

21 September 2023

Submitted via: ConsumerCareConsultation@ea.govt.nz

Retail team
Electricity Authority
Wellington

Re: Options to update and strengthen the Consumer Care Guidelines Consultation paper

Whānau should never have to face a decision between keeping essential energy services connected to have the heater on or putting kai on their table. Aotearoa urgently needs a stronger, mandatory framework to ensure electricity retailers consistently and appropriately support the wellbeing of whānau. This should prohibit disconnecting whānau who are unable to pay.

FinCap welcomes the opportunity to comment on the Electricity Authority's *Options to update and strengthen the Consumer Care Guidelines Consultation paper (Consultation Paper)*. There will always be some who are unable to pay because of cash flow or other issues. Our recent *Voices* report found that where whānau being assisted by financial mentors had an energy debt, the median amount was \$453.18 in 2022.¹ This is despite that report and our *Put on Hold?* report finding that financial assistance from Work and Income for energy debt was extensive.² Regulator intervention to ensure protection of the interests of domestic consumers should not result in an underwhelming framework that allows retailers to run a conveyor belt to disconnection for whānau who are simply unable to pay.

The current voluntary Consumer Care Guidelines (**the Guidelines**) are inconsistently applied by energy retailers. Some are doing right by the community while the gap in protections permitting other retailers' underperformance is dangerous because coercing payment by disconnecting a whānau is a safety issue.

There are also outstanding issues around some whānau having great difficulty getting electricity supplied and some whānau having no choice but a prepay arrangement that disconnects electricity when they run out of funds. The Electricity Authority needs to take urgent action to improve and codify vital protections and set out a much more detailed and comprehensive reform and monitoring timeline.

We expand on these comments in our submission below.

About FinCap

FinCap (the National Building Financial Capability Charitable Trust) is a registered charity and the umbrella organisation supporting the 190 local, free financial mentoring services across Aotearoa. These services supported 50,000 whānau facing financial hardship in 2022. We lead the sector in the training and development of financial mentors, the collection and analysis of client data and encourage collaboration between services. We advocate on issues affecting whānau to influence system-level change to reduce the causes of financial hardship.

¹ See page 41 <https://www.fincap.org.nz/wp-content/uploads/2023/09/230915-Final-Voices-report.pdf>

² See <https://www.cac.org.nz/assets/Documents/Put-on-hold-report-June-2023.pdf>

Response to Consultation paper questions

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.

We strongly agree. There is clear evidence from self-reporting, community workers³ and otherwise that retailer's alignment with the guidelines and outcomes vary greatly. This is unacceptable where electricity is an essential service and assistance frameworks need to help prevent hospitalisation among a range of other potential consequences.

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

FinCap is concerned the proposed policy objective might constrain the ability for the Electricity Authority to make the amount of change necessary to better protect whānau from avoidable payment difficulty and energy hardship. This is because aspects of the current purpose and intended outcomes are often interpreted with a narrow lens that is not favourable to the realities of how any whānau can find themselves experiencing difficulty paying for essential energy services. We also see some of the purposes as underwhelming and in need of strengthening. We expand on these concerns in our answer to Question 3 below.

FinCap instead recommends that the policy objective be to deliver purposes and intended outcomes that are adjusted or interpreted so as to totally prevent energy providers' conduct causing or compounding challenges to the wellbeing of whānau.

An additional overarching assumption needs to apply to the protection framework and its development. This is that almost all whānau are honest and want to pay for the services they use, but are unable to, and that our protection system should be designed to support them as opposed to setting up barriers to assistance to prevent fraud. Setting such a principle or expectation will make development and implementation of protections more efficient and effective. An example of regulators asserting this reality as a potential starting point can be seen on page 5 of the ASIC ACCC Debt collection guidelines.⁴

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.

We are concerned about varying interpretation of the purposes and intended outcomes. The flow on interpretation around whether prepay automatic disconnection should be allowed as well as disconnection for non-payment in general also seems to be an area where there is not 'general industry consensus.' As in our response to the previous question we recommend that the purposes and intended outcomes are adjusted or interpreted so as to totally prevent energy providers' conduct causing or compounding challenges to the wellbeing of whānau.

As in our response to the previous question FinCap raises concern that the interpretation of the purposes and intended outcomes can vary greatly amongst stakeholders. This can see interpretations resulting in actions that forget the human cost of an ineffective consumer protection regime for an essential service.

³ See: <https://www.cac.org.nz/assets/Documents/Put-on-hold-report-June-2023.pdf>

⁴ See page 5:

<https://www.accc.gov.au/system/files/Debt%20collection%20guideline%20for%20collectors%20and%20credit%20-%20April%202021.pdf>

Principle C in the guidelines is *Retailers have a right to be paid for services and competition and innovation should be supported*. This and how it relates to purposes and intended outcomes seems to be interpreted in a way that results in decision makers deciding that retailers should always have disconnection of essential energy services as a debt collection tool. A whānau should not be put on a conveyor belt to their safety being put at risk by disconnection where they are unable to pay. When referring to whānau being ‘unable to pay’ we mean circumstance such as cash flow issues or other barriers (such as mental health or previous unfair experiences) that make it difficult to communicate with or trust an electricity provider.

FinCap is simultaneously raising the need to reform debt collection protections in Aotearoa and encourages the Electricity Authority to raise this within government. Regardless of the need for debt collection to be better, normal debt collection processes without disconnection are available to retailers. These are, on balance, better than a whānau facing safety issues from rapid unfair repayment being coerced through the removal of essential energy supply. A retailer not having disconnection to coerce payment does not mean their legal right to be paid is exhausted.

We challenge the inclusion of Principle C in general. Our *Voices* report demonstrates that even with assistance from a financial mentor, more than half of whānau still are unable to afford essential services and debt repayment obligations immediately.⁵ The guidelines need to acknowledge that expecting payment of arrears in lump sum within a short period of time is simply impossible or will cause substantial hardship for many whānau who have had a change of financial circumstances or have faced long term disadvantage. The protection framework is setting itself up to fail if it allows such an unrealistic expectation on whānau which undermines other purposes and intended outcomes.

Intended outcome B) c. in the guidelines is *Customers engage with retailers in good faith and respond to retailer communications, to avoid or minimise non-payment issues*. 3.22 in the Options Paper discusses customers not responding to retailers in good faith as an issue. This commentary reveals a need for the Electricity Authority to reassess expectations on whānau experiencing vulnerability. Retailers regularly claim whānau don’t respond adequately but this needs to be understood in the context of an expectation that trust in the industry will only be rebuilt for many in the public after many years of consistent industry conduct and strong regulator monitoring and compliance work. Currently, fewer than half of consumers clearly trust electricity providers to do the right thing.⁶

Financial mentors report that their work to help whānau with financial wellbeing is increasingly complex given the administrative load of juggling the demands and expectations of multiple creditors, insufficient income and social issues.⁷ They also report that even in their role as advocates they too often see a luck of the draw as to who they get at a retailer’s contact centre⁸ when they should instead be able to expect consistent and respectful assistance. Why should a whānau who seems to never get the benefit of the doubt trust that engaging with a retailer will do right by their promises when they have been let down before? The Electricity Authority must design protections that, by default, ultimately assist rather than punish those unable to pay.

We also note that some retailers and many community stakeholders do not support the current lack of protection for whānau who have prepay arrangements with automatic disconnection. Evidence of

⁵ The median expenditure relative to income for whānau seeing a financial mentor in 2022 was 104.3%. See page 25: <https://www.fincap.org.nz/wp-content/uploads/2023/09/230915-Final-Voices-report.pdf>

⁶ See: <https://www.cac.org.nz/assets/Documents/New-Zealand-small-electricity-consumer-sentiment-survey-2022-Baseline-results.pdf>

⁷ Ibid pages 8-10

⁸ See page 25: <https://www.cac.org.nz/assets/Documents/Put-on-hold-report-June-2023.pdf>

this can be seen in previous retailer and community submissions to the Electricity Authority and public statements. Currently the purposes and intended outcomes are making next to no intervention on these issues and we therefore do not consider there is 'general industry consensus' in how this content in the guidelines has been interpreted or drafted.

Stronger drafting of purposes and intended outcomes or better interpretation of the current drafting in the context of the reality of everyday challenges, not theory, is needed. Such approaches are necessary to prevent retailers from causing or compounding energy hardship and related challenges to the wellbeing of whānau.

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

We support timely codification of protections most important to preventing extremely bad outcomes. A commitment to an issues paper on further work by mid 2024 is welcome but we urge the Electricity Authority to set out a much more detailed and comprehensive reform and monitoring timeline where the public can have confidence that all potentially outstanding issues will be assessed, addressed and monitored transparently.

We are conscious that a rush to codify some aspects of the current guidelines risks locking in inefficient and ineffective protections. We support waiting for the final recommendation of the Energy Hardship Expert Panel so as to not undermine those recommendations.

However, the Electricity Authority needs to clearly commit to fully resourcing the codification of improved protections relative to everything in the current guidelines and more as a priority workstream. Effective policy development, monitoring and compliance work around retailing in the electricity system is needed to actually deliver desired outcomes to end users.

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 mid2024? If possible, please provide any initial evidence on these issue areas.

The list below describes a range of issues we have identified working with financial mentors, other stakeholders or through other research which may relate to the current guidelines in some way but needs more work to realise effective intervention:

- Financial mentors continue to report that some whānau face unreasonable difficulty getting a retailer to supply them due to ongoing or previous debt issues. Many sign up in someone else's name which can expose either party to economic abuse, others have no option but prepay which limits their access to electricity based on their current financial position.⁹ Work needs to be done to ensure all whānau have simple and timely access to post-pay electricity at a fair price as the default.
- A financial mentor has recently shared issues with how new energy technology providers commenced with a sales pitch rather than appropriate assistance where it should be clear their customer was having issues paying for the products and services provided. We have forwarded on this example in confidence to the Electricity Authority. The protection framework should also 'level the playing field' and ensure that there are requirements on new energy technology providers where relevant not just traditional energy retailers. Dubious claims around the merits of new energy technology relevant to the cost also need more attention. FinCap has screenshots of some of this solar marketing that we can provide

⁹ See page 21-22: <https://www.cac.org.nz/assets/Documents/Put-on-hold-report-June-2023.pdf>

to the Electricity Authority.

- The bundling of essential electricity services with other goods and services complicates switching or whānau access to assistance where difficulty paying arises. Different regulatory requirements for services on the same bill are even confusing for expert financial mentors,¹⁰ let alone a whānau who shouldn't need expertise in navigating their relationship with a business to keep their essential services connected.
- Aotearoa lacks coherent regulation and enforcement tools towards the fair conduct of debt collectors. This gap undermines protections as quite common historic energy debt¹¹ gets in the way of paying bills today. While our recommendation relative to the issue raised at the top of this list might counter this problem, we recommend the Electricity Authority nonetheless consider this reality and what can be done to counter energy hardship issues.
- Currently the regulation of gas retail conduct is not consistent with the regulation of electricity retail conduct. These are both energy services with the same purpose, often on the same bill or discussed in the same sentence on the phone to a retailer. Consistency is needed especially in the context of a phase out of retail gas networks where those least able to convert appliances to electricity may be exposed to greater ongoing cost for essential energy services.
- FinCap observes varying interpretation of what circumstances reflect medical dependency. We expect that someone needing hot water to prevent health issues worsening should be clearly understood as within scope. In a recent hui, Electricity Authority staff shared that current work with health agencies is just tied to specific health devices and this is concerning.
- FinCap also observes less robust systems for identifying and notifying relevant organisations of medical dependence in comparison to other jurisdictions.¹²
- Financial mentors have sought pointers from FinCap on resolving payment difficulty arising in secondary network arrangements. An example is a property manager billing a whānau for extensive usage without clear evidence of metering. These arrangements are generally confusing and there appears to be poor visibility for the regulator and Utilities Disputes. The onus to enforce any guidance for these retail arrangements is on consumers which is unrealistic and a failure of our protection system.
- There appears to be no sufficient protections to prevent back billing by energy retailers that is unreasonable. For example, a retailer could incorrectly bill a property for years due to system issues and then present a bill of tens of thousands of dollars for payment once this is corrected despite the customer not being at fault. Intervention is needed to set requirements around what could reasonably be expected to be paid in this or similar scenarios.
- As noted in the Consultation paper on page 19, energy retailers like other services providers are susceptible to being exploited by perpetrators of family violence to cause a range of harm. Retailer staff have mentioned awareness of such situations to FinCap. A consistent protection framework is needed for retailers to identify and appropriately respond to risks of

¹⁰ Ibid page 23

¹¹ See page 70: <https://www.fincap.org.nz/wp-content/uploads/2021/09/Debt-collection-in-Aotearoa-from-the-perspective-report.pdf>

¹² For example: <https://www.aer.gov.au/system/files/AER%20-%20Life%20support%20registration%20guide%20-%20September%202021.pdf>

family violence. Some retailers have told us they have operational policy in place in order to address these issues but this is not universal across the industry.

- The Electricity Authority's monitoring of outcomes from settings for the retail of electricity is currently ineffective, not transparent or both. The Electricity Authority needs to establish a much stronger, ongoing and transparent monitoring and compliance programme for the public to have ongoing trust that the electricity system is delivering in the interest of domestic consumers.
- Some fees charged by energy retailers are either not justified on face value or counterproductive. Examples are disconnection and reconnection fees. These compound payment difficulty and can vary greatly between retailers at times despite what should be similar underlying costs. FinCap has otherwise recommended many fees be waived altogether or not be charged, especially where there are clear signs someone is at risk of energy hardship. For example, it should be easy for a retailer to check whether someone has a community services card, pays by Work and Income redirection or is working with a financial mentor. Charging someone a fee when this is known is unfair and inefficient as it will likely just create costs for collecting a 'bad debt' that has little prospect of being paid.

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?

The list below draws on the findings of the *Put on hold?* report as well as our work with financial mentors and other stakeholders on energy related issues. Some may reflect significant amendments or extensions to the Guidelines but they are included anyway to demonstrate what the Electricity Authority should be conscious of when proceeding with this work.

- Currently there is little monitoring of outcomes and significant risks faced by whānau on prepay supply where there is automatic disconnection.¹³ Until this is addressed then other protections are undermined by whānau being left with no choice but such prepay arrangements. There are significant risks to the safety of whānau in Aotearoa that currently sit in a regulatory gap.
- Requirements around payment plans and resetting payment plans in Part 6 of the Guidelines need revisiting if they are to set a minimum standard that leads to realistic repayment arrangements.¹⁴ FinCap recommends the consideration of requirements consistent with the Essential Services Commission framework in Victoria, Australia.¹⁵ This requires a retailer to accept what a whānau says they can pay at regular intervals even if this below their ongoing usage at that time. Where this amount proves too optimistic then the retailer must offer to lower the amount. This required intervention is intended to build trust and engagement of whānau while the underlying causes of payment difficulty take time to be resolved.
- The requirements in the current guidelines around whānau easily realising the most appropriate pricing plan are not reflected in financial mentors' frustration that whānau are not being effectively offered changes between low and standard user let alone other retailer price options.¹⁶

¹³ Pages 37-38: <https://www.cac.org.nz/assets/Documents/Put-on-hold-report-June-2023.pdf>

¹⁴ Ibid, pages 32-34

¹⁵ See: <https://www.esc.vic.gov.au/electricity-and-gas/information-consumers/having-trouble-paying-your-energy-bills-you-have-rights>

¹⁶ See Pages 23-24: <https://www.cac.org.nz/assets/Documents/Put-on-hold-report-June-2023.pdf>

- Financial mentors report that smooth pay is an effective assistance tool while direct debiting causes issues.¹⁷ Consideration should be given to expanding and codifying the guidelines so that smooth pay is universally available and that payments by redirection from Work and Income are always accepted where a whānau wants to make such arrangements.
- The *Put on hold?* report found evidence that conduct within contact centres at a retailer or across retailers is inconsistent. The Guidelines that currently set expectations around quality assurance, respect of customers and appropriate staff training are not universally effective but may be helping reinforce good work at some retailers. Further work is needed to overcome issues with industry culture, ineffective modes of contact that are provided by some retailers and that community workers or whānau must at times know the ‘magic words’ to be directed to appropriate assistance.
- Throughout the Guidelines financial mentors’ wider work beyond budgeting is not acknowledged and we recommend, as we did during the last round of guidelines development, that the drafting instead refer to ‘financial mentoring’ not ‘budgeting advice.’
- The ‘underconsumption’ of electricity is common in Aotearoa with MBIE currently measuring 110,000 households being unable to adequately heat the home.¹⁸ We are aware of other experts saying this measurement is conservative. Retailers should be required to do more with their unique visibility and potential expertise to monitor for possible underconsumption through metering data. FinCap would expect such monitoring would lead to proactive outreach to offer appropriate assistance or referral towards energy wellbeing.
- It is difficult to establish in the current voluntary framework what energy efficiency assistance is being provided by retailers and how helpful it is or isn’t.¹⁹ Therefore, relevant aspects of the guidelines may need revision following more research.
- Some financial mentors’ reports suggest in many cases little may be done by retailers other than making the situation bad enough for Work and Income to provide recoverable assistance lending for energy. The Guidelines currently state that other assistance should be offered before this. Drafting may need strengthening in part 6 along with codification to make this reality.
- Part 7 in the Guidelines requires a visit to the premises or a traceable form of contact before disconnection. While FinCap would prefer no disconnection for non-payment at all, if it remains, then this protection needs to be stronger and clearer. If someone has not paid as they are in hospital or due to severe mental health limiting their ability to make phone calls then an in person visit might make all the difference to understand and assist. We recommend that if disconnection is still available then a staff member adequately trained in assisting someone facing vulnerability be required to visit and assess whether there are signs disconnection should not happen for the safety of consumers in the household. This will provide clarity for retailers on what is required and is likely to be more effective. Work in this space could incorporate learnings from the *Knock to stay connected customer code* initiative in Australia.²⁰

¹⁷ Ibid, pages 27-28

¹⁸ See: <https://www.mbie.govt.nz/about/news/new-analysis-shows-110000-households-unable-to-afford-to-heat-their-homes/>

¹⁹ Page 34: <https://www.cac.org.nz/assets/Documents/Put-on-hold-report-June-2023.pdf>

²⁰ See: <https://www.theenergycharter.com.au/knock-to-stay-connected/>

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?

We agree that some of the protections in these parts of the Guidelines are the most vital and in need of immediate codification to prevent extreme harm to whānau.

However, we reiterate our recommendation that the Electricity Authority set out a much more detailed and comprehensive reform and monitoring timeline beyond codifying just these parts. We also reiterate concerns that aspects of the Guidance in some of these Parts need strengthening to be effective.

Urgent codification of requirements from Part 9 to ensure fees and bonds reflect reasonable costs should also be explored as overcharging quickly leads to payment difficulty for those with the least resources to absorb the cost. However, as previously discussed in this submission, there should also be consideration of prohibiting some fees that are counterproductive like late fees, disconnection and reconnection fees for whānau clearly unlikely to be able to pay them.

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

We reiterate our recommendation that the Electricity Authority set out a much more detailed and comprehensive reform and monitoring timeline. This likely reflects a staging of codifying and strengthening the guidelines somewhat similar to Option 3 then Option 4 in the issues paper.

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

We are concerned that Criterion three places undue or unrealistic burden on the community sector and whānau in the interpretation of the proposed *'impact on retailers right to payment, and market efficiency.'* Part one of our *Voices* report briefly describes the strain financial mentors are under.²¹ The *Put on Hold?* and *Voices* reports also highlight that energy affordability issues are leading to debt to government issues rather than the underlying energy issues being addressed.

We also recommend an additional criterion that is weighted above all else. This should be that options are assessed against their potential to improve the health, wellbeing and social participation of all whānau in Aotearoa. It is vital that the Electricity Authority have this focus as Aotearoa accelerates electrification so as to achieve an equitable, just transition.²²

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

In addition to our recommendations in response to the previous question we also recommend timeliness have a greater weighting than currently proposed. We recommend this as currently the lack of strong protections poses significant safety issues where disconnection is dangerous to some whānau.

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?

Yes. Our *Put on hold?* report notes some retailers are already able to adequately assist their customers.²³ Some retailers also appear to be going beyond what might become a minimum standard. We'd anticipate that there would likely be no costs beyond slight adjustments to reporting that demonstrates compliance. Such adjustments could be part of regular assessments or evaluations

²¹ See: <https://www.fincap.org.nz/wp-content/uploads/2023/09/230915-Final-Voices-report.pdf>

²² Further discussion and definition on some related and relevant work here: <https://www.mbie.govt.nz/business-and-employment/economic-development/just-transition/>

²³ See page 42: <https://www.cac.org.nz/assets/Documents/Put-on-hold-report-June-2023.pdf>

to check whether internal policy is achieving intended outcomes which is good practice and builds efficiencies.

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

Yes, there is too much scope for inconsistency and uncertainty in a voluntary framework. The *Put on hold?* report also noted that community workers did not trust frameworks that aren't mandatory would be reliable.²⁴ Strengthening is needed.

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

Stronger and clearer requirements can 'level the playing field' and create efficiencies where outcomes are actually achieved and there is no need to change systems due to misinterpretation.

We are still concerned that if some retailers are still offering prepay with automatic disconnection that it will undermine the protections and this 'levelling of the playing field.'

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)?

No comment.

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

Stronger interventions and approaches we have recommended earlier in this submission have the greatest potential for greater health, wellbeing and social participation as is in the interests of domestic consumers.

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

We generally agree that codifying and strengthening the guidelines along with other intervention we have recommended earlier in this submission will have a great amount of positive impact compared to the status quo.

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

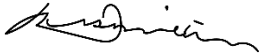
We agree that some of the protections in Parts two, six, seven and eight of the Guidelines are the most vital and in need of immediate codification to prevent extreme harm to whānau.

However, we reiterate our recommendation that the Electricity Authority set out a much more detailed and comprehensive reform and monitoring timeline beyond codifying just these parts. We also reiterate concerns that aspects of the Guidance in some of these Parts need strengthening to be effective. Please see the lists of issues in response to questions five and six earlier in this submission which demonstrate why we need clear commitment to ongoing work.

Please contact Jake Lilley, senior policy advisor at FinCap on [REDACTED] or at [REDACTED] to discuss or clarify any aspect of this submission.

²⁴ Ibid, pages 19-20

Ngā mihi,

A handwritten signature in black ink, appearing to read 'Ruth Smithers', with a stylized flourish at the end.

Ruth Smithers
Chief Executive
FinCap