



**Submission by the
Financial Rights Legal Centre**

Australian Energy Regulator

DRAFT Sustainable Payment Plans Framework,
March 2016

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About the Financial Rights Legal Centre

The Financial Rights Legal Centre is a community legal centre that specialises in helping consumer's understand and enforce their financial rights, especially low income and otherwise marginalised or vulnerable consumers. We provide free and independent financial counselling, legal advice and representation to individuals about a broad range of financial issues. Financial Rights operates the Credit & Debt Hotline, which helps NSW consumers experiencing financial difficulties. We also operate the Insurance Law Service which provides advice nationally to consumers about insurance claims and debts to insurance companies. Financial Rights took over 25,000 calls for advice or assistance during the 2014/2015 financial year.

Financial Rights also conducts research and collects data from our extensive contact with consumers and the legal consumer protection framework to lobby for changes to law and industry practice for the benefit of consumers. We also provide extensive web-based resources, other education resources, workshops, presentations and media comment.

For Financial Rights Legal Centre submissions and publications go to www.financialrights.org.au/submission/ or www.financialrights.org.au/publication/

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Introduction

Thank you for the opportunity to comment on the draft Sustainable Payment Plans Framework. Financial Rights strongly supports the development of this draft Framework. It is important that retailers are guided to develop a practical model to analyse their customer's capacity to pay. Doing this well with suitably trained staff should avoid:

- Forcing clients into unaffordable payment plans;
- Risk of disconnection; and
- Premature reliance on scarce financial counselling resources.

In its current form the draft Framework does a good job regarding the following things:

- Giving the customer an opportunity to fully consider a proposed payment plan before agreeing to it;
- Mentioning that small payments are better than no payments;
- Understanding that a missed payment is not necessarily a sign of non-engagement or unwillingness to pay;
- Asking the customer what they can afford to pay – at beginning of the conversation;
- Explaining how the new payment arrangement compares to the customer's ongoing usage;
- Notes that a temporary payment plan should be established while the customer waits for a financial counsellor to become available;
- Instructs that payment plans that are less than ongoing usage should be reviewed at least once every 3 months; and
- Encourages the retailer to monitor the customer's payments and usage and contact the customer if their usage changes to the extent that the payment plan may no longer be appropriate.

The following feedback responds to the AER's specific questions about our views on the draft Good Practice Framework:

Issue 1 – We are interested in stakeholders' views on the proposed principles-based approach and the specific principle and accompanying examples.

Financial Rights supports the principle under "Flexibility" that "a missed payment is not necessarily a sign of non-engagement or unwillingness to pay." A further principle should be included that ensures once a repayment arrangement has been made that it be allowed to work. We note that 14(k) of ASIC & the ACCC's *Debt Collection Guideline for collectors and creditors* (Debt Collection Guideline) states that:

Once finalised, the debtor should be given a reasonable opportunity for the repayments to be made under the arrangements.

A similar principle that incorporates flexibility and allowing repayment arrangements to work should be embedded in the Capacity to pay good practice framework. This would mean:

- allowing the consumer to stick to the agreement without calls or harassment,
- not penalising or harassing consumers on a payment plan over minor defaults
- amending the payment plan if required; and
- not instituting inappropriate short term arrangements that give the consumer on a payment plan no chance to prove they can actually meet their obligations.

invite stakeholder feedback on the flow chart or any of the proposed good practice elements or actions discussed in the following sections.

3.3.2 When it is not clear what a customer can afford

Financial Rights notes that previous drafts of the Framework included example questions that may help clarify the customer's circumstances. These included:

- Do you receive Centrelink payments?
- Do you live in public housing?
- Do you rent?
- Do you have any pressing health or financial issues?
- Has your living situation changed?
- Is someone helping you?

Financial Rights believes including these example questions in the Framework would be a simple and helpful way to guide retailers through a complex process.

In addition to the questions above the assessment model could include the following additional questions:

- Have there been specific changes to your income or circumstances, for example separation, illness; temporary or permanent?
- Do you have other debt commitments?
- What are your basic living expenses?
- How/when/if do you think you can start paying more, or at least start affording your usage?

The overall goal for assessing a customer's capacity to pay is to discover how much money the client has left over each fortnight to pay towards their energy debt after taking account of living expenses and other debt obligations. These assessments should also aim to assess whether any financial hardship that the customer is experiencing is permanent or temporary.

Financial Rights understands that Sydney Water does ask these more targeted questions and has also employed a former Financial Counsellor to train staff in a suitable process. We note that having in house financial counsellors does not replace the need for independent external financial counsellors which are not conflicted, but having in house financial counselling expertise can help train other staff towards best practice in doing capacity to pay assessments.

As the consultation document notes customers may have had difficulty in determining what is affordable for them. It may be necessary to change the repayment arrangement until it is affordable. There needs to be a flexible approach and commitment to making a workable repayment arrangement. It is not useful to set time limits (such as 3 months) on this process.

When agreed payments are missed or paid late the retailer should try to get the customer back making a revised affordable repayment straight away (including through Centrepay). Retailers should initiate a discussion with their customer as soon as a repayment plan is broken regarding what happened; if the customer cannot afford the repayments then why; was it just a once off missed repayment but the customer can now afford to keep paying or is there now a new ongoing problem. In the case of the latter it may be appropriate for a new arrangement to be entered or for the customer pay a reduced amount on temporary basis and be referred to see a financial counsellor.

3.3.3 Referral to financial counsellors

Financial Rights notes that the customer is referred to a financial counsellor under the draft guide when it is determined that the customer isn't sure what they can afford, and under Option C. It is Financial Rights' view that a customer should only be referred to a financial counsellor:

- After the retailer makes an effort to assess capacity to pay;
- If the customer's financial hardship is severe (and they may need assistance with a range of financial issues apart from their energy bill); or
- The customer and the retailer can't agree on a repayment plan or the customer says they cannot afford even minimum repayments.
- There have been repeated broken arrangements.

If access to a financial counsellor is difficult for a customer (e.g. customer is in a remote area or disabled), the retailer's hardship department should have a qualified staff person available to do a financial assessment for the customer rather than insisting that they must see a financial counsellor before an arrangement can be reached.

3.3.4. Levels of Assistance

The timeframes detailed under each option have decreased from the last iteration seen by Financial Rights. Option A has decreased from 15 months to 12 months. Option B has decreased its period from 15-24 months to 12-18 months.

The AER state this was done because “a longer timeframe increased the risk a customer’s debt may increase before being identified as requiring assistance.”

Financial Rights believes that greater flexibility with respect to the timeframes listed under the Options A, B and C would assist consumers and retailers.

Additionally, there is almost no detail at all on how arrangements are confirmed. Getting the consumer to understand what has changed is critical. The consumer may misunderstand or just forget what was agreed. Confirmation in writing covering detail on how much and how long the payments go for would assist in ensuring that the consumer understands and remembers the agreed arrangement. As an equivalent example, Sections 14(i) and (j) of the Debt Collection Guideline state that:

“Any repayment arrangement reached with a debtor should be fully and accurately documented.”

“A written copy of the agreed repayment arrangement should be provided to the debtor on request. If the debtor does not agree with the way the repayment arrangement has been recorded, they have an opportunity to clarify the arrangement with the debt collector or creditor.”

Finally, if Centrelink recipients are not contributing enough via Centrepay there should be a process to have this reviewed periodically (every three months) to avoid the build up of large arrears.

3.3.5 Increasing payment plan amounts

Financial Rights notes that the good practice guide chart now includes the following statement:

“Ideally, payment plan amounts should not be unilaterally increased without discussing this with the customer first.” (our emphasis)

The introduction of the word “ideally” undermines the intent of the sentence and introduces an element of ambivalence to unilateral increases in payment plans. Such ambivalence is inappropriate for a Good Practice Framework and provides a get out of gaol free card for companies when they decide it is not cost-effective to speak to a customer first before increasing their payment plan. The consultation document states:

“Retailers, particularly larger retailers, noted that the large numbers of customer on payment plans outside hardship programs made it impractical to contact all these individuals by phone.”

Financial Rights does not accept this argument. Putting aside the fact that larger retailers should by rights have more resources to make these contacts, the Framework will embed procedural unfairness into the payment plan process simply because

retailers are unwilling to commit reasonable recourses to do their customers the courtesy of contacting them before changing their plan.

Financial Rights strongly submits that repayment arrangements should *never* be unilaterally increased by the retailer. This would be unfair to the consumer and lead to higher levels of default. There must be a new assessment before an increase is instituted in order to demonstrate the customer's increased capacity to pay.

Issue 3:

3.3.7 Inactive account customers

Financial Rights agrees with the AER that the Good Practice Framework should apply to inactive accounts in financial hardship.

There are a number of reasons why a consumer may switch retailers but have left a debt behind. Some common reasons are moving address, family breakdown (sometimes involving domestic violence), changing family relationships, homelessness or simply being unaware of the problem. Another significant reason is that consumers are subject to aggressive sales tactics of retailers, where door-to-door salespeople pressure consumers already in arrears to switch providers, where they should sensibly have stayed with their current provider.

Regardless of the reason for this situation, as a general principle there must be a policy to respond to ex-consumers in financial hardship who cannot afford to pay the debt in full or at all.

Inactive accounts with arrears should be treated the same as any other debt for current customers, including provision for hardship arrangements and debt waivers. We would argue that even if a customer has switched energy providers and still has a debt they are still a customer just not an active customer. We strongly believe that the hardship program should be accessible to people who are no longer connected, especially for clients that were in the hardship program before they switched retailers.

The Debt Collection Guideline specifically recognises and encourages creditors to have a flexible and realistic approach to repayment arrangements (See section 14). The section asks creditors specifically to consider:

- *Making reasonable allowances for a debtor's ongoing living expenses*
- *Recognise that debtors experiencing financial difficulties will often have a number of debts owing to different creditors*
- *Ensuring that payment arrangements are meaningful and sustainable*

It is noted that these requirements apply regardless of whether the consumer is a current customer or ex-customer.

We believe that if the capacity to pay assessments are not applied uniformly to customers both inactive and active then they represent poor practice that is inconsistent with the Debt Collection Guideline.

With respect to the exclusion of debt collection agencies, Financial Rights strongly disagrees with this approach. This Framework is the appropriate means to address this issue as it directly pertains to retailer's practices and behaviours with respect to hardship process and this includes engagement of debt collection agencies. This should not simply be left to the ACCC and ASIC Debt Collection Guidelines. Financial Rights believes that the guidelines should apply to both internal recoveries teams and external third party debt collectors engaged by the retailers. Additionally, energy debts should only be sold to companies that are a member of an Ombudsman scheme.

4.1.1. Published list of retailers

Issue 5 – Would consumers or their representatives benefit from knowing which retailers had adopted the Framework. For example, would it help customers or their representatives to know what to expect from their retailer when setting up payment plans?

If so, would a public list, for example, hosted on the AER's website or on an individual retailer's website, be an effective method of publishing and recognising retailers who have adopted and implemented the Framework?

Financial Rights strongly supports publishing the list of retailers who sign up to the Framework for the reasons detailed in the consultation document. This list should be published *both* on the AER website and on an individual retailer's website, not either/or. Retailers should recognise that signing up to the Framework is an important positive step in developing better customer relations and one that should be promoted far and wide.

As an additional suggestion Financial Rights believes that there would be value in publishing the names of retailers who have *not* signed up to the Framework. Consumers have a right to know which retailers have failed to agree to meet the minimum standards set by the Good Practice Framework and should not have to figure it out. This would be particularly the case if Framework adherents were only listed on individual retailer websites.

Issue 6 – We are interested in stakeholders' views on this approach and other options that could be explored to implement the Framework, including any key benefits or drawbacks.

Financial Rights notes that the AER will not take on a monitoring role. Financial Rights does not support this laissez-faire approach. Financial Rights believes that the AER must monitor the introduction and impact of the framework. Without any monitoring it is likely that the Framework will fail to be taken up and will have minimal ongoing and effective impact.

Without any monitoring, there is the potential for a retailer to introduce a policy that meets the Framework, subsequently change their policy to standards arguably below those set by the Framework and nobody will be the wiser. This could arise by the retailer either not self-assessing or not believing that the standard is below those set by the Framework. This has the

potential to lead to absurd outcomes and render the Framework ineffective. Without genuine monitoring how will industry and consumer stakeholders know other than through chance.

4.1.2 Processes for retailers not meeting Framework standards

The only consequence proposed by the AER for those retailers who have not met the standards of the Framework is to remove them from the published list. This is a minimal and relatively passive consequence. Financial Rights believes that as an alternative the retailer should be placed on the list of those retailers who have not implemented the Framework – with explicit reasons detailing why they have been placed on the list, placed beside the retailer’s name. This too is fairly minimal but at least provides substantially more information to consumers who would be left in the dark if the AER proposal were to be implemented.

While individual complaints may be better dealt with through Internal Dispute Resolution and External Dispute Resolution processes, Financial Rights believes that there is an important role to be played by AER in monitoring, collecting and acting on issues of systemic failure in practice.

4.1.3. Measuring the impact

Issue 8: We are interested in stakeholders' views about this approach, and whether it would provide useful information about the impact of the Framework.

What other information could retailers, consumer representatives or financial counsellors provide to help assess whether a retailer’s adoption of the Framework has improved outcomes for consumers?

Financial Rights again notes that the AER does not propose a formal monitoring role. Without formal monitoring the introduction of a sustainable payments plans framework will likely be ineffective. Ad hoc or informal checks are not enough to ensure that the framework will have the desired impact.

Financial Rights suggest three ways to measure the effectiveness of the framework:

- Whether the number of defaults decrease over time;
- The impact on the number of disconnections;
- Whether the number of complaints to the Energy Ombudsmen schemes in each state regarding financial hardship programs decreases over time; and
- Whether the rate of compliance with payment arrangements improves?

Financial Rights is strongly of the view that the AER should take a formal monitoring role. It should measure and report on the results every six months or at the very least in an Annual Review.

Other issues failed to be address in the consultation document and draft good practice framework

Financial Rights believes the following issues should be addressed in the framework:

Disconnection: There is no detail in the framework about hardship and disconnection. We submit there should be further guidance to retailers about reviewing repayment arrangements that aren't working or reassessing capacity to pay measurements before customers are disconnected.

Energy Audits: Retailers should offer an in-home energy audit if a customer struggling to pay their bills cannot explain high usage or if usage is well beyond average for similar households.

External Dispute Resolution: The guideline should oblige retailers to advise customers that they can raise a dispute with an energy ombudsman scheme for free, especially those consumers with a risk of disconnection.

Incentives: Hardship programs should include incentives which are transparently explained in their published policies (e.g. matched payments).

Vouchers: Retailers should be encouraged to remind consumers that vouchers may be available but they need to be realistic about the amount likely to be available to reduce the debt.

Waivers: Waivers should be considered if a debt is not recoverable or if the debt occurred as a result of domestic violence or similar situations.

Concluding Remarks

Thank you again for the opportunity to comment. If you have any questions or concerns regarding this submission please do not hesitate to contact the Financial Rights Legal Centre on (02) 9212 4216.

Kind Regards,



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