

16 September 2019

Life support review
Essential Services Commission
Level 37, 2 Lonsdale Street
Melbourne VIC 3000

By portal: <https://engage.vic.gov.au/>

Dear Ms Symons,

Re: Strengthening protections for life support customers – Draft Decision

Thank you for the opportunity to comment on the Essential Services Commission's (ESC) *Strengthening protections for life support customers – Draft Decision (Life Support Draft Decision)*.

The Energy and Water Ombudsman (Victoria) (EWOV) is an industry-based external dispute resolution scheme that helps Victorian energy or water customers by receiving, investigating and resolving complaints about their company. Under EWOV's Charter, we resolve complaints on a 'fair and reasonable' basis and aim to reduce the occurrence of complaints¹. We are guided by the principles in the Commonwealth Government's Benchmarks for Industry-based Customer Dispute Resolution². It is in this context that our comments are made.

Life support protections are crucial for highly vulnerable customers dependent on specialised medical equipment which requires electricity or gas to function. The majority of our interactions with customers dependent on life support equipment are related to billing errors concerning the application of life support concessions, or the poor provision of information by retailers to customers who are eligible for those concessions. One benefit of strengthening life support protections through this review will be to refresh life support customer registers and raise the profile of those customers, and this creates an opportunity to also ensure those customers are informed of relevant concessions. The ESC may wish to consider codifying that opportunity as an obligation through this review – potentially through a short amendment to draft decision 14 (Provision of information to customers).

The Life Support Draft Decision will broaden the network of entities required to be responsible for communicating with life support customers, and will also ensure that accurate life support registers are

¹ See Clause 5.1 of EWOV's Charter: <https://www.ewov.com.au/files/ewov-charter.pdf>

² See EWOV's website: <https://www.ewov.com.au/about/who-we-are/our-principles>

promptly maintained. A sharper registration process, particularly draft decision 11, will heighten retailer awareness of life support customers – as will the requirement of draft decision 16 to ask customers when first contracting or re-contracting whether they require life support. The case study below illustrates how those decisions will assist customers in vulnerable circumstances³:

Brenda – 2019/10464

Brenda lives in a small regional town in central Victoria, and has severe asthma which she manages with the assistance of an oxygen machine.

In mid-June 2019 Brenda was disconnected just after 10.00am by her electricity retailer, who claimed to have sent disconnection notices that Brenda had not received. There was confusion in establishing Brenda's account due to identification requirements.

Brenda contacted her retailer and advised them of her health condition, requesting immediate reconnection.

The retailer advised they would re-connect, and that Brenda should check her meter box to see if supply had been restored. Brenda did so several times, in pouring rain, but still had no power at 1pm.

Brenda again contacted her retailer who advised they would re-submit the reconnection order.

Brenda's power was finally restored just before 1.30pm.

Following reconnection, Brenda raised a complaint with EWOV. She wanted to ensure this would never happen again, and through this process, the retailer undertook to post Brenda an application form for the life support register. We advised Brenda that she would not be registered on life support until her retailer had received the completed application form and medical certification.

We subsequently assessed Brenda's case for a wrongful disconnection payment, and she received a payment of \$69.44 for a wrongful disconnection of 3 hours and 20 minutes duration.

Much of the Life Support Draft Decision is directed towards updating Victoria's regulatory framework to align with new life support obligations in the National Energy Retail Rules (**NERR**), which have been in place since 1 February 2019 and are sensible, effective reforms. EWOV supports this intent. As the Life Support Draft Decision notes, the majority of retailers operating in Victoria also operate in other states - so should have no difficulty now meeting those obligations in Victoria. Further elements of the Life Support Draft Decision propose to maintain existing obligations in Victorian utilities legislation, and again EWOV supports these measures. It is difficult to conceive of valid arguments to support winding existing protections back in this area.

³ Note: Customer's name changed for de-identification purposes.

The Life Support Draft Decision also proposes to implement some additional protections, of which draft decisions 16 – 19 are particularly notable. These will improve information flow between customers, retailers, distributors and exempt persons – and also ensure life support registers are promptly updated and well maintained. These are useful additions which will improve service standards for life support customers and do not pose unreasonable administrative or cost burdens on providers.

Finally, draft decisions 22 -24 address embedded networks. 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. Since acquiring the embedded network jurisdiction on 1 July 2018 we have joined 230 embedded network members, serving approximately 96,000 customers. We have undertaken 37 embedded network related investigations and currently receive an average of 2.2 complaints daily.

Residential customers in embedded networks are living in apartment blocks, caravan parks and retirement villages. These 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. While life support protections will increase the administrative burden on embedded network operators, it is one that should be manageable – they have now had some time to adjust to new obligations imposed by the 2017 General Exemption Order.

Our further comments are set out below.

1. Aligning with the NERR

Gas customers

Draft decision 4 is an important element of the Life Support Draft Decision, extending life support obligations to gas distributors through the Gas Distribution System Code (**GDSC**). 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 than have existed for electricity distributors.

Draft decision 5 will maintain the existing prohibition on de-energising life support customers already in the Energy Retail Code (**ERC**) and the Electricity Distribution Code (**EDC**), and also extend that prohibition to gas customers through **GDSC**. Given draft decision 4, this is a necessary decision.

Explicit informed consent for planned outages shorter than the notice period

Draft decision 9 is a practical and useful addition, which aligns with the NERR and will provide the flexibility for planned outages to occur in a period shorter than the required notice period – as long as the electricity or gas life support customer has provided their explicit informed consent for that to occur. EWOV supports this decision.

Registration, medical confirmation and information

Draft decisions 11 -14 and 16 propose to align with the national framework in relation to registering and de-registering life support customers; medical confirmation required by life support customers; the accuracy of life support registers; the information that must be provided to life support customers and the requirement to enquire about a customer's life support status when first contracting with them.

It is important that Victoria aligns with these standards, which will improve service standards for Victorian life support customers – and remove some unnecessary barriers to receiving required protection.

Draft decision 11 is particularly important and will afford life support protections to customers from the time they have first contacted their energy business to inform them that they require life support equipment - unless they are validly de-registered. This removes the requirement for customers to provide medical confirmation in order to be formally registered and is a sensible change to bridge the potentially dangerous period that now exists between a customer first contacting their provider, and actually becoming registered.

As already discussed, draft decision 16 requires businesses to initiate a conversation around life support equipment requirements when a customer first enters a contract. We are aware that some

retailers already do this, and strongly support this being codified as a formal obligation for all retailers. We reiterate that the review may also provide an opportunity to require retailers to provide appropriate information regarding life support and other medical concessions. This could potentially be implemented through a small amendment to draft decision 14.

2. Maintaining existing protections

Planned interruptions

Draft decisions 6, 7 and 8 maintain existing notice periods for planned electricity and gas interruptions. Draft decision 7 allows life support electricity customers to request longer notice periods for planned interruptions – it is important that this be maintained, as the existing four business day notice period is relatively brief.

3. Additional protections

Longer notice periods for gas customers

Draft decision 10 extends to gas customers what electricity customers have through draft decision 7, namely the right to request a longer notice period for a planned interruption. This is necessary for equity and is an important protection. Life support customers should be able to obtain the notice they need in order to make alternative arrangements when dealing with planned interruptions.

As with much of the Life Support Draft Decision, this protection requires effective communication between customers and distributors, and should help to promote a more customer focused culture within distributor businesses. The current review of the EDC seeks to promote the same cultural shift, and is very welcome.

Better communication with customers and between businesses

Draft decisions 17, 18 and 19 are positive additions which will promote better communication with customers, between businesses and more timely maintenance of life support registers. We are supportive of all of these measures.

4. Protections for embedded network customers

Draft decisions 22 and 24 will extend important new protections to life support customers living in embedded networks, and apply additional protections. We are strongly supportive of these measures. As evidenced through our case handling, embedded networks do create added complexity for energy customers, and without comprehensive registration and communication requirements there is the risk that a relevant party may be unaware of a life support customer living in an embedded network, or a life support customer may not be notified of a planned interruption. Neither of these situations is acceptable.

In relation to **draft decision 23**, EWOV concurs that at this time it is very difficult, practically, for an embedded network customer to become an on-market customer. This is not a satisfactory situation - and is one we hope will be addressed in the near future. On that basis, 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. In our view, 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. We base this view partly on our own experience in operationalising regulatory protection that has been applied 'after the fact',

More fundamentally we believe that the critical nature of life support protections, and the potentially fatal consequences of not having them in place, dictate that the ESC should err on the side of caution and regulate in anticipation of consumer need, rather than risk falling behind.

5. Others

Implementation time-frames

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

Draft decision 3 affords retailers and exempt sellers until April 2020 to transition legacy customers. This appears generous but is likely to be necessary, particularly for exempt sellers.

Retailer planned interruptions

Draft decision 15 is prudent insofar as licensed retailer interruptions are not a relevant concept in the Victorian energy market, as the Life Support Draft Decision explains.

In relation to embedded networks, it would be sensible to require embedded network operators to provide life support customers with notice of a planned interruption that may occur in their embedded network due to maintenance, repair or meter replacement to facilitate access to the contestable retail market.

Again, while transferring on-market has only been achieved by a handful of embedded network customers, this is an unsatisfactory situation that will hopefully improve in the short to medium term. As with draft decision 23 it would be prudent for the ESC to implement appropriate protections in anticipation of that change, rather than playing catch-up after the fact.

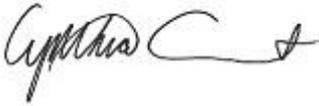
Definitions and medical certificate requirements

Draft decisions 20 and 21 are both sensible decisions, and EWOV supports them. It is particularly important to retain the broader medical certificate requirements already in place in the ERC and the EDC, rather than the more specific medical certificate requirements in the NERR. As the Life Support

Draft Decision notes, shifting that requirement would create an unfair and unnecessary burden for some legacy life support customers, for no discernible benefit.

We trust these comments are useful. Should you require any further information or have any queries, please contact Zac Gillam, Senior Policy and Stakeholder Engagement Officer, on (03) 8672 4285.

Yours sincerely



Cynthia Gebert
Energy and Water Ombudsman (Victoria)