



5 May 2015

Energy Hardship Review
Essential Services Commission
Level 37, 2 Lonsdale St
Melbourne VIC 3000

By email: energyhardshippreview@esc.vic.gov.au

Inquiry into the financial hardship arrangements of energy retailers

AGL Energy (**AGL**) welcomes the opportunity to make a submission on the Essential Services Commission's (**ESC**) *Approach Paper on the inquiry into the financial hardship arrangements of energy retailers* (the **Approach Paper**).

AGL is a significant retailer of energy with over 3.8 million electricity and gas customers nationally. Accordingly, AGL has a strong interest in the efficient delivery of energy services for the long-term interests of consumers.

As evidenced by its public affordability commitment, AGL is committed to improving the way it manages customers that are experiencing payment difficulties and hardship. As a part of this program of work, AGL is trialling and developing advanced methods of managing its customers, with a view to implementing evidence-based programs that provide the best outcomes for customers in need.

As such, AGL supports the ESC's inquiry and looks forward to participating in further consultation on this issue. We believe that an outcomes-based approach in reviewing the current framework to support hardship customers may lead to potential improvements for the benefit of Victorian consumers.

However, in AGL's view, the ESC should take great care in reaching the objectives set out within the Approach Paper. As the ESC works towards the deliverables set out in the terms of reference, we submit that the Commission should promote an outcomes-focused hardship framework that will help stimulate innovation in retailer offerings to customers, and potentially drive partnerships across sectors to achieve these established objectives.

In AGL's view, the current regulatory framework is appropriate to achieve such an outcome for Victorian consumers. As such, we believe that the Commission should review whether or not the current framework is being utilised as effectively as possible by participants, rather than suggesting any significant changes to the framework without a careful reasoning or evidence-based approach for doing so.

AGL contends that a shift towards a regulatory framework that promotes rigid processes and benchmarking will likely not improve the current standard of support available by retailers, as retailers will not have a natural incentive to find the best outcome for each customer. As such, utmost care should be taken to drive the development of the hardship framework in the right direction.

AGL believes that any change to the current framework that would provide a barrier or disincentive to retailers implementing initiatives to better support customers (such as those outlined within AGL's affordability commitment) would be a poor outcome for Victorian consumers. As such, we urge the Commission to take great care on any recommendations that are made to policy-makers to ensure that any outcomes appropriately respect the dynamic and complex nature of hardship and affordability issues, and support retailers taking on their own initiatives to manage these customers as best as possible.



Further information in response to Approach Paper is included in **Annexure A** to this this submissions. If you have any further questions regarding this submission or would like to discuss this matter further, please contact Aleks Smits at asmits@agl.com.au or (03) 8633 7146.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Rebecca Brigham', is written over the typed name.

Rebecca Brigham

Manager Retail Markets Regulation

ANNEXURE A - Further Responses to the Approach Paper



The AGL Affordability Commitment

Over the last 12 months, AGL has outlined a public commitment to address the concerns of its customers and community organisations in regard to affordability, disconnection, and hardship issues in the energy industry.¹

As a part of this commitment, AGL has embarked on a longer-term program throughout 2015 and 2016 to bring about significant and meaningful changes to support its customers. Within these changes, AGL has committed to a number of initiatives, including:

- Providing additional investment in resources to support hardship customers, including dedicating \$6 million over three years to support customers in need;
- Improving the way we work with customers who may be experiencing financial difficulties through the implementation of guiding principles that encourage increased respect, trust, and training opportunities to achieve the best outcome for our customers;
- Taking an early intervention approach to supporting vulnerable customers, including trialling new methods of identification to contact customers, and taking steps to better proactively identify vulnerable customers;
- Providing a dedicated phone line and email address for financial counsellors and community workers to speak directly with AGL hardship specialists; and
- Improving the prominence of hardship information in our communication materials, from the time of sign up through to information on our website.

Initial feedback on AGL's program of work to deliver its affordability commitment has been that it is a meaningful step forward in addressing the core underlying challenges for customers experiencing financial difficulties and in hardship. We acknowledge the initiative will require a long-term process of change, however a number of the initiatives such as website improvements and the opening of a direct phone line for financial counsellors to contact AGL's hardship team have already begun delivering positive changes for energy consumers.

Regulatory Framework

AGL recognises that as a business there are always potential improvements that can be made to support customers experiencing payment difficulties. Furthermore, AGL contends that there is a natural incentive to proactively identify customers that may be experiencing payment difficulties and supporting customers that are experiencing hardship. Once debt is accrued, it can often be difficult for customers to regain a sustainable footing with their ongoing payments, making it more difficult for an energy retailer to recover this debt and maintain a positive customer relationship.

With this in mind, AGL notes that the current regulatory framework allows for a useful degree of flexibility that allows retailers to consistently improve their hardship processes to respond to advances in technology, changes in affordability, or indeed competition by other retailers. For example, the promises made in Affordability Commitment are only possible due to a deeper understanding of hardship issues that has been realised through better technology and data collection opportunities within AGL, along with ongoing and detailed engagement with the community sector. As a result, AGL now has the ability to address its customer base in a more dynamic manner and respond to individuals in a way that addresses their unique circumstances and preferences in a way that would not have been possible even a few years previously.

It has only through being able to respond in a flexible regulatory environment that AGL has been able to make these changes and make a strong commitment towards improving processes for hardship customers. Indeed, if external obligations had limited the drivers for employing technological and process improvements advances, the positive developments that customers are now experiencing may not have been able to be realised. As such, AGL strongly advocates that any recommendations to make changes to the regulatory framework, should, as a principal objective, encourage retailers to innovate and respond

¹ For more detail on AGL's Affordability Commitment, please see: <http://www.agl.com.au/~media/AGL/Residential/Documents/Help%20and%20Support/2014/Affordability%20Commitment.pdf>

rather than seek to meet arbitrary benchmarking indicators or follow fixed processes that are likely to stifle innovation within hardship programs.



Scope of the Hardship Review

AGL recognises that the management of hardship customers and customers who are experiencing payment difficulties is an important responsibility and an intrinsic part of operating in the retail energy market. Although AGL recognises that as a retailer it has a crucial role in the management of these customers, AGL also advocates for a shared responsibility model that also recognises wider affordability issues outside of its control.

With regard to this review, AGL advocates for a comprehensive review and understanding of the various underlying drivers which affect customers participating on hardship programs that draws from a number of sources and seeks to understand the effect that changes in any regulation will have on customers. To a large extent, this review has already begun through the ERAA's affordability forums, which have begun engaging on a program of work that is investigating a number of the issues surrounding affordability, hardship, and consumer engagement in a number of national working groups involving a range of stakeholders from retailers, consumer advocate bodies, and Ombudsmen.

With this in mind, AGL strongly advocates for evidence-based policy that is developed in consultation with the industry. In AGL's experience, a number of previous initiatives and processes relating to hardship customers have not worked as anticipated, and as such, we believe that an ability to trial various strategies and respond to developments within the energy industry is a vital part of any framework. For example, through its current range of initiatives, AGL is seeking to trial a number of different mechanisms with customers and collect data relating to these trials that can objectively assess the impact of various strategies. Unfortunately, prior to this having occurred, AGL cannot submit what it believes will be the best strategies to respond to customers in hardship; rather, we can only provide an indication of one thing having worked better than another and a commitment to continuous evidence-based improvement in this area.

Responding to the Complexities of Hardship Frameworks

In AGL's experience, issues relating to hardship, affordability, and disconnections are not easy to delineate, and do not lend themselves easily to fixed processes or regulation that does not take account of customers' unique circumstances. AGL has previously raised concerns that questions relating to payment difficulties, hardship, and disconnections are often conflated as being relating issues, when in reality they are more likely to be individual symptoms of broader affordability issues, customer engagement difficulties, and retailer process changes. As such, AGL would recommend that the Commission takes great care in establishing a careful reasoning for any recommendations, and ensures that any reasoning does not conflate any issues without a firm evidential basis.

The Definition of Hardship

AGL reminds the Commission that the term hardship, as it relates to the Victorian regulatory framework, is not a defined term, and as such, it will be difficult for the inquiry to make general conclusions about "hardship" customers as a group. The term hardship is difficult to define within an industry context, and the current Victorian regulations do not attempt to do so, instead defining the term within the *Energy Retail Code* by reference to how a retailer identifies these customers within its own approved hardship policy.² It is no surprise, therefore, that the treatment of hardship customers will differ across the industry as hardship policies naturally vary and the definition and treatment of hardship customers will be different from one retailer to another.

AGL believes that the inquiry needs to carefully consider this unique facet of the energy industry in managing this review, as blanket references to hardship may not accurately reflect the differences in programs between each retailer. Naturally, this framework will also mean that comparison with different industries will also be of limited utility as these industries may have a different idea of what customers are covered by the term.

² *Energy Retail Code* s.3, definition of "hardship customer"

As a starting point, AGL would encourage the ESC to review what is meant by the term hardship prior to progressing with any other recommendations regarding these customers. In AGL's view, this is an important policy consideration that is crucial to developing a framework for managing these customers. Indeed, AGL contends that such a process may create a scope for a further review that better reflects the experience of an industry that manages multiple definitions of hardship.



Different Stages of Hardship

Further complicating this issue is AGL's contention that not all customers should be considered as in the binary state of being either in hardship or not in hardship. AGL believes that an arbitrary treatment of hardship customers (which has traditionally been the case within the energy industry) leads to poor outcomes for some customers that do not clearly fall within either category. As a result of a strict reliance on this interpretation, AGL has often found that a focus on whether or not a customer is or is not in hardship has been overstated in providing a useful outcome for that customer.

Indeed, AGL contends that a focus on this principle over time has led to poor policy and regulatory interpretation within the energy industry. Furthermore, we believe a focus on this concept could continue to create perverse outcomes if retailers are required to delineate between a hardship group and a non-hardship group among their customers, based on completely arbitrary indicators. In AGL's view, any recommendations that arise from this inquiry should very carefully consider the way that retailers would comply with their obligations and any adverse outcomes that may arise from implementing very fixed definitions of hardship.

As a starting point to an alternate view, AGL has identified at least four different categories of customers that may be experiencing payment difficulties, ranging from those that simply need temporary payment assistance to those that are in persistent hardship with no foreseeable method of meeting the cost of their consumption. AGL recognises that each customer's situation is unique and that payment difficulties should be addressed on an individual basis, and it is certainly our future intention to no longer view our customer base as being either "in hardship" or "not hardship", but rather to see that customers may be in varying degrees of financial difficulty over time. Although each retailer's assessment of its own customer base will vary, AGL strongly argues that business and policy responses should be similarly flexible to these stages of difficulty and take a more ranged approach to the idea of a customer being in hardship.

Matters to be covered by the Inquiry

AGL broadly supports a number of the principles that have been outlined within the scope of the inquiry, but also believes that the Commission may find some matters challenging to answer and some outcomes difficult to achieve. Addressing each of the matters to be covered by the inquiry in turn, AGL provides the following initial feedback for the Commission to consider as it embarks on this review.

Objective of retailer hardship programs

As stated previously, AGL supports a shared responsibility model to delivering effective measures to customers experiencing financial difficulties or participating in retailer hardship programs. AGL notes that whilst the current obligations placed on retailers are well intentioned, the way in which compliance with the current hardship obligations meets the objectives of making a material difference for customer's capacity to pay is unclear.

For example, the requirement to make customers aware of energy concessions, financial counselling services, energy savings advice and audits all have the intention of improving the capacity of the customer to pay for energy. However, it is unclear as to the effectiveness of these measures in achieving hardship policy objectives, and as such, an assessment of the usefulness of promoting increased compliance or enforcement action against these obligations is difficult to make.

In this absence of this information, AGL believes that an outcomes-based approach to policy and regulation is far preferable in assessing the type of help that should be made available to customers within an effective hardship program. A rigid focus on arbitrary mechanisms rather than objectives and outcomes may stimulate an environment of strict process compliance rather than a culture of assisting customers based on their individual requirements.



AGL contends that there are several outcomes which could be focussed on in considering policy and regulatory design to support customers participating on hardship programs. Ultimately, these may include:

- Measures to assist customers reduce consumption;
- Enhancing financial capacity of customer to pay (access to energy concessions and income support);
- Referral to additional support services which may enhance the capacity of the customer to pay (emergency relief, financial counselling, and mental health services).

AGL believes that an objectives-based approach to meeting the above outcomes will not limit too narrowly the potential measures and solutions which might make a material difference to customers. Such an approach is far preferable to any alternate framework, which may place an emphasis on following a strict process that may not promote the best outcome for each customer.

To support these outcomes, AGL also recommends that for regulatory measures applying to hardship customers that link with other aspects of government policy (such as concessions or energy efficiency advice and audits) consideration should be given to the adequacy of funding or policy support dedicated to initiatives which can assist these customers. Of note, the absence of any low-income energy efficiency policy or program within Victoria has resulted in AGL currently partnering with agencies who retained infrastructure post the removal of Federal HESS funding.

AGL therefore supports the development of a specific, low-income targeted energy efficiency policy designed for high-consumption customers participating on retailer hardship programs. Given that this could potentially be co-funded with industry, AGL is currently exploring the design of this component of the \$6 million support fund announced in December. AGL believes that this policy should sit separately to the Victorian Energy Efficiency Target Scheme, given the significant barriers for customers living in social housing and private rental properties, combined with limited available capital for these customers to make significant energy efficient investment. AGL would be happy to discuss further with the Commission these policy and program alternatives and research completed to date in this State.

Retailer Hardship Methods

AGL supports an investigation of the different methods used by energy retailers to assist customers encountering difficulty paying their bills because of financial hardship. Indeed, AGL has recently developed a number of unique strategies that it believes may be particularly useful for some categories of customers across the energy industry. In addition to these different methods, however, AGL suggests that the Commission could also consider the significant support that is provided to customers in the form of payment deferrals, payment plans, instalment plans, flexible billing options, support and advice that is made available to each customer, irrespective of their hardship status. In AGL's view, there are a number of mechanisms that contribute to the treatment of all customers with payment difficulties, which are important to recognise as a part of the review.

However, AGL strongly cautions against making a best practice assessment of any particular aspects of a retailer's hardship program. As mentioned previously in this submission, the definition of a hardship customer is, by very careful reasoning, a definition that is set by the retailer themselves.

Certainly, and although AGL considers that some comparison between these definitions might be useful, any comparison to an arbitrary best practice among retailers would provide absolutely no utility in identifying whether or not the best outcomes are being achieved for customers who are experiencing a range of payment difficulties. Customer experience on a hardship program will be, by its very nature, a qualitative experience, and AGL does not believe a particular best practice model can be proclaimed when it comes to managing hardship customers, unless that practice is a framework that is flexible and adaptable in managing individual customer's circumstances.

Rather, AGL believes that a more useful comparison would be to examine how other jurisdictions and industries (and particularly those that relate to essential services) define hardship and manage the issue of customers not being able to bridge the gap between the cost of this service and their ability to meet a payment. This then, would allow policy-

makers to act on the experience of other jurisdictions in terms of a best practice model. In AGL's view, this best practice model would still allow for a large degree of flexibility between component businesses within that market as they respond to hardship customers in a way that reflects that significant differences between those companies and how they manage their customer base.



Design of Regulatory Obligations to Avoid Disconnection

With regard to the inquiry into the design and efficacy of regulatory obligations to ensure that hardship customers avoid disconnection, AGL submits that this inquiry should be very careful to not conflate disconnections with poor treatment of hardship customers. AGL considers that such an inquiry into disconnection processes would appear to be verging on a review of the overall collections process and the operation of the Victorian wrongful disconnection payment scheme. Such a review would appear to be outside the remit for this inquiry, as it would likely require an independent scope given the complexities of the policy issues created within the scheme.

As such, and given the focus of this review is on hardship customers, we would recommend that the ESC focuses on obligations for customers while they are on the hardship program, rather than obligations on retailers to avoid disconnection entirely. Alternatively, if the focus of this review is to examine the definition of hardship and how this is applied to customers during the collections cycle, AGL would again point to the fact that this is something that is currently individually set by retailers through their hardship policies.

As such, the monitoring and enforcement of this obligation in terms of compliance by retailers with their hardship policies could be examined in this regard. Any determination as to how retailers should identify hardship customers without attempting to assess these broader questions should consider the very significant ramifications of enforcing a strict definition of hardship upon retailers.

Indeed, AGL believes that the major outcome from this inquiry could in fact be a review into how retailers use their hardship policies and whether or not the process to approve, update, and communicate hardship policies to customers could be improved. AGL is already performing such a review internally, and would be happy to provide input to the Commission in this regard.

Benchmarking

AGL is not supportive of a benchmarking framework for the Commission to assess and publicly report on retailers' hardship programs in the absence of detailed consultation on how such programs will be benchmarked and communicated publicly. Indeed, different retailers may employ different hardship strategies that respond equally well for their customer base, as is the case under the current flexible framework of approved retailer policies.

Any benchmarking would likely stifle innovation and provide an obstruction to the individual treatment of customers, as retailers would have an incentive to follow a hardship process that aims at rigid compliance towards a benchmarked process rather than responding to individual customer concerns and advancing methods of dealing with customers in hardship. AGL contends that benchmarking would have the likely effect of homogenising retailer's hardship programs, which may not be a good outcome for consumers. However, we note that an indicative benchmarking framework is required outcome of this inquiry, as such we suggest the following.

AGL notes that the ESC already collects a significant amount of data on disconnections and hardship, which is used to inform an annual performance report that draws conclusions from this data. AGL believes that a review of these indicators and how the performance report is developed might be useful to inform the type of benchmarking that is being considered within the scope of the inquiry.

However, AGL also submits that there are significant risks in taking such an approach, as an assessment of hardship practices based purely on quantitative data is unlikely to provide a useful outcome. By its very nature, the treatment of a customer that is experiencing hardship will often be best assessed through qualitative factors, such as customer experience and care shown by the retailer, rather than data indicators such as raw numbers of customers on a program and levels of debt.

With this in mind, if the current quantitative indicators continue to be used, AGL would encourage the ESC to also seek more information on retailers on how the data reflects the individual nature of the differing hardship programs. AGL notes that the ESC already has broad powers to request data from retailers, and a review of how data is collected and translated into a performance report would appear to be more useful in the first instance than developing an entirely new benchmarking framework.



In the first instance, AGL would suggest that more information could be provided regarding advancements in individual retailer hardship processes, which could be published on a more regular basis to provide an incentive for retailers to seek out practices that receive positive responses. AGL would be please to provide such information to the Commission on a regular basis.