



Electricity Authority  
PO Box 10041  
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17 October 2023

By email: [REDACTED]

**Submission on:** Options to update and strengthen the *Consumer Care Guidelines*

Thank you for the opportunity to make a submission on *Options to update and strengthen the Consumer Care Guidelines*. This submission is prepared by Dr Kimberley O’Sullivan, on behalf of He Kāinga Oranga / Housing and Health Research Programme, Department of Public Health, University of Otago, Wellington. For further information, or if you would like to meet to discuss any of the points made in this submission please contact Dr O’Sullivan.

#### Consultation Questions and Responses:

**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.**

Yes, we strongly agree that the current voluntary Consumer Care Guidelines are not delivering on their purpose or intended outcomes and do not provide sufficient consumer protections for residential and small business consumers. As our primary focus is on the health and wellbeing outcomes for people in relation to their electricity use at home we focus our attention on residential consumers in this submission, but we recognise that the Electricity Authority has a legislated mandate to “protect the interests of domestic consumers and small business consumers in relation to the supply of electricity”.<sup>1</sup>

The current Guidelines are voluntary, and there is evidence both from international literature, and through the Electricity Authority’s own recent review of the implementation of the Guidelines by retailers, that the voluntary approach does not deliver adequate consumer protection.<sup>2</sup> Electricity is an essential service for keeping healthy at home, with

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<sup>1</sup> Section 15(2) Electricity Industry Act

<sup>2</sup> O’Sullivan, Telfar-Barnard, Dohig, 2023 <https://www.phcc.org.nz/briefing/consumer-care-guidelines-electricity-retailers-must-be-mandatory>

serious health consequences possible when secure, stable, and affordable electricity supply is not available to all residential consumers. This is particularly the case for residential consumers who are or live with a person medically dependent on a critical electronic medical device, that may necessitate hospitalisation if electricity is not available at home. Others who have health conditions that are exacerbated by inadequate indoor temperatures may also experience health consequences of having electricity supply interrupted through planned (in the case of disconnection for non-payment) or unplanned disconnections. The current voluntary Guidelines are out of step with the approaches taken by other similar jurisdictions – consumer protections in Victoria, Australia and recently strengthened consumer protections by Ofgem in the UK present examples of more appropriate levels of consumer protections that better safeguard health. The current voluntary Guidelines are not sufficient to avoid serious health consequences and even deaths that could be prevented by continual and adequate supply of electricity to all residential consumers.

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

The current review of the Guidelines presents an opportunity to reevaluate the purpose and intended outcomes of the Guidelines. Re-evaluation is urgently needed to address the fact that the Guidelines have not been delivering the previous purpose and intent of the Guidelines (as per the EA’s review of retailer implementation of the Guidelines), as well as the updated legislative mandate for the Electricity Authority to protect the interest of domestic consumers. The current Guidelines are insufficient to meet the mandate, and therefore meeting the purpose and intended outcomes of these Guidelines should not be the policy objective – the policy objective should be to provide Guidelines that can meet the obligations under the mandate, and to deliver and enforce updated Guidelines.

**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.**

The industry consensus should not distract from the need for the Electricity Authority to provide Guidelines that can sufficiently protect the interests of domestic consumers – which the current Guidelines do not. As phrased, the above question suggests that the industry consensus should be prioritised over the needs for consumer protection, an assumption that we strongly reject.

There is evidence that domestic consumers are increasingly under financial pressure that is limiting their ability to afford adequate electricity. Over 8,000 households were disconnected

for non-payment of electricity last year.<sup>3</sup> Our research has previously shown that prepay electricity is typically used by consumers in energy hardship,<sup>4</sup> that prepay electricity was more expensive than the equivalent standard billing plans,<sup>5</sup> and that over a third of those who automatically disconnect when their prepay electricity runs out of credit are disconnected for more than 12 hours.<sup>6</sup>

Our research found that 2.3% of children aged 0-4 were in homes that had no electricity on Census night in 2018.<sup>7</sup> The number without electricity trended downwards over age, but there was also a bump in the younger working age people of 25-34 – also the age of most new parents in this country. Based on recent evidence from the Consumer Advocacy Council that 42% of people surveyed say paying for power is harder now than it was a year ago,<sup>8</sup> and Consumer New Zealand's recent findings that prepay electricity is still more expensive than equivalent standard billing plans,<sup>9</sup> and with the costs of living pressures after COVID and weather-related events this year, we are not expecting to see an improvement in these figures from the 2023 Census.

Under the current settings, there is insufficient protection for those consumers that may find themselves experiencing energy debt and facing disconnection or using prepay services. Without adequate Guidelines to ensure that disconnection, debt recovery, and associated fees will not harm domestic consumers, there is a real risk of increased health harms from energy hardship. There is a particularly urgent need to strengthen protections for medically dependent consumers.

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

We would recommend a broader approach be taken by the Electricity Authority. We recommend a two-stage implementation of mandatory Guidelines, where those areas covered by the current Guidelines could be updated and made mandatory quickly. A second,

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<sup>4</sup> O'Sullivan, K.C., Howden-Chapman, P.L., Fougere, G.M., 2015. Fuel poverty, policy, and equity in New Zealand: The promise of prepayment metering. *Energy Research & Social Science* 7, 99-107.

<https://doi.org/10.1016/j.erss.2015.03.008>

<sup>5</sup> O'Sullivan, K.C., Howden-Chapman, P., Fougere, G., 2011. Making the connection: the relationship between fuel poverty, electricity disconnection and prepayment metering. *Energy Policy* 39, 733-741.

<https://doi.org/10.1016/j.enpol.2010.10.046>

<sup>6</sup> O'Sullivan, K.C., Howden-Chapman, P.L., Fougere, G.M., Hales, S., Stanley, J., 2013. Empowered? Examining self-disconnection in a postal survey of electricity prepayment meter consumers in New Zealand. *Energy Policy* 52, 277-287. <http://dx.doi.org/10.1016/j.enpol.2012.09.020>

<sup>7</sup> Viggers et al, 2021 <https://www.healthyhousing.org.nz/sites/default/files/2021-11/Housing-that-Lacks-Basic-Amenities-in-Aotearoa-New-Zealand-2018.pdf>

<sup>8</sup> Consumer Advocacy Council 2023 <https://www.cac.org.nz/our-work/our-research/sentiment-survey-2022/>

<sup>9</sup> Consumer New Zealand 2023 <https://www.consumer.org.nz/articles/prepay-customers-paying-much-more-for-power>

or even third stage (if mandating the current Guidelines is broken into two steps of mandating those areas that could be made mandatory with limited work required sooner, while those areas requiring more significant updating or code changes are mandated later) should be to assess what new Guidelines may need to be introduced in order to meet the Electricity Authority's legislative mandate to protect the interest of domestic consumers.

**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.**

We would like to see strengthening of the Guidelines that would better promote and protect population health through increasing access to essential electricity for all domestic consumer in Aotearoa. In particular the present Guidelines are falling short in the provisions relating to medically dependent consumers – and here this should extend to those consumers whose health may be significantly affected by loss or restriction of electricity services and especially young children and older people who are physiologically more susceptible to inadequate indoor temperatures. The present Guidelines are also insufficient to protect consumers experiencing energy hardship, which also has consequences for health and wellbeing – the Guidelines on fees, bonds, and disconnections could be made mandatory immediately. The Guidelines would also benefit from being considered more broadly with a goal of ensuring that the interests of domestic consumers are being adequately protected to better align with the updated legislative mandate of the Electricity Authority. Again, looking to recently enacted protections in other jurisdictions will be helpful here. We are available to discuss research and evidence to support broader consumer protections and look forward to being consulted on the indicated issues paper.

In addition, the Guidelines could be usefully updated and strengthened to cover issues related to increased uptake of solar, distributed energy, and community energy networks.

**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?**

We consider that there is no reasonable justification for disconnection of medically dependent consumers – this should be acted on immediately as it presents a very real health risk that in the most extreme cases can result in death. In addition, we do not agree that medically dependent consumers can safely be provided electricity through prepay services, which risk automatic disconnection if not credited. The provision of electricity to medically dependent consumers through automatically disconnecting prepay meters is at odds with the right to health.<sup>10</sup> There are other vulnerable groups who should not be disconnected (young

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<sup>10</sup> <https://tikatangata.org.nz/human-rights-in-aotearoa/right-to-health>

children, older people) or at the very least, protected from disconnection during certain times – for example during forecast cold snaps or heat events, where disconnection from electricity services should be avoided except in the interest of immediate public safety.

Protections for prepay customers, as noted above, are of particular concern and the current Guidelines could also be strengthened and mandated immediately. Looking to best practice international examples of prepay consumer protections will also be helpful in developing this.

**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 these parts are of immediate and critical concern, however these should also be reviewed and strengthened as well as being made mandatory. We urge the Electricity Authority to review and consult on required changes to enhance these parts of the Guidelines and make them mandatory as soon as possible. We also urge the Electricity Authority to consider updating and making the rest of the Guidelines mandatory to provide the best possible outcomes for domestic consumers (i.e. we support Option 4).

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

We recommend that all parts of the Guidelines should be made mandatory, accepting that some parts of the Guidelines (as above) warrant more immediate action than others that may require further consultation before strengthening and codifying changes. A robust system for ensuring adherence to the Guidelines and a regime for penalties for breaching the Guidelines should also be introduced.

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

The criteria used by the Authority to assess options should align with its updated statutory objectives – namely improving the market for the long-term benefit of consumers, and protecting the interests of domestic consumers, reflecting section 15(1) and 15(2) of the Act. The overarching principles of the Guidelines and the outcomes listed in 7.2 of the consultation document should therefore be reviewed accordingly.

We disagree with criterion 3 as it does not align with the statutory objectives of the Authority, particularly protecting the interests of domestic consumers, and recommend the Authority remove this criterion.

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

We agree that criteria four and five are less important, and should be weighted less heavily, however we also recommend that the Authority consider health costs of delays in implementing a fully mandatory and enhanced set of consumer protections. One means of balancing this would be to progress updating and making the Guidelines mandatory in two stages. We recommend parts two, six, seven, and eight are initially strengthened and codified as early as possible in 2024 and especially before winter so that the most health harms from having unenforced and inadequate consumer protections for another winter season are avoided. The remaining parts could then be updated and mandated in late 2024.

**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. The Guidelines should already be voluntarily complied with, so retailers should not be facing significant additional costs. Any additional costs should be readily absorbed by retailers, this should be part of expected operational costs of retailing electricity – an essential service that supports people to be healthy at home, and which is clearly a profitable industry. We do not expect that compliance with Guidelines that support the Electricity Authority to meet its statutory obligations to domestic consumers would threaten profitability.

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

Yes, we absolutely agree, and we would in fact expect worsening of retailer alignment. As above, we have not seen evidence that suggests that energy hardship is improving. We expect that financial difficulties for vulnerable and medically dependent consumers could continue to grow with ongoing cost of living increases forecast over the next year, and remain concerned about the health implications of rising energy hardship.

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

We would expect that with a mandatory, enforced, consumer protections regime that provides the best benefit for consumers competition would be improved as all retailers would be meeting the expectations for engagement with consumers. This would potentially remove some retailers that are not fit to be operating in an industry delivering an essential service that is critical for enabling people to be healthy at home.

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

We see little benefit in option 2 for consumers, the current voluntary Guidelines are not providing sufficient consumer protections and are not being fully or evenly complied with across the electricity retailers.

Option 3 would provide some additional protection and would improve the current situation, however as outlined above, there are gaps in the Guidelines currently including in parts two, three, seven and eight, and these require review.

Option 4 would provide the best protection, however, as noted, there are currently gaps in the Guidelines and we recommend these are reviewed.

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

We agree that option 1 – status quo – is not suitable and changes is needed.

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

We agree with the Authority that option 2 is of little benefit as it will not provide the significant improvements to consumer welfare that are needed and should, therefore, not be progressed.

We agree that option 3 will provide some much-needed benefits to consumer welfare, however, we do not believe that option 3 provides the full benefits to consumer welfare that can and should be achieved by implementing mandatory minimum consumer protections. Progressing option 3 as it is would be a missed opportunity to embed best practice consumer protections while making changes to the Guidelines.

We agree that option 4 will provide the best opportunity for positive impacts for consumer welfare, but we disagree with the Electricity Authority's initial assessment that negative effects on the market will outweigh consumer benefits. We believe the health implications (and importantly, public health costs) of consumer protections are underestimated.<sup>11</sup> In contrast, it is our view that the negative effects on retailers of the Electricity Authority pursuing option 4 are overestimated, especially in light of the profit increases of the four largest retailers over the past year.<sup>12</sup>

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<sup>11</sup> O'Sullivan, 2023 <https://www.newsroom.co.nz/electricity-is-not-just-expensive>

<sup>12</sup> Consumer New Zealand, 2023 <https://www.consumer.org.nz/articles/profits-surge-for-new-zealand-s-gentailers>

International examples do not demonstrate that market operation is negatively impacted by ensuring stronger consumer protections are upheld.

The current situation where voluntary Guidelines that do not adequately protect consumers are not adhered to is not delivering for domestic consumers. This has important health implications with significant taxpayer costs attached.<sup>13</sup> <sup>14</sup>The evidence suggests that the mental health and wellbeing costs of energy hardship are being underestimated.<sup>15</sup>

**We recommend that the Electricity Authority pursue option 4, following review of the current Guidelines to address the gaps noted above.** As also outlined above, our recommendation is that a two-stage approach may be worth consideration.

If option 3 is progressed, gaps in protections for medically dependent consumers, vulnerable consumers, and prepay customers must be urgently addressed and we would welcome further consultation on the required changes.

We are available to meet with the Electricity Authority to discuss these issues further.

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<sup>13</sup> Riggs, L., Keall, M., Howden-Chapman, P., Baker, M.G., 2021. Environmental burden of disease from unsafe and substandard housing, New Zealand, 2010–2017. *Bulletin of the World Health Organization* 99, 259-270. <https://apps.who.int/iris/handle/10665/341231>

<sup>14</sup> O'Sullivan, 2023 <https://www.newsroom.co.nz/electricity-is-not-just-expensive>

<sup>15</sup> O'Sullivan, K. 2023. Unaffordable home heating increases risk of severe mental distress. *The Briefing*, (30 March). <https://www.phcc.org.nz/briefing/unaffordable-home-heating-increases-risk-severe-mental-distress>