermore, given stakeholders were mostly concerned with implementing the gas life support obligations, we took a range of additional factors into account when developing our final decision for gas businesses. These were:

- the need to provide the same critical and strengthened protections to customers who require gas to fuel their life support equipment
- stakeholder concerns that manual processes to manage gas life support customers used in other jurisdictions are cumbersome
- the Australian Energy Market Operator's submission stating participants are not uncomfortable using bilateral agreements to fulfil their life support obligations
- the considerably lower number of gas life support customers reported³⁰
- the uncertainty of whether stakeholders would agree to an automated business to business process and then the long lead time for the Australian Energy Market Operator to develop a process and implement the system.

We note that most energy retailers that operate in Victoria also operate in other jurisdictions that are already subject to the National Energy Retail Rules. Therefore, these businesses should have systems and processes in place to comply with the National Energy Retail Rules.

Therefore, in summary, our final decision is to commence the life support obligations that apply to electricity businesses earlier than obligations for gas distribution businesses and retailers that

²⁹ AGL, submission to the Essential Services Commission 2019, Strengthening protections for life support customers: Draft Decision, August and Origin Energy, submission to the Essential Services Commission 2019, Strengthening protections for life support customers: Draft Decision, August

³⁰ Origin Energy, submission to the Essential Services Commission 2019, Strengthening protections for life support customers: Draft Decision, August

supply gas. Life support obligations for electricity businesses will apply from 3 February 2020 and life support obligations for gas businesses will apply from 1 July 2020. Both commencement dates will be preceded by transitional arrangements. We understand from stakeholders that operationally it is more practical to begin new obligations on the first business day of the month.

Electricity businesses

Life support obligations that apply to electricity distribution businesses, electricity retailers and exempt sellers and suppliers will apply from 3 February 2020.

In practice, this means that customers who have been registered before 3 February 2020 – regardless of whether they have provided medical confirmation – will receive protections under the amended codes from 3 February 2020 unless they are validly de-registered.

Between 2 January 2020 and 2 February 2020, electricity distribution businesses and exempt suppliers must share their life support customer databases with relevant retailers and exempt sellers. This includes registrations where the life support customer has not provided medical confirmation from a registered medical practitioner. Retailers and exempt sellers must then reconcile their databases with the distribution businesses' and exempt suppliers' databases to establish which life support customers have provided medical confirmation and which have not.

We also consider the three-month timeframe to be sufficient for retailers and exempt sellers to transition legacy customers and seek medical confirmation after the new framework fully comes into effect.

Process to register legacy life support customers who require electricity

Over three months, between 3 February 2020 and 30 April 2020, retailers and exempt sellers will act as the registration process owner for all legacy electricity customers and must provide customers:

- **Who have provided medical confirmation:**
 - advice that there may be distribution business, exempt supplier planned and unplanned interruptions and that the distribution business, exempt supplier or exempt seller has to provide notice of planned interruptions (where relevant)
 - information to assist the customer to prepare a plan of action in the event of an unplanned interruption
 - the phone numbers of the retailer, distribution business, exempt seller or exempt supplier (where relevant)
 - advice that if the customer changes retailer, the customer must notify the new retailer that they are a life support customer
 - advice from exempt sellers that if the customer exercises their power of choice to enter a contract with licensed retailer, then the customer must notify that new retailer.

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- **Who have not provided medical confirmation:**

- the information in the point above
- a medical confirmation form
- advice that if the customer fails to provide medical confirmation the premises may be validly de-registered, and the customer will cease to receive protections under the life support protections in the Energy Retail Code, Electricity Distribution Code and Gas Distribution System Code (if relevant).

This process will help retailers, distribution businesses, exempt sellers and exempt suppliers maintain the accuracy of their registers by confirming customers who still require life support equipment. This requirement will also mean they can validly de-register customers who do not provide medical confirmation.

Process to register legacy life support customers who require gas

Life support obligations that apply to gas distribution businesses and retailers that supply gas will apply from 1 July 2020.

From 3 February 2020, gas retailers acting as registration process owners should commence the process of validly registering their legacy life support customers that have been ‘flagged’ as requiring gas to fuel their life support equipment. Gas retailers should adopt the following process for customers:

- **Who have provided medical confirmation:**

- advice that there may be distribution business planned and unplanned interruptions and that the distribution business must provide notice of planned interruptions
- information to assist the customer to prepare a plan of action in the event of an unplanned interruption
- the phone numbers of the retailer and distribution business
- advice that if the customer changes retailer the customer must notify the new retailer that they are a life support customer.

- **Who have not provided medical confirmation:**

- the information in the point above
- a medical confirmation form
- advice that if the customer fails to provide medical confirmation the premises may be validly de-registered, and the customer will cease to receive protections under the life support

protections in the Energy Retail Code, Electricity Distribution Code and Gas Distribution System Code.³¹

From 3 February 2020 until 30 June 2020, further transitional arrangements will apply when a new life support customer who requires gas to fuel their equipment contacts their gas retailer or distribution business. These arrangements are to account for stakeholder concerns that a lack of automated processes could result in time bound obligations not being able to be met.

The time bound obligations include:

- registration of the life support customer by the registration process owner and the other party. This includes the registration process owner's obligation to notify the other party of the life support customer
- requiring the registration process owner to send written information to life support customers no later than 5 business days after receipt of advice from the customer
- some ongoing obligations concerned with updating registers and notifying other relevant energy businesses of any updated customer information.
- obligations concerned with updating registers following de-registering a supply address

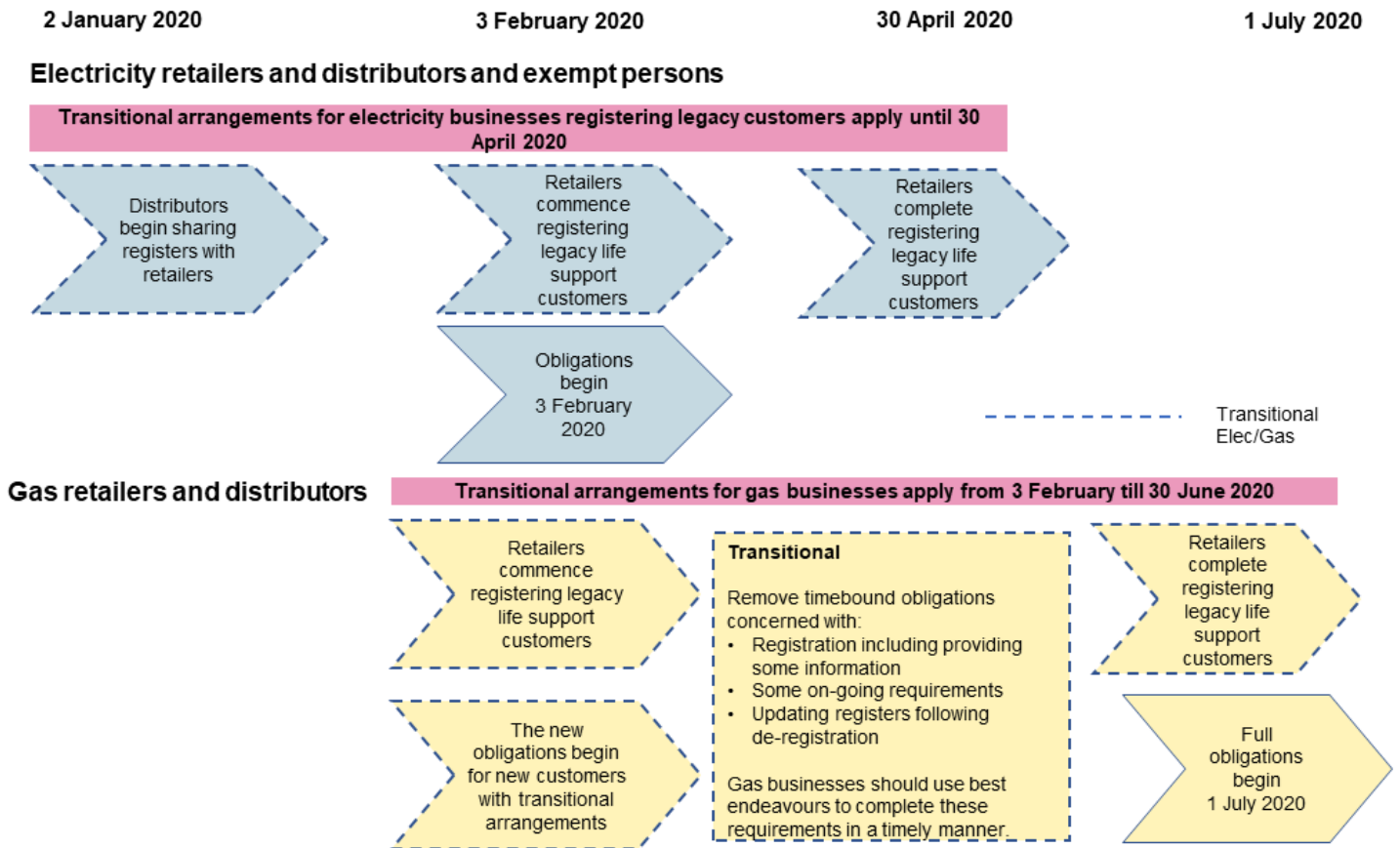
Therefore, our final decision is to not apply these time bound obligations in relation to gas retailers and gas distribution businesses between 3 February 2020 and 30 June 2020. Rather gas retailers and distribution businesses should use best endeavours to complete these obligations in a timely manner rather than within a specified timeframe. All other life support obligations contained in the Energy Retail Code and Gas Distribution System Code for these businesses commence on 3 February 2020.

Implementing transitional arrangements

Our view is that energy businesses will have the best understanding of the processes and procedures required to implement the transitional arrangements. Therefore, we will not specify these in any more detail.

³¹ We have included the Electricity Distribution Code because gas fuelled life support equipment is also likely to require electricity to operate.

Figure 1- Implementing timeframes for the new life support obligations



This figure is also shown in Appendix B

3.4. Notification of planned distribution business interruptions

Final decision 7

Explicit informed consent

We will remove our proposed obligations in the Electricity Distribution Code and Gas Distribution System Code that allow life support customers to give their explicit informed consent for a planned interruption to occur on a specified date.

Rule 90 National framework

We will not adopt Rule 90 of the National Energy Retail Rules.

Gas distribution system interruptions

We will retain existing obligations in the Gas Distribution System Code in relation to the notification period for planned interruptions.

We will remove our proposed obligation in the Gas Distribution System Code that allows life support customers to request a longer notification period for a planned interruption.

Electricity distribution system interruptions

We will retain existing obligations in the Electricity Distribution Code that require the distribution business to provide affected customers with at least four business days' written notice of the interruption, unless a longer period of notice is requested by the customer.

Stakeholder views on our draft decision

Interruptions with explicit informed consent

Most stakeholder feedback on planned distribution business interruptions related to our proposal to include an additional clause in the Electricity Distribution Code and the Gas Distribution System Code that required distribution businesses to provide life support customers with the option of providing explicit informed consent for a planned interruption to occur on an earlier specified date. Distribution businesses would then be required to keep records of this for at least two years.³²

AGL, the Energy and Water Ombudsman (Victoria), AusNet Services and the Australian Gas Infrastructure Group supported our draft decision. However, CitiPower, Powercor, United Energy and Jemena stated that the inclusion of that obligation was unworkable and instead suggested that the whole of clause 90 of the National Energy Retail Rules should be adopted. Rule 90 is set out in box 1 below.

Jemena wrote:

We believe adopting clause 90(1)(c) of the National Energy Retail Rules (NERR) in isolation would not be practical. Clause 90(1)(c) provides an opportunity for a life support customer to bring forward the specified date of a planned interruption. This would only be possible where planned works do not impact any other customers.

Jemena added:

For planned maintenance, repair or augmentation works on the distribution system; we typically notify about 50-100 customers. In these instances, it will not be practical to bring forward the specified date of a planned interruption for a life support customer

³² This proposal was based on Rule 90 of the National Energy Retail Rules.

as a shorter timeframe may not be workable to the other customers, particularly if some of those customers are life-support customers themselves.³³

CitiPower, Powercor, United Energy also provided a short case study that demonstrated that they may potentially breach clause 5.5.1 of the Electricity Distribution Code if the commission adopted the draft decision in its final decision.³⁴ The case study showed that where the distribution business brings forward an interruption for a life support customer (with explicit informed consent) this could result in other affected customers not receiving the required minimum four business days' notice.³⁵ In turn, this could result in the distribution business being issued with a penalty notice by the commission.

CitiPower, Powercor, United Energy and Jemena suggested that clause 90 of the National Energy Retail Rules in its entirety should be adopted.

CitiPower, Powercor, United Energy wrote:

Rule 90 of the NERR allows distributors to arrange a planned interruption to occur within a date range or on a specified date with the consent of affected customers, including life support customers. This Rule, if adopted in its entirety, is workable for distributors and can provide benefits to all customers.

Subrule 90(1)(c) allows life support customers to provide consent to a distributor to bring forward a planned interruption that would affect them to a specified date. Subrule 90(1)(b)(ii) allows for other customers, who are not life support customers, impacted by that same interruption to provide consent to a distributor for the same outage to occur on a specified date. Therefore, all customers impacted by a planned outage can provide consent for the outage to occur on a specified date.³⁶

CitiPower, Powercor, United Energy also noted a transition period would be required so they could build an electronic system to hold records of explicit informed consent.

Box 1 Rule 90 National Energy Retail Rules

³³ Jemena, submission to the Essential Services Commission 2019, Strengthening protections for life support customers: Draft Decision, August

³⁴ Clause 5.5.1 of the Electricity Distribution Code provides obligations about notifying customers of a planned interruption.

³⁵ CitiPower/Powercor/United Energy, submission to the Essential Services Commission 2019, Strengthening protections for life support customers: Draft Decision, August

³⁶ CitiPower/Powercor/United Energy, submission to the Essential Services Commission 2019, Strengthening protections for life support customers: Draft Decision, August

90 Distributor planned interruptions

(1) Planned interruption arrangements

A distributor may arrange a distributor planned interruption by:

- (a) giving the affected customer the notice under subrule (1B); or
- (b) other than in the circumstances described in paragraph (c), obtaining the affected customer's explicit consent to the interruption occurring:
 - (i) on any date within a date range of 5 business days; or
 - (ii) on a specified date,

in which case subrule (1A) applies

(c) where a person residing at the premises requires life support equipment, obtaining the affected customer's explicit consent to the interruption occurring on a specified date, in which case subrule (1A) applies.

(1A) Record of consent

If the distributor obtains the consent of the affected customer pursuant to subrule (1)(b) or (c):

- (a) the distributor must retain the record of consent for a period of at least 2 years in a format and including such information to enable the distributor to answer enquiries from the customer relating to the consent; and
- (b) subrules (1B) and (2) regarding planned *interruption* notices will not apply.

(1B) Notice to be given

If the distributor has not obtained an affected customer's consent to the *distributor planned interruption* occurring within a date range or on a specified date in accordance with subrule (1) (as applicable), the distributor must notify each affected customer by any appropriate means of the *interruption* at least 4 business days before the date of the *interruption*.

(2) Contents of notification

The notification must:

- (a) specify the expected date, time and duration of the *interruption*; and
- (b) include a 24 hour telephone number for enquiries (the charge for which is no more than the cost of a local call); and
- (c) include a statement that any enquiries regarding *distributor planned interruptions* are to be directed to the distributor.

Maintaining existing timeframes for notification of a planned interruption

AGL supported our proposal to maintain the protection that requires electricity distribution businesses and exempt electricity suppliers to give at least four business days' written notice of planned interruptions to supply at the premises (the four business days to be counted from, but not including, the date of receipt of the notice)

However, AGL and Australian Gas Infrastructure Group raised concerns about our proposal to maintain the existing obligations in the Gas Distribution System Code that require gas distribution businesses to give at least 10 business days' written notification of a planned interruption for maintenance and up to 10 business days' notice in the event of a disconnection for health and safety reasons. This given, the National Energy Retail Rules harmonised the notice period for planned interruptions for both fuels to at least four business days.

The Australian Gas Infrastructure Group wrote:

We believe this is likely to cause confusion for customers and retailers having inconsistent notice periods. We request the Commission... align with the NERR and Electricity Distribution Code for planned notification timeframes.³⁷

Longer notice periods for gas distribution businesses

We proposed that gas distribution businesses also allow life support customers to request a longer period of notice of a planned interruption, provided the longer notice period is necessary and can be accommodated by the distribution business. This is consistent with the Electricity Distribution Code.

The Australian Gas Infrastructure Group opposed allowing life support customers to request a longer period of notice. It wrote:

While the Code includes a timeframe of least 10 business days written notification of gas planned interruptions we do not support the inclusion of a new clause to enable customers to request longer notice periods. This will create additional issues for planned maintenance activities.³⁸

³⁷ Australian Gas Infrastructure Group, submission to the Essential Services Commission 2019, Strengthening protections for life support customers: Draft Decision, August

³⁸ Australian Gas Infrastructure Group, submission to the Essential Services Commission 2019, Strengthening protections for life support customers: Draft Decision, August

Final decision – notification of planned distribution business interruptions

Interruptions with explicit informed consent

Our final decision is not to proceed with our proposed draft decision allowing life support customers to provide distribution businesses with explicit informed consent for a planned interruption to occur on a specified date. This is because adopting only part of Rule 90 of the National Energy Retail Rules (that is life support customers can bring forward the date of an interruption provided they give informed consent) could create additional operational challenges and potentially cause breaches of obligations that require distribution businesses to provide specific timeframes for written notification of planned interruptions.

Rule 90 of Part 4 of the National Energy Retail Rules covers matters related to planned distribution business interruptions. Rule 90 allows life support customers to give explicit consent for a planned interruption to occur on a specified date. We note that this is inconsistent with Part 7 of the National Energy Retail Rules which also covers matters related to life support customers.

Furthermore, our view is that adopting Rule 90 of the National Energy Retail Rules in its entirety could create less certainty for other customers (not life support customers) about when a planned distribution business interruption would occur. This is because the rule allows for an interruption to occur on a range of dates – provided the affected customers provide explicit consent.

Rule 90 of the national framework is also unclear about how a distribution business would manage two or more life support customers who are affected by the same interruption but give explicit consent for the planned interruption to occur on different days. This is relevant as the distribution businesses have reported growing numbers of life support customers and that planned interruptions often affect more than one customer. It is also important to note that under Rule 90 should explicit consent not be received, the default position of the distribution business is to give affected customers, including life support customers, at least four business days' written notice of the planned interruption. This is consistent with the National Energy Retail Rules (Part 7 life support customers) and the Electricity Distribution Code.

Maintaining existing electricity and gas distribution business notification periods of planned interruptions

Our final decision is to maintain the existing obligations in the Gas Distribution System Code in relation to the notification periods for planned distribution business. This is because these protections are well established in Victoria and stronger than those in the National Energy Retail Rules.

We will also maintain the existing notification period requirements in the Electricity Distribution Code because they are well established in Victoria and consistent with the National Energy Retail Rules.

Our final decision took into consideration several factors. The National Energy Retail Rules specify that distribution businesses must give life support customers at least four business days' written notification of a planned interruption, which is consistent with the requirements under the Electricity Distribution Code. The Gas Distribution System Code requires gas distribution businesses to give at least 10 business days' written notification of a planned interruption and up to 10 days written notice of its intention to disconnect for health and safety reasons.³⁹ We note Australian Gas Infrastructure Group's concerns that different notification periods may be confusing to retailers and customers. However, our view is that these notification periods are well established in Victoria. Additionally, it is highly unlikely that a customer who requires both electricity and gas to fuel their life support equipment would receive notification from both their electricity distribution business and gas distribution business at the same or nearly same time about a planned interruption. We also understand that planned gas supply interruptions are less frequent than those that occur in electricity networks as they generally only occur for cyclic meter replacement or mains renewal works which are planned.

We also consider, shortening the notice period for life support customers who require gas to fuel their life support equipment would mean they receive lower protections than other gas customers.

Longer notice periods for life support customers who require gas

Under the Gas Distribution System Code, gas distribution businesses need to give longer written notice periods of planned interruptions than electricity distribution businesses do under the Electricity Distribution Code. Therefore, our final decision is to remove the option for life support customers to request an even longer notice period of a planned interruption.⁴⁰

Longer notice periods for life support customers who require electricity

We will maintain the existing protection in the Electricity Distribution Code that allows customers to request a longer notice period. This stronger protection does not exist in the National Energy Retail Rules.

³⁹The Electricity Distribution Code requires distribution business to give at least for business days' written notice of the interruption or longer if requested by the customer and can be accommodated by the distribution business. The Gas Distribution System Code requires distribution business to give at least 10 days' written notice or in the case of a health and safety interruption give the customer written notice of the reason for disconnection, then allow the customer five business days to rectify the reason (the five business days must be counted from the date of receipt of the notice); and at the expiration of those five business days give the customer a further five business days' notice of its intention to disconnect the customer.

⁴⁰ We proposed to include this protection in the Gas Distribution System Code to be consistent with the Electricity Distribution Code.

Retailer planned interruptions

We will not introduce the concept of ‘retailer interruptions’ into the Victorian framework for licensees at this time as metering competition is not currently allowed.⁴¹ Retailer interruptions generally relate to when a retailer organises for the exchange of an electricity meter at a customer’s premises. Currently, in Victoria, only licensed distribution businesses can interrupt a customer’s electricity supply for the purposes of maintaining or exchanging a meter.

3.5. Registration and de-registration of life support customers

Final decision 8

Registration of life support customers

We will retain our proposal where the registration process owner must follow a prescribed process to notify the other party (or parties which may be the case for embedded electricity networks), and it must begin to seek to obtain medical confirmation from the life support customer within five business days.

De-registration because of a change in customer circumstances

We will retain our proposal that requires retailers, distribution businesses, exempt sellers and exempt suppliers to give at least 15 business days’ written notification of de-registration. However, we will allow this obligation to be waived when the customer or their authorised representative gives their explicit informed consent for de-registration to occur on an earlier date.

Registration process owner

We will retain our proposal that allows electricity retailers and distribution businesses, and gas retailers and distribution businesses to act as the registration process owner.

Distribution businesses de-registering life support customers

We will retain our proposal that allows distribution businesses to de-register some life support customers when they are not the registration process owner. This would occur in cases where the distribution business becomes aware that the customer has changed retailers without informing their new retailer that they are a life support customer.

‘May’ de-register

⁴¹ Advanced Metering Infrastructure (Obligations to Install Meters) Order 2017 made on 12 October 2017 specifies that only a licensed distribution business can be a metering coordinator.

We will retain our proposal that states a retailer, distribution business, exempt seller or exempt supplier may de-register a life support customer on advice from the other party.

De-registration where medical confirmation is not provided

We will retain our proposal that allows the registration process owner to de-register a life support customer's premise where medical confirmation is not provided.

Stakeholder views on our draft decision

15 business days' written notification of de-registration where there is a change of customer circumstances

We proposed when a customer advises their energy business that the person for whom the life support equipment is required has vacated the premises or no longer requires the life support equipment, the energy business may de-register the customer's premises on the date specified in the written de-registration notice. Where the date of de-registration must be at least 15 business days from the date of the notice.

AGL, AusNet Services, the Australian Gas Infrastructure Group, EnergyAustralia, Origin Energy and Simply Energy reported that the proposed processes that require an energy business to de-register the life support customers premises at least 15 business days from the date of the written de-registration notice had proven problematic in other jurisdictions and in some cases distressing for customers and their families.

The energy businesses gave examples of where the '15 business day' rule was problematic.

Origin Energy wrote:

It would provide a better customer experience, and a more sensitive approach when the reason for the de-registration is the death of the person that previous [sic] required life support equipment. In such cases, retailers are usually informed by a recently bereaved family member that the person requiring life support has passed away. If this is the account holder, the retailer is required to write to the deceased person to advise them that the life support flag will be removed due to advice it is no longer required. Meeting this requirement has resulted in complaints from customers who find this letter insensitive at a difficult time.⁴²

EnergyAustralia wrote:

⁴² Origin Energy, submission to the Essential Services Commission 2019, Strengthening protections for life support customers: Draft Decision, August

If there is a subsequent life support registration at the site within 15 days by the new customer, this might lead to an inadvertent de-registration of the new customer's life support requirement. It is not possible for participants to consider the dates that the transactions were sent as the distributor may have sent the latest transaction, but not be aware of the latest information passed from the customer to their new retailer.⁴³

Origin Energy and Simply Energy suggested that the 15-business day written notice period could be waived and de-registration occur on an agreed date with the explicit informed consent of the customer.

Simply Energy wrote:

To take account of this type of situation and make the process more responsive to customer instructions, Simply Energy is in the process of raising a rule change to the NERR, to include a condition in rule 125 sub rule 9 of the NERR that enables the 15-business day requirement to be waived in cases of customer-initiated explicit consent. Simply Energy recommends that the ESC includes a similar provision if it adopts the 15-business day rule.⁴⁴

Registration process owner

We proposed that the registration process owner is the first energy business contacted by a customer in relation to their life support equipment requirements. Our proposal in relation to the registration process owner was consistent with the National Energy Retail Rules. That is the registration process owner could be the life support customer's electricity distribution business or electricity retailer and if necessary, their gas distribution business or gas retailer. In the case of embedded electricity networks, the registration process owner is only ever the exempt seller for off-market customers (see section 3.12).

AGL and Simply Energy wrote that they considered that the retailer should be the registration process owner because the retailer has the primary relationship with the customer. Simply Energy added that confusion can arise when a customer notifies both their retailer and distribution business of their life support equipment requirements. The customer then receives communications from both businesses, but if they only respond to one business the other party may then commence de-registration. This can then result in customer complaints.

⁴³ EnergyAustralia, submission to the Essential Services Commission 2019, Strengthening protections for life support customers: Draft Decision, August

⁴⁴ Simply Energy, submission to the Essential Services Commission 2019, Strengthening protections for life support customers: Draft Decision, August

The Australian Gas Infrastructure Group noted that in Victoria there were no deemed contracts between gas distribution businesses and their customers. As a result, they requested the commission to consider the implications from a lack of a contractual relationship and whether retailers were better placed to be the registration process owner where gas is required.

Distribution businesses de-registering life support customers

Our proposal allowed distribution businesses to be able to de-register a life support customer if they become aware that the customer has changed retailers and not informed their new retailer that they are a life support customer. However, we still asked stakeholders whether this was necessary given we proposed to require retailers to ask new customers or re-contracting customers whether they are a life support customer.

Stakeholders provided opposing views on this matter. EnergyAustralia, the Australian Energy Council, Jemena, CitiPower, Powercor, United Energy and the Australian Gas Infrastructure Group supported allowing distribution businesses being able to de-register life support customers when they are not the registration process owner.

Jemena wrote:

We believe there is value in retaining the right of distributors to de-register the life support status for customers as we may still encounter customers who have not notified their retailer that they are not a life support customer.⁴⁵

The Australian Energy Council added:

Given the new retailer will have an obligation to ascertain with the customer whether life support equipment is required, we consider the risk of incorrect removal by the distributor from the register is low... Given the intent of these changes, changing these obligations without clarity over the consequences would be imprudent.⁴⁶

However, the Consumer Action Law Centre, Origin Energy and Simply Energy did not support distribution businesses being able to de-register life support customers when they are not the registration process owner. Origin Energy considered that the requirement for retailers to ask new customers whether they required life support equipment would negate the need for distribution businesses needing to de-register life support customers when they are not the registration process owner.

⁴⁵ Jemena, submission to the Essential Services Commission 2019, Strengthening protections for life support customers: Draft Decision, August

⁴⁶ Australian Energy Council, submission to the Essential Services Commission 2019, Strengthening protections for life support customers: Draft Decision, August

Final decisions

Origin Energy wrote:

We support the ESC's proposal to require retailers to ask new customers about life support equipment at the time of renewing or first entering into an electricity or gas contract. This could negate the need for distributors to de-register customers when they become aware that the customer has changed retailers and in turn have not notified the new retailer that they are a life support customer.⁴⁷

Other matters

AusNet Services and CitiPower, Powercor and United Energy requested the Victorian codes be strengthened and require the relevant party to de-register the life support customer when given valid instructions to do so. They believed that this would help facilitate more accurate life support registers. The requirements in the National Energy Retail Rules (and our proposed amendments to our codes) are that a distribution business or a retailer **may** de-register a customer's premises after being notified by the other party that they have de-registered the premises.

Final decision – registration and de-registration of life support customers

Registration of life support customers

We did not receive any specific stakeholder feedback on the processes to register a life support customer. However, stakeholders broadly supported our proposals to largely base the Energy Retail Code, Electricity Distribution Code and Gas Distribution System Code on the National Energy Retail Rules in relation to registering life support customers. Therefore, our final decision in relation to registering life support customers is to adopt our draft decision.

Under our final decision, the customer begins to receive life support protections from the time they first notify the registration process owner unless they are validly de-registered. During this time, the registration process owner must follow a prescribed process to notify the other party (or parties which may be the case for embedded electricity networks), and within five business days it must begin to seek to obtain medical confirmation from the life support customer.⁴⁸

⁴⁷ Origin Energy, submission to the Essential Services Commission 2019, Strengthening protections for life support customers: Draft Decision, August

⁴⁸ The registration process owner is also responsible for notifying the other party within one business day that the premises requires life support equipment and the date from which it is required.

15 business days' written notification or explicit informed consent for de-registration to occur on an earlier date

Our final decision in relation to de-registering a customer's premises because of a change of circumstances is to remove the need to give at least 15 business days' written notification of de-registration where the customer or their authorised representative has given their explicit informed consent for de-registration to occur on a specified date. Otherwise, in all other cases, energy businesses must advise the customer that the premises will be de-registered in a minimum of 15 business days from the date of the written notification. We will require records of explicit informed consent to be kept for two years.

We consider that there is merit in allowing customers to provide their explicit informed consent to de-register a premises as requiring life support equipment because of a change of circumstances. This would appear to provide:

- a more sensitive way of treating relatives of a loved one who has died, particularly where the person who has died is the account holder and will have correspondence issued in their name that also enquires if they still need life support protections
- less opportunity to inadvertently de-register a life support customer when the customer is seeking registration with a new retailer at the same premises
- less delay when a premises is to be demolished or a meter is to be abolished yet the premises is still 'flagged' as a residence where a customer requires life support equipment.

However, we still consider the protection afforded by giving at least 15 business days' written notification of de-registration because of changes in circumstances is a necessary protection, particularly because it gives customers time to inform their retailer, distribution business or exempt person that de-registration is not appropriate and that they still require registration.

Registration process owner

Our final decision is to adopt our draft decision that permits both retailers and distribution businesses to be the registration process owner. As noted in section 3.12, exempt sellers will always be the registration process owner for off-market life support customers in embedded electricity networks.

We consider that there are no substantive reasons to move away from our draft decision to allow electricity and gas retailers and electricity and gas distribution businesses to act as the registration process owner for the relevant fuel. While some stakeholders stated that a customer's primary relationship is with their retailer, there may be cases where the customer informs the distribution business but not the retailer. Furthermore, there was strong support among stakeholders to align with the National Energy Retail Rules. On this basis, we will maintain our draft decision that permits both retailers and distribution businesses to be the registration process owner.

We note Australian Gas and Infrastructure Group's concerns that gas distribution businesses should not act as the registration process owner because they do not have a contractual (deemed contract) relationship with their customers. However, we consider the absence of this contractual relationship is not grounds to preclude gas distribution businesses from having regulatory obligations to act as registration process owner if required.

Distribution businesses de-registering life support customers

Our final decision is to adopt our draft decision that permits distribution businesses to de-register supply addresses when they are not the registration process owner.

We consider there are no substantive risks that a distribution business may inadvertently de-register a life support customer when they are not the registration process owner. This is in the situation where they become aware that a customer has transferred to another retailer without informing the new retailer that they are a life support customer. This is because before the life support customer is de-registered, the distribution business must notify the customer in writing of its intention to do so at least 15 business days before de-registration. This process should help remind customers who still require life support equipment that they need to contact their new retailer and advise them of their requirements.

Practically, our final decision to require retailers to ask new or re-contracting customers whether they require life support equipment should decrease the likelihood that distribution businesses will need to de-register a supply address when they are not the registration process owner.

'May de-register'

Our final decision is to adopt the proposed wording in the draft decision. On balance, we consider that the drafting in Energy Retail Code, Electricity Distribution Code and Gas Distribution System Code stating that retailers or distribution businesses may de-register a customer's premises as requiring life support equipment on advice from the other party is adequate. This is because it gives some discretion to the retailer or distribution business to maintain registration if they have reason to suspect the customer still requires life support equipment.

De-registration where medical confirmation is not provided

Stakeholders did not provide feedback on our draft decision allowing the registration process owner to de-register a life support customer's premise when the customer does not provide medical confirmation. Therefore, our final decision is to adopt our draft decision in relation to this matter.

In this case written notification must be provided in the form of a de-registration notice. This de-registration process ensures that customers are aware that they will be de-registered, and that they have adequate time to inform energy businesses if de-registration is **not** appropriate.

3.6. Medical Confirmation

Final decision 9

Medical confirmation

We will retain our proposal which requires life support customers to provide a completed medical confirmation form, that includes confirmation from a registered medical practitioner that the customer requires life support equipment to prevent being validly de-registered.

We will retain our proposal which sets out the process for the registration process owner to seek the medical confirmation from the life support customer.

Definition of medical confirmation

We have amended the definition of medical confirmation to mean: Certification in a medical confirmation form from a registered medical practitioner that a person residing or intending to reside at a customer's supply address requires life support equipment.

Medical certificates

We will not allow medical certificates to be used as a form of medical confirmation. We have updated the definition of medical confirmation accordingly. Please refer to Glossary.

Frequency of customer contact by energy businesses

We will retain our proposal which allowed energy businesses to confirm at any time whether the person requiring life support equipment still resides at the premises or still requires life support equipment.

Stakeholder views on our draft decision

Medical confirmation

All stakeholders supported our draft decision to align with the National Energy Retail Rules in relation to requiring customers to provide medical confirmation of their need for life support equipment.

The main reasons given for requiring medical confirmation were to help ensure life support registers are accurate and therefore ensuring protections from disconnection and notification of planned interruptions are afforded.

Jemena wrote:

Final decisions

To have a robust process to manage the life support register, we support retention of the obligation on life support customers to provide medical confirmation from a registered medical practitioner. An increase in registration of life support customer registrations has a flow-on effect on distributors when planning outages for new connections, maintenances, repair and augmentations of the distribution system.⁴⁹

Uniting Kildonan wrote:

In our view it is reasonable to request customers requiring Life Support protections (such as emergency response in the event of blackouts and notifications of planned and unplanned outages) to provide documentation to establish this need, provided they are given sufficient time to complete the application process.⁵⁰

However, the Consumer Action Law Centre wrote:

At a bare minimum, if the ESC does decide to proceed with draft decision 12 to adopt the medical confirmation requirements from the National Energy Retail Rules (**NERR**), additional requirements around those who notify but do not provide medical confirmation and who do not engage further are necessary... at a minimum we would expect that businesses keep records of households who are 'de-registered' but have at some stage indicated that someone required life support in the households. This record must be understood as a circumstance that should be taken into account by retail businesses and exempt sellers considering the appropriate responses to payment difficulty.⁵¹

Medical certificates used as a form of medical confirmation

In our draft decision we proposed to amend the required content of the medical confirmation form to include medical confirmation or a current medical certificate certifying that a person residing at the customer's premises has a medical condition which requires continual supply of electricity, gas or both.

Some stakeholders raised concerns with this proposal. This was because a medical certificate from a registered medical practitioner may not capture all the information that is necessary for an energy business to effectively register a life support customer.

⁴⁹ Jemena, submission to the Essential Services Commission 2019, Strengthening protections for life support customers: Draft Decision, August

⁵⁰ Uniting Kildonan, submission to the Essential Services Commission 2019, Strengthening protections for life support customers: Draft Decision, August

⁵¹ Consumer Action Law Centre, submission to the Essential Services Commission 2019, Strengthening protections for life support customers: Draft Decision, August

Red Energy and Lumo Energy wrote:

The use of a medical certificate in place of this form means that some consumers will not provide adequate or complete information to the retailer or distributor, which will likely require follow up and rework for both the consumer and retailer or distributor.⁵²

In addition, stakeholders considered providing a medical certificate only as medical confirmation would not meet the Victorian Department of Health and Human Service's documentation requirements for life support concessions.

AGL wrote:

AGL believes the medical confirmation requirements for life support equipment registration is required, noting that any Victorian Life Support concession administered by the Victorian Department of Health and Human Services (DHHS) requires the use of the DHHS concession form and medical confirmation. To minimise impact on customers, AGL believes a customer can visit their local General Practitioner (GP) to obtain confirmation for both life support registration and concession eligibility.⁵³

Other matters

Stakeholders raised some other matters related to the medical confirmation process. These were:

- making sure customers are aware of concessions that may be available to them
- the frequency of contacting customers to seek medical confirmation
- the accessibility of medical confirmation forms.

Concessions

Uniting Kildonan recommended that retailers should review their customer accounts and fully inform them of their entitlements. The Consumer Action Law Centre recommended that:

...situations may arise where the medical confirmation that is provided to a business indicates that a customer is eligible for the Life Support Concession when they are not already receiving it. The ESC must require energy retailers to make appropriate efforts to

⁵² Red Energy and Lumo Energy, submission to the Essential Services Commission 2019, Strengthening protections for life support customers: Draft Decision, August

⁵³ AGL, submission to the Essential Services Commission 2019, Strengthening protections for life support customers: Draft Decision, August

facilitate the customer receiving this concession wherever this is the case. Facilitating greater access to this concession will lower the risk that the use of some life support equipment does not lead to avoidable payment difficulty for households.⁵⁴

Accessibility of medical confirmation form

Uniting Kildonan wrote:

If medical confirmation is required, consideration should be given to the use of a standardised form that all registered process owners could provide to the customer. Documentation needs to be provided in plain English, as well as other languages and include the use of graphics to communicate critical tasks.

We would further encourage the Commission to consider whether an online portal would be feasible to allow hospital staff (including nurses, doctors and social workers) to assist patients with completing the application process. This could occur at point of sale when the patient is issued with life support equipment or discharged from hospital care.⁵⁵

Frequency of contact

The Consumer Action Law Centre raised concerns about how frequently a retailer or distribution business should contact a customer to seek medical confirmation. It suggested to:

Ensure that businesses cannot request confirmation of life support registration at excessive frequencies and that any notices about de-registration have the purpose of informing households how to maintain registration.⁵⁶

Final decision – medical confirmation

Medical confirmation

Our final decision in relation to requiring life support customers to provide medical confirmation and how energy businesses seek medical confirmation is consistent with our draft decision. Our draft decision provided clear processes to seek medical confirmation from life support customers so as they would not be validly de-registered. It required the registration process owner to forward a

⁵⁴ Uniting Kildonan, submission to the Essential Services Commission 2019, Strengthening protections for life support customers: Draft Decision, August

⁵⁵ Uniting Kildonan, submission to the Essential Services Commission 2019, Strengthening protections for life support customers: Draft Decision, August

⁵⁶ Consumer Action Law Centre, submission to the Essential Services Commission 2019, Strengthening protections for life support customers: Draft Decision, August

template confirmation form to the customer and (if necessary) reminder notices within the prescribed timeframes.

Further, after considering stakeholder feedback, we agree that the requirement to provide medical confirmation strengthens protections for life support customers and makes the process clear and consistent. It also lessens the likelihood of a customer being inadvertently de-registered and therefore not receiving appropriate critical protections.

Medium and large embedded network customers

We extended life support protections to customers who operate embedded networks using more 40MWh of electricity per year, but only where there is a life support customer registered with the exempt seller and who resides or intends to reside within the embedded network site. The medical confirmation process for these customers and the life support customers who live within the embedded network is described in section 3.12.

Content of medical confirmation form

Our final decision is to adopt our draft decision which specifies the contents of the medical confirmation form. We consider that this is reasonable in that it ensures a consistent approach to collecting important information about customers that have critical needs. Refer to appendix C for an example of a medical confirmation form.

Definition of medical confirmation

For clarity, we have amended the definition of medical confirmation to mean:

Certification in a medical confirmation form from a registered medical practitioner that a person residing or intending to reside at a customer's supply address requires life support equipment.

Medical certificates used as a form of medical confirmation

Our final decision is to not permit medical certificates to be used as a form of medical confirmation. On reflection, we consider that medical certificates may not be a useful substitute for a completed medical confirmation form. This is because medical certificates may not include information that is necessary to register a life support customer with an energy business. For example, the certificate may not identify the type of life support equipment the customer is using, the fuel type required to operate the equipment or the date from which the life support equipment is required.

In addition, accessing the Department of Health and Human Services life support concession and preventing de-registration by an energy business both require the customer to obtain medical confirmation. A customer could obtain these in a single visit to their general practitioner, hence reducing the burden on them.

Other matters

Frequency of contact

Our final decision is to adopt our draft decision which allowed energy businesses to confirm at any time whether the person requiring life support equipment still resides at the premises or still requires life support equipment. Our view is that this is necessary to help retailers, distribution businesses and exempt sellers and suppliers keep records up-to-date and accurate and to ensure life support protections are afforded to customers who genuinely require them. We note the Consumer Action Law Centre's concerns about energy businesses contacting customers excessively to obtain medical confirmation. However, we consider the obligations in our codes mitigate these concerns to an extent. This is because the process to obtain medical confirmation can take at least 50 business days and if the customer does not provide medical confirmation, they can be validly de-registered.

Record keeping

We note Consumer Action Law Centre's concerns about keeping records of those life support customers where they have been de-registered. We consider the requirements in the codes are adequate in that they require records of de-registration including the reasons for de-registration to be kept for at least two years.

Concessions and accessibility of medical confirmation form

We discuss matters related to concessions and accessibility of information about medical confirmation in section 3.10.

However, we agree that an online portal in a hospital may be useful to help customers (patients) and medical practitioners to complete forms related to their life support requirements. However, prescribing such a portal is outside the scope of this final decision and would require a much wider-ranging government, industry and regulatory approach.

3.7. Definition of life support equipment

Final decision 10 – We will define life support equipment as:

Life support equipment means any of the following:

1. an oxygen concentrator;
2. an intermittent peritoneal dialysis machine;
3. a kidney dialysis machine;
4. a chronic positive airways pressure respirator;
5. crigler najjar syndrome phototherapy equipment;

6. a ventilator for life support;

In relation to a particular customer—any other equipment (whether fuelled by electricity or gas) that a registered medical practitioner certifies is required for a person residing at the customer's premises for life support.

The definition will be included in the Energy Retail Code, Electricity Distribution Code and Gas Distribution System Code.

We have removed the ability to use medical certificates as a form of medical confirmation. Refer to section 3.6. Therefore, our final decision is to amend our proposed definition of life support equipment and remove references to medical certificates from being allowed to be used to confirm life support equipment requirements. Noting the life support equipment defined specifically in our final decision is consistent with the equipment defined in the National Energy Retail Rules.

3.8. Additional Protections

Final decision 11

Asking customers whether they require life support equipment

We will retain our proposal and require retailers to ask customers whether they require life support equipment at the time of entering a contract or re-contracting (except where a customer has already provided medical confirmation).

We will amend clause 16(5) and 16A of the proposed amendments to the Energy Retail Code to make it clear that the retailer must ask the customer about their life support equipment requirements before the contract starts.

Clarifying whether a customer's life support equipment is fuelled by electricity and gas

We will retain our proposal and require the energy business to establish whether a customer's life support equipment is fuelled by electricity and gas.

Timely notifications

We will retain our proposal that requires the registration process owner to notify the other party within one business day of the life customer advising they are a life support customer.

We will retain our proposal that requires the registration process owner and the other party to update their registers within one business day.

Stakeholder views on our draft decision

Requiring retailers to ask customers about their life support equipment requirements

AGL wrote that it supported asking only new customers if they required life support equipment. AGL was concerned whether asking re-contracting customers was necessary especially where they have already provided medical confirmation.

EnergyAustralia wrote that as a matter of course it asks new customers about their life support equipment requirements. EnergyAustralia added that the commission should amend the proposed requirement in clause 136(19)(a) of the Energy Retail Code so it is clear that the retailer is required to ask for this information as a pre-condition to the contract.

Clarifying responsibilities where life support equipment is fuelled by electricity and gas

To help protect customers in the situation where their life support equipment is fuelled by electricity and gas, we proposed additional safeguards. These ensure that all relevant energy businesses are aware that the customer requires life support equipment.

We received opposing views about whether we should include this protection in our final versions of the Energy Retail Code, Electricity Distribution Code and Gas Distribution System Code. Simply Energy stated that the returned medical confirmation form should be the definitive source of the fuel required to operate the life support equipment.

Simply Energy wrote:

This poses a significant risk to the customer protections, especially where the customer is unaware or mistaken about the fuel type or incorrectly states the fuel type at the time of the call. This could be a fatal error if the correct fuel is not registered for life support. Simply Energy considers that the NERR clearly deals with a situation where a customer needs both electricity and gas to fuel their life support equipment. The NERR permits a medical practitioner to certify other equipment as life support equipment for a person residing at the customer's premises. For example, a medical practitioner can certify gas and electricity heating or cooling as life support equipment... Once the medical confirmation is received by the retailer with information about which is the life support fuel, the retailer can then initiate de-registration of the other fuel type, which can happen almost instantly upon receipt of the medical confirmation.⁵⁷

⁵⁷ Simply Energy, submission to the Essential Services Commission 2019, Strengthening protections for life support customers: Draft Decision, August

On the other hand, Red Energy and Lumo Energy wrote:

Red and Lumo strongly support the Commission's proposal for the confirmation of consumers' specific requirements for life support, namely, whether it relates to the supply of electricity or gas, or both fuels. Currently retailers operating in other states are expected to automatically register any consumer who requires register for life support for both electricity and gas. This not only creates inefficiencies for retailers but creates unnecessary disruption for distribution networks. The consultation paper provides clear guidance to the market to ensure that consumers are correctly registered for the supply of the specific energy source that is required (noting that this may be electricity or gas or both as per the customer's medical requirements). We would strongly encourage the Commission to maintain this position in its final decision report and to work with the Australian Energy Regulator (AER) to implement similar approach in the NERR.⁵⁸

Timely notifications

We have mainly dealt with issues relating to timely notifications of the other party and updating registers in section 3.3, this section deals with implementation and transitional arrangements.

However, Origin Energy stated that a retailer cannot notify the other party of a life support customer unless it is the financially responsible market participant. Origin Energy added a retailer can only make the notification as soon as practicable and in accordance with the transactions available.

Red and Lumo Energy raised concerns that updating registers within one business day may not be achievable when the business acquires customers through field sales channels or switching sites. This is because it takes time to confirm details of these newly acquired customers before registering them.

Final decision – additional protections

Requiring retailers to ask customers about their life support equipment requirements

Our final decision is to adopt our draft decision and require retailers to ask new and re-contracting customers before their contract begins whether they require life support equipment.⁵⁹

We consider that it is appropriate to ask new and re-contracting customers whether they require life support equipment. In the case of re-contracting customers this provides another point to check with a customer whether they still require life support equipment. However, where a re-contracting

⁵⁸ Red Energy and Lumo Energy, submission to the Essential Services Commission 2019, Strengthening protections for life support customers: Draft Decision, August

⁵⁹ Except for re-contracting customers that have already provided medical confirmation to their retailer or exempt seller.

customer has already provided medical confirmation, obligations relating to seeking medical confirmation and de-registration because medical confirmation was not provided do not apply.

We also agree with EnergyAustralia that retailers should ask customers about their life support requirements before the contract starts. We have added a new clause 16(5) and new clause 16A of the Energy Retail Code to clarify that the retailer or exempt seller must ask the customer before they enter into a contract or agreement. We have also removed the duplicate clause 136(19)(a).

Clarifying responsibilities where life support equipment is fuelled by electricity and gas

Our final decision is to adopt our draft decision and require energy businesses to ask customers about whether their life support equipment is fuelled by electricity and gas.

We agree with Simply Energy that the completed and returned medical confirmation form should contain the definitive information on what fuel or fuels a life support customer needs to operate their equipment. However, we are concerned that customers should be registered accurately at the time they contact their retailer or distribution business in relation to what fuel(s) they require to operate their equipment. This is because waiting for the medical confirmation form to be returned could take up to 50 business days or longer if the customer requests an extension.

We consider the national rules do not deal effectively with the situation where the customer contacts either their electricity or gas distribution business first. In these situations, the distribution business can only register the customer for the fuel they distribute. Our draft decision required the distribution business, for example the electricity distribution business, to determine whether the equipment is also fuelled by gas, and if so, advise the customer to contact their gas distribution business or retailer. A similar situation arises where a customer has different electricity and gas retailers. Our draft decision requires the retailer, for example the electricity retailer, to determine whether the equipment is also fuelled by gas, and if so, advise the customer to contact their gas distribution business or retailer. Therefore, we consider our draft decision best ensured that customers know who they need to contact and that all relevant energy businesses are aware of the life support customer's needs.

We note Simply Energy's concerns if a customer incorrectly identifies the fuel required to operate their equipment. To help address this concern, we expect that the retailer or distribution business contacted first would discuss the list of defined life support equipment with customers to help them identify the correct fuel(s).

Timely notifications

Our final decision is to adopt our draft decision and require the:

- registration process owner to notify the other party within one business day that the customer is a life support customer

- registration process owner and the other party to update their registers within one business day of becoming aware that a customer is a life support customer.

We agree with Origin Energy's concerns that a retailer cannot notify the other party of the life support customer unless they are the financially responsible market participant. While we have decided some precontractual obligations will apply to retailers, other life support obligations will apply once the retailer becomes the financially responsible retailer⁶⁰ These obligations include requiring the registration process owner (when the retailer) to notify the distribution business of the life support customer within one business day and update their registers within one business day.

We acknowledge Red Energy and Lumo Energy's concerns about the additional time to confirm details of customers acquired through field channels. However, once these details are confirmed we expect that the retailer (when the registration process owner) would still be able to update their register within one business day of becoming the financially responsible retailer following the conclusion of the cooling-off period and a once request to transfer the customer's supply has been successfully completed.

Medical certificates

We have dealt with matters concerning using medical certificates as a form of medical confirmation in section 3.6.

3.9. Privacy and sharing information

Final decision 12

We will not amend the Energy Retail Code, Electricity Distribution Code, Gas Distribution System Code to include requirements for medical confirmation to be provided to the other party with the consent of the customer. Or when the person requiring life support equipment is not the customer the consent of the individual who requires the life support equipment (or a person authorised to consent on their behalf, such as a power of attorney) unless this is unreasonable or impracticable.

⁶⁰ Financially responsible retailer for premises means: (a) in the case of electricity—the retailer who is the financially responsible Market Participant responsible for the premises under the NER; or (b) in the case of gas—the retailer who is responsible for settling the account for gas withdrawn from the delivery point (however described) associated with the premises under the relevant Retail Market Procedures. Currently retailer obligations under Energy Retail Code, Part 7 Life Support Equipment apply once the retailer becomes the financially responsible retailer.

Stakeholder question

In our draft decision paper, we stated that where energy businesses are required to collect and disclose information about life support equipment that they do so in a way that is consistent with the Privacy Act 1998 (Cth) and Australian Privacy Principles. We also sought feedback on whether the Energy Retail Code, Electricity Distribution Code and Gas Distribution System Code could be amended to include specific obligations that require:

- where the person who requires life support equipment is not the customer, that medical confirmation be provided with the consent of the individual who requires the life support equipment (or a person authorised to consent on their behalf, such as a power of attorney) unless this is unreasonable or impracticable; and
- for the person who requires life support equipment to consent to the medical confirmation being disclosed to other relevant energy businesses in accordance with the codes.

Stakeholder views on our question

EnergyAustralia, Origin Energy, Powershop and Simply Energy did not consider amending our Codes to include obligations about sharing information about life support equipment were necessary. EnergyAustralia wrote:

EnergyAustralia considers that the Privacy Act 1988 (Commonwealth) and the Australian Privacy Principles provides adequate privacy requirements on businesses, including energy business, to safeguard customer health information. We do not consider amendments to the ERC around collecting and disclosing information about life support equipment is necessary.

For example, as part of our privacy policy, we inform our customers that we may be required to collect their health information in certain circumstances – including if the premises has life support equipment – and that the health information may be disclosed to the customer’s distributor.⁶¹

However, AusNet Services considered the proposed amendments discussed in the draft decision could be included in the final decision. AusNet Services wrote:

We agree that the Victorian codes should include proposed privacy requirement, discussed on pages 29 and 30, in the Code. This is a gap. Currently retailer and distribution businesses

⁶¹ EnergyAustralia, submission to the Essential Services Commission 2019, Strengthening protections for life support customers: Draft Decision, August

are sending secure B2B transactions with blanked out, non-mandated fields because the parties lack the legal authority to provide it the other party.⁶²

Final decision – privacy and information sharing

We consider that the Privacy Act 1988 (Cth) and Health Records Act 2001 (Vic) provide adequate existing protections to consumers as well as providing mechanisms to enable disclosures.

Disclosures of personal information can be made either with the consent of the relevant person, or as authorised by law. A disclosure of personal or medical information that is required by the life support provisions of the codes will be a disclosure of private information that is permitted under both the Privacy Act 1988 (Cth) and the Health Records Act 2000 (Vic).

Furthermore, the only information the registration process owner is required to provide the other party is that a person residing or intending to reside at the customer's premises requires life support equipment and the date from which the life support equipment is required.

We note AusNet Service's concerns about non-mandated information in business-to-business transactions being incomplete because the party lacks the authority to share it with the other party. This matter is outside the scope of this final decision which is about sharing information in relation to medical confirmation. However, we may decide to review this further in our wider Electricity Distribution Code review.

3.10. Information requirements

Final decision 13

We will retain our proposal in relation to the information that is required to be provided by energy business to life support customers.

We will include new requirements:

- customers must be advised that they may be eligible for state and federal concessions and rebates and how to access them
- customers must be provided with a list of eligible life support equipment. This list will be documented in a new schedule 10 of the Energy Retail Code
- that all information must be provided in plain English and include details of how to access interpreter services

⁶² AusNet services, submission to the Essential Services Commission 2019, Strengthening protections for life support customers: Draft Decision, August

that all information must be provided in plain English and include the details of how to access interpreter services.

Stakeholder views on our draft decision

AGL was the only stakeholder to provide feedback on aligning with the National Energy Retail Rules, specifically in relation to what information should be provided to customers. AGL wrote that they had implemented the majority of the National Energy Retail Rules for Victorian customers.

However, Uniting Kildonan and the Energy and Water Ombudsman (Victoria) considered that retailers and exempt sellers should be required to inform life support customers of the state and commonwealth concessions that may be available to them. They stated that this was important because the costs of energy for a household that has critical life support equipment can be significantly higher. Further, some customers may have missed out on eligible concessions for extended periods. And in some of these cases, concessions were not eligible to be backdated and applied to the customer's account.

Final decision - information to be provided to life support customers by the registration process owner

Our final decision is to adopt our draft decision in relation to the information that must be provided to life support customers. This is because we consider this information will better ensure life support customers are informed about their rights and the processes to obtain and maintain registration and manage in the event of planned and unplanned interruptions.

The information includes:

- information explaining if the customer fails to provide medical confirmation, the premises may be de-registered, upon which they will cease to receive life support protections
- advice that there may be distribution business planned interruptions for which the customer will be notified⁶³
- advice that there may be unplanned interruptions
- information to assist the customer to prepare a plan of action in case of an unplanned interruption
- two emergency phone numbers, one for the distribution business and one for the retailer (the charge for calls to these numbers must be no more than the cost of a local call)⁶⁴

⁶³ We will not require retailers or distribution business to explain that there may be retailer planned interruptions. Refer to section 3.4.

⁶⁴ We will only require retailers to provide both the telephone number for the retailer and distributor. Distributors will only be required to provide their telephone number.

- advice that if the customer decides to change retailer at the supply address, they need to advise their new retailer of life support requirements.

We require that the registration process owner provides all this information in writing, no more than five business days after the registration process owner receives notification from the customer that they are a life support customer.

Additional information requirements

We also see merit in making sure life support customers are aware that they may be eligible for certain concessions and rebates related to life support equipment and medical conditions. Therefore, our final decision will include a new requirement for the registration process owner to send out information to customers advising them that they may be eligible for concessions offered by the Victorian Department of Health and Human Services and the Commonwealth Department of Human Services, including how to access them. Like the other information forwarded after registration, this information must be forwarded to the customer no later than five business days after registration.

Our final decision will also require the registration process owner to forward a list of possible life support equipment to customers within five business days. We have listed this equipment in box 2 below. The list is consistent with the life support equipment defined in our final decision 10 and will include the examples of 'other' life support equipment that are listed in the Australian Energy Regulator's guideline.⁶⁵ This is so the list of possible life support equipment is more complete, gives examples of equipment that could be fuelled by gas and is more useful to customers. We will include the list in box 2 below in a new schedule 10 of the Energy Retail Code. We will also include references to the schedule in the Electricity Distribution Code and Gas Distribution System Code. This is to assist distribution businesses if they are the registration process owner. We expect the registration process owner to send all this information to customers in a single communication within five business days to ensure that customers have all relevant information available to them at the same time.

Accessibility of information

We will require that this information be written in plain English and include the details of interpreter services.

⁶⁵ Australian Energy Regulator, Life support registration guide 2019, page 5
<https://www.aer.gov.au/system/files/AER%20Life%20support%20registration%20guide%202019.pdf>

This obligation is similar to existing requirements in clauses 25(1)(w) and 55 of the Energy Retail Code that requires bills to contain the details of interpreter services in community languages.

Our final decision will also require distribution businesses to include the details of interpreter services on all written information provided to life support customers. We will amend the Electricity Distribution Code and Gas Distribution System Code accordingly.

Box 2 Listing of examples of life support equipment

Below list the life support equipment defined in our final decision 10 and the National Energy Retail Rules:

- an oxygen concentrator
- an intermittent peritoneal dialysis machine
- a kidney dialysis machine
- a chronic positive airways pressure respirator
- crigler najjar syndrome phototherapy equipment
- a ventilator for life support

The National Energy Retail Rules ,Energy Retail Code and Electricity Distribution Code all contemplate that in relation to a particular customer any other equipment could be considered life support equipment as long as a registered medical practitioner certifies it is required for a person residing at the customer's premises for life support.

The Australian Energy Regulator's guideline goes further and provides examples of other life support equipment that a medical practitioner could consider is essential for their patient. 'Other' life support equipment may include, but is not limited to, the following:

- external heart pumps
- respirators (iron lung)
- suction pumps (respiratory or gastric)
- feeding pumps (kangaroo pump, or total parenteral nutrition)
- insulin pumps
- airbed vibrator
- hot water
- nebulizer, humidifiers or vaporizers

- apnoea monitors
- medically required heating and air conditioning
- medically required refrigeration
- powered wheelchair.

3.11. Record management requirements

Final decision 14 - We will retain our proposal in relation to the record management requirements placed on energy businesses.

In our draft decision we set out our proposed requirements about how energy businesses manage records of registration and de-registration of life support customers. We did not receive any stakeholder feedback on this matter. Therefore, our final decision is to adopt our draft decision in relation to managing records of registration and de-registration of life support customers. This includes an obligation to retain records for at least two years.

3.12. Additional requirements for embedded electricity networks

Final decision 15 – Strengthening protections for embedded network customers

We will largely apply the obligations that will exist for licensed electricity retailers and distribution businesses under the amended Energy Retail Code and Electricity Distribution Code to exempt sellers and suppliers, as outlined in the earlier sections of our final decision.

We will also include additional obligations to ensure that off-market life support customers are validly registered with the:

- exempt seller
- exempt supplier
- licensed retailer at the gate meter who sells electricity to the exempt seller
- licensed distribution business whose network supplies the embedded network.

Additionally, on-market customers will be registered with their licensed retailer, exempt supplier and the licensed distributor supplying the embedded network.

Final decision 16 – On-market embedded network customers

We cannot adopt additional obligations at this time to protect embedded networks from disconnection by the licensed retailer at the gate meter where there is an on-market life support customer and no off-market life support customers. However, based on our code amendments, on-market customers will still be protected with their licensed retailer and

exempt supplier. Customers will also receive planned supply interruption notifications from their exempt supplier for both internal interruptions within the embedded network and planned interruptions in the licensed distributor's network.

Final decision 17 – Protecting embedded network customers in sites that consume more than 40MWh per annum

In line with final decision 3, embedded network sites that consume more than 40MWh of electricity, will be included for the purposes of Part 7 that relate to life support protections. Embedded network operators/owners will be required to pass on a copy of the life support customer's medical confirmation form to the licensed retailer at the gate meter to ensure the whole embedded network site maintains its registration with the licensed retailer and the licensed distribution business supplying the network.

Final decision

The approach adopted in our final decision will ensure that life support customers residing in embedded networks are protected from disconnection or de-energisation by:

- exempt sellers
- licensed retailers selling directly to on-market customers (as these obligations exist in the code amendments proposed in our draft decision)
- exempt suppliers for both off-market and on-market customers
- the retailer at the gate meter selling electricity to the embedded network operator/owner (but not where there is one or more on-market life support customer and no off-market life support customers)
- the distribution business supplying the embedded network (except in the cases of an unplanned interruption or a disconnection initiated by a customer).

Off-market customers are those customers who are sold electricity by an exempt seller and do not have a National Metering Identifier allocated to their electricity meter and are therefore not discoverable in the national electricity database, the Market Settlement and Transfer Solution.

On-market customers refer to customers that have obtained a contract with a licensed electricity retailer and have had a National Metering Identifier allocated to their electricity meter so that it is discoverable in the national electricity database, the Market Settlement and Transfer Solutions.

On-market customers

The proposals in our draft decision, which we have adopted in this final decision – requiring licensed retailers to ask customers if they require life support equipment, register them accordingly

and notify the distributor – will apply to customers in embedded networks as the obligations apply to licensees regardless of whether the customer resides in an embedded network or not. This will ensure that on-market customers are registered with their licensed retailer and the distributor supplying the network. Also, the additional protections about notification of planned supply interruptions will apply for on-market life support customers as they are supplied electricity by the exempt supplier in the embedded network. Exempt suppliers are also required to notify life support customers within one business day of notification from a licensed distributor about a planned interruption in the distributor’s network. Additionally, exempt suppliers are required by the Electricity Distribution Code to register customers when notified by a customer that someone residing or intending to reside at the customer’s premises requires life support equipment.

We noted in our draft decision that even with the proposed alternative approach to capture the registration of on-market life support customers with the licensed retailer at the gate meter, there was no ready framework available to facilitate the de-registration process of on-market customers. One of the key objectives of the new life support framework is to ensure that registers are up-to-date and accurate. Accordingly, there was a considerable risk that embedded networks with an on-market customer could be registered in perpetuity in the absence of formal business-to-business systems and processes to facilitate the exchange of information between retailers selling directly to on-market customers and exempt persons.

The commission will monitor whether the Council of Australia Government’s Energy Council indicates intends to adopt the Australian Energy Market Commission’s final report recommendations⁶⁶ regarding life support for on-market customers, and whether the Victorian Government decides to adopt the proposed framework for embedded networks in Victoria.

Off-market customers

For off-market customers, we consider that the customer/retailer relationship between the customer purchasing electricity through the gate meter (i.e. the exempt seller) and the licensed retailer provides an appropriate channel for all relevant energy businesses to register embedded network sites where there is an off-market life support customer/s residing. On balance, we also note that the number of life support customers in embedded electricity networks will be small and accordingly, the administrative burden for exempt persons should be minimal.

We have created diagrams to illustrate at a high-level the information flows and actions required to register and de-register an off-market life support customer.

⁶⁶ AEMC Updating the regulatory arrangements for embedded networks, available at: <https://www.aemc.gov.au/market-reviews-advice/updates-regulatory-frameworks-embedded-networks>

Exempt sellers – registering off-market customers

We understand that the vast majority of customers in embedded electricity networks are sold electricity by exempt sellers.

To ensure that the retailer at the gate meter and the distribution business supplying the embedded network are aware of the life support customer/s, we have included additional obligations on exempt sellers. When an exempt seller is notified or advised by a customer that they require life support equipment, an exempt seller will be required to:

- notify the exempt supplier (if it is a different party) of the life support customer within one business day
- provide the customer with a medical confirmation form and the other required information in writing within five business days
- within one business day after setting up the contract, notify the licensed retailer at the gate meter that there is a customer who requires life support equipment (the retailer will then in turn notify the distribution business)⁶⁷
- liaise between the customer and the retailer at the gate meter to ensure that a copy of the completed medical confirmation form is provided to the retailer.

Embedded networks using more than 40MWh of electricity per annum

If the exempt seller operates an embedded network that has a total annual consumption of electricity that exceeds, or is expected to exceed, 40MWh per annum, the licensed retailer at the gate meter is obligated to register the site as requiring life support and can only de-register the site if it does not receive a copy of the life support customer's medical confirmation form or if there is a change of customer circumstances (and only after discharging its other obligations, including those relating to reminder notices).

Exempt suppliers – registering customers

When an exempt supplier is notified by a customer that they require life support equipment, the exempt supplier will be required to:

- register the life support customer on its register within one business day, and
- notify the exempt seller within one business day after notification from the customer.

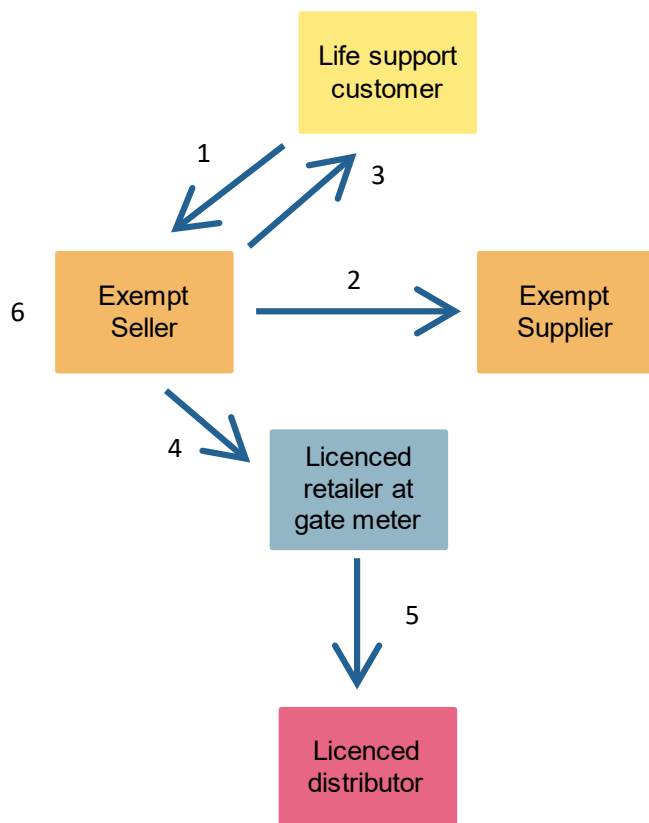
For off-market customers, the exempt seller's obligations will then commence, and it will be required to register the life support customer within one business day, and notify the licensed

⁶⁷ We anticipate that exempt persons will phone or email their licensed retailer to initiate this process.

retailer at the gate meter within one business day who in turn will notify the distribution business supplying the embedded network within one business day.

It is important to note that, for off-market customers, the exempt seller will always be the registration process owner, as it is the party with a relationship with both the life support customer and the licensed retailer at the gate meter.

Figure 2 - Registering an off-market life support customer in an embedded network

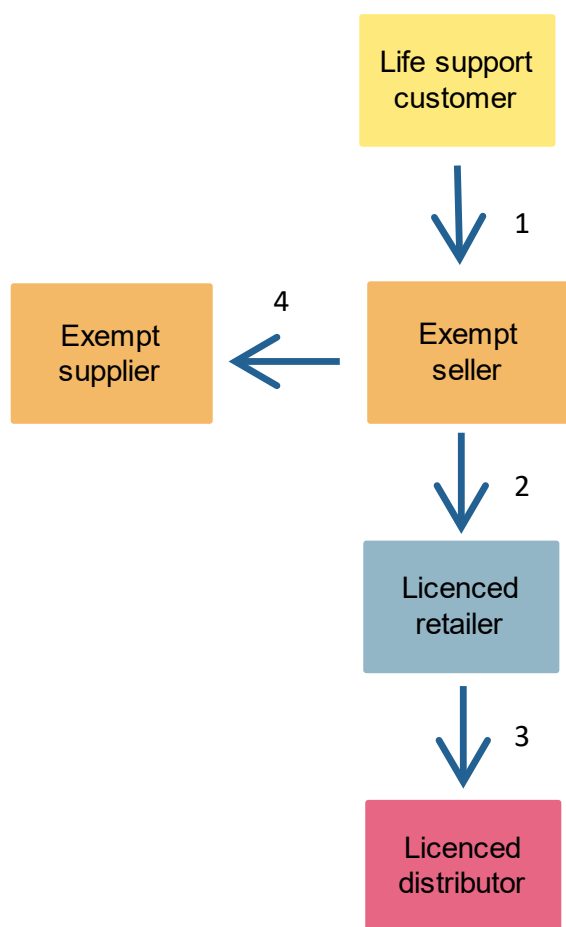


High-level actions and information flows

1. Customer notifies exempt seller that they require life support equipment.
2. Exempt seller registers customer and notifies exempt supplier (if it is a different party) within one business day.
3. Exempt seller provides life support customer information including a medical confirmation form within five business days.
4. Exempt seller, as customer of licenced retailer at gate meter, notifies the retailer about the life support customer within one business day.
5. Licenced retailer notifies licenced distributor supplying embedded network of life support customer within one business day after exempt seller's notification.
6. Exempt seller liaises with customer to ensure it and the licenced retailer receive the medical confirmation form.

Note: The customer could notify the exempt supplier first. If so, the exempt supplier is required to notify the exempt seller (if it is a different party) within one business day. The exempt seller is then required to complete steps three to six.

Figure 3 - De-registering an off-market life support customer in an embedded network



High-level actions and information flows

1. Customer is validly de-registered by exempt seller.
2. Exempt seller notifies licenced retailer at the gate meter of the de-registration.
3. Licenced retailer at the gate meter updates its register by de-registering the customer and notifies the licenced distributor of the de-registration.
4. Exempt seller notifies exempt supplier (if a different party) of the de-registration.
5. Customer is de-registered with all relevant energy businesses.

Draft decision

In our draft decision, we proposed to include equivalent life support protections for off-market embedded electricity network customers, along with additional obligations that would ensure that all relevant energy businesses were aware of the off-market life support customer.

We highlighted that the Australian Energy Market Commission recently released its final report to update the regulatory arrangements for embedded networks.⁶⁸

In summary, the Australian Energy Market Commission recommended that:

- certain embedded networks would be elevated into the Australian Energy Regulator’s retailer authorisation regime and would have to register with the Australian Energy Market Operator⁶⁹
- the National Energy Retail Rules would apply to many embedded networks, including the life support obligations contained in the rules

⁶⁸ Available at: <https://www.aemc.gov.au/market-reviews-advice/updating-regulatory-frameworks-embedded-networks>

⁶⁹ Victoria has its own licensing and exemptions framework that operates separately to the AER’s authorisation regime.

- a new concept of the ‘Embedded Network Service Provider’ would become the registration process owner for both on-market and off-market customers as these customers all have a relationship with them.

The reason that the Australian Energy Market Commission made these recommendations was to ensure that both on-market and off-market customers could be registered as life support customers with all the relevant parties.

Based on the Australian Energy Market Commission’s final report, we understand that there are still significant barriers, particularly for residential customers, to leaving embedded networks. We also acknowledged that licensed retailers generally find it challenging to sell electricity to customers in embedded networks due to the limitations of current market and system arrangements.⁷⁰

Accordingly, we did not consider that there will be any, or many, on-market residential embedded network customers, particularly life support customers. Therefore, in reaching this final decision we believe that it is not possible for on-market embedded network customers to be registered with the licensed retailer at the gate meter due to the lack of formal business-to-business processes and systems between licensed retailers and exempt suppliers.

We proposed an alternative approach to registering on-market customers, however, we questioned if the customer would be protected from disconnection in the event that the licensed retailer at the gate meter disconnected the exempt seller or whether the licensed distribution business would directly notify the customer of planned outages.

We were also concerned that despite the proposed alternative approach, further consideration would be needed regarding the equivalent provisions for licensed retailers in de-registering life support customers and how information flows could work in practice.

⁷⁰ See page iii of the AEMC Updating the regulatory frameworks for embedded networks, Final report, 20 June 2019.

Stakeholder views on draft decision

Stakeholders broadly supported extending the strengthening of life support obligations to protect customers in embedded electricity networks:

Origin Energy wrote:

Origin supports the application of life support requirements to embedded networks.⁷¹

The Consumer Action Law Centre wrote:

We generally support this approach [always requiring the exempt seller to always be the registration process owner]. As stated by the ESC, in most scenarios the exempt seller will be in contact with the customer and the retailer at the gate meter.⁷²

Uniting Kildonan wrote:

We also support the initiative by the Commission to include clearer protections for customers who are part of an embedded network and dependent on life support equipment as we know from our advocacy work that such customers are frequently excluded from the mainstream concessions and support.⁷³

The Energy and Water Ombudsman (Victoria) wrote:

These elements of the Life Support Draft Decision will ensure that new protections for customers on life support are also extended to those living in embedded networks, and EWOV also strongly supports these changes. [Embedded network] customers should receive equal life support protections to those in other living situations. The number of people living in embedded networks is significant, and the potential for reliance on life support equipment by those residents (particularly in retirement villages) means that such protections are an urgent priority.⁷⁴

However, some stakeholders expressed concerns with limiting the obligations in the Energy Retail Code and Electricity Distribution Code to only off-market customers:

⁷¹ Origin Energy, submission to the Essential Services Commission 2019, Strengthening protections for life support customers: Draft Decision, August

⁷² Consumer Action Law Centre, submission to the Essential Services Commission 2019, Strengthening protections for life support customers: Draft Decision, August

⁷³ Uniting Kildonan Vic. Tas, submission to the Essential Services Commission 2019, Strengthening protections for life support customers: Draft Decision, August

⁷⁴ Energy and Water Ombudsman of Victoria, submission to the Essential Services Commission 2019, Strengthening protections for life support customers: Draft Decision, August

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The Consumer Action Law Centre wrote:

There are households in embedded networks in Victoria who are purchasing electricity from a licensed retailer from within an embedded network. Because this situation can occur (however rare) then regulation needs to be put in place to offer such households effective life support protections if needed to avoid a severe safety risk. All businesses that could bring about a disconnection or outage in such a scenario should be required to be notified and be subject to relevant requirements to give the life support protections effect.⁷⁵

The Energy and Water Ombudsman (Victoria) added:

We do not agree with the ESC's draft decision 23 to delay additional provisions to apply to on-market residential embedded network customers until such time as they can be shown to be needed. The more prudent approach would be to establish the protections now so that when it does become simpler for embedded network customers to transfer on-market, the protections are already in place.⁷⁶

Origin Energy wrote:

The ESC should consider the management of on-market embedded network customers in the design of the new life support obligations. We support the additional provisions that would cover on-market embedded network customers.⁷⁷

While we acknowledge stakeholder calls to extend full protections to on-market customers, as we noted in our final decisions on pages 57-58, there is currently no alternative approach available to the commission to capture the full registration and de-registration process of on-market life support customer with the licensed retailer at the gate meter. This is because there is no ready framework available at this time to facilitate the registration and de-registration processes of on-market customers with between exempt suppliers and licensed retailers.

However, as noted in our final decisions, we have extended protections for on-market customers so that they receive protections from their licensed retailer and exempt supplier, and also the licensed distributor supplying the embedded network. They will also be notified of planned interruptions both in the embedded network and in the licensed distributor's network.

⁷⁵ Consumer Action Law Centre, submission to the Essential Services Commission 2019, Strengthening protections for life support customers: Draft Decision, August

⁷⁶ Energy and Water Ombudsman of Victoria, submission to the Essential Services Commission 2019, Strengthening protections for life support customers: Draft Decision, August

⁷⁷ Origin Energy, submission to the Essential Services Commission 2019, Strengthening protections for life support customers: Draft Decision, August

Final decisions

Strengthening electricity supply interruption obligations

Final decision 18 – Exempt seller supply interruptions

We will not implement the concept of exempt seller supply interruptions.

Final decision 19 – Notifying embedded network life support customers about planned outages in the licensed distribution network

Exempt sellers and suppliers will be required to notify embedded network customers within one business day, after receipt of notification from the licensed distribution business, of any planned outage event occurring in the licensed electricity distribution business's network.

Final decision

We will require exempt sellers serving off-market life support customers to disclose to customers in the information provided within five business days of becoming aware of the life support customer, that a supply interruption may occur as a result of a planned interruption by an exempt supplier or a licensed distribution business. We note that licensed retailers serving on-market customers will be required to advise that there could be distributor interruptions and advise customers accordingly.

We will not extend the planned interruptions obligations to exempt sellers. We understand that supply interruptions will only be performed by the exempt supplier (or licensed distributor supplying the embedded network) and that there are strong customer protections in the Electricity Distribution Code to cover these situations.

We note Origin Energy's submission that both the gate meter customer and exempt seller should be notified about supply interruptions. The General Exemption Order provides that the exempt seller (exempt person) holding a retail exemption must be the customer of the licensed retailer at the gate meter in order to be eligible for the retail exemption.⁷⁸ Accordingly, these parties will always be the same entity.

We agree with EnergyAustralia's submission that the exempt seller should be required to notify life support customers of the planned outage in the distribution business's network. We consider the existing gap in the regulatory framework compromises the intent and objectives of strengthening life support protections for customers in embedded electricity networks. We have also extended the requirements about planned outage notifications to ensure that exempt suppliers also advise customers about planned interruptions that are instigated by both the licensed distributor supplying the embedded network and the exempt supplier itself.

⁷⁸ Clauses 4(1)(a) and 5(1)(b) of the General Exemption Order 2017.

In relation to AGL's submission, we note that licensed electricity distribution businesses are already required to, and will continue to be required to, notify customers (including customers at the gate meter of an embedded network, i.e. exempt sellers) of planned supply interruptions. Accordingly, we do not consider that further work is required to operationalise these obligations. Regarding AGL's view that notification requirements should be extended to all embedded network customers, we see that there could be merit in this suggestion and we will consider it as part of our broader Electricity Distribution Code review.⁷⁹

Draft decision

In our draft decision, we asked stakeholders if exempt sellers should be required to tell customers that their supply could be interrupted due to a planned exempt seller interruption.

We also outlined that there is currently a gap in the regulatory framework where exempt persons are not obligated to notify life support customers about planned interruptions in the licenced distribution businesses network.

We noted that distribution businesses are currently required to notify the exempt seller at least four business days prior to the planned outage.⁸⁰ However, there is currently no mechanism that requires the exempt seller or supplier to pass this information on to life support customers within an embedded network.

We view the requirement for an exempt seller or supplier to notify a life support customer of a planned distribution business interruption in a timely manner to be a critical customer protection. This notification will allow a customer to prepare for the planned outage and make alternative arrangements to manage their life support equipment requirements for the duration of the outage.

Stakeholder views on draft decision

In submissions, stakeholders broadly supported the intent of our draft decision but noted some considerations the commission should have regard to.

EnergyAustralia wrote:

When notifying of a planned supply outage, a two staged approach would be required.

Where the distributor or licenced retailer knows that there is a planned outage, the exempt

⁷⁹ Electricity Distribution Code review 2019, <https://www.esc.vic.gov.au/electricity-and-gas/codes-guidelines-and-policies/electricity-distribution-code/electricity-distribution-code-review-2019>.

⁸⁰ Clause 5.5 of the Electricity Distribution Code.

seller should be informed. It should then be the responsibility of the exempt seller to communicate this to customers.⁸¹

Origin Energy wrote:

With respect to planned outages, we believe that the distributor should notify the gate meter customer as well as the exempt seller; then it would be the responsibility of the exempt seller to notify customers inside the embedded network. This is consistent with current practice.⁸²

AGL wrote:

AGL supports the draft decision but notes that exempt sellers do not generally have public contact details available and are not transactional within the energy markets. As such, AGL suggests that some further work may be required with exempt sellers to operationalise these requirements.⁸³

AGL added:

We recommend that the exempt supplier should be required to notify all customers connected to its network of the interruption details, regardless of whether they are life support or on-market customers.⁸⁴

The Consumer Action Law Centre wrote:

All businesses that could bring about a disconnection or outage in such a scenario should be required to be notified and be subject to relevant requirements to give the life support protections effect.⁸⁵

⁸¹ EnergyAustralia, submission to the Essential Services Commission 2019, Strengthening protections for life support customers: Draft Decision, August

⁸² Origin Energy, submission to the Essential Services Commission 2019, Strengthening protections for life support customers: Draft Decision, August

⁸³ AGL, submission to the Essential Services Commission 2019, Strengthening protections for life support customers: Draft Decision, August

⁸⁴ AGL, submission to the Essential Services Commission 2019, Strengthening protections for life support customers: Draft Decision, August

⁸⁵ Consumer Action Law Centre, submission to the Essential Services Commission 2019, Strengthening protections for life support customers: Draft Decision, August

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The Energy and Water Ombudsman (Victoria) wrote:

Without comprehensive registration and communication requirements there is the risk that a life support customer may not be notified of a planned interruption. [This situation] is [not] acceptable.⁸⁶

Uniting Kildonan wrote:

We consider it is reasonable to expect the registration process owner to notify other parties within one business day to ensure all registers are up to date and accurate.⁸⁷

Informing exempt persons of the new obligations

Exempt persons selling or supplying electricity to customers within embedded networks already have life support obligations in the Energy Retail Code and Electricity Distribution Code. When exempt persons register with the commission, they must submit a declaration that they understand they have life support obligations. In addition to notifying peak bodies and consumer groups who represent embedded networks and their customers following our final decision, we will directly notify exemption holders registered with us about the changes to their life support obligations, including where they can find more information.

⁸⁶ Energy and Water Ombudsman of Victoria, submission to the Essential Services Commission 2019, Strengthening protections for life support customers: Draft Decision, August

⁸⁷ Uniting Kildonan, submission to the Essential Services Commission 2019, Strengthening protections for life support customers: Draft Decision, August

Appendix A

Stakeholders who made written submissions to the life support draft decision:

Retailers

- Momentum
- EnergyAustralia
- Simply Energy
- AGL
- Red Energy and Lumo Energy
- Origin energy
- Powershop

Distribution businesses

- Jemena
- Citipower/Powercor/United Energy
- Ausnet Services
- Australian Gas Infrastructure Group (AGIG)

Industry

- Australian Energy Market Operator (AEMO)
- Australian Energy Council (AEC)

Ombudsman

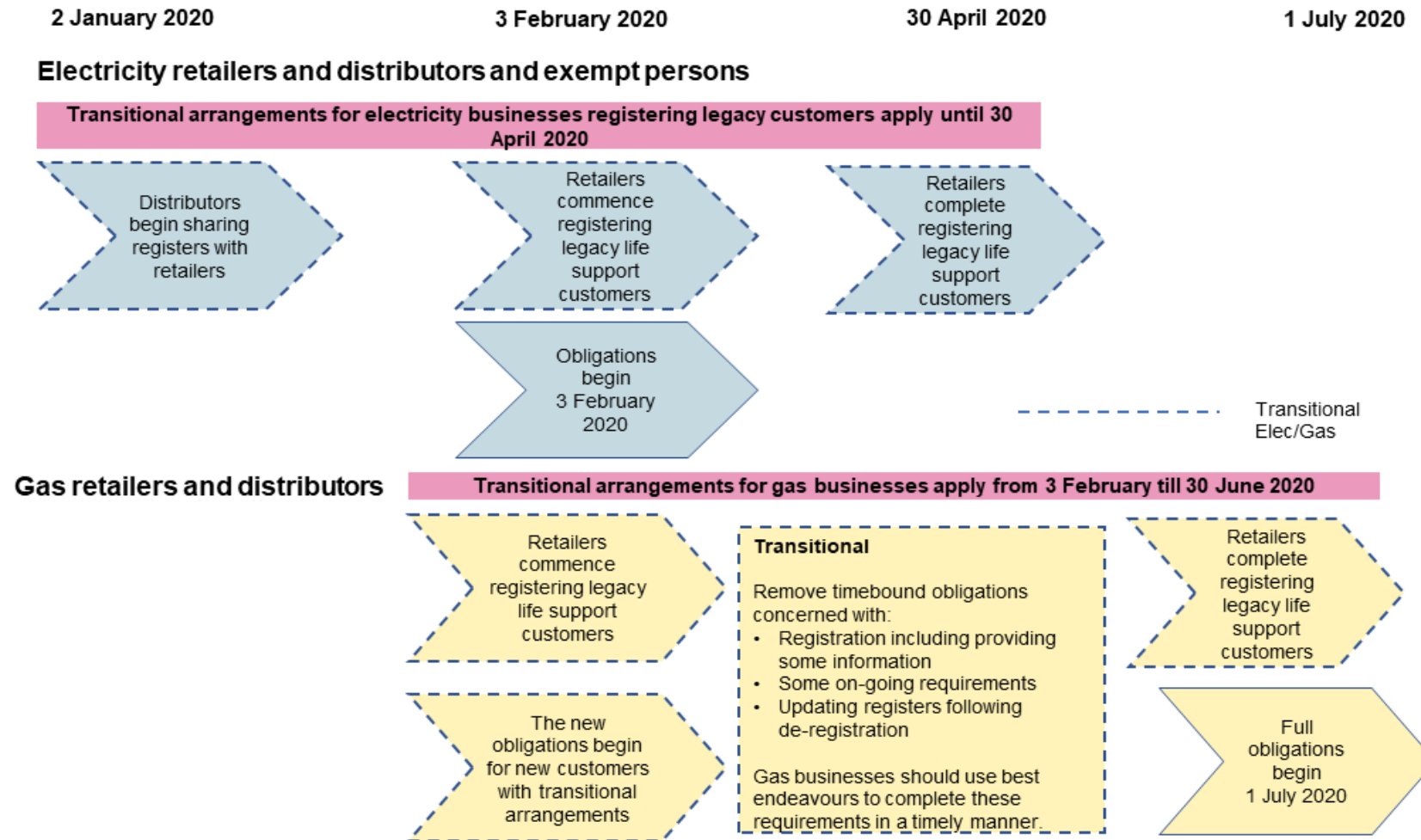
- Energy and Water Ombudsman Victoria (EWOV)

Community

- Consumer Action Law Centre (CALC)
- Uniting Kildonan Victoria and Tasmania

Appendix B

Implementation timeframes for the new life support obligations





Medical confirmation form

Date of issue: 01/01/2019

Use this form to provide medical confirmation and ensure your account is permanently registered for life support with us and your distributor. Completion and return of this form will satisfy the requirement to provide medical confirmation under the applicable energy rules.

You must send your completed form to us by: 01/02/2019

Email: lifesupport@lifesupport.com.au
Fax: (03) 9000 0000
Mail: Life Support, Locked Bag 123, Melbourne 3000

If you have any questions or want to request more time to complete and return your form, please contact us and we'll be happy to help.

- Chat with us online at lifesupport.com.au/livechat
- Email: lifesupport@lifesupport.com.au
- Call: 133 000

1. Details

Title First name Surname

Energy supply required for life support equipment: Electricity Gas

Electricity and gas

Electricity account number: Gas account number:

Supply address where equipment is located

Street number Street name

Suburb State Postcode

NMI/MIRN number on bill (if known)

Telephone Work/mobile telephone

Date you require energy supply for the purposes of life support equipment



2. Life support equipment

I, or a member of my household, make use of the following life support equipment:

- | | |
|---|--|
| <input type="checkbox"/> airbed vibrator | <input type="checkbox"/> kidney dialysis machine |
| <input type="checkbox"/> apnoea monitors | <input type="checkbox"/> medically required heating and air conditioning |
| <input type="checkbox"/> chronic positive airways pressure respirator | <input type="checkbox"/> medically required refrigeration |
| <input type="checkbox"/> crigler najjar syndrome phototherapy equipment | <input type="checkbox"/> nebulizer, humidifiers or vaporisers |
| <input type="checkbox"/> external heart pumps | <input type="checkbox"/> oxygen concentrator |
| <input type="checkbox"/> feeding pumps (kangaroo pump, or total parenteral nutrition) | <input type="checkbox"/> powered wheelchair |
| <input type="checkbox"/> hot water | <input type="checkbox"/> respirators (iron lung) |
| <input type="checkbox"/> insulin pumps | <input type="checkbox"/> suction pumps (respiratory or gastric) |
| <input type="checkbox"/> intermittent peritoneal dialysis machine | <input type="checkbox"/> ventilator for life support |

Any other equipment (whether fuelled by electricity or gas) that a registered medical practitioner certifies is required for a person residing at the customer's premises for life support:

3. Medical practitioner/hospital confirmation

I, (doctor)

hereby certify that a person residing in the above address requires the life support equipment indicated above.

Signature and stamp of medical practitioner

Date

Glossary

Term	definition
Confirmation from a registered medical practitioner	See medical confirmation
Customer who requires life support equipment	See <i>Life support customer</i> .
Embedded network	Embedded networks are privately owned and operated networks where an exempt person supplies and sells electricity to customers in properties such as apartment buildings, retirement villages, caravan parks and boarding houses.
Exempt person	<p>Exempt persons are typically embedded electricity network owners and operators found in buildings such as apartment buildings, retirement villages, caravan parks and boarding houses. Exempt persons are exempt from the requirement to hold an electricity licence.</p> <p>Persons undertaking certain electricity sale, supply or generation activities may be exempt from the requirement to hold an electricity licence under section 16 of the Electricity Industry Act 2001. These exemptions are granted by Order in Council. The current exemptions framework is in the General Exemption Order 2017.</p>
Exempt seller	Exempt sellers undertake the retail functions of an embedded network such as sending bills, credit collection and handling enquiries and complaints. Exempt sellers are referenced as an 'exempt person' in the Energy Retail Code.
Exempt supplier	Exempt suppliers undertake the network functions of an embedded network such as taking the meter readings and maintaining the network infrastructure. Exempt suppliers are referenced as an 'exempt distributor' in the Electricity Distribution Code.
Gate meter	A gate meter is also known as a 'parent meter'. It is a contestable on-market meter that is used to measure the total electricity supplied by a licensed retailer and distribution business to an exempt seller's embedded network.
Life support customer	Life support customer or customer requiring life support equipment means customers who

	reside or intend to reside at a premises where life support equipment is required. This person may or may not be the customer themselves.
Life support equipment	<p>Life support equipment means any of the following:</p> <ol style="list-style-type: none"> 1. an oxygen concentrator; 2. an intermittent peritoneal dialysis machine; 3. a kidney dialysis machine; 4. a chronic positive airways pressure respirator; 5. crigler najjar syndrome phototherapy equipment; 6. a ventilator for life support; <p>in relation to a particular customer—any other equipment (whether fuelled by electricity or gas) that a registered medical practitioner certifies is required for a person residing at the customer’s premises for life support.</p>
Medical confirmation	Certification in a medical confirmation form from a registered medical practitioner that a person residing or intending to reside at a customer’s supply address requires life support equipment.
Registration process owner	The party (retailer or distribution business) first contacted by the customer to advise they require life support equipment. The registration process owner maintains specific obligations in relation to registration, confirmation, de-registration and information sharing and record keeping.
The other party	The energy business that is not the registration process owner.