Options to update and strengthen the Consumer Care Guidelines

Consultation paper

4 September 2023

ELECTRICITY AUTHORITY
TE MANA HIKO

Executive summary

The Electricity Authority Te Mana Hiko (Authority) published Consumer Care Guidelines (the Guidelines) in March 2021. These were designed to support electricity retailers to deliver a consistent and supportive minimum standard of care to all New Zealand's domestic consumers. Adherence to the Guidelines is currently voluntary. They identify specific actions and behaviours retailers should take where domestic consumer vulnerabilities commonly surface, and harm can inadvertently be caused or exacerbated through unsupportive practices.

The Guidelines are currently voluntary

The Authority decided that the Guidelines would be voluntary at the time of publishing. However, we noted that if voluntary guidelines did not satisfactorily deliver their intended outcomes, we would consider mandating all, or aspects, of them in future. Since the Guidelines' publication, the Authority has also acquired an additional statutory objective to protect the interests of domestic consumers.

Our review showed implementation has not been as consistent as expected

A review of retailers' self-assessed alignment with the Guidelines, published in June 2023, showed that retailer alignment with the Guidelines was variable, and implementation has not been as consistent as we expected. Consumer stakeholders and the Energy Hardship Expert Panel also consider that the Guidelines, as currently drafted and implemented, are not effective in delivering adequate protections to consumers, and that retailers may not be following them.

This variable alignment and consumer stakeholder feedback, alongside other issues like retailers interpreting the Guidelines' recommendations differently, indicates that they are not satisfactorily delivering their intended outcomes. Some of the reasons for originally making the Guidelines voluntary also no longer stand. This is because the Authority now has an additional consumer protection objective and function, and further information from the Ministry for Business, Innovation and Employment's energy hardship workstream. We have therefore decided to consult on work to update and strengthen the Guidelines.

Scope of this paper

We acknowledge stakeholder views that further protections for consumers, outside what the Guidelines currently cover, may be necessary. However, our immediate priority is addressing any issues with the current Guidelines not delivering their intended outcomes as quickly as possible. We intend to consider and consult stakeholders on issues that fall outside of the current Guidelines' content through an issues paper to be released by mid-2024.

Our policy objective is to deliver the Guidelines' purpose and intended outcomes

Our policy objective for this work is ensuring that the Guidelines' purpose and intended outcomes are consistently being delivered. The purpose of the Guidelines is to support retailers:

(a) adopting behaviours and processes that foster positive relationships with domestic consumers

(b) helping domestic consumers maximise their potential to access and afford a constant electricity supply suitable for their needs

(c) helping domestic consumers minimise harm caused by insufficient access to electricity, or by helping payment difficulties.

To achieve this purpose, while supporting competition and innovation, our policy objective is to deliver intended outcomes under three of the Guidelines' overarching principles, these are:

(a) Electricity is important to the health, wellbeing and social participation of people and whānau in communities (overarching principle A).

(b) Respect and constructive engagement underpin the consumer and retailer experience (overarching principle B).

(c) Retailers have a right to be paid for services delivered and competition and innovation should be supported (overarching principle C).

We must also ensure that the Authority acts consistently with its statutory objectives:[1]

(a) to protect the interests of domestic consumers and small business consumers in relation to the supply of electricity to those consumers (the Authority's additional statutory objective)

(b) to promote competition in, reliable supply by, and the efficient operation of, the electricity industry for the long-term benefit of consumers (the Authority's main statutory objective).

We are considering four options

We seek your views on options outlined in this paper to address the policy objective and meet our statutory objectives. These options are:

1. Maintain the status quo.
2. Keep the Guidelines voluntary but clarify interpretation issues in some areas.
3. Codify (ie, make mandatory) parts two, six, seven and eight of the Guidelines, which provide key consumer welfare protections around financial difficulty, disconnection, and medically dependent consumers.
4. Codify parts one to nine of the Guidelines.

Note that options 3 and 4 would also include clarifying interpretation issues.

Option three is our initial preferred option

Our initial view is that option three would best deliver our policy objective. This option would protect the interests of domestic consumers facing financial difficulty, disconnection, or who are medically dependent consumers. It would also minimise negative impacts on innovation, and the competition and efficiency limbs of our main statutory objective.

We are interested in your views on these options and our initial assessment of them.

After considering stakeholder feedback on our analysis and observations in this paper, we will progress a preferred option for further consultation with stakeholders.

[1] The Authority's statutory objectives are outlined in section 15 of the Electricity Industry Act 2010.

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1. What you need to know to make a submission

What this consultation is about

1.1. The purpose of this paper is to consult on options to update and strengthen the Consumer Care Guidelines. This is to ensure that the purpose and intended outcomes of the Guidelines are consistently delivered.

1.2. Information provided to the Authority indicates that there is variable retailer alignment with the Guidelines, and it appears that the desired outcomes are not being delivered satisfactorily. This paper outlines potential options to ensure that the purposes and the intended outcomes of the Guidelines are being delivered consistently and provides an initial assessment of these options against different criteria.

1.3. We are interested in your views on these options and our initial assessment of them. Your input will help us make a final decision on which option to progress (noting that one of the options is to maintain the status quo).

How to make a submission

1.4. We invite both written and verbal submissions for this consultation. We want to ensure all stakeholders have an opportunity to share their views on options to update and strengthen the Guidelines. Note you may submit both a verbal and written submission.

1.5. Written submissions can be submitted electronically in the format shown in Appendix B. Please email submissions to: ConsumerCareConsultation@ea.govt.nz with 'Consultation Paper—Options to Update and Strengthen the Consumer Care Guidelines' in the subject line.

1.6. If you cannot send your written submission electronically, please contact us (ConsumerCareConsultation@ea.govt.nz or 04 460 8860) to discuss alternative arrangements.

1.7. We will be running webinars providing information on the options under consideration, and on the consultation process, including how to arrange a verbal submission if this is your preferred method. Verbal submissions will be handled on an individual basis.

1.8. We will provide all the relevant information on how to participate in the webinars with the release of this consultation paper. Details will be provided via our website and email.

1.9. To find out more, or to express your interest in making a verbal submission please contact us at ConsumerCareConsultation@ea.govt.nz with the subject line 'Consultation Paper—Options to Update and Strengthen the Consumer Care Guidelines Engagement'.

1.10. The Authority intends to publish all submissions it receives. For verbal submissions this will include a record of what was discussed. We will however protect personal details of lived experience should these be shared, and we will check with you during the conversation as to what details you would like to keep private. If you prefer that the Authority should not publish your submission, or any part of it, please:

(a) indicate which part(s) should not be published

(b) explain why you consider your submission, or any part, should not be published

(c) for written submissions only, provide a version of your submission that the Authority can publish (if we agree not to publish your full submission).

1.11. If you indicate that part of your submission should not be published, the Authority will discuss this with you before deciding whether to not publish that part of your submission.

1.12. However, please note that all submissions (both written and verbal) received by the Authority, including any parts that the Authority does not publish, can be requested under the Official Information Act 1982. This means the Authority would be required to release material not published unless good reason existed under the Official Information Act to withhold it. The Authority would normally consult with you before releasing any material that you indicated should not be published.

When to make a submission

1.13. Please send your written submission to us by 5pm on Monday 2 October 2023. The Authority considers a four-week consultation period is appropriate for this paper as there will be a further opportunity to consult if the decision is to progress to a Code amendment.

1.14. Authority staff will acknowledge receipt of all written and verbal submissions electronically. Please contact the Authority at ConsumerCareConsultation@ea.govt.nz or 04 460 8860 if you do not receive electronic acknowledgement of your submission within two business days of sending it.

2. Background

We published Consumer Care Guidelines in March 2021 to ensure electricity retailers deliver a consistent and supportive standard of care

2.1. The Authority published the Consumer Care Guidelines (the Guidelines)[2] in March 2021, which applied to retailers from 1 July 2021, to help them deliver a consistent and supportive minimum standard of care to domestic consumers.[3] The Guidelines replaced earlier guidance for vulnerable and medically dependent consumers introduced in the mid-to-late 2000s. The updated Guidelines aimed to address findings that the earlier guidance was not fit-for-purpose.[4]

2.2. The Guidelines were made under our function to undertake market facilitation measures and to monitor the operation and effectiveness of those measures. We

[2] The Guidelines can be found here: https://www.ea.govt.nz/documents/2093/Consumer-Care-Guidelines.pdf.

[3] A domestic consumer means a person who purchases or uses electricity for domestic premises. Domestic consumers are also known as residential consumers.

[4] See page seven of the Authority's consultation on the Guidelines in October 2020 for information on these problems: https://www.ea.govt.nz/documents/2209/Consumer-care-guidelines-consultation-document.pdf#page=8.

considered the Guidelines were consistent with the efficiency element of our main, and only, statutory objective at that time.

2.3. The Guidelines’ purpose, as stated in clause 1.2 of the Guidelines, is to guide retailers in:

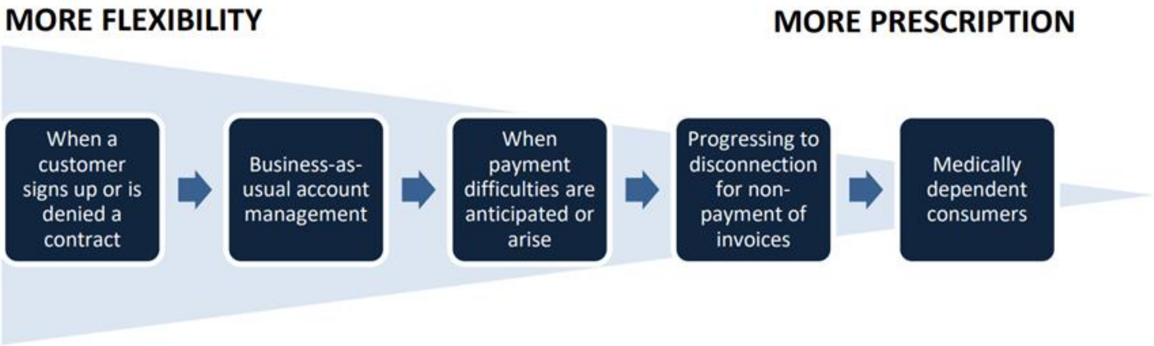
(a) adopting behaviours and processes that foster positive relationships with domestic consumers

(b) helping domestic consumers maximise their potential to access and afford a constant electricity supply suitable for their needs

(c) helping domestic consumers minimise harm caused by insufficient access to electricity or by payment difficulties.

2.4. The Guidelines are voluntary, identifying specific actions and behaviours that retailers should take at key points where the relationship between the customer and retailer may change. This is where vulnerabilities commonly surface, and harm can be inadvertently caused or exacerbated through unsupportive practices.

2.5. Retailers can align with the Guidelines through following these actions and/or taking alternative actions that achieve the purpose and outcomes in Part one.[5] They allow for varying flexibility depending on the risk of harm presented by a situation, as below:



2.6. We developed the Guidelines in close collaboration with stakeholders. The development process included ten workshops/webinars that were well-attended by representatives from electricity retailers, consumer groups, distributors, social and support agencies, academics researching energy poverty, and, at times, the Ministry of Health. Officials from the Ministry of Business, Innovation and Employment (MBIE) also attended to observe and support.

2.7. Stakeholders were involved in a collaborative process of mapping consumers’ experience with potential issues and harms that might occur regarding their electricity. Then participants worked iteratively to develop the draft guidelines’ content. The draft guidelines were also subject to two consultations to ensure broad support and technical accuracy before being finalised.

2.8. Given the collaborative development approach, we considered that the Guidelines were a product of general industry consensus at the time. This included widespread ‘buy-in’ from both organisations that represented the interests of vulnerable consumers, and retailers.

[5] See clause ix. in the explanatory note of the Guidelines.

We considered voluntary standards were appropriate when the Guidelines were introduced

2.9. A key feature of the current Guidelines is their voluntary nature. This decision was primarily made as (set out in paragraph 7.2 of the March 2021 Decision Paper publishing the Guidelines):[6]

(a) It would allow retailers a period of time to adjust their consumer care processes and systems to the guidelines' recommendations without breaching the Electricity Industry Participation Code 2010 (the Code), or requiring exemptions from the Code, aiding the efficiency of implementation.

(b) Guidelines are easier to update than the Code, which was particularly important in a period during which the new guidelines are being embedded in retailers' practices, and technology is rapidly changing in the consumer engagement space.

(c) The Authority did not at that time have comprehensive information about alignment (with the existing guidelines) across all retailers, nor detailed assessments over time of consumer outcomes. The information requested by Part 10 of the Guidelines was expected to enable a better information base from which to assess the extent that the intended outcomes of the Guidelines are being achieved.

2.10. We considered the ability to easily update the Guidelines was important, as they were linked to other work on energy hardship which MBIE was still progressing. The Electricity Price Review (EPR) had also recommended that the Authority be given a consumer protection function. Cabinet subsequently agreed that the Authority be given an explicit statutory function under the Electricity Industry Act 2010 (the Act) to protect domestic consumer and small business electricity consumers, "together with any further amendments necessary to ensure consistency with its statutory objective".[7] We discuss this work further below at paragraph 3.10.

2.11. At that time the Authority considered it prudent to wait until this work was completed before considering whether aspects of the Guidelines could be mandated. Also, given the amount of collaboration with stakeholders in developing the Guidelines, we expected retailers would align their practices with the Guidelines voluntarily.

We stated that if the Guidelines did not satisfactorily deliver their intended outcomes, we would consider mandating all or aspects of them

2.12. When we published the Guidelines, we considered various triggers for initiating a process to consider mandating certain aspects of the Guidelines, these triggers included if:

(a) retailers do not align with the purpose, principles and intended outcomes described in Part 1 of the Guidelines (to the extent consistent with our statutory objective and functions)

[6] The March 2021 Decision Paper publishing the Guidelines can be found here: https://www.ea.govt.nz/documents/2204/Consumer-Care-Guidelines-Decisions-Paper.pdf.

[7] See paragraphs 21-22 of the Cabinet Minute, https://www.mbie.govt.nz/assets/progressing-the-electricity-price-reviews-recommendations-minute-of-decision.pdf.

(b) achievement of the Guidelines' purpose and intended outcomes is not satisfactory.

2.13. We noted in the March 2021 decision paper that retailers and other participants should not incur substantial duplication of implementation costs if some, or all, of the voluntary Guidelines were ultimately made mandatory. This was based on our view that mandatory standards introduced would be no different to the voluntary Guidelines.

2.14. We planned to conduct a review of retailer alignment with the Guidelines, and their effectiveness in achieving desired consumer outcomes, in late 2022.

3. Problem definition

Information provided to us indicates that there is variable retailer alignment with the Guidelines

3.1. A review of retailer alignment with the Guidelines, using retailers' self-assessment, concluded in June 2023.[8] The review showed that retailers' stated alignment with the Guidelines was variable. Of the 29 retail brands that provided a self-assessment, nine self-assessed as not being fully aligned with the Guidelines, covering 27% of domestic consumer installation control points (ICPs), 520,644 ICPs, at the time of review.

3.2. Nine retailer brands (two medium and seven small sized retailers), covering 4.7% of domestic consumer ICPs (92,903 ICPs), did not provide an assessment of their alignment.

3.3. Table One below shows the number of domestic consumer ICPs with retailers that do not follow all recommendations in each part of the Guidelines, and the retailers' size. This is based on retailers' stated alignment (ie, excluding non-respondents).

[8] The 'Summary of Retail Brands' self-assessments of alignment with the Consumer Care Guidelines' can be found here: https://www.ea.govt.nz/documents/3127/Summary_of_retail_brands_self_assessments_with_consumer_care_guidelines.pdf.

Table One: Domestic consumer ICP coverage and retailer size non-alignment by Part for 2021/22 Alignment review

	Number of domestic consumer ICPs not covered by Part	Percentage of total domestic consumer ICP market not covered by Part	Number of large (>100,000 ICPs), medium (10,000 – 99,999 ICPs), and small (<10,000 ICPs) retailers not aligned by Part
Part two	6	<0.01%	0,0,1
Part three	76,898	4%	0,1,1
Part four	0	0	0,0,0
Part five	517,079	27%	1,2,1
Part six	2,973	0.15%	0,0,1
Part seven	519,950	27%	1,2,1
Part eight	440,766	23%	1,1,2
Part nine	77,304	4%	0,1,2
Part ten	609	<0.04%	0,0,2

3.4. Stated non-alignment by retailers varied across the Guidelines. Given that the Guidelines were developed in close collaboration with electricity retailers, we expected that all retailers would align their practices, to deliver the Guidelines' intended outcomes.

3.5. This expectation was one of the reasons for making the Guidelines voluntary. Consequently, we consider that the number of retailers that did not provide a self-assessment, and the variable level of stated alignment, means that the Guidelines do not appear to be satisfactorily delivering their intended outcomes.

3.6. The information provided to the Authority also indicates that retailers are not operating on a 'level playing field' by aligning with the Guidelines. This is one of the Guidelines' intended outcomes (clause 5(C)(b)), and ultimately results in variable outcomes for domestic consumers.

3.7. We will consider information provided by our second alignment review for the 2022/23 financial year, alongside submissions to the current consultation, when considering any changes to the Guidelines.

Some of the reasons for originally making the Guidelines voluntary no longer stand

3.8. One of the reasons we made the Guidelines voluntary was because they would be easier to update, compared to mandatory standards which would need to be in the Code. This was important as other work was still underway on energy hardship. This included the establishment of the Energy Hardship Expert Panel (the Expert Panel) to make recommendations about alleviating energy hardship.

3.9. Another reason for making the Guidelines voluntary was that the Authority considered it would be prudent to wait for the response to the EPR recommendation that the Authority be given a consumer protection function. The introduction of a consumer protection objective and function for the Authority, together with the current status of the Expert Panel's work (both of which are summarised below), indicates that it is timely to reconsider whether the Guidelines are achieving their purpose and intended outcomes.

Consumer protection statutory objective under the Electricity Industry Act 2010

3.10. The amendment work arose when, in 2019, the EPR saw an ambiguity regarding the Authority's ability to add consumer protection provisions to the Code, and to monitor and enforce any consumer protection provisions made under the Code or by regulation. Without a consumer protection function or statutory objective, some industry participants questioned whether consumer protection was consistent with the Authority's objective to promote competition, reliability, and efficient operation of the electricity industry.

3.11. In December 2019 Cabinet agreed that the Authority be given "an explicit statutory function under the Act to protect domestic consumer and small business electricity consumers, together with any further amendments necessary to ensure consistency with its statutory objective." In implementing the voluntary Guidelines, the Authority stated that we would wait until this action had been taken before considering whether aspects of the Guidelines should be mandated.

3.12. The Electricity Industry Amendment Act 2022, which got Royal assent on 31 August 2022, is now in force. It gives the Authority a new additional objective to "protect the interests of domestic consumers and small business consumers in relation to the supply of electricity to those consumers". This only applies to the Authority's activities in relation to the dealings of industry participants with domestic consumers and small business consumers. As the Guidelines cover how retailers (an industry participant) interact with domestic consumers, we consider that the Guidelines fall within the scope of the additional objective.

Insights from MBIE's energy hardship expert panel

3.13. We understand the Minister of Energy and Resources has received the Expert Panel's final report with recommendations to alleviate energy hardship, but it has not been published as of the end of July 2023. However, their discussion paper *Te Kore, Te Pō, Te Ao Marama | Energy Hardship: the challenges and the way forward*, released in late March 2023, contains several draft strategies regarding the Guidelines and insights into whether the Guidelines are delivering their intended outcomes.[9]

3.14. The Expert Panel's discussion paper was based on engagement with a wide range of key stakeholder groups and communities. It states that "household energy consumers, particularly those in energy hardship, are still struggling to have their voices heard and receive the protections they need.".

3.15. The discussion paper records that the Expert Panel considers the Guidelines are not as effective as they could be, and that alignment with the Guidelines varies across retailers. To address this problem, alongside other draft strategies[10], the Expert Panel recommends the Authority "review and strengthen the Guidelines, including making key elements mandatory" including arrangements for supporting

[9] The Expert Panel's discussion paper can be found here: Te Kore, Te Po, Te Ao Marama - Energy hardship: the challenges and a way forward (mbie.govt.nz).

[10] The Expert Panel's discussion paper identifies other matters for addressing in mandatory standards including areas related to post-pay, disconnection, pre-pay, fees and costs, payment options, and data collection.

those in payment difficulty, fees and bonds, disconnection for non-payment and medically dependent consumers.

3.16. We note that the Expert Panel's final recommendations to alleviate energy hardship, and the Government's response to these recommendations may be published during or shortly after the consultation period for this paper. We will consider the views of the Expert Panel and the Government in our analysis, if this information is available to us, when selecting a final preferred option to update and strengthen the Guidelines.

Consumer stakeholders consider the Guidelines do not provide adequate consumer protection

3.17. Alongside the findings of the Expert Panel, the Authority has also received stakeholder feedback that the Guidelines are not providing adequate protections particularly to vulnerable consumers.

3.18. This feedback has come from the Consumer Advocacy Council, Consumer NZ, FinCap, Anglican Care, Sustainability Trust/Toast Electric, the Housing and Health Research Group in the University of Otago, the Wellington City Mission, and Christian Action Aotearoa.[11] Issues raised by some of these stakeholders include that retailers are not following the Guidelines, are charging unreasonable fees, and not proactively providing support to customers in payment difficulty.

3.19. FinCap also published a report funded by the Consumer Advocacy Council in June 2023, *Put on hold? Cyclone Gabrielle, Covid-19 disruption and business as usual – do our electricity consumer protections work when whānau most need them?* This found "inconsistencies in how electricity retailers implement the Guidelines", through interviews with 13 financial mentors and one legal advocate.[12]

3.20. This stakeholder feedback indicates that retailer non-alignment with the Guidelines may be greater than identified in the self-alignment review.

Some retailers have also sought clarity on interpreting and applying the Guidelines

3.21. Retailer stakeholders have also raised issues with interpreting and applying certain aspects of the Guidelines. We have heard that some retailers find aspects of the Guidelines difficult to fully implement. These include delivering disconnection notices to non-responsive customers, and interpreting sections of the Guidelines that are ambiguous. For example, what are:

(a) severe weather events

(b) times when disconnection would endanger the wellbeing of the customers or any consumer at the premises

(c) reasonable efforts for the purposes of the Guidelines.

3.22. The examples given of customers not responding to retailers, indicates the Guidelines may not be delivering a key outcome. This concerns customers needing

[11] See an open letter from these stakeholders on the Guidelines here: https://www.anglicanadvocacy.org.nz/wp-content/uploads/2023/06/open-letter-6.6.23-1.pdf.

[12] FinCap's report can be found here: https://www.cac.org.nz/assets/Research/Put-on-hold-report-June-2023.pdf.

to engage with retailers in good faith and responding to retailer communications, to avoid or minimise non-payment issues (clause 5(B)(c)).

3.23. We consider that retailer stakeholders raising issues about interpreting parts of the Guidelines, also indicates that the Guidelines may not be satisfactorily delivering the intended outcome of retailers operating on a ‘level playing field’ (clause 5(B)(b)). This may result in domestic consumers receiving varying levels of care, depending on how their retailer interprets the Guidelines. For example, one retailer may consider disconnection on a very cold day to endanger wellbeing; another may not.

Available data is insufficient to clearly link the Guidelines’ introduction to achieving intended outcomes

3.24. The Authority has received data relevant to monitoring domestic consumer outcomes, primarily through two retail data requests:

(a) Quarterly monitoring information provided voluntarily under clause 128 of the Guidelines, starting 1 July 2021 - this request collected aggregate information on areas including numbers of:

i. consultations a retailer has done with work and income on a domestic consumer’s behalf

ii. domestic consumer disconnections

iii. medically dependent consumers with debts outstanding greater than 60 days

iv. Identified medically dependent consumers registered.

The Authority has not proactively requested this information since quarter two (Q2) 2022 (where responses covered 85% of ICPs). This is because we considered that other mandatory data requests (noted in (b) below) sufficiently overlapped regarding key information.

(b) Mandatory monthly data provided through the Retailer Financial Stress (RFS) notice (the RFS notice).[13] The RFS notice collects aggregated information from retailers with more than 1,000 domestic, industrial, and/or commercial consumer ICPs to monitor retailer and consumer financial stress regarding debt, disconnections for non-payment, and deferred payment plans. This notice commenced in October 2022, and consolidated and replaced a COVID-19 focused information request that ended in September 2022 (the COVID-19 request).[14]

3.25. Data we received through the RFS notice showed that, for May 2023:

(a) 186,781 customer accounts billed each month were flagged as being medically dependent or vulnerable

(b) 54,487 customers are on a deferred payment plan with increased credit terms, or with a revised payment due date (but not in arrears)

(c) 40,015 customers have an invoice payment more than 30 days overdue and are not scheduled for disconnection, amounting to around $30 million of debt

[13] The RFS notice is available here: https://www.ea.govt.nz/documents/1917/Retailer-Financial-Stress-Notice_sviPhtQ.pdf.

[14] The Covid-19 request is available here: https://www.ea.govt.nz/documents/2895/26652Information-request-Section-46-on-consumer-debt-and-disconnections.pdf.

(d) 57,092 customers have been sent disconnection warning notices

(e) 1,268 ICPs have been disconnected for non-payment for more than 24 hours (this does not include disconnections of customers on pre-pay[15] plans).

3.26. For Q2 2022, data received through the quarterly voluntary request covering around 85% of domestic consumer ICPs indicated that there were:

(a) 14,863 medically dependent consumers registered

(b) 544 medically dependent consumers with debts outstanding greater than 60 days.

3.27. This information is useful for viewing the current state of consumer outcomes. However, both datasets have significant limitations, making them unsuitable for reasonably assessing whether the Guidelines' intended outcomes have been delivered since implementation in July 2021.

3.28. A key limitation is that the data collected during the period since implementation was heavily influenced by COVID-19. In April 2020, responding to concerns on COVID-19's impact, the Authority set out its expectation that consumers should only be disconnected as a last resort once all options had been exhausted. The Authority also reminded retailers, in August 2021, that disconnections for non-payment should not occur during pandemic-related lockdowns.

3.29. A significant drop in disconnections from pre-pandemic levels occurred after the Authority's expectations were set out in April 2020. Numbers of disconnections for non-payment (of more than 24 hours) dropped from between 150 - 250 per week in March 2020, to almost zero by May 2020. A similar trend also occurred after the Authority's expectations were again set out in August 2021, responding to a nationwide lockdown.

3.30. It is consequently difficult to determine how many of the decreased disconnections seen from baseline levels in 2019 to now, along with other consumer outcomes, can be attributed to the Guidelines' implementation in July 2021.

3.31. Further, we consider many of the indicators collected through the RFS notice do not indicate whether the Guidelines are working effectively (noting the RFS notice did not intend to assess this). Although the Guidelines aim to reduce disconnections, debt, and financial difficulty, various factors outside of retailers following the Guidelines' recommendations heavily influence whether these indicators increase or decrease. Stakeholders have also raised concerns that retailers' interpretations of the RFS notice questions varies, such as what a 'vulnerable' consumer is, causing further data reliability issues.

3.32. The Authority recognises that much of this data is incomplete due to the way we have collected retail data in the past. Through a project to improve monitoring of the retail market (the retail market monitoring project), we are currently investigating the way in which we collect and use retail data and are considering options to improve this.

3.33. Through the retail market monitoring project, we intend to improve retail data access for the Authority to better monitor outcomes in the retail market including

[15] Pre-pay refers to a pricing plan that requires a prepayment service and is where the customer pays the retailer for electricity to be consumed, before the customer consumes it.

consumption, expenditure, and tariffs. The Authority's Board will consider this matter in the coming months.

3.34. Given retail market monitoring improvements will be considered through the retail market monitoring project, we have excluded options regarding improving monitoring of the Guidelines to achieve the intended outcomes under the Guidelines' overarching principle D[16] in this consultation paper. We have also excluded changes to the recommendations under part 10 of the Guidelines that cover information disclosure and monitoring. References to the Guidelines' intended outcomes past this point in the paper should therefore be read as excluding the intended outcomes under overarching principle D.

We seek your views on whether the Guidelines are satisfactorily delivering their purpose or intended outcomes

3.35. Our current view, based on the self-alignment review, consumer stakeholders' feedback, and the Expert Panel's discussion paper, is that the Guidelines are not satisfactorily delivering on their purpose or intended outcomes. This is due primarily to the Guidelines not being consistently followed by all retailers.

3.36. Therefore, domestic consumers may not be getting minimum standards of care that we envisioned when introducing the Guidelines. We encourage stakeholders to provide any objective evidence that may disprove or support this problem definition.

Q1. Do you agree or disagree with our view that the Guidelines are not delivering on their purpose or intended outcomes? Please provide any supporting evidence.

4. Policy Objective

Our policy objective is to deliver on the purpose and intended outcomes of the Guidelines

4.1. The Authority considers that the Guidelines were a product of general industry consensus, when published in March 2021. They were developed through close collaboration with various stakeholders including electricity retailers, consumer groups, distributors, social and support agencies, academics researching energy poverty, and, at times, the Ministry of Health.

4.2. Since that time new stakeholders have joined the industry, including new electricity retailers and consumer advocacy groups. While acknowledging that industry stakeholders have changed, our view is that the Guidelines' purpose and accompanying intended outcomes are still appropriate.

4.3. The Guidelines' intended outcomes aim to balance domestic consumer and retailer interests. This acknowledges that while retailers should seek to keep customers connected and provide help, they also have a right to be paid for electricity supplied.

4.4. In our view, achieving the Guidelines' purpose alongside their intended outcomes should therefore be the main policy objective of any changes to the Guidelines.

[16] Overarching principle D is "transparency enables outcomes to be measured and informs continuous improvement".

Q2. Do you agree the policy objective should be delivering the purpose and intended outcomes of the Guidelines? If not, why not?

Q3. Do you consider the Guidelines' recommendations, purposes, and intended outcomes continue to reflect general industry consensus? Note in this question we are seeking your views on the Guidelines' content; not whether they should be mandatory.

4.5. The Authority considers achieving the policy objective of delivering the purpose and intended outcomes of the Guidelines will contribute to reducing certain market failures in the retail electricity market. These primarily concern information asymmetry, and retailers not considering the harm to customers and their households when choosing to disconnect customers who are potentially prepared to pay, but who may not have the immediate capability to do so.

Consideration of harm to customers and their households

4.6. The Guidelines aim to deter retailers from disconnecting customers more frequently or readily than what may be considered acceptable, noting the potential harm of disconnection to customers and their households. The Guidelines primarily do this through recommendations to retailers regarding:

(a) providing support to customers who are experiencing or anticipated to experience payment difficulties (Part six)

(b) the process for progressing to disconnection for non-payment of invoices (Part seven)

(c) not disconnecting medically dependent consumers for either non-payment or obtaining electricity or distribution services by, or involving, deception (clause 100, Part eight).

Information asymmetry

4.7. Information asymmetry is a situation where one party has more or better information than the other party in a transaction or a contract. This information imbalance can lead to market inefficiencies and potential exploitation of less-informed parties.

4.8. The Guidelines aim to help resolve this imbalance of information between retailers, who may hold more information, and domestic consumers, through various recommendations to retailers including:

(a) Publishing and making customers aware of a consumer care policy that outlines specific actions retailers will take when dealing with consumers, and includes information on all fees, conditional discounts and bonds charged or made available to customers (Part two).

(b) Making sure customers are aware of the range of electricity pricing plans and payment plans the retailer offers before signing up, and the drawbacks of any plan (clause 21, Part four).

(c) Ensuring customers are aware, before changing a pricing plan, of the range of pricing plans and payment plans the retailer offers, and of any options generally available in the market the retailer is aware of that might better suit the customer's circumstances (clause 31, Part five)

(d) Ensuring customers are made aware of budgeting and electricity efficiency advice available from reputable support/social agencies (throughout the Guidelines).

Achieving the policy objective contributes to addressing energy hardship, but does not aim or intend to fully resolve all energy hardship issues

4.9. When we published the Guidelines, we acknowledged that industry participants need to play an active role to reduce the impacts and likelihood of domestic consumers experiencing energy hardship. This is reflected through the purpose and intended outcomes of the Guidelines.

4.10. However, energy hardship is a bigger issue than can be solved by the Authority, Guidelines, or retailers alone. As recognised by the EPR, the Expert Panel, and MBIE through its defining energy hardship workstream, energy hardship is caused and impacted by a range of variables, many of which are outside of the Authority's or retailers' control. These variables include household energy needs, location in New Zealand, available energy sources, household income, housing type and quality, and appliance efficiency.

4.11. While the Guidelines aim to help consumers address some of these variables where possible through referrals to support and social agencies, they do not (and cannot be expected to) directly address the root causes of all energy hardship issues.

The policy objective must be considered in light of the Authority's statutory objectives

4.12. In considering whether any changes are required to ensure that the purpose and intended outcomes of the Guidelines are being consistently delivered, we need to ensure the Authority acts consistently with its statutory objectives:

(a) to promote competition in, reliable supply by, and efficient operation of, the electricity industry for the long-term benefit of consumers (the main objective)

(b) to protect the interests of domestic consumers and small business consumers in relation to the supply of electricity to those consumers (the additional objective) - the additional objective applies only to the Authority's activities in relation to the direct dealings of industry participants with domestic consumers and small business consumers.

4.13. The interaction between these two objectives, including the effect of any potential conflicts that may arise between the main and additional objectives, has not yet been formally tested. However, the Authority's current view is that, given the content of the Guidelines, these fall squarely within the additional objective, and they are also consistent with the main objective.

4.14. In addition to being consistent with the statutory objectives, if the Guidelines, or any part of them, were to be included in the Code, it would need to be necessary or desirable to do so in order to promote the protection of the interests of domestic consumers in relation to the supply of electricity to those consumers. Section 32 of the Act provides that the Code can only contain provisions that are consistent with the objectives of the Authority, and are necessary or desirable to promote any or all of the following:

(a) competition in the electricity industry

(b) reliable supply of electricity to consumers

(c) efficient operation of the electricity industry

(d) protection of the interests of domestic consumers and small business consumers in relation to the supply of electricity to those consumers

(e) performance by the Authority of its functions

(f) any other matter specifically referred to in the Act as a matter for inclusion in the Code.

4.15. The Authority's initial view is that this test would be met here.

5. Scope of options

We have excluded options that significantly amend or extend the Guidelines' current content, but plan to consult on these issues by mid-2024

5.1. We acknowledge stakeholder views that further protections for consumers, outside of what the Guidelines currently cover, may be necessary. However, our immediate priority is addressing any issues with the current Guidelines not delivering their intended outcomes as quickly as possible.

5.2. We know that some consumer stakeholders have raised consumer protection concerns including:

(a) minimum standards of care for small businesses

(b) protections for domestic consumers using distributed energy resources such as solar panels

(c) responsibilities for retailers regarding customers experiencing family violence, following the rules introduced by the Australian Energy Market Commission in September 2022[17]

(d) banning disconnection and reconnection fees in cases of unpaid bills

(e) standards to ensure that pre-pay prices should be no higher than a retailer's cheapest post-pay plan.

5.3. The Expert Panel's final recommendations to Government on alleviating energy hardship, and the Government's response, may also contain Authority-led actions that fall outside of the current Guidelines' coverage. We note the Expert Panel's discussion paper considered a range of draft Authority led strategies extending protections past the current Guidelines' coverage, including developing a mechanism(s) to ensure all domestic consumers can obtain a post-pay electricity supply despite 'adverse credit'.

5.4. We intend to consider and consult stakeholders on issues that fall outside of the current Guidelines' content, including the issues raised in paragraph 5.2. and raised in the Government's response to the Expert Panel's final recommendations to

[17] The Australian Energy Market Commission introduced rules for retailers, in September 2022, to address potential exploitation of essential services by perpetrators of family violence to control victims, undermine financial security, and inflict psychological and physical harm. For more information on this rule see https://www.aemc.gov.au/rule-changes/protecting-customers-affected-family-violence.

alleviate energy hardship (if released), through an issues paper to be released by mid-2024.

Q4. What do you think about our approach to limit options to areas covered by the current Guidelines?

Q5. What issues that fall outside of the current Guidelines would you like to see us consult stakeholders on in an issues paper to be released by mid-2024? If possible, please provide any initial evidence on these issue areas.

6. Options for consideration

6.1. Excluding options that significantly amend or extend the Guidelines' current content, we are seeking stakeholder views on the options summarised below.

Option one – maintain status quo

6.2. Option one would make no changes to the current Guidelines.

Option two – voluntary with amended wording

6.3. Option two would keep the Guidelines voluntary but amend their wording to address issues noted by stakeholders about varying interpretations of parts of the Guidelines. This includes addressing interpretation issues for the following areas:

(a) what a 'severe weather event' is (clauses 66(c), 73(a)(i), and 73(a)(ii))

(b) when a disconnection could be interpreted as endangering the wellbeing of the customer or any consumer at the premises (clauses 66(c), and 73(a)(i))

(c) what 'reasonable' means in various parts of the Guidelines, including making reasonable efforts to contact a customer or consumer for their medically dependent consumer status, who the retailer believes could be a medically dependent consumer (clause 90)

(d) any other wording raised by stakeholders through this consultation that needs clarification but does not significantly amend or extend the Guidelines.

6.4. We would seek stakeholder consensus on these interpretations through further consultation. If this option was adopted, we consider that relevant interpretations could be agreed Q2 2024.

6.5. This option could be undertaken on its own or alongside options three or four.

Q6. Are there other interpretation issues or areas of the Guidelines that you consider need to be clarified, that do not significantly amend or extend the Guidelines?

Option three – codify parts of high importance (parts two, six, seven and eight)

6.6. Option three would codify (make mandatory through the Code) parts two, six, seven and eight of the Guidelines. These parts contain recommendations for retailers to take specific actions:

(a) to contain certain information in a consumer care policy, on their website and in initial communications with customers (part two)

(b) when a customer anticipates payment difficulties, is having payment difficulties, and/or is in payment arrears (part six)

(c) prior to, at, and following disconnection (part seven)

(d) when supplying domestic premises where a medically dependent consumer usually resides, including not to disconnect a post-pay customer's premises for non-payment of debt if a medically dependent consumer or potentially medically dependent consumer is usually resident (part eight).

6.7. They also contain recommendations for how and where retailers should publish and promote their consumer care policies, and the minimum recommended content of these policies (part two).

6.8. We consider that the recommendations in these parts of the Guidelines prevent the greatest amount of harm from occurring to domestic consumers.

6.9. Part two ensures that consumers can access information about their rights under a retailer's consumer care policies and processes, and puts in place systems to make consumers aware of these policies.

6.10. Part six ensures that customers have appropriate time to organise and receive the assistance or benefits they are entitled to, and that supportive practices from the retailer both increase the ability for the customer to cope and the retailer to be paid. The part six recommendations aim to ensure that:

(a) intervention to assist the customer occurs at the earliest possible time

(b) the customer is on the lowest cost pricing plan for their circumstances

(c) the retailer is actively working to prevent the accumulation of debt by their customers

(d) if the customer is using a prepay meter, the retailer recognises self-disconnection patterns that indicate the customer is having payment difficulties, and offers support.

6.11. Part seven ensures that disconnection for non-payment is a last resort[18], as the chance of a consumer experiencing harm increases substantially when they are without electricity. The part seven recommendations aim to ensure that:

(a) retailers make reasonable attempts to contact customers before disconnection

(b) where a customer will not engage with a retailer, the retailer has the right to disconnect, provided the appropriate process is followed

(c) consumers at premises with no retailer contract receive similar disconnection notifications as customers at contracted premises

(d) medically dependent, or potentially medically dependent, consumers are identified before disconnection

[18] Note that in the Guidelines a disconnection resulting from a prepayment service running out of credit is not considered a disconnection for non-payment. This is because the customer is presumed to have understood and accepted the risks associated with being on a prepayment service, where disconnection will occur if the prepayment service runs out of credit.

(e) disconnection for non-payment of debt regarding electricity supply or distribution services is a last resort, undertaken only after affected parties are aware of all relevant information

(f) prepay customers receive notification of low credit, noting that they will not receive disconnection notices.

6.12. Part eight primarily ensures that households with medically dependent consumers are not disconnected for non-payment. Other part eight recommendations aim to ensure that:

(a) medically dependent consumers are identified and recorded in retailers' customer relationship management systems as early as practicable

(b) retailers have discretion to determine whether they treat a consumer as a medically dependent consumer without a health practitioner's verification notice.

6.13. Codifying these parts of the Guidelines would require us to first draft Code amendments. This draft would be based on the current recommendations, and enable appropriate Code monitoring and/or enforcement.

6.14. This includes considering whether retailers could align with the Code by either adopting the minimum actions and/or taking alternative actions that achieve the same purpose and outcomes of the Guidelines (as stated in clause ix. in the explanatory note of the Guidelines).

6.15. This process would also include ensuring any wording adjustments are made to resolve interpretation issues, as outlined above under option two.

6.16. After Code amendments were drafted, we are then required to follow the consultation process for proposed amendments set out in section 39 of the Act and the Consultation Charter.[19] This would include:

(a) publicising a draft of the proposed amendment.

(b) preparing and publicising a regulatory statement (containing a statement of the objectives of the proposed amendment, evaluation of costs and benefits, and evaluation of alternative means of achieving the amendments' objectives).

(c) consulting on the proposed amendment and regulatory statement.

6.17. If this option were to be chosen, then pending completion of the consultation process set out in paragraph 6.16. and consideration of stakeholder feedback, we would then amend the Code. We consider option three could result in code changes by mid-2024. During the amendment consultation process we would also consult on our approach to compliance and enforcement of these parts and how they fit with our Compliance Monitoring Framework.[20]

6.18. We proactively monitor for Code compliance using a risk-based framework to determine which provisions are highest risk and should be prioritised. Provisions

[19] The consultation charter provides guidelines on the processes for amending the Code and consulting on proposed amendments to the Code. It is available here: https://www.ea.govt.nz/documents/482/Consultation_Charter.pdf.

[20] For information on our compliance strategy, framework and policies see: https://www.ea.govt.nz/documents/890/Compliance_monitoring_framework.pdf.

that are high-risk have both a high likelihood of undetected non-compliance occurring and a high level of harm from non-compliance.

Q7. Do you agree that parts two, six, seven and eight are the parts of the Guidelines preventing the greatest harm from occurring to domestic consumers?

Option four – codify all relevant parts (parts one to nine)

6.19. Option four would codify parts one to nine of the Guidelines (as previously stated in paragraph 3.34., part 10 is outside of scope for this consultation paper).

6.20. As well as codifying the parts covered in option three, option four extends mandatory standards to parts of the Guidelines with recommendations for retailers including to:

(a) collect and record information regarding consumer care, primarily to enable a retailer to proactively support, as effectively as possible, any customer who may have difficulty paying their bill or maintaining electricity connection (part three)

(b) take actions when a customer is signed-up or a person enquiring with a retailer is denied a contract, including letting customers know of the full range of pricing and payment plans available, and considering information outside of a person's poor credit record when considering signing them up (part four)

(c) take actions regarding business-as-usual account management, including advising customers annually of the retailer's consumer care policy and that the customer can request access to consumption data (part five)

(d) ensure bonds and fees charged are reasonable (part nine).

6.21. Codifying these parts would follow the same Code drafting and subsequent consultation process as outlined in option three. As with option three, the process would include ensuring any wording adjustments are made to resolve existing interpretation issues within the Guidelines.

6.22. If this option was chosen, we consider option four could result in code changes in the second half of 2024.

Q8. Are there any other options you think we should consider?

7. Criteria to assess options

Our policy objective and statutory objectives form the primary criteria to assess options

7.1. Using the Guidelines' intended outcomes, alongside the Authority's statutory objectives, we have determined three primary criteria to assess options against. These criteria are outlined below.

Criterion one: Impact on domestic consumer welfare

7.2. Criterion one assesses options against their ability to deliver on the seven intended outcomes outlined under the Guidelines' overarching principles A and B.[21] These seven outcomes are:

(a) Retailers work proactively to minimise harm caused by difficulty accessing electricity (including by disconnection).

(b) Customers facing difficulties paying for electricity supply or distribution services are supported, including through retailers proactively helping customers:

i. to be on the most appropriate pricing plan and payment plan

ii. prevent accumulating debt over electricity supply or the provision of distribution services.

(c) Retailers seek to keep customers connected, avoiding disconnection for an unpaid electricity invoice, and only use disconnection as a last resort measure, and only in relation to a customer's undisputed debt over electricity supply or the provision of distribution services.

(d) medically dependent consumers are not to be disconnected for non-payment of debt or for obtaining electricity or distribution services by or involving deception.

(e) Customers, and consumers permanently or temporarily resident at a customer's premises, are treated with care and respect in every interaction with retailers.

(f) Consumers interacting with retailers receive at least a minimum standard of treatment regardless of the retailer and regardless of whether they are a customer of the retailers.

(g) Customers engage with retailers in good faith and responds to retailer communications, to avoid or minimise non-payment issues.

7.3. Criterion one also considers how each of the options may promote the Authority's additional objective to protect domestic consumer interests.

Criterion two: Impact on competition and innovation

7.4. Criterion two assesses options against their ability to deliver the first two intended outcomes of the Guidelines' overarching principle C:[22]

(a) Retailers operate on a level playing field, where all competitors align with the Guidelines.

(b) These Guidelines do not place undue costs or constraints on retailers that limit competition or innovation.

[21] Overarching principle A is "Electricity is important to the health, wellbeing and social participation of people and whānau in communities", overarching principle B is "respect and constructive engagement underpin the consumer and retailer experience".

[22] Overarching principle C is "retailers have a right to be paid for services delivered and competition and innovation are supported".

7.5. Criterion two also considers how each of the options may promote competition in the electricity industry for the long-term benefit of consumers, as set out in the Authority's main statutory objective.

Criterion three: Impact on retailers' right to payment, and market efficiency

7.6. Criterion three assesses options against their ability to deliver the second two intended outcomes of the Guidelines' overarching principle C:

(a) Retailers are paid for electricity supplied and/or distribution services provided.

(b) Retailers have clear, predictable, consistent and effective processes and interfaces to use when engaging with support/social agencies and health agencies about matters covered by the Guidelines.

7.7. Criterion three similarly considers how each of the options may promote the efficient operation of the electricity industry for the long-term benefit of consumers, as set out in the Authority's main statutory objective.

Options should also be assessed against their timeliness and cost to the Authority

7.8. We also consider that each of the options should be assessed for their timeliness, given that we aim to deliver our policy objective to ensure that the purpose and intended outcome of the Guidelines are consistently being delivered as quickly as possible. We will consider how quickly each option can feasibly be implemented under **criterion four: timeliness**.

7.9. Consideration of costs to the Authority of implementing any options will also be included under **criterion five: Authority cost**. We consider that it is appropriate to consider this as the Authority works within limited levy-funded appropriations and needs to allocate resources efficiently to achieve its objectives.

7.10. Any increased cost to the Authority that cannot be managed within current appropriations would need to be funded through increases to the levy of industry participants. The costs on participants from increases to the levy may be passed onto consumers.

7.11. However, we consider it appropriate for both these criteria to be weighted less than the first three criteria when used for options assessment. This is because we consider delivering the intended outcomes of the Guidelines and considering how options may promote the Authority's statutory objectives are the primary considerations.

Q9. Do you agree with our criteria to assess options? Are there any other criteria you think the Authority should use?

Q10. Do you agree criteria four and five should be weighted less than the first three criteria?

8. Assessment of options against status quo

8.1. Table two on page 28 provides our initial assessment of how each option aligns with or deviates from our criteria, compared to the status quo (doing nothing).

8.2. If option three or four (those requiring Code changes) is the preferred option following consultation, we will complete and consult on a full cost-benefit analysis in line with our obligations for proposed Code changes under section 39 of the Act and the Consultation Charter. This will include considering any costs and benefits to non-retailer industry participants such as distributors and metering equipment providers (MEPs) (we expect these to be minimal if these participants are already aligned with the Guidelines).[23]

8.3. For MEPs these costs include incremental implementation costs from the expectation on them to not disconnect a retailer's customer without the express consent of the retailer. For distributors these costs could include incremental implementation costs form the expectation on them to not vary the time or date of a planned outage or disconnection without conferring with retailers where their medically dependent customers are affected.

8.4. We note that many of the main costs and benefits to consumers and retailers are considered throughout the criteria used in our assessment. For example, the increased compliance costs and customer debt that retailers may face under options three and four are considered through criteria two and three. We encourage stakeholders to provide us with the estimated costs and benefits (where quantifiable) under each option to inform our preferred option, and the subsequent cost benefit analysis for options three or four if these are preferred post consultation.

8.5. It is difficult to make an accurate assessment of the scale of potential impact any changes would make, given our knowledge of alignment is limited to retailers self-reported alignment for the 2021/22 financial year. Further, as discussed in the problem definition section of this paper, feedback from consumer stakeholders suggests that the self-reported alignment may not be a true reflection of retailers' alignment with the Guidelines.

8.6. We will consider information provided through of our second alignment review for the 2022/23 financial year, alongside submissions on the current consultation, when considering any changes to the Guidelines.

8.7. Our assessment is preliminary, and we welcome stakeholder feedback and information to strengthen the accuracy of our analysis regarding how the options meet/do not meet the criteria.

8.8. We especially welcome stakeholder feedback on the impacts to retail market competition, innovation, efficiency, and costs to retailers, as our analysis of these is initial and will be further informed by stakeholder perspectives on these areas.

8.9. For the avoidance of doubt, our current view is that all options are consistent with both of our statutory objectives. We also consider that retailers already following the Guidelines will not experience a significant increase to their compliance costs if any parts of the Guidelines are mandated.

Q11. Do you agree with our assumption that retailers already following the Guidelines should not experience a significant increase in their compliance costs if any part of the Guidelines is mandated?

[23] For information on the expected incremental costs to distributors and metering equipment providers of introducing the Guidelines see page 45 of the Guidelines October 2020 consultation paper here: https://www.ea.govt.nz/documents/2209/Consumer-care-guidelines-consultation-document.pdf#page=45.

Recap of Option one – status quo

8.10. Option one would mean no changes to the Guidelines. We consider current concerns regarding non-alignment with the Guidelines are likely to continue if no changes are made.

> Q12. Do you agree that under the status quo, concerns regarding retailer alignment with the Guidelines are likely to continue?

Table Two: Initial assessment of options against status quo

	Option Two – voluntary with amended wording	Option Three – codify parts two, six, seven and eight	Option Four – codify parts one to nine
Domestic consumer welfare	**Assessment: low positive impact** Addressing interpretation issues may prompt some retailers to improve their standards to better achieve the intended outcomes under this criterion. Would likely not prompt retailers who are not aligned with the Guidelines already to shift their behaviour, as they may be unaligned due to reasons other than interpretation issues (such as compliance costs).	**Assessment: medium – high positive impact** Would require all retailers to comply with recommendations in parts two, six, seven and eight, likely resulting in improved delivery of key intended consumer outcomes including that: ▪ customers facing payment difficulties are supported through retailers proactively helping them ▪ retailers only use disconnection as a last resort ▪ medically dependent consumers are not disconnected for non-payment of debt or for obtaining electricity or distribution services by, or involving, deception.	**Assessment: high positive impact** Alongside the benefits of option three, this option would likely result in improved delivery of other key intended consumer outcomes including that: ▪ customers, and consumers permanently or temporarily resident at a customer's premises, are treated with care and respect in every interaction with retailers ▪ retailers work proactively to minimise harm caused by difficulty accessing electricity (for example, considering factors outside credit history when a customer seeks to sign up) ▪ consumers receive at least a minimum standard of treatment regardless of retailer and whether they are a retailers' customer.
Competition and innovation	**Assessment: low positive impact** May ensure a 'level playing field' for retailers that follow agreed interpretations, but retailers could continue to ignore these or continue to choose to not follow the Guidelines, continuing to result in a 'non-level playing field'.	**Assessment: low negative impact** Would require all retailers to operate on a 'level playing field' to support customers in financial difficulty, disconnection processes, and non-disconnection of medically dependent consumers. This may encourage new entrants if they see the market as fair. Conversely, increased regulatory costs from complying with these parts (for example, developing a consumer care policy and training staff on it) could increase barriers to market entry, decreasing market desirability for new entrants. There is a risk that some smaller retailers may struggle to absorb/pass-on the increased regulatory costs, potentially leading them to become unprofitable and leave the market. Scope for innovation may also decrease as the recommendations in these parts are relatively prescriptive, and retailers may be less inclined to take risks to innovate to reach desirable outcomes, given potential repercussions for Code non-compliance. However, the scope to which innovation is limited will depend on whether a prescriptive or principles-based approach is taken to Code drafting (note retailers can align with the current Guidelines by taking alternative actions that achieve the purpose and outcomes in Part one - see clause ix.in Guidelines explanatory note).	**Assessment: medium negative impact** Would require all retailers to operate on a 'level playing field' regarding all recommendations in the current Guidelines. This may encourage new entrants if they see the market as fair. Conversely, there could be minor increased regulatory costs above those in option three. This is primarily due to additional costs associated with ensuring systems exist to gather information and records relating to consumer care. These costs may increase market entry barriers, decreasing desirability for new entrants. Smaller retailers may also struggle to absorb/pass on the increased regulatory costs, leading them to become unprofitable and leave the market. Scope for innovation may also decrease more than in option three due to retailers having to follow further prescriptive rules.
Retailers right to payment / market efficiency	**Assessment: low positive impact** May ensure that retailers who follow agreed interpretations have clear, predictable, consistent, and effective processes. Potentially increases efficiency when dealing with support/social agencies, or customers. We expect having agreed interpretations will have little to no positive impact on retailers receiving payment.	**Assessment: low negative impact** Would cause retailers to take on increased debt through delaying disconnections, by following the processes to support customers in financial difficulty and for disconnection, and not being able to disconnect medically dependent consumers. To compensate for the risk of bad debt alongside increased regulatory costs, retailers may pass these costs on to all consumers through higher prices, negatively impacting all consumers.	**Assessment: medium negative impact** Would have similar impact on increased amounts of retailer debt to option three, given other parts of the Guidelines do not significantly reduce a retailer's ability to disconnect domestic consumers. To compensate for the risk of bad debt and slightly increased regulatory costs, retailers may pass these costs on to all consumers through higher prices, negatively impacting all consumers in the market.
Timeliness	**Assessment: short term implementation** Could be delivered relatively quickly through workshopping interpretations with stakeholders, and then amending the Guidelines. We estimate the Guidelines could be amended by Q2 2024.	**Assessment: medium term implementation** Requires completion of, and consultation on a proposed Code amendment and cost-benefit analysis on four Guideline parts. We estimate following these processes the Code could be amended by mid-2024.	**Assessment: long term implementation** Require completion of, and consultation on, a proposed Code amendment and cost-benefit analysis on nine Guidelines parts. We estimate following these processes the code could be amended in the second half of 2024.
Authority cost (ultimately passed on to consumers via levy)	**Assessment: neutral** No additional costs to the Authority expected.	**Assessment: low – medium cost impact** Once implemented this option may result in increases to ongoing operational costs associated with compliance activities from the codified parts. This could include participant auditing, investigation, and enforcement action.	**Assessment: medium cost impact** Once implemented this option may result in increases to ongoing operational costs associated with compliance activities from the codified parts. These will be greater than option three given the increased number of mandatory parts. This could include participant auditing, investigation, and enforcement action.

Q13. What impacts to competition, innovation and efficiency in the retail market would you expect to see for options three and four respectively?

Q14. For retailers, broken down by Guidelines part, what would the estimated costs to your business be of codifying parts of the Guidelines under option three or four (for example implementation and compliance costs)?

Q15. What do you think the benefits to domestic consumers will be under options two to four?

Q16. Do you agree with our initial assessment of the options against the status quo? If not, what is your view and why?

8.11. Based on our initial assessment, the Authority's preferred option is Option three - codify parts two, six, seven and eight of the Guidelines. We consider this would best deliver our policy objective and be consistent with the Authority's statutory objectives.

8.12. Importantly, it would protect the interests of domestic consumers facing financial difficulty or disconnection, or who are medically dependent consumers. This is while minimising any potential negative impacts on the promotion of competition in, reliable supply by, and the efficient operation of, the electricity industry for consumers long-term benefit.

8.13. Our initial assessment is that option three is likely to resolve the greatest areas of concern identified with the status quo. These include help for domestic consumers in financial difficulty and processes for those facing disconnection, and retailers disconnecting medically dependent consumers for non-payment.

8.14. We consider that:

(a) option two does not deliver sufficient improvements to domestic consumer welfare

(b) there is a risk that option four will result in negative impacts to innovation, and to the competition and efficiency limbs of our main statutory objective. This could result in negative impacts on the retail market negatively impacting the long-term interests of consumers. These impacts could outweigh the potential benefits to consumers from making these parts of the Guidelines mandatory. However, as part of this consultation we are seeking more information on the potential negative impacts to innovation, competition, and efficiency as part of this option.

Q17. Do you agree with our preliminary view? If not, what is your view and why?

Appendix A Format for written submissions

If you would prefer to make a verbal submission, please see section one for more information.

Submitter	

Questions	**Comments**
Q1. Do you agree or disagree with our view that the Guidelines are not delivering on their purpose or intended outcomes? Please provide any supporting evidence.	
Q2. Do you agree the policy objective should be delivering the purpose and intended outcomes of the Guidelines? If not, why not?	
Q3. Do you consider the Guidelines' recommendations, purposes, and intended outcomes continue to reflect general industry consensus? Note in this question we are seeking your views on the Guidelines' content; not whether they should be mandatory.	
Q4. What do you think about our approach to limit options to areas covered by the current Guidelines?	
Q5. What issues that fall outside of the current Guidelines would you like to see us consult stakeholders on in an issues paper to be released by mid-2024? If possible, please provide any initial evidence on these issue areas.	
Q6. Are there other interpretation issues or areas of the Guidelines that you consider need to be	

clarified, that do not significantly amend or extend the Guidelines?	
Q7. Do you agree that parts two, six, seven and eight are the parts of the Guidelines preventing the greatest harm from occurring to domestic consumers?	
Q8. Are there any other options you think we should consider?	
Q9. Do you agree with our criteria to assess options? Are there any other criteria you think the Authority should use?	
Q10. Do you agree criteria four and five should be weighted less than the first three criteria?	
Q11. Do you agree with our assumption that retailers already following the Guidelines should not experience a significant increase in their compliance costs if any part of the Guidelines is mandated?	
Q12. Do you agree that under the status quo, concerns regarding retailer alignment with the Guidelines are likely to continue?	
Q13. What impacts to competition, innovation and efficiency in the retail market would you expect to see for options three and four respectively?	
Q14. For retailers, broken down by Guidelines part, what would the estimated costs to your business be of codifying parts of the Guidelines under option three or four (for example implementation and compliance costs)?	
Q15. What do you think the benefits to domestic consumers will be under options two to four?	

Q16. Do you agree with our initial assessment of the options against the status quo? If not, what is your view and why?	
Q17. Do you agree with our preliminary view? If not, what is your view and why?	

Glossary of abbreviations and terms

Act	The Electricity Industry Act 2010. The Act provides a framework for regulating New Zealand's electricity industry and is administered by the Ministry of Business, Innovation and Employment.
Authority	The Electricity Authority.
Cabinet	The group of Government ministers that meets regularly to deliberate on major political issues. Cabinet makes most decisions on matters of public policy, and devises and implements the Government's political strategy.
Code	The Electricity Industry Participation Code 2010. The Code sets out the duties and responsibilities for all individuals and participants involved in the electricity industry. All industry participants are required by law to comply with the Code.
Consumer	A person who is supplied electricity for consumption - consumers can be domestic/residential, commercial/business, and industrial.
Customer	A person who has entered into a contract with a retailer for electricity supply (other than for resupply), and/or providing distribution services.
Distributor	A business engaged in conveying electricity on distribution lines (other than lines that are part of the national grid).
Domestic consumer	A person who purchases or uses electricity for domestic premises.
EPR	The Electricity Price Review. The EPR was an independent review into New Zealand's electricity market commissioned by the government in 2018. It examined whether the market was delivering fair and equitable prices to consumers, and how to future proof the electricity sector to help ensure New Zealand's transition away from carbon-based fuels. The EPR delivered its recommendations to government in 2019 Electricity Price Review: Final Report (mbie.govt.nz).
Expert Panel	The Energy Hardship Expert Panel. The Expert Panel was established in late 2021 as part of the government's response to the Electricity Price Review recommendations. The Expert Panel's objective is to recommend policy priorities and actions to government to alleviate energy hardship, and provide impartial, evidence-based expert advice.
ICP	Installation control point - a unique code assigned to a specific site where electricity is supplied, such as a domestic consumer's house or a business.
Industry Participant	An industry participant means a person, or a person belonging to a class of persons, identified in section 7 of the Act. This includes distributors, retailers, and metering equipment providers.
Levy	The Crown funds the Authority through appropriations of public money. The Crown recovers the cost of this funding, up to the level of actual expenditure incurred, through a levy on electricity industry participants.
Market facilitation measures	Actions that the Authority can take to help the electricity industry function well, short of amending the Code or recommending changes to regulations. This can include discussion with participants, education programmes, publishing guidelines and model agreements.
MBIE	The Ministry for Business, Innovation and Employment.

Medically Dependent Consumer	A consumer (whether a customer of a retailer or a consumer permanently or temporarily resident at a customer's premises) who depends on mains electricity for critical medical support. This is such that loss of electricity may result in loss of life or serious harm. Medical dependence on electricity could be for use of medical or other electrical equipment needed to support a treatment regime (for example, a microwave to heat fluids for renal dialysis).
MEP	Metering Equipment Provider - a business or person with responsibility for (or appointed to be responsible for) any metering installation.
Post-pay	Post-pay refers to a pricing plan where the retailer charges the customer for electricity consumed after the customer has consumed electricity.
Pre-pay	Pre-pay refers to a pricing plan that requires a prepayment service and is where the customer pays the retailer for electricity to be consumed, before the customer consumes it.
Retailer	A business engaged in selling electricity to a consumer (other than for resale).
RFS notice	The retailer financial stress notice - a data request notice for retailers allowing the Authority to permanently monitor financial stress.
Royal Assent	The final step in the legislative process where the Sovereign, or the Sovereign's representative in New Zealand, the Governor-General, signs a bill into law.
Small business consumer	A consumer that is not a domestic consumer and consumes less than 40 MWh of electricity per year.