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Essential Services Commission

Submissions to Payment Difficulty Framework

Level 37, 2 Lonsdale Street

Melbourne, Victoria 3000

16 June 2017

AGL Response to the Essential Services Commission New Draft Decision: Payment Difficulty Framework

AGL Energy Limited (AGL) welcomes the opportunity to respond to the Essential Services Commission of Victoria (the Commission) Draft Decision on the Safety Net for Victorian Energy Consumers facing payment difficulties.

AGL is Australia's largest integrated Energy Company, operating across the supply chain with investments in coal-fired, gas-fired, and renewable electricity generation and is a significant retailer of energy, providing energy solutions to over 3.7 million customer accounts in the NEM. AGL is Australia's largest ASX listed owner, operator and developer of renewable generation.

AGL has invested \$6.5 million in an Affordability Initiative which targets debt relief, matching payments, funding of financial counsellors, along with partnerships to deliver solar PV to customers participating on its hardship program. It is this integrated approach and strengthening of the support net across the industry and community sector which we believe will be the most effective in reducing debt accrual and wherever possible, avoiding disconnection.

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. This is the subject of ongoing research with our community partners who provide home energy visits to customers on our hardship program.

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.

AGL commends the Commission on the new Draft Decision. The Decision is a significant improvement compared to the first Draft Decision with much of the prescription that led to unintended and negative consequences removed. AGL's assessment of the new Draft Decision is based on the Commission's approach to thinking about options as outlined at the Commission's 29 May stakeholder forum, being:



- That every residential disconnection is a measure of last resort
- There is equitable access to a consistent, minimum level of assistance
- Scope for innovation and preserving customer agency

The following table contains a summary of AGL’s recommended options to the new Draft Decision framework. AGL would urge the Commission to conduct a proper analysis of all the alternative options it receives as part of this process. AGL would highly recommend the Commission issue an Options Paper prior to making a Final Decision that contains all the options the Commission receives and tests these options with industry and consumer and community groups, who have the technical and deep knowledge to evaluate the various options. This will ensure the Commission’s objective of disconnections being a last resort is achieved at least cost for all Victorian energy users but with maximum benefits being delivered to those in payment difficulties.

Proposed new Draft Decision	Alternatives options
<p>The framework introduces a definition of ‘<i>arrears</i>’ which is defined as a missed (full or partial) of bill at the time the next or subsequent bills are issued.</p>	<p>An alternative definition of <i>arrears</i> is to link it to the current minimum disconnection threshold (in Victoria it is currently \$120) but increasing this threshold to \$300 to align with the AER level.</p> <p>AGL does not believe Default Assistance is required, see below for more details.</p> <p>Hence, AGL believes the minimum disconnection threshold should be used as a definition of <i>arrears</i> for the offering of Tailored Assistance.</p> <p>AGL notes that aligning the definition of <i>arrears</i> to the minimum disconnection threshold supports the Commission’s concerns raised in the Guidance, being:</p> <ul style="list-style-type: none"> • It continues to allow retailers an opportunity to collect payment before offering additional assistance to customers; and • It also removes the uncertainty around how the industry, the Commission and other stakeholders interpret clause 82 ‘retailers know or should reasonably have known’ that a customer is likely to be in <i>arrears</i>. A set \$300 is clear and consistent level for all customers and for retailers to offer Tailored Assistance.
<p>Retailer must offer Standard Assistance (SA) to customer to help them avoid getting into <i>arrears</i>.</p>	<p>Standard Assistance should be an entitlement for costumers before they fall into arrears or if they are in <i>arrears</i>.</p>



<p>Retailer must offer three of five SA measures as a minimum:</p> <ol style="list-style-type: none"> 1. Payment plans of equal amounts over a specified period 2. Options for making payments at different intervals 3. Extending the pay by date for a bill for at least one billing cycle in any 12-month period 4. Paying for energy use in advance 5. Paying for anticipated arrears over a period that is 3 times length of customer billing period. 	
<p>Retailers must offer Tailored Assistance (TA) if the customer is in <i>arrears</i> (ie didn't pay their bill by the next bill) or the retailer should have <i>reasonably known</i> the customer would fall in arrears.</p> <p>There are two type of TA, being:</p> <ol style="list-style-type: none"> 1. A repayment plan of <i>arrears</i> over a two-year period, plan can be up to one month. Retailer must also offer specific energy efficiency advice to lower future energy costs and advice on Government grants and concessions. 2. If customer tells a retailer they can't pay the full cost of their on-going energy, then retailer must 'park' <i>arrears</i> for minimum of six months, place customer on payment plan that is less than full cost of their on-going energy, best available tariff, practical assistance to help customer reduce energy use and information on how the customer is tracking with lowering energy use. 	<p>AGL believes an improved model of Tailored Assistance that continues to meet the Commission's objective that disconnection as a measure of last resort, provide equitable and consistent treatment of customers while offering clear minimum standards but avoids the above consequences would include:</p> <ol style="list-style-type: none"> a. Payment proposals should be based on payment of arrears up to two years and energy use. b. The two-year period for arrears should remain fixed based on the date of initial payment proposal. c. Customers can offer revised payment proposals as many times as they prefer if the proposal is in line with (a) and (b). d. Payment proposals and revised payment proposals should be of equal amounts per payment period. <p>Customers should be entitled two Tailored Assistance payment proposals over a 12-month period. These measures provide clear minimum standards of entitlement with respect to Tailored Assistance, removes the need to provide guidance and interpretation (and therefore possibly inconsistent treatment of customers) of 'facing payment difficulties' as currently proposed in Clause 91 (c). These measures also restore balance in the customer / retailer relationship in that retailers will be required to provide customers with information on their entitlements and customers will still have the power to make payment proposals based on the information they receive. Retailers can innovate by offering assistance over and above the minimum.</p>



<p>Customer can make payment proposal, which the retailer must accept if it would result in their <i>arrears</i> being fully paid within two years.</p>	
<p>Retailers must offer Default Assistance (DA) as a 'last resort' before disconnection.</p>	<p>Remove Default Assistance.</p> <p>AGL believes the Default Assistance provisions will generate higher costs to industry without any commensurate consumer benefits with respect to accruing and managing arrears. Further, the default payment is unlikely to satisfy the Commission's objective of providing a mechanism for a non-engaged customer to accept an offer of assistance to manage their <i>arrears</i> without having to contact their retailer.</p> <p>AGL concludes that if the Commission wants to improve the minimum protection obligations for non-engage customers, a better outcome would be to focus on introducing an obligation that promotes and encourages customers with payment difficulties to engage early. Early identification and engagement of payment difficulties for these consumers enables retailers to provide various support mechanisms, including tailored and affordable payment plans, referrals to financial counsellors, information about energy efficiency and access to government concessions and grants. Early identification of payment difficulties minimises the likelihood of debt reaching unmanageable levels and customers being in a position of long term payment difficulties.</p>
<p>Hardship policies</p>	<p>Hardship policies should complement the minimum standards and therefore retailers should not be required to re-produce hardship policies that contain the payment difficulties framework minimum standards.</p>



The remainder of the submission contains detailed analysis of AGL's preferred options. The submission also contains comments on the further analysis to the findings of the Commission's Hardship Inquiry (Chapter 2) and on the Costs and Benefits for Customers and Retailers (Chapter 6).

If you have any questions or would like to discuss AGL's submission please contact Con Hristodoulidis, Manager Regulatory Strategy, on (03) 8633 6646 or christodoulidis@agl.com.au.

Yours sincerely,

(signed for email)

Elizabeth Molyneux

Head of Energy Market Regulation



1. General Comments

Chapter 2: Findings of the Hardship Inquiry

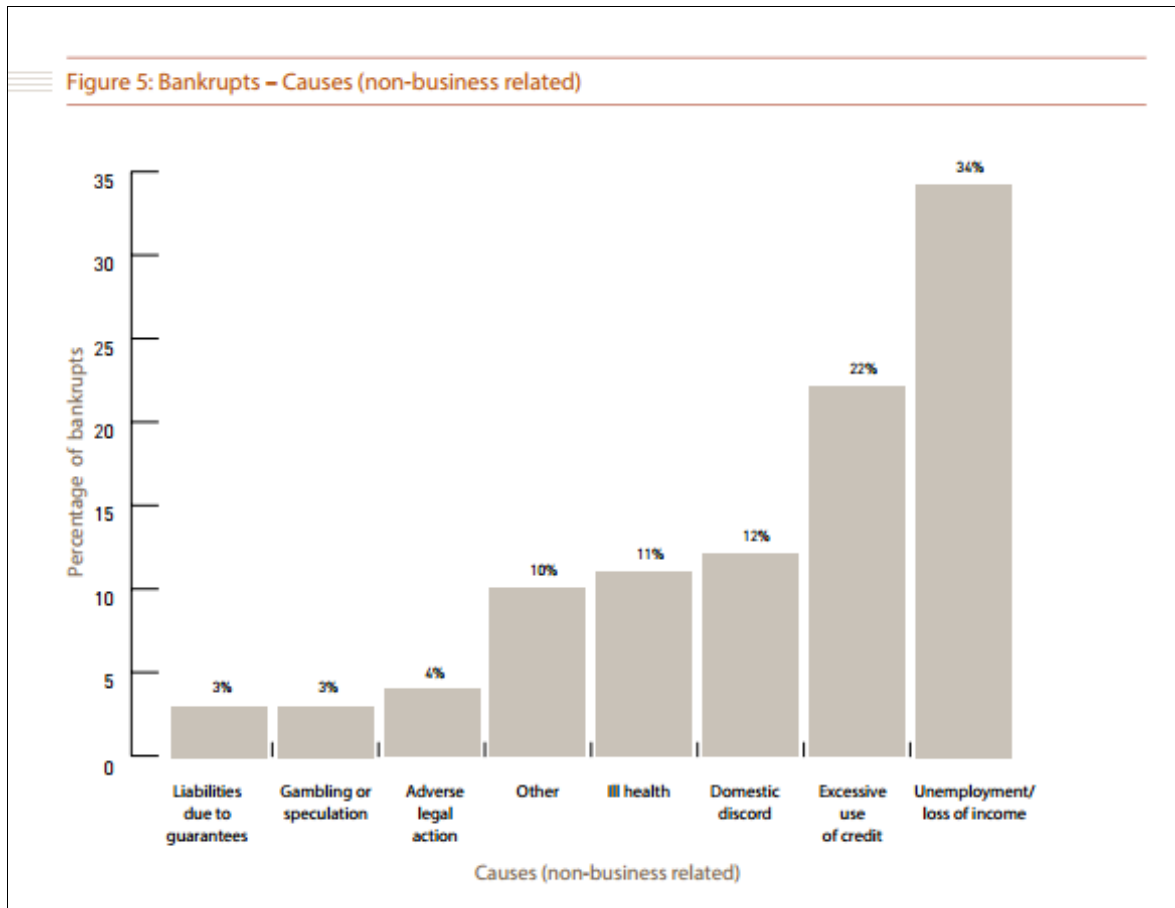
In section 2.2.2 of the Draft Decision the Commission outlines the consequences of energy arrears and disconnection. AGL supports the Commission's view that energy is essential and that disconnection may have economic and social consequences. This is the reason AGL has invested significant effort and money to conduct detailed research to understand the drivers of disconnection.

Through the knowledge gathered through this research AGL has begun to establish several out-reach partnerships with community groups and financial counsellors. These partnerships provide customers with payment difficulties access to support services that aid and support to broader issues (eg, mental health, job loss, crisis support and recently arrived refugees) that may underpin the financial position.

However, AGL is concerned the Commission may have misinterpreted data from the Insolvency and Trustee Services Australia's research report, *Profile of Debtors*¹. The Commission states on page 11 of the new Draft Decision that 8% of all bankruptcies were a consequence of utility arrears. The Commission implies the bankruptcy data supports the claim the Consumer Action and Law Centre make that bankruptcies caused by high energy arrears and arrears collection activities concerning because bankruptcy can lead to even more consequences.

On reviewing the Insolvency and Trustee Services Australia's research report, it contains commentary and data on the causes of bankrupts. The diagram below contains a summary of the causes. Utility costs/bills does not appear as a cause of bankrupts. Rather, the Trustee Services Australia's research report shows that utilities account for 8% of total unsecured debts against total industry unsecured debt. Unsecured debt does not necessarily result in bankruptcy for the person holding the debt.

¹ <https://www.afsa.gov.au/sites/g/files/net1601/f/profiles-of-debtors-2011.pdf>



On page 29 of the new Draft Decision the Commission provides a summary of data around hardship program numbers, disconnection for non-payment and energy arrears since the hardship inquiry. The summary states the data shows that retailers are admitting higher number of customers into hardship programs, disconnection for non-payments have fallen and total arrears of customers participating in hardship programs has increased.

The Commission notes numerous factors beyond the control of retailers, including broader economic forces and changing customer preferences could impact the data. However, the Commission concludes the data is ‘an indication that the reasons for [their] earlier concern about customer arrears has not gone away’. AGL is concerned the Commission is making a partial assessment on the updated data rather than conducting a full and detailed assessment as to the causes of the changes in the data.

As AGL submitted in the first Draft Decision when ESCOSA reviewed the success of South Australia transitioning from State based to the national energy customer framework (NECF), it conducted an assessment of movements in hardship indicators within an overall economic context. The purpose of the analysis was to understand ‘how much of any change in hardship indicators can be attributed to external factors and how much to the customer protection framework and how the framework has operated’.



Further, a recent report by St Vincent De Paul², found that underlying cost of living pressures and insufficient income (not energy prices/costs) were the overriding factors in Victoria, New South Wales, South Australia and South East Queensland in influencing disconnection for non-payment.

The Report also found that in Victoria there appeared to be a strong link between the roll out of smart meters (which enable disconnections to be done remotely instead of on a site visit) and an increase in the disconnection completion rate, and therefore also an increase in households being disconnected multiple times over a three-year period.

AGL reiterates its previous recommendation that the Commission must undertake a similar analysis to determine whether the current Victorian hardship measures have not delivered against the Government's objective of keeping consumers connected. Otherwise the payment difficulties framework is unlikely to address the root cause of customers facing payment difficulties and therefore remaining connected. Rather, it will impose additional costs on energy users without any commensurate consumer benefits with respect to better managing their bill payments.

Chapter 6: Costs and Benefits for Customers and Retailers

In our submission to the first Draft Decision AGL stated that the Victorian Energy Retail Code is classified as a legislative instrument under the *Victorian Subordinate Legislation Act 1994*. We provided a copy of the Victorian Gazettal Notice the Chairperson of the Commission signed stating the Code is a legislative instrument, <http://www.gazette.vic.gov.au/gazette/Gazettes2014/GG2014S241.pdf>.

In a letter sent by the Chairperson of the Commission in January 2017, the Chairperson stated the Code is not a legislative instrument under the *Victorian Subordinate Legislation Act 1994*. The January 2017 letter went on to explain how the Code is a guideline made by the Commission under sec. 13 of the *Essential Services Act 2011*, sections 35C, 36A and 44 of the *Electricity Industry Act 2000*, and 42C, 43A and 48H of the *Gas Industry Act 2001*. However, the January 2017 letter did not explain why there has been a variation in the Commission's interpretation from July 2014 when the Chairperson Gazetted the Code as a legislative instrument and January 2017.

AGL would like the Commission to outline the change in interpretation, as unless clear guidance to the variation is offered, it is AGL's position that the Code remains a legislative instrument under the *Victorian Subordinate Legislation Act 1994*.

The Commission states on page 132 -133 of the new Draft Decision that it has identified "options for solving this 'problem' and assessed the merits of these options" through an 'impact assessment in real time'. Further, the Commission states the framework proposed in the new Draft Decision has "been informed by the 'real time impact assessment'".

In the interest of transparency and best practice regulatory making process, AGL believes the Commission should release all options and the assessment criteria and evaluation it has considered through the 'impact assessment in real time'.

² Households in the Dark, St Vincent De Paul, May 2016, <https://www.vinnies.org.au/content/Document/VIC/2016-June-Households-in-the-dark2.pdf>



2. Specific Comments on the new Draft Decision

Customers in Arrears – Clause 78

The Commission introduces a definition of arrears in the new Draft Decision that states that a customer is in arrears if they have not paid a bill by the issue date of the subsequent bill or sooner, if the customer is likely not to pay a bill by the issue date of the subsequent bill. The Commission stated they introduced the definition of arrears to strike a balance between retailers' collection activities and when retailers must offer minimum levels of assistance to customers facing payment difficulties.

In introducing the term of arrears and defining when it begins, the Commission was conscious of avoiding one of the weaknesses of the first Draft Decision being that the framework interfered with retailers' billing and credit management practices. AGL welcomes the Commission's response in the new Draft Decision to allow retailers to continue to undertake credit collection activities post bill due date without interference from the proposed payment difficulties minimum standards framework. AGL also commends the Commission for setting a clearer timeframe for when regulatory minimum standards must be offered based on the definition of arrears.

However, AGL believes that the proposed definition of arrears may result in unintended and negative consequences for customers, being:

1. Customers on different billing cycles will be offered assistance based on varying arrears levels and timeframe. For example, monthly billed customers, are likely to receive the offer of Tailored Assistance much sooner than quarterly or two monthly billed customers.
2. It significantly increases the period before disconnection for non-payment for non-engaged customers can occur. For more detailed discussion, see Default Assistance section of submission.

At the Commission Stakeholder Forum on 29 May, a group of retailers and consumer advocacy groups considered alternative ways for defining arrears and proposed an alternative definition of arrears. The definition was based on a financial threshold that is linked to the Commission's minimum disconnection threshold. The minimum disconnection threshold for non-payment aims to protect customers that do not engage with their retailer from being disconnected if their arrears is below the financial threshold.

In AGL's view the minimum disconnection threshold is a more appropriate definition of arrears to establish a clear basis for a customer's entitlement to Tailored Assistance. Our view is based on:

1. Using a financial amount rather than a mis-payment as a definition of arrears provides greater consistency in assistance across customers.
2. It allows customers to choose a billing cycle that most suits their circumstances and not be penalised to access to minimum regulatory obligations based on length of billing cycle.
3. Retailer system costs with meeting a minimum disconnection threshold will be significantly lower as retailers already account for the threshold in their current systems. Hence, the change required will be smaller than the changes required to account for the current definition of arrears. The current definition would require a complete re-think of the system's logic to determine next steps on the collection cycle.



Currently, in Victoria the minimum disconnection threshold is set at \$120 (pre GST) whereas the AER sets the threshold at \$300 for jurisdictions sign up to NECF. As the AER recently (March 2017)³ completed a review of the threshold and found that \$300 strikes a good balance between consumer protection and retailer obligation to disconnect for non-payment, AGL would support the Commission increasing the Victorian threshold to align with the NERR \$300 threshold.

AGL notes that aligning the definition of arrears to the minimum disconnection threshold supports the Commission's concerns raised in the guidance, being:

- It continues to allow retailers an opportunity to collect payment before offering additional assistance to customers; and
- It also removes the uncertainty around how the industry, the Commission and other stakeholders interpret clause 82 'retailers know or should reasonably have known' that a customer is likely to be in arrears'. A set \$300 is clear and consistent level for all customers and for retailers to offer Tailored Assistance.

Standard Assistance

AGL supports the objective of Standard Assistance being that a residential customer is entitled to minimum standard forms of assistance to help avoid getting into arrears.

However, the current drafting of Standard Assistance is based on offering the entitlement to customers before they are considered being in arrears, where arrears refers to when a customer has not paid a bill by the issue date of the subsequent bill. Hence, it appears that a retailer cannot offer and a customer is unable to accept Standard Assistance after the arrears has been triggered. This may result in a scenario where a Standard Assistance solution is more appropriate for a customer than Tailored Assistance. For example, a monthly billed customer that goes on leave forgets to call a retailer to defer payment and returns having received two monthly bills. This customer may prefer to delay payment for a few weeks to catch up.

To avoid doubt, AGL recommends that Standard Assistance is a customer entitlement regardless of triggering arrears and that a customer has the discretion to request a Standard Assistance measure as opposed to Tailored Assistance. This would be in line with the Commission's comment that customers are in the best position to determine what form of assistance is in their best interest.

Tailored Assistance

Tailored Assistance is the 'engine room' of the new Draft Decision. AGL supports the objective of Tailored Assistance that residential customers be entitled to minimum standards of flexible and practicable assistance that makes it easier for them to repay their arrears and lower their energy costs.

Further, AGL commends the Commission for removing much of the prescriptive elements of assistance in the original Draft Decision, being Connection Support, Promise to Pay, Energy Costs and Pay as You Go.

³ AER, Review of the Minimum Disconnection Amount, Final Decision, March 2017, <https://www.aer.gov.au/system/files/Minimum%20disconnection%20amount%20-%20Final%20decision%20-%202017%20March%202017.pdf>



The new Draft Decision is far less prescriptive and allows for retailers and customers to put in place far more tailored and effective arrangements to support positive outcomes.

AGL also supports the notion, that if a customer continues to meet their obligations they agreed to in setting up the Tailored Assistance, (including making payments as agreed, implementing, if practical, energy efficiency advice offered to lower costs and taking up offers of advice about any government and non-government assistance available) then disconnection will not occur and the customer improves their chances of getting their energy use and costs to more sustainable footing.

However, AGL believes the Commission can make several improvements to the proposed Tailored Assistance framework in the new Draft Decision that better meets the objective of the framework. Proposed improvements include:

1. Under Clause 79(1)(a) retailers are required as a minimum to offer repayment of arrears over a period of up to two years by payments at regular intervals of up to a one month. The setting of payment arrangements for up to 2 years for arrears only is likely to cause several negative outcomes for customers.

First, the de-coupling of arrears and on-going use is likely to confuse the customer as customers are likely to receive several payment notifications (ie Bill for previous use, Reminder Notice, Tailored Assistance payment schedule for arrears and on-going Bills for usage) with different amounts. Second, the de-coupling means the Tailored Assistance plans that only focus on arrears, may result in the customers' arrears continuing to grow over the two-year period, especially in the scenario where the customers' energy usage remains the same (that is, energy efficiency or behavioural changes are not possible) and financial situation also remains unchanged or deteriorates.

Customers have been operating and expect payment plans that combine arrears and use from as far back as the state owned electricity and gas businesses. The practice of setting payment plans that include arrears and consumption is also consistent with water utilities hardship policy payment plans. For example, East Gippsland Water state that a customer participating in their financial hardship program:

..."Should agree to a schedule of payments plan not exceeding 12 months, or some other period considered appropriate to East Gippsland Water sufficient to recover both the amount in arrears, and enable the customer to meet future bills..."

...[the customer] Will be encouraged to enter into a schedule of payments plan that sufficiently **meets arrears and ongoing charges (emphasis added)** but East Gippsland Water may accept a flexible schedule of payments that provides for a longer-term payment arrangement⁴."

Therefore, AGL believes and it is widely accepted by customers that it makes sense and improves customer experience to set payment proposals on usage and arrears. A minimum standard based on arrears and usage is likely to place less pressure on customers with financial difficulties. It provides greater incentives for customers, who have the capacity, to take proactive steps to reduce

⁴ Page 4, <http://www.egwater.vic.gov.au/wp-content/uploads/2016/03/SOP150CustomerFinancialHardship.pdf>



their consumption as they will see the benefit of lower consumption through either lower payment plan amounts or paying off arrears sooner.

2. A significant shift in Tailored Assistance in the new Draft Decision (and the first Draft Decision) compared to current arrangements is the proposed obligation to 'empower customers to make payment proposals to their retailer that they consider they can manage'. This could lead to the unintended outcome whereby a customer can defer repayment or accrue arrears indefinitely or lead to ballooning payments. This outcome was discussed at the Commission Forum on Monday 29 May. At the Forum, the Commission stated there are four proposed clauses that allow retailers to withdraw Tailored Assistance. AGL believes in their current drafting, these clauses provide limited opportunity for retailers to withdraw Tailored Assistance.
 2. Clause 82 – A customer's circumstance: It is hard to see how, if not impossible, a retailer can refuse a customer's payment proposal that is in line with Tailored Assistance obligations under clause 82 given Clause 93 prohibits a retailer from 'waiving any entitlements' under Tailored Assistance.
 3. Clause 79(4) – This clause only relates to whether a retailer offers an extension to the 6-month deferral of a customer's arrears.
 4. Clause 81(3) – This clause relates to whether a retailer believes a customer is not meeting their responsibility to implement practical energy efficiency assistance.
 5. Clause 91(c) – This clause allows retailers to end assistance only if a retailer 'becomes aware' the customer 'is not anticipating' or is 'facing payment difficulties'. It is hard to imagine how a retailer can cease offering assistance by proving that customer is not 'facing payment difficulties' given there is no definition of a 'payment assistance' and a customer has an on-going arrears, especially as the Commission states on page 112 of the Draft Decision the 'onus to show that a customer is not in fact anticipating or facing payment difficulties would be on the retailer'.

Finally, while the customer has an entitlement to revise the payment proposal as long as it pays off the arrears within two years (clause 80(1)), there is no reciprocal obligation for a retailer to request a revision to the payment proposal based on changes to the customer's consumption.

AGL believes an improved model of Tailored Assistance that continues to meet the Commission's objective that disconnection is a measure of last resort, provide equitable and consistent treatment of customers while offering clear minimum standards but avoids the above consequences would include:

- a. Payment proposals should be based on payment of arrears up to two years and energy use.
- b. The two-year period for arrears should remain fixed based on the date of initial payment proposal.
- c. Customers can offer revised payment proposals as many times as they prefer if the proposal is in line with (a) and (b).
- d. Payment proposals and revised payment proposals should be of equal amounts per payment period.



- e. Customers should be entitled two Tailored Assistance payment proposals over a 12-month period.

These measures provide clear minimum standards of entitlement with respect to Tailored Assistance, removes the need to provide guidance and interpretation (and therefore possibly inconsistent treatment of customers) of 'facing payment difficulties' as currently proposed in Clause 91 (c). These measures also restore balance in the customer / retailer relationship in that retailers will be required to provide customers with information on their entitlements and customers will still have the power to make payment proposals based on the information they receive. Customers will be entitled, as a minimum standard, to two payment proposals in a 12-month period. Retailers can innovate by offering assistance over and above the minimum.

Tailored Assistance - Practical Assistance

Under Clause 79(1)(e) retailers are required to provide practical assistance on the tariff and energy use that is most likely to minimise the customer's energy costs based on the retailer's knowledge of the customer's pattern of use and payment history. AGL supports the principle of placing a customer facing payment difficulties on a tariff that may reduce their energy costs.

However, on page 88 of the Guidance, the Commission states "in advising the customer of their tariff options, the retailer must consider any customer circumstances likely to affect their future energy consumption and the likelihood that payments will be made as agreed". Further, on page 89 the Commission states "retailers would have to show that they know or reasonably believe that there was no scope for action" for customers who are unable implement energy efficiency measures.

This appears to contradict Clause 93 whereby retailers are prohibited from making assistance under Part 3 contingent on personal or financial information. Assessing and determining what is likely to affect a customer's future energy consumption is inexplicably linked to having knowledge of a customer's future personal and financial position.

Further, Clause 82 (customer circumstances) requires retailers to consider all the circumstances of the customer that are known or "*should reasonably have been known*" in providing practical tariff assistance. This potentially leaves a retailer exposed to a 3rd party (eg, EWOV and/or the Commission) ex post assessment that concludes the retailer "should have reasonably known" of a customer circumstance and therefore offered 'inappropriate tariff and energy efficiency assistance'.

In April 2017, AGL announced a Fairer Way package that included a range of measures to support customers in payment difficulties, including Victorian customers on a Standard Retail Contract who receive a government energy concession to automatically receive a 15% discount off their electricity usage charges and customers participating in AGL's hardship program, Staying Connected – will be offered guaranteed (non-conditional) discounts. AGL is seeking Commission guidance on whether these initiatives go over and above the proposed minimum standard of clause 79(1)(e)(i). Specifically, would AGL's initiative satisfy the minimum standard of clause 79(1)(e)(i) by offering a blanket unconditional discount or would AGL be required to also offer further practical tariff assistance?



Default Assistance

The Commission states Default Assistance is a measure of last resort for customers who have not responded to a retailers' best endeavours to provide assistance. The Commission surmises on page 100 of the Draft Decision that they 'consider that some customers may be able to avoid the risk of disconnection' because of the offer of Default Assistance.

The Commission also states the use of Default Assistance received some support following the first Draft Decision and therefore 'propose that where a retailer has used their best endeavours to discuss their entitlement to tailored assistance, but the customer has not responded, retailers would be required to make a written offer of default assistance' (pages 119-120).

AGL notes the new Draft Decision shifts Default Assistance from the start of the payment difficulties framework to the end of the framework, which eliminates the issue of over capturing customers (as per the first Draft Decision) who do not need this type of assistance. However, AGL is disappointed the Commission did not address AGL's main concern with Default Assistance raised in our submission to the first Draft Decision being the need to encourage early engagement. The default assistance will not provide any assistance to those in payment difficulties who do not contact their retailer or pay their bill. Rather, the outcome from the default payment assistance is to delay the pathway for disconnection for non-payment.

AGL is concerned that over the last few years regulatory creep has occurred in credit management regulation under the guise of providing customers additional minimum standard of protection prior to a disconnection for non-payment occurring. However, the additional protections have not addressed the core issue of early identification and engagement of payment difficulties. This has resulted in additional regulatory costs without any material impact on promoting improved customer outcomes, such as more affordable payment plans, lower average customer arrears and ultimately lower disconnections for non-payment.

It is worth noting that prior to offering Default Assistance to a non-engaged customer, the customer will have received at a minimum the following regulatory communications:

1. A bill
2. Reminder Notice
3. Disconnection Warning
4. Best Endeavours contact as per Appendix A – Interpretation of Energy Retail Code, box (i), which would include minimum three telephone calls and a letter sent by registered post for non-engaged customers

Hence, if a retailer followed only the regulatory minimum standards currently in place, they would have made a minimum of seven attempts to contact the customer. Under the new Draft Decision, retailers will also be required to offer customers in arrears 'best endeavours' Tailored Assistance followed by Default Assistance. Hence, based on the new Draft, a non-engaged customer will receive a minimum nine contacts from a retailer before disconnection for non-payment occurs.

As AGL stated in our submission to the first draft, our credit management process goes beyond the minimum contact protection requirements. We also use SMS messages, a 2nd Reminder Notice and additional phone telephone contacts. Hence, a non-engaged customer is likely to receive over 12 contact points, prior to being offered Default Assistance under the new Draft Decision. It is unclear in the new Draft



how an additional contact point at the end of the credit collection cycle will incentivise dis-engaged customers to contact a retailer, especially as the Default Assistance is premised on the customer not being encouraged to make contact.

Further, retailers have developed products to encourage customers to pay early, such as pay on time discounts and bill smoothing and these products have been unsuccessful in encouraging contact.

Therefore, AGL reiterates its position that Default Assistance will not offer any benefit to non-engaged customers as a last resort.

Rather, AGL believes the Default Assistance as currently drafted will result in:

1. Higher average debt at the point of disconnection for non-engaged customers. Under the current obligations, the minimum regulatory standard to disconnect a non-engaged customer for non-payment is around 28 business days (or 40 days, assuming 4 weekends are covered in 28 business days), under the proposed framework this will increase to approximately 104 days for quarterly billed customers (ie approximately 90 days until arrears occurs plus when the next bill is issued and payment has been received on the current bill plus 14 days for the due date of the first payment due under the Default Assistance). This means for quarterly billing, non-engaged and non-paying customers will receive an additional 64 days to pay their bill.

Based on the Commission's 2014-15 Performance Report⁵, which outlines average electricity annual bills for domestic customer in metropolitan Melbourne at \$980 (lowest average) and \$1,249 in eastern Victoria (highest average), non-paying and non-engaging customers will reach the point of disconnection for non-payment on average with approximately \$172 to \$219 more in arrears than under the current process.

The negative consequences of higher average debt for non-paying and non-engaged customers include, higher debt provisions for retailers, leading to higher cost of capital, harder for customers to get back on a sustainable pathway and therefore an increase of non-engaging non-paying customers changing retailers to avoid paying higher arrears, leading to potentially more 3rd party credit collection activity of customers who have changed retailers and higher bad debt write off by retailers.

2. For those customers that pay their bill at the time of receiving a disconnection warning (which AGL previously stated would be approximately two percent of customers or approximately 24,000 customer accounts per billing cycle), the issuing of Default Assistance will only result in delaying the payment of their bill. It is important to note, for these customers, they have previously received numerous contacts from AGL and it is the Disconnection Warning that prompts payment, hence, it is highly unlikely Default Assistance will change the paying behaviour of these customers.

The Default Assistance payment plan in its current form of de-coupling payment plan for arrears from billing for on-going energy use is likely to cause customer confusion as they will receive various payment requests with different timing obligations for payment.

⁵ page 23, <http://www.esc.vic.gov.au/document/energy/30388-energy-retailers-comparative-performance-report-pricing-2014-15/>



For example, the table below illustrates that consumers will receive a monthly payment schedule for arrears payments plus also continue to receive regular bills for on-going consumption.

Illustrative purposes of the communication likely to be received by non-engaged customer electricity quarterly billed customers

Date	Communication received
1 April	Bill for 1 Jan – 31 March consumption period
15 April	Reminder Notice for non-payment of for 1 Jan – 31 March consumption period
1 July	Bill for 1 April – 30 June consumption period
2 July	Tailored Assistance offer (best endeavour) for non-payment for 1 Jan – 31 March consumption period
15 July	Reminder Notice for non-payment of for 1 April – 30 June consumption period
16 July	Default Assistance for non-payment of for 1 Jan – 31 March consumption period
1 August	Disconnection Warning for non-payment of for 1 Jan – 31 March consumption period
10 August – 15 August	Best endeavour contact for non-payment for 1 Jan – 31 March consumption period

As AGL outlined in our submission to the first Draft Decision, delaying the disconnection process for non-engaged customers also negatively impact retailers’ financial performance (for example, cash flow and cost of capital and the like), which may compel retailers to review other aspects of service and product offerings.

Finally, Kildonan tested the concept of a default payment at a consumer workshop they conducted in September 2015 to test the draft recommendations as contained in the Commission’s *Supporting Customers, Avoiding Labels Energy Hardship Inquiry Draft Report*. Kildonan provided the findings of the focus group in their submission to the Commission in October 2015⁶.

The Kildonan submission stated that consumers did not support the notion of a default payment plan as offering assistance with resolving affordability or usage issues and that the payment plan did not provide any longer-term assistance:

1. page 4, where the submission states that “automatic payment plans won’t resolve the issue of affordability or usage”;



2. page 14 which states “All participants initially thought they would appreciate a no-questions-asked payment plan option; however, on reflection, 75% indicated that this would not assist them in the longer term.”

The Kildonan research went on to highlight that participants preferred early engagement with the retailer.

AGL concludes that if the Commission wants to improve the minimum protection obligations for non-engage customers, a better outcome would be to focus on introducing an obligation that promotes and encourages customers with payment difficulties to engage early. Early identification and engagement of payment difficulties for these consumers enables retailers to provide various support mechanisms, including tailored and affordable payment plans, referrals to financial counsellors, information about energy efficiency and access to government concessions and grants. Early identification of payment difficulties minimises the likelihood of debt reaching unmanageable levels and customers being in a position of long term payment difficulties.

In summary, AGL believes the Default Assistance provisions will generate higher costs to industry without any commensurate consumer benefits with respect to accruing and managing arrears. Further, the Default Assistance provisions is unlikely to satisfy the Commission’s objective of providing a mechanism for a non-engaged customer to accept an offer of assistance to manage their arrears without having to contact their retailer.

Financial Hardship policies

AGL supports the Commission’s reinstatement of Financial Hardship Policies in the new Draft Decision. We also support the Commission’s view that financial hardship policies, underpinned by customer entitlements to minimum standards of assistance is an important architecture of the framework.

However, the drafting of Clause 86 does not appear to support the Commission’s intention. Specifically, Clause 86 (b) required retailers’ hardship policies to include the entitlements to the minimum assistance for Tailored and Default Assistance. This would appear a superfluous obligation as retailers will be required to offer the minimum entitlements of Tailored and Default Assistance without requiring it to be referenced in the Hardship policy.

Under the proposed minimum standards framework, the retailer’s hardship policy should outline initiatives and programs retailers offer to satisfy the obligations as contained in Section 43C and 48GC of the Electricity and Gas Industry Acts and other matters covered by Commission Guidelines. This would mean retailers’ hardship policies complement the proposed minimum standards of the Code. This approach also aligns with the Commission’s guidance on page 103 of the new Draft Decision.