



Consumer Care Consultation
Electricity Authority
via email
ConsumerCareConsultation@ea.govt.nz

2 October 2023

Options to update and strengthen the Consumer Care Guidelines

Thank you for the opportunity to submit on the “Options to update and strengthen the Consumer Care Guidelines” consultation (“Consultation”). Mercury’s responses to the specific questions asked are contained in Appendix A and a summary of our broad views is set out below. Please note that Mercury also supports the Electricity Retailers Association of New Zealand (“ERANZ”) submission on this Consultation.

Mandate the Guidelines under Option three

Mercury supports mandating the Consumer Care Guidelines (“Guidelines”) in accordance with Option three of the Consultation. As an organisation we were heavily involved in the working group that helped develop the content of the draft Guidelines and are proud of the work we have done to ensure alignment and introduce initiatives that go beyond the recommended minimum standards. Mandating the Guidelines under Option three would have a minimal impact for Mercury and other retailers who are already in alignment with the Guidelines and should bring greater consistency of experience for vulnerable customers regardless of their provider.

We would not support mandating the entire Guidelines under Option four as this would create an overly compliance heavy regime where innovation and competition cannot co-exist. Option three also carries a risk of disincentivising innovation however the benefit to vulnerable consumers outweighs this risk. To mitigate the impact on innovation it will be important for the Guidelines to emphasise that retailers can achieve alignment through alternative measures where those measures achieve the purpose and outcomes of the Guidelines.¹

Guidelines not broken, just need tweaking

The Consultation and the Authority’s review of retailers’ self-assessment under the Guidelines in June 2023 are themed around perceived poor retailer alignment and that the Guidelines have been unsuccessful in delivering on their intended purpose. It is our view, however, that the same data can also be viewed in a more positive light to show that most of the largest retailers are fully aligned with the Guidelines. The reality is that nearly 90% of New Zealand’s domestic consumers are now receiving better minimum protections than before the Guidelines were introduced². Whilst we agree that some tweaking is required to iron out ambiguities and impracticalities, the

¹ Explanatory note ix and section 126b of the Consumer Care Guidelines.

² See Electricity Retailers Association of New Zealand submission on this Consultation at page 2 “All ERANZ members align with the new Consumer Care Guidelines and have undertaken extensive work to ensure this. This means that almost 90% of all residential consumers have the protection of the Guidelines from ERANZ members...”



Guidelines themselves are still fit for purpose and have greatly increased retailer obligation towards vulnerable consumers. This outcome should be given more weight in decisions regarding the future of the Guidelines.

Treat Energy Hardship Expert Panel recommendations and consumer group concerns in scope or implement Option Two as a stopgap

In our view, the Energy Hardship Expert Panel (“Expert Panel”) recommendations and consumer stakeholder concerns form a critical input to any changes to the Guidelines and therefore should be considered “in scope”. For example, discussions around whether retailers should be obliged to provide an electricity contract to customers with adverse credit and whether retailers should be banned from charging disconnection and reconnection fees both fall squarely within the processes covered by the Guidelines.

We appreciate that there is a sense of urgency to the Authority’s Consultation timeframe however we are concerned that pushing through any changes to the Guidelines before consulting on wider issues will result in unnecessary duplication of effort and cost. The Authority should ideally delay any final decision on this Consultation until wider issues have been consulted on in the second half of 2024.

Alternatively, Option two could be implemented in the first half of 2024 as a stopgap whilst consultation on the Expert Panel recommendations and consumer stakeholder concerns is progressed. This would involve duplication of effort however the Authority could also use this as an opportunity to test the efficacy of the amended voluntary Guidelines. We assume that there would be a follow up consultation to incorporate feedback received on the Expert Panel recommendations and consumer stakeholder concerns prior to deciding the ultimate form the Guidelines should take.

If you have any questions on Mercury’s submission, please don’t hesitate to contact me on 0212882276 or jo.christie@mercury.co.nz.

Yours sincerely



Jo Christie
Regulatory Strategist



Appendix A: Mercury submission on “Options to update and strengthen Consumer Care Guidelines”

Question	Response
<p>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.</p>	<p>Based on the evidence provided in the Consultation Mercury agrees with the Electricity Authority (“Authority”) that the Consumer Care Guidelines (“Guidelines”) are not delivering on their purpose or intended outcome. The requirement to deliver disconnection notices to non-responsive customers, and the ambiguity in some sections of the Guidelines that leaves them open to interpretation, means that the Guidelines are not being consistently followed by all retailers.</p> <p>However, this should not detract from the positive outcomes that the Guidelines have generated for consumers. The data shows that the largest retailers in New Zealand are fully aligned with the Guidelines.³ This means that almost 90% of residential consumers in New Zealand are receiving the recommended protections. This success should not be understated and supports a view that the Guidelines are not too broken, they simply require some tweaking to enable more consistent alignment.</p>
<p>Q2. Do you agree the policy objective should be delivering the purpose and intended outcomes of the Guidelines? If not, why not?</p>	<p>Yes, we agree with the policy objective.</p>
<p>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.</p>	<p>In our view the original purpose and intended outcomes of the Guidelines are still fit for purpose. We would however seek changes to certain recommendations before the Authority chooses whether to mandate part or all the Guidelines.</p> <p>Please see Appendix B for a full list of Mercury’s suggested amendments to the Guidelines.</p>

³ See Electricity Retailers Association of New Zealand submission on this Consultation at page 2 “All ERANZ members align with the new Consumer Care Guidelines and have undertaken extensive work to ensure this. This means that almost 90% of all residential consumers have the protection of the Guidelines from ERANZ members...”



<p>Q4. What do you think about our approach to limit options to areas covered by the current Guidelines?</p>	<p>Mercury agrees the Authority should be addressing the issues with the current Guidelines not delivering their intended outcomes as quickly as possible however we do not agree that this should be its priority.</p> <p>A final decision on this Consultation would not be complete until some of the strategies contained in the Energy Hardship Expert Panel’s (“Expert Panel”) discussion paper can be explored. The potential issues raised in section 5 of the Consultation are so directly relevant to the processes covered by the Guidelines that it would not make sense to exclude them from discussion over what mandated Guidelines should include.</p> <p>For example, in our view:</p> <ul style="list-style-type: none"> • banning disconnection and reconnection fees; • standards around prepay pricing; and • ensuring all consumers can access post pay products <p>are all matters that require increased understanding and further discussion prior to a decision on the content of mandated Guidelines.</p> <p>Ideally, the Authority should delay any final decision on this Consultation until wider issues have been consulted on in the second half of 2024. The feedback from both consultations could then be incorporated into the final form the Guidelines should take.</p> <p>Alternatively, Option two could be implemented in the first half of 2024 as a stopgap whilst consultation on the Expert Panel recommendations and consumer stakeholder concerns is progressed. This would involve duplication of cost and effort however the Authority could also use this as an opportunity to test the efficacy of the amended voluntary Guidelines prior to consulting on the ultimate form the Guidelines should take.</p>
<p>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.</p>	<p>As mentioned above, the priority issues for consultation in 2024 from our perspective are:</p> <ul style="list-style-type: none"> • Banning disconnection and reconnection fees in cases of unpaid bills’; • Standards to ensure that pre-pay prices are no higher than a retailer’s cheapest post-pay plan; and • Ensuring all domestic consumers can obtain a post-pay electricity supply despite “adverse credit”. We note that the ERANZ Connect Me pilot is testing onboarding customers who would otherwise not be able to secure a post-pay connection and we will look forward to being able to share our findings with the Authority when the pilot has concluded in March 2024. <p>We do not consider the matters raised at section 5.2 (a), (b), and (c) to be a requisite part of current or future Guidelines in relation to domestic consumers. Small businesses and distributed energy resources may necessitate distinct minimum standards of care or regulation but they should not hold up any decision in relation to strengthening of current Guidelines.</p>

<p>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?</p>	<p>Please see Appendix B attached.</p>												
<p>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?</p>	<p>Mercury agrees that parts two, six, seven and eight of the Guidelines do the most to prevent harm from occurring to domestic consumers.</p> <p>Mercury is deeply invested in improving outcomes for our vulnerable customers and has a swathe of initiatives underway to provide payment solutions and wrap around support for those who experience payment difficulties. As a result of these initiatives our disconnection rates for residential arrears have plummeted, as shown in the table below.</p> <table border="1" data-bbox="523 734 1278 875"> <thead> <tr> <th></th> <th>2022</th> <th>2023</th> </tr> </thead> <tbody> <tr> <td>July</td> <td>19</td> <td>2</td> </tr> <tr> <td>August</td> <td>20</td> <td>1</td> </tr> <tr> <td>September</td> <td>30</td> <td>0 (as at 28.9.23)</td> </tr> </tbody> </table> <p>We do not agree that parts one to nine of the Guidelines should be mandated. Doing so would create a relationship between retailer and customer that is purely about compliance. The Australian experience shows that in such a compliance heavy environment the customer experience suffers. Such an environment also has the potential to hinder innovation and therefore competition.</p>		2022	2023	July	19	2	August	20	1	September	30	0 (as at 28.9.23)
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July	19	2											
August	20	1											
September	30	0 (as at 28.9.23)											
<p>Q8. Are there any other options you think we should consider?</p>	<p>The Authority could consider:</p> <ul style="list-style-type: none"> • Delaying a decision on this Consultation until it has consulted on the Expert Panel recommendations and the consumer stakeholder concerns (see above at question 4). This would avoid the duplication of cost and effort that will result if consultation on wider issues necessitates further changes to the Guidelines; or • Adopting Option two as a short-term fix pending consultation on recommendations from the Expert Panel. This would give the Authority the opportunity to monitor alignment with the amended voluntary Guidelines and test their efficacy prior to a decision on mandating. 												
<p>Q9. Do you agree with our criteria to assess options? Are there any other criteria you think the Authority should use?</p>	<p>We agree with the criteria to assess options.</p>												

<p>Q10. Do you agree criteria four and five should be weighted less than the first three criteria?</p>	<p>It is not possible to answer this question without some indication of what the difference in cost to the Authority would be to:</p> <ol style="list-style-type: none"> 1. Amend and potentially Mandate Guidelines in first half of 2024 then re-do this process to incorporate any changes following Expert Panel recommendations in the second half of 2024; or 2. Delay final decision on Guidelines until there has been consultation on Expert Panel recommendations and then amend and potentially mandate all relevant changes at the same time. <p>If there is a significant cost difference between these two options it would be more transparent for the Authority to give cost and timeliness the same weighting as the first three criteria.</p>
<p>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?</p>	<p>Yes.</p>
<p>Q12. Do you agree that under the status quo, concerns regarding retailer alignment with the Guidelines are likely to continue?</p>	<p>Yes.</p>
<p>Q13. What impacts to competition, innovation and efficiency in the retail market would you expect to see for options three and four respectively?</p>	<p>As mentioned above at question 7, Option four risks creating an overly compliance heavy relationship between retailers and their customers that would both stifle innovation and create a poor customer experience. We have heard from colleagues in the Australian electricity sector that their consumer care regulation has had a stultifying effect on their ability to “delight” their customers.</p> <p>Whilst Option three also carries an element of this risk, if the Authority can create a clearer pathway for retailers to comply with the Guidelines through alternative actions that still achieve the purpose and outcomes (see question 6 above) then retailers can still look at ways to innovate and this risk will be mitigated.</p>
<p>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)?</p>	<p>No comment.</p>
<p>Q15. What do you think the benefits to domestic consumers will be under options two to four?</p>	<p>Most domestic consumers are unlikely to see any benefits from the changes suggested under options two to four. We do anticipate however that greater alignment with the Guidelines will ensure vulnerable customers will have a more consistent experience regardless of who their electricity provide is.</p>

<p>Q16. Do you agree with our initial assessment of the options against the status quo? If not, what is your view and why?</p>	<p>Yes.</p> <p>We note however that the Authority has not mentioned the additional Code Amendment and consultation that would be required if amended or codified Guidelines were to require further amendment following consultation on Expert Panel recommendations.</p>
<p>Q17. Do you agree with our preliminary view? If not, what is your view and why?</p>	<p>Mercury agrees with the Authority's preliminary view that Option three is likely to resolve the greatest areas of concern identified with the status quo. This will not have a significant negative impact for Mercury and other retailers who are already in alignment with the Guidelines and will encourage those who are not to implement appropriate changes.</p> <p>As we have mentioned throughout our submission, we recommend the Authority consider the timing of the mandating to include the Expert Panel recommendations. This could either mean delaying a final decision on this Consultation or using Option two as a stopgap until all relevant issues have been debated and incorporated as necessary.</p>

Appendix B: Suggested Amendments to Guidelines

Clause 23 – Advising all new customers of budgeting support availability

- Requiring retailers to advise every new post-pay customer of the existence of the retailer's consumer care policy and the retailer's commitment to offer support if the customer faces payment difficulties is irrelevant in many circumstances. Not all customers go into debt and even fewer get to the disconnection stage. It is not appropriate to presume that a new customer will not pay their account.
- We recommend this clause be amended to require retailers to provide this information as appropriate.

Clause 24 – Retailers to consider financial mentoring when examining a credit history

- This clause requires retailers to consider whether a potential new customers' poor credit rating is countered by their active participation in financial mentoring or whether it was the result of historic circumstances that have now passed. Satisfying these scenarios involves asking highly personal questions and then asks retailers to make judgement calls which are well outside their area of expertise.
- We recommend removing subclauses (a) and (b).

Clause 27 – Advising all new customers of arrears processes

- Similarly to clause 23, requiring retailers to advise every new post-pay customer of the process for unpaid invoices is unnecessary. Retailers should have flexibility to only do this where appropriate.
- As an alternative action, retailers can advise of special conditions and support available when onboarding high credit risk applicants.

Clause 31(b) – Awareness of options generally available in the market:

- Retailers' contact centre staff cannot be realistically expected to have an awareness of competitor options in the market that might be more suitable. Retailers already inform customers of the PowerSwitch price comparison website.
- We recommend the Authority delete subclause (b) or replace it with a recommendation to refer to price comparison tools available in the marketplace.

Clause 61(c) – Requiring on-site contractors to provide advice on budgeting support agencies

- Service providers are trained to check the household for medically dependent customers prior to disconnection however they are not trained nor qualified to give out budgeting advice. Service Providers work with several electricity retailers and to memorise the specific offerings for each one is unrealistic. There would also be a risk factor attached to service provider interactions with customers especially when it's not good news.
- Instead, service providers are instructed to advise customers to contact the retailer and advise them on how to do so, so trained staff can provide high quality advice with consideration of each customer's circumstances.

Clause 66(d) – Ensuring a customer has “understood” notifications

- Requiring a retailer to ascertain whether the customer “understood” the notifications re non-payment and disconnection notices is an impossible standard to meet. Practically, this is only viable during a phone call by asking the customer whether they have understood. However, getting hold of customers on the phone is difficult at the best of times. Often, customers require communication through apps, email, text messages, postal mail, or courier letters – all of which cannot provide evidence of whether the customer has “understood”.
- We recommend the words “and understood” be removed from this clause.



Clause 78 – MDCs involved in deception

- There is no method in the Guidelines for a retailer to deal with a customer who has attained medically dependent status through lies or tricks such as forging a health practitioner's signature, or alleging that an MDC resides at the property when they don't, etc.
- We recommend the Guidelines more clearly state that medically dependent consumer protections are for legitimate MDC's only.