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Attention: Ms Sharon Deano
Director, Compliance and Enforcement, Energy
Essential Services Commission
By Email Only: compliance.reporting@esc.vic.gov.au

14 June 2024

Dear Ms Deano,

Payment Difficulty Framework Guideline – Draft for Consultation

AGL Energy (**AGL**) welcomes the opportunity to provide feedback to the Essential Services Commission (the **ESC**) in response to the abovementioned Draft for Consultation (the **Draft Guideline**).

Proudly Australian since 1837, AGL delivers around 4.3 million gas, electricity, and telecommunications services to our residential, small, and large business, and wholesale customers across Australia. As one of the largest providers of essential services, AGL has extensive experience in supporting customers experiencing payment difficulties, vulnerable circumstances and entrenched financial hardship.

AGL welcomes the ESC's efforts to consolidate, streamline and simplify the various Guidance Notes that have been issued to support the Payment Difficulty Framework since its inception. These Guidance Notes highlight the complex and dynamic nature of providing payment difficulty support to Victorian consumers, as well as the need to have a responsive and flexible framework that sets out clear expectations for energy retailers.

AGL has carefully considered the proposed Draft Guideline in conjunction with the ESC's supporting document and is largely supportive of the revisions. Where relevant, we have sought to highlight any areas of concern or potential refinement to the Draft Guideline. AGL's detailed feedback to the issues and changes contemplated in the Draft Guideline are set out within the attached **Appendix A**.

If you have any questions in relation to this submission, please contact Liam Jones on ljones3@agl.com.au.

Yours sincerely,

A handwritten signature in black ink that reads 'Liam Jones'.

Liam Jones
Senior Manager Policy and Market Regulation



Appendix A – AGL’s Response to Consultation Questions

Question 1: Do the guidance, better practice examples and case studies contained in the draft guideline provide adequate guidance to you to administer the payment difficulty framework?

AGL is largely supportive of the Draft Guideline but wishes to make several suggestions and recommendations to improve its operation as outlined in our response to Question 2 below.

Question 2: Alternatively, if you consider the guidance provided is not adequate, please provide responses to the following:

- a. Specify which area of the draft guideline you believe does not give adequate guidance; and**
- b. Outline the reasons why you believe this area of the draft guideline does not give adequate guidance.**

AGL wishes to provide the ESC with both high-level and specific feedback in relation to the Draft Guideline as set out below:

High-Level Feedback

- a. AGL notes that consultation on the Draft Guideline is running parallel to the ESC’s ‘*Energy Retail Code of Practice Review*’ (the Review). We understand that the Draft Guideline is concerned with updated guidance on the *existing* framework, whereas the Review is considering a potential *future state* framework. However, given the significant overlap between the two bodies of work, we are mindful of duplication of effort in circumstances where it is likely that the Draft Guideline may become redundant less than 12 months after its commencement. Similarly, the AER is also considering whether elements of the PDF should be adopted into the NECF through its ‘*Review of Payment Difficulty Protections in the National Energy Customer Framework*’. Notwithstanding this, we believe the ESC has struck a good balance of ensuring minimal, light-touch revisions to existing guidance.
- b. The revoked guidance notes and guidelines referred to in Attachment A of the Draft Guideline contained very specific and detailed information on their respective subject matters. We note that this guidance has been summarised into the Draft Guideline as outlined in Table 1 of the Supplementary Information document. We recommend that the Draft Guideline provide further clarity as to the effect of the revocation of the previous Guidance Notes. Specifically, is there an expectation that they will cease to have any probative value going forward, say for example where the original, revoked document contains more prescription or detail on a given issue than the Draft Guideline?
- c. There is currently no proposed commencement date for the new Draft Guideline. While we do not anticipate any significant process or system changes arising from the Draft Guideline, we nonetheless recommend a period of two to three (2-3) months between final decision and effective commencement date to facilitate any necessary updates to internal governance practices and frontline processes. This period is conditional upon the final version remaining substantially consistent with the Draft Guideline, with no revisions that would necessitate system or process changes, which would necessarily extend the period of time AGL would require to be ready.



- d. The use of case studies to illustrate different types of scenarios, historical compliance issues and retailer practices is helpful, especially where examples of compliant and non-compliant behaviour are juxtaposed for comparison. We note however the inherent complexities of administering payment difficulty framework support, resulting in many different permutations and situations that could not realistically be foreshadowed and captured in a Draft Guideline.

Specific Feedback

Section	AGL Feedback
1.1.2	<p>Better Practice Definition</p> <p>AGL recognises that the ERCoP sets out a range of minimum standards and entitlements for Victorian consumers experiencing payment difficulties. Energy retailers, including AGL often exceed these minimum expectations through their own practices and processes, such as for example AGL's \$75m Customer Support Package¹. These additional supports are acknowledged through the 'better practice' examples in the Draft Guideline. Noting that retailers will have varying approaches to supplementary support, AGL recommends that the guidance around 'better practice' should explicitly clarify that they are examples of discretionary retailer conduct that would <i>exceed</i> the minimum obligation, rather than equating to it.</p>
1.1.4	<p>Minimum Level of Arrears</p> <p>AGL notes that the Draft Guideline corrects the original guidance note² and draws a distinction between a customer's entitlement to tailored assistance³ and the retailer's obligation to inform the customer of tailored assistance where the minimum level of arrears exceeds \$55 including GST⁴. This issue is considered at multiple points in the Draft Guideline – see for example sections on no barriers to assistance, tailored assistance and providing information about payment assistance. Noting the different debt threshold for these two provisions (specifically for customers with debt below \$55), it would be helpful for the Draft Guideline to more clearly distinguish the two obligations and provide guidance on how retailers should act for customers with arrears between \$0 and \$55. In the substantive Review of the ERCoP, there may be value in aligning the two provisions to a common, consistent threshold value.</p>
1.1.6	<p>Payment Difficult Framework Review Phone Call Study</p> <p>The language used to describe the findings of the review could be redrafted to make the proposition clearer. We infer that the intent of this paragraph is to describe that the PDF Review identified communication 'strategies' that correlated to positive customer outcomes?</p>

¹ <https://www.agl.com.au/about-agl/media-centre/asx-and-media-releases/2024/may/agl-has-delivered-more-than-35-million-to-support-customers-in-need>

² Draft payment difficulty framework (PDF) guideline: Supplementary information, p. 5

³ Clause 128

⁴ Clause 129(2)



1.1.6 **Timeliness**

There exists an obligation for retailers to provide information to consumers in a timely manner⁵. However, as the ESC acknowledges (and AGL agrees), there is a delicate balancing act of providing customers with too much information, resulting in poor outcomes. This theme is also considered under Section 3.1.8, with some discretion provided to retailers around the level of detail to be provided to customers.

AGL remains concerned that payment difficulty phone conversations are often lengthy and involve the provision of heavily prescriptive information. Customers who are contacting their retailer – often during times of distress or vulnerability – may not properly understand or retain the multitude of information required to be conveyed by the retailer. AGL has long advocated for a position where information could be provided to customers in a phased or triaged manner, with the most critical information coming up front over the phone (such as for example agreeing on the terms of a payment arrangement), with less time sensitive information (such as energy efficiency tips) coming at a later point in time and through alternative channels such as email, letter or SMS. We contend this will lead to better customer outcomes by not overwhelming customers and allowing them to properly engage with the support measures.

In this regard, the Draft Guideline could go further to explain that the concept of timeliness is contextual, should be commensurate with the type of information being conveyed and does not necessarily equate to “immediately” or “straight away”.

3 **No Entitlement to Receiving Payment Difficulty Assistance**

It would be helpful for the ESC to provide guidance on the types of scenarios that might constitute a “firm basis” for a retailer to form a view that a customer is not entitled to receive assistance. The requirement for the retailer to be able to evidence such as basis should be clarified in the context of subsequent guidance around customers not being compelled to provide evidence⁶.

3.1.2 **Customers Who Cannot Pay for Ongoing Usage**

The second paragraph under ‘Guidance’ sets out that “some” customers might not be able to afford their ongoing energy usage. However, in the context of this type of tailored assistance, is it more correct that *all* customers falling under this category would not be able to afford their ongoing energy usage (as reflected in the heading of section 3.1.2)?

3.1.3 **Affordability of Practical Assistance**

In a broader sense, AGL remains concerned with ensuring equitable access and participation in the energy transition for all consumers. Electrification remains a preferred method of decarbonisation for residential consumers, with all-electric homes being cheaper to run, having lower emissions and being better for people’s health⁷. Yet, the barriers to electrification of households remain significant, especially for vulnerable customers, with

⁵ Clause 141(1)(c)

⁶ Clause 143

⁷ Grattan Institute 2023, Getting off gas: why, how and who should pay?, p. 14.



high upfront costs, customer preferences, lack of information, constraints about what fuel can be used and choice of appliances in the home⁸.

In the context of the Draft Guideline, the ESC acknowledges potential cost barriers for customers wishing to undertake energy efficiency upgrades as part of practical assistance, especially those who are already struggling to afford their energy costs.

AGL has previously provided critical feedback on this feature of Tailored Assistance. Recognising that it is not the intention of this Draft Guideline to look at the underlying obligation (we intend to do so under the Review), AGL recommends that the guidance should be tempered and be more pragmatic around what practical assistance retailers might reasonably be able to recommend for customers having regard to both their financial and accommodation situations (which will largely impact which upgrades they can undertake).

Similarly, in relation to the recommendation to utilise the Victorian Energy Upgrades scheme, AGL notes similar concerns around the current ability of the scheme to support vulnerable customers, especially having regard to the program's 'paradigm shift' to high cost/high impact electrification activities. Notwithstanding this, AGL is very supportive of efforts to leverage the VEU scheme for more activity creation and will similarly raise improvement opportunities with DEECA in relation to how the scheme could be adapted to better support vulnerable customers.

3.1.6 **URGS Guidelines**

While replication of the URGS eligibility rules in the Draft Guideline is certainly helpful, AGL raises minor concerns around redundancy and version control should the parameters of the scheme ever change. Instead, these could be hyperlinked or annexed to the Draft Guideline, thus avoiding having to cascade any substantive revisions to the Guidelines in the future.

3.1.8 **Customers Opting Out of Receiving Support**

The scenario of a customer wishing to 'opt out' of receiving information about tailored assistance options during an interaction with their retailer has been highlighted as a better practice example. It is AGL's experience that this type of customer response is common, especially for customers with low levels of debt or delinquency. AGL recommends that this scenario be reflected as normal practice (rather than better practice) and should be more explicit that a retailer will have complied with their Part 6 obligations if they have attempted to inform the customer of their entitlements and the customer explicitly requests not to receive that information.

3.1.18 **Failure to Implement Practical Assistance**

AGL notes that a retailer will not always know whether a customer has implemented the recommended practical assistance without input from the customer. This may be because the retailer needs to await updated meter read information or it is not (yet) obvious due to factors such as seasonality (i.e. not comparing year-on-year changes). AGL recommends that the Draft Guideline should provide a qualification that the retailer obligation only exists where it is (or should be) apparent to the retailer or the retailer otherwise knows that the customer hasn't implemented practical assistance recommendations.

⁸ Ibid p. 20-22.



3.1.18 **Extension of Time to Reduce Energy Costs**

An additional area of concern for AGL is the accumulation of debt that customers experience whilst on tailored assistance with a debt freeze in place. The reality is that allowing customers to pay below consumption will result in more debt for the customer to repay at the end of the debt freeze period, which may be unsustainable for that customer. In this regard, AGL questions whether the Draft Guideline should contemplate this as a necessary balancing consideration when contemplating additional time to work on lowering their energy costs.

3.1.23 **Partially Compliant Notices**

AGL acknowledges that a retailer who issues a single, partially compliant notice will not have met their obligations under Part 6 of the ERCoP. However, the Draft Guidelines also contemplate the implications of a retailer providing information across multiple notices and in particular, the factual circumstances in Case Study 7 discuss a retailer sending two partially compliant notices. AGL recommends clarification as to how a retailer might go about remedying the situation in Case Study 7 – for example, had the second notice (or a new third notice) contained all the relevant Part 6 information then would the retailer have discharged their obligations under the ERCoP?

3.1.24 **Pay-on-Time Discount Case Studies**

AGL recommends an additional Case Study to explain the appropriate treatment for a bill with a pay-on-time discount and a pay-by date that occurs prior to the commencement of tailored assistance.

4.1.1 **Debt Recovery Proceedings**

AGL notes that Clause 144(1) of the ERCoP relates to the commencement or continuation of “proceedings” for the recovery of debt. In this context, it is AGL’s view that this is intended to be a reference to legal or court proceedings. However, in Case Study 11, the provision is used in the context of the retailer sending a disconnection warning notice. It is not clear to AGL how this provision could be construed as applying to a disconnection warning notice – this is the precursor to undertaking a disconnection for non-payment and not the institution of proceedings. Notwithstanding this, AGL notes that the conduct described in Case Study 11 would still constitute a contravention of other clauses with the Code and/or the relevant Acts.
