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Australian Energy Market Commission

Submitted online

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AEMC Consultation - National Energy Retail Amendment (Strengthening protections for customers in hardship) Rule 2018

AGL Energy (AGL) welcomes the opportunity to comment on the National Energy Retail Amendment (strengthening protections for customers in hardship) Rule 2018 consultation paper.

AGL is committed to providing customers with assistance through our hardship program as well as our wider community initiatives, products, services and community/government partnerships that help inform and empower customers and can help address utility financial stress prior to hardship. We achieve this through a number of ways including our Affordability Plan (2014) and our A Fairer Way Package (2017).

For more than a decade, AGL's hardship program, Staying Connected, has been assisting customers experiencing financial disadvantage. Staying Connected is designed to provide assistance to customers experiencing financial hardship to the extent that they are unable to make payments as required under AGL's standard credit guidelines. While participating in the program, customers are protected from disconnection and are offered a range of services.

One of the defining features of customers participating on AGL's hardship program is that they consume around 40% more energy annually, when compared to our average customer base. This is due to a wide range of factors such as time spent in the home, poor building fabric, cheap appliance use and limited availability of funds to make energy saving investments in solar PV or new heaters. AGL actively supports consumer groups to provide support and education to consumers regarding energy and energy efficiency.

AGL believes this sort of collaborative engagement and awareness raising activity is a shared responsibility across industry, government and the community sector to ensure our most vulnerable customers are supported to engage and navigate the energy market. Regulation and setting minimum standards of support, while important, is only one element of a holistic response. The shared responsibility approach ensures long term and holistic solutions that tackle the root causes of vulnerability, such as improved housing quality stock and social and community agency support to complement regulatory minimum standards, are identified. This provides the best possible economic and social inclusion outcomes.

While AGL support the AEMC consideration of affordability and hardship matters to improve outcomes for customers, the AER's rule change request is premature. AGL consider first steps should involve:

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1) Greater consultation and transparency by the AER with industry on their expectations if the position relating to minimum requirements under the NERL has changed. AGL welcomes renewed guidance notes or best practice observations by the AER.
2) The opportunity for retailers to respond to these expectations before moving to regulation.
3) The completion of the AEMC affordability review of other economic and financial aspects impacting affordability. AGL note that the general economic and welfare situation in Australia which is pushing more consumers to financial stress. Utility stress is part of a larger bucket regarding affordability concerns that Australian consumers are facing and stem from more than just utility stress. For example, the Newstart allowance has been cited as inadequate for basic costs of living.

AGL note that the Essential Services Commission of South Australia[1] undertook a similar review in relation to the NERL in 2016, and in 2004 a Joint Initiative into hardship and affordability assessed hardship indicators and shared responsibility.[2] The Joint Initiative work discussed in the attachment also highlights the difficulty in applying a formulaic requirement on hardship assessments due to the differences with utility stress and hardship.

Hardship policies and regulation

Retailers continue to operate with hardship policies (and underlying processes) that the AER has been approving since 2011. Inconsistencies in retailer hardship policies are most observable by the AER, who can issue reports regarding best practice or updated guidance notes that would help inform and evolve retailer practices.

AGL consider the success of retailers voluntarily adopting the Sustainable Payment Plan Framework is a testament to the willingness of retailers to work with the regulator to achieve positive customer outcomes. We would welcome a review of the SPPF, particularly as this was developed following the 2014/15 hardship audit.

If the AERs expectation of minimum requirements has changed, or they have identified an inability to enforce the approved policies, then we encourage them to report evidence-based recommendations to help guide industry on how to evolve hardship approaches. AGL consider that the AER already has the necessary powers and scope to develop guidance, require variation and approve consistent policies through the National Energy Retail Law (NERL). It is therefore unclear to AGL how additional powers under a Guideline could materially change matters of consistency without making judgements on who should receive assistance and what kind of assistance should be provided.

AGL encourage a collaborative approach to achieving positive results for customers by working with the AER, community sector and other industry participants through existing frameworks and powers. This could include issuing a new guidance note and facilitating workshops to explain expectations to achieve consistency. If this engagement strategy fails, the AER can rely on section 43(2) of the NERL to require a variation and would be able to refer to an updated guidance note as the minimum expectation.

[1] National Energy Retail Law: Review of operation in South Australia, 2016 Report
[2] Committee for Melbourne, Utility Debt Spiral Project 2004

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Alternative Approaches

Guidelines are not subject to the same cost-benefit rigour that legislative or regulatory changes are, and we consider the AER already has sufficient powers under the NERL and the issuing of guidance notes to improve consistency of retailer policies, with the power to require retailers vary where they do not voluntarily do so.

For these reasons, AGL recommend the AEMC explore other avenues when considering affordability and hardship matters that may result in more positive outcomes for consumers and industry. Other considerations for the AEMC include:

- In addition to the first steps recommended above, the AEMC could develop a rule requiring retailers to resubmit hardship policies for approval every 3-4 years. This should be combined with the AER issuing a guidance note on minimum requirements and best practice observations ahead of variation requirements.
- Considering alternative mechanisms of regulatory change, such as amending the NERL to reflect the expected minimum requirements, while still facilitating retailer innovation and processes.
- Retaining section 75 of the NERR and ensuring hardship indicators remain as are. Any rule change in relation to Guidelines should then be added as a separate section (for example, 75A), and sufficiently limits the scope of the AER's powers relating to the issuing of Guidelines to ensure that extensive and operationally complex frameworks are not imposed on retailers without the need to complete a cost-benefit analysis.
- Recommending reviews in other sectors, such as increased government assistance (including Newstart allowance minimum amount, energy efficiency schemes, energy grants etc).

The underlying objective and success measures of a hardship program should perhaps be discussed further in principle, across the wider industry. There would appear to be some competing objectives that do not exist comfortably together.

The remainder of the submission focuses on regulation setting, policy matters and affordability concerns for the AEMC's consideration. In particular, it provides further information on the Shared Responsibility Model addressing affordability matters.

Should you have any questions or comments, please contact Kathryn Burela on 0498 001 328 or kburela@agl.com.au.

Regards

Elizabeth Molyneux

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1. Regulation and policy

In making the rule change request, the AER has identified issues relating to the enforceability of policies that express high level statements, and an inconsistency across retailer's hardship policies resulting in different customer outcomes. The AER consider that Guideline powers would allow for a clear set of standard statements and requirements for retailers to incorporate in their policies.

Without knowing the content of the Guidelines, it is difficult to comment on their appropriateness, however any discussion regarding assistance for customers experiencing payment difficulties due to hardship that seeks consistency or clarity will wander in to the policy space and AGL question whether Guidelines are the most appropriate tool for addressing these issues.

Simply identifying a form of market failure or legitimate need for intervention, does not presuppose that regulation is appropriate. Rather, a whole range of feasible regulatory and non-regulatory options should be considered, and their costs and benefits fully assessed, in order to determine the proposal with the highest net benefit.[3]

The AEMC, in considering rule change requests do this through their consideration of whether a matter meets the National Energy Retail Objective (NERO). However, this requirement is not imposed on regulators who substantially impact retailer processes and practices with the mandating of requirements through Guidelines and Codes – which have the same effect as regulation.

The Australian Government Guide to Regulation sets the definition for regulation as *"any rule endorsed by government where there is an expectation of compliance".* This rule change would result in exactly this, and likely result in the AER making policy decisions about who or how support is delivered. AGL consider the AEMC is more appropriately placed to make decisions relating to policy.

The recent experience of retailers with the Essential Services Commission (ESC) regarding the Payment Difficulties Framework (PDF) is an example of high prescription rule setting without full economic assessment. The presupposed outcome of ensuring all customers who are vulnerable were protected meant that such a wide net was cast that any engaged Victorian customer with $55 debt qualifies for the hardship program. These changes were not subject to a Regulation Impact Statement as they were issued under the Energy Retail Code. This would be similiarly true of any changes required under an issued Guideline.

AGL note that ESCOSA is the only regulator to consider wider economic conditions when evaluating the effectiveness of hardship policy.[4] In assessing hardship effectiveness, ESCOSA found that external economic factors are an important influence on the number of hardship customers' existing at any one time and so trends in hardship numbers must be considered within the relevant economic context. For example, it might be expected that the number of hardship customers will increase during a period of increasing unemployment.

[3] Committee for Melbourne, Utility Debt Spiral Project 2004
[4] ESCOSA National Energy Retail Law, Review of Operation in South Australia

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2. Guideline impact on business

If the AEMC decision is to allow the rule change request, AGL recommend the scope of the Guidelines be narrowed. AGL welcome guidance on the AER's expectations of minimum requirements and hardship policies but ambiguous language can create unintended outcomes. The inclusion of open-ended wording such as 'matters that the AER considers must be contained in customer hardship policies' creates a risk for substantial changes to retailer processes and the obligations imposed. We note that the minimum requirements as set out in the National Energy Retail Law refers to retailer processes for identification, processes for early response, flexible payment options, programs to help with energy efficiency.

Guidelines that speak to these minimum requirements could allow the AER to develop and impose substantial new operational requirements on retailers, that over-time could also become more prescriptive. Given the lack of regulatory rigour required for Guideline amendment, these changes could be frequent and substantial. For example, the Guidelines could require retailers to establish a prescribed proactive identification process (i.e. by setting a debt threshold), or a process of pre-reminder notice communications to customers (early response) or require specific energy efficiency programs (programs to help with energy efficiency). The cost of this will ultimately be borne by customers and will likely stifle innovation and retailer investment in other affordability measures, such as those highlighted in the attachment.

AGL is unable to comment on the cost to industry of these Guidelines until the content of the Guidelines has been proposed. However, AGL note that the AER consideration of costs and benefits are substantially narrow given the potentially large scope the proposed rule drafting would allow. The AER state that their proposal does not expand obligations to retailers, it just seeks to provide clarity through the Guideline. However, they also note that businesses may incur costs relating to system changes, staff training and associated changes involved in implementing policies, systems and procedures. The nature of the obligation on retailers will inevitably change, as standard statements, processes, early action measures, definitions or thresholds are set, and operational processes need to be revised.

In our view, there is a real risk that the AER will have the power to make key policy decisions (such as who can receive hardship assistance, and what kind of assistance should be provided) through their Guidelines. AGL does not support the Guideline containing provisions subject to civil penalty, and enforceability should remain with the approved policies under the NERL.

3. Economic disconnect

Financial stress and affordability matters are not isolated to utilities or energy. In 2004, a joint community, government and business initiative in Melbourne explored the relationship between utility debt and poverty (Joint Initative).[5] This has been one of the most comprehensive cross-

[5] Committee for Melbourne, Utility Debt Spiral Project was a joint community, government and business initiative designed to explore the relationship between utility debt and poverty, and to identify social and regulatory frameworks to assist people at risk. The steering committee members included representatives from State Government of Victoria, City of Melbourne, Essential Services Commission, Water and Energy Ombudsman, communicty groups including Consumer Utilities Advocacy Centre (now known as CALC), Vincent

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sectoral reviews undertaken in Australia to understand affordability issues, the impact of utilities, and potential social and regualatory frameworks that can assist people at risk. The report offers two important insights into affordability and utilitity stress:

1) Households reporting financial hardship also report utility stress. The reverse is not true: most households reporting utility stress do not also report financial hardship.
2) Government effort and expenditure is focused on 'cure' (i.e. assisting households already in hardship) rather than on prevention highlighting the difficulty in establishing clear hardship indicators.

Specifically, this report identifies that almost 60 per cent of households who report utility stress are neither in poverty, nor reporting the behaviors that indicate finanical hardship. The report concludes that this highlights the importance of targeting utility hardship programs to those households in the greatest need.[6] It also stated that people's experiences are unique and complex and as such it is not approporiate to apply a formula-driven approach based on household characteristis to detrmine whether assistance or leniancy should be provided.[7]

4. Shared responsibility model

AGL support a shared responsibility approach to energy hardship, where energy suppliers, government and the community sector work together to deliver sustainable improvements for vulnerable customers. These improvements can help ensure vulnerable customers can access competitively priced, reliable and high-quality energy supplies. The shared responsibility approach ensures long term and holistic solutions that tackle the root causes of vulnerability, such as improved housing quality stock and social and community agency support to complement regulatory minimum standards, are identified.

Retailers can continue to assist the community both through regulated means and other community initiatives in line with their own corporate values and business decisions. AGL's focus on community support, partnerships, products and other initiatives are detailed in the Attachment.

In relation to government effort and expenditure, it is important to note that the provision of financial support through Newstart is consistently being cited as being inadequate to support a basic standard of living and that other economic conditions are impacting affordability and financial stress. For example:

- **One in four people in Australia go without household essentials** and can't pay bills because their cost of living has become too expensive - "the reality is that Newstart hasn't kept up with the cost of living which means families and individuals are struggling with basics".[8]
- **Roughly three million people lived below the poverty line in 2013-14.** Of those people, 57.3 per cent relied on income support payments as their main source of income. Social security reforms over the last few years have meant there is a growing number of people shifting off other

de Paul's, Good Sheppard, Kildonan, Consumer Law Centre Victoria, Financial Consumer Rights Council, Victorian Council of Social Services, four consulting groups and several utility companies including Origin, AGL, Powercor and Citipower (as well as water companies).

6 Committee for Melbourne, Utility Debt Spiral Project 2004, Page 6-7.

7 Committee for Melbourne, Utility Debt Spiral Project 2004, page 23.

8 Good Shepherd Microfinance media release 7 June 2018.

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payments to receive lower-rate social security payments (mainly Newstart), which increases the likelihood they will live in poverty

- Source: Adapted from the Australian Bureau of Statistics (ABS)

- **Australian wages have stagnated and rents have increased at twice the rate of inflation** in the past 5 years resulting in more than 150,000 low-income earners in private rentals paying more than half of their income oin housing, even after rent assistance.[9]
- **Cost of living pressures and insufficient income were the overriding factors** in Victoria, New South Wales, South Australia and South East Queensland in influencing disconnection for non-payment.[10]

The type of energy specific support offered by government for those experiencing hardship is also problematic. Grants and concessions are important financial support tools for consumers but are offered when there is already finanicial difficulty, rather than helping prevent it.

The Joint Initiative acknowledged that government has a greater emphasis on the aiding financial difficulty, rather than in programs to help prevent, which they note is recognition that identifying households who are at risk of falling into hardship is incredibly difficult and complex.[11] Work towards this goal could include:

- Energy specific government support should be increased and focused on longer term solutions (instead of short term payments) for example:
    - Expanding or initiating energy efficiency schemes – this can include rebates or replacement of energy inefficient appliances for low-income households.
    - Reviewing criteria for accessing relief grants.
    - Reviewing the frequency and/or amount available in those grants.
- Expanding the shared responsibility model to capture associated industries such as energy appliance manufacturers and appliance retailers. The marketing of cheap, energy inefficient appliances ‘lock in’ an inability to pay higher energy bills as the appliance stock contained within the average household has a relatively long tenor. AGL consider possible solutions to ensure those with payment difficulties can still access cheap appliances is to amend the consumer credit codes to ensure that retailers of consumer appliances give preferential pricing to customers in hardship.

5. Disengaged customers

Disconnection is not a preferred course of action for retailers and is a difficult and distressing experience for customers. Debt accumulation has harmful effects to customers, who are saddled with long-term debts that they may ultimately be unable to clear and may impact future access to credit and other financial services, and retailers who bear additional credit risks (higher bad debt and increased debt write offs. Where a customer is not engaging, any offer of assistance by a retailer is

[9] Jenny Smith, Chief Executive of Council to Homeless Persons, 2016
[10] Vinnies, Households in the Dark May 2016
[11] Committee for Melbourne, Utility Debt Spiral Project, page 12.

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going to be missed or ignored. Retailers must balance the number of outgoing communications with ensuring the customer does not feel chased or harassed.

To try and encourage engagement, AGL contacts the customers a number of times through a number of channels. Our credit management process goes beyond the minimum contact protection requirements. We also use SMS messages, a 2nd reminder notice and additional phone contacts. Hence, a non-engaged customer is likely to receive several contact points, prior to being disconnected. Customers may also respond to communication, but then fail to make payments in line with their commitments, this is an example of non-meaningful engagement. It is unlikely that Guidelines would be able to address these issues.

6. Debt

If a prescriptive regulatory regime forces hardship on customers due to set indicators, the cost of running a hardship program increases and imposes a solution on customers who may simply need assistance with financial management (i.e. through a payment plan).

[redacted]

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Attachment– AGL investment and community focus

AGL support the use of hardship programs as an essential support for the most vulnerable consumers. But a focus on increasing participation in hardship fails to look at the broader issues of affordability and prevention as discussed above. We encourage the AEMC to consider these affordability measures in the upcoming Affordability review, rather than viewing hardship guidelines in isolation.

AGL's Affordability Initiative, launched in December 2014, is a program of work through which we aim to better understand the issues associated with customers facing financial hardship, and provide targeted and effective support. We built on this with the launch of A Fairer Way in 2017.[12]

- **Discounts -** Our A Fairer Way package places our most vulnerable customers on specifically designed products with unconditional discounts.
- **Investing $1.2 million** - over three years to increase financial counselling resources in Queensland, New South Wales, Victoria and South Australia, partnering with YFS Logan, Wesley Mission, Kildonan UnitingCare and Uniting Communities).
- **Government Partnerships -** Continuing to implement programs to assist vulnerable consumers to improve the sustainability of their energy spend.
  - This includes our $1 million partnership with the NSW Government to deliver solar energy to vulnerable customers residing in community housing.
  - Providing $500,000 to the Queensland Government's Switched On Communities program, run by Queensland Council of Social Service to provide grants to local community organisations to educate vulnerable groups on how to save energy, compare energy products and how to engage with their retailer.
- **Domestic Violence focus** - ensuring customers who are impacted by domestic violence are appropriately supported in line with our family and domestic violence policy. Our policy ensures that calls are transferred to trained specialists, the availability of flexible payment arrangements, debt relief on case-by-case assessments and additional steps to ensure account privacy.
- **Joint Community Programs** - We work with community groups to deliver joint programs to identify and address root causes of financial stress including:
  - Through AGL's Energy for Life program we're investing over $3 million over six years in partnerships with The Smith Family, St Vincent de Paul Society, Cancer Council Australia and Julian Burton Burns Trust.
  - As well as providing financial support to St Vincent de Paul's home visitation program, AGL and St Vincent de Paul have developed 'Energy Advice Packs' which contain information about retailer hardship programs, tips on how to save energy around the home and advice about what other support is available to families in hardship.

AGL invests heavily in social programs and community support. We have a range of programs and support systems in place for vulnerable consumers including:

[12] AGL A Fairer Way Package announcement, media release 17 March 2017.

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- **Here to Help**[13] - this is an interactive digital tool which will enable customers to assess if they are eligible for any grants or concessions to support energy affordability and assist with often complex application processes.
- **Energy use and financial support** - we work with our customers to try and reduce their consumption and refer them to Financial Counsellors for additional support. As part of these referrals we offer appliance replacement in South Australia through our work with Uniting Communities, and on an ad-hoc basis depending on customer circumstances in other jurisdictions.
- **Dedicated financial counsellors line** – direct to our specialist team to assist financial counsellors referring customers.
- **Boost and Graduate** – where we may credit a customer's account to clear debt and bring their account balance to zero.

Initiatives that are not specific to hardship customers include:

- **Debt relief** – this applies to any vulnerable customer who may request relief, or an authorized contact person on their behalf. These customers do not have to be on the hardship program for consideration.
- **Self Service Meter Reads** - this functionality enables customers to enter their own meter reads, either through the AGL app, online or over the phone to understand what their bill is to date. This can help prevent bill shock, especially through seasonal periods of high consumption / quarterly billed customers, or through the absence of an actual read by the distributor.
- **Bill smoothing enhancements** - we have implemented improvements to our bill smoothing functionality, which enables customers to spread annual consumption equally throughout the year.
- **Energy Insights** – available in Victoria but will roll out as smart meters become more prevalent.

Payment assistance and plans:

- **Bill smoothing -** AGL's Bill Smoothing product is offered to customers as a means of spreading the cost of a customer's energy costs over a shorter time frame. AGL have conducted proactive campaigns to target customers not yet in payment difficulties. This allows them to proactively
- **Assist payment arrangements** – Assist payment arrangement are a variation on the bill smoothing product which allows the customer to also include a component of arrears spread over the duration of the payment plan.
- **Promise to Pay (P2P) arrangements** – (also known as instalment plan) where customers enter to pay amounts owing after the original due date. For the duration of the P2P, the customer pays the agreed instalment amounts. Payments due under P2P are in addition to amounts due for continuing energy consumption.

[13] AGL Here to Help financial assistance options and concessions check tool

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- **Online Payment arrangements** - This initiative was introduced by AGL as a means of driving increased customer engagement by including the option for customer's to proactively request and nominate a payment arrangement through online channels. This includes bill extensions.
- **Prepaid** - This is a recently introduced product from AGL that incentivises a customer to make payments prior to a bill due date by factoring in a co-contribution or bonus from AGL. Customers on this product will benefit from making payments prior to falling into arrears.
- **Pay My Way** – payment solution allowing customers to pay instalments towards their bill. This is a pre-payment product that allows customers to make incremental payments to their account without committing to a bill smoothing product.
- **Payment options** – SMS Pay (reminder a few days before the bill is due that allows customers to reply 'PAY' for the payment to be deducted on the due date.