

FILE No:

DOC: 500/2258

FORM G
Regulation 9

COMMONWEALTH OF AUSTRALIA

Trade Practices Act 1974 – Sub-section 93(1)

EXCLUSIVE DEALING

NOTIFICATION

To the Australian Competition and Consumer Commission:

Notice is hereby given, in accordance with sub-section 93(1) of the *Trade Practices Act 1974*, of particulars of conduct or of proposed conduct of a kind referred to in sub-section 47(6) or (7) of that Act in which the person giving notice engages or proposes to engage.

1. (a) **Name of person giving notice:**

AGL Gas Company (ACT) Limited ABN 24 008 552 663 (AGL).

(b) **Short description of business carried on by that person:**

Supply of energy products and services.

(c) **Address in Australia for service of documents on that person:**

AGL Centre, 111 Pacific Highway, North Sydney, NSW 2060.

2. (a) **Description of the goods or services in relation to the supply or acquisition of which this notice relates:**

Energy, energy appliances and financing services.

(b) **Description of the conduct or proposed conduct:**

See Attachment A.

3. (a) **Class or classes of persons to which the conduct relates:**

Residential customers and potential customers of AGL who acquire, will acquire or will be offered:

- certain energy appliances from AGL's retail partners;
- energy services from AGL; and
- interest-free repayment services from AGL.

(b) **Number of those persons:**

- (i) **at present time:** 3,000
- (ii) **estimated within the next year:** 3,000

(c) **Where number of persons stated in item 3(b)(i) is less than 50, their names and addresses:**

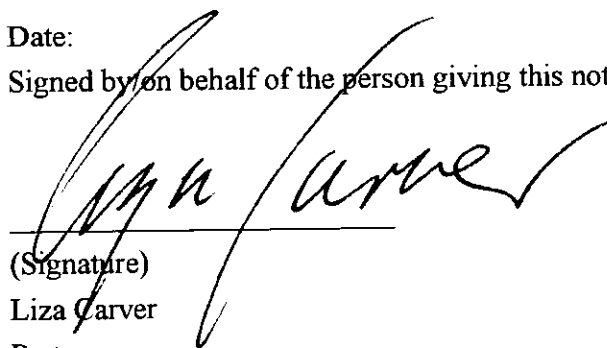
Not applicable.

4. **Name and address of person authorised by the person giving this notice to provide additional information in relation to this notice:**

Mr Robert Wong, Corporate Counsel, The Australian Gas Light Company, AGL Centre, 111 Pacific Highway, North Sydney, NSW 2060.

Date:

Signed by/on behalf of the person giving this notice:



(Signature)

Liza Carver

Partner

Gilbert & Tobin

ATTACHMENT A

1. CORPORATIONS INVOLVED

1.1 AGL

AGL is a wholly owned subsidiary of The Australian Gas Light Company ARBN 052 167 405, an energy company supplying energy products and services including natural gas, electricity and liquid petroleum gas (LPG) to customers in Australia and overseas through various subsidiaries.

AGL is authorised to supply natural gas to contestable and non-contestable customers in the ACT. AGL and its related bodies corporate have approximately 850,000 natural gas customers and one million electricity customers throughout Australia.

The Australian Gas Light Company owns 50% of Elgas Limited, which sells LPG to 500,000 customers. AGL may extend the proposed conduct to cover LPG and LPG appliances, particularly in areas where natural gas is not available.

The Australian Gas Light Company is entering into a joint venture with ACTEW to provide natural gas and electricity to customers in the ACT and natural gas to customers in Queanbeyan. On completion, the conduct described in this notification will be undertaken by the retail joint venture between subsidiaries of the Australian Gas Light Company and ACTEW, rather than by AGL. AGL will notify the Commission on completion of the identity of the joint venture entity or entities involved.

1.2 AGL Retail Partners

AGL markets and supplies its services with the assistance of retail partners and agents, including franchised AGL Energy Shops and other independent retailers. AGL does not have any ownership interest in any of its retail partners.

AGL retail partners provide a range of services on behalf of AGL, including connecting customers and accepting bill payments. AGL retail partners typically sell a range of energy appliances such as hot water and heating and cooling systems, which they install and connect to natural gas and electricity supplies and may also repair and maintain.

In New South Wales and the ACT, AGL has franchised energy shops in Auburn, Balgowlah, Bankstown, Blacktown, Bondi Junction, Caringbah, Charlestown, Chatswood, Fyshwick, Liverpool, Thornleigh and Warrawong.

It also has independent retail partners in Bathurst, Bowral, Cootamundra, Cowra, Dubbo, Forbes, Goulburn, Griffith, Junee, Lakehaven, Katoomba, Leeton, Lithgow, Maitland, Narrandera, Orange, Parkes, West Wyalong, Yass and Young. These retail partners include gas and electrical appliance stores, heating and cooling specialists, and plumbers.

AGL owns 50% of the Essential Energy Services Pty Limited (**EES**) joint venture with Wizard, trading as AGL Response. AGL Response coordinates franchised repair and maintenance providers, who will participate in promotions in the same way as retail partners. AGL Response currently operates in Victoria and may be extended to New South Wales and South Australia.

2. PROPOSED CONDUCT

2.1 Summary of Promotions

AGL proposes to offer a range of interest-free repayment options to customers who acquire selected appliances from AGL's retail partners. The offer contemplates that:

- the customer purchases an appliance from the retailer, but either:
 - pays the retailer a deposit against the retail price of the appliance; or
 - pays nothing to the retailer;
- the retailer installs the appliance to the customer's satisfaction;
- AGL pays the retailer the retail price of the appliance, less:
 - any deposit paid by the customer; and
 - a commission of up to 6% of the retail price; and
- the customer pays the balance of the retail price to AGL in 12 or 24 equal monthly instalments.

AGL considers the promotion an opportunity to develop the natural gas and electricity industries across Australia. The promotion will make significant purchases, such as hot water and central heating systems, affordable to a wide range of customers. This will provide customers with access to an inexpensive and efficient energy source and will stimulate demand for natural gas and electricity for the benefit of the industry.

2.2 Details of Promotions

(a) Examples

Attached to this notification are the following confidential documents that provide an example of the conduct AGL proposes to engage in:

- a *2000 Appliance Campaign Conditions* agreement to be entered into between AGL and each retailer, setting out the framework of the promotion;
- a *Two Year Fixed Term Plan* to be entered into between AGL and the customer, setting out the details and terms and conditions of the interest-free repayment plan; and
- a brochure entitled *AGL Payment Plans: Things You Should Know*, setting out the key terms of the interest-free repayment plan to customers.

The promotions offered from time to time may vary with the appliances available and other market conditions, but will remain consistent with the points described below. Most promotions will be offered for a limited time, generally three months. AGL may enter into other arrangements with other retail partners to support the promotions, but these will not affect the terms offered to customers.

(b) Appliances

Though AGL may in some cases extend the promotion to any appliance that consumes electricity or natural gas and is supplied by its retailers, AGL intends to focus its promotion on major appliances such as the following:

Storage Internal Hot Water Systems	Cookers
Storage External Hot Water Systems	Wall Ovens
Continuous Internal Hot Water Systems	BBQs
Continuous External Hot Water Systems	Cooktops
Pool or Spa Heaters	Ducted Evaporative Cooling Systems
Central or Ducted Heating Systems	Ducted Refrigerative Cooling Systems
Flued Heaters or Log Fires	Ducted Reverse Cycle Air Conditioning Systems
Unflued Log Fires	Wall Mounted "Split" Air Conditioning Systems
Portable Heaters	

Some of these appliances will be available on either 12-month or 24-month interest free repayment plans, and others will only be available on 12-month plans. Generally speaking, more

expensive items such as hot water systems and heating and cooling systems will be available on 24-month interest free repayment plans.

(b) Term

As discussed above, the term of the repayment plan will be either 12 or 24 months, depending on the nature of the appliance and the particular promotions available. AGL intends to concentrate on more expensive appliances that would otherwise be less affordable to customers. These items will generally be available on 24-month interest free plans.

If sufficient demand exists, AGL will also offer cheaper items on 12-month interest free plans. Where 12-month interest free plans are offered, customers will also have the option of purchasing more expensive appliances such as hot water and heating systems on a 12-month plan.

The customer always has the option of making all outstanding repayments in a single payment. That is, the customer is not “tied” to AGL for any set period. As discussed below, outstanding amounts become due if the customer ceases to acquire energy from AGL.

(c) Acquisition of Energy

Customers must acquire energy from AGL in order to participate in the promotion. Since the promotion involves interest-free repayments, the only direct benefit of the promotion to AGL is the increased consumption of energy supplied by AGL.

There is an indirect benefit in the promotion of the natural gas and electricity industries generally, but this benefit is not sufficient to cover AGL’s costs in providing the interest-free repayment plan. All participants in the natural gas and electricity industries will receive this indirect benefit.

Customers are not required to use AGL for all of their energy needs. During their participation in the AGL payment plan customers must take *either* natural gas *or* electricity from AGL, depending on the appliance purchased, but they are not required to take both.

Further, customers are not obliged to take AGL energy for any minimum period. Customers may cease to acquire energy from AGL at any time, provided that they pay any outstanding amounts due under the repayment plan within 14 days. The repayment of outstanding amounts simply reflects the termination of the customer relationship, and no interest or any other penalty is charged for early termination.

The association between the repayment plan and the customer taking an AGL energy supply is not intended to lock the customer in to AGL but is simply intended to secure the benefit of the repayment plan for AGL and protect AGL from unreasonable credit risk. AGL’s credit risk is

unreasonably increased if a customer ceases to acquire energy from AGL, either through switching to a new retailer or relocating premises, and AGL no longer has a reliable relationship with that customer.

When residential customers become contestable and wish to acquire energy from another provider, the repayment plan does not present a significant barrier to this choice. The customer can either make the outstanding repayments directly or refinance the appliance with credit from another source. AGL envisages that the new energy provider may wish to take over the repayment plan in order to attract customers and receive the same benefits as the proposed promotion will deliver to AGL.

Importantly, no matter what the circumstances in which the customer disconnects from AGL energy, the customer has received a significant benefit in the interest-free deferral of payment until the time of disconnection.

(d) Payment Methods

Payment systems available under the repayment plans currently include:

- direct debit;
- direct charge; and
- AGL's Easy Way/Even Pay payment system.

Customers must use the same payment method (including the same debit account or credit card) to pay the interest-free repayments *and* the customer's AGL energy account.

AGL Easy Way/Even Pay is a direct debit payment system that estimates bill payments based on previous energy consumption and spreads these out into equal fortnightly or monthly payments over 12 or 24 months. Interest-free repayments on appliances can be combined with this system.

Direct debit is generally available to all customers with a bank account in Australia, apart from passbook and investment accounts. Direct charge is available to all customers with a credit card or associated debit card.

These payment methods impose no direct additional cost on customers, since bank and transaction fees are absorbed by AGL and are generally cheaper than other payment methods. Direct payment methods are convenient and reliable and are critical in ensuring that repayments are not accidentally neglected or delayed. AGL is not in the credit business and does not charge

interest on overdue payments. Direct payment methods are its best means available to secure payment, maintain a consistent cashflow and ensure the viability of the promotion.

It is equally important for the reduction of administrative and transaction costs for customers to make repayments and pay their energy bills using the same payment method, including the same debit account or credit card. All payment methods involve a charge per transaction, although some also increase with value billed. Combining transactions significantly reduces costs, allowing AGL to pass through savings to customers.

Customers on direct payment methods receive a bill as usual and are advised that the amount of the bill will be automatically paid by them on the bill's due date. Customers who wish to query any aspect of a bill may do so in the intervening period to avoid or adjust the payment. If a bill is queried after the payment is processed, the payment can be reversed or any overpaid amount credited to the customer's AGL account.

Of the payment methods offered, direct debit is the cheapest and most efficient. Transaction fees payable by AGL for direct debit payments are lower than those for credit card payments and are charged at a flat rate per transaction, rather than a scale based on value. Transaction fees for various payment methods in New South Wales and Victoria include the following:

Method	NSW Fee	Vic Fee
Independent gas agent	\$2.00	N/A
Credit card phone payment	\$2.00	\$0.75
Australia Post	\$1.18	\$1.04
Bank counter	\$1.00	\$0.92 or \$1.25
Bpay	\$0.70	\$0.55
Mail (locked bag)	\$0.52	\$0.36
Direct charge	\$0.14 + 1.3% of value	\$0.25 + 1.3% of value
Direct debit	\$0.14	\$0.10

Depending on customer acceptance, AGL may choose to limit the payment options to direct debit on certain promotions now or in the future. This would significantly reduce AGL's costs in providing the promotion and allow more flexibility in other areas of the promotion, such as the appliances covered and the times during which promotions are available.

(e) AGL Responsibility for Appliances

The appliance is in all cases sold by the retailer to the customer, and AGL does not obtain title to the appliance at any time. Since there is no agreement of sale between AGL and the customer, AGL is not a party to any agreement in which terms are implied by Part V Division 2 of the

Trade Practices Act. AGL makes this clear to the customer in the terms and conditions and in the pamphlet shown to customers at the point of sale.

AGL does not consider that it falls within the “linked credit provider” provisions of the *Trade Practices Act*. Even if AGL were considered to be a linked credit provider, it would fall under the exceptions set out in section 73(3). AGL selects its retail partners carefully on the basis of strict requirements as to financial standing and business reputation. It maintains a close relationship with these partners to monitor their continuing solvency and to inform them of their obligations to customers.

However, AGL wishes to keep its customers informed of their legal rights. The attached brochure and customer terms and conditions therefore draw attention to the possibility that customers may have rights against AGL under section 73 of the *Trade Practices Act* in some possible circumstances.

3. PUBLIC BENEFITS

The proposed conduct will significantly benefit consumers generally as well as AGL customers specifically. The impact of the proposed conduct is not such that, under the test laid down in section 93(3A)(b) of the Act, the likely benefit to the public will be outweighed by the likely detriment to the public.

(a) Increased Ability to Afford Appliances

The most significant public benefit associated with the proposed conduct is the increased ability of consumers to afford electrical and natural gas appliances through the offering of interest-free repayment terms over 12 or 24 months.

Hot water and heating and cooling systems are major appliances and can cost from \$650 to more than \$10,000 plus installation as follows:

Appliance	Approximate Cost
Hot water system	\$650 to \$4,500
Central/flued heating system	\$2,500 to \$10,000+
Air conditioning system	\$2,000 to \$10,000+
Pool heating	\$2,000 to \$5,000

AGL also offers interest-free repayment terms on smaller appliances such as cookers, wall ovens, cooktops, BBQs and portable heaters. These appliances range in price from \$600 to \$2,000.

Paying these amounts as a lump sum represents a considerable outlay and a deterrent to many people who would benefit from new natural gas or electrical appliances.

(b) Increased Competition from Specialist Outlets

Interest-free repayment terms are offered by major chains such as Bing Lee and Chandlers under arrangements with independent finance companies. Department stores may also provide interest-free periods in conjunction with internal credit arrangements. Individual retail outlets generally do not have the financial backing to offer interest-free repayment terms without assistance.

The retail outlets currently providing interest-free repayment terms are generalist outlets offering a wide range of household and other goods without any particular expertise in natural gas or electricity. AGL's retail partners are selected for their knowledge and expertise in supplying and installing natural gas and electricity appliances, and many of them are expert plumbers, gasfitters and electricians.

(c) Public Safety

For reasons of public safety, it is preferable for these retailers to supply and install these appliances. These retailers improve the safety and reliability of AGL's gas and electricity supply and reduce the risk of malfunction arising from faulty selection and installation. These retailers are also well placed to assist customers in their purchasing decisions and can help customers select the most appropriate and efficient appliances for their needs.

The proposed conduct will allow skilled and knowledgeable retailers to compete with large generalist chains and department stores by providing competitive prices and repayment terms. The increased availability of expert advice and installation coupled with interest-free repayment terms is a considerable public benefit.

(d) Efficient Energy Consumption

The availability of interest-free repayment terms will also stimulate the markets for natural gas and electricity and will promote the efficient use of natural resources. Innovations in heating, cooling and hot water systems have resulted in the development of new appliances that are much more energy efficient than their predecessors. Customers are becoming aware of the economic and environmental savings of these new appliances, particularly through energy efficiency rating systems and advertising campaigns. However, the cost of replacing inefficient appliances with new appliances is a deterrent.

AGL's interest-free repayment plans allow customers to replace their inefficient appliances without lump sum payments and to spread their repayments over 12 or 24 months. During this

time, these payments are effectively offset by the savings resulting from more efficient energy use. This has an individual benefit for the customer and also a broader public benefit in reducing energy consumption in line with domestic and international guidelines.

(e) Reduction in Transaction Costs

Finally, the rationalisation of payment methods to direct payment systems (and particularly direct debit) has a public benefit in reducing overheads associated with transaction fees, debt recovery and the interest cost of late payment. As discussed above, direct debit is the cheapest and most reliable payment system available. Encouraging more customers to pay with cheaper and more reliable systems reduces free riding by customers using more expensive systems whose cost is absorbed by AGL. It allows AGL to reduce energy prices and offer further benefits through promotions such as the AGL payment plans.

3.4 No Public Detriment

(a) No Lessening of Competition in Energy Supply

The proposed conduct will not result in the lessening of competition in any market. As discussed above, customers are not locked in to taking gas or electricity supply from AGL and remain free to move to other retailers on repayment of outstanding amounts. AGL envisages that new retailers will wish to take over their new customers' outstanding payments in order to attract customers and facilitate transfer. Other retailers are of course free to offer similar repayment terms at any time, as many outlets already do.

As the natural gas and electricity industries across Australia are systematically deregulated, these industries are becoming increasingly characterised by:

- regional suppliers expanding into national operators; and
- specialised natural gas or electricity suppliers diversifying into general energy suppliers.

As a result, the historical landscape involving one monopoly electricity supplier and one monopoly natural gas provider in each State is making way for a number of national energy suppliers providing both natural gas and electricity to an increasingly wide range of customers.

Most of AGL's competitors now describe and market themselves as energy companies operating nationally with a similar suite of products and services. These competitors include Origin Energy, TXU, EnergyAustralia and Great Southern Energy.

AGL's competitors sell energy to the following numbers of residential customers:

Competitor	Customers
Origin Energy	517,000 gas in Victoria 330,000 gas in SA 76,000 gas in Queensland 17,000 in Albury and Alice Springs
Pulse	560,000 electricity in Victoria 520,000 gas in Victoria
TXU	511,000 electricity in Victoria 410,000 gas in Victoria
Energex	1,000,000 electricity in Queensland 90,000 gas in Queensland
EnergyAustralia	1,300,000 electricity in NSW
Integral Energy	775,000 electricity in NSW
CitiPower	250,000 electricity in Victoria

As contestability progresses, any customer who wishes to cease acquiring natural gas or electricity from AGL will be able to switch to these or other new retailers. In order to protect AGL from unreasonable credit risk, these customers will have to repay any outstanding amounts.

(b) No Detriment in Selecting AGL Retail Partners

AGL does not consider that requiring customers who wish to take advantage of interest-free terms to purchase appliances from particular retailers provides a public detriment. AGL has a wide range of retail partners in many locations. All of these retailers are selected for their knowledge and expertise in supplying and installing gas and electricity appliances. All of these retailers compete with each other, ensuring that customers can take advantage of competitive prices and quality service. AGL does not select these retailers on the basis of territorial exclusivity and will accredit any qualifying retailer where it is commercially desirable to do so.

(c) No Detriment in Specified Payment Methods

The requirement that customers make all AGL payments using one payment method, being a direct payment method or particularly a direct debit method, does not constitute a significant public detriment. Bills are issued in the same manner and at the same time as traditional payment methods, and payments are processed on the due date as always. Customers have ample time to challenge any bill or request an extension in the case of financial hardship. Once made, payments can always be reversed or credited to the customer's account if necessary.

(d) AGL is Dedicated to Customer Protection

AGL is committed to ensuring that all customers and potential customers are provided with all information relevant to the decision to purchase natural gas, electricity and associated appliances. AGL ensures that its managers, representatives and retail partners are aware of their responsibilities under Part IV and Part V of the *Trade Practices Act 1974* and their obligations to protect both the competitive process and the interests of consumers.

AGL holds regular trade practices training sessions for its staff at which issues of consumer protection, particularly the prevention of misleading or deceptive conduct and the resolution of third-line forcing issues, are paramount. AGL also provides a trade practices compliance guide to employees emphasising these issues and is developing an electronic trade practices compliance program that conforms to *AS3806 – Compliance Programs (1998)*.