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Review of Australia's Consumer Policy Framework  
Productivity Commission  
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### **Review of Australia's Consumer Policy Framework**

AGL Energy Ltd (AGL) welcomes the opportunity to respond to the Productivity Commission's (the Commission) draft report on the *Review of Australia's Consumer Policy Framework* (report).

AGL made a written submission (dated 11 May 2007) in response to the Issues Paper released by the Commission in January 2007 with respect to this review. We are pleased that many of the comments made in our submission were taken into consideration by the Commission in preparing its draft report. Similar to our previous submission, our comments are largely focussed on the regulation of the energy industry, as opposed to the general consumer protection framework, enforcement and remedies.

#### Objectives for consumer policy

AGL supports the Commission's view that Australian Governments should 'adopt a common overarching objective for consumer policy', as set out in draft recommendation 3.1. As a national energy company operating across jurisdictions, we are highly aware of the jurisdictional differences in regulatory development and interpretation. This has led to an overly complex and costly regulatory framework (both for business and consumers) with respect to the energy market. In addition, in our view, it has also contributed to the creation of an energy regulatory framework that has sought to address social policy issues which would more effectively be addressed through other mechanisms.

We agree with the Commission that a clearly enunciated set of objectives will provide much needed guidance to all stakeholders, particularly regulators and policy makers, leading to a more transparent and consistent consumer protection framework. Such objectives will form a constant reference point against which proposed regulatory and legislative developments can be measured for appropriateness and effectiveness.

We also reiterate the comments made in our earlier submission with respect to the need for the adoption of principles of best practice regulation within the context of the development of a new consumer policy framework.<sup>1</sup>

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<sup>1</sup> See Appendix 1 of AGL's 11 May 2007 submission to the Commission.

## A new national generic consumer law

For similar reasons as those for which we support the development of a national framework for energy (discussed below), AGL is also supportive of the creation of a single generic consumer law to replace the current inconsistent jurisdictional regime. A national law would be in the interests of both business and consumers, as it would reduce costs for businesses operating nationally, and would ensure that consumers around Australia would be afforded the same protections, regardless of where they live. We also agree with the Commission that introducing a single generic consumer law may facilitate the creation of national industry specific regulatory frameworks. Finally, we note that we would support the introduction of a single national regulator for the new national generic consumer law.

## Industry specific consumer regulation

### *Progressing to a national framework for energy*

AGL strongly supports draft recommendation 5.3, which states that a single consumer protection regime for energy services, to apply in all jurisdictions participating in the National Energy Market (the NEM), should be developed and implemented by the Ministerial Council on Energy (the MCE). We agree that 'a fragmented set of consumer policy arrangements in the energy sector is increasingly out of kilter with broader market and regulatory developments.' (p.414) To this extent, we are supportive of COAG investigating and overseeing a review and reform program for industry-specific regulation, as set out in draft recommendation 5.1.

This issue of national energy regulation has been raised by AGL, as well as other energy retailers, in a variety of forums and we do not intend to repeat in detail in this submission the reasons why we consider the development of a national framework for energy to be a priority for government.<sup>2</sup> Suffice to say, and as mentioned in our previous submission, the current complex generic and energy specific regulatory requirements impose significant costs on energy retailers, in terms of multiple business systems and processes, and personnel training. We also believe that the current framework leads to jurisdictional inconsistencies with respect to customer rights and obligations.

In order to realise all of the benefits of a nationally consistent regulatory regime, the scope for jurisdictional discretion must, in our view, be limited. However, as the Commission rightly notes, recommendations regarding the proposed national energy framework, made by the Retail Policy Working Group to the MCE Standing Committee of Officials, still allow for significant scope for jurisdictional discretion in respect of a number of matters – such that, 'the new policy framework will be a hybrid, rather than a truly national regime.' (p.416). Accordingly, and as discussed below, we endorse the Commission's comments with respect to retail price regulation, alternative dispute resolution (ADR) arrangements and service performance targets.

### *Is there a continued need for retail price constraints under contestability?*

AGL strongly supports market based retail energy pricing and believes that retail price regulation should be removed once full contestability has been established. Competition is the best mechanism for producing efficient prices, providing the price signals for new investment and providing incentives for the most efficient use of energy. Accordingly, we fully support draft recommendation 5.4, which recommends the removal of price caps still applying in contestable retail energy markets.

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<sup>2</sup> See, for example, AGL's submission of 25 July 2007 to the MCE's Retail Policy Working Group Consultation paper on the National Framework for Electricity and Gas Distribution and Retail Regulation at <http://www.mce.gov.au/assets/documents/mceinternet/AGL20070814112708%2Epdf>

As the Commission itself notes, social policy issues such as financial hardship are not effectively addressed by regulating energy prices. Price regulation and assistance to customers in financial hardship should be managed as two separate issues. While AGL provides customers experiencing financial hardship with a range of support measures, including through our national hardship program, Staying Connected, we consider that effective and efficient assistance to customers in financial hardship also requires adequate, well-targeted and transparent community service obligations.

AGL is of the view that the removal of retail price regulation will ensure cost reflective prices that will:

- Promote private sector investment in new generation and retail supply;
- Promote appropriate demand management and energy efficiency measures which will assist in reducing the need for new investment, and reducing greenhouse gas emissions;
- Limit the possibility for future significant price increases for customers to facilitate the required investment or participation in the energy market;
- Reduce significant regulatory costs of price reviews arising from the complexity and analysis required under current arrangements; and
- Enable the government and industry to provide targeted assistance to customers in financial hardship.

We also take this opportunity to note that, in its recent report on the Review of the Effectiveness of Competition in Electricity and Gas Retail Markets in Victoria, the Australian Energy Market Commission, has recommended the removal of retail price regulation in Victoria for similar reasons.

*Should jurisdictionally based Energy and Water Ombudsman offices be amalgamated?*

AGL supports, in principle, draft recommendation 9.2 to establish a national energy and water ombudsman that incorporates relevant existing State and Territory ADR bodies. AGL believes that small-end customers should have access to informal, fair and efficient dispute resolution arrangements and that retailers should be obliged to be part of an approved Ombudsman scheme in the jurisdiction in which they participate.

In our view, there should be a nationally consistent Ombudsman regime for energy, irrespective of whether one is administered nationally or jurisdictionally. There are a number of inefficiencies associated with schemes that are inconsistent across jurisdictions, adding cost to participants. Further, disparity in jurisdictional schemes prevents continuous improvement in the handling of disputes, as it is difficult to establish meaningful comparison and therefore benchmarking.

AGL submits that a nationally consistent Ombudsman scheme(s) should have the following fundamental characteristics:

- be based on principles of national consistency, efficiency and effectiveness;
- be funded on a cost reflective basis;
- be available to residential customers covered by Retail Codes or equivalent, who have already approached their retailer in order to seek resolution of the dispute;
- have a clear charter defining its role as an independent arbiter of disputes being neither an industry or consumer advocate;

- apply the best practice benchmarks in its dispute resolution processes – for example, the Department of Industry, Science and Tourism Benchmarks for Industry Based Customer Dispute Resolution Schemes;
- be promoted by retailers as an alternative dispute resolution scheme when disputes cannot be reasonably resolved with the retailer;
- have a governance structure based on 50% industry, 50% customer advocates and an independent chair; and
- have retailers and distributors as members of the scheme to accommodate disputes related to services provided where there is significant direct relationship between distributors and customers.

### Unfair contracts

We do not propose to comment in any detail on unfair contracts, other than to say that we consider a cautious approach should be taken with respect to this issue – especially given the lack of overwhelming evidence to suggest that the existence of unfair contract terms is causing significant consumer detriment which cannot otherwise be remedied within the current scope of consumer protection legislation. In the event that the Commission considers it necessary to recommend action with respect to unfair contracts, we agree in principle with the approach outlined in draft recommendation 7.1, insofar as any new provision should be part of the new national generic consumer law (so as to avoid jurisdictional inconsistency) and prohibit the detrimental effect of unfair contract terms, as opposed to their existence. Further, we would expect that any new provision would be broadly consulted on prior to its introduction and be reviewed within at least five years of its introduction to determine effectiveness and cost-benefit (as outlined in draft recommendation 7.1).

Should you wish to discuss any aspect of this submission, please contact Anna Stewart on 03 8633 6830.

Yours sincerely

Elizabeth Molyneux

**General Manager Energy Regulation**