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Australian Energy Market Commission

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22 October 2026

Dear Sir or Madam

Strengthening Standards for Payment Difficulty Assistance (RRC0074)

AGL Energy (AGL) welcomes the opportunity to comment on the Australian Energy Market Commission's (AEMC) Draft Determination on Strengthening Standards for Payment Difficulty Assistance.

AGL supports practical and efficient rules that improve outcomes for customers experiencing payment difficulty. However, the proposed drafting may create unintended consequences in two areas:

- **Documentary evidence:** the prohibition may be interpreted too broadly, limiting retailers' ability to administer additional support programs that require reasonable eligibility or suitability checks.
- **Payment plans and reviews:** the emphasis on affordability and the proposed review process may produce inconsistent practices, unnecessary customer contact and arrangements that are affordable in the short term but unsustainable over time.

AGL recommends that documentary evidence be prohibited only where it is sought to establish or verify payment difficulty or hardship. AGL also recommends that payment-plan reviews be required only when a customer or authorised third party requests a review or provides updated information that warrants one. Clear information about how customers can request a review should be provided when an arrangement is established.

If you would like to discuss any aspect of AGL's submission, please contact Brandon Hoogendorp at bhoogendorp@agl.com.au

Yours sincerely,

Liam Jones
Senior Manager Policy and Market Regulation

About AGL Energy

We believe energy makes life better and we are passionate about powering Australian life. Proudly Australian for more than 185 years, AGL supplies around 4.6 million customer services[1]. AGL operates Australia's largest private electricity generation portfolio within the National Electricity Market, comprising coal and gas-fired generation, renewable energy sources such as wind and hydro, as well as batteries and other storage technology. We are building on our history as one of Australia's leading private investors in renewable energy. Our ambition is to be a leader in the energy transition. As part of this, we are progressing our strategy to transition our energy portfolio and connect every customer to a sustainable future.

[1] Services to customers number is as at 30 June 2026.

Part 1 - Banning documentary evidence to access payment difficulty assistance

Flexibility supports better customer outcomes

In its Draft Determination, the AEMC acknowledges that "flexibility is important to support retailer-customer engagement for assistance beyond those related to payment difficulty protections"[2] and the need to allow "flexibility for other documentary evidence requests"[3] relating to additional types of support offered by retailers from time to time.

Retailers increasingly provide specialised assistance measures that extend beyond the minimum requirements of the payment difficulty framework, including access to government support schemes, energy efficiency programs, appliance replacement initiatives and other targeted support. These measures often require information to verify eligibility, suitability or customer outcomes. In practice, many of these initiatives are documented through retailer hardship policies which commonly contain both mandatory protections and voluntary support initiatives.

The AEMC recognises this important distinction and has intended to solve for this through r. 73 which prohibits retailers from requiring "*any documentary evidence of payment difficulties or hardship as a precondition to applying these Rules or the retailer's hardship policy*"[4]. However, the current drafting risks regulating assistance measures according to where they are documented, rather than the purpose for which information is requested. In the absence of any definitions or supporting guidelines, we do not believe the drafting of r. 73 sufficiently sets out the distinction that the AEMC is seeking to achieve. Capturing the Rules and hardship policies in their entirety risks extending the prohibition beyond its stated purpose and limiting customer access to beneficial support measures.

Uncertainty will reduce support for customers

Consequently, the current drafting could unintentionally reduce assistance available to customers experiencing payment difficulties or hardship by creating uncertainty about whether retailers can administer additional support measures that require reasonable eligibility or suitability checks. Regulatory ambiguity is likely to produce inconsistent interpretations across retailers, resulting in differing customer experiences and increased reliance on regulatory guidance or compliance enforcement to clarify appropriate practices.

If interpreted contrary to the spirit of the AEMC's Draft Determination, the consequences would be that retailers may be subject to enforcement action and may not be able to offer additional support that requires these necessary checks and balances. For example, a retailer may offer access to a specialised assistance measure that requires verification of particular circumstances, such as confirmation of tenancy arrangements, participation in a government support program, or evidence that premises are suitable for a proposed energy efficiency upgrade. While these requests are not intended to verify payment difficulty, the current drafting may create uncertainty as to whether they are permissible where the assistance is delivered through a retailer's hardship framework. This would ultimately be to the detriment of consumers who would otherwise be eligible for this much-needed assistance. AGL's concerns around misinterpretation are not unfounded. Recent experience demonstrates that differences can emerge between the policy intent articulated in an AEMC determination and the interpretation ultimately adopted in implementation instruments - see for example the AEMC's final decision on *Improving the ability to switch to a better offer* and the AER's application in their draft retail guidelines. This highlights the importance of ensuring that drafting clearly and expressly reflects the intended policy outcome.

[2] Draft determination Page 13
[3] Draft determination Page 4
[4] Draft R. 73

Achieving the intended outcome without unintended consequences

The current drafting extends beyond payment difficulty assistance and risks capturing additional support measures for which limited eligibility checks may be appropriate. In AGL's view, retailers should not be required to choose between complying with r. 73 and obtaining information that may be reasonably necessary to comply with other regulatory requirements or support programs.

Instead, AGL recommends redrafting r. 73 in one of two ways:

Option 1 – Explicit Purpose Test

The prohibition should be limited to documentary evidence requested for the purpose of establishing payment difficulty or hardship, rather than applying to all documentary evidence requests associated with assistance measures that may be delivered through a retailer's hardship policy. This would provide greater regulatory certainty and ensure the prohibition operates as intended without inadvertently constraining retailers' ability to meet other obligations, administer assistance schemes or deliver tailored support measures. The following illustrative wording could be utilised:

> (1) A retailer must not require a customer to provide documentary evidence for the purpose of establishing that the customer is experiencing payment difficulties or hardship as a precondition to applying these Rules or the retailer's hardship policy.
>
> (2) Subrule (1) does not prevent a retailer from requesting information reasonably necessary to assess a customer's eligibility for, or the suitability of, assistance that the retailer offers in addition to its obligations under these Rules.

This approach ensures the prohibition should continue to apply where the substantive purpose of a request is to establish, verify or assess a customer's payment difficulty or hardship circumstances. However, retailers should retain the ability to request information that is reasonably necessary to administer separate assistance measures that serve a different purpose.

Option 2 - Specific Payment Difficulty Obligations

As an alternative, the prohibition could be limited to the specific payment difficulty obligations in r. 72 and r. 33 (instead of the Rules more broadly and hardship policies).

Minor drafting correction

AGL also notes that r. 73 of the *Draft National Energy Retail Amendment (Strengthening standards for payment difficulty assistance) Rule 2026* appears to contain a typographical error by replicating the addendum note from r. 72 relating to the application of r. 33(4). AGL contends that this note is not applicable to this provision and should be removed.

Part 2 - Making payment plans more affordable

As outlined in our submission to the Consultation Paper[5], AGL supports retailers considering information provided by customers or authorised third parties when establishing payment arrangements or reviewing their appropriateness having regard to updated information. We believe retailers should work collaboratively with customers or authorised third parties to ensure payment arrangements are fit for purpose, reflect all relevant factors and have the greatest prospects of success. To support this collaboration, AGL provides dedicated contact channels for financial counsellors, enabling more streamlined assistance for customers who use these services.

AGL also supports balancing all relevant factors when establishing a payment arrangement. A considered approach is essential to address any immediate concerns for the customer, including the risk of disconnection, while maintaining a longer-term focus on improving the customer's financial position and levels of indebtedness.

However, as part of these proposed changes, AGL has identified two primary areas of concern:

- *Affordable* payment plans – possibly placing an unintended and perhaps disproportionate focus on immediate affordability, rather than consideration of all factors relevant to the customer's situation;
- The review process including what constitutes a review, when a review should occur and what follow-up action should take place after a review.

Affordable payment arrangements

The proposed framework requires retailers to offer payment plans that can be reasonably determined to be "affordable for that customer"[6]. However, AGL is concerned that the factors that must be considered in determining whether a payment plan is affordable may be contradictory and/or in conflict with one another. The proposed drafting may unintentionally alter the operational balance between affordability, arrears reduction and future consumption management. While these factors remain listed in the rule, positioning affordability as the primary outcome risks creating an expectation that immediate repayment affordability should prevail where these considerations point in different directions. While well-intended, this may lead to poor customer outcomes over the medium to long term.

Unlike the current NERR r. 72 (which requires that payment plans are established having regard to a balanced view of capacity to pay, arrears and forecast energy consumption), the proposed draft rules require that payment plans must primarily be *affordable* having regard to capacity to pay including information provided by the customer or third party on their circumstances, arrears and consumption.

Affordable is not a defined term, and on a plain English reading can be taken to mean "having a cost that is not too high"[7], "not expensive"[8] or "believed to be within one's financial means"[9]. These factors are exclusively linked to, or determined by, a customer's capacity to pay (actual or perceived). In this sense, the customer's arrears or forecast energy consumption are inconsequential to capacity to pay. The term *affordable* may be interpreted as requiring greater emphasis on *immediate* affordability than a payment plan that is considering of all factors, including long term customer outcomes with the current rules requiring simply that payment plans to be established with regard to these factors, in recognition that a retailer must find the right balance when providing the arrangements.

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5 https://www.agl.com.au/about-agl/news-centre/2026/july/strengthening-standards-payment-difficulty-assistance
6 Draft R. 72(1)(a)
7 https://www.merriam-webster.com/dictionary/affordable
8 https://dictionary.cambridge.org/dictionary/english/affordable
9 https://www.dictionary.com/browse/affordable

While it is absolutely critical to ensure that customers are provided payment plans that they can afford, it is also equally essential to have a nuanced discussion around the factors that will determine whether a payment plan is sustainable over the long term or will potentially lead to perverse outcomes such as the accumulation of further debt. By doing so, consumers can make informed choices about their household budgets and expenditure to avoid exacerbating financial or payment difficulties.

A retailer's ability to determine whether something is 'reasonable' is diminished in circumstances where there is no process or mechanism to verify the same – retailers will in practice be required to accept at face value what a customer determines is affordable (or not).

AGL's experience supporting customers through payment difficulties demonstrates that arrangements based solely on a customer's nominated repayment amount do not always lead to sustainable outcomes – customers will often inadvertently underestimate both their household budget and their ongoing energy costs. Effective payment plans require balancing affordability with a realistic pathway to stabilising or reducing debt over time.

Hypothetical Customer Scenario

Charlie is experiencing payment difficulties and contacts their energy retailer. They have an electricity debt of $2,500 and forecast electricity consumption of $2,150 per year. They contact their energy retailer to discuss a payment plan. Their retailer calculates that to clear the debt and cover ongoing energy costs over 12 months would require repayments of $387 per month or $283 per month over 24 months. Charlie tells their retailer they cannot afford either of those options and proposes to repay $100 per month for the foreseeable future. The retailer accepts Charlie's proposal and admits them to the retailer's hardship program.

Under the proposed framework, payment plans need to be affordable. With reference to the hypothetical scenario above, Charlie's arrears and forecast energy consumption are irrelevant based on their capacity to pay. Here, Charlie would accumulate a further $950 of arrears over the next 12 months based on this arrangement. Furthermore, Charlie's debt would increase from $2,500 to approximately $3,450 after twelve months despite complying with the agreed payment plan. In these circumstances, the arrangement may technically satisfy affordability criteria while nevertheless worsening the customer's financial position.

To be clear, AGL does not oppose allowing customers experiencing financial hardship the ability to make repayments at a rate below their ongoing consumption should the circumstances reasonably dictate it. A payment plan that is affordable today but causes debt to increase over time may provide short-term relief at the expense of long-term financial hardship. In some circumstances, a payment arrangement that does not cover ongoing consumption can create a growing debt burden, increasing the likelihood of future payment difficulty, disconnection risk and prolonged hardship. Retailers have an obligation to ensure the payment arrangements they put in place for customers consider and balance both the customer's short-term and long-term needs so not as to exacerbate or worsen their financial position.

However, the new wording may create a stronger obligation to focus on immediate affordability, without appropriate balance against the customer's future debt position even though it must have regard to capacity to pay, arrears and consumption over the following twelve-month period. This may provide future detriment to the customer as retailers lose the flexibility when forming arrangements based on this wording. While we do not anticipate this to be the intent of the proposal, we would welcome the AEMC's review.

To provide greater certainty and retaining the overall focus, we recommend that the reference to "*affordable*" in r. 72(1)(b) and r. 72(4) is substituted with "*appropriate*" to continue to allow retailers to strike the right balance when establishing an arrangement, recognising that in many cases retailers already, (and will continue to do so), accept payment arrangements below consumption to address a customer's capacity to pay, as outlined further in our submission. The term "appropriate" better reflects the inherently multi-factor

assessment currently undertaken by retailers. It allows consideration of affordability, customer circumstances, arrears, future consumption and long-term sustainability without elevating any individual factor above another.

Reviewing payment plans

AGL is concerned that the proposed 'review' framework creates uncertainty in respect of what constitutes a review, when reviews should be initiated, how a review will operate in practice and the benefits (or lack thereof) of undertaking reviews for some customers. This uncertainty could lead to processes that are inefficient and costly at best through to overbearing and harassing at worst. While the AEMC acknowledges the need to "avoid creating a continuous loop of review"[10] and to minimise the "information burden on consumers"[11], AGL remains concerned that the drafting of the review framework does not achieve this in practice. The AEMC has sought to allow "sufficient flexibility"[12] for retailers but has not explicitly provided this flexibility in the drafting of the supporting provisions – this can be remedied by adopting AGL's recommended drafting of the provision.

Fundamentally, AGL is supportive of ensuring that payment plans are appropriate for customers at both the point of inception and importantly, on an ongoing basis having regard to the various changing circumstances that affect customers. AGL is equally committed to ensuring that the core problem statement is addressed – increasing the proportion of customers who complete their hardship arrangements and reducing the proportion of customers excluded for failing to meet payment plan requirements. While AGL acknowledges the core problem statement, we believe that the proposed solution does not address the underlying issue which speaks to broader cost of living, affordability and engagement. Instead, it tackles the end effect or byproduct of affordability but does so in a manner that may in fact exacerbate customer indebtedness.

Ultimately, it is in both customer's and retailer's best interests to ensure that payment plans are successful, where the definition of success involves the customer maintaining the agreed repayments, covering their ongoing energy usage and reducing their accumulated debt over time.

Elements of the payment plan review process

As outlined above, the design of the proposed review framework raises a number of concerns:

a. What a payment plan review constitutes.
b. When a retailer must undertake a payment plan review.
c. What actions the retailer must take following a payment plan review.

AGL is concerned that in the absence of clearly defined obligations and appropriate supporting guidance, that different retailers will inevitably adopt different review triggers, leading to inconsistent treatment of customers experiencing comparable hardship circumstances.

What a payment plan review constitutes

The proposed r. 72 is silent on what constitutes a 'review' and the respective roles and responsibilities of retailers and customers alike in the review process. It is clear that payment plan reviews are intended to be either customer-initiated[13] or retailer-initiated[14]. A payment plan review could be relatively clear where a customer has self-initiated the review, either by direct request and/or by providing updated information to the retailer. On the other hand, a retailer-initiated review (independent of a customer request) could be interpreted in at least two ways:

[10] Draft Determination Page 18
[11] Draft Determination Page 18
[12] Draft Determination Page 18
[13] Draft R. 72(2)(b)
[14] Draft R. 72(2)(a) or R. 72(2)(c)

1. *Unilaterally*: It could require the retailer to undertake an internal review of the customer's payment plan utilising the information at its disposal. This could feasibly be performed through a system or automated process.
2. *Bilaterally*: It could require the retailer to actively seek to engage with the customer in relation to the payment plan.

There is a significant difference in implementation and operational costs between the two options above. The effectiveness of each option can only be determined by also considering *when* they must occur and *what action* follows – the mere act of reviewing a payment plan in and of itself does not deliver any customer benefit.

When a retailer must undertake a payment plan review

The proposed r. 72(2) sets out three scenarios in which a review *must* occur:

a. *when the retailer becomes aware of a change in circumstances including capacity to pay, arrears or forecast energy consumption.*

   The requirement to conduct reviews based on updated information, particularly consumption and arrears, creates uncertainty about when a review must be initiated and in turn, how it should be conducted.

   Noting the above discussion around whether reviews should be unilateral or bilateral, the retailer is at a minimum, able to identify a change in circumstances relating to arrears and forecast energy consumption. In contrast, changes in a customer's capacity to pay can only be ascertained where there is engagement between the customer and retailer (irrespective of who initiates the contact).

   However, it is unclear as to the degree of materiality in changes that should be accounted for – on current drafting, there is little retailer discretion or flexibility on this point – *any* change in circumstances across the three variables requires the retailer to undertake a review. While r. 72(2)(a) contains reference to 'reasonableness' it is unclear whether it relates to the 'becoming aware' or the 'relevant changes' part of the provision – the construction of the clause is critical.

   In the hypothetical customer scenario of Charlie (discussed above), it was established that the customer's debt would be increasing every month that they continue to pay below the ongoing cost of energy. This would in and of itself, require the retailer to undertake a review based on a change of arrears each and every month that the customer was on that arrangement. While the retailer may not be obligated to modify the arrangement pursuant to r. 72(3), the process of undertaking a review must occur. This represents a significant operational impact and perhaps more importantly, a considerable impost on customers where a review is deemed to require bilateral engagement – customers in this scenario would in effect by contacted every month to review their payment plan. Many customers experiencing hardship make payments that do not cover their arrears and forecasted energy costs, reflecting arrangements tailored to what they can practically afford, with roughly 50% of customers in hardship plans paying below their consumption[15]. Arrears may therefore increase because of maintaining an 'affordable' arrangement, as outlined in our hypothetical example, rather than the customer's circumstances changing. AGL does not consider this to be the intended outcome of the proposed rule change.

   Even where retailers do not notify customers or propose revised payment amounts, as they may not believe the payments should be altered based on the capacity to pay information the retailer holds, the requirement may still oblige them to undertake regular reviews which do not result in an outcome being provided to the customer. This can be seen in the worked example provided previously.

[15] AER Annual Retail Market Report 2024 - 2025

Similarly, if a customer's forecast energy consumption increases, this may require a retailer to perform a review and possibly propose higher repayments. However, the frequency or threshold of consumption changes requiring review would be determined individually and would be largely subjective creating an inconsistent customer experience, which is further compounded by such changes being seasonal or temporary due to individual customer circumstances such as more being inside the household. Such an occurrence would serve to only cause an increase to customer stress and confusion as they seek to navigate what could be different retailers approaches to maintain compliance with the proposed rule.

Requiring reviews in these circumstances may create tension between the obligation to propose a review and the need to maintain an affordable, or appropriate, arrangement. The ambiguity may lead to reviews occurring too frequently or not being initiated at all as retailers seek to interpret their obligations. Retailers hold information about capacity to pay from their most recent engagement with the customer or an authorised third party and rely on those parties to provide updates. Without updated information, retailers may be unable to propose a revised arrangement that is appropriate for the customer's current circumstances.

Proposing changes without this information may also cause stress, leave customers feeling not supported by their retailers, or create pressure to accept payment amounts they cannot afford or do not seek to adopt. These concerns remain even where the customer's explicit informed consent is required before changes can be made. Repeated proposals may also prompt complaints from customers who have no ability to change their payment amounts.

b. *in response to a customer request*

Clearly if a customer engages with their retailer to notify of a change in circumstances or to request a review of their payment plan, then it is appropriate that the retailer should reasonably consider the same. While there are no limitations on the number of times the customer can request a review, there are limitations in place for what the retailer must do following that review.

c. *if the retailer considers that the payment plan should be reviewed.*

The interaction between (a) and (c) is unclear. While (a) sets out a number of clear factors that might give rise to a belief that a payment plan should be reviewed, AGL infers that (c) is intended to provide a retailer discretion for scenarios or circumstances not explicitly covered by (a) - provided it is reasonable to do so. While AGL does not object to this discretion, it is presently unclear what scenarios might be captured by this provision.

<u>What actions the retailer must take following a review</u>

Following a review (either customer or retailer initiated), the framework mandatorily requires retailers to update the payment plan where *all three* criteria are met:

a. *the retailer considers it appropriate or necessary*

Following such reviews, and without any known change to the customer's capacity to pay, retailers may conclude that proposing a new payment amount is not appropriate. This imposes operational requirements without necessarily delivering a benefit to customers, particularly where the review creates a notification to a customer that is either misaligned with their capacity to pay or does not propose a new amount.

b. *the customer provides explicit informed consent*

The success of payment plans is dependent on customers understanding and committing to the terms of the agreement. As such, AGL agrees with the requirement that any amendments to a customers' payment should require the customer's explicit informed consent.

c. *the retailer reasonably considers the updated payment plan is affordable for the customer*

AGL refers to and repeats its feedback in response to the concept of affordability

AGL's Recommended Approach

AGL therefore recommends that the obligation be clarified so that an obligation to conduct a review arises only where a customer or an authorised third party requests a review or provides updated information that requires the arrangement to be reviewed under rule 72(2) (a) and (c). Retailers should not otherwise be required to initiate a review independently as the customer forms an integral part of the review.

This approach would enable a tailored conversation when the relevant party is engaged and able to explain the customer's current circumstances, allowing the retailer to consider all relevant factors, including capacity to pay, as part of an informed review process. AGL considers that this would achieve the objective of the rule change by supporting appropriate payment arrangements and preserving customers' right to a review when their circumstances change, without imposing a process that may be seen as divisive and avoids requiring a separate, unsolicited review communication and enable all relevant factors to be considered through direct engagement.

To ensure customers understand their options, AGL supports the proposed requirement to include clear information on how to request a review in correspondence establishing a payment arrangement. This provides a practical pathway for customers to engage with their retailer when they seek to alter their arrangement, recognising that their circumstances may change over time.

To keep customers on hardship payment arrangements informed of their progress, AGL provides regular reports on their arrears and, where known, consumption relative to forecasts based on previous periods. These include explanations that reducing consumption, where safe to do so, can lower energy costs and help reduce arrears, while also inviting customers to contact AGL if their payment arrangements need to change, empowering them to negotiate an appropriate arrangement without placing direct pressure on them to alter their payments.

These form a light-touch update and do not propose changes to payment amounts, recognising the importance of customers retaining control over arrangements that reflect their individual circumstances. This information-based engagement creates less friction than an unsolicited review proposing new payment amounts, which, even when handled sensitively, may cause stress or undermine engagement, particularly where customers cannot afford the proposed payments.