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8 September 2021

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Submitted via email: [telcoperformanceregulation@acma.gov.au](mailto:telcoperformanceregulation@acma.gov.au)

### **Consultation on consumer vulnerability: expectations for the telecommunications industry**

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AGL Energy (**AGL**) welcomes the opportunity to provide feedback on the Australian Communications and Media Authority's (**ACMA**) consultation on consumer vulnerability and the expectations for the telecommunications industry (the **Statement of Expectations**), dated 14 July 2021.

With the purchase of the Southern Phone Company in 2019, AGL entered the telecommunications industry to become one of Australia's largest energy-led multi-product retailers, providing over 4.2 million electricity, gas and telco services to residential, small, and large businesses, and wholesale customers. As one of Australia's largest providers of essential services (both in energy and telecommunications), AGL has extensive experience in supporting consumers experiencing vulnerability and understanding consumer barriers to participation, through AGL's:

- Staying Connected' hardship program.
- AGL's life support protections for customers relying on critical medical equipment to sustain life.
- Family violence framework.
- COVID-19 support program.

Accordingly, our response to the Statement of Expectations is based on our experience in the energy and telco industries and is aimed at ensuring the Statement of Expectations meets its stated objectives while also allowing businesses opportunities to seek innovative and effective solutions to support their customers.

#### **The role of the Statement of Expectations**

AGL understands ACMA's intention is to further build on existing obligations under the Telecommunications Consumer Protections Code (the **TCP Code**) to support consumers experiencing vulnerability and AGL commends ACMA for the collaborative approach it has taken to this consultation by seeking feedback from the industry and consumers through forums.

AGL operates across a number of regulatory jurisdictions such as the National Energy Customer Framework (**NECF**), the Victorian and Western Australian energy regime, as well as various regulatory frameworks for telecommunication providers; AGL takes its compliance obligations extremely seriously. While AGL supports all measures to reduce barriers to access and participation in the telecommunications industry, in our view,



the Statement of Expectations could provide further clarity as to how it complements and, therefore, what role it will play and what weight it will carry when assessing compliance and enforcement matters under the TCP Code.

Generally, broad statements about consumer vulnerability and ‘characteristics’ that make a customer susceptible to vulnerability are difficult for retail service providers (**RSP**) to interpret and comply with. AGL recommends that AMCA clearly define how it expects the Statement of Expectations will interact and complement telco’s existing support programs, policies, and processes in the context of current TCP Code obligations on dealing with consumers experiencing vulnerability as well as unconscionable conduct, broadly.

Most recently, statements of expectations have been used in the energy industry to provide expedited guidance to retailers and distributors on alleviating short-term or prolonged crisis situations and supporting consumers during periods of uncertainty. For example, the Australian Energy Regulator’s (**AER**) Statement of Expectations for energy businesses was released in April 2020 in response to the unfolding COVID-19 pandemic. The AER’s Statement of Expectations sets out the minimum measures expected of energy retailers and distributors to support consumers during the pandemic. The AER acknowledged that some of the measures in the AER’s Statement of Expectations were at odds with the National Energy Retail Rules and had to be voluntarily adopted by licensed entities. The measures under the AER’s Statement of Expectations were universally accepted by the energy industry as being proportionate to the level of hardship caused by the pandemic and government-mandated health restrictions.

Given the above example, AGL believes that ACMA should clearly outline the purpose for the Statement of Expectations. For example, is it intended to complement the TCP Code and provide voluntary measures to support consumers impacted by COVID-19 or any other short-term event, such as natural disasters? Currently, many of the examples listed appear to overlap or duplicate examples that the TCP Code provides regulatory solution to. One example of this duplication is under priority area 1 - “include regular monitoring and reporting on sales representatives’ interactions with consumers” which is very similar to clause 4.5.1 (d) of the TCP Code. As such, the drafting of the Statement of Expectations’ objective is, in some cases, too vague and may have the unintended outcome of duplicating regulatory oversight thereby creating competing sets of compliance obligations. Overly complex and prescriptive regulatory frameworks for consumers experiencing vulnerability may limit the RSP’s ability to offer robust and flexible ways to deal with individual circumstances and minimise barriers to participation in the telecommunications industry.

### **Implementation Timeframe**

ACMA should consider that if the Statement of Expectations were to create additional regulatory obligations, RSPs will need sufficient time to prepare systems and processes to accommodate the changes. Leveraging our energy experience with complex regulatory frameworks, once finalised, AGL recommends a 12-month implementation period for the measures under the Statement of Expectations. This timeframe takes into account the volume of outcomes and examples set out under each of the five priority areas and the detailed drafting of the Statement of Expectations.



## Identifying Vulnerability

As one of Australia's largest providers of essential services, AGL has extensive experience in supporting consumers and working with communities to create long-term sustainable support options for those affected by vulnerability. For over 15 years, AGL's dedicated hardship program, Staying Connected, has been supporting consumers experiencing financial distress through a personalised approach that goes beyond traditional payment plans. While telcos, energy businesses and other private enterprises can work to reduce barriers to access and participation within their industries, vulnerability and the elements which give rise to it are complex social issues which cannot be addressed by regulating private businesses in isolation; it requires collaboration between welfare agencies, community groups and the government:

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*“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”.*<sup>1</sup>

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AGL generally supports the goals outlined in the Statement of Expectations, however, the examples offered to explain those principles are intrusive and may contribute to poor customer outcomes. AGL believes it is most important to create an industry culture where consumers feel empowered to self-identify and are comfortable disclosing their circumstances to Service Centre consultants as they know that their RSP will respond positively, offering support options to suit their individual needs. RSPs must have robust frameworks, processes, and training in place to triage consumers following their voluntarily self-disclosure and determine the most appropriate assistance based on their nuanced circumstances and barriers experienced in accessing and participating in the telecommunications industry. However, creating regulatory obligations to proactively identify vulnerable consumers may lead to a number of negative and unintended consequences. First and foremost, Service Centre consultants are trained to provide account support and are not social welfare experts; in our view, trained specialists are best positioned to manage these complex matters. Secondly, consumers may become more alienated and disengaged if they feel the Service Centre consultant is probing into personal matters. Negative interactions can have a very harmful effect on a person's wellbeing.

Notwithstanding the above, AGL believes there are extreme events that do require proactive identification of vulnerability such as bushfires, floods and other extenuating circumstances affecting a number of consumers or locales, for example, the pandemic-related health restrictions on movement. These instances require 'a whole of business' approach where support measures should do rely on a subjective determination of consumer vulnerability driven by pre-existing scripting and Service Centre processes. Below is a case study of AGL's approach to proactively identifying consumers affected by the 2019 bushfire emergency:

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<sup>1</sup> AGL, Response to the Essential Services Commission New Draft Decision: Payment Difficulty Framework, 16 June 2017



### **2019 Bushfire Crisis**

During the summer 2019/2020 bushfire crisis, AGL was actively monitoring alerts from government sources, the Bureau of Meteorology and bushfire alert websites to identify all affected postcodes in order to implement a number of controls for AGL customers within those areas.

To mitigate barriers likely to be experienced by these customers in the context of essential services, AGL unilaterally engaged each area of its business to surface opportunities to provide enhanced and meaningful support. This whole-of-business approach resulted in measures such as pausing of billing and collection activity, discretionary waiving of charges and specialised assistance to replace or repair damaged meters.

This is an effective example of proactively identifying customers experiencing vulnerability. This approach shifted the responsibility of engagement and disclosure away from the customer and allowed customers to focus on safety and recovery and not on energy bills during times of crises. It also removed the onus from Service Centre consultants having to make subjective assessments on what actions would best promote positive customer outcomes

## **Statement of Expectations**

### **Priority Area 1: Internal Business Practices**

*Is this priority area appropriate?*

The 'Internal Business Practices' priority area is appropriate. AGL supports having robust policies and processes in place to support consumers experiencing vulnerability or barriers to accessing telecommunications services.

*Are the outcome set under this priority appropriate? Are there any other outcomes that should be specified?*

The outcomes set out under the 'Internal Business Practices' priority area are generally appropriate.



*Are the examples appropriate and realistic? Are there additional examples that can be provided.*

Of the examples listed under this priority area, AGL does not believe it to be appropriate for sales representatives and Service Centre consultants, broadly, to proactively identify whether perceived elements of vulnerability are affecting the consumer. The concept of 'vulnerability' is deeply personal to the individual. Rather, businesses should promote an inclusive culture where consumers feel empowered to voluntarily self-disclose their circumstances while having resilient systems and processes in place to offer timely and meaningful support. We consider that the ACMA should be cautious not to create obligations for RSP's to proactively identify 'vulnerable consumers.' It is not appropriate for private enterprises and Service Centre consultants to make process-driven social welfare judgements about consumers' personal circumstances. This is not a skill set of Service Centre consultants and can be taken in offense by consumers. AGL can share a recent experience relating to identifying vulnerability from the energy industry:

#### **“Vulnerable Customer” – Ombudsman Complaint**

The customer had lodged an unrelated complaint through the ombudsman scheme.

Through the dispute resolution process, AGL was advised by the ombudsman that they believed the customer to be experiencing financial abuse. AGL was directed to apply additional protections on account of being identified as a customer experiencing vulnerability.

The customer was dissatisfied that additional controls had been applied to their account and requested for these protections to be removed. The customer advised that they would be lodging a new complaint with the ombudsman in relation to being classified as 'vulnerable'.

AGL subsequently removed the additional protections.

## **Priority Area 2: Selling and Contracting**

*Is this priority area appropriate?*

The 'Selling and Contracting' priority area is appropriate. AGL supports selling products to consumers based on their needs and circumstances.

*Are the outcome set under this priority appropriate? Are there any other outcomes that should be specified?*

The outcomes set out under the 'Selling and Contracting' priority area, are generally appropriate.



*Are the examples appropriate and realistic? Are there additional examples that can be provided.*

AGL does not support establishing processes that “go beyond identifying that a consumer has a source of income...” and which judge the “nature or stability of that income”. Beyond determining that an income stream exists, a subjective assessment as to the nature and stability of income by Service Centre consultants is unfair at best, and discriminatory at worst. Further, the impact of government-mandated restrictions and the COVID-19 pandemic have fundamentally changed the concept of income stability. Given the current and future climate around COVID-19 and restrictions on movement and business operations, how would ACMA expect Service Centre consultations to approach casual employment and how would irregular shiftwork affect the consumer’s access to their desired telecommunication service? Similarly, under the Statement of Expectations, how should RSPs treat consumers working in industries directly affected by the restrictions or those receiving COVID-19 government support? As ACMA did not further articulate what it means by “nature and stability of income” AGL assumes it has yet to create a clearer definition.

While in the energy industry retailers may consider a customer’s ‘capacity to pay’ under the National Energy Customer Framework, this requirement applies only when entering a payment arrangement and is used to determine the appropriate instalment repayments for debt. It is not industry practice in energy to determine a customer’s capacity to pay at the point of entering a contract and would likely be prohibited conduct under the energy regulations.

In our view, the regulations under the TCP Code, existing credit checking requirements and the duty to disclose all material facts at point of sale are sufficient for Service Centre consultations to make an appropriate judgement. Additional assessments on the stability of a consumer’s income may be perceived as unfair and could create additional barriers to access to or participation in the telecommunications industry. Once the consumer has all the necessary information about the cost and features of the telco product, subject to a successful credit check, they should be entitled to make their own independent assessment of affordability of the service, unless they make the RSP aware of circumstances that could impact either that independent assessment or their capacity to pay. This is no different from any other purchase decision consumers make.

### **Priority Area 3: Customer Service**

*Is this priority area appropriate?*

The ‘Customer Service’ priority area is appropriate. AGL supports accessibility and inclusivity in the telecommunications industry.

*Are the outcome set under this priority appropriate? Are there any other outcomes that should be specified?*

As noted above, AGL promotes outcomes which encourage and facilitate consumer self-identification, but we do not believe it is appropriate in most circumstances for Service Centre consultants to “suspect vulnerability” or attempt to proactively identify the consumer’s circumstances by probing further.

As an example, during an interaction, a consultant may identify that English is not the consumer’s first language. Any suggestion that they may benefit from an interpreter is not always welcome or appropriate. The consumer may be offended or embarrassed that Service Centre consultants are



judging their English comprehension and literacy, especially where English may be the second language for the Service Centre consultant themselves. AGL's experience is that the majority of interpreter requests are self-identified and should be consumer-initiated.

In the context of victim-survivors affected by family violence, it is neither appropriate nor safe for Service Centre consultants to attempt to "identify" or draw inferences about such sensitive and complex matters. It is, however, appropriate for consultants to offer all available assistance and protection options under the business' family violence policy. Self-identification should be driven by the individual and any additional account controls applied and assistance offered should be in line with their instructions, including measures to reduce repeat disclosure. An attempt to proactively identify family violence factors by Service Centre consultants could further traumatise victim-survivors and compromise their safety as perpetrators of family violence often control access to essential and telecommunication services as a form of financial abuse. Family violence is a highly sensitive and multifaceted social issue, management of which requires engagement of highly skilled specialists across a number of sectors, including social welfare, courts, and the police. Service Centre consultants are trained in assisting consumers with account maintenance queries but are not specially trained and equipped to identify and diffuse family violence situations.

*Are the examples appropriate and realistic? Are there additional examples that can be provided.*

AGL supports the examples listed under the 'Customer Service' priority area where these examples refer to regular, comprehensive staff training for dealing with and supporting consumers experiencing vulnerability. However, the full suite of examples listed under this priority area may be overly prescriptive. AGL cautions against highly prescriptive regulations that control all or most elements of the RSP's interaction with the consumer as this may result in telcos adopting stricter scripting requirements for Service Centre consultants which do not necessarily contribute to a dynamic and engaging customer experience.

#### **Priority Area 4: Financial Hardship**

*Is this priority area appropriate?*

The 'Financial Hardship' priority area is appropriate. AGL agrees that supporting consumers with financial difficulties to retain access to their services is a key priority.

*Are the outcome set under this priority appropriate? Are there any other outcomes that should be specified?*

The outcomes set out under the 'Financial Hardship' priority area are generally appropriate.

*Are the examples appropriate and realistic? Are there additional examples that can be provided.*

The examples under the 'Financial Hardship' priority area clearly reflect the requirements of the TCP Code and AGL endorses those listed.



## **Priority Area 5: Disconnections**

### *Is this priority area appropriate?*

The 'Disconnections' priority area is appropriate. AGL supports disconnections being used as a measure of last resort.

### *Are the outcome set under this priority appropriate? Are there any other outcomes that should be specified?*

While AGL agrees that no consumer should be disconnected when adhering to a financial arrangement, we note that the outcome relating to "minimising the number of consumers disconnected within 12 months of exiting a financial arrangement" may result in a number of unintended and negative outcomes for consumers.

"Exiting" a financial arrangement, if broadly interpreted, could mean that the financial arrangement was completed successful, revoked for non-payment, or cancelled by the consumer. Drawing on its extensive experience with debt-management in the energy industry, AGL does not consider it appropriate to prohibit disconnections for non-payment where the consumer's arrangement was revoked for non-payment or cancelled. Even taking into consideration those consumers who successfully completed a financial arrangement, a prohibition on subsequent disconnections within the 12-month period does not necessarily prevent further accrual of debt or promote positive consumer outcomes. Non-payment and disengagement from the RSP during a proposed 12-month disconnection moratorium would contribute to higher debt accumulation, therefore, exacerbating financial and mental stress for the consumer. Extending the debt collection cycle beyond what is necessary, therefore, delaying disconnections does little to address genuine payment difficulty for consumers.

Further, it is unclear from the drafting of this outcome whether ACMA intends to achieve a percentage target reduction or set a quota for RSPs to artificially suppress the number of consumers disconnected. AGL cautions against the implementation of a regulated benchmark percentage in an attempt to decrease disconnections. Such measures could further disincentivise consumer engagement to seek support resulting in increased accumulation of debt and further exacerbating the long-term debt-disconnection cycle.

### *Are the examples appropriate and realistic? Are there additional examples that can be provided?*

The examples listed under the 'Disconnections' priority area, are generally appropriate, however, AGL notes the reference to Service Centre consultants proactively assisting consumers facing disconnection to determine whether they are experiencing vulnerability. As we note throughout the submission, Service Centre staff should support and facilitate self-disclosure while offering further assistance, however, the disclosure of vulnerability should rest with the consumer who is best placed to understand their circumstances rather than Service Centre staff.





If you would like to discuss any aspect of AGL's submission, please contact Valeriya Kalpakidis at [vkalpakidis@agl.com.au](mailto:vkalpakidis@agl.com.au).

Yours sincerely,

A handwritten signature in black ink, appearing to read "D. Joss", written in a cursive style.

David Joss  
Head of Southern Phone Company  
**AGL Energy**