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Submitted via webform: <https://www.erawa.com.au/current-consultations>

Draft Amendments to the Gas Marketing Code of Conduct

AGL Energy (AGL) welcomes the opportunity to provide feedback on the Economic Regulation Authority's (ERA) draft Amendments to the code of conduct for gas marketing, dated 9 December 2024.

As part of the 2023-2025 Review of the Gas Marketing Code of Conduct, AGL had expressed its support for the three recommendations made by Gas Marketing Code Consultative Committee (GMCCC).¹ While AGL did not have an opportunity to comment on the latter addition of Recommendation 4 in GMCCC's Final Report relating to the introduction of Basic Plan Information Document (BPID) requirements, we support the policy intent of the proposal that simplification and standardisation of pricing information could assist consumers to better navigate which gas plans and products are best suited to meet their energy objectives. Accordingly, AGL's feedback below considers only the practical implications of a number of the new provisions in the draft Gas Marketing Code of Conduct Amendment Code 2024 (the Amendment Code).

AGL's feedback to this consultation is based on our longstanding history as one of Australia's largest providers of essential services, our experiences operating within various energy regulatory frameworks in the National Energy Market (NEM) and our insights and observations with respect to equivalent Basic Plan Information Document regulations in the National Energy Customer Framework (NECF).

Recommendation 1 – Preliminary and consequential amendments to the Gas Marketing Code of Conduct

AGL has no specific comments.

Recommendation 2 – Regulating comparative gas and electricity marketing claims

AGL supports Recommendation 2 which seeks to regulate how marketing claims that contain comparisons between gas and electricity can be presented to consumers. Specifically, marketing material that directly or impliedly compares the two sources of fuel against each other on matters of cost, energy efficiency, environment health and sustainability, and greenhouse gas emissions must contain the information required under the Code.

¹ AGL Energy, [Response to the GMCCC Gas Marketing Code of Conduct Draft Review Report June](#), 17 July 2024.



AGL's feedback is specific to the operation of Clauses 6A(1)(b) and 6A(2) with respect to implied representations. The ERA uses the words "benefits", "better", "cheaper", "cleaner", "efficient", "faster" and "less" as examples of terms that a small use customer is reasonably likely to interpret as making a comparison between gas and electricity. Using one or more of these words in marketing material for gas plans and products would invariably trigger the full spectrum of comparative marketing obligations under clauses 6C to 6E of the Amendment Code.

AGL considers that the ERA's scope of "impliedly refers" is too broad-reaching, arbitrarily restrictive and could have the unintended consequence of capturing marketing claims that do not actually directly compare gas and electricity. Terms such as "efficient" could be used in isolation to describe general properties of gas without being misleading, noting that gas is still a viable energy source and part of the fuel mix required during Australia's energy transition.

Another concern about the far reach of implied comparisons is demonstrated by information such as "electric blow heaters can be costly to run, using over two kilowatts of energy per hour". This type of message makes a claim about the cost of an electric heater, but it is unclear whether the comparison is with gas, wood heaters, or other electric heaters. With a risk that this might be construed as an implied comparison under the new requirements with gas, a retailer would likely need to spend a significant sum of money procuring the services of a consulting firm to complete analysis of an electric heater that complies with the method prescribed by the ERA. While this type of messaging may assist customers to make a decision about which appliances to use, the process and added costs of compliance with the new regulations may deter retailers from providing this type of information in the future due to the risk of it being construed as a comparison to gas. Alternatively, retailers who do share this type of information may pass the additional costs onto customers.

AGL recommends that it is more appropriate for the ERA to consider the totality and context of the message rather than words used in isolation to determine whether a comparative marketing claim has been made. We also recommend that due to the ambiguity associated with an implied comparison (as demonstrated in the blow heater example), that only direct comparisons between electricity and gas are captured under the new rule.

Recommendation 3 – Simplifying identification requirements for telemarketing and face-to-face marketing:

AGL has no specific comments.

Recommendation 4 – Basic plan information documents for plans generally available to small use customers

Clause 9A(3)(b) Definition of restricted plan: This subclause defines a restricted plan as a "gas plan that is only available to a small use customer who meets the criteria set by the retailer that are not within the customer's control." While the examples of restricted plans provided by the ERA in the Amendment Code are accurate, the phrase "...criteria set by the retailer that are not within the customer's control" is inconsistent with wording ordinarily used in energy regulations frameworks across the NEM to describe a restricted plan. Further, this language is ambiguous and does not assist retailers to interpret the characteristics of a restricted offer.

For the avoidance of doubt, AGL recommends the wording be amended to, either:



- “a small use customer who meets criteria set by the retailer, which make the gas plan not accessible to all customers”; or
- align it to the AER’s Retail Pricing Information Guidelines definition of restricted plans: “Restricted plans are plans specifically targeted to an exclusive individual or group and tailored to the specific circumstances of that customer and their need(s)”².

Schedule 1 — Contents of basic plan information documents

AGL’s feedback is specific to Cl.5(4)(c) which states that the BPID must specify “the value of any incentive, rather than an incentive that relates to charges under the plan”. The ERA may be aware that there are some incentives for which the monetary value cannot be easily calculated to satisfy this requirement. For example, frequent flyer points may be offered as a sign-up incentive to a customer in conjunction with an airline partnership. These points cannot be easily converted to a precise dollar value as their purchasing power varies significantly depending on how the customer spends the points.

The ERA may wish to remove this requirement as it does not align with the existing AER Retail Pricing Information Guidelines requirements, or alternatively, amend the wording to read: “the monetary value of any incentive, other than an incentive that relates to charges under the plan, *to the extent that this value can be ascertained or easily calculated.*”

Schedule 2 — Terms permitted and not permitted in basic plan information documents

In addition to ongoing contracts with a limited/fixed benefit period, some evergreen energy plans can have an enduring benefit period that lasts for the life of the contract. Under Column 2 of “Terms Permitted” to be used in BPIDs in the Amendment Code, the ERA should consider aligning with the AER terminology where an evergreen contract is described as either an:

- “Ongoing contract with benefit period”; or
- “Ongoing contract with [number] month(s)] benefit period”.³

Implementation Timeframe

AGL acknowledges the GMCCC’s observation that “All Western Australian retailers already provide BPIDs or a format like BPIDs that could be standardised with minimal modification”, however, we note that modifications will still need to be made, whether they are minimal or otherwise. Changes to customer-facing material can take time to implement and generally involve the retailer working with third-party vendors and contractors to execute the changes as well as undertaking a robust internal business approval process before said changes can take effect. The short implementation timeframe is further compounded by the proximity of the release of the ERA’s Final Determination to the 1 July 2025 commencement date of the new rules.

AGL recommends that Recommendations 1, 2 and 3 commence on 1 July 2025 as already provided for by the ERA. Recommendation 4 relating to BPIDs should come into effect on 1 September 2025 to allow retailers sufficient time to make modifications to their BPIDS, as required, and comply with their new

² Australian Energy Regulator, Retail Pricing Information Guidelines, Version 5, April 2018, p23.

³ Ibid, p13.



obligations, including by establishing (or incorporating the new regulations into) effective compliance and monitoring processes.

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

Yours sincerely,



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