

Electricity Authority
Via email
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4 December 2020

Consultation Paper – Consumer care guidelines

Thank you for the opportunity to provide feedback on the Authority's Consultation Paper "Consumer care guidelines" (Guidelines). Please find Mercury's submission attached at Appendix A. We have summarised the key points of our submission in our cover letter below.

1. Highly collaborative and constructive consultation process

Mercury would like to commend the Authority for its highly collaborative consultation process. We have been privileged to be part of this process and have seen how the involvement of representatives from such diverse sectors with different opinions to bring to the discussion has added enormous value to the product. Although as a retailer Mercury may disagree with the prescriptive nature of some of the new recommendations, we strongly support the purpose of the Guidelines and believe that as a result of its wide consultation the Authority has produced a genuinely consumer centric document. With some further tweaking as a result of this consultation we are confident that the Guidelines can retain their consumer centric focus whilst capturing the flexibility retailers require to supply electricity at the lowest possible cost to vulnerable consumers.

2. Prepay exclusion is an industry breakthrough

As the Authority knows, Mercury has spent some time advocating for the protection of the prepay product GLOBUG and the unique role it has played in providing customers with payment difficulties a viable way to maintain consistent electricity supply. The exclusion of prepay disconnections from the requirements that apply to post pay disconnections is an industry breakthrough and an acknowledgment that prepay has an important role in reducing electricity related credit issues for vulnerable consumers. The Guidelines now provide retailers with certainty that the prepay model will not be undermined by disconnection requirements that are impossible to comply with and as a result more retailers may consider adding a prepay product to their suite of residential offerings. This would bring greater competition to the sector and better outcomes for vulnerable consumers all over New Zealand.

3. To support innovation and competition the Guidelines should be less prescriptive

Core principle B states "competition and innovation are supported" under the Guidelines. In their current form however the overly prescriptive nature of some parts of the Guidelines risks stifling competition and innovation. Instead of focusing on outcomes, the Authority has adopted a step by step approach which forces retailers to change existing processes at great cost even if their own solutions or existing processes align with the desired outcomes. There is also a danger that due to their prescriptive nature the Guidelines will not be fit for purpose if future technological, political or other changes impact on the way we do business.



The Guidelines are described as being voluntary however the Authority expects complete alignment to be achieved. If monitoring shows widespread non-alignment the Authority will consider developing regulations. In practice therefore the Guidelines become pseudo mandatory. We strongly submit the Guidelines should focus on retailers achieving desired outcomes rather than prescribing how this should be done. In this way more retailers will align with the Guidelines whilst at the same time supporting innovation and competition and ensuring that they are future proof.

We set out below the priority sections that Mercury suggests should be more outcome focused:

> **Online declines**

Part 4 of the Guidelines provides that where a retailer declines to enter into a contract with a consumer the retailer must give information about alternative payment tools that might suit the consumer, pricing plan comparison websites and the reason the retailer has declined a contract. This recommendation is very specific in its requirements and whilst it may work for consumers who sign up through traditional channels it is completely unworkable for online offerings. A consumer chooses to sign up online because it gives them access to cheaper electricity plans and/or because they prefer a contactless product. Introducing requirements that necessitate an element of human intervention would inevitably result in an increase in electricity prices.

> **Timeframes for interventions**

Parts 6 and 7 contain very prescriptive timeframes within which notifications must be sent. Retailers will have existing processes that may already align with the desired outcomes of the Guidelines but do not match the timeframes recommended by the Authority.

> **Retailers must provide traceable contact for disconnection notifications**

The Authority has introduced a new concept of “traceable contact” into part 7 of the Guidelines. This is where retailers must be able to show that they have attempted to make physical contact with a customer prior to disconnection by a courier who requires a signature of receipt and if this fails by sending a representative to the premises. We have discussed this in greater depth in our submission document however the heart of the issue is that Mercury already has an effective process that we follow prior to disconnecting a post pay customer for arrears that aligns with the desired outcomes of the Guidelines. We engage with customers and treat them with respect. We send the requisite number of notices via numerous different methods of contact. As a last resort, when disconnection has become inevitable, we send a representative to the premises. We have trialled couriers and found it to be administratively burdensome and ineffective. It does not make sense to require retailers to add this additional step in the process.

The requirement for traceable contact also applies to disconnections of vacant premises. This to us is even more problematic as Mercury’s current processes only require a site visit where there is a health or safety concern. Otherwise disconnections for vacant premises are carried out remotely once the requisite notifications have been sent to an uncontracted occupier. This is a quick and seamless process that avoids prolonging the process and putting additional costs on retailers. Remote disconnection is also the most effective trigger for reminding a consumer who has moved into premises to open an account with a retailer. The traceable contact requirement for vacant premises would increase retailer costs, prolong the disconnection process and make smart meter technology pointless if a physical presence is required regardless of remote capabilities.

> **Timing of prepay disconnections**

At Part 7, the Guidelines recommend that prepay disconnections should not be carried out “after midday on the day before a weekend”. The Guidelines also provide customers should only be disconnected at a time that it would be reasonably easy to seek reconnection. Mercury’s GLOBUG disconnects customers at midday seven days a week however customers can also top up and be reconnected within minutes twenty-four hours a day seven days a week. Although the GLOBUG process is not strictly compliant, it does align with the desired outcome that customers can easily seek reconnection. In our view there is nothing to be gained from this extra level of prescription.

4. Find right balance between consumer welfare and retailers right to be paid



Core principle B of the Guidelines states that “retailers have a right to be paid”. The difficulty for the Authority is finding the right balance between respect and constructive engagement with the consumer (principle A) and the retailer’s right to be paid. Mercury is concerned that the Guidelines have tipped the scales too far in favour of consumer. We would like to highlight the following areas as examples of where this imbalance needs to be redressed:

> **No acknowledgement that consumers also have obligations**

The existing guidelines achieved a balance between retailer and customer obligations that seems to have been lost in the draft Guidelines. Under Part 1: Purpose, there is no acknowledgment that effective engagement requires two-way communications between retailers and their customers. Retailers would find it useful if the guidelines contained reference to the fact that customers also have an obligation to engage with retailers and respond to communications in order to avoid non-payment issues arising. This could then be incorporated into all retailers’ consumer care policies and could be referred to where a customer refuses to engage.

> **Requirement for customers to understand**

At various parts of the Guidelines retailers have a responsibility to ensure the customer “understands” information they are provided such as a retailer’s terms and conditions and notifications of disconnections. There is no commercial organisation we are aware of that is required to go to these lengths. This would in effect be asking retailers to explain to every consumer prior to signing up the potential impact of a lengthy legal document. Our customer representatives are not trained as legal advisors and retailers cannot be expected to meet the costs of resourcing this recommendation for little or no commercial benefit. The obligation should extend to retailers providing all information in plain English and staff in customer facing roles knowing where to refer a consumer who may have difficulties understanding but no further.

> **Monitoring low consumption**

The Guidelines at Part 5 imply that retailers should be able to detect early signs of financial difficulty by monitoring their customer base for any material reduction in a customer’s energy use. For a retailer such as Mercury with roughly 350,000 ICP’s this is an unrealistic expectation. Where a retailer notices material changes in the course of their usual business this suggestion has great merit however a retailer cannot have a duty to monitor the social well-being of each individual customer.

5. Wider social issues not resolved

The imbalance we have identified above highlights that in New Zealand we have a wider social issue that the Guidelines do not address. Retailers cannot be expected to act like social welfare agencies so how do we solve this problem? Mercury has long been an advocate for change in this area and although this is not an issue for the Authority alone to solve, it must be a fundamental consideration when we are considering how to bring about positive and transformational change for our vulnerable consumers.

> **Coordinated approach through formal arrangements between retailers and ministries**

A coordinated response to our societal issues of poverty and poor housing quality is not the responsibility of the Authority and electricity retailers to resolve alone. The Government has campaigned on reducing child poverty. Creating partnerships across ministries i.e. Social Development, Housing, Children and Energy is fundamental to seeing real change. A formal agreement between retailers and the relevant ministries would ensure that resources are targeted to our most vulnerable families. Retailers would be encouraged to engage with social services or non-governmental organisations such as Kainga Ora and Work and Income who share similar objectives to keep their clients’ power connected, their homes warm dry home and to reduce their debt hardship. These organisations would step into the processes within the Guidelines where the issue requires assistance that the retailer is not set up to provide. Retailers cannot achieve the purpose of the Guidelines in isolation, we need the support of key social services who also have an interest in the well-being of our customers.

> **Government should underwrite vulnerable consumer debt**

Further assistance should be available for retailers who decline to supply a consumer. Retailers decline a post pay account to protect the commercial risk to the business. If a retailer is unable to offer prepay, an alternative



would be to provide the consumer with a financial underwriter such as Work and Income. This would ensure both the uninterrupted payment by a customer to the retailer and the continuous power supply for the customer. If appropriate arrangements were made with a social agency the Guidelines could provide a process for retailers to follow in order to apply for this assistance.

> **Redirect winter energy payment to electricity accounts**

Mercury has submitted on various occasions to MBIE as part of the Electricity Price Review (EPR) and has written to the Minister of Social Development (MSD) to suggest that the Winter Energy Payment (WEP) could be targeted to New Zealand's most vulnerable households rather than to many pensioners who do not have the same need for financial assistance. The current government funding for the WEP in 2020 was \$480 million. If this were targeted to the 100,000 households identified by the EPR First Report as vulnerable, this would completely fund the annual electricity bills for those consumers. A redirected WEP would enable MSD to underwrite electricity accounts and thereby ensure that our most vulnerable consumers have a continuous supply of electricity.

In conclusion, we reiterate our praise for the Authority's benchmark consultation process in relation to these Guidelines. We would welcome the opportunity to continue working with the Authority to produce a final product that is consumer centric and gives retailers flexibility within the framework of the purpose and principles to achieve the desired outcomes. If you have any queries regarding our submission, please contact Jo Christie on 0212882276 or at jo.christie@mercury.co.nz.

Yours sincerely



Jo Christie
Regulatory Strategist



Appendix A: Mercury Submission

Overarching questions

1. Do you agree with the structure of the Guidelines?

Part	Clause	Feedback
Overarching	n/a	Mercury agrees with the structure of the Guidelines. We strongly support the division of the Guidelines into parts that correspond with the customer's journey. It provides a logical system for quick reference and means the Guidelines are more likely to become a living document.

2. Do you agree with the change in focus from 'vulnerability' to 'consumer care' applying to all domestic customers, and the reasoning behind this change?

Part	Clause	Feedback
Overarching	n/a	Mercury supports the Guidelines applying to all consumers rather than focusing on those who are "vulnerable". Obviating the need to define what "vulnerable" means will encourage retailers to focus on the ongoing wellbeing of all customers and become adept at identifying early signs that any customer may be falling into vulnerability. Ultimately, intervention in the early stages should prevent the accumulation of unsustainable debt and a reduction in disconnection rates for non-payment.

3. Do you have thoughts on the concept of these Guidelines sitting within a wider consumer care guidance package?

Part	Clause	Feedback
Overarching	n/a	<p>Mercury supports the idea of the Guidelines sitting within a wider consumer care guidance package. This holistic approach makes it easy to find all related documentation in one place and will give participants a clear picture of all requirements. We look forward to this package including the updated protocol between retailers and social agencies and providing retailers with access to a Ministry of Health database of certified medically dependent consumers.</p> <p>We refer the Authority to our comments below at question 4 and submit that the consumer care guidance package should not be limited to the documents currently listed at Appendix A but should be capable of expanding and changing over time to meet future needs.</p>

Questions on the Explanatory Note

4. Do you agree with the inclusion of an Explanatory Note? If yes, please tell us if the meaning is clear?

Part	Clause	Feedback
Explanatory Note	n/a	<p>Mercury agrees with the inclusion of an Explanatory Note, subject to the following suggestions:</p> <ol style="list-style-type: none">Paragraph iv should not be limited to what the consumer care guidance package currently includes. It may be that in the future there are additional documents that need to be incorporated in the package, such as an application form for retailers to apply to access a Ministry of Health database of certified medically dependent consumers or similar. This paragraph should therefore provide for the consumer care package to be updated from time to time.



		<p>2. Paragraph iv should not prescribe the format of the HP Notice. Individual retailers each currently use their own version of an HP Notice, and these are working well. Provided that an HP Notice contains the minimum required information, it should be deemed to align with the Guidelines.</p>
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5. Do you have feedback on the drafting of specific clauses in this Part? Do you suggest alternative wording? Or is there any superfluous or missing text?

Part	Clause	Feedback
n/a	n/a	When referring to sub-clauses, it is not clear in some clauses whether the sub-clauses are intended to be options or whether all sub-clauses are intended to apply. For example, at clause 40, it is not clear if sub-clauses (a) to (j) are intended to be options or whether all are mandatory. This can be addressed with appropriate insertions of "and" or "or" at the end of each sub-clause. An example of where this has been done is at clause 37.

Questions on Part 1: Purpose

6. We have not included a (sub) purpose statement specific to each Part, at the start of every Part. It could be possible to group parts and provide a purpose statement for each (e.g. Parts 2&3, Parts 4-7, then separately for each of Parts 8, 9 and 10). Do you think we should, and if so, why?

Part	Clause	Feedback
1	n/a	We do not think it is necessary to include purpose statements specific to each part. As currently drafted the purpose statement at part 1 is succinct and clear. And "sub" purpose statements will risk diluting the message and adding superfluous text to the Guidelines.

7. Do you agree with the purpose statement, the overarching principles or the intended outcomes?

Part		Feedback
1	Purpose	Mercury agrees with the purpose.
1	Principles	Mercury agrees with the principles.
1	Outcomes	<p>Overall, Mercury agrees with the outcomes and contributing actions.</p> <p>Under principle B however we would like to see an additional contributing action acknowledging that effective engagement requires two-way communications between retailers and their customers. Retailers should be able to explain in their consumer care policies that customers also have an obligation to engage with retailers and respond to communications in order to avoid non-payment issues arising.</p> <p>We would also like the Authority to consider an additional paragraph acknowledging that the Guidelines are voluntary and as per the Explanatory Note "The purpose of these guidelines is to achieve the intended outcomes described in Part 1". Retailers should therefore have flexibility in the way that they implement the recommendations, provided that the purpose and intent of the Guidelines is met. We have been surprised at how prescriptive the Guidelines are particularly in Part 7 dealing with the progression to disconnection. We appreciate that prescription guarantees certain outcomes however this does not consider either the resources required by retailers to adhere to new processes or how inflexible prescriptive rules will be in the face of innovation. If the</p>

		outcomes are achieved, and these are measurable in accordance with the Part 10 reporting requirements, the “how” should not be so important.
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8. Do you have feedback on the drafting of specific clauses in this Part? Do you suggest alternative wording? Or is there any superfluous or missing text?

Part	Clause	Feedback
1		No comment

Questions on Part 2: Retailers to publish a consumer care policy

9. Do you agree in general with the recommendations in this Part? If yes, please tell us if the meaning is clear?

Part	Clause	Feedback
2	n/a	We agree with the recommendations in Part 2 however as mentioned above at question 7 we suggest the Authority introduces a paragraph that expressly give retailers the right to address customer obligations. In the existing guidelines there was a balance between retailer and customer obligations that seems to have been lost in the draft Guidelines. This would provide retailers with a simple way to remind a customer that they must respond to communications and engage with retailers to receive the benefits of the consumer care Guidelines.

10. Do you have feedback on the drafting of specific clauses in this Part? Do you suggest alternative wording? Or is there any superfluous or missing text?

Part	Clause	Feedback
2		No comment

Questions on Part 3: Information and records relating to consumer care

11. Do you agree in general with the recommendations in this Part? If yes, please tell us if the meaning is clear?

Part	Clause	Feedback
3	13iv and v	Mercury agrees in general with the recommendations in Part 3. We would however suggest that some clarification is required around the difference between a customer’s support person and/or an alternate contact under sections 13 iv and v.

12. Do you have feedback on the drafting of specific clauses in this Part? Do you suggest alternative wording? Or is there any superfluous or missing text?

Part	Clause	Feedback
3		No comment

Questions on Part 4: When a customer signs up or is denied a contract

13. Do you agree in general with the recommendations in this Part? If yes, please tell us if the meaning is clear?

Part	Clause	Feedback
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4	n/a	Mercury appreciates the intent of Part 4 and agrees it is essential that more is done to guide consumers at sign up, however we are of the view that aspects of Part 4 require amendment.
	20a	Section 20 recommends that retailers ensure new customers “understand” and agree to the retailer’s terms and conditions. We submit that this is inappropriate in this context. Retailers cannot possibly guide each consumer through the terms and conditions to ensure that they are understood before they agree to sign up. We can make sure that our terms and conditions are written in plain English and that we are able to refer consumers to reading/language resources if they are struggling with comprehension. We also ensure that consumers are easily able to access the terms and conditions for their particular offer and require consumers to agree to the terms and conditions before they can proceed to join. However, the obligation should go no further than this.
	All clauses but specifically 22 and 23	<p>These sections have not considered how the many online-only offerings in the electricity retail sector will be able to achieve alignment with this proposed clause. Currently, Mercury customers who attempt to join online and do not meet a satisfactory credit check are declined online through an automatic process. In order to align, this automatic process would need to be disestablished or a declined online customer would have to be referred to the contact centre to discuss their situation and be provided with the recommended information and advice. Some retailers do not have contact centres which is the reason they are able to keep electricity prices so low. Further, a customer who chooses to use an online service is often doing this because it is fast and efficient and removes the need for human contact. The Authority should be mindful of the different way that retailers and customers interact with online products and should avoid placing undue restrictions on future innovation in this area.</p> <p>We understand the harm the Authority is trying to remedy, and we support the Authority's suggestion that retailers should take into account whether a prospective customer is in good faith liaising with and actioning the advice or assistance received from a support / social agency. However, we do not believe clause 22 as drafted remedies this. We therefore submit that Part 4 should be less prescriptive and encourage retailers to design solutions that align with the purpose and principles of the Guidelines.</p>
	24	The recommendation that retailers contact every support person or alternate contact to seek the person’s agreement to act in that capacity is an onerous one. It creates a huge administrative burden and does not address the situation if a nominated person does not wish to have this responsibility. We submit that logically and from a cost perspective it makes sense for this obligation to rest with the customer, as per the existing guidelines and as is the case for other industries, e.g. insurance and telco.
	25	We submit that it would be a negative customer experience to have to explain the process for non-payment of an invoice in our first interaction with a customer, when our data shows that close to 90% of all Mercury customers pay on time. This clause should be deleted. If we have done our job, customers in danger of non-payment will have been placed on a product that will avoid non-payment issues. We note that retailers are already required under clause 21 to advise new customers of the existence of the consumer care policy and under clause 20 have agreed to our terms and conditions.

14. Should further assistance be available (within these Guidelines) for retailers, for when they are engaging with a customer that they are declining supply? Should further matters for a retailer to consider be included?

Part	Clause	Feedback
4	n/a	<p>Further assistance should be available for retailers who decline to supply a consumer. Retailers decline a post pay account to protect the commercial risk to the business. If a retailer is unable to offer prepay, an alternative would be to provide the consumer with a financial underwriter such as Work and Income. This would ensure both the continuous power supply for the customer and the uninterrupted payment by a customer to the retailer. If appropriate arrangements were made with a social agency the Guidelines could provide a process for retailers to follow in order to apply for this assistance.</p> <p>Mercury has submitted on various occasions to MBIE as part of the Electricity Price Review (EPR) and has written to the Minister of Social Development (MSD) to suggest that the Winter Energy Payment (WEP) could be targeted to New Zealand's most vulnerable households rather than to many pensioners who do not have the same need for financial assistance. The current government funding for the WEP in 2020 was \$480 million. If this were targeted to the 100,000 households identified by the EPR First Report as vulnerable, this would completely fund the annual electricity bills for those consumers. A redirected WEP would enable MSD to underwrite electricity accounts and thereby ensure that our most vulnerable consumers have a continuous supply of electricity.</p>

15. Do you have feedback on the drafting of specific clauses in this Part? Do you suggest alternative wording? Or is there any superfluous or missing text?

Part	Clause	Feedback
4		No comment

Questions on Part 5: Business-as-usual account management

16. Do you agree in general with the recommendations in this Part? If yes, please tell us if the meaning is clear?

Part	Clause	Feedback
5	n/a	See our comments below.
	28b	<p>Mercury agrees that this recommendation will help retailers identify customers who may be experiencing payment difficulties. If, however 28b is suggesting retailers should be monitoring their entire customer base, this would require significant work and administration to identify and contact the right customers. We suggest that ad hoc checks on the consumption patterns of customers who are known to be struggling would be more appropriate.</p> <p>Further, clause 28b does not allow for drops in consumption due to seasonal changes, absences for holidays, children who have left home etc. This could be resolved by targeting uncharacteristic material changes in consumption based on all relevant factors available to the retailer.</p>
	29a	This recommendation is too prescriptive. Mercury suggests the requirement should simply be for retailers to ensure information about service and payment plans are easily accessible.
	29b	As observed at the Authority's Auckland workshop on 3 November the reference in the draft Guidelines at 29b to "payment plans" should read "payment tools". This is to clarify that retailers are not expected to make a customer aware of another retailer's cheaper price plans, rather it is an

		obligation to advise a customer that a prepay product such as GLOBUG, for example, might suit their circumstances better.
	30	Mercury will always use actual meter readings where these are available.

17. Do you have feedback on the drafting of specific clauses in this Part? Do you suggest alternative wording? Or is there any superfluous or missing text?

Part	Clause	Feedback
5		No comment

Questions on Part 6: When payment difficulties are anticipated or arise

18. Do you agree in general with the recommendations in this Part? If yes, please tell us if the meaning is clear?

Part	Clause	Feedback
6	n/a	Mercury agrees in general with the recommendations in Part 6, subject to our comments below. We support retailers making every possible attempt to assist customers who have fallen into arrears so that progressing to disconnection at Part 7 will be a last resort measure.
6	37	<p>Mercury considers that where a customer is materially breaching a retailer's terms and conditions in such a way that would warrant disconnection, retailers should be able to exercise their judgement to proceed directly to disconnection in accordance with its terms and conditions, even if a customer is also in arrears and would otherwise go through the process at Part 7.</p> <p>A retailer's terms and conditions are in place to protect a retailer's commercial interests but also to ensure the retailer is complying with relevant law and contractual arrangements. A customer failing to comply with the terms and conditions can put the retailer in breach of law and / or contract, and disconnection is often the only way a retailer can remedy the breach. There can also be health and safety implications if a customer breaches the terms and conditions, both for the customer and their household as well as the retailer and its personnel (including contractors). The rationale for these Guidelines is to help those who have genuine difficulty in paying their electricity bills while providing retailers with the means to address customers who are acting in bad faith in their relationship with retailers. There are circumstances where it will be appropriate for a retailer to use the Part 7 process even where a customer is breaching the retailer's terms and conditions, but it is too fact-specific to be able to be prescribed in the Guidelines. Therefore, Mercury believes retailers need to retain the discretion to disconnect in accordance with existing processes in their terms for material breach but are also best placed to understand if the specific breach of the terms can be dealt with under the Part 7 process.</p> <p>Mercury's suggested solution would be to include a line after paragraph 37 along the following lines to illustrate this discretion:</p> <p><i>Where a customer is in material breach of a retailer's terms and conditions for supply of electricity (other than breach for non-payment of an invoice), a retailer may proceed with disconnection in accordance with process set out in the retailer's terms, even if the customer is in arrears and would otherwise go through the process in "Part 7: Progressing to disconnection for non-payment of electricity invoices and reconnection".</i></p>

38	<p>The recommendations in clause 38 are very prescriptive and a retailer's existing processes when a customer has missed a payment may not align with the Authority's timeframes. At Mercury for example, we follow a very similar process in terms of how many times we communicate with a customer however our contact points are timed differently. For example, Mercury customers receive notifications:</p> <ol style="list-style-type: none"> 1. At 21 calendar days past invoice due date, a reminder text, email or letter; 2. At 28 calendar days, an automated call plus a text message; 3. At 35 days, a reminder letter or a disconnection warning and an outbound call; 4. At 42 days, a final disconnection warning and most customers will receive an outbound call; 5. At 49 days, disconnection attempt. Note that disconnection for post pay will never happen on a Friday or during a weekend. <p>We would like comfort from the Authority that where a retailer's processes meet the intent of the Guidelines, we will not be required to undergo costly changes purely to align with the Authority's suggested timetable.</p> <p>A less prescriptive approach would also future proof the Guidelines. If for example future innovations mean that there are better ways to help our customers that technically don't match the process described, the Guidelines will no longer be fit for purpose.</p>
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19. Do you have feedback on the drafting of specific clauses in this Part? Do you suggest alternative wording? Or is there any superfluous or missing text?

Part	Clause	Feedback
6	36	Please clarify what the Authority means by "learning loops".
6	37a	This clause should make it expressly clear that the retailer may advance straight to disconnection at Part 7 without having to comply with the recommendations at Part 6 if there is evidence the customer is fraudulently using electricity.
6	37b and clauses 40 and 42	Under this clause the retailer can progress to part 7 if the customer fails to respond to the retailers three attempts to make contact under clause 40 or 42. We have been unable however to find a reference to three attempts at making contact in either clause 40 or 42. Should this instead be a reference to clause 38?
6	42a	This should read "Retailers should not unilaterally change the customer's payment plan, <i>otherwise than in accordance with a retailer's terms and conditions</i> " (emphasis added). The Commerce Commission has recognised there are situations where a retailer may have a legitimate reason to need to unilaterally vary a contract and has given guidance to retailers on ensuring unilateral variations of price and terms of a contract are not unfair for the purposes of the Fair Trading Act. As such, retailers should be able to change a customer's payment plan in accordance with the retailer's terms and conditions with the expectation that these terms and conditions are compliant with the unfair contract provisions of the Fair Trading Act.

Questions on Part 7: Progressing to disconnection for non-payment of invoices and reconnection

20. Do you agree in general with the recommendations in this Part? If yes, please tell us if the meaning is clear?

Part	Clause	Feedback
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7	n/a	<p>Mercury does not agree with the prescriptive nature of the recommendations at Part 7 of the Guidelines. Once a retailer has decided to commence the disconnection process it is because all the relevant assistance set out in Part 6 has been offered to no avail. Particularly in relation to vacant premises, disconnection is often the only way to convince the occupier to engage with the retailer and/or seek help from a social agency or budget advisory.</p> <p>We are concerned that many of the new steps in the disconnection process recommended by the Authority at part 7 will delay disconnection. For example:</p> <ol style="list-style-type: none"> 1. having to send a courier is a very manual process that will take time; and 2. where a first attempt at a field disconnection fails (due to no contact, access or safety concerns), the disconnection process needs to start again in order to remotely disconnect as we are required to give notice again. <p>Ultimately these processes are a cost to the retailer and will result in the customer accruing debt that could have been avoided. This seems contrary to the purpose of the Guidelines.</p> <p>Further, the additional requirements recommended by the Authority at clauses 52 and 54 (addressed below) are operationally very difficult to achieve and will result in costs that are ultimately passed on to the consumer.</p> <p>The Guidelines should ensure that the customer is treated with respect and given every opportunity to engage with the retailer right up until the point of disconnection however the Guidelines should not introduce requirements that prolong the disconnection process and make it more costly for retailers to implement.</p>
	52 and 54 generally	<p>We refer the authority to our comments above at question 18 in relation to clause 38 of Part 6 and note that the same comments apply in relation to clauses 52 and 54 of Part 7. The requirements are too prescriptive and will impose huge costs on retailers who already have processes in place.</p>
	52b	<p>Clause 52b introduces a new requirement for the retailer to provide the post pay customer (and occupiers of vacant premises at 54e below) with a notice of disconnection in person. This can be done through a representative or a courier letter requiring a signature on receipt. The Authority refers to this as retailers being able to show that they have made “traceable contact” and thereby proving the customer has received notification. Our concerns with this requirement are as follows:</p> <ol style="list-style-type: none"> 1. Unfortunately, in our experience customers do not sign for couriers (see below under clause 54e). Even if they do, we question what difference it makes to their ability to clear a debt. This recommendation could be an expensive waste of resources and delay the disconnection process resulting in the customer accruing further debt, including the cost of a physical visit to a site (or multiple attempts to visit a site). In our view this requirement has no benefits. Mercury already has robust procedures in place and the concept of “traceable contact” creates an unjustifiable cost to retailers (and therefore consumers). As we have discussed in our cover letter, there are social welfare agencies who are better placed to play this role.

		<ol style="list-style-type: none"> 2. A blanket requirement to send a representative to a site places that person in a potentially confrontational or unsafe position that could have been avoided. 3. Smart meters have been designed to enable remote disconnection and reconnection. The requirement would effectively render all technological advancements useless if despite remote capabilities human intervention on site were still required. Whilst Mercury currently sends a representative to the site for the majority of residential disconnection for arrears, we submit that it is essential that retailers retain a discretion to undertake remote disconnection where that may be justified e.g. to avoid additional cost to the customer for cost or safety reasons. 4. At the Auckland workshop the Authority indicated that its expectation is that if a retailer sends a courier to obtain a signature of receipt, but the courier is unsuccessful, the retailer must also then send a representative to the site. According to the Authority, only then will a retailer be seen to have used its best endeavours to ensure disconnection is only used as a last resort. For the reasons already mentioned, it is costly and impractical to require one form of contact let alone two before disconnection can be carried out. <p>As an alternative, the Authority may like to consider how social agencies could assist retailers immediately prior to a disconnection. Often a customer will have an existing relationship with a Kainga Ora representative or another social agency who may be able visit the site in place of a retailer’s representative. This agent is more likely to make successful contact and is in a better position to encourage the customer to engage with their retailer in order to avoid disconnection. This would require coordination between retailers and agencies however it would save costs to retailers that would otherwise increase a customer’s debt. Importantly, this process would be an acknowledgment by the Government that this is a social issue and not one that can be solved by electricity retailers alone. This suggestion is covered in more detail in our comments on clause 54e below.</p>
	54e	<p>Clause 54e contains the same “traceable contact” requirement for vacant/uncontracted premises as clause 52b. For the reasons we have set out above in relation to clause 52b (cost, increasing debt burden and safety) and for the further reasons set out below, we submit that this requirement is unworkable for retailers.</p> <ol style="list-style-type: none"> 1. It is difficult to engage with an unwilling customer who we have a contract with but even more difficult to engage with an unwilling customer who we know nothing about. The issue of customer avoidance is often insurmountable and however many steps a retailer adds into the process to encourage engagement disconnection is the only way to resolve the issue. 2. In 2017 Mercury conducted a trial using couriers to deliver disconnection notices to 20-30 uncontracted households where there was obviously domestic consumption. As with all uncontracted premises, Mercury could not address the courier envelope to a specific person, so the envelope was addressed to the “occupier”. Success, (being a switch out, an account opening or a disconnection) was less than 20%. The admin was very time consuming and prolonged the process. Access was an issue and occupiers refused to sign for the courier as they were not named on the envelope.

		<p>Given this very low success rate Mercury concluded that there was no value in using couriers to deliver disconnection notices.</p> <ol style="list-style-type: none"> 3. Vacant disconnections should be a quick and seamless process. What the Guidelines are proposing will prolong the process and increase costs on retailers. 4. Remote disconnections work well for vacant premises allowing retailers to act quickly and: <ol style="list-style-type: none"> a. Resolve frequently encountered access issues; and b. Disconnect a previous customer at the premises on move out or soon after. When a consumer moves into a new home to find they have no power this is a trigger to remind them to open an account. <p>As we also mentioned above, intervention by a third-party agency representative may be a more successful alternative to encourage customer engagement with the retailer and avoid disconnection. We submit that this service should form part of a coordinated response to our societal issues of poverty and poor housing quality and should not be the responsibility of the Authority and electricity retailers to resolve alone.</p> <p>The Government is wanting to reduce child poverty. Creating partnerships across ministries i.e. Social Development, Housing, Children and Energy is fundamental to seeing real change. Energy Hardship Grants issued by Work and Income from June 19 - June 20 of this year totalled \$22 million for 60,000 clients. The Food hardship grant was \$173 million for 1.6 million clients. Energy hardship is just one part of the struggles for a family in genuine hardship. A formal agreement or memorandum of understanding between retailers and the relevant ministries would ensure that resources are targeted to our most vulnerable families. Retailers would be encouraged to engage with social services or non-governmental organisations such as Kainga Ora and Work and Income who share similar objectives to keep their clients' power connected, their homes warm dry home and to reduce their debt hardship.</p> <p>The Retailer cannot achieve the purpose of the Guidelines in isolation, we need the support of key social services who also have an interest in the well- being of our customer.</p>
	59d	<p>The Guidelines suggest a retailer is required to ensure that the customer or consumer has "received and understood" notifications of disconnection and the outcome of not responding to the retailer's contact attempts, with one way of doing this being by sending a representative to the premises when it is being disconnected. This is impractical:</p> <ol style="list-style-type: none"> 1. If a retailer is unable to get in contact with a consumer, a retailer will never be able to confirm that a consumer has received or understood the disconnection notifications or understands the outcomes and will effectively be deadlocked from disconnecting the premises. 2. The requirement for the retailer to confirm a consumer's "understanding" is inappropriate. A retailer should be required to ensure disconnection notices are in plain English, easy to understand and a retailer is able to refer

		<p>consumers to reading/language resources if they are struggling with comprehension. However, the obligation should go no further.</p> <p>3. Requiring a representative to be present is unduly burdensome, particularly where a disconnection occurs remotely.</p>
	62	<p>This recommendation means that retailers can only use remote disconnection for uncontracted premises where there is “no indication” of a domestic consumer being in residence. It is very difficult to quantify the level of consumption that would indicate that a person or persons were living on a property. Domestic consumption can vary dramatically from house to house. Retailers cannot be expected to determine usage based on house size, occupancy numbers or what appliances there might be at the property. In many instances domestic consumption may be indicated but householders have moved out and simply left hot water on.</p> <p>Even where retailers have determined that there is domestic consumption at uncontracted premises, sending notification of the disconnection should be enough to enable remote disconnection. The occupier has been given the opportunity to open an account and avoid disconnection.</p> <p>We therefore submit the Authority should be focusing on a retailer’s efforts to notify the property rather than the levels on consumption that are observed by a retailer. (See also our comments in relation to clause 54e above).</p>
	68	<p>Mercury commends the Authority for recognising that prepay disconnections are not the same as disconnections for post pay products. The Guidelines recognise that prepay allows customers to manage their own credit situation and thereby offers a valuable debt prevention tool for customers who might otherwise be unable to afford a consistent supply of electricity. We see this as a break-through for the industry that provides much needed regulatory certainty and may encourage more retailers to offer products like GLOBUG.</p>
	69ii	<p>This clause recommends that prepay customers should only be disconnected at a time that it would be reasonably easy to seek rapid reconnection. As an example, the Authority suggests that a customer should not be disconnected “after midday on the day before a weekend” (which presumably means Friday). We note that GLOBUG disconnections are made at midday 7 days per week (except Christmas Day) however customers can purchase credit any time online or from a local dairy and reconnection can also occur 24/7 once a customer has topped up their credit.</p> <p>This very prescriptive recommendation is not necessary for a prepay product such as GLOBUG where reconnection is possible within a short time period (normally between 3-10 minutes of top up).</p>

21. Do you suggest alternative wording? Or is there any superfluous or missing text?

Part	Clause	Feedback
7	52a	Please clarify whether these five attempts are inclusive of the three attempts required by part 6 clause 38.

54b and 54d	Clause 54b and 54d appear to be inconsistent with each other. Clause 54b requires retailers to make three attempts at contact within a 7-day period. Yet clauses 54c and 54d states that the retailer must issue additional notices after the retailer becomes aware of electricity consumption at the premises. All of clause 54 is predicated on the retailer believing a consumer is in residence because of electricity consumption patterns. Is the intention that the notices in clauses 54c and 54d are in addition the three attempts to contact under clause 54b? Or can a retailer issue a notice to the consumer informing the consumer they must contract with the retailer as one of those three contact attempts? Mercury also seeks clarification around the timeframes for giving these notices. What notices are supposed to be given within the seven-day period of the retailer becoming aware of consumption at the property? .
55	Can the Authority please clarify what is meant by the retailer making "all reasonable attempts" to determine that no MDC or potential MDC resides at a premise to be disconnected? Mercury would understand this to mean providing information on all customer comms leading to disconnection covering where a customer could obtain information on applying to have MDC status and a summary of what it means to be a MDC, and confirming there is no current or potential MDC status on the customer's account.
59e	It would be helpful to have a separate paragraph that makes it clear that remote disconnection and reconnection is allowed, if it is safe for the customer. We can glean this information from various other clauses in the Guidelines (e.g. clauses 62 and 66) however a positive recommendation around remote capabilities would avoid uncertainty in this regard. Any new paragraph should also consider our comments at 52b and 54e above at question 20.
65b	This obligation should only apply if the consumer has not switched to another retailer within that five-business day period.

Questions on Part 8: Additional recommendations for medically dependent consumers

22. Should we include a Part making additional recommendations specific to MDCs? Or, should we have recommendations relating to MDCs throughout Parts 4-7?

Part	Clause	Feedback
8	n/a	Mercury supports this separate Part 8 for medically dependent consumers (MDC's). It makes it clear that there are additional obligations for retailers and allows a complete recommended process to be set out.

23. Do you agree in general with the recommendations in this Part? If yes, please tell us if the meaning is clear?

Part	Clause	Feedback
8	n/a	In general, we agree with the recommendations in Part 8, subject to our comments below.
	75a ii	This clause introduces the HP Notice requirement. We strongly support the introduction of the HP Notice as a means of verifying a customer's medically dependent status. The HP Notice will help reduce false claims and allow us to focus our attention and resources on genuine cases. We simply require comfort that health practitioners have also agreed to this new requirement and wonder if the Authority has considered retailers' options if health practitioners fail to engage?

	78a	Retailers should seek to ensure customers understand and agree to the obligation to inform the retailer if someone at the premises is MDC. This recommendation is impractical as it is difficult to practically confirm whether a customer has understood this obligation.
	80	Mercury strongly supports the requirement that retailers should not proactively recommend a prepayment meter to a customer if the customer, or a consumer usually resident at the customer's premises, is an MDC. Mercury is actively encouraging new MDC's onto post pay products and where possible migrating MDC's currently with GLOBUG onto post pay products. Our preference would be to have no MDC's on pre-pay given the health and safety risks.
	83	<p>The guidelines require retailers to use reasonable endeavours to ensure their agreements with distributors require the distributor to:</p> <ol style="list-style-type: none"> 1. coordinate with retailers if MDCs are affected by a planned electricity outage or disconnection; 2. not vary the time or date of a planned electricity outage or disconnection without conferring with the retailers whose MDC are affected. <p>Agreements between retailers and distributors for distribution services have been prescribed by the Electricity Industry Participation Code via the "Default Distribution Agreement"(DDA). Planned electricity outages are covered in a category called "Recorded Terms" which can be prescribed by each distributor in its respective DDA. Any amendment to a distributors' Recorded Terms requires the agreement of the relevant Distributor that has drafted the terms. Therefore, following publication by distributors of their DDA, retailers have very little bargaining power to influence the terms relating to electricity outages. Mercury suggests this obligation sits better with distributors than with retailers.</p> <p>Mercury is broadly comfortable with the requirement that retailers should use reasonable endeavours to ensure their agreements with MEPs require the MEP to:</p> <ol style="list-style-type: none"> 1. not disconnect a retailer's customer without the express consent of the retailer; 2. not vary the time or date of a consented disconnection. <p>However, in Mercury's experience, MEPs may need the ability to disconnect without express consent of a retailer or vary the time or date due to health and safety reasons. Mercury suggests a change should be made here to recognise this, as otherwise this clause is prescriptive on what should be contained in its contracts with MEPs. Mercury also considers the obligation needs to be jointly put on the MEPs, as MEP agreements are heavily negotiated and, in some cases, retailers may not have the bargaining power to get these amendments made.</p>
	94	Mercury submits that the 40-business day timeframe provided at this clause for an MDC applicant to respond to any retailer queries is too long. If an applicant is not genuine 40 days would allow that person to fall behind payments for two billing cycles. Mercury's current terms give the potential MDC 21 days to respond and we would like to see this timeframe reflected in the Guidelines.

24. Do you have feedback on the drafting of specific clauses in this Part? Do you suggest alternative wording? Or is there any superfluous or missing text?

Part	Clause	Feedback
8	95c	Same comment as above - can the Authority please clarify what is meant by the retailer making "all reasonable attempts" to determine that no MDC or potential MDC resides at premises to be disconnected? Mercury would understand this to mean providing information on all customer comms leading to disconnection covering where a customer could obtain information on applying to

Part	Clause	Feedback
		have MDC status and a summary of what it means to be a MDC, and confirming there is no current or potential MDC status on the customer's account.

Questions on Part 9: Bonds and Fees

25. Do you agree with the explanation of what a fee is?

Part	Clause	Feedback
9	n/a	Mercury does not agree with the inclusion of conditional discounts under the description of fee. The requirements in clauses 102 and 103 do not cleanly apply to conditional discounts and in Mercury's view, any requirements for conditional discounts should be set out separately – see proposed drafting below.

26. Do you agree in general with the recommendations in this Part? If yes, please tell us if the meaning is clear?

Part	Clause	Feedback
9	n/a	

27. Do you have feedback on the drafting of specific clauses in this Part? Do you suggest alternative wording? Or is there any superfluous or missing text?

Part	Clause	Feedback
9	98, 101, 102 and 103	<p><i>Mercury proposes amending the wording in clauses 98, 101, 102 and 103 as follows to separate obligations relating to fees and conditional discounts:</i></p> <p><i>98. In the context of these Guidelines, a fee is a charge that a retailer places on a customer for a specific electricity offering other than the electricity supplies or the distribution services provided to the customer. Examples include a break fee for a fixed term contract, or an administrative fee at disconnection or reconnection. A conditional discount <u>can, in some circumstances, is also treated</u> act as a fee (e.g., a prompt payment discount, or a discount for payment via direct debit or paperless transactions), because the customers who do not meet the conditions for the discount pay a higher amount for the electricity supplied or distribution services provided. <u>As such, certain Guidelines apply to the use of conditional discounts.</u></i></p> <p><i>101. Retailers should, in their consumer care policy, provide information on all fees, <u>conditional discounts</u>, and bonds charged <u>or made available to customers.</u></i></p> <p><i>102. Retailers should ensure that:</i></p> <ul style="list-style-type: none"> <i>a. fees are charged only for goods or services used by a customer that are additional to the supply of electricity or the provision of distribution services</i> <i>b. before using a good or service that is additional to the supply of electricity or the provision of distribution services, the customer understands the amount of the fee</i> <i>c. if a retailer determines a fee by a particular method or calculation (such as a fee calculated by reference to an hourly rate), this is explained in advance, and included in the retailer's consumer care policy</i> <i>d. any fees set via a method or calculation should include a stated maximum limit;</i>

		<p><i>e. customers understand the amount of any conditional discount and how a customer can receive that conditional discount.</i></p> <p><i>103. Retailers should ensure all fees <u>or conditional discounts</u> charged under this Part are reasonable, taking into account the following (as applicable):</i></p> <p><i>a. a fee should only be charged to those customers who are the recipient of a specific good or service that is additional to the supply of electricity or the provision of distribution services, and not to other customers</i></p> <p><i>b. all fees should bear a proper relation to the cost of providing the good or service and should not exceed the cost of providing the good or service</i></p> <p><i>c. a fee that cross-subsidises the provision of other goods or services or other customers should be avoided. The fee should not be used to offset the cost of future recipients of the good or service, or to attempt to recover any deficit that may have arisen because of previous under-recovery;</i></p> <p><i>d. conditional discounts should be cost-reflective of the cost to the retailer of a customer not meeting the conditions for the discount.</i></p>
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Questions on Part 10: Information disclosure and monitoring

28. Do you agree in general with the recommendations in this Part? If yes, please tell us if the meaning is clear?

Part	Clause	Feedback
10	n/a	Mercury agrees in general with the recommendations at Part 10.

29. Do you have feedback on the drafting of specific clauses in this Part? Do you suggest alternative wording? Or is there any superfluous or missing text?

Part	Clause	Feedback
10		No comment

Questions on Monitoring alignment and outcomes

30. Do you agree with the monitoring process that the Authority intends to follow?

Part	Clause	Feedback
Monitoring	n/a	We agree with the monitoring process that the Authority intends to follow, except as set out below.

31. Do you agree with the process set out for monitoring consumer complaints? Do you suggest alternative wording? Or is there any superfluous or missing text?

Part	Clause	Feedback
Monitoring	n/a	We are nervous about the Authority's expectations at paragraph 189 of the consultation document.

		<p>As we have mentioned in this submission, we have concerns that the Guidelines are too prescriptive in parts. This will make it extremely difficult for retailers to achieve “complete alignment” without incurring ongoing costs to make their processes compliant. Further, the Guidelines themselves may not be fit for purpose if technology brings improvements that have not been factored into the detail of the Guidelines that are designed for our current 2020 environment.</p> <p>If the Authority is looking for “complete alignment” we would prefer the requirement to be complete alignment with the purposes of the Guidelines. These purposes will endure over time, despite changes in technology and processes. This also enables retailers to use the Authority’s recommendations to the greatest extent possible but to continue using their own processes where purposes are still achieved.</p>
Monitoring	n/a	

Questions on implementation

32. Do you agree with a 30 June 2021 implementation date for the proposed Guidelines? If you disagree please provide reasons and the date that you would propose.

Part	Clause	Feedback
Implementation	n/a	An implementation date of 30 June 2021 puts undue pressure on retailers to make system changes within a very tight time frame. Most retailers would have resourcing and budgeting for systems planned at least a year in advance. We therefore submit that an implementation date of 30 June 2022 would be more realistic.

Questions on the indicative impact assessment

33. Do you agree with the type of benefits identified?

Part	Clause	Feedback
Impact	n/a	We agree with the benefits the Authority has identified for the consumer. The Guidelines are consumer centric and are designed to maximise access to a continuous supply of electricity and minimise the harm caused by payment difficulties. We look forward to the positive impact that implementation of the purpose of the Guidelines will have on New Zealand’s vulnerable consumers.
	Paragraph A29-A30	<p>We disagree with the key expected incremental benefits the Authority has identified for the retailer. The Authority has assumed certain time and cost benefits however the Authority has not given any evidence to support their assumptions. Mercury takes the opposing view that the processes the Authority has identified as benefits will in fact incur significant ongoing costs. In particular:</p> <ol style="list-style-type: none"> 1. A29g – retailers will be required to provide more notices of electrical disconnection under the Guidelines. It is not clear how this will be a cost saving; 2. A29h – although ultimately retailers may spend less time dealing with customers in payment difficulties this benefit is likely to be offset by the amount of time retailers will be required to spend engaging with customers at other points within their journey with the retailer;

Part	Clause	Feedback
		<p>3. A30k – as we have discussed above, our experience has shown that couriers are ineffective, particularly in relation to disconnection for vacant premises. Further, it is our understanding that the Authority will still expect retailers to send a representative to a site if a courier’s attempt to achieve signed receipt fails (see question 20.3 above in relation to clause 52b). It is difficult to see how this will result in any cost savings for retailers.</p>

34. Are there benefits missing?

Part	Clause	Feedback
Impact	n/a	No comment

35. Do you propose alternative methods to estimate the size of any particular benefit, or a different estimated magnitude?

Part	Clause	Feedback
Impact	n/a	No comment

36. Do you agree with the type of costs identified?

Part	Clause	Feedback
Impact	n/a	On the whole Mercury agrees with the types of costs identified by the Authority however we believe that the dollar values have been significantly under-estimated for each retailer. We have not yet conducted a detailed internal analysis however we would welcome the opportunity to provide the Authority with more accurate estimates of the costs listed at paragraph A37.

37. Are there costs missing?

Part	Clause	Feedback
Impact	n/a	No comment

38. Do you propose alternative methods to estimate the size of any particular cost, or a different estimated magnitude?

Part	Clause	Feedback
Impact	n/a	As mentioned above at question 36 the Authority should seek estimates from retailers in relation to the costs identified at tables 2 and 3 of paragraph A37 of the consultation document.