

17<sup>th</sup> September 2019

Essential Services Commission  
Level 37, 2 Lonsdale Street  
Melbourne Victoria 3000

Submission via website: <https://engage.vic.gov.au/strengthening-energy-protections-life-support>

## Strengthening protections for life support customers: Feedback to Draft Decision

Simply Energy welcomes the opportunity to provide feedback for strengthening protections for consumers with life support requirements as a part of Essential Services Commission's (ESC) draft consultation.

Simply Energy is a leading second-tier energy retailer with over 720,000 customer accounts across Victoria, New South Wales, South Australia, Queensland and Western Australia. Simply Energy has a total of 3326 registered Life Support customers in Victoria across all distribution network regions (as at July 2019).

Simply Energy supports improvements in protections for life support customers across all jurisdictions. The National Energy Retail Rules (NERR) were changed in February 2019 to ensure customers receive adequate life support protections, however the implementation uncovered several issues that are set out in this submission and its appendix.

Simply Energy supports most of the proposed provisions that aim to harmonise protections and aim for a national regulatory regime. While acknowledging that the current proposed protections are aimed to apply to Victorian customers, Simply Energy urges the ESC to also consider the gaps that exists in the NERR, to avoid implementing requirements in Victoria that have been found to need amendment when operated in other states. This perspective informs Simply Energy's responses to the questions raised by the ESC in the following areas:

- Challenges in implementing the life support obligations in other jurisdictions
- Requirement for customer to provide medical confirmation
- Requirements on collecting and disclosing information
- Distributor initiated de-registration of life support customers
- Life Support update and notification timeliness
- Embedded networks and exempt sellers
- Proposed transition and implementation plan

### Challenges in implementing the life support obligations in other jurisdictions

While Simply Energy supports a Victorian framework that is consistent with the NERR, there have been some challenges in implementing the following NERR requirements:

- Registration Process Owner (RPO)

The introduction of the RPO has been onerous, adding complexity for no increase in customer protection. Each participant is required to manage the accuracy of life support registrations, creating the risk of duplication, leading to confusion and inefficiency. For example, if a customer advises a retailer about a life support requirement at the point of sale, and also informs the distributor (which happens in some cases), the retailer and the distributor have separate RPO roles (unless one party can provide evidence to the other about the time of customer contact). In such a case the customer receives communications from the retailer and the distributor, and if the customer has returned paperwork to one of the parties, the other party may initiate reminder notices as part of the de-registration process, which in turn, increases the inconsistencies in the life support register. This causes confusion and unsatisfactory outcomes and often results in customer complaints.

Simply Energy considers that end customers should be oblivious to how life support registration accuracy is maintained and that the process to enable customer protections should be seamless, making it easy for customers. Specifically, regardless of whether the customer contacts the retailer or the distributor, one party should be responsible for life support registration accuracy. The retailer should be this party, as is currently the case in Victoria and is almost always the case in Simply Energy's experience in other states.

Maintaining the current Victorian requirements in this respect will be a variance from the NERR, however it will have the important benefit of not requiring any participant system or process changes that do not benefit end customers. Moreover, Simply Energy is proposing an amendment to the NERR (more details have been provided in the **Appendix** section) to address some of the issues with RPO requirements.

- De-registration Process:

Simply Energy would like to draw the ESC's attention to NERR Rule 125 sub rule 9, in particular the red coloured text below:

**Deregistration where there is a change in the customer's circumstances**

(9) Where a customer whose premises have been **registered by a retailer** under subrule 124(1)(a) or 124(3) advises the retailer that the person for whom the life support equipment is required **has vacated the premises** or no longer requires the life support equipment, the retailer may deregister the customer's premises on the date specified in accordance with subrule(9)(a)(ii) if:

(a) the **retailer has provided written notification** to the customer advising:

- (i) that the customer's premises will be deregistered on the basis that the customer has advised the retailer that the person for whom the life support equipment is required has vacated the premises or no longer requires the life support equipment;
- (ii) the date on which the customer's premises will be deregistered, which must be **at least 15 business days from the date of that written notification**;

The red coloured text above is directly related to customers leaving their current premises (move-outs). The NERR requires a site to remain flagged for life support for at least 15

business days after the customer has received a letter from its retailer. However, in most move-outs this letter is sent to a vacant house because customer has already moved out. While the 15 business days rule holds value for a change in customer circumstance where the customer is still residing in the same property, it has negative impacts on move-outs. In most cases a new customer moves in to the premises that was previously flagged as life support and there is no flexibility provided in the NERR to de-register the site before 15 business days from the notice sent to previous customer, despite the new customer not requiring life support at the site. The inability to de-register the site creates inaccuracies in the life support register and the resulting confusion between retailers and distributors.

Currently in Victoria there is no similar requirement and the process works seamlessly when a customer moves out. To organise a move-out on a life support registered site, de-energisation is prohibited, which provides the protection required. Once the account is finalised and the customer move-out date is confirmed, the life support flag can be removed from the site, which is appropriate because it is either a vacant property or there is a new customer in residence. If the new customer requires life support this will have been captured at the point of sale, which will override any planned life support de-registration for the site.

Since implementing the 15-business day rule for all its life support customers, Simply Energy has received a complaint from a life support customer in relation to a planned demolition of their house, which was at risk of being delayed by the application of the rule, at significant cost to the customer. Simply Energy was able to work with the distributor to waive the 15-business day requirement in this case as this was a Victorian site – if the Victorian requirements had matched the NERR this would not have been possible.

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.

- Issues with the distributor initiated de-registration process

Details of this issue is provided in the section headed “**Distributor initiated de-registration of life support customers**” following the next section of this document.

#### *Requirement for customer to provide medical confirmation*

While Simply Energy agrees that retailers or distributors should register the premises as life support as soon as the customer provides verbal confirmation, subsequently the customer must provide medical confirmation in order to fulfil the life support protection requirements. This will be inline with the NERR and any change to the NERR process may add cost and risk to systems and processes.

Also, Simply Energy considers that gas should be treated like electricity, as is done in states covered by the NERR. In contrast, as per section 5.2 “Combined electricity and gas life support equipment” of the ESC’s Draft Decision Report, the ESC proposes to include obligations in Victorian codes to require retailers, exempt sellers, and distributors, when contacted by a customer, to establish whether the customer’s life support equipment is fuelled by electricity and gas. 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.

This issue was earlier raised in the AER-facilitated forums late last year and the AER advised that the only valid proof of fuel-type should be provided by a customer's medical practitioner, and unless the medical practitioner has mentioned fuel-type in the medical confirmation, industry participants should not take the risk to identify the fuel-type, and if in doubt should flag both fuels. Simply Energy considers that Victoria should align with the AER's approach as quoted from the AER's guidance note published in October 2018 (please see Appendix for the original document from the AER):

***Single fuel customers***

For customers with separate retailers for electricity and gas the obligation to share relevant information about a registered life support customer's premises is only to the applicable retailer or distributor, i.e. an electricity retailer advises the electricity distributor or the electricity distributor advises the electricity retailer.

At the time of the initial contact with the customer, retailers or distributors could advise the customer if they would like to have their premises registered as life support for both fuel types they need to advise their other electricity/gas retailer or distributor.

***Customers receiving electricity and gas from one retailer***

The Retail Rules do not distinguish between an electricity or gas retailer or distributor nor the fuel type powering the life support equipment. For customers receiving both electricity and gas services from the same retailer, if the retailer knows the fuel type required to power life support equipment it can register one fuel type only.

If there is any doubt regarding the fuel type required, it is prudent for the retailer to advise both the electricity and gas distributors that a customer's premises requires life support equipment.

If the retailer decides to only register one fuel type, the retailer needs to take steps to ensure it is satisfied that the life support used by a person residing at the customer's premises is powered by one fuel type. We consider the most authoritative source for this information is a registered medical practitioner.

Where a retailer is unable to identify with certainty the fuel type required for a person residing at the customer's premise for life support, best practice is for the retailer and electricity and gas distributors to maintain a register for the premises.

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.

*Requirements on collecting and disclosing information*

The ESC asks whether energy-specific obligations are required so that energy businesses seek consent from customers and persons residing at the premises (as applicable) before collecting and disclosing information about life support equipment to other energy businesses. Simply Energy considers that this is appropriately covered by privacy laws, and that energy-specific provisions may contradict them, and as a result should not be pursued.

*Distributor initiated de-registration of life support customers*

Simply Energy does not support the flexibility provided in the NERR that allows distributors to deregister sites for life support when they are not the RPO. The NERR includes a 'special' provision for distributors in rule 125 sub rule 14 "**Deregistration where there is a change in the customer's retailer**" (set out below), where de-registration process can be initiated by a distributor at any time where a change of retailer has occurred, regardless of whether the distributor or the retailer was the original RPO, which contradicts the RPO principle and purpose.

*"Where a distributor has registered a customer's premises pursuant to subrule 124(5) and the distributor becomes aware (including by way of notification in accordance with the Market Settlement and Transfer Solution Procedures) that the customer has subsequently transferred to*

*another retailer at that premises, the distributor may deregister the customer's premises on the date specified in accordance with subrule (14)(a)(ii) if:*

- (a) the distributor has provided written notification to the customer advising:*
- (i) that the customer's premises will be deregistered;*
  - (ii) the date on which the customer's premises will be deregistered, which must be at least 15 business days from the date of that written notification;*
  - (iii) that the customer will no longer receive the protections under this Part when the premises is deregistered; and*
  - (iv) that the customer must contact the distributor prior to the date specified in accordance with subrule (14)(a)(ii) if a person residing at the customer's premises requires life support equipment; and*

*(b) the customer has not contacted the distributor prior to the date specified in accordance with subrule (14)(a)(ii) to advise that a person residing at the customer's premises requires life support equipment."*

As a result of the above rule, most distributors have automated their processes to trigger the de-registration process (also known as the follow-up process), which results in miscommunication to the customer in cases where life support is still required. Based on the customer's instructions, the new retailer may have initiated the process to register the site for life support, while at the same time the distributor has begun communicating with the customer in relation to its intent to de-register the site, leading to customer confusion, complaints, and escalations.

Simply Energy suggests that there should only be one source of truth to register and deregister sites. Since the retail contract is managed by the retailer, the most logical party to have this ownership (RPO) should be the retailer.

#### *Life Support update and notification timeliness*

While NERR does not indicate any specific timeframe, Simply Energy agrees with the proposed one business day notification for the following proposed requirements:

- obligation to notify the other party within one business day. This obligation should only be introduced after the transitional period has expired to allow participants to manage system changes, especially for gas market systems
- obligation on retailers, distributors and exempt persons to update their life support registers within one business day.

#### *Embedded networks and exempt sellers*

Simply Energy agrees with the ESC's proposed approach of requiring the exempt seller to always be the ROP and to ensure that the protection should apply at the distributor connection point. Simply Energy also broadly agrees with the alternative approach outlined in section 6.2 of the report, however it may not be possible for the licenced distributor to notify any on-market customer about planned interruption as these child connection points (regardless of on-market or off-market status) are not directly connected to distribution networks. As a result the framework should give responsibilities to all parties, including the licenced retailer at the gate meter, the exempt seller for the child connection points, and the licenced distributor for the parent connection point

### Proposed transition and implementation plan

In terms of implementation, Simply Energy recommends that regulatory implementation is independent of technical implementation, hence the framework should be adopted holistically. Nevertheless, there could be challenges in some parts of the Victorian codes where system or process changes will be required. As such, Simply Energy proposes the following transition path for the implementation:

- Simply Energy agrees with the transition period to commence from 1<sup>st</sup> December 2019.
- While the market solution exists for electricity, there are manual processes in place for gas and considering the 'one business day' proposal to inform the other participant about life support, this can only happen if AEMO provides the same platform for gas as it provides for electricity. As per the most recent discussions held with AEMO to upgrade market-used gas technical schema to bring it to the same level as electricity, AEMO has provided November 2020 as the earlier implementation window for the schema upgrade that can accommodate Life Support notifications.
- As such, Simply Energy suggests the transition period to be in place for at least 6 months to allow participants to understand the Victorian code amendments, any variance from the NERR that might require system and/or process changes, and most importantly, implementing a robust long-term solution that could be a testament for other jurisdictions. Simply Energy proposes 1<sup>st</sup> November 2020 for the full implementation of Life Support changes, inline with AEMO's proposed Gas Market changes.

### Proposed next steps

Simply Energy considers that there is a strong need for industry-wide collaboration and cooperation for the best interest of end customers. In view of this, Simply Energy supports consistency across the NEM while acknowledging the gaps that exist in the NERR and sees this as a perfect opportunity to resolve those gaps in Victorian Codes to meet the longer-term objectives of this reform.

In closing, Simply Energy would welcome the opportunity to engage with the ESC, as well as other key stakeholders such as AEMO, Information Exchange Committee and Network Providers to further explore any gaps in the current process that can be identified and hence worked on.

Simply Energy looks forward to engaging with you on these matters. If you have any questions or would like to engage in discussions with Simply Energy, please contact Aakash Sembey, Industry Regulations Manager, on (03) 8807 1132 or [Aakash.Sembey@simplyenergy.com.au](mailto:Aakash.Sembey@simplyenergy.com.au).

Yours sincerely



James Barton  
General Manager, Regulation

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**Please refer to the appendices on the next page.**

## APPENNDIX A

### Simply Energy's Proposed NERR Rule Change – Retailer Workshop Aug 2019

15<sup>th</sup> August 2019



# Life Support

## Change Proposal

Aakash Sembey  
Industry Regulations Manager



## BACKGROUND

**Last rule change was aimed to fix these:**

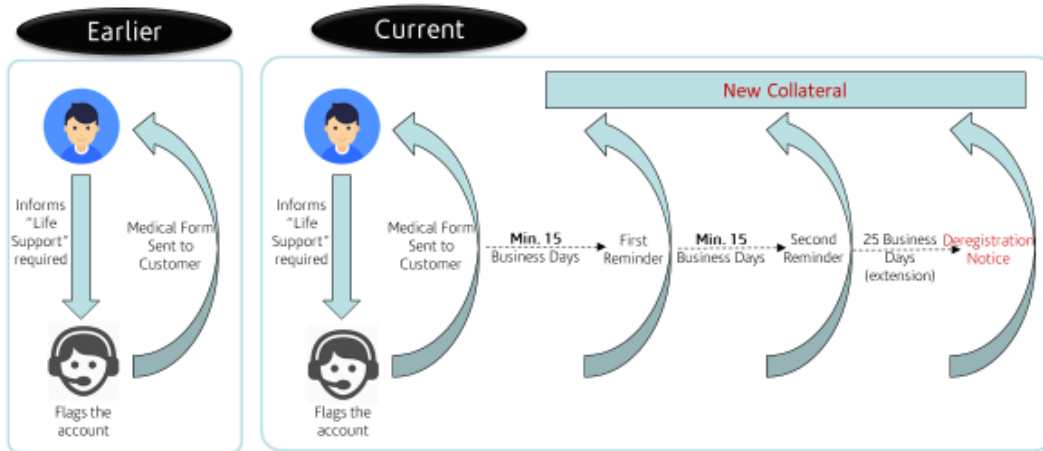
**Rule Made:** December 2017

**Effective:** 1<sup>st</sup> Feb 2018 (Schedule 3) and 1<sup>st</sup> Feb 2019 (Schedule 1 & 2)

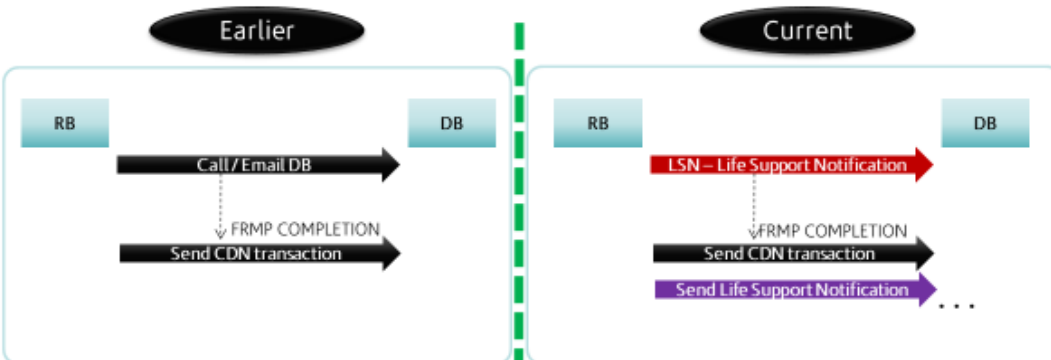
- Lack of life support equipment validation, inadequate end-to-end processes to manage life support;
- difficulty enforcing life support rules if the customer does not provide medical confirmation;
- life support registers have grown increasingly inaccurate;
- customers not receiving legal protection as they should.

Jurisdiction	Starting figures for 2017 (network data)	Starting figure for 2018 (network data)	Variance
VIC	19,395	23,601	~22% ↑
NSW	60,777	68,083	~12% ↑
SA	5,276	6,793	~28% ↑
QLD	15,519	18,535	~20% ↑
TAS	4,635	4,753	~2.5% ↑

## LS REGISTRATION – CUSTOMER INTERACTION

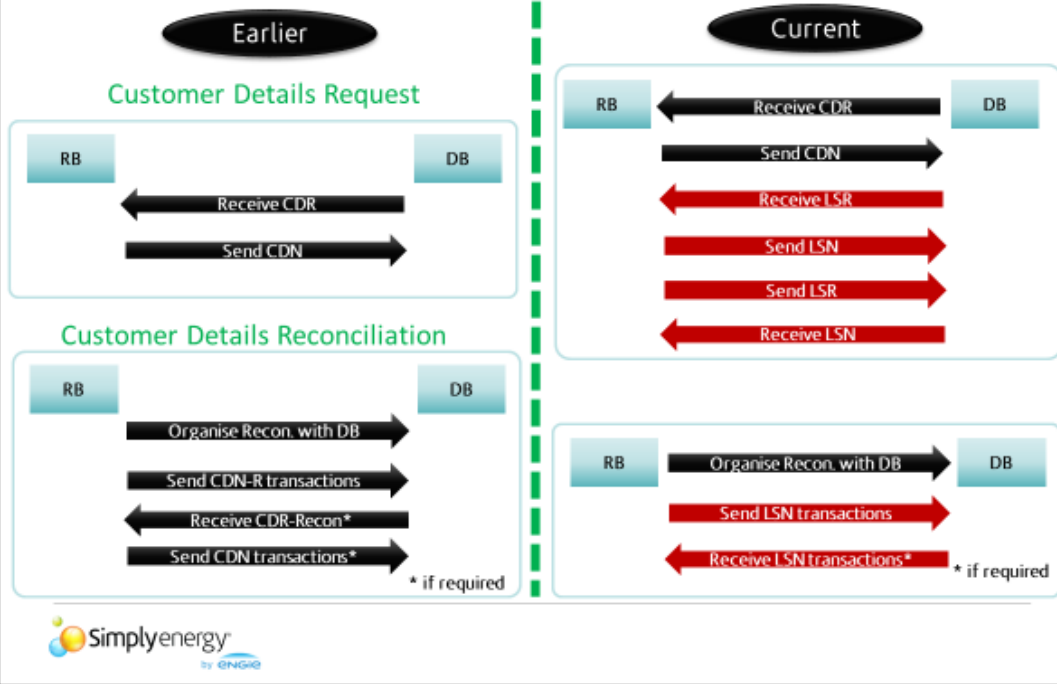


## LS REGISTRATION – NETWORK INTERACTION





## LS REGISTRATION – NETWORK INTERACTION



## LS DEREGISTRATION - ???



## KEY ISSUES

### GAPS

Not-so-well drafted  
Rules/requirements

Not-so-well drafted  
B2B Procedures

Risk vs reality based  
approach

Registration  
Process Owner  
issues

Inconsistent  
interpretations

### ISSUES

Increasingly  
inaccurate Life  
Support registers

Customer  
detriment and  
inconvenience

Operational  
inefficiencies across  
the sector

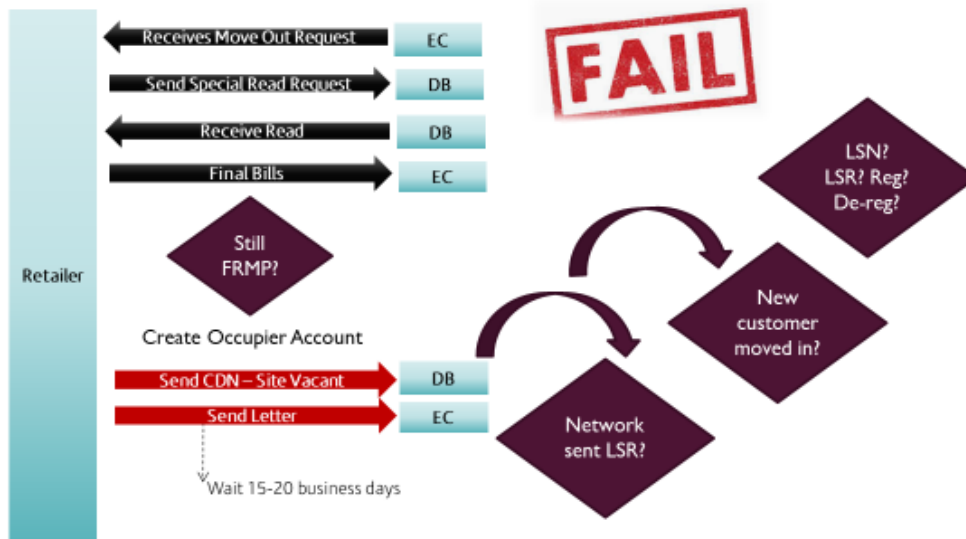
## NERR RULE IN QUESTION – RULE 125

### Deregistration where there is a change in the customer's circumstances

(9) Where a customer whose premises have been **registered by a retailer** under subrule 124(1)(a) or 124(3) advises the retailer that the person for whom the life support equipment is required **has vacated the premises** or no longer requires the life support equipment, the retailer may deregister the customer's premises on the date specified in accordance with subrule(9)(a)(ii) if:

- (a) the **retailer has provided written notification** to the customer advising:
- (i) that the customer's premises will be deregistered on the basis that the customer has advised the retailer that the person for whom the life support equipment is required has vacated the premises or no longer requires the life support equipment;
  - (ii) the date on which the customer's premises will be deregistered, which must be **at least 15 business days from the date of that written notification**;

## NERR RULE IN QUESTION – RULE 125



## B2B PROCESS TO DEREGISTER

### Life Support Notification Triggers:

- Life Support Request from DB
- Registered - No Medical Confirmation
- Registered - Medical Confirmation with DNSP
- Registered – Medical Confirmation with Retailer
- Deregistered – No Medical Confirmation
- **Deregistered – Customer Advice**
- Deregistered – No Customer Response
- None (means that the premises doesn't have a current Life Support requirement)



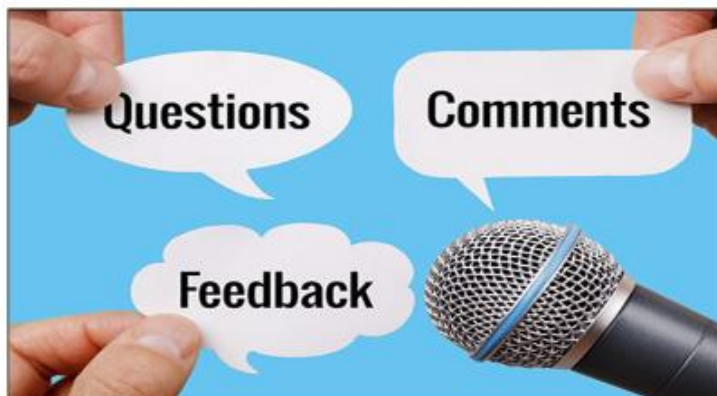
## NEXT STEPS AND TENTATIVE TIMEFRAMES

- Rule change is confined to solve one major issue
- Rule change will be based on customer detriment and inconvenience
- Any examples you/your organisation can provide will assist in the proposal
- Aim to get this proposal before Victorian decision is made

MILESTONES	DATE	COMMENT
Retailer Engagement via AEC	15 <sup>th</sup> Aug 2019	DONE
Network Engagement via AEC	Mid September 2019	TBC
First draft for review via AEC	End of September 2019	In progress
First draft rule change for informal AEMC review	Mid October 2019	Not commenced
Formal lodgement of rule change	End of October 2019	Not commenced



## DISCUSSION



**Aakash Sembey** – Simply Energy (Proponent)

**David Markham** – Australian Energy Council



## Update: National Energy Retail Rules life support obligations

### A. Application of the life support rules

The life support obligations under the National Energy Retail Rules (Retail Rules) apply to both fuel types, electricity and gas.

Life support equipment is defined under the Retail Rules as an oxygen concentrator; an intermittent peritoneal dialysis machine; a kidney dialysis machine; a chronic positive airways pressure respirator; a crigler najjar syndrome phototherapy equipment and a ventilator for life support.

The Retail Rules also permit 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.

If a retailer or distributor is advised (either by the customer or the other market participant) that a person residing at the customer's premises requires life support equipment or a customer provides medical confirmation, the retailer or distributor must register that premises as requiring life support. Once a medical practitioner certifies that a person residing at the customer's premises requires life support equipment, the premises must be registered until a customer advises of a change in circumstances.

### B. Transitional arrangements and commencement of the new life support rules

On 1 February 2019, the new life support rules will come into effect. The new rules will require retailers and distributors to:

- provide clear information to life support customers on their rights and obligations under the life support protections
- follow a prescribed process for registering and deregistering life support customers, and
- follow a prescribed process to share relevant information between relevant retailers or distributors about the requirement for life support equipment at a premises.

Until 1 February 2019, life support transitional arrangements apply that provide protections in the current life support rules to all existing customers registered as having life support equipment and new customers who advise a retailer or distributor they require life support equipment. The protections apply whether the customers have provided medical confirmation or not and irrespective of whether the life support equipment is powered by electricity or gas.

Until 1 February 2019, once premises are registered as requiring life support equipment, retailers and distributors are not permitted to deregister or remove a premises flagged for life support unless the customer informs the retailer or distributor that life support equipment is no longer required or the person no longer resides at the premises.

## C. Obligation to register premises as life support

If a retailer or distributor is advised (either by the customer or the other market participant) that a person residing at the customer's premises requires life support equipment or a customer provides medical confirmation, the retailer or distributor must register that premises as requiring life support.

Once a medical practitioner certifies that a person residing at the customer's premises requires life support equipment, the premises must be registered until a customer advises of a change in circumstances.

Retailers and distributors are required to maintain a register of the premises where they receive advice that life support equipment is required. The obligation may vary depending on whether or not the customer is receiving both electricity and gas from the same retailer.

### *Single fuel customers*

For customers with separate retailers for electricity and gas the obligation to share relevant information about a registered life support customer's premises is only to the applicable retailer or distributor, i.e. an electricity retailer advises the electricity distributor or the electricity distributor advises the electricity retailer.

At the time of the initial contact with the customer, retailers or distributors could advise the customer if they would like to have their premises registered as life support for both fuel types they need to advise their other electricity/gas retailer or distributor.

### *Customers receiving electricity and gas from one retailer*

The Retail Rules do not distinguish between an electricity or gas retailer or distributor nor the fuel type powering the life support equipment. For customers receiving both electricity and gas services from the same retailer, if the retailer knows the fuel type required to power life support equipment it can register one fuel type only.

If there is any doubt regarding the fuel type required, it is prudent for the retailer to advise both the electricity and gas distributors that a customer's premises requires life support equipment.

If the retailer decides to only register one fuel type, the retailer needs to take steps to ensure it is satisfied that the life support used by a person residing at the customer's premises is powered by one fuel type. We consider the most authoritative source for this information is a registered medical practitioner.

Where a retailer is unable to identify with certainty the fuel type required for a person residing at the customer's premise for life support, best practice is for the retailer and electricity and gas distributors to maintain a register for the premises.