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Simon Kidd,
Assistant Director, Retail Markets Branch
Australian Energy Regulator
GPO Box 520
Melbourne VIC 3001

Re: AER Capacity to Pay Good Practice Framework

Dear Mr Kidd,

Thank you for the opportunity to comment on the draft Capacity to Pay Good Practice Framework.

Financial Rights strongly supports the development of this Good Practice 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 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:

The framework's processes and principles that provide guidance about establishing and testing whether an agreed repayment amount is affordable

Financial Rights notes that the framework includes questions that may help clarify the customer's circumstances. In addition to these the assessment model could include asking clients:

- 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.

When making a repayment plans it should be taken into account that the customer 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.

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.

The framework's processes and timelines relating to reviewing repayment amounts, particularly whether changes should be able to be made unilaterally by the retailer (and if so, under what circumstances)

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.

Financial Rights believes that greater flexibility with respect to the timeframes listed under the Options A, B and C would assist consumers and retailers. The timeframes as they stand seem a bit arbitrary.

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.

The framework's processes and guidance around referring customers 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.

Whether this framework should apply to inactive accounts. Why or why not?

Financial Rights strongly submits 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. 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.

How the effectiveness of the framework could be measured once retailers have implemented it?

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
- What is the compliance rate of payment arrangements?

Any concerns about the framework, or anything else you think should be included

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

Debt collectors: Financial Rights would like to ensure that the guidelines 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.

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 is as a result of domestic violence or similar situations.

Kind Regards,

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