

Essential Services Commission Act

Undertaking to the Essential Services Commission for the purposes of Section 54ZD of the Essential Services Commission Act (Vic) 2001

by

AGL Sales Pty Ltd (ABN 88 090 538 337)

Person giving the undertaking

1. This undertaking is given by AGL Sales Pty Ltd (ABN 88 090 538 337) of Level 24, George Street, Sydney NSW 2000 (**'AGL'**) to the Essential Services Commission (**'the Commission'**) for the purposes of Section 54ZD of the Essential Services Commission Act (Vic) 2001.

The Commission's concerns

2. The commission considers that AGL may not have satisfied compliance with clauses 89(1)(c), 89(1)(d) and 111A(1)(A)(i) of the Energy Retail Code¹ (the **'Code'**) on several occasions. In particular, the commission alleges that:
 - (a) AGL implemented a system control that led to AGL's systems failing to generate Utility Relief Grant Scheme (**'URGS'**) forms where a customer had less than \$100 of energy debt. This system control prevented URGS forms being generated for 424 customers. At all times AGL instructed staff to inform these customers of their entitlement to assistance under Part 3 of the Code, this included their entitlement to apply for URGS
 - (b) AGL failed to inform one customer who was entitled to assistance that they could obtain assistance provided by a government provided, in the form of URGS
 - (c) AGL wrongfully disconnected three customers by failing to establish payment arrangements for Customers 1 and 2, failing to provide information about entitlements for assistance to Customer 2 and failing to provide Customer 3 with

¹ When the Energy Retail Code of Practice was remade with effect from 1 March 2022, these obligations were renumbered to clause 141(d), 141(e) and 187(1)(a)(i) respectively.

information about URGS and information to assist that customer in reducing her ongoing energy consumption

3. The commission is concerned about the potential for further non-compliance with clauses 141(d), 141(e) and 187(1)(a)(i) of the Energy Retail Code of Practice arising from process, training or other deficiencies that may have contributed to the alleged conduct.

Admissions & Resolution

4. AGL acknowledges the Commissions concerns and offers the Undertaking in paragraph 6 to resolve the Commissions concerns. AGL:
 - (a) has already taken steps to rectify the circumstances giving rise to the conduct of concern including:
 - (i) removing the system control on utility relief grant application forms;
 - (ii) waiving the affected customers energy debt at the time they contacted AGL; and
 - (iii) making wrongful disconnection payments to three affected customers.
 - (b) and acknowledges that the conduct outlined in paragraph 2(b) and 2(c) above is likely to have contravened sections 89(1)(c), 89(1)(d) and 111A(1)(a)(i) of the Energy Retail Code.

Commencement of this Undertaking

5. This Undertaking comes into effect when:
 - (a) the Undertaking is executed by AGL; and
 - (b) the Undertaking so executed is accepted by the commission. (the '**Commencement Date**')

Undertaking

6. From the Commencement Date and for a period of 18 months (the '**Term**'), AGL undertakes for the purposes of section 54ZD of the Essential Services Commission Act (Vic) 2001, that it will implement and maintain a Compliance Improvement Action Plan (as set out in **Annexure A**).²

² The Essential Services Commission Act (Vic) 2001, as it was in force immediately before 1 December 2021, continues to apply in relation to any contravention prior to that date.

7. AGL must notify the commission in writing within 5 Business Days of any failure to comply with this Undertaking.

Publication of undertaking

8. AGL acknowledges that:
 - (a) the commission may make this Undertaking publicly available by publishing it on its website;
 - (b) the commission may, from time to time, make public reference to this Undertaking including in news media statements and in commission publications; and
 - (c) this Undertaking in no way limits the rights and remedies available to any other person arising from the alleged conduct.

Costs

9. AGL must pay all of its own costs in relation to this Undertaking (including but not limited to development and implementation of the Compliance Improvement Action Plan).

Executed as an Undertaking

Executed by AGL Sales Pty Ltd by its authorised officers pursuant to section 127(1) of the Corporations Act (Cth) 2001.



Director
Melinda Hunter



Secretary
Hilary Thorpe

This 20 day of July 2022.

Accepted by the Essential Services Commission pursuant to Section 54ZD of the Essential Services Commission Act (Vic) 2001.



Chairperson
Kate Symons

This 11th day of August 2022.

Annexure A – Compliance Improvement Action Plan

Training

1. AGL must arrange the following:
 - (a) the provision of information about the payment difficulty framework obligations of the Energy Retail Code of Practice as part of the induction of new directors, employees and officers (including third party agents) whose duties relate to responding to, assisting or liaising with customers who are experiencing difficulties in paying their energy bills, or who have responsibility for managing staff with such duties; and
 - (b) regular (at least annual) training about the payment difficulty framework obligations of the Energy Retail Code of Practice for directors, employees and officers (including third-party agents) whose duties relate to responding to, assisting or liaising with customers who are experiencing difficulties in paying their energy bills, or who have responsibility for managing staff with such duties.
2. The training referred to in clause 1(b) must be developed with and annually reviewed by the AGL Regulatory and Compliance team.
3. In addition to its obligation to maintain records of training as required under clause 54(1)(b) of the Energy Retail Code of Practice, AGL will maintain a record of the training provided for at clause 1(b) of: attendees, the content of the training, the dates the training was completed and the names and contact details of the person(s) providing the training.

Quality assurance and compliance monitoring

4. AGL must conduct regular quality assurance checks on interactions between its employees or officers (including third party agents) and customers who contact AGL regarding difficulties in paying their energy bills over the period since the previous review (or, in the instance of the first review, the period immediately preceding the date of the review) (**'review period'**).
5. For the purposes of clause 4, the quality assurance and compliance checks will be based on a sample:
 - (a) comprising at least 2% of all contacts from customers within the review period

- (b) comprising a mix of contacts via different channels (e.g. calls, emails, website chat) that is appropriate give the number of total contacts made via those channels.
6. If necessary, in order to meet the quality assurance and compliance checks outlined under clause 5, AGL will increase the size of its compliance team and/or assign a staff member(s) who are dedicated to conducting these checks.

Regular reports to AGL Senior Management

7. AGL must provide reports to AGL's Senior Management, including but not limited to AGL's General Manager, Customer Operations, on a regular basis addressing implementation of, and compliance with, the Compliance Improvement Action Plan. This regular basis will be at least biannually.

Independent audit of the Compliance Improvement Action Plan

8. Within twelve months of the Commencement Date, AGL must propose an independent person, being an independent auditor with expertise in Victoria's energy laws ('**Independent Auditor**'), for the commission's approval, to complete a review of AGL's implementation of the Compliance Improvement Action Plan ('**Implementation Review**'). If the commission does not approve the nominated Independent Auditor, then AGL must liaise with the commission to identify a candidate acceptable to the commission within five business days of such non-approval.
9. Within ten business days of receiving notice of the commission's approval of the Independent Auditor, AGL will engage the Independent Auditor to complete the Implementation Review and prepare a report that identifies:
- (a) whether AGL has implemented the Compliance Improvement Action Plan, and the adequacy of that implementation
 - (b) whether the controls and processes implemented by AGL have resulted in AGL achieving compliance with clauses 141(d), 141(e) and 187(1)(a)(i) of the Energy Retail Code of Practice
 - (c) recommends any further actions, including but not limited to training or quality assurance, to address continued non-compliance with clauses 141(d), 141(e) and 187(1)(a)(i) of the Energy Retail Code of Practice.
10. The independent auditor will undertake an independent compliance audit to assess samples of the following in order to obtain reasonable assurance over AGL's Controls and Processes for purpose of:

- (a) interactions between AGL and customers who are experiencing difficulties in paying their energy bills since the Commencement Date
 - (b) consists of a mix of interactions via different channels (e.g., calls, emails, website chat) that is appropriate given the number of total sales conducted via those channels.
- 11. AGL must use best endeavors to ensure the Independent Auditor:
 - (a) completes the Implementation Review within 60 business days of the engagement, by provision of the report referred to in paragraph 10 to AGL and
 - (b) has full, free and unrestricted access to all staff, records, documentation and information necessary to conduct the Implementation Review.
- 12. Within two business days of receipt of the Independent Auditor's report, AGL must provide a copy of the report to the commission.
- 13. Within 20 business days of receipt of the Independent Auditor's report, AGL must provide the commission its response to any recommendations of the Independent Auditor, including timings for implementation as relevant. This response must be from AGL's Chief Executive Officer unless that person is on leave at the required time, in which case it will be from their delegate. If AGL does not implement any of the Independent Auditor's recommendations, it will provide the commission with an explanation of its position.
- 14. Within three months prior to the expiration of the undertaking, AGL must provide the commission with a report that outlines:
 - (a) its progress in implementing the Independent Auditor's recommendations (if applicable) and
 - (b) its compliance with the Undertaking

Provision of Compliance Improvement Action Plan documents to the commission

- 15. AGL must maintain a record of and store all documents relating to the implementation of the Compliance Improvement Action Plan for a period not less than 5 years following the Commencement Date.
- 16. If requested by the commission during the period of 5 years following the Commencement Date, AGL must cause to be produced, and provided to the commission, copies of any relevant documents relating to the Compliance Improvement Action Plan.