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Electric Kiwi welcomes the revised draft of the Consumer Care Guidelines

Electric Kiwi supports the proposed adoption of new guidelines to protect consumers, in place of the existing Medically Dependent and Vulnerable Consumer Guidelines and last year's Addendum.

We welcome that the Authority has added an additional 'technical' round of consultation prior to finalising the Guidelines.

There are only limited elements of the existing Guidelines that were suitable for retention, so it is unsurprising the Authority's task has required a near complete rewrite. Even with the improvements made since the last iteration, there remains a substantive amount of technical drafting issues to resolve. These need to be resolved before we could fully endorse the proposed new Guidelines.

We support and are a signatory to the independent retailer joint submission. The issues raised in the joint submission in relation to clarity of the proposed requirements highlight the potential difficulties and challenges that could arise in terms of compliance: including potential for different interpretations of what is required to comply with the Guidelines and conflicts between clauses.

The Guidelines won't provide protection and care for all consumers until pre-pay disconnections are addressed

We reiterate, the Consumer Care Guidelines should apply to all Kiwi households and should not discriminate between pre-pay and post-pay customers.

The Authority will not successfully protect consumers, whether they are in hardship, vulnerable in some way or medically-dependent, and will not successfully achieve the purpose of the Consumer Care Guidelines unless the issues with pre-payment meters, including the regular disconnection of customers who are in financial hardship (which can include medically-dependent consumers), are addressed.



As a brief recap, Electric Kiwi reiterates the concerns we raised about pre-payment meters:

- **The Authority needs to address the risks associated with pre-pay:** The area of the draft Consumer Care Guidelines we are most concerned about, from the perspective of protecting the most vulnerable households and members of society, is pre-pay. Being expected to manage finances by going without electricity, particularly if it is on a regular and recurring basis, is not a first world solution to financial hardship. More transparency about the size of this problem is needed before the Authority can make a fully informed decision on this aspect of the Guidelines.
- **The Guidelines need to remove the effective 'opt out' for pre-payment plans to ensure protection is in place for these consumers.** The approach to pre-pay needs to be substantially changed for the Guidelines to fully achieve their objectives. The joint independent retailer submission details several improvements that should be made to the Guidelines to ensure pre-pay customers receive proper protections and are treated with care. If the Authority does not consider the issues with pre-pay can be resolved within the timeline it has set for finalising the new Consumer Care Guidelines, we would support carving this issue out for ongoing review and resolution in 2021.

It isn't sufficient that "For customers on pre-pay, Part 4 recommends retailers ensure the customer understands fully how electrical disconnection will occur and how to avoid this happening". The same warnings and advice could be applied for post-pay. Based on the discussions at the 3 November workshop, there doesn't appear to be any sound reasons for saying retailers can use terms and conditions to effectively opt out of the Guidelines for pre-pay, but no equivalent provision is provided for in relation to post-pay.

- **More transparency around the size of the pre-pay problem is needed:** We agree with the Authority "It is important to understand the nature and scale of any problems with the treatment of vulnerable and medically dependent consumers before developing and introducing new code".⁵ This requires publication of information on the extent of so-called 'voluntary disconnection'. We note and support the Electricity Price Review position that "disconnections for non-payment and self-disconnections by those on pre-payment meters" are "important statistics"⁶ and "There would be merit in recording and monitoring other key statistics such as disconnections for non-payment and self disconnections by those on pre-payment meters".^{7,8}

While the Authority now states that pre-payment is out-of-scope the basis for this statement remain unclear. The Guidelines otherwise explicitly include provisions for post-pay and pre-pay arrangements.

Pre-pay is marketed as a hardship product and therefore should have minimum requirements that are at least equivalent (if not more) than what post pay customers receive. The Electricity Commission's concerns about the existing Guidelines were such that they initially imposed a ban on providing pre-pay to vulnerable and medically-dependent consumers and this should not be confused with the concerns raised here on the Guidelines allowing a lower standard of care to be provided to pre-pay customers.

We consider that pre-pay is right in the bullseye of matters that need to be resolved to ensure consumer protection and achievement of the objectives of the draft Consumer Care Guidelines; particularly the objective to "[help] domestic consumers minimise harm caused by insufficient access to electricity, or by payment difficulties".

The Electricity Price Review recommendations in relation to consumer protection/Guidelines explicitly included pre-payment and directed that "The Electricity Authority should monitor and enforce the standards, which should include: ... pre-pay service standards", and "important statistics such as disconnections for non-payment and self-disconnections by those on pre-payment meters" (which the Authority has details of) should be "recorded and monitored".

We suggest pre-pay be included with the issues of site visits and disconnection for reasons of fraud/deception as matters for the Authority to address after finalisation of the current version of the Guidelines. If the Authority leaves it to MBIE to resolve, it will result in a clumsy and inefficient situation where two agencies are dealing with heavily overlapping elements of consumer care/protection regulation.



In our previous submission, we commented that “In order to ensure an evidence-based approach to this matter, the Authority should publicly release the statistics it has on the frequency and duration of ‘voluntary’ disconnections. This data should be broken down to include statistics on the existing “vulnerable consumer” and “medically dependent consumer” categories. and all other households. We note and support the Electricity Price Review position that “disconnections for non-payment and self-disconnections by those on pre-payment meters are “important statistics””.

The Authority needs to consider the implications of the cost of physical site visits, including to vacant premises, on residential electricity charges, disconnection fees etc

The discussion paper states “the final draft guidelines maintains the status quo policy of the existing guidelines and the addendum”, and this includes “that retailers should, before disconnecting premises over unpaid electricity: (a) For premises where the retailer has a contract with a customer, send a representative to the site if the customer has not responded to the repeated requests for engagement by the retailer. This includes premises with smart meters and remote disconnection functionality”.

If the present policy decision is to retain the status quo, at least temporarily, the revised draft Guidelines do not achieve this.

The current Vulnerable Consumer Guidelines are clear the requirements for site visits are part of the “Retailers’ disconnection process for vulnerable consumers” [emphasis added].¹ The existing Guidelines separate out the requirement to determine whether a customer is vulnerable (clauses 12 – 14), and for physical site visits (clause 43), such that the retailer will determine whether the customer is vulnerable before they get to the disconnection step. Under the existing Guidelines, the physical visit only applies if (i) it has been (already) determined the customer is vulnerable, and (ii) the retailer has not been able to make contact with the customer. There is no requirement for a physical site visit to check whether the customer is vulnerable.

The revised draft Guidelines extend this requirement from vulnerable consumers only to all consumers, including vacant premises. This is a substantial and costly change to the status quo, as reflected in various of the electricity retailer (incumbent and independent) submissions. Whilst the current drafting allows for a traceable form of contact as a way to avoid a physical visit, this is not going to apply in all cases. For vacant premises especially, the retailer does not know who the consumer is and therefore it is likely to still lead to a requirement for a visit.

We reiterate “The Guidelines could be counter-productive if they result in consumers facing financial difficulties/disconnection bearing higher costs: ... a key ‘consumer care’ focus should be on ensuring we don’t let customers build up debt they can’t manage. The Authority should be cautious about requirements that result in higher (operationally inefficient) costs of disconnection. The Guidelines’ fees provisions direct that these costs should be passed-through in a subsidy-free/exacerbator or beneficiary’s-pays basis. The protections the Guidelines are intended to provide could prove counter-productive if they result in customers facing disconnection incurring additional costs and fees, and this could result in heightened financial pressure/debt issues. The Authority should consider not only what costs its proposed regulations will impose, but who will bear those costs.”

Given the Authority intends to revisit this matter immediately after finalising the Guidelines, we consider the

¹ We are aware, the Authority interprets the existing Guidelines differently, based on discussions at the 4 March 2021 workshop.



Authority should consider what is a reasonable attempt to contact the customer, and what would be considered reasonable under efficient operation of the electricity industry and cost criteria; particularly noting any additional costs incurred could be directly passed through (and required by the Guidelines to be directly passed through) to the customer as part of the disconnection/reconnection process. Also, we recommend the Authority collect data relating to disconnections of vacant premises to inform the solution and avoid unnecessary costs being imposed on consumers for minimal benefit.

The draft Guidelines include conflicting direction in terms of efficient processes for interacting with customers regarding non-payment

It appears one of the policy decisions the Authority has made is “Retailers should have efficient processes for interacting with customers regarding non-payment”, as reflected in the new clause 38.

This accords with the discussion paper statement “The Authority considers that the role it is taking in facilitating the making of the guidelines comes within, or is incidental and related to, its market-facilitation function and is consistent with the efficiency element in its statutory objective”.

While there have been improvements to the draft Guidelines non-payment disconnection processes – for example, providing for traceable forms of contact and not just a requirement for a physical site visit – various elements of the draft Guidelines would not satisfy efficient operation of the electricity industry criteria, for example:

- While we fully support the ban on disconnection of MDCs for non-payment, it is difficult to see how this could be justified on efficiency grounds.
- The upfront requirements for a new customer would impose costs (including time) for both the retailer and the customer, which don’t sit well with on-line business models² and could reduce switching.
- The requirement for 2 weeks between invoice and payment would restrict business model options and hence reduce innovation and competition.
- We remain of the view “The proposed non-payment/disconnection notification requirements are overly prescriptive, and would impose operationally inefficient costs”. There is clearly a consensus view on this amongst the incumbent and independent retailers on this point.

There is now an apparent conflict between complying with the Guidelines’ prescriptive non-payment/disconnection process requirements – which includes requirements which are not efficient, and could not be justified on “efficient operation of the electricity industry” grounds – and the Guidelines’ principles-based requirement to “have efficient processes”. We are unclear how retailers could resolve this apparent conflict from a compliance perspective.

If clause 38 is retained, it needs a qualifier such as “Retailers should have efficient processes ... to the extent permissible under the Guidelines”. Otherwise, if the Authority’s policy intent is that retailers’ “have efficient processes” then the process requirements in the Guidelines will need to be substantially changed to ensure they are efficient. This is likely to mean a shorter minimum period before disconnection, less minimum requirements to attempt to contact the customer, and narrower and more targeted requirements for when physical site visits are required.

² A point discussed in more detail in the joint independent retailers’ submission.



The draft Guidelines do not satisfy the Authority's narrow efficiency-only interpretation of its statutory objective.

Concluding remarks

The task of developing the Consumer Care Guidelines has been particularly challenging given the lack of coherence of the existing Guidelines, and that they are hopelessly out-of-date, as well as the conflict between consumer protection and welfare objectives and efficiency objectives.

Whilst the redraft is a significant improvement, the issue of physical site visits for vacant premises is a clear example where the Authority's proposals do not match its efficiency objective.

The matter of physical site visits/vacant premises, what retailers can do in situations where fraud or deception occurs and the effective 'opt out' for pre-payment disconnection remain substantive issues that need to be addressed.

The Consumer Care Guidelines' protections need to apply to all Kiwi households, regardless of whether they are on post-pay or pre-pay plans. Managing financial difficulties by going without electricity on a regular basis is not a first world solution. The effective carve-out of pre-pay customers and so-called "voluntary" disconnections will severely undermine the success of the new Guidelines if it is not resolved. We reiterate "If the Authority does not consider the issues with pre-pay can be resolved within the timeline it has set for finalising the new Consumer Care Guidelines, we would support carving this issue out for ongoing review and resolution in 2021".

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'L. Blincoe', with a long horizontal flourish extending to the right.

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