



# Life support registration guide

## 2019



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Inquiries about this publication should be addressed to:

Australian Energy Regulator  
GPO Box 520  
Melbourne Vic 3001

Tel: 1300 585 165

Email: [AERInquiry@aer.gov.au](mailto:AERInquiry@aer.gov.au)

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# Introduction

## Overview

From 1 February 2019, new rules will commence to strengthen protections for customers who rely on life support equipment. All retailers and distributors that operate under the National Energy Retail Law (**Retail Law**) and National Energy Retail Rules (**Retail Rules**) are required to comply with these obligations.

These new rules are designed to allocate clear responsibilities between retailers and distributors and ensure the life support registers are accurate and up to date.

In summary the new rules:

- enable a customer to receive the protections of the life support rules from the time they inform their retailer or distributor that they rely on life support equipment until they are deregistered
- require the registration process owner (the retailer or distributor contacted by the customer) to:
  - notify customers of their rights and obligations under the life support rules
  - follow a prescribed process for obtaining medical confirmation of a customer's eligibility to be on the life support register
  - follow a prescribed process if the registration process owner chooses to remove a customer from the register where medical confirmation is not provided
- establish a clear process to enable either the retailer or distributor to deregister the premises if the customer advises that life support equipment is no longer required.

It is important that businesses have compliance systems to manage the registration processes for life support customers to ensure they meet the requirements of the Retail Law and Retail Rules.

## About this guide

We have developed this guide to assist retailers and distributors to understand their responsibilities to customers relying on life support equipment under the Retail Law and Retail Rules.

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 provided and shared between retailers and distributors.

This guide sets out the general requirements under the Retail Rules and does not constitute legal advice. Where a business is unsure about specific aspects of the Retail Rules and how they apply to certain situations they should obtain their own legal advice.

## 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.

## Objectives

The key objectives of the new life support rules are to provide:

- **Clear information to customers:** Retailers and distributors are required to provide customers that have applied for life support protections with information on the registration and deregistration processes. This includes information about the life support protections and the information that customers must provide to maintain registration.
- **Clear processes for registration and deregistration of customers:** The Retail Rules outline a clear process for the registration and deregistration of life support customers. The new processes will help ensure life support customers are validly registered and deregistered and in turn improve the quality of life support registers.
- **Obligations on parties to share information:** Retailers and distributors are required to share relevant information about the requirement for life support equipment at a premises. The sharing of information will help ensure customers are appropriately registered and receive the protections of the life support registration.
- **Obligations to maintain accurate records:** Retailers and distributors are required to ensure registers are up to date, there is a record of transactions and customer protections are maintained.

## 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. Reflecting the importance of these protections, the life support obligations are civil penalty provisions.

### 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.

### What customers do the life support obligations apply to?

The life support obligations apply when a retailer or distributor is notified by any customer to whom energy is sold by a retailer that a person who is residing at a customer's premises requires life support equipment.

The life support obligations can apply to both small and large customers if there is a person residing at a customer's premises who requires life support equipment. For example, the life support obligations can apply if a large customer is a retirement village as there are persons in residence.

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 and air conditioning
- medically required refrigeration
- powered wheelchair.

# Customer registration process

The registration of customers requiring life support equipment is critical to ensuring customers are provided the required protections. Once a customer informs a retailer or distributor of the requirement for life support, 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.

## Life support registration process

The below chart provides a brief overview of the life support process and obligations from the time a customer advises of the requirement for life support equipment:

<b>Customer notification</b>	<ul style="list-style-type: none"><li>• Customer contacts retailer or distributor to advise they require life support protections</li><li>• The party (retailer or distributor) contacted by the customer becomes the registration process owner</li><li>• The registration process owner flags the customer as 'life support' in its internal systems and notifies the relevant retailer/distributor</li></ul>
<b>Medical confirmation</b>	<ul style="list-style-type: none"><li>• 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</li><li>• If the customer returns the completed medical confirmation form, the registration process owner updates its system and notifies the retailer or distributor that medical confirmation has been provided</li><li>• 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</li></ul>
<b>Deregistration</b>	<ul style="list-style-type: none"><li>• If, after the reminder and deregistration notice timeframes specified in the Retail Rules have passed, the customer has not returned the medical confirmation form, the registration process owner can commence deregistration</li><li>• The registration process owner updates its systems and notifies the retailer or distributor of the change to the customer's status</li><li>• At any time during the process, the customer can advise of a change in circumstances (e.g. vacating premises). The registration process owner may then initiate deregistration as per the timeframes specified in the Retail Rules</li></ul>
<b>Information sharing and record keeping</b>	<ul style="list-style-type: none"><li>• Retailers and distributors have obligations to share information about a customer's life support registration status</li><li>• Retailers and distributors have obligations to create and maintain accurate records of the registration and deregistration process</li></ul>

## When should a premises be registered for life support?

A customer must be registered as a life support customer once they notify the retailer or distributor that life support equipment is required at the premises.

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 requirement 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 so that both are aware of the customer's requirement for life support equipment.

If the customer contacts their retailer to let them know that they need life support protections, the retailer is the registration process owner.

If the customer contacts their distributor to let them know that they need life support protections, the distributor is the registration process owner.

## 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.

Within five 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
- information about the life support protections the customer will receive.

The registration process owner must allow the customer at least 50 business days to complete and return the medical confirmation form.

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 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.

### Reminder process

The registration process owner must give the customer up to five opportunities to provide them with the completed medical confirmation form. These steps and the timeframes for each are outlined below:

- the information pack with the medical confirmation form (to be provided no later than 5 business days after being advised by the customer)
- first reminder notice (to be provided no less than 15 business days from the date the information pack was issued)
- second reminder notice (to be provided no less than 15 business days from the date the first reminder notice was issued)
- at least one extension of a minimum of 25 business days if requested by the customer (at any time during the process, not necessarily in this sequence)

deregistration notice (to be provided no less than 15 business days from the date the second reminder notice was issued).

**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.

## What information must the customer provide to the registration process owner?

After a customer has advised the retailer or distributor that they require life support equipment, the customer needs to provide confirmation from a registered medical practitioner in order to ensure they continue to receive life support protections.

Once the information pack is provided, the customer has a minimum of 50 business days to return the completed medical confirmation form to the registration process owner.

If the customer fails to provide medical confirmation after the reminder notice process, the registration process owner is able to commence the deregistration process.

**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.

## 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 obligations around life support protections 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

A customer can only be deregistered for not providing medical confirmation to the registration process owner when certain steps have been followed:

- 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 and provided at least 50 business days to provide medical confirmation
- the registration process owner has sent the deregistration notice at least 15 business days before deregistration
- the customer has not provided medical confirmation to the registration process owner before the date on the deregistration notice.

### 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 to ensure they are appropriately registered and receive the protections of the life support 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 initiating the registration process and the sharing of information to the customer's retailer or distributor. This sharing of information is so both parties have up-to-date records with respect to a customer's application 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.

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## 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 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 must be able to demonstrate and 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 Statement of Approach (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.

## Responsibility for compliance

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.

With the commencement of these new rules on 1 February 2019, businesses are required to have policies, systems and procedures for registering and deregistering premises requiring life support equipment. 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 is a civil penalty. This means that a court may order a penalty of up to \$100 000 for a corporation and \$20 000 for individuals per contravention. The AER may also issue an infringement notice(s) where it has reason to believe that a person has breached a civil penalty provision. The penalty payable for corporations in response to an infringement notice is \$20 000.

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.