



Sustainable Payment Plans Framework

AER response to consultation issues

July 2016

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1 Overview

Payment plans are one of the main ways energy retailers can help customers who are experiencing financial difficulties to better manage their energy bills. Under the National Energy Retail Law (NERL) and National Energy Retail Rules (NERR), energy retailers must have regard to a customer's capacity to pay, any amount they owe, and how much energy they expect to use over the next year when establishing a payment plans.

The Australian Energy Regulator (AER) has worked collaboratively with a wide range of stakeholders, including retailers, financial counsellors and other consumer representatives, to develop this good practice Framework for assessing customers' capacity to pay.

The Sustainable Payment Plans Framework (Framework) is intended to improve the quality of capacity to pay conversations while still allowing flexibility of approach and encouraging retailers to offer extra assistance to customers. Its aim is to achieve better outcomes by helping customers and retailers agree to payment plans that are affordable and sustainable.

2 Background

2.1 AER hardship review

In January 2015, we published a review of energy retailers' customer hardship policies and practices.¹

The review made a number of findings and observations about energy retailers' approaches to dealing with customers experiencing payment difficulties, including how they approached establishing payment plans with customers.

These included numerous examples of good practice in regard to some retailers' approaches to negotiating affordable repayment amounts with customers, but also practices and attitudes that contributed to poor consumer outcomes.

The review identified a range of issues that had a negative impact on outcomes for consumers, including:

- customers feeling pressured to agree to retailers' proposed repayment amounts, even if they could not afford them
- retailers pushing customers to meet their current consumption costs even if the customer said they could not afford that amount, and
- retailer uncertainty about processes for dealing with payment plan customers, such as requiring customers to see a financial counsellor as a pre-condition of accessing a payment plan.

The report noted that we would work collaboratively with retailers and other stakeholders to develop and implement strategies to improve outcomes for customers experiencing financial difficulties.

2.2 Framework development

In October 2015, we commenced preliminary discussions with stakeholders about developing a practical Framework, based on identified and agreed good practice, which retailers could adopt to guide their engagement with customers when having conversations about a customer's capacity to pay in the context of setting up payment arrangements.

Over the past months, we have engaged with large, medium and small energy retailers, financial counsellors, consumer representatives, energy Ombudsman schemes and other interested stakeholders to develop the Framework. Many of these stakeholders provided feedback to inform specific aspects of the Framework.

The final Framework is included as **Attachment 1**.

Key milestones in our engagement process are detailed below.

¹ AER review of energy retailers' customer hardship policies and practices, January 2015—<http://www.aer.gov.au/retail-markets/compliance/aer-review-of-energy-retailers-customer-hardship-policies-and-practices-2015>

Initial discussions with stakeholders

In October 2015 we advised a number stakeholder groups, including energy retailers, financial counsellors and consumer representatives, of our intention to develop a good practice Framework for undertaking capacity to pay discussions when establishing payment plans.

We invited them to provide preliminary comments about the scope and approach before we started drafting the Framework. These discussions led to us developing a preliminary outline of the Framework for further discussion with stakeholders.

Discussion with the AER's Customer Consultative Group

We sought feedback from our Customer Consultative Group (CCG) members on an early draft Framework at the group's meeting on 10 November 2015.

CCG members were supportive of the project and approach and provided feedback and input to assist us to further develop the Framework.

National retailer workshop

On 17 November 2015 we hosted a national workshop with more than 30 retailer representatives to discuss the draft Framework.

Individual discussions with stakeholders

Between November 2015 and January 2016 we conducted discussions with individual retailers and other stakeholders to further explore issues raised in the earlier forums, concerns or questions about aspects of the Framework.

National stakeholder forum

On 28 January 2016 we held a national stakeholder forum that was attended by retailers, financial counsellors, government departments, energy ombudsmen schemes, consumer representatives and other interested stakeholders. This forum provided an opportunity to discuss an updated draft of the Framework that we circulated in January informed by the stakeholder feedback we had received to date.

Formal consultation

On 11 March 2016 we released the draft Framework for formal consultation. Twenty submissions were received from a wide range of stakeholders, and these have been published on our website.² We also released a consultation paper outlining the background to the project and the key issues at this time.

Targeted additional consultation

On 26 April 2016, we contacted stakeholders who had provided a written submission and offered the opportunity to provide additional comment on three issues: our proposal to publish a list of retailers that have adopted the Framework on our website; a transitional

² <https://www.aer.gov.au/retail-markets/retail-guidelines/aer-sustainable-payment-plans-Framework>

period before we publish a list of retailers; and commencing conversations with payment plan customers. Seven additional submissions were received.

2.3 Objectives of the Framework

The Framework comprises two elements:

- a set of principles to guide retailers' conversations with customers about their 'capacity to pay', and
- a flow chart that sets out good practice actions and considerations at different stages of a payment plan.

The Framework aims to improve outcomes for energy customers who are experiencing financial issues and/or have a debt with their energy retailer. Its key objectives are to:

- improve retailers' ability to negotiate sustainable and affordable payment plans that:
 - take account of a customer's capacity to pay
 - customers can successfully manage and ultimately complete, and
 - reduce the likelihood a customer's debt will grow more than necessary.
- highlight good practice alternatives to some of the concerns identified in our hardship report
- enhance the quality of retailers' engagement with customers by encouraging open, clear and ongoing engagement based on trust, respect and empathy.

Outcomes we would expect from retailers adopting the Framework are:

- an increase in customers successfully completing payment plans
- a reduction in customers failing payment plans
- an increase in customers who proactively take steps to contact and discuss problems or changed circumstances with their retailer.

We believe this approach will benefit customers, as it increases the likelihood a payment plan will achieve the important goal of preventing a customer's debt from growing more than necessary, without causing an unsustainable financial burden.

It also benefits retailers by increasing the likelihood a customer will successfully make their agreed repayments, and take steps to proactively engage with their retailer in the event their circumstances change.

3 Issues raised during consultation

3.1 Issue one: Framework principles

3.1.1 General approach

Our preliminary position

We consider that retailers should have the flexibility to develop and implement their own approaches to customers experiencing financial issues informed by the good practices identified in the Framework.

To achieve this, we have adopted a principles-based, rather than a prescriptive approach.

The principles we consider should guide all retailers' engagement with customers when discussing payment plans and a customer's capacity to pay are:

- **Empathy and respect** – including that retailers should avoid blame and judgement, and act in good faith towards customers
- **Flexibility** – including accepting that customers' circumstances vary, and that financial issues may be short or long-term
- **Consistency** – including that retailers consistently apply the Framework's principles to their engagement with payment plan customers, so that those with the same circumstances will receive the same standard of assistance.

Over the course of the project we made a number of refinements and additions to this section to clarify the intent and to address specific issues raised by stakeholders.

Stakeholder feedback

During the consultation, we sought feedback on the broad principles as well as the illustrative examples included under each.

Retailer, consumer and ombudsman stakeholders were all supportive of the Framework's principles-based approach, and of the principles themselves. One consumer submission considered the principles "comprise good practice for retailers dealing with customers experiencing financial difficulty, and customers in general".³

Similarly, retailer representatives supported the principles as "as a strong basis on which to develop a payment plan Framework".⁴

EnergyAustralia additionally stated that energy retailers were "acutely aware of a level of mistrust" of the energy industry that saw many consumers avoid engaging with their retailers when experiencing payment difficulties. EnergyAustralia considered the application of the

³ Consumer Action Law Centre (CALC) submission, p1

⁴ Australian Energy Council (AEC) submission, p1

principles would "assist in providing consumers with confidence that they will be treated fairly by their retailer."⁵

Specific issues raised by stakeholders during the consultation relating to the principles, and our response to these, are discussed below.

3.1.2 Flexibility

Trial and error

Throughout the development of the Framework, consumer representatives highlighted it could take time for a customer to adjust their budget and behaviours to meet the ongoing commitment of a new payment plan, and that amounts and timeframes agreed in the initial conversation will often need to be adjusted to become sustainable and realistically affordable.

Some submissions noted that the Framework's flexibility principle should more explicitly recognise this reality.

For example, Energy and Water Ombudsman Victoria (EWOV) noted that in its experience, revisiting payment plans for hardship assistance customers after three months provided an opportunity for customers to adjust behaviours, after which opportunities to increase payments could be explored.⁶

Similarly, Financial Rights Legal Centre (FRLC) said the Framework's flexibility principle should be expanded to highlight that once a payment plan is agreed, a customer should have a reasonable opportunity to make it work, including amending the payment plan if required.⁷

While the Framework acknowledges that a missed payment does not necessarily mean a customer is not engaging or is not trying to honour their commitments, we agree that it is good practice for retailers to recognise there may be a period of adjustment to a new plan and work with customers to make adjustments before concluding a plan has failed.

We have updated the flexibility principle to include that retailers should: "Work with the customer to find a solution acceptable to both parties, and recognise that despite the best efforts of both parties, some trial and error may occur before that solution is found."

We also acknowledge, however, that customers have the obligation to engage with their retailer and that continuing non-engagement puts a customer at risk of disconnection, and this is reflected in the Framework's principles and good practice chart.

Flexible payment arrangements

We received feedback that the Framework's flexibility principle include that retailers be flexible about payment methods and frequency.

⁵ EnergyAustralia submission, p2

⁶ EWOV submission, p3

⁷ FRLC submission, p4

We agree that it is good practice for retailers to be flexible about these things and have added the statement under flexibility: "Offer customers a choice of payment method and payment frequency whenever possible."

'Small payments'

Some retailers had concerns about the statement under the flexibility principle: "in most cases, small payments are better than no payments". In their view, this statement suggested retailers would be obliged to carry customers on 'below-consumption' payment plans in the long-term.

For instance, Red/Lumo Energy's submission stated: "The suggestion that retailers should carry these customer debts in the long term, or offer incentive payments to bridge the gap between payment and usage, is not within the remit of the AER and should not be included in a best practice Framework going forward."⁸

This statement that 'small payments are better than no payments', does not oblige retailers to accept 'small payments', but simply reflects the reality that some energy customers will not be able to cover their usage and pay off debt quickly, either in the short-term or for a longer period. The Framework encourages retailers to work with customers in these situations to 'close the gap', but is not prescriptive about what steps retailers take to do so.

We are aware that some customers are likely to struggle to afford their usage indefinitely despite their best efforts. We consider this a broader affordability issue and that it is not appropriate for the Framework to mandate how the retailer should handle these situations. Rather, the Framework's principles simply require an acknowledgement and understanding that these situations do occur.

3.1.3 Rural and regional customers

In its submission, Energy and Water Ombudsman New South Wales (EWON) considered that the particular needs and vulnerabilities of customers living in rural and remote areas should be recognised – for example, that customers living in rural and remote areas will have more limited access to services, such as financial counsellors, compared to those customers in metropolitan areas.⁹

Our intention is that the Framework be a principles-based document that can be applied to customers in a range of circumstances, and so in our view it is not necessary to specifically address all customer types. We consider that under the existing principles, retailers should take reasonable steps to accommodate customers with particular needs or limitations, including culturally and linguistically diverse and regional customers.

In regard to the availability of financial counsellors, we note that the Framework recommends retailers agree to a temporary payment arrangement while a customer seeks advice from a financial counsellor.

⁸ Red/Lumo Energy submission, p2

⁹ EWON submission, p2

3.1.4 Accountability

Powershop suggested including an accountability principle would ensure retailers honoured their commitment to help customers in difficulty and also drive customers to adhere to their payment plan.¹⁰

We consider the Framework already has adequate mechanisms achieve customer and retailer accountability. Making the public commitment to adopt the Framework creates accountability for retailers.

Additionally, the Framework specifically acknowledges customer accountability, stating: "The relationship between a customer and their retailer involves mutual rights and responsibilities, including a customer's responsibility to engage with their retailer throughout a payment plan."

3.2 Issue two: Framework flow chart

3.2.1 Opening conversation: 'What can you afford?'

Our preliminary position

The draft Framework recommended retailers start capacity to pay conversations by asking the customer the open question 'What can you afford to pay?'

The intention of this starting question was to prompt a customer to consider their circumstances, household budget and expenses when nominating an amount.

Our rationale for starting the conversation in this way was to highlight that retailers commencing a capacity to pay conversation with a closed statement such as 'Can you afford \$x per fortnight?' increases the risk a payment plan will be not be realistically affordable for a customer.

This was because customers often feel pressured to agree to a retailer-nominated amount, for example because they fear disagreement, disconnection or are uncomfortable discussing their situation further.

Where a customer does this, it can increase the risk of them falling behind in payments, being excluded from hardship programs and being more vulnerable to disconnection.

Throughout the development of the Framework, we received feedback from a number of stakeholders, including financial counsellors and retailers, that while the question was a good starting point, it was not sufficient on its own as many customers would not immediately understand what they could afford.

In response to this, the draft Framework emphasised that in addition to the starting question of 'what can you afford?', retailers take additional steps to clarify and check what is affordable for a customer. Such conversations would include providing a customer with context about their usage, likely timeframes to repay a debt, and prompting them to think about their other financial commitments.

¹⁰ Powershop submission, p1

Stakeholder feedback

A number of submissions raised concerns about the prescriptiveness of 'What can you afford?' as the starting point for all payment plan conversations.

Some consumer submissions considered that requiring this as a starting point closed down the possibility of retailers building rapport with a customer by asking questions about their particular circumstances before asking what they could afford.

For example, South Australian Financial Counsellors Association (SAFCA) said it would prefer to see retailers initially establish a level of rapport with the customer, for example by inquiring about customer's circumstances including whether or not they are receiving any concessions to which they might be entitled.¹¹

Some retailers considered that it was important to frame payment plan conversations by explaining a customer's usage and debt status, before asking them what they could afford.

For instance, Momentum Energy suggested the Framework's approach would lead to customers paying less than they can truly afford, either intentionally or inadvertently, stating: "While this is often the appropriate way to start such a conversation, this is not always the case. For example, there will be instances where the customer's response to that question will be a larger amount if the question is asked after some discussion of the customer's circumstances, and where that larger amount is more appropriate because it is closer to, while still being within, the customer's actual capacity to pay".¹²

However other submissions still highlighted that the opening conversation must give customers an opportunity to consider what they can afford. For example, EWON's supplementary submissions noted: "The good practice guide chart must still prompt retailers to ask the customer 'What can you afford?', and allow the customer an appropriate amount of time to consider their response, before a particular level of assistance is discussed."

Having considered the feedback on this issue, our view is that it is reasonable for the Framework to provide more flexibility in how the initial conversation can take place, and specifically not require that conversations start with 'what can you afford?' This is consistent with our overall objective of creating a Framework that provides retailers with flexibility to adopt their own approaches.

However, we consider the Framework must still emphasise the key good practice principles that should apply to this conversation, specifically that:

- customers have an opportunity to consider what they can realistically afford without feeling pressured to accept an amount suggested by a retailer
- it is good practice to clarify and check what is affordable for a customer.

While the Framework recommends that 'what can you afford to pay?' is the ideal starting point for a conversation between the customer and retailer (for reasons that are explained in

¹¹ SAFCA submission, p1

¹² Momentum Energy submission, p2

the Framework), it also encourages retailers to ask further questions to prompt the customer to think further about their circumstances.

The revised text in the good practice chart reflects our position that prompting the customer by asking whether they can pay the retailer's preferred amount puts undue pressure on a customer to accept the amount regardless of whether it is affordable.

While we continue to consider that "what can you afford to pay?" is a key question that should be asked, we have removed the requirement that the conversation begins with this question.

Accepting customer-nominated amounts

We received retailer feedback that the Framework should be clearer about situations when a retailer considers an amount nominated by a customer is not realistic or appropriate, as the Framework could be interpreted as requiring retailers to accept any amount nominated by a customer, even when it was not appropriate.¹³

It was suggested merging 'opening conversation' box with the 'If it's not clear what a customer can afford?' as a way to clarify that both elements may form part of the single conversation aimed at building a holistic picture of the customer's circumstances.

The Framework does not require retailers to accept any customer-nominated amount. Where a retailer considers a customer-nominated amount is not realistic, they may choose to follow the 'If it's not clear' path.

3.2.2 Clarifying questions

An early draft of the Framework included a list of questions that retailers could ask to gain more information about a customer's circumstances, and whether they may benefit from hardship assistance, including 'do you rent?' and 'do you live in public housing?'

We removed these as we considered these questions risked creating a stigma of being considered disadvantaged or vulnerable, that may discourage customers from engage with their retailer.

Some submissions considered we should again include these questions. Consumer Action Law Centre (CALC), for instance, stated: "We consider that these questions are less intrusive and should be reinstated and prescribed as a requirement before asking a customer what they can afford, this will prevent customers from over committing to payment plans, and will prevent retailers from failing to understand the customer's circumstances (and subsequently promoting an unaffordable payment plan)."¹⁴

We are aware that there are a range of risk factors that may indicate a customer is more likely to require higher levels of support, such as unemployment, illness, history of payment problems and family circumstances.

¹³ Red/Lumo Energy submission to further targeted consultation on draft framework, p1

¹⁴ CALC submission, p3

We consider it is good practice for retailers to be attuned to these risk factors, some of which may be evident from a customer's account history. We also consider that retailers should seek more information from a customer about these if desired, provided this is done in sensitive and respectful way.

However, we do not consider these need to be specified in the Framework. Each situation is unique, and retailers should retain some flexibility in relation to how and when they ask these additional questions.

3.2.3 Early intervention and types of hardship assistance

Some submissions commented on the importance of early intervention, and suggested that the Framework should require retailers to more proactively identify customers at risk of payment difficulties.

The focus the Framework is to provide good practice guidance to retailers when establishing customers' capacity to pay when negotiating payment plans. Retailers are already obliged, under their hardship policies, to have processes in place to identify customers with payment difficulties. We also note that the Framework encourages retailers to be aware of the factors that can increase the risk of a customer requiring more intensive support.

We agree that early intervention is vital to ensuring that debts do not become unmanageable. However, we do not consider it is appropriate for the Framework to provide more prescriptive guidance about how retailers should seek to proactively identify customers with payment difficulties, particularly given existing obligations under hardship policies.

We also received feedback that particular types of assistance should be required by the Framework, including home energy audits and debt waivers.

We also agree that hardship assistance, such as home energy audits and debt waivers, can be very helpful. The Framework encourages retailers to offer assistance like this wherever possible, particularly for Option C customers and other customers who appear to be at high risk for further payment difficulties. The Framework also states that retailers should offer Centrepay and conduct concession checks to every customer who receives income from Centrelink, as this is a very easy way to assist this particular group of vulnerable customers. However, beyond this, we consider that each retailer should retain some flexibility to decide what assistance is most appropriate in each individual situation.

3.2.4 Levels of assistance – options A, B and C

Some submissions noted the change in timeframes for Option A and Option B, and argued that longer timeframes make payment plans more affordable.

One retailer suggested that the "commercial reality of Option A does not lend itself to a period of 12 months, but that a period of between 6 and 12 months would be viable".¹⁵

To clarify our position, the timeframes under Options A, B and C are intended to indicate the *level of assistance* a customer is likely to require, rather than a fixed repayment period.

In summary, the Framework highlights that:

¹⁵ Ergon Energy Queensland submission, p3

- a customer who can pay of their debt in less than 12 months (Option A) is unlikely to require a high level of additional support
- a customer who will need 12-18 months to repay their debt (Option B) is likely to require assistance and retailers should consider what would help in the circumstance
- a customer who requires more than 18 months to repay their debt or who can't pay their ongoing consumption (Option C) will require more intensive retailer assistance.

3.2.5 Financial counsellors

Financial counsellors and their representatives emphasised that a retailer referring a customer to their services should be seen as a step to be taken only after a retailer has made a genuine attempt to reach an acceptable outcome with a customer. They also stated that customers should not be compelled to see financial counsellors.

In this context, Kildonan UnitingCare (Kildonan) recommended we amend the framework to state referral to a financial counsellor must not be a prerequisite to starting ‘*or continuing on*’ a payment plan, stating: “We believe this is a necessary and important distinction to recognise that financial counselling services (and other community supports) should be seen by energy retailers as supplementary options to assist customers in difficulty and not as mandatory obligations on them.”¹⁶

Our view is that this recommendation is a logical extension of our initial position, and represents a good practice approach. We have updated the Framework in line with Kildonan’s recommendation.

3.3 Issue three: Inactive account customers

Our preliminary position

During early discussions, consumer stakeholders commented that the Framework should apply to retailers’ engagement customers who no longer had an energy supply with a retailer (e.g. had moved to another retailer), but still had a debt with them that had not yet been referred to a debt collection agency.

Overall, retailers saw no issues applying the Framework’s broader principles to their engagement with these customers. However some retailers noted that applying the Framework’s processes for this group of customers could increase administration costs as they would have to put additional resources into managing this group.

Our view is that it is good practice for retailers to give inactive account customers with a debt a reasonable opportunity to repay the amount owed, taking into account what a customer can reasonably afford, and apply the Framework’s principles of flexibility, consistency, empathy and respect when negotiating these repayment plans.

¹⁶ Kildonan UnitingCare submission, p2

We also note that existing guidelines for the debt collection industry¹⁷ highlight that it is good practice for debt agencies to adopt a 'flexible and realistic approach to repayment arrangements'.

While we recognise stakeholders' concerns about retailer's use of debt collection agencies, and the practices of some agencies in particular, our view is this Framework is not the appropriate means to address these issues.

Stakeholder feedback

The majority of submissions were supportive of applying the Framework's principles to inactive account customers. FRLC, for example, noted that there are many reasons why a customer may switch retailers and leave a debt behind, including family breakdown, homelessness or not being aware of the debt.¹⁸

FRLC argued that the entire Framework should apply to inactive account customers, and noted that the ASIC/ACCC Debt Collection Guidelines applies to both active and inactive customers.

One retailer submission suggested that applying the principles to inactive accounts would not be sustainable for longer term management.

Our response

We continue to believe that the Framework's principles should be applied to inactive account customers. While the good practice chart contains elements that may be helpful when dealing with inactive customers, it also contains numerous references to ongoing usage that make it inappropriate for the Framework to apply in full to these types of customers.

We recognise, however, that it is beneficial that the Framework include a statement to clarify this position.

We have updated the Framework's Introduction to clarify how the Framework should apply to this customer group.

3.4 Issue four: Small business customers

Our preliminary position

The sections of the NERL and NERR that deal with payment plans¹⁹ apply only to residential customers, including hardship customers and customers experiencing financial difficulties.

During our initial discussions, some stakeholders commented that small business customers (including farmers) commonly have incomes that vary by season, meaning it may be more difficult for them to meet payments at certain times of year. They commented that this

¹⁷ Debt collection guideline for collectors & creditors, Australian Competition and Consumer Commission and Australian Securities and Investments Commission, 2015—<https://www.accc.gov.au/publications/debt-collection-guideline-for-collectors-creditors>

¹⁸ FRLC submission, p7

¹⁹ National Energy Retail Rules, r 72; National Energy Retail Law, s 50.

customer group would benefit from having the Framework's principles and guidance apply to them.

However, retailers said their processes for dealing with payment plans for residential customers should continue to be dealt with separately from small business debt, and that it would be inappropriate for the Framework to be extended to small business customers. In particular, they noted legal risks to retailers related to assisting insolvent businesses

While there is no formal obligation under the NERL or NERR for retailers to offer payment plans to small business customers experiencing payment difficulties, we recognise that many retailers already have existing processes in place to allow small business customers a level of flexibility when negotiating the repayment of arrears.

Stakeholder feedback

In the consultation we sought feedback on our preliminary position that the Framework not cover small business customers, but that:

- the Framework's broader principles of fairness, empathy, respect and consistency, create a foundation for an effective standard of engagement that can be applied to any group of customers
- retailers should consider ways to reflect these principles in their engagement with small business customers experiencing payment difficulties.

There was wide support for our position that the principles in the Framework can be applied to any group of customers, including small business customers. However, one retailer did suggest that while the high level principles are appropriate for dealings with small business customers, some of the dot point examples were not.²⁰

A small number of submissions noted that the draft Framework has been written with residential customers in mind, and does not clearly state the different rights that apply to each type of customer. It was argued that this could lead to small business customers being misinformed of their rights, and that the Framework and associated documents should clearly state that it applies only to residential customers.

One stakeholder suggested that it would be unfair for a retailer with no residential customers to be perceived more negatively as a result of not being present of a published list of retailers who had adopted the Framework.²¹

Our response

We continue to believe that it is appropriate to encourage retailers to consider ways to reflect the Framework's principles in their engagement with small business customers experiencing payment difficulties.

²⁰ Momentum, p2

²¹ ERM, p2

We also agree with suggestions that the Framework document should include a statement clarifying that a retailer who adopts the Framework is committing to apply the principles and good practice actions to residential customers only.

We have updated the Framework's Introduction to clarify how the Framework should apply to small business customers.

3.5 Issue five: Published list of retailers

Our preliminary position

In our consultation document, we sought comments on our preliminary position that publishing a list of retailers who had adopted the Framework would:

- help customers and their representatives know what to expect when dealing with a retailer
- provide positive recognition for retailers who adopted the Framework
- promote transparency and accountability
- be more effective in improving standards across the sector than alternative approaches such as releasing the Framework as a general guideline.

Stakeholder feedback

Stakeholders had a range of views on this issue.

Consumer stakeholders overwhelmingly supported us publishing a list as an effective way to hold retailers to the standard in the Framework. In particular, a number of stakeholders commented that as the Framework is voluntary, a public list is necessary to provide accountability to retailers to genuinely adopt the Framework.

Some consumer stakeholders recommended that we should also publish a list of retailers who have not adopted the Framework or who we have removed from the list.²² We consider that a list of retailers who are not signed up, or a list of retailers who were removed from the list, would not be appropriate for a voluntary Framework. Our objective is to encourage good practice, rather than punishing non-participation.

Retailers expressed a range of views about the list. Some saw benefits for customers and their representatives in knowing what to expect from a retailer, and noted that they should be free to publish the Framework on their own websites²³.

Conversely, some retailers did not support the list approach or expressed reservations about it. The main retailer concerns and our response are discussed below.

- *They were not clear about the benefits of the published list.*²⁴

²² CALC, p2; FRLC, p8

²³ Origin Energy submission, p2

²⁴ AEC, p1

As noted at the start of this section, we consider there are clear benefits to customers and industry in a published list of retailers. Consumer stakeholders overwhelmingly agreed with this view, as did a number of retailers.

- *The published list would not achieve any additional changes in retailer behaviour above what would be achieved if the Framework was released as general guidance with no retailer commitment. They suggested we publish the Framework as a general guidance document.*²⁵

Our view is that for some retailers whose standards currently do not meet those in the Framework, the potential for positive recognition through being included on a list of retailers who are applying good practice principles, will provide an incentive to improve their processes.

Additionally, we consider a public commitment creates a strong incentive for retailers to maintain the standards in the Framework.

- *The list would create the impression that those not on the list offered a lower standard of service, when this may not be the case if they had other reasons for not adopting the Framework.*²⁶

The introduction to the Framework provides background and context about how the Framework was developed, its purpose and scope. Our intention is to include this information on the website where the list is published so that customers can understand what a retailer's presence on the list means. We will not make any further representations about retailers who are or are not present on the list.

- *We would be engaged in influencing consumer perceptions of retailers service standards, which was beyond our regulatory remit.*²⁷

Our role in the retail energy market is broad. While it includes traditional regulatory roles such as monitoring and reporting on retailers' performance and compliance with the law and rules, it also includes a range of activities aimed at meeting our strategic objective of increasing customers' confidence in the retail energy market. These include managing the Energy Made Easy price comparator website, which uses customer's usage data to rank energy offers according to the cheapest estimated bill and providing other information to energy customers on their rights and obligations and other energy market issues.

We consider that facilitating and publishing list of retailers who adopt a voluntary framework developed with extensive industry and consumer input is consistent with our objective of improving customer confidence.

- *Retailers who adopted the Framework would be subject to greater scrutiny from ombudsman schemes and consumer groups.*

While this issue was not specifically addressed in any submissions, it was raised during early discussions.

²⁵ Momentum, p3; AEC, p1

²⁶ ERM, p2

²⁷ Red/Lumo, p2; AEC, p1

We agree it is possible that retailers who adopt the Framework may be subject to more scrutiny than those who do not – for example if external parties such as customers, their representatives or ombudsman schemes want to understand how a retailer applying the Framework in practice.

We consider stakeholder interest in how a retailer is practically applying the Framework would be a reasonable outcome of publicly committing to meet the Framework's standard. Our view is that accepting accountability for meeting the standards forms part of that commitment.

Our response

These submissions did not raise any issues, or demonstrate any substantive costs or impacts, that would cause us to change our initial view about the benefits of a published list.

3.6 Issue six: Retailer implementation

Our preliminary position

As the Framework will be a voluntary one, it will be up to individual retailers to commit to adopt the Framework and implement it. This will include accepting responsibility for monitoring their own operational processes and procedures to ensure these meet the standards articulated in the Framework.

This would include, for instance, re-checking whether changes in any policies or procedures affected their ability to meet the Framework, and periodically self-assessing to ensure that the standards in the Framework were still being met.

Stakeholder feedback

While retailers were generally supportive of this position, several consumer submissions raised concerns about how seriously retailers would treat their commitment to meet and maintain the Framework standards without any external monitoring.

For example, one consumer stakeholder expressed the opinion that without monitoring, "it is likely that the Framework will fail to be taken up and will have minimal ongoing and effective impact".²⁸

Similarly, Kildonan said retailers may pay "lip service to the principles of the Framework if they are not consistently meeting or exceeding the standards expected." They also noted reputational risks for us relying on a self-monitoring approach, saying: "The lack of enforcement is an inherent weakness in the Framework."²⁹

EWON's submission commented that monitoring of retailer performance was necessary to ensure retailers were meeting the Framework's standards, and that without this monitoring would fall to consumer representatives and energy ombudsman schemes, which were not funded to undertake that work.³⁰

²⁸ FRLC, p8

²⁹ Kildonan, p3

³⁰ EWON, p4

Our response

We consider that the processes proposed for publishing and managing the list, and evaluating the Framework's impact, together with some of our existing mechanisms, will be effective in identifying retailers who have signed up to the Framework but are not meeting its standards.

We have a range of existing means through which we receive information and feedback about retail market issues that we expect will identify underlying issues with how retailers are meeting the Framework's standards, including:

- the Retail Law performance monitoring framework
- our Customer Consultative Group
- regular liaison with ombudsman schemes
- feedback from other retailers and industry participants.

3.7 Issue seven: Processes for retailers not meeting Framework standards

Our preliminary position

In the event that we receive feedback from stakeholders that a retailer who had adopted the Framework was systemically not meeting the standards of the Framework, our proposed approach would be to raise the issue with the retailer and seek confirmation that their processes and practices were consistent with the Framework and that any issues have been addressed.

If we were not satisfied with the response, we could remove that retailer from any published list.

We will not consider individual complaints about retailers not meeting the standards of the Framework and consider that customers should contact their retailer and follow usual dispute resolution processes if required.

Stakeholder feedback

While there was broad support for the proposed approach to maintaining the list of retailers, Kildonan noted the reputational risk to us if a retailer who is widely perceived as consistently not applying the Framework were to remain on the list. Their submission stated: "If the perception of advocates is that one retailer is consistently failing to adhere to the principles, but that retailer continues to remain on the published list of participating retailers, then the AER is risking its reputation and credibility in standing up for these guiding principles."³¹

One retailer highlighted that there was a difference between isolated cases and systemic issues, and argued that a retailer should be afforded the right to review procedures before a determination is made on whether an issue is systemic.

³¹ Kildonan, p3

Our response

We maintain the view that our proposed approach to managing the list is appropriate. We agree that an isolated case of behaviour not consistent with the Framework should not lead to the retailer being removed from the list and have not proposed such a response.

We will undertake discussions with the retailer and any other relevant stakeholders before making a determination on whether the conduct is systemic and warrants removal from the list.

As discussed in the consultation paper, individual complaints between a customer and retailer should be resolved by following the retailer's usual dispute resolution processes.

3.8 Issue eight: Measuring the impact

Our preliminary position

Data on a range of indicators around hardship programs and payment plans is already available through retailers' existing performance reports, and we will review these to see if the introduction of the Framework has any demonstrable impact on these measures over time.

We also raised the possibility that we would seek information from retailers and consumer representatives about the impact of the Framework, once it has been in effect for a period of time. We could conduct a survey around six months after the launch of the Framework, seeking views for example on perceptions of what has changed and in what way.

Stakeholder feedback

Submissions that discussed this issue were in favour of a survey approximately six months after the launch of the Framework. Some submissions discussed other methods we might adopt, for example:

- a review and report once or twice a year
- retailers voluntarily providing relevant in-house data
- a stakeholder forum at least one year after the Framework's launch

Our response

We are mindful of the need to ensure that we, retailers and other stakeholders are not unnecessarily burdened by our evaluation approach.

We consider that the performance data already collected by us will provide sufficient insight into the impact of the Framework.

We consider a stakeholder survey a suitable method for assessing stakeholder views on the operation of the Framework and remain open to considering other methods that may come to light following the launch of the Framework.

3.9 Issue nine: Public release and commencement date

We asked stakeholders' views on an appropriate commencement date for the Framework.

A number of consumer and retailer stakeholders suggested that there should be a delay between the finalisation of the Framework and its commencement, with periods ranging from three to 12 months.

In our additional consultation, we sought feedback on a proposed implementation timeline of publicly releasing the Framework in July then proceeding to publish the list of retailers around October.

Stakeholders who responded were supportive of this approach.

In order to offer retailers time to make their processes consistent with the Framework, we will:

- **Publicly release the Framework in July 2016**
- **Ask retailers to indicate whether they will adopt the Framework**
- **Publish a list of retailers who have adopted the Framework in November 2016.**