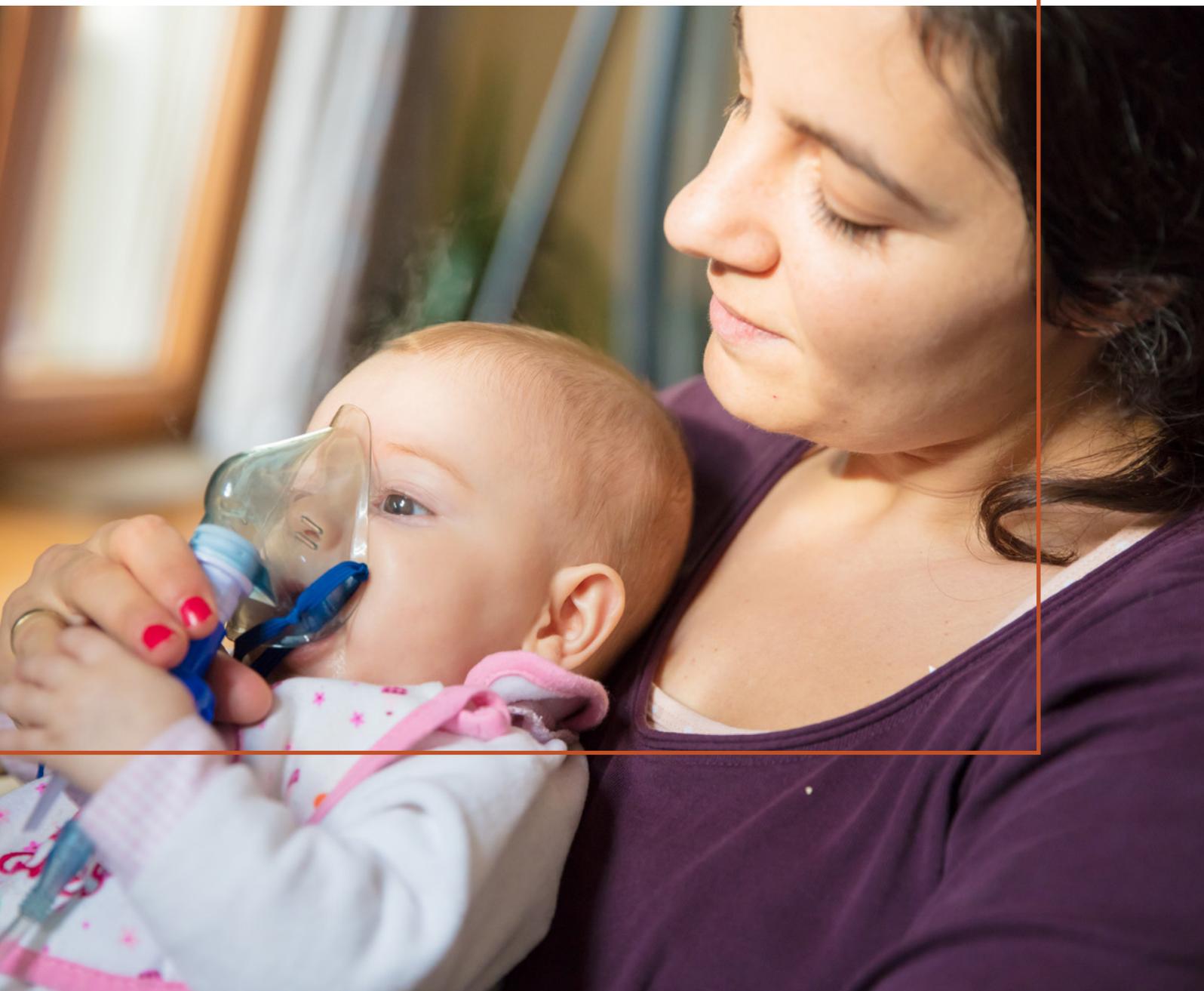




Life support registration guide 2021



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Introduction

About this guide

We have developed this guide to assist retailers and distributors to understand their responsibilities to customers who rely on life support equipment under the Retail Law and Retail Rules. In 2021, there were more than 145,000 premises registered as requiring life support equipment across Queensland, New South Wales, the Australian Capital Territory, South Australia and Tasmania.¹

This guide sets out some of the key requirements on retailers and distributors for customers using life support equipment, including the type of equipment, information that must be provided to a life support customer, the processes for registration and deregistration and the information that must be retained, provided and shared between retailers, customers and distributors.

This guide does not have legal force. The AER cannot provide a definitive interpretation of the law because that is the role of the courts. The AER will approach each potential compliance and enforcement matter on a case-by-case basis, taking into account all relevant circumstances, in accordance with its Compliance and Enforcement Policy.

Following this guide cannot provide a guarantee against enforcement action by the AER. The AER encourages businesses to follow this guide and incorporate it into their staff training, both in terms of the text and the spirit of the document.

About the Australian Energy Regulator

The Australian Energy Regulator (AER) regulates energy markets and networks under national legislation and rules in Eastern and Southern Australia, as well as networks in the Northern Territory.

Its functions include:

- monitoring wholesale electricity and gas markets to ensure energy businesses comply with the legislation and rules, and taking enforcement action where necessary
- setting the amount of revenue that network businesses can recover from customers for using networks (electricity poles and wires and gas pipelines) that transport energy
- regulating retail energy markets in Queensland, New South Wales, South Australia, Tasmania (electricity only), and the Australian Capital Territory
- operating the Energy Made Easy website, which provides a retail price comparator and other information for energy consumers
- publishing information on energy markets, including the annual State of the energy market report.

¹ Results from a voluntary survey responded to by electricity distributors across these jurisdictions.

About the life support obligations

The life support obligations apply to a wide range of life support equipment and customers. It is important for retailers and distributors to be aware of what constitutes life support equipment and the circumstances when the life support obligations apply so as to avoid serious harm arising from non-compliance. Reflecting the importance of these protections, the life support obligations are Tier 1 civil penalty provisions. Tier 1 civil penalty provisions carry maximum penalties of the greater of: \$10 million; 3 times the value of the benefit gained from the breach (if this can be ascertained); or 10% of annual turnover (if the benefit cannot be ascertained).

What is life support equipment?

The Retail Rules define life support equipment to mean any of the following:

- 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
- in relation to a particular customer – any other equipment that a registered medical practitioner certifies is required for a person residing at the customer’s premises for life support.

Which customers are protected by the life support obligations?

The life support obligations apply when a retailer or a distributor is advised by a customer of a retailer that a person who is residing or intending to reside at the customer’s premises requires life support equipment. The retailer or distributor that registers the customer for life support protections is known as the registration process owner.

This includes both small and large customers. For example, the life support obligations can apply if a retailer or distributor is advised by a retirement village that is a large customer that there are persons in residence who require life support equipment.

Customer registration process

The registration of customers requiring life support equipment is critical to ensuring customers are provided the required protections. When a customer advises a retailer or distributor that a person residing at the customer’s premises requires life support equipment, the customer must be registered and given information about their obligations, the life support protections and what they need to do to continue receiving the protections.

Importantly, the definition of life support equipment includes a category for ‘other’, being any equipment that a medical practitioner considers 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 or air conditioning
- medically required refrigeration
- powered wheelchair

Life support registration process

The below chart provides a brief overview of the life support registration process and obligations on retailers and distributors when advised by a customer of the requirement for life support equipment:

Customer notification	<ul style="list-style-type: none">• Customer contacts retailer or distributor to advise they require life support equipment or, during discussions with the customer, the retailer or distributor is informed of a need for life support equipment at the premises• The party (retailer or distributor) contacted by the customer becomes the registration process owner• The registration process owner registers the customer as requiring 'life support' in its internal systems and notifies the other business (being the retailer/distributor as appropriate)
Medical confirmation	<ul style="list-style-type: none">• The registration process owner sends the customer information pack on life support, including the medical confirmation form, in the timeframe specified in the Retail Rules• If the customer returns the completed medical confirmation form, the registration process owner updates its system and notifies the other business (being the retailer or distributor) that medical confirmation has been provided• If the customer does not return the medical confirmation form, the registration process owner must provide specific reminder and deregistration notices to alert the customer that failure to provide the medical confirmation form may result in deregistration• Medical confirmation means signed and dated certification from a registered medical practitioner that a person requires life support equipment (including details of the type of equipment required), which may take the form of a medical certificate or section(s) completed by a registered medical practitioner within a medical confirmation form
Deregistration	<ul style="list-style-type: none">• If, after the reminder and deregistration notice timeframes specified in the Retail Rules have passed and the customer has not returned the medical confirmation form, the registration process owner can commence deregistration. The registration process owner should ensure that all of the notification and reminder requirements contained in the Retail Rules have been met before commencing the deregistration process• The registration process owner updates its systems and notifies the other business (being the retailer or distributor as appropriate) of the change to the customer's status• At any time, the customer can advise of a change in circumstances (e.g. where the person for whom the life support equipment is required has vacated the premises). The registration process owner may then initiate deregistration as per the timeframes specified in the Retail Rules
Information sharing and record keeping	<ul style="list-style-type: none">• Retailers and distributors have obligations to share information about a customer's life support registration status• Retailers and distributors have obligations to create and maintain accurate records of the registration and deregistration process• Retailers and distributors have obligations to keep copies of the medical confirmation provided for as long as the customer is a customer of that business and at least 110 business days from the date the customer ceases to be a customer for the registered premises• Retailers and distributors have obligations to provide a copy of the medical confirmation used to register a customer's premises as subject to the life support protections when requested by the customer

When should a premises be registered for life support?

Retailers and distributors should register a premises when advised that someone residing or intending to reside at the premises requires life support equipment.

The AER expects retailers and distributors to register that a person residing or intending to reside at the customer's premises requires life support equipment as soon as the customer mentions the need for equipment that could fall within the definition of "life support equipment". This approach avoids situations where vulnerable customers or employees without relevant medical training are required to form a view on what constitutes life support equipment when the Retail Rules clearly provide that medical expertise will be required through the medical confirmation form.

Rule 124(1) states:

when advised by a customer that a person residing or intending to reside at the customer's premises requires life support equipment, a retailer must: (a) register 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.

The corresponding obligation for distributors is rule 124(4).

It is likely that customers will only notify one business of the need for life support protections. The obligations for registration (and deregistration where appropriate) rest with the retailer or distributor the customer notified in the first instance. We refer to this business as the registration process owner. The registration process owner must notify the relevant retailer or distributor (as appropriate) so that both are aware of the customer's requirement for life support equipment.

If the customer contacts their retailer to let it know that the customer needs life support protections, the retailer is the registration process owner.

If the customer contacts their distributor to let it know that the customer needs life support protections, the distributor is the registration process owner.

The registration process owner must notify the other business (retailer or distributor) so that both the retailer and distributor are aware of the customer's requirement for life support equipment.

What information must be sent to a customer?

Once a customer advises their retailer or distributor they require life support equipment, there is specific information that must be provided to the customer. This information needs to be provided in accordance with the timeframes specified in the Retail Rules.

Customers receive the life support protections from the time they inform their retailer or distributor that they require life support equipment, even if they do not initially provide any medical confirmation.

Reminder process

Within 5 business days of being advised by a customer that they require life support equipment, the registration process owner must send the customer an information pack about life support registration. The information pack contains key information about the medical confirmation process, including:

- a life support equipment medical confirmation form
- information about the requirement to get medical confirmation from a registered medical practitioner, including that if the customer fails to provide medical confirmation the customer will cease to receive the life support protections
- information to assist the customer to prepare a plan of action in the case of an unplanned interruption
- information about the life support protections the customer will receive.

The registration process owner must allow the customer at least 50 business days from the date of the medical confirmation form to complete and return the form. If the customer requests an extension to this time, the registration process owner must give the customer at least an additional 25 days to provide medical confirmation.

During this process, the registration process owner must provide specific reminder notices to alert the customer that failure to provide the medical confirmation form may result in deregistration and loss of life support protections. The Retail Rules specify certain timeframes for two reminder notices to be sent to the customer.

The first reminder notice is to be provided no less than 15 business days from the date the information pack was issued. The second reminder notice is to be provided no less than 15 business days from the date the first reminder notice was issued.

The reminder notices need to state certain information, including:

- the date by which the medical confirmation must be provided
- that life support registration is temporary until medical confirmation is received
- a failure to provide the medical confirmation may result in deregistration.

Important: Life support registration is not transferrable between retailers or distributors. However, if the distributor is the registration process owner and becomes aware the customer has changed retailer it must notify the new retailer of the need for life support equipment at the customer's premises.

Important: Rule 125(13) allows retailers and distributors to request a customer whose premises has been registered under rule 124 to confirm whether the person requiring life support equipment still resides at the premises or still requires life support equipment.

The registration process owner can only take steps to deregister a customer under this rule if the customer confirms that life support is no longer required at the premises.

What is medical confirmation?

Medical confirmation is the documentation that a customer must provide to their retailer or distributor which acts as proof or confirmation that someone residing at the premises requires life support equipment.

Medical confirmation means signed and dated certification from a registered medical practitioner that a person requires life support equipment (including details of the type of equipment required), which may take the form of a medical certificate or section(s) completed by a registered medical practitioner within a medical confirmation form.

Can customers re-use medical confirmation when they change retailer or distributor?

Yes. For the purpose of providing medical confirmation to a new retailer or distributor, a customer can submit a copy of the medical confirmation that they submitted to their previous retailer or distributor provided that it is signed and dated, is legible and is less than 4 years old.

Can a customer request a copy of their medical confirmation?

Yes. Where a customer has provided medical confirmation to their retailer or distributor to confirm life support registration, they can request a copy of the medical confirmation from their retailer or distributor.

Upon receiving the request to provide a copy of the medical confirmation from the customer (and subject to applicable privacy laws), the retailer or distributor must provide a copy of that medical confirmation to the customer within 15 business days of the request. The AER expects that the process implemented for requesting a copy of the medical confirmation is simple to follow and does not create any barriers for customers. The AER also expects that customers will not be charged for making a request for a copy of their medical confirmation.

This rule does not apply if the customer is no longer a customer of the retailer or distributor for more than 110 business days.

Deregistration of life support customers

The Retail Rules set out the process that retailers and distributors must follow in order to deregister a customer. Deregistration of a customer as requiring life support protections is not mandatory. Customers remain registered as having life support equipment until completion of the deregistration process. Once a customer's premises is deregistered as requiring life support equipment, retailer and distributor life support obligations cease.

The Retail Rules provide three circumstances where a customer may be deregistered:

- the customer does not provide medical confirmation of the need for life support equipment
- the customer advises of a change in their circumstances
- the customer changes retailer.

Customer does not provide medical confirmation of the need for life support equipment

The rules permit the registration process owner to deregister a premises where the customer has not provided medical confirmation and the following steps have been completed:

- the registration process owner has followed the reminder process set out above (including sending two reminder notices)
- the registration process owner has taken all reasonable steps to contact the customer (in person, by telephone or by electronic means) and provided the customer at least 50 business days to provide medical confirmation plus, if the customer requests this, give an extension of at least 25 business days
- the registration process owner has provided the customer with a deregistration notice no less than 15 business days from the date the second reminder notice was issued. The deregistration notice must specify certain information, including a date on which the customer's premises will be deregistered
- the registration process owner has sent the deregistration notice at least 15 business days before the proposed deregistration
- the customer has not provided medical confirmation to the registration process owner before the date on the deregistration notice.

Importantly, the customer has until the date on the deregistration notice to provide medical confirmation so registration process owners should not take steps to commence the deregistration process until this period has expired, to avoid deregistering a customer that provides medical confirmation after the deregistration notice is sent.

Retailers and distributors should consider individual customer circumstances and associated risks when considering deregistering a customer from life support protections. If considering deregistering where no medical confirmation has been provided we suggest, for example, that the registration process owner consider including additional checks and balances in deregistration processes to ensure each step has been undertaken.

Customer advises of change in circumstances

Where a customer advises the retailer or distributor that the person who required life support equipment has vacated the premises or no longer requires the life support equipment, the retailer or distributor can commence deregistration of the premises. The retailer or distributor must send the customer written notification at least 15 business days before deregistration and can only deregister if the customer does not contact the retailer or distributor before the date on the deregistration notice.

Customer changes retailer

Where a distributor has registered a customer's premises on the advice of the retailer, the distributor can commence deregistration of the premises when it becomes aware that the customer has transferred to a new retailer. The distributor must provide the customer written notification at least 15 business days before deregistration and can only deregister if the customer does not contact the distributor before the date on the deregistration notice.

Important: Under rule 124B(2)(b) if a customer changes retailers and the distributor is the registration process owner, it has an obligation to notify the new retailer of the customer's life support registration.

Information sharing

The Retail Rules include obligations on retailers and distributors to share information about life support customers. This is to ensure they are appropriately registered and therefore receive the protections available to them as part of their registration.

What information must the registration process owner share with the customer's retailer or distributor?

Retailers and distributors should work closely in order to ensure that life support registers are kept up-to-date and that registration and deregistration processes are followed.

Retailers and distributors should also co-operate and give all reasonable assistance to each other in relation to their respective obligations under the life support rules.

Retailers and distributors each have obligations to a customer with respect to life support, regardless of whether they are the registration process owner or not. These obligations start once the customer notifies the registration

process owner (either their retailer or distributor) that life support equipment is required at the premises.

The registration process owner is responsible for registering the customer's premises and the medical confirmation process and sharing information with the customer's retailer or distributor. Information sharing allows both parties to have up-to-date records with respect to a customer's registration for life support protections.

If the customer initially contacts a retailer to advise of the need for life support equipment, the distributor's obligations will commence upon being advised by the retailer.

If the customer initially contacts a distributor to advise of the need for life support equipment, the retailer's obligations will commence upon being advised by the distributor.

Keeping a register and records

It is important that records are maintained by retailers and distributors to ensure registers are up-to-date, there is a record of transactions and customer protections are maintained.

Do I need to keep a register and records?

Both retailers and distributors are required to:

- keep and maintain an accurate life support register
- keep and maintain accurate records of registration and deregistration processes, which includes records of all communication to and from customers in compliance with the Retail Rules
- keep a copy of the medical confirmation for the period of time the person remains a customer of that retailer or distributor for the registered premises and for 110 business days from the date the person ceases to be a customer of that retailer or distributor for the registered premises
- keep and maintain policies, systems and procedures to facilitate compliance with the registration and deregistration requirements of the Retail Rules and to enable it to effectively monitor compliance with the Retail Rules.

Retailers and distributors must keep accurate business records to demonstrate compliance with these obligations.

What is a record?

A record is something that is a piece of evidence about an event that occurred in the past, particularly an account kept in writing or some other permanent form. It may be in the form of:

- hardcopy communications
 - letter
 - file note – of a telephone conversation or visit to a supply address or other face to face contact with a customer
- electronic communications
 - email
 - voicemail
 - text message
- voice recordings of phone calls
- any record that can be produced as confirmation that an event occurred when, by whom and what it related to.

Retailers and distributors must ensure these records and registers are complete and accurate.

Retailers and distributors may be required to produce or otherwise substantiate their records and registers.

Compliance and enforcement

AER approach to compliance

Our general approach is to provide guidance on good industry practice, and promote a culture of compliance by businesses with effective internal practices. An aspect of this work is to identify the boundaries of unacceptable conduct and clearly communicate our expectations.

We employ a risk-based approach to monitoring and enforcing compliance with the national energy legislation and rules, focusing on the impact and probability of a breach, and allocate our resources on that basis.

We assess instances of potential non-compliance with the Retail Law and Retail Rules in accordance with our Compliance and Enforcement Policy (available on the [AER website](#)). We will consider a range of factors in deciding on an appropriate response and will take steps with the relevant business.

When considering compliance or enforcement action, we will prioritise action where there are serious issues impacting vulnerable consumers.

Responsibility for compliance

Businesses are required to continually monitor and review their systems and processes to ensure compliance with obligations across the legislative framework.

Section 273 of the Retail Law requires a business (even where functions are outsourced to a third party) to establish policies, systems and procedures to enable it to efficiently and effectively monitor its compliance with the requirements of the Retail Law, the National Regulations and the Retail Rules.

Businesses are required to have policies, systems and procedures for registering and deregistering premises requiring life support equipment as well as assisting customers with obligations around the use and provision of medical confirmation forms as required in the legislation. This includes maintaining accurate and up-to-date registers and ensuring deregistrations are carried out in accordance with the Retail Rules.

A failure to meet the life support obligations is a breach of the Retail Rules and attracts a Tier 1 civil penalty. This means that a court may order a penalty of up to the greater of: \$10 million; 3 times the value of the benefit gained from the breach (if this can be ascertained); or 10% of annual turnover (if the benefit cannot be ascertained).

The self-reporting framework requires retailers and distributors to report possible breaches of the Retail Law and Retail Rules. The AER Compliance Procedures and Guidelines sets the frequency of reporting. The life support obligations are classified as immediate and must be reported within two business days of the business identifying them, given the potential for serious customer harm.