

## Annexure 2 – Regulation of standing offer and market contract terms

### Part A: AGL Comments on Terms proposed in the Consultation Paper

Subject	Requirement (Proposal from Consultation paper)	AGL Comments on proposed requirement
<b>Calculation of Charges</b>		
Tariffs and charges	<p>Charges are to be made on the basis of tariffs and charges specified in the contract or published in accordance with prescribed publication requirements (such as in the Gazette and/or a general circulation newspaper and/or on the retailer’s internet site).</p> <p>Any variation to tariffs and charges must be notified to the customer in advance of the variation taking effect.</p> <p>Upon request, a retailer must provide a customer with reasonable information on network charges, retail charge and any other charges relating to the sale or supply of energy.</p>	<p><u>Standing offer and market offer contracts</u></p> <p>With respect to variation of tariffs and charges, AGL does not believe that there should be any regulation. Retailers require flexibility in order to take advantage of innovations and developments in communication methods. General consumer protection provisions are sufficient to guard against misleading and deceptive conduct in respect of price variation.</p>
Use of meter data	<p>Unless otherwise permitted, a retailer must base the calculation of charges under a bill on an estimation of a small customer’s bill on metering data provided by the distributor or other responsible person.</p> <p>A retailer may base the calculation of charges under a bill on an estimation of a small customer’s consumption of energy in the following circumstances:</p> <ul style="list-style-type: none"> <li>• Where the customer consents to the use of estimates by the retailer;</li> <li>• Where the retailer is not able to reasonably or reliably base the bill on a meter reading; or</li> <li>• Where the metering data is not provided to the retailer by the distributor or the other responsible person.</li> </ul>	<p><u>Standing offer contracts</u></p> <p>AGL supports this provision for use of meter data.</p> <p><u>Market offer contracts</u></p> <p>This requirement is not a necessary regulation. If retailers believe it is necessary to include such provisions they will do so.</p>

Subject	Requirement (Proposal from Consultation paper)	AGL Comments on proposed requirement
Meter reads	A retailer must use its best endeavours to ensure that a meter reading takes place at least once in each [6/12] month period.	<p><u>Standing offer contracts</u></p> <p>AGL does not oppose this provision for standing offer contracts, and suggests that the 12 month period is sufficient.</p> <p><u>Market offer contracts</u></p> <p>There is no need to impose this requirement for market offer contracts. The determination of meter reading will be a commercial function of the contract between the retailer and the customer.</p>
Estimations	<p>Where estimations are permitted to be used as the basis for the calculation of energy charges under a bill for a small customer, the estimations may be based on:</p> <ul style="list-style-type: none"> <li>• The customer's reading of the relevant meter;</li> <li>• Historical meter data for the relevant customer; or</li> <li>• Where there is no historical meter data for the relevant customer, the average usage of energy by a comparable customer over the corresponding period.</li> </ul>	<p><u>Standing offer contracts</u></p> <p>AGL supports this provision for standing offer contracts. However, the wording should be amended to reflect that it is the retailer's decision as to the appropriate method of estimation on.</p> <p><u>Market offer contracts</u></p> <p>This provision is not warranted for market offer contracts.</p>
Meter access	<p>A customer must allow the retailer or its agent access to the supply address for the purposes of reading the meter.</p> <p>If a failure to provide access results in a charge being based on an estimation and the customer subsequently requests an actual read, the retailer may charge the customer its reasonable costs of</p>	<p><u>Standing offer contracts</u></p> <p>AGL supports the underlying requirement of this provision, however, is of the view that it should be amended to require a customer to provide 'safe and unhindered' access to</p>

Subject	Requirement (Proposal from Consultation paper)	AGL Comments on proposed requirement
	complying with the request.	<p>metering equipment on their premises. Further, it is appropriate to establish an ability on the part of the retailer to impose a fee on the customer in the event the customer does not provide safe and unhindered access after the required notification.</p> <p><u>Market offer contracts</u></p> <p>It is not necessary for such as clause to be mandatory for market contracts. Retailers will include within a contract if they determine is warranted.</p>
<b>Termination</b>		
Retailer termination	<p>A retailer may terminate a small customer supply contract where:</p> <ul style="list-style-type: none"> <li>• The retailer has a contractual right to disconnect, disconnection has occurred and there is no contractual right for reconnection;</li> <li>• The small customer and the retailer have entered into a new customer contract; or</li> <li>• The small customer has transferred to another retailer.</li> </ul>	<p><u>Standing offer and market offer contracts</u></p> <p>AGL does not believe that there is any need for energy specific regulation in respect of the grounds on which a retailer and customer can terminate their standing offer or market contracts. There will be regulation in respect of disconnection, and this negates the need to regulate the termination of contracts.</p>
Customer termination	A small customer may terminate a standing offer contract upon [three] business days notice to the retailer.	<p><u>Standing offer and market offer contracts</u></p> <p>This provision is not warranted for standard</p>

Subject	Requirement (Proposal from Consultation paper)	AGL Comments on proposed requirement
	<p>A small customer may terminate a market contract upon [28] days notice to the retailer.</p>	<p>offer contracts or market contracts.</p> <p>Particularly for market contracts, the notice period for termination of contracts will be based on a commercial outcome that is appropriate for both the retailer and the customer, and may vary from product to product.</p> <p>As noted above, there is a clear and well developed body of law that governs the termination of contracts. There can be no justification for imposing regulation around the circumstances in which customers can terminate contracts or the process which customers must go through in order to terminate a contract.</p>
<b>Security</b>		
Provision of security	<p>A retailer may require a small customer to provide a security deposit where:</p> <ul style="list-style-type: none"> <li>• The small customer still owes that retailer or another retailer in relation to the supply of electricity to another address;</li> <li>• The customer has unlawfully used energy within the past two years;</li> <li>• The customer has refused to provide acceptable identification to the retailer; or</li> <li>• The retailer reasonably considers that the customer does not have a satisfactory credit history and the customer has refused an instalment plan offered by the retailer.</li> </ul>	<p><u>Standing offer and market offer contracts</u></p> <p>AGL does not believe any regulation pertaining to security deposits is warranted. Retailers should have the flexibility to require security deposits in line with their commercial imperatives. Competitive forces will operate to constrain retailers in respects of requiring security depots.</p>

Subject	Requirement (Proposal from Consultation paper)	AGL Comments on proposed requirement
Information about credit history	<p>If a retailer requires a security deposit on the basis that a small customer has an unsatisfactory credit history, the retailer must inform the customer:</p> <ul style="list-style-type: none"> <li>• That the retailer has decided the customer has an unsatisfactory credit history;</li> <li>• The reasons for the retailer's decision;</li> <li>• Of the customer's rights to raise a complaint; and</li> <li>• That the customer has the right to obtain details in relation to the information on which the retailer's decision was based.</li> </ul>	<u>See above</u>
Amount of security	The amount of security may not exceed [1.5] times the average quarterly bill (for customers on a quarterly billing cycle) or [2.5] times the average monthly bill (for customers on a monthly billing cycle).	
Interest	The retailer must pay interest on a security deposit to the customer in accordance with a specified interest rate.	
Application of security	<p>The retailer may only apply a security deposit to off-set amounts owed to it under a standard form supply contract where the customer:</p> <ul style="list-style-type: none"> <li>• Has failed to pay a bill which results in disconnection by the retailer and there is no contractual right to reconnection;</li> <li>• Vacates the property;</li> <li>• Requests disconnection; or</li> <li>• Transfers to another retailer</li> </ul>	
Repayment of security	The retailer must repay a security deposit to the customer after the customer has completed 12 months of on-time payment of energy charges or where the customer ceases to take supply at the relevant address.	

Subject	Requirement (Proposal from Consultation paper)	AGL Comments on proposed requirement
<b>Billing, apportionment or payment, disputes</b>		
Frequency of bills	Energy bills must be issued by the retailer at least every three months.	<p><u>Standing offer and market offer contracts</u></p> <p>There is not a need for regulation in respect of the timing or length of frequency of bills for either standing or market contracts. In addition, AGL considers that retailers will require the flexibility around billing periods to negotiate meter reading cycles with meter providers, and to cater for changing customer needs.</p>
Content of bills	<p>A bill should include the following content:</p> <ul style="list-style-type: none"> <li>• Customer's name, account number and address;</li> <li>• Meter identifier;</li> <li>• Bill period;</li> <li>• Relevant tariff;</li> <li>• Whether the bill was issued as a result of a meter read or an estimation and, if issued as a result of a meter read, the date of the meter reading;</li> <li>• Details of consumption or estimated consumption [(including a consumption graph)];</li> <li>• Pro rata billing information (if applicable);</li> <li>• Any amount deducted, credited or received under a Government rebate or concession scheme or under an instalment plan;</li> <li>• The amount of any security deposit;</li> <li>• The network charge and any other miscellaneous charges;</li> <li>• Details of the available payment methods;</li> <li>• Telephone number for account and fault enquires; and</li> <li>• Contact details for complaints.</li> </ul> <p>Amounts billed for goods and services (other than the supply of energy)</p>	<p><u>Standing offer and market offer contracts</u></p> <p>AGL does not support the extensive list of requirements as shown adjacent for standing or market contracts. The extent of regulatory requirement in respect of the content of a bill should be limited to the provision of the MIRN/NMI/DPI ID, which is necessary to facilitate the efficient and effective transfer of customers.</p> <p>Where policy directives require additional information, such as greenhouse gas emission graphs, AGL believes that a full review of the expected benefits and effectiveness of imposing such a regulatory requirement should be undertaken, including the potential use of other forms of medium for awareness such as government</p>

Subject	Requirement (Proposal from Consultation paper)	AGL Comments on proposed requirement
	must be included in a separate bill or as a separate line item on an energy bill.	campaigns or bill inserts.
Apportionment	<p>If a bill includes amounts payable for other goods and services provided by the retailer (apart from the supply of energy), any payment made in relation to such a bill must be applied firstly to the payment of energy charges, unless otherwise directed by the customer or agreed by the customer.</p> <p>In the case of dual fuel bills, payment is to be made as agreed with or directed by the customers. If there is not such agreement or direction, payment is to be applied in proportion to the relative value of the electricity and gas charges.</p>	<p><u>Standing offer and market offer contracts</u></p> <p>AGL does not see the need for a regulation in respect of bill apportionment. Any arrangements with respect to bill apportionment are to be agreed between the customer and the retailer.</p>
Disputes	<p>A retailer must review a bill upon the request of a small customer in accordance with [the retailer's standard complaints and dispute resolution procedures/the retailer's billing complaints procedures].</p> <p>Retailers may require a customer to pay the greater of:</p> <ul style="list-style-type: none"> <li>• The portion of the bill under review which is not in dispute; or</li> <li>• An amount equal to the average amount of the customer's bills over the previous year (excluding the bill in dispute).</li> </ul> <p>And any future bills that are properly due.</p> <p>Where, after conducting a review of the bill, a retailer is satisfied that the bill is:</p> <ul style="list-style-type: none"> <li>• Correct, the customer must pay the amount outstanding; or</li> <li>• Incorrect, the retailer must adjust the bill accordingly and refund any fee paid in carrying out any metering test.</li> </ul>	<p><u>Standing offer and market offer contracts</u></p> <p>This provision is appropriate for both standing offer and market contracts.</p>
<b>Undercharging and overcharging</b>		
Undercharging	A retailer may recover from a customer any amount undercharged	<u>Standing offer and market contracts</u>

Subject	Requirement (Proposal from Consultation paper)	AGL Comments on proposed requirement
	<p>during the previous 12 months. Interest is not payable on the amount undercharged and the customer must be given a corresponding period of time to pay any undercharged amount. Any amount undercharged must be listed and explained as a separate item on the customer's next bill or on a separate bill.</p>	<p>There is not a need for energy specific regulation with respect to undercharging and overcharging for standing or market contracts. AGL expects that retailers should be subject to the same statutory limitations as other suppliers of goods and services in Australia.</p> <p>However, in the event that a provision is included it is important to ensure that retailers are permitted to recover the full undercharged amount, where the undercharge is the fault of a customers (eg. failure to provide access or illegal use of energy).</p> <p>In some jurisdictions, retailers are unable to recover network charges that span back prior to 12 months. This can be a substantial cost to retailers that should be passed on to the customer irrespective of the elapsed time period.</p>
Overcharging	<p>A retailer must repay any amount overcharged. If the amount overcharged is less than a threshold amount, the retailer must credit that amount to the next bill. If the amount overcharged exceeds the relevant threshold, the retailer must repay the amount as directed by the customer or, where there is no such direction, credit the customer's next bill.</p>	<p><u>Standing offer and market offer contracts</u></p> <p>AGL does not believe there is a need for regulation in respect of the means by which a retailer reimburses a customer.</p>

Subject	Requirement (Proposal from Consultation paper)	AGL Comments on proposed requirement
<b>Payment methods and difficulties</b>		
Payment methods	<p>A retailer must accept payment by a small customer by any of the following payment methods:</p> <ul style="list-style-type: none"> <li>• In person;</li> <li>• By mail; or</li> <li>• By direct debit or [credit card] arrangement.</li> </ul> <p>Where a direct debit arrangement is entered into, the retailer and the small customer must agree the amount, date and frequency of the direct debits and the customer's cancellation options.</p>	<p><u>Standing offer contracts</u></p> <p>Regulation in regards to the payment methods available to small customers is not warranted for standing or market contracts.</p> <p>Should regulation be introduced, retailers must be able to recover any transaction costs associated with the different methods of payment.</p> <p><u>Market offer contracts</u></p> <p>As for standing offer contracts, AGL does not believe it necessary for payment methods to be mandated for market offer contracts.</p> <p>However, in the event that a regulation is imposed, AGL considers it appropriate to provide that for market contracts the retailer and the customers can negotiate payment methods different to those required for standing offer contracts.</p>
Payment difficulties	<p>A retailer must offer a small customer an instalment plan where the customer informs the retailer that it is experiencing payment difficulties or it becomes apparent to the retailer that the customer is experiencing payment difficulties. Where customers are experiencing payment difficulties, retailer must provide information to those customer in relation to available concessions or</p>	<p><u>Standing offer and market offer contracts</u></p> <p>AGL accepts that there may need to be regulation in respect of managing payment difficulties. AGL does not object to the provision as outlined.</p>

Subject	Requirement (Proposal from Consultation paper)	AGL Comments on proposed requirement
	<p>Government assistance, financial counselling services and their ability to have the bill directed to a consenting third party.</p> <p>A retailer is not required to offer an instalment plan if the customer has had two instalment plans cancelled due to non-payment in the previous 12 months.</p>	
Bill smoothing	<p>Where a retailer is entitled to use estimations as the basis for the calculation of charges under an energy bill, estimated bills may be provided under a smoothing arrangement if:</p> <ul style="list-style-type: none"> <li>• The amount payable each month is initially the same;</li> <li>• The retailer's estimate is based on the customer's historical billing data or, if no such data exists, the average consumption of a similar customer;</li> <li>• The retailer re-estimates consumption after six months; and</li> <li>• The difference between the initial estimate and the re-estimate is greater than 10%, the retailer resets the amount payable under each of the remaining bills to reflect the difference.</li> </ul>	<p><u>Standing offer and market offer contracts</u></p> <p>Regulation in respect of bill smoothing is not necessary. A retailer may offer bill smoothing as product differentiation or as a general service.</p> <p>With respect to billing data, it is in the best interests of the retailer to ensure that they have accurate data when determining bill smoothing arrangements to ensure minimal financial exposure.</p>
<b>Disconnection</b>		
Rights to disconnect	<p>A retailer may disconnection or discontinue supply where:</p> <ul style="list-style-type: none"> <li>• A small customer has not paid a bill;</li> <li>• Access to a meter has been denied for three consecutive bills;</li> <li>• The customer has refused to provide acceptable identification or security;</li> <li>• A customer has used energy illegally; or</li> <li>• A customer has obstructed an authorised person in relation to acts to be done under the contract.</li> </ul>	<p><u>Standing offer and market offer contracts</u></p> <p>AGL agrees that there needs to be regulation of disconnections in both standing offer contracts and market contracts, and does not object to the proposed wording.</p>
Limitations on right	Other limitations will apply to the right to discontinue supply in	<u>Standing offer and market offer contracts</u>

Subject	Requirement (Proposal from Consultation paper)	AGL Comments on proposed requirement
to disconnect	<p>circumstances where a small customer has not paid a bill on account of having insufficient income. In these circumstances, the retailer is required to comply with its obligations in respect of customer payment difficulties (eg to other instalment plans or special payment arrangements and to make referrals to counselling services etc) before proceeding to disconnect a customer. Retailers are not entitled to disconnect while an application for Government assistance or a payment plan is pending. In addition, premises registering as containing life support or other medical equipment may not be disconnected and retailers may only carry out disconnections before certain times of the day and on certain days.</p>	<p>AGL supports this obligation for standing offer contracts and market offer contracts.</p>
Notice	<p>Disconnection may not be effected until the retailer has provided the customer with:</p> <ul style="list-style-type: none"> <li>• A reminder notice; and</li> <li>• [two] disconnection notes.</li> </ul> <p>In addition, the retailer must make a reasonable attempt to contact the customer by telephone.</p>	<p><u>Standing offer and market offer contracts</u></p> <p>Regulation in respect of notice of pending disconnections is warranted. However, AGL submits that there should be different disconnection procedures depending on the reason underlying the disconnection. For example, a retailer should be able to disconnect a customer who is refusing to provide identification details within a relatively short time frame, rather than going through the same process followed when disconnecting a customer for non-payment. In respect of disconnection for non-payment, AGL recommends that the following notice obligations should be considered:</p> <ul style="list-style-type: none"> <li>• for general customers – one bill, one late notice prior to late fee being incurred, one disconnection warning and</li> </ul>

Subject	Requirement (Proposal from Consultation paper)	AGL Comments on proposed requirement
		<p>then disconnection.</p> <ul style="list-style-type: none"> <li>For customers in financial difficulty – one bill, one late notice (no late fee), one disconnection warning, one attempted contact through a phone call and then disconnection if not customer contact / payment plan.</li> </ul>
Dual fuel contracts	<p>If disconnection is permitted, a retailer must ensure that a small customer on a dual fuel contract is initially disconnected from gas supply and that disconnection from electricity supply occurs within a certain period after the disconnection period.</p>	<p><u>Standing offer and market offer contracts</u></p> <p>There is no need to differentiate between gas and electricity disconnection. Where non-payment has occurred, the disconnection procedures outlined above for both fuels should be implemented.</p>
Reconnection	<p>A retailer must notify a small customer of the arrangements which the customer will need to make in respect of reconnection, including any costs payable by the customer. Any payment arrangements for reconnection must allow for fair and reasonable payments at fair and reasonable intervals.</p> <p>A retailer must reconnect premises if the breaches described above are remedied within 10 business days. Retailers must make appropriate arrangements with the relevant distributor to ensure that reconnection occurs as soon as possible for the customer.</p>	<p><u>Standing offer and market offer contracts</u></p> <p>AGL supports this provision for both standing and market contracts.</p>
Liability and warranties	<p>A retailer must not include any term or condition in an energy contract that limits the liability of the retailer for breach of the contract or negligence by the retailer, provided that:</p> <ul style="list-style-type: none"> <li>the retailer's liability may be limited as contemplated by section</li> </ul>	<p><u>Standing offer contracts</u></p> <p>AGL would support regulation in respect of standing contracts, provided any regulation is limited in line with the following</p>

Subject	Requirement (Proposal from Consultation paper)	AGL Comments on proposed requirement
	<p>68A of the Trade Practices Act or by equivalent State or Territory legislative provisions; and</p> <ul style="list-style-type: none"> <li>there is no variation or exclusion of relevant legislative provisions which provide that the retailer is not liable for damages for failure to supply due to circumstances beyond its control (ie section 120 of the NEL)</li> </ul> <p>The retailer may not include in an energy contract with a small customer a term pursuant to which the customer indemnifies the retailer, so that the retailer may recover from the customer an amount greater than the retailer would otherwise have been able to recover at general law for breach of contract or negligence by the customer in respect of the contract.</p>	<p>principles:</p> <ul style="list-style-type: none"> <li>any restrictions in respect of liability and warranty provision in energy specific contracts should only have the effect of imposing the same limitations on energy retailers as are imposed on retailers of all other products in Australia – ie. Energy retailers should not be subject to provisions any more onerous than the liability and warranties provisions in the TPA and FRAs; and</li> <li>retailers need to be able to mitigate the possibility that they will bear liability in relation to third party actions or incidents. AGL supports the inclusion of Force Majeure provisions within the regulation to define limitation of liability to those incidents beyond the retailer's control.</li> </ul> <p>AGL does not support that retailer's liability may be limited by State or Territory legislative provisions.</p> <p><u>Market offer contracts</u></p> <p>This obligation is not necessary for market offer contracts.</p>

**Part B: AGL Comments on possible additional terms and requirements as proposed in the Consultation Paper**

Subject	Requirement (Proposal from Consultation paper)	AGL Comments on proposed requirement
Dispute resolution and complaints	<p>A retailer must handle a complaint made by a small customer in accordance with the relevant Australian Standard and the relevant jurisdictional dispute resolution process.</p> <p>When a customer contacts a retailer in relation to a complaint, the retailer must inform the customer that:</p> <ul style="list-style-type: none"> <li>• the customer has the right to raise the complaint to a higher level within the retailer’s management structure; and</li> <li>• if after raising the complaint to a higher level, the customer is still not satisfied with the retailer’s response, the customer may refer the complaint to an external ombudsman.</li> </ul>	<p><u>Standing offer and market offer contracts</u></p> <p>AGL agrees that retailers should be required to handle complaints in accordance with relevant Australian Standards and national legislation.</p> <p>However, AGL does not believe that jurisdictions should have differing resolution processes. While dispute resolution schemes may be operated in each jurisdiction, each scheme should operate under consistent nationally applicable law and rules.</p>
Communications with customers	<p>A retailer must provide access to multi-lingual services (for languages common to the relevant customer base) in order to meet the reasonable needs of its small customers.</p>	<p><u>Standing offer and market offer contracts</u></p> <p>AGL does not object to this provision.</p>
Provision of energy efficiency advice	<p>On request, a retailer must provide energy efficiency advice to a small customer.</p>	<p><u>Standing offer and market offer contracts</u></p> <p>The provision of energy efficiency advice to customers is not required as a regulation. However, if implemented, AGL would support such a requirement on the basis that the obligation is limited to occasions where a customer directly requests the information.</p>
Assessing credit risk	<p>In deciding whether a small customer has an unsatisfactory credit rating, a retailer may only have regard to any relevant utility related</p>	<p><u>Standing offer and market offer contracts</u></p>

	<p>default by that small customer.</p>	<p>This obligation is not warranted, nor capable of implementation. From a practical perspective, if such an obligation were introduced, a new database containing 'utility' specific information would need to be established. This cannot be viewed as achieving the objectives of reducing cost and complexity.</p> <p>Further, even if such a regulation were able to be implemented, there is no valid reason for placing such restrictions on retailers and exposing them to a significantly higher degree of risk than any other business.</p>
<p>Prepayment meters</p>	<p>A customer cannot be required to use a prepayment meter.</p>	<p><u>Standing offer and market offer contracts</u></p> <p>While AGL supports the view that innovative technology, such as prepayment meters should be a product of choice, AGL does submit that there may be occasions where a customer is required to use a prepayment meter for a short period of time eg. If a customer moves into a premises that had a prepayment meter and the customer wants immediate access to energy rather than wait until the meter is changed to a post pay meter.</p> <p>Therefore, while AGL supports this provision in principle, re-wording to allow for the above circumstances should be incorporated.</p>

<p>Payment terms</p>	<p>The due date for payment of a bill may not be less than a prescribed period after the date on which the bill is sent out.</p>	<p><u>Standing offer and market offer contracts</u></p> <p>Prescribed periods in respect of payment terms should not be regulated. Retailers will need to allow sufficient time for payment in order to manage the expenditure associated with sending out reminder notices, which are a significant cost to the retailer.</p> <p>The due date will be a commercial decision entered into by a retailer and its customer.</p>
<p>Rights to information</p>	<p>An energy contract must set out for a small customer how the small can receive information on his or her rights, entitlements and obligations.</p>	<p><u>Standing offer and market offer contracts</u></p> <p>AGL supports this obligation.</p>
<p>Historical billing information</p>	<p>A retailer must provide historical billing data for the previous 12 months without charge to a small customer. Any information provided prior to that period may be subject to a charge.</p>	<p><u>Standing offer and market offer contracts</u></p> <p>AGL does not believe that this warrants regulation. However, if regulation is imposed there should be scope to impose a charge for multiple requests or requests that extend beyond 12 months.</p>
<p>Cooling-off period</p>	<p>A retailer must ensure that each market contract entered into with a small end customer enables the customer to rescind the contract within 10 business days after the contract is entered into.</p>	<p><u>Standing offer and market offer contracts</u></p> <p>In the first instance, AGL believes that the FTAs should be nationally consistent, and therefore, the relevant provisions of the FTAs would be sufficient.</p> <p>However, in the event that this does not occur, AGL would support an obligation for a cooling off period of 10 business days following the receipt of the prescribed</p>

		information by the customer.
Early termination charges	<p>The retailer may only impose an early termination charge under a small end customer market contract if:</p> <ul style="list-style-type: none"> <li>• the market contract includes details of the amount or manner of calculation of the early termination charges; and</li> <li>• the imposition of the early termination charge is not prohibited under an applicable regulatory instrument, at law or in equity.</li> </ul>	<p><u>Standing offer and market offer contracts</u></p> <p>It is not appropriate to include regulation of additional retail charges in the national regulatory framework. AGL does not support the regulation of early termination fees. Any regulation or prohibition of early termination fees will reduce product innovation and stifle competition.</p>
Service standards	The retailer must comply with specified service standards.	<p><u>Standing offer and market offer contracts</u></p> <p>AGL firmly believes that it is inappropriate to include an obligation that retailers must comply with specified service standards. AGL notes in this respect that the new regulatory framework in Queensland does not incorporate these regulations.</p>
Customer consultative groups	The retailer must establish a customer consultative group.	<p><u>Standing offer and market offer contracts</u></p> <p>AGL does not oppose the establishment of a customer consultative group, but does not believe that this should be a matter for regulation.</p>
Discrimination	A retailer must not refuse to supply or supply on inferior terms on the basis that the customer supplies or uses alternative forms of sources of energy or services that reduce the demand for energy.	<p><u>Standing offer and market offer contracts</u></p> <p>AGL notes that network operators are able to refuse a new network connection to gas on the basis of the connection being non-prudent (ie, insufficient quantity of volume to sustain prudent investment in the connection). While AGL does not believe</p>

		that energy specific regulation is required, in the event regulation is introduced, AGL expects that retailers will not be penalised for the ability of network operators to reject new network connections on the basis of insufficient demand for energy.
Greenhouse gas emissions	Bills must include information concerning greenhouse gas emissions in accordance with guidelines.	<p><u>Standing offer and market offer contracts</u></p> <p>As outlined earlier, where policy directives require additional information, such as greenhouse gas emission graphs, AGL believes that a full review of the expected benefits and effectiveness of imposing such a regulatory requirement should be undertaken, and should include consideration of the relative effectiveness of other mediums for creating awareness – eg government campaigns or bill inserts.</p>
Fees for late payment	Not permitted.	<p><u>Standing offer and market offer contracts</u></p> <p>AGL does not support this provision. As outlined earlier, AGL submits that it is not appropriate to impose a form of price regulation through regulation of additional retail charges.</p> <p>Late payment fees are a nationally accepted charge imposed by utilities and other service providers. If a customer wishes to avoid a late payment fee, they have the ability to do so.</p>

		AGL does acknowledge that there are cases where the late payment fee may be either not permitted or waived – such as where a customer advises they are in financial hardship and accepts being placed onto a payment instalment plan.
CSOs	Retailers may be required to deliver government funding CSOs	<u>Standing offer and market offer contracts</u>  If such obligations are imposed it must be on the basis that the relevant government is required to guarantee retailers full cost recovery.
Shortened billing cycles	Conditions under which a customer may be placed on a shortened billing cycle.	<u>Standing offer and market offer contracts</u>  Obligations regarding shortened billing cycles should be incorporated within the 'disconnection regulations'.
Competitive pricing information	Retailers must publish information relating to the provision of pricing information to enable small customers to compare competing offers.	<u>Standing offer and market offer contracts</u>  An obligation on the publishing of competitive pricing information is not warranted, and AGL submits that retailers will generally publish their pricing information for competitive purposes.
Compensation for wrongful disconnection	Retailers must pay compensation to customer who are wrongfully disconnected.	<u>Standing offer and market offer contracts</u>  AGL does not support this obligation. Retailer compliance with regulations governing disconnection processes is sufficient.



## Regulation of marketing conduct

### Part C: AGL Comments on requirements for marketing conduct proposed in the Consultation Paper

Subject	Requirement (Proposal from Consultation paper)	AGL Comments on proposed requirement
<b>Pre-contractual disclosures</b>		
Timing / form	<p>A retailer must provide a small customer with certain prescribed information as follows:</p> <ul style="list-style-type: none"> <li>(a) prior to formation of a market contract: where the prescribed matters may be disclosed in writing, electronically or verbally; and</li> <li>(b) [within 2 business days after formation of the market contract / at least 5 days prior to the expiration of the cooling-off period]: pursuant to a single written disclosure statement (unless such disclosure statement has already been provided).</li> </ul>	<p>A retailer should be required to provide the customer with written information as soon as practicable after the customer has entered the contract. It is in a retailers best interests to ensure that the customer has the information on a timely basis to ensure that the relevant cooling offer period can commence.</p>
Required disclosures	<p>The information which a retailer must provide in the manner described above is information in relation to:</p> <ul style="list-style-type: none"> <li>(a) existence of commissions: whether the marketer is entitled to receive a commission from the retailer for arranging the market contract;</li> <li>(b) prices, charges, penalties, billing and payment arrangements: all applicable prices, charges and penalties, security deposits, service levels, concessions or rebates, billing and payment arrangements and how any of these matters may be changed;</li> <li>(c) contract duration: the duration of the contract, the availability of extensions and whether the contract can be transferred to other premises if the customer moves out during the term of the contract;</li> <li>(d) cooling-off period: any rights to rescind an energy contract, including how to exercise these rights;</li> </ul>	<p>AGL is of the view that the following information is all that is necessary to be provided to the customer before entering into a contract:</p> <ul style="list-style-type: none"> <li>(a) the prices, charges and tariffs that will be applicable in respect of the energy contract;</li> <li>(b) the term of the contract; and</li> <li>(c) the cooling-off period.</li> </ul>

	<p>(e) dispute resolution and complaints;</p> <p>(f) electronic transactions: if any marketing requirement is to be complied with by an electronic transaction, how the transaction is to operate and, as appropriate, that the customer will be bound by the electronic transaction or will be recognised as having received the information contained in the electronic transaction; and</p> <p>(g) standard supply contracts: the availability of standard form supply contracts and the relevant regulator's contact details.</p>	
<p>Cooling-off period</p>	<p>Unless such information has previously been supplied to the small customer, a retailer must send documentation to the small customer providing details of the customer's right to rescind the market contract, including information about how to exercise this right, at least [5] business days prior to the expiry of the cooling-off period.</p>	<p>As discussed above, AGL is of the view that firstly, the jurisdictional FTAs should be nationally consistent and then the relevant provisions of the FTAs would be sufficient.</p> <p>However, in the event that this does not occur, AGL would support an industry specific obligation for a cooling period to last for 10 business days following the receipt of the prescribed information by the customer.</p>
<p>Dispute resolution and complaints</p>	<p>A retailer must advise a small customer of its right to complain to the retailer in respect of any marketing activity conducted on behalf of the retailer and, if such complaint is not satisfactorily resolved by the retailer, of the customer's right to complain to the relevant industry ombudsman.</p>	<p>AGL supports dispute resolution schemes and that customers are aware of their rights to complain to the customer and/or the relevant dispute resolution scheme. However, it should be sufficient that the notification of dispute resolution and complaints is outlined within the standing offer or market offer contract.</p>
<p>General conduct standards</p>	<p>Marketers must, and retailers must ensure that marketers:</p> <p>(a) comply with all applicable Commonwealth and State and Territory laws;</p>	<p>AGL submits that retailers use best endeavours to ensure that marketers are aware of their obligations when dealing with</p>

	<p>(b) do not engage in misleading, deceptive or unconscionable conduct, whether by act or omission;</p> <p>(c) do not exert undue pressure on, harass or coerce a small customer; and</p> <p>(d) ensure that information provided to small customers is truthful and in plain language, is relevant to the small customer's circumstances and includes timely, accurate and verifiable comparisons.</p> <p>Marketers should have, and retailers should ensure that marketers have, adequate product knowledge. Adequate product knowledge covers knowledge of matters such as tariffs, billing procedures and the availability of rebates and concessions.</p>	<p>customers.</p> <p>All of the items listed adjacent are already legal obligations for marketers, therefore should not be repeated unnecessarily.</p>
<p>Contact times</p>	<p>Except by prior appointment with, or at the request of, a small customer, a marketer must not visit or telephone a small customer for the purposes of marketing:</p> <p>(a) at any time on a Sunday or public holiday applying in the relevant jurisdiction;</p> <p>(b) outside of the hours of 9am and 5pm on a Saturday;</p> <p>(c) outside of the hours of 9am and 8pm on a week day; and</p> <p>(d) on Christmas Eve after 5pm.</p>	<p>There is not any need for energy specific regulation in respect of contract hours. Energy retailers are subject the provision dealing with contact times contained in the relevant FTAs in each jurisdiction.</p> <p>As noted earlier, the relevant FTAs should be made nationally consistent where possible.</p>
<p>Duties of marketers</p>	<p>At all times in connection with any marketing activity, a marketer must identify his or herself to a small customer. Identification involves the marketer using best endeavours to provide the small customer with:</p> <p>(a) the marketer's first name;</p> <p>(b) any relevant identification number;</p> <p>(c) the name of the retailer on whose behalf the marketing contract is being made;</p> <p>(d) sufficient contact details to enable the customer to contact the marketer; and</p> <p>(e) advice as to the purpose of the marketing contact.</p>	<p>AGL supports this requirement to the extent that the provisions are not included in the various FTAs, with the FTAs being made nationally consistent. AGL considers that the following obligations are sufficient with regards to identification and marketing in person:</p> <p><u>Identification</u></p> <p>As soon as practicable following the commencement of any marketing contact</p>

	<p>Where marketing is conducted in person, a marketer must wear an identification badge showing the marketer's photograph, first name and the name of the retailer on whose behalf the marketing contact is being made.</p>	<p>with a customer, a retailer must advise the small customer of the purpose of the market contact and use its best endeavours to provide a small customer with the following information prior to completion of the marketing contact:</p> <p>(a) the name of the salesperson; and (b) contact details for the retailer.</p> <p><u>Marketing in person</u></p> <p>A salesperson who makes a marketing contact by visiting a small customer must wear an identification card on his or her chest containing:</p> <p>(a) the name of the salesperson; (b) a photograph of the salesperson; (c) the name of the retailer; and (d) the retailer's telephone number.</p>
<p>Contact records</p>	<p>Where a customer has indicated that he or she does not wish to be contacted for the purposes of marketing, a retailer must use its best endeavours to ensure that the customer is not contacted again. A retailer may satisfy this obligation by keeping records containing details of customers who have indicated that they do not wish to be contacted.</p>	<p>AGL does not believe that energy specific regulation is required. There are sufficient national regulations, such as the introduction of a 'Do not call register' that will provide sufficient safeguard for customers.</p>
<p>Training</p>	<p>Retailers must ensure that marketers are appropriately trained in relation to compliance with marketing obligations.</p>	<p>AGL does not believe that there is any need for energy specific regulation regarding the training of energy marketing representatives and that the common law and generally applicable statutory consumer protection laws (ie, the TPA and various FTAs) all impose vicarious liability on a company for the actions of its employees</p>

		and agents.
Record keeping	Retailers must keep records of all marketing related activities, including details of marketing visits which have been conducted, telephone marketing calls which have been placed and details of customers who has indicated that they do not wish to be contacted for one year after contact is made. Retailers must also retain records of any explicit informed consent obtained by a marketer for two years after such consent is obtained.	The obligation in it current form is too onerous and unnecessary. AGL would support the requirement that a retailer must retain records of any explicit informed consent for at least 2 years.
Compliance audits	A retailer must conduct a compliance audit in respect of the compliance by marketers with their marketing obligations at least once per year.	It is not necessary to regulate the internal audit of compliance. Retailers are aware of their obligations and would ensure that all appropriate internal checks are made as a matter of course.

## Annexure 3 - Principles of Best Practice Regulation

Nine main principles of best practice regulation have been identified:<sup>1</sup> These are:

1. Communication – all stakeholders to understand regulatory initiatives and needs;
2. Consultation – effective and early consultation assists regulators understand the implication of their regulation and offers stakeholders the opportunity to suggest alternatives;
3. Consistency – consistency across sectors, over time and across jurisdictions provides confidence in the regime;
4. Predictability – helps utilities plan for the future;
5. Flexibility – ability to evolve and amend regulatory approach as the external environment changes;
6. Independence – free from undue influence that could compromise regulation helps build trust in the regulator;
7. Effectiveness and efficiency – assessment of cost effectiveness and efficiency includes time; taken to make decision and having staff with appropriate technical knowledge;
8. Accountability – regulator taking responsibility for their regulatory actions; and
9. Transparency – open about objectives, processes, data and decision.

The principle of proportionality has also been recognised as being of prime importance in devising, implementing, enforcing and reviewing regulations. This principle requires that remedies be appropriate to the risk posed, with costs identified and minimised.<sup>2</sup>

The Better Regulation Task Force<sup>3</sup> also identified a number of tests of good regulation that build on the aforementioned principles and recommend they be applied to the full range of policy tools, not just prescriptive regulation. They require regulations to:

1. Be balance and avoid knee-jerk reactions – it can lead to ineffective or disproportionate regulation being introduced;
2. Seek to reconcile contradictory policy objectives – clear assessments of likely impacts of regulations are essential for identifying and reconciling contradictory objectives;
3. Balance risks, costs and benefits – trade-offs between the costs and benefits of regulation need to be assessed;
4. Avoid unintended consequences – by regulating in one area regulators may unintentionally create problems elsewhere;
5. Be easy to understand – the complexity of some regulations can undermine their effectiveness;

---

<sup>1</sup> The Office of Water Regulation (1999), *Best practice utility regulation*, Utility Regulators Forum discussion paper, July 1999

<sup>2</sup> Better Regulation Task Force (2003), *Principles of Good Regulation*, [www.brtf.gov.uk](http://www.brtf.gov.uk), 2003, page 4

<sup>3</sup> *ibid*, page 7; The Better Regulation Task Force was established in September 1997. It is an independent body that advises United Kingdom Government on action to ensure that regulation and its enforcement accord with the Principles of Good Regulation.

6. Have broad public support – it is a good indicator that the public sees it as necessary;
7. Be enforceable – it must be practical to enforce;
8. Identify accountability – there must be clear accountability without resorting to unfair retribution;
9. Be relevant to current conditions – regulations should be reviewed on a regular basis to ensure they remain necessary and relevant;
10. Proportionality – remedies should be appropriate to risk posed and costs identified and minimised; and
11. Targeting – regulation should be focused on the problem and minimise side effects.

The development of the national regulatory framework should take into account these principles and related tests in order to ensure a net benefit to the national energy market.